

**BENICIA CITY COUNCIL
CITY COUNCIL MEETING AGENDA**

**Benicia City Hall, 250 East L Street
January 21, 2020
7:00 PM**

Call To Order

1. Closed Session (6:00 P.M.)

1.A - CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2):

Number of potential cases: 1

2. Convene Open Session (7:00 P.M.)

3. Roll Call

4. Pledge Of Allegiance

5. Reference To The Fundamental Rights Of The Public

A plaque stating the fundamental rights of each member of the public is posted at the entrance to this meeting room per section 4.04.030 of the City of Benicia's Open Government Ordinance.

6. Announcements

6.A - ANNOUNCEMENTS FROM CLOSED SESSION, IF ANY

6.B - MAYOR'S OFFICE HOURS

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's office of City Hall from 6:00 to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through City Hall by calling 707-746-4200.

6.C - OPENINGS ON BOARDS AND COMMISSIONS

- Community Sustainability Commission
2 Full Terms, Expiring July 31, 2023

- Open Government Commission
1 Partial Term, Expiring July 31, 2021

7. Proclamations

None

8. Appointments

None

9. Presentations

9.A - ECO AWARD PRESENTATION BY REPUBLIC SERVICES

10. Adoption Of Agenda

11. Opportunity For Public Comments

This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the City Council from responding to or acting upon matters not listed on the agenda. Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

12. Written Comment

13. Public Comment

14. Consent Calendar

Items listed on the Consent Calendar are considered routine and will be enacted, approved or adopted by one motion unless a request for removal or explanation is received from a Council Member, Staff or member of the public. Items removed from the Consent Calendar shall be considered immediately following the adoption of the Consent Calendar.

14.A - APPROVAL OF CITY COUNCIL MINUTES FROM DECEMBER 17, 2019 (City Clerk)

Recommendation:
Approve the minutes.

[December 17, 2019 City Council Meeting Minutes](#)

14.B - PARTICIPATION IN THE SOLANO COUNTY SUBREGION FOR THE REGIONAL HOUSING NEEDS ALLOCATION PROCESS (Interim Community Development Director)

The Association of Bay Area Governments (ABAG) is currently conducting the process to determine and assign the Regional Housing Needs Allocation (RHNA) for 6th Cycle Housing Element, 2022-2030. State law authorizes formation of a subregion, by which a total allocation may be distributed among participants. The distribution of housing units within a subregion may result in different allocation than would be otherwise be determined by ABAG. Solano County proposes to form a subregion, similar to the process followed in the prior Housing Element, in order to have the flexibility to determine the distribution and location of future housing in the County. The Solano City County Coordinating Council (4Cs) recommended formation of the subregion at their meeting on August 8, 2019.

Recommendation:
Adopt a resolution (Attachment 1) approving the City's participation in the Solano County Subregion for the Regional Housing Needs Assessment (RHNA) process.

[Staff Report - RHNA Subregion](#)

[1. Resolution - RHNA Subregion](#)

14.C - CITY APPOINTMENTS SUBCOMMITTEE (City Manager)

The term for the City Appointments Subcommittee is one year. The term for current member Council Member Campbell has expired. The City Council is being asked to confirm Mayor Patterson's selection of Council Member Young to the City Appointments Subcommittee. The term will expire December 31, 2020.

Recommendation:
Appoint, by motion, Council Member Young to the City Appointments Subcommittee to a term ending December 31, 2020.

[Staff Report - City Appointments Subcommittee](#)

[1. Resolution - City Appointments Subcommittee](#)

14.D - APPROVAL OF AMENDMENT TO THE CONTRACT WITH WALKER CONSULTANTS FOR AN ADDITIONAL PUBLIC SURVEY, WORKSHOP AND MEETING TO UPDATE THE DOWNTOWN PARKING STUDY (Economic Development Manager)

In June 2019, the City Council approved a contract with Walker Consultants to update the 2004 Downtown Parking Study. During the course of conducting the study, it was requested by members of the public that there be additional opportunities for public feedback. To accommodate this request, City staff requested that Walker Consultants expand their scope of work to include an additional online survey, a second public workshop and a report and presentation to the Planning Commission.

Recommendation:

Adopt the resolution (Attachment 1), approving an amendment to the agreement (Attachment 2) with Walker Consultants, authorizing the additional scope of work for Walker Consultants to conduct the updated Benicia Downtown Parking Study.

[Staff Report - Amendment to Walker Consultants Agreement](#)

[1. Resolution - Amendment to Walker Consultants Agreement](#)

[2. Amendment to Agreement - Walker Consultants](#)

14.E - APPROVAL TO WAIVE THE READING OF ALL ORDINANCES INTRODUCED OR ADOPTED PURSUANT TO THIS AGENDA (City Attorney)

15. Business Items

15.A - CONSIDER THE ADOPTION OF A RESOLUTION OF INTENTION TO TRANSITION TO A BY-DISTRICT METHOD OF CITY COUNCIL ELECTIONS (City Attorney)

Many cities in California that have utilized an at-large method of elections have transitioned, or are in the process of transitioning, to by-district elections. A driving factor for many of these cities are legal challenges to their at-large systems of election under the California Voting Rights Act (CVRA). While there is not now any allegations the City of Benicia's at-large method violates the CVRA, staff brings this matter forward at this time to consider making the voluntary choice to transition. There are benefits in making the switch now, and further, as this issue has recently been considered by the Benicia Unified School District, the issues to consider remain fresh in the community.

Recommendation:

Consider adopting a resolution (Attachments 1 & 2) declaring the City's intention to initiate procedures to transition from at-large City Council elections to by-district elections pursuant to California Elections Code § 10010 and taking related actions.

[Staff Report - By-District Elections](#)

[1. Resolution - Option 1](#)

[2. Resolution - Option 2](#)

15.B - INTRODUCTION OF AN ORDINANCE AMENDING CHAPTERS 17.16 (USE CLASSIFICATIONS), 17.70 (GENERAL REGULATIONS) AND 17.108 (DESIGN REVIEW) OF THE BENICIA MUNICIPAL CODE PERTAINING TO ACCESSORY DWELLING UNITS (PUBLIC HEARING) (Interim Community Development Director)

The proposed project is an amendment to the Benicia Municipal Code (BMC) regulations for Accessory Dwelling Units (ADUs) (Section 17.70.060) and additional associated amendments to Use Classifications (Chapter 17.16) and Design Review (Chapter 17.108). The amendments would bring the City of Benicia into compliance with recent changes to State statute. The amendments would additionally clarify procedures, modify height standards and setback standards, and revise objective design standards for ADUs.

The proposed amendments are initiated pursuant to City Council direction received on January 15, 2019, and subsequent amendments to State legislation which became effective on January 1, 2020. Following a public hearing, the Historic Preservation Review Commission recommended approval of the proposed amendments on December 19, 2019. The Planning Commission conducted a public hearing and recommended approval of the proposed amendments on January 9, 2020.

Recommendation:

Move to waive the first reading and introduce an ordinance (Attachment 1) of the City Council amending Chapters 17.16 (Use Classifications), 17.70 (General Regulations) and 17.108 (Design Review) of the Benicia Municipal Code and find that the ordinance is exempt under the California Environmental Quality Act.

[Staff Report - Accessory Dwelling Units](#)

[1. Draft Ordinance - Accessory Dwelling Units](#)

[2. ADU Summary of Legislative Changes](#)

[3. Summary of Stakeholder Feedback August and October 2019](#)

[4. Correspondence from Brandon Marshall August 2019](#)

[5. Summary of Stakeholder Feedback November 2019](#)

[6. Correspondence from Leann Taagepera and Staff Response](#)

[7. Mark-up of Current ADU Regulations](#)

[8. Correspondence from Mark Hajjar December 16, 2019.pdf](#)

[9. Presentation from Brandon Marshall and Brian Harkins, December 19 2019](#)

[10. Historic Preservation Review Commission Staff Report \(without Attachments\)](#)

[11. Draft Minutes HPRC, December 19, 2019](#)

[12. Resolution No. 19-14 \(HPRC\)](#)

[13. Correspondence from Mark Hajjar, January 9, 2020](#)

[14. Planning Commission Staff Report \(without Attachments\)](#)

[15. Draft Minutes of the Planning Commission, January 9, 2020](#)

[16. Resolution No. 20-1 \(PC\)](#)

15.C - DISCUSSION OF REVISIONS TO USE PERMIT APPLICATION AND PUBLIC SAFETY LICENSE FEES FOR CANNABIS OPERATIONS (Interim Community Development Director)

On December 17, 2019, the City Council directed staff to return on January 21, 2020 with reconsideration of the adopted cannabis use permit application fee and Public Safety License fees charged to cannabis operations. Both the cannabis Use Permit fee and the associated cannabis Public Safety License application fee are currently charged as “fixed fees”, with the specified fee amount adopted into the City’s Master Fee Schedule. Based on Council’s discussion, this staff report is providing two options to revise the cannabis operations Use Permit application and Public Safety License fees: (1) reduce the fixed fee amount, or (2) require the applications to be processed and billed on an hourly rate basis. Under both these options, any other external service provider costs that are expended to process these applications, such as CEQA review, would also be charged to the applicant.

Recommendation:

Discuss the cannabis Use Permit application fee and Public Safety License fee options provided and direct staff to prepare the required documents to amend the City’s Master Fee Schedule to accomplish either of the following:

1. Establish the cannabis use permit application fee and public safety license fee to be charged on an hourly rate basis and reimbursed to the city by the applicant. A resolution approving a new hourly billing methodology and hourly rates for cannabis operations, among other new documentation, would also be required; or

2. Reduce the fixed fee to process a cannabis use permit application to a lesser amount such as the lowest existing amount in the current fee schedule for a Use Permit application of \$5,361; and reduce the fixed fee to process a Public Safety License application to \$11,610.

[Staff Report - Cannabis Fees](#)

[1. City of Benicia Planning Fee Schedule, Effective 9-1-19](#)

[2. Two-Step Request, Councilmember Young & Vice Mayor Strawbridge](#)

[3. Email from Councilmember Young - Cannabis Application Fees from San Francisco](#)

15.D - MODIFICATION OF EXCISE TAX RATES FOR CANNABIS DELIVERY BUSINESSES OPERATING IN BENICIA (Interim Community Development Director)

At the December 17, 2019 meeting, the City Council discussed a two-step request submitted by Councilmember Young and Vice Mayor Strawbridge for consideration of deferring the excise tax rate for cannabis delivery operations for one year. Since no delivery businesses were operating in 2019, the two-step request is to modify the delivery tax rate such that the tax rate in 2020 is 2%, increasing to 3% in 2021, and 4% in 2022 and beyond.

Recommendation:

Move to adopt a resolution (Attachment 1) to defer the excise tax rates for one year for cannabis delivery businesses operating in Benicia, and to modify the delivery tax rate to the following: 2% in 2020 (effective through 12/31/20); 3% in 2021 (1/1/21-12/31/21); 4% in 2022 (effective 1/1/22) and beyond.

[Staff Report - Cannabis Delivery Excise Tax Rates](#)

[1. Resolution Modifying Tax Rates for Cannabis Delivery Businesses](#)

[2. Resolution No. 18-134 Setting Excise Tax Rates for Cannabis Businesses](#)

16. Council Member Committee Reports:

(Council Member serve on various internal and external committees on behalf of the City. Current agendas, minutes and meeting schedules, as available, from these various committees are included in the agenda packet. Oral reports by the Council Members are made only by exception.)

16.A - COUNCIL MEMBER COMMITTEE REPORTS

[Committee Reports](#)

17. Adjournment (11:00 P.M.)

Public Participation

The Benicia City Council and its Boards and Commissions welcome public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The City Council allows speakers to speak on non-agendized matters under public comment, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the City Council.

Should you have material you wish to enter into the record, please submit it to the City Manager.

Disabled Access or Special Needs

In compliance with the Americans with Disabilities Act (ADA) and to accommodate any special needs, if you need special assistance to participate in this meeting, please contact Alan Shear, the ADA Coordinator, at (707) 746-4200. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting.

Meeting Procedures

All items listed on this agenda are for Council discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the City Council.

Pursuant to Government Code Section 65009, if you challenge a decision of the City Council 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 Council at, or prior to, the public hearing. You may also be limited by the ninety (90) day statute of limitations in which to challenge in court certain administrative decisions and orders (Code of Civil Procedure 1094.6) to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

The decision of the City Council is final as of the date of its decision unless judicial review is initiated pursuant to California Code of Civil Procedures Section 1094.5. Any such petition for judicial review is subject to the provisions of California Code of Civil Procedure Section 1094.6.

Public Records

The agenda packet for this meeting is available at the City Manager's Office and the Benicia Public Library during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the

City Manager's Office located at 250 East L Street, Benicia, or at the meeting held in the Council Chambers. If you wish to submit written information on an agenda item, please submit to the City Clerk as soon as possible so that it may be distributed to the City Council. A complete proceeding of each meeting is also recorded and available through the City Clerk's Office.

Contact Your Council Members

If you would like to contact the Mayor or a Council Member, please call the number listed below to leave a voicemail message.

Mayor Patterson: 746-4213

Vice Mayor Strawbridge: 746-4213

Council Member Campbell: 746-4213

Council Member Young: 746-4213

Council Member Largaespada: 746-4213

DRAFT

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
DECEMBER 17, 2019
7:00 PM

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

CALL TO ORDER

Mayor Patterson called the Closed Session to order at 6:00 p.m.

All Council Members were present.

1) CLOSED SESSION (6:00 P.M.)

1.A CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: Commanding Officer's Quarters, 1 Commandant's Lane

Agency negotiator: City Manager, Economic Development Manager, City Attorney

Negotiating parties: City of Benicia, Terry Scott, Marty Duvall

Under negotiation: Price and terms of payment

1.B - CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(d)(1)

**Name of case: APS West Coast dba Amports v. City of Benicia etal. regarding Yuba
or 678 East H Street**

2) CONVENE OPEN SESSION (7:00 P.M.)

Mayor Patterson called the Open Session to order at 7:02 p.m.

3) ROLL CALL

All Council Members were present.

Council Member Campbell arrived at 7:03 p.m.

4) PLEDGE OF ALLEGIANCE

5) REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC

6) ANNOUNCEMENTS

6.A - ANNOUNCEMENTS FROM CLOSED SESSION, IF ANY

DRAFT

Ben Stock, City Attorney reported the following actions taken during Closed Session:

Item 1.A - No reportable action taken.

Item 1.B - The City Council considered a draft settlement agreement tonight in the noticed closed session Amports litigation matter involving the Yuba property. The Council voted 5-0 to direct the City Attorney to finalize the settlement with Amports' attorney. Once executed by both parties, the settlement provides that the parties would request the Court to enter a stay in the current litigation in order for Amports to submit a request for an emergency demolition permit. If the City exercises its discretion and issues the demolition permit, Amports would take the following actions:

- 1) Amports would dismiss the current litigation with prejudice.
- 2) Amports will provide the City with \$800,000 for the City to allocate towards rehabilitating City owned structures.
- 3) Amports will install an interpretative sign on the property to convey the historic significance of the site.
- 4) Amports will document the structures on the property per the Secretary of Interior's Standards.
- 5) Offer building features and equipment as determined by Amports to the Benicia Historic Museum.
- 6) Offer to sponsor up to \$5,000 for an exhibit regarding the site at the museum.
- 7) Attempt to move the façade of the Shipping Office building for the potential future integration with a site plan that it would be seeking for development of the site.

After demolition, Amports would then submit a use permit application to develop the property for cargo processing and storage, which would include a potential walking path along the shore, and that path would be dedicated to the City for public use. If Amports' use permit is ultimately approved after undergoing all requisite review, Amports will provide an additional \$400,000 to the City for further rehabilitation of historic structures. Amports will also seek to attach the façade of the Shipping Office building to the newly developed site. If that façade is unable to be reattached at a cost of under \$500,000, Amports will pay the City \$500,000 for historic rehabilitation purposes minus the costs already spent attempting to reattach it.

Amports also agrees as part of this settlement to work with the Benicia Fire Department to allow a secondary means of access over Amports property to provide emergency access to the Arsenal.

The Council also directed staff to bring back an item in the first quarter of 2020 to discuss how the City will structure a public process to allocate the money received as part of this settlement for renovating historic structures. Once the parties execute the settlement, any member of the public may obtain a copy of the agreement through the City Clerk's office.

6.B - MAYOR'S OFFICE HOURS

6.C - OPENINGS ON BOARDS AND COMMISSIONS

7) PROCLAMATIONS

DRAFT

7.A - SUBA MANUFACTURING & JACK BELL

Proclamation - SUBA Manufacturing & Jack Bell 

8) APPOINTMENTS

9) PRESENTATIONS

9.A - BENICIA PUBLIC LIBRARY ANNUAL REPORT (Director of Library and Cultural Services)

Staff Report -Annual Report from the Benicia Public Library 

1. Annual Report of the Library to City Council 

2. Annual Report to the California State Library for Fiscal Year 2018-2019 

10) ADOPTION OF AGENDA

On motion of Council Member Largaespada, seconded by Vice Mayor Strawbridge, Council approved the Adoption of the Agenda, as presented, on a roll call by the following vote:

Ayes: Council Member Campbell, Council Member Largaespada, Vice Mayor Strawbridge, Council Member Young, Mayor Patterson

Noes: (None)

11) OPPORTUNITY FOR PUBLIC COMMENTS

12) WRITTEN COMMENT

Three items received (copies on file).

13) PUBLIC COMMENT

None

14) CONSENT CALENDAR

14.A - APPROVAL OF CITY COUNCIL MINUTES FROM DECEMBER 3, 2019 (City Clerk)

December 3, 2019 City Council Meeting Minutes 

14.B - AWARD OF CONTRACT FOR ON-CALL TREE SERVICE WORK (Parks & Community Services Director)

Staff Report - On-Call Tree Service Work 

DRAFT

- 1. Resolution - On-Call Tree Service Work 
- 2. Contract - On-Call Tree Service Work 

RESOLUTION 19-125 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A NOT-TO-EXCEED \$150,000 CONTRACT WITH A PLUS TREE, INC. FOR ON-CALL TREE SERVICE WORK

Mike Dotson, Parks and Community Services Director, clarified the reason it was brought back was it did not originally have a not-to-exceed amount listed in the contract.

Vice Mayor Strawbridge asked for clarification if there were there was a benefit for a company in Benicia, and whether there was a company available in Benicia. Staff would look into the issue and get back to Council.

Public Comment:

None

On motion of Vice Mayor Strawbridge, seconded by Council Member Largaespada, Council approved the adoption of Resolution 19-125, on a roll call by the following vote:

Ayes: Council Member Campbell, Council Member Largaespada, Vice Mayor Strawbridge, Council Member Young, Mayor Patterson

Noes: (None)

14.C - APPROVAL OF CONTRACT CHANGE ORDERS AND ACCEPTANCE OF THE WASTEWATER TREATMENT PLANT GRIT BASINS IMPROVEMENT PROJECT (Public Works Director)

Staff Report - Acceptance of WWTP Grit Basins Improvement Project 

1. Resolution - Acceptance of the WWTP Grit Basins Improvement Project 

2. Notice of Completion - Acceptance of the WWTP Grit Basins Improvement Project

RESOLUTION 19-119 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING CONTRACT CHANGE ORDER NOS. 1 THROUGH 4 AND ACCEPTING THE WASTEWATER TREATMENT PLANT GRIT BASINS IMPROVEMENT PROJECT AS COMPLETE, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAID NOTICE WITH THE SOLANO COUNTY RECORDER

14.D - APPROVAL OF AMENDMENT TO AGREEMENT WITH HENDERSON POWER SERVICES, LLC FOR EMERGENCY GENERATOR UPGRADES AT THE WASTEWATER PLANT (Public Works Director)

DRAFT

Staff Report - Emergency Generator Upgrades at WWTP 

1. Resolution - Emergency Generator Upgrades at WWTP 
2. Amendment to Agreement No. 2 - Henderson Power Services, LLC 

RESOLUTION 19-120 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING AMENDMENT TO AGREEMENT NO. 2 WITH HENDERSON POWER SERVICES, LLC TO REPLACE AND UPGRADE CONTROL SYSTEM COMPONENTS IN THE EMERGENCY GENERATOR AT THE WASTEWATER TREATMENT PLANT FOR AN AMOUNT NOT-TO-EXCEED \$79,431, AND AUTHORIZING THE CITY MANAGER TO SIGN THE AMENDMENT ON BEHALF OF THE CITY

- 14.E - APPROVAL OF AMENDMENT TO AGREEMENT NO. 3 WITH TULLY & YOUNG, INC. FOR WATER MANAGEMENT STRATEGIES CONSULTATION (Public Works Director)**

Staff Report - Amendment to Tully & Young, Inc. Agreement 

1. Resolution - Amendment to Tully & Young, Inc. Agreement 
2. Amendment to Agreement No. 3 - Tully & Young, Inc. 

RESOLUTION 19-121 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE AMENDMENT TO AGREEMENT NO. 3 WITH TULLY AND YOUNG, INC. FOR ADDITIONAL WATER MANAGEMENT STRATEGIES CONSULTATION FOR AN AMOUNT NOT-TO-EXCEED \$22,660 AND AUTHORIZING THE CITY MANAGER TO SIGN THE AMENDMENT ON BEHALF OF THE CITY

- 14.F - APPROVAL OF AMENDMENT TO AGREEMENT WITH MEAD & HUNT FOR THE LAKE HERMAN DAM EMERGENCY ACTION PLAN (Public Works Director)**

Staff Report - Amendment to Mead & Hunt Agreement 

1. Resolution - Amendment to Mead & Hunt Agreement 
2. Amendment to Agreement - Mead & Hunt 

RESOLUTION 19-122 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE AMENDMENT TO AGREEMENT WITH MEAD & HUNT FOR ADDITIONAL ENGINEERING SERVICES RELATED TO THE LAKE HERMAN DAM EMERGENCY ACTION PLAN FOR AN AMOUNT NOT-TO-EXCEED \$14,000 AND AUTHORIZING THE CITY MANAGER TO SIGN THE AMENDMENT ON BEHALF OF THE CITY

- 14.G - APPROVAL OF PURCHASE OF STREAM FLOW GAGES FROM WESTERN HYDROLOGIC SYSTEMS (Public Works Director)**

Staff Report - Purchase of Stream Flow Gages 

1. Resolution - Purchase of Stream Flow Gages 

DRAFT

2. Purchase and Installation Agreement - Western Hydrologic Systems

RESOLUTION 19-123 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE PURCHASE AND INSTALLATION AGREEMENT WITH WESTERN HYDROLOGIC SYSTEMS FOR ONE AUTOMATED RESERVOIR LEVEL INDICATOR, TWO STREAM FLOW GAGES, AND DATA CALIBRATION/LOGGING SERVICE FOR ONE YEAR IN THE AMOUNT OF \$51,920 AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

14.H - APPROVAL OF MAINTENANCE AGREEMENT WITH FERGUSON WATERWORKS RELATED TO WATER METER INFRASTRUCTURE (Public Works Director)

Staff Report - Ferguson Maintenance Agreement 

1. Resolution - Ferguson Waterworks Maintenance Agreement 

2. Contract - Ferguson Waterworks Maintenance Agreement 

RESOLUTION 19-126 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A THREE-YEAR MAINTENANCE AGREEMENT WITH FERGUSON WATERWORKS FOR THE 25 DATA COLLECTION UNITS RELATED TO THE ADVANCED METERING INFRASTRUCTURE (AMI) WATER METERS FOR \$71,250 FOR THE PERIOD OF NOVEMBER 19, 2019 THROUGH NOVEMBER 18, 2022, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

Vice Mayor Strawbridge and Staff discussed the maintenance agreement for the new water meters. There should have been a maintenance agreement in place before, but there was not. They also discussed the issue of the users not paying for the maintenance costs, and what fund the maintenance costs would come from (ratepayer fund).

Council Member Young and Staff discussed complaints regarding citizens stating the meters were reading incorrectly, and whether any of the complaints were justified as a meter anomaly.

Council Member Campbell and Staff discussed how much water the City has saved by installing the meters. Council Member Campbell would like to see that information in the future.

Public comment

None

On motion of Council Member Largaespada, seconded by Council Member Young, Council approved the adoption of Resolution 19-126, on a roll call by the following vote:

DRAFT

Ayes: Council Member Campbell, Council Member Largaespada, Vice Mayor Strawbridge, Council Member Young, Mayor Patterson
Noes: (None)

14.I - ADOPTION OF THE 2020 CITY COUNCIL REGULAR MEETING CALENDAR (Assistant City Manager)

Staff Report - 2020 City Council Regular Meeting Calendar 
1. 2020 City Council Regular Meeting Calendar 

14.J - APPROVAL OF AGREEMENT WITH MUNICIPAL RESOURCES GROUP FOR TECHNICAL FINANCIAL ASSISTANCE (Finance Director)

Staff Report - MRG Agreement 
1. Resolution - MRG Agreement 
2. Agreement with Municipal Resources Group 

RESOLUTION 19-124 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING AN AGREEMENT WITH MUNICIPAL RESOURCES GROUP FOR TECHNICAL FINANCIAL ASSISTANCE FOR \$80,000 AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT ON BEHALF OF THE CITY

14.K - APPROVAL TO WAIVE THE READING OF ALL ORDINANCES INTRODUCED OR ADOPTED PURSUANT TO THIS AGENDA (City Attorney)

Council pulled items 14.B and 14.H for discussion.

On motion of Council Member Largaespada, seconded by Council Member Young, Council approved the Adoption of the Consent Calendar, as amended, on a roll call by the following vote:

Ayes: Council Member Campbell, Council Member Largaespada, Vice Mayor Strawbridge, Council Member Young, Mayor Patterson
Noes: (None)

15) BUSINESS ITEMS

15.A - RESOLUTION FOR SOLANO COUNTY TRANSIT TO TRANSITION TO A LEGISLATIVELY RECOGNIZED TRANSIT DISTRICT (City Manager)

Staff Report - SolTrans Transition to Transit District 
1. Resolution - SolTrans Transition to Transit District 

DRAFT

RESOLUTION 19-127 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ENDORSING ITS SUPPORT FOR THE CREATION OF A SOLANO COUNTY TRANSIT DISTRICT

Kristina Botsford, Deputy Director, SolTrans, reviewed the staff report.

Public Comment:

None

On motion of Council Member Largaespada, seconded by Vice Mayor Strawbridge, Council approved the adoption of Resolution 19-127, on a roll call by the following vote:

Ayes: Council Member Campbell, Council Member Largaespada, Vice Mayor Strawbridge, Council Member Young, Mayor Patterson

Noes: (None)

15.B - APPROVAL OF CONSULTANT AGREEMENT FOR PUBLIC OUTREACH AND ENGAGEMENT FOR THE UPCOMING WATER AND WASTEWATER RATE STUDY (Public Works Director)

Staff Report - Rate Study Public Engagement 

1. Resolution - Rate Study Public Engagement 

2. Consultant Agreement - Rate Study Public Engagement 

Kyle Ochenduszkowski, Assistant Public Works Director, reviewed the staff report.

Jodie Monaghan, JM Consultants, reviewed her background.

Council Member Campbell and Ms. Monaghan discussed whether she had ever worked on a water rate study project before, concern that hiring a consultant would insinuate that we will be having a water rate increase.

Council Member Young and Staff discussed how many consultants the RFP was sent to.

Council Member Largaespada and Staff discussed concern regarding the scope being too big for Benicia and this project, and concern regarding hiring a public relations (PR) firm.

Mayor Patterson clarified that she did not feel this was PR, it was facilitated work.

Council Member Campbell and Staff discussed the upcoming scheduled water rate increases, whether Ms. Monaghan would be around if and when the last increase went into effect.

Ms. Monaghan clarified she was not doing a media campaign. She was doing a public outreach program.

DRAFT

Vice Mayor Strawbridge and Staff discussed concern regarding jumping the gun on this prior to having enough data. People are still dealing with the past increases that occurred. There is not enough data to move forward.

Mayor Patterson clarified this was an agreement for public outreach study, not for a rate increase. We owe it to the community to trust that they can be involved and engaged in the process.

Council Member Largaespada discussed concern regarding residents being unhappy with rate increases, concern regarding spending \$100,000 on this item, he would rather spend it on planning and financing - rate study, concern regarding 30% of the quote being spent on PR items, and having staff work on public outreach rather than a consultant.

Public Comment:

None

Mr. Ochendusko discussed how beneficial it would be to have a deep understanding of our rate payers.

Council Member Young discussed how critical outreach would be, concern regarding the sequence, and the need for a rate study.

Mayor Patterson and Staff discussed the public engagement process.

Council Member Young suggested forming a working group. He was concerned regarding the timing and structure of the proposed action.

Mayor Patterson discussed the benefits of early public engagement and having a dialogue in the community while Staff gathers the information necessary to move forward.

Council Member Campbell discussed the need to know the rate numbers. Once those numbers are known, we can present it to the public.

Will Tarbox, Public Works Director, discussed the CAFR and utility update. Once we have all of those items, we will send it to MBS for an analysis. The facilitation effort is early, but the sequencing is in place. If we proceed with the facilitation, we will be ahead of the game. From a sequencing perspective, we are exactly where we need to be.

Council Member Strawbridge and Staff discussed the timeline, and suggested developing the advisory group and plugging them into the timeline later on.

Council Member Campbell likes the general idea, but not the timing. He could not support this at this time. He discussed concern regarding the last water rate increase process.

DRAFT

On motion of Council Member Young, seconded by Mayor Patterson, Council denied the proposed resolution, on a roll call by the following vote:

Ayes: Council Member Young, Mayor Patterson

Noes: Council Member Campbell, Council Member Largaespada, Vice Mayor Strawbridge

15.C - TWO-STEP REQUEST FOR REPURPOSING AND UPDATING TRAFFIC BICYCLE PEDESTRIAN SAFETY COMMITTEE (TBPSC) (City Manager)

Staff Report - Two-Step Request - Traffic Bicycle Pedestrian Safety Committee 

1. Two-Step Request, Mayor Elizabeth Patterson 

Lorie Tinfow, City Manager, introduced the Mayor's request for the two step process.

Council Member Young discussed support for bringing this forward for future discussion. A lot of what occurs at the meetings are traffic concerns. He wanted to make sure that traffic would be included in the future discussion.

Council Member Largaespada discussed support for bringing this back for future discussion. He also wanted to make sure that the residents would always have the vehicle to submit their crosswalk, stop sign requests, etc.

Vice Mayor Strawbridge discussed support for bringing this back for discussion. She supported having a citizen on the committee, but also wanted to ensure the makeup of the committee stayed intact.

Public Comment:

1. Terry Scott - Mr. Scott asked Council to widen the focus of the committee to be designed around individual mobility.

On motion of Council Member Young, seconded by Council Member Largaespada, Council approved bring this back for future discussion, on a roll call by the following vote:

Ayes: Council Member Campbell, Council Member Largaespada, Vice Mayor Strawbridge, Council Member Young, Mayor Patterson

Noes: (None)

15.D - TWO-STEP REQUEST FOR ADJUSTING TAX RATE FOR CANNABIS DELIVERY OPERATIONS AND REVIEWING CANNABIS BUSINESS APPLICATION FEES (City Manager)

Staff Report - Two-Step Request - Tax Rate for Cannabis Delivery Operations and Cannabis Business Application Fees 

1. Two-Step Request, Councilmember Young & Vice Mayor Strawbridge 

DRAFT

Vice Mayor Strawbridge stated the reason she was interested in this was for economic development and economic competitiveness in the industry. She wanted to ensure we were competitive with other cities in order to attract more of the business. She would like the tax rate in the Industrial Park adjusted.

Council Member Young discussed when the tax rates were originally set in 2018. He would like to postpone the increases that were proposed from 2019 to 2020. He would also like the application fee reduced for delivery businesses (currently a \$35,000 application fee). He discussed concern regarding black market dealers, and discouraging businesses from coming to Benicia.

Council Member Largaespada discussed support for bringing this back for future discussion. He wants to make sure that we compare Benicia to cities similar to Benicia (rather than Oakland, etc.). He would also like the annual license fees discussed.

Public Comment:

1. Tom Hamilton - Mr. Hamilton discussed support for reassessing the tax rates.

Mayor Patterson asked Staff to fast track this issue. Staff stated the soonest this could be brought back would be 1/21/20.

Council Member Largaespada was okay with fast-tracking the sales tax, but not the application fees.

Ms. Tinfow stated Staff would be able to address the concerns discussed tonight, and see what direction Council wants to give to Staff. Council can forward recommendations to Ms. Tinfow to include in the staff report for 1/21/20.

Council and Staff discussed what actions could be taken when this item is brought back. Mayor Patterson would like choices for the decisions that could be made when this item is brought back. Staff needs more time to look into the issues raised with the short time (due to the holiday break).

Mayor Patterson stated she was looking for a motion to move this forward as fast-tracked as possible within Staff's capacity.

On motion of Vice Mayor Strawbridge, seconded by Council Member Young, Council approved bringing this back for future discussion, as fast-tracked as possible within Staff's capacity, on a roll call by the following vote:

Ayes: Council Member Campbell, Council Member Largaespada, Vice Mayor Strawbridge, Council Member Young, Mayor Patterson
Noes: (None)

16) COUNCIL MEMBER COMMITTEE REPORTS:

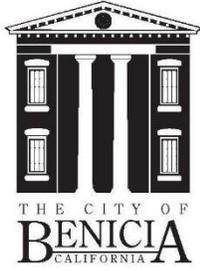
16.A - COUNCIL MEMBER COMMITTEE REPORTS

DRAFT

Committee Reports 

17) **ADJOURNMENT (10:30 P.M.)**

Mayor Patterson adjourned the meeting at 9:39 p.m.



**AGENDA ITEM
CITY COUNCIL MEETING DATE – JANUARY 21, 2020
BUSINESS ITEMS**

TO : City Manager

FROM : Interim Community Development Director

SUBJECT : **PARTICIPATION IN THE SOLANO COUNTY SUBREGION FOR THE REGIONAL HOUSING NEEDS ALLOCATION PROCESS**

EXECUTIVE SUMMARY:

The Association of Bay Area Governments (ABAG) is currently conducting the process to determine and assign the Regional Housing Needs Allocation (RHNA) for 6th Cycle Housing Element, 2022-2030. State law authorizes formation of a subregion, by which a total allocation may be distributed among participants. The distribution of housing units within a subregion may result in different allocation than would be otherwise be determined by ABAG. Solano County proposes to form a subregion, similar to the process followed in the prior Housing Element, in order to have the flexibility to determine the distribution and location of future housing in the County. The Solano City County Coordinating Council (4Cs) recommended formation of the subregion at their meeting on August 8, 2019.

RECOMMENDATION:

Adopt a resolution (Attachment 1) approving the City's participation in the Solano County Subregion for the Regional Housing Needs Assessment (RHNA) process.

BUDGET INFORMATION:

Participation in the Solano subregion requires payment of \$5,500 for support of a consultant, PlaceWorks, to represent the subregion at ABAG meetings and hearings and provide technical assistance. The Solano Transportation Authority (STA) will administer the \$49,950 contract, with all agencies contributing an equal amount.

BACKGROUND:

Under State Housing Element law, the Regional Housing Needs Allocation (RHNA) process is the procedure for allocating a “fair share” of housing units, in all income categories, to each city and county in California, including the Bay Area. Under State law, the Association of Bay Area Governments (ABAG) is responsible for formulating the methodology and allocating the housing units to each jurisdiction. The RHNA planning period addresses an 8-year planning cycle.

Contiguous cities and counties may choose to form a subregion. Under the RHNA process, a subregion is allocated a total number of units, and the subregion itself must develop its own internal methodology for distributing those units among its agencies. The methodology must comply with California housing law, which has undergone statutory revisions in the last two years. Once the allocation is final, each agency must then update its Housing Element to incorporate those units into its next planning period for the years 2022 – 2030.

During the previous RHNA process, Solano was one of three counties in the Bay Area electing to utilize a subregional approach. The others were Napa County and San Mateo County. Formation of a subregion allows for more local control and coordination among the County and each of its cities in the allocation process.

For informational purposes, for the 2007-2014 RHNA cycle, Solano County was allocated a combined total of 12,985 housing units. For the 2014-2022 cycle, the County was allocated 6,977 units. The reduction in unit allocation was primarily resultant of a larger percentage of the Bay Area’s regional allocation being dispersed to Priority Development Areas and employment centers, most of which are in the inner Bay Area.

While ABAG has not been assigned its regional allocation from HCD at this time, ABAG staff expects a significant increase in unit allocation to the region, with each County’s allocation potentially doubling. This is likely intended to reflect the well documented shortage of housing in California.

On August 8, 2019, the Solano City County Coordinating Council (4Cs) recommended that Solano County form a subregion for the RHNA process and designate the 4Cs as the decision-making body for the Solano subregion. In order to form the subregion, each jurisdiction must pass a resolution authorizing participation in the subregion. A commitment of \$5,500 is required from each jurisdiction to fund its fair share of the cost of consultant technical assistance from a consulting firm, PlaceWorks.

NEXT STEPS:

Following the City Council’s action, a copy of the authorizing resolution will be provided to ABAG in accordance with the agency’s requirements.

ALTERNATIVE ACTIONS:

The City Council may decline to authorize participation in the subregion. If the City does not participate in the Solano County subregion, Benicia will be assigned its RHNA allocation from ABAG (tentatively expected in Winter, 2021).

General Plan	Housing Element Policy 1.01 – “The City shall facilitate the production of housing that is affordable to people with a wide range of incomes.”
	Housing Element Policy 2.03 – “Maintain an adequate supply of residential land in appropriate land use designations and zoning categories to accommodate the City’s regional housing needs allocation”
	General Plan Policy 2.1.7 – “The City shall promote compact urban development within the UGB [Urban Growth Boundary]”

Strategic Plan	Strategy 5: Maintain and Enhance a High Quality of Life
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CEQA Analysis	The Regional Housing Needs Allocation process is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15283 which specifies that CEQA does not apply to RHNA determinations made by the Department of Housing and Community Development, a council of government, city or county pursuant to Section 65584 of the Government Code. Section 65584 establishes the RHNA process, including formation and requirements for subregions.
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ATTACHMENT:

1. Resolution – RHNA Subregion

*For more information contact: Alan Shear, Interim Community Development Director
 Phone: 707.746.4277
 E-mail: ashear@ci.benicia.ca.us*

RESOLUTION NO. 20-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING THE CITY OF BENICIA TO BECOME A MEMBER OF THE SOLANO COUNTY SUBREGION TO ADMINISTER THE REGIONAL HOUSING NEEDS ALLOCATION PROCESS FOR THE SOLANO COUNTY SUBREGION'S 2022-2030 HOUSING ELEMENT UPDATE

WHEREAS, the Association of Bay Area Governments (ABAG) is required by state law to administer the Regional Housing Needs Allocation process in the Bay Area; and

WHEREAS, ABAG has begun preliminary work on developing the process with the objective of completing the program in July of 2021; and

WHEREAS, state law allows ABAG to delegate the authority to allocate the housing need within a subregion to a "subregional entity" that consists of any combination of geographically contiguous local governments within ABAG; and

WHEREAS, the representatives of jurisdictions within Solano County have undertaken the task of forming a subregional entity, which is referred to herein as the "Solano County Subregion"; and

WHEREAS, the City of Benicia desires to join the Solano County Subregion and become a member of it on the terms described below; and

WHEREAS, the Solano City County Coordinating Council (CCCC), using the resources of both the Solano Transportation Authority and Solano County, will provide staff report to the Solano County Subregion.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby approves the formation of the Solano County Subregion. The City Manager shall ensure that a copy of this resolution is delivered to ABAG and is authorized and directed to execute and deliver all necessary documentation necessary to facilitate the formation of the Solano County Subregion in a manner consistent with this resolution and state law.

BE IT FURTHER RESOLVED that that the City Council of the City of Benicia acknowledges and agrees that:

1. The Solano City County Coordinating Council will act on behalf of, and be the final decision maker for, the Solano County Subregion.
2. The Solano County Subregion will make decisions pursuant to its rules attached hereto as Exhibit A.

3. The Solano County Subregion will identify an Authorized Representative(s) to act on its behalf and serve as contact with ABAG.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was adopted by the City Council of the City of Benicia at a regular meeting of said Council held on the 21st day of January, 2020 by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date

Exhibit A

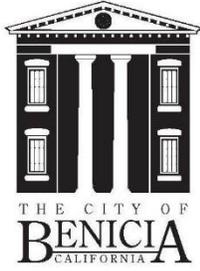
Decision-making Rules of the Solano County Subregion

Government Code section 65584.03 allows the formation of a subregional entity to allocate a subregion's housing need. It goes on to provide that the Subregional Entity's decisions shall be approved "by vote of the county or counties, if any, and the majority of the cities with the majority of the population within a county or counties" unless the local agency members adopt rules governing the Subregional decision-making process.

The following rules shall apply to decisions of the Solano County Subregion:

Staff level discussions of the Solano County Subregion shall occur at meetings of the County's planning directors or their designees, which shall occur roughly monthly over the course of the process.

Final decisions regarding documents, relating to the Solano County Subregion, shall be made by the Solano City County Coordinating Council (CCCC) at their regular meetings, following CCCC's rules and procedures.



AGENDA ITEM
CITY COUNCIL MEETING DATE – JANUARY 21, 2020
CONSENT CALENDAR

TO : City Council

FROM : City Manager

SUBJECT : **CITY APPOINTMENTS SUBCOMMITTEE**

EXECUTIVE SUMMARY:

The term for the City Appointments Subcommittee is one year. The term for current member Council Member Campbell has expired. The City Council is being asked to confirm Mayor Patterson’s selection of Council Member Young to the City Appointments Subcommittee. The term will expire December 31, 2020.

RECOMMENDATION:

Appoint, by motion, Council Member Young to the City Appointments Subcommittee to a term ending December 31, 2020.

BUDGET INFORMATION:

This action has no impact on the budget.

BACKGROUND:

The City Council Rules of Procedure provide for a one-year term for members of the City Appointments Subcommittee. The terms of the members are staggered, with Vice Mayor Strawbridge’s term ending July 31, 2020. To continue to comply with the City Council Rules of Procedure, staff is presenting the Mayor’s recommendation to appoint Council Member Young for the full one-year term starting January 2020.

The City Council’s Rules on the City Appointments Subcommittee

1. A two-member subcommittee appointed by the Mayor, which will rotate among Council Members with one new appointee each year, shall be appointed to interview applicants for all boards, commissions and committees, unless otherwise provided for by statute, ordinance or resolution. One member of the City Council subcommittee shall be appointed in January of each year and one member appointed in July of each year, each for a one-year term.
2. Each term of the subcommittee will be filled by Council Members who did not serve on the committee during the prior term unless the Council Member is unable or unwilling to serve on the subcommittee.

3. The subcommittee shall interview the applicants using standardized questions for all applicants, particularized questions for the particular board or commission, and any other appropriate questions. The subcommittee shall recommend one applicant to the Mayor for each vacancy and the Mayor may make the appointment from the recommended applicant. The subcommittee shall provide comments to the Mayor on why they recommended the applicant. If the Mayor finds the recommendation acceptable, the comments shall be included in the agenda packet as part of the paperwork for the appointment.

4. If the applicant is not acceptable to the Mayor, the subcommittee shall recommend an additional applicant until an appointment is made by the Mayor, which shall be subject to final approval by the Council. The City Clerk shall call for the vote in the following order: subcommittee members, remaining Council Members, and the Mayor.

5. If, at any point during this process, only one qualified applicant is available, the subcommittee may choose to make a single recommendation.

6. If the subcommittee is unable to recommend applicants due to lack of qualified applicants, then the Mayor may elect to interview the available applicants and/or direct staff to conduct additional outreach efforts to fill the opening.

7. The names of the proposed appointees shall be posted five (5) working days prior to the appointment being made.

8. For appointments to a board or commission where state law provides for appointment by the Council as a whole, any Council Member may nominate a person for appointment. The Council shall then vote on the nominee at the following Council meeting.

9. If desired by the member, members of the Council who are not on the subcommittee may interview any or all of the applicants. These members shall use care not to violate the Brown Act by disclosing the information they learn from the interviews prior to the meeting where appointments are scheduled to be made.

NEXT STEPS:

After appointment, the subcommittee shall continue interviewing applicants to fill the vacancies on boards and commissions.

ALTERNATIVE ACTIONS:

Do not appoint Council Member Young and return to Council with an alternate selection by the Mayor.

General Plan	Goal 2.28: Improve and maintain public facilities and services
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Strategic Plan	Strategic Issue #1: Protecting Community Health and Safety
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CEQA Analysis	Committee appointments made by Councilmembers are not subject to the California Environmental Quality Act under Guidelines Section 15378 (b)(5) because organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment do not constitute a project.
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ATTACHMENT:

1. Resolution – City Appointments Subcommittee

For more information contact: Lorie Tinfow, City Manager

Phone: 707.746.4200

E-mail: ltinfow@ci.benicia.ca.us

RESOLUTION NO. 20-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
CONFIRMING THE MAYOR'S APPOINTMENT OF COUNCIL MEMBER STEVE
YOUNG TO A CITY COUNCIL APPOINTMENT SUBCOMMITTEE FOR A ONE-
YEAR TERM ENDING DECEMBER 31, 2020.**

NOW, THEREFORE, BE IT RESOLVED THAT the appointment of Council Member Steve Young to a City Council Appointment Subcommittee by Mayor Patterson is hereby confirmed by the City Council of the City of Benicia, contingent on the adoption of the subcommittee resolution.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was adopted by the City Council of the City of Benicia at a regular meeting of said Council held on the 21th day of January, 2020 by the following vote:

Ayes:

Noes:

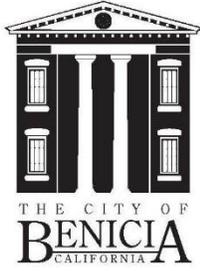
Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date



**AGENDA ITEM
CITY COUNCIL MEETING DATE – JANUARY 21, 2020
CONSENT CALENDAR**

TO : City Manager

FROM : Economic Development Manager

SUBJECT : **APPROVAL OF AMENDMENT TO THE CONTRACT WITH WALKER CONSULTANTS FOR AN ADDITIONAL PUBLIC SURVEY, WORKSHOP AND MEETING TO UPDATE THE DOWNTOWN PARKING STUDY**

EXECUTIVE SUMMARY:

In June 2019, the City Council approved a contract with Walker Consultants to update the 2004 Downtown Parking Study. During the course of conducting the study, it was requested by members of the public that there be additional opportunities for public feedback. To accommodate this request, City staff requested that Walker Consultants expand their scope of work to include an additional online survey, a second public workshop and a report and presentation to the Planning Commission.

RECOMMENDATION:

Adopt the resolution (Attachment 1), approving an amendment to the agreement (Attachment 2) with Walker Consultants, authorizing the additional scope of work for Walker Consultants to conduct the updated Benicia Downtown Parking Study.

BUDGET INFORMATION:

At the request of City staff, Walker Consultants submitted an expanded scope of services outlining additional tasks to be completed in order to complete the Downtown Parking Study in the amount of \$8,150. Staff recommends approving the amendment to the contract in an amount not to exceed \$8,150. With this proposed amendment, the total value of the contract would be \$63,085 and there are sufficient funds in account #0102210-7008 (Economic Development Contract Services).

BACKGROUND:

In June 2019, City Council awarded the contract to Walker Consultants to update the 2004 parking study of the downtown area of Benicia.

Walker Consultants teamed with City staff to conduct public outreach, evaluated current parking demand, collected and evaluated parking data, evaluated parking demand and solutions for a

proposed hotel development, evaluated future land uses changes that could impact parking demand, and evaluated employing flex-space.

At staff’s request, Walker Consultants conducted an additional community workshop in the evening hours, conducted and analyzed an additional online survey, and will give an additional report and presentation to the Benicia Planning Commission on February 13th. (The original scope of work included a report to the Economic Development Board and City Council).

The fees for these additional services are \$8,150. This is based on a project cost of the following:

- \$3,090 for the additional community workshop (the same fee as community workshop conducted as part of the original scope of services).
- Approximately 10 hours to perform study composition and analysis for the Phase II online survey at an hourly rate of \$230/hour.
- Approximately 12 hours to prep and present to Planning Commission as well as respond to any proposed changes or comments at an hourly rate of \$230/hour.

NEXT STEPS:

Following Council adoption of the proposed resolution, staff will execute the amendment to the agreement with Walker Consultants. Staff is planning to present the Downtown Parking Study Report to the City Council on February 18, 2020.

ALTERNATIVE ACTIONS:

Reject the proposed additional scope of work. Such action would result in cancelling the report to the Planning Commission and only having City staff available to present the report on February 18th to the City Council.

