



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: February 22, 2022

SUBJECT:
Ordinance Introduction – Accessory Dwelling Unit Ordinance Amendments

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 to amend San Mateo Municipal Code Section 27.04.165 by adding a definition for “Junior accessory dwelling unit.”

BACKGROUND:

On January 1, 2020, State legislation with updated regulations for accessory dwelling units (ADUs) and junior ADUs (JADUs) went into effect. These regulations established minimum standards and requirements that all jurisdictions were required to comply with and superseded all local ADU ordinances. On March 2, 2020, the City Council held a study session to receive an update on the changes to ADU and JADU regulations. Following public comments and discussion, the Council directed staff to conduct public outreach to receive input from the community on how the City’s ADU ordinance should be updated. Following a delay due to the pandemic, an interim ADU ordinance was brought back to the Council in the spring of 2021, but it was sent back with direction to conduct additional public outreach. In the summer of 2021, additional community outreach, which included an online survey and two virtual community workshops, was conducted. Based on the community input that was received, staff prepared an updated ADU and JADU Ordinance for consideration by the Planning Commission and City Council.

On August 24, 2021, the Planning Commission held a public hearing to consider the updated ADU Ordinance. Following public comments and deliberation, the Commission voted to recommend approval of the updated ADU Ordinance with several modifications for the City Council to consider. These recommended modifications included increasing the maximum allowable size for JADUs to 650 square feet; using a lot’s remaining floor area allowance to govern the size of an ADU rather than establishing a maximum size limit; modifying the objective design standards for second-story windows, balconies, and decks; eliminating the owner-occupancy requirement for ADUs after 2024; and including incentives for ADU construction that exceeds the City’s REACH codes. Additionally, the Commission recommended that the City Council consider removing the R1/R2 daylight plane requirements on ADUs and for staff to provide a graphic study to examine the impacts of imposing the daylight plane on two-story ADUs built at or near the four-foot side yard setback.

On September 7, 2021, the City Council held a study session to consider the updated ADU Ordinance and the Planning Commission’s recommendations. The Council expressed support for allowing the available remaining floor area on a lot to govern the size of an ADU rather than prescribing a specific size maximum and refining the code language related to second-story decks and balconies to allow them in certain instances. The recommendation to incentivize ADU construction that goes beyond the City’s REACH code requirements did not find majority support among the Councilmembers. The Council also deliberated on the appropriate height limit for ADUs, with three height limit options under consideration:

- 16 feet to top plate line/24 feet to roof peak
- 20 feet to top plate line/28 feet to roof peak
- 24 feet to top plate line/32 feet to roof peak

A final height limit was not settled upon, with discussion around whether or not to require a daylight plane to reduce impacts on adjacent properties while also not unduly limiting the ability to build a two-story ADU. Following the discussion, the Council directed staff to provide additional height and daylight plane graphics to illustrate how the daylight plane would affect two-story ADUs of various heights and roof designs.

For reference and additional background, the September 7, 2021 City Council meeting minutes and agenda report (no attachments) are included as [Attachment 4](#) and [Attachment 5](#).

DISCUSSION:

The draft ADU Ordinance that is before the City Council was informed by the requirements of the Department of Housing and Community Development (HCD); community input received during public outreach over the past year; peer review of the development standards adopted by other jurisdictions in the county; staff recommendations based on experience processing ADU permits; and the recommendations previously received from both the Planning Commission and City Council. A clean copy of the draft Ordinance is included as [Attachment 1](#), and a tracked changes version of the Ordinance that reflects the changes from the City's current Ordinance is included as [Attachment 2](#).

ADU Height and Daylight Plane

One of the main issues that remains to be resolved with the updated ADU Ordinance is the height limit. Any of the three height limits under consideration would exceed the minimum 16-foot height requirement specified by State law. All three height limit options would allow for the construction of a two-story ADU, but the two taller height limits would allow for a wider range of two-story ADU sizes and styles. It should also be noted the tallest height option (24 feet/32 feet) is the building height limit in the R1/R2 zoning districts. However, single-family structures in these zoning districts are also required to comply with larger setbacks and the daylight plane.

