



CITY OF SAN MATEO

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Agenda Report

Agenda Number: 11

Section Name: {{section.name}}

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TO: City Council

FROM: Drew Corbett, City Manager

PREPARED BY: Community Development Department

MEETING DATE: March 15, 2021

SUBJECT:

Ordinance Introduction – Accessory Dwelling Unit and Junior Accessory Dwelling Unit Updates

RECOMMENDATION:

Introduce an Ordinance to amend San Mateo Municipal Code Chapter 27.19 – “Accessory Dwelling Unit and Junior Accessory Dwelling Unit – Residential Zones” in accordance with changes to state law and “Junior accessory dwelling unit” definition.

BACKGROUND:

On March 2, 2020, staff presented the City Council an outline of the changes to ADU and JADU state legislation which came into law on January 1, 2020, and discussed the areas of regulation which remain under local agency discretion for the purpose of informing a planned update to San Mateo Municipal Code (SMMC) Chapter 27.19 – “Accessory Dwelling Unit and Junior Accessory Dwelling Unit – Residential Zones.” 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 from the March 2, 2020 meeting and 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) are provided in this report.

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.

Staff is currently developing virtual outreach strategies to move forward with the process of collecting community input. Staff is also developing a review schedule for ordinance development comprised of two phases:

Phase 1

- Formal review and adoption of initially proposed ADU and JADU code update to conform with state regulations (Government Code § 65852.2 and § 65852.22)
- Introduction and adoption of initial ordinance to occur in March/April

Phase 2

- Community outreach efforts to engage residents, homeowner associations, architects/designers, and builders to help inform development of second ordinance update

- Development of a second, more comprehensive ordinance update reflective of community's input in remaining areas under local control
- Return to both the Planning Commission and City Council to present the second ordinance update with a targeted adoption date before the end of summer 2021

Special Provisions of the State ADU Ordinance

To maximize opportunities to retain available housing stock, the state included the following special provisions which are included in this initial, Phase 1 update to our local ordinance:

Deferred Enforcement

The state requires, upon application and approval, a local agency to delay enforcement against a qualifying substandard ADU for five (5) years to allow the owner to correct the violation, so long as the violation is not a health and safety issue, as determined by the enforcement agency (Gov. Code, § 65852.2, subd. (n); Health & Safety Code, § 17980.12).

Moratorium for Owner-Occupancy Requirement

The City's existing ordinance includes a provision that requires owner-occupancy for either the primary dwelling or ADU, as permitted by state law. The new state legislation places a five-year moratorium restricting local agencies from enforcing owner-occupancy requirements on ADUs approved between January 1, 2020, to December 31, 2024. As such, staff proposes to retain the existing owner-occupancy requirement in the proposed ordinance. Should the state move to extend the moratorium or remove it entirely in the future, the ordinance can be updated to reflect the new legislation accordingly.

Proposed Code Amendments

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 standards to expedite the local ordinance update and proactively address any potential issues that might occur between now and when Phase 2 is completed:

Required Parking for ADUs

State law specifies required off-street parking associated with ADU development shall not exceed one parking space per ADU or per bedroom, whichever is less. The state ordinance also allows local agencies to determine where the required parking can be located on the property. Staff proposes to maintain the City's existing requirement that permits required ADU parking to be located in the rear one-third of the property, including the rear yard setback and a portion of the required side and street yard setback areas. This parking can be either covered, uncovered, or in tandem configuration. In consultation with the Housing and Community Development Department (HCD) it was determined the City's existing ADU parking requirements are more permissive than off-street parking requirements for the primary residence and therefore in compliance with state regulations. It should also be noted the new state legislation 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.

By-Right Provision

Consistent with new state legislation, the proposed code amendment establishes that a property owner may construct either an attached or detached ADU of at least 800 square-feet (sq. ft.) 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.

Maximum Unit Size

The City has defaulted to the maximum unit sizes (i.e. floor area) specified in state law for both detached and attached ADUs. Detached ADUs are permitted to be up to 1,200 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 HCD a draft of the proposed ordinance for preliminary review. Consistent with HCD's interpretation of state law, the proposed code amendment 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 when converting a portion of an existing residence.

Architectural Standards for Detached Units

HCD found an issue with an architectural standard specified in SMMC 27.19.050 (1)(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 can no longer be enforced given the provisions of the new legislation. As such, the proposed code amendment removes the requirement from the list of architectural standards for detached ADUs.

ADU Building Height

As previously noted, a local agency cannot establish a maximum building height lower than 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 which expand the footprint of the primary residence more than 150 sq. ft. (exempted floor area per state law to accommodate ingress/egress to the ADU) are subject to the development standards specified by the underlying zoning district provided those requirements do not preclude the construction of a 800 sq. ft. ADU of at least 16 feet in height with four-foot side and rear setbacks (i.e. a "by-right" ADU).

Required Address Assignments

Staff proposes that all new ADU and JADU building permits include an application for a separate address assignment for the purpose of assisting the Police and Fire Departments locate these types of dwelling units more efficiently when responding to emergencies. It should be noted that the current (FY 20/21) address assignment fee of \$427 is waived when assignment is required as a condition for construction. As such, the address assignment can be enforced without additional cost to the property owner.

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.

DISCUSSION ITEMS:

ADUs in the Front Yard Setback

State law does not address whether ADUs can be located in the front yard setback of a parcel and specifies only that new ADU construction provide for four-foot side and rear setbacks and allows 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 for the aforementioned by-right ADUs. However, the City Attorney's Office reads Government Code Section 65852.2(a)(1)(B) to say that the City can

impose a front yard setback requirement. Front yard setbacks serve many purposes, including maintaining adequate sight distances around structures located near driveways and sidewalks to enhance vehicle and pedestrian safety. As such, staff recommends retaining the existing limitation on front yard setbacks for now and have provided draft findings outlining health and safety concerns per the requirements of Gov. Code Section 65852.2 (h)(2)(B)(ii) which are included in the draft ordinance attached to this report.

Planning Commission Recommendation

On February 9, 2021, the Planning Commission reviewed the proposed draft ordinance update and recommended adoption of the ordinance to City Council by 4-1 vote. The majority of the Commission were specifically supportive of staff recommendations to restrict building height for detached ADUs to a maximum of 16 feet (measured to tallest roof ridge), and the proposal to not permit ADUs in front yard setbacks, including the required health and safety findings drafted by the City Attorney's Office. However, one Commissioner did not support treating ADUs differently from other types of development regarding how building height would be measured and was not comfortable with the proposal to restrict detached building height 16 feet without additional analysis and information. Additionally, the Commissioner did not agree with the proposal to restrict locating ADUs in front yard setbacks as a blanket policy. These topics, as well as several others, will be covered during the public outreach planned for Phase 2. Any proposed Ordinance revisions will reflect community input and again be presented to the Planning Commission for a recommendation prior to City Council review.

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.

NOTICE PROVIDED

All meeting noticing requirements were met.

ATTACHMENTS

- Att 1 – Proposed Ordinance
- Att 2 – Administrative Report to City Council (March 2, 2020)
- Att 3 – Summary of State ADU/JADU Legislation Effective January 1, 2020
- Att 4 – Public Comment

STAFF CONTACT

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