



# CITY OF SAN MATEO

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## Agenda Report

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**TO:** City Council  
**FROM:** Drew Corbett, City Manager  
**PREPARED BY:** Community Development Department  
**MEETING DATE:** March 2, 2020

**SUBJECT:**  
Accessory Dwelling Unit (ADU)/Junior Accessory Dwelling Unit (JADU) Ordinance Update

### RECOMMENDATION:

Discuss changes to State law associated with ADU and JADU development and consider areas of regulation which remain under local agency discretion.

### BACKGROUND:

In recent years (2016 and 2017), the California legislature passed several reforms (AB 2299, SB 1069, and AB 2406) intended to reduce regulations related to ADUs and JADUs to spur construction of these types of dwellings, with the broader goal of helping address the state housing crisis. ADU's are also known as second units, guest houses, casitas, "granny" units or in-law units.

In the spring of 2019, the City did extensive outreach aimed at helping the San Mateo community talk more constructively about the shared challenge of housing. The City hosted two events in conjunction with Home for All, a San Mateo County collaborative, aimed at creating an inclusive environment for community members to discuss and build a shared understanding of how housing challenges affect the entire community and to broaden participation in the discussion. The City held two events, the first on April 27, 2019 and the second on May 18, 2019. The second conversation was built upon the feedback and input that was received from the first gathering. The need for more information and feasibility of ADUs and JADUs were voiced by the community during these community conversations, as well as during the City's General Plan community workshops. Please see [Attachment 1](#) and [Attachment 2](#) for summaries of these community conversation events.

Additionally, the City Council, at its annual 2019-20 goal setting meeting, directed staff to study ADUs and JADUs with regard to the City's current regulations and opportunities to streamline the permitting process.

### New ADU/JADU State Legislation

On January 1, 2020, six ADU and JADU related housing bills signed into law by Governor Newsom became effective. Three of the six Assembly and Senate Bills (AB 68, AB 881, and SB 13) took direct aim at easing local zoning controls, reducing associated development fees, and expediting permit processing associated with ADU and JADU development. The primary changes resulting from these bills are summarized below:

#### *AB 68 & AB 881 (Overlapping bills):*

- Prohibits minimum lot size requirements for ADUs;
- Prohibits the imposition of side and rear setbacks greater than 4-feet for an ADU;
- Ensures *by-right* an ADU of at least 800 square feet, 16 feet in height with 4-foot side and rear setbacks;
- Limits floor area ratio, lot coverage, and other zoning requirements as impediments to ADU development;

- Local agencies must ministerially approve a permit within 60 days of deeming application complete;
- Prohibits requiring replacement parking for demolished or converted garages or parking structures (i.e. carports);
- Allows a new or converted ADU in the same location and footprint as the existing accessory structure;
- Multi-family buildings may add ADUs up to 25% of the existing unit count (or at least one) and up to two detached; and
- Single-family zoned lots can be developed with a JADU and ADU in addition to the primary residence (effectively allowing three (3) separate living units on each parcel zoned for single-family).

**SB 13:**

- Property owner no longer must occupy the primary dwelling or the ADU (remains requirement for JADUs);
- No impact fees for ADUs less than 750 square feet; otherwise fees are proportional to the size of primary dwelling;
- Cannot require correction of non-conforming zoning conditions as condition of approval; and
- Allows owner to delay enforcement of certain building standards up to five years for building requirements that do not violate the Health and Safety Code.

Remaining Areas of Discretion for Local Agencies

The new state legislation has expressly limited the ability of local agencies to regulate ADUs and JADUs. Local agencies that haven't already adopted an ordinance compliant with Government Code Section 65852.2 are required to default to the standards specified in state law for permitting ADUs. As of January 1, 2020, any local ordinance that conflicts with the existing and updated requirements specified in state law is rendered *null and void*. Local agencies can simply default to the state regulations or elect to adopt by local ordinance more permissive requirements than specified by the state.

