

REPORT TO PLANNING COMMISSION

SUBJECT

Forward a Recommendation to Adopt an Urgency Interim Ordinance and Introduce an Ordinance Amending Titles 16 (Buildings and Construction) and 19 (Zoning) of the Sunnyvale Municipal Code related to new State Legislation on Accessory Dwelling Units, Parking Minimums, and Large Family Child Care Homes and Find that the Action is Exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Sections 15061(b)(3), 15378(b)(5), Public Resources Codes Section 21080.17 and Health & Safety Code Section 1597.45(d) (Planning File Number 2022-7711).

REPORT IN BRIEF

This report includes proposed ordinances on three different topics: accessory dwelling units (ADUs), parking, and family child care. These changes to the City's Zoning Code and Building and Construction Code are necessary to comply with state law.

Accessory dwelling units (ADUs) and the removal of parking requirements are considered necessary components by the State in the solution to alleviate the current housing crisis in California. ADUs provide additional rental housing supply to meet the increasing demand for housing and can potentially reduce displacement of existing homeowners by providing an additional income source. Parking requirements can be costly for developers while also creating the potential for increases to carbon emissions. Additionally, the removal of barriers for operators of a large family child care home will help to alleviate the need for providers in the State while also allowing for more affordable versions of child care.

Unlike previous years where the City retained some control over certain requirements, the changes this year for ADUs and parking requirements are straightforward and do not leave opportunity for variation.

Staff has reviewed the legislation and applicable sections of the Sunnyvale Municipal Code (SMC) related to ADUs, parking, and large family child care homes and recommends:

- Modifications to Chapter 19.79 (Accessory Dwelling Units) in Title 19 (Zoning) and the creation of a new Chapter, 16.72 (Permit Process for Accessory Dwelling Units), in Title 16 (Buildings and Construction);
- Modifications of Chapter 19.46 (Parking) in Title 19 (Zoning); and
- Modifications of Chapter 19.58 (Family Child Care Homes) of Title 19 (Zoning) and other related modifications to Title 19.

To ensure that there is only a short time between the effective date of the new legislation (January 1, 2023) and the effective date of the new City standards, interim urgency ordinances (Attachments 2 and 4) are proposed along with regular ordinances (Attachments 3, 5 and 6) for the updates to SMC Title 19 (Zoning) and Title 18 (Building and Construction). If the City Council adopts the Proposed Interim Urgency Ordinances at their meeting on December 13, 2022, they will be effective

immediately upon adoption and will be effective for 45 days (until January 26, 2023). If a regular ordinance is introduced on December 13, 2022, the soonest it would be effective is on February 2, 2023 (30 days after the second reading on January 3, 2023). While there will be a short gap in between the effective date of the Regular Ordinance and the expiration of the Urgency Ordinances (three days), no issues should arise because the Regular Ordinance is codifying the legislation verbatim, which goes into effect on January 1, 2023, and staff would review any application received between January 27, 2023 and February 1, 2023 based on existing objective standards along with the language from the legislation. Both sets of ordinances include identical amendments to SMC Title 19 (Zoning).

Under Government Code Section 65868, an urgency ordinance can only be used for zoning regulations; therefore, the Proposed Interim Urgency Ordinance does not include the amendments to SMC Title 16 (Buildings and Construction). However, if an application for an ADU is received after January 1, 2023, and prior to the effective date of the Regular Ordinance, the language from the Government Code will be followed to process building permits, as the new State requirements will be in effect.

The change to the City's requirements for large family child care is a clean-up item and not urgent because staff have already implemented the state law administratively. Therefore, no urgency ordinance is proposed for this item.

BACKGROUND

In 2022 the California State legislature considered many bills related to housing and homelessness; 14 of those bills were signed by the governor. The housing related legislation addresses affordability, accessory dwelling units (ADUs), density bonus, processing timeframes, housing in commercial zones, and annual progress reports. The full list of housing related bills is listed below. This report includes analysis and recommendation associated with three 2022 bills and one 2019 bill.

