



# City of Sunnyvale

## Agenda Item

16-1052

Agenda Date: 11/28/2016

### REPORT TO PLANNING COMMISSION

#### **SUBJECT**

Forward a recommendation to the City Council to adopt an Urgency Interim Ordinance and to introduce an Ordinance to Amend Title 19 (Zoning) and Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code related to Senate Bill 1069 and Assembly Bill 2299, and Find that the Action is Exempt from CEQA.

#### **BACKGROUND**

On September 27, 2016, Governor Brown signed Senate Bill 1069 and Assembly Bill 2299 ("Bills"), amending multiple Government Code Sections related to land use, in an effort to alleviate the current housing crisis in California and to increase the rental housing supply by encouraging production of Accessory Dwelling Units ("ADUs"). The Bills require local jurisdictions to adopt local ADU ordinances consistent with the State legislation by January 1, 2017. The Sunnyvale Municipal Code currently refers to ADUs as Accessory Living Units; staff recommends amending the Code to change the term to reflect the terminology of the new state legislation as well as other amendments discussed below.

Staff has performed a consistency review of the zoning code relating to ADUs (Section 19.68.040) in comparison to the new legislation and has identified necessary modifications to bring the zoning code into conformance. The appreciable inconsistencies are related to parking requirements and the conversion of space totally contained within the interior of an existing single-family house (or one its accessory structures) to an ADU. The Sunnyvale Municipal Code must be amended by January 1, 2017 to meet the State requirements or City regulations could be deemed null and void and no local regulations would then apply to ADUs in Sunnyvale. Because a regular ordinance will not go into effect until 30 days after the second reading, an urgency interim ordinance must also be adopted that will go into effect immediately and expire when the regular ordinance becomes effective.

The City Council is scheduled to consider this item on December 6, 2016.

#### **EXISTING POLICY**

##### Sunnyvale General Plan, Housing Element

- *Policy A.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 D.1* - Provide sites for development of housing that responds to diverse community needs in terms of density, tenure type, unit size, accessibility, location and cost.
- *Policy F.1* - Continue efforts to balance the need for additional housing with other community values, including preserving the character of established neighborhoods, high quality design, and promoting sense of identity in each neighborhood.

---

16-1052Agenda Date: 11/28/2016

---

- *Policy F.2* - Promote neighborhood vitality by providing adequate community facilities, infrastructure, landscaping and open space, parking and public health and safety within new and existing neighborhoods.

#### Sunnyvale Municipal Code Section 19.68.040

This Section includes requirements for ADUs, including: minimum lot size, maximum unit size, property owner as a resident of one of the units, and design standards. Other than the requirements and standards listed in this Section, ADUs must also comply with development standards for the base zoning district. The full text of Section 19.68.040 can be found in Attachment 3.

#### Senate Bill 1069 and Assembly Bill 2299

The Bills were passed and adopted on September 27, 2016. The Bills will become effective on January 1, 2017 and will be incorporated into State Government Code Sections related to land use. The full text of the Bills can be found in Attachment 4.

#### Urgency Interim 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 adopted urgency interim ordinance will be effective immediately, and will automatically expire 45 days after the adoption unless extended by the legislative body.

#### **ENVIRONMENTAL REVIEW**

The action being considered is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15305 of Title 14 of the California Code of Regulations (minor alterations in land use limitations that do not result in any changes in land use or density). In addition, the ordinance is exempt under the general rule that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the action may have a significant effect on the environment, the activity is not subject to CEQA. (Section 15061(b)(3)).

Projects that are subject to the requirements of the amended Section will be evaluated pursuant to CEQA on an individual basis. However, ADUs are generally exempt from CEQA review under CEQA Guidelines Section 15301 (Existing Facilities) and/or Section 15303 (New Construction or Conversion of Small Structures).

#### **DISCUSSION**

ADUs are considered one component of the solution to alleviate the current housing crisis. 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. The City has provided simple permitting of ADUs for years, and the City's current permitting process meets most (but not all) of the requirements of the new State legislation.

The newly adopted legislation on ADUs is an effort by the State to encourage and increase production of ADUs, especially in cities that had banned these uses. As a result of the Bills, local jurisdictions are required to adopt a local ordinance consistent with the legislation. If adoption of a

---

16-1052Agenda Date: 11/28/2016

---

consistent local ordinance is not completed by January 1, 2017, local jurisdictions' existing ordinances are considered "null and void" and State standards would automatically be in effect for regulation of ADUs.