Given the sweeping changes the new legislation brings, San Mateo is left with only a few remaining areas of discretion. Staff describes those areas of discretion and provides recommendations for City Council consideration and direction to staff in the seven discussion points below:

***Building Size Limitations***

State law provides a property owner the right to construct an attached or detached ADU of at least 800 square feet in size, and of at least 16 feet in height with four-foot side and rear yard setbacks regardless of any local ordinance related to: minimum or maximum ADU size, proportionality to the proposed or existing primary dwelling, limits on lot coverage, floor area ratio, open space, or minimum lot size. This means a small 5,000 square-foot lot with a floor area ratio (FAR) of .50 could have a maximum build-out of 3,300 square feet (2,500 square-foot house plus an 800 square-foot ADU), or .66 FAR as a result of this "by-right" provision.

A local agency can establish by ordinance a maximum building size for attached or detached ADUs provided it is not less than 850 square feet for a studio or one bedroom, or 1,000 square feet for an ADU with two or more bedrooms. ADUs attached to an existing primary residence cannot exceed more than 50 percent of the existing primary dwelling's floor area. Detached ADUs are permitted to be up to 1,200 square feet provided there is adequate floor area allowance on the lot. In specific scenarios when an existing or proposed single-family residence is being developed with both a JADU and a detached ADU, state regulations specify a local agency "may impose" conditions that limit that detached ADU to no more than 800 square feet in size and 16 feet in height. Should the aforementioned provisional conditions not be adopted, it would mean that a 5,000 square foot R1-C (single-family) lot has the potential to be developed with a 1,200 square-foot primary residence, of which 500 square-feet can be converted into a JADU, and up to a 1,200 square-foot detached ADU. Presuming the primary residence and ADU in this scenario are occupied by at least two to three adults in each dwelling, and one to two adults in the JADU, there is a realistic possibility of having at least five to eight adults with accompanying vehicles living on the same lot.

***Building Height***

The new state law establishes that a local agency must allow a minimum building height of at least 16 feet for either an attached or detached ADU. It should be noted *building height* as defined in the municipal code is measured from existing grade to top of the building plate, rather than to the tallest roof ridge. Since ADUs can be created from conversions of

existing accessory structures that sometimes may be built close to shared property lines (including no setbacks), the City may want to consider establishing ADU height restrictions or other objective standards to limit potential view and privacy impacts on neighboring properties given the new reduced side and rear yard setback requirements of four feet. Additionally, the City can consider whether to allow two-story detached ADUs as long as we allow a minimum height of 16 feet.

### ***Parking Requirements***

State requirements for off-street parking associated with ADU development has become increasingly lax with each update. State law specifies required off-street parking shall not exceed one parking space per ADU or per bedroom, whichever is less. However, a local agency can elect to reduce or eliminate parking requirements for any ADU located within its jurisdiction. It should be noted that state law now eliminates replacement parking when a garage or covered parking structure is demolished in conjunction with the construction of an ADU, or conversion of that parking structure into an ADU as was previously required. Additionally, Government Code Section 65852.2 (d)(1) exempts ADUs located within one-half mile walking distance of any fixed-route bus stop or other transit stop from any imposed parking requirement. Given this exemption, the vast majority of residential zoned parcels in San Mateo would be exempt from providing the required off-street parking space due to the availability of public transit across the city. There is no parking requirement for JADUs. See [Attachment 3 – Half-mile Walking Distance to Transit Proximity Map](#).

### ***Development/Impact Fees***

SB 13 reduces impact fees associated with ADU development, and eliminates impact fees associated with JADU development, by creating a more equitable tiered fee structure that eliminates impact fees for ADUs less than 750 square feet and requires fees on larger ADUs to be charged proportionately in relation to the square footage of the primary dwelling. In order to charge proportional impact fees, the City would need to conduct a nexus fee study to determine the appropriate impact fee to charge for the ADU. In the absence of a fee nexus study, San Mateo does not currently apply traffic impact fees (TIF), park in-lieu fees, or water or sewer hook-up fees associated with ADU/JADU development. The state Mitigation Fee Act requires that all new development pay its fair share so that the impacts of these ADUs on the need for public facilities (if any) will need to be studied. If there are any unfunded impacts, other developments cannot be required to subsidize them and the City will need to make up the difference out of its General Fund.