Housing and Homelessness Bills Signed by the Governor

SB 897 and AB 2221 are addressed in this report; AB 2011, AB 2668, and SB 6 will be addressed in Spring 2023.

Bill Number	Author	Title
SB 897	<u>Wieckowski</u>	Accessory dwelling units: junior accessory dwelling units
AB 2221	Quirk-Silva	Accessory dwelling units
AB 2011	Wicks	Affordable Housing and High Road Jobs Act of 2022
SB 6	Caballero	Local planning: housing: commercial zones
AB 2234	R. Rivas	Planning and zoning: housing: <u>postentitlement</u> phase permits
AB 682	Bloom	Planning and zoning: density bonuses: shared housing buildings

AB 1551	Santiago	Planning and zoning: development bonuses: mixed-use projects
AB 2334	Wicks	Density Bonus Law: affordability: incentives or concessions in very low vehicle travel areas: parking standards: definitions
AB 1743	McKinnor	General plan: annual report
AB 2094	R. Rivas	General plan: annual report: extremely low-income housing
AB 2653	Santiago	Planning and Zoning Law: housing elements
SB 197	Committee on Budget	Housing
AB 2339	Bloom	Housing element: emergency shelters: regional housing need
SB 1338	Umberg	Community Assistance, Recovery, and Empowerment (CARE) Court Program

Other bills that were signed by the Governor which may have an effect on land use and development related to Inclusion and Social Justice; Hazard Mitigation; Coordinated Planning; Neighborhood Vitality and Healthy Communities; Circulation Element Update; Infrastructure services and fees; CEQA; and Climate. One of these bills is discussed in this report

- *AB 2097 - Friedman, Parking Minimums.*

In 2019, legislation was passed to classify large family child care homes similarly to the small family equivalent and remove local control of this use by deeming it an appropriate use for any residential zoning district (*SB 234 Skinner: Keeping Kids Close to Home Act*). The City did not make changes to the municipal code and instead modified practices administratively to comply with State law; however, the lack of consistency with the code and state law has caused confusion and staff is recommending an amendment to the zoning code.

In addition, the 2022-2023 adopted State Budget included a \$2.5 billion affordable housing package with funding for:

- Affordable Housing and Sustainable Communities Program
- Infill Infrastructure Grant Program
- Multifamily Housing Program
- Housing Accelerator Program
- ADU financing
- Adaptive Reuse Projects
- New “California Dream for All” program to boost first-time homeownership

The City Council is scheduled to consider this item on December 13, 2022.

EXISTING POLICY

SUNNYVALE GENERAL PLAN

Chapter 3: Land Use and Transportation

Policy LT-1.7 - Emphasize efforts to reduce regional vehicle miles traveled by supporting active modes of transportation including walking, biking, and public transit.

Policy LT-2.2 - Reduce Greenhouse Gas Emissions that affect climate and the environment through land use and transportation planning and development.

GOAL LT-7 Diverse Housing Opportunities - Ensure the availability of ownership and rental housing options with a variety of dwelling types, sizes, and densities that contribute positively to the surrounding area and the health of the community.

Policy LT-14.12 - Recognize child care and places of assembly as essential services and land uses that support the diverse needs of the community. Avoid locating these sensitive uses near hazardous materials, noise, dust, etc.

Chapter 5: Housing

Policy HE-1.1 - Encourage diversity in the type, size, price and tenure of residential development in Sunnyvale, including single-family homes, townhomes, apartments, mixed-use housing, transit-oriented development and live-work housing.

Policy HE-4.1 - Provide site opportunities for development of housing that responds to diverse community needs in terms of density, tenure type, unit size, accessibility, location and cost.