General Plan	Goal 2.12 Strengthen the Downtown as the City’s central commercial zone. <input type="checkbox"/> Policy 2.12.3 Seek to make Downtown a thriving and vigorous community center offering a variety of activities and attractions for residents and visitors.
	Goal 3.7 Maintain and reinforce Benicia’s small-town visual characteristics

Strategic Plan	Strategic Issue 3: Strengthening Economic and Fiscal Conditions <input type="checkbox"/> Strategy #3: Retain and Attract Business
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CEQA Analysis	This project is Categorical Exempt per CEQA Section 15301.
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ATTACHMENTS:

1. Resolution – Amendment to Walker Consultants Agreement
2. Amendment to Agreement – Walker Consultants

For more information contact: Mario Giuliani, Economic Development Manager

Phone: 707.746.4289

E-mail: mgiuliani@ci.benicia.ca.us

RESOLUTION NO. 20-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
AUTHORIZING AN AMENDMENT TO THE CONTRACT WITH WALKER
CONSULTANTS TO CONDUCT AN UPDATED BENICIA DOWNTOWN PARKING
STUDY**

WHEREAS, a parking study of downtown Benicia was last conducted in 2004; and

WHEREAS, parking conditions have changed in the last 15 years with the addition of increased business and visitor traffic to the downtown; and

WHEREAS, there is consideration of building a hotel on the city-owned public parking lot on East Second and East E Streets; and

WHEREAS, having an update Benicia Downtown Parking Study would enable some funding of parking improvements by making the City of Benicia eligible for SB1 grant funding; and

WHEREAS, staff issued a Request for Proposals and interviewed responding firms; and

WHEREAS, the contract was awarded to Walker Consultants in the amount of \$54,935 on June 18, 2019; and

WHEREAS, staff requested Walker Consultants conduct an additional public workshop, conduct an additional online survey and an additional public meeting with the Benicia Planning Commission; and

WHEREAS, Walker Consultants has submitted an amendment for these additional services in the amount of \$8,150.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia does hereby authorize that staff enter amendment to contract with Walker Consultants in an amount not to exceed \$8,150 to complete the updated Benicia Downtown Parking Study.

On motion of Council Member _____, seconded by Council Member _____, the above resolution was adopted by the City Council of the City of Benicia at a regular meeting of said Council held on the 21st day of January, 2020 by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date

CONTRACT #__ __ - __ __ __

AMENDMENT TO AGREEMENT

This Amendment of the Agreement, entered into this 21st day of January 2020 by and between the City of Benicia, a municipal corporation (hereinafter "CITY") and Walker Consultants, a California corporation, with its primary office located at 601 California Street, Suite 820, San Francisco, CA 94108 (hereinafter "CONTRACTOR") (collectively, "the Parties"), is made with reference to the following:

RECITALS

A. On June 18, 2019, an Agreement for Contract Services (Contract #19-205) was entered into by and between CITY and CONTRACTOR. ("Agreement"); and

B. CITY and CONTRACTOR desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. Paragraph 1 (Description of Services to be Provided) of the Agreement is modified to include the additional services described in the attached Proposal dated December 17, 2019 for Expanded Scope of Services: Downtown Parking Study.
2. Paragraph 2 (Payment) of the Agreement is modified to include an additional \$8,150.
3. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed on the day and year first above written.

[SIGNATURES ON THE FOLLOWING PAGE]

EXHIBIT A
Proposal



601 California Street, Suite 820
San Francisco, CA 94108

415.644.0630
walkerconsultants.com

December 17, 2019

Mario Giuliani
Economic Development Manager
The City of Benicia
250 East L Street
Benicia, CA 94501

Transmitted via email: mgiuliani@ci.benicia.ca.us

Re: Proposal for Expanded Scope of Service: Downtown Parking Study

Dear Mr. Giuliani,

Walker Consultants ("Walker") is pleased to submit for your review the following proposal to perform additional services as part of our current work on the City of Benicia Downtown Parking Study. The proposal includes our understanding of the additional project needs, scope of services, and professional fee for your consideration.

PROJECT UNDERSTANDING

Walker is currently conducting a Downtown Parking Study for the City of Benicia. As part of the study, Walker has performed public outreach and engagement, including a public meeting and online survey. The purpose of this engagement is to both educate the community on findings from parking field work as well as gain valuable feedback to inform the study's recommendations.

As part of this effort, Walker has performed the following engagement and outreach tasks:

- Conducted stakeholder outreach with the Downtown Benicia Alliance to discuss existing parking conditions and findings as well as gain input on parking issues.
- Planned and conducted a community workshop in the morning of August 20, 2019. Created stations to educate the community about parking best practices, existing downtown parking conditions, and to receive input on parking issues and feedback on potential solutions.
- Conducted and analyzed responses of a twenty-question online survey to gain feedback from community members who may not have been able to attend the community meeting.

At the request of the City, Walker performed the following tasks in addition to the scope of services for this engagement. The goal of these tasks was to increase opportunities for the community to give input on the study.

- A second community workshop was held on September 16, 2019. The second workshop was held in the evening to provide members of the public an additional opportunity to attend
- Walker and the City issued a Phase II online survey designed to gather additional input from the public based on the Phase I online survey responses.
- A presentation to the City of Benicia Planning Commission on February 13, 2020.



PROFESSIONAL FEE

Walker proposes a fee of \$8,150 for this additional work. This is based on a project cost of the following:

- \$3,090 for the additional community workshop (the same fee as community workshop conducted as part of the original scope of services).
- Approximately 10 hours to perform study composition and analysis for the Phase II online survey at an hourly rate of \$230/hour.
- Approximately 12 hours to prep and present to Planning Commission as well as respond to any proposed changes or comments at an hourly rate of \$230/hour.

We sincerely appreciate this opportunity to be of service to the City of Benicia and perform this study. We are available to answer any questions you may have, so please call us at your convenience if you have any questions.

If all is satisfactory, please sign and return this authorization signifying your acceptance and notice to proceed.

Sincerely,

WALKER CONSULTANTS

A handwritten signature in cursive script that reads "Chrissy Mancini Nichols".

Chrissy Mancini Nichols
Consultant

Enclosures General Conditions of Agreement



AUTHORIZATION

Trusting that this meets with your approval, we ask that you sign in the space below to acknowledge your acceptance of the terms contained herein, and to confirm your authorization for us to proceed. Please return one signed original of this agreement for our records.

City of Benicia

Accepted by (Signature) _____

Printed Name _____

Title _____

Date _____



SERVICES

Walker Consultants ("Walker") will provide the CLIENT professional services that are limited to the work described in the attached letter ("the services"). Any additional services requested will be provided at our standard hourly rates or for a mutually agreed lump sum fee. The services are provided solely in accordance with written information and documents supplied by the CLIENT, and are limited to and furnished solely for the specific use disclosed to us in writing by the CLIENT. No third-party beneficiary is contemplated. All documents prepared or provided by WALKER are its instruments of service, and any use for modifications or extensions of this work, for new projects, or for completion of this project by others without Walker's specific written consent will be at CLIENT's sole risk.

PAYMENT FOR SERVICES

~~Prior to commencement of services the CLIENT agrees to make an Initial Payment to Walker in an amount equal to 20% of the total fee or as stated in the attached letter. This amount will be credited to the last invoice(s) sent to the CLIENT. Walker will submit monthly invoices based on work completed plus reimbursable expenses. Reimbursable expenses will be billed at 1.15 times the cost of travel and living expenses, purchase or rental of specialized equipment, photographs and renderings, document reproduction, postage and delivery costs, long distance telephone and facsimile charges, additional service consultants, and other project related expenses. Payment is due upon receipt of invoice. If for any reason the CLIENT does not deliver payment to WALKER within thirty (30) days of date of invoice, Walker may, at its option, suspend or withhold services. The CLIENT agrees to pay Walker a monthly late charge of one and one half percent (1½%) per month of any unpaid balance of the invoice.~~

STANDARD OF CARE

Walker will perform the services in accordance with generally accepted standards of the profession using applicable building codes in effect at time of execution of this Agreement. Walker's liability caused by its acts, errors or omissions shall be limited to the fee or \$10,000, whichever is greater.

Any estimates or projections provided by Walker will be premised in part upon assumptions provided by the CLIENT. Walker will not independently investigate the accuracy of the assumptions. Because of the inherent uncertainty and probable variation of the assumptions, actual results will vary from estimated or projected results and such variations may be material. As such, Walker makes no warranty or representation, express or implied, as to the accuracy of the estimates or projections.

PERIOD OF SERVICE

Services shall be complete the earlier of (1) the date when final documents are accepted by the CLIENT or (2) thirty (30) days after final documents are delivered to the CLIENT.



**AGENDA ITEM
CITY COUNCIL MEETING DATE – JANUARY 21, 2020
BUSINESS ITEMS**

TO : City Council

FROM : City Attorney

SUBJECT : **CONSIDER THE ADOPTION OF A RESOLUTION OF INTENTION TO TRANSITION TO A BY-DISTRICT METHOD OF CITY COUNCIL ELECTIONS**

EXECUTIVE SUMMARY:

Many cities in California that have utilized an at-large method of elections have transitioned, or are in the process of transitioning, to by-district elections. A driving factor for many of these cities are legal challenges to their at-large systems of election under the California Voting Rights Act (CVRA). While there is not now any allegations the City of Benicia’s at-large method violates the CVRA, staff brings this matter forward at this time to consider making the voluntary choice to transition. There are benefits in making the switch now, and further, as this issue has recently been considered by the Benicia Unified School District, the issues to consider remain fresh in the community.

RECOMMENDATION:

Consider adopting a resolution (Attachments 1 & 2) declaring the City’s intention to initiate procedures to transition from at-large City Council elections to by-district elections pursuant to California Elections Code § 10010 and taking related actions.

BUDGET INFORMATION:

The fiscal impact of a change to by-district elections will vary among the options proposed.

Under Option 1, if the City were to switch to by-district elections immediately, the City would need to hire a demographer and expend staff and attorney time in following the specific procedures laid out in the Elections Code for accomplishing the transition.

Under Option 2, if the City were to decide to switch to by-district elections following the 2020 Census, the costs would be relatively the same as under Option 1, only deferred until the results of the 2020 Census are made public.

Under Option 3, if the City decided not to transition to by-district elections, there would be no immediate costs to the City. However, the City would face exposure to litigation if someone were to allege a violation of the CVRA.

BACKGROUND:

Cities, counties and districts across California have been transitioning from at-large elections to by-district elections in response to the California Legislature’s adoption of the California Voting Rights Act of 2001 (“CVRA”) (Election Code §§ 14025 – 14032). The CVRA prohibits California public agencies from imposing or applying an at-large method of election that “impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election.” A remedy for a violation of the CVRA is that a court will “implement appropriate remedies tailored to the violation, including the imposition of district based elections.”

The CVRA defines a “protected class” as “a class of voters who are members of a race, color, or language minority group, as this class is referenced and defined in the federal Voting Rights Act of 1965.” An “at-large method of election” means a method of electing members to the governing body of a political subdivision in one of three ways:

1. One in which the voters of the entire jurisdiction elect the members to the governing body;
2. One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body; or
3. One that combines at-large elections with district-based elections.

“By-district election” means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

The CVRA also provides for a cause of action for its violation where a plaintiff can show that the at-large method of elections results in racially polarized voting. Such lawsuits have proven difficult – and expensive – to defend. Further, one of the remedies that may be imposed for a violation is a forced switch to a by-district method of elections. There are various law firms who have methodically made allegations of racially polarized voting against many California jurisdictions. Those jurisdictions then must either choose to defend against the CVRA challenge or adopt district-based elections. Staff is unaware of any jurisdictions that have prevailed in defending such a challenge. Judgments in those lawsuits have been substantial, and also result in having the district-based method of elections imposed on the jurisdiction.

The City of Benicia utilizes the at-large method of election described in item 1 above. The City, by initiative, voted to elect a Mayor and separately elect four Councilmembers. This method of election did not restrict where such Councilmembers resided. The City has used this method of election since 1976. Although there is not now any allegation that the City of Benicia’s method of election has resulted in impairing the ability of a protected class to elect candidates of its choosing, it nevertheless may be a worthwhile endeavor to make this transition now.

This transition has been raised now due to the above, as well as because Benicia Unified School District (BUSD) is completing its transition from an at-large method of elections to by-trustee

(i.e. by-district) elections, and the issue is fresh in the community’s mind. Further, to the extent the City elects to proactively transition, doing so may allow for greater control of the process rather than having the process dictated to it by a prospective plaintiff or a court. Taking the action now would give greater control of the process to the community.

In 2016, the procedure for making the transition was laid out in legislation. The procedures require no less than 5 meetings:

- 2 meetings prior to any maps being drawn to discuss the composition of districts.
- 2 meetings after maps have been drawn where the public can provide input regarding the content of the draft maps and proposed sequencing of elections.
- A final meeting to approve an ordinance establishing district-based elections.

The legislature included a transition timeline, which, if followed, insulates a local agency from litigation arising from alleged CVRA violations. Under these “safe harbor” provisions, if a city passes a resolution of intention to transition from at-large to district-based elections with the specific steps it will take to facilitate the transition, and estimated time frame for doing so, then a plaintiff is prohibited from commencing an action to enforce the provisions of the CVRA within 90 days of the resolution’s passage.

How has this legislation impacted other public agencies in Solano County?

Several cities and local districts in the county have already transitioned or are in the process of transitioning to district-based elections. The table below provides a snapshot of where these various agencies are in regards to their election method:

City	District Elections?	Proactive/Compelled
Vacaville	District	Compelled
Fairfield	In final stages of switching to District	Compelled
Suisun	At large	n/a
Dixon	District	Proactive
Rio Vista	At large	n/a
Vallejo	District	Compelled
Benicia Unified School District	District	Proactive

DISCUSSION:

The City Council now must consider and decide the method of elections the City of Benicia should operate under. The Council has several options at this meeting to choose from, namely:

1. Adopt a resolution (Attachment 1) stating the Council’s intention to transition to district-based elections for the 2020 general municipal election;
2. Adopt a resolution (Attachment 2) stating the Council’s intention to transition to district-based elections for the 2022 general municipal election, after receiving results of the 2020 U.S. Census; or
3. Decide against transitioning to district-based elections at this time, and decide not to adopt a resolution of intention.

Each option is discussed in turn below.

Option 1: Adopt a resolution stating the Council’s intention to transition to district-based elections for the 2020 general municipal election.

If the Council votes to adopt a resolution at this meeting, then pursuant to Elections Code § 10010, the Council is required to hold 5 public hearings prior to adopting an ordinance establishing the district-based method of elections. If the City sought to adhere to the “safe harbor” provisions, the City would need to hold these 5 meetings within 90 days (by April 20, 2020). In addition, the City is required to hire a professional demographer to assist in the preparation of draft district maps. The City Attorney’s Office has retained Cooperative Strategies, should the City Council decide to proceed.

The first two public hearings give the public an opportunity to provide input regarding the composition of districts. Maps cannot be drawn at these two initial hearings and the meetings must be held within the span of no more than 30 days in order to stay within the “safe harbor” provision. Those two initial meetings would be to introduce the public to the process of adopting a district-based election system, the tools available to draft maps, other information relating to the process, and an opportunity for the public to ask questions. At the third and fourth meetings, draft district maps will be presented and discussed, and will include discussion on the potential sequence of the elections of those districts. In order to adhere to the “safe harbor” provision, the map presentation must be held within a span of no more than 45 days. There is also a 7-day publication requirement before such meetings to provide notice of new maps that are to be considered. There is a final public hearing to adopt the ordinance establishing a by-district system.

Attachment 1 to this staff report is a resolution stating the Council’s intention to immediately start the transition to a district-based election system, and includes an exhibit with a tentative timetable for accomplishing the tasks laid out in the “safe harbor” provisions.

Adopting this resolution and adhering to the “safe harbor” provisions would have the benefit of shielding the City from exposure to litigation for any alleged violation of the CVRA.

It should be noted that following each decennial Federal census, and using that census as a basis, the Council will have to adopt new boundaries so that the districts will be substantially equal in population. The next census is taking place this year, and is to be reported to the President by December 31, 2020. The information is expected to be made available in 2021. Thus, the boundaries may have to be reconsidered prior to the 2022 election.

Option 2: Adopt a resolution stating the Council’s intention to transition to district-based elections for the 2022 general municipal election, after receiving results of the 2020 U.S. Census.

The City could wait for the 2020 Census to be conducted and reported, however, until the City commences the transition to district-based election, it is exposed to allegations of violations of the CVRA – and thus litigation. That is, as the City would not be adhering to the safe harbor provisions outlined above, if someone were to allege a violation of the CVRA, the City would either have to defend the lawsuit, or decide to switch to by-district elections at that time and then adhere to the “safe harbor” provisions.

However, given the nearness of the 2020 Census and the expectation that the results of that census will require adjusting of district boundaries, arguments have been made in courts in other jurisdictions that where a census is imminent that it would be unfair to force a local agency to adjust boundaries and then alter them again so soon thereafter. But such arguments have come from other jurisdictions and provide no precedent here.

However, as there are no allegations of violations against Benicia at this time, it is possible that if the City resolved to initiate the transition following the receipt of the results of the 2020 Census, a lawsuit challenging that decision might be dismissed without a trial.

Attachment 2 to this staff report is a resolution stating the Council’s intention to start the transition following receipt of the 2020 Census results.

Option 3: Decide against transitioning to district-based elections at this time, and decide not to adopt a resolution of intention.

The final option is to decide not to adopt a resolution of intention to transition to district-based elections at this meeting. The City could decide to take this issue up at a later date if desired. This choice would expose the City to potential litigation – to the extent there was an allegation of a violation of the CVRA, as the City would not be following the “safe harbor” provisions. If a person alleged at some point that the City is violating the CVRA, at that time, the City would then have to decide to either vigorously defend itself or decide to switch to by-district elections. If the City decided to just switch to by-district elections at that time without defending the lawsuit through agreement with a potential plaintiff, the City would be liable for the plaintiff’s attorney fees, up to \$30,000.

On the other hand, if the City decided to vigorously defend the lawsuit, the City would have to cover its own attorney fees and costs, which could amount to hundreds of thousands of dollars. If the City lost, the City would be liable for not just its own fees and costs, but also payment of a plaintiff’s attorney fees and costs. Such costs could be quite substantial. Further, losing in such a lawsuit would result in the City having to switch to by-district elections at that time – and incur the expenses thereof.

NEXT STEPS:

Adopt one of the options discussed above. Adopting Option 1 will result in setting in motion the immediate transition to by-district elections, and the City would follow the proposed schedule attached to the resolution in order to make the transition in time for the 2020 general election in

the fall. Adopting Option 2 will result in the City deferring any action until the 2020 Census results are made public. Choosing Option 3 will result in the City taking no further action tonight and in the foreseeable future.

ALTERNATIVE ACTIONS:

Decide to conduct a study by a demographer to consider whether the City’s current at-large method of elections is at risk of violating the CVRA and bring this item back at a future date to discuss the results.

General Plan	N/A
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Strategic Plan	N/A
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CEQA Analysis	The proposed amendments are exempt from the California Environmental Quality Act (CEQA) Guidelines Section 15061 (b)(3), the “general rule” exemption, which states that 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.
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ATTACHMENTS:

1. Resolution - Option 1 – Begin the process of transitioning to district-based election in time for the 2020 election
2. Resolution - Option 2 – Plan to begin the process of transitioning to district-based election following release of the Census 2020 results

*For more information contact: Benjamin Stock, City Attorney
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 E-mail: bstock@ci.benicia.ca.us*

RESOLUTION NO. 20-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA DECLARING ITS INTENT TO TRANSITION FROM AT-LARGE ELECTIONS TO BY-DISTRICT ELECTIONS

WHEREAS, members of the City Council of the City of Benicia (“City”) are currently elected in at-large elections, in which each City Councilmember and a separately elected Mayor are elected by the registered voters of the entire City; and

WHEREAS, the City Council has concluded that it is in the public interest to begin the process of transitioning from at-large to by-district elections for the City Councilmembers due to the public benefit of having elected representatives in each geographic area of the City; and

WHEREAS, California Government Code section 34886, in certain circumstances, authorizes the legislative body of a city of any population to adopt an ordinance to change its method of election from an at-large system to a district-based system in which each Councilmember is elected only by the voters in the district in which the candidates reside; and

WHEREAS, California Elections Code section 10010 provides the procedures required for the transition to a by-district election system; and

WHEREAS, California Elections Code section 10010 provides safe harbor procedures that if the City adopts a resolution outlining its intention to transition from at-large to district-based elections, and the specific steps it will undertake to facilitate this transition, and an estimated time frame for doing so, a prospective plaintiff may not bring a CVRA lawsuit within ninety (90) days after that resolution’s passage, and thereby insulate the City from litigation; and

WHEREAS, the City wishes to make the transition to a district-based election for the Councilmembers in time for the next general election, to take place in November 2020; and

WHEREAS, a timeline has been prepared, which is attached hereto and incorporated by reference as Exhibit A, which provides the specific steps that the City will undertake and the estimated time frame for transitioning to district-based elections.

NOW, THEREFORE BE IT RESOLVED that the City of Benicia, acting by and through its City Council, having considered and been fully advised in the matter and good cause appearing, therefore does hereby resolve as follows:

1. The City Council hereby expresses its intent to transition from an at-large election system to a by-district election system for the City Councilmembers as authorized by Government Code section 34886 for use in the City’s General Municipal Election for City Councilmembers commencing in November 2020.
2. The City Council hereby approves the tentative timeline contained in Exhibit A attached hereto, and incorporated herein by this reference, for conducting a public

process to solicit public input and testimony on proposed by district electoral plans before adopting any such plan.

3. This timeline contained in Exhibit A shall be subject to adjustment by the City Council as it deems necessary, provided that such adjustments shall consider the City's goals of finalizing the change to by-district elections within ninety (90) days of adoption of this resolution and making the transition in time for the November 2020 general election.
4. The City Manager shall continue to work with the City Attorney and demographer, Cooperative Strategies, to resolve all legal issues necessary to give effect to this resolution and to meet the timelines set forth in Exhibit A and take such further steps necessary to effectuate this transition with the County.

On motion of Council Member _____, seconded by Council Member _____, the above resolution was adopted by the City Council of the City of Benicia at a regular meeting of said Council held on the 21st day of January, 2020 by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date

EXHIBIT A

Date of Meeting	Type of Action	Goals
January 21, 2020	Regular Meeting – Council	Adopt Resolution of Intention to Transition to By District Elections.
February 4, 2020 (1 st Meeting)	Regular Meeting – Council	Pre-Map Public Hearing #1: Public meeting to give background on CVRA, introduce mapping tools and information on process.
February 18, 2020 (2 nd Meeting)	Regular Meeting – Council	Pre-Map Public Hearing #2: Public meeting to give background on CVRA, introduce mapping tools and information on process.
Draw draft Maps and publish Draft maps at least 7 days prior to March 3, 2020, meeting.		
March 3, 2020 (3 rd Meeting)	Regular Meeting – Council	First meeting where maps can be drawn.
If draft maps altered, must publish modified draft maps at least 7 days prior to March 17, 2020, meeting.		
March 17, 2020 (4 th Meeting)	Regular Meeting – Council	Second meeting to confirm maps and sequencing.
April 7, 2020 (5 th meeting)	Regular Meeting – Council	Hold meeting to adopt district maps
April 21, 2020	Regular Meeting – Council	Introduction and first reading of Ordinance.
May 5, 2020	Regular Meeting – Council	Second reading and adoption of Ordinance.

RESOLUTION NO. 20-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA DECLARING ITS INTENT TO TRANSITION FROM AT-LARGE ELECTIONS TO BY-DISTRICT ELECTIONS

WHEREAS, members of the City Council of the City of Benicia (“City”) are currently elected in at-large elections, in which each City Councilmember and a separately elected Mayor are elected by the registered voters of the entire City; and

WHEREAS, California Government Code section 34886, in certain circumstances, authorizes the legislative body of a city of any population to adopt an ordinance to change its method of election from an at-large system to a district-based system in which each Councilmember is elected only by the voters in the district in which the candidates reside; and

WHEREAS, California Elections Code section 10010 provides the procedures required for the transition to a by-district election system; and

WHEREAS, if the City Council acts to transition to district-based elections for the City Councilmembers immediately, to be in place for the City’s next scheduled general municipal election in November 2020, then the City will be required to conduct a redistricting process again for the very next general municipal election in 2022 to account for the results of the 2020 United States Census; and

WHEREAS, the City Council finds that conducting a redistricting process for two successive elections would cause undue disruption of the City’s election process, and the stability and continuity of the City’s legislative system, and would be highly prejudicial to the City of Benicia and its citizens.

NOW, THEREFORE BE IT RESOLVED that the City of Benicia, acting by and through its City Council, having considered and been fully advised in the matter and good cause appearing, therefore does hereby resolve as follows:

1. The City Council hereby expresses its intent to transition from an at-large election system to a by-district election system as authorized by Government Code section 34886, following release of the results of the 2020 United States Census, for use in the City’s General Municipal Election for City Councilmembers commencing in November 2022.
2. At the time the 2020 Census data becomes available, the City Council will begin transition to district-based elections according to the requirements of the California Elections Code and any other applicable legal authority.

On motion of Council Member _____, seconded by Council Member _____, the above resolution was adopted by the City Council of the City of Benicia at a regular meeting of said Council held on the 21st day of January, 2020 by the following vote:

Ayes:

Noes:

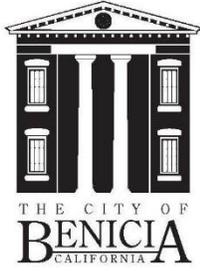
Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date



AGENDA ITEM
CITY COUNCIL MEETING DATE – JANUARY 21, 2020
BUSINESS ITEMS

TO : City Manager

FROM : Interim Community Development Director

SUBJECT : **INTRODUCTION OF AN ORDINANCE AMENDING CHAPTERS 17.16 (USE CLASSIFICATIONS), 17.70 (GENERAL REGULATIONS) AND 17.108 (DESIGN REVIEW) OF THE BENICIA MUNICIPAL CODE PERTAINING TO ACCESSORY DWELLING UNITS (PUBLIC HEARING)**

EXECUTIVE SUMMARY:

The proposed project is an amendment to the Benicia Municipal Code (BMC) regulations for Accessory Dwelling Units (ADUs) (Section 17.70.060) and additional associated amendments to Use Classifications (Chapter 17.16) and Design Review (Chapter 17.108). The amendments would bring the City of Benicia into compliance with recent changes to State statute. The amendments would additionally clarify procedures, modify height standards and setback standards, and revise objective design standards for ADUs.

The proposed amendments are initiated pursuant to City Council direction received on January 15, 2019, and subsequent amendments to State legislation which became effective on January 1, 2020. Following a public hearing, the Historic Preservation Review Commission recommended approval of the proposed amendments on December 19, 2019. The Planning Commission conducted a public hearing and recommended approval of the proposed amendments on January 9, 2020.

RECOMMENDATION:

Move to waive the first reading and introduce an ordinance (Attachment 1) of the City Council amending Chapters 17.16 (Use Classifications), 17.70 (General Regulations) and 17.108 (Design Review) of the Benicia Municipal Code and find that the ordinance is exempt under the California Environmental Quality Act.

BUDGET INFORMATION:

Adopting the ordinance will not result in direct impacts to the City's budget.

BACKGROUND:

Prior Amendment to ADU Ordinance (2019)

In 2016 and 2017, revisions to State law required local agencies to streamline permitting to allow second units on all residentially-zoned lots subject to ministerial review. Ministerial review means that if a proposed ADU meets the City's objective standards, it must be approved. The City is not allowed to require design review or any other type of discretionary approval for an ADU that complies with City's adopted objective standards. In response to these changes, the City of Benicia adopted an updated Accessory Dwelling Unit (ADU) ordinance in January 2019.

The adopted regulations are found in Sections 17.70.050 (Accessory Uses and Structures) and 17.70.060 (Accessory Dwelling Units) of the Benicia Municipal Code (BMC). Upon adoption of the ADU regulations in January 2019, the City Council directed staff to consider future revisions to address concerns including:

- The quality of living space above ground floor garage (e.g., dormer requirements, allowed height)
- Allowed lot coverage
- Setbacks
- Other comments from local architects on the adopted regulations

The City's updated regulations have coincided with an increase in the number of homeowners seeking permit approval for an ADU. In 2018, the City issued permits for three ADUs, whereas in 2019 the City issued building permits for eight ADUs.

New legislation was passed in 2019 that further streamlines and clarifies the State's requirements for ADUs. A summary of revisions to the statute is provided as Attachment 2. The State's new requirements for ADUs further streamline permitting, expand opportunities for new ADUs, and limit the applicability of local design criteria for certain ADUs.

Stakeholder Outreach

In preparation for the zoning amendments, staff conducted an outreach meeting on August 2, 2019, with local architects engaged in the permit process for ADUs to obtain feedback on the topic areas identified by the City Council. This meeting allowed staff to obtain additional comments on the design and permitting process for ADUs. Staff also consulted with representatives of the Benicia Historical Society to provide information and obtain feedback through meetings held on August 2 and October 4, 2019. A summary of comments from both groups is provided as Attachment 3; comments from architect Brandon Marshall, who was not able to attend the August 2 meeting, are provided as Attachment 4.

The feedback of stakeholder meeting participants was considered and compiled into preliminary recommendations, which were discussed in a follow up meeting on November 14, 2019. A summary of comments from that meeting is provided in Attachment 5; these comments were largely incorporated into the resulting zoning amendment. Following the meeting, additional written comments on the preliminary recommendations were received from one member of the public and additional revisions were made in the draft ordinance. A copy of this correspondence, including a reference memorandum from January 2018 and staff responses, is provided as Attachment 6.

Proposed Amendments to Benicia Municipal Code

The proposed zoning amendments would align with recent changes to State law, amend existing criteria as necessary for compliance with State law and in response to community feedback, and establish procedures for review of ADUs that do not meet the adopted objective planning standards.

The following key amendments are proposed in accordance with State law:

- Allow ADUs in all zoning districts that permit multifamily dwellings. In Benicia, this includes commercial and mixed-use districts.
- Require action on an ADU application within 60 days of receiving the application (e.g., approval, denial, or written comments describing necessary revisions).
- Allow Junior ADUs (smaller than 500 sq. ft.) consistent with State law.
- For certain types of ADUs, require ministerial approval subject only to limited standards prescribed by the State (“Units Subject to Limited Standards”).
- On single-family lots, allow one ADU and one Junior ADU if exterior access is available and side and rear setbacks are sufficient for fire and safety.
- On multifamily lots, allow at least one ADU and up to 25% of existing multifamily dwelling units within a building, and up to 2 detached ADUs subject to compliance with 16-foot height and four-foot setback requirements.
- Allow an attached ADU with a floor area of 50 percent of the primary dwelling and at least 850 square feet for an ADU with one bedroom or less and 1,000 square feet for an ADU with more than one bedroom.
- Allow a detached ADU of at least 1,200 square feet.
- Specify that unit size, lot coverage, floor area ratio (FAR), open space, or lot size requirement would not prohibit a detached ADU with 16 feet height, 800 square feet of floor area, and four-foot side and rear setbacks (“Guaranteed Allowance”).
- Allow an existing structure to be converted to or replaced with an ADU, regardless of whether it conforms with setback or building separation standards and without the replacement of off-street parking.

In addition to aligning the ordinance with the State requirements, staff incorporated feedback from local design professionals and historic preservation advocates to adjust the regulations for clarity, livability and compatibility within the Historic District. These proposed regulations are consistent with the State ADU laws. Key amendments to the ordinance in response to recent legislation and community feedback are described below, along with analysis of additional amendments that were suggested by stakeholders through the outreach process.

- Require design review for ADUs that do not comply with Objective Design Standards and require a variance for ADUs that do not comply with Development Standards (e.g., floor area, height, setbacks and building separation).
- Clarify that the presence of an ADU would not exempt a project that otherwise requires design review, such as a new garage or new addition with expansion of living area for the primary dwelling (“Dependent on Separate Construction”).

- In a historic district, increase permitted wall height to 14 feet and clarify that wall height is measured to top plate, and increase peak height from 15 feet to 16 feet for an ADU with a 4:12 roof pitch. For steeper roofs, clarify that the 20-foot height limitation applies to ADUs with a pitch of 6:12 and greater.
- Outside of a historic district, eliminate the wall height limitation, allow for a peak height of 16 to 20 feet (dependent on roof pitch) if located within five feet of a side or rear property line, and increase the allowed peak height to 20 to 24 feet (dependent on roof pitch) if located seven or more feet from a side or rear property line.
- Reduce the required separation between a detached ADU and primary dwelling from ten feet to five feet, which was the required separation prior to the 2019 amendment.
- Increase the dormer allowance such that dormers would be allowed to occupy up to 66% of the wall expanse below in order to allow wall height and natural light that improves livability above the ground floor.
- Clarify the requirement for roof orientation to prevent shadow effects on adjoining properties.
- Clarify that ground level decks and similar appurtenances may be located four feet from a side or rear property line. Specify that second story decks and balconies must be set back at least ten feet from a side or rear property line adjoining a single-family or two-family dwelling and require that exterior stairs be oriented towards the interior of a lot.
- Revise historic district standards to prevent any alteration of a street-facing façade or a historic structure primary contributing façade (which is the historic front façade of the structure) and relax requirements for building materials.

Staff further proposes that the Municipal Code be amended to revise ADU use classifications for consistency with State statute and for clarity with the zoning regulations, to clarify terms (such as “divided lite” and “stucco”) and to improve the objectivity of standards for consistency with the State law. A markup of current regulations showing all proposed amendments is provided as Attachment 7.

Historic Preservation Review Commission Recommendation

The Historic Preservation Review Commission (HPRC) conducted a public hearing to consider the draft ordinance on December 19, 2019. Prior to the hearing, the City received correspondence from architect Mark Hajjar, provided as Attachment 8. Architect Brandon Marshall made a slide presentation regarding building materials, which is provided as Attachment 9.

Following a staff presentation, four members of the public provided comment. Three community members requested greater flexibility on building material requirements and spoke regarding diverse and contemporary building design. One person asked for clarification about solar requirements under recent State law.

Commissioners considered public comment and requested clarification from staff regarding Mills Act requirements, building materials requirements, the number of ADUs allowed on a single-family parcel, effects on existing nonconforming ADUs, and permitting requirements pursuant to State law.

Following discussion, the HPRC recommended approval of the proposed ordinance with the following revisions:

- Add a statement pertaining to the front lot line to also include the primary contributing façade, for those structures whose historic front facades face former right-of-way (e.g., facing a bluff), within Section 17.70.060.J.
- Reduce the required dormer inset in Section 17.70.060.J from three (3) feet to two (2) feet.
- Eliminate the material specification for detached ADUs within a Historic District, and specify disallowed materials only, which include pressed board, vinyl composite or fiber cement materials with a wood grain.
- For attached ADUs within a Historic District, expand permitted materials to include smooth fiber cement (e.g. Hardi Board), and disallow faux wood grain. Eliminate the requirement for horizontal siding.
- For attached ADUs associated with a contributing or landmark structure, disallow vinyl windows.

A copy of the HPRC staff report (without attachments) is provided as Attachment 10. Draft minutes of the HPRC are provided as Attachment 11 and a resolution of the HPRC is provided as Attachment 12. The recommendations of the HPRC have been incorporated into the proposed ordinance.

Planning Commission Recommendation

The Planning Commission conducted a public hearing on the proposed amendments at its regular meeting on January 9, 2020. Following a staff presentation, three members of the public provided comment. One community member, architect Mark Hajjar, read a letter to the Planning Commission expressing support for the proposed ordinance but with concerns about the requirements for design review when a project is dependent on separate construction (see Attachment 13). One community member commented on the expense associated with meeting design requirements within the Downtown Historic District. One community member commented in support of the ADU ordinance but with concerns about requirements for non-historic structures in the Downtown Historic District and recommended that there be distinctions made between apartment buildings and single family homes.

The Planning Commission asked clarifying questions about design review requirements and specific language within the ordinance. At the conclusion of the hearing, the commission recommended approval of the proposed ADU ordinance (approved 6-0). A copy of the Planning Commission staff report (without attachments) is provided as Attachment 14. Draft minutes of the Planning Commission are provided as Attachment 15 and a resolution recommending approval of the ordinance is provided as Attachment 16.

Following the Planning Commission hearing, on January 13, 2020, staff met with three community members who clarified concerns about requiring design review for ADUs dependent on separate construction. They spoke regarding the need for additional housing as well as procedural requirements in historic districts, and requested that projects proposing a detached

garage with an ADU directly above be exempt from design review where such projects meet the requirements of the ordinance.

Solano Airport Land Use Commission

Pursuant to the Public Utilities Code (PUC) Section 21676, any local agency whose general plan includes areas covered by an airport land use compatibility plan shall refer a proposed zoning ordinance or building regulation to the airport land use commission for review. The commission shall determine whether the proposal is consistent with the adopted airport land use compatibility plan. Benicia falls within the jurisdiction of the Travis Air Force Base Airport Land Use Compatibility Plan; therefore, proposed zoning amendments must be reviewed by the Solano County Airport Land Use Commission (ALUC).

The proposed amendments were heard by the ALUC on January 9, 2020 and the commission determined that the proposed zoning amendments are consistent with the Travis Air Force Base Airport Land Use Compatibility Plan.

NEXT STEPS:

Prior to adoption of the ordinance, the City Council must conduct a second reading, which is scheduled for February 4, 2020. If the amendments are adopted at the second reading, they would become effective 30 days later.

ALTERNATIVE ACTIONS:

1. Provide alternate direction to staff; or
2. Deny the proposed amendments to the Benicia Municipal Code.

General Plan	<p>Goal 2.1 Preserve Benicia as a small-sized city.</p> <ul style="list-style-type: none"> ➤ Policy 2.1.1: Ensure that new development is compatible with adjacent existing development and does not detract from Benicia’s small town qualities and historic heritage.
	<p>Goal 3.7: Maintain and reinforce Benicia’s small-town visual characteristics.</p> <ul style="list-style-type: none"> ➤ Policy 3.7.1: Ensure that new development is compatible with the surrounding architectural and neighborhood character.
	<p>Housing Element Goal 1: Goal 1: Benicia shall be an active leader in attaining the goals of the City’s Housing Element.</p> <ul style="list-style-type: none"> ➤ Policy 1.04: The City will review and revise regulatory standards necessary to comply with State Housing law.

Strategic Plan	No strategic plan policies are directly applicable to the proposed project.
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CEQA Analysis	<p>The project is exempt from environmental review under California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15282(h) that exempts the adoption of an ordinance regarding second units in a single family or multifamily residential zone to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code.</p> <p>The additional clean-up amendments are exempt pursuant to Section 15061(b), the “General Rule”, which states that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the project would have a significant effect on the environment. The proposed clean-up amendments merely clarify and align existing Code and would not alter the physical environment in any manner that would result in a significant effect on the environment.</p>
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ATTACHMENTS:

1. Draft Ordinance – Accessory Dwelling Units
2. ADU Summary of Legislative Changes
3. Summary of Stakeholder Feedback, August and October 2019.
4. Correspondence from Brandon Marshall, August 2019
5. Summary of Stakeholder Feedback, November 2019
6. Correspondence from Leann Taagepera and Staff Response
 - a. Correspondence from Leann Taagepera received December 4, 2019
 - b. Reference letter dated January 15, 2019
 - c. Staff Response to December 4 comments
7. Mark-up of Current ADU Regulations
8. Correspondence from Mark Hajjar, December 16, 2019
9. Presentation from Brandon Marshall and Brian Harkins, December 19, 2019
10. Historic Preservation Review Commission Staff Report (without Attachments)
11. Draft Minutes of Historic Preservation Review Commission, December 19, 2019
12. Resolution No. 19-15 (HPRC)
13. Correspondence from Mark Hajjar, January 9, 2020
14. Planning Commission Staff Report (without Attachments)
15. Draft Minutes of the Planning Commission, January 9, 2020
16. Resolution No. 20-1 (PC)

*For more information contact: Alan Shear, Interim Community Development Director
 Phone: 707.746.4277
 E-mail: ashear@ci.benicia.ca.us*

CITY OF BENICIA

ORDINANCE NO. 20-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING BENICIA MUNICIPAL CODE CHAPTER 17.16 (USE CLASSIFICATIONS), CHAPTER 17.70 (GENERAL REGULATIONS) AND CHAPTER 17.108 (DESIGN REVIEW) OF TITLE 17 (ZONING), ALL PERTAINING TO THE REGULATION OF ACCESSORY DWELLING UNITS, AND FINDING ADOPTION OF THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the California State Legislature finds that Accessory Dwelling Units (ADUs) are an essential component of California’s housing supply that provide additional rental stock and housing for family members, students, the elderly, in-home health care providers, people with disabilities and others at below market prices within existing neighborhoods; and

WHEREAS, new legislation for ADUs took effect on January 1, 2020 that necessitates revisions to the Benicia Municipal Code for consistency with State housing law; and

WHEREAS, Benicia Housing Element Policy 1.04 states that the City will review and revise regulatory standards necessary to comply with State Housing law; and

WHEREAS, the Historic Preservation Review Commission conducted a duly noticed public hearing on December 19, 2019, and recommended approval of the ordinance amending Title 17 (Zoning) pertaining to accessory dwelling units to the City Council; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on January 9, 2020, and recommended approval of the ordinance amending Title 17 (Zoning) pertaining to accessory dwelling units to the City Council; and

WHEREAS, the City Council of the City of Benicia held a duly noticed public hearing on the proposed amendments and introduced Ordinance No. _____ on January 21, 2020.

NOW, THEREFORE, the City Council of the City of Benicia does hereby ordain as follows:

Section 1. Section 17.16.080 (Accessory use classifications) of Chapter 17.16 (Use Classifications) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows:

A. Accessory Uses and Structures. Uses and structures that are incidental to the principal permitted or conditionally permitted use or structure on a site and are customarily found on the same site. This classification includes accessory dwelling units, home occupations, and construction trailers.

1. 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. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes an efficiency unit and a manufactured home, as defined in Section 18007 of the Health and Safety Code.

a. Attached Accessory Dwelling Unit. An accessory dwelling unit that shares at least one common wall with the primary dwelling and is not fully contained within the existing space of the primary dwelling or an accessory structure.

b. Detached Accessory Dwelling Unit. An accessory dwelling unit that does not share a common wall with the primary dwelling and is not fully contained within the existing space of an accessory structure.

c. Internal Accessory Dwelling Unit. An accessory dwelling unit that is fully contained within the existing space of the primary dwelling or an accessory structure.

d. Junior Accessory Dwelling Unit. A unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.

2. Donation and Collection Bin. An unstaffed drop-off box, receptacle or other similar container used to accept donated clothing or other salvageable personal property, including but not limited to books, shoes, canned goods, and small household items to be used by a nonprofit or for-profit operator for distribution, resale, or recycling. (Ord. 19-04 § 1; Ord. 19-02 § 2).

Section 2. Section 17.70.060 (Accessory dwelling units) of Chapter 17.70 (General Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is hereby repealed and replaced to read as follows:

17.70.060 Accessory dwelling units.

A. Purpose. This section is intended to achieve the goals of the city’s housing element and of the California Government Code by permitting accessory dwelling units, thereby increasing housing opportunities for the community through use of existing housing resources and infrastructure.

B. Where Allowed. An accessory dwelling unit is permitted:

a. In any district where single-family or multifamily dwellings are a permitted use; and

b. On any lot with an existing or proposed single-family or multifamily dwelling.

C. Permitting Process.

1. When Consistent with Standards.

- a. An accessory dwelling unit that complies with all standards in this section shall be approved ministerially upon issuance of a building permit. No other permit, discretionary review, or public hearing is required.
- b. If an existing single-family or multifamily dwelling exists on the lot upon which an accessory dwelling unit is proposed, the City shall act on an application to create an accessory dwelling unit within 60 days from the date the City receives a completed application. If the applicant requests a delay in writing, the 60-day time period shall be tolled for the period of the delay.
- c. The City has acted on the application if it:
 - (1) Approves or denies the building permit for the accessory dwelling unit;
 - (2) Informs the applicant in writing that changes to the proposed project are necessary to comply with this section or any applicable regulation; or
 - (3) Determines that the accessory dwelling unit does not qualify for ministerial approval.

2. When Deviating from Standards.

- a. A proposed accessory unit that deviates from the standards in subsection J (Objective Design Standards) of this section shall be reviewed and may be approved or denied subject to the design review procedures in Chapter 17.108 (Design Review).
- b. A proposed accessory dwelling unit that deviates from standards in subsection I (Development Standards) or any other applicable physical standard of this section shall be reviewed and may be approved or denied subject to the variance procedures in Chapter 17.104 (Use Permits and Variances).

3. When Dependent on Separate Construction. When a proposed attached or detached accessory dwelling unit is dependent on the construction of a new building or new portion of a building that is not a part of the accessory dwelling unit (“separate construction”), the City shall either:

- a. Accept and begin processing the accessory dwelling unit application only after acting on an application for the proposed separate construction; or
- b. Upon written request from the applicant, review and act on the accessory dwelling unit together with the separate construction as part of a single application. In this case,

the accessory dwelling unit is subject to the same review procedures and requirements as the separate construction.

D. Junior Accessory Dwelling Units.

1. General. Junior accessory dwelling units shall comply with all standards in this section unless otherwise indicated.
2. Sanitation Facilities. A junior accessory dwelling unit may include sanitation facilities, or may share sanitation facilities with the existing structure.
3. Kitchen. A junior accessory dwelling unit must include, at a minimum:
 - a. A cooking facility with appliances; and
 - b. At least three linear feet of food preparation counter space and three linear feet of cabinet space.

E. Maximum Number per Lot. Not more than one accessory dwelling unit is allowed per lot except as allowed by subsections G.2 (Detached Accessory Dwelling Units), G.3 (Non-livable multifamily space) and G.4 (Detached Accessory Dwelling Units on Multifamily Lots) of this section.

F. Accessory Use. An accessory dwelling unit that conforms to this section:

1. Is considered an accessory use or accessory structure;
2. Is not considered to exceed the allowable density for the lot upon which it is located; and
3. Is considered a residential use consistent with the general plan and zoning designation for the lot.

G. Units Subject to Limited Standards. The city shall ministerially approve an application for a building permit within a residential or mixed-use district to create the following types of accessory dwelling units. For each type of accessory dwelling unit, the city shall require compliance only with the development standards in this subsection. Standards in subsections I (Development Standards) and J (Objective Design Standards) do not apply to these types of accessory dwelling units.

1. Internal Accessory Dwelling Units. One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:
 - a. The accessory dwelling unit or junior accessory dwelling unit, as such use is classified in section 17.16.080, is within the proposed space of a single-family dwelling

or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

- b. The space has exterior access from the proposed or existing single-family dwelling.
- c. The side and rear setbacks are sufficient for fire and safety.
- d. The junior accessory dwelling unit complies with the requirements of Government Code Section 65852.22.

2. Detached Accessory Dwelling Units. One detached, new construction, accessory dwelling unit for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subsection G.1 (Internal Accessory Dwelling Units). The accessory dwelling unit must comply with the following:

- a. Maximum floor area: 800 square feet.
- b. Maximum height: 16 feet.
- c. Minimum rear and side setbacks: four feet.

3. Non-Livable Multifamily Space. Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, subject to the following:

- a. At least one accessory dwelling unit is allowed within an existing multifamily dwelling up to maximum of 25 percent of the existing multifamily dwelling units; and
- b. Each accessory dwelling unit shall comply with building code standards for dwellings.

4. Detached Accessory Dwelling Units on Multifamily Lots. Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling, are subject to the following:

- a. Maximum height: 16 feet
- b. Minimum rear and side setbacks: four feet.

H. General Standards. Except as provided in subsection G (Units Subject to Limited Standards) of this section, an accessory dwelling unit shall comply with the following general standards:

1. Rental.

a. An accessory dwelling unit may be rented but shall not be sold or otherwise conveyed separately from the primary dwelling.

b. The rented unit shall not be leased for any period less than 30 days.

2. Primary and Accessory Designations. An existing primary dwelling unit may be designated as an accessory dwelling unit if:

a. The existing dwelling to be designated as an accessory dwelling unit complies with all standards in this section; and

b. The new primary dwelling unit is built in compliance with applicable standards and requirements of this title that apply to primary dwellings.

3. Nonconforming Uses and Structures. In conformance with BMC 17.98.020 and 17.98.030, the City shall not require, as a condition for approval of a permit application, the correction of nonconforming zoning conditions.

I. Development Standards. Except as provided in subsection G (Units Subject to Limited Standards) of this section, an accessory dwelling unit shall comply with the following development standards.

1. Floor Area. The floor area of an accessory dwelling unit shall not exceed the maximums shown in Table 1.

Table 1: Maximum Floor Area

ADU Type	Maximum ADU Floor Area
Attached	
One bedroom or less	50 percent of the existing primary dwelling or 850 sq. ft., whichever is greater
More than one bedroom	50 percent of the existing primary dwelling or 1,000 sq. ft., whichever is greater
Detached	1,200 sq. ft.
Internal	50 percent of the existing primary dwelling
Junior	500 sq. ft.

