



CITY OF SAN MATEO

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Agenda Report

Agenda Number: 2

Section Name: {{section.name}}

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TO: Planning Commission
FROM: Sailesh Mehra, Planning Manager
PREPARED BY: Community Development Department
MEETING DATE: February 9, 2021

SUBJECT:

Ordinance Introduction – Municipal Code Amendment to Update Current Accessory Dwelling Unit and Junior Accessory Dwelling Unit Ordinance and Junior Accessory Dwelling Unit Definition

RECOMMENDATION:

Introduce an ordinance amending San Mateo Municipal Code Chapter 27.19 – “Accessory Dwelling Unit and Junior Accessory Dwelling Unit – Residential Zones” in accordance with changes to State law Government Code § 65852.2 and § 65852.22, and 27.04.165 (c) “Junior accessory dwelling unit” definition.

BACKGROUND:

On January 1, 2020, six accessory dwelling unit (ADU) and junior accessory dwelling unit (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. Some of the primary changes resulting from these bills are provided below:

AB 68 & AB 881 (Overlapping bills):

- Ensures *by-right* an ADU of at least 800 square feet, 16 feet in height with 4-foot side and rear setbacks can be created;
- Limits local agencies ability to utilize floor area ratio, lot coverage, and other zoning requirements as impediments to ADU development;
- Allows a new or converted ADU in the same location and footprint as an existing accessory structure;
- Multi-family buildings may add ADUs up to 25% of the existing units (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 residential use).

SB 13:

- Removes the ability for local agencies the ability to require owner-occupancy of the primary dwelling or the ADU (provision sunsets January 1, 2025; 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 request a delay enforcement of certain building standards up to five years if determined by the Building Official that correcting the violation is not necessary to protect health and safety.

See Attachment 1 for a comprehensive summary of the ADU and JADU state legislation which became effective January 1, 2020, provided by the Department of Housing and Community Development (HCD).

On March 2, 2020, staff presented to City Council an outline of the changes to ADU and JADU state legislation and areas of regulation which remain under local agency discretion for the purpose of informing an update to our local ADU and JADU ordinance in San Mateo Municipal Code (SMMC) Chapter 27.19. The Council provided feedback on specific questions posed by staff regarding those limited areas of discretion and directed staff to conduct community outreach to solicit feedback to better understand how residents want future ADU and JADU development in San Mateo to look. The administrative report is provided as [Attachment 2](#).

Shortly thereafter, the County of San Mateo issued a shelter-in-place order due to the onset of the COVID-19 pandemic which disrupted planned outreach efforts, resulting in a delay of the update to the local ordinance. In the absence of having an updated ordinance in place, staff has defaulted to the state regulations in practice regarding those areas where our current local ordinance conflicts with state law or is silent regarding new regulations. Existing provisions in the local ordinance which do not conflict with state law remain enforced.

During this time staff has also been developing virtual outreach strategies to move forward with the process of collecting community input and an ordinance development and review schedule comprised of two phases. Phase 1 is currently being undertaken with formal review of the initially proposed ADU and JADU ordinance update to formally conform with the changes to state regulations; the anticipated adoption of this initial ordinance update will likely occur in February or March 2021. Phase 2 would involve community outreach efforts to help inform the development of a second ordinance update reflective of the community's input. Staff intends to return to both the Planning Commission and City Council to present the second proposed ordinance update and have it adopted before the end of Q4 2021.

Proposed Code Amendments

SMMC 27.19 – Accessory Dwelling Unit and Junior Accessory Dwelling Unit

While the new state legislation has expressly limited the ability of local agencies to regulate the creation of ADUs and JADUs, local agencies may still apply development and design standards, including but not limited to, parking, building height, setback, landscape, architectural review, and maximum unit size standards, provided the requirements do not conflict with the minimum provisions established by Gov. Code § 65852.2 and § 65852.22. Due to the comprehensive changes to the state legislation the proposed local ordinance update to SMMC 27.19 incorporates the state provisions primarily *as-is*, however, staff proposes the following development standards as the most pragmatic approach to expediate the local ordinance update and proactively address any potential issues that might occur between now and when Phase 2 is completed:

Exempted Floor Area

The new state legislation establishes that a property owner may construct either 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 setbacks “by-right” regardless of any development standard based on the percentage of the proposed or existing primary dwelling, lot coverage, floor area ratio, open space, or minimum lot size that would otherwise preclude its construction. This provision effectively results in exempted floor area (i.e. up to 800 sq. ft.) that would not be included when calculating for the purposes of determining the total floor area for a given parcel. As such, the proposed update to the local ordinance clarifies that floor area of any new ADU which exceeds 800 square feet would then be applied to the overall maximum floor area allowance of the subject lot as prescribed by the underlying zoning district.

Maximum Unit Size

The City has defaulted to the maximum unit sizes (i.e. floor area) specified in the state ordinance for both detached and attached ADUs. Detached ADUs are permitted to be up to 1,200 square feet (sq. ft.) while attached ADUs are permitted to be up to 50 percent of the floor area of the primary dwelling. It should be noted that staff provided the Housing and Community Development Department (HCD) a draft of the proposed ordinance for preliminary review. HCD's interpretation of the state ordinance specifies that notwithstanding the noted 50 percent threshold, local agencies must allow an attached ADU to be of at least 850 sq. ft. for a studio or one-bedroom unit, or at least 1,000 sq. ft. for an ADU of two bedrooms or more.

