AGENDA
MANOR PLANNING AND ZONING COMMISSION
105 E. EGGLESTON ST.
MANOR, TEXAS 78653
JANUARY 13, 2016 6:30 P.M.

MARY ANN PARKER – CHAIR
BRIAN WINKLER – COMMISSIONER
ADRIANA ROJAS – COMMISSIONER
WILLIAM MYERS – COMMISSIONER

ZINDIA PIERSON – VICE CHAIR
TODD SHANER – COMMISSIONER
VACANT – COMMISSIONER

CALL TO ORDER AND ANNOUNCE A QUORUM IS PRESENT

CONSENT AGENDA:

1. APPROVE MINUTES:

   DECEMBER 9, 2015

2.

   A. DISCUSSION AND POSSIBLE ACTION TO APPROVE A FINAL PLAT FOR SHADOWGLEN PHASE 2, SECTION 20, SEVENTY TWO (72) SINGLE FAMILY LOTS ON 11 ACRES MORE OR LESS, LOCATED ON SHADOWGLEN TRACE MANOR, TX. APPLICANT: KIT PERKINS – AECOM. OWNER: SG LAND HOLDINGS, LLC. STAFF: SCOTT DUNLOP

   B. DISCUSSION AND POSSIBLE ACTION TO APPROVE A PRELIMINARY PLAN FOR STONEWATER NORTH REVISED PHASES 1 – 5, TWO HUNDRED THIRTY ONE (231) SINGLE FAMILY LOTS ON 69 ACRES MORE OR LESS, LOCATED ON FM 973 AND TOWER RD. MANOR, TX. AGENT: DOUCET AND ASSOCIATES. OWNER: CONTINENTAL HOMES OF TEXAS. STAFF: SCOTT DUNLOP

   C. DISCUSS AND POSSIBLE RECOMMENDATION UPON A REZONING REQUEST FOR 146 ACRES AT THE SE CORNER FM 973 AND BRENHAM ST; PORTIONS OF THE CALVIN BAKER SUR. NO. 38, JAMES MANOR SUR. NO. 39 AND 40, JAMES H. MANNING SUR. NO. 37; TRAVIS COUNTY APPRAISAL DISTRICT IDS# 227196, 227197, 227198, 227199, 227211 FROM SINGLE FAMILY RESIDENTIAL - 1 (R-1) DISTRICT ZONING TO

PLANNED UNIT DEVELOPMENT (PUD) DISTRICT ZONING. APPLICANT: KIMLEY-HORN ASSOCIATES. OWNER: 706 DEVELOPMENT CORP. STAFF: SCOTT DUNLOP

D. DISCUSS AND POSSIBLE ACTION UPON A CONCEPT PLAN FOR LAGOS MASTER PLANNED COMMUNITY; 146 ACRES AT THE SE CORNER FM 973 AND BRENHAM ST; PORTIONS OF THE CALVIN BAKER SUR. NO. 38, JAMES MANOR SUR. NO. 39 AND 40, JAMES H. MANNING SUR. NO. 37; TRAVIS COUNTY APPRAISAL DISTRICT IDS# 227196, 227197, 227198, 227199, 227211. APPLICANT: KIMLEY-HORN ASSOCIATES. OWNER: 706 DEVELOPMENT CORP. STAFF: SCOTT DUNLOP

REGULAR AGENDA:

3. DISCUSSION AND POSSIBLE RECOMMENDATIONS TO STAFF FOR AMENDING CITY ORDINANCES TO PERMIT ACCESSORY DWELLING UNITS.

4. ADJOURN

FRANCES AGUILAR
CITY SECRETARY

This Facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact Frances Aguilar at 512-272-5555, or fax 512-272-8636 for further information.

MINUTES
MANOR PLANNING AND ZONING COMMISSION
105 E. EGGLESTON ST.
MANOR, TEXAS 78653
DECEMBER 9, 2015, 6:30 P.M.

MARY ANN PARKER – CHAIR (P)
BRIAN WINKLER – COMMISSIONER (P)
ADRIANA ROJAS – COMMISSIONER (P)
WILLIAM MYERS – COMMISSIONER (P)

ZINDIA PIERSON – VICE CHAIR (P)
TODD SHANER – COMMISSIONER (P)
VACANT – COMMISSIONER

CALL TO ORDER AND ANNOUNCE A QUORUM IS PRESENT

CHAIRPERSON PARKER ANNOUNCED A QUORUM AND CALLED THE MEETING TO ORDER AT 6:31 PM

CONSENT AGENDA:

1. APPROVE MINUTES:

   NOVEMBER 10, 2015

MOTION TO APPROVE THE NOVEMBER 10TH MINUTES BY VICE CHAIR PIERSON, SECONDED BY COMMISSIONER SHANER. 5 – 0 TO APPROVE.

2.

A. DISCUSSION AND POSSIBLE ACTION TO APPROVE A FINAL PLAT FOR SHADOWGLEN PHASE 2, SECTION 20, SEVENTY TWO (72) SINGLE FAMILY LOTS ON 11 ACRES MORE OR LESS, LOCATED ON SHADOWGLEN TRACE MANOR, TX. APPLICANT: KIT PERKINS – AECOM. OWNER: SG LAND HOLDINGS, LLC. STAFF: SCOTT DUNLOP

B. DISCUSSION AND POSSIBLE ACTION TO APPROVE A PRELIMINARY PLAN FOR STONEWATER NORTH REVISED PHASES 1 – 5, TWO HUNDRED THIRTY ONE (231) SINGLE FAMILY LOTS ON 69 ACRES MORE OR LESS, LOCATED ON FM 973 AND TOWER RD. MANOR, TX. AGENT: DOUCET AND ASSOCIATES. OWNER: CONTINENTAL HOMES OF TEXAS. STAFF: SCOTT DUNLOP

C. DISCUSSION AND POSSIBLE ACTION TO APPROVE A FINAL PLAT FOR PRESIDENTIAL HEIGHTS PHASE 1, ONE HUNDRED THIRTEEN (113) SINGLE FAMILY LOTS ON 30 ACRES MORE OR LESS, LOCATED AT BOIS D'ARC AND TOWER ROAD. AGENT: KIMLEY-HORN. OWNER: PRESIDENTIAL GLEN, LTD. STAFF: SCOTT DUNLOP

ITEM 2C WAS MOVED TO THE REGULAR AGENDA BY SCOTT DUNLOP. MOTION TO APPROVE BY COMMISSIONER SHANER, SECONDED BY COMMISSIONER ROJAS. 5 – 0 TO APPROVE.

D. DISCUSS AND POSSIBLE RECOMMENDATION UPON A REZONING REQUEST FOR 146 ACRES AT THE SE CORNER FM 973 AND BRENHAM ST; PORTIONS OF THE CALVIN BAKER SUR. NO. 38, JAMES MANOR SUR. NO. 39 AND 40, JAMES H. MANNING SUR. NO. 37; TRAVIS COUNTY APPRAISAL DISTRICT IDS# 227196, 227197, 227198, 227199, 227211 FROM SINGLE FAMILY RESIDENTIAL - 1 (R-1) DISTRICT ZONING TO PLANNED UNIT DEVELOPMENT (PUD) DISTRICT ZONING. APPLICANT: KIMLEY-HORN ASSOCIATES. OWNER: 706 DEVELOPMENT CORP. STAFF: SCOTT DUNLOP

MOTION TO POSTPONE ITEMS 2 A, B, D, BY COMMISSIONER MYERS, SECONDED BY VICE CHAIR PIERSON. 5 – 0 TO POSTPONE TO JANUARY 13TH MEETING.

E. DISCUSS AND POSSIBLE ACTION UPON A CONCEPT PLAN FOR LAGOS MASTER PLANNED COMMUNITY; 146 ACRES AT THE SE CORNER FM 973 AND BRENHAM ST; PORTIONS OF THE CALVIN BAKER SUR. NO. 38, JAMES MANOR SUR. NO. 39 AND 40, JAMES H. MANNING SUR. NO. 37; TRAVIS COUNTY APPRAISAL DISTRICT IDS# 227196, 227197, 227198, 227199, 227211. APPLICANT: KIMLEY-HORN ASSOCIATES. OWNER: 706 DEVELOPMENT CORP. STAFF: SCOTT DUNLOP

ITEM MOVED TO REGULAR AGENDA BY SCOTT DUNLOP. HAMILTON POINT RESIDENT MARLENE SMITH SPOKE ABOUT INCREASED TRAFFIC ON BLAKE MANOR, THE NEED FOR IMPROVING THE ROAD WITH TURN LANES OR TRAFFIC SIGNALS INTO HAMILTON POINT, IF THE PROPOSED DEVELOPMENT WILL INCREASE TRAFFIC THROUGH HAMILTON POINT, THE PROPOSED FUTURE FM 973, AND IF THE PROPOSED DEVELOPMENT WILL BE LOW-INCOME HOUSING. STAFF SPOKE THAT TRAFFIC STUDIES WILL BE PART OF THE DEVELOPMENT PROCESS AND ANY NECESSARY ROADWAY IMPROVEMENTS WILL BE DETERMINED BY THE STUDY, THE FUTURE FM 973 IS FUNDED AND CONSTRUCTED BY TXDOT AND THE PROPOSED DEVELOPMENT ASSIGNS RIGHT-OF-WAY FOR THE ROAD BUT FM 973 BYPASS IS NOT PART OF THIS DEVELOPMENT, AND THE CITY DOES NOT DICTATE THE AFFORDABILITY OF HOUSES IN THE DEVELOPMENT, ONLY THE TYPES OF HOUSING I.E. SINGLE-FAMILY OR MULTI-FAMILY AND THE INDIVIDUAL LOT SIZES. MOTION TO POSTPONE BY COMMISSIONER MYERS, SECONDED BY VICE CHAIR PIERSON. 5 – 0 TO POSTPONE TO JANUARY 13TH MEETING.

REGULAR AGENDA:

3. DISCUSSION AND POSSIBLE ACTION TO APPROVE A SETBACK WAIVER FOR BLOCK 44, LOT 7, LOCALLY KNOW AS 204 W. EGGLESTON. APPLICANT: VERONICA DONLEY. STAFF: SCOTT DUNLOP

MOTION TO APPROVE BY COMMISSIONER SHANER, SECONDED BY COMMISSIONER MYERS. 5 – 0 TO APPROVE.

4. DISCUSSION AND POSSIBLE ACTION TO APPROVE AN AMENDMENT TO THE SHADOWVIEW UNIFORM SIGN PLAN. APPLICANT: DANNY BURNET. STAFF: SCOTT DUNLOP

MOTION TO APPROVE BY COMMISSIONER SHANER, SECONDED BY VICE CHAIR PIERSON. 5 – 0 TO APPROVE.

5. DISCUSSION AND POSSIBLE RECOMMENDATION TO REZONE 13.34 OUT OF THE JAMES MANOR SURVEY NO. 39, ABSTRACT 528, JAMES MANOR SURVEY NO. 40 ABSTRACT 546, AND CALVIN BARKER SURVEY NO. 38, ABSTRACT 58; LOCALLY KNOWN AS 11817 MURCHISON STREET, FROM SINGLE-FAMILY RESIDENTIAL (R-1) TO INSTITUTIONAL (I). APPLICANT. MANOR INDEPENDENT SCHOOL DISTRICT. STAFF: SCOTT DUNLOP

MOTION TO RECOMMEND APPROVAL TO CITY COUNCIL BY COMMISSIONER MYERS, SECONDED BY VICE CHAIR PIERSON. 5 – 0 TO RECOMMEND APPROVAL.

6. ADJOURN

MOTION TO ADJOURN BY VICE CHAIR PIERSON, SECONDED BY COMMISSIONER MYERS. 5 – 0 TO ADJOURN.

MARY ANN PARKER
CHAIRPERSON

This Facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact Frances Aguilar at 512-272-5555, or fax 512-272-8636 for further information.

JAY ENGINEERING COMPANY, INC.
P.O. Box 1220
Leander, TX 78646
(512) 259-3882
Fax 259-8016
Texas Registered Engineering Firm F-4760

February 11, 2015

Mr. Tom Bolt
Director of Development Services
City of Manor
P.O. Box 387
Manor, TX 78653

Re: First Construction Plan and Final Plat Review for
Shadowglen Phase 2, Section 20 Subdivision
City of Manor, Texas

Dear Mr. Bolt:

The first submittal of the Shadowglen Phase 2, Section 20 Subdivision Construction Plans and Final Plat prepared by AECOM Technical Services, Inc. and received by our office on January 12, 2015 has been reviewed for general compliance with the City of Manor Subdivision Ordinance 263. Based upon the review our office can offer the following comments:

CONSTRUCTION PLANS

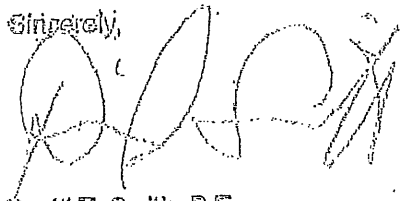
1. Provide Geotechnical Engineering Report and Pavement Design for all proposed streets and include a table or detail of proposed pavement section for each street.
2. FYI – the AARV detail should be updated to utilize the City of Manor modification or City of Austin Standard that utilizes PE pipe rather than copper tubing.
3. Include the final plat in the plans.
4. Provide benchmarks on plat and/or plans.
5. The submitted tax certificates show taxes paid for 2013 and Delinquent taxes from prior years. Tax certificates must be submitted showing all taxes paid as required in Section 24(d)(2)(v) of Subdivision Ordinance 159.

The applicant should provide a written response narrative that identifies how each of the comments was addressed. Additional comments may be rendered based upon reviews of updated submittal information.

Review of this submittal does not constitute verification that all data, information and calculations supplied by the applicant are accurate, complete, or adequate for the intended purpose. The engineer of record is solely responsible for the completeness, accuracy, and adequacy of his/her submittal, whether or not City Engineers review the application for Ordinance compliance.

Please call if you have any questions or need additional information.

Sincerely,



David T. Smith, P.E.

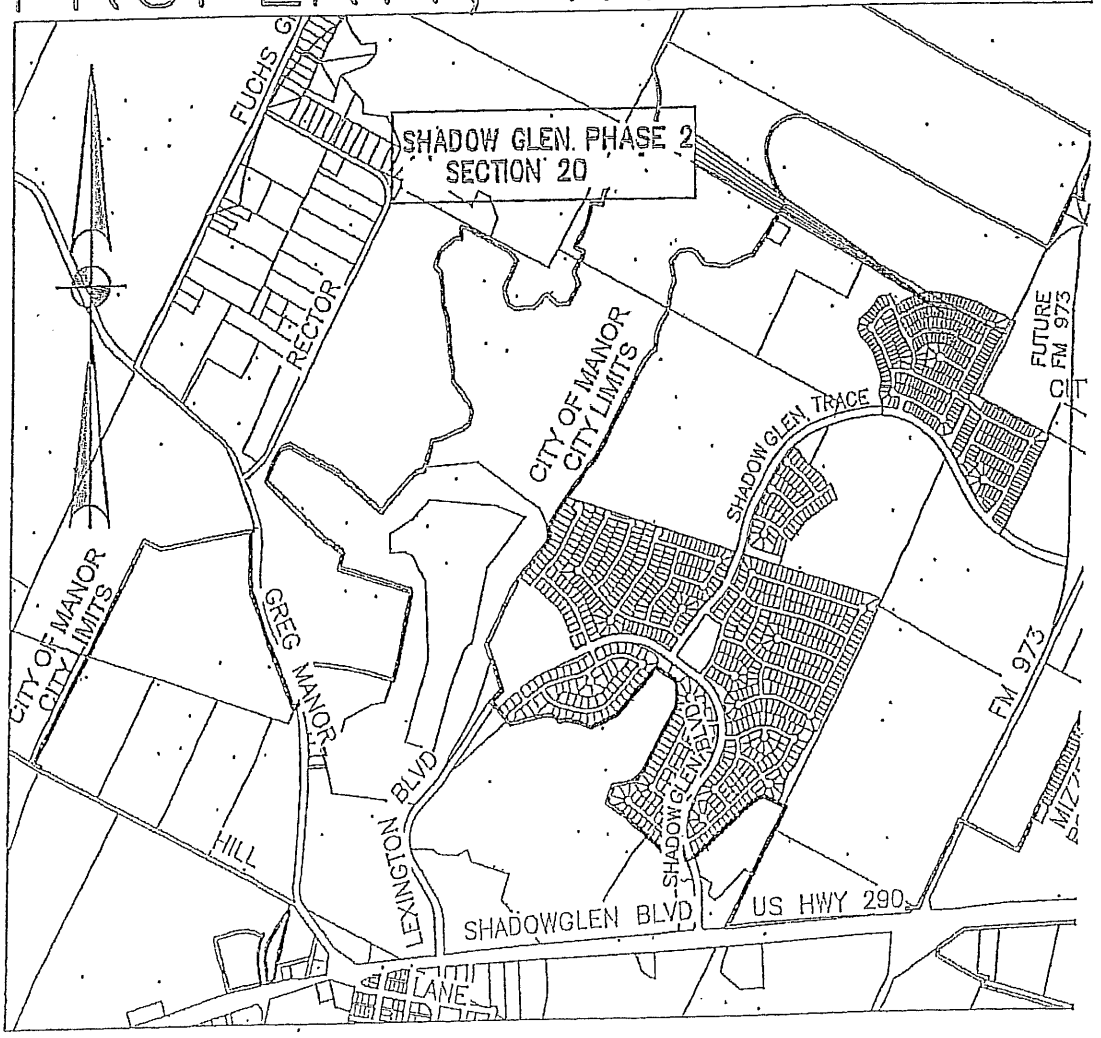
DTS/s

Copy: Jamie Burke, AECOM

PN: 100-979-10

OR EXTENT OF DEVELOPMEN
EARBY LAND USES THAT ARE
NEIGH

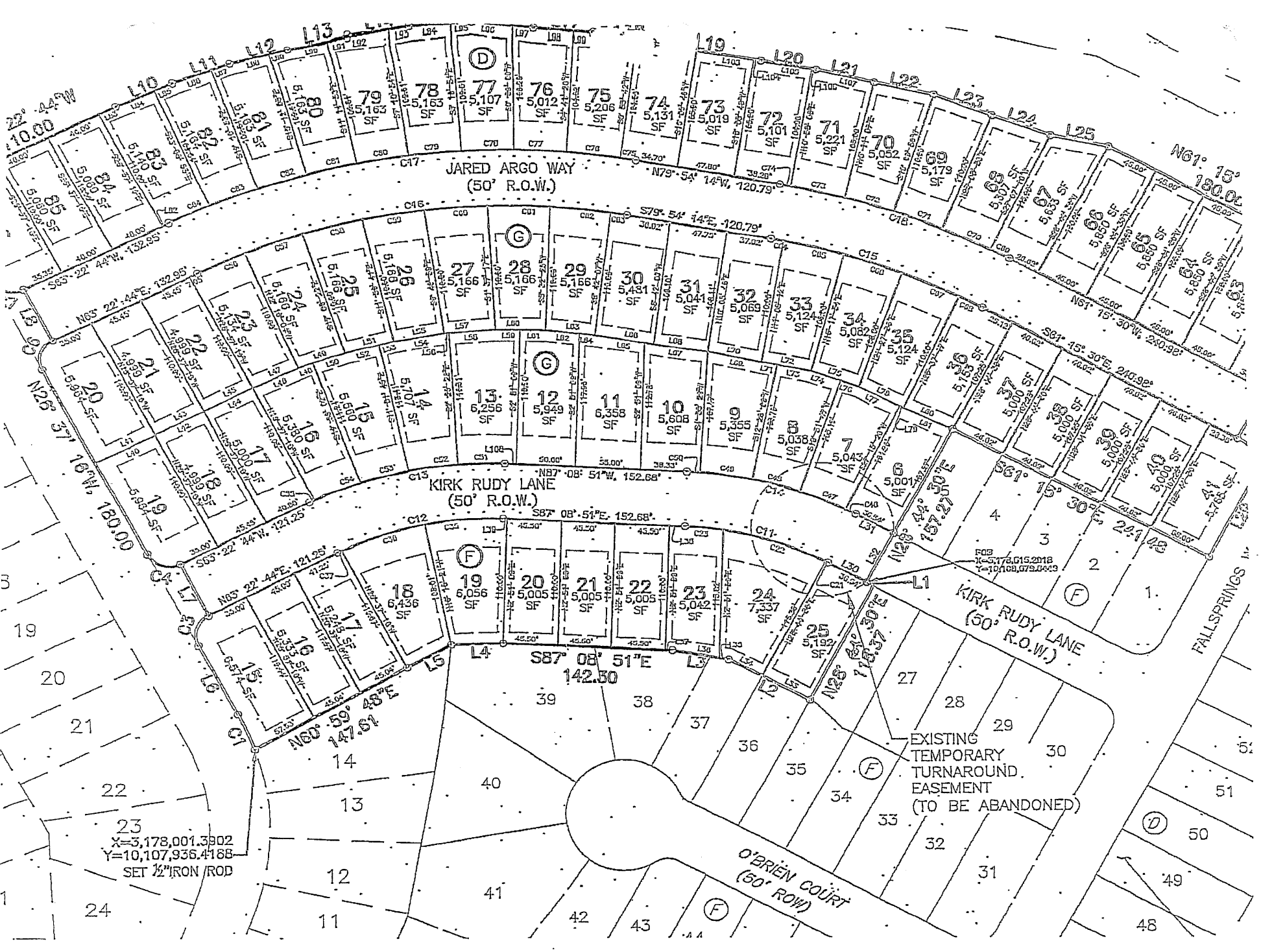
THIS CAN AFFECT THE
COUNTY REQUIRES THIS NOTI(
IT IS NOT A STATEMENT OR R
THE PROPERTY, THE SUBDIV



VICINITY MAP
SCALE: 1" = 2000'

COM

ERVICES, INC.
REET, SUITE 600
XAS, 78701
COM.COM
NO.. F-3580


JARED ARGO WAY
(50' R.O.W.)
KIRK RUDY LANE
(50' R.O.W.)
KIRK RUDY LANE
(50' R.O.W.)
O'BRIEN COURT
(50' ROW)
EXISTING
TEMPORARY
TURNAROUND
EASEMENT
(TO BE ABANDONED)
FALLSPRINGS
S87° 08' 51"E
142.50
X=3,178,001.3902
Y=10,107,936.4168
SET ½"IRON ROD

DOUCET
& ASSOCIATES

7401B Highway 71 West, Suite 160
Austin, TX 78735
Office: 512.583.2600
Fax: 512.583.2601

DoucetandAssociates.com

June 25, 2014

City of Manor
Development Services Department
105 E. Eggleston St.
Manor, Texas 78653
512-272-5555

Attn: Tom Bolt, Director of Development Services

RE: Revised Stonewater North Subdivision: Preliminary Plan

Dear Mr. Bolt:

The Preliminary Plan Submittal Form and the associated documents enclosed are intended for a Preliminary Plan review of Stonewater North Subdivision. The revised Stonewater North Preliminary Plan differs from the previously approved preliminary plan in that the residential lot sizes have been increased from 40-feet to 50-feet. No significant changes have been made to the approved roadway or utility layouts.

