



## Cotati City Council Agenda Staff Report

**Item type:** PUBLIC HEARINGS (ACTION)  
**To:** City Council  
**Subject:** **INTRODUCTION AND FIRST READING OF AN ORDINANCE TO AMEND SECTION 17.42.170 ACCESSORY DWELLING UNITS/JUNIOR ACCESSORY DWELLING UNITS OF THE COTATI MUNICIPAL CODE**  
**Date:** December 10, 2024  
**Written by:** Autumn Buss, Associate Planner

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### **Recommendation**

It is recommended that the City Council hold a public hearing and introduce an Ordinance amending Title 17 (Land Use) of the Cotati Municipal Code in accordance with State law by repealing and replacing Section 17.42.170 Accessory Dwelling Units/Junior Accessory Dwelling Units and amending Section 17.90.020 Definitions of Specialized Terms and Phrases.

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### **Background**

Since 2016, the California State Legislature has regularly adopted new laws intended to increase the development of accessory dwelling units (“ADUs”) in an effort to create more housing opportunities in the state. This legislation has significantly reduced the amount of control that local jurisdictions have to regulate ADUs. In some cases, the new laws set state-level standards that supersede local standards; in others they simply nullify existing local regulations. In 2020, in response to a number of state laws passed in 2019, the City adopted an ordinance for ADU development in Cotati that reiterated the numerous standards and requirements set forth in the state ADU law. Since that time, the Legislature has continued to make frequent law changes that have rendered the existing ADU ordinance—codified as Section 17.42.170 of the Cotati Municipal Code—increasingly less accurate and relevant. For the most part, Section 17.42.170 is simply redundant with state law, reiterating standards set by the state over which the City has no control. However, some of the new state legislation has made Cotati’s code out of date and currently inconsistent with state law.

### **Analysis/Discussion**

Staff expect that the State Legislature will continue to regularly adopt updates to state ADU law,

as California's housing crisis continues. This, in turn, may make the City's existing code further noncompliant with state law or require a great deal of staff, Planning Commission, and City Council time to repeatedly update the City's code in order to remain current. An alternative, however, is to adopt an ordinance that references state ADU law, as updated from time to time, for the majority of standards, rather than attempting to adopt every standard of the state ADU law word for word into the City's code. The City may choose to adopt an ADU ordinance addressing only certain standards, as long as those standards are consistent with the state law.

A copy of Section 17.42.170, Cotati's current ADU standards, is included as Attachment 1. As mentioned above, while most of the provisions of Section 17.42.170 are a reiteration of state standards that are still applicable at this time, some of its provisions are no longer consistent with state law. Key state legislative changes that have been made since Section 17.42.170 was codified in 2020 include the following:

- Minimum allowable height limit of 18 feet for detached ADUs within ½ mile of SMART station or on properties with existing or proposed multifamily, multistory dwellings
- Minimum allowable height limit of 25 feet for attached ADUs
- Front setback requirements may not preclude development of a detached ADU of 800 square foot or less on a property
- Number of ADUs that must be allowed per single-family property is three—one junior accessory dwelling unit (JADU) of up to 500 square feet built entirely within the primary dwelling; one ADU built entirely within the existing space of the primary dwelling or an accessory structure; and a detached ADU up to 800 square feet in size
- Unpermitted and/or nonconforming ADUs cannot be denied a permit
- Owner occupancy of the property is no longer mandatory for ADUs
- Stricter approval timelines are required of the City.

Two new legislative bills that will further render Section 17.42.170 inconsistent with state law have been passed and will take effect on January 1, 2025:

- SB 1211--Raises the allowable maximum number of detached ADUs on an existing multifamily property from two to eight; prohibits local agencies from requiring replacement of uncovered, off-street parking spaces that are removed to accommodate ADU construction
- AB 2533—Extends unpermitted ADU amnesty to JADUs and changes cut-off date for construction of units that may receive amnesty from January 1, 2018 to January 1, 2020.

State ADU law does provide limited opportunities for local jurisdictions to regulate certain aspects of ADU development. These may be included in a local ordinance, and are described below.

- Limits on size. A local jurisdiction may:
  - Limit an ADU to 50% or less of the square footage of the primary dwelling, although an ADU of at least 800 square feet in size must be allowed.
  - Limit studio or one-bedroom attached or detached ADUs to 850 square feet and 2+ bedroom ADUs to 1,000 square feet.
  - Set a maximum cap of 1,200 square feet on all ADUs.
  
- Limit on height. Regardless of height in feet allowed by state law, a local jurisdiction may cap ADUs at 2 stories high.
  
- Parking in setbacks. Although parking in setbacks cannot be prohibited, a local jurisdiction may make a determination about the specific locations in setbacks where parking is permitted. (The City's existing parking standards address this issue sufficiently through limits on parking in setbacks for both single-family and multifamily housing.)
  
- Minimum 30-day rental of ADUs. This provision is intended to limit the use of ADUs as vacation rentals rather than permanent housing.

