



City of Sunnyvale

Agenda Item

25-0107

Agenda Date: 2/10/2025

REPORT TO PLANNING COMMISSION

SUBJECT

Recommend to City Council:

Proposed Project: Introduce an Ordinance to:

Amend Title 19 (Zoning) of the Sunnyvale Municipal Code related to recent State Legislation on Accessory Dwelling Units (ADUs).

File #: PLNG-2024-0544

Environmental Review: The action is exempt pursuant to Public Resources Code Section 21080.17 and California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) and 15268.

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REPORT IN BRIEF

This report includes proposed ordinance amendments to Title 19 (Zoning) of the Sunnyvale Municipal Code (SMC), which are necessary to comply with state legislation on Accessory Dwelling Units (ADUs).

The state considers ADUs a necessary form of housing to contribute to the solution to alleviate the current housing crisis in California. ADUs may 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. ADUs may also be associated with multifamily housing sites, further increasing the number of housing units. State ADU law has been revised many times in recent years with an aim to improve its effectiveness at creating more housing units.

Staff reviewed the legislation and the applicable sections of Title 19 (Zoning) of the SMC related to ADUs and recommends:

- Repealing and readopting Chapter 19.79 (Accessory Dwelling Units);
- Modifying Chapter 19.12 (Definitions);
- Modifying Table 19.37.040 (Minimum Landscape Area and Usable Open Space);
- Modifying Chapter 19.82 (Miscellaneous Planning Permit); and
- Modifying Chapter 19.50 (Nonconforming Buildings and Uses)

The City Council is scheduled to consider this item on March 25, 2025.

BACKGROUND

Prior to 2016, jurisdictions had the authority to regulate and permit ADUs based on local preferences. However, state legislation passed since then has significantly reduced local control on ADUs, with most approvals permitted through the building permit process only. The City's Zoning Code, Chapter 19.79 (Accessory Dwelling Units), has subsequently been amended multiple times to comply with changes in state law. The recent amendments have resulted in greater ADU production in Sunnyvale.

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In Fiscal Year 2022-2023, the City issued 47 building permits for ADUs and 83 in Fiscal Year 2023-2024. The time to complete construction varies depending on many factors (e.g. contractor and materials availability, new construction vs conversion of existing square footage, etc.). The following table shows the number of completed ADUs/JADUs for the past two calendar years and the number of units currently under construction.

ADUs/JADUs	
Year	Completed Construction
2023	40
2024	77
Under Construction	
Jan-2025	71

The City last introduced ADU code amendments in December 2022 (RTC 22-1134) and adopted Ordinance No. 3209-23 in January 2023. The changes at the time were for ADU height and locational allowances, and the building permit process for ADUs, which was codified in Chapter 16.72 in Title 16 (Buildings and Construction).

State law requires approval of certain types of ADUs on each residential lot using only the standards in State law but allows local agencies to impose locally-enacted objective standards on other ADUs as long as those standards would permit an ADU of at least 800 square feet with four-foot minimum side and rear yard setbacks. State law does not allow minimum lot size requirements, and also prohibits parking requirements for ADUs in many specific circumstances.

This report includes analysis and proposed code updates associated with bills signed into law in 2023 and 2024. Additionally, staff is proposing amendments for clarity and readability based on experience processing ADU permits in recent years.

EXISTING POLICY

General Plan Land Use and Transportation Element

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.

Housing Element

Goal H-1: Provision of Adequate Housing Sites. Provide adequate sites for the development of new housing through appropriate land use and zoning to address the diverse needs of Sunnyvale's residents and workforce.

Policy H-1.6. Housing Opportunities in Single-Family Neighborhoods. Allow for a greater variety of housing options within traditionally single-family residential neighborhoods, including accessory dwelling units, and duplexes and lot splits consistent with Government Code Section 65852.21 (i.e., Senate Bill 9).