A fee waiver of $14,000 was approved by the City of Manor's City Council on June 3, 2015. The application fee check enclosed in this submittal package accounts for the difference between the preliminary plan submittal fee and the fee waiver.

Please find the following documents enclosed for your review:

- Preliminary Plan Application (1)
- Application Fee Check (1)
- Fee Waiver Approval E-mail (1)
- Engineering Report (1)
- Hydrologic Report (1)
- Service Availability Letters (1 set)
- Mailing List of residents within 300' (1)
- Mailing Labels of residents within 300' (1)
- Preliminary Plan – Stonewater North (1 set)

An additional copy of the submittal materials have been submitted directly to Frank Phelan at the office of the Jay Engineering Company in Leander, Texas. Should you have any questions please do not hesitate to contact me.

JAY ENGINEERING COMPANY, INC.
P.O. Box 1220
Leander, TX 78646
(512) 259-3882
Fax 259-8016

September 11, 2015

Mr. Tom Bolt
City Manager
City of Manor
P.O. Box 387
Manor, TX 78653

Re: Stonewater North Subdivision
Fourth Preliminary Plan Application Submittal
City of Manor

Dear Mr. Bolt:

The Stonewater North Subdivision Preliminary Plan submitted by Doucet & Associates and received by our office September 10, 2015, has been reviewed for compliance with the City of Manor Subdivision Ordinance 263 B. Our previous comments dated July 7, 2015, have not been addressed with the latest submittal. The previous comments were:

1. Provide verification of no significant trees within the Limits of Construction as required by Section 22(c)(2)(iii) of Subdivision Ordinance 263 B. Significant Trees, within the boundaries of the subdivision and of 8-inch caliper and larger, shall be shown accurately to the nearest one (1) foot, Critical Root Zones of these trees shall also be shown.

2. An easement will be required for the fully developed 100 year flood plain, based upon the submitted memorandum. Show easement on the plan as required by Section 22(c)(4)(i) of Subdivision Ordinance 263 B. A drainage study, consisting of a Drainage Area Map with contours, location and capacities of existing and proposed drainage features, and calculations in accordance with this Ordinance and good engineering practices, shall be provided to ensure the property will be developed in accordance with City drainage policies.

Review of this submittal does not constitute verification that all data, information and calculations supplied by the applicant are accurate, complete, or adequate for the intended purpose. The engineer of record is solely responsible for the completeness, accuracy, and adequacy of his/her submittal, whether or not City Engineers review the application for Ordinance compliance.

We trust that you will find this information helpful when considering approval of this Preliminary Plan. If you should have any questions, or need additional information, please let us know.

Sincerely,

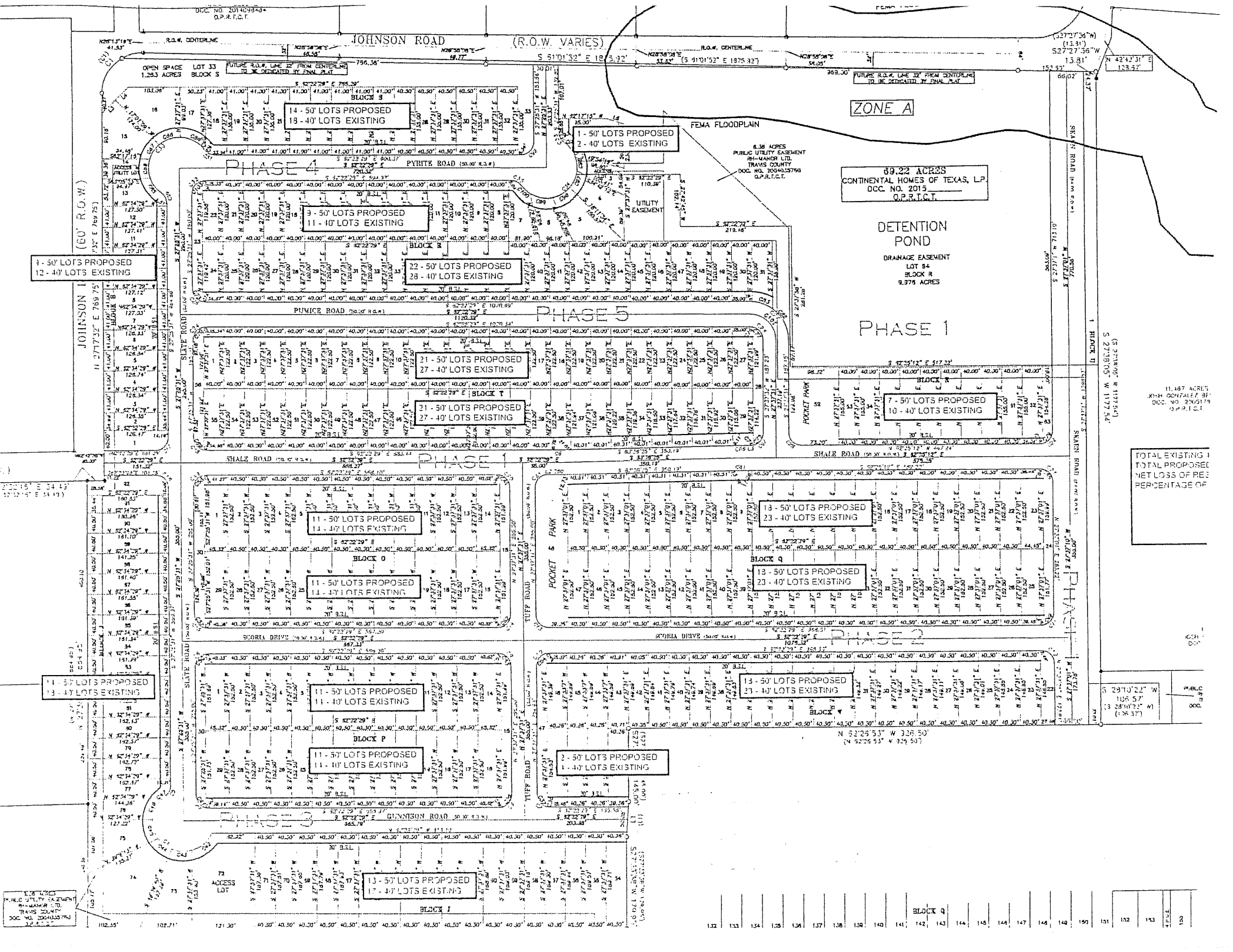
Pauline M. Gray

Pauline M. Gray, P.E.

PMG/s

Copy: Scott Dunlop, City of Manor
Vince Musat, Doucet Engineering
Hanna Lupico, Doucet Engineering

PN 100-721-10


JOHNSON ROAD (R.O.W. VARIES)
ZONE A
FEMA FLOODPLAIN
69.22 ACRES
CONTINENTAL HOMES OF TEXAS, L.P.
DETENTION POND
DRAINAGE EASEMENT
LOT 84
BLOCK R
9.976 ACRES
PHASE 1
PHASE 2
PHASE 3
PHASE 4
PYRITE ROAD
PUMICE ROAD
SHALE ROAD
SLATE ROAD
TUFF ROAD
SCORIA DRIVE
GUNNISON ROAD
POCKET PARK
14 - 50' LOTS PROPOSED
18 - 40' LOTS EXISTING
1 - 50' LOTS PROPOSED
2 - 40' LOTS EXISTING
9 - 50' LOTS PROPOSED
11 - 40' LOTS EXISTING
3 - 50' LOTS PROPOSED
12 - 40' LOTS EXISTING
22 - 50' LOTS PROPOSED
28 - 40' LOTS EXISTING
21 - 50' LOTS PROPOSED
27 - 40' LOTS EXISTING
7 - 50' LOTS PROPOSED
10 - 40' LOTS EXISTING
11 - 50' LOTS PROPOSED
14 - 40' LOTS EXISTING
18 - 50' LOTS PROPOSED
23 - 40' LOTS EXISTING
13 - 50' LOTS PROPOSED
23 - 40' LOTS EXISTING
2 - 50' LOTS PROPOSED
1 - 40' LOTS EXISTING
13 - 50' LOTS PROPOSED
17 - 40' LOTS EXISTING
BLOCK S
BLOCK T
BLOCK Q
BLOCK O
BLOCK P
BLOCK V
BLOCK J
BLOCK R
OPEN SPACE LOT 33
1.283 ACRES
BLOCK S
FUTURE R.O.W. LINE 30' FROM CENTERLINE TO BE DEDICATED BY FINAL PLAT
6.38 ACRES
PUBLIC UTILITY EASEMENT
RH-MANOR LTD.
TRAVIS COUNTY
DOC. NO. 2014035750
O.P.R.T.C.T.
UTILITY EASEMENT
ACCESS LOT
11.487 ACRES
JOHN GONZALEZ JR.
DOC. NO. 2010179
O.P.R.T.C.T.
TOTAL EXISTING
TOTAL PROPOSED
NET LOSS OF RE
PERCENTAGE OF
JOHNSON ROAD (60' R.O.W.)
SWANN ROAD (R.O.W. VARIES)
DOC. NO. 2014098434
O.P.R.T.C.T.

Kimley»Horn

November 9, 2015

City of Manor
Attn: Scott Dunlop
505 Barton Springs Road
Austin, Texas 78704

Re: Lagos Master Planned Community
Planned Unit Development – Letter of Intent
SE corner of FM 973 and Blake Manor Road
Manor, Texas 78653

To Whom It May Concern:

Please accept this Summary Letter for the above referenced project. The proposed Lagos Master Planned Community is located at the southeast corner of FM 973 and Blake Manor Road in Manor, Texas and Travis County. The existing property is approximately 700 undeveloped acres. The site consists of approximately 146 acres within the City of Manor's jurisdiction, with the remainder residing in the City of Austin.

The proposed development intends to provide single family housing in the style of a lakefront community. The majority of the proposed single family residences will be located next to ponds and lakes to offer a better living experience than a typical subdivision. In addition to the single family lots, multi-family apartment units, retail lots, restaurants, public parks, and other amenities are included in the scope of the development. Manor ISD has been coordinating to construct a new elementary school in the Lagos property as well.

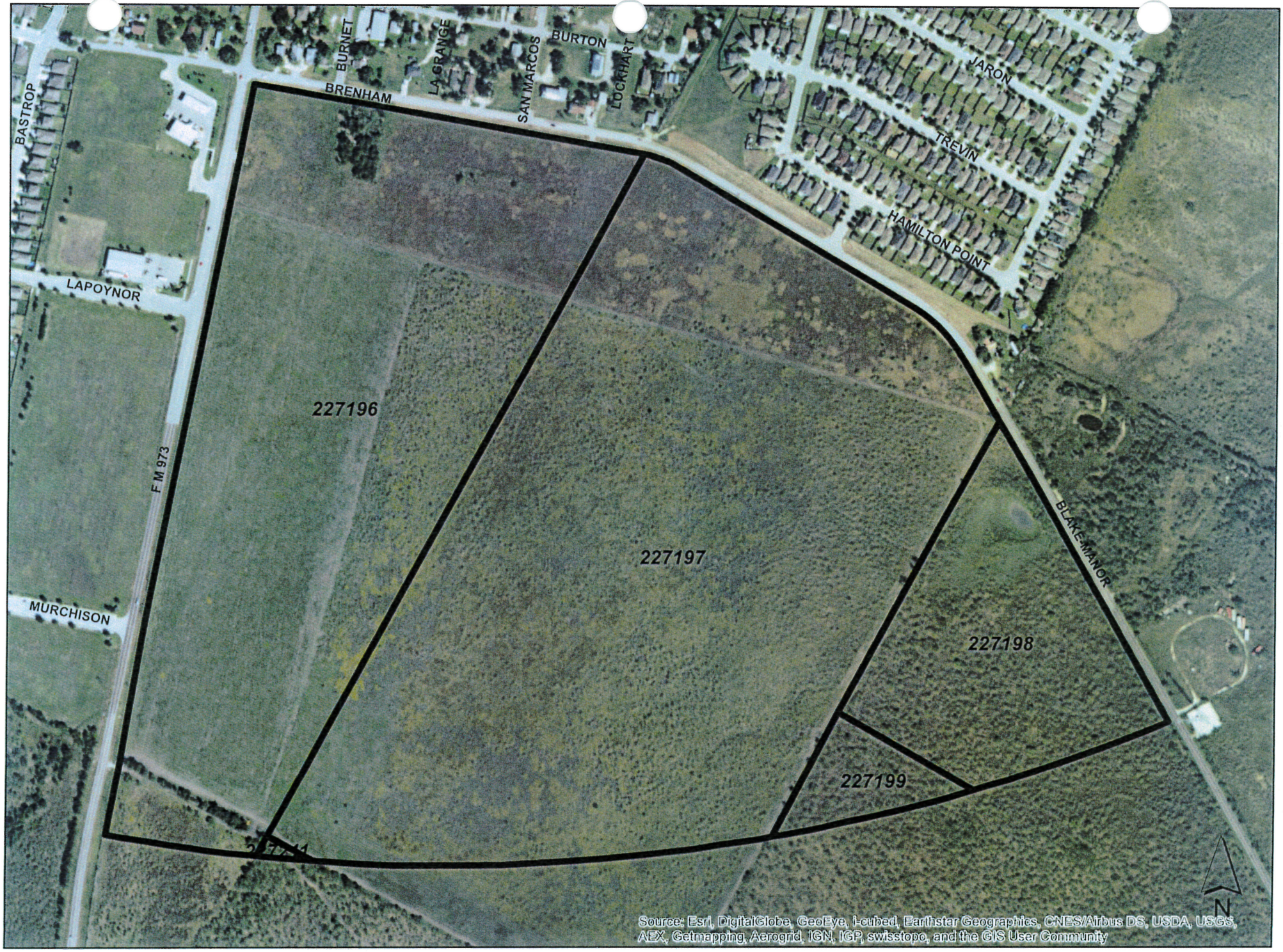
A typical zoning classification is not conducive to providing this variety of uses in an efficient or aesthetically pleasing manner. In order to adequately and responsibly meet the needs of the citizens of Manor, the Lagos property is undergoing the rezoning process, in order to be classified as a Planned Unit Development (PUD). PUD zoning allows for a more flexible and fluid community as well as a better dispersion of uses throughout the proposed development.

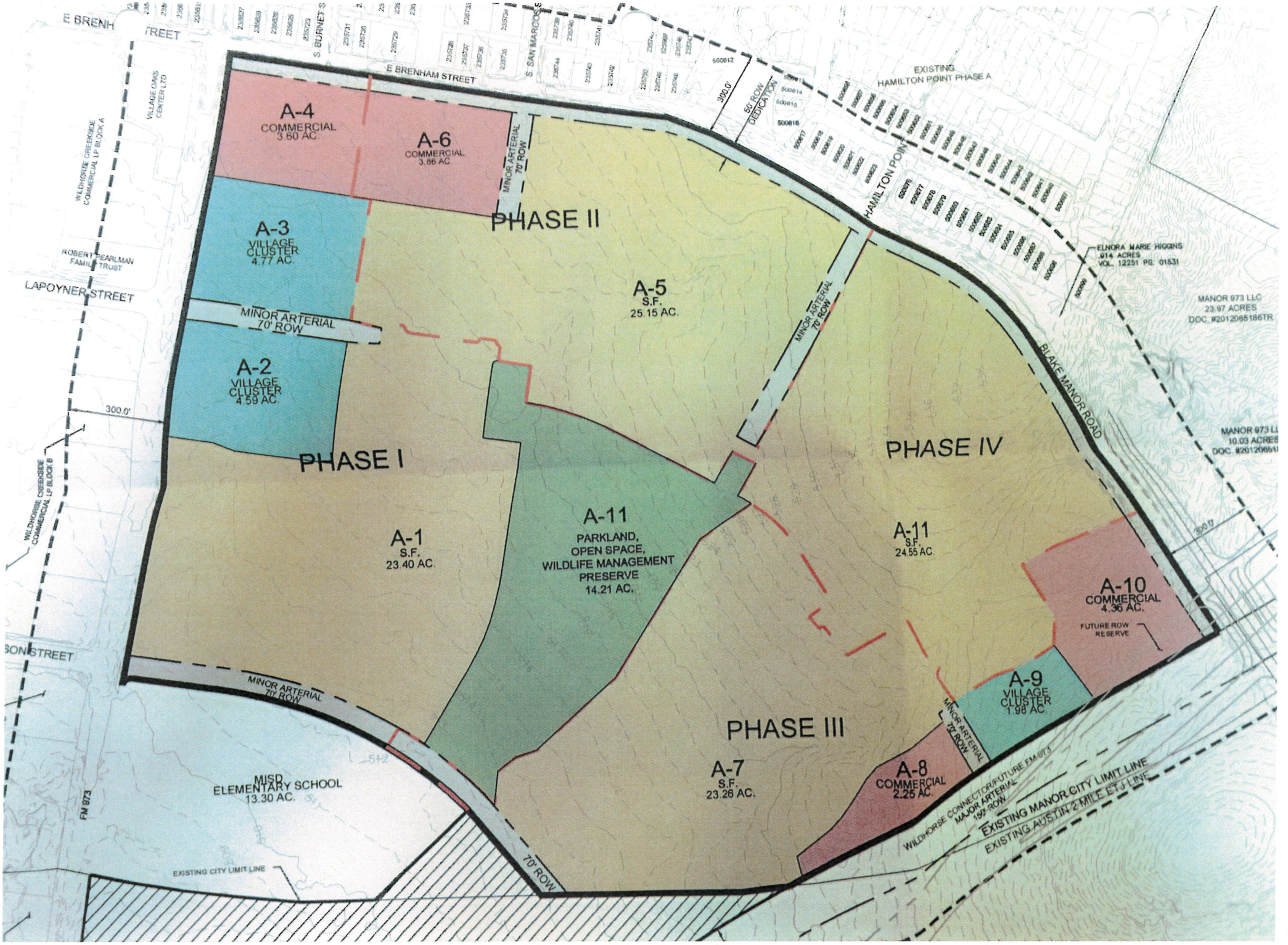
If you have any questions or comments regarding this request, please contact me at 512-418-1771.