CLIMATE ACTION PLAYBOOK

The City's Climate Action Playbook sets a vision for the City of Sunnyvale to reduce carbon emissions by 2050 in alignment with the State of California's set targets for deeper emissions reductions of 40% below 1990 levels by 2030 ("40x30") and 80% below 1990 levels by 2050 ("80x50"). The Playbook lays out six strategies that outline the overarching approach for bold climate action to achieve the end game of 80x50. Within each Strategy, there are several Plays that identify areas for action and measurable targets to define progress. These Strategies and Plays foster innovation to transform the way we power our buildings, travel around the Bay Area, consume goods and services, and empower our community to take individual actions. The Strategies and Plays also identify how we can better adapt to increasing local climate change impacts.

INTERIM URGENCY ORDINANCE

California Government Code Section 65858 provides that a city may adopt an urgency interim ordinance by a four-fifths vote where necessary to protect the public health, safety and welfare, in order to prohibit uses that may be in conflict with a contemplated zoning proposal of the legislative body, which ordinance shall expire 45 days after adoption unless extended by the legislative body. The four-fifths requirement means that the Council adopts the Proposed Interim Urgency Ordinance with six (6) affirmative votes. The adopted Interim Urgency Ordinance will be effective immediately and will automatically expire 45 days after the adoption unless extended by the Council.

ENVIRONMENTAL REVIEW

The actions being considered are exempt from environmental review pursuant to California Environmental Quality Act (CEQA) pursuant to Guidelines Sections 15061(b)(3) and 15378(b)(5) because the proposed ordinances merely implement state-mandated programs related to ADUs, parking minimums, and family daycare homes, and are therefore not a "project" within the meaning of CEQA. In addition, adoption of an ADU ordinance is statutorily exempt from CEQA under Public Resources Code Section 21080.17, and family daycare homes are statutorily exempt under California Health and Safety Code Section 1597.45(d). Finally, the adoption of the proposed

ordinances is exempt from CEQA under Guidelines Section 15061(b)(3) because it can be seen with certainty that these actions will not have a significant environmental effect.

Projects that are subject to the new regulations will be evaluated pursuant to CEQA on an individual basis as applicable. However, purely ministerial decisions (ADUs) are not subject to CEQA. (CEQA Guidelines Section 15268.)

DISCUSSION

ADUs and the removal of parking requirements are considered by the State Legislature as crucial components in the solution to alleviate the current housing crisis in California. ADUs provide an additional rental housing supply to meet the increasing demand for housing and can potentially reduce displacement of existing homeowners by providing an alternative income source. Parking requirements can be costly for developers while also creating the potential for increases to carbon emissions in the City and State.

Staff has reviewed the legislation and related sections of the SMC related to ADUs, parking, and large family child care homes and the following sections summarize the significant changes to the existing regulations as required by new State legislation. The full draft ordinances with all edits and new language can be found in Attachments 2-6.

Accessory Dwelling Units

Prior to 2016, jurisdictions could regulate and permit ADUs based on local preferences. State legislation passed between 2015-2022 has removed most local control on ADUs and requires jurisdictions to allow these units in residential zoning districts with most ADUs permitted through the building permit process only. The City's Zoning Code has been amended several times since 2016 to address changes in State law, and the currently proposed amendments are intended for the same purpose.

Staff has performed a consistency review of the municipal code in comparison to the new legislation - Senate Bill (SB) 897 and Assembly Bill (AB) 2221 - and has identified necessary modifications to bring the zoning and building codes into conformance. These Zoning Code amendments are in Attachments 2 and 3.

Although the modifications to the Government Code on ADUs are not as substantial as in previous years, they will still affect the look and feel of existing neighborhoods with increased height allowances and more locational allowances.