However, the City does charge a flat building permit fee of \$2,819 for each ADU \$1,275 for each JADU based on the actual cost of plan review and inspections. Should the City want to further incentivize ADU development, state law does not limit the authority of local agencies to adopt less restrictive requirements related to impact fees or project review fees.

### ***Objective Standards***

Local agencies still have the limited ability to adopt objective standards as part of the ADU/JADU development requirements provided it does not conflict with state law. Examples of such objective development standards would be requiring matching exterior architectural materials and color patterns between the main house and the ADU, obscured glazing for windows along the side and rear facing elevations of two-story ADUs which are located within 20 feet of a neighboring dwelling on an abutting lot to ensure privacy, or requiring address markers for each ADU and JADU to be located along a street facing frontage for fire and safety purposes.

### ***Prohibit Short-Term Rentals***

SB 13 prohibits short-term rentals (i.e. rental terms less than 30 days) of ADUs in the following scenarios: when an ADU is located within an existing or proposed single-family dwelling; when a city has adopted a condition that limits a detached ADU to 800 square feet when a JADU exists; or for ADUs in multi-family developments. However, state law does provide local agencies discretion to prohibit short-term rentals for all other ADU types (i.e. new or converted detached ADUs). The City may want to consider continuing the prohibition of short-term rentals for all ADUs, requiring the rental of an ADU be for a term longer than 30 days, as currently required in our local ordinance.

### ***Enforcement delay of existing unpermitted ADUs/JADUs***

In addition to the waiver of impact fees, SB 13 also provides a provision where the property owner can request a five-year enforcement delay for unpermitted ADUs as long as the ADU meets health and safety standards. This statute is being

interpreted as only applicable to violations of the building code (Title 23) and not to violations of the zoning code (Title 27). As of February 14, 2020, there are a total of 19 active cases for unpermitted ADUs in San Mateo. Fourteen (14) of these cases do not have health and safety concerns nor nonconforming zoning conditions, and therefore can be permitted or are eligible for the five-year deferral to bring the structure into building code compliance. Three (3) of the cases appear to have nonconforming zoning conditions such as setback or FAR violations but are otherwise also eligible for the code enforcement deferral. Two (2) of the cases have health and safety violations (e.g. no heat), but are eligible for the code enforcement deferral once the health and safety violations are resolved. The City may want to consider provisions for permanent amnesty to allow the existing ADUs to remain in perpetuity, regardless of non-compliance to zoning and building code standards provided the ADUs meet health and safety considerations.

### Staff Efforts

Staff recognizes informing and educating the public are fundamental components of encouraging ADU/JADU development. This was also provided as feedback from the Home for All Community Conversations. Staff has been examining opportunities to incorporate new technology and refine processes to help make information and permitting more accessible and easier for homeowners. These efforts are classified into three general categories described below:

#### *Technology*

Staff has been working with Symbium, a company that develops software that makes it easier to visualize land use and zoning regulations. Staff is currently testing a beta version of Symbium's BUILD for ADUs software specific to San Mateo. This is a highly intuitive web platform that provides interactive mapping and simplifies complicated regulations, including the state's new ADU/JADU housing laws that will help citizens navigate the permitting process. Once a new Ordinance is adopted, Symbium will update the application to meet San Mateo's updated requirements.

#### *Information*

Staff assessed existing ADU/JADU handout materials and related web pages to determine how the information could be more accessible and intuitively presented to the public. As a result, the previously separate ADU and JADU submittal checklists have been consolidated and combined with the standard building permit guide to provide an easy to read format of all the information necessary to submit a complete Building Permit application for an ADU or JADU in one document.

Additionally, staff has refreshed its ADU/JADU one-stop webpage, which is now featured on the City's homepage. The webpage summarizes key Planning, Building, Fire, and Public Works requirements associated with ADU/JADU development, as well as a property zoning look-up tool, development fees, and handout materials.

#### *Programs*

Staff is looking into the possibility of developing innovative programs intended to provide homeowners a range of benefits, including expediting design and permitting timelines, and financial assistance for qualifying projects. The City may explore the possibility of working with architects and home builders on developing pre-approved ADU designs that meet general development standards and building code requirements. The pre-approved designs provide the homeowner with savings of both time and money by avoiding the sometimes lengthy plan review process and costs associated with architectural design and engineering drawings.