Implementation Program H4. Accessory Dwelling Units. Facilitate the construction of new

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accessory dwelling units (ADUs) through the following actions:

- Amending the ordinance to comply with state law, and annually reviewing the ADU ordinance and making amendments as necessary to maintain compliance with State legislative changes.
- Establishing and publicizing ADU resources, including an ADU toolkit and other web-based materials. ADU resources may be created in collaboration with nearby jurisdictions and may include: pre-approved design plans; loan programs and/or partnerships with local lenders to provide funding for accessory dwelling unit construction; and technical assistance, including assistance with cost/benefit analyses through a web-based cost calculator. The ADU toolkit will provide additional technical assistance including design standards, permit processes, an application resources.
- Promoting tools and resources to homeowners throughout the city to increase the production of ADUs and dual urban opportunity housing (DUOs) to promote mixed-income neighborhoods in areas of high resource, specifically south of the El Camino Real corridor. Promotion will include workshops, utility billing inserts, City newsletter articles, easy to use website features and more.
- Monitoring the production and affordability of ADUs every two years and the progress made according to the assumptions in the inventory. Take alternative actions within six months (e.g., additional incentives) if not meeting the assumptions in the sites inventory.

ENVIRONMENTAL REVIEW

The action being considered is not subject to the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 which statutorily exempts ordinances implementing state ADU regulations, and is also exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the amendments to the ADU ordinance will have a significant impact on the environment. Further, state law requires that ADUs be reviewed and approved ministerially, and CEQA does not apply to ministerial projects (CEQA Guidelines Section 15268).

DISCUSSION

This report gives an overview of ADU-related state legislation signed into law in 2023 and 2024 and how the mandates have been addressed in the proposed code updates. Other code updates are proposed for internal consistency within the Zoning Code, and for readability and clarity based on staff's experience reviewing a diverse range of ADU proposals in recent years.

AB 1332: Pre-approved ADUs

The governor approved Assembly Bill 1332 in October 2023, which mandates that all local agencies develop a program for the preapproval of new construction ADUs by January 1, 2025. Local agencies are required to approve or deny an application for preapproval within 60 days of receipt of a completed application. Once an ADU plan has been preapproved, it must be made available on the local agency's website with the contact information of the designer. Additionally, applications for detached ADUs using preapproved plans are required to be approved or denied ministerially, without discretionary review, within 30 days. By implementing standardized, preapproved construction plans, the bill aims to streamline the permitting process, making it faster and more affordable for homeowners to build ADUs.

Staff recently launched a pre-approved ADU section on the City's website (see Attachment 4 for links). The page provides detailed information for each pre-approved plan including description, key features, floor plans, cost estimate, and contact information for the designer. This resource will help

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in streamlining the process for those interested in building ADUs, offering easy access to essential details and professional contacts. Staff will continue to review proposals for preapproved ADU applications and once approved add the plans to the website.

AB 976: Owner-Occupancy Requirements

The governor signed Assembly Bill 976 in October 2023, which prohibits cities from imposing an owner-occupancy requirement on standard accessory dwelling units, regardless of when they were permitted. Owner-occupancy is still required to construct a junior accessory dwelling unit (JADU).

AB 1033: Separate Sale or Conveyance of ADUs

The governor approved Assembly Bill 1033 in October 2023, which authorizes cities to permit the separate sale or conveyance of primary dwelling units and ADUs as condominiums. Cities are not required to implement this measure. The intent of allowing this option is to provide more affordable home ownership opportunities and encourage ADU production. Prior to AB 1033, ADUs could only be sold separately to qualifying nonprofits, meeting certain affordability and occupancy restrictions or to persons and families of low or moderate income.