ADU Height Allowances (Chapter 19.79)

The City is currently allowed to restrict the height of attached or detached ADUs to 16 feet. While the City allows ADUs on the second story of a single-family dwelling, they are treated like additions and follow the same development standards as a second level single-family addition. The legislative changes include increases to the height allowances for both detached and attached ADUs in the following ways:

- Detached ADUs:
 - Single-family lot:
 - 16 feet (existing height allowance) on a residential property that is not located within one-half mile of a major transit stop or high-quality transit corridor as

defined in the State Government Code and shown in Attachment 9.

- 18 feet on a property that is located within one-half mile of a major transit stop or high-quality transit corridor. Plus, an additional two feet can be proposed to accommodate a roof pitch aligned with the pitch on the single-family dwelling for a total of 20 feet.
- Multi-family lot:
 - The lot is not located within one-half mile of a major transit stop or high-quality transit corridor:
 - 16 feet (existing height allowance) on a property where the dwelling(s) is one-story.
 - 18 feet on a property where the dwelling(s) is multi-story.
 - 18 feet on a property that is located within one-half mile of a major transit stop or high-quality transit corridor. Plus, an additional two feet can be proposed to accommodate a roof pitch aligned with the pitch on the primary dwelling for a total of 20 feet.
- Attached ADU on a single-family lot: twenty-five feet or the height limitation that applies to the primary dwelling, whichever is lower.

Locational Allowances (SMC Chapter 19.79)

The SMC currently states that objective zoning requirements such as lot coverage, required rear yard maximum lot coverage, floor area ratio, open space, and design review can be used to regulate a non-streamlined ADU (e.g., larger than 800 square feet). Ultimately this means that if a property owner was unable to construct an 800 square foot ADU while also adhering to the City's lot coverage (or other objective standards) requirements, the City would still have to allow the ADU. The new legislation adds "front setback" in the list of standards that would have to be relaxed if the ADU did not fit elsewhere on the property. While this is less likely to occur on a single-family property because there is typically enough space for an 800 square foot ADU in the rear yard, there are instances on multi-family properties where the dwelling(s) cover more of the property and the City may be required to allow the ADU(s) in the front setback if it cannot fit elsewhere. The allowance for use of the front yard may also be a factor on corner lots in both single-family and multi-family zoning districts where both streets are considered "front yards"; the shorter side is the regular front yard and the longer side is defined as "reducible front yard." Some communities define the longer side as a street side yard.

Detached ADUs on Lots with a Multi-Family Dwelling (SMC Chapter 19.79)

The SMC currently allows up to two detached ADUs on a property with an existing multi-family dwelling. The new legislation expands this to say that up to two detached ADUs may be allowed on a property with an existing *or proposed* multi-family dwelling. This change would allow the property owner or developer of a multi-family development project to design the project with up to two detached ADUs from the beginning.

Building Permit Process for Accessory Dwelling Units (SMC Chapter 16.72)

There are various legislative requirements that pertain to the building permit phase in both the existing and new legislation. In 2019, staff included the building related items in Chapter 19.79 with the other ADU regulations; however, with the addition of more building permit related items this year, staff has determined that it is more appropriate to create a new SMC Chapter, 16.72 (Permit Process for Accessory Dwelling Units), in Title 16 (Buildings and Construction). The new changes include:

- Specification on what type of use occupancy an ADU should be characterized as;

- Clarifying language stating that:
 - Fire sprinklers cannot be triggered for the house when a new attached or detached ADU is proposed;
 - A building permit shall not be denied due to nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit; and
- Other minor or clarifying building permit requirement associated with ADUs.

Parking Requirements

Construction of parking spaces can be costly to developers and has been cited as a deterrent to housing construction throughout the State. Additionally, the City and State has set targets for reduction of carbon emissions which will be difficult to meet if shifts are not made between driving in gas powered single-occupancy vehicles vs. taking public transportation, driving an electric car, biking, or walking to work, home, and other destinations. These two State prioritized issues led legislators to sponsor several bills aimed at reducing or removing parking minimum requirements for development projects built in proximity to major transit stations and AB 2097 passing.

