

CITY OF MOUNTAIN VIEW

ENVIRONMENTAL PLANNING COMMISSION

STAFF REPORT

WEDNESDAY, MARCH 4, 2020

5. PUBLIC HEARINGS

5.1 Consideration of Text Amendments to 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

RECOMMENDATION

That the Environmental Planning Commission (EPC) adopt a Resolution Recommending that the City Council Approve Zoning Text Amendments to 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 (Exhibit 1 to the EPC Staff Report).

PUBLIC NOTIFICATION

The Commission's agenda is advertised on Channel 26, the agenda and this report appear on the City's Internet website and were posted in accordance with the Brown Act, and a notice for the item was published in the newspaper.

BACKGROUND

Staff has completed a consistency review of the Zoning Ordinance relating to the new State legislation on accessory dwelling units 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.

ANALYSIS

Accessory Dwelling Units and Junior Accessory Dwelling Units

On October 9, 2019, the Governor 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 Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (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 Exhibit 3 – Redlined Draft Code Amendments.

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:

- Accessory dwelling units 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. State law restricts the gross floor area of attached ADUs to less than 50 percent of the floor area of the primary dwelling. 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 requirements 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.

If supported by Council, Mountain View could also consider an amnesty program similar to San Jose's that would go beyond the provisions of State law by providing a streamlined building permit process and waiver of illegal construction building permit fees for building permit applications to legalize unpermitted ADUs. If supported by Council, an ADU amnesty program would not be included within the Zoning Ordinance, but would be a limited-period program offered to incentivize legalization of unpermitted ADUs.

Family Day-Care Homes

On September 5, 2019, the Governor 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 Exhibit 3 – Redlined Draft Code Amendments.

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 7 to 14 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 allows 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 certain variations 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.

NEXT STEPS

Following a recommendation from the EPC at this public hearing, the proposed amendments and EPC’s recommendation will be presented to City Council at a public hearing tentatively scheduled for March 24, 2020.

CONCLUSION

Staff recommends that the EPC recommend Council approve the proposed text amendments to comply with State legislation pertaining to Accessory Dwelling Units, Junior Accessory Dwelling Units, and Family Day-Care Homes and to clarify the language for Planned Community Permits.

ALTERNATIVES

1. Recommend approval of the Zoning Text Amendments with modifications.
2. Request additional information from staff and continue the item.
3. Recommend disapproval of the Zoning Text Amendments.

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BW/6/CDD
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- Exhibits:
1. Resolution for Recommendation of Council – Approval of Zoning Text Amendments
 2. Summary of Draft Amendments
 3. Redlined Draft Code Amendments