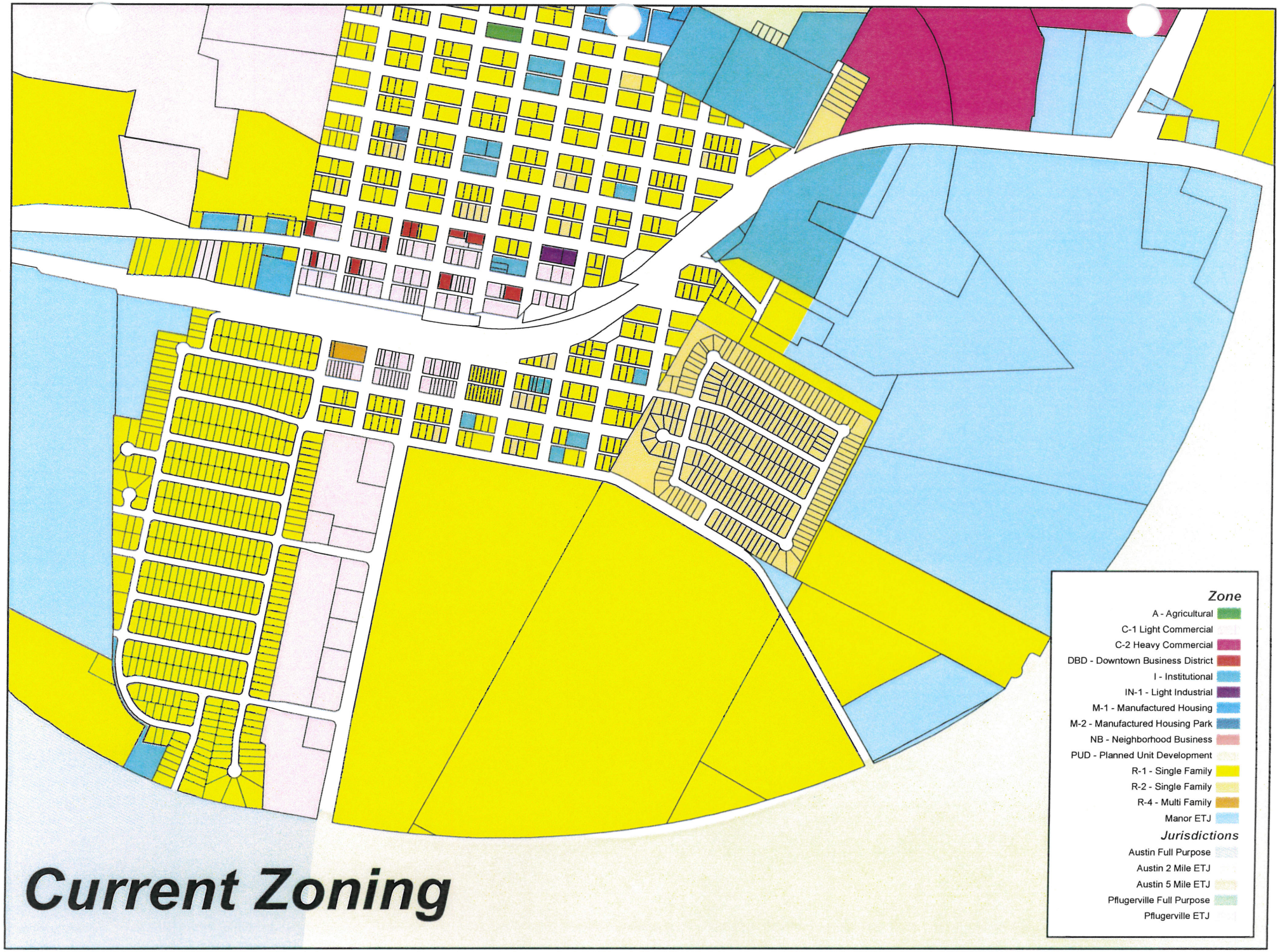
Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

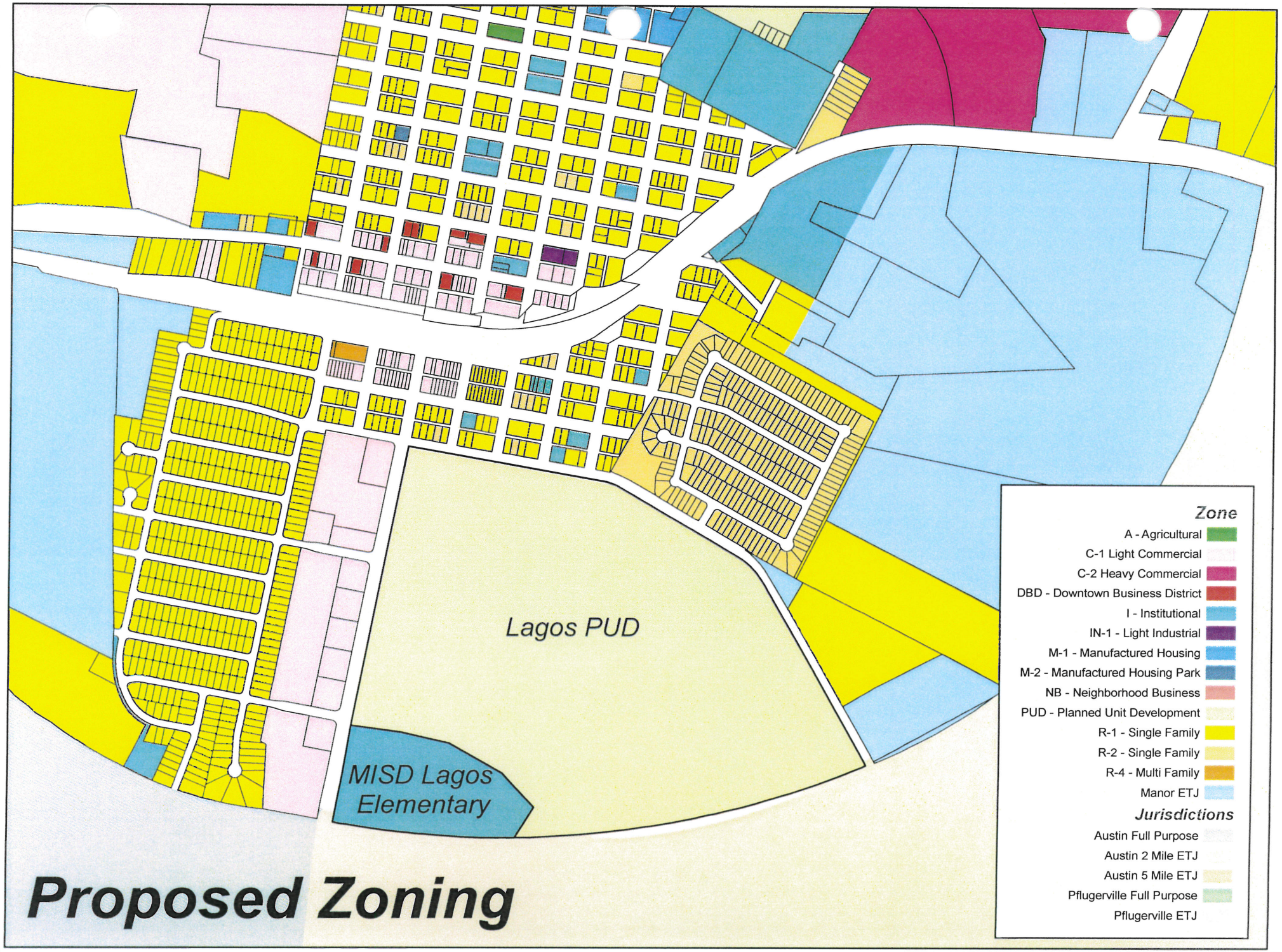
Robert J. Smith, P.E.
Senior Project Manager


BASTROP
BURNET
BRENHAM
LA GRANGE
SAN MARCOS
BURTON
LOCKHART
JARON
TREVIN
HAMILTON POINT
LAPOYNOR
F M 973
MURCHISON
BLAKE MANOR
227196
227197
227198
227199
N
Source: Esri, DigitalGlobe, GeoEye, i-cubed, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community


E BRENHAM STREET
E BRENHAM STREET
S. BURNET ST
S. SAN MARCOS ST
EXISTING HAMILTON POINT PHASE A
50' ROW DEDICATION
HAMILTON POINT
A-4
COMMERCIAL
3.60 AC.
A-6
COMMERCIAL
3.86 AC.
MINOR ARTERIAL 70' ROW
PHASE II
A-3
VILLAGE CLUSTER
4.77 AC.
A-5
S.F.
25.15 AC.
ELNORA MARIE HIGGINS
.914 ACRES
VOL. 12251 PG. 01531
MANOR 973 LLC
23.97 ACRES
DOC. #2012065186TR
WILDHORSE CREEKSIDE COMMERCIAL LP BLOCK A
VILLAGE OAKS CENTER LTD
ROBERT PEARLMAN FAMILY TRUST
LAPOYNER STREET
MINOR ARTERIAL 70' ROW
A-2
VILLAGE CLUSTER
4.59 AC.
300.0'
PHASE I
A-1
S.F.
23.40 AC.
A-11
PARKLAND, OPEN SPACE, WILDLIFE MANAGEMENT PRESERVE
14.21 AC.
MINOR ARTERIAL 70' ROW
BLAKE MANOR ROAD
PHASE IV
A-11
S.F.
24.55 AC.
A-10
COMMERCIAL
4.36 AC.
FUTURE ROW RESERVE
MANOR 973 LL
10.03 ACRES
DOC. #201206541
WILDHORSE CREEKSIDE COMMERCIAL LP BLOCK B
BONS STREET
MINOR ARTERIAL 70' ROW
A-9
VILLAGE CLUSTER
1.98 AC.
MINOR ARTERIAL 70' ROW
PHASE III
A-7
S.F.
23.26 AC.
A-8
COMMERCIAL
2.25 AC.
MISD
ELEMENTARY SCHOOL
13.30 AC.
FM 973
EXISTING CITY LIMIT LINE
70' ROW
WILDHORSE CONNECTOR/FUTURE FM 973
MAJOR ARTERIAL
150' ROW
EXISTING MANOR CITY LIMIT LINE
EXISTING AUSTIN 2 MILE ETJ LINE



Current Zoning



Proposed Zoning

JAY ENGINEERING COMPANY, INC.
P.O. Box 1220
Leander, TX 78646
(512) 259-3882
Fax 259-8016
Texas Registered Engineering Firm F-4780

November 30, 2015

Robert J. Smith, P.E.
Kimely-Horn and Associates, Inc.
10814 Jollyville Road, Avallon IV, Suite 300
Austin, Texas 78759

Re: First Concept Plan Review for
Lagos Master Planned Community
City of Manor, Texas

Dear Mr. Smith:

The Lagos Master Planned Community Concept Plan, submitted by Kimley-Horn and Associates, Inc. and received by our office on November 9, 2015, has been reviewed for completeness and compliance with the City of Manor Subdivision Ordinance. We can offer the following comments based upon our review:

1. The location map on the concept plan is not to the correct scale as required in Section 21(c)(3) of Subdivision Ordinance 263B. A location map drawn at a scale of two thousand (2,000) feet per inch showing the area within a one (1) mile radius of the proposed subdivision must be shown on the plan. Use of the latest USGS 7.5 minute quadrangle map is recommended.

2. The future FM 973 50' R.O.W. dedication to TXDOT should be shown on the concept plan.

3. The R.O.W. dedication width for Blake Manor Road should be shown on the concept plan.

4. Section 21(c)(1) requires that the surveyor name, address and phone number be shown on the concept plan.

5. The date the concept plan was revised and/or prepared is required to be shown on the concept plan per Section 21(c)(2).

6. Section 21(c)(8)(ii) requires that the estimated traffic volume to be generated by all proposed development other than single family residential be shown on the concept plan.

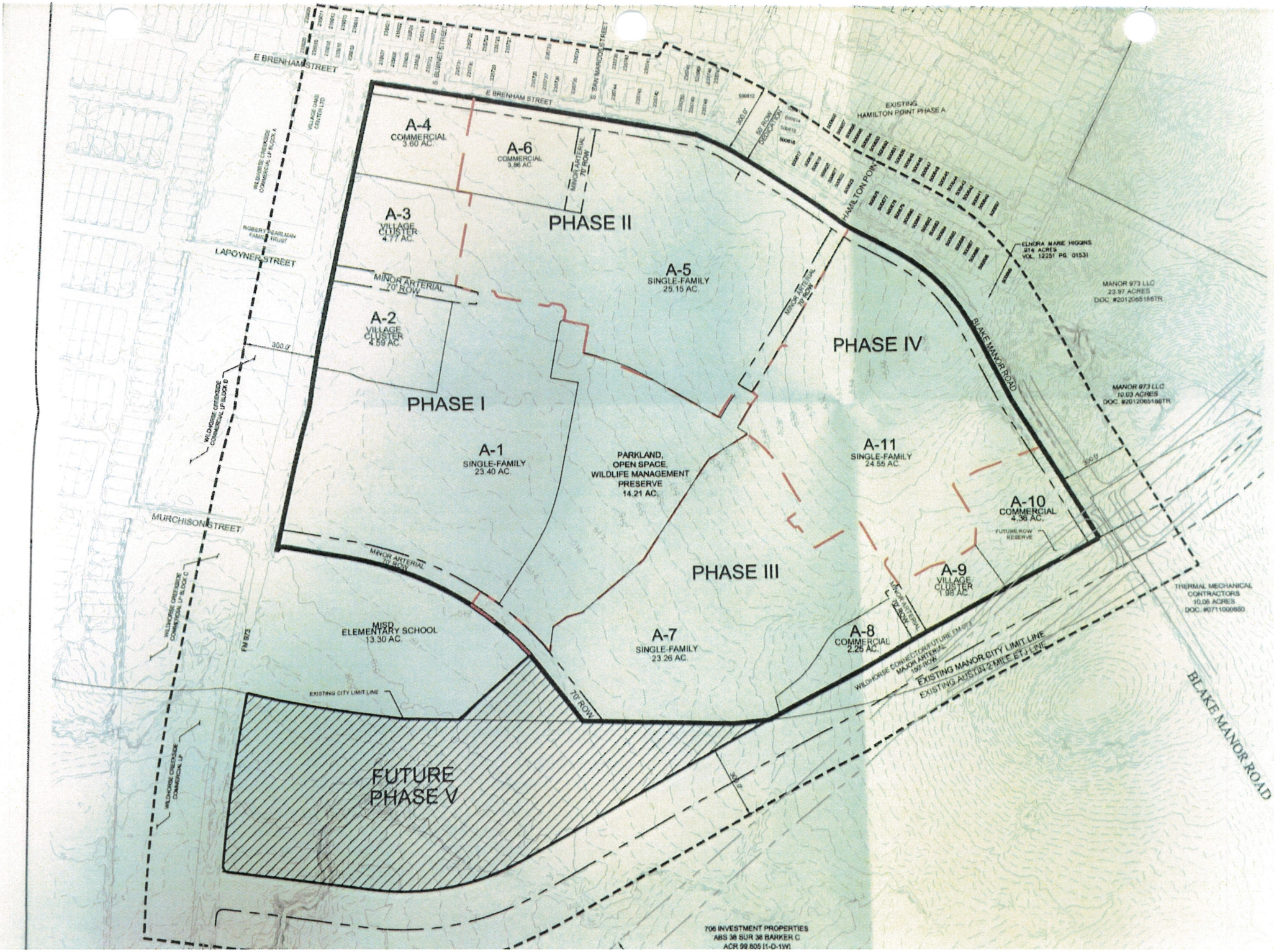
The Concept Plan does not meet the minimum informational requirements of Subdivision Ordinance 263 and is therefore administratively incomplete. Additional comments may be generated as requested information is provided. A comment response letter, indicating how each comment has been addressed, must be included with a resubmitted plan. Review of this submittal does not constitute a verification of all data, information and calculations supplied by the applicant are accurate, complete, or adequate for the intended purpose. The engineer of record is solely responsible for the completeness, accuracy, and adequacy of his/her submittal, whether or not City Engineers review the application for Ordinance compliance. Please call if you have any questions or need additional information.

Sincerely,

Pauline M. Gray, P.E.
PMG/s

Cc: Tom Bolt, City of Manor
Scott Dunlop, City of Manor

PN 100-986-10

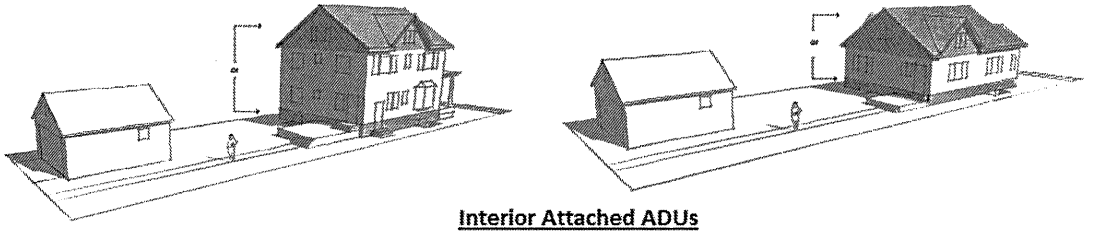

E BRENHAM STREET
S. BURNET STREET
S. SAN MARCOS STREET
E BRENHAM STREET
EXISTING HAMILTON POINT PHASE A
50' ROW DEDICATION
HAMILTON POINT
A-4
COMMERCIAL
3.60 AC.
A-6
COMMERCIAL
3.86 AC.
MINOR ARTERIAL 70' ROW
A-3
VILLAGE CLUSTER
4.77 AC.
PHASE II
ELNORA MARIE HIGGINS
.914 ACRES
VOL. 12251 PG. 01531
MANOR 973 LLC
23.97 ACRES
DOC. #2012065185TR
WILDHORSE CREEKSIDE COMMERCIAL LP BLOCK A
VILLAGE OAKS CENTER LTD
ROBERT PEARLMAN FAMILY TRUST
LAPOYNER STREET
MINOR ARTERIAL 70' ROW
A-5
SINGLE-FAMILY
25.15 AC.
MINOR ARTERIAL 70' ROW
A-2
VILLAGE CLUSTER
4.59 AC.
300.0'
PHASE I
PHASE IV
BLAKE MANOR ROAD
MANOR 973 LLC
10.03 ACRES
DOC. #2012065186TR
WILDHORSE CREEKSIDE COMMERCIAL LP BLOCK B
A-1
SINGLE-FAMILY
23.40 AC.
PARKLAND, OPEN SPACE, WILDLIFE MANAGEMENT PRESERVE
14.21 AC.
A-11
SINGLE-FAMILY
24.55 AC.
300.0'
A-10
COMMERCIAL
4.36 AC.
FUTURE ROW RESERVE
MURCHISON STREET
MINOR ARTERIAL 70' ROW
PHASE III
A-9
VILLAGE CLUSTER
1.98 AC.
MINOR ARTERIAL 70' ROW
THERMAL MECHANICAL CONTRACTORS
10.05 ACRES
DOC. #0711000650
WILDHORSE CREEKSIDE COMMERCIAL LP BLOCK C
MISD ELEMENTARY SCHOOL
13.30 AC.
A-7
SINGLE-FAMILY
23.26 AC.
A-8
COMMERCIAL
2.25 AC.
WILDHORSE CONNECTOR/FUTURE EMS/FS
MAJOR ARTERIAL 100' ROW
EXISTING MANOR CITY LIMIT LINE
EXISTING AUSTIN 2 MILE ETJ LINE
EXISTING CITY LIMIT LINE
70' ROW
BLAKE MANOR ROAD
FUTURE PHASE V
WILDHORSE CREEKSIDE COMMERCIAL LP
706 INVESTMENT PROPERTIES
ABS 38 SUR 38 BARKER C
ACR 99.805 [1-D-1W]

Accessory Dwelling Units

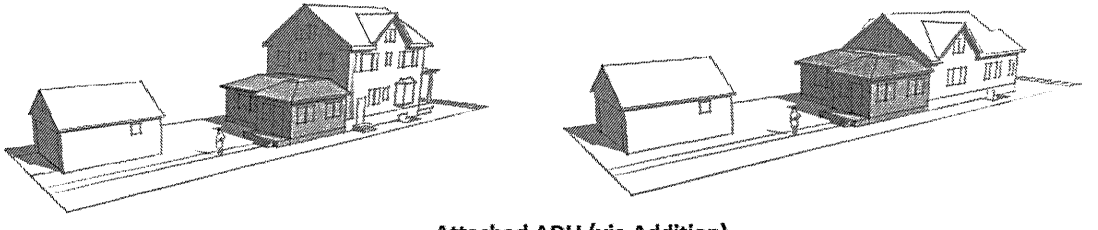
What are accessory dwelling units (ADUs)?

- Independent housing units created within single-family homes or on their lots.
  - Garage apartments, granny flats, in-law suites
  - Attached or detached to principle structure
- Pros:
  - Additional, generally more affordable housing option
  - Additional income for home owner
- Cons:
  - Increased density of single-family residential area
  - Parking and number of occupants

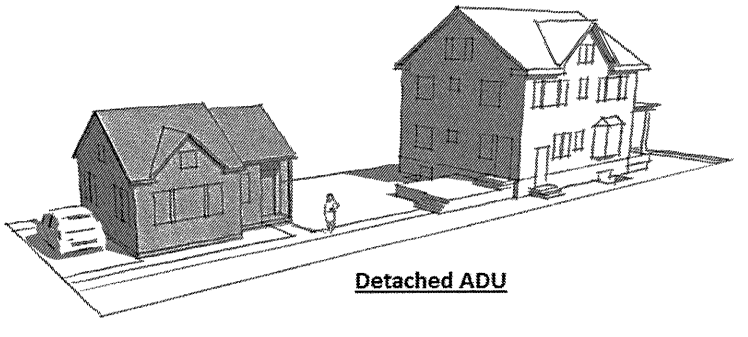
Examples



Interior Attached ADUs



Attached ADU (via Addition)



Detached ADU

Current regulations for R-1 zoning

- Only 1 single family dwelling unit per lot
  - Single family dwelling unit – "detached building having accommodations for occupancy by not more than one family
  - Dwelling unit – "a building or portion of a building arranged, occupied or intended to be occupied as residential unit designed to accommodate 1 household for living, sleeping, eating, cooking and sanitation"
- Accessory building – "subordinate building detached and used for a purpose customarily incidental to the main structure … but not involving the conduct of business or occupancy by any long-term or paying guests."
- Total lot coverage of main building and accessory structures maximum 50%
- Parking – 2 spaces per living unit and one half space for each additional bedroom above two

ADU standards to consider

- Attached and/or detached
- Parking requirements
- Floor area size, setback from main building, height
- Number of bedrooms
- Shared and/or private access
- Permissible in R-2 zoning
- Conditional use permit
- New and/or existing homes
- Utilities

QUICKNOTES

Planning fundamentals for public officials and engaged citizens

This PAS QuickNotes was prepared by APA research staff with contributions from Elisa L. Paster and Evan D. Fieldman, associates at the Paul Hastings law firm.

Accessory Dwelling Units

Accessory dwelling units (ADUs) are small, self-contained living units that typically have their own kitchen, bedroom(s), and bathroom space. Often called granny flats, elder cottage housing opportunities (ECHO), mother-daughter residences, or secondary dwelling units, ADUs are apartments that can be located within the walls of an existing or newly constructed single-family home or can be an addition to an existing home. They can also be freestanding cottages on the same lot as the principal dwelling unit or a conversion of a garage or barn.

The benefits to the home owner and the ADU occupant are many. For the home owner, ADUs provide the opportunity to offer an affordable and independent housing option to the owner's grown son or daughter just starting out or to an elderly parent or two who might need a helping hand nearby. The unit could also be leased to unrelated individuals or newly established families, which would provide the dual benefit of providing affordable housing to the ADU occupant and supplemental rental income to the owner. Supplemental income could offset the high cost of a home mortgage, utilities, and real estate taxes. Finally, leasing an ADU to a young person or family can provide an elderly home owner with a sense of security and an opportunity to exchange needed work around the house and yard for a discount on rent.

Despite the benefits, some communities resist allowing ADUs, or allow them only after time-consuming and costly review procedures and requirements. Public resistance to ADUs usually takes the form of a perceived concern that they might transform the character of the neighborhood, increase density, add to traffic, make parking on the street more difficult, increase school enrollment, and put additional pressure on fire and police service, parks, or water and wastewater. However, communities that have allowed ADUs find that these perceived fears are mostly unfounded or overstated when ADUs are actually built.