In order to avoid a short period of time between the effective dates of the Bills (January 1, 2017) and the City's ADU ordinance (mid-January 2017), an urgency interim ordinance (Attachment 2) was prepared along with a regular ordinance (Attachment 3). If the City Council adopts the urgency interim ordinance at their meeting on December 6, 2016, the urgency interim ordinance will be effective immediately upon adoption, and will be effective for 45 days, until January 20, 2017. That provides enough time for the regular ordinance to take effect, which requires 30 days after the second reading/adoption. Both ordinances include identical amendments to Title 19 (Zoning) and Title 10 (Vehicles and Traffic).

Staff has reviewed the Bills and Section 19.68.040 of the Sunnyvale Municipal Code and determined the necessary modifications to conform to the State legislation. The most significant modifications include the following:

1. Replacement of the term "Accessory Living Unit" with "Accessory Dwelling Unit". The term change must be applied throughout the Zoning Ordinance for internal consistency. See Attachment 5 for all affected Title 19 Sections.
2. Overall Organization. The entire section has been organized to provide a purpose statement, general standards for all ADUs, standards for new construction and standards for conversion of existing legal/permitted structures.
3. Density. Language confirming ADUs' consistency with the general plan and zoning district density has been included in the purpose statement.
4. Zoning, Building and Fire Codes. ADUs are subject to all otherwise applicable provisions of Title 19 (Zoning) and Title 16 (building and fire codes). Under the new legislation, however, fire sprinklers cannot be required in ADUs unless required for the primary dwelling unit.
5. Newly Constructed/Expanded Structures. The City's existing requirements for ADUs are largely preserved with respect to newly constructed and expanded structures. ADUs are allowed only in conjunction with a single-family home in R-0, R-1, R-2, and residential blocks of the Downtown Specific Plan. The minimum lot size is 9,000 square feet in R-0/R-1 and 5,000 square feet in R-2 and DSP blocks.
  - *Parking*. The most significant changes involve parking. The new legislation exempts many ADUs from parking requirements. In particular, the City cannot require the owner to provide an off-street parking space for the ADU if it is part of an existing structure, located in a historic district, within a half mile of public transit, or one block from a car share vehicle. Although the legislation does not define "public transit," staff recommends defining it in the proposed ordinance as "an existing rail station or a bus stop with service intervals no longer than 15 minutes during peak commute hours." In addition, staff recommends

defining the distance to a car share vehicle as a fixed, designated car share location. Staff has also added language to the proposed ordinance clarifying that the primary dwelling unit must meet all applicable parking standards. For example, if a detached garage is converted to an ADU, replacement spaces must be provided. However, per the legislation, the replacement spaces may be covered, uncovered, or provided in setback areas, as tandem parking on an existing driveway, or by mechanical parking lifts. Staff also recommends amending Municipal Code Section 10.26.050 to clarify that if the ADU is in a neighborhood that requires permit parking, the occupants of an ADU will be entitled to obtain an on-street parking permit.

- *Unit Size.* There is a potential ambiguity in the legislation regarding the maximum allowable size of ADUs. Although one section refers to allowing ADUs to be up to 50% of the floor area of the primary dwelling to a maximum size of 1,200 square feet, another section states that cities can continue to regulate the minimum and maximum size of ADUs. Staff at the California Department of Housing and Community Development (HCD) has indicated in informal discussions that they believe cities retain the ability to impose a maximum size limit on ADUs. Therefore, the existing maximum, 700 square feet, is included in the proposed ordinance for newly constructed and expanded structures. HCD is currently preparing formal technical guidance on the legislation, but this will not be available before January 2017.

6. Conversion of existing interior spaces to ADUs. Another significant legislative change gives homeowners the right to create an ADU within the interior of an existing accessory structure or single-family dwelling.

- *Minimum lot size and parking.* These requirements do not apply to these conversions as long as the unit is entirely contained within the existing structure, has independent exterior access, and sufficient setbacks for fire safety.
- *Additional Minimum Standards.* After a careful analysis of the legislation, staff believes that the City can impose certain other restrictions that appear to be consistent with the legislative intent of creating an accessory dwelling unit within the existing interior space of a primary residence. These include a requirement that the existing accessory structure be legally permitted, regulating the size of ADUs consistent with the standards contained elsewhere in the legislation (150 square feet minimum, up to 50% of the existing floor space or 1,200 square feet), which retains the legislative intent that the accessory dwelling unit is meant to supplement the primary residence and not create another unit that is comparable in size to the primary residence, and requiring that the primary dwelling meet minimum parking standards. In order to prevent homeowners from constructing an accessory structure and immediately converting it to an ADU, staff also proposes adding a requirement to Section 19.40.020 (requirements for accessory structures) that the owner record a covenant prohibiting conversion of the structure to an ADU for 10 years.