2. Bulk Standards.

- a. An accessory dwelling unit shall conform to the applicable floor area ratio and site landscaping standards of the district in which it is located, except when otherwise allowed by subsection J.4 (Guaranteed Allowance) of this section.
- b. An accessory dwelling unit is exempt from maximum lot coverage standards.

3. Guaranteed Allowance. Maximum floor area, floor area ratio, and open space standards shall not prohibit an accessory dwelling unit with at least an 800 square feet of floor area, a height of at least 16 feet, and four-foot side and rear yard setbacks, provided the accessory dwelling unit complies with all other applicable standards.

4. Property Line Setbacks.

- a. All Accessory Dwelling Units. An accessory dwelling unit shall be setback from property lines as required by Table 2.
- b. Detached Accessory Dwelling Units.

(1) A detached accessory dwelling unit shall not occupy a required court or front yard, nor project beyond the front building line of the principal structure on the site. In an H historic overlay district, the detached accessory dwelling unit shall not project beyond the primary contributing façade, defined as the building face of a designated landmark or contributing building which is parallel to a street or former right-of-way and provides a front entrance leading to a foyer or lobby.

(2) A ground-floor deck, balcony or platform attached to or associated with a detached accessory dwelling unit shall be located at least four feet from a rear or side property line. See subsection J.1 (Second story Decks and Balconies) of this section for second-story deck and balcony setback standards.

Table 2: Minimum Property Line Setbacks

Property Line	ADU Type			
	Attached	Detached	Internal	Junior
Front	Same as primary dwelling [1]		None required	
Side	4 ft.	4 ft.		
Rear	4 ft.	4 ft.		

Note:

[1] For detached accessory dwelling units, see also 17.70.060.I.4.b (Detached Accessory Dwelling Units). For detached accessory structures in an H historic overlay district, see also 17.70.060.J.6 (Historic District Standards).

5. Building Separation. A minimum five-foot distance shall be maintained between a detached accessory dwelling unit the primary building on the site. A detached accessory structure shall be set back from other structures on the site as required by the building code.

6. Converting and Replacing Existing Structures.

- a. An internal ADU may be constructed regardless of whether it conforms to the current zoning requirement for building separation or setbacks.
- b. If an internal ADU is proposed to be constructed within an existing accessory structure, the city shall ministerially permit an expansion of the existing accessory structure by up to 150 square feet for the purpose of accommodating ingress and egress.
- c. If an existing structure is demolished and replaced with an accessory dwelling unit, an accessory dwelling unit may be constructed in the same location and to the same dimensions as the demolished structure.

7. Height.

a. Historic Districts. The height of an accessory dwelling unit in an H historic overlay district shall not exceed the maximums shown in Table 3.

Table 3: Maximum Height in Historic Districts

ADU Type	Maximum ADU Height [1]
Attached	Same as required for primary dwelling
Detached	
Exterior building wall [2]	14 ft.
Roof peak (based on roof pitch)	
Below 4:12	16 ft.
4:12 to less than 6:12	18 ft.
6:12 or greater	20 ft.
Internal	Not applicable
Junior	Not applicable

Note:

[1] For detached accessory structures in an H historic overlay district, see also 17.70.060.K.6 (Historic District Standards).

[2] Measured to the top plate.

b. Outside Historic Districts. The roof peak of a detached accessory dwelling unit outside of an H historic overlay district shall not exceed the maximums shown in Table 4. The maximum allowed height for attached accessory dwelling units is the same as required for the primary dwelling. Height standards do not apply to internal and junior accessory dwelling units.

Table 4: Detached Accessory Dwelling Unit Maximum Height Outside Historic Districts

Maximum Roof Peak Height Based on Roof Pitch	Exterior Building Wall Distance from Rear or Side Property Line		
	4 ft. to less than 5 ft.	5 ft. to less than 7 ft.	7 ft. or more
Below 4:12	16 ft.	18 ft.	20 ft.
4:12 to less than 6:12	18 ft.	20 ft.	22 ft.
6:12 or greater	20 ft.	22 ft.	24 ft.

8. Foundation. An accessory dwelling unit shall be constructed on a permanent foundation.

J. Objective Design Standards. Except as provided in subsection G (Units Subject to Limited Standards) of this section, an accessory dwelling unit shall comply with the following design standards.

1. Second Story Decks and Balconies. Second story decks and balconies shall be set back a minimum of 10 feet from a side or rear property line adjoining a lot occupied by a single-family or two-family dwelling.

2. Outdoor stairs. Outdoor stairs providing access to a second story accessory dwelling unit shall adjoin an exterior wall that faces the interior of the lot, rather than an exterior wall nearest a side or rear property line.

3. Dormers. The side wall of a dormer shall be set back a minimum of two feet from the parallel side wall below. The cumulative width of a dormer or dormers on any side of an accessory dwelling unit shall not occupy more than 66 percent of the building face below.

4. Gables. If a gable roof or turned gable roof is present, the gable ridge shall be oriented in a direction parallel to the side property line in order to minimize shadow effects on the adjoining lot.

5. Roof Pitch. The roof pitch for an accessory dwelling unit shall be 4:12 or greater. However, if the primary residence has a roof pitch shallower than 4:12, a similar pitch may be employed on the accessory dwelling.

6. Historic District Standards. In an H historic overlay district, an accessory dwelling unit shall conform to the following additional requirements:

- a. Except as provided in subsection I.6 of this section, a detached accessory dwelling unit shall be set back from the primary contributing façade and/or front property line such that the entirety of the accessory dwelling unit is behind the rear wall of the principal structure on the lot.
- b. The elevation of the highest point of a detached accessory dwelling shall not exceed the elevation of the highest point of the primary dwelling, except that in all cases a detached accessory dwelling unit at least 16 feet in height is allowed.
- c. An attached accessory dwelling unit shall not result in a rooftop addition or any alteration to the existing roofline of a designated historic contributing or landmark structure.
- d. An accessory dwelling unit shall not result in any increase in building height for a designated historic contributing or landmark structure, except that in all cases an attached accessory dwelling unit at least 16 feet in height is allowed.
- e. An accessory dwelling unit shall not result in any exterior alteration to the primary contributing façade nor the existing wall or façade of a designated historic contributing or landmark structure where such wall or façade is parallel to a public street.
- f. A building addition to a designated historic contributing or landmark structure to accommodate an attached accessory dwelling unit shall be inset or separated by a connector that is offset at least 18 inches from the parallel side or rear building wall to distinguish it from the primary dwelling. Such building addition shall not extend beyond the side wall of the primary dwelling.
- g. For an attached accessory dwelling unit, the exterior building and trim materials shall be wood or smooth fiber cement siding or f shingles. However, if Portland cement plaster (stucco) is the predominant finish for the primary residence, then stucco may also be applied to the accessory dwelling. Synthetic stucco (e.g., EIFS or DryVit) and faux wood grains are prohibited.
- h. For a detached accessory dwelling unit, the following exterior building materials are prohibited: pressed board, vinyl, synthetic stucco and any composite or fiber cement material with a faux wood grain.
- i. The exterior walls of an accessory dwelling shall utilize the same base and trim colors as the primary residence.
- j. The roof shall utilize the same material and color as the primary residence and shall match the primary residence in overall appearance.

k. Windows shall be taller than they are wide or shall match the proportions of the primary dwelling’s windows. Windows in bathrooms, basements and crawl spaces, kitchens and laundry rooms may be horizontally oriented.

l. Window pane divisions shall be true or simulated divided lites (i.e., individual panes set within muntins or muntins applied to both the interior and exterior of the glass).

m. Window frames shall be painted or factory-finished. No metallic finishes such as silver or bronze anodized aluminum are permitted.

n. For designated contributing and landmark structures, vinyl windows are not permitted on an attached ADU.

K. Parking.

1. No additional off-street parking stalls shall be required for an accessory dwelling unit.

2. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, replacement parking stalls are not required for the demolished parking structure.

L. Recordation of Deed Restriction. An executed deed restriction, on a form provided by the city, shall be submitted to the city prior to issuance of a building permit and shall be recorded prior to final occupancy. The deed restriction shall stipulate all of the following:

1. That the rented unit shall not be rented for any period less than 30 days at a time; and

2. That the accessory dwelling shall not be sold separately from the primary dwelling.

3. For junior accessory dwelling units, restrictions on size and attributes in conformance with this section.

Section 3. Subsection C (Exceptions to Criteria) of Section 17.108.060 (Review responsibilities) of Chapter 17.108 (Design Review) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows:

C. Exceptions to Criteria. The community development director may authorize minor deviations from the zoning standards specified herein: timing of construction for an accessory structure, projection of detached garage in the RS district, separation between buildings per BMC 17.70.050; and modifications in vehicle space size requirements per BMC 17.74.100.

Section 4. **Severability.** If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 5. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15282(b) that exempts the adoption of an ordinance regarding second units in a single family or multifamily residential zone to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code. The additional clean-up amendments are exempt pursuant to Section 15061(b), the “General Rule”, which states that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the project would have a significant effect on the environment. The proposed clean-up amendments merely clarify and align existing Code and would not alter the physical environment in any manner that would result in a significant effect on the environment. The City Clerk shall file a Notice of Exemption with the County.

Section 5. Publication. The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Benicia, California and cause the same to be published in accordance with State law.

Section 6. Effective Date. This Ordinance shall be in full force and effective thirty (30) days after its adoption and shall be published and posted as required by law.

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the _____ day of _____, 2020, and adopted at a regular meeting of the Council held on the _____ day of _____, 2020, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

ADU: Summary of Legislative Changes

The 2019 housing legislative package signed by the Governor in October 2019 included five bills updating the State ADU legislation.

Effective January 1, 2020, the law relating to ADUs will be amended to provide¹:

1. A city must allow and ADU within a residential or mixed-use zone. A city that does not provide water or sewer service must consult with local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where ADUs may be permitted.
 - Within a new or proposed single-family home: One ADU and one junior ADU per lot if exterior access is available; and side and rear setbacks are sufficient for fire and safety.
 - One detached, new construction ADU that does not encroach into four-foot side and rear yard setbacks on a lot with a proposed or existing single-family dwelling. City may impose total floor area of 800 square feet; height limitation of 16 feet.
 - Multiple ADUs within portions of existing multifamily dwelling structures that are not used as livable space including storage rooms, boiler rooms, passageways, attics, basements, garages if each unit complies with state building standards. At least one ADU within an existing multifamily dwelling and “shall allow up to 25% of the existing multifamily dwelling units.”
 - Not more than two ADUs that are located on a lot that has an existing multifamily dwelling but are detached from the dwelling and are subject to a height limit of 16 feet and four-foot rear and side setbacks.
2. An ADU may be located in an attached garage, storage area or other accessory structure. If on-site parking is removed to allow for ADU, a city may not require the on-site parking to be replaced.
3. The maximum rear and side yard setback for an ADU that is not converted from an existing structure is 4 feet (reduced from 5 feet in existing law).
4. Development standards:
 - City may not impose a minimum lot size.
 - Fire sprinklers cannot be required in an ADU if sprinklers are not required for the primary residence.
 - Minimum size may not prohibit an efficiency unit.
 - Maximum size may not be less than 850 square feet or 1,000 square feet for ADU that provides more than one bedroom.
 - Lot coverage, floor area ratio, open space and other standards must permit at least an 800 square foot ADU that is at least 16 feet in height.

¹ This list is a compilation of changes made by AB 68 (Ting); AB 881 (Bloom); SB 13 (Wieckowski); AB 587 (Friedman); and AB 671 (Friedman).

- If on-site parking is removed to allow for an ADU, a city may not require the on-site parking to be replaced. No parking can be required if ADU located within ½ mile walking distance of public transit.

5. A city must act on an application for an ADU on a lot with an existing single-family or multi-family structure within 60 days of receiving a completed application. Ministerial approval of an ADU is required under existing law.

6. The City may not require owner occupancy for either the primary dwelling or the ADU. This section is repealed on January 1, 2025.

7. Rental of an ADU must be for a term longer than 30 days.

8. Gov't Code 65852.2(a)(1)(D)(i) provides that an ADU may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence.

AB 587 (Friedman) creates an exception to this provision:

- Qualified non-profit corporation developed the property.
- Enforceable restriction recorded on the use of the land.
- Qualified buyer must occupy as primary residence (person of low or moderate income).
- Qualified buyer must first offer option to purchase to nonprofit corporation if sells unit in the future.
- Affordability restrictions must be placed on the property for 45 years.
- A separate utility connection can be required.

10. A city must submit a copy of its ADU ordinance to the Department of Housing and Community Development (HCD) within 60 days of adoption. HCD may submit written findings to city regarding whether ordinance complies with state law. If HCD finds it does not, city is given 30 days to respond to HCD's findings. City must either amend ordinance or "adopt without changes." HCD may refer violation to Attorney General.

11. HCD will adopt guidelines relating to the implementation of the legislation.

Accessory Dwelling Unit Summary of Stakeholder Feedback, August and October 2019

On August 2, 2019 the City of Benicia Planning Division staff, together with consultant Ben Noble, met with local architects engaged in permitting for ADUs (Mark Hajjar, Marvin Bergeron and Steve McKee) to obtain feedback on the topic areas identified by the Council at the time of the ordinance adoption, and to seek additional input. Key takeaways from the meeting include:

- Clarification of existing language is needed regarding the height of ADUs relative to the primary dwelling and the measurement of building height.
- The allowed dormer width should be 66% of the facade width instead of 30% the facade width, to allow for livable areas and retain a traditional proportion of building elements.
- The 10-foot required separation between buildings is problematic; this should be reduced to 5 feet as it was before the ADU ordinance was amended.
- Building massing is key concern. The ordinance currently limits second story living area to space under the roof rather than allowing a full two-story building; the City should stick with this approach by keeping the maximum wall height.
- The City needs to clarify regulations for decks on ADUs to resolve an inconsistency in the Zoning Ordinance.

Staff and the consultant also met with representatives of the Historical Society (Jerry Hayes, Bonnie Silveira, Leann Taagepera and Belinda Smith), on August 2 and October 4, 2019, to provide information about the ADU Ordinance update and to obtain input. The following key topics were discussed at these meetings:

- Even with new pressures and challenges to approve ADUs, it is important to preserve and protect Benicia's history.
- The City should guard against the slow erosion of the community's historic character.
- In its work on the ADU ordinance, the City should also pay attention to the adopted Downtown Historic Conservation Plan, Arsenal Historic Conservation Plan and Historic Context Statement.
- The ADU permitting process should be designed to protect historic resources to the extent typically achieved thorough CEQA review, analysis of the Secretary of Interior's Standards, historic conservation plan...there should be an analysis of compliance with the Secretary of Interior's Standards within the confines of law.
- The key concern is what happens at the City Development counter when ADU plans are received and discussed by the applicant and the City staff. What information and explanations are provided to the public and how ADU projects will be reviewed must be clear and understandable to all.
- The current standards don't sufficiently address architecture or compatibility. There is frustration about carefully worded language regarding ADU design that was removed through the hearing process.
- ADUs are supposed to be accessory, not two houses on one lot. There are concerns about compatibility of this development within the districts and increasing density.
- Specific concerns include the number of stories, location of the ADU on the site, additions to historic buildings, conversion of existing detached structures (e.g., carriage house), and safe access due to alley conditions

From: [REDACTED]
To: [Suzanne Thorsen](#)
Subject: RE: Benicia ADU Discussion - August 2, 2019 at 8:30 a.m.
Date: Thursday, August 8, 2019 8:19:51 PM

Hi Suzanne,

Just got back from vacation Wednesday, I can probably talk tomorrow if you like. My comments are below:

1. I've run into multiple projects that are significantly restricted by 17.70.060-D-3-b which does not allow the accessory structure to be higher than the primary. I get the basis for this as a conservative planning approach that protects the integrity of existing structures but the Planning Department should understand that this has restricted new housing units on multiple projects of mine (Owners decided not to build ADU). I think this is detrimental to the larger intent of adding housing units given most Owners will not tear down their 1-story house, and I wonder whether this clause is too preventative and directly conflicts the State Civil Code changes. The projects this has come into play have been old 1-story bungalows with sizeable lots, where the Owner wanted to put a garage in the rear with ADU over. In both cases the lot is large enough such that a respectable and compatible higher structure could be added in the rear without adverse effect. I don't like adding more discretion (guessing you don't either), but this may be an area to consider some planning review leeway. I understand this also has to overlay with the Historical district requirements.
2. Regarding #3 Building separation – I would strongly urge the Planning department to consider removing the 10ft separation, it has become a serious problem for 2 of my projects already. Using the CRC/CBC minimums as suggested is probably adequate but I think 5ft is appropriate to provide proper separation between buildings. As you know, we've done the CDD exception to criteria on a previous project and it is one more potential review (without much definition) that eats up precious time during the design and construction process and if I may, not a great use of the Planning Department's time. I think this separation can be standardized at 5ft and this will not adversely affect the neighborhood fabric in Benicia.
3. I completely agree with #7 of your handout regarding decks, this should have language specific to ADU's because they will almost always face a rear yard or alley and as you know, the current deck restrictions have changed at least one project of mine where current deck language requires a 15ft setback.
4. 17.70.060-E-5 – I'm running into this in almost every City, and I will never understand the idea that copying what is already on the lot is somehow better than creating a contextual, well-scaled structure that fits into and adds character to the neighborhood fabric using its unique formal identity and highlights the original building through contrast. Restricting flat roofs outright is a mistake that seems base in protecting the historic district properties but in doing so restricts the potential for the entire City. I might add, 2:12 is the minimum asphalt shingle roofing slope that code allows and can be warranted. We go to this slope often when we need to steal headroom or reconcile geometries.
5. 17.70.060-E-6 – same as my note #4 for items d, e, f, i, j. I've played this game in Vallejo a couple times now and it just creates boring, uninspired architecture when we copy the primary structure.

6. Can we add language that defines roof pitch so we don't end up in another discussion over a barrel roof ADU? If the City doesn't want barrel roofs, it should be specific, but I guarantee this will come up again if not specified.
7. 17.70.050-3 – maximum peak height needs to be 25ft to allow an appropriate 2 story structure (ADU over garage), this should be at 4:12 average. The dormer discussion, while cute, doesn't really get us anywhere. My take is the City either allows a 2-story accessory structure or it doesn't. If the City is going to hold to the ADU being shorter than the primary than why restrict it's height beyond that. What we end up with is tortured, or otherwise bad architecture that does not allow accessory units that people want to live in.

Thanks,

Brandon Marshall, LEED AP BD+C

FOG STUDIO

[REDACTED]
[REDACTED]
[REDACTED]

www.fogprojects.com

From: Suzanne Thorsen <SThorsen@ci.benicia.ca.us>

Sent: Friday, August 2, 2019 5:32 PM

To: [REDACTED]

Subject: RE: Benicia ADU Discussion - August 2, 2019 at 8:30 a.m.

Hi Brandon,

Attached please find an outline of the concepts for targeted amendments. This is by no means a final draft, it was a discussion prompt for today's meeting. We are looking for comments by next Friday – if you want to set up time for a call next week I can walk you through the highlights and also bring you up to speed on some of the takeaways from those architects we were able to speak to today.

Thanks,

Suzanne

Suzanne Thorsen

Phone: 707. 746-4382

sthorsen@ci.benicia.ca.us

The City of Benicia Community Development Department is committed to providing high quality service. Please assist us in improving by taking a short survey to tell us how we are doing!

<https://www.opentownhall.com/7155>

Accessory Dwelling Unit Summary of Stakeholder Feedback, November 14, 2019

The feedback of stakeholder meeting participants was considered and compiled into preliminary recommendations, which were discussed in a joint meeting on November 14, 2019. Participants included local architects and representatives of the Benicia Historical Society, who provided wide-ranging feedback including the following recommendations:

- Clarify the height limitation for an ADU with a 6:12 roof pitch and the measurement of wall height.
- Consider eliminating the wall height standard for ADUs outside of a historic district. Allow 2-story ADUs with increased height that scales in relation to the property line setback.
- Retain the wall height limitation within a historic district, but increase the permitted wall height from 12' to 14' to allow adequate headroom for an ADU constructed above a garage.
- Compatibility of new ADUs within a historic district is important and the standards should prevent adverse impacts to historic resources.
- Clarify procedures for ADUs that don't comply with the adopted standards.
- Clarify procedures for ADUs that are proposed as part of a larger project, such when the ADU is part of a new building (e.g., garage) or building addition that increases living area for the primary residence.
- Require or encourage screening for an ADU in the historic district that is located to the side of a primary structure.
- Prepare public information to help people understand the requirements, for example Vallejo has a helpful ADU handbook.
- Standards for historic buildings should not be limited to only those on the California Register, because the Historic District is not on the California Register even though it is locally designated. CEQA says that a building is historic if it is listed at the local, state or national level.
- Clarify language regarding orientation of buildings and second story decks/balconies to preserve sunlight and privacy on adjoining lots.

Participants recommended that the City establish a grandfathering/amnesty process for ADUs that were constructed or converted without building permits.

December 4, 2019

To: Suzanne Thorsen, Principal Planner, City of Benicia
From: Leann Taagepera
SUBJECT: Accessory Dwelling Unit Ordinance Comments

Thank you for the opportunity to submit further comments on staff's proposed preliminary revised Accessory Dwelling Unit Ordinance. Please also see comments I submitted as a part of a group to the City Council, on January 15, 2019. Although I am a member of the Benicia Historical Society's Governmental Affairs Committee, we have not had a chance to meet about this topic after our meeting with you on 10/4/19. Therefore, these comments should be considered my own. The Committee does work to represent the interests of historic preservation in Benicia, however.

The revisions staff propose to the ADU ordinance "shall" "impose standards on accessory dwelling units that "that prevent adverse impacts on any real property" that is listed as historic, as required by CGC Section 65852.2(a)(1)(B)(i). I would like staff to provide an analysis that explains how the ordinance complies with this requirement of State Law. Essentially, how do the standards proposed take the place of the Secretary of the Interior Standards, the DHCP, the AHCP, and design review? Has staff found examples of how other jurisdictions are successfully achieving this? I provided some examples of other ordinances in the member of 1/15/19.

At our October meeting, a preliminary draft of a revised ordinance was presented. The current ordinance includes many parts not presented at the meeting. Is staff proposing that the remainder of the ordinance remain the same, even the "manufactured homes" section?

At the meeting, we discussed page 3 of the proposed ordinance which states that "The City shall ministerially approval an application for a building permit...for the following types of [ADU's]. Staff and the consultant indicated that the City Attorney firm is saying that AB 68 requires a detached ADU that is a maximum of 800 square feet, 16 feet tall and with four-foot side and rear-yard setbacks would be required to be approved ministerially and somehow automatically. There was an implication by staff that such an ADU would not be subject to the other standards found in the ordinance. Under AB 68, all ADU's that fall within its stated parameters are required to be processed ministerially, yes, but the Gov't Code Section that staff cites does not state that such an ADU would not be required to follow the ordinance's design and development standards.

CGC Section 65852.2€ states that "(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve..." The word "notwithstanding" does not mean that the other provisions of AB 68 do not apply to such applications. There would be no point in creating the other requirements/provisions of AB 68 if they did not apply to the development that the law is requiring and allowing. For example, see <https://definitions.uslegal.com/n/notwithstanding/> where "notwithstanding" is defined as "despite something; not prevented by; in spite of the fact that." Therefore it simply does not seem accurate to interpret AB 68 to intend that if such an ADU were

proposed as is described on page 3 of the proposed ordinance, it would not need to follow any of the other requirements of the state law or the local ordinance.

To support my contention, I refer you to CGC 65852.2 (C), which states “Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” I added the underlining to call out that in this section, the law specifically says that the ADU is to comply with development standards.

Page 7 of the proposed ordinance (item I.6) cites CGC 65852.2(a)(1)(D)(vii) and states that “The City much allow an existing structure to be converted to or replaced with an ADU, regardless of whether it conforms with setback or building separation standards.” What setback or building separation standards is staff referring to? Do you mean that an existing building that has a setback or separation that is legal, non-conforming can continue with that setback or separation? That section of the CGC cited states:

“(vii) 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.” (I am quoting it here for discussion purposes.)

Staff’s proposed wording in I.6. “Converting and Replacing Existing Structures” states that “Any expansion of the structure shall conform to the current zoning standards.” Can you clarify what this means? This appears to say that a building that is legal non-conforming as to setback or building separation that was expanded could not continue the setback or separation in the new part of the building? I don’t believe this is consistent with the legal, non-conforming section of the municipal code or normally how approvals are completed for buildings that were constructed pre-zoning or under a different set of standards than currently exist.

Item I.6.b. is proposed to read “If an existing accessory structure is converted to an accessory dwelling unit, the City shall ministerially permit the expansion of the existing structure by up to 150 square feet to accommodate the ingress and egress.” Is this a requirement of state law?

Page 8 of the preliminary proposed ordinance (item J.6.c) presented at the meeting states that “an attached accessory dwelling unit shall not result in a rooftop addition or any alternation to the existing roofline of a structure listed on the California Register of Historic Places.” As I said at the meeting, all references to the CRHP should be replaced by “listed at the local, state or national level” or something to that effect. The part of State Law that uses the term California Register has been interpreted by all jurisdictions’ ordinances I have read to include locally listed. Regarding the requirements in the quoted section, staff has begun to differentiate between requirements for historic buildings and non-historic, but within the historic districts. The same requirements should apply in order to prevent adverse impacts to the District(s) as a whole and to neighboring historic properties. Item J.6.d also appears to be written to only apply to a historic building and not a non-historic building in the District(s). The same

comment applies. Also, in this part of the proposed ordinance, in 6.b., is staff suggesting that a two story house in a District can construct an ADU that is the same height as the primary dwelling even if there are single-story houses adjacent to the two-story house? This would seem to result in an incompatibility issue within the District.

In addition, page 8 states under “6 Historic District Standards” - “In the H historic overlay district...” – does staff mean “districts”? We have more than one historic district.

Page 9 states under “objective design standards” “Mixed Use District” that “In a mixed use district, an accessory dwelling unit shall conform to the standards of the downtown mixed use master plan form-based code.” As we discussed, the ADU ordinance should supersede any current requirements in the municipal code and the DMUMP. State law has superseded and now this ordinance must be prepared in order to allow compliance with the new state law. It doesn’t make sense to call out the DMUMP part of the downtown historic district and say that ADU’s must comply with the DMUMP, just as it wouldn’t make sense to call out the other areas of the downtown District and say that ADU’s there must comply with zoning found in the municipal code. This statement should be stricken. Recall also that the DHCP prevails in the event there is a conflict between either zoning or the DMUMP and the DHCP. The standards for ADU’s the downtown historic district should replace the DHCP’s requirements (an argument can be made that standards should include applicable sections of the Arsenal Historic Conservation Plan in that area, as well.)

We discussed a balcony on the second story of a stand-alone ADU building over a garage or perhaps that would be proposed as an addition to a historic or other house. Since lots in the Historic Districts are typically small, a new balcony on a new building constructed within a backyard or a balcony on the back of a two-story house would likely serve to eliminate the privacy of all of the adjacent and nearby yards and introduce new sources of noise and light into windows and yards of nearby houses. This is, of course, true of many parcels in Benicia. What can staff propose to mitigate this issue? How have other jurisdictions dealt with this in their ordinances? With the State mandating that the rear-yard setback for an ADU be reduced to four feet, this could introduce severe incompatibility issues, particularly in the historic districts and in those blocks that do not include alleys. My opinion is that balconies should not be allowed unless the topography of the lot where they are proposed would not allow a line of sight view into private backyards and windows. It was proposed by one of the architects at the meeting that a balcony could face its own backyard or sideyard between it and the main house or be limited in other ways to protect the privacy of the neighbors.

The issue of rear yard setbacks and heights of new buildings was a concern for many downtown residents when the DMUMP was prepared and I believe that the DMUMP presents different requirements for rear yard setbacks and heights on blocks with alleys and blocks without alleys. Could staff review this and provide recommendations?

I noticed the following about addressing the privacy concerns of nearby residences in the City of Redwood City (this was before state law was updated this Fall) - <https://medium.com/redwood-city-voice/new-proposals-addressing-accessory-dwelling-unit-adu-limits-and-house-size-limits-floor-area-bd3d244335aa> :

“The Planning Commission recommendations include requirements to limit a second story ADUs above a detached garage to 280 square feet, and reduce maximum height of a detached, second story ADU to

20-feet. In addition, second floor balconies, and roof decks would be prohibited. Exterior stairs would be required to face the interior of a lot, rather than the sides or rear. Windows facing immediately adjacent side and rear neighbors would be required to be higher on the wall and cloudy. Incentives for one-story ADUs include reducing the rear yard setback to 6 ft., allowing ADUs to replace detached garages, and increasing the size of ADA compliant units to 1,000 sq. ft.”

Here is an example from Sacramento’s ordinance -

https://gcode.us/codes/sacramento/view.php?topic=17-ii-17_228-i-17_228_105:

“D. Design standards.

1. The design of the secondary dwelling unit must conform to the design guidelines applicable to the lot on which the secondary dwelling unit is located.
2. New secondary dwelling units should use universal access design features, including “no step” entrances, where topography and site constraints allow.
3. No portion of a secondary dwelling unit balcony, deck, or open-stair landing that faces the rear lot line or the side lot line nearest to the secondary dwelling unit may be higher than three feet from the ground.”

Page 10 of the proposed revised ordinance item 6 states “In the H historic overlay district” – again, there is more than one historic district in Benicia. Item 6.c. – we discussed my question about if a non-historic building would be allowed to have a rooftop addition and you indicated that you would look in this.

Page 10, item 6g states that “building and trim materials shall be horizontal wood siding.” Normally on a historic building, the siding is vertical from the waterline to the ground. Perhaps this section should state that the siding could also be vertical in this area. Benicia includes historical Brown Shingle (the exterior siding) houses. This section should be updated to include this style of siding, which is not horizontal or vertical. In item 6h and 6i, instead of having the colors be exactly the same as the primary building, could they be complimentary?

Are the standards in this section the same for junior ADU’s? How would staff review a new door proposed to be cut into a historic building for ingress/egress of a junior, attached ADU? Do you propose standards for such a door on a historic house?

Page 11, item 6j – I respect staff and the HPRC’s decision to require that gutters not be composed of PVC materials; however, currently such gutters are allowed on historic houses and if the ADU were located behind the primary building, wouldn’t it possible that the public would never see the plastic gutters? Would vinyl/plastic windows be allowed in ADU’s in the historic districts? I do not see a prohibition in the proposed ordinance. If plastic windows would be allowed, why wouldn’t plastic gutters? Item 6k – why were the words “Windows in small spaces, such as” stricken? Now, staff proposes that only bathroom windows may be horizontally oriented. Historical houses in Benicia include horizontal windows in rooms that are not bathrooms, so why should ADU’s be restricted to only horizontal in bathrooms and not, say, kitchens? Item 6l requires true divided windows? Would these be new windows on an addition to a historic house or are all of these standards for detached ADU’s? If the standards allow for plastic vinyl windows, why should they be true divided or muntins applied to both the inside and outside of the glass? In item 6n, why is staff proposing to remove the sentence “Dormers shall not face an adjoining side yard”?

Page 11 states that that “the community development director may grant an exception to criteria...” Please explain why the CDD should be able to grant such exceptions and under what circumstances? It sounds like this will end up with different property owners being treated differently depending on which staff reviews their projects etc.

Page 12 I.4.c.(2) again refers to balconies on an attached two-story accessory structure that could now be allowed four feet from the side or rear property lines. So, this describes a new two story building sprouting up in a person’s backyard only four feet from the neighbor’s property with a balcony that could completely view previously private backyard space and into windows of nearby properties. See my previous comments regarding this.

Discussion at last meeting – staff said that the City Attorney firm is saying that if an ADU has a certain height etc. then it is ministerial with no adherence to the design standards – the law says “attached” not separate building. Plus, it still would need to not adversely affect historic resources and why couldn’t it be required to follow the rest of the design standards for historic district/building?

At the meeting, we discussed heights allowed for ADU’s in historic districts. I believe we agreed that the heights would remain as recommended by the HPRC and the PC in the historic districts, meaning not increasing the heights allowed in the Districts. The height would be essentially one and a half structure if it is over a garage.

How will staff process a new garage with an ADU over it? Is the garage square footage part of the allowable ADU square footage? If it isn’t considered part of the ADU, then the building should be required to go through the regular design review process for the District.

Setback – is it true that we cannot require the entire ADU to be behind the primary structure? Is staff certain that this is not allowed? In the event that it is not allowed, I recommend that screening be required of the ADU, to attempt to reduce its visibility from the street.

I watched the City Council meeting from 1/15/19. At that meeting, Shawna stated that the compatible design requirement would remain for the historic districts. At that meeting, she said that “Requiring compatibility with existing development” was directed to be removed by Council at September meeting for areas outside of the Historic District. In 2018, staff, the HPRC, and the PC recommended that the ordinance include the following: “The exterior appearance of an accessory dwelling unit shall be compatible with existing development in the immediate neighborhood by using building materials, window styles, roof slopes, colors, and exterior finishes that are the same or visually similar to those on the primary dwelling unit. Reflective metal finishes are prohibited.” Since Shawna stated at that meeting that the “compatible with existing development” section would remain for the historic districts, why has staff removed it? If there is something I am not understanding about this situation that would clarify it, please let me know.

As I stated in the January, 2019 memo to the City Council, Benicia’s current ADU ordinance includes the following, none of which has been included in the current, proposed ADU ordinance:

“7. Design.

- a. Accessory dwelling units shall be designed to be compatible and in harmony with existing development in the immediate neighborhood. Building materials, architectural features, colors, and exterior finishes should be substantially similar as those on the existing dwelling unit.
- b. The orientation of accessory dwelling units on the lot shall be designed so that the privacy of adjacent neighbors is reasonably preserved. This includes measures such as limiting windows that have openings facing adjacent properties, height considerations, and/or window glass treatments.
- c. An accessory dwelling unit shall have a backlit illuminated address sign.”

Why hasn't any provision been included to attempt to protect the privacy of adjacent neighbors?

I had commented the following in the January, 2019 memo:

“Later in the proposed new ADU regulations, somewhat different and conflicting height standards are listed on page 4 in Section 4:

“D. Development Standards, 3. Height:

- a. An attached accessory dwelling unit shall conform to the height standards of the district in which it is located, subject to compliance with the design standards of this section.
- b. A detached accessory dwelling unit shall conform to the applicable height standards for accessory structures provided in BMC 17.70.050 or ancillary structures as provided in the Downtown Mixed Use Master Plan, but shall not exceed the height of the primary dwelling.
- c. The community development director may grant an exception to criteria to increase the wall and/or peak height of a detached accessory dwelling unit up to five feet if the structure would comply with all other applicable design standards, and the director finds that such increase is necessary to support the feasible construction of an accessory dwelling unit.”

Item “b” above refers to BMC 17.70.050 which is the current standard for nonresidential accessory structures. It states: “3. Maximum Height. The maximum height of a nonresidential accessory structure shall be 12 feet, subject to the provisions of this subsection; provided, that pitched roofs shall not exceed a height of 15 feet. For any RS lot containing a single-family residence, a pitched roof may extend to 20 feet in height to match the roof pitch of the existing or proposed residence on the site. The maximum height of any wall shall not exceed 12 feet at the eaves. No second story, other than an unfinished storage area, may be developed for any accessory building.””

Has this all been stricken from the current proposed ordinance?

Other jurisdictions around the state include more specific language in their ADU ordinances regarding the protection of historic resources. I provided examples of such ordinances in the January, 2019 memo. Staff has insisted that including such language is impossible. Would staff consider wording that at least encourages developers of ADU's to provide designs that would be consistent with the Secretary of the Interior Standards and applicable design review guidance or standards found in Benicia's Historic Plans? Benicia's ordinance could state that **Construction of an accessory dwelling unit in a historic district is encouraged to comply with all applicable historic standards and must avoid creating any adverse impacts on any real property that is listed in the California Register of Historic Places.**

Lastly, as we discussed at the meeting, Benicia, particularly the downtown historic district, includes alleys that are unpaved, not maintained, practically not even graded and essentially single-lane roads. Even some of the paved alleys are in poor condition and are essentially single-lane narrow roadways. Other jurisdictions have created maps to show locations where ADU's would be allowed and do not allow ADU's where traffic flow or public safety issues would result. This is because AB 69 specifically allows for this:

"65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily use. The ordinance shall do all of the following:

Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted."

An example of ordinance wording that would address these issues is found from the City of Larkspur. In this staff report, you can read how their staff consulted with the local fire department regarding safety issues. (Another example of a jurisdiction that has identified locations where ADU's are not allowed due to public safety issues is Pacific Grove.)

https://www.ci.larkspur.ca.us/DocumentCenter/View/9570/SR_PC_ADU-ORD-20190312

Has Benicia staff discussed adding two more units (the new law turns SFR zoning into triplex zoning, essentially) to the small lots downtown that are served by these unpaved, single-lane alley or discussed safety issues with them at all? The Larkspur staff report states " Location Restrictions. The Commission agreed with the concerns of the Fire Department that ADUs should be restricted in areas that lack on-street parking, roadway width and emergency ingress and egress and adequate fire suppression infrastructure." Further, it states that the ordinance on page four of the staff report "Specifies the areas where certain accessory dwelling units are not permitted due to specific conditions relating to constrained emergency ingress and egress." Where in Benicia would ADU's not be permitted due to the impact on traffic flow and public safety? Are there any areas where there would not be adequate water or sewer service?

Further, the Larkspur staff report states, on page 5: "As indicated previously, State law allows local jurisdictions to restrict areas to accommodate ADUS where they lack on-street parking, roadway width and emergency ingress and egress and adequate fire suppression infrastructure. Planning staff has conferred with the Central Marin Fire, Fire Marshal, to determine areas that should restrict development of new detached ADUs in order to avoid limited access for emergency vehicles and evacuations using the following criteria:

- Restricted parking areas which are designated with white outlined parking space rectangles. A minimum of 12-foot roadway width and one parking space in the delineated white rectangles is not enough for an emergency vehicle to pass when a vehicle is parked in the space.
- Streets with insufficient roadway width. A minimum 20-foot roadway width is required for emergency ingress/egress.

- One lane roads with roadway widths allowing two-way traffic.
- Remote areas not served by improved or paved roads.

Where, in Benicia, would there be such areas where ADU's would not be allowed or be access by car?

In addition, SB 68 refers to fire and life safety conditions, but, so far, I haven't seen those statements in Benicia's proposed ordinance. SB 68 states: "(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions." In addition, it states that "(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply: (iii) The side and rear setbacks are sufficient for fire and safety."

As an aside, this section of the staff report also states: "Height. ADUs constructed over accessory structures that add additional height should be reviewed on a case-by-case basis, subject to Design Review, as it is dependent on location and how they are designed. ADUs should not exacerbate bulk and mass, and latitude is needed to ensure that ADUs fit well with the architecture, site, and surroundings." I just want to add that jurisdictions throughout the state are considering these height and compatibility issues and are actually still requiring some sort of design review, whether it is done by staff or a commission.



January 15, 2018

To: Benicia City Council

From: Toni Haughey (HPRC Vice-Chair, Historic Home Owner)
Tim Reynolds (HPRC Chair, Historic Home Owner)
Leann Taagepera (former HPRC Commissioner, Historic Home Owner)
Jon Van Landshoot (HPRC Member, Historic Home Owner)

SUBJECT: Accessory Dwelling Unit Ordinance

Please see our comments on the proposed ADU Ordinance. We request that the Ordinance be returned to the Historic Preservation Review Commission and Planning Commission in a joint meeting to work through the current deficiencies in the proposed ordinance.

Please note that it appears that this item is required by the Benicia Municipal Code to be sent back to the Planning Commission for a recommendation. The Planning Commission provided a recommendation regarding the ordinance in June. BMC Section 17.120.070 requires amendments to ordinances to be heard by the Council not more than 60 days after the PC hearing. The Council first reviewed this ordinance in September.

Please see our comments below. The proposed ordinance is not ready for adoption due to problems associated with:

- **Protection for Historic Buildings and Districts – This is REQUIRED by the State.**
- **Conflicting/Confusing Height Standards**
- **Elimination of Various Existing Sections of Benicia’s ADU Ordinance**
- **Elimination of Standards for Compatible Design**
- **Conflict with General Plan Policies that require the protection of historic resources.**

Major Problem: Staff has not adequately addressed potential impacts to historic resources in its proposed ADU Ordinance. Therefore, the proposed ordinance is not exempt from CEQA as worded.

State Law allows for added wording in the proposed ADU Ordinance and REQUIRES “standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.” Note that all properties listed in the National Register are automatically on the California Register.

Other Cities throughout California, including Anaheim, Fremont, Orange, Santa Rosa, Vallejo, Woodside include this or similar wording (see attached.)

The Solution: Benicia, as a historic city, should follow the examples of a vast number of other jurisdictions across California and include wording that assures that, as allowed by state law, adverse impacts to historic districts and individual buildings do not result, and that would allow Benicia to exempt the ordinance from CEQA.

We ask that the Ordinance be corrected to comply with CEQA and protect Benicia's historic assets through the following simply changes:

- 1) In Section E. Design Standards, eliminate item "1" which states "In a mixed use district, an accessory dwelling unit shall conform to the standards of the Downtown Mixed Use Master Plan form-based code" and replace with **"An accessory dwelling unit located on a parcel governed by the Downtown Mixed Use Master Plan area shall conform to those standards, except in the event of a conflict between the Downtown Historic Conservation Plan and the DMUMP, the Downtown Historic Conservation Plan will apply. An accessory dwelling unit located on a parcel governed by zoning in the Benicia Municipal Code shall conform to those standards, except in the event of a conflict between the Downtown Historic Conservation Plan or the Arsenal Historic Conservation Plan and the BMC, the Downtown Historic Conservation Plan will apply."**

[Note that the wording staff proposes is not appropriate – there are mixed-use zones in Benicia that are not located in the DMUMP. This wording assists in fixing the problem with the staff-proposed wording and allows it to comply with CEQA through the protection of historic resources, as allowed by the state's new ADU requirements.]

- 2) In Section E. Design Standards "6" where it stated "In the H historic overlay district, an accessory dwelling unit shall conform to the following additional requirements:" add: **I. Construction of an accessory dwelling unit in a historic district must comply with all applicable historic standards and must avoid creating any adverse impacts on any real property that is listed in the California Register of Historic Places.***

*This wording is taken from Vallejo's ordinance. Please see other example wording attached to this memo.

The following is found in the Office of Historic Preservation Technical Assistance Series #1 "California Environmental Quality Act (CEQA) and Historical Resources found at <http://ohp.parks.ca.gov/pages/1054/files/ts01ca.pdf>

"The California Register includes resources listed in or formally determined eligible for listing in the National Register of Historic Places, as well as some California State Landmarks and Points of Historical Interest. Properties of local significance that have been designated under a local preservation ordinance (local landmarks or landmark districts) or that have been identified in a local historical resources inventory may be eligible for listing in the California Register and are presumed to be significant resources for purposes of CEQA unless a preponderance of evidence indicates otherwise (PRC § 5024.1, 14 CCR § 4850)."

Thank you for your consideration of these important issues that will affect our quality of life, especially in Benicia's historic districts. As we continue to use heritage tourism to bring visitors to Benicia, let's make sure that they have Historic Districts with appropriate, quality development to see! We pride ourselves on our historic identity. Our General Plan states that "Benicia is committed to preserving and enhancing its unique geographic and cultural inheritance." Goal 3.1 is to "Maintain and enhance Benicia's historic character."

FURTHER COMMENTS ON PROPOSED ADU ORDINANCE

Background: Staff has provided incorrect direction to the HPRC, PC, CC and public during the year about the implementation of SB 229 and AB 494. Staff has not fully identified architectural review standards that would prevent adverse impacts to historic resources. This is allowed by state law. If the City does not do this, the new ADU ordinance would be subject to CEQA, and would not be exempt, as adverse impacts could result to individual historic properties and historic districts. For example, the proposed requirements for the historic districts allow for a building addition of any size that would be allowed by zoning. This is not consistent with the Historic Plans or the Secretary of the Interior Standards. Also, an addition to a historic building is required by the Standards to be differentiated between the old and the new. Other cities across the state are including language such as this. Vallejo just passed its ADU ordinance in October and it includes this language. Why can't Historic Benicia also include this language?

Staff has not provided an analysis to determine whether the allowable development new construction and alterations to historic buildings would prevent adverse impacts to the historic district and individual buildings.

Currently, this is how Benicia protects historic resources when it processes applications for ADU's – current Benicia ADU ordinance wording -

"d. If the proposed accessory dwelling unit is located in the city's H historic overlay district on a property that is designated by the city's downtown or arsenal historic conservation plans as a historic, potentially historic, contributing or potentially contributing landmark or building, and the application involves an exterior modification to an existing structure or is a detached structure, the application will require discretionary review by the historic preservation review commission to ensure protection of a locally designated historic resource."

None of this wording has currently been included. State law doesn't require elimination of staff review of new ADU buildings or modification of historic buildings to add an ADU. In addition, the HPRC could still be used as an advisory body. Our proposed wording, modeled on Vallejo's ordinance, passed in October, but similar to many other ordinances, would make up for this lack of protection. HPRC members brought up these issues when it reviewed staff's proposed ordinance change in May and June. Staff would not include wording to protect historic resources, even though this is allowed by state law. In addition, since this time, we have researched other ordinances that were passed throughout this state and found that other jurisdictions are including wording to ensure that new construction in historic districts comply with adopted historic plans and that exterior alterations proposed to historic buildings would not result in a significant adverse impact. This is required by CEQA. This ordinance cannot be exempted from CEQA if it does not protect historic resources.

The state ADU law is found online here -

https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=65852.2

and states:

"65852.2.

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily use. The ordinance shall do all of the following:

(B) (a) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places."

Design Review Role: We must note that many other jurisdictions are continuing to require design review of ADU's by commissions, I believe in both an advisory and a discretionary (City of Fremont, City of Orange) role. These commissions assist their jurisdictions staff to assure compliance with CEQA's requirements (state law) that projects that result in adverse impacts to historic resources are not exempt from environmental review. In Benicia, staff has proposed that it be the sole arbiter of compliance with development standards. We recommend that the HPRC could continue their design role for ADU's in at least an advisory capacity. Staff seems not to have considered this option at all.

Outreach: In the future, we request that outreach be performed specifically to the preservation community when such project affect Benicia's historic resources. By that, we mean that local preservation advocates were not contacted for input to this revised ordinance. Benicia's General Plan includes Program 3.1.D which states "Continue to work and cooperate with the Benicia Historical Society on historic preservation issues." Staff did not contact the Historical Society or any other Benicia preservation organization, advocates, or historic district property owners to solicit input on this ordinance update. No stakeholder committee was formed at all.

HPRC/PC Recommendations Ignored by Council: In addition, staff, the HPRC, and the PC recommended that the ordinance include the following that Council identified for elimination at its September meeting:

- Either the primary or the accessory dwelling unit shall be owner occupied
- The exterior appearance of an accessory dwelling unit shall be compatible with existing development in the immediate neighborhood by using building materials, window styles, roof slopes, colors, and exterior finishes that are the same or visually similar to those on the primary dwelling unit. Reflective metal finishes are prohibited.

Note that this provision of compatibility was proposed by HPRC, PC, and staff after many public meetings and is found in other jurisdictions' ADU ordinances throughout the state. It is intended to provide for quality design that is compatible with current aesthetics in neighborhoods in Benicia. Without it, the design in Benicia is pretty much anything goes. We don't understand why the bar is set so low for our residents. Is that what Council intended?

Also, in the proposed ordinance revision, staff eliminated the second bullet item above, per the Council's direction, in Section 4 E. Design Standard, but not in Section 5 e. Design Criteria (for manufactured homes.) So, staff's wording would require such aesthetic compatibility only if the unit were a manufactured building and not if it were constructed on site. This does not make sense.

No Current ADU Ordinance Wording Provided to Commissions or Council: We would like to note that the current ADU ordinance was not provided to Council with the proposed changes indicated in redline and strike-out. (We have attached the current ordinance as an FYI.) Benicia's entire ordinance does not need to be changed – it just needs to be updated to conform to current state law. This is a pattern by staff, but we feel that it is not helpful to the public or decision-makers if they are not shown what exists now so that the effect of proposed changes can be understood. For example, currently, Benicia requires that either the primary or the ADU unit be owner-occupied. This was again proposed and Council provided direction to change this at the first reading. Was Council aware that this is the current requirement? What else from the current Ordinance that is worthy of keeping, is staff proposing be eliminated? For an example, the current ordinance includes a section on appeals. No wording about appeals is included in the current proposed ordinance.

Benicia's current ADU ordinance includes the following, none of which has been included in the current, proposed ADU ordinance:

"7. Design.