ADUs are a particularly desirable option for many communities today considering the current economic climate, changes in household size, increasing numbers of aging baby boomers, and the shortage of affordable housing choices. They provide a low-impact way for a community to expand its range of housing choices.

LOCALITIES AND STATES GET INTO THE ACT

Towns, cities, and counties across the country have done the right thing by proactively amending local zoning ordinances to allow ADUs. This is typically done either as a matter of right or as a special or conditional use. In either case, reasonable conditions may be imposed. Some states, including California, have enacted legislation that limits the ability of localities to zone out ADUs.

In 2001 AARP retained APA's Research Department to write a guidance report for citizens interested in convincing local and state officials of the benefits of allowing ADUs and showing them how to do it. *Entitled Accessory Dwelling Units: Model State Act and Model Local Ordinance*, the monograph provides alternative statute and ordinance language useful to implementing all forms of ADUs.

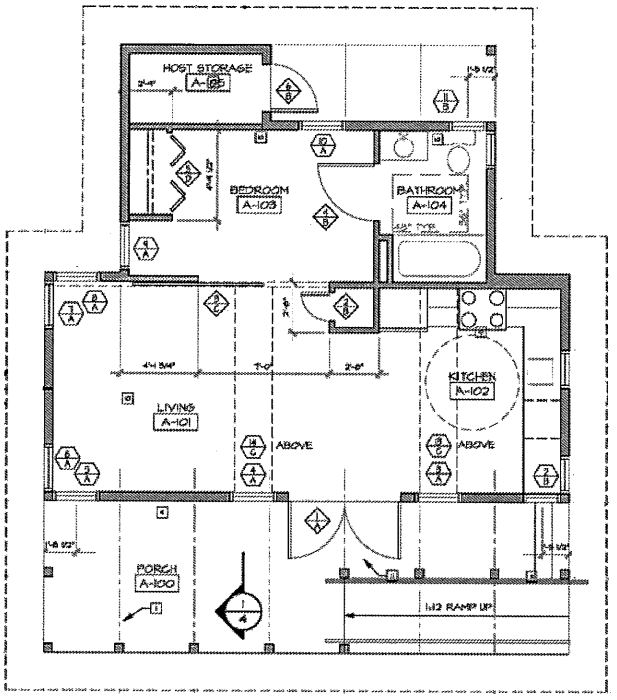
The Model Local Ordinance suggests recommendations for communities. Additionally, the intent of the ordinance describes the permitting process for eligibility and approval, and further outlines standards for ADU approval pertaining to lot size, occupancy, building standards, parking and traffic, public health, and how to deal with nonconforming ADUs. *The Model State Act* provides findings and policies encouraging the approval of ADUs and names local governments as the entities entitled to authorize

"Towns, cities, and counties across the country have done the right thing by proactively amending local zoning ordinances to allow ADUs."

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adoption of an ADU statute. It specifies the limits to which local governments may prohibit ADUs and outlines default permitting provisions if a locality does not adopt an ADU ordinance. It details optional approaches for adopting ADU ordinances, certifying local ADU ordinances, gathering data on ADU efforts, preparing reports and recommendations, and forming a statewide board overseeing ADUs.



David Baker and Partners Architects

Single story ADU floor plan.

WHAT ISSUES ARISE WHEN A PROPOSED ADU ORDINANCE IS CONSIDERED?

ADU ordinances offer a variety of benefits to local communities but the road to implementation may not be an easy process. While ADUs are more widely accepted now than in years past, skeptics still remain and some still oppose ADU zoning. The following describes some issues or decision points that communities must address in order to successfully navigate the perilous waters of public acceptance. The approach that is right for your city or town will be unique, based on local physical, political, social, and economic conditions.

By-right Permitting. Should permits for ADUs be issued as a matter of right (with clear standards built into the ordinance) or should they be allowed by discretion as a special or conditional use after a public hearing?

Occupancy. Should ordinance language allow an ADU only on the condition that the owner of the property lives in one of the units?

Form of Ownership. Should the ordinance prohibit converting the ADU unit into a condominium?

Preexisting, nonconforming ADUs. How should the ordinance treat grandfathered ADUs? How do you treat illegal apartments that want to apply for an ADU permit?

Unit Size: Should the ordinance limit the square footage of the ADU to assure that the unit is truly accessory to the principal dwelling on the property?

Adequacy of Water and Sewer Services. How do you guarantee there is enough capacity in sewer lines, pumping stations, and treatment facilities to accommodate ADUs?

These are not easy issues. However, communities would do well to seriously consider adopting an approach that: allows ADUs by right with clear written conditions; does not require owner occupancy; prohibits condominium ownership on the basis that a condo could not be considered accessory; provides a simple procedure for legalizing preexisting or formerly illegal apartments provided the unit is inspected; provides a generous size standard; and provides a water and sewer adequacy standard. □

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For more information on this topic visit www.planning.org

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Accessory Dwelling Units

At the November 19, 2015 Council meeting, the Council approved the following changes to the ADU regulations:

- Reduce minimum lot size for ADUs on SF-3 zoned lots to 5,750 square feet.
- Set the maximum size of an ADU to 1,100 square feet or 0.15 FAR whichever is smaller
- Reduce building separation to 10 feet (front to back and side to side).
- Eliminate requirement that an entry be more than 10 feet from a property line.
- Remove driveway requirement
- Provide one parking space for the ADU in addition to main structure parking.
- Eliminate parking requirement for ADU within 1/4 mile of an activity corridor as identified in the Imagine Austin Comprehensive Plan that is also served by transit
- Limit use as short-term rental to a maximum of 30 days per year for ADUs constructed after October 1, 2015.
- Prohibit use as a Type 2 short term rental.

Ordinance 20151119-080

ORDINANCE NO. 20151119-080

AN ORDINANCE AMENDING CITY CODE CHAPTERS 25-2 AND 25-6 RELATING TO ACCESSORY DWELLING UNITS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 25-2-774 (*Two-Family Residential Use*) is amended to read as follows:

§ 25-2-774 TWO-FAMILY RESIDENTIAL USE.

(A) For a two-family residential use, the base zoning district regulations are superseded by the requirements of this section.

(B) For a two-family residential use the minimum lot area is [~~7,000 square feet~~] equivalent to a standard lot.

(C) The second dwelling unit:

(1) must be contained in a structure other than the principal structure;

(2) must be located:

(a) at least [~~15~~] 10 feet to the rear or side of the principal structure; or

(b) above a detached garage;

(3) may be connected to the principal structure by a covered walkway;

[~~(4) may not have an entrance within 10 feet of a lot line;~~]

[~~(5) unless the second dwelling unit has vehicular access from a rear alley, it must be served by a paved driveway, and the portion of the driveway that crosses the front yard must be at least 9 feet and not more than 12 feet wide;~~]

[~~(6)~~](4) may not exceed a height of 30 feet, and is limited to two stories; [~~and~~]

[~~(7)~~](5) may not exceed [~~a gross floor area of~~]:

(a) [~~850 total square feet~~]1,100 total square feet or a floor-to-area ratio of 0.15, whichever is smaller; [~~or~~]and

(b) 550 square feet on the second story, if any[~~.~~]; and

(6) may not be used as a short term rental for more than 30 days in a calendar year if the second dwelling unit was constructed after October 1, 2015.

(D) Impervious cover for the site may not exceed 45 percent.

(E) Building cover for the site may not exceed 40 percent.

[~~(F) Other than in a driveway, parking is prohibited in the front yard.~~]

PART 2. City Code Section 25-2-1463 (*Secondary Apartment Regulations*) is amended to read as follows:

§ 25-2-1463 SECONDARY APARTMENT REGULATIONS.

(A) A secondary apartment is not permitted in combination with a cottage or urban home special use.

(B) A secondary apartment must be located in a structure other than the principal structure. [~~The apartment may be connected to the principal structure by a covered walkway.~~]

(C) The secondary apartment:

(1) must be contained in a structure other than the principal structure;

(2) must be located:

(a) at least [~~15~~] 10 feet to the rear or side of the principal structure; or

(b) above a detached garage;

(3) may be connected to the principal structure by a covered walkway;

[~~(4) may not have an entrance within 10 feet of a lot line;~~]

[~~(5) unless the secondary apartment has vehicular access from a rear alley, it must be served by a paved driveway, and the portion of the driveway that crosses the front yard must be at least 9 feet and not more than 12 feet wide;~~]

[~~(6)~~](4) may not exceed a height of 30 feet, and is limited to two stories; [~~and~~]

[~~(7)~~](5) may not exceed [~~a gross floor area of~~]:

(a) [~~850 total square feet~~] 1,100 total square feet or a floor-to-area ratio of 0.15, whichever is smaller; [~~or~~]and

(b) 550 square feet on the second story, if any[~~.~~]; and

(6) may not be used as a short term rental for more than 30 days in a calendar year if the secondary apartment was constructed after October 1, 2015.

(D) Impervious cover for the site may not exceed 45 percent.

(E) Building cover for the site may not exceed 40 percent.

[~~(F) Other than in a driveway, parking is prohibited in the front yard.~~]

PART 3. The "Residential Uses" portion of the table in Part 1 of City Code Chapter 25-6 Appendix A (*Tables of Off-Street Parking and Loading Requirements*) is amended to read as follows:

CHAPTER 25-6 APPENDIX A.

PART 1 – MOTOR VEHICLES

Use Classification	Minimum Off-Street Parking Requirement	Off-Street Loading Requirement

Residential Uses		
Cottage special use Mobile home residential [~~Secondary apartment special use~~] Single-family residential Small lot single-family residential Townhouse residential [~~Two family residential~~] Urban home special use	2 spaces for each dwelling unit	None
Secondary apartment special use Two family residential	Principal unit: 2 spaces Secondary unit: If located greater than .25 miles from an activity corridor that is served by a bus or transit line - 1 space; if located less than or equal to .25 miles from an activity corridor that is served by a bus or transit line – 0 spaces. For purposes of this requirement, activity corridor is defined in the Imagine Austin Comprehensive Plan, as adopted by Ordinance No. 20120614-058.	None
Accessory apartment Condominium residential Multifamily residential	Efficiency dwelling unit: 1 space 1 bedroom dwelling unit: 1.5 spaces Dwelling unit larger than 1 bedroom: 1.5 spaces plus 0.5 space for each additional bedroom	None
Duplex residential Single-family attached residential -Standard -If larger than 4,000 sq. ft. or more than 6 bedrooms	 4 spaces 4 spaces or 1 space for each bedroom, whichever is greater	None
Bed and breakfast residential	1 space plus 1 space for each rental	None

	unit	
Group residential	1 space plus 1 space for each 2 lodgers or tenants	Schedule C
Retirement Housing	80% of the parking otherwise required by this table for the residential use classification	Schedule C

PART 4. Subsection (B) of City Code Section 25-2-788 (*Short-Term Rental (Type 1) Regulations*) is amended to read as follows:

(B) A short-term rental use under this section may not:

(1) include the rental of less than an entire dwelling unit, unless all of the following conditions are met:

(a) a partial unit must at a minimum include the exclusive use of a sleeping room and shared use of a full bathroom;

(b) the owner is generally present at the licensed short-term rental property for the duration of any short-term rental of a partial unit;

(c) not more than one partial unit at the property is simultaneously rented for any period less than 30 consecutive days; and

(d) rental of the partial unit is limited to a single party of individuals;

(2) operate without a license as required by Section 25-2-791 (*License Requirements*); [~~or~~]

(3) operate without providing notification to renters as required by Section 25-2-792 (*Notification Requirements*); or[.]

(4) include a secondary dwelling unit or secondary apartment except as provided by Section 25-2-774(C)(6) (*Two Family Residential Use*) and 25-2-1463(C)(6) (*Secondary Apartment Regulations*).

PART 5. Subsection (B) of City Code Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*) is amended to read as follows:

(B) A short-term rental use under this section may not:

(1) include the rental of less than an entire dwelling unit;

(2) operate without a license as required by Section 25-2-791 (*License Requirements*); [~~or~~]

(3) operate without providing notification to renters as required by Section 25-2-792 (*Notification Requirements*); or[~~,~~]

(4) include a secondary dwelling unit or secondary apartment except as provided by Section 25-2-774(C)(6) (*Two Family Residential Use*) and 25-2-1463(C)(6) (*Secondary Apartment Regulations*).

PART 6. Subsection (C) of City Code Section 25-2-791 (*License Requirements*) is amended to read as follows:

(C) The director shall issue a license under this section if:

(1) the application includes all information required under Subsection (B) of this section;

(2) the proposed short-term rental use complies with the requirements of Section 25-2-788 (*Short-Term Rental (Type 1) Regulations*), Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*), or Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*);

(3) for a short-term rental use regulated under Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*), no more than 3% of the single-family, detached residential units within the census tract of the property are short-term rental (including Type 2 and Type 1 second dwelling unit or secondary apartment) uses as determined by the Director under Section 25-2-793 (*Determination of Short-Term Rental Density*); and

(a) the structure has a valid certificate of occupancy or compliance, as required by Chapter 25-1, Article 9 (*Certificates of Compliance and Occupancy*); or

(b) the structure has been determined by the building official, not to pose a hazard to life, health, or public safety, based on a minimum life-safety inspection;

(4) for a short-term rental use regulated under Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*), located in a non-commercial zoning district, no more than 3% of the total number of dwelling units at the property and no more than 3% of the total number of dwelling

units located within any building or detached structure at the property are short-term rental (Type 3) uses as determined by the Director under Section 25-2-793 (*Determination of Short-Term Rental Density*); and

(a) the structure and the dwelling unit at issue have a valid certificate of occupancy or compliance, as required by Chapter 25-1, Article 9 (*Certificates of Compliance and Occupancy*); or

(b) the structure and the dwelling unit at issue have been determined by the building official not to pose a hazard to life, health, or public safety, based on a minimum life-safety inspection[~~.~~];

(5) for a short-term rental use regulated under Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*), located in a commercial zoning district, no more than 25% of the total number of dwelling units at the property and no more than 25% of the total number of dwelling units located within any building or detached structure at the property are short-term rental (Type 3) uses as determined by the Director under Section 25-2-793 (*Determination of Short-Term Rental Density*); and

(a) the structure and the dwelling unit at issue have a valid certificate of occupancy or compliance, as required by Chapter 25-1, Article 9 (*Certificates of Compliance and Occupancy*); or

(b) the structure and the dwelling unit at issue have been determined by the building official not to pose a hazard to life, health, or public safety, based on a minimum life-safety inspection.

PART 7. Subsections (A) and (D) of City Code Section 25-2-793 (*Determination of Short-Term Rental Density*) is amended to read as follows:

§ 25-2-793 DETERMINATION OF SHORT-TERM RENTAL DENSITY.

(A) The director shall determine on an annual basis the total number of single-family, detached residential structures within each census tract and use that number to calculate the maximum number of licenses for Type 2 short-term rentals that may be issued under Section [~~25-2-790~~] 25-2-791 ([~~*Registration*~~] *License Requirements*).

(D) For a short-term rental use regulated under Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*), one short-term rental (Type 2) license per census tract may be permitted if no other property within the census tract is currently licensed as a short-term rental (Type 2 or Type 1 secondary dwelling unit or secondary apartment) use and the use complies with all other license requirements, even if approval of a single Type 2 license in the census tract would otherwise exceed the density cap under Subsection (A) or (B) of this section or fail to meet the standard of Section 25-2-791(C)(3).

PART 8. Regulations related to two-family residential use and secondary apartments will be analyzed as part of the CodeNext review of the Land Development Code. The CodeNext team is directed to review and report on Austin's two-family residential use and secondary apartment regulatory, economic, and fiscal impacts as part of the CodeNext process, including impact on housing affordability options throughout the city.

PART 9. This ordinance takes effect on November 30, 2015.

PASSED AND APPROVED

§
§
November 19, 2015 §

Steve Adler
Mayor

APPROVED:
Anne L. Morgan
Interim City Attorney

ATTEST: For
Jannette S. Goodall
City Clerk

Accessory Dwelling Units

Model State Act and Local Ordinance



A Publication of the

Public Policy Institute

Rodney L. Cobb and Scott Dvorak
American Planning Association

Accessory Dwelling Units:

Model State Act and Local Ordinance

by

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and

Scott Dvorak, Research Associate

American Planning Association

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The Public Policy Institute, formed in 1985, is part of the Research Group at AARP. One of the missions of the Institute is to foster research and analysis on public policy issues of interest to older Americans. This publication represents part of that effort.

The views expressed herein are for information, debate, and discussion and do not necessarily represent the formal policies of AARP.

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FOREWORD

Accessory dwelling units (ADUs) are independent housing units created within single-family homes or on their lots. These units can be a valuable addition to a community's housing stock. ADUs have the potential to assist older homeowners in maintaining their independence by providing additional income to offset property taxes and the costs of home maintenance and repair. Other potential benefits include companionship, the opportunity to negotiate for home maintenance or personal services in return for reduced rents, and increased personal security. ADUs also offer a cost-effective means of increasing the supply of affordable rental housing in a community without changing the character of a neighborhood or requiring construction of new infrastructure such as roads, sewers, and schools. Zoning ordinances that prohibit ADUs or make it extremely difficult for homeowners to create them are the principal obstacle to the wider availability of this housing option.

The Public Policy Institute of AARP asked the American Planning Association (APA) to develop model legislation (a state statute and a local ordinance) that would assist AARP volunteer leaders and other interested citizens, planners, and government officials in evaluating potential changes to state laws and local zoning ordinances to encourage the wider availability of ADUs. The APA is the nation's leading source of information on planning and zoning practices. Rodney L. Cobb, APA's Staff Attorney and Editor of *Land Use Law* and *Zoning Digest,* was the principal investigator for this project. He was assisted by Scott Dvorak, Research Associate, and other members of APA's research department. The authors have drawn heavily from the experiences of states and localities in developing the model legislation. As a result, many of the provisions incorporated in the model legislation have been tested in different communities and proven successful in actual practice.

The model legislation is intended to serve as a guide for communities that want to make the benefits of ADUs available to households of all ages, not just older persons. It has been drafted to meet the needs of a wide variety of communities. Optional provisions, including those that are attractive even to very cautious communities, are incorporated in the model local zoning ordinance to provide as many choices as possible for jurisdictions to consider. The materials presented here indicate that ADUs can be a cost-effective solution for meeting myriad housing needs without engendering the negative impacts sometimes associated with other forms of affordable housing development. It is our hope that the model legislation will prove to be a valuable reference for communities seeking to increase the housing choices available to their residents.

George J. Gaberlavage
Associate Director/Consumer Team
Public Policy Institute

EXECUTIVE SUMMARY

Background

Accessory dwelling units (ADUs) are independent housing units created within single-family homes or on their lots. They have the potential to assist older homeowners in maintaining their independence by providing additional income to offset property taxes and maintenance and repair costs. Other potential benefits to older homeowners include companionship, the opportunity to negotiate for home maintenance or personal services in return for reduced rents, and increased personal security. ADUs also offer a cost-effective means of increasing the supply of affordable rental housing in a community without changing the character of a neighborhood or requiring construction of new infrastructure (roads, sewers, schools, etc.) to serve development. Zoning ordinances that prohibit ADUs or make it extremely difficult for homeowners to create them are the principal obstacles to the wider availability of this housing option.

Purpose

The purpose of this report is to present model legislation for both states and local jurisdictions to use to develop their own regulations on creating ADUs. Drawing on the experience of communities that have incorporated ADUs into their zoning practices, the report reviews and evaluates potential options for changes in state laws and local zoning ordinances to increase the availability of ADUs.

Methodology

A search was conducted to collect and review existing literature on ADUs, including all state ADU legislation, local ADU ordinances, and ADU court cases. In addition, a mailing went out to some 1,600 planning agencies and consultants who subscribe to the American Planning Association's *Zoning News,* requesting copies of local ADU ordinances and information on ADU policies and regulations. (These activities took place in 1996 and 1997, with an additional review conducted in 1999 of ADU state legislation and court cases.) The researchers then analyzed the 50 local ADU ordinances and other materials collected in response to the mailing. A series of follow-up interviews with state and local officials and ADU experts were then conducted to develop further information on the key ADU issues raised by the analysis. To obtain a broad national perspective, these interviews were conducted with officials in a variety of regions and states. The Model State Accessory Dwelling Unit Act and the Model Accessory Dwelling Unit Ordinance were then drafted. Several state and local officials interviewed earlier subsequently reviewed the draft model legislation to assess its utility and feasibility in light of actual administrative practice and community experience.

Principal Findings

Regulatory barriers can be most effectively removed by adoption of a state ADU act and by encouraging localities to adopt ADU ordinances. Many communities that initially allowed limited ADU development found the experience positive enough to broaden the scope for ADUs.

Conclusion

Reductions in the size of American households, along with changes in their composition and economic circumstances, warrant consideration of zoning policies that encourage the more efficient use of the nation's infrastructure and supply of single-family homes to meet current and future housing needs. States and localities are also seeking ways to assure the independence and security of older residents with a minimum of public investment. ADUs provide a potential resource for addressing these issues by making more effective use of existing housing stock and providing older homeowners with a potential source of income to maintain their independence.

INTRODUCTION

Across the United States, communities are struggling to meet the nation's growing and changing housing needs. Three factors — changing demographics, changing economics, and changing community goals — have converged to make innovative solutions to housing issues a policy necessity.

- Changing demographics.
  American families are growing in number but shrinking in size. People are living longer, more people are staying single longer, and married couples are having fewer children. The housing stock has not kept up with this change in family demographics. In some communities, the need for housing, especially for people with special physical and financial needs, has become acute. Underused space in single-family houses is one of the nation's largest untapped housing resources.