The City may also study the feasibility of offering financial/funding assistance programs that would make building an ADU or JADU a more accessible option for homeowners, as well as a tool to add affordable housing stock in San Mateo. The City may study offering a fee waiver incentive whereby building permit and plan check fees (and other development impact fees) would be completely waived for units offering qualifying low-income households. The City may also investigate developing a loan program to qualifying residents that would help provide homeowners with necessary funding.

### Upcoming 2020 State Law Changes

There are two bills that attempt to clean up some of the 2019 legislation (AB 953 and SB 773). As of February 6, 2020, the changes clarify that 1) if a jurisdiction has not acted on a completed application in 60 days, it is deemed approved; and 2) a homeowner can have both an ADU and a JADU under a wider range of special provisions. It also fixes a typo that said

jurisdictions "may shall" approve multifamily ADUs, clarifying that jurisdictions shall approve them. Finally, it clarifies that the ADU rules are of state-wide concern. All of the other rules are unchanged.

#### Staff Recommendations for City Council

Staff will be preparing amendments to the Zoning Code consistent with the mandatory requirements of state law. However, as noted above, there remain some limited areas in which the City may exercise discretion in determining these requirements. Staff requests City Council direction on the following questions and options for Council's consideration:

1. Should the City increase the exempted minimum "by-right" ADU square footage provision from 800 square feet up to 1,200 square feet? Staff recommends defaulting to the state specified "by-right" exemption of 800 square feet, or studying a tiered increase up to 1,200 square feet and limiting all ADUs to a maximum of two bedrooms.
2. Should the City limit the size of an ADU to 800 square feet when both an ADU and JADU would exist on the same lot? Staff recommends the City Council adopt this provisional condition to limit the size of ADUs on any single parcel that also has a JADU.
3. Should the City refer to the State statute for maximum building height of 16 feet, or study alternative building height restrictions or other objective standards? Staff recommends developing ADU building height maximums and objective standards compliant with the State requirements to help mitigate potential view, shade, and privacy impacts on neighboring properties.
4. Should the City consider amending the Zoning Code to accommodate more flexible off-street parking standards (i.e. wider driveways) for lots with an ADU or JADU? Staff recommends considering exemptions to parking requirements and front yard paving to account for additional parking needs associated with ADU/JADU development.
5. Should the City consider impact fees for ADU/JADU's and conduct a nexus study? Given the limited scope of charging impact fees and the goal to further incentivize ADU/JADU construction, staff recommends codifying that no impact fees be charged for ADU's, regardless of size, and continue to charge the flat fee building permit to cover the cost of plan review and inspections.
6. Should the City develop objective design standards for ADU/JADUs? Staff recommends that objective design standards related to architectural materials, reducing privacy impacts, and addressing fire and safety concerns be incorporated into the ADU/JADU Ordinance.
7. Does the City Council want to continue prohibiting short-term rentals for all ADU's? Staff recommends continuing to prohibit short-term rentals by requiring the rental terms for all new or converted detached ADUs to be no less than 30 days as already required by local ordinance.
8. Does the City Council want to consider provisions for permanent amnesty to allow existing illegal non-conforming ADU's to remain in perpetuity? Staff recommends preparing provisions for permanent amnesty to allow the existing ADUs to remain in perpetuity, regardless of non-compliance to zoning and building code standards provided the ADUs meet health and safety considerations.

#### **BUDGET IMPACT:**

Costs associated with necessary Code amendments, including staff time and Symbium's BUILD, are covered under the Community Development Department's existing operating budget.

#### **ENVIRONMENTAL DETERMINATION:**

This informational item is not a project subject to CEQA, because it can be seen with certainty that it will not cause a physical change in the environment. (Public Resources Code Section 21065.)

**NOTICE PROVIDED**

All meeting noticing requirements were met.

**ATTACHMENTS**

Att 1 – April 27, 2019 Community Conversation

Att 2 – May 18, 2019 Community Conversation

Att 3 – Half-mile Walking Distance to Transit Proximity Map

Att 4 – Public Comments Received

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