- a. Accessory dwelling units shall be designed to be compatible and in harmony with existing development in the immediate neighborhood. Building materials, architectural features, colors, and exterior finishes should be substantially similar as those on the existing dwelling unit.
- b. The orientation of accessory dwelling units on the lot shall be designed so that the privacy of adjacent neighbors is reasonably preserved. This includes measures such as limiting windows that have openings facing adjacent properties, height considerations, and/or window glass treatments.
- c. An accessory dwelling unit shall have a backlit illuminated address sign."

Why hasn't any provision been included to attempt to protect the privacy of adjacent neighbors?

Problem with Height Requirements: The proposed ADU ordinance includes two allowable height standards. It also appears to include conflicting height standards for areas in the DMUMP. In addition there appear to be no specific height standards in the historic district. The height of a new building in a historic is normally evaluated against the Secretary of the Interior Standards. The ADU Ordinance should identify heights that are appropriate in the historic district to ensure compatibility with adjacent historic buildings, especially since many of the lots are small and already do not meet (and are not required to follow) current setback standards.

The proposed ordinance includes the current Benicia ADU ordinance height standard on page 2 in Section 3:

"3. Maximum Height. The maximum wall height of an accessory structure shall be 12 feet, subject to the provisions of this subsection. Maximum peak height shall be determined on the basis of roof pitch as provided herein.

- a. Fifteen (15) feet where the roof pitch is below 4:12.
- b. Eighteen (18) feet where the roof pitch is between 4:12 and 6:12."
- c. Twenty (20) feet where the roof pitch exceeds 6:12.

Later in the proposed new ADU regulations, somewhat different and conflicting height standards are listed on page 4 in Section 4:

"D. Development Standards, 3. Height:

- a. An attached accessory dwelling unit shall conform to the height standards of the district in which it is located, subject to compliance with the design standards of this section.
- b. A detached accessory dwelling unit shall conform to the applicable height standards for accessory structures provided in BMC 17.70.050 or ancillary structures as provided in the Downtown Mixed Use Master Plan, but shall not exceed the height of the primary dwelling.
- c. The community development director may grant an exception to criteria to increase the wall and/or peak height of a detached accessory dwelling unit up to five feet if the structure would comply with all other applicable design standards, and the director finds that such increase is necessary to support the feasible construction of an accessory dwelling unit."

Item "b" above refers to BMC 17.70.050 which is the current standard for nonresidential accessory structures. It states: "3. Maximum Height. The maximum height of a nonresidential accessory structure shall be 12 feet, subject to the provisions of this subsection; provided, that pitched roofs shall not exceed a height of 15 feet. For any RS lot containing a single-family residence, a pitched roof may extend to 20 feet in height to match the roof pitch of the existing or proposed residence on the site. The maximum height of any wall shall not exceed 12 feet at the eaves. No second story, other than an unfinished storage area, may be developed for any accessory building."

The proposed ADU ordinance should specifically state the above height requirements to be clear. In addition, the two height standards are not the same (one provides roof pitches) and the text should be clarified.

The height limit for ancillary structures in the DMUMP are as follows. Are these height appropriate for ADU's in the Historic District?

Town Core -

Height		
Building Min.	16'	ⓐ
Building Max.	2 stories and 25'	ⓐ
Ancillary Building Max.	2 stories and 25'	
Finish Ground Floor Level	12" max. above sidewalk	ⓐ
First Floor Ceiling Height	12' min. clear	ⓑ
Upper Floor(s) Ceiling Height	8' min. clear	ⓐ

Neighborhood General -

Height		
Building Max.	2.5 stories and 30' max.	Ⓝ
Ancillary Building Max.	1.5 stories and 15' max.	
Finish Ground Floor Level	18" min. above sidewalk*	ⓐ
First Floor Ceiling Height	10' min. clear	ⓑ
Upper Floor Ceiling Height	8' min. clear	ⓐ

*6" on downslope lots.

Neighborhood General-Open -

Height		
Building Max.	2.5 stories and 30' max.	Ⓝ
Ancillary Building Max.	1.5 stories and 15' max.	
Finish Ground Floor Level	18" min. above sidewalk*	ⓐ
First Floor Ceiling Height	10' min. clear	ⓑ
Upper Floor Ceiling Height	8' min. clear	ⓐ

*6" on downslope lots.

Examples from Other Cities Regarding Protecting Historic Buildings

Anaheim's ADU Ordinance

110 Historic Buildings.

1101 A Second Unit proposed for any lot that includes a building listed in the California Register of Historic Places shall conform to the requirements for the historic structure.

1102 A Second Unit proposed for any lot that includes a building listed in the California Register of Historic Places, or identified as a Contributor in the Anaheim Colony Historic District Preservation Plan and other historic preservation plans as may be approved by the City Council, are encouraged to comply with the design guidelines of such plan.

Orange's ADU Ordinance –

11. Except for those accessory dwelling units located in a historic district, all applications for accessory dwelling units that meet the requirements of Title 17 shall receive ministerial approval.

Fremont's ADU Info -

An application for an ADU that meets the applicable standards in the Fremont Municipal Code (FMC) is subject only to ministerial review and approval. This means that the application may be approved by staff and no public hearing is required. Where design review requirements are applicable (for example, for an addition or a new detached structure), a Ministerial Design Review Permit is required.

Depending on the scope of the project, other City permits may be required. On lots that have been deemed eligible or formally listed on the National Register of Historic Places, the California Register of Historical Resources, or any adopted local list of historic resources, architectural approval must be granted by the Historical Architectural Review Board (HARB). Permits from the Alameda County Water District (ACWD) and Union Sanitary District (USD) may also be required. A fee is required for the building permit and may be required for other permits.

Napa's ADU Info –

- 17 If site is in :SC Soscol Corridor Overlay District, applicants need to review the *Soscol Corridor/Downtown Corridor Development Design Guidelines* to assure project compatibility with these Guidelines.
- 18 If site is in :MU-T Mixed Use Tannery Bend District, applicants need to review the *Tannery Bend Development & Design Guidelines* to assure project compatibility with these Guidelines.

Santa Rosa's ADU Info –

- B. General requirements. An accessory dwelling unit:

1. May be located on any residentially zoned lot that allows single-family or multifamily dwellings and that contains only one single-family detached dwelling;
2. Is not subject to the density requirements of the General Plan, but shall otherwise be consistent with the General Plan text and diagrams.
3. Shall not be allowed on, or adjacent to, real property that is listed in the California Register of Historic Places.

11. Standards for Historic Preservation Districts.

a. Applicability. The requirements outlined below shall apply to new accessory dwelling units within the Historic (-H) Combining District.

b. Development standards.

(1) Through photographs, color and material boards, architectural elevations, and other means, the applicant shall demonstrate the consistency of the proposed design of accessory dwelling unit's colors, textures, materials, fenestration, decorative features and details, with that of the time period of the residence's construction and/or adjacent historic structures.

(2) For properties that are identified as a contributor to the District, through the preparation of a historic resource survey by a qualified professional, the applicant shall demonstrate that the proposed accessory dwelling unit will not negatively impact historic resources on the property, and will be consistent with Secretary of the Interior Standards for Treatment of Historic Properties as applicable.

San Jose's ADU Info –

<p>Design</p>	<p>If located on a site that is listed on the California Register of Historic Resources, all new attached units and new detached units must incorporate architectural style, and similar materials and colors, including but not limited to roofing, sidings and windows and doors (20.30.150.L.1 & 2).</p>
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Woodside's ADU Info -

- ADU shall be consistent with Residential Design Guidelines.
- ADU shall comply with Fire District and Building Department regulations and may be required to install fire sprinklers, meet Wildland Urban Interface requirements, fire hydrant, and/or provide fire truck access/turnaround. Contact Woodside Fire Protection District and Woodside Building Department for all detailed regulations.
- Limitations to septic installation may apply. Contact Town of Woodside and San Mateo County Department of Environmental Health for specific regulations.
- ADU shall have all utility connects prescribed by CBC/CRC.
- ADU must comply with Zoning Districts that require increased setbacks for portions of structures that exceed 17 feet.
- Removal of Significant Trees as defined by the Municipal Code requires Town review and approvals of a Tree Destruction Permit.
- Conversion of existing historical structures is encouraged by the Town if the project complies with all applicable Zoning and Building Codes, and the California Secretary of Interior Standards for Historical Resources.
- ADUs must conform to all development standards in the zoning district in which they are proposed.

Benicia's Current ADU Ordinance:

17.70.060 Accessory dwelling units. SHARE

A. Purpose. This section is intended to implement Program 1.06 of the city's 1999 – 2006 housing element in accordance with Government Code Section 65852.2 by permitting the creation of accessory dwelling units through an administrative process, thereby increasing housing opportunities for the community through use of existing housing resources and infrastructure.

B. Zoning. One accessory dwelling unit per parcel is permitted by right in all residential districts (RS, RM, and RH), and on lots with a single-family dwelling, subject to the development standards in subsection (D) of this section.

C. Administrative Permit. Accessory dwelling units require approval by the community development department director, or designee. Applications shall be submitted to the community development department accompanied by the required fee. The administrative permit for a second dwelling unit shall be processed as follows:

1. After receipt of a completed application, the community development director, or designee, will review the application and shall approve an accessory dwelling unit upon making all of the following findings:
 - a. The dwelling conforms to the design and development standards for accessory dwelling units established in subsection (D) of this section.
 - b. Either the primary or the accessory dwelling unit is owner-occupied with proof that this requirement has been recorded as a deed restriction. The community development director, or designee, may waive the owner-occupancy requirement if all of the following conditions are met:
 - if. The occupant(s) of one of the units is/are disabled;
 - ii. As a result of the disability, the occupant(s) is/are unable to hold title to the property as an owner; and
 - iii. The primary caretaker(s) of the disabled occupant(s) resides in the other unit.

The waiver of the owner-occupancy requirement is valid only so long as the above conditions are met.

- c. Public utility and services including emergency access are adequate to serve both dwellings.
- d. If the proposed accessory dwelling unit is located in the city's H historic overlay district on a property that is designated by the city's downtown or arsenal historic conservation plans as a historic, potentially historic, contributing or potentially contributing landmark or building, and the application involves an exterior modification to an existing structure or is a detached structure, the application will require discretionary review by the historic preservation review commission to ensure protection of a locally designated historic resource.

2. Approval or denial by the community development director, or designee, of an administrative permit for an accessory dwelling unit shall be noticed to the applicant in a "letter of action." This letter shall include findings of approval or denial. If necessary, conditions of approval made by the community development director, or designee, on granting the administrative permit will be included in the letter.

3. The ministerial approval of an accessory dwelling unit shall expire two years from the date of approval unless made valid by construction of the unit. The community development director, or designee, may grant a maximum one-year extension of the two-year approval expiration period.

D. Design and Development Standards.

1. Lot Size. Accessory dwelling units shall only be permitted on residential lots of 6,000 square feet or greater.

2. Lot Coverage. The basic requirements of Chapter 17.24 BMC shall apply.

3. Unit Size. An accessory dwelling unit, whether within, attached to, or detached from the existing structure, shall not exceed 800 square feet, or the size of the primary dwelling unit, whichever is less. The existing unit may be considered the accessory unit, and a new dwelling unit built, if all applicable standards and requirements of this title are met.

4. Building Location.

a. Accessory dwelling units shall not be permitted in a required yard or court except if a rear yard is adjacent to an alley and a four-foot setback for a vehicle entrance to a covered parking structure is maintained.

b. A six-foot distance from any existing dwelling shall be maintained.

5. Building Height. The maximum height of a detached accessory dwelling unit shall be 12 feet, except that pitched roofs may have a height of 15 feet. The maximum height of any wall shall not exceed 12 feet at the eaves. No second story, other than an unfinished storage area, may be developed for any accessory building.

6. Parking. A minimum of three off-street parking spaces shall be required for a lot containing an accessory dwelling. One parking space, which is not required to be covered, shall serve the accessory unit. The additional parking space for the accessory dwelling unit shall not be placed within the required front yard setback unless, at the discretion of the community development director, or designee, there is no other reasonable place for the additional parking space to be located and appropriate landscaping and/or berming is provided to mitigate any adverse aesthetic impacts.

7. Design.

a. Accessory dwelling units shall be designed to be compatible and in harmony with existing development in the immediate neighborhood. Building materials, architectural features, colors, and exterior finishes should be substantially similar as those on the existing dwelling unit.

b. The orientation of accessory dwelling units on the lot shall be designed so that the privacy of adjacent neighbors is reasonably preserved. This includes measures such as limiting windows that have openings facing adjacent properties, height considerations, and/or window glass treatments.

c. An accessory dwelling unit shall have a backlit illuminated address sign.

E. Appeals. The decision of the community development director, or designee, shall be final on the tenth business day following the decision, unless appealed or reviewed in accordance with Chapter 1.44 BMC.

F. Recordation.

1. The administrative conditions of approval shall be filed for record with the county recorder and evidence of such filing shall be submitted to the community development director, or designee, prior to issuance of building permit(s) or rental and occupancy of the accessory dwelling.

2. A deed restriction stipulating that the property owner occupies either the main or accessory dwelling unit, unless a waiver to this requirement has been granted under subsection (C) of this section, shall be filed with the county recorder and evidence of recordation submitted to the community development director, or designee, prior to issuance of building permit(s) or rental and occupancy of the accessory dwelling.

3. A deed restriction stipulating that only one accessory dwelling unit is allowed and that it shall not be sold separately from the primary dwelling shall be filed with the county recorder and evidence of recordation submitted to the community development director, or designee, prior to issuance of building permit(s) or rental and occupancy of the accessory dwelling. (Ord. 13-07 § 2; Ord. 07-60 § 1; Ord. 04-2 § 2; Ord. 99-7; Ord. 92-15 N.S. § 12, 1992; Ord. 92-9 N.S. § 14, 1992; Ord. 87-4 N.S., 1987).



December 4, 2019

To: Suzanne Thorsen, Principal Planner, City of Benicia

From: Leann Taagepera

SUBJECT: Accessory Dwelling Unit Ordinance Comments

Thank you for the opportunity to submit further comments on staff's proposed preliminary revised Accessory Dwelling Unit Ordinance. Please also see comments I submitted as a part of a group to the City Council, on January 15, 2019. Although I am a member of the Benicia Historical Society's Governmental Affairs Committee, we have not had a chance to meet about this topic after our meeting with you on 10/4/19. Therefore, these comments should be considered my own. The Committee does work to represent the interests of historic preservation in Benicia, however.

1. The revisions staff propose to the ADU ordinance "shall" "impose standards on accessory dwelling units that "that prevent adverse impacts on any real property" that is listed as historic, as required by CGC Section 65852.2(a)(1)(B)(i). I would like staff to provide an analysis that explains how the ordinance complies with this requirement of State Law. Essentially, how do the standards proposed take the place of the Secretary of the Interior Standards, the DHCP, the AHCP, and design review? Has staff found examples of how other jurisdictions are successfully achieving this? I provided some examples of other ordinances in the member of 1/15/19.

The objective design standards in Subsection J.6 (Historic District Standards) are the standards that satisfy the requirement to prevent adverse impacts on historic resources while also complying with the requirement to ministerially approve ADUs.

The objective standards address compatibility within the historic district to the extent feasible, given the limitations of objectivity and ministerial permitting. They do not take the place of the SOIS, DHCP, AHCP and design review, which are all associated with a discretionary process. The City is limited in its review of ADU applications to the ministerial procedure mandated by the State which does not allow for discretion on the part of a public official, in addition to the stated intent and requirements (e.g., size, setbacks, etc.) of the statute.

Staff reviewed the Ordinances referenced in prior correspondence. Many of the standards and procedures in these examples are not objective nor ministerial. The City remains open to ideas for additional standards which may objectively address compatibility.

2. At our October meeting, a preliminary draft of a revised ordinance was presented. The current ordinance includes many parts not presented at the meeting. Is staff proposing that the remainder of the ordinance remain the same, even the "manufactured homes" section?

The outline presented in October covered key amendments to the ADU regulations. There are no amendments proposed for the section pertaining to manufactured homes, as jurisdictions are not permitted to disallow this method of construction ADUs.

3. At the meeting, we discussed page 3 of the proposed ordinance which states that "The City shall ministerially approval an application for a building permit...for the following types of [ADU's]. Staff and the consultant indicated that the City Attorney firm is saying that AB 68 requires a detached ADU that is

a maximum of 800 square feet, 16 feet tall and with four-foot side and rear-yard setbacks would be required to be approved ministerially and somehow automatically. There was an implication by staff that such an ADU would not be subject to the other standards found in the ordinance. Under AB 68, all ADU's that fall within its stated parameters are required to be processed ministerially, yes, but the Gov't Code Section that staff cites does not state that such an ADU would not be required to follow the ordinance's design and development standards.

CGC Section 65852.2€ states that "(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve..." The word "notwithstanding" does not mean that the other provisions of AB 68 do not apply to such applications. There would be no point in creating the other requirements/provisions of AB 68 if they did not apply to the development that the law is requiring and allowing. For example, see <https://definitions.uslegal.com/n/notwithstanding/> where "notwithstanding" is defined as "despite something; not prevented by; in spite of the fact that." Therefore it simply does not seem accurate to interpret AB 68 to intend that if such an ADU were proposed as is described on page 3 of the proposed ordinance, it would not need to follow any of the other requirements of the state law or the local ordinance.

To support my contention, I refer you to CGC 65852.2 (C), which states "Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards." I added the underlining to call out that in this section, the law specifically says that the ADU is to comply with development standards.

The phrase "notwithstanding" in combination with the statement that the City "shall ministerially approve an application for a building permit" means that subdivisions (a) to (d), which grant the City authority to establish local objective development and design standards, do not apply to the subset of ADUs described in subdivision (e) which are described in the draft ordinance Section 17.70.060.G. Furthermore, the legislative history of 65852.2 subd. (e) establishes that the Legislature intended to "carve out" certain ADUs from review, approval and denial standards set forth in 65852.2 subds. (a) through (d). In 2017, the Legislature specifically created this "carve out" for "internal ADUs." That is, the Legislature added language to the State ADU laws which provided that internal ADUs would not be subject to the same approval standards as other ADUs. In the 2019 Legislative session, instead of removing subdivision (e), the Legislature *added* certain types of ADUs to subdivision, thereby reinforcing the legislative intent of including even more ADUs in the "carve out" category.

Prior to these recent amendments, Section 65852.2(e) read as follows:

Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a zone for single-family use one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, including, but not limited to, a studio, pool house, or other similar structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. A city may require owner

occupancy for either the primary or the accessory dwelling unit created through this process.

HCD interpreted this to mean that if an internal ADU complies with the standards in this subdivision, the City must approve it and may not require compliance with any other ADU standard authorized under subdivisions (a) to (d). See page 25 of HCD's December 2018 Accessory Dwelling Unit Memorandum.

With the new bills, subdivision 65852.2(e) is revised to retain the same "notwithstanding" introductory language, but expands the applicability to four types of ADUs, not just internal ADUs.

Government code sections 65852.2(c)(1)(C) and subdivision (e) do not operate in conjunction with one another, but rather operate in tandem. Subdivision (c)(1)(C) applies to ADUs regulated by subdivisions (a) through (d). This section provides that any local standards regarding size, lot coverage, floor area ratio, open space and/or minimum lot size cannot prohibit *at least* an ADU that is 800 SF, 16 feet in height with 4 feet setbacks. This provision does not apply to the ADUs regulated by subdivision (e). A local jurisdiction cannot impose standards regarding size, lot coverage, floor area ratio, open space and/or minimum lot size to subdivision (e) ADUs.

ADUs that do not meet the criteria of subdivision (e) shall comply with the balance of the ADU ordinance, BMC Section 17.70.060.

4. Page 7 of the proposed ordinance (item I.6) cites CGC 65852.2(a)(1)(D)(vii) and states that "The City much allow an existing structure to be converted to or replaced with an ADU, regardless of whether it conforms with setback or building separation standards." What setback or building separation standards is staff referring to?

The ADU setback and building separation standards in BMC 17.70.060.

Do you mean that an existing building that has a setback or separation that is legal, non-conforming can continue with that setback or separation? That section of the CGC cited states:

"(vii) 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." (I am quoting it here for discussion purposes.)

We interpret this to mean that an existing building nonconforming to setbacks and building separation standards can be converted to an ADU, or can be replaced with a new structure that matches the placement and dimensions of the existing nonconforming structure.

Staff's proposed wording in I.6. "Converting and Replacing Existing Structures" states that "Any expansion of the structure shall conform to the current zoning standards." Can you clarify what this means? This appears to say that a building that is legal non-conforming as to setback or building separation that was expanded could not continue the setback or separation in the new part of the building? I don't believe this is consistent with the legal, non-conforming section of the municipal code

or normally how approvals are completed for buildings that were constructed pre-zoning or under a different set of standards than currently exist.

We've deleted this sentence from I.6.a.

Item I.6.b. is proposed to read "If an existing accessory structure is converted to an accessory dwelling unit, the City shall ministerially permit the expansion of the existing structure by up to 150 square feet to accommodate the ingress and egress." Is this a requirement of state law?

Yes. See Government Code 65852.2(e)(A)(1) :

(1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a zone for single-family use one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, including, but not limited to, a studio, pool house, or other similar structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. A city may require owner occupancy for either the primary or the accessory dwelling unit created through this process. within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

5. Page 8 of the preliminary proposed ordinance (item J.6.c) presented at the meeting states that "an attached accessory dwelling unit shall not result in a rooftop addition or any alternation to the existing roofline of a structure listed on the California Register of Historic Places." As I said at the meeting, all references to the CRHP should be replaced by "listed at the local, state or national level" or something to that effect.

We've made this change to reflect local designation of historic structures.

The part of State Law that uses the term California Register has been interpreted by all jurisdictions' ordinances I have read to include locally listed. Regarding the requirements in the quoted section, staff has begun to differentiate between requirements for historic buildings and non-historic, but within the historic districts. The same requirements should apply in order to prevent adverse impacts to the District(s) as a whole and to neighboring historic properties. Item J.6.d also appears to be written to only apply to a historic building and not a non-historic building in the District(s). The same comment applies. Also, in this part of the proposed ordinance, in 6.b., is staff suggesting that a two story house in a District can construct an ADU that is the same height as the primary dwelling even if there are

single-story houses adjacent to the two-story house? This would seem to result in an incompatibility issue within the District.

The ordinance has been revised to address designated contributing and landmark structures. The standards that apply district-wide are intended to address the overall character of the District, which is a generous interpretation of the language provided in Government Code Section 65852.2 (a) which states:

“A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multi-family dwelling residential use. The ordinance shall do all of the following... (B)(i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.”

Historic district standards in paragraphs (c), (d), (e) and (f) of 17.70.060.J.6 are intended to prevent adverse impacts to designated historic buildings. We do not recommend applying these same limitations to non-historic buildings in light of the Legislature’s intent for local ordinances to not be “so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.” Govt Code 65852.150 (b)

The Design Standards for H Districts (BMC Section 17.70.060.J) which state that an ADU shall not exceed the height of the primary dwelling must be combined with the Development Standards (BMC Section 17.70.060.I), which limit height to 16’ for an ADU with a 4:12 roof pitch, up to 20’ for an ADU with a 6:12 roof pitch.

6. In addition, page 8 states under “6 Historic District Standards” - “In the H historic overlay district...” – does staff mean “districts”? We have more than one historic district.

Noted, we have made the correction.

7. Page 9 states under “objective design standards” “Mixed Use District” that “In a mixed use district, an accessory dwelling unit shall conform to the standards of the downtown mixed use master plan form-based code.” As we discussed, the ADU ordinance should supersede any current requirements in the municipal code and the DMUMP. State law has superseded and now this ordinance must be prepared in order to allow compliance with the new state law. It doesn’t make sense to call out the DMUMP part of the downtown historic district and say that ADU’s must comply with the DMUMP, just as it wouldn’t make sense to call out the other areas of the downtown District and say that ADU’s there must comply with zoning found in the municipal code. This statement should be stricken. Recall also that the DHCP prevails in the event there is a conflict between either zoning or the DMUMP and the DHCP. The standards for ADU’s the downtown historic district should replace the DHCP’s requirements (an argument can be made that standards should include applicable sections of the Arsenal Historic Conservation Plan in that area, as well.)

We’ve removed this language.

8. We discussed a balcony on the second story of a stand-alone ADU building over a garage or perhaps that would be proposed as an addition to a historic or other house. Since lots in the Historic Districts are typically small, a new balcony on a new building constructed within a backyard or a balcony on the back of a two-story house would likely serve to eliminate the privacy of all of the adjacent and nearby yards and introduce new sources of noise and light into windows and yards of nearby houses. This is, of course, true of many parcels in Benicia. What can staff propose to mitigate this issue? How have other jurisdictions dealt with this in their ordinances? With the State mandating that the rear-yard setback for an ADU be reduced to four feet, this could introduce severe incompatibility issues, particularly in the historic districts and in those blocks that do not include alleys. My opinion is that balconies should not be allowed unless the topography of the lot where they are proposed would not allow a line of sight view into private backyards and windows. It was proposed by one of the architects at the meeting that a balcony could face its own backyard or sideyard between it and the main house or be limited in other ways to protect the privacy of the neighbors.

The proposed ordinance requires that second story balconies or decks maintain a 10 foot setback from any adjoining lot that contains a single-family or duplex unit. In 2018, the prior ADU ordinance was amended on the direction of the Council to eliminate a restriction on rooftop decks; therefore, it is staff's understanding that the City Council intends to allow upper story decks and balconies for ADUs.

9. The issue of rear yard setbacks and heights of new buildings was a concern for many downtown residents when the DMUMP was prepared and I believe that the DMUMP presents different requirements for rear yard setbacks and heights on blocks with alleys and blocks without alleys. Could staff review this and provide recommendations?

City must allow no less than 4-foot rear setbacks and 16-foot heights regardless of what DMUMP requires. For alley-adjacent lots, the City could allow setbacks less than 4 feet and heights more than 16 feet if desired.

Staff has not reviewed the public hearing record on adoption of the DMUMP; however, the DMUMP currently allows ancillary buildings ranging from 15 to 20 feet in height depending on roof pitch and zone, consistent with the City Council's adoption of Resolution No. 19-2 There was not previously, nor is there currently, a distinction in permitted height and yards for ancillary buildings on lots adjoining an alley.

10. I noticed the following about addressing the privacy concerns of nearby residences in the City of Redwood City (this was before state law was updated this Fall) - <https://medium.com/redwood-city-voice/new-proposals-addressing-accessory-dwelling-unit-adu-limits-and-house-size-limits-floor-area-bd3d244335aa> :

"The Planning Commission recommendations include requirements to limit a second story ADUs above a detached garage to 280 square feet, and reduce maximum height of a detached, second story ADU to 20-feet. In addition, second floor balconies, and roof decks would be prohibited. Exterior stairs would be required to face the interior of a lot, rather than the sides or rear. Windows facing immediately adjacent side and rear neighbors would be required to be higher on the wall and cloudy. Incentives for one-story ADUs include reducing the rear yard setback to 6 ft., allowing ADUs to replace detached garages, and increasing the size of ADA compliant units to 1,000 sq. ft."

Here is an example from Sacramento's ordinance -

https://qcode.us/codes/sacramento/view.php?topic=17-ii-17_228-i-17_228_105:

"D. Design standards.

1. The design of the secondary dwelling unit must conform to the design guidelines applicable to the lot on which the secondary dwelling unit is located.
2. New secondary dwelling units should use universal access design features, including "no step" entrances, where topography and site constraints allow.
3. No portion of a secondary dwelling unit balcony, deck, or open-stair landing that faces the rear lot line or the side lot line nearest to the secondary dwelling unit may be higher than three feet from the ground."

Noted. The proposed ordinance has been revised to require that exterior stairs are oriented to the interior of a lot. However, staff does not recommend a prohibition on second story decks or balconies and has proposed a setback requirement to address concerns noted in the November 14 meeting.

11. Page 10 of the proposed revised ordinance item 6 states "In the H historic overlay district" – again, there is more than one historic district in Benicia. Item 6.c. – we discussed my question about if a non-historic building would be allowed to have a rooftop addition and you indicated that you would look in this.

The ordinance has been revised to address historic districts in plural. In some cases, we say "a historic district" when referring to an ADU in the singular form.

Based on the language of the State law, there is, under certain circumstances, a mandatory allowance for a ADU that measures 16 feet in height, even if such an ADU results in a rooftop addition to a non-historic home.

12. Page 10, item 6g states that "building and trim materials shall be horizontal wood siding." Normally on a historic building, the siding is vertical from the waterline to the ground. Perhaps this section should state that the siding could also be vertical in this area. Benicia includes historical Brown Shingle (the exterior siding) houses. This section should be updated to include this style of siding, which is not horizontal or vertical. In item 6h and 6i, instead of having the colors be exactly the same as the primary building, could they be complimentary?

This recommendation may be considered if the waterline and ground can be objectively defined. The horizontal siding standard was developed in concert with HPRC review during study sessions on the ADU amendments in 2018. Similarly, materials may be expanded to include Brown Shingle if such term can be objectively defined; however, please note that shingles are already a permitted exterior material for an ADU in a historic district.

With regard to color, the City may require specific, objective criteria. Requiring that colors be complimentary to the house would be subjective and therefore inconsistent with the State's requirements (See Gov. Code section 65858.2 subd. (a)(1)(B)(i) and (a)(6)). The City may opt to eliminate the standard for exterior color, or may specific permitted colors, but may not create a standard that requires interpretation or discretion on the part of an official.

13. Are the standards in this section the same for junior ADU's? How would staff review a new door proposed to be cut into a historic building for ingress/egress of a junior, attached ADU? Do you propose standards for such a door on a historic house?

Junior ADUs are a type of ADU and are subject to BMC Section 17.70.060. Please note however that ADUs proposed pursuant to Section 17.70.060.G (pursuant to Government Code Section 65852.2(e) shall not be subject to the design standards of the City's ordinance. For these types of ADUs, which include Junior ADUs and Internal ADUs, the City may not impose a standard addressing location, style, materials, size, etc.

14. Page 11, item 6j – I respect staff and the HPRC's decision to require that gutters not be composed of PVC materials; however, currently such gutters are allowed on historic houses and if the ADU were located behind the primary building, wouldn't it possible that the public would never see the plastic gutters? Would vinyl/plastic windows be allowed in ADU's in the historic districts? I do not see a prohibition in the proposed ordinance. If plastic windows would be allowed, why wouldn't plastic gutters?

We've removed this standard.

15. Item 6k – why were the words "Windows in small spaces, such as" stricken? Now, staff proposes that only bathroom windows may be horizontally oriented. Historical houses in Benicia include horizontal windows in rooms that are not bathrooms, so why should ADU's be restricted to only horizontal in bathrooms and not, say, kitchens?

Additional types of spaces, such as basements/crawl spaces, kitchens, laundry rooms, etc. may be specified; however, the term "small spaces" is subjective and requires discretion on the part of an official and is therefore inconsistent with the State laws. (See Gov. Code section 65858.2 subd. (a)(1)(B)(i) and (a)(6).)

16. 6l requires true divided windows? Would these be new windows on an addition to a historic house or are all of these standards for detached ADU's? If the standards allow for plastic vinyl windows, why should they be true divided or muntins applied to both the inside and outside of the glass?

The standard pertaining to window divisions was developed in concert with the HPRC during study sessions on the ADU amendments in 2018. The requirement may be stricken or modified.

17. In item 6n, why is staff proposing to remove the sentence "Dormers shall not face an adjoining side yard"?

In an H District, ADUs would be limited in peak height and wall height. Dormers are key to creating ceiling height that allows the creation of livable areas above a ground floor space such as a garage. Prohibiting dormers on two sides of a structure significantly constrains the feasibility and livability of these upper floor spaces. However, the proposed standard that requires ridgelines to be oriented perpendicular to an adjoining side property line may result in a natural orientation of dormers away from side yards.

18. Page 11 states that that "the community development director may grant an exception to criteria..." Please explain why the CDD should be able to grant such exceptions and under what circumstances? It

sounds like this will end up with different property owners being treated differently depending on which staff reviews their projects etc.

This language has been removed from the draft ordinance.

19. Page 12 I.4.c.(2) again refers to balconies on an attached two-story accessory structure that could now be allowed four feet from the side or rear property lines. So, this describes a new two story building sprouting up in a person's backyard only four feet from the neighbor's property with a balcony that could completely view previously private backyard space and into windows of nearby properties. See my previous comments regarding this.

As noted, the proposed ordinance would require a 10-foot setback from adjoining single-family and two-family lots for upper story decks and balconies. Ground floor decks and balconies would be permitted at a setback of four feet.

Discussion at last meeting – staff said that the City Attorney firm is saying that if an ADU has a certain height etc. then it is ministerial with no adherence to the design standards – the law says “attached” not separate building. Plus, it still would need to not adversely affect historic resources and why couldn't it be required to follow the rest of the design standards for historic district/building?

ADUs that are permitted subject to Government Code 65852.2(e) include both detached and attached units and internal conversion ADUs. The City does not have authority to apply its own additional development or design standards to these specified types of ADUs, including standards for Historic Districts. Additionally, as explained previously, the State laws only reserve to local jurisdictions the imposition of limited ministerial standards. The State laws do not provide for the imposition of discretionary design review standards or procedures. (See Gov. Code section 65858.2 subd. (a)(1)(B)(i), (a)(3), (a)(6).

20. At the meeting, we discussed heights allowed for ADU's in historic districts. I believe we agreed that the heights would remain as recommended by the HPRC and the PC in the historic districts, meaning not increasing the heights allowed in the Districts. The height would be essentially one and a half structure if it is over a garage.

This is correct. The two amendments to height in a historic district are a) to increase the height limit for a building with a 4:12 pitch from 15 feet to 16 feet in accordance with the State statute; and b) to increase permitted wall height to 14 feet to accommodate livable wall heights on the upper floor. However, the effect is to retain a standard that results in one or one and a half story ADUs.

21. How will staff process a new garage with an ADU over it? Is the garage square footage part of the allowable ADU square footage? If it isn't considered part of the ADU, then the building should be required to go through the regular design review process for the District.

As provided in the draft ordinance, this type of project in a historic district would require design review for the garage, but not the ADU. See 17.70.060.C.3. The applicant would also request that the City review the project in its entirety, with the ADU subject to the same design review requirements as the garage.

22. Setback – is it true that we cannot require the entire ADU to be behind the primary structure? Is staff certain that this is not allowed? In the event that it is not allowed, I recommend that screening be required of the ADU, to attempt to reduce its visibility from the street.

A standard to require screening (either fencing or landscaping) was explored but is not recommended due to the potential for unanticipated consequences such as incompatible landscaping or fencing; maintenance and longevity; and the potential to call additional attention to the ADU due to out of scale or unattractive screening measures.

23. I watched the City Council meeting from 1/15/19. At that meeting, Shawna stated that the compatible design requirement would remain for the historic districts. At that meeting, she said that “Requiring compatibility with existing development” was directed to be removed by Council at September meeting for areas outside of the Historic District. In 2018, staff, the HPRC, and the PC recommended that the ordinance include the following: “The exterior appearance of an accessory dwelling unit shall be compatible with existing development in the immediate neighborhood by using building materials, window styles, roof slopes, colors, and exterior finishes that are the same or visually similar to those on the primary dwelling unit. Reflective metal finishes are prohibited.” Since Shawna stated at that meeting that the “compatible with existing development” section would remain for the historic districts, why has staff removed it? If there is something I am not understanding about this situation that would clarify it, please let me know.

During the first reading of the ordinance on September 4, 2018 the City Council directed staff to eliminate the design standard requiring compatibility with existing development.

24. As I stated in the January, 2019 memo to the City Council, Benicia’s current ADU ordinance includes the following, none of which has been included in the current, proposed ADU ordinance:

“7. Design.

- a. Accessory dwelling units shall be designed to be compatible and in harmony with existing development in the immediate neighborhood. Building materials, architectural features, colors, and exterior finishes should be substantially similar as those on the existing dwelling unit.
- b. The orientation of accessory dwelling units on the lot shall be designed so that the privacy of adjacent neighbors is reasonably preserved. This includes measures such as limiting windows that have openings facing adjacent properties, height considerations, and/or window glass treatments.
- c. An accessory dwelling unit shall have a backlit illuminated address sign.”

Why hasn’t any provision been included to attempt to protect the privacy of adjacent neighbors?

The standard of the prior ordinance was not objective and required the discretion of a public official. The reasons for eliminating a standard for orientation of dormer windows have been previously described.

25. I had commented the following in the January, 2019 memo:

“Later in the proposed new ADU regulations, somewhat different and conflicting height standards are listed on page 4 in Section 4:

“D. Development Standards, 3. Height:

- a. An attached accessory dwelling unit shall conform to the height standards of the district in which it is located, subject to compliance with the design standards of this section.
- b. A detached accessory dwelling unit shall conform to the applicable height standards for accessory structures provided in BMC 17.70.050 or ancillary structures as provided in the Downtown Mixed Use Master Plan, but shall not exceed the height of the primary dwelling.
- c. The community development director may grant an exception to criteria to increase the wall and/or peak height of a detached accessory dwelling unit up to five feet if the structure would comply with all other applicable design standards, and the director finds that such increase is necessary to support the feasible construction of an accessory dwelling unit.”

Item “b” above refers to BMC 17.70.050 which is the current standard for nonresidential accessory structures. It states: “3. Maximum Height. The maximum height of a nonresidential accessory structure shall be 12 feet, subject to the provisions of this subsection; provided, that pitched roofs shall not exceed a height of 15 feet. For any RS lot containing a single-family residence, a pitched roof may extend to 20 feet in height to match the roof pitch of the existing or proposed residence on the site. The maximum height of any wall shall not exceed 12 feet at the eaves. No second story, other than an unfinished storage area, may be developed for any accessory building.””

Has this all been stricken from the current proposed ordinance?

We believe that this comment has been addressed by the proposed ordinance, which does not cross-reference BMC Section 17.70.050 (Accessory Uses and Structures). The provision for an exception to criteria has been removed. In a Historic District, however, there remains a limitation on wall and peak height as previously noted.

26. Other jurisdictions around the state include more specific language in their ADU ordinances regarding the protection of historic resources. I provided examples of such ordinances in the January, 2019 memo. Staff has insisted that including such language is impossible. Would staff consider wording that at least encourages developers of ADU’s to provide designs that would be consistent with the Secretary of the Interior Standards and applicable design review guidance or standards found in Benicia’s Historic Plans? Benicia’s ordinance could state that **Construction of an accessory dwelling unit in a historic district is encouraged to comply with all applicable historic standards and must avoid creating any adverse impacts on any real property that is listed in the California Register of Historic Places.**

Language that encourages compliance with historic standards may be added to the ordinance but cannot be enforced beyond those objective standards within the Municipal Code. The City cannot require that an ADU “avoid creating any adverse impacts on any real property that is listed in the California Register of Historic Places” as such a requirement would necessitate the discretion of a public official. However, the City can establish objective criteria for the protection of properties listed on the California Register of Historic places.

27. Lastly, as we discussed at the meeting, Benicia, particularly the downtown historic district, includes alleys that are unpaved, not maintained, practically not even graded and essentially single-lane roads. Even some of the paved alleys are in poor condition and are essentially single-lane narrow roadways. Other jurisdictions have created maps to show locations where ADU’s would be allowed and do not allow ADU’s where traffic flow or public safety issues would result. This is because AB 69 specifically allows for this:

“65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily use. The ordinance shall do all of the following:

Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.”

An example of ordinance wording that would address these issues is found from the City of Larkspur. In this staff report, you can read how their staff consulted with the local fire department regarding safety issues. (Another example of a jurisdiction that has identified locations where ADU’s are not allowed due to public safety issues is Pacific Grove.)

Has Benicia staff discussed adding two more units (the new law turns SFR zoning into triplex zoning, essentially) to the small lots downtown that are served by these unpaved, single-lane alley or discussed safety issues with them at all? The Larkspur staff report states “ Location Restrictions. The Commission agreed with the concerns of the Fire Department that ADUs should be restricted in areas that lack on-street parking, roadway width and emergency ingress and egress and adequate fire suppression infrastructure.” Further, it states that the ordinance on page four of the staff report “Specifies the areas where certain accessory dwelling units are not permitted due to specific conditions relating to constrained emergency ingress and egress.” Where in Benicia would ADU’s not be permitted due to the impact on traffic flow and public safety? Are there any areas where there would not be adequate water or sewer service?

Further, the Larkspur staff report states, on page 5: “As indicated previously, State law allows local jurisdictions to restrict areas to accommodate ADUS where they lack on-street parking, roadway width and emergency ingress and egress and adequate fire suppression infrastructure. Planning staff has conferred with the Central Marin Fire, Fire Marshal, to determine areas that should restrict development of new detached ADUs in order to avoid limited access for emergency vehicles and evacuations using the following criteria:

- Restricted parking areas which are designated with white outlined parking space rectangles. A minimum of 12-foot roadway width and one parking space in the delineated white rectangles is not enough for an emergency vehicle to pass when a vehicle is parked in the space.
- Streets with insufficient roadway width. A minimum 20-foot roadway width is required for emergency ingress/egress.
- One lane roads with roadway widths allowing two-way traffic.
- Remote areas not served by improved or paved roads.

Where, in Benicia, would there be such areas where ADU’s would not be allowed or be access by car? In addition, SB 68 refers to fire and life safety conditions, but, so far, I haven’t seen those statements in Benicia’s proposed ordinance. SB 68 states: “(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.” In addition, it states that “(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply: (iii) The side and rear setbacks are sufficient for fire and safety.”

The conditions described in the Larkspur report are not found in Benicia and notably do not pertain to the historic districts. All areas are served by municipal sewer and water. There are no remote areas, nor areas with a combination of steep slopes, insufficient roadway width and extreme fire hazard, to warrant a prohibition or limitation on ADUs. All residential areas of the City are served by public roadways within standard response time for the Fire Department. In the downtown, areas with

unimproved or minimally improved alleys nevertheless have frontage roadway access and meet the intent and requirements of the State statute.

The City's Zoning Ordinance does not require off-street parking for ADUs. State statute exempts ADUs from parking requirements within historic districts and areas within ½ mile of transit, which covers a large proportion of the city.

28. As an aside, this section of the staff report also states: "Height. ADUs constructed over accessory structures that add additional height should be reviewed on a case-by-case basis, subject to Design Review, as it is dependent on location and how they are designed. ADUs should not exacerbate bulk and mass, and latitude is needed to ensure that ADUs fit well with the architecture, site, and surroundings." I just want to add that jurisdictions throughout the state are considering these height and compatibility issues and are actually still requiring some sort of design review, whether it is done by staff or a commission.

As noted previously, ADUs must be permitted ministerially if they conform to adopted zoning requirements. The City does not have the authority to require design review for ADUs that conform to the requirements of BMC Section 17.70.060 (See Gov. Code section 65858.2 subd. (a)(1)(B)(i), (a)(3), and (a)(6).

17.16.080 Accessory use classifications.

A. Accessory Uses and Structures. Uses and structures that are incidental to the principal permitted or conditionally permitted use or structure on a site and are customarily found on the same site. This classification includes accessory dwelling units, home occupations, and construction trailers.

1. Accessory Dwelling Unit. An attached or a detached residential dwelling unit that provides ~~permanent, complete, independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence,~~ including facilities for living, sleeping, food preparation and cooking, eating and sanitation, for one or more persons, on the same parcel as a primary dwelling. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. This classification is also inclusive of “junior accessory dwelling unit,” as such term is defined in Government Code Section ~~65852.22~~. An accessory dwelling unit also includes an efficiency unit and a manufactured home, as defined in Section 18007 of the Health and Safety Code.

a. Attached Accessory Dwelling Unit. An accessory dwelling unit that shares at least one common wall with the primary dwelling and is not fully contained within the existing space of the primary dwelling or an accessory structure.

b. Detached Accessory Dwelling Unit. An accessory dwelling unit that does not share a common wall with the primary dwelling and is not fully contained within the existing space of an accessory structure.

c. Internal Accessory Dwelling Unit. An accessory dwelling unit that is fully contained within the existing space of the primary dwelling or an accessory structure.

d. Junior Accessory Dwelling Unit. A unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

2. Donation and Collection Bin. An unstaffed drop-off box, receptacle or other similar container used to accept donated clothing or other salvageable personal property, including but not limited to books, shoes, canned goods, and small household items to be used by a nonprofit or for-profit operator for distribution, resale, or recycling. (Ord. 19-04 § 1; Ord. 19-02 § 2).

17.70.060 Accessory dwelling units.

A. Purpose. This section is intended to achieve the goals of the city’s housing element and of the California Government Code by permitting accessory dwelling units, thereby

increasing housing opportunities for the community through use of existing housing resources and infrastructure.

B. Where Allowed. An accessory dwelling unit is permitted:

- a. In any district where single-family or multifamily dwellings are a permitted use; and
- b. On any lot with an existing or proposed single-family or multifamily dwelling.

~~B. Zoning. One accessory dwelling unit per parcel is permitted by right in all residential districts (RS, RM, and RH) and mixed use districts of the downtown mixed use master plan, and on lots with a primary single-family dwelling, subject to compliance with the requirements of this section. An accessory dwelling unit that conforms to this section shall be deemed to be an accessory use or accessory structure 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 general plan and zoning designation for the lot.~~

C. Permitting Process.

1. When Consistent with Standards.

- a. An accessory dwelling unit that complies with all standards in this section shall be approved ministerially upon issuance of a building permit. No other permit, discretionary review, or public hearing is required.
- b. If an existing single-family or multifamily dwelling exists on the lot upon which an accessory dwelling unit is proposed, the City shall act on an application to create an accessory dwelling unit within 60 days from the date the City receives a completed application. If the applicant requests a delay in writing, the 60-day time period shall be tolled for the period of the delay.
- c. The City has acted on the application if it:
 - (1) Approves or denies the building permit for the accessory dwelling unit;
 - (2) Informs the applicant in writing that changes to the proposed project are necessary to comply with this section or any applicable regulation; or
 - (3) Determines that the accessory dwelling unit does not qualify for ministerial approval.

2. When Deviating from Standards.

a. A proposed accessory unit that deviates from the standards in subsection J (Objective Design Standards) of this section shall be reviewed and may be approved or denied subject to the design review procedures in Chapter 17.108 (Design Review).

b. A proposed accessory dwelling unit that deviates from standards in subsection I (Development Standards) or any other applicable physical standard of this section shall be reviewed and may be approved or denied subject to the variance procedures in Chapter 17.104 (Use Permits and Variances).

3. When Dependent on Separate Construction. When a proposed attached or detached accessory dwelling unit is dependent on the construction of a new building or new portion of a building that is not a part of the accessory dwelling unit (“separate construction”), the City shall either:

a. Accept and begin processing the accessory dwelling unit application only after acting on an application for the proposed separate construction; or

b. Upon written request from the applicant, review and act on the accessory dwelling unit together with the separate construction as part of a single application. In this case, the accessory dwelling unit is subject to the same review procedures and requirements as the separate construction.

D. Junior Accessory Dwelling Units.

1. General. Junior accessory dwelling units shall comply with all standards in this section unless otherwise indicated.

2. Sanitation Facilities. A junior accessory dwelling unit may include sanitation facilities, or may share sanitation facilities with the existing structure.

3. Kitchen. A junior accessory dwelling unit must include, at a minimum:

a. A cooking facility with appliances; and

b. At least three linear feet of food preparation counter space and three linear feet of cabinet space.

E. Maximum Number per Lot. Not more than one accessory dwelling unit is allowed per lot except as allowed by subsections G.2 (Detached Accessory Dwelling Units), G.3 (Non-livable multifamily space) and G.4 (Detached Accessory Dwelling Units on Multifamily Lots) of this section.

F. Accessory Use. An accessory dwelling unit that conforms to this section:

1. Is considered an accessory use or accessory structure;
2. Is not considered to exceed the allowable density for the lot upon which it is located; and
3. Is considered a residential use consistent with the general plan and zoning designation for the lot.

G. Units Subject to Limited Standards. The city shall ministerially approve an application for a building permit within a residential or mixed-use district to create the following types of accessory dwelling units. For each type of accessory dwelling unit, the city shall require compliance only with the development standards in this subsection. Standards in subsections I (Development Standards) and J (Objective Design Standards) do not apply to these types of accessory dwelling units.

1. Internal Accessory Dwelling Units. One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

a. The accessory dwelling unit or junior accessory dwelling unit, as such use is classified in section 17.16.080, is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

b. The space has exterior access from the proposed or existing single-family dwelling.

c. The side and rear setbacks are sufficient for fire and safety.

d. The junior accessory dwelling unit complies with the requirements of Government Code Section 65852.22.

2. Detached Accessory Dwelling Units. One detached, new construction, accessory dwelling unit for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subsection G.1 (Internal Accessory Dwelling Units). The accessory dwelling unit must comply with the following:

a. Maximum floor area: 800 square feet.

b. Maximum height: 16 feet.

c. Minimum rear and side setbacks: four feet.