- Changing economics.
  Not only is family size changing, but so are the economic circumstances of families. As the population ages, many older people find themselves living in their family homes alone. They may need additional income to pay for health care services, cover home maintenance costs, or make mortgage payments. Others may want a family member or a caretaker to live nearby, while maintaining privacy for both parties.

- Changing community goals.
  Many communities have recognized the need to stabilize or increase population densities in certain areas in order to maintain the existing public infrastructure, services, and tax base. In addition, many communities have sought to concentrate population density in specific areas in order to encourage public transit service and reduce urban sprawl. These communities do not, however, necessarily want their single-family neighborhoods to become structurally more dense.

One approach to meeting these needs is to allow or even encourage the development of accessory dwelling units (ADUs). ADUs are constructed as either apartments or cottages, and the term "ADU" is used in this publication to include both types of accessory units. The relationship of the ADU to the single-family home, or "the principal dwelling unit," determines the type of ADU. An *accessory apartment* is built within the principal dwelling unit, whereas an *attached accessory cottage* is physically connected to that dwelling unit. A *detached accessory cottage* is located on the same lot as the principal dwelling unit but is not physically connected.

ADUs offer the potential for assisting older homeowners and others in maintaining their independence while increasing the supply of affordable rental housing within a community. Income from an ADU can offset rising property taxes, maintenance and repair costs, and other housing expenses that are often a burden for older homeowners. ADUs can also make it easier for households with children to afford the housing they need. In some situations, an ADU may

provide enough additional income so that a family can afford to buy a house in a preferred neighborhood that is safer, has better schools, or is closer to work.

Currently, ADUs are not a widely available housing option in the United States. Local zoning ordinances that prohibit ADUs or make it difficult for homeowners to create them are the principal obstacle. Although the impacts on neighborhoods from developing ADUs are minimal compared to those of other types of affordable housing, residents are often concerned about ADUs' compatibility with neighborhood character and design, the impact on parking, and the effects on property values and community services (see Sidebar A).

Yet, what today is called an accessory dwelling unit was once a rather typical housing arrangement. ADUs were relatively common before World War II. Many accessory units were created by middle-aged and older persons, often widows, seeking to take in roomers or boarders after their children moved out. Following the war, however, the explosive growth of the suburbs was guided by zoning ordinances that focused almost exclusively on the housing needs of the traditional nuclear family, and most communities prohibited ADUs.

Ironically, those same suburban homes were frequently constructed with unfinished space, so that homeowners could modify their living space as their needs changed. Many of these suburban homes have had additions and modifications — bedrooms, finished basements, and recreation rooms to accommodate growing families — over the past 50 years.

Current zoning ordinances, however, often maintain rigid prohibitions against ADUs. These ordinances now limit the expansion and modification options of homeowners and prevent communities from making effective use of their current housing stock to meet the changing needs of families. For older persons living in the suburbs today, the inability to continue to adapt their homes to suit their needs may mean they cannot "age in place." Yet, consumer preference surveys conducted by AARP consistently indicate that 80 percent or more of older households would like to remain in their current homes.

In addition, a recent AARP housing preference survey of persons 50 and older indicated that over one-third of the respondents (36 percent) would consider modifying their home to include an ADU in the event they needed assistance as they grew older. The potential for construction of ADUs by older homeowners is significant. The latest American Housing Survey (1997) revealed that some 16.5 million older households (age 65 and older) own their homes, and single-family detached homes make up 88 percent of these units. This survey indicates that these homes could accommodate accessory units. Single-family detached dwellings among homeowners age 65 and older (including mobile homes) had a median area of 1,665 square feet.

In fact, though ADUs are illegal in many U.S. communities, some homeowners create them anyway. Since creating an accessory apartment does not require any changes to the outside of the dwelling, an illegal unit is not likely to draw the attention of local officials. Overall, ADUs are an important part of annual additions to the nation's housing stock; it is estimated that between 65,000 and 300,000 such units are created each year (Howe 1990, 70).

Sidebar A. DALY CITY, CALIFORNIA

In 1979, Daly City officials, like many civic leaders in the San Francisco Bay area, were concerned about the lack of affordable housing. To help remedy the problem, city officials offered to acquire land and build a public housing project. After a hearing with 400 residents, many of them protesters, the project did not go forward. City officials were still searching for answers to the affordable housing problem when the California legislature passed a law in 1982 pushing local governments to adopt ADU regulations. In 1983, Daly City passed its own ADU ordinance, citing three reasons: to help meet housing needs, to conform to the state legislation, and to legalize illegal ADUs that posed health and safety hazards to residents.

Before launching its ADU program, Daly City officials were worried that too many ADUs might cause nuisances, parking problems, and demands too great for existing community services. The city established a number of requirements to meet these concerns. Because small lots dominate the city's neighborhoods, only accessory apartments, not detached units, were allowed in residential zones. Four parking spaces were required on premises with an ADU, with two being for the principal unit. These spaces, however, could be accommodated with tandem parking (one car in front of another in driveways) and could be located in any area of the yard. Daly City also limited the maximum size of an accessory apartment to 25 percent of the living area of the principal dwelling unit.

A further city requirement that owners occupy the premises has proven critical to preventing nuisances. Officials reasoned that with the ADU owners on the premises, many nuisances that tenants might otherwise create would not be tolerated. Although realtors have tried to repeal the owner-occupancy requirement, Daly City officials have made it clear that an owner's presence on premises with an ADU is a must.

A cornerstone of Daly City's ADU program is its Project Homesafe, which received an award from the California League of Cities as an innovative community development program. This project was initiated by the city in 1992 to rid neighborhoods of fire and structural risks posed by illegal ADUs that did not conform to building and electrical codes. Out of an estimated 5,000 illegal units, 1,055 have been legalized, meaning that many safety hazards have been eliminated.

In addition to legalizing existing ADUs, the city's efforts have led to the creation of 288 new legal units. Early in its ADU program, the city sowed the seeds of success in fostering new units by minimizing applicant fees and red tape. It charges only $100 for ADU application fees, which is even less than the fee required to add a bedroom to a house. To cut red tape, the city designed a process that takes about 20 minutes. An applicant describes the particulars of his proposal and may then obtain a preliminary approval. A hearing is not required. Permits are permanent, and conditions (like the owner-occupancy requirement) are recorded in the title to the property in order to notify subsequent owners of the conditions. The city also promotes new ADUs with a low-interest loan program for low-income owners who agree to install ADUs and to lease the units only to other low-income persons for a period of at least five years.

Other advantages of Daly City's ADU program are at the human level — in its social benefits. Many senior citizens who were empty nesters living on fixed incomes were able to create accessory apartments, live in them, and rent out the remainder of their homes to persons who often became part of their extended family. One homeowner with Alzheimer's was able to trade ADU quarters for medical services from an ADU tenant, a nurse, who was also delighted by the arrangement. The city's young citizens have gained from ADUs because Bay Area housing costs are quite high and one viable option for them is to rent an ADU. For some laid-off blue-collar residents, ADU rental income has actually allowed them to keep their homes.

The model legislation contained in this publication authorizes and provides guidelines for all forms of accessory units. The *model state act* provides the justification and authorization for ADUs and establishes rules that local officials must follow in adopting a local ADU ordinance. The *model local ordinance* offers provisions that local officials can include in their existing zoning ordinance to specify what a homeowner must do to obtain a permit to build an ADU. The model local ordinance is intended to be implemented in tandem with the model state act.

Resources searched or consulted to develop the model acts include all existing American state ADU legislation, model ADU ordinances, and ADU court cases. These sources are noted in parentheses in the text of the model legislation, and a complete reference list appears at the end of the document.

The Model State Act on Accessory Dwelling Units

The model state act sets the terms for what communities can and cannot do in regulating ADUs via local ordinances. It consists of five sections:

1. General Provisions
   Section 1 establishes as state policy the encouragement of ADUs in a manner that enhances residential neighborhoods. This section incorporates the act's findings, purposes, and definitions of terms.

2. Regulatory Authority
   Section 2 authorizes localities to adopt ADU ordinances and specifies the powers they may exercise in regulating ADUs. This section authorizes local governments to allow ADUs in single-family or multi-family zoning districts; to require that either the ADU or the principal dwelling unit be owner-occupied; to impose standards with regard to parking, height, setback, lot coverage, architectural review, and other considerations; to define the application procedure for creating ADUs; and to set maximum and minimum sizes for attached and detached ADUs.

3. Limiting Regulatory Authority
   Section 3 prohibits localities from regulating ADUs in ways that violate the intent of the act. This section requires localities to justify bans on ADUs, exempts ADUs from growth-limitation measures, and establishes guidelines for parking requirements and fees that localities may impose.

4. Default Provisions
   Section 4 establishes procedures and standards for obtaining a permit to create an ADU if a locality does not adopt an ADU ordinance. This section prohibits localities that do not have an ordinance in place from imposing standards beyond those in the state law. Section 4 also requires publication of a quarterly notice indicating the availability of the public official responsible for processing ADU permits.

5. State's Role in ADU Policies
   Section 5 presents the option of giving the state a stronger role in encouraging ADUs. This section authorizes state review and certification of local ADU ordinances, collection of data on local ADU efforts, preparations of a State Annual Report that would make recommendations to the legislature and governor for improving the ADU act, and creation of a State Advisory Board on ADU policies.

Italicized notes are included in the text to assist readers in understanding various provisions of the act. Some of the explanations refer to the related model ADU local ordinance, which is designed to complement the model state act.

The Model Local Ordinance on Accessory Dwelling Units

The model local ordinance is designed to implement the policies of the model state ADU act. It will also help guide communities in drafting their ADU ordinances, even if the state does not have legislation governing ADUs. It attempts to balance the need to specify clear, rigorous standards that protect the community with the need to avoid requirements so onerous that no one will apply to install an ADU.

The ADU ordinance specifies what a homeowner must do to get a permit to build or create an ADU. Typically, a community adopts an ADU ordinance as an amendment to its zoning ordinance. (Some local governments refer to zoning regulations as "codes" or "bylaws" or "unified development regulations.")

The provisions of the model local ADU ordinance are organized into the following three categories:

1. General Provisions
   Section 1 establishes that the purpose of the ordinance is to promote and encourage the creation of legal ADUs in a manner that enhances residential neighborhoods. Section 2 provides a definition of terms.

2. Permits: Eligibility and Application
   Sections 3 through 6 inform homeowners of the steps they must take to obtain, keep valid, and renew an ADU permit. In addition, these sections specify what types of proposed ADUs (apartments, attached or detached cottages) are eligible for permits in various zoning districts.

3. Standards
   Sections 7 through 23 specify standards that a homeowner's application must meet before a permit to build or create an ADU is approved. These standards address the issues of lots (Sections 7 through 9), occupants (Sections 10 and 11), building standards (Sections 12 through 19), parking and traffic (Section 20), public health (Section 21), density limits (Section 22), and legalizing illegal and nonconforming ADUs (Section 23).

In the model local ordinance, the duplication of general zoning provisions is avoided because communities typically adopt an ADU ordinance as part of their general zoning ordinance or code. For this reason, the model local ADU ordinance does not contain provisions setting up zones or laying out application and enforcement procedures, and it does not provide routine definitions of basic zoning ordinances (such as definitions of "permit" or "lot"). It is assumed that the general zoning ordinance of which this model local ordinance will become part provides that all building construction is subject to the range of other typical community laws — e.g., building codes, fire codes, electrical codes, and housing codes.

The model local ADU ordinance presents options for dealing with key ADU issues. These options acknowledge that conditions vary in different communities. They are evaluated as "optimal," "favorable," or "minimal" (see below), based on their potential to increase the availability of ADUs in a community. For each option, a commentary is provided about the issues involved. Some comments are predicated on the assumption that the model local ordinance is adopted in a state that has already enacted a state accessory dwelling unit law.

1. Optimal
   Provisions labeled "optimal" provide the fewest restrictions on the development of ADUs;

2. Favorable
   Provisions labeled "favorable" address the concerns of the legislative body and neighbors while imposing relatively modest requirements for the installation of ADUs;

3. Minimal
   Provisions labeled minimal address the concerns of the legislative body and neighbors but in a manner that is likely to reduce the potential incentives for homeowners to create ADUs.

Sorting among these provisions will allow policymakers and community members to draft ordinances that reflect their desires and concerns. Historically, communities have tended to adopt somewhat strict standards in the beginning and then to amend their ordinances with standards that more readily encourage homeowners to develop ADUs (Hare 1989, 17-18). The research conducted for this report indicates that the fear of negative impacts is greatly diminished as local officials and neighbors have the opportunity to see firsthand the benefits of ADUs for citizens. Given this experience, many communities may become interested in increasing the number of ADUs (see Sidebar B).

Sidebar B. MONTGOMERY COUNTY, MARYLAND

Like many rapidly developing suburban counties, this area outside of Washington, DC has experienced a tremendous increase in the cost of housing. With this increase in cost comes more restricted access to housing for people of low and moderate incomes. To address this problem, the county established a committee in 1983 to study how to use the existing housing stock more efficiently. One of the study results was the adoption of an accessory apartment ordinance in 1984. Since then, more than 600 special-exception applications have been submitted for accessory apartments. By 1996, the county had about 400 legal accessory apartments; since 1989, more than 360 affidavits of compliance for registered units have been filed for rent-free units used by relatives or in-home workers.

To ensure acceptance of the original ordinance, the county was very careful about establishing the criteria under which it would allow accessory apartments. The ordinance has since been amended seven times for various reasons, including allowing ADUs in cellars, reducing lot-size minimums, requiring the posting of signs when a house with an accessory apartment has been sold and the new owner intends to maintain the accessory apartment, and eliminating the requirement for an annual status report to the county council. The county found that requiring a minimum lot size is a good idea; however, the minimum lot did not need to be as a large as officials initially thought.

As in any community, residents were concerned with neighborhood quality, particularly property values and parking. Montgomery County addresses these issues by requiring two off-street parking spaces or proof of adequate on-street parking and by limiting the number of accessory apartments approved in any one neighborhood. Officials have not established a hard-and-fast rule for accessory apartment spacing, but it has used a guide of no more than two units on any one block. The county also requires that owners occupy the premises.

In order to ensure the success of its accessory unit program, the county published a guidebook in 1991 designed to assist applicants seeking permits for accessory apartments. The book details who is allowed to construct an accessory apartment, the information needed to obtain a permit, and what to expect during the application process. The Montgomery County accessory apartment program started with thorough research backing up the need for this type of housing, followed by an ordinance that addressed the main concerns of residents but could be amended as needed. The county government supported the ordinance by publishing guides to getting accessory apartments approved and by maintaining on staff a program specialist responsible for coordinating the program and assisting the public.

MODEL STATE ACT ON ACCESSORY DWELLING UNITS

1. General Provisions.

   A. Findings.

   The Legislature finds and declares that:

   i. There is a large and growing unmet need for affordable housing to shelter the State's population. (Cal. Stats. 1982, ch. 1440 Section 1);
   ii. The State's existing housing resources, particularly single-family dwelling units, are vastly underutilized due in large part to the changes in social patterns. The improved use of this state's existing housing resources offers an innovative and cost-effective solution to the State's housing crisis (Cal. Stats. 1982, ch. 1440 Section 1);
   iii. The State can play an important role in increasing the use of existing housing resources and in reducing the barriers to the provision of affordable housing (Cal. Stats. 1982, ch. 1440 Section 1);
   iv. Typical installation rates of accessory dwelling units (ADUs) are low, rarely exceeding one ADU per 1,000 single-family homes per year (Hare 1989, 1); and
   v. There are many benefits associated with the creation of legal ADUs on single-family lots (Cal. Stats. 1982, ch. 1440 Section 1). These benefits include:

      (1) Providing a cost-effective means of accommodating development by making better use of existing infrastructure and reducing the need to provide new infrastructure (Cal. Stats. 1982, ch. 1440 Section 1);
      (2) Increasing the supply of affordable housing without government subsidies (MRSCW 1995, 9);
      (3) Benefiting older homeowners, single parents, young home buyers, and the disabled (Hare 1989, Report I, 3);
      (4) Integrating affordable housing more uniformly in the community (MRSCW 1995, 9);
      (5) Providing homeowners with extra income to help meet rising home ownership costs (MRSCW 1995, 12);
      (6) Providing a means for adult children to give care and support to a parent in a semi-independent living arrangement (MRSCW 1995, 12);
      (7) Reducing the incidence of housing deterioration and community blight by preventing absentee ownership of properties (Verrips 1983, 70);
      (8) ADUs in owner occupied single-family homes foster better housing maintenance and neighborhood stability (MRSCW 1995, 12; ERA 1987, 30);
      (9) Residential neighborhoods can accommodate a meaningful number of ADUs without significant negative impacts because these areas were typically designed for households with more persons than are occupying these areas (Verrips 1983, iv);

(10) ADUs provide the opportunity for increased security and companionship for older and other homeowners who fear crime and personal accidents (MRSCW 1995, 13; Cal. Stats. 1982, ch. 1440 Section 1);
(11) ADUs help meet growth management goals by creating more housing opportunities within existing urban areas (MRSCW 1995, 12);
(12) ADUs enhance job opportunities for individuals by providing housing nearer to employment centers and public transportation; and ADUs can enhance the local property tax base (Goldman and Hodges 1983, 7).

B. Purposes and Intent.
It is the policy of the State to promote and encourage the creation of ADUs in a manner that enhances residential neighborhoods in order for the people of the State to meet their housing needs and to realize the benefits of ADUs.

C. Definitions.

Note: We have defined both accessory apartments and cottages to guide communities in adopting ADU ordinances and because this model state act (Section 5.C.) requires municipalities to give the state statistics that distinguish between accessory apartments and accessory cottages. If a state is adopting a statute that does not require this distinction and record keeping, the state may use "second unit," as in the California statutes. We prefer the wording of "accessory" over "second" relative to these units in this model statute because the word "second" may unnecessarily have negative connotations for adjacent single-family homeowners.

i. "Accessory" means that the ADU serves single-family dwelling purposes, rather than meaning that an ADU must necessarily be subordinate to or smaller than the principal dwelling unit on a single-family lot.

Note: The traditional legal meaning for "accessory" is that an accessory use of any type must be subordinate to a principal use. Because of this traditional meaning, we have defined "accessory" relative to ADUs to ensure that, if a community so desires, the ADU may be larger than the principal unit and the owner may live in either unit. In other words, this definition helps avoid a court ruling that the "accessory" dwelling unit must be smaller than the principal unit and must be occupied by a tenant rather than the owner of the principal unit. Letting the owner live in either unit is important because a major benefit of ADUs is income for homeowners, allowing them to maintain their homes or to "age in place." Some homeowners prefer to live in the smaller unit, usually the ADU, in order to maximize their income from the rent-producing unit. In addition, this definition supports Section 10 of the model local ordinance, which permits the owner-resident to live in either the principal dwelling unit or the ADU.

ii. "Accessory cottage" means a type of ADU that is a house built or placed permanently on the same lot as a single-family house. An accessory cottage may be attached or detached from the house but is not built within the existing house.

iii. "Accessory apartment" is a type of ADU that is created by converting part of, or adding on to an existing detached single-family home or row house, or by building a separate unit into a new single-family home.

iv. "Accessory dwelling unit" (ADU) is the general term for accessory apartments and cottages. It means a residential living unit that provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling it accompanies (adapted from Cal. Gov't Code Section 65852.2(I)(4)).

v. "Default provisions" means the standards of Section 4 of this Act that a community must apply if it has no local ADU ordinance.

vi. "Dwelling unit" means a residential living unit that provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation.

vii. "Living area," means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure (Cal. Gov't Code Section 65852.2(I)(1)).

Note: This definition is used in a default-provision standard of this model state act (Section 4.F.v.) that limits the floor area of an ADU to not more than 40 percent of the living area of the existing residence.

viii. "Municipality" means a general-purpose local government created by general law or a charter, including a city, county, or village.

Note: In some states, this definition should include towns, townships, and boroughs.

ix. "Owner-occupant" means an owner who has legal residency on the premises of a dwelling unit that contains an ADU, who resides in the home at least six months of the year, and whose portion of the dwelling is not occupied when the owner is not present.

2. General Regulatory Authority.
Municipalities may, by adopting a municipal ordinance, exercise the authorities granted in this Section of the Act.

Note: The major issue in this section is whether local governments will be mandated to adopt an ADU ordinance. As discussed in the introduction, this model state act does not mandate adoption of an ordinance by a municipality. However, section A below is recommended because it, along with the remainder of the act, strongly encourages communities to adopt ADU regulations.

A. Ordinance Adoption.
Any municipality may, by ordinance certified by the State pursuant to this Act, provide for the creation of ADUs in single-family and multi-family residential zones (see similar provisions in Cal. Gov't Code Section 65852.2(a) and Haw. Rev. Stat. Section 46-4(c)).

B. Criteria for Determining Areas.
Municipalities may designate areas within the jurisdiction where accessory units may be permitted. The designation of areas may be based on criteria that may include, but are not limited to, the adequacy of water and sewer services and the impact of ADUs on traffic flow (adapted from Cal. Gov't Code Section 65852.2(a)(1)).

Note: At times, communities exclude ADUs from various neighborhoods without a reason related to the physical community, such as adequacy of certain services. Section 2.B. of the model state act guides local governments to consider these service factors as a basis for determining the appropriate areas for ADUs.

C. Approval Process.
Municipalities may establish a process for the issuance of a permit or a conditional use permit for ADUs (adapted from Cal. Gov't Code Section 65852.2(a)(4)).

Note: Section C deals with whether a community must allow ADUs by right, simply by making application, or must go through a conditional use permit process that often involves a hearing. Adopting a conditional permit process typically gives communities more control over ADUs than if the units are allowed by right. For more discussion of the issues related to the approval process, see the note in Section 4 of the model local ordinance.

D. Imposing Standards.
Municipalities may impose standards on ADUs that include, but are not limited to, parking, height, setback, lot coverage, architectural review, and maximum size of unit (adapted from Cal. Gov't Code Section 65852.2(a)(2)).