If cities elect to allow separate sales of ADUs, an ordinance must be adopted requiring the following items:

- Condominiums shall be created pursuant to the Davis-Stirling Common Interest Development Act which typically require homeowner's association (HOA) formation and preparation of covenants, conditions and restrictions (CC&Rs),
- All objective requirements of the Subdivision Map Act must be met,
- A safety inspection of the ADU must be conducted (such as a certificate of occupancy) before recordation of the condominium plan,
- Proof of lienholder consent to the condominium plan,
- Updated City submittal checklists with these provisions including a notice to applicants about condominium conversion,
- The homeowner must notify utility providers of the condominium creation, and
- Written HOA approval if the property is within an existing HOA.

As of the date of this report, the City of San Jose is the only local agency in the area that has opted in to allowing separate sale of ADUs. The City of Berkeley is also considering this provision. While the impact of this new provision is not yet clear, staff has concerns with its potential implementation. The process to convert existing ADUs to ownership and establish new ADUs as ownership would place more demand on staff resources and would add additional time and fees to the process for applicants. Condominium plans require a parcel map per the Subdivision Map Act, which is reviewed at an administrative hearing. State law also does not require owner occupancy, which could facilitate corporate investment. Applicants would have to form HOAs to assess property responsibilities, which could lead to neighbor disputes and neighborhood preservation cases. Condominium plans also limit the future redevelopment of these properties with multiple owners and titles with additional encumbrances.

Staff does not recommend allowing ADU ownership based on the above reasons. However, if the Planning Commission wishes to recommend this option to City Council, staff recommends taking action to recommend Council direct staff to return with draft ordinance language.

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SB 477: State ADU Law Reorganization

The governor signed Senate Bill 477 as urgency legislation in March 2024. The bill makes non-substantive changes and reorganizes various provisions relating to the creation and regulation of ADUs with the intention of making the State ADU regulations easier to read and navigate. This action has recodified the ADU State law into new sections, Government Code 66310 through 66342.

SB 1211: State ADU Law Clarifications and Increase in Multifamily ADUs

Senate Bill 1211, approved by the governor in September 2024, introduces clarifications to the definition of ADU livable space, prohibits local agencies from imposing any objective standard not authorized by state law, and prohibits local agencies from requiring replacement parking for removal of uncovered parking spaces (prior law also prohibits local agencies from requiring replacement parking for covered parking). The City's current ADU ordinance does not require replacement parking for ADUs. The law also increases the number of detached new construction ADUs allowed on lots with existing multifamily dwellings from two to eight per lot.

AB 2533: Unpermitted ADUs and JADUs

Assembly Bill 2533, approved by the governor in September 2024, prohibits local agencies from denying permits for unpermitted ADUs and JADUs built before January 1, 2020, based on building, local or state violations. This prohibition applies unless the local agency makes a finding that correcting the violation is necessary to prevent the building from being classified as substandard.

Previously, this protection only applied to unpermitted ADUs built before January 1, 2018. AB 2533 extends the amnesty protection to ADUs before January 1, 2020, and now also includes JADUs. Additionally, the bill also requires a local agency to inform the public about the provisions prohibiting denial of a permit for an unpermitted ADU. It also requires local agency to inform homeowners that they may also obtain a confidential third-party code inspection from a licensed contractor before submitting a permit application.

The bill further prohibits a local agency from imposing impact fees or connection or capacity charges on homeowners. The City's current code already complies by allowing ADUs without requiring corrections of nonconforming zoning conditions, building code violations, or unpermitted structures, unless it poses a threat to public health and safety.

In compliance with AB 2533, staff is working to update the City's website to ensure public awareness of these provisions.

Code Updates

Staff has completed a consistency review of the Sunnyvale Municipal Code (SMC) to ensure alignment with recent state legislation regarding ADUs. This review identified necessary modifications to the SMC to align with state requirements and enhance the clarity and readability of the ADU ordinance. The proposed changes also address feedback from the California Department of Housing and Community Development (HCD) on the City's current ADU ordinance (last updated in December 2022). Due to the substantial revisions and restructuring of the ADU ordinance, staff recommends repealing and readopting SMC Chapter 19.79 in its entirety to ensure consistency and ease of implementation. See Attachment 2 for the draft ordinance.