As described above, staff has determined that adoption of an ordinance that includes a reference to state ADU law for the bulk of the ADU standards (standards which the City is required to uphold regardless) is the most efficient and effective way to keep our code simple, up-to-date, and consistent with frequently-changing state law. Therefore, the proposed ordinance would repeal the City's existing Land Use Code Section 17.42.170, and replace it with updated language referencing state standards for ADUs and codifying those standards over which the City has control. The key points of the proposed ordinance are as follows:

- Referral back to the required standards set by state ADU law.
- Confirmation of ministerial, non-discretionary review for ADUs that conform to state law. An ADU that does not conform to state law but is consistent with City standards may also be considered for discretionary Design Review approval by the City.
- Limit the size of ADU that may be built in the front setback to 800 square feet. (See additional discussion below.)
- Limit attached and detached ADUs on lots of up to ½ acre in size to 850 square feet for studio and one-bedroom units and 1,000 square feet for 2+ bedroom units, although applicants may choose a discretionary Design Review process to request relief from these limits. On lots over 1/2 acre in size these limits would not apply. (This is a current City standard in 17.42.170.)
- Limit the size of any ADU to 1,200 square feet. (This is a current City standard in 17.42.170.)

- Restrict the size of an attached or interior conversion ADU to 50% of the square footage of the primary dwelling (although ADU of up to 800 square feet in size must be permitted). (This is a current City standard in 17.42.170.)
- Height and Setbacks: Establish the City’s standards for height limits and setback requirements within the bounds of ADU law, which restricts jurisdictions from setting height limits *below* certain levels and setbacks *above* certain levels, but does not set an absolute height limit or setback requirement. Because state ADU law is fairly confusing on this point, it is prudent for the ordinance to clarify the maximum heights and minimum setbacks for Cotati, as follows:
  - Minimum side and rear setbacks of 4 feet for all ADUs, with the exception of conversion of an existing legal accessory structure or living space that is converted to an ADU, in which case no setback may be required per state law.
  - Height limits that set the State’s minimum height limits as the maximum allowed in Cotati, as follows:

Type of ADU	Maximum height
Attached	25 feet
Detached, within one half-mile of SMART station	18 feet
Detached, on a property with existing or proposed multifamily, multistory dwelling(s)	18 feet
Detached	16 or 18 feet

- While 16 feet is the lowest height limit that state law allows for an ADU at this time, staff proposes to set the height limit for all detached ADUs to 18 feet, in the interest of simplifying the implementation of the ordinance across the city.
- ADUs that comply with the setback standards for the primary dwelling unit according to the applicable zoning district may utilize the corresponding height limit for the primary dwelling unit.
- Limit ADUs to two stories high, unless constructed through conversion of interior space in an existing building.
- Remove the requirement for parking for any ADU in Cotati. State law allows the City to require one parking space per ADU, with the exceptions of ADUs within ½ mile of any public transit, and JADUs. These exceptions greatly reduce the number of properties on which the City may require parking, and in the interest of streamlining implementation and in the spirit of the progressive parking standards recently adopted by the City for

multifamily development, staff proposes to remove the parking requirement for ADUs entirely. This would not preclude voluntary provision of parking.

- Require a 30-day rental term minimum. (This is a current City standard in 17.42.170.)
- Amend the definitions of single-family and multifamily housing in order to ensure that ADUs are not included in the unit count, density calculation, or site coverage calculation for a lot, and that the presence of one or more ADUs on a single-family lot does not classify that property or the dwellings on it as “multifamily.” (See Attachment 2 for redline version of proposed definition amendments.)

A copy of the proposed new Section 17.42.170 is included as Attachment 3.

Staff have developed a handout regarding ADU development that will help guide applicants and staff members in developing and evaluating ADU proposals. The handout addresses both state ADU law standards, and City standards that are not affected by state ADU law or are proposed to be adopted in the ADU ordinance. The handout is included as Attachment 4.

The ADU handout describes the criteria for placement of an ADU in a front setback. Since the state law, as amended in 2023, simply added “front setback” to a lengthy list of standards that a local jurisdiction may *not* apply if they preclude development of a detached ADU of up to 800 square feet on a property, with no qualifying or clarifying language, staff feels that a common-sense interpretation of the standard is warranted. This approach proposes allowing front setback development of an ADU only when no other location is available on the property due to permanent and/or natural features of a lot. Full details are in section 5B of the ADU handout in Attachment 4.

### **Planning Commission Recommendation**

The Planning Commission held a public hearing and discussed the proposed ADU ordinance update at its meeting on November 18, 2024. The Planning Commission unanimously adopted a resolution recommending that the Council adopt the proposed ordinance, and supported the staff recommendations of setting the maximum height limit for detached ADUs to 18 feet and removing the parking requirement for all ADUs.

### **Financial Considerations**

With the exception of the staff time needed to prepare the draft ordinance, there are no direct financial impacts to the general fund associated with the adoption of the ordinance.

### **Environmental Issues**

The proposed ordinance is exempt from the California Environmental Quality Act as it is consistent with the program Final Environmental Impact Report (SCH# 2013082037) for the Cotati General Plan Update that was certified on March 24, 2015 (Resolution Number 2015-11) and the Mitigated Negative Declaration certified for the 2023-2031 Housing Element (SCH #

2013082037) adopted and certified on June 2, 2023. In addition, the proposed ordinance is consistent with and implements the City's adopted General Plan, including the 2023-2031 Housing Element, and no new environmental impacts peculiar to the project site(s) have been realized or identified. Therefore no additional environmental analysis is required under CEQA Section 15183, and pursuant to Section 15168 of the *CEQA Guidelines*, no further environmental review is required.