3. Non-Livable Multifamily Space. Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, subject to the following:

a. At least one accessory dwelling unit is allowed within an existing multifamily dwelling up to maximum of 25 percent of the existing multifamily dwelling units; and

b. Each accessory dwelling unit shall comply with building code standards for dwellings.

4. Detached Accessory Dwelling Units on Multifamily Lots. Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling, are subject to the following:

a. Maximum height: 16 feet

b. Minimum rear and side setbacks: four feet.

H.G. General Standards. Except as provided in subsection G (Units Subject to Limited Standards) of this section, an accessory dwelling unit shall comply with the following general standards:

~~1. Public utility and services, including emergency access, shall be adequate to serve both the primary dwelling and the accessory dwelling unit.~~

12. Rental.

a. The An accessory dwelling unit may be rented but shall not be sold or otherwise conveyed separately from the primary dwelling.

b3. The rented unit shall not be leased for any period less than 30 days.

~~4. An executed deed restriction, on a form provided by the city, shall be required pursuant to subsection (G) of this section.~~

25. Primary and Accessory Designations. An existing primary dwelling unit may be designated as an accessory dwelling unit if:

a. The existing dwelling to be designated as an accessory dwelling unit complies with all standards in this section; and

b. ~~The a~~ new primary dwelling unit is built in compliance with applicable standards and requirements of this title that apply to primary dwellings.

3. Nonconforming Uses and Structures. In conformance with BMC 17.98.020 and 17.98.030, the City shall not require, as a condition for approval of a permit application, the correction of nonconforming zoning conditions.

ID. Development Standards. Except as provided in subsection G (Units Subject to Limited Standards) of this section, an accessory dwelling unit shall comply with the following development standards.

1. Floor Area. The floor area of an accessory dwelling unit shall not exceed the maximums shown in Table 1.

Table 1: Maximum Floor Area

<u>ADU Type</u>	<u>Maximum ADU Floor Area</u>
<u>Attached</u>	
<u>One bedroom or less</u>	<u>50 percent of the existing primary dwelling or 850 sq. ft., whichever is greater</u>
<u>More than one bedroom</u>	<u>50 percent of the existing primary dwelling or 1,000 sq. ft., whichever is greater</u>
<u>Detached</u>	<u>1,200 sq. ft.</u>
<u>Internal</u>	<u>50 percent of the existing primary dwelling</u>
<u>Junior</u>	<u>500 sq. ft.</u>

~~a. Attached Units. The floor area of an attached accessory dwelling unit shall not exceed 50 percent of the total floor area of the primary dwelling unit or 1,200 square feet, whichever is less. However, if the primary dwelling has an existing floor area of less than 1,200 square feet, an attached accessory dwelling unit may have a maximum floor area of 600 square feet subject to compliance with all other zoning standards.~~

~~b. Detached Units. The total floor area for a detached accessory dwelling unit shall not exceed 1,000 square feet or the size of the existing primary dwelling unit, whichever is less.~~

2. Bulk Standards.

a. An accessory dwelling unit shall conform to the applicable floor area ratio, ~~lot coverage~~ and site landscaping standards of the district in which it is located, except when otherwise allowed by subsection J.4 (Guaranteed Allowance) of this section.

b. An accessory dwelling unit is exempt from maximum lot coverage standards. For lots less than 6,000 square feet in area, a five percent increase in lot coverage over the base allowance is permitted subject to an exception to criteria if such increase is necessary to accommodate additional floor area for a new accessory dwelling unit.

3. Guaranteed Allowance. Maximum floor area, floor area ratio, and open space standards shall not prohibit an accessory dwelling unit with at least an 800 square feet of floor area, a height of at least 16 feet, and four-foot side and rear yard setbacks, provided the accessory dwelling unit complies with all other applicable standards.

4. Property Line Setbacks.

a. All Accessory Dwelling Units. An accessory dwelling unit shall be setback from property lines as required by Table 2.

b. Detached Accessory Dwelling Units.

(1) A detached accessory dwelling unit shall not occupy a required court or front yard, nor project beyond the front building line of the principal structure on the site. In an H historic overlay district, the detached accessory dwelling unit shall not project beyond the primary contributing façade, defined as the building face of a designated landmark or contributing building which is parallel to a street or former right-of-way and provides a front entrance leading to a foyer or lobby.

(2) A ground-floor deck, balcony or platform attached to or associated with a detached accessory dwelling unit shall be located at least four feet from a rear or side property line. See subsection J.1 (Second story Decks and Balconies) of this section for second-story deck and balcony setback standards.

Table 2: Minimum Property Line Setbacks

<u>Property Line</u>	<u>ADU Type</u>			
	<u>Attached</u>	<u>Detached</u>	<u>Internal</u>	<u>Junior</u>
<u>Front</u>	<u>Same as primary dwelling [1]</u>		<u>None required</u>	
<u>Side</u>	<u>4 ft.</u>	<u>4 ft.</u>		
<u>Rear</u>	<u>4 ft.</u>	<u>4 ft.</u>		

Note:

[1] For detached accessory dwelling units, see also 17.70.060.I.4.b (Detached Accessory Dwelling Units). For detached accessory structures in an H historic overlay district, see also 17.70.060.J.6 (Historic District Standards).

~~c. An attached accessory dwelling unit shall conform to the applicable minimum yard, build-to line and setback standards of the district in which it is located.~~

~~d. A detached accessory dwelling unit shall conform to the applicable yard, setback, build-to line and building separation standards for accessory structures or ancillary buildings; provided, however, that the required minimum side and rear setback shall not exceed five feet.~~

5. Building Separation. A minimum five-foot distance shall be maintained between a detached accessory dwelling unit the primary building on the site. A detached accessory structure shall be set back from other structures on the site as required by the building code.

6. Converting and Replacing Existing Structures.

a. An internal ADU may be constructed regardless of whether it conforms to the current zoning requirement for building separation or setbacks.

b. If an internal ADU is proposed to be constructed within an existing accessory structure, the city shall ministerially permit an expansion of the existing accessory structure by up to 150 square feet for the purpose of accommodating ingress and egress.

c. If an existing structure is demolished and replaced with an accessory dwelling unit, an accessory dwelling unit may be constructed in the same location and to the same dimensions as the demolished structure.

~~e. Any existing accessory structure or ancillary building may be converted to an accessory dwelling unit regardless of whether it conforms to the current zoning requirement for building separation or setbacks; provided, however, that any expansion of the structure shall conform to the current applicable zoning standards.~~

73. Height.

a. Historic Districts. The height of an accessory dwelling unit in an H historic overlay district shall not exceed the maximums shown in Table 3.

Table 3: Maximum Height in Historic Districts

<u>ADU Type</u>	<u>Maximum ADU Height [1]</u>
<u>Attached</u>	<u>Same as required for primary dwelling</u>

<u>Detached</u>	
<u>Exterior building wall [2]</u>	<u>14 ft.</u>
<u>Roof peak (based on roof pitch)</u>	
<u>Below 4:12</u>	<u>16 ft.</u>
<u>4:12 to less than 6:12</u>	<u>18 ft.</u>
<u>6:12 or greater</u>	<u>20 ft.</u>
<u>Internal</u>	<u>Not applicable</u>
<u>Junior</u>	<u>Not applicable</u>

Note:

[1] For detached accessory structures in an H historic overlay district, see also 17.70.060.K.6 (Historic District Standards).

[2] Measured to the top plate.

b. Outside Historic Districts. The roof peak of a detached accessory dwelling unit outside of an H historic overlay district shall not exceed the maximums shown in Table 4. The maximum allowed height for attached accessory dwelling units is the same as required for the primary dwelling. Height standards do not apply to internal and junior accessory dwelling units.

Table 4: Detached Accessory Dwelling Unit Maximum Height Outside Historic Districts

<u>Maximum Roof Peak Height Based on Roof Pitch</u>	<u>Exterior Building Wall Distance from Rear or Side Property Line</u>		
	<u>4 ft. to less than 5 ft.</u>	<u>5 ft. to less than 7 ft.</u>	<u>7 ft. or more</u>
<u>Below 4:12</u>	<u>16 ft.</u>	<u>18 ft.</u>	<u>20 ft.</u>
<u>4:12 to less than 6:12</u>	<u>18 ft.</u>	<u>20 ft.</u>	<u>22 ft.</u>
<u>6:12 or greater</u>	<u>20 ft.</u>	<u>22 ft.</u>	<u>24 ft.</u>

~~a. An attached accessory dwelling unit shall conform to the height standards of the district in which it is located, subject to compliance with the design standards of this section.~~

~~b. A detached accessory dwelling unit shall conform to the applicable height standards for accessory structures provided in BMC 17.70.050 or ancillary structures as provided in the downtown mixed use master plan, but shall not exceed the height of the primary dwelling.~~

~~c. The community development director may grant an exception to criteria to increase the wall and/or peak height of a detached accessory dwelling unit up to five feet if the structure would comply with all other applicable design standards, and the director finds that such increase is necessary to support the feasible construction of an accessory dwelling unit.~~

84. Foundation. An accessory dwelling unit shall be placed constructed on a permanent foundation.

JE. Objective Design Standards. Except as provided in subsection G (Units Subject to Limited Standards) of this section, an accessory dwelling unit shall comply with the following design standards.

~~1. In a mixed use district, an accessory dwelling unit shall conform to the standards of the downtown mixed use master plan form-based code.~~

12. Second Story Decks and Balconies. Second story decks and balconies shall be set back a minimum of 10 feet from a side or rear property line adjoining a lot occupied by a single-family or two-family dwelling. A deck, balcony or platform attached to or associated with a detached accessory dwelling unit shall be oriented away from an adjoining residential side yard.

2. Outdoor stairs. Outdoor stairs providing access to a second story accessory dwelling unit shall adjoin an exterior wall that faces the interior of the lot, rather than an exterior wall nearest a side or rear property line.

3. Dormers. ~~Dormers~~ The side wall of a dormer shall be set back a minimum of ~~three~~ two feet from the parallel side wall below. The cumulative width of a dormer or dormers on any side of an accessory dwelling unit shall not occupy more than 66 percent of the building face below and shall not cumulatively occupy more than 30 percent on any side of the building.

4. Gables. If a gable roof or turned gable roof is present, the gable ~~end~~ ridge shall be oriented in a direction parallel to the side property line in order to minimize shadow effects on the adjoining lot.

5. Roof Pitch. The roof pitch for an accessory dwelling unit shall be 4:12 or greater. However, if the primary residence has a roof pitch shallower than 4:12 predominantly flat roof, a similar pitch may be employed on the accessory dwelling.

6. Historic District Standards. In the an H historic overlay district, an accessory dwelling unit shall conform to the following additional requirements:

a. Except as provided in subsection I.6 of this section, a detached accessory dwelling unit shall be set back from the primary contributing façade and/or

front property line such that the entirety of the accessory dwelling unit is behind the rear wall of the principal structure on the lot. ~~Detached accessory dwellings and building additions shall be located behind the primary dwelling and shall not exceed the height or footprint of the primary dwelling.~~

b. The elevation of the highest point of a detached accessory dwelling shall not exceed the elevation of the highest point of the primary dwelling, except that in all cases a detached accessory dwelling unit at least 16 feet in height is allowed.

c. An attached accessory dwelling unit shall not result in a rooftop addition or any alteration to the existing roofline of a designated historic contributing or landmark structure ~~any increase in building height.~~

d. An accessory dwelling unit shall not result in any increase in building height for a designated historic contributing or landmark structure, except that in all cases an attached accessory dwelling unit at least 16 feet in height is allowed.

e. An accessory dwelling unit shall not result in any exterior alteration to the primary contributing façade nor the existing wall or façade of a designated historic contributing or landmark structure where such wall or façade is parallel to a public street.

fe. A building addition ~~for~~ to a designated historic contributing or landmark structure to accommodate an attached accessory dwelling unit shall be inset or separated by a connector that is offset at least 18 inches from the parallel side or rear building wall to distinguish it from the primary dwelling. Such A building addition ~~for an attached ADU~~ shall not extend beyond the side wall of the primary dwelling.

gd. For an attached accessory dwelling unit, the exterior building and trim materials shall be ~~horizontal wood~~ or smooth fiber cement siding or shingles. However, if Portland cement plaster (stucco) is the predominant finish for the primary residence, then a stucco exterior may also be applied to the accessory dwelling. Synthetic stucco (e.g., EIFS or DryVit) and faux wood grains are ~~is~~ prohibited.

h. For a detached accessory dwelling unit, the following exterior building materials are prohibited: pressed board, vinyl, synthetic stucco and any composite or fiber cement material with a faux wood grain.

ieThe exterior walls of an accessory dwelling shall utilize the same base and trim colors as the primary residence.

jf. The roof shall utilize the same material and color as the primary residence and shall match the primary residence in overall appearance.

~~g. Gutters shall not be constructed of plastic or PVC materials and shall apply a similar profile as gutters located on the primary residence.~~

kh. Windows shall be taller than they are wide or shall match the proportions of the primary dwelling's windows. ~~Windows in small spaces, such as bathroom windows,~~ Windows in bathrooms, basements and crawl spaces, kitchens and laundry rooms may be horizontally oriented.

li. Window pane divisions shall be true or simulated divided lites (i.e., individual panes set within muntins or muntins applied to both the interior and exterior of the glass).

mj. Window frames shall be painted or factory-finished. No metallic finishes such as silver or bronze anodized aluminum are permitted.

n. For designated contributing and landmark structures, vinyl windows are not permitted on an attached ADU.

~~k. Dormers shall not face an adjoining side yard.~~

KF. Parking.

1. No additional off-street parking stalls shall be required for an accessory dwelling unit.

2. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, replacement parking stalls are not required for the demolished parking structure.

LG. Recordation of Deed Restriction. An executed deed restriction, on a form provided by the city, shall be submitted to the city prior to issuance of a building permit and shall be recorded prior to final occupancy. The deed restriction shall stipulate all of the following:

1. That the rented unit shall not be rented for any period less than 30 days at a time; and

2. That the accessory dwelling shall not be sold separately from the primary dwelling.

3. For junior accessory dwelling units, restrictions on size and attributes in conformance with this section.

17.108.060 Review responsibilities.

Except as modified by an adopted conservation plan the following review responsibilities will apply:

* * *

C. Exceptions to Criteria. The community development director may authorize minor deviations from the zoning standards specified herein: timing of construction for an accessory structure, projection of detached garage in the RS district, separation between buildings per BMC 17.70.050; ~~increased height for an ADU and increased lot coverage for an ADU per BMC 17.70.060;~~ and modifications in vehicle space size requirements per BMC 17.74.100.



City of Benicia City Council
250 East L Street
Benicia, CA 94510

December 16, 2019

Re: Draft ADU Ordinance for Public Hearing on 12/19 at HPRC

Dear HPRC members,

As a Benicia resident and local architect I have participated in developing portions of the Draft Ordinance No. 19. I have reviewed this draft and would like to suggest an addition to the following section :

J. Objective Design Standards.

6. Historic District Standards.

g. Exterior building and trim materials shall be horizontal wood siding...

Limiting the exterior material to “horizontal wood siding” may not be a fair representation of how some historical accessory structures’ exterior were built. These buildings were most often utilitarian structures used to stable horses, carriages and other equipment. Many were built as sheds, barns and out buildings with exterior materials such as wood board and batten as well as wood siding. A good example of this is the barn like structure at the rear of the Foley House on West G Street and also the Carriage House behind the Fischer-Hanlon House also on West G Street. I’m not suggesting they were all board and batten but that some were. I suggest that it would be reasonable to allow the option of board and batten with appropriate trims as well as wood horizontal siding. This would allow for a more authentic variation of materials for these buildings. If we allow just one siding type we are promoting a more homogeneous neighborhood than historically existed.

Thank you for your consideration.

Very truly yours,

Mark Hajjar

Architect

- Why prescribe styles and materials on non-historic structures including ADUs?
- Why limit creativity and require “sameness”?
- How do the standards below improve the Downtown Historic District?

g. Exterior building and trim materials shall be horizontal wood siding or fiber cement siding or shingles. However, if Portland cement plaster (stucco) is the predominant finish for the primary residence, then a stucco exterior also be applied to the accessory dwelling. Synthetic stucco (e.g., EIFS or DryVit) is prohibited.

h. The exterior walls of an accessory dwelling shall utilize the same base and trim colors as the primary residence.

i. The roof shall utilize the same material and color as the primary residence and shall match the primary residence in overall appearance.

j. Windows shall be taller than they are wide or shall match the proportions of the primary dwelling’s windows. Windows in bathrooms, basements and crawl spaces, kitchens and laundry rooms may be horizontally oriented.

k. Window pane divisions shall be true or simulated divided lites (i.e., individual panes set within muntins or muntins applied to both the interior and exterior of the glass).

l. Window frames shall be painted or factory-finished. No metallic finishes such as silver or bronze anodized aluminum are permitted.



Wood Shingle



Wood & Metal Siding



Sho Sugi Ban with parapet



Sho Sugi Ban



Sho Sugi Ban

Attachment 9 - Presentation from Brandon Marshall and Brian Harkins, December 19, 2019



Vertical Wood Siding



Vertical Wood Siding



Wood Shingle
With parapet



Wood Siding & SS Roof

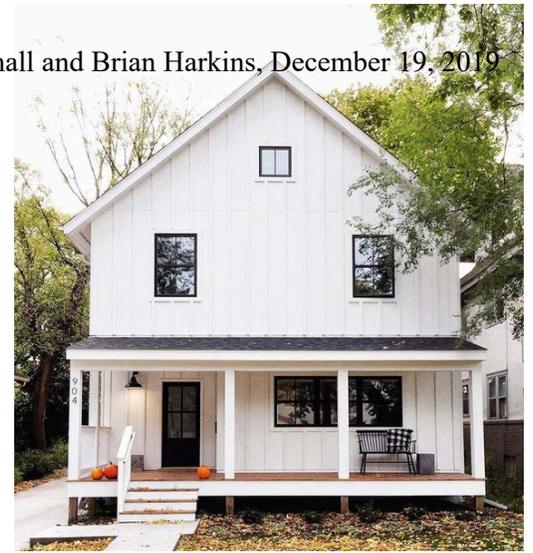
Wood Siding Variations



Board & Batten



Board & Batten w/ Ext. Stair



Board & Batten w/ Porch



Painted Board & Batten



Board & Batten & Metal Roof



Board & Batten & Horiz. Siding ¹²⁹

Board & Batten Vertical Siding



Flat Metal Panel



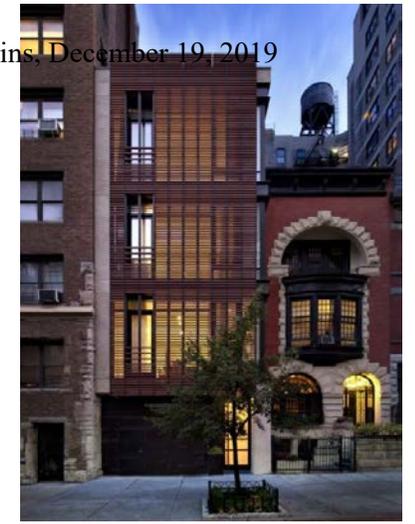
Synthetic Rain Screen



Horizontal Wood Slat



Wood Slat



Wood Louver



Rotated Wood Siding



Weathered Steel Siding



Cementitious Rain Screen & Vertical Wood



Horizontal Wood Slat

Rain Screens & Scrims



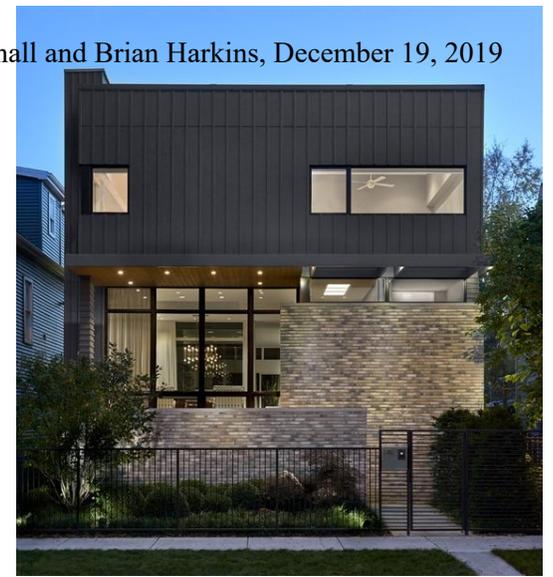
Brick & Metal Bay



Brick & Vertical Metal Siding



Brick & Vertical Wood



Brick & Board & Batten



Brick



Concrete Masonry



Stacked Stone & Wood

Stone & Masonry



Corrugated Metal Siding



Standing Seam Roof



Corrugated Metal Siding



Corrugated Metal Siding



Standing Seam Roof & Painted Wood



Corrugated Metal Siding



Standing Seam Roof



Standing Seam Roof

Metal Panel Siding



Cement Plaster & Glass



Cement Plaster



Cement Plaster & Wood



Cement Plaster & Metal



Cement Plaster & Standing Seam Roof



Cement Plaster & Standing Seam Ro ^f/₁₃₃

Cement Plaster



The Secretary of the Interior's Standards for Rehabilitation

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

Compatibility - a state in which two things are able to exist or occur together without problems or conflict.

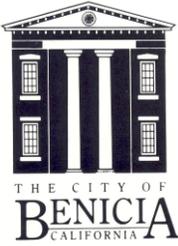
Prescribing architectural styles and materials of construction:

- Stifles creativity
- Ignores energy conservation, housing cost, lifestyle needs and other future objectives
- Limits the potential of the downtown district to be vibrant and diverse

We can and should:

- Preserve Our Historic Structures
- Ensure “new additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and it’s environment would be unimpaired” (Ref Secretary of the Interior Standards for Rehabilitation of Historic Structures)

On ADUs, maintenance of non-historic structures, and new construction, we should Build For Our Future



Historic Preservation Review Commission Staff Report

December 19, 2019

Project: Amendments to Title 17 (Zoning) of the Benicia Municipal Code pertaining to regulations for accessory dwelling units (ADUs), after a determination that the project is exempt from CEQA.

Staff Recommendation

Move to adopt the resolution (Attachment 1) recommending that the City Council of the City of Benicia adopt an ordinance amending Chapter 17.16 (Use Classifications), Chapter 17.70 (General Regulations) and Chapter 17.108 (Design Review) of the Benicia Municipal Code (BMC), after a public hearing and determination that the project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA).

Project Description

The proposed project is an amendment to the Benicia Municipal Code (BMC) regulations for Accessory Dwelling Units (Section 17.70.060) and additional associated amendments to Definitions (Chapter 17.16) and Design Review (Chapter 17.108). The amendments would bring the City of Benicia into compliance with recent changes to State statute. The amendments would additionally clarify procedures, modify height standards and setback standards, and revise objective design standards for ADUs.

Public Noticing

In accordance with Government Code Section 65091, notice of public hearing was posted in Benicia City Hall on December 4, 2019 and published in the Benicia Herald on December 8, 2019.

Project Location

The proposed amendments to the Zoning Ordinance would be effective city-wide.

Background

Prior Amendment to ADU Ordinance (2019)

In 2016, revisions to State law required local agencies to streamline permitting to allow second units on all residentially-zoned lots with only ministerial review. Ministerial review means that if a proposed ADU meets the City's objective standards, it must be approved. The City is not allowed to require design review or any other type of discretionary approval for an ADU that complies with objective standards.

In 2017, State law further limited the scope of allowable local agency zoning controls for second units. In response to these changes, the City of Benicia adopted an updated Accessory Dwelling Unit (ADU) ordinance in January 2019 which included the following key revisions:

- Ministerial review process for all ADUs including those within historic districts
- Streamlined permitting process for conversion of existing structures into ADUs
- Elimination of on-site parking requirements for ADUs.
- Increased height and floor area allowances for attached and detached ADUs and simplified setback standards.
- Adoption of objective design standards for ADUs citywide, with specific standards for ADUs in historic districts.

The adopted regulations are found in Zoning Ordinance Sections 17.70.050 (Accessory Uses and Structures) and 17.70.060 (Accessory Dwelling Units) of the Benicia Municipal Code (BMC). Upon adoption of the ADU regulations in January 2019, the City Council directed staff to consider future revisions to address concerns including:

- The quality of living space above ground floor garage (e.g., dormer requirements, allowed height)
- Allowed lot coverage
- Setbacks
- Other comments from local architects on the adopted regulations

The City's updated regulations have coincided with an increase in the number of ADUs seeking permit approval. In 2018, the City issued permits for three ADUs. To date, in 2019 the City has issued permits for eight ADUs; two additional ADU building permits are in review or ready to issue.

New legislation was passed in 2019 that further streamlines and clarifies the State's requirements for ADUs. A summary of revisions to the statute is provided as Attachment 2 and a markup of the State's updated regulations, which take effect on January 1, 2020, is provided as Attachment 3.

Stakeholder Outreach

In preparation for the ADU zoning amendments, staff conducted an outreach meeting on August 2, 2019 with local architects engaged in the permit process for ADUs to obtain feedback on the topic areas identified by the City Council. This meeting allowed staff to obtain additional comments on the design and permitting process for ADUs. Staff also consulted with representatives of the Benicia Historical Society to provide information and obtain feedback through meetings held on August 2 and October 4, 2019. A summary of comments from both groups is provided as Attachment 4; comments from architect Brandon Marshall, who was not able to attend the August 2 meeting, are provided as Attachment 5.

The feedback of stakeholder meeting participants was considered and compiled into preliminary recommendations, which were discussed in a joint meeting on November 14, 2019. A summary of comments from that meeting is provided in Attachment 6;

analysis of how comments were considered is detailed in the body of this report. Following the meeting, additional written comments on the preliminary recommendations were received from one member of the public. A copy of this correspondence, including a reference memorandum from January, 2018 and staff responses, is provided as Attachment 7.

Analysis

The State’s new requirements for ADUs further streamline ADU approval, expand opportunities for new ADUs, and limit the applicability of local design criteria for certain ADUs. The State laws reserve limited discretion to local jurisdictions in regulating ADUs. Specifically, the State laws allow local jurisdictions to impose standards related to: parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. In the Historic District, this means that some standards (such as height limitations and location requirements) must be modified to align with new State standards. The limitations on local review, both in terms of timing and ministerial permitting, require that the City must act on an ADU application within 60 days, and that an ADU which conforms to the standards of the Zoning Ordinance shall be approved. The City cannot require any commission-level review for an ADU that meets the criteria of the Zoning Ordinance. However, the draft ordinance would establish procedures by which ADUs that exceed these standards can be reviewed through a discretionary process such as design review or zoning variance.

In addition to aligning the ordinance with the State requirements, staff incorporated feedback from local design professionals and historic preservation advocates to adjust the regulations for clarity, livability and compatibility within the Historic District. These proposed regulations are consistent with the State ADU laws. Key amendments to the ordinance in response to recent legislation and community feedback are described below, along with analysis of additional amendments that were suggested by stakeholders through the outreach process.

The proposed ordinance amending the ADU regulations is provided as Exhibit A of Attachment 1. A mark-up of the current regulations is provided as Attachment 6.

Proposed Amendments in Compliance with Recent Legislation

The 2019 housing legislative package signed by the Governor in October 2019 included five bills updating the State ADU legislation, which take effect on January 1, 2020. Although the new legislation retains the ability for local governments to establish standards that prevent adverse impacts to property on the California Register of Historic Resources, it establishes mandatory standards for setback and height requirements.

Key areas of amendment for Benicia include the following:

1. Where Allowed.
 - ADUs must be allowed in all zoning districts that permit multifamily dwellings. In Benicia, this includes commercial and mixed-use districts. Gov't Code 65852.2(a)(1)(D)(ii).
 - See draft ordinance Section 17.70.060.B
2. Approval Process.
 - The City must act on an ADU application within 60 days of receiving the application. Gov't Code 65852.2(a)(3).
 - See draft ordinance Section 17.70.060.C
3. Junior ADUs.
 - The City must allow Junior ADUs (less than 500 sq. ft.) consistent with state law. Junior ADU provisions are no longer optional. Gov't Code 65852.2(a)(3).
 - See draft ordinance Section 17.70.060.D
4. ADUs Subject to Limited Standards.
 - For certain types of ADUs, the City must ministerially approve the project subject to limited standards. The City may not require compliance with other standards that otherwise would apply. Gov't Code Section 65852.2(e)
 - See draft ordinance Section 17.70.060.G
5. Number of ADUs per Lot.
 - On single-family lots, the City must allow one ADU and one junior ADU p if exterior access is available; and side and rear setbacks are sufficient for fire and safety. On multi-family lots, the City must allow at least one ADU and up to 25% of existing multi-family dwelling units within a building, and up to 2 detached ADUs subject to compliance with 16 foot height and 4 foot setback requirements (Gov't Code 6585.52.2(e)).
 - See draft ordinance Section 17.70.060.G
6. Floor Area.
 - The City must allow an attached ADU with a floor area of 50 percent of the primary dwelling and at least 850 square feet for an ADU with one bedroom or less and 1,000 square feet for an ADU with more than one bedroom. The City must allow a detached ADU of at least 1,200 square feet. Gov't Code 65852.2(a)(1)(D) and 65852.2(c)(2)(B).
 - See draft ordinance Section 17.70.060.I
7. Minimum Size/Placement Guarantee.
 - The City may not impose unit size, lot coverage, FAR, open space, or lot size requirement that would prohibit a detached ADU with four-foot side and rear setbacks, 16 feet of height, and 800 square feet of floor area. Gov't Code 65852.2(c)(2).

- See draft ordinance Section 17.70.060.I
- 8. Setbacks.
 - The City may not impose unit size, lot coverage, FAR, open space, or lot size requirement that would prohibit an ADU with four-foot side and rear setbacks. Gov't Code 65852.2(c)(2). Gov't Code 65852.2(c)(2)(C) and 65852.2(e)(1)(B).
 - See draft ordinance Section 17.70.060.I
- 9. Converting and Replacement Existing Structures.
 - The City must allow an existing structure to be converted to or replaced with an ADU, regardless of whether it conforms with setback or building separation standards. Gov't Code 65852.2(a)(1)(D)(vii).
 - See draft ordinance Section 17.70.060.I
- 10. Height.
 - The City may not impose unit size, lot coverage, FAR, open space, or lot size requirement that would prohibit an ADU height of at least 16 feet. Gov't Code 65852.2(c)(2)(C) and 65852.2(e)(1)(A).
 - See draft ordinance Section 17.70.060.I
- 11. Replacement Parking.
 - The City may not require replacement parking for existing structure converted into or demolished to accommodate an ADU. Gov't Code 65852.2(a)(1)(D)(xi)
 - See draft ordinance Section 17.70.060.K

Proposed Amendments in Response to Community Feedback

Through the course of several meetings with local design professionals and community members, the City received suggestions for ordinance revisions to improve the livability and feasibility of ADUs, as well as to improve protection of historic district resources. Community members also asked for clarification on the procedures and language of the ordinance. A summary of comments and corresponding amendments is provided below.

- 1. Deviations from Standards.
 - Comment: Clarify the process to approve an ADU that deviates from standards. Clarify the review process for an ADU that is part of a broader project (such as a new garage).
 - Response: Design review would be required for ADUs that do not comply with Objective Design Standards (including H District design standards), and a variance would be required for ADUs that do not comply with Development Standards (such as floor area, height, setbacks and building separation). The presence of an ADU would not exempt a project that otherwise requires design review (such as a new garage, new addition

with expansion of living area for the primary dwelling). See draft ordinance Section 17.70.060.C.

2. Development Standards: Height

- Comment: Clarify height limitation for an ADU with a 6:12 roof pitch. Clarify measurement of wall height and consider increasing permitted wall height to 14 feet to allow adequate headroom for an ADU constructed above a garage.
- Response: The ordinance would increase the permitted wall height in an H District to 14 feet, clarify that wall height is measured to top plate, and maintain a peak height of 16 feet (for an ADU with a 4:12 roof pitch). For steeper roofs, the ordinance clarifies that the 20-foot height limitation applies to ADUs with a pitch of 6:12 and greater. See draft ordinance Section 17.70.060.H.

3. Development Standards: Height outside of H Districts

- Comment: Outside of a historic district, allow 2-story ADUs; eliminate the wall height standards and allow increased height that scales in relation to the property line setback.
- Response: This feedback was incorporated into the draft ordinance which eliminates the wall height standard for ADUs outside of a historic district and allows for a peak height of 16-20 feet if located within five feet of a side or rear property line, and peak height of 20-24 feet if located seven or more feet from a side or rear property line. See draft ordinance Section 17.70.060.H.

4. Separation between Buildings.

- Comment: the requirement for a 10-foot separation between buildings causes hardships, and the criteria to allow a reduction to 5 feet should be clarified.
- Response: the required separation is reduced from 10 feet to 5 feet, which was the required separation prior to the 2019 amendment. See draft ordinance Section 17.70.060.I

5. Design Standards: Height in Relation to Primary Structure (outside of H District)

- Comment: The restriction that prevents the height of an ADU from exceeding that of the home is unclear and questioned if it is necessary.
- Response: This requirement would be eliminated for ADUs outside of a historic District.

6. Design Standards: Dormers.

- Comment: The limitation of dormers to 30% of the wall expanse below hinders the livability of ADUs above a garage.
- Response: This limitation would be increased to 66%; see draft ordinance Section 17.70.060.J

7. Design Standards: Gable Orientation
 - Comment: The current language about orientation of gable ends is confusing and vague.
 - Response: The proposed ordinance clarifies this design standard to address the orientation of the roof ridge; see draft ordinance Section 17.70.060.J
8. Decks and Balconies.
 - Comment: clarify if decks and similar appurtenances can project into required yards; address privacy concerns related to second story balconies or decks.
 - Response: The proposed ordinance allows ground level decks and similar appurtenances to be located four feet from a side or rear property line. Second story decks and balconies would be setback at least ten feet from a side or rear property line adjoining a single-family or two-family dwelling. See draft ordinance Sections 17.70.060.I and J.
9. Design Standards: Historic Districts
 - Comment: The design standards do not adequately protect historic resources.
 - Response: An additional standard was added that prevents any alteration of historic structure facade that faces a public street; see draft ordinance Section 17.70.060.J.6

Further Amendments Proposed

In addition to amendments required for alignment with State law and in response to community feedback, the following addition amendments are proposed:

1. Amendments to Accessory Use Classifications. The ADU classification would be revised for consistency with the State statute, and four sub-classifications of ADUs would be defined in order to clarify the applicability of zoning regulations.
2. Building Materials. Staff proposes amending the H District Design Standards to allow fiber-cement siding in addition to wood, as this type of materials closely replicates the appearance of wood (and is highly durable, with lower long-term maintenance costs).
3. Additional Clarifications. Based upon the City's application of the ADU ordinance over the past year, as well as public comments received, additional minor amendments are proposed to clarify the design standards including specificity of the terms "divided lite" and "stucco", replacement of the term "flat roof" with a measurable standard, and a more objective approach to the standard regarding horizontally-oriented windows.

Suggestions Considered but not Incorporated

The City received a number of comments and suggestions which were considered but not reflected in the draft ordinance. A summary of comments and rationale is provided below.

1. Allow two-story ADUs
 - Comment: The City should either allow a 2-story ADU or not. The dormer requirements etc. can result in tortured or bad design.
 - Response: There seems to be a strong community preference to retain the form and appearance of a 1 or 1.5 story ADU in the historic districts. This objective may be achieved with the proposed wall height and peak height limitations. Outside of H Districts, standards would be revised to allow two-story ADUs subject to certain setback requirements.
2. Aesthetic Requirements for ADUs in an H District.
 - Comment: The City should not require ADUs to match or copy the primary dwelling, as it stifles originality and dilutes the historic fabric of the neighborhood.
 - Response: This comment was considered and design requirements were relaxed for areas outside of a Historic District. In the absence of design review, however, criteria that ensure a compatible form and materials can help to minimize adverse impacts to historic resources and the character of a historic district, and do not necessarily preclude original design.
3. Screening ADUs in a Historic District.
 - Comment: Require or encourage screening for an ADU in the historic district that is located to the side of a primary structure.
 - Response: This suggestion was considered but was not included in the draft ordinance. Staff is concerned about the potential for unanticipated consequences such as failed or overgrown landscaping, inappropriate fencing, and deferred property maintenance. Further, landscaping is unlikely to fully screen a new building addition or structure measuring at least 16 feet tall and could have the reverse effect of drawing attention to the ADU.
4. Findings of Consistency with Secretary of Interior's Standards (H District).
 - Comment: The City should conduct a review of an ADUs compliance with the Secretary of Interior's Standards, within the confines of the law.
 - Response: If an ADU is proposed that does not comply with the design or development standards, it would be subject discretionary review either through design review or a zoning variance. In such an instance, if located within a historic district, the ADU may be reviewed for compliance with the Secretary of Interior's Standards. However, such a review is not permitted for a ministerial permit, as issuance of the permit is contingent on compliance with adopted objective standards and would not be affected by staff findings.

Consistency with the General Plan

The proposed amendments to the Benicia Municipal Code are consistent with the following Goals and Policies of the Benicia General Plan:

- Goal 2.1 Preserve Benicia as a small-sized city.
 - Policy 2.1.1: Ensure that new development is compatible with adjacent existing development and does not detract from Benicia’s small town qualities and historic heritage.

- Goal 3.7: Maintain and reinforce Benicia’s small-town visual characteristics.
 - Policy 3.7.1: Ensure that new development is compatible with the surrounding architectural and neighborhood character.

- Housing Element Goal 1: Goal 1: Benicia shall be an active leader in attaining the goals of the City’s Housing Element.
 - Policy 1.04: The City will review and revise regulatory standards necessary to comply with State Housing law.

California Environmental Quality Act

The project is exempt from environmental review under California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15282(h) that exempts the adoption of an ordinance regarding second units in a single family or multifamily residential zone to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code.

The additional clean-up amendments are exempt pursuant to Section 15061(b), the “General Rule”, which states that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the project would have a significant effect on the environment. The proposed clean-up amendments merely clarify and align existing Code and would not alter the physical environment in any manner that would result in a significant effect on the environment.

Next Steps

Solano Airport Land Use Commission

Pursuant to the Public Utilities Code (PUC) Section 21676, any local agency whose general plan includes areas covered by an airport land use compatibility plan shall refer a proposed zoning ordinance or building regulation to the airport land use commission for review. The airport land use commission shall determine whether the proposal is consistent with the adopted airport land use compatibility plan. Benicia falls within the jurisdiction of the Travis Air Force Base Airport Land Use Compatibility Plan; therefore, proposed zoning amendments must be reviewed by the Solano County Airport Land Use Commission (ALUC).

The City of Benicia anticipates that the proposed amendments will be heard by the ALUC in January 2019; however, a hearing date has not yet been set. The purpose of the hearing would be to evaluate the consistency of the proposed zoning amendments with the Travis Air Force Base Airport Land Use Plan.

Local Adoption Hearings

Adoption of an amendment to the Zoning Ordinance requires a noticed public hearing and recommendation of the Planning Commission pursuant to Government Code Section 65854 and 65855. A public hearing on the proposed ordinance has been tentatively scheduled for the Planning Commission’s regular meeting of January 9, 2020.

Subsequent to the Planning Commission’s recommendation, the City Council must conduct two readings on the proposed amendment. If adopted at the second reading, the amendments would become effective 30 days later.

Attachments:

1. Draft Resolution with Exhibit A
2. ADU Summary of Legislative Changes
3. Updates to State legislation for ADUs (Government Code Section 65852.2 and 65852.22)
4. Summary of Stakeholder Feedback, August and October 2019.
5. Correspondence from Brandon Marshall,
6. Summary of Stakeholder Feedback, November 2019
7. Correspondence from Leann Taagepera and Staff Response
 - a. Correspondence from Leann Taagepera received December 4, 2019
 - b. Reference letter dated January 15, 2019
 - c. Staff Response to December 4 comments
8. Mark-up of Current Regulations

For more information contact: Suzanne Thorsen, Principal Planner

Phone: 707.746.4382

E-mail: sthorsen@ci.benicia.ca.us

MINUTES OF THE
REGULAR MEETING – HISTORIC PRESERVATION REVIEW COMMISSION
DECEMBER 19, 2019
6:30 P.M.

Commission Room, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

1) **CALL TO ORDER**

Chair Reynolds called the meeting to order at 6:30 PM.

2) **ROLL CALL OF COMMISSIONERS**

Present: Commissioners Delgado, Haughey, Maccoun, McKee, von Studnitz, and Chair Reynolds

Excused: Commissioner Van Landschoot

Staff Present:

Alan Shear, Interim Community Development Director

Suzanne Thorsen, Principal Planner

Nira Doherty, Contract City Attorney

Ben Noble, Consultant

Danielle Crider, Associate Planner

Evan Gorman, Assistant Planner

Della Olm, Administrative Secretary

3) **PLEDGE OF ALLEGIANCE**

4) **REFERENCE TO FUNDAMENTAL RIGHTS OF PUBLIC**

5) **ADOPTION OF AGENDA**

On motion of Commissioner von Studnitz, seconded by Commissioner Haughey, the Commission approved the adoption of the agenda on a roll call by the following vote:

Ayes: Commissioners Delgado, Haughey, Maccoun, McKee, von Studnitz, and Chair Reynolds
Noes: (None)

6) **OPPORTUNITY FOR PUBLIC COMMENT**

None.

7) **CONSENT CALENDAR**

No items.

8) **REGULAR AGENDA ITEM**

8.A Certified Local Government (CLG) Annual Reports

[Staff Report - CLG Annual Report](#) 

[1. Benicia CLG 2017-2018 Annual Report](#) 

[2. Benicia CLG 2018-2019 Annual Report](#) 

Suzanne Thorsen, Principal Planner, provided a verbal explanation of the report.

Commissioner Haughey was present at the “Can I do that?” and “Playing Well Together” webinar trainings for the 2018-2019 report.

Commissioner Von Studnitz and Commissioner Delgado were present at a CEQA training on August 29, 2019.

Chair Reynolds requests that any future webinar trainings be made available remotely for the purpose of increasing commissioner attendance. He also discussed possible future training options such as the California Preservation conference in Sacramento in 2020, the AIE Conference in LA in 2020, Lorman webinar trainings, and online references from the Association for Preservation Technology.

8.B Staff Report - Amendments to Title 17 (Zoning) of the Benicia Municipal Code pertaining to regulations for accessory dwelling units (ADUs), after a determination that the project is exempt from CEQA

Accessory Dwelling Units - HPRC Staff Report 

1. Draft Resolution with Exhibit A 

2. ADU Summary of Legislative Changes 

3. Updates to State Legislation for ADUs 

4. Summary of Stakeholder Feedback August and October 2019 

5. Correspondence from Brandon Marshall 08082019 

6. Summary of Stakeholder Feedback November 2019 

7. Correspondence from Leann Taagepera and Staff Response 

8. Markup of Current Regulations 

Suzanne Thorsen, Principal Planner, and Ben Noble, a consultant for the Accessory Dwelling Unit ordinance, provided a presentation.

Ms. Thorsen introduced Nira Doherty, contract Attorney, who has assisted with drafting the ordinance.

PUBLIC COMMENT:

Mark Hajjar submitted written comment which was provided to the Commissioners via email and paper copy in advance. He requests more flexibility with the materials allowed on the exterior of accessory structures in the historic district and spoke about design.

Jerry Hayes asked legal counsel for clarification on solar requirements on accessory dwelling units (ADUs). Ms. Doherty confirmed that the new solar requirements in the 2019 California Building Code will not apply to ADUs.

Brandon Marshall provided a presentation with slides. He requests greater flexibility in regards to materials allowed on the exterior of accessory structures in the historic district.

He believes that limiting the materials as described in the proposed ordinance creates undue burden for homeowners in the historic district and limits design flexibility.

Brian Harkins requests more flexibility in material guidelines for ADUs in the historic district.

Brandon Marshall and Brian Harkins request to list materials in the ordinance that are excluded rather than allowed.

Leanne Taagepera's written comment was included in the agenda packet.

COMMISSIONER DISCUSSION:

The Commissioners and staff discussed possible burdens living in the historic districts, material restrictions on accessory structures in historic districts, foundations of accessory structures, and prefabricated structures, multiple ADUs on one lot, junior ADUs, pre-existing unpermitted accessory structures, ADUs that must be approved ministerially under subsection G.

Ms. Doherty states that allowing flexibility with detached ADUs is consistent with the legislative intent of allowing residential properties to construct ADUs.

The Commissioners request to keep the language that is in subsection 6.G that requires wood siding or fiber cement siding without a wood grain, stucco if it is on the primary dwelling, or shingles and eliminate the horizontal requirement for siding. On a detached accessory structure, the Commissioners do not want to require specific materials. They would like to disallow pressed board, vinyl composite, or fiber cement materials with a wood grain.

At 8:38 P.M., Chair Reynolds announced a 10 minute recess.

At 8:46 P.M., Chair Reynolds reconvened the meeting.

Chair Reynolds would like to add a statement regarding the front lot line or primary contributing façade and define primary contributing façade under general standards in 17.70.060.J. He would also like the inset of the dormer in dormer section J.3 to be changed from 3 feet to 2 feet. Finally, he would like the language in J.6.a to be revised to reference a front property line or primary contributing façade and for J.6.e to similarly reference a primary contributing façade.

The Commissioners request that the historic district standards be revised to state that attached ADUs on contributing structures shall not have vinyl windows.

Ms. Thorsen provided an overview of the revisions that Commissioners request to the ordinance. “For an attached accessory dwelling unit, you will keep the language that is in subsection 6.G that requires wood siding or fiber cement siding without a wood grain, stucco if it is on the primary dwelling, or shingles and eliminate the horizontal requirement for siding. On a detached accessory structure, we would not specify required materials. We would disallow pressed board, vinyl composite, or fiber cement materials with a wood grain.

Under general standards, 17.70.060.I.4.b, add a statement regarding the front lot line or primary contributing façade and define primary contributing façade.

Under the dormer section, J.3, the inset of the dormer will be changed from 3 feet to 2 feet.

Under J.6.a, the language will be revised to reference a front property line or primary contributing façade. Similarly, J.6.e will reference a primary contributing façade.

The historic district standards will be revised to state that attached ADUs on contributing or landmark structures shall not have vinyl windows.”

On motion of Commissioner Delgado, seconded by Commissioner Haughey, the Commission approved the resolution (Attachment 1) recommending that the City Council of the City of Benicia adopt an ordinance with the Commissioner’s revisions that Suzanne Thorsen read (supported by the record) amending Chapter 17.16 (Use Classifications), Chapter 17.70 (General Regulations) and Chapter 17.108 (Design Review) of the Benicia Municipal Code (BMC), after a public hearing and determination that the project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA), on a roll call by the following vote:

Ayes: Ayes: Commissioners Delgado, Haughey, Maccoun, McKee, von Studnitz, and Chair Reynolds

Noes: (None)

9) **COMMUNICATIONS FROM STAFF**

Staff announced that meetings will now be recorded with action minutes. The City also maintains recordings of the meetings for review upon request.

Ms. Doherty announced a potential settlement between the City and Amports regarding the demolition of historic buildings.

Staff announced that City Hall will be closed for the holiday from December 24 - January 1.

10) COMMUNICATIONS FROM COMMISSIONERS

Chair Reynolds would like to discuss window types. The commissioners requested a learning meeting about different kinds of windows. Staff suggested forming a subcommittee to explore the window discussion.

11) ADJOURNMENT

Chair Reynolds adjourned the meeting at 9:51 P.M.

RESOLUTION NO. 19-14 (HPRC)

A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL APPROVAL OF AMENDMENTS TO THE BENICIA MUNICIPAL CODE TITLE 17 (ZONING) TO AMEND REGULATIONS FOR ACCESSORY DWELLING UNITS

WHEREAS, the California State Legislature finds that Accessory Dwelling Units (ADUs) are an essential component of California's housing supply that provide additional rental stock and housing for family members, students, the elderly, in-home health care providers, people with disabilities and others at below market prices within existing neighborhoods; and

WHEREAS, upon adoption of the current ADU ordinance on January 15, 2019, the Benicia City Council directed further updates to address the quality of living space above a ground floor garage, lot coverage, setbacks and other comments from local architects; and

WHEREAS, new legislation for ADUs will take effect on January 1, 2020 that necessitates revisions to the Benicia Municipal Code for consistency with State housing law; and

WHEREAS, the City of Benicia intends to amend its regulations for ADUs to address the direction of the City Council and maintain consistency with State housing law; and

WHEREAS, Benicia Housing Element Policy 1.04 states that the City will review and revise regulatory standards necessary to comply with State Housing law; and

WHEREAS, Benicia Housing Element Program 1.10 states that the City will amend the Zoning Ordinance for second units (accessory dwelling units) including the allowance of ADUs above a garage, modification of parking requirements and modification of fees; and

WHEREAS, the Historic Preservation Review Commission at a regular meeting on December 19, 2019, conducted a hearing, heard public comment and reviewed the draft ordinance found it to be consistent with the City of Benicia General Plan and Housing Element;

NOW, THEREFORE, BE IT RESOLVED that the Historic Preservation Review Commission of the City of Benicia hereby recommends the City Council approve an Ordinance amending the Benicia Municipal Code and a Resolution amending the Downtown Mixed Use Master Plan to incorporate regulations pertaining to accessory dwelling units. The Commission recommends that the City Council establish a one-year review period following adoption of the amended regulations, whereby the effectiveness

of the regulations may be evaluated and subsequent amendments completed as appropriate

BE IT FURTHER RESOLVED THAT the Historic Preservation Review Commission of the City of Benicia finds that:

- a) The proposed amendments are exempt from environmental review under California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15282(b) that exempts the adoption of an ordinance regarding second units in a single family or multifamily residential zone to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code. The additional clean-up amendments are exempt pursuant to Section 15061(b), the "General Rule", which states that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the project would have a significant effect on the environment. The proposed clean-up amendments merely clarify and align existing Code and would not alter the physical environment in any manner that would result in a significant effect on the environment.

