



**DATE:** April 28, 2020

**CATEGORY:** Public Hearing

**DEPT.:** Community Development

**TITLE:** **Zoning Text Amendments Regarding Accessory Dwelling Units, Family Day-Care Homes, and Planned Community Permits**

### **RECOMMENDATION**

Introduce an Ordinance Amending Sections of Chapter 36 (Zoning Ordinance) of the City Code to Update Accessory Dwelling Unit and Home-Based Child-Care Regulations to Align with New State Regulations and Modifications to Planned Community Permit Regulations, to be read in title only, further reading waived, and set a second reading for May 12, 2020 (Attachment 1 to the Council report).

### **BACKGROUND**

Staff has completed a consistency review of the Zoning Ordinance relating to new State legislation on Accessory Dwelling Units (ADUs) and family day-care homes and has identified necessary text amendments to bring the City's regulations into conformance with State law. Additionally, staff is proposing amendments to the Planned Community Permit section to clarify the purpose and intent of the regulations.

### **Previous Public Hearings**

#### *Environmental Planning Commission Public Hearing*

On March 4, 2020, the Environmental Planning Commission (EPC) held a public hearing to discuss the proposed code amendments to Chapter 36 (Attachment 3– [Environmental Planning Commission Staff Report – March 4, 2020](#)). The EPC voted unanimously to recommend the City Council adopt the proposed Zoning Text Amendments with no text changes.

Several members of the EPC expressed concerns about potential neighborhood parking impacts with the conversion of garages for single-family homes and multi-family developments with no replacement requirement. As State law requires cities to allow conversion of nonlivable spaces, including garages, to ADUs, and prohibits jurisdictions

from requiring replacement parking for such conversions, the EPC ultimately recommended the City Council adopt the proposed Zoning Text Amendments. However, EPC did recommend staff collect data on the characteristics of future permitted ADUs and monitor potential neighborhood parking impacts for future evaluation and discussion.

Several EPC members also expressed concerns with the allowance of Junior Accessory Dwelling Units (JADUs) to not have separate sanitation facilities from the main home and inquired about the possibility of allowing people to build and include ADUs in the City's Below-Market-Rate (BMR) unit program, which is discussed later in this report.

Three members from the public spoke at the hearing, and one letter in support of the proposed code amendments was received (Attachment 4). Two speakers asked clarifying questions about the proposed standards and their applicability to development scenarios, and one speaker made recommendations on changes to the regulations regarding the separation distance between structures and to allow JADUs within detached accessory structures.

## **ANALYSIS**

### **Accessory Dwelling Units and Junior Accessory Dwelling Units**

On October 9, 2019, Governor Gavin Newsom signed into law several bills (Senate Bill No. 13, Assembly Bill No. 68, Assembly Bill No. 587, Assembly Bill No. 670, Assembly Bill No. 671, and Assembly Bill No. 881) amending multiple Government Code sections related to encouraging the production of ADUs and JADUs. This legislation became effective on January 1, 2020.

The following is a summary of the proposed amendments to the City's existing ADU regulations which would bring them into compliance with State law and can be found in their entirety in Attachment 1.

#### *Allowable Zoning Districts*

The City's current ADU regulations only allow ADUs in the R1 (Single-Family Residential) District. State law requires local jurisdictions to permit accessory dwelling units in any single-family, multi-family, or mixed-use zoning district which allows for residential uses. Staff is proposing to amend the residential and commercial land use tables to allow ADUs in all residential or mixed-use districts consistent with this requirement.

### *ADUs in Multi-Family Structures*

The City's current regulations do not allow ADUs in multi-family structures. State law mandates that local jurisdictions allow ADUs in existing multi-family structures as follows:

- ADUs within the portions of an existing multi-family dwelling structure that are not used as livable space, provided that each unit complies with State building standards for dwellings. Such accessory dwelling units shall not be created within any portion of the habitable area of an existing dwelling unit in a multi-family structure. Up to 25 percent of the number of existing multi-family units in the building, but at least one unit, shall be allowed.
- Up to two detached accessory dwelling units shall be permitted on a lot with an existing multi-family dwelling structure, provided that the height does not exceed 16', and 4' side and rear yard setbacks are maintained.

### *Development Standards*

State law stipulates many new development standards relating to the size of units, location, setbacks, heights, and exceptions. The major changes to the City's existing ADU regulations necessary to conform with these requirements are summarized as follows:

- Size: State law requires local jurisdictions to allow a studio or one-bedroom ADU of up to 850 square feet and a two-or-more bedroom ADU of up to 1,000 square feet. The City's current regulations allow a maximum size of 700 square feet.
- Setbacks: State law mandates that local jurisdictions require no more than a 4' side and rear setback for all ADUs.
- Reconstruction: State law mandates that a new ADU may be built in the same location and built to the same dimensions as an existing, legal, detached accessory structure, subject to all adopted building and fire codes for residential occupancy.
- Exceptions: State law mandates that limits on lot coverage, floor area ratio, and open space shall allow, at minimum, an 800 square foot detached or attached accessory dwelling unit 16' high with 4' side and rear yard setbacks if the

proposed accessory dwelling unit is in compliance with all other development standards.