The R1/R2 daylight plane is applied at each side yard property line, starting at a height of 12 feet and extending into the lot at an angle of 45 degree. All portions of a structure must be within the daylight plane, with the exception of antennas, chimneys, eaves, skylights, and dormers or similar architectural features. The daylight plane is intended to provide for additional light and air between taller structures and to reduce the impacts of bulk and mass on neighboring properties by requiring taller portions of a house to be built toward the interior of the lot. Additionally, single-family residences are required to provide a side yard setback of at least 5-7 feet and a rear yard setback of at least 15 feet, with a setback of 25 feet for second-story elements. These setback requirements are not applicable to ADUs.

To better understand how the daylight plane could impact the height and design of a detached ADU, the City contracted with Larry Cannon of Cannon Design Group to prepare graphics and photo examples of ADUs and how they could be constructed within the height limit and daylight plane. The goal of the graphics is to visualize the effects of the daylight plane on ceiling heights, building heights, and setbacks for two-story detached ADUs of varied roof forms with a zero setback at the side property line (i.e., when built over an existing garage) and new construction ADUs built with a four-foot side setback. This includes conceptual cross-sections and photo examples showing different architectural designs and how they interact with the height limit and daylight plane. These graphics and photographs are included as [Attachment 3](#).

Based on this information, staff is asking Council to determine the appropriate height limit for ADUs in the City and if they should be subject to the R1/R2 daylight plane. The height limit is contained in Section 27.19.050 (e) of the draft Ordinance (highlighted) and can be modified based on the Council's final decision. The daylight plane requirement is contained in Section 27.19.050 (j) of the draft Ordinance.

Second Story Decks

The other main issue for Council consideration is how to best regulate decks for two-story ADUs. Based on previous Council feedback and the Planning Commission's recommendation, there is support for allowing two-story ADUs to have

decks if the property owner is interested. It should be noted that since January 1, 2020, the City has received a total of 174 applications for ADUs and only 18 of those applications proposed a two-story ADU. The limited interest in two-story ADUs is likely related to the higher cost of building a two-story structure and that most new ADUs are between 400-700 square feet, so a second story is not necessary to achieve the desired size. However, given the interest in allowing for two-story ADUs and providing flexibility for second story decks if requested, the following design standards are proposed:

- When an exterior stair is proposed, it shall have a setback of at least five feet from the nearest property line and the size of the second story landing shall be limited to the minimum area required to allow ingress and egress as specified by the California Building Code.
- For a two-story ADU that seeks to have a larger second story deck or balcony, an application for discretionary review, pursuant to Section 27.19.050, shall be submitted.

The wide range of neighborhood contexts, topography and adjacent property relationships present difficulties in establishing objective standards for second story decks while still maintaining a reasonable level of privacy for adjacent properties. Thus, staff is recommending that for new two-story ADUs that include a second story deck, a Zoning Administrator level planning application be submitted to allow for a more context specific review before a new deck or balcony is approved. This discretionary review would be an alternative to the ministerial approval process for applications that meet all of the City's objective standards. Providing an alternative discretionary review process is consistent with guidance from HCD. This is consistent with how the City reviews and approves second story decks for two-story single-family dwellings.

Alternative Discretionary Review Process

In addition to the changes outlined above, Section 27.19.050 has been revised to include a discretionary review as alternative to a ministerial approval for ADUs. This section would allow for an application for discretionary review of an ADU proposal that is not in full compliance with the requirements in the City's ADU Ordinance. This discretionary process would allow staff to review ADU applications individually when there are context-specific circumstances, such as topography or an odd shaped lot, that require unique design elements that may not be consistent with the objective standards in the ADU Ordinance. The Zoning Administrator would need to make findings related to neighborhood scale, privacy and health, safety and welfare, and the decision could be appealed to the Planning Commission.