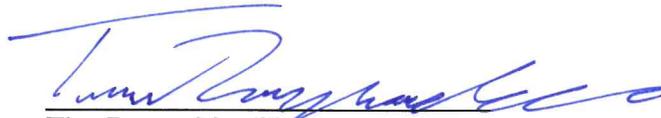
On motion of Commissioner Delgado, seconded by Commissioner Haughey, the above Resolution is introduced by the Historic Preservation Review Commission of the City of Benicia at a special meeting of the Commission held on the 19th day of December 2019, subject to revisions pertaining to exterior building materials, primary contributing facades, and dormer requirements as reflected in the minutes of the meeting, and adopted by the following vote:

Ayes: Commissioners Delgado, Haughey, Maccoun, McKee, von Studnitz and Chair Reynolds

Noes: None

Absent: None

Abstain: None


 Tim Reynolds, Chair

1.14.20

 Date

CITY OF BENICIA

ORDINANCE NO. 20-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING BENICIA MUNICIPAL CODE CHAPTER 17.16 (USE CLASSIFICATIONS), CHAPTER 17.70 (GENERAL REGULATIONS) AND CHAPTER 17.108 (DESIGN REVIEW) OF TITLE 17 (ZONING), ALL PERTAINING TO THE REGULATION OF ACCESSORY DWELLING UNITS, AND FINDING ADOPTION OF THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the California State Legislature finds that Accessory Dwelling Units (ADUs) are an essential component of California's housing supply that provide additional rental stock and housing for family members, students, the elderly, in-home health care providers, people with disabilities and others at below market prices within existing neighborhoods; and

WHEREAS, new legislation for ADUs took effect on January 1, 2020 that necessitates revisions to the Benicia Municipal Code for consistency with State housing law; and

WHEREAS, Benicia Housing Element Policy 1.04 states that the City will review and revise regulatory standards necessary to comply with State Housing law; and

WHEREAS, the Historic Preservation Review Commission conducted a duly noticed public hearing on December 19, 2019, and recommended approval of the ordinance amending Title 17 (Zoning) pertaining to accessory dwelling units to the City Council; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on January 9, 2020, and recommended approval of the ordinance amending Title 17 (Zoning) pertaining to accessory dwelling units to the City Council; and

WHEREAS, the City Council of the City of Benicia held a duly noticed public hearing on the proposed amendments and introduced Ordinance No. _____ on January 21, 2020.

NOW, THEREFORE, the City Council of the City of Benicia does hereby ordain as follows:

Section 1. Section 17.16.080 (Accessory use classifications) of Chapter 17.16 (Use Classifications) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows:

A. Accessory Uses and Structures. Uses and structures that are incidental to the principal permitted or conditionally permitted use or structure on a site and are customarily found on the same site. This classification includes accessory dwelling units, home occupations, and construction trailers.

1. 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. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes an efficiency unit and a manufactured home, as defined in Section 18007 of the Health and Safety Code.

a. Attached Accessory Dwelling Unit. An accessory dwelling unit that shares at least one common wall with the primary dwelling and is not fully contained within the existing space of the primary dwelling or an accessory structure.

b. Detached Accessory Dwelling Unit. An accessory dwelling unit that does not share a common wall with the primary dwelling and is not fully contained within the existing space of an accessory structure.

c. Internal Accessory Dwelling Unit. An accessory dwelling unit that is fully contained within the existing space of the primary dwelling or an accessory structure.

d. Junior Accessory Dwelling Unit. A unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.

2. Donation and Collection Bin. An unstaffed drop-off box, receptacle or other similar container used to accept donated clothing or other salvageable personal property, including but not limited to books, shoes, canned goods, and small household items to be used by a nonprofit or for-profit operator for distribution, resale, or recycling. (Ord. 19-04 § 1; Ord. 19-02 § 2).

Section 2. Section 17.70.060 (Accessory dwelling units) of Chapter 17.70 (General Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is hereby repealed and replaced to read as follows:

17.70.060 Accessory dwelling units.

A. Purpose. This section is intended to achieve the goals of the city's housing element and of the California Government Code by permitting accessory dwelling units, thereby increasing housing opportunities for the community through use of existing housing resources and infrastructure.

B. Where Allowed. An accessory dwelling unit is permitted:

a. In any district where single-family or multifamily dwellings are a permitted use; and

b. On any lot with an existing or proposed single-family or multifamily dwelling.

C. Permitting Process.

1. When Consistent with Standards.

- a. An accessory dwelling unit that complies with all standards in this section shall be approved ministerially upon issuance of a building permit. No other permit, discretionary review, or public hearing is required.
- b. If an existing single-family or multifamily dwelling exists on the lot upon which an accessory dwelling unit is proposed, the City shall act on an application to create an accessory dwelling unit within 60 days from the date the City receives a completed application. If the applicant requests a delay in writing, the 60-day time period shall be tolled for the period of the delay.
- c. The City has acted on the application if it:
 - (1) Approves or denies the building permit for the accessory dwelling unit;
 - (2) Informs the applicant in writing that changes to the proposed project are necessary to comply with this section or any applicable regulation; or
 - (3) Determines that the accessory dwelling unit does not qualify for ministerial approval.

2. When Deviating from Standards.

- a. A proposed accessory unit that deviates from the standards in subsection J (Objective Design Standards) of this section shall be reviewed and may be approved or denied subject to the design review procedures in Chapter 17.108 (Design Review).
- b. A proposed accessory dwelling unit that deviates from standards in subsection I (Development Standards) or any other applicable physical standard of this section shall be reviewed and may be approved or denied subject to the variance procedures in Chapter 17.104 (Use Permits and Variances).

3. When Dependent on Separate Construction. When a proposed attached or detached accessory dwelling unit is dependent on the construction of a new building or new portion of a building which that not a part of the accessory dwelling unit (“separate construction”), the City shall either:

- a. Accept and begin processing the accessory dwelling unit application only after acting on an application for the proposed separate construction; or
- b. Upon written request from the applicant, review and act on the accessory dwelling unit together with the separate construction as part of a single application. In this case,

the accessory dwelling unit is subject to the same review procedures and requirements as the separate construction.

D. Junior Accessory Dwelling Units.

1. **General.** Junior accessory dwelling units shall comply with all standards in this section unless otherwise indicated.
2. **Sanitation Facilities.** A junior accessory dwelling unit may include sanitation facilities, or may share sanitation facilities with the existing structure.
3. **Kitchen.** A junior accessory dwelling unit must include, at a minimum:
 - a. A cooking facility with appliances; and
 - b. At least three linear feet of food preparation counter space and three linear feet of cabinet space.

E. Maximum Number per Lot. Not more than one accessory dwelling unit is allowed per lot except as allowed by subsections G.2 (Detached Accessory Dwelling Units), G.3 (Non-livable multifamily space) and G.4 (Detached Accessory Dwelling Units on Multifamily Lots) of this section.

F. Accessory Use. An accessory dwelling unit that conforms to this section:

1. Is considered an accessory use or accessory structure;
2. Is not considered to exceed the allowable density for the lot upon which it is located; and
3. Is considered a residential use consistent with the general plan and zoning designation for the lot.

G. Units Subject to Limited Standards. The city shall ministerially approve an application for a building permit within a residential or mixed-use district to create the following types of accessory dwelling units. For each type of accessory dwelling unit, the city shall require compliance only with the development standards in this subsection. Standards in subsections I (Development Standards) and J (Objective Design Standards) do not apply to these types of accessory dwelling units.

1. **Internal Accessory Dwelling Units.** One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:
 - a. The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or

accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

- b. The space has exterior access from the proposed or existing single-family dwelling.
- c. The side and rear setbacks are sufficient for fire and safety.
- d. The junior accessory dwelling unit complies with the requirements of Government Code Section 65852.22.

2. Detached Accessory Dwelling Units. One detached, new construction, accessory dwelling unit for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subsection G.1 (Internal Accessory Dwelling Units). The accessory dwelling unit must comply with the following:

- a. Maximum floor area: 800 square feet.
- b. Maximum height: 16 feet.
- c. Minimum rear and side setbacks: four feet.

3. Non-Livable Multifamily Space. Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, subject to the following:

- a. At least one accessory dwelling unit is allowed within an existing multifamily dwelling up to maximum of 25 percent of the existing multifamily dwelling units; and
- b. Each accessory dwelling unit shall comply with building code standards for dwellings.

4. Detached Accessory Dwelling Units on Multifamily Lots. Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling, are subject to the following:

- a. Maximum height: 16 feet
- b. Minimum rear and side setbacks: four feet.

H. General Standards. Except as provided in subsection G (Units Subject to Limited Standards) of this section, an accessory dwelling unit shall comply with the following general standards:

1. Rental.

a. An accessory dwelling unit may be rented but shall not be sold or otherwise conveyed separately from the primary dwelling.

b. The rented unit shall not be leased for any period less than 30 days.

2. Primary and Accessory Designations. An existing primary dwelling unit may be designated as an accessory dwelling unit if:

a. The existing dwelling to be designated as an accessory dwelling unit complies with all standards in this section; and

b. The new primary dwelling unit is built in compliance with applicable standards and requirements of this title that apply to primary dwellings.

3. Nonconforming Uses and Structures. In conformance with BMC 17.98.020 and 17.98.030, the City shall not require, as a condition for approval of a permit application, the correction of nonconforming zoning conditions.

I. Development Standards. Except as provided in subsection G (Units Subject to Limited Standards) of this section, an accessory dwelling unit shall comply with the following development standards.

1. Floor Area. The floor area of an accessory dwelling unit shall not exceed the maximums shown in Table 1.

Table 1: Maximum Floor Area

ADU Type	Maximum ADU Floor Area
Attached	
One bedroom or less	50 percent of the existing primary dwelling or 850 sq. ft., whichever is greater
More than one bedroom	50 percent of the existing primary dwelling or 1,000 sq. ft., whichever is greater
Detached	1,200 sq. ft.
Internal	50 percent of the existing primary dwelling
Junior	500 sq. ft.

2. Bulk Standards.

a. An accessory dwelling unit shall conform to the applicable floor area ratio and site landscaping standards of the district in which it is located, except when otherwise allowed by subsection J.4 (Guaranteed Allowance) of this section.

b. An accessory dwelling unit is exempt from maximum lot coverage standards.

3. **Guaranteed Allowance.** Maximum floor area, floor area ratio, and open space standards shall not prohibit an accessory dwelling unit with at least an 800 square feet of floor area, a height of at least 16 feet, and four-foot side and rear yard setbacks, provided the accessory dwelling unit complies with all other applicable standards.

4. **Property Line Setbacks.**

a. **All Accessory Dwelling Units.** An accessory dwelling unit shall be setback from property lines as required by Table 2.

b. **Detached Accessory Dwelling Units.**

(1) A detached accessory dwelling unit shall not occupy a required court or front yard, nor project beyond the front building line of the principal structure on the site.

(2) A ground-floor deck, balcony or platform attached to or associated with a detached accessory dwelling unit shall be located at least four feet from a rear or side property line. See subsection J.1 (Second story Decks and Balconies) of this section for second-story deck and balcony setback standards.

Table 2: Minimum Property Line Setbacks

Property Line	ADU Type			
	Attached	Detached	Internal	Junior
Front	Same as primary dwelling [1]		None required	
Side	4 ft.	4 ft.		
Rear	4 ft.	4 ft.		

Note:

[1] For detached accessory dwelling units, see also 17.70.060.I.4.b (Detached Accessory Dwelling Units). For detached accessory structures in an H historic overlay district, see also 17.70.060.J.6 (Historic District Standards).

5. **Building Separation.** A minimum five-foot distance shall be maintained between a detached accessory dwelling unit the primary building on the site. A detached accessory structure shall be set back from other structures on the site as required by the building code.

6. **Converting and Replacing Existing Structures.**

- a. An internal ADU may be constructed regardless of whether it conforms to the current zoning requirement for building separation or setbacks.
- b. If an internal ADU is proposed to be constructed within an existing accessory structure, the city shall ministerially permit an expansion of the existing accessory structure by up to 150 square feet for the purpose of accommodating ingress and egress.
- c. If an existing structure is demolished and replaced with an accessory dwelling unit, an accessory dwelling unit may be constructed in the same location and to the same dimensions as the demolished structure.

7. Height.

- a. Historic Districts. The height of an accessory dwelling unit in an H historic overlay district shall not exceed the maximums shown in Table 3.

Table 3: Maximum Height in Historic Districts

ADU Type	Maximum ADU Height [1]
Attached	Same as required for primary dwelling
Detached	
Exterior building wall [2]	14 ft.
Roof peak (based on roof pitch)	
Below 4:12	16 ft.
4:12 to less than 6:12	18 ft.
6:12 or greater	20 ft.
Internal	Not applicable
Junior	Not applicable

Note:

[1] For detached accessory structures in an H historic overlay district, see also 17.70.060.K.6 (Historic District Standards).

[2] Measured to the top plate.

- b. Outside Historic Districts. The roof peak of a detached accessory dwelling unit outside of an H historic overlay district shall not exceed the maximums shown in Table 4. The maximum allowed height for attached accessory dwelling units is the same as required for the primary dwelling. Height standards do not apply to internal and junior accessory dwelling units.

Table 4: Detached Accessory Dwelling Unit Maximum Height Outside Historic Districts

Maximum Roof Peak Height Based on Roof Pitch	Exterior Building Wall Distance from Rear or Side Property Line		
	4 ft. to less than 5 ft.	5 ft. to less than 7 ft.	7 ft. or more
Below 4:12	16 ft.	18 ft.	20 ft.
4:12 to less than 6:12	18 ft.	20 ft.	22 ft.
6:12 or greater	20 ft.	22 ft.	24 ft.

8. Foundation. An accessory dwelling unit shall be constructed on a permanent foundation.

J. Objective Design Standards. Except as provided in subsection G (Units Subject to Limited Standards) of this section, an accessory dwelling unit shall comply with the following design standards.

1. Second Story Decks and Balconies. Second story decks and balconies shall be set back a minimum of 10 feet from a side or rear property line adjoining a lot occupied by a single-family or two-family dwelling.

2. Outdoor stairs. Outdoor stairs providing access to a second story accessory dwelling unit shall adjoin an exterior wall that faces the interior of the lot, rather than an exterior wall nearest a side or rear property line.

3. Dormers. The side wall of a dormer shall be set back a minimum of three feet from the parallel side wall below. The cumulative width of a dormer or dormers on any side of an accessory dwelling unit shall not occupy more than 66 percent of the building face below.

4. Gables. If a gable roof or turned gable roof is present, the gable ridge shall be oriented in a direction parallel to the side property line in order to minimize shadow effects on the adjoining lot.

5. Roof Pitch. The roof pitch for an accessory dwelling unit shall be 4:12 or greater. However, if the primary residence has a roof pitch shallower than 4:12, a similar pitch may be employed on the accessory dwelling.

6. Historic District Standards. In an H historic overlay district, an accessory dwelling unit shall conform to the following additional requirements:

a. Except as provided in subsection I.6 of this section, a detached accessory dwelling unit shall be set back from the front property line such that the entirety of the accessory dwelling unit is behind the rear wall of the principal structure on the lot.

- b. The elevation of the highest point of a detached accessory dwelling shall not exceed the elevation of the highest point of the primary dwelling, except that in all cases a detached accessory dwelling unit at least 16 feet in height is allowed.
- c. An attached accessory dwelling unit shall not result in a rooftop addition or any alteration to the existing roofline of a designated historic contributing or landmark structure.
- d. An accessory dwelling unit shall not result in any increase in building height for a designated historic contributing or landmark structure, except that in all cases an attached accessory dwelling unit at least 16 feet in height is allowed.
- e. An accessory dwelling unit shall not result in any exterior alteration to the existing wall or façade of a designated historic contributing or landmark structure where such wall or façade is parallel to a public street.
- f. A building addition to a designated historic contributing or landmark structure to accommodate an attached accessory dwelling unit shall be inset or separated by a connector that is offset at least 18 inches from the parallel side or rear building wall to distinguish it from the primary dwelling. Such building addition shall not extend beyond the side wall of the primary dwelling.
- g. Exterior building and trim materials shall be horizontal wood siding or fiber cement siding or shingles. However, if Portland cement plaster (stucco) is the predominant finish for the primary residence, then a stucco exterior also be applied to the accessory dwelling. Synthetic stucco (e.g., EIFS or DryVit) is prohibited.
- h. The exterior walls of an accessory dwelling shall utilize the same base and trim colors as the primary residence.
- i. The roof shall utilize the same material and color as the primary residence and shall match the primary residence in overall appearance.
- j. Windows shall be taller than they are wide or shall match the proportions of the primary dwelling's windows. Windows in bathrooms, basements and crawl spaces, kitchens and laundry rooms may be horizontally oriented.
- k. Window pane divisions shall be true or simulated divided lites (i.e., individual panes set within muntins or muntins applied to both the interior and exterior of the glass).
- l. Window frames shall be painted or factory-finished. No metallic finishes such as silver or bronze anodized aluminum are permitted.

K. Parking.

1. No additional off-street parking stalls shall be required for an accessory dwelling unit.
2. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, replacement parking stalls are not required for the demolished parking structure.

L. Recordation of Deed Restriction. An executed deed restriction, on a form provided by the city, shall be submitted to the city prior to issuance of a building permit and shall be recorded prior to final occupancy. The deed restriction shall stipulate all of the following:

1. That the rented unit shall not be rented for any period less than 30 days at a time; and
2. That the accessory dwelling shall not be sold separately from the primary dwelling.
3. For junior accessory dwelling units, restrictions on size and attributes in conformance with this section.

Section 3. Subsection C (Exceptions to Criteria) of Section 17.108.060 (Review responsibilities) of Chapter 17.108 (Design Review) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows:

C. Exceptions to Criteria. The community development director may authorize minor deviations from the zoning standards specified herein: timing of construction for an accessory structure, projection of detached garage in the RS district, separation between buildings per BMC 17.70.050; and modifications in vehicle space size requirements per BMC 17.74.100.

Section 4. **Severability.** If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 5. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15282(b) that exempts the adoption of an ordinance regarding second units in a single family or multifamily residential zone to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code. The additional clean-up amendments are exempt pursuant to Section 15061(b), the “General Rule”, which states that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the project would have a significant effect on the environment. The proposed clean-up amendments merely clarify and align existing Code and would not alter the physical environment in any manner that would result in a significant effect on the environment. The City Clerk shall file a Notice of Exemption with the County.

Section 5. Publication. The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Benicia, California and cause the same to be published in accordance with State law.

Section 6. Effective Date. This Ordinance shall be in full force and effective thirty (30) days after its adoption and shall be published and posted as required by law.

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the _____ day of _____, 2020, and adopted at a regular meeting of the Council held on the _____ day of _____, 2020, by the following vote:

Ayes:

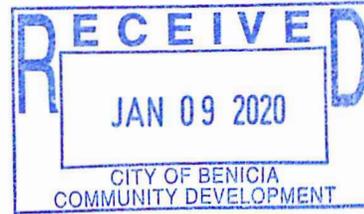
Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk



City of Benicia Planning Commission
250 East L Street
Benicia, CA 94510

January 9, 2020

Re: Draft ADU Ordinance at Public Hearing on 1/9/2020

Dear Commissioners,

I encourage you to approve the amendments to the Benicia Municipal Code for Accessory Dwelling Units that you have before you tonight. I want to commend the city for including design professionals in developing some of the requirements. As architects, we have to work with these codes to create the living spaces that they are intended to promote and it's my feeling that this document is more workable for having included us in its development.

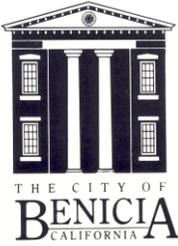
At this point I do have to address one item that I feel needs attention. It is the requirement in the historic district for a second story ADU over a garage, when the garage is new to the site, to be subjected to one of two different avenues of design review. I feel this is not in keeping with the intent of this document which provides housing with fewer restraints in the process of approval. The removal of the requirement for Design review in the Historic District has been adequately mitigated in Section J, 6 of this amendment. To require it in this instance is not appropriate. This limitation should be reviewed by the city in hopes of making ADUs over garages more feasible.

I think it is important for you and the city as a whole to be aware that these ADU structures are not inexpensive to build. Increasing numbers of building code requirements as well title 24 energy upgrades are working at odds with the idea of creating affordable housing with these ADUs. The city has no control over these increasing requirements. We as a community do have control over the fees incurred in the planning and permitting process. That is an area where we, as a community could take a bold step by reducing those costs. By deciding to eliminate all or most of those fees for ADUs, this community could make its contribution to provide more affordable housing in our city. What an affective altruistic gesture that would be. I ask you to consider just that. We cannot afford to continue on this upward spiral of more expensive buildings.

Thank you for your consideration.

Very truly yours,

Architect



Planning Commission Staff Report

January 9, 2020

Project: Amendments to Title 17 (Zoning) of the Benicia Municipal Code pertaining to regulations for accessory dwelling units (ADUs), after a determination that the project is exempt from CEQA.

Staff Recommendation

Move to adopt the resolution (Attachment 1) recommending that the City Council of the City of Benicia adopt an ordinance amending Chapter 17.16 (Use Classifications), Chapter 17.70 (General Regulations) and Chapter 17.108 (Design Review) of the Benicia Municipal Code (BMC), after a public hearing and determination that the project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA).

Project Description

The proposed project is an amendment to the Benicia Municipal Code (BMC) regulations for Accessory Dwelling Units (Section 17.70.060) and additional associated amendments to Definitions (Chapter 17.16) and Design Review (Chapter 17.108). The amendments would bring the City of Benicia into compliance with recent changes to State statute. The amendments would additionally clarify procedures, modify height standards and setback standards, and revise objective design standards for ADUs.

Public Noticing

In accordance with Government Code Section 65091, notice of public hearing was posted in Benicia City Hall on December 19, 2019 and published in the Benicia Herald on December 22, 2019.

Project Location

The proposed amendments to the Zoning Ordinance would be effective city-wide.

Background

Prior Amendment to ADU Ordinance (2019)

In 2016, revisions to State law required local agencies to streamline permitting to allow second units on all residentially-zoned lots with only ministerial review. Ministerial review means that if a proposed ADU meets the City's objective standards, it must be approved. The City is not allowed to require design review or any other type of discretionary approval for an ADU that complies with objective standards.

In 2017, State law further limited the scope of allowable local agency zoning controls for second units. In response to these changes, the City of Benicia adopted an updated Accessory Dwelling Unit (ADU) ordinance in January 2019 which included the following key revisions:

- Ministerial review process for all ADUs including those within historic districts
- Streamlined permitting process for conversion of existing structures into ADUs
- Elimination of on-site parking requirements for ADUs.
- Increased height and floor area allowances for attached and detached ADUs and simplified setback standards.
- Adoption of objective design standards for ADUs citywide, with specific standards for ADUs in historic districts.

The adopted regulations are found in Zoning Ordinance Sections 17.70.050 (Accessory Uses and Structures) and 17.70.060 (Accessory Dwelling Units) of the Benicia Municipal Code (BMC). Upon adoption of the ADU regulations in January 2019, the City Council directed staff to consider future revisions to address concerns including:

- The quality of living space above ground floor garage (e.g., dormer requirements, allowed height)
- Allowed lot coverage
- Setbacks
- Other comments from local architects on the adopted regulations

The City's updated regulations have coincided with an increase in the number of ADUs seeking permit approval. In 2018, the City issued permits for three ADUs. To date, in 2019 the City has issued permits for eight ADUs; two additional ADU building permits are in review or ready to issue.

New legislation was passed in 2019 that further streamlines and clarifies the State's requirements for ADUs. A summary of revisions to the statute is provided as Attachment 2 and a markup of the State's updated regulations, which take effect on January 1, 2020, is provided as Attachment 3.

Stakeholder Outreach

In preparation for the ADU zoning amendments, staff conducted an outreach meeting on August 2, 2019 with local architects engaged in the permit process for ADUs to obtain feedback on the topic areas identified by the City Council. This meeting allowed staff to obtain additional comments on the design and permitting process for ADUs. Staff also consulted with representatives of the Benicia Historical Society to provide information and obtain feedback through meetings held on August 2 and October 4, 2019. A summary of comments from both groups is provided as Attachment 4; comments from architect Brandon Marshall, who was not able to attend the August 2 meeting, are provided as Attachment 5.

The feedback of stakeholder meeting participants was considered and compiled into preliminary recommendations, which were discussed in a joint meeting on November 14, 2019. A summary of comments from that meeting is provided in Attachment 6;

analysis of how comments were considered is detailed in the body of this report. Following the meeting, additional written comments on the preliminary recommendations were received from one member of the public. A copy of this correspondence, including a reference memorandum from January, 2018 and staff responses, is provided as Attachment 7.

Historic Preservation Review Commission Public Hearing

The Historic Preservation Review Commission (HPRC) conducted a public hearing to consider the draft ordinance on December 19, 2019. Prior to the hearing, the City received correspondence from architect Mark Hajjar, provided as Attachment 8. Architect Brandon Marshall made a slide presentation regarding building materials, which is provided as Attachment 9.

Following a staff presentation, four members of the public provided comment. Three community members requested greater flexibility on building material requirements and spoke regarding diverse and contemporary building design. One person asked for clarification about solar requirements under recent State law.

Commissioners considered public comment and requested clarification from staff regarding Mills Act requirements, building materials requirements, the number of ADUs allowed on a single-family parcel, effects on existing nonconforming ADUs, and permitting requirements pursuant to State law.

Following discussion, the HPRC recommended approval of the proposed ordinance with the following revisions:

- Add a statement pertaining to the front lot line to also include the primary contributing façade, for those structures whose historic front facades face former right-of-way (e.g., facing a bluff), within Section 17.70.060.J
- Reduce the required dormer inset in Section 17.70.060.J, from three (3) feet to two (2) feet).
- Eliminate the material specification for detached ADUs within a Historic District, and specify disallowed materials only, which include pressed board, vinyl composite or fiber cement materials with a wood grain.
- For attached ADUs within a Historic District, expand permitted materials to include smooth fiber cement (e.g. Hardi Board), and disallow faux wood grain. Eliminate the requirement for horizontal siding.
- For attached ADUs associated with a contributing or landmark structure, disallow vinyl windows.

Draft minutes of the HPRC are provided as Attachment 10. The recommendations of the HPRC have been incorporated into the draft ordinance and are reflected in the draft Ordinance (Exhibit A of Attachment 1) and markup of current regulations (Attachment 11).

Analysis

The State's new requirements for ADUs further streamline ADU approval, expand opportunities for new ADUs, and limit the applicability of local design criteria for certain ADUs. The State laws reserve limited discretion to local jurisdictions in regulating ADUs. Specifically, the State laws allow local jurisdictions to impose standards related to: parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. In a Historic District, this means that some standards (such as height limitations and location requirements) must be modified to align with new State standards. The limitations on local review, both in terms of timing and ministerial permitting, require that the City must act on an ADU application within 60 days, and that an ADU which conforms to the standards of the Zoning Ordinance shall be approved. The City cannot require any commission-level review for an ADU that meets the criteria of the Zoning Ordinance. However, the draft ordinance would establish procedures by which ADUs that exceed these standards can be reviewed through a discretionary process such as design review or zoning variance.

In addition to aligning the ordinance with the State requirements, staff incorporated feedback from local design professionals and historic preservation advocates to adjust the regulations for clarity, livability and compatibility within the Historic District. These proposed regulations are consistent with the State ADU laws. Key amendments to the ordinance in response to recent legislation and community feedback are described below, along with analysis of additional amendments that were suggested by stakeholders through the outreach process.

The proposed ordinance amending the ADU regulations is provided as Exhibit A of Attachment 1. A mark-up of the current regulations is provided as Attachment 11.

Proposed Amendments in Compliance with Recent Legislation

The 2019 housing legislative package signed by the Governor in October 2019 included five bills updating the State ADU legislation, which take effect on January 1, 2020. Although the new legislation retains the ability for local governments to establish standards that prevent adverse impacts to property on the California Register of Historic Resources, it establishes mandatory standards for setback and height requirements.

Key areas of amendment for Benicia include the following:

1. Where Allowed.
 - ADUs must be allowed in all zoning districts that permit multifamily dwellings. In Benicia, this includes commercial and mixed-use districts. Gov't Code 65852.2(a)(1)(D)(ii).
 - See draft ordinance Section 17.70.060.B
2. Approval Process.

- The City must act on an ADU application within 60 days of receiving the application. Gov't Code 65852.2(a)(3).
 - See draft ordinance Section 17.70.060.C
3. Junior ADUs.
- The City must allow Junior ADUs (less than 500 sq. ft.) consistent with State law. Junior ADU provisions are no longer optional. Gov't Code 65852.2(a)(3).
 - See draft ordinance Section 17.70.060.D
4. ADUs Subject to Limited Standards.
- For certain types of ADUs, the City must ministerially approve the project subject to limited standards. The City may not require compliance with other standards that otherwise would apply. Gov't Code Section 65852.2(e)
 - See draft ordinance Section 17.70.060.G
5. Number of ADUs per Lot.
- On single-family lots, the City must allow one ADU and one junior ADU if exterior access is available and side and rear setbacks are sufficient for fire and safety. On multifamily lots, the City must allow at least one ADU and up to 25% of existing multifamily dwelling units within a building, and up to 2 detached ADUs subject to compliance with 16 foot height and 4 foot setback requirements (Gov't Code 6585.52.2(e)).
 - See draft ordinance Section 17.70.060.G
6. Floor Area.
- The City must allow an attached ADU with a floor area of 50 percent of the primary dwelling and at least 850 square feet for an ADU with one bedroom or less and 1,000 square feet for an ADU with more than one bedroom. The City must allow a detached ADU of at least 1,200 square feet. Gov't Code 65852.2(a)(1)(D) and 65852.2(c)(2)(B).
 - See draft ordinance Section 17.70.060.I
7. Minimum Size/Placement Guarantee.
- The City may not impose unit size, lot coverage, floor area ratio (FAR), open space, or lot size requirement that would prohibit a detached ADU with four-foot side and rear setbacks, 16 feet height, and 800 square feet of floor area. Gov't Code 65852.2(c)(2).
 - See draft ordinance Section 17.70.060.I
8. Setbacks.
- The City may not impose unit size, lot coverage, FAR, open space, or lot size requirement that would prohibit an ADU with four-foot side and rear setbacks. Gov't Code 65852.2(c)(2). Gov't Code 65852.2(c)(2)(C) and 65852.2(e)(1)(B).

- See draft ordinance Section 17.70.060.I
- 9. Converting and Replacement Existing Structures.
 - The City must allow an existing structure to be converted to or replaced with an ADU, regardless of whether it conforms with setback or building separation standards. Gov't Code 65852.2(a)(1)(D)(vii).
 - See draft ordinance Section 17.70.060.I
- 10. Height.
 - The City may not impose unit size, lot coverage, FAR, open space, or lot size requirement that would prohibit an ADU height of at least 16 feet. Gov't Code 65852.2(c)(2)(C) and 65852.2(e)(1)(A).
 - See draft ordinance Section 17.70.060.I
- 11. Replacement Parking.
 - The City may not require replacement parking for existing structure converted into or demolished to accommodate an ADU. Gov't Code 65852.2(a)(1)(D)(xi)
 - See draft ordinance Section 17.70.060.K

Proposed Amendments in Response to Community Feedback

Through the course of several meetings with local design professionals and community members, the City received suggestions for ordinance revisions to improve the livability and feasibility of ADUs, as well as to improve protection of historic district resources. Community members also asked for clarification on the procedures and language of the ordinance. A summary of comments and corresponding amendments is provided below.

1. Deviations from Standards.
 - Comment: Clarify the process to approve an ADU that deviates from standards. Clarify the review process for an ADU that is part of a broader project (such as a new garage).
 - Response: Design review would be required for ADUs that do not comply with Objective Design Standards (including H District design standards), and a variance would be required for ADUs that do not comply with Development Standards (such as floor area, height, setbacks and building separation). The presence of an ADU would not exempt a project that otherwise requires design review (such as a new garage, new addition with expansion of living area for the primary dwelling). See draft ordinance Section 17.70.060.C.
2. Development Standards: Height in Historic Districts
 - Comment: Clarify height limitation for an ADU with a 6:12 roof pitch. Clarify measurement of wall height and consider increasing permitted wall height to 14 feet to allow adequate headroom for an ADU constructed above a garage.

- Response: The ordinance would increase the permitted wall height in a historic district to 14 feet, clarify that wall height is measured to top plate, and maintain a peak height of 16 feet (for an ADU with a 4:12 roof pitch). For steeper roofs, the ordinance clarifies that the 20-foot height limitation applies to ADUs with a pitch of 6:12 and greater. See draft ordinance Section 17.70.060.H.
3. Development Standards: Height outside of H Districts
- Comment: Outside of a historic district, allow 2-story ADUs; eliminate the wall height standards and allow increased height that scales in relation to the property line setback.
 - Response: This feedback was incorporated into the draft ordinance which eliminates the wall height standard for ADUs outside of a historic district and allows for a peak height of 16-20 feet if located within five feet of a side or rear property line, and peak height of 20-24 feet if located seven or more feet from a side or rear property line. See draft ordinance Section 17.70.060.H.
4. Separation between Buildings.
- Comment: The requirement for a 10-foot separation between buildings causes hardships, and the criteria to allow a reduction to 5 feet should be clarified.
 - Response: The required separation is reduced from 10 feet to 5 feet, which was the required separation prior to the 2019 amendment. See draft ordinance Section 17.70.060.I
5. Design Standards: Height in Relation to Primary Structure (outside of H District)
- Comment: The restriction that prevents the height of an ADU from exceeding that of the home is unclear and potentially unnecessary.
 - Response: This requirement would be eliminated for ADUs outside of a historic district.
6. Design Standards: Dormers.
- Comment: The limitation of dormers to 30% of the wall expanse below hinders the livability of ADUs above a garage.
 - Response: This limitation would be increased to 66%; see draft ordinance Section 17.70.060.J
7. Design Standards: Gable Orientation
- Comment: The current language about orientation of gable ends is confusing and vague.
 - Response: The proposed ordinance clarifies this design standard to address the orientation of the roof ridge; see draft ordinance Section 17.70.060.J

8. Decks and Balconies.

- Comment: clarify if decks and similar appurtenances can project into required yards; address privacy concerns related to second story balconies or decks. Apply consistent requirement to exterior stairs.
- Response: The proposed ordinance would allow ground level decks and similar appurtenances to be located four feet from a side or rear property line. Second story decks and balconies would be set back at least ten feet from a side or rear property line adjoining a single-family or two-family dwelling. Exterior stairs would be oriented towards the interior of a lot. See draft ordinance Sections 17.70.060.I and J.

9. Design Standards: Historic Districts

- Comment: The design standards do not adequately protect historic resources. The standards for building materials are too restricting.
- Response: A standard was added that prevents any alteration of a historic structure primary contributing façade (which is the historic front façade of the structure), nor a facade that faces a public street. Materials standards for detached ADUs were relaxed and for attached ADUs were modified to include fiber cement siding. See draft ordinance Section 17.70.060.J.6.

Further Amendments Proposed

In addition to amendments required for alignment with State law and in response to community feedback, the following addition amendments are proposed:

1. Amendments to Accessory Use Classifications. The ADU classification would be revised for consistency with the State statute, and four sub-classifications of ADUs would be defined in order to clarify the applicability of zoning regulations.
2. Building Materials. Staff proposes amending the H District Design Standards to allow fiber-cement siding in addition to wood, as this type of materials closely replicates the appearance of wood (and is highly durable, with lower long-term maintenance costs).
3. Additional Clarifications. Based upon the City's application of the ADU ordinance over the past year, as well as public comments received, additional minor amendments are proposed to clarify the design standards including specificity of the terms "divided lite" and "stucco", replacement of the term "flat roof" with a measurable standard, and a more objective approach to the standard regarding horizontally-oriented windows.

Suggestions Considered but not Incorporated

The City received some comments and suggestions which were considered but not reflected in the draft ordinance. A summary of comments and rationale is provided below.

1. Allow two-story ADUs

- Comment: The City should either allow a 2-story ADU or not. The dormer requirements etc. can result in tortured or bad design.
 - Response: There seems to be a strong community preference to retain the form and appearance of a 1 or 1.5 story ADU in the historic districts. This objective may be achieved with the proposed wall height and peak height limitations. Outside of H Districts, standards would be revised to allow two-story ADUs subject to certain setback requirements.
2. Aesthetic Requirements for ADUs in an H District.
- Comment: The City should not require ADUs to match or copy the primary dwelling, as it stifles originality and dilutes the historic fabric of the neighborhood.
 - Response: This comment was considered and design requirements were relaxed for areas outside of a Historic District. In the absence of design review, however, criteria that ensure a compatible form and materials can help to minimize adverse impacts to historic resources and the character of a historic district, and do not necessarily preclude original design.
3. Screening ADUs in a Historic District.
- Comment: Require or encourage screening for an ADU in the historic district that is located to the side of a primary structure.
 - Response: This suggestion was considered but was not included in the draft ordinance. Staff is concerned about the potential for unanticipated consequences such as failed or overgrown landscaping, inappropriate fencing, and deferred property maintenance. Further, landscaping is unlikely to fully screen a new building addition or structure measuring at least 16 feet tall and could have the reverse effect of drawing attention to the ADU.
4. Findings of Consistency with Secretary of Interior’s Standards (H District).
- Comment: The City should conduct a review of an ADUs compliance with the Secretary of Interior’s Standards, within the confines of the law.
 - Response: If an ADU is proposed that does not comply with the design or development standards, it would be subject discretionary review either through design review or a zoning variance. In such an instance, if located within a historic district, the ADU may be reviewed for compliance with the Secretary of Interior’s Standards. However, such a review is not permitted for a ministerial permit, as issuance of the permit is contingent on compliance with adopted objective standards and would not be affected by staff findings.

Consistency with the General Plan

The proposed amendments to the Benicia Municipal Code are consistent with the following Goals and Policies of the Benicia General Plan:

- Goal 2.1 Preserve Benicia as a small-sized city.
 - Policy 2.1.1: Ensure that new development is compatible with adjacent existing development and does not detract from Benicia’s small town qualities and historic heritage.

- Goal 3.7: Maintain and reinforce Benicia’s small-town visual characteristics.
 - Policy 3.7.1: Ensure that new development is compatible with the surrounding architectural and neighborhood character.

- Housing Element Goal 1: Goal 1: Benicia shall be an active leader in attaining the goals of the City’s Housing Element.
 - Policy 1.04: The City will review and revise regulatory standards necessary to comply with State Housing law.

California Environmental Quality Act

The project is exempt from environmental review under California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15282(h) that exempts the adoption of an ordinance regarding second units in a single family or multifamily residential zone to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code.

The additional clean-up amendments are exempt pursuant to Section 15061(b), the “General Rule”, which states that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the project would have a significant effect on the environment. The proposed clean-up amendments merely clarify and align existing Code and would not alter the physical environment in any manner that would result in a significant effect on the environment.

Next Steps

Solano Airport Land Use Commission

Pursuant to the Public Utilities Code (PUC) Section 21676, any local agency whose general plan includes areas covered by an airport land use compatibility plan shall refer a proposed zoning ordinance or building regulation to the airport land use commission for review. The airport land use commission shall determine whether the proposal is consistent with the adopted airport land use compatibility plan. Benicia falls within the jurisdiction of the Travis Air Force Base Airport Land Use Compatibility Plan; therefore, proposed zoning amendments must be reviewed by the Solano County Airport Land Use Commission (ALUC).

The City of Benicia anticipates that the proposed amendments will be heard by the ALUC on January 9, 2019. The purpose of the hearing would be to evaluate the consistency of the proposed zoning amendments with the Travis Air Force Base Airport Land Use Plan.

City Council Hearings

Adoption of an amendment to the Zoning Ordinance requires a noticed public hearing and recommendation of the Planning Commission pursuant to Government Code Section 65854 and 65855. Subsequent to the Planning Commission's recommendation, the City Council must conduct two readings on the proposed amendment. If adopted at the second reading, the amendments would become effective 30 days later.

Attachments:

1. Draft Resolution with Exhibit A
2. ADU Summary of Legislative Changes
3. Updates to State legislation for ADUs (Government Code Section 65852.2 and 65852.22)
4. Summary of Stakeholder Feedback, August and October 2019.
5. Correspondence from Brandon Marshall, August 2019
6. Summary of Stakeholder Feedback, November 2019
7. Correspondence from Leann Taagepera and Staff Response
 - a. Correspondence from Leann Taagepera received December 4, 2019
 - b. Reference letter dated January 15, 2019
 - c. Staff Response to December 4 comments
8. Correspondence from Mark Hajjar, December 16, 2019
9. Presentation from Brandon Marshall and Brian Harkins, December 19, 2019
10. Draft Minutes of Historic Preservation Review Commission, December 19, 2019
11. Mark-up of Current Regulations

For more information contact: Suzanne Thorsen, Principal Planner

Phone: 707.746.4382

E-mail: sthorsen@ci.benicia.ca.us

DRAFT

MINUTES OF THE
REGULAR MEETING – PLANNING COMMISSION
JANUARY 9, 2020
7:00 P.M.

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape. These are action minutes; a full video is available online at www.ci.benicia.ca.us/agendas.

1) CALL TO ORDER

Vice Chair Macenski called the meeting to order at 7:00 P.M.

3) PLEDGE OF ALLEGIANCE

2) ROLL CALL OF COMMISSIONERS

Present: Commissioners Catton, Dravnieks-Apple, Eckmeyer, Mollica, Macenski, Stock

Absent: Chair Birdseye

Excused: None

Staff Present:

Alan Shear, Interim Community Development Director

Nira Doherty, Assistant City Attorney

Suzanne Thorsen, Principal Planner

Danielle Crider, Associate Planner

Evan Gorman, Assistant Planner

Della Olm, Administrative Secretary

5) REFERENCE TO FUNDAMENTAL RIGHTS OF PUBLIC

6) ADOPTION OF AGENDA

On motion of Commissioner Catton, seconded by Commissioner Dravnieks-Apple, the Commission approved the agenda on a roll call by the following vote:

Ayes: Commissioners Catton, Dravnieks-Apple, Eckmeyer, Mollica, Macenski, Stock

Noes: (None)

7) OPPORTUNITIES FOR PUBLIC COMMENTS

None.

8) WRITTEN

Mark Hajjar submitted a letter regarding the downtown historic district guidelines on January 9, 2020 that was provided to the Commissioners via email and paper copy.

9) PUBLIC COMMENTS

10) CONSENT CALENDAR

10.A November 14, 2019 Draft Minutes

[November 14, 2019 Draft Minutes](#) 

On motion of Commissioner Catton, seconded by Commissioner Dravnieks-Apple, the Commission approved the consent calendar on a roll call by the following vote:

Ayes: Commissioners Catton, Dravnieks-Apple, Eckmeyer, Mollica, Macenski, Stock
Noes: (None)

11) REGULAR AGENDA ITEMS

11.A Amendments to Title 17 (Zoning) of the Benicia Municipal Code pertaining to regulations for accessory dwelling units (ADUs), after a determination that the project is exempt from CEQA.

[PC Staff Report](#) 

1. [Draft Resolution with Exhibit A](#) 

2. [ADU Summary of Legislative Changes.pdf](#) 

3. Updates to State Legislation for ADUs.pdf 
4. Summary of Stakeholder Feedback August and October 2019 
5. Correspondence from Brandon Marshall August 8 2019 
6. Summary of Stakeholder Feedback November 2019 
7. Correspondence from Leann Taagepera and Staff Response 
8. Correspondence from Mark Hajjar December 16, 2019 
9. Presentation from Brandon Marshall and Brian Harkins, December 19 2019 
10. Draft Minutes HPRC December 19 2019 
11. Markup of Current Regulations.pdf 

Suzanne Thorsen, Principal Planner, provided a presentation.

Public Comment:

Mark Hajjar, a resident and architect in Benicia, read written comment which was provided to the Planning Commission at the hearing. He commented with concerns about requiring Design Review for projects that depend on separate construction.

Brandon Marshall, an architect and Benicia resident, discussed the downtown historic district guidelines and costs of construction in the historic district.

Brian Harkins, a Vallejo resident who owns property in Benicia, discussed the ADU (Accessory Dwelling Unit) ordinance and the regulation of building materials for non-historic structures.

Commissioner Discussion:

DRAFT

Commissioners and Staff discussed design review for Accessory Dwelling Units over detached garages in the historic district.

On motion of Commissioner Catton, seconded by Commissioner Apple, the Commission approved the ordinance amending Chapter 17.16 (Use Classifications), Chapter 17.70 (General Regulations) and Chapter 17.108 (Design Review) of the Benicia Municipal Code (BMC), after a public hearing and determination that the project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) on a roll call by the following vote:

Ayes: Commissioners Catton, Dravnieks-Apple, Eckmeyer, Mollica, Macenski, Stock
Noes: (None)

11.B Presentation - Information Session on Housing

[Staff Report - Information Session on Housing](#) 

Evan Gorman, Assistant Planner, and Danielle Crider, Associate Planner, provided a presentation.

Commissioners and staff discussed the environmental justice goal in the proposed ADU Ordinance, a possible CEQA review to the General Plan's Environmental Impact Report, downtown historic district guidelines, and identifying usable sites for housing for the Regional Housing Needs Allocation.

12) COMMUNICATION FROM STAFF

Ms. Thorsen informed the Commissioners that Brad Misner will begin as the new Community Development Director on January 27, 2020.

13) COMMUNICATION FROM COMMISSIONERS

Commissioner Eckmeyer announced that she will not be applying for another term as a Planning Commissioner due to conflicting schedules with her employment.

Commissioners thanked her for her service.

14) ADJOURNMENT

Vice Chair Macenski adjourned the meeting at 8:17 P.M.

RESOLUTION NO. 20-01 (PC)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL APPROVAL OF AMENDMENTS TO THE BENICIA MUNICIPAL CODE TITLE 17 (ZONING) TO AMEND REGULATIONS FOR ACCESSORY DWELLING UNITS

WHEREAS, the California State Legislature finds that Accessory Dwelling Units (ADUs) are an essential component of California's housing supply that provide additional rental stock and housing for family members, students, the elderly, in-home health care providers, people with disabilities and others at below market prices within existing neighborhoods; and

WHEREAS, upon adoption of the current ADU ordinance on January 15, 2019, the Benicia City Council directed further updates to address the quality of living space above a ground floor garage, lot coverage, setbacks and other comments from local architects; and

WHEREAS, new legislation for ADUs will take effect on January 1, 2020 that necessitates revisions to the Benicia Municipal Code for consistency with State housing law; and

WHEREAS, the City of Benicia intends to amend its regulations for ADUs to address the direction of the City Council and maintain consistency with State housing law; and

WHEREAS, Benicia Housing Element Policy 1.04 states that the City will review and revise regulatory standards necessary to comply with State Housing law; and

WHEREAS, Benicia Housing Element Program 1.10 states that the City will amend the Zoning Ordinance for second units (accessory dwelling units) including the allowance of ADUs above a garage, modification of parking requirements and modification of fees; and

WHEREAS, the Historic Preservation Review Commission at a regular meeting on December 19, 2019, conducted a hearing, heard public comment and reviewed the draft ordinance found it to be consistent with the City of Benicia General Plan and Housing Element; and

WHEREAS, the Planning Commission at a regular meeting on January 9, 2020 conducted a hearing, heard public comment and reviewed the draft ordinance found it to be consistent with the City of Benicia General Plan and Housing Element; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Benicia hereby recommends the City Council approve an Ordinance amending the Benicia Municipal Code and a Resolution amending the Downtown Mixed Use

Master Plan to incorporate regulations pertaining to accessory dwelling units. The Commission recommends that the City Council establish a one-year review period following adoption of the amended regulations, whereby the effectiveness of the regulations may be evaluated and subsequent amendments completed as appropriate

BE IT FURTHER RESOLVED THAT the Planning Commission of the City of Benicia finds that:

- a) The proposed amendments are exempt from environmental review under California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15282(b) that exempts the adoption of an ordinance regarding second units in a single family or multifamily residential zone to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code. The additional clean-up amendments are exempt pursuant to Section 15061(b), the "General Rule", which states that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the project would have a significant effect on the environment. The proposed clean-up amendments merely clarify and align existing Code and would not alter the physical environment in any manner that would result in a significant effect on the environment.