### *Parking*

The City's current regulations require one parking space for an ADU which may be covered or uncovered and can be located anywhere on the lot. Additionally, the one parking space shall not be required if any of the following conditions are met:

- The unit is located within one-half mile walking distance of public transit;
- The unit is located within an architecturally and historically significant historic district;
- The unit is part of the existing primary dwelling unit or an existing accessory structure;
- On-street parking permits are required but not offered to the occupant of the ADU;  
or
- There is a car-share vehicle parking space located within one block of the ADU.

State law continues to require these parking standards but has also added a provision which eliminates the requirement to replace the parking lost if an existing garage or carport is converted to an ADU.

### *Junior Accessory Dwelling Units*

The City's current regulations do not address JADUs. State law mandates that local jurisdictions allow JADUs in single-family homes as follows:

- Allowed up to a maximum size of 500 square feet;
- Shall have a separate entrance from the single-family home;
- Shall include an efficiency kitchen, which includes a cooking facility with appliances and a food preparation counter and storage cabinets;

- May, but is not required to, include separate sanitation facilities. If separate sanitation facilities are not provided, the junior accessory dwelling unit shall share sanitation facilities with the single-family home;
- Shall not require any additional parking;
- May be allowed on the same lot as a property with a detached ADU, provided certain provisions are met; and
- Requires recordation of a deed restriction.

#### *Amnesty Program*

Under State law, owners of unpermitted ADUs built before January 1, 2020 that receive notice to correct violations may request that the enforcement of the violations be delayed for five years if correcting the violation is not necessary to protect health and safety. The option for deferred enforcement of up to five years may incentivize the legalization of existing illegal ADUs by providing property owners with additional time to go through the permitting process without also incurring fines or other enforcement deadlines.

The City of San Jose has implemented a two-year amnesty program which implements the deferred enforcement provision and waives their illegal construction penalty fee. The amnesty program does not waive ADU zoning and building code requirements, and the legalization of unpermitted ADUs may require modifications to unpermitted structures to bring them into compliance with their ADU zoning and building code regulations. The cities of Sunnyvale, Santa Clara, Cupertino, Campbell, Redwood City, and San Carlos are not considering ADU amnesty programs.

If Council would like to implement an amnesty program, staff recommends a five-year amnesty program (to align with the State time frame for deferred enforcement), which would provide an expedited building permit process and waiver of illegal construction penalty fees for building permit applications to legalize unpermitted ADUs. If directed by Council, the ADU amnesty program would not be included within the Zoning Ordinance. Staff would create an informational handout describing the overall ADU regulations and permitting process as well as the ADU amnesty policy and benefits for legalization of illegal ADUs.

### *ADUs as BMR Units*

At the March 4, 2020 EPC meeting, the EPC inquired about the possibility of counting ADUs as BMR units.

Current ADU rents in Mountain View average between \$2,300 and \$2,600, which is the equivalent of a 100 percent area median income (AMI) rent for Santa Clara County. For reference, a deed-restricted one-bedroom unit for a 100 percent AMI household would rent for about \$2,625 per month. While they do not carry a deed restriction, these ADUs could be considered “naturally affordable” moderate-income housing units and could increase the City’s moderate-income housing supply and provide a more affordable alternative for some moderate-income households. The Housing Trust Silicon Valley is in the process of developing an ADU lending program to provide construction loans to homeowners who are interested in building an ADU.

However, should Council be interested in having ADUs count for low- or very low-income housing, it would most likely require financial assistance from the City. In establishing a lending program for homeowners who elect to deed-restrict their ADUs and rent to lower-income households, the program would be structured to be consistent with other affordable housing programs in the City. A term of affordability would need to be established, tenants would be selected and qualified for units from the existing BMR wait list, and the tenants would be subject to annual income verification requirements. Based on current annual permitting averages of ADUs, potential length of affordability and the administrative requirements borne by the homeowner to comply with program parameters, staff does not anticipate that a lending program, such as described above, would result in a significant amount of additional affordable units on an annual basis. Absent a formal City program, staff can work with individual homeowners who are interested in renting their ADU to low-income households to enter into requisite agreements to deed-restrict their unit based on existing BMR standards.