Staff has performed a consistency review of the Zoning Code (SMC Chapter 19.46 (Parking) of Title 19 (Zoning) in comparison to the new legislation (AB 2097) and has identified necessary modifications to bring the zoning code into conformance. These changes are shown in Attachments 4 and 5.

The modifications to SMC Chapter 19.46 (Parking) are relatively straightforward, the City is no longer allowed to enforce any parking minimum requirements, except for required ADA parking and electric vehicle charging spaces, for most development projects that are located within one-half mile of a major transit stop as defined by the State Government Code. In Sunnyvale, the major transit stops include the two Caltrain stations, eight VTA light rail stations (three in Mountain View), and one bus stop in Santa Clara that has a one-half mile buffer that encroaches slightly into Sunnyvale. These stations and one-half mile buffers are shown on the map in Attachment 8.

There are some exceptions, mainly hotels and event centers; the full text and edits can be found in Attachments 4 and 5. Additionally, the City is still able to regulate parking that is proposed voluntarily through the parking lot design requirements in SMC Chapter 19.46 (Parking). Although this legislation has the ability to impact existing neighborhoods significantly, it is relatively unlikely that a project would propose no parking spaces because it is assumed that there will be a demand for spaces until transportation options become more viable. Lastly, it is important to note that if a development project proposes parking voluntarily, the developer or property owner can charge users for the spaces. This means the City can no longer require that the parking is provided free of charge to the residents, community, or employees on these lots.

Large Family “Child” Care Homes

In 2019, legislation was passed to remove the statutory distinction between “large” family (up to 14 children) and small family daycare homes (8 or fewer children) and remove local control of this use by deeming it an appropriate use for any residential zoning district subject to State regulation. The City has been aware of this legislation since it went into effect on January 1, 2020, and staff have implemented the changes administratively. However, the outdated provisions in Title 19 have resulted in some confusion in the community for both child care providers and neighbors of those uses.

Therefore, the modifications of SMC Chapter 19.58 (Family Child Care Homes), and a few other related modifications in Title 19, are included in these current ordinance updates (Attachment 6). Among other things, the City's requirements will now refer to "family daycare homes" rather than "child care" to be consistent with the terminology used in state law. Therefore, the ordinance updates include significant modifications to SMC Chapter 19.58 (Family Child Care Homes), and a few other related modifications in Title 19 (Attachments 6).

The proposed updates do not affect the City's zoning requirements that apply to commercial daycare centers that are not operated in the provider's own home.

Future Code Modifications Related to new State Legislation

While the above-mentioned code modifications require immediate attention, there are a few other housing bills that will require staff to return to the Council in Spring 2023, including; AB 2011, AB 2668, and SB 6. These three bills require jurisdictions to create a non-discretionary permit process for housing development projects. Staff has already begun work on this process but felt that it warranted more discussion and attention internally and is not ready to bring to the Council. Unlike most bills that pass in September and go into effect on January 1, AB 2011 and SB 6 do not go into effect until July 1, 2023, and Staff intends to have the process ordinances considered by the Council prior to that effective date. AB 2688 takes effect on January 1, 2023; however, Staff can modify activity administratively as needed and bring the entire package of process changes at the same time.

FISCAL IMPACT

The modifications to the Sunnyvale Municipal Code as described in this report will have no direct fiscal impact on the City.

PUBLIC CONTACT

Public contact regarding this item was made through posting the agenda for the Planning Commission on the City's official-notice bulletin board, on the City's website, the availability of the agenda and report in the Office of the City Clerk, and with publication in the *Sun* newspaper, at least 10 days prior to the hearing.