Note: This section clarifies that a municipality, in approving an application to create a legal ADU, may impose conditions related to the factors discussed above.

E. Requiring Owner Occupancy.
Based on the finding of this act, that premises with owner-occupants are better maintained, the legislature declares that a municipal regulation requiring properties with ADUs to be owner occupied, either in the accessory unit or the principal unit, prevents deterioration of neighborhoods and is a regulation substantially related to land-use impact. Such a requirement is, therefore, a regulation of land use rather than a regulation of the user of land.

Note: Courts may rule that a community has no zoning authority to require that a site with an ADU be occupied by the owner, on the basis that this regulates the land user rather than the land use (Ziegler 1995, 56A-8). However, on July 29, 1996, a California appeals court issued the only published court decision (issued by a court higher than a trial court) addressing the owner-occupancy requirement in the context of ADUs. In the case of Sounhein v. City of San Dimas, 55 Cal. Rptr. 2d 290, the court heard a claim by homeowners that the city's owner-occupancy requirement imposed on their ADU permit was invalid; even if it were not invalid, it applied only to the "applicant" and not subsequent owners. But the court upheld the owner occupancy requirement as a "character of the property as owner-occupied" and further ruled that the requirement applies to all subsequent owners of the premises. Id. at 296. Such a condition attaches to the land, the court explained, in order to fulfill the legislative purposes in imposing the condition. Id. The purposes of the owner-occupancy requirement, the court noted, are to discourage speculation in residential properties that can make housing less affordable, to prevent the disadvantages of absentee ownership, and to preserve residential neighborhood character. The Sounhein case means that the owner-occupancy requirement for ADUs has now been directly addressed and upheld by a state court.

In Section 2.E., the state legislature gives municipalities the specific authority to require owner occupancy on the basis that it encourages maintenance of the dwellings and premises.

F. Less Restrictive Provisions.
This Act does not limit the authority of municipalities to adopt less restrictive requirements for the creation of ADUs (adapted from Cal. Gov't Code Section 65852.2(e)).

Note: This section clarifies that the model state act generally does not cut back on a community's power to adopt provisions that are less restrictive that those in the model state act. For example, Section 3.D. of the model state act limits how many parking spaces may be required for each ADU. However, section 2.F. allows a community to be less restrictive if it so desires. For example, it may not require any parking spaces to be provided for a new ADU. Emphasizing that local ordinances may be less restrictive than the model state act allows communities to be less restrictive on ADUs if they witness their benefits and become more comfortable with the idea of ADUs in single-family zoning districts.

G. Maximum or Minimum Size.
A municipality may establish minimum and maximum unit size requirements for both attached and detached ADUs (adapted from Cal. Gov't Code Section 65852.2(d)).

Note: The size of ADUs can raise the concerns of neighbors that the units are either too large or too small (see the model local ordinance, Section 17, for more on these issues). This section of the model state act makes it clear that a community adopting its own ADU ordinance may set limits on how large or small an ADU can be. Communities not adopting their own ordinances cannot set maximum or minimum size on attached or detached ADUs. (Maximum size limits are set by the default provisions.) In other words, for communities that want to set their own standards on ADU sizes, this section gives them incentives to adopt their own ordinances.

H. Use, Density, and Plan Consistency Rules.
Municipalities may provide that ADUs do not exceed the allowable density for the lot upon which the ADU is located, and that ADUs are a residential use that is consistent with the existing community plan and zoning designation for the lot (adapted from Cal. Gov't Code Section 65852.2(a)(3)).

Note: An issue for ADUs is whether they are inconsistent with existing residential zoning, zoning density standards, and community plans. Section 2.H. authorizes communities to accommodate ADUs by stating — in the appropriate local documents (ordinances, or plans) — that the units are harmonious with local plan policies and density concerns. This is a perfectly reasonable assumption, since family size is shrinking in the U.S. and much of the space in homes and infrastructure in residential neighborhoods was originally designed for larger families and is now underused.

3. Limiting Regulatory Authority.

A. Noninterference by Other Law.
No municipality may develop, amend, or interpret other codes or regulations, such as building codes or special taxing district provisions, in ways that interfere with the intent of this Act.

Note: At times, neighbors' fears and misperceptions about ADUs can put political pressure on local elected officials to use their powers to veto homeowners' plans to develop ADUs. A wide variety of local government actions and regulations can be used for this purpose. While it is likely that only a small percentage of municipalities would misuse their powers against ADUs, this section makes it illegal for them to do so.

B. Exemption from Growth-Limitation Measures.
ADUs shall not be considered in the application of any local ordinance, policy, or program to limit residential growth (adapted from Cal. Gov't Code Section 65852.2(a)(5)).

Note: If this provision is not included in a statute, a community could adopt an ordinance allowing the creation of ADUs only to have the units banned because of existing growth limit measures, such as moratoria or quotas on

building permits. These latter growth control measures should not apply to ADUs because they can be accommodated within the present infrastructure capacities of existing residential neighborhoods.

C. Prohibiting ADUs.
No municipality shall adopt an ordinance that totally prohibits ADUs within single-family or multi-family zoned areas unless the same:

i. Contains findings acknowledging that it may limit housing opportunities of the region;
ii. Contains findings that the ban is justified because of specific adverse impacts on the public health, safety, and welfare that would result from allowing ADUs within single-family and multi-family zoned areas;
iii. Bases the latter findings on technical reports of studies of the municipality;
iv. Explains why such units cannot be accommodated within the present utility and service capacities of existing single-family neighborhoods; and
v. Is certified by the State Housing Office as conforming to this Act, in the same procedure defined in Section 5. Until certification of any such ordinance, applications for approval shall be subject to the default provisions of this Act. (adapted from Cal. Gov't Code Section 65852.2(c)).

Note: Because the general policy of the statute is to encourage the development of ADUs, this section requires communities to justify any ban on them. Few communities in California banned these units following adoption of its ADU law in 1982 (CDHCD 1987, VIII-13). However, this section is stronger than the California law and makes it more difficult for a community to ban ADUs. Although, under California law, a ban on ADUs must be accompanied by specific findings, it does not have to be based on a technical report of a study of the community, as is required by this section. In addition, unlike the California law, this section requires that the state Office of Housing must certify an ordinance banning ADUs.

D. Parking Requirements.
Parking requirements for ADUs shall not exceed one parking space per unit or per bedroom, whichever is greater. Additional parking may be required, provided that a finding is made that the additional parking requirements are directly related to the use of the ADU and are consistent with existing neighborhood standards applicable to existing dwellings. Off-street parking shall be permitted in required residential yards, setback areas, or through tandem parking (adapted from Cal.Gov't Code Section 65852.2(e)).

Note: This section prevents communities from requiring more parking than is reasonable, and it applies to communities with and without ADU ordinances (see Section 20 of the model local ordinance for more discussion on parking).

E. Fees.
Fees for permitting construction of ADUs shall not exceed 30 percent of the fees that would be charged for creation of a single-family home in areas with similar zoning.

Note: This provision addresses the fact that high fees can be major disincentives to homeowners seeking to develop ADUs (see the note in Section 5 of the model local ordinance).

4. Default Provisions.
A municipality without an adopted state-certified ADU ordinance that receives an application for a permit for an ADU on or after [the effective date of the Act] shall accept the application and approve or disapprove the application pursuant to the default provisions of this Section 4 of the Act, unless it adopts a certified ordinance in accordance with this Act within [120] days after receiving the application.

Note: This provision tells municipalities how to process their first application to create an ADU if they do not have an ordinance that conforms to this model state act. It also gives communities the option of quickly adopting their own ordinance and getting state certification if the community prefers its own provisions rather than the model state act's default provisions. This will encourage communities to adopt their own ADU rules.

A. Only Basis for Denial.
No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under Section 4 of the Act (Cal. Gov't Code Section 65852.2(b)(2)).

Note: This provision prevents a community without an ADU ordinance from excluding an ADU on the basis of any other measure. While this section says that no other rules shall be applied (except those that apply to other residences), the next section prevents a local government from applying the default provision's standards in a stricter fashion.

B. Maximum Without Local Ordinance.
The default provisions of this Section 4 establish the maximum standards that municipalities shall use to evaluate proposed ADUs on lots zoned for residential use that contain an existing single-family dwelling. No additional standards, other than those provided in this section, shall be used or imposed, except that a municipality may require lots or parcels of land with an ADU to be owner occupied (adapted from Cal. Gov't Code Section 65852.2(b)(2)).

C. No Changes Necessary.
No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement the default provisions of this Act. Any municipality may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of ADUs if these provisions are consistent with the limitations of the default provisions (adapted from Cal. Gov't Code Section 65852.2(b)(4)).

Note: A community is subject to the default provisions of this model state act if it does not have an ADU ordinance of its own. But if a community without an ADU ordinance wants to amend a comprehensive plan or other ordinance, this provision allows it to do so if the amendment is consistent with the default provisions.

D. Accommodating Units.
An ADU that conforms to the requirements of the default provisions shall not be considered to exceed the allowable density for the lot upon which it is located and shall be deemed a residential use consistent with the existing general plan and zoning designations for the lot. ADUs shall not be considered in the application of any local ordinance, policy, or program to limit residential growth (adapted from Cal. Gov't Code Section 65852.2(b)(5)).

Note: This provision is designed to protect ADUs from other local laws. If a community adopts its own ordinance, it may require more land area for an ADU. But if the community has no ADU ordinance and is therefore subject to the default provisions of this model state act, it cannot require an ADU to be on a lot larger than the minimum lot size for the zoning district. This is another example of how a community may gain more control over ADUs by adopting its own ADU regulations.

E. Public Notice of Public Official.
On the first Monday of each yearly quarter, each municipality of the state that has not adopted state-certified ADU regulations shall publish in the general newspaper of greatest frequency and circulation the name, title, address, and hours of availability of the public official who is responsible for processing applications for permission to develop ADUs under the default provisions of this Act.

F. Standards.
Every municipality shall grant a permit or special use or a conditional use permit for the creation of an ADU if the unit complies with all provisions of this Section 4, including the following standards (adapted from Cal. Gov't Code Section 65852.2(b)(1)):

i. The proposed ADU is not intended for sale and may be rented (adapted from Cal. Gov't Code Section 65852.2(b)(1)(A));

Note: The issue that this standard addresses is whether the homeowner can sell only the ADU to another person while still owning the principal home and lot. By preventing the sale of the ADU, this standard is designed to prevent the creation of dual ownership of two buildings on, or from, one single-family lot (see the discussion of this issue in Section 18 of the model local ordinance).

ii. The lot proposed to contain the ADU is zoned for single-family or multi-family use (adapted from Cal. Gov't Code Section 65852.2(b)(1)(B));

Note: This standard addresses the issue of whether ADUs will be built in commercial and industrial land zoning districts. Essentially, this standard, by allowing ADUs only on land zoned for residential uses, prevents occupants of ADUs from suffering the impacts of commercial and industrial land uses.

iii. The lot proposed for an ADU contains an existing single-family dwelling (adapted from Cal. Gov't Code Section 65852.2(b)(1)(C));

Note: In dealing with ADUs, communities must decide if they will be allowed in new units or only in existing ones. This standard clarifies that under the default provisions, ADUs cannot be built simultaneously with, or before, a new dwelling unit (see also the discussion of similar issues in the model local ordinance, Sections 7, 13, and 14).

iv. The ADU is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling (adapted from Cal. Gov't Code Section 65852.2(b)(1)(D));

Note: This section allows unattached ADUs. Many communities do not want such ADUs in their residential neighborhoods (see the discussion in the model local ordinance, Section 3, Authorization for ADUs by Zoning District). For that reason, this provision may encourage some local governments to push for adoption of a local ADU ordinance that leaves out this provision.

v. The floor area of an attached ADU shall not exceed 40 percent of the living area of the existing residence (adapted from Cal. Gov't Code Section 65852.2(b)(1)(E));

Note: In the California default provisions, the increase in floor area was limited to 30 percent. For the issues related to this provision, see the model local ordinance, Section 17.

vi. The total area of floor space for a detached ADU shall not exceed 1,200 square feet (Cal. Gov't Code Section 65852.2(b)(1)(F));

Note: See the discussion of maximum ADU size in the model local ordinance, Section 17.

vii. Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located are applicable to any ADU (Cal. Gov't Code Section 65852.2 (b)(1)(G));

Note: This section allows a local government to apply other residential construction rules to ADUs. Politics as well as practicality justifies this section — that is, exempting ADUs from standards applied to residential construction could create opposition from neighbors and local elected officials. Although the model state act limits the laws that can be applied to ADUs, this section clarifies that residential construction standards do apply to ADUs.

viii. Local building code requirements that apply to detached dwellings, as appropriate, are to be applied to an ADU; and

ix. Approval by the local health officer where a private sewage disposal system is being used, if required (Cal. Gov't Code Section 65852.2(b)(1)(I)).

Note: For a discussion of the public health issues related to this provision, see the model local ordinance, Section 21.

5. State's Role in ADU Policies.

A. Required Municipal Ordinance Submission.
A municipality shall submit a copy of the ordinances adopted pursuant to Section 2 or Section 3.C. to the Office of Housing within 60 days after adoption (adapted from Cal. Gov't Code Section 65852.2(h)).

Note: This section is optional for states that do not want to give themselves a strong role related to ADUs. In this section, communities are required to submit their ADU ordinances to the state whether they are regulating (Section 2) or banning ADUs (Section 3.C.).

In addition to submitting ordinances after they are adopted, municipalities are required (under Section 5.B.) to present proposed ADU ordinances prior to adoption for the state's review. Submitting the ADU ordinance is the initial step that allows the state to play its role in the remaining sections of this model state act.

B. State Certification of ADU Ordinances.
A municipality shall submit the zoning ordinance, amendments to a certified ordinance, or an ordinance banning ADUs 30 days prior to final approval of such ordinance or amendment to the State Office of Housing for an opinion on whether the ordinance conforms to this statute. This submission must include the municipality's date of planned final approval. The Office of Housing may notify other relevant agencies so that they may also comment on whether or not the municipality's draft ordinance conforms to the statute. The Office of Housing shall notify the municipality prior to its planned date of final approval of its opinion as to conformity of the ordinance to this statute. If, in the opinion of the Office of Housing, the ordinance and/or amendments reviewed do not conform to this statute, the Office of Housing shall notify the local jurisdiction of actions that must be taken to bring the ordinance(s) and/or amendments into conformity.

The jurisdiction must bring its ordinance into conformity, as recommended by the Office of Housing pursuant to the prior section, within 90 days of notification of nonconformance by the Office. If the municipality has not brought its ordinance into conformity within the 90-day period, the Office of Housing will notify the jurisdiction that it must automatically accept and process applications for ADUs under the default regulations of this Act until conformity is certified by the Office of Housing. Prior to any certification by the Office of Housing, any applications submitted under the default regulations of this Act shall be processed fully and solely under those regulations.

Amendments to a municipality's ordinance certified by the Office must be submitted and certified in the same manner and procedure as the initial proposed ordinance pursuant to this section.

C. Municipal Annual Reports to State.
Each municipality shall report annually to the Office of Housing the following statistics, on a form to be provided by the Office of Housing, the number of:

i. Single-family structures in the jurisdiction;
ii. Single-family structures in single-family residential zones and in multi-family residential zones in which accessory units are permitted;
iii. Illegal accessory apartments or accessory cottages, attached and unattached, known or estimated to be in the jurisdiction;
iv. Applications to legalize illegal accessory apartments submitted to the jurisdiction and the results of processing these applications;
v. Legal accessory apartments and accessory cottages, attached and unattached, in the jurisdiction;
vi. Applications for new accessory units accepted for processing;
vii. Applications approved and/or permits issued by size, number of bedrooms, and area location;
viii. Applications disapproved, with reasons categorized by requirements not met; and
ix. Complaints against legal ADUs, with the complaints categorized by the perceived impacts, such as parking, aesthetics, or traffic.

D. State Annual Report.
The Office of Housing shall prepare an annual report to the Governor and the legislature from the annual reports from the municipalities, including the installation rates of ADUs and recommendations, if any, for amending the Act or other implementation measures necessary for developing ADUs as affordable housing. The annual report shall include any recommendations from the State Advisory Board on ADU policies.

E. State Advisory Board on ADU Policies.

i. Creation.
The Office of Housing shall establish an Advisory Board to monitor implementation of

the Act and to recommend amendments to the Act or model local ordinance provisions to the Office of Housing.

ii. Composition.
The Advisory Board shall be appointed by the Director of the Office of Housing in consultation with the legislature and Governor and shall include one representative from each of the following groups: remodelers, mortgage bankers, real estate agents, new home builders, first-time home buyers, home health care agencies, local permitting agencies, and organizations for the disabled, older persons, and neighborhoods.

iii. Duties.
The Advisory Board's duties shall include, but not be limited to, preparing an annual commentary on the report prepared by the Office of Housing on accessory units. The Board's commentary shall contain recommendations for furthering the purposes of the legislation and will be published and circulated with the Office of Housing's annual report.

Note: This section of the model state act is optional. It gives the state the role of encouraging ADUs and reviewing local efforts to accommodate them. This role includes action by a state agency — the Office of Housing. The model state act recommends that state Offices of Housing certify local ordinances as conforming to the statute, analyze data from annual municipal reports (Section 5.C.), and provide recommendations to the legislature and Governor for promoting ADUs.

One shortcoming of Washington State's ADU statute was that it did not provide a way for the state to assess how the statute was working at the local level (Hope 1996). This shortcoming is typical of existing ADU legislation. The optional monitoring provision here would require communities to report specific ADU data to the State Housing Office (Section 5.C., which applies to all communities within a state) and to obtain ADU policy recommendations from a State Advisory Board (Section 5.E.). With the benefit of the community data and the advisory board recommendations, the Office of Housing would prepare an annual report proposing new or amended policies to the state legislature and Governor (Section 5.D.). This optional monitoring mechanism would assist the state in assessing the law's success. Because it allows well-informed policy adjustment to be made, it should help ensure the ultimate success of the state ADU policies. The authors, however, recognize that some states would be unwilling or unable to afford such a monitoring program. Omission of these provisions, giving the state this monitoring role, would not be fatal to the purposes of the model state act.

MODEL LOCAL ORDINANCE ON ACCESSORY DWELLING UNITS

I. General Provisions.

1. Purpose and Intent.

Note: In this section of the ordinance, a community makes clear what it is trying to achieve in adopting the ordinance. This information may help in defending the ordinance in a court case or in informing citizens as to how the ordinance will benefit and protect their interests. In spite of the advantages this section can provide, communities have typically omitted it in their ADU ordinances.

If a community has no purposes that are different from those of the model state act, it may simply want to reference that act's findings (Section 1) and its purposes and intent (Section 2). We highly recommend that a community adopting an ADU ordinance copy the information in Section 1 of the model state act and present these findings (particularly the benefits of ADUs) to citizens at public hearings. In addition, the local legislative body would be wise to adopt, if this is not part of its ordinance, Section 1 of the model state act, including the benefits, into the record of its minutes when it adopts the ADU ordinance. Afterward, the public official administering the ADU ordinance can make this information available to persons inquiring about ADU permits.

If a community has public purposes that are different from those in the model state act, those purposes should be specified in the ordinance (after consulting legal counsel that they are not inconsistent with the purpose of state ADU legislation). For example, some communities use ADUs to help rehabilitate rundown areas containing large older houses; others intend for only certain groups to benefit from ADUs, such as the disabled, older persons, or family members. The model local ADU ordinance presents options (optimal, favorable, or minimal) to meet varying conditions and concerns in different communities. (See Introduction to Model State Act on Accessory Dwelling Units and the Model Local Ordinance on Accessory Dwelling Units.) We have provided a minimal option that targets only certain populations as beneficiaries of ADUs. (See the note accompanying Section 11 below related to limiting the occupants of ADUs.)

[Optimal provision] It is the policy of [name of local government] to promote and encourage the creation of legal ADUs in a manner that enhances residential neighborhoods and helps residents meet their housing needs and realize the benefits of ADUs.

[Favorable provision] None

[Minimal provision] It is the policy of [name of local government] to promote and encourage the creation of legal ADUs in a manner that enhances residential neighborhoods in order that persons [name target groups, such as older persons] can meet their housing needs and realize the benefits of ADUs.

2. Definitions.

Note: Terms in an ordinance that should be defined are those that the public may not be familiar with and those that vary from the ordinary definitions in Webster's dictionary. Since the model local ordinance must be consistent with the model state act, the latter's definitions of accessory, accessory dwelling unit, accessory apartment, accessory cottage, living area, and owner-occupant should be included in this model local ordinance. A community may simply incorporate these definitions by reference to the model state act, as we have done here to save space. However, users of an ordinance (e.g., applicants for a permit) are inconvenienced by such a practice since most do not have easy access to state laws. Therefore, it is better to repeat the model state act's definitions in the ordinance. In addition to the definitions in the model state act, the ordinance adds a definition for Zoning Administrator. Note that, because the ADU ordinance is part of a local zoning ordinance, the definitions of the zoning ordinance will apply to the ADU ordinance.

"Zoning Administrator" means the local official who is responsible for processing and approving or denying applications to develop or legalize ADUs.

Note: As discussed in Section 4 below, this model local ordinance assumes that the community Zoning Administrator has the authority to act on applications for ADUs. However, if the approval process, as discussed in Section 4 below, is the one used for a conditional use permit, the planning commission, a board of zoning adjustment, or another local body may be responsible for acting on ADU applications.

II. Permits: Eligibility and Application.

3. Authorization for ADUs by Zoning District.

Note: This section addresses allowing ADUs in specific types of zoning districts (or zones). Neighbors' fears about harmful impacts of ADUs result in some communities banning ADUs or only allowing them in one zone, while other communities are more liberal. In a 1995 survey of 150 communities in the Province of British Columbia, for example, 46 allowed ADUs only in two-family zones, 41 allowed them in single- and two-family zones, 10 allowed them only in single-family zones, and 42 prohibited ADUs (BCMHRSC 1995, 5).