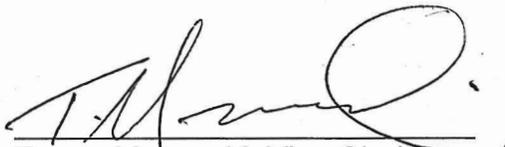
On motion of Commissioner Apple, seconded by Commissioner Catton, the above Resolution is introduced by the Planning Commission of the City of Benicia at a regular meeting of the Commission held on the 9th day of January 2020 and adopted by the following vote:

Ayes: Commissioners Apple, Catton, Eckmeyer, Macenski, Mollica, Stock

Noes: None

Absent: Chair Birdseye

Abstain: None



 Trevor Macenski, Vice Chair

1/13/2020

 Date

CITY OF BENICIA

ORDINANCE NO. 20-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING BENICIA MUNICIPAL CODE CHAPTER 17.16 (USE CLASSIFICATIONS), CHAPTER 17.70 (GENERAL REGULATIONS) AND CHAPTER 17.108 (DESIGN REVIEW) OF TITLE 17 (ZONING), ALL PERTAINING TO THE REGULATION OF ACCESSORY DWELLING UNITS, AND FINDING ADOPTION OF THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the California State Legislature finds that Accessory Dwelling Units (ADUs) are an essential component of California's housing supply that provide additional rental stock and housing for family members, students, the elderly, in-home health care providers, people with disabilities and others at below market prices within existing neighborhoods; and

WHEREAS, new legislation for ADUs took effect on January 1, 2020 that necessitates revisions to the Benicia Municipal Code for consistency with State housing law; and

WHEREAS, Benicia Housing Element Policy 1.04 states that the City will review and revise regulatory standards necessary to comply with State Housing law; and

WHEREAS, the Historic Preservation Review Commission conducted a duly noticed public hearing on December 19, 2019, and recommended approval of the ordinance amending Title 17 (Zoning) pertaining to accessory dwelling units to the City Council; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on January 9, 2020, and recommended approval of the ordinance amending Title 17 (Zoning) pertaining to accessory dwelling units to the City Council; and

WHEREAS, the City Council of the City of Benicia held a duly noticed public hearing on the proposed amendments and introduced Ordinance No. _____ on January 21, 2020.

NOW, THEREFORE, the City Council of the City of Benicia does hereby ordain as follows:

Section 1. Section 17.16.080 (Accessory use classifications) of Chapter 17.16 (Use Classifications) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows:

A. Accessory Uses and Structures. Uses and structures that are incidental to the principal permitted or conditionally permitted use or structure on a site and are customarily found on the same site. This classification includes accessory dwelling units, home occupations, and construction trailers.

1. 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. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes an efficiency unit and a manufactured home, as defined in Section 18007 of the Health and Safety Code.

a. Attached Accessory Dwelling Unit. An accessory dwelling unit that shares at least one common wall with the primary dwelling and is not fully contained within the existing space of the primary dwelling or an accessory structure.

b. Detached Accessory Dwelling Unit. An accessory dwelling unit that does not share a common wall with the primary dwelling and is not fully contained within the existing space of an accessory structure.

c. Internal Accessory Dwelling Unit. An accessory dwelling unit that is fully contained within the existing space of the primary dwelling or an accessory structure.

d. Junior Accessory Dwelling Unit. A unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.

2. Donation and Collection Bin. An unstaffed drop-off box, receptacle or other similar container used to accept donated clothing or other salvageable personal property, including but not limited to books, shoes, canned goods, and small household items to be used by a nonprofit or for-profit operator for distribution, resale, or recycling. (Ord. 19-04 § 1; Ord. 19-02 § 2).

Section 2. Section 17.70.060 (Accessory dwelling units) of Chapter 17.70 (General Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is hereby repealed and replaced to read as follows:

17.70.060 Accessory dwelling units.

A. Purpose. This section is intended to achieve the goals of the city's housing element and of the California Government Code by permitting accessory dwelling units, thereby increasing housing opportunities for the community through use of existing housing resources and infrastructure.

B. Where Allowed. An accessory dwelling unit is permitted:

a. In any district where single-family or multifamily dwellings are a permitted use; and

b. On any lot with an existing or proposed single-family or multifamily dwelling.

C. Permitting Process.

1. When Consistent with Standards.

- a. An accessory dwelling unit that complies with all standards in this section shall be approved ministerially upon issuance of a building permit. No other permit, discretionary review, or public hearing is required.
- b. If an existing single-family or multifamily dwelling exists on the lot upon which an accessory dwelling unit is proposed, the City shall act on an application to create an accessory dwelling unit within 60 days from the date the City receives a completed application. If the applicant requests a delay in writing, the 60-day time period shall be tolled for the period of the delay.
- c. The City has acted on the application if it:
 - (1) Approves or denies the building permit for the accessory dwelling unit;
 - (2) Informs the applicant in writing that changes to the proposed project are necessary to comply with this section or any applicable regulation; or
 - (3) Determines that the accessory dwelling unit does not qualify for ministerial approval.

2. When Deviating from Standards.

- a. A proposed accessory unit that deviates from the standards in subsection J (Objective Design Standards) of this section shall be reviewed and may be approved or denied subject to the design review procedures in Chapter 17.108 (Design Review).
- b. A proposed accessory dwelling unit that deviates from standards in subsection I (Development Standards) or any other applicable physical standard of this section shall be reviewed and may be approved or denied subject to the variance procedures in Chapter 17.104 (Use Permits and Variances).

3. When Dependent on Separate Construction. When a proposed attached or detached accessory dwelling unit is dependent on the construction of a new building or new portion of a building that is not a part of the accessory dwelling unit (“separate construction”), the City shall either:

- a. Accept and begin processing the accessory dwelling unit application only after acting on an application for the proposed separate construction; or
- b. Upon written request from the applicant, review and act on the accessory dwelling unit together with the separate construction as part of a single application. In this case,

the accessory dwelling unit is subject to the same review procedures and requirements as the separate construction.

D. Junior Accessory Dwelling Units.

1. General. Junior accessory dwelling units shall comply with all standards in this section unless otherwise indicated.
2. Sanitation Facilities. A junior accessory dwelling unit may include sanitation facilities, or may share sanitation facilities with the existing structure.
3. Kitchen. A junior accessory dwelling unit must include, at a minimum:
 - a. A cooking facility with appliances; and
 - b. At least three linear feet of food preparation counter space and three linear feet of cabinet space.

E. Maximum Number per Lot. Not more than one accessory dwelling unit is allowed per lot except as allowed by subsections G.2 (Detached Accessory Dwelling Units), G.3 (Non-livable multifamily space) and G.4 (Detached Accessory Dwelling Units on Multifamily Lots) of this section.

F. Accessory Use. An accessory dwelling unit that conforms to this section:

1. Is considered an accessory use or accessory structure;
2. Is not considered to exceed the allowable density for the lot upon which it is located; and
3. Is considered a residential use consistent with the general plan and zoning designation for the lot.

G. Units Subject to Limited Standards. The city shall ministerially approve an application for a building permit within a residential or mixed-use district to create the following types of accessory dwelling units. For each type of accessory dwelling unit, the city shall require compliance only with the development standards in this subsection. Standards in subsections I (Development Standards) and J (Objective Design Standards) do not apply to these types of accessory dwelling units.

1. Internal Accessory Dwelling Units. One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:
 - a. The accessory dwelling unit or junior accessory dwelling unit, as such use is classified in section 17.16.080, is within the proposed space of a single-family dwelling

or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

- b. The space has exterior access from the proposed or existing single-family dwelling.
- c. The side and rear setbacks are sufficient for fire and safety.
- d. The junior accessory dwelling unit complies with the requirements of Government Code Section 65852.22.

2. Detached Accessory Dwelling Units. One detached, new construction, accessory dwelling unit for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subsection G.1 (Internal Accessory Dwelling Units). The accessory dwelling unit must comply with the following:

- a. Maximum floor area: 800 square feet.
- b. Maximum height: 16 feet.
- c. Minimum rear and side setbacks: four feet.

3. Non-Livable Multifamily Space. Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, subject to the following:

- a. At least one accessory dwelling unit is allowed within an existing multifamily dwelling up to maximum of 25 percent of the existing multifamily dwelling units; and
- b. Each accessory dwelling unit shall comply with building code standards for dwellings.

4. Detached Accessory Dwelling Units on Multifamily Lots. Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling, are subject to the following:

- a. Maximum height: 16 feet
- b. Minimum rear and side setbacks: four feet.

H. General Standards. Except as provided in subsection G (Units Subject to Limited Standards) of this section, an accessory dwelling unit shall comply with the following general standards:

1. Rental.

a. An accessory dwelling unit may be rented but shall not be sold or otherwise conveyed separately from the primary dwelling.

b. The rented unit shall not be leased for any period less than 30 days.

2. Primary and Accessory Designations. An existing primary dwelling unit may be designated as an accessory dwelling unit if:

a. The existing dwelling to be designated as an accessory dwelling unit complies with all standards in this section; and

b. The new primary dwelling unit is built in compliance with applicable standards and requirements of this title that apply to primary dwellings.

3. Nonconforming Uses and Structures. In conformance with BMC 17.98.020 and 17.98.030, the City shall not require, as a condition for approval of a permit application, the correction of nonconforming zoning conditions.

I. Development Standards. Except as provided in subsection G (Units Subject to Limited Standards) of this section, an accessory dwelling unit shall comply with the following development standards.

1. Floor Area. The floor area of an accessory dwelling unit shall not exceed the maximums shown in Table 1.

Table 1: Maximum Floor Area

ADU Type	Maximum ADU Floor Area
Attached	
One bedroom or less	50 percent of the existing primary dwelling or 850 sq. ft., whichever is greater
More than one bedroom	50 percent of the existing primary dwelling or 1,000 sq. ft., whichever is greater
Detached	1,200 sq. ft.
Internal	50 percent of the existing primary dwelling
Junior	500 sq. ft.

2. Bulk Standards.

a. An accessory dwelling unit shall conform to the applicable floor area ratio and site landscaping standards of the district in which it is located, except when otherwise allowed by subsection J.4 (Guaranteed Allowance) of this section.

b. An accessory dwelling unit is exempt from maximum lot coverage standards.

3. Guaranteed Allowance. Maximum floor area, floor area ratio, and open space standards shall not prohibit an accessory dwelling unit with at least an 800 square feet of floor area, a height of at least 16 feet, and four-foot side and rear yard setbacks, provided the accessory dwelling unit complies with all other applicable standards.

4. Property Line Setbacks.

a. All Accessory Dwelling Units. An accessory dwelling unit shall be setback from property lines as required by Table 2.

b. Detached Accessory Dwelling Units.

(1) A detached accessory dwelling unit shall not occupy a required court or front yard, nor project beyond the front building line of the principal structure on the site. In an H historic overlay district, the detached accessory dwelling unit shall not project beyond the primary contributing façade, defined as the building face of a designated landmark or contributing building which is parallel to a street or former right-of-way and provides a front entrance leading to a foyer or lobby.

(2) A ground-floor deck, balcony or platform attached to or associated with a detached accessory dwelling unit shall be located at least four feet from a rear or side property line. See subsection J.1 (Second story Decks and Balconies) of this section for second-story deck and balcony setback standards.

Table 2: Minimum Property Line Setbacks

Property Line	ADU Type			
	Attached	Detached	Internal	Junior
Front	Same as primary dwelling [1]		None required	
Side	4 ft.	4 ft.		
Rear	4 ft.	4 ft.		

Note:

[1] For detached accessory dwelling units, see also 17.70.060.I.4.b (Detached Accessory Dwelling Units). For detached accessory structures in an H historic overlay district, see also 17.70.060.J.6 (Historic District Standards).

5. **Building Separation.** A minimum five-foot distance shall be maintained between a detached accessory dwelling unit the primary building on the site. A detached accessory structure shall be set back from other structures on the site as required by the building code.

6. **Converting and Replacing Existing Structures.**

- a. An internal ADU may be constructed regardless of whether it conforms to the current zoning requirement for building separation or setbacks.
- b. If an internal ADU is proposed to be constructed within an existing accessory structure, the city shall ministerially permit an expansion of the existing accessory structure by up to 150 square feet for the purpose of accommodating ingress and egress.
- c. If an existing structure is demolished and replaced with an accessory dwelling unit, an accessory dwelling unit may be constructed in the same location and to the same dimensions as the demolished structure.

7. **Height.**

- a. **Historic Districts.** The height of an accessory dwelling unit in an H historic overlay district shall not exceed the maximums shown in Table 3.

Table 3: Maximum Height in Historic Districts

ADU Type	Maximum ADU Height [1]
Attached	Same as required for primary dwelling
Detached	
Exterior building wall [2]	14 ft.
Roof peak (based on roof pitch)	
Below 4:12	16 ft.
4:12 to less than 6:12	18 ft.
6:12 or greater	20 ft.
Internal	Not applicable
Junior	Not applicable

Note:

[1] For detached accessory structures in an H historic overlay district, see also 17.70.060.K.6 (Historic District Standards).

[2] Measured to the top plate.

b. Outside Historic Districts. The roof peak of a detached accessory dwelling unit outside of an H historic overlay district shall not exceed the maximums shown in Table 4. The maximum allowed height for attached accessory dwelling units is the same as required for the primary dwelling. Height standards do not apply to internal and junior accessory dwelling units.

Table 4: Detached Accessory Dwelling Unit Maximum Height Outside Historic Districts

Maximum Roof Peak Height Based on Roof Pitch	Exterior Building Wall Distance from Rear or Side Property Line		
	4 ft. to less than 5 ft.	5 ft. to less than 7 ft.	7 ft. or more
Below 4:12	16 ft.	18 ft.	20 ft.
4:12 to less than 6:12	18 ft.	20 ft.	22 ft.
6:12 or greater	20 ft.	22 ft.	24 ft.

8. Foundation. An accessory dwelling unit shall be constructed on a permanent foundation.

J. Objective Design Standards. Except as provided in subsection G (Units Subject to Limited Standards) of this section, an accessory dwelling unit shall comply with the following design standards.

1. Second Story Decks and Balconies. Second story decks and balconies shall be set back a minimum of 10 feet from a side or rear property line adjoining a lot occupied by a single-family or two-family dwelling.

2. Outdoor stairs. Outdoor stairs providing access to a second story accessory dwelling unit shall adjoin an exterior wall that faces the interior of the lot, rather than an exterior wall nearest a side or rear property line.

3. Dormers. The side wall of a dormer shall be set back a minimum of two feet from the parallel side wall below. The cumulative width of a dormer or dormers on any side of an accessory dwelling unit shall not occupy more than 66 percent of the building face below.

4. Gables. If a gable roof or turned gable roof is present, the gable ridge shall be oriented in a direction parallel to the side property line in order to minimize shadow effects on the adjoining lot.

5. Roof Pitch. The roof pitch for an accessory dwelling unit shall be 4:12 or greater. However, if the primary residence has a roof pitch shallower than 4:12, a similar pitch may be employed on the accessory dwelling.

6. Historic District Standards. In an H historic overlay district, an accessory dwelling unit shall conform to the following additional requirements:

- a. Except as provided in subsection I.6 of this section, a detached accessory dwelling unit shall be set back from the primary contributing façade and/or front property line such that the entirety of the accessory dwelling unit is behind the rear wall of the principal structure on the lot.
- b. The elevation of the highest point of a detached accessory dwelling shall not exceed the elevation of the highest point of the primary dwelling, except that in all cases a detached accessory dwelling unit at least 16 feet in height is allowed.
- c. An attached accessory dwelling unit shall not result in a rooftop addition or any alteration to the existing roofline of a designated historic contributing or landmark structure.
- d. An accessory dwelling unit shall not result in any increase in building height for a designated historic contributing or landmark structure, except that in all cases an attached accessory dwelling unit at least 16 feet in height is allowed.
- e. An accessory dwelling unit shall not result in any exterior alteration to the primary contributing façade nor the existing wall or façade of a designated historic contributing or landmark structure where such wall or façade is parallel to a public street.
- f. A building addition to a designated historic contributing or landmark structure to accommodate an attached accessory dwelling unit shall be inset or separated by a connector that is offset at least 18 inches from the parallel side or rear building wall to distinguish it from the primary dwelling. Such building addition shall not extend beyond the side wall of the primary dwelling.
- g. For an attached accessory dwelling unit, the exterior building and trim materials shall be wood or smooth fiber cement siding or f shingles. However, if Portland cement plaster (stucco) is the predominant finish for the primary residence, then stucco may also be applied to the accessory dwelling. Synthetic stucco (e.g., EIFS or DryVit) and faux wood grains are prohibited.
- h. For a detached accessory dwelling unit, the following exterior building materials are prohibited: pressed board, vinyl, synthetic stucco and any composite or fiber cement material with a faux wood grain.
- i. The exterior walls of an accessory dwelling shall utilize the same base and trim colors as the primary residence.
- j. The roof shall utilize the same material and color as the primary residence and shall match the primary residence in overall appearance.

k. Windows shall be taller than they are wide or shall match the proportions of the primary dwelling's windows. Windows in bathrooms, basements and crawl spaces, kitchens and laundry rooms may be horizontally oriented.

l. Window pane divisions shall be true or simulated divided lites (i.e., individual panes set within muntins or muntins applied to both the interior and exterior of the glass).

m. Window frames shall be painted or factory-finished. No metallic finishes such as silver or bronze anodized aluminum are permitted.

n. For designated contributing and landmark structures, vinyl windows are not permitted on an attached ADU.

K. Parking.

1. No additional off-street parking stalls shall be required for an accessory dwelling unit.

2. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, replacement parking stalls are not required for the demolished parking structure.

L. Recordation of Deed Restriction. An executed deed restriction, on a form provided by the city, shall be submitted to the city prior to issuance of a building permit and shall be recorded prior to final occupancy. The deed restriction shall stipulate all of the following:

1. That the rented unit shall not be rented for any period less than 30 days at a time; and

2. That the accessory dwelling shall not be sold separately from the primary dwelling.

3. For junior accessory dwelling units, restrictions on size and attributes in conformance with this section.

Section 3. Subsection C (Exceptions to Criteria) of Section 17.108.060 (Review responsibilities) of Chapter 17.108 (Design Review) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows:

C. Exceptions to Criteria. The community development director may authorize minor deviations from the zoning standards specified herein: timing of construction for an accessory structure, projection of detached garage in the RS district, separation between buildings per BMC 17.70.050; and modifications in vehicle space size requirements per BMC 17.74.100.

Section 4. Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 5. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15282(b) that exempts the adoption of an ordinance regarding second units in a single family or multifamily residential zone to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code. The additional clean-up amendments are exempt pursuant to Section 15061(b), the “General Rule”, which states that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the project would have a significant effect on the environment. The proposed clean-up amendments merely clarify and align existing Code and would not alter the physical environment in any manner that would result in a significant effect on the environment. The City Clerk shall file a Notice of Exemption with the County.

Section 5. Publication. The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Benicia, California and cause the same to be published in accordance with State law.

Section 6. Effective Date. This Ordinance shall be in full force and effective thirty (30) days after its adoption and shall be published and posted as required by law.

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the _____ day of _____, 2020, and adopted at a regular meeting of the Council held on the _____ day of _____, 2020, by the following vote:

Ayes:

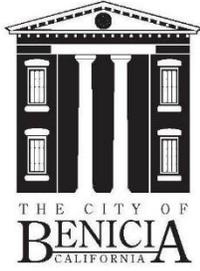
Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk



**AGENDA ITEM
CITY COUNCIL MEETING DATE – JANUARY 21, 2020
BUSINESS ITEMS**

TO : City Manager

FROM : Interim Community Development Director

SUBJECT : **DISCUSSION OF REVISIONS TO USE PERMIT APPLICATION AND PUBLIC SAFETY LICENSE FEES FOR CANNABIS OPERATIONS**

EXECUTIVE SUMMARY:

On December 17, 2019, the City Council directed staff to return on January 21, 2020 with reconsideration of the adopted cannabis use permit application fee and Public Safety License fees charged to cannabis operations. Both the cannabis Use Permit fee and the associated cannabis Public Safety License application fee are currently charged as “fixed fees”, with the specified fee amount adopted into the City’s Master Fee Schedule. Based on Council’s discussion, this staff report is providing two options to revise the cannabis operations Use Permit application and Public Safety License fees: (1) reduce the fixed fee amount, or (2) require the applications to be processed and billed on an hourly rate basis. Under both these options, any other external service provider costs that are expended to process these applications, such as CEQA review, would also be charged to the applicant.

RECOMMENDATION:

Discuss the cannabis Use Permit application fee and Public Safety License fee options provided and direct staff to prepare the required documents to amend the City’s Master Fee Schedule to accomplish either of the following:

1. Establish the cannabis use permit application fee and public safety license fee to be charged on an hourly rate basis and reimbursed to the city by the applicant. A resolution approving a new hourly billing methodology and hourly rates for cannabis operations, among other new documentation, would also be required; or
2. Reduce the fixed fee to process a cannabis use permit application to a lesser amount such as the lowest existing amount in the current fee schedule for a Use Permit application of \$5,361; and reduce the fixed fee to process a Public Safety License application to \$11,610.

BUDGET INFORMATION:

As discussed in previous staff reports, new cannabis businesses will impact the City’s budget in terms of increased costs that should be offset by established application and renewal fees.

BACKGROUND:

The City Council adopted four ordinances at its February 20, 2018 meeting to allow cannabis uses in Benicia. These ordinances specifically allow commercial cannabis uses in Benicia. All commercial cannabis uses in Benicia are required to obtain a Public Safety License and Use Permit. The Public Safety License is administered by the Police Department and reviews the security plan for the business and requires backgrounding of employees, owners and managers. The Use Permit is administered by the Community Development Department and requires Planning Commission approval following a public hearing.

On June 5, 2018, the City Council approved Resolution No. 18-56 adopting fees and charges into the City's Master Fee Schedule related to cannabis Use Permit applications, and cannabis Public Safety License applications. The fee to process a Use Permit application for establishment of any allowable cannabis business is a fixed fee of \$19,000 and the fee to process a Public Safety License application is a fixed fee of \$16,200. As a point of comparison, City fees for a Use Permit application for residential, commercial or industrial projects range between \$5,361 - \$14,515, depending on the size and type of project proposed. All City planning fees are currently fixed fees and listed in the Planning Fee Schedule (Attachment 1).

Additionally, the City passes-though to the applicant any discrete costs incurred from the use of external service providers if required to process the specific application. For example, if environmental studies, outside consultants, or other costs are incurred, the applicant would pay these costs with the standard 15% surcharge added to all outside consulting fees.

On September 17, 2019, the City Council adopted an ordinance creating a license classification for cannabis delivery-only retail operations (without restriction on the number of such businesses) and limited the location of delivery-only retail operations and microbusiness uses to the Industrial Districts within the Benicia Industrial Park, north of Interstate Highway 780.

ANALYSIS:

The two-step request submitted by Vice Mayor Strawbridge and Councilmember Young and discussed at the December 17, 2019 meeting (Attachment 2) stated the following:

“Our \$35,000 fee is well in excess of what other cities charge and will (unless modified) mean that cannabis businesses will likely not locate here, costing the City potentially significant revenue. If we want to encourage this new industry to locate here, as well as attempt to cut into the black market, we must offer a competitive environment. The State recently announced they are raising their taxes an additional 15% as well.”

Based on Council's direction at the June 5, 2018 meeting, the current cannabis fees were developed using a full cost recovery methodology. The fees would reimburse the city for the cost of all consultant and special legal services to create the ordinances and the ordinance review process, as well as additional staff capacity in both the Police Department and Community Development Department that also included consultant assistance to process the applications. The City also incurred costs associated with reviewing the retail cannabis proposals and conducting the selection process. Since cities are allowed to charge fees to applicants to recover

the full cost of providing services, the current cannabis Use Permit fee and Public Safety License fee were calculated to recover the described costs.

Of the two options presented in this report, staff recommends that the Council choose the first option and direct staff to move forward with the necessary implementation steps.

Comparison with Fees/Payments in other Jurisdictions

Fees for cannabis businesses, as well as the type of cannabis business allowed vary widely within the city and county jurisdictions located in the region. Many jurisdictions near Benicia have adopted regulations that allow cannabis businesses, while other nearby jurisdictions have decided to allow only those cannabis activities that are required to be allowed by State law. The unique combination of various fees, taxes, and payments ultimately determine the short-term and long-term “bottom line” for a new cannabis business when choosing a location.

Councilmember Young has provided fee information from San Francisco to process a cannabis retailer, medicinal cannabis retailer, and delivery-only cannabis retailer (Attachment 3).

Fee Methodology

A billing process to track and bill for the actual staff time used to process each cannabis application would require the applicant to submit a deposit and staff from the Community Development Department (Planning and Building), Police Department, Fire Department, Public Works, and any other department whose time is required to review and process the applications, would bill their time spent to review against the deposit. The applicant would be required to refresh the deposit account and submit additional funds if the dollar amount reached a certain threshold. The hourly rates charged to the applicant depend on the level of staff time required for application review and any other related processing activities.

It should be noted that a billing procedure will require new systems to be established for the City. Establishing and administering a new hourly rate billing and collection system would be new to the City.

The hourly rates for city staff in each department, including an administrative surcharge, would be added to the Master Fee Schedule. In addition, the amount of the application deposits would need to be determined and new reimbursement-based agreements for cannabis applications would be developed to ensure that applicants remain up-to-date with their billing payments, or processing activities may be paused.

NEXT STEPS:

Provide direction to staff on the preferred revisions to the cannabis operation application fees process so such changes can be implemented as necessary. If either option is selected, the amended Master Fee Schedule will return to Council for adoption at the February 4, 2020 meeting and the revised fees will take effect March 5, 2020.

ALTERNATIVE ACTIONS:

Provide alternate direction.

General Plan	<p>Goal 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life.</p> <ul style="list-style-type: none"> • Program 2.5.C: Evaluate future uses on a cost/revenue basis, taking into account economic diversity for the long term and environmental and community costs and benefits.
	<p>Goal 2.6: Attract and retain a balance of different kinds of industrial uses to Benicia.</p> <ul style="list-style-type: none"> • Policy 2.6.1: Preserve industrial land for industrial purposes and certain compatible “service commercial” and ancillary on-site retail uses. • Policy 2.6.2: Other land uses should not adversely affect existing industrial and commercial land uses.
	<p>Goal 2.13: Support the economic viability of existing commercial centers. Policy 2.12.1: Direct new commercial ventures first, towards Downtown, and second, to other existing economic centers (instead of dispersing resources to new areas).</p>
	<p>Goal 4.4: Reduce the incidence of substance abuse and strive for a drug-free community.</p>
	<p>Goal 4.6: Prevent and reduce crime in the community.</p>

Strategic Plan	Strategic Issue 1: Protecting Community Health and Safety
	Strategy 5: Promote community and personal health
	Strategic Issue 3: Strengthening Economic and Fiscal Conditions

CEQA Analysis	<p>The actions under consideration are not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15060, subd. (c)(2) because they will not result in a direct or reasonably foreseeable indirect physical change in the environment and pursuant to CEQA Guidelines section 15061, subd. (b)(3) because there is no possibility the activity in question may have a significant effect on the environment. Furthermore, Business and Professions Code Section 26055(h) exempts from Division 13 of the Public Resources Code, the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity whereby the discretionary review in any such law, ordinance, rule, or regulation includes any applicable environmental review pursuant to Division 13.</p>
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ATTACHMENTS:

1. City of Benicia Planning Fee Schedule, effective 9/1/19
2. Two-Step Request Submitted by Vice Mayor Strawbridge and Councilmember Young
3. Email from Councilmember Young – Cannabis Application Fees from San Francisco

For more information contact: Alan Shear, Interim Community Development Director

Phone: 707.746.4309

E-mail: ashear@ci.benicia.ca.us

City of Benicia Planning Fee Schedule

Fee Description	Notes	Effective 9/1/19
Planning Applications		
General Plan Amendment		\$ 17,163
Zone Change (including map)		\$ 8,578
Annexation		\$ 8,578
Condominium Conversion		\$ 9,246
Development Agreement	[1]	\$ 5,361
Ordinance Revision (text amendment)		\$ 5,897
Overlay District Plan		\$ 8,578
Planned Development		\$ 8,042
Use Permit		
Office Projects up to 7,500 sq. ft.		\$ 5,361
Residential Projects up to 6 units		\$ 5,361
Commercial/industrial up to 7,500 sq. ft.		\$ 5,361
Officer projects 2,501-7,500 sq. ft.		\$ 5,361
Residential Projects 7 or more units		\$ 14,515
Commercial/Industrial more than 7,501 sq. ft.		\$ 14,515
Cannabis Use Permit	[4]	\$ 19,000
All other projects		\$ 5,361
Use Permit (staff level)		\$ 2,144
Use Permit (temporary)		\$ 536
Variance		
Variance (Staff-Single Family Residences)		\$ 2,144
Variance (Commission)		\$ 5,361
Design Review		
Residential Design Review - Commission Level- Outside H District; Single Family Exempt		\$ 2,681
Commercial Design Review - Staff Level		\$ 1,286
Residential Design Review-Commission level Minor (H District Only)		\$ 858
Commercial Design Review- Commission Level		\$ 2,681
Commercial Design Review (Commission or staff level, Minor)		\$ 1,286
Design Review Exemption or Exception to Criteria	[5]	\$ 118

City of Benicia Planning Fee Schedule

Fee Description	Notes	Effective 9/1/19
Miscellaneous		
Accessory Dwelling Unit (Ministerial)	[2,4]	\$ 181
Appeal/Rehearing/Review		\$ 536
Extension of Approval (Staff)		\$ 214
Extension of Approval (Commission)		\$ 858
Home Occupation Permit		\$ 107
Building Permit Review (1 check/1 re-check)		\$ 107
Field Inspection (Associated with Building Permit)	[5]	\$ 118
Mills Act Contract		\$ 1,608
Sign Permit (Per Site)		\$ 161
Sign Program (Multi-tenant Building)		\$ 3,217
New Sign under the existing sign program		\$ 54
Zoning Compliance Letter		
Standard Letter (Applicant provides template)		\$ 322.09
Detailed Letter		\$ 536.12
Each additional hour after the first 6 hours		\$ 107.02
Zoning Permit		\$ 107.02
Donation Bin Not-for Profit (Zoning Permit)		\$ 259.75
Donation Bin For Profit (Zoning Permit)		\$ 519.50
Environmental Review		
Exemption from CEQA (filed)		\$ 268
Initial Study/ND		\$ 5,361
Initial Study/Mitigated Negative Declaration		\$ 10,722
Mitigation Monitoring and Reporting Program		\$ 2,289
IS/EIR/EIS-Outsourced	[3,4]	15% of total contract cost
Subdivision Applications		
Parcel Map - 4 or fewer lots	[4]	\$ 10,573
Tentative Map - 4 or fewer lots		\$ 13,960
Tentative Map - 5 or more lots		\$ 13,960
Each additional 5 lots	[6]	\$ 2,288
Vesting Parcel Map - 4 or fewer lots		\$ 13,273
Vesting Tentative Map - 4 or fewer lots		\$ 16,249

City of Benicia Planning Fee Schedule

Fee Description	Notes	Effective 9/1/19
Vesting Tentative Map - 5 or more lots		\$ 16,249
Each Additional 5 lots		\$ 2,289
Lot Line adjustment		\$ 2,144
Certificate of Compliance		\$ 1,374
Parcel Merger/Split		\$ 4,289
Waiver of Parcel Map		\$ 2,289
Reversion to Acreage		\$ 10,299
Mobile Home Park Conversion		\$ 10,722
Certificate of Correction- Minor Corrections approved by staff		\$ 2,289
Amendment to Approved Map or Agreement needing Council/Commission action		\$ 6,866
Extension of Approved Map		\$ 687
Mobile Food Vendor's Permit		
New		\$ 596
Renewal		\$ 107
Water Efficient Landscape Ordinance (WELO) Plan Check Fees		
WELO P.C. Single Family		\$ 804
WELO P.C. for multi-unit dwelling (4 or more units)		\$ 1,126
Other Fees and Charges		
Pre-Application Review (per meeting)	[1]	\$ 1,140
In-Lieu Parking Fee	[4]	Varies
Consultant Services	[3]	Cost of Service plus 15% of project cost for city administrative fees
ALUC Review		\$ 536
Contract Management- Administrative Fee (per contract)	[4]	15% of Consultant Cost
Annual Permit	[4]	15% of Consultant Cost

City of Benicia Planning Fee Schedule

Fee Description	Notes	Effective 9/1/19
<p>For services requested of City staff which have no fee listed in this fee schedule, the City Manager or the City Manager's designee shall determine the appropriate fee based on the established hourly rates for this division. Additionally, the City will pass-through to the applicant any discrete costs incurred from the use of external service providers if required to process the specific application.</p>		
<p style="background-color: #cccccc;"> </p>		

[Notes]

- [1] Actual cost significantly higher than NBS Study
- [2] CA State law changed; Ministerial permit
- [3] Initial deposit will be 25% of contract value
- [4] Maintain status quo fee amount
- [5] Fee in previous schedule was inadvertently omitted
- [6] Fee increased by less than CPI of 3.9% because fee amount caps at full cost recovery

APPENDIX A: COUNCIL MEMBER REQUESTED AGENDA ITEM

Requested by: Councilmember Young & Vice Mayor Strawbridge

Desired Initial Council Meeting Date: December 17, 2019

Desired Date for Second Step or Policy Calendar Review: _____

Deadline for Action, if any: _____

Problem/Issue/Idea Name: Adjusting Tax Rate for Cannabis Delivery Operations and Review of Cannabis Business Application Fees

Description of Problem/Issue/Idea:

In late 2018, the City Council set tax rates for various types of cannabis activities. The rate for delivery businesses was set at 2% for 2019, escalating to 3% in 2020 and 4% in 2021. For a variety of reasons, the City approval of cannabis business applications has been delayed. Now, with the recent decision by the Council to allow unlimited delivery businesses in the Industrial Park, we have at least one delivery business interested in locating there. But there are two impediments to them doing so. Two others, one begun by a Benicia businessman, have opted to locate in Pacheco and Oakland, instead, due in part to our excessive fees.

Since no delivery businesses will be up and operating in 2019, part one of this request is to postpone the escalation of the tax rate by one year, so that the tax rate in 2020 would be 2%, going up to 3% in 2021 and 4% in 2022.

The second part of the request relates to the City fees for cannabis businesses, and how they are calculated.

We currently charge \$19,000 for an application for any kind of a cannabis business, and an additional \$16,000 for the public safety license. In addition, businesses must also pay a fee to apply for a Conditional Use Permit. Our \$35,000 fee is well in excess of what other cities charge, and will (unless modified) mean that cannabis businesses will likely not locate here, costing the City potentially significant revenue. If we want to encourage this new industry to locate here, as well as attempt to cut into the black market, we must offer a competitive environment. The State recently announced they are raising their taxes an additional 15% as well.

By comparison, Santa Ana charges \$1,690 in application fees and, if approved, \$12,098 in permit fees.

San Jose charges \$13,846 as an annual operating fee.

Long Beach charges \$5,870 to apply for a license as well as an additional \$1,136 in permit fees for dispensaries and up to \$2,751 for manufacturers.

Union City charges \$9,904 for anyone who makes it through four steps of the process.

Chula Vista charges \$6,879 for application fees.

Commerce charges \$13,025

West Hollywood \$12,375.

Sacramento \$9650

Lompoc \$13,000 all inclusive

Monterey County- \$10,000

The most interesting way to charge for application processing, in our opinion, comes from Nevada City.

There, applicants make a deposit of between \$5-10,000. The City then charges for their actual time expended by city employees in processing the application. All city employees charge a rate of \$75/hr., except for the City Attorney who charges \$175/hr.

This is how other professionals like attorneys and accountants typically bill for their services, and is an approach we favor as a way to assure we are charging fees commensurate with the time needed to process the applications. The City, of course, could charge different hourly rates.

While it would require those city employees who deal with cannabis applications to log and record the time spent while working on specific applications, it is a far more transparent and equitable way to document what we are charging our customers.

When asking members of the industry about their experiences with fees in various California localities,, two comments of note:

"Your city and others are the reason we still have a thriving black market.

Name one other business or industry that is charged \$35,000 prior to getting a license. Then the business needs a property and a year of payments while all these permits go through.

If I want to open a retail clothing store it's a one day application and a small permit fee. I could be open within a week.

Your are only helping your local dealer thrive. Think about that."

And " Fees can not be made up, they need to have a cost basis. Check the state laws." I am not suggesting that our fees are "made up", but note only that we need to justify them.

This request is time sensitive as three businesses, and at least one landlord, are waiting on City action before committing to making Benicia their home.

COUNCIL DIRECTION

- No Further Action
- Schedule for Second Step on _____
- Schedule for Policy Calendar Review on _____
- Refer to: Staff _____
 Commission _____
 Board _____
 Committee _____

Date Due: _____

Attachment 3 - Email from Councilmember Young - Cannabis Application Fees from San Francisco

From: [Alan Shear](#)
To: [Laura Provencher](#)
Subject: FW: application fees for delivery business
Date: Wednesday, January 15, 2020 4:21:37 PM

From: Lorie D. Tinfow <LTinfow@ci.benicia.ca.us>
Sent: Friday, January 03, 2020 12:03 PM
To: Alan Shear <AShear@ci.benicia.ca.us>
Cc: Ben Stock <bstock@bwslaw.com>
Subject: Fwd: application fees for delivery business

Another

Lorie Tinfow
City Manager

Begin forwarded message:

From: Steve & Marty Young [REDACTED] >
Date: December 20, 2019 at 6:28:36 PM PST
To: "Lorie D. Tinfow" <LTinfow@ci.benicia.ca.us>
Subject: Fwd: application fees for delivery business

please include with staff report info when it returns on 1/21

----- Forwarded message -----

From: Office of Cannabis (ADM) <officeofcannabis@sfgov.org>
Date: Fri, Dec 20, 2019 at 4:42 PM
Subject: RE: application fees for delivery business
To: Steve & Marty Young [REDACTED]

<i>Cannabis Permit Type</i>	<i>Inspection Type</i>	<i>Fee Amount</i>
Cannabis Retailer, Medicinal Cannabis Retailer and Delivery- Only Cannabis Retailer	Under 5,001 sq. feet	\$600
	5,001-10,000 sq. feet	\$900
	10,001-20,000 sq. feet	\$1,300
	Over 20,000 sq. feet	\$1,500

I've included the fees for delivery-only cannabis retailers for your convenience. This information can be found in Section 249.2 of the San Francisco Business and Tax Regulations Code. This does not include inspection fees.

SF Office of Cannabis

From: Steve & Marty Young [REDACTED]
Sent: Thursday, November 21, 2019 11:22 AM
To: Office of Cannabis (ADM) <officeofcannabis@sfgov.org>
Subject: application fees for delivery business

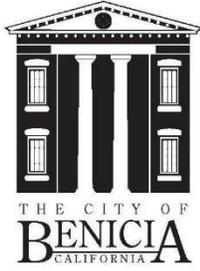
This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I am a councilman in Benicia, where we recently voted to allow unlimited deliveries originating in our Industrial Park.

Our current fees to apply for a delivery fee however are quite high (\$35,000 total). I want to go back and ask for amendments to the fees, but need to know what other cities in the bay area are charging.

Is that something you can help me with?

Steve Young



AGENDA ITEM
CITY COUNCIL MEETING DATE – JANUARY 21, 2020
BUSINESS ITEMS

TO : City Manager

FROM : Interim Community Development Director

SUBJECT : **MODIFICATION OF EXCISE TAX RATES FOR CANNABIS DELIVERY BUSINESSES OPERATING IN BENICIA**

EXECUTIVE SUMMARY:

At the December 17, 2019 meeting, the City Council discussed a two-step request submitted by Councilmember Young and Vice Mayor Strawbridge for consideration of deferring the excise tax rate for cannabis delivery operations for one year. Since no delivery businesses were operating in 2019, the two-step request is to modify the delivery tax rate such that the tax rate in 2020 is 2%, increasing to 3% in 2021, and 4% in 2022 and beyond.

RECOMMENDATION:

Move to adopt a resolution (Attachment 1) to defer the excise tax rates for one year for cannabis delivery businesses operating in Benicia, and to modify the delivery tax rate to the following: 2% in 2020 (effective through 12/31/20); 3% in 2021 (1/1/21-12/31/21); 4% in 2022 (effective 1/1/22) and beyond.

BUDGET INFORMATION:

As discussed in previous staff reports and determined by previous Council action, new cannabis businesses will generate new tax revenue for the City via the cannabis business excise tax approved by the voters in 2018. However, since the cannabis industry is relatively new and evolving, specific revenue estimates for delivery are not available at this time.

BACKGROUND:

On November 6, 2018, the voters of Benicia considered a measure to set the cannabis excise tax for all businesses except commercial cultivation operating within the City at a rate up to 6% of gross revenues; for commercial cultivation the proposed tax was based on square footage and set up to \$10 per square foot. The tax measure was overwhelmingly approved by more than 76% of Benicia voters.

On November 29, 2018, the City Council set the initial excise tax rate for the various types of business operations, including retail, delivery, distribution, testing, manufacturing, commercial cannabis cultivation and microbusinesses (see Resolution 18-134 included as Attachment 2).

Since no delivery businesses were operating in 2019, the two-step request is to defer and modify the delivery tax rate so that the tax rates shall be the following:

- 2% in 2020 (through 12/31/20)
- 3% in 2021 (1/1/21 - 12/31/21)
- 4% in 2022 (effective 1/1/22) and beyond

NEXT STEPS:

With Council adoption of the resolution tonight, staff will modify the tax rates shown in cannabis information and implement the change.

ALTERNATIVE ACTIONS:

Provide alternate direction.

General Plan	Goal 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life. Program 2.5.C: Evaluate future uses on a cost/revenue basis, taking into account economic diversity for the long term and environmental and community costs and benefits.
	Goal 2.6: Attract and retain a balance of different kinds of industrial uses to Benicia. o Policy 2.6.1: Preserve industrial land for industrial purposes and certain compatible “service commercial” and ancillary on-site retail uses. o Policy 2.6.2: Other land uses should not adversely affect existing industrial and commercial land uses.
	Goal 2.13: Support the economic viability of existing commercial centers. Policy 2.12.1: Direct new commercial ventures first, towards Downtown, and second, to other existing economic centers (instead of dispersing resources to new areas).
	Goal 4.4: Reduce the incidence of substance abuse and strive for a drug-free community.
	Goal 4.6: Prevent and reduce crime in the community.

Strategic Plan	Strategic Issue 1: Protecting Community Health and Safety
	Strategy 5: Promote community and personal health
	Strategic Issue 3: Strengthening Economic and Fiscal Conditions

CEQA Analysis	The actions under consideration are not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15060, subd. (c)(2) because they will not result in a
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	direct or reasonably foreseeable indirect physical change in the environment and pursuant to CEQA Guidelines section 15061, subd. (b)(3) because there is no possibility the activity in question may have a significant effect on the environment. Furthermore, Business and Professions Code Section 26055(h) exempts from Division 13 of the Public Resources Code, the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity whereby the discretionary review in any such law, ordinance, rule, or regulation includes any applicable environmental review pursuant to Division 13.
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ATTACHMENTS:

1. Resolution Modifying Tax Rates for Cannabis Delivery Businesses
2. Resolution No. 18-134 Setting Excise Tax Rates for Cannabis Businesses

*For more information contact: Alan Shear, Interim Community Development Director
Phone: 707.746.4309
E-mail: ashear@ci.benicia.ca.us*

RESOLUTION NO. 20 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA MODIFYING THE EXCISE TAX RATES FOR CANNABIS DELIVERY BUSINESSES OPERATING IN BENICIA

WHEREAS, following the passage of Measure 64 in November 2016 that legalized cannabis in the State of California, many cities, including Benicia, began the process of considering whether or not to allow cannabis business operations within their boundaries and if so, how to do so; and

WHEREAS, on November 6, 2018, the voters of Benicia overwhelmingly approved a measure to set the cannabis excise tax for all businesses except commercial cultivation operating within the City at a rate up to 6% of gross revenues; for commercial cultivation the proposed tax was based on square footage and set up to \$10 per square foot; and

WHEREAS, on November 29, 2018 the City Council set the initial excise tax rates for the various types of business operations including retail, delivery, distribution, testing, manufacturing, commercial cannabis cultivation and microbusinesses per Resolution 18-134; and

WHEREAS, since no delivery businesses were operating in 2019, the City Council desires to modify the delivery tax rate so that the tax rate is 2% in 2020, 3% in 2021, and 4% in 2022 and beyond; and

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Benicia does hereby amend Resolution 18-134 and modify the excise tax rates for all cannabis delivery businesses operating in Benicia as follows:

Business Type	Excise Tax Rate	Unit
Delivery	2% in 2020 (through 12/31/20); 3% in 2021 (1/1/21 – 12/31/21); 4% in 2022 (effective 1/1/22) and beyond	Gross Receipts

BE IT FURTHER RESOLVED THAT all other excise tax rates contained in Resolution 18-134 remain in effect.

On motion of Council Member _____, seconded by Council Member _____, the above resolution was adopted by the City Council of the City of Benicia at a regular meeting of said Council held on the 21st day of January, 2020 by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date

RESOLUTION NO. 18- 134**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA SETTING THE EXCISE TAX RATES FOR ALL CANNABIS BUSINESSES OPERATING IN BENICIA**

WHEREAS, following the passage of Measure 64 in November 2016 that legalized cannabis in the State of California, many cities, including Benicia, began the process of considering whether or not to allow cannabis business operations within their boundaries and if so, how to do so; and

WHEREAS, over the course of more than a year, the City Council worked to determine where to allow and not allow cannabis businesses in town, the number of various business types to permit to operate (ultimately deciding on two retail, one microbusiness, and unlimited other types), and set the proposal processes and criteria for scoring the proposals for the competitive, limited business types (retail and microbusiness); and

WHEREAS, on June 19, 2018, Council acted to place a tax measure for voter consideration on the November 2018 ballot; and

WHEREAS, on November 6, 2018, the voters of Benicia considered a measure to set the cannabis excise tax for all businesses except commercial cultivation operating within the City at a rate up to 6% of gross revenues; for commercial cultivation the proposed tax was based on square footage and set up to \$10 per square foot; and

WHEREAS, the tax measure was overwhelmingly approved by more than 76% of Benicia voters and now the City Council is asked to set the initial excise tax rate for the various types of business operations including retail, delivery, distribution, testing, manufacturing, commercial cannabis cultivation and microbusinesses; and

WHEREAS, Benicia was just one of 73 agencies (cities and counties) that passed a cannabis tax measure for voter consideration during this last election; and

WHEREAS, as shown in the accompanying staff report, those tax rates and ways of assessing them vary greatly from agency to agency and Council may set the tax rate for different business activities at different rates; and

WHEREAS, staff is recommending that Council adopt the maximum tax rates included in the November 2018 measure due to the following: the limited competition of cannabis businesses in the Bay Area; Benicia's attractiveness to cannabis businesses as evidenced by the recent initial round of proposals received for two retail opportunities; the ease to administer, understand, and adjust the rates downward in the future; and it achieves Council's intent to allow cannabis in order to increase City revenues; and

WHEREAS, the Council acted to set excise tax rates for all cannabis businesses operating in Benicia as follows:

Business Type	Excise Tax Rate	Unit
Retail	5%	Gross Receipts
Delivery	2% in Year 1 (11/6/18 through 12/31/19); 3% in Year 2 (1/1/20 – 12/31/20); 4% in Year 3 (effective 1/1/21) and beyond	Gross Receipts
Distribution	1%	Gross Receipts
Testing	1%	Gross Receipts
Manufacturing	2% in Year 1 (11/6/18 through 12/31/19); 2.5% in Year 2 (1/1/20 – 12/31/20); 3.5% in Year 3 (effective 1/1/21) and beyond	Gross Receipts
Microbusiness	5%	Gross Receipts
Commercial cannabis cultivation	\$5 in Year 1 (11/6/18 through 12/31/19); \$6 in Year 2 (1/1/20 – 12/31/20); \$7 in Year 3 (1/1/21 – 12/31/21); Beginning 1/1/22, rate will be adjusted each January 1 by San Francisco Area's Consumer Price Index for All Urban Consumers as of previous October.	Per square foot

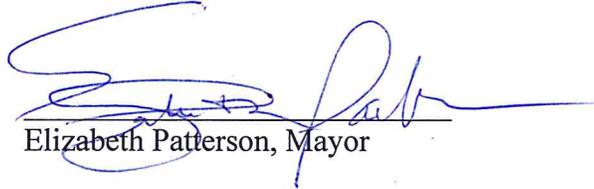
NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia does hereby set the excise tax rates for all cannabis businesses operating in Benicia as presented within this resolution.