ALTERNATIVES

Forward a recommendation to the City Council:

1. Actions pertaining to Accessory Dwelling Units
 - a. Adopt the Urgency Interim Ordinance (Attachment 2) Amending Title 19 (Zoning) of the Sunnyvale Municipal Code related to New State Legislation on Accessory Dwelling Units.
 - b. Introduce the Ordinance (Attachment 3) Amending Titles 16 (Building and Construction) and 19 (Zoning) of the Sunnyvale Municipal Code related to New State Legislation on Accessory Dwelling Units.
 - c. Find that these actions are exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(3), 15378(b)(5), Public Resources Codes Section 21080.17 and Health & Safety Code Section 1597.45(d).
2. Actions pertaining to Parking
 - a. Adopt the Urgency Interim Ordinance (Attachment 4) Amending Title 19 (Zoning) of the Sunnyvale Municipal Code related to New State Legislation on Parking Minimums.
 - b. Introduce the Ordinance (Attachment 5) Amending Title 19 (Zoning) of the Sunnyvale Municipal Code related to New State Legislation on Parking Minimums.

- c. Find that these actions are exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(3), 15378(b)(5), Public Resources Codes Section 21080.17 and Health & Safety Code Section 1597.45(d).
3. Introduce the Ordinance (Attachment 6) Amending Title 19 (Zoning) related to Large Family Child Care Homes and find that the action is exempt from CEQA Act pursuant to CEQA Guidelines Sections 15061(b)(3), 15378(b)(5), Public Resources Codes Section 21080.17 and Health & Safety Code Section 1597.45(d).
4. Alternatives 1, 2 and 3 with modifications to any of the above ordinances.
5. Do not introduce one or more of the ordinances and provide feedback on desired changes.

RECOMMENDATION

Forward to City Council recommended Alternatives 1, 2 and 3:

1.a) Adopt the Urgency Interim Ordinance (Attachment 2 to this report) Amending Title 19 (Zoning) of the Sunnyvale Municipal Code related to New State Legislation on Accessory Dwelling Units; 1.b) Introduce the Ordinance (Attachment 3 to this report) Amending Titles 16 (Building and Construction) and 19 (Zoning) of the Sunnyvale Municipal Code related to New State Legislation on Accessory Dwelling Units; and 1.c) Find that these actions are exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(3), 15378(b)(5), Public Resources Codes Section 21080.17 and Health & Safety Code Section 1597.45(d).

2.a) Adopt the Urgency Interim Ordinance (Attachment 4 to this report) Amending Title 19 (Zoning) of the Sunnyvale Municipal Code related to New State Legislation on Parking Minimums; 2.b) Introduce the Ordinance (Attachment 5 to this report) Amending Title 19 (Zoning) of the Sunnyvale Municipal Code related to New State Legislation on Parking Minimums; and 2.c) Find that these actions are exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(3), 15378(b)(5), Public Resources Codes Section 21080.17 and Health & Safety Code Section 1597.45(d).

3. Introduce the Ordinance (Attachment 6 to this report) Amending Title 19 (Zoning) related to Large Family Child Care Homes and find that the action is exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(3), 15378(b)(5), Public Resources Codes Section 21080.17 and Health & Safety Code Section 1597.45(d).

Codifying State legislation into the Sunnyvale Municipal Code assists the community in understanding project requirements without needing to additionally consult with the State Government Code. These modifications will also help staff stay current on legislative changes and assure that accurate information is presented to the public.

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Reviewed by: Teri Silva, Assistant City Manager
Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Reserved for Report to Council
2. Draft Urgency Ordinance re ADUs (*tract changes version included behind regular ordinance*)
3. Draft Ordinance re ADUs (*tract changes version included behind regular ordinance*)
4. Draft Urgency Ordinance re Parking Minimums
5. Draft Ordinance re Parking Minimums

6. Draft Ordinance re Large Family Child Care
7. Links to Senate Bills 897 and 234 and Assembly Bills 2097 and 2221
8. Map Showing Major Transit Stops with 1/2 Mile Buffer for Parking
9. Map Showing Major Transit Stops and High-Quality Transit Corridors with 1/2 Mile Buffer for ADUs