7. Utilities. If an ADU is created within existing interior space, the City cannot require a new or separate utility hookup. However, the City is allowed to require separate utility hookups and appropriate fees for newly constructed or expanded structures.

Given the many ambiguities in the new legislation, it is possible that some provisions will need to be revised after HCD issues technical guidance. Staff recommends retaining several of the existing

---

**16-1052****Agenda Date: 11/28/2016**

---

provisions for accessory dwelling units including: minimum lot size for new construction, maximum unit size of 700 square feet, a 20-year deed restriction requiring property owner residency in one of the units (primary or accessory), and the need for the primary unit to comply with minimum parking requirements before either conversion of existing square footage or new construction take place. Sunnyvale has a good track record of allowing ADUs and has updated the regulations on several occasions to simplify the process and allow more ADUs to be built in the community. Staff finds that retaining these provisions is necessary to maintain the quality of neighborhoods and to emphasize the accessory nature of ADUs. Staff finds these retained and new provisions consistent with the General Plan.

Staff contacted several local cities to see what approach they are using. Staff has also contacted the state division of Housing and Community Development (HCD) for guidance. HCD staff members realize there are sections of the Bills that are unclear and potentially contradictory and have indicated they will prepare guidelines for local communities. These guidelines are not expected until after January 1, 2017. Sunnyvale staff will continue to monitor what other cities are doing and will review the HCD technical guidelines, once available.

#### Future ADU Study

A provision of the legislation is that HCD review local ordinances for compliance with the California ADU statutes. There is a possibility that the state legislature may look at clarifying the new regulations. Sunnyvale Staff will submit the ordinance adopted by the Council to HCD and will continue to monitor activity with the legislature; staff would return to Council if there are any issues found with consistency of Sunnyvale's regulations.

One of the programs listed in the City's certified 2015-2023 Housing Element, Program #15, involves a study of the City's current ADU regulations.

Consider modifications to allow increased development of ALU's in appropriate zones.  
Conduct outreach, complete analysis of ALU standards and possible modifications, and provide recommendations for public, stakeholder, and Council consideration.

Community Development Department staff will begin this study in 2017, consistent with the schedule provided in the Housing Element implementation plan.

#### **FISCAL IMPACT**

The proposed amendments to the Sunnyvale Municipal Code associated with Accessory Dwelling Units would have no fiscal impacts.

#### **PUBLIC CONTACT**

Public contact regarding this item was made in the following ways:

1. Posting the Agenda for Planning Commission on the City's official-notice bulletin board outside City Hall and by making the agenda and report available at the Sunnyvale Public Library and on the City's website;
2. Publication in the *Sun* newspaper, at least 10 days prior to the hearing; and
3. E-mail notification of the hearing dates sent to all interested parties and neighborhood associations.

#### **ALTERNATIVES**

---

**16-1052****Agenda Date: 11/28/2016**

---

Recommend to City Council:

1. Adopt an Urgency Interim Ordinance and Introduce an Ordinance to Amend Title 19 (Zoning) and Section 10.26.050 of the Sunnyvale Municipal Code to ensure consistency with Senate Bill 1069 and Assembly Bill 2299.
2. Alternative 1 with modifications.
3. Do not amend Title 19 (Zoning) and Section 10.26.050 of the Sunnyvale Municipal Code and accept the State law default requirements.

### **STAFF RECOMMENDATION**

Recommend to the City Council Alternative 1: Adopt an Urgency Interim Ordinance and Introduce an Ordinance to Amend Title 19 (Zoning) and Section 10.26.050 of the Sunnyvale Municipal Code to ensure consistency with Senate Bill 1069 and Assembly Bill 2299.

The adoption of the recommended amendments to the Sunnyvale Municipal Code will ensure consistency with the amended State legislation on ADUs prior to the effective date of the legislation. In addition, the recommended modifications ensure that the City retains authority to regulate ADUs on applications received after January 1, 2017.

Making no changes to the ordinance would require the City to impose the adopted State standards in their entirety and may create inconsistencies with the City's General Plan and Zoning Ordinance, and adversely impact existing Sunnyvale neighborhoods' characteristics and integrity.

Prepared by: Kelly Cha, Associate Planner

Reviewed by: Amber Blizinski, Principal Planner

Reviewed by: Andrew Miner, Planning Officer

Reviewed by: Trudi Ryan, Director, Community Development

Reviewed by: Kent Steffens, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. *Not Used (for use with Report to Council)*
2. Draft Urgency Interim Ordinance
3. Draft Ordinance
4. Full Text of Section 19.68.040 of Sunnyvale Municipal Code
5. Full Text of Senate Bill 1069 and Assembly Bill 2299
6. List of Affected Sections of Title 19 (Zoning)