On motion of Council Member **Young**, seconded by Council Member **Schwartzman**, the above Resolution was adopted by the City Council of the City of Benicia at a special meeting of said Council held on the 29th day of November, 2018 by the following vote:

Ayes: **Council Members Schwartzman, Young, and Mayor Patterson**

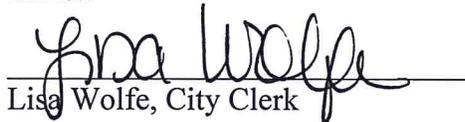
Noes: **Council Members Campbell and Hughes**

Absent: **None**



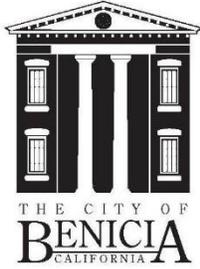
Elizabeth Patterson, Mayor

Attest:



Lisa Wolfe, City Clerk

12-11-18
Date



**AGENDA ITEM
CITY COUNCIL MEETING DATE – JANUARY 21, 2020
COUNCIL MEMBER COMMITTEE REPORT**

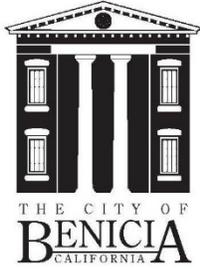
TO : Mayor Patterson
Council Member Campbell

FROM : Interim Community Development Director

SUBJECT : **MARIN CLEAN ENERGY (MCE)**

The following information is provided for your committee report at the January 21, 2020 Council meeting.

The next regular scheduled meeting is February 20, 2020. The meeting schedule and minutes can be found online at: <https://www.mcecleanenergy.org/meeting-archive/>.



**AGENDA ITEM
CITY COUNCIL MEETING DATE – JANUARY 21, 2020
COUNCIL MEMBER COMMITTEE REPORT**

TO : Mayor Patterson
Council Member Strawbridge

FROM : Public Works Director

SUBJECT : **SOLANO COUNTY WATER AGENCY**

The following information is provided for your committee report at the January 21, 2020 Council meeting.

Attached are the regular board minutes from December 12, 2019 and the agenda from the regular board meeting held on January 9, 2020. The next regular board meeting will be on February 13, 2020 at the SCWA office and the agenda is not available at this time.

ATTACHMENTS:

1. Minutes from the December 12, 2019 Board meeting
2. Agenda from the January 9, 2020 Board meeting

**SOLANO COUNTY WATER AGENCY
BOARD OF DIRECTORS MEETING MINUTES
MEETING DATE: December 12, 2019**

The Solano County Water Agency Board of Directors met this evening at the Solano County Water Agency office in Vacaville. Present were:

Mayor Elizabeth Patterson, City of Benicia
Vice-Mayor Scott Pederson, City of Dixon
Councilmember Chuck Timm, City of Fairfield
Mayor Ronald Kott, City of Rio Vista
Mayor Lori Wilson, City of Suisun
Mayor Ron Rowlett, City of Vacaville
Mayor Bob Sampayan, City of Vallejo
Supervisor Erin Hannigan, Solano County District 1
Supervisor Monica Brown, Solano County District 2
Supervisor John Vasquez, Solano County District 4
Supervisor Skip Thomson, Solano County District 5
Director Dale Crossley, Reclamation District No. 2068
Director John Kluge, Solano Irrigation District

CALL TO ORDER

The meeting was called to order by Chair Thomson at 6:30 pm.

APPROVAL OF AGENDA

On a motion by Mayor Rowlett and a second by Mayor Patterson the Board unanimously approved the agenda.

PUBLIC COMMENT

There were no public comments.

CONSENT ITEMS

On a motion by Mayor Patterson and a second by Supervisor Brown the Board unanimously approved the following consent items:

- (A) Minutes
- (B) Expenditure Approvals

BOARD MEMBER REPORTS

Directors Kluge and Crossley both reported they had recently attended the Fall Association of California Water Agencies (ACWA) conference in San Diego, and found a number of the conference sessions – particularly the sessions on the Sustainable Groundwater Management Act, the Governor’s Water Resiliency Plan, and the Brown Act - informative and interesting.

GENERAL MANAGER’S REPORT

In addition to the written report included in the Board’s agenda packet, General Manager Roland Sanford briefly discussed the status of the Phase II Dixon drainage study and noted that a consultant contract for the Phase II study should be ready for Board consideration at the January 2020 Board meeting. Mr. Sanford also reported that staff is proposing a workshop to update the Board on the status of the Solano Habitat Conservation Plan, either before the regular January 9, 2020 Board meeting, or if the January agenda is light, during the meeting itself. He also reminded the Executive Committee that the next Executive Committee meeting will be held on Thursday, January 2, 2020.

SOLANO WATER ADVISORY COMMISSION

There were no additions to the written notes included in the Board packet.

LAKE BERRYESSA MUSSEL PREVENTION AND EDUCATION PROGRAM

Principal Water Resource Specialist Chris Lee introduced the topic and thanked the Board for the Board's continuing support of the Lake Berryessa Mussel Prevention and Education Program. Mr. Lee then introduced Ms. Sabrina Colias, the project manager for the Lake Berryessa Mussel Prevention and Education Program, noting that Ms. Colias has recently secured two grants which together will provide \$750,000 over the next three years to support the program. Mr. Lee then introduced Mr. Zachary Hyer, who assists with day-to-day program operations, along with interns Mr. Chad Cabristante and Ms. Chelsea Quintero, who provided a PowerPoint presentation of the Lake Berryessa Mussel Prevention and Education Program.

As a part of their presentation, Mr. Cabristante and Ms. Quintero explained the purpose and scope of the Lake Berryessa Mussel Prevention and Education Program and stated that this year alone 13,557 boats were inspected as a part of the program, with 10 boats requiring some form of decontamination prior to launching. Mr. Cabristante and Ms. Quintero answered a variety of Board member questions. At the conclusion of the presentation the Board thanked Mr. Cabristante and Quintero for their work and expressed continuing support for the Lake Berryessa Mussel Prevention and Education Program.

2020 LEGISLATIVE PLATFORM

General Manager Roland Sanford noted that the proposed 2020 Legislative Platform has two purposes: 1) informing legislators of the needs, wants, and concerns of the Agency, and 2) expediting the issuance of letters supporting or opposing proposed legislation. With regard to the latter, Mr. Sanford explained that letters of support or opposition can be issued by the General Manager or other Board designee without prior approval by the full Board, if the subject matter of the letter is consistent with the position(s) articulated in the adopted Legislative Platform – thereby allowing for a quick response that would otherwise take up to a month to initiate since the Board typically only meets monthly. Mr. Sanford reported the Legislative Committee has reviewed the proposed 2020 Legislative Platform, which essentially mirrors the 2019 Legislative Platform, and is recommending the Board adopt the proposed 2020 Legislative Platform as presented.

Mayor Kott questioned whether it was appropriate to have the Legislative Committee chair – an elected official and member of the Water Agency Board of Directors – signing letters of support or opposition in view of the legal opinion prepared by Water Agency counsel recommending otherwise. General Manager Roland Sanford noted that it has been past practice for either the General Manager or Legislative Committee chair to sign such letters. After further discussion, the Board agreed to continue the past practice of either the General Manager or Legislative Committee chair signing letters of support or opposition.

On a motion by Mayor Patterson and a second by Director Crossley the Board unanimously adopted the proposed 2020 Legislative Platform; authorized the Legislative Committee chair to sign and submit letters of support or opposition to pending Federal, State and local legislation or proposed policy guidelines that pertain to the priority issues and policy positions identified in the 2020 Legislative Platform; and authorized the General Manager to sign and submit letters of support or opposition to pending Federal, State and local legislation or proposed policy guidelines that pertain to the priority issues and policy positions identified in the 2020 Legislative Platform, with the stipulation that the Legislative Committee chair be given the opportunity to review all letters of support or opposition before release by the General Manager.

RETENTION OF LEGISLATIVE ADVOCATE

General Manager Roland Sanford reported that the Legislative Committee solicited and received seven proposals for legislative advocacy services and that the Committee interviewed the top three firms, were unanimous in their selection of Reeb Government Relations, LLC as the top firm, and are recommending the Board retain Reeb Government Relations, LLC for legislative advocacy services.

Supervisor Vasquez expressed disappointment that no representatives of Reeb Government Relations, LLC were present to answer questions and stated that he therefore would not support the recommendation to retain Reeb Government Relations, LLC for legislative advocacy services.

On a motion by Supervisor Brown and a second by Mayor Patterson the Board authorized the General Manager to execute an agreement with Reed Government Relations for legislative advocacy services. The vote was not unanimous, Vice-Mayor Pederson, Mayor Rowlett, and Supervisor Vasquez voted no.

CREATION OF ASSISTANT GENERAL MANAGER POSITION

General Manager Roland Sanford stated he had nothing to add to the written staff report in the Board’s meeting agenda packet. In response to questions by Supervisor Thomson, Mr. Sanford discussed the rationale for creating the Assistant General Manager position and more specifically, the need to redistribute his (Mr. Sanford) work load to allow more time for long-range planning/strategic development, attention to legislative matters, and coalition building. Mr. Sanford went on to explain that more attention to the aforementioned items was needed in order for the Water Agency to become an effective player in regional and statewide water management issues.

Director Kluge stated it was his understanding that the proposal to create the Assistant General Manager position was to be discussed at an “in-person” meeting of the Executive Committee and that creation of the Assistant General Manager position is a significant action possibly warranting a nationwide search. Supervisor Thomson noted that the proposal to create an Assistant General Manager position had been discussed at the December Executive Committee meeting, which was conducted via teleconference.

Vice-Mayor Pederson and Mayor Wilson both recommended staff provide additional information regarding the justification for creating the Assistant General Manager position. After further discussion, the Board took no action – tabling the item with the expectation that staff will return in February with additional information regarding the justification for creating the Assistant General Manager position.

LEGISLATIVE UPDATES

Mayor Kott stated that there were no additional updates beyond what has already been discussed in earlier action items.

WATER POLICY UPDATES

1. Staff had nothing to report on emerging Delta and Water Policy issues.
2. General Manager Roland Sanford reported that the Water Policy Committee ‘s work on the draft water exchange policy has been delayed due to the meeting facilitator being ill for an extended period of time, and that the draft water exchange policy will not be ready for Board consideration in January, as originally anticipated. Mr. Sanford indicated that the draft policy would most likely be ready for Board consideration in February or March.
3. There was nothing to report on the activities of the Delta Counties Coalition.
4. There was nothing to report on the activities of the Delta Conservancy.

TIME AND PLACE OF NEXT MEETING

Thursday, January 9, 2019 at 6:30 p.m., at the SCWA offices in Vacaville.

ADJOURNMENT

This meeting of the Solano County Water Agency Board of Directors was adjourned at 7:50 p.m. in the memory of the victims of the Santa Clarita high school shooting.

Roland Sanford
General Manager & Secretary to the
Solano County Water Agency



BOARD OF DIRECTORS MEETING

BOARD OF DIRECTORS:

Chair:

Director John D. Kluge
Solano Irrigation District

Vice Chair:

Supervisor Skip Thomson
Solano County District 5

Mayor Elizabeth Patterson
City of Benicia

Mayor Thom Bogue
City of Dixon

Mayor Harry Price
City of Fairfield

Director Ryan Mahoney
Maine Prairie Water District

Director Dale Crossley
Reclamation District No. 2068

Mayor Ron Kott
City of Rio Vista

Supervisor Erin Hannigan
Solano County District 1

Supervisor Monica Brown
Solano County District 2

Supervisor Jim Spering
Solano County District 3

Supervisor John Vasquez
Solano County District 4

Mayor Lori Wilson
City of Suisun City

Mayor Ron Rowlett
City of Vacaville

Mayor Bob Sampayan
City of Vallejo

GENERAL MANAGER:

Roland Sanford
Solano County Water Agency

DATE: Thursday, January 9, 2020

TIME: 6:30 P.M.

PLACE: Berryessa Room
Solano County Water Agency Office
810 Vaca Valley Parkway, Suite 203
Vacaville

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

3. **APPROVAL OF AGENDA**

4. **PUBLIC COMMENT**

Limited to 5 minutes for any one item not scheduled on the Agenda.

5. **ELECTION OF OFFICERS AND APPOINTMENT OF EXECUTIVE COMMITTEE FOR 2020**

6. **CONSENT ITEMS** *(estimated time: 5 minutes)*

(A) **Minutes:** Approval of the Minutes of the Board of Directors meeting of December 12, 2019.

(B) **Expenditure Approvals:** Approval of the December 2019 checking account register.

(C) **Quarterly Financial Reports:** Approve the Income Statement and Balance Sheet of December, 2019.

7. **BOARD MEMBER REPORTS** *(estimated time: 5 minutes)*

RECOMMENDATION: For information only.

8. **GENERAL MANAGER’S REPORT** *(estimated time: 5 minutes)*

RECOMMENDATION: For information only.

9. **SOLANO WATER ADVISORY COMMISSION REPORT** *(estimated time: 5 minutes)*

RECOMMENDATION: For information only.

10. **SOLANO HABITAT CONSERVATION PLAN UPDATE** *(estimated time: 40 minutes)*

RECOMMENDATION: Hear presentation and provide direction to staff regarding future public outreach activities.

11. **APPOINTMENT OF LEGISLATIVE AND WATER POLICY COMMITTEES FOR 2020** *(estimated time: 10 minutes)*

RECOMMENDATION:

1. Appoint Legislative and Water Policy committees and adopt respective meeting calendars for 2020.

12. **LEGISLATIVE UPDATES** *(estimated time: 5 minutes)*

RECOMMENDATION:

1. Hear report from Committee Chair on activities of the SCWA Legislative Committee.
2. Hear report from Bob Reeb of Reeb Government Relations, LLC.

13. **WATER POLICY UPDATES** *(estimated time: 10 minutes)*

RECOMMENDATION:

1. Hear report from staff on current and emerging Delta and Water Policy issues and provide direction.
2. Hear status report from Committee Chair on activities of the SCWA Water Policy Committee.
3. Hear report from Supervisor Thomson on activities of the Delta Counties Coalition, Delta Protection Commission, and Delta Conservancy.
4. Hear report from Mayor Patterson on activities of the North Bay Watershed Association.

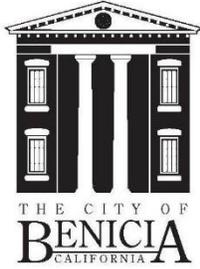
14. TIME AND PLACE OF NEXT MEETING

Thursday, February 14, 2020 at 6:30 p.m. at the SCWA offices.

The Full Board of Directors packet with background materials for each agenda item can be viewed on the Agency's website at www.scwa2.com.

Any materials related to items on this agenda distributed to the Board of Directors of Solano County Water Agency less than 72 hours before the public meeting are available for public inspection at the Agency's offices located at the following address: 810 Vaca Valley Parkway, Suite 203, Vacaville, CA 95688. Upon request, these materials may be made available in an alternative format to persons with disabilities.

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**AGENDA ITEM
CITY COUNCIL MEETING DATE – JANUARY 21, 2020
COUNCIL MEMBER COMMITTEE REPORT**

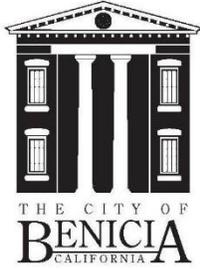
TO : Council Member Young
Council Member Largaespada

FROM : Interim Community Development Director

SUBJECT : **SKY VALLEY OPEN SPACE COMMITTEE**

The following information is provided for your committee report at the January 21, 2020 Council meeting.

These committee meetings are now scheduled on an as-needed basis. At this time, the next meeting date is unknown.



AGENDA ITEM
CITY COUNCIL MEETING DATE – JANUARY 21, 2020
COUNCIL MEMBER COMMITTEE REPORT

TO : Council Members Campbell and Strawbridge
FROM : City Manager
SUBJECT : **SOLANO EDC BOARD OF DIRECTORS**

The following information is provided for your committee report at the January 21, 2020 City Council meeting.

A meeting of the Board of Directors was held on November 14, 2019, at First Northern Bank Operations Center in Dixon. The agenda was previously issued. The minutes are attached.

The last meeting was scheduled held on January 9, 2020, at Jelly Belly Visitor Center in Fairfield. The agenda is attached. The minutes are not yet available.

The next meeting is scheduled for Thursday, March 19, 2020, at 9:00 a.m. at a location to be announced. The agenda is not yet available.

ATTACHMENTS:

1. Solano EDC minutes, November 14, 2019
2. Solano EDC agenda, January 9, 2020

SOLANO EDC BOARD OF DIRECTORS MEETING
November 14, 2019
MINUTES

CALL TO ORDER

Chair Nelson called the meeting to order at 9:08 am at First Northern Bank's Operations Center in Dixon. He thanked Immediate Past Chair Walker for hosting the meeting. He welcomed Mabel Salon with UC Davis and John Donlevy with the City of Winters to the group.

Attending were:

Greg Armstrong	Larry Burkhardt	Robert Burris	Birgitta Corsello
Jeremy Craig	John Donlevy Jr.	Kevin English	Celia Esposito-Noy
Greg Folsom	Theresa Fortier	Mario Giuliani	Daryl Halls
Dilenna Harris	Liz Kelly	Ron Kott	Melyssa Laughlin
Barry Nelson	Harry Price	Jon Quick	Sean Quinn
Mabel Salon	Lorie Tinfow	Scot VanBuskirk	Louise Walker

Absent were:

Paul Adler	Robert Arp	John Barkey	Bill Biasi
Thom Bogue	Nicole Braddock	Tom Campbell	Michele Daugherty
Pippin Dew	Abhishek Dosi	Lisette Estrella-Henderson	Kevin Flanagan
Erin Hannigan	Heather Henry	Robert Hickey	Steve Huddleston
Bridgit Koller	Albert Lavezzo	Jim Lindley	Sheila McCabe
Greg Nyhoff	Scott Pardini	Scott Reynolds	Ron Rowlett
Tom Sheaff	Scott Sheldon	Talyon Sortor	Sarah Sweitzer
Scott Thomas	Lori Wilson		

APPROVAL OF MINUTES

Chair Nelson called for approval of minutes of the September meeting. Upon motion duly made (Kott) and seconded (Harris) it was RESOLVED, that the minutes of the September 12, 2019 meeting of the Solano EDC Board of Directors be accepted as submitted.

TREASURERS REPORT

Treasurer Craig presented the financial report for October 2019. Upon motion duly made (Quinn) and seconded (Harris) it was RESOLVED, that the Treasurer's Report be accepted.

2020 BOARD BALLOT

Chair Nelson called for the approval of the draft 2020 Director's ballot. Upon motion duly made (Halls) and seconded (Harris) it was RESOLVED, that the ballot be accepted as submitted.

PRESIDENT'S REPORT

President Burris provided an update on: work plan activity; Solano Energy Watch; Bay Ren opportunity; prospect activity; FASTER Bay Area forum; census contract; Solano Economic Research Center projects; CALED webinar and CA Economic Summit in Fresno.

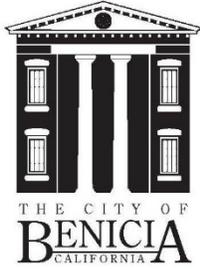
The meeting adjourned 10:17 am.



Solano EDC Board of Directors Meeting
January 9, 2020
Jelly Belly Candy Company, One Jelly Belly Lane, Tangerine Room

AGENDA

- | | | | |
|-------------|-----|---|----------------------------|
| 9:00 am | 1. | Call to Order | Jeremy Craig, Acting Chair |
| Action Item | 2. | Approval of Nov 14, 2019 Meeting Minutes | Jeremy Craig, Acting Chair |
| Action Item | 3. | Treasurer's Report – December 2019 | Jeremy Craig, Treasurer |
| Action Item | 4. | 2020 Board Election Results | Jeremy Craig, Acting Chair |
| Action Item | 5. | New Director:
Sheila Carroll, Carroll & Associates | Jeremy Craig, Acting Chair |
| Action Item | 6. | Nomination for 2020 Chair | Jeremy Craig, Acting Chair |
| | 7. | Energy Watch Update | J. Paul Harrington |
| | 8. | President's Report | Bob Burris, President/CEO |
| | 9. | Items from Directors | |
| 10:00 am | 10. | Adjourn Meeting | |



AGENDA ITEM
CITY COUNCIL MEETING DATE – JANUARY 21, 2020
COUNCIL MEMBER COMMITTEE REPORT

TO : Mayor Patterson
Council Member Largaespada

FROM : Public Works Director

SUBJECT : **SOLANO TRANSPORTATION AUTHORITY (STA)**

The following information is provided for your committee report at the January 21, 2020 Council meeting.

Attached are the minutes from the December 11, 2019 Board meeting and the agenda from the January 8, 2020 Board meeting. The next regular board meeting will be on February 12, 2020 at the City of Suisun Council Chambers.

ATTACHMENTS:

1. Minutes from the December 11, 2019 Board meeting
2. Agenda from the January 8, 2020 Board meeting



SOLANO TRANSPORTATION AUTHORITY
Draft Board Minutes for Meeting of
December 11, 2019

1. CALL TO ORDER

Chair Price called the regular meeting to order at 6:00 p.m. A quorum was confirmed.

MEMBERS

PRESENT:	Harry Price, Chair	City of Fairfield
	Thom Bogue, Vice Chair	City of Dixon
	Elizabeth Patterson	City of Benicia
	Ron Kott	City of Rio Vista
	Lori Wilson	City of Suisun City
	Ron Rowlett	City of Vacaville
	Bob Sampayan	City of Vallejo
	Jim Spring	County of Solano

MEMBERS

ABSENT: None.

STAFF

PRESENT:	(In alphabetical order by last name.)	
	Amy Antunano	Program Coordinator
	Anthony Adams	Project Manager
	Regina Benson	Customer Service Representative (CSR)
	Katelyn Costa	Program Coordinator
	Bernadette Curry	Legal Counsel
	Triana Crighton	Assistant Planner
	Ron Grassi	Director of Programs
	Robert Guerrero	Director of Planning
	Daryl Halls	Executive Director
	Denise Harris	Customer Service Representative (CSR)
	Vincent Ma	Marketing & Legislative Program Manager
	Johanna Masielat	Office Manager/Clerk of the Board
	Debbie McQuilkin	Transit Mobility Coordinator
	Lloyd Nadal	Program Svcs. Division Manager
	Neil Quintanilla	Marketing Assistant
	Brent Rosenwald	Planning Assistant

ALSO PRESENT: (In alphabetical order by last name.)

Jack Batchelor	District Rep. for Congressman John Garamendi
Charles Brown	Alta Planning + Design
Greg Folsom	City of Suisun City
Matt Gleason	City of Vallejo
Cookie Gordon	Vallejo Resident/Equity Working Group Member
George Gwynn	Suisun City Resident
Steve Kinsey	CivicKnit
Beth Kranda	Solano County Transit (SolTrans)
David Kutrosky	STA Rail Consultant
Matt Medill	City of Suisun City
Michael Pimentel	Shaw/Yoder/Antwih Inc.
Matt Robinson	Shaw/Yoder/Antwih Inc.
William Tarbox	City of Benicia
Matt Tuggle	County of Solano
Chris Wilson	Gilbane

2. CONFIRM QUORUM/STATEMENT OF CONFLICT

A quorum was confirmed by the Clerk of the Board, Johanna Masiclat. There was no Statement of Conflict declared at this time.

3. APPROVAL OF AGENDA

On a motion by Board Member Sampayan, and a second by Board Member Wilson, the STA Board approved the agenda. (7 Ayes, 1 Absent - Rowlett)

4. OPPORTUNITY FOR PUBLIC COMMENT

1. George Gwynn, Suisun City resident, commented on the Brown Act as it relates to local government agencies.
2. Cookie Gordon Vallejo resident, expressed her gratitude for the bus shelter that was much needed and built on Magazine and Sheridan Street in Vallejo.

Board Member Rowlett arrived at the meeting.

5. EXECUTIVE DIRECTOR'S REPORT

Daryl Halls provided an update on the following items:

- Adoption of STA's Legislative Platform and Priorities for 2020
- Presentation on Regional Transit Services and Opportunities
- Release of Draft Equity Chapter of County Transportation Plan (CTP)
- Fiscal Year 2018-19 Comprehensive Annual Financial Report (CAFR) –Annual Audit
- Regional Transportation Impact Fee (RTIF) 6th Annual Report
- Updated Budget and Schedule for STA Office Building
- Approval of 2019 Congestion Management Plan for Solano County
- Solano Commuter Strategic Plan and Incentives
- Annual Reports for Solano Mobility Programs
- STA Staff Update

- 6. **REPORT FROM THE METROPOLITAN TRANSPORTATION COMMISSION (MTC)**
MTC Commissioner and STA Board Member Spering reported that MTC Commissioners will be discussing the following at MTC’s Annual Retreat:
 - A. Linking housing production to transportation funding
 - B. Consolidation of ABAG and MTC
 - C. FASTER Bay Area Proposal and Chui’s Housing Bill – Regional Housing Finance Authority

- 7. **REPORT FROM CALTRANS**
 - A. **Caltrans’ Draft 2020 State Highway Operations and Protection Program (SHOPP)**
presented by Anthony Adams, STA

- 8. **STA PRESENTATIONS**
 - A. **State Legislative Update** *presented by Matt Robinson and Michael Pimentel, Shaw/Yoder/Antwih, Inc.*
 - B. **Directors Reports:**
 - 1. **Planning**
 - 2. **Projects**
 - 3. **Programs – Solano Mobility Year-End Reports** *presented by Amy Antunano, Katelyn Costa, and Debbie McQuilkin*

- C. **Overview of Regional Transit Services in Solano County** *presented by Daryl Halls, David Kutrosky, Consultant and Beth Kranda, SolTrans*

9. **CONSENT CALENDAR**

Recommendation:

Approve the following consent items in one motion.

On a motion by Board Member Wilson, and a second by Board Member Rowlett, the STA Board approved Items A through I. (8 Ayes)

- A. **Meeting Minutes of the STA Board Meeting of October 9, 2019**

Recommendation:

Approve the Minutes of the STA Board Meeting of October 9, 2019.

- B. **Meeting Minutes of the STA Board Special Meeting of November 6, 2019**

Recommendation:

Approve the Minutes of the STA Board Meeting of November 6, 2019.

- C. **Draft Minutes of the STA Technical Advisory Committee (TAC) Meeting of November 20, 2019**

Recommendation:

Receive and file.

- D. **Fiscal Year (FY) 2018-19 Fourth Quarter Budget Report**

Recommendation:

Receive and file.

- E. **Adoption of STA 2020 Employee Benefits Summary**

Recommendation:

Receive and file.

F. Employer Incentive Program

Recommendation:

Approve the Solano Commuter Engagement Strategic Plan and Incentives for FY 2020-21.

G. Bay Area Air Quality Management District (BAAQMD) Transportation Funds for Clean Air (TFCA) County Program Manager Funds – Change in Allocation for Fiscal Year (FY) 2019-20 Projects

Recommendation:

Approve the changes in allocation for \$120,000 of TFCA funds for FY 2019-20 as follows:

1. Deprogram \$120,000 for Travis Air Force Base EV Chargers;
2. Program \$80,000 to the Solano Mobility Program; and
3. Program \$40,000 to the Solano EV Implementation Program.

H. Paratransit Coordinating Council (PCC) Membership Appointments

Recommendation:

Forward a recommendation to the STA Board to approve the following

1. Re-appoint Judy Nash, Public Agency – Education Member for another three (3) year term; and
2. Appoint Brian McLaughlin as a Member at Large to a three (3) year term.

I. Contract Amendment - Federal Legislative Advocacy Services

Recommendation:

Approve the following:

1. Authorize the Executive Director to enter into a 24-month contract amendment and extension with Akin Gump Strauss Hauer & Feld LLP (Akin Gump);
2. Authorize the Executive Director to extend the contract with the Cities of Fairfield, Vacaville and Vallejo and SolTrans to provide federal advocacy services in pursuit of federal funding for the STA’s priority projects through December 31, 2021 at a total cost not-to-exceed \$240,000; and
3. The expenditure of \$49,999.92 to cover the STA’s contribution for this 24-month contract.

10. ACTION FINANCIAL ITEMS

A. STA’s Comprehensive Annual Financial Report (CAFR) for Fiscal Year (FY) 2018-19 – Annual Audit

Daryl Halls presented the STA’s Comprehensive Annual Financial Report (CAFR) for FY 2018-19. Daryl Halls cited that for the fourteenth consecutive year, the STA received an unqualified audit without any findings of its Fiscal Year 2018-19 budget. He continued by thanking Susan Furtado, STA’s Accounting Manager, Brenda McNichols, Accounting Technician, and STA’s Budget Managers for their diligence in managing their respective budgets.

Board/Public Comments:

None presented.

Recommendation:

Approve the following:

1. Receive and file STA’s Annual Audit for FY 2018-19; and
2. Authorize the Executive Director to submit the FY 2018-19 Comprehensive Annual Financial Report (CAFR) to the Government Finance Officers Association (GFOA).

On a motion by Board Member Wilson, and a second by Board Member Bogue, the STA Board approved the recommendation. (8 Ayes)

B. STA Office Building Updated Budget

Daryl Halls presented the overall project budget and summarized the extensive procurement process for the new STA office building authorized by the STA Board back in March 2018. He explained the original scope of work and outlined the effort to reduce the scope and cost for the project by reducing the size from 30,000 sq. ft. to 22,500 sq. ft. and generally removing and downsizing on space. He outlined the construction costs and project budget stating that the cost of building and occupying the new office building will be primarily funded from the STA Project Contingency Fund.

Board/Public Comments:

Board Member Patterson commented on the proposal to reduce the square footage of the new building and questioned if it was not better to have the larger building where some level of lease revenue could be utilized until STA grew into the larger space. She also asked if the designer can look into removing gas service from the building and utilize an all-electric energy source to provide heating while eliminating greenhouse gas emissions. The last question that was asked was if LEED certification was the proper approach for the building and would it be more important to spend monies on enhanced insulation and other energy efficiencies in lieu of just obtaining the LEED certification.

Board Member Kott asked if the project management services is included in the overall construction cost and how the future parking lot is being financed. Daryl Halls responded yes to the project management services being included in the overall construction costs and that the land acquisition of the future parking lot will be a separate and follow-up process as the property site is still pending the clean-up activities on site by the current property owner. He added that staff will work with the Building Oversight Committee and the City of Suisun City on the funding plan and design and functionality of the parking lot over the next 6 months and will return to the STA Board at that time.

Board Member Patterson requested staff to consider installing solar to both the new office building and the parking lot.

George Gwynn, Suisun resident, commented on the various financial impacts of the design build concept approach for the new office building. Board Member Rowlett responded that the design build approach is the best way to go as far as designing and costing out the project and commended the design team for the building concept.

Board Member Rowlett also echoed and supported Board Member Patterson's comments on considering expanding the square footage of the building for unforeseen growth and the potential for leasing aspect purposes. He also addressed some questions that were conveyed by members of the public in which he did not have the answers at the time, and he cited that until he can provide direct answers to those questions and to be completely transparent, he was requesting the Board to table until the next meeting in January 2020. Board Member Patterson supported Board Member Rowlett's request, but she also requested that staff come back and present the different design options restoring the additional 8,000 square footage.

Board Member Wilson asked how the delay would impact timing and schedule. Daryl Halls responded that since the office project is in the design phase, the delay to January will not impact the construction schedule of the project. Board Member Wilson also requested a list of the general concerns raised to Board Member Rowlett to ensure that they will be addressed properly and not cause further delay.

Board Member Sperring commented that the Building Oversight Committee spent a lot of time taking every little aspect in consideration including the financial management and functional demands of the current proposed design and square footage. He cautioned that with additional space comes additional cost and that there is no financial benefit to either the City of Suisun City or the STA when it comes to leasing the extra space that is being suggested.

Written public comment submitted:

Helenmarie “Cookie” Gordon, a community advocate and Vallejo resident, STA Equity and Vallejo Community Based Transportation Plan (CBTP) working group member and member of the public, submitted a written comment to let the STA Board know that she is supportive of the proposed new office building for the STA. She stated that the office space STA is currently located in is not ADA friendly. She commented that there was a time when she was late to a meeting at STA because the handicap parking spaces provided by the current building was not easy to find. And she also commented that there was no automatic push button available to enter the office building and suite. She noted that she also witnessed an elderly person who had similar experiences as she came in to the call center. She concluded by stating that she is confident that the new building will accommodate the needs of Committee members and members of the public with disabilities.

By consensus, the STA Board, on a motion by Board Member Rowlett and a second by Board Member Patterson, recommended to table recommendation items 1 and 2 and to approve recommendation item 3 by the following roll call vote:

AYES:	Wilson, Rowlett, Patterson, Price, Bogue, Kott, Sampayan, Sperring
NOES:	None
ABSENT	None
ABSTAIN	None

Recommendation:

Authorize the Executive Director to:

1. Enter into all agreements as necessary, utilizing a Design Build construction procurement approach, for the design and the construction of a new STA Office Building for an amount not-to-exceed \$16.01 million;
2. Enter into short term financing as necessary to fund the new office building payable with future Project Contingency Funds; and
3. Amend the contract with Gilbane Building Company for project management services for an amount not to exceed \$200,000.

Board Members Patterson and Sampayan left the meeting

C. Regional Transportation Impact Fee (RTIF) 6th Annual Report

Anthony Adams presented a summary of the 6th Annual Report for the RTIF. He indicated that as part of the update of the County's Public Facility Fee (PFF), the Solano County Board of Supervisors approved to increase the amount collected from \$1,500 to \$2,500 for each Dwelling Unit Equivalent (DUE), which would increase the amount collected to over \$2M per year. He also identified the new projects being proposed to be included in the RTIF Nexus Study, which includes Sunset Ave. Railroad Crossing (Suisun City), Airport Rd (Rio Vista), West Texas Gateway (Fairfield), Parkway Blvd Overcrossing, Pedrick Road, and West A St Undercrossing (Dixon).

Board/Public Comments:

None presented.

Recommendation:

Approve the 6th Annual Solano Regional Transportation Impact Fee (RTIF) Report.

On a motion by Board Member Rowlett, and a second by Board Member Wilson, the STA Board approved the recommendation. (6 Ayes, 2 Absent – Patterson and Sampayan)

11. ACTION – NON FINANCIAL ITEMS

A. STA's 2020 Legislative Platform and Legislative Update

Vincent Ma reviewed and outlined the comments received from STA's projects and programs staff and from the City of Vallejo during the public comment period of the STA's 2020 Legislative Platform.

Board/Public Comments:

None presented.

Recommendation:

Approve the STA's 2020 Legislative Platform with recommended amendments as shown in Attachment E.

On a motion by Board Member Wilson, and a second by Board Member Rowlett, the STA Board approved the recommendation. (6 Ayes, 2 Absent – Patterson and Sampayan)

B. 2019 Solano Congestion Management Program (CMP) Update

Robert Guerrero reported on the development of the CMP. He reviewed the guidelines and outlined the sections within the CMP. He also reviewed the comments received during the circulation period back in October 2019 and concluded by listing the next steps after submitting the Final CMP to MTC.

Board/Public Comments:

None presented.

Recommendation:

Approve the 2019 Solano County Congestion Management Program (CMP) and authorize the STA Executive Director to submit the document to the Metropolitan Transportation Commission.

On a motion by Board Member Wilson, and a second by Board Member Rowlett, the STA Board approved the recommendation. (6 Ayes, 2 Absent – Patterson and Sampayan)

C. Release of the Draft Comprehensive Transportation Plan (CTP) Equity Chapter for Public Comment

Charles Brown, Alta Planning + Design, presented the Equity Chapter of the Draft CTP. He requested the Board release the Draft CTP Equity Chapter for a 30 day public comment period.

Board/Public Comments:

None presented.

Recommendation:

Approve releasing the Draft Equity Chapter for a 30-day public comment period.

On a motion by Board Member Rowlett, and a second by Board Member Wilson, the STA Board approved the recommendation. (6 Ayes, 2 Absent – Patterson and Sampayan)

12. INFORMATIONAL – NO DISCUSSION

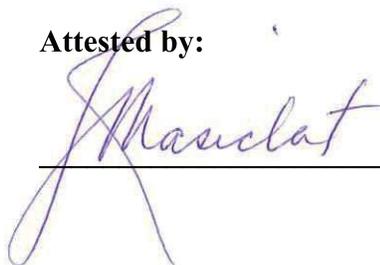
- A. American Disability Act (ADA) In-Person Eligibility Year End Program Update**
- B. Solano Mobility Travel Training Program - FY 2018-19 Year-End Program Update**
- C. Intercity Taxi (PEX) Card Services FY 2018-19 Year-End Update**
- D. Solano Mobility Program Update and Solano Mobility Call Center/Transportation Depot FY 2018-19 Year-End Update**
- E. Solano Mobility Vanpool Program Annual Update for FY 2018-19**
- F. Bucks for Bikes Annual Update for FY 2018-19**
- G. Abandoned Vehicle Abatement (AVA) Program 4th Quarter**
- H. Summary of Funding Opportunities**
- I. 2019 STA Board and Advisory Committee Meeting Schedule**

13. BOARD MEMBER COMMENTS

14. ADJOURNMENT

The meeting was adjourned at 7:30 p.m. The next STA Board meeting is scheduled at **6:00 p.m., Wednesday, January 8, 2020**, Suisun Council Chambers.

Attested by:



Johanna Masielat, STA Clerk of the Board

MEETING AGENDA



**6:00 p.m., STA Board Regular
Wednesday, January 8, 2020
Suisun City Hall Council Chambers
701 Civic Center Drive
Suisun City, CA 94585**

Mission Statement: To improve the quality of life in Solano County by delivering transportation projects to ensure mobility, travel safety, and economic vitality.

Public Comment: Pursuant to the Brown Act, the public has an opportunity to speak on any matter on the agenda or, for matters not on the agenda, issues within the subject matter jurisdiction of the agency. Comments are limited to no more than 3 minutes per speaker unless modified by the Board Chair, Gov't Code § 54954.3(a). By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the agency. **Speaker cards are required in order to provide public comment. Speaker cards are on the table at the entry in the meeting room and should be handed to the STA Clerk of the Board. Public comments are limited to 3 minutes or less.**

Americans with Disabilities Act (ADA): This agenda is available upon request in alternative formats to persons with a disability, as required by the ADA of 1990 (42 U.S.C. §12132) and the Ralph M. Brown Act (Cal. Govt. Code §54954.2). Persons requesting a disability related modification or accommodation should contact Johanna Masiclat, Clerk of the Board, at (707) 399-3203 during regular business hours at least 24 hours prior to the time of the meeting.

Translation Services: For document translation please call:

Para la llamada de traducción de documentos:

對於文檔翻譯電話

Đối với tài liệu gọi dịch:

Para sa mga dokumento tawag sa pagsasalin:

707-399-3203

Staff Reports: Staff reports are available for inspection at the STA Offices, One Harbor Center, Suite 130, Suisun City during regular business hours, 8:00 a.m. to 5:00 p.m., Monday-Friday. You may also contact the Clerk of the Board via email at jmasiclat@sta.ca.gov **Supplemental Reports:** Any reports or other materials that are issued after the agenda has been distributed may be reviewed by contacting the STA Clerk of the Board and copies of any such supplemental materials will be available on the table at the entry to the meeting room.

Agenda Times: Times set forth on the agenda are estimates. Items may be heard before or after the times shown.

ITEM

BOARD/STAFF PERSON

- 1. CALL TO ORDER/ PLEDGE OF ALLEGIANCE** Chair Price
(6:00 p.m.)
- 2. CONFIRM QUORUM/ STATEMENT OF CONFLICT** Chair Price
An official who has a conflict must, prior to consideration of the decision; (1) publicly identify in detail the financial interest that causes the conflict; (2) recuse himself/herself from discussing and voting on the matter; (3) leave the room until after the decision has been made. Cal. Gov't Code § 87200.

<u>STA BOARD MEMBERS</u>							
Jim Spering	Lori Wilson	Elizabeth Patterson	Thom Bogue (Vice Chair)	Harry Price (Chair)	Ronald Kott	Ron Rowlett	Bob Sampayan
County of Solano	City of Suisun City	City of Benicia	City of Dixon	City of Fairfield	City of Rio Vista	City of Vacaville	City of Vallejo
<u>STA BOARD ALTERNATES</u>							
Erin Hannigan	Mike Segala	Lionel Largaespada	Steve Bird	Chuck Timm	Donald Roos	Dilenna Harris	Robert McConnell

3. APPROVAL OF AGENDA

4. OPPORTUNITY FOR PUBLIC COMMENT
(6:00 – 6:05 p.m.)

5. EXECUTIVE DIRECTOR’S REPORT Daryl Halls
(6:05 – 6:10 p.m.)
Pg. 7

6. REPORT FROM THE METROPOLITAN TRANSPORTATION COMMISSION (MTC)
(6:10 – 6:25 p.m.)
A. MTC/ABAG Presentation on Plan Bay Area 2050 Therese McMillan, MTC

7. REPORT FROM CALTRANS
(6:25 – 6:30 p.m.)

8. STA PRESENTATIONS
(6:30 – 6:40 p.m.)

- A. Federal Legislative Update** Susan Lent, Akin Gump
- B. STA’s Year-End Report** Daryl Halls
- C. Directors Reports:**
 - 1. Projects** Janet Adams
 - 2. Programs** Ron Grassi
 - 3. Planning** Robert Guerrero

9. CONSENT CALENDAR

Recommendation:

Approve the following consent items in one motion.

(Note: Items under consent calendar may be removed for separate discussion.)

(6:40 – 6:45 p.m.)

A. Meeting Minutes of the STA Board Meeting of December 11, 2019 Johanna Masiclat
Recommendation:
Approve the Minutes of the STA Board Meeting of December 11, 2019.
Pg. 15

B. Fiscal Year (FY) 2019-20 First Quarter Budget Report Susan Furtado
Recommendation:
Receive and file.
Pg. 23

C. Renewal of Membership with Solano Economic Development Corporation (EDC) for 2020 Daryl Halls
Recommendation:
Approve the renewal of STA’s membership with the Solano Economic Development Corporation (Solano EDC) at the Premier Member “Chairman’s Circle Investor” level of \$15,000 for Calendar Year 2020.
Pg. 27

- D. 2020 Paratransit Coordinating Council (PCC) Work Plan Recommendation:** Debbie McQuilkin
Approve the 2020 PCC Work Plan as shown in Attachment A.
Pg. 33

- E. Regional Transportation Impact Fee (RTIF) – Project Allocation Recommendation for Dixon Area Advanced Traffic and Rail Safety Study** Erika McLitus
Recommendation:
Approve the following:
1. Allocation of \$150,000 in RTIF funds for the Solano County/City of Dixon Railroad Safety Corridor Study, with 73% coming from District 5 and 27% coming from District 7; and
2. Authorize the Executive Director to enter into a Funding Agreement between the STA, Solano County and the City of Dixon for a Dixon Area Advanced Traffic and Rail Safety Study not-to-exceed \$150,000 of RTIF funds.
Pg. 37

- F. Comprehensive Transportation Plan Contract Amendment – Alta Planning + Design** Triana Crighton
Recommendation:
Authorize the STA Executive Director to:
1. Extend the contract with Alta Planning + Design until the end of the fiscal year (June 30, 2020); and
2. Amend the contract budget to add \$5,000 for Alta Planning + Design to complete the CTP.
Pg. 39

10. ACTION FINANCIAL ITEMS

- A. STA Office Building Updated Budget** Daryl Halls/
Building Oversight
Committee
Recommendation:
Authorize the Executive Director to:
1. Enter into all agreements as necessary, utilizing a Design Build construction procurement approach, for the design and the construction of a new STA Office Building for an amount not-to-exceed \$16.01 million; and
2. Enter into short term financing as necessary to fund the new office building payable with future Project Contingency Funds.
(6:45 – 6:50 p.m.)
Pg. 41

- B. STA’s Fiscal Year (FY) 2019-20 Proposed Mid-Year Budget** Susan Furtado
Recommendation:
Approve the STA’s FY 2019-20 Proposed Budget Revisions as shown in Attachment A.
(6:50 – 6:55 p.m.)
Pg. 47

C. Approval to submit Transit and Intercity Rail Capital Program (TIRCP) Application for Solano Regional Transit Improvements Phase 2

Anthony Adams

Recommendation:

Approve the following:

1. The Solano Regional Transit Improvement Phase 2 project list and funding plan as shown in Attachment B;
2. Authorize the Executive Director to submit a TIRCP 2020 application for Solano Regional Transit Improvements Phase 2 for an amount not-to-exceed \$11M in partnership with Fairfield and Suisun Transit (FAST), Solano County Transit (SolTrans), City of Fairfield, City of Suisun City, and City of Vallejo; and
3. Program STAF matching funds for an amount up to \$1.1M.

(6:55 – 7:00 p.m.)

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11. ACTION NON-FINANCIAL ITEMS

A. Modification to the Solano Transportation Authority’s Mission Statement

Robert Guerrero

Recommendation:

Approve the modification to STA’s Mission Statement as shown in Attachment A.

(7:00 – 7:05 p.m.)

Pg. 65

B. Selection of 2020 STA Chair and Vice Chair

Daryl Halls

Recommendation:

Approve the following:

1. Selection of the STA Chair for 2020 commencing with the STA Board Meeting of February 12, 2020;
2. Selection of the STA Vice-Chair for 2020 commencing with the STA Board Meeting of February 12, 2020; and
3. Request the new Chair designate the STA Executive Committee for 2020.

(7:05 – 7:10 p.m.)

Pg. 69

12. INFORMATIONAL – DISCUSSION

A. Solano Housing Investment Partnership (SolHIP) Update

Robert Guerrero/
Andrea Howard,
Placeworks

(7:10 – 7:20 p.m.)

Pg. 71

B. Solano Priority Conservation Areas (PCAs) Update

Bill Emlen, Solano County

(7:20 – 7:25 p.m.)

Pg. 75

C. Status of 2019 Priority Development Areas (PDAs) Designations Triana Crighton
(7:25 – 7:30 p.m.)
Pg. 79

D. Solano Priority Production Areas (PPAs) Robert Guerrero
(7:30 – 7:35 p.m.)
Pg. 89

NO DISCUSSION

E. Update on Vallejo’s Community Based Transportation Plan (CBTP) Ron Grassi
Pg. 93

F. Legislative Update Vincent Ma
Pg. 101

G. 2020 STA Board and Advisory Committee Meeting Schedule Johanna Masielat
Pg. 109

13. BOARD MEMBERS COMMENTS

14. ADJOURNMENT

The STA Board’s next regularly scheduled meeting is at **6:00 p.m., Wednesday, February 12, 2020** at the Suisun Council Chambers.

STA Board Meeting Schedule for Calendar Year 2020

6:00 p.m., February 12th

6:00 p.m., March 11th

6:00 p.m., April 8th

6:00 p.m., May 13th

6:00 p.m., June 10th

6:00 p.m., July 8th

No Meeting in August (Board Summer Recess)

6:00 p.m., September 9th

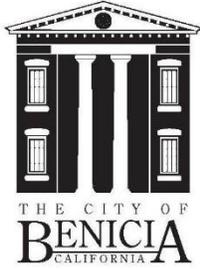
6:00 p.m., October 14th

No Meeting November

5:30 p.m., November 4, 2020 – STA’s 23rd Annual Awards Ceremony – City of Dixon

6:00 p.m., December 9th

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AGENDA ITEM
CITY COUNCIL MEETING DATE – JANUARY 21, 2020
COUNCIL MEMBER COMMITTEE REPORT

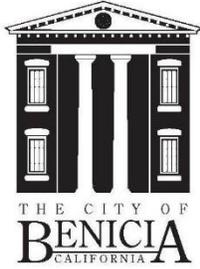
TO : Council Member Young
Council Member Largaespada

FROM : Public Works Director

SUBJECT : **TRAFFIC, PEDESTRIAN, BICYCLE SAFETY COMMITTEE**

The following information is provided for your committee report at the January 21, 2020 Council meeting.

The TPBS Committee last met on October 17, 2019. The next regular meeting will be Thursday, January 16, 2020, in the City of Benicia Commission Room.



AGENDA ITEM
CITY COUNCIL MEETING DATE – JANUARY 21, 2020
COUNCIL MEMBER COMMITTEE REPORT

TO : Councilmember Largaespada

FROM : Interim Community Development Director

SUBJECT : **TRI-CITY AND COUNTY COOPERATIVE**
PLANNING GROUP “SOLANO OPEN SPACE”

The following information is provided for your committee report at the January 21, 2020, Council meeting.

The minutes from the most recent meeting on April 22, 2019 are not yet available. The next meeting has not been scheduled yet.

For a list of additional upcoming Solano County outdoor events please visit:
<http://solanoopenspace.org/AandE.asp>.