### *Short-Term Rentals*

State law prohibits short-term rentals in all detached accessory dwelling units under eight hundred (800) square feet, all junior accessory dwelling units, and all accessory dwelling units in multi-family zones that were permitted after January 1, 2020. Staff is proposing that short-term rentals be prohibited in all ADUs, detached or attached, under 800 square feet. Short-term rentals in such ADUs that received required permits prior to January 1, 2020 may continue to operate.

## **Family Day-Care Homes**

On September 5, 2019, Governor Newsom signed into law Senate Bill No. 234, which amends several sections of the Health and Safety Code relating to family day-care homes to streamline the administration of child-care licensing to facilitate an increase in the supply of licensed family day-care homes. This legislation became effective on January 1, 2020.

The following is a summary of the proposed amendments to the City's existing regulations pertaining to family day-care homes which would bring them into compliance with State law and can be found in their entirety in Attachment 1.

### *Permitting Process*

The City's current regulations list small-family day-care homes, which may provide care for up to six children, as a principally permitted use within residential zoning districts and large-family day-care homes, which may allow seven to fourteen children, are conditionally permitted with approval of a nondiscretionary Conditional Use Permit. State law allows small-family day-care homes to care for up to eight children in some cases, and staff is proposing a modification to the City's definition for small-family day-care homes to be consistent with the State's definition. Additionally, State law requires that large-family day-care homes now be a principally permitted use, similar to small-family day-care homes, and shall not require approval of a nondiscretionary Conditional Use Permit.

### *Standards for Large-Family Day-Care Homes*

The City's current regulations require that both large-family day-care homes and commercial child day-care centers comply with criteria related to spacing and concentration, traffic control, proximity to other uses, outdoor play areas, and parking. SB 234 prevents jurisdictions from applying additional standards to large-family day-care homes beyond what is required by the underlying zoning district for a residential use or development. The proposed amendments would remove the requirement that these criteria apply to large-family day-care homes but would still require that they apply to commercial child day-care centers.

## **Planned Community Permits**

Planned Community Permits allow new construction, redevelopment, or changes of use within a Planned Community District (precise plans) provided that the proposal complies with the special land use and project development standards of the applicable precise plan. Similar to Planned Unit Development (PUD) Permits, which may apply to projects in standard zoning districts, Planned Community Permits allow flexibility and diversity in site planning, structure heights, and location in planned community districts (Precise Plans) while protecting the integrity and character of the district.

Staff proposes minor amendments to the Planned Community Permit section to clarify that the purpose of a Planned Community Permit is to allow for creative, innovative developments within a context of defined community goals. The proposed amendments clarify that, in some cases, variations from the applicable precise plan standards may be granted, but in order for these variations to be granted, proposals must clearly demonstrate superior site and building design and comply substantially with the intent of the requirements in the applicable precise plan.

These amendments are necessary in order to address the decision by the Santa Clara County Superior Court in the case of *County Inn, LLC v. City of Mountain View* (Case No. 18CV322114). The court ruled that the City lacked the authority under the current language of the Zoning Code to approve a variation from applicable precise plan standards. Because the Planned Community District is intended to provide for creative, innovative developments within a context of defined community goals, these amendments establish specific criteria for approval of variations from applicable precise plan standards. Any action by the Planning Division on a request for a variation from applicable precise plan standards is subject to the public review and hearing process and requisite findings set forth in the Zoning Code.

## **ENVIRONMENTAL REVIEW**

The action to modify Chapter 36 for updates to the zoning text is exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) (the “common-sense” exemption) because it includes text amendments related to recent legislation enacted by the State and minor amendments to clarify an existing planning permit. Therefore, it can be seen with certainty that there is no possibility that the activity will have a significant effect on the environment.

**FISCAL IMPACT** – None.



## **CONCLUSION**

Staff recommends that Council approve the proposed Zoning Text Amendments to comply with State legislation pertaining to Accessory Dwelling Units and Family Day-Care Homes, and clarify the language for Planned Community Permits.

## **ALTERNATIVES**

1. Approve of the Zoning Text Amendments with modifications.
2. Refer the project back to the EPC for further analysis and reconsideration.
3. Disapprove the Zoning Text Amendments.

## **PUBLIC NOTICING**

Agenda posting, newspaper publication, and a copy of the report on the City website.

Prepared by:

Brittany Whitehill  
Assistant Planner

Stephanie Williams  
Zoning Administrator/  
Planning Manager

Approved by:

Aarti Shrivastava  
Assistant City Manager/  
Community Development Director

Kimbra McCarthy  
City Manager

BW-SW/6/CAM  
840-04-28-20CR  
200179

- Attachments:
1. Ordinance of Zoning Text Amendments (Chapter 36)
  2. [Environmental Planning Commission Staff Report – March 4, 2020](#)
  3. Summary of Draft Amendments
  4. Comment Letter to the Environmental Planning Commission