Architectural Standards for Detached Units

HCD found issue with an architectural standard specified in SMMC 27.19.050 (l)(2)(b) that requires detached ADUs “Be designed to minimize the visibility of the accessory dwelling unit from the street(s), with the exception that corner lots are excluded from this requirement.” The concern related to the whether the requirement could be objectively enforced, as well as serve as a potential encumbrance (i.e. impacts to site planning and size of ADU) for property owners developing ADUs on their lots. Staff agrees with HCD’s contention that the requirement leaves room for subjectivity and no longer feasible given the provisions of the new legislation. As such, staff proposes to remove the requirement from the list of architectural standards for detached ADUs.

ADU Building Height

As previously noted, a local agency must allow a minimum building height of at least 16-feet for both attached and detached ADUs. *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. Given that ADUs can be created from conversions of existing accessory structures or on top of these structures which are commonly built within setback areas close to or on shared property lines, staff proposes a modified definition for ADU building height to not to exceed 16-feet as measured from existing or finished grade (whichever is lower) from any point along the building’s perimeter to the *highest roof peak*. The restricted detached ADU building height would mitigate some of the potential privacy and view impacts of ADU development to adjacent properties while still allowing for design flexibility. Attached ADUs would be permitted to build up to the plate height of the primary residence or 16 feet, whichever is higher, in accordance with the standards of the underlying zoning district.

Detached ADU Building Height in Multi-Family Zoning Districts

State law now limits building height for detached ADUs to a maximum of 16 feet in instances where a parcel has an existing multi-family development. Maximum building heights in these multi-family districts range from 35-55 feet and were developed with the intent of accommodating higher density development. Staff believes it is prudent to also extend the state’s 16-foot building height restriction for detached ADUs in multi-family zoning districts (i.e. R3, R4, R5, R4D, R5D, R6D and BMSP) to parcels that have either been previously developed with, or are proposed to be developed with a single-family residential use. The proposed added height restriction would close the “existing multi-family development” loophole created by the state law, preventing unusually tall detached ADU structures that would otherwise be permitted by the underlying zoning districts discussed, as well as would be consistent with intent of the state legislation.

SMMC 27.04.165 (c) – “Junior Accessory Dwelling Unit”

Consistent with the changes to state law, SMMC 27.04.165 (c) “Junior accessory dwelling unit” definition has been amended to indicate that JADUs can now be constructed within the walls of an existing or proposed single-family residence and no longer require the inclusion of an existing bedroom. It should be noted that attached garages are considered part of the residence and can therefore be converted into a JADU.

The proposed draft ordinance amendments are included in [Attachment 3](#).

Discussion Items

Staff is requesting the Planning Commission discuss the following item:

ADUs in the Front Yard

The state ordinance is silent regarding whether ADUs can be located in the front yard of a parcel, specifying only that new ADU construction provide for four-foot side and rear setbacks, and allowing local agencies to impose setback standards in conformance with state law per Gov. Code Section 65852.2 (a)(1)(B). HCD has interpreted the exclusion of a front yard setback standard to mean that ADUs are permitted within front yard areas without restriction. Staff does not agree with this interpretation and proposes prohibiting the location of ADUs within required front yard setbacks and have drafted findings outlining health and safety concerns per the provisions of Gov. Code Section 65852.2 (h)(2)(B)(ii) which are provided below.

Legislative Findings. The City Council of the City of San Mateo finds:

(a) Government Code Section 65852.2(a)(1)(B) authorizes cities to impose parking and setback standards in conformance with state law.

(b) Government Code Section 65852.2(e) limits side and rear setbacks for accessory dwelling units to four feet, but does not address front setbacks.

(c) The City wishes to limit the location of accessory dwelling units to locations outside of the required front setback to address the following health and safety concerns:

(1) The City's required front setback areas range from 15 feet to 25 feet.

(2) Given the size of these required front setback areas, it is necessary to preserve visibility to the street from driveways and parking spaces for vehicles exiting the property in order to protect both pedestrians and passing vehicles.

(3) Given the size of these required front setback areas, it is necessary to locate accessory dwelling units far enough from the street to reduce traffic noise for residents of accessory dwelling units.

Staff is requesting the Planning Commission provide a recommendation to the City Council whether to allow ADUs in required front yards, or restrict the location of ADUs to outside of the required front yard setbacks based on the proposed draft findings.

Required State Review

Upon adoption of the ADU/JADU ordinance, the City will be required to submit a copy of the adopted ordinance to the state Housing and Community Development Department (HCD) within 60 days after the adoption per Government Code § 65852.2 (h)(1). After the adoption of the ordinance, HCD may review and submit written findings to the local agency as to whether the ordinance complies with state regulations.

BUDGET IMPACT:

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

ENVIRONMENTAL DETERMINATION:

The proposed ordinance is statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 21080.17 of the Public Resources Code and Section 15282(h) of the CEQA Guidelines because it is an accessory dwelling unit ordinance that is implementing the provisions of Government Code § 65852.2 and 65852.22.

PUBLIC COMMENTS:

One public comment has been formally submitted since the March 2, 2020, City Council meeting, which has been included as Attachment 4.

NOTICE PROVIDED

All meeting noticing requirements were met.

ATTACHMENTS

Att 1 – Summary of State ADU/JADU Legislation Effective January 1, 2020

Att 2 – Administrative Report to City Council (March 2, 2020)

Att 3 – Proposed Ordinance Amendments

Att 4 – Public Comment

STAFF CONTACT

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