Definitions (Chapter 19.12)

Staff updated several sections of the zoning definitions, including:

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- Defining the following types of accessory dwelling units:
 - New Construction ADUs (SMC 19.12.020)
 - Conversion ADUs (SMC 19.12.020)
 - Attached and Detached ADUs (SMC 19.12.020)
- Modifying the definitions of the following:
 - JADUs (SMC 19.12.020)
 - Gross floor area (SMC 19.12.080)
 - Accessory structure (SMC 19.12.020)
 - Building, main (SMC 19.12.030)
 - Lot coverage (SMC 19.12.130)
- Adding definitions for terms used in (and consistent with) state ADU law:
 - Habitable area (SMC 19.12.090)
 - Multifamily dwelling structure (SMC 19.12.140)
 - Nonconforming zoning condition (SMC 19.12.150)
 - Objective standards (SMC 19.12.160)
 - Proposed dwelling (SMC 19.12.170)
 - Public transit (SMC 19.12.170)

Minor Updates to Existing SMC Chapters

To ensure consistency with the updated ADU ordinance and state law, staff proposes minor edits to the following chapters of the SMC:

- *Minimum Landscape Area and Usable Open Space (Chapter 19.37)*
Revisions to SMC Table 19.37.040, which outlines the minimum landscape area and usable open space, include removing the usable open space requirement for ADUs in alignment with state law.
- *Miscellaneous Planning Permit (Chapter 19.82)*
SMC Section 19.82.020 (a)(1) has been updated to reference the updated ADU ordinance section.
- *Nonconforming Buildings and Uses (Chapter 19.50)*
Updates to SMC Section 19.50.020 with references to the revised SMC chapter addressing single-family and multifamily dwelling ADU requirements.

Number of Allowed ADUs

Single-family Dwelling Lot. The SMC currently permits one ADU and one JADU per single-family dwelling lot. Based on feedback from HCD in 2023, the updated ordinance clarifies that up to three ADUs are permitted per single-family dwelling lot. This includes:

- One Conversion Accessory Dwelling Unit;
- One detached or attached, New Construction Accessory Dwelling Unit; and
- One Junior Accessory Dwelling Unit (JADU).

Multifamily Dwelling Lot. As noted earlier, SB 1211 has increased the number of permitted detached, new construction ADUs from two up to eight per multifamily dwelling lot, provided that the total number of ADUs does not exceed the existing number of units on the lot.

Streamlining Updates

The SMC currently requires a Miscellaneous Planning Permit (MPP) for all attached, new construction ADUs, regardless of size. To simplify and streamline the review process and to be in

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compliance with State law, staff proposes amendments providing that the following ADUs do not require a separate planning permit and only need a building permit:

- Attached, new construction ADUs that do not exceed 800 square feet (state law allows ADUs up to 800 square by right) on single-family dwelling lots;
- Detached, new construction ADUs (regardless of size) on a lot with existing or proposed multifamily dwelling structures; and
- New construction ADUs located entirely within a new basement.

Other ADUs allowed by state law and the SMC would still require a ministerially reviewed MPP in addition to a building permit.

Owner deed restriction requirement for JADUs

The SMC currently requires that at least one of the dwelling units on the lots with JADUs must be owner occupied, unless the owner is a governmental agency, land trust, or housing organization. Recent legislative updates expand the deed restriction text requirements for JADUs to include the following:

- JADUs cannot be sold separately from the single-family residence. The deed restriction must explicitly state that this prohibition is enforceable against future purchasers.
- JADUs must adhere to the maximum gross floor area of 500 square feet and comply with all other applicable requirements.

Staff has updated the ADU ordinance to incorporate these additional requirements, ensuring alignment with state law and providing clear guidelines for JADU ownership and compliance.