The model state act allows communities to designate areas where ADUs are permitted and sets out the types of criteria for determining those areas (See sections 2A and 2B). In addition, the Act allows communities to locate ADUs in any single-family or multi-family zones.

These statutory provisions give communities wide discretion in permitting ADUs in many types of residential zoning districts. But in using this discretion, communities must make some key decisions about the capacities of various types of residential zones to absorb ADUs. Certainly, not all types of residential zones are equal in this regard. The desirability of locating ADUs in the major types of residential zones is discussed below.

Multi-family zones. These zones are distinguished by multi-family structures that not only have common walls between dwelling units but also are atop one another. The typical principal units are apartments or condominiums in multi-story structures. ADUs are seldom, if ever, allowed in these zones because they tend to have less potential than do single-family zones for accommodating ADUs in terms of available parking, infrastructure, and unused housing space.

Clustered single-family zones. These zones contain single-family dwelling units that have common walls but are not atop one another. These zones may be called low-density, multi-family zones or higher density, single-family zones, and they have as principal units row houses, townhouses, or clustered single-family dwelling units. Siting ADUs in these zones is also difficult for several reasons. Parking is often inadequate in areas with townhouses, row houses, or clustered single-family units. In addition, building and fire codes often require bedrooms to have a window for exterior emergency exits by occupants. For this reason, common walls shared by dwelling units greatly reduce the potential to locate accessory apartments in zones with these types of principal units.

Single-family zones. These zones contain one single-family dwelling unit per lot and provide the greatest opportunities for siting all types of ADUs. Even in these zones, however, neighbors' concerns about property values and aesthetics often cause communities to ban detached accessory cottages or to allow them only on larger lots. Detached units are more expensive to build (MRSCW 1995, 34) and are usually a relatively small portion of the total number of ADUs in a community. One of the reasons that accessory apartments outnumber detached units is because illegal detached ADUs are impossible to hide. In towns with a preponderance of small lots (such as Daly City, California), not allowing detached ADUs is appropriate (MRSCW 1995, 34). Attached cottages are allowed in more communities than are detached cottages.

None of the three model provisions allow ADUs in multi-family zones as described above. The optimal provision allows all types of ADUs in single-family zones with one principal unit per lot, but only accessory apartments in zones with single-family units sharing common walls. In the latter zones, apartments are allowed only if the applicant provides proof that the ADU conforms to fire and building code requirements. The favorable provision does not permit ADUs in zones with dwelling units that have walls in common, but in other single-family zones (districts with one dwelling unit per lot), accessory apartments and attached cottages may be built.

The favorable provision also allows detached accessory cottages in the one-unit-per-lot zones if a specified minimum lot size is met. (This authority is not extended in the favorable provision to other types of residential zones, even if that minimum lot size happens to be met by an individual applicant, because the parking problems in those zones would not strike a balance between the neighbors' concerns and those of ADU developers.) In the minimal provision, accessory apartments are authorized only in zones with one home per lot, and accessory cottages are not allowed in any zones.

In adapting the model provisions to a local zoning ordinance, a community will substitute its zoning district names (or abbreviations) for the model provisions' descriptions of zoning districts. For example, a community labeling its one-unit-per-lot zone as "Single-Family Residential Zone (SFR) "will substitute that for "zoning districts designed primarily to permit single-family homes on individual lots" in these model provisions. Similarly, "Townhouse Residential Zone (TR)" may be substituted for "zoning districts designed primarily for single-family homes with walls attached to other single family homes."

[Optimal provision] ADUs are allowed in zoning districts designed primarily to permit single-family dwelling units on individual lots. Accessory apartments may be located in zoning districts designed primarily for single-family dwelling units with walls attached to other single family homes when applicants provide written evidence from the proper fire and building officials that the proposed ADU conforms to building and fire code regulations.

[Favorable provision] An accessory apartment or an attached accessory cottage may be permitted in any residential zone designed primarily to permit single-family dwelling units on individual lots. A detached accessory cottage may be located in this same zone on a lot with a minimum lot size of [specify minimum size].

[Minimal provision] An accessory apartment may be allowed in zoning districts designed primarily to permit single-family dwelling units on individual lots.

4. Approval Process.

Note: A lengthy and burdensome application process will discourage homeowners from developing ADUs (Gellen 1985, 185; MRSCW 1995, 28). An application procedure that involves a public hearing means a loss of privacy (Gellen 1985, 185) and added time to reach a final decision on the permit (Hare 1989, 20). One study noted that application periods ranged from one day to six months (CSS 1991, 22). Advocates of ADUs argue that requiring a conditional use permit for an ADU is unfair when ADUs typically have less impact than single-family residences that are allowed by right. Neighbors, on the other hand, may prefer the conditional use permit process so they can collectively voice their concerns before local decision makers.

The two basic options available to a community are to allow ADUs through the conditional use permit (sometimes called special exception, special permit, or special land use) or to allow them by right in the zoning district. "By right" means that the process involves filling out an application and presenting it to a local building official or Zoning Administrator, who will check to see that it meets the requirements of the ordinance. No hearing or discretionary decision is involved. The conditional use permit process, however, involves a hearing preceded by public notice. The "by right" approach has the advantage of being fast and less public for ADU applicants. Of course, if there is a great deal of political resistance to adopting an ADU ordinance, the reassurance that ADUs will be subject to the conditional use process, with hearings, can persuade law makers to adopt an ordinance. Communities that are new to the process may choose the latter approach.

This model local ordinance is written with a Zoning Administrator making the decision to issue an ADU permit. If a community wants to use a conditional use approach, the provisions of this ordinance are easily convertible by substituting, in the place of the Zoning Administrator, the name of the local body that makes decisions on conditional use permits. The type of local body varies but is often a planning commission, a zoning commission, or a zoning board of appeals.

The favorable provision below is designed to speed up permit processing. A hearing will not be necessary in every case. A neighbor can choose to meet with an applicant and the building official to review the application. However, if a neighbor has serious concerns, a hearing can be conducted after the neighbor requests one in writing. Several sources have recommended this provision, which can eliminate the need for a public hearing (Hare 1989, 21; CSS 1991, 55). Another option would be to notify at least 10 adjacent property owners to check for possible objections. If none were raised, the application would not be processed via the conditional use permit procedure (CSS 1991, 55).

The optimal provision allows ADUs by right without a hearing, and the minimal provision is to make ADU applicants go through the conditional use permit process with a hearing. The full procedure for a conditional use process is not given in this section because the local zoning ordinance (of which the ADU is a part) will provide those procedures, which are often specified in the state zoning enabling act.

In choosing a procedure for ADUs, it is important to keep in mind that even ADUs allowed by right are subject to standards in the ordinance. The trend in Washington State communities that have recently adopted ADU ordinances is to allow them by right, subject to ordinance criteria (MRSCW 1995, 27).

[Optimal provision] One ADU is permitted per residentially zoned lot, provided the Zoning Administrator first approves the proposed ADU as complying with the standards of this ordinance.

[Favorable provision] One ADU is permitted per residentially zoned lot, provided the Zoning Administrator first approves the proposed ADU as complying with the standards of this ordinance, unless a property owner requests in writing that the application be processed via a conditional use permit procedure. Within five days after receiving a completed application for approval of an ADU, the Zoning Administrator shall notify by mail all property owners within 300 feet of the property proposed for an ADU. The notice to the property owners shall inform the owners that they may, at any time within 30 days of the date of mailing of the notice, in writing to the Zoning Administrator either demand and have a meeting with the applicant and the Zoning Administrator to review the application, or can cause the application to be processed with conditional use permit procedures. Within the same 30-day period, the Zoning Administrator shall meet simultaneously with an applicant and owners who have properly demanded meetings to review the application. If either the applicant or the Zoning Administrator fails to meet with such an owner, the owner may demand in writing to the Zoning Administrator that the application be processed via the conditional use permit procedure.

[Minimal provision] One ADU is permitted per residentially zoned lot by conditional use permit if the proposed ADU conforms to the standards of this ordinance.

5. Application Fees and Information.

Note: Other difficulties for homeowners contemplating installing an ADU are permit fees, complicated applications, and multiple-stop approval processes. Application fees associated with a hearing can also be much higher than are application fees unrelated to hearings. A 1989 study of 47 communities found that in the 10 communities with the greatest installation rates for ADUs, none had fees higher than $2,000 (Hare 1989, 15). The same study revealed that in the County of Los Angeles, an applicant paid a $3,000 fee that was nonrefundable for an ADU, and the permit was denied (Hare 1989, 21).

The model state act (Section 3.E.) does not allow the fees for ADUs to be higher than 30 percent of the application fee for a single-family residence. This section levels the playing field for ADUs. The optimal provision is consistent with the model state act, limiting the ADU fees to 30 percent of the fees for a house, but the favorable provision does not conform to the act because it allows communities to charge equal fees for ADUs and other dwelling units.

[Optimal provision] Application fees for ADUs shall not be more than 30 percent of the application fees for a single-family dwelling unit. The information required on applications for creating or legalizing ADUs shall be the same information that is required to construct a single-family dwelling unit.

[Favorable provision] Application fees and application information required for ADUs shall be less than or equal to those required to construct a single-family dwelling unit.

[Minimal provision] None

6. Permit Renewal (Monitoring).

Note: In order to make sure that an ADU continues to comply with the conditions that were a part of the permit as originally issued, some communities issue temporary permits and require periodic permit renewal. For example, in a survey of 50 communities with ADU ordinances, 14 percent issued temporary permits (APA 1996). While requiring permit renewal and inspections has the advantage of making neighbors feel more comfortable with ADUs, it increases administrative costs related to an ordinance. More significantly, this requirement discourages the creation of ADUs for reasons similar to those of limiting groups of eligible occupants, as discussed in the introduction to the model state act ("Avoiding Policies that Deter New ADUs"). Bankers and the homeowners who actually have a financial stake are more nervous about temporary permits.

For this reason, we have written optimal and favorable provisions to provide permanent permits. The optimal provision requires the ADU owner to file an annual statement that the ADU complies with the local ordinance. The favorable provision states that the permit expires if the ADU no longer conforms to the ordinance and that a complaint by a neighbor can cause a hearing to determine conformance to the ordinance. But the permit issued for an ADU under the minimal provision is only a temporary one and must be renewed. This provision is waived, however, if there are no complaints of violations made to the Zoning Administrator. Communities that want to apply a more strict provision can remove that portion of the provision that allows the ADU owner to have the permit renewal waived if no complaints are filed.

[Optimal provision] The owner of an ADU shall, on the first day of every year [or specify intervals in number of years], sign and file written statements with the Zoning Administrator that the ADU complies with the municipal zoning code.

[Favorable provision] A certificate of occupancy [or permit] issued for an ADU shall expire if the ADU does not conform to the municipal zoning code. If a complaint is made to the Zoning Administrator by a landowner within 300 feet of the ADU, the Zoning Administrator shall cause a hearing to be held within 60 days after the date of the complaint to determine if the ADU violates the municipal zoning code. Fifteen days prior to the public hearing, the Zoning Administrator shall notify all property owners within 300 feet of the site of the ADU of the hearing. Revocation of a permit by the Zoning Administrator must be based on an inspection of the ADU premises and a written record of the Zoning Administrator's findings at the hearing.

[Minimal provision] Permits for ADUs shall be issued for a period not longer than five years and must be renewed at the end of the first term of issuance and every such period thereafter. Temporary permits for ADUs do not have to be renewed if, during the time period since the date of the last renewal or waived renewal date, no complaints of violations of the municipal zoning code by the ADU are filed with the Zoning Administrator. Renewal of temporary permits requires inspection of the ADU premises by the Zoning Administrator.

III. Standards.

7. Lot Standards - Occupied by Dwelling Unit.

Note: Can a permit be issued for developing an ADU on a lot that is not already occupied by a dwelling unit? This section addresses whether an ADU can be designed and built simultaneously with the construction of a new residence. This question springs from a community's general reluctance to convert a single-family zone into a duplex zone. Many local ordinances, such as the default provisions of the model state act (Section 4.F. iii.), allow ADUs only on lots that already have dwellings. This is common (APA 1996). Some local governments, however, have begun to allow new houses to be constructed with ADUs (MRSCW 1995, 47). Communities adopting their own ordinance under the model state act can allow ADUs in, or with, new residences. Proponents of ADUs have emphasized that ADUs built in new houses are less expensive "with designs that more effectively address exterior appearance and parking issues" (MRSCW 1995, 47).

For the latter reason, our optimal provision allows ADUs to be designed and built in or related to new dwellings. The optimal option allows all types of ADUs to be developed related to new homes.

Accessory apartments, rather than either attached or detached accessory cottages, are generally more acceptable as a type of ADU built in relation to

new residences. Consequently, in the favorable provision only accessory apartments are allowed to be built related to new homes. The minimal provision requires lots to have an existing dwelling in order to be eligible for an ADU permit.

If a community does allow ADUs in new houses, as per Section 7, it would be contradictory to base eligibility for an ADU on the age of the principal dwelling or how long it has been owned. (See Sections 13 and 14 concerning standards for principal dwelling units.)

[Optimal provision] An ADU may be incorporated in either an existing or a new dwelling unit (WOCD 1994, Section A.7.).

[Favorable provision] An accessory apartment may be incorporated in either an existing or a new dwelling unit.

[Minimal provision] The lot proposed for an ADU shall contain an existing single-family dwelling unit (adapted from Cal. Gov't Code Section 65852.2(b)(1)(C)).

8. Lot Standards - Minimum Size.

Note: This section addresses the lot sizes required for ADU installation. This requirement is often excessive and can greatly diminish the number of ADUs in a community. In a survey of 50 ordinances, the minimum lot size requirement varied from 4,500 square feet to one acre (APA 1996). One community allows detached ADUs only on lots that are 1.5 times the minimum lot size of the zoning district (Orange County, Fla., Zoning Code Sec. 38-1426 (f)(4)). Some communities have the same minimum lot-size requirements for all ADUs. When the requirements are not the same, greater lot sizes are required for detached units than for accessory apartments. The model state act (Section 2.H.) allows communities to exempt ADUs from lot density requirements.

The provisions below require the minimum lot size of the underlying zoning district for all types of ADUs, with two exceptions. First, the optimal provision allows ADU apartments to be on lots that are a specified number of square feet — presumably smaller than the zoning district's minimum lot size. One proponent of ADUs argues that minimum lot sizes may disqualify older homeowners, and others with homes on small lots, from installing ADUs and receiving their benefits (MRSCW 1995, 45). For this reason, the optimal provision below requires that the minimum lot size be met only for accessory cottages, while lots that are a specified size may contain dwellings with accessory apartments.

Second, in the minimal provision, communities must specify the minimum number of square feet of lot size that is eligible for detached ADUs. Some

communities may want this minimum lot size to be more than the minimum lot area required in the zoning district because neighbors are sometimes concerned about overcrowding and the impact of detached ADUs on property values and aesthetics.

Other approaches to dealing with the density of ADUs per land area are mentioned in the note to Section 22 below.

[Optimal provision] ADUs may be developed on lots meeting the minimum lot size for the respective zoning district, except that accessory apartments may be on lots that are [specify number of square feet].

[Favorable provision] ADUs may be developed on lots meeting the minimum lot size for the respective zoning district.

[Minimal provision] ADUs may be developed on lots meeting the minimum lot size for the respective zoning district, except that detached accessory cottages may be developed only if the lot size is [specify number of square feet] or more.

9. Lot Standards - Setback and Lot Coverage.

Note: ADUs are generally subject to setback and coverage requirements of zoning ordinances. For this reason, this model ADU ordinance, similar to the Washington model (WOCD 1994), does not separately address this issue. These issues are highly related to aesthetic concerns covered in sections below.

10. Occupancy Standards - Owner of Premises.

Note: Some neighbors are concerned that allowing ADUs will cause deterioration of neighborhood properties because landlord speculators will buy up houses with ADUs and rent out both units (MRSCW 1995, 28). The fear is that tenants will not maintain the units. A popular way to allay these fears is to require the owner of the lot to reside on the premises — the majority of ADU ordinances contain this requirement (APA 1996). There is evidence that owner occupancy does lead to better maintenance of the premises (Verrips 1983, 70). Not surprisingly, neighbors tend to want the adjacent premises with ADUs to be owner occupied (Town of Babylon, New York 1979, 2). In order for owner occupancy to be most effective in fulfilling the purposes of ADUs, it is important to allow the owner to live in either unit (see the discussion in Section 1.C i. of the model state act, the definition of "Accessory"). Communities often allow homeowners to reside in either the principal unit or the ADU (APA 1996).

The optimal option includes both aspects of owner occupancy — requiring owner occupancy and allowing it in either unit — because both tend to

facilitate the development of new ADUs. For communities that may not feel comfortable allowing the owner to live in either unit, the minimal provision requires the owner to reside in the principal dwelling unit. No favorable provision is recommended.

Many communities monitor ADUs to ensure that the owner still lives on the premises. A variety of methods are used to do this monitoring (see Section 6), including registration of occupants, certification of occupancy, and annual licensing of rental units with annual inspections.

Other communities require ADU owners to record the requirements of the ADU ordinance as deed restrictions, particularly the owner-occupancy requirement. The deed restrictions accompany the title of the property and give notice to all subsequent buyers of the occupancy requirement. Both the optimal and favorable provisions below require this registration.

Various provisions of the model also address the issue of owner occupancy. Those provisions allow and support the requirement that the owner live in the larger or smaller unit (see the discussion in Section 2.E. of the model state act; also see Section 1.A.v. (7) — findings about benefits of owner occupancy — and the definitions of "Accessory" and "Owner-Occupant"). If a community adopts this ordinance but does not have a statute echoing these provisions of the model state act, it may want, with the advice of counsel, to include versions of those provisions in its zoning ordinance.

[Optimal provision] A lot or parcel of land containing an ADU shall be occupied by the owner of the premises, and the owner may live in either the ADU or the principal dwelling unit. Within 30 days of securing approval for construction of an ADU, the owner shall record against the deed to the subject property, a deed restriction running in favor of the municipality limiting occupancy of either the principal dwelling unit or the ADU to the owner of the property. Proof that such a restriction has been recorded shall be provided to the Zoning Administrator prior to issuance of the occupancy permit for the ADU (adapted from WOCD 1994, Application Procedures).

[Favorable provision] None

[Minimal provision] A principal dwelling unit on a lot or parcel of land containing an ADU shall be occupied by the owner of the premises. Within 30 days of securing approval for construction of an ADU, the owner shall record against the deed to the subject property, a deed restriction running in favor of the municipality limiting occupancy of either the principal dwelling unit or the ADU to the owner of the property. Proof that such a restriction has been recorded shall be provided to the Zoning Administrator prior to issuance of the occupancy permit for the ADU (adapted from WOCD 1994, Application Procedures).

11. Occupancy Standards for ADUs.

Note: Limiting eligible occupants of ADUs can keep the number of installations of ADUs down. In a 1996 survey of 50 ADU regulations, 18 percent of the communities limited occupancy of ADUs to persons who were elderly, disabled, or related to the owner (APA 1996). Requiring the occupant to be a relative of homeowner is the most frequent limitation.

Although these policies can have good intentions (e.g., to provide care for the special needs of the owner or occupant), the limitations can discourage investors in ADUs and can cause enforcement problems for communities. In fact, the trend in ADU regulations is away from these types of regulations (MRSCW 1995, 35). A more reasonable and legally defensible approach to occupancy limitations may be requiring a minimum number of square feet of living area of the ADU per person. But in our view, the optimal option is not to have an occupancy standard.

Some communities, however, may insist on this type of limitation; we have provided a favorable provision that, like one county ordinance, limits occupancy only during the ADU's first three years (Orange County, Fla., Zoning Code Section 38-1426 C (2) a). The community may define the number of persons and characteristics of persons who are eligible occupants (e.g., relatives, older persons, or disabled persons). The three-year limit may serve to encourage investments in ADUs since the owner will be certain of a greater pool of potential occupants after that time.

Finally, we have provided a minimal option that allows the locality to limit the occupancy of an ADU to a specified group. While we do not recommend adoption of such a provision, its inclusion may be the only way to obtain passage of an ordinance. In these cases, it should be viewed as a transitional phase allowing the locality to gain experience with ADUs and leading to further liberalization of the ordinance.

Prior to adopting a provision limiting the occupancy of ADUs, a community should obtain a legal opinion as to whether such a restriction violates the federal Fair Housing Act (42 U.S.C.A. Sec. 3601). Among the groups protected from housing discrimination by this federal law are families with children under 18 years of age.

As previously mentioned, the favorable and minimal options limit the number of occupants. In a recent survey of ADU ordinances, the limitations on the number of persons ranged from two to five, with some communities requiring occupancy by families (APA 1996). The most common limitation on the number of persons occupying an ADU was less than three.

[Optimal provision] None

[Favorable provision] During the first three years after the issuance of a permit for an ADU, the occupants of the ADU shall be limited to [specify] in number and persons who are [specify eligibility criteria].

[Minimal provision] The occupants of the ADU shall be limited to [specify] in number and persons who are [specify eligibility criteria].

12. Principal Dwelling Unit Building Standards - Minimum Floor Area.

Note: Some communities do not want smaller houses to have a related ADU because the ADU may be dominant and inconsistent with the single-family character of a neighborhood. Communities sometimes set a minimum size for the principal dwelling unit as an eligibility requirement for constructing an ADU. While a recent survey of 50 ordinances did not reveal any communities that took this approach (APA 1996), the survey did find that communities often regulate the relative sizes of the ADU and the principal unit by setting maximums on ADUs in terms of percentage of the living space of the principal dwelling or a maximum floor area size for the ADU, or both. Setting a minimum size on principal units as an eligibility requirement for an ADU is not recommended; it is better to deal with the issue of consistency with single-family character by limiting the size of the ADU in terms of a percentage of the principal dwelling unit (See Section 17 below.)