However, there is an open question as to whether the decision of the Planning Commission on appeal should be final or appealable to the City Council. The draft Ordinance provides that the Commission action on appeal would be final (Section 27.19.045(d), highlighted), which would be consistent with establishing a review process that is not too lengthy. But this is not a legal requirement and can be removed if the preference is for the Council to be the final decisionmaker on an appeal.

An example of the type of ADU design proposal that could utilize this alternative discretionary review process would be a request for a second-story deck that faces an abutting residential property. Staff would be able to review the size of the lot, location of the ADU in relation to the abutting property, and any other existing conditions on the property that could be considered in making the findings for the entitlement.

ADU and JADU Size Limits

As outlined in State law, a jurisdiction must allow (1) ADUs of at least 850 square feet for a studio or one-bedroom and 1,000 square feet for an ADU with more than one bedroom, up to a maximum of 1,200 square feet, and (2) JADUs of at least 500 square feet. However, HCD staff have stated that the City can allow ADUs that exceed 1,200 square feet and JADUs that exceed 500 square feet, if desired. Based on input provided by the Planning Commission and City Council, as noted in the Background section above, the draft Ordinance has a size limit of 650 square feet for JADUs and no size limit for ADUs, provided that they do not exceed the FAR for the underlying zoning district.¹ But, these proposed size limits can be adjusted if there is Council interest.

¹ ADUs up to 800 square feet in size are allowed "by-right" even if they exceed a lot's FAR; ADUs that exceed 800 square feet can be subject to FAR limits.

NEXT STEPS:

Following introduction, the Ordinance will be brought back for a second reading and adoption at the next available City Council meeting, and the Ordinance will go into effect 30 days afterwards. In addition, the City is required to submit the approved Ordinance to HCD within 60 days of adoption for final review and acceptance by the State. If HCD identifies inconsistencies between the City's Ordinance and State law, a follow-up code amendment may be necessary. However, based on prior discussions with HCD and internal review, the draft Ordinance appears to be fully consistent with State law and, in many aspects, it exceeds the minimums established by State law.

Once the ADU Ordinance is adopted, staff will update all ADU related handouts, educational materials and the website to reflect the updated requirements for developing ADUs and JADUs. In addition, one or two community workshops will be scheduled later in the year to provide an overview of the City's updated ADU regulations and a forum to answer resident questions.

BUDGET IMPACT:

Costs associated with the ADU Code amendments, including staff time and other related activities, is funded as part of the Community Development Department's annual budget.

ENVIRONMENTAL DETERMINATION:

In accordance with Public Resources Code Section 21080.17 and California Environmental Quality Act (CEQA) Guidelines, section 15282(h), the portion of this ordinance addressing accessory dwelling units is statutorily exempt from CEQA, because it relates to second units in a single family or multifamily residential zone. In accordance with CEQA Guidelines Section 15061(b)(3), the portion of this ordinance addressing junior accessory dwelling units is exempt from CEQA, because it can be seen with certainty that there is no possibility that amending the City's Zoning Code to comply with state law requirements pertaining to junior accessory dwelling units within existing residences will have a significant effect on the environment.

PUBLIC COMMENTS:

Planning Division staff has communicated with numerous residents about State ADU regulations, the City's updated ADU Ordinance and general ADU permitting and development questions since the September 7, 2021, City Council study session. While all of this correspondence is not included, all communications that specifically addressed the City's draft ADU Ordinance, a total of seven to-date, are included with this agenda report ([Attachment 6](#)).

NOTICE PROVIDED:

All meeting noticing requirements were met.

ATTACHMENTS

- Att 1 – Draft ADU Ordinance
- Att 2 – Draft ADU Ordinance (track changed)
- Att 3 – ADU Height and Daylight Plane Graphics
- Att 4 – City Council Meeting Minutes 9-7-21
- Att 5 – City Council Agenda Report 9-7-21 (no attachments)
- Att 6 – Public Comments

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