Clarifying Development Standards for ADUs and Readability Enhancements

Staff has reorganized the ADU ordinance to improve clarity and provide applicable objective development standards. The current ordinance is structured around streamlined and non-streamlined ADUs. However, applicants and staff typically evaluate requirements based on whether the lot contains single-family or multifamily dwellings, consistent with the structure of state law. Key updates to the ordinance include:

- Organization of the ordinance around the requirements for ADUs on single-family and multifamily dwelling lots to simplify navigation and application.
- Clarification to the permitted number of each ADU type and their corresponding development standards.
- Addition of a new section outlining the review process for each ADU type.

These improvements are intended to enhance the readability and understanding of the regulations for both applicants and staff.

FISCAL IMPACT

The modifications to the SMC as described in this report will have no direct fiscal impact on the City. However, the updates to the ADU ordinance are expected to encourage additional ADU construction on residential properties, which may increase property values and result in higher property tax revenue for the City.

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PUBLIC CONTACT

Public contact was made by posting the Planning Commission meeting agenda on the City's official-notice bulletin board at City Hall. In addition, the agenda and this report are available at the NOVA Workforce Services reception desk located on the first floor of City Hall at 456 W. Olive Avenue (during normal business hours), and on the City's website. A public hearing notice was also published in the *Sun* newspaper at least 20 days prior to the hearing in accordance with recent legislation in AB 2904.

As of the date of staff report preparation, staff has not received any public comments.

ALTERNATIVES

Recommend to City Council:

1. Introduce the Ordinance (Attachment 2) Amending Title 19 (Zoning) of the Sunnyvale Municipal Code on Accessory Dwelling Units and find that this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Codes Sections 21080.17 and CEQA Guidelines Sections 15061(b)(3) and 15268.
2. Alternative 1 with modifications to the Ordinance.
3. Do not introduce the Ordinance and provide feedback on desired changes.

STAFF RECOMMENDATION

Recommend to City Council Alternative 1:

Introduce the Ordinance (Attachment 2) Amending Title 19 (Zoning) of the Sunnyvale Municipal Code on Accessory Dwelling Units and find that this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Codes Sections 21080.17 and CEQA Guidelines Sections 15061(b)(3) and 15268.

The proposed updates to the Sunnyvale Municipal Code aim to simplify the community's understanding of ADU requirements and reduce reliance on state law for clarification. These changes will also help staff provide accurate and consistent information to the community. Additionally, the updates support the City's General Plan and Housing Element goals by reducing barriers to ADU development, streamlining approval processes, and increasing housing opportunities by expanding the number of allowed ADUs for both single-family and multifamily dwelling lots.

LEVINE ACT

The Levine Act (Gov. Code Section 84308) prohibits city officials from participating in certain decisions regarding licenses, permits, and other entitlements for use if the official has received a campaign contribution of more than \$500 from a party, participant, or agent of a party or participant in the previous 12 months. The Levine Act is intended to prevent financial influence on decisions that affect specific, identifiable persons or participants. For more information see the Fair Political Practices Commission website: www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html

A check or "Y" in the checklist below indicates that the action being considered falls under a Levine Act category or exemption:

SUBJECT TO THE LEVINE ACT

- ☐ Land development entitlements
- ☐ Other permit, license, or entitlement for use
- ☐ Contract or franchise

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EXEMPT FROM THE LEVINE ACT

- ☐ Competitively bid contract
- ☐ Labor or personal employment contract
- ☒ General policy and legislative actions

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Reviewed by: Shaunn Mendrin, Planning Officer

Reviewed by: Trudi Ryan, Director of Community Development

Reviewed by: Connie Verceles, Deputy City Manager

Approved by: Tim Kirby, City Manager

ATTACHMENTS

1. Reserved for Report to Council
2. Draft Ordinance - ADUs and Other Code Updates
3. Links to 2023 and 2024 State ADU Laws
4. Links to City's Pre-Approved ADUs Plans Gallery and Calculator