13. Principal Dwelling Unit Building Standards - Age.

Note: This section addresses the question of how soon an ADU can be installed after the principal dwelling is constructed. The discussion assumes that the ADU being built is an accessory apartment. Accessory cottages built with new houses would create the greatest amount of political resistance (more than accessory apartments), raising concerns about the single-family zone being converted to a duplex zone.

Regulations that require houses to be a certain age before becoming eligible for an ADU are adopted out of homeowners' concern that too many ADUs will overwhelm the neighborhood. The specific concern is that houses will be designed and marketed with ADUs if new houses can have them. ADUs should not be allowed in new houses, opponents say, because the intent behind them is to use the existing housing stock (MRSCW 1995, 47). To address this issue, communities sometimes set limits on how quickly ADUs can be built, based on the age of the principal dwelling units. (Even more rarely, communities use ADUs to revitalize only older neighborhoods and require the principal dwelling to be built before a certain date, such as 1976. (See Hamden, Conn., Zoning Regulations (1996) and Hare 1981, 14).

An age limitation on the principal dwelling unit will reduce the number of ADUs developed, and the optimal provision allows buildings of any age to be eligible for an ADU. The favorable provision would not permit ADUs in buildings completed in the last three years. As a minimal provision, the principal dwelling unit is eligible for an ADU after it is a specified number of years old. The age required for the principal dwelling unit is generally from two to five years (APA 1996). If a community does allow ADUs in new houses, as in Section 7, it would, of course, be contradictory to base eligibility for an ADU on the age of the principal dwelling or how long it has been owned, as in some provisions in Sections 13 and 14.

[Optimal provision] An ADU may be developed in either an existing or a new dwelling unit (WOCD 1994, Sec. A.7.).

[Favorable provision] An ADU may be developed in a dwelling unit that has been completed for at least three years.

[Minimal provision] An ADU may be developed in a dwelling unit that has been completed for at least [specify] years.

14. Principal Dwelling Unit Building Standards - Term of Ownership.

Note: Requirements concerning the term of ownership are similar to those regarding the age of the principal dwelling. They deal with the question of how long the principal dwelling must be owned by the current owner before an ADU can be constructed. Neighbors can raise the concern that speculators will buy houses simply to install an ADU. Advocates for ADUs point out that term of ownership requirements bar first-time buyers from using ADU rental income to defray house mortgage or maintenance costs (MRSCW 1995, 48). Also, requiring that the principal dwelling or the ADU be owner occupied is an effective protection against speculation. As with restrictions on the age of the principal dwelling, we do not recommend term-of-ownership requirements. Requiring home ownership for a specified number of years is the minimal provision.

[Optimal provision] An ADU may be developed in either an existing or a new dwelling unit (WOCD 1994, Sec. A.7.).

[Favorable provision] None

[Minimal provision] An ADU may be developed in a dwelling unit that has been owned at least [specify] years by its current owner.

15. ADU Building Standards - Architectural Design and Types of Structures.

Note: This section and the remaining sections on building standards govern the appearance of accessory cottages. Homeowners adjacent to ADUs are sometimes concerned that ADUs will erode the single-family charm of their neighborhood, and ADU ordinances commonly address many appearance issues (APA 1996), such as type of structure, architectural design, maximum size, minimum size, and whether the ADU is subordinate to the principal unit.

This section specifically deals with the type of structure (mobile home, site-built dwelling, or manufactured housing) that can be used as an ADU. It also addresses whether the ADU must be architecturally consistent with the principal unit and whether it must be consistent in appearance with a site-built single-family residence. The optimal provision maximizes the opportunities for ADUs by allowing any type of structure to be an ADU if that structure is allowed as a principal unit in the zoning district. No other appearance requirements are placed on ADUs in the optimal provision. The favorable provision is more restrictive by allowing manufactured houses to be ADUs only if they are allowed in the zone and are consistent with the appearance of a single-family residence. The minimal provision adds to the favorable provision the requirement that the ADU must be consistent with the building type of the principal dwelling unit.

[Optimal provision] A mobile home or manufactured dwelling unit may be used as an ADU in any zone in which dwelling units are permitted (adapted from WOCD 1994, Section 9).

[Favorable provision] A manufactured dwelling unit may be used as an ADU in any zone where that type of structure is permitted if the appearance of the same remains that of a site-built, single-family dwelling unit (WOCD 1994, Section 9).

[Minimal provision] A manufactured dwelling unit may be used as an ADU in any zone where that type of structure is permitted if the proposed ADU is consistent with the building type of the principal unit and the appearance of the ADU remains that of a site-built, single-family dwelling unit (WOCD 1994, Section 9).

16. ADU Building Standards - Orientation of Entrance.

Note: Many ADU regulations focus on the entrance of the ADU as an aesthetic concern. Most communities discourage or prohibit entrances from being constructed on the front of principal buildings. Thus, entrances and particularly stairways are limited to side or rear yards. When a front entrance is required for physical or cost reasons, communities often demand that the front entrance to the principal dwelling must double as the entrance to both units. The options below vary in how strictly entrances and stairways are regulated. The optimal provision requires ADU entrances to be less visible than principal dwelling unit entrances, and stairways may not be on the front

of the principal dwelling unit. The favorable and minimal provisions are similar, in that both require ADU entrances not to be visible from the street view and limit ADU stairways to the rear of principal dwelling units. While the favorable provision allows ADUs to share a front entryway with the principal dwelling unit, the minimal provision does not.

[Optimal provision] If the ADU's primary entrance is not the same as that for the principal dwelling unit, it shall be less visible from the street view of the principal dwelling than the main entrance of the principal dwelling unit (adapted from WOCD 1994, Section A.10.), and the ADU's stairways may not be constructed on the front of the principal dwelling unit.

[Favorable provision] The ADU's primary entrance shall be not visible from the street view of the principal dwelling, and the ADU's stairways may not be constructed on the front or side of a principal dwelling unit.

[Minimal provision] No entrance for an ADU shall be permitted on, or, from the front of a principal dwelling unit; the ADU's primary entrance shall be not be visible from the street view of the principal dwelling unit; and the ADU's stairways may not be constructed on the front or side of a principal dwelling unit.

17. ADU Building Standards - Size.

Note: This section deals with a number of issues related to the size of the ADU. The intentions of communities in setting size limitations are commonly to require the ADU to be subordinate to the principal dwelling unit, to control neighborhood density, and to control visual impacts.

The standards of this section set minimums on the ADU square footage and maximums on the total square footage and number of bedrooms of the ADU. A common minimum size requirement for an ADU is 300 square feet; a frequent maximum on number of bedrooms is two; and the maximum size for ADUs falls in the range of 600 to 1,200 square feet, with 800 square feet occurring most often as a maximum size (APA 1996).

This model local ordinance does not directly require the ADU to be subordinate to the principal unit but does so indirectly by setting the maximum floor space of the ADU as a percentage of the living area of the principal unit. Advocates for ADUs point out that less affluent homeowners in smaller houses may not qualify to build an ADU if their house is too small (MRSCW 1995, 30). For example, if the ADU may not be larger than 30 percent of the living area of the principal unit but may not be smaller than 300 square feet, a homeowner with a living area of only 900 square feet could not have an ADU (270 square feet is 30 percent of 900 square feet and less than the minimum required size of 300 square feet). For this reason, the favorable and minimal provisions below raise the maximum percentage to 40 percent of the living space of the principal unit. Such a maximum percentage

is not unusual (APA 1996). Communities wanting to be more strict than the minimal option can change the percentage after determining that greater limitations are needed to protect the public interest. The maximum size of an ADU in the optimal provision is 1,200 square feet and 800 square feet in the minimal provision. (The maximum ADU size allowed in a recent survey of 50 ADU ordinances was 1,200 square feet [APA 1996].)

No alternative is listed as the optimal option. Size can be limited by other regulations. The Uniform Building Code (Sections 1207 and 1208), for example, contains a minimum size for efficiency units. Similarly, lot coverage maximums and minimum lot sizes limit the size of accessory cottages. Health codes can also limit the number of bedrooms in an ADU.

[Optimal provision] None

[Favorable provision] In no case shall an ADU be more than 40 percent of the living area of a principal dwelling unit, nor more than 1,200 square feet, nor less than 300 square feet, nor have more than two bedrooms (adapted from WOCD 1994, Section A.8.).

[Minimal provision] In no case shall an ADU be more than 40 percent of the living area of a principal dwelling unit, nor more than 800 square feet, nor less than 300 square feet, nor have more than two bedrooms (adapted from WOCD 1994, Section A.8.).

18. ADU Building Standards - Not Intended for Sale.

Note: An argument of opponents to ADUs is that the owners will eventually sell them off as condominiums. While this can create double owner occupancy of the premises, it can also result in the premises being occupied only by tenants. Thus, the opponents are concerned that the premises will not be as well maintained as owner-occupied premises. Opponents also warn that turning some ADUs into condominiums makes their fear of a neighborhood of duplexes a reality. The California ADU statute has a "not intended for sale" standard (Cal. Gov't Code Section 65852.2(b)(1)(A)), and communities occasionally impose similar requirements (APA 1996).

One concern, however, is that if a community voids an ADU permit because the ADU has been sold for a condominium, a court may reverse the community action on the basis that zoning can regulate land use but not types of land ownership (Ziegler 1995, 56A-11 and 56A-12). Before adopting this standard, legal counsel should be consulted because courts are also reluctant to uphold regulations that may limit property owners' ability to sell their land. Since this standard basically addresses the concerns of neighbors, it is listed below as a minimal option.

[Optimal provision] None

[Favorable provision] None

[Minimal provision] The ADU shall not be intended for sale and may be rented (adapted from Cal. Gov't Code Section 65852.2(b)(1)(A)).

19. ADU Building Standards - Screening and Orientation.

Note: Privacy is at the heart of neighbors' fears about being overrun by ADUs. This standard protects neighbors' privacy by giving the permit issuer a number of factors to consider, and the ADU homeowner a variety of options, that can be used to honor any adjacent landowner's privacy. While it could be argued that this standard balances the neighbors' and the ADU owners' interests, many owners are likely to view it as inconvenient or even onerous. Such a standard is relatively rare and is listed as a minimal option because it focuses more on the neighbors' concern over the visual or privacy impacts of ADUs.

[Optimal provision] None

[Favorable provision] None

[Minimal provision] The orientation of the proposed ADU shall, to the maximum extent practical, maintain the privacy of residents in adjoining dwellings as determined by the physical characteristics surrounding the ADU, including landscape screening, fencing, and window and door placement (adapted from City of Olympia, Washington, Unified Development Code, Section 18.04.060 1.b. 1995).

20. Parking and Traffic.

Note: Because of the average drop in household size, traffic is not generally a problem with ADUs. Most neighborhoods that house ADUs were designed for families that would generate more traffic than today's actual occupancy levels (Verrips 1983, iv; Gellen 1985, 151-152). For this reason, we recommend no standards for controlling traffic. Communities that are concerned about traffic may want to deal with it under density controls, as discussed in Section 22 below.

The issue of parking, however, is more complicated. Parking standards are one of the most frequent concerns (Hope 1996), and one expert views parking as the most difficult issue (Hare 1989, 24). Not surprisingly, communities tend to require too many parking spaces, making parking requirements one of the major obstacles to increasing the number of new ADUs (CHCD 1989, VIII-13). For example, in a 1996 survey of local ADU ordinances (APA 1996), 4 of the 50 surveyed communities required up to three spaces per ADU. But in

suburban communities where hilly terrain does not limit parking on sites or streets, ADUs will not cause parking problems (Verrips 1983, 83).

In addition, there is a reluctance in many communities to allow tandem parking (one vehicle in front of the other in a driveway) and to allow parking in setback areas even when that is a normal practice in a neighborhood. Advocates of ADUs emphasize that single-family homes with teenagers can generate as much or more traffic, and the need for parking is often minimal as ADUs are frequently occupied by "empty nesters" and single persons who have fewer cars or no car (MRSCW 1995, 38 and 39).

The controversy over parking illustrates that communities vary tremendously in terms of physical conditions and parking norms. These norms vary from cars being invisible to cars being ubiquitous, including tandem parking, parking on sideyard parking pads, and curb parking (Gellen 1989, 172). Neighbors often vary in how much curb parking they think can be allowed before they see the neighborhood streets as overcrowded. Because neighborhoods have different standards, a performance approach is needed, allowing flexibility rather than a set rule that ignores the variety of circumstances (Gellen 1989, 172).

The optimal provision limits the number of spaces that can be required, while the favorable provision allows a flexible approach because more than one parking space may be required under certain conditions. Both of these options are consistent with the model state act, whereas the minimal provision is not. The minimal option is required by some communities. However, it focuses on neighbors' concerns and creates difficulties for owners of ADUs because it does not allow parking in setbacks, tandem parking, or on-street parking. In addition, this requirement may be more onerous than parking requirements for the principal dwelling unit. (An assumption related to these standards is that there is only one ADU per principal dwelling unit.)

[Optimal provision] One parking space is required per ADU if:

a. the same requirement exists for the principal dwelling unit;
b. no other parking spaces are available in side or rear yards, by tandem parking, or on-street parking; or
c. the use of the ADU will create the need for an additional parking space.

[Favorable provision] One parking space is required per ADU.

a. Additional parking may be required, provided that:
    1. the Zoning Administrator finds that the additional parking requirements are directly related to the use of the ADU; and
    2. the total number of parking spaces required for an ADU does not exceed the number of spaces required for a principal dwelling unit.

b. The Zoning Administrator may permit off-street parking in setback areas or through tandem parking if the off-street parking:
   1. would not block access by emergency vehicles to the principal dwelling unit or ADU; and
   2. is permitted and occurs in the neighborhood (adapted from Cal. Gov't Code Section 65852.2(e)).

[Minimal provision] Two off-street parking spaces are required for each ADU.

21. Public Health.

> *Note: The adequacy of water and sewer service to ADUs is generally not an issue because ADUs, rather than creating undue burdens, usually result in more efficient use of these services (MRSCW 1995, 50). Nevertheless, an ADU ordinance standard for water and sewer services should exist if current services are near capacity or ADUs add more bedrooms to the principal dwelling unit. Public health issues are generally addressed through regulations other than zoning, but an ordinance standard can require the homeowner developing the ADU to provide proof of conformance to public health regulations. We consider this standard to be necessary for the benefit of ADU owners and the neighbors. All three options contain this requirement.*
>
> *The minimal option contains an additional requirement. Because of aesthetic concerns, communities sometimes require only one electrical and one water meter per principal dwelling unit. Three communities were found to have this requirement in a recent study of 50 ADU ordinances (APA 1996). Minimizing the meters on the exterior of a building is designed to support the owner-occupancy requirement and to maintain the appearance of single-family rather than two-family houses (MRCSW 1995, 50).*

[Optimal provision] Applicants for ADU permits must supply the Zoning Administrator with certification by the municipal health official that the water supply and sewage disposal facilities are adequate for the projected number of residents (adapted from WOCD 1994, Section A. 2.).

[Favorable provision] [Same as optimal provision]

[Minimal provision] Applicants for ADU permits must supply the Zoning Administrator with certification by the municipal health official that the water supply and sewage disposal facilities are adequate for the projected number of residents. In addition, only one electrical and one water meter shall be allowed to serve the principal dwelling unit and the ADU (latter sentence adapted from Edmonds, Washington, Community Development Code, Section 20.21.030 C. 1996).

22. Density Limits.

Note: Restrictions on density are designed to reduce the number of ADUs in order to minimize their projected effects on the neighborhood. Density controls may also be put in place to avoid an accumulation of ADUs in the same area or to distribute ADUs evenly through an area (MRSCW 1995, 46).

A wide range of methods are used to limit density of ADUs, including:

- *quotas on the total number of ADU permits before an ADU ordinance is repealed;*
- *quotas on the number of permits issued before an ADU ordinance is reviewed;*
- *periodic reviews of ADU ordinances to evaluate the number of permits issued;*
- *limitations on the number of ADUs per area (e.g., by block or census tract);*
- *restrictions on the number of ADUs as a percentage of the residences in an area; and*
- *spacing requirements between ADUs.*

Advocates of ADUs may argue, however, that density rules reduce the number of ADUs unjustifiably. When the infrastructure in single-family neighborhoods is underutilized, why is it fair to say "no" to one homeowner applying to create an ADU simply because another homeowner in the area has already installed an one? Justifying the density control may be even harder if the homeowner with the ADU permit originally installed it illegally and now is issued the permit to legalize wrongdoing.

But density controls may be an essential political tool in some communities. Guarantees that neighborhoods will not be overrun by ADUs may increase support for an ADU ordinance in a community. For this reason, density controls are suggested as the minimal provision. Density limits for ADUs are not recommended as optimal options because the controls are hard to justify.

The favorable provision calls for annual reporting. This reporting can trigger a reconsideration of the ordinance if density thresholds are exceeded. This option is considered favorable because its effect, rather than vetoing an application for an ADU, is to cause a review of the ordinance for amendments to the ADU ordinance. We want to emphasize that this review calls for "amendments" rather than repeal of the ordinance.

[Optimal provision] None

[Favorable provision] The Zoning Administrator shall report annually to the municipal legislative body the number of units established, the geographic distribution of the units, the average size of the units, the number and type of complaints, and completed enforcement actions. The municipal legislative body shall reassess this ordinance for amendments every [specify number] years or sooner if records show that 20 percent of the single-family

structures within any census tract or citywide have ADUs (adapted from Tacoma, Wash., Municipal Code, Section 13.06(B)(8) (1996) in MRSCW 1995, 58).

[***Minimal provision*** - choose one of the following four options] No applications for ADUs may be accepted in census tracts or areas if granting the permit would cause the percentage of single-family units with ADUs of any single-family zone in one census tract to exceed 20 percent (adapted from Seattle, Washington, Section 23.44.025, Seattle Municipal Code in MRSCW 1995, 46).

[or]

A permit for an ADU may be issued if not more than 10 percent of the existing single-family units within 1,000 feet of the proposed ADU contain existing ADUs (adapted from South Winsor, Connecticut, Section 4.7.1.g., Zoning Ordinance 1990).

[or]

A permit for an ADU may be issued if not more than [specify number] permits have been issued for ADUs over the three-year period since the adoption of these regulations (adapted from Hamden, Connecticut, Section 701 m., Zoning Regulations 1996).

[or]

The Zoning Administrator may issue a permit for an ADU if the total number of permits has not exceeded [specify number]. When this number is exceeded, the Zoning Administrator shall report to the municipal legislative body that the number is exceeded, and that body shall review the ADU ordinance for its continuance, amendment, or repeal.

23. Legalizing ADUs.

> *Note: An illegal ADU is one that was installed without obtaining the required permits from the local government. Some ADUs may have existed prior to any ordinance making them illegal. Those ADUs can become legal, nonconforming ADUs if they initially conformed to all public laws. However, ADUs installed after zoning regulations were adopted are illegal unless permits were obtained from the local government. After permits are available for ADUs, illegal ADUs may actually be encouraged by harsh regulations, excessive fees, and tedious application procedures. Illegal ADUs are quite common because of the pressure for affordable housing and the reluctance of many communities to legalize ADUs.*
>
> *A goal of some communities that are more familiar with these issues is to legalize the illegal ADUs for safety reasons. But many ADU owners strongly resist legalization out of their fear of higher property taxes, legal sanctions, income taxes on rental income, the costs of conforming to local codes, and the possibility that code inspectors will discover a variety of code violations*

(Gellen 1985, 187-191). For these reasons, programs to accommodate illegal ADUs have not been very successful (Gellen 1985, 188). In addition, most communities have limited budgets for enforcing ADU regulations, meaning that code enforcement relies on specific complaints. Thus, most communities simply ignore illegal ADUs.

A variety of approaches, however, are available to deal with illegal ADUs. First, we recommend not having harsh regulations, lengthy application processes, or high fees that will create even more illegal ADUs. In addition, the model ordinance includes the following approaches: amnesty periods from enforcement, long time periods to comply with regulations, an exemption from all but safety regulations, and the threat of stiff penalties after all else has failed. While there appears to be no optimal or even favorable provision for a community living with numerous illegal ADUs, we do suggest a minimal provision below that includes several of the above options.

Some benefits accrue to communities that legalize illegal ADUs. If illegal units are tolerated, the risk is increased that other people will be encouraged to have illegal units. In this instance, it can be quite important for community leaders to make the statement through their ADU regulation that they are committed to the public interest by requiring owners of illegal ADUs to come forward and legalize their units. Furthermore, legalizing the illegal ADUs provides the opportunity to correct dangerous safety hazards (such as inadequate electrical wiring). With these benefits in mind, we suggest the minimal provision for legalizing ADUs below.

[Optimal provision] None

[Favorable provision] None

[Minimal provision] Any existing illegal ADU will not be subject to any enforcement action if an application to legalize the ADU is submitted within [specify number] months of the adoption of these regulations (adapted from a 1995 draft of Village of Scarsdale, New York, Zoning Code 1995).

[or]

Owners of illegal ADUs shall be guilty of a misdemeanor and subject to a penalty of [specify the maximum allowed by law]. Any existing illegal ADU will not be subject to any enforcement action if:

1. The ADU owner applies for a permit to legalize the illegal ADU permit within [specify] months of the adoption of these regulations;
2. The ADU complies with the minimum requirements of the Uniform Building Code, Section 1208, within [specify] months of the date of applying for a permit under this Section (adapted from Mercer Island, Washington, Section 19.04.0607(D); MRSCW 1995, 45);
3. The ADU complies with the minimum housing code standards within [specify] months of the date of applying for a permit under this Section of the ordinance (adapted from Tacoma, Washington, Section 13.06.196(C)(11) Code, MRSCW 1995, 44); and
4. The ADU owner supplies the Zoning Administrator with certification by the municipal health official that the water supply and sewage disposal facilities are adequate for the ADU (adapted from WOCD 1994, Section A.2.).

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