



City of Sunnyvale

Agenda Item

19-1076

Agenda Date: 11/25/2019

REPORT TO PLANNING COMMISSION

SUBJECT

Forward a Recommendation to the City Council to adopt an Urgency Interim Ordinance and to Introduce an Ordinance Amending Title 19 (Zoning) of the Sunnyvale Municipal Code related to new State Legislation on Accessory Dwelling Units and Find that the Action is Exempt from the California Environmental Quality Act

REPORT IN BRIEF

Prior to 2016, cities could regulate and permit Accessory Dwelling Units (ADU) based on local preferences. State legislation passed between 2015-2019 has removed most local control on ADUs and requires jurisdictions to allow these units in most single-family zoning districts, and now in multi-family zoning districts. Additionally, there are now several circumstances where “by-right” ADUs must be allowed through the issuance of a building permit. The City’s Zoning Code has been amended several times since 2016 to address past changes in State law, and the currently proposed amendments are intended for the same purpose.

Staff has performed a consistency review of the Zoning Code (Title 19 of the Sunnyvale Municipal Code (SMC)) relating to ADUs (formerly SMC Section 19.68.040) and Junior Accessory Dwelling Units (JADUs) in comparison to the new legislation (AB 881, AB 68, and SB 13) and has identified necessary modifications to bring the zoning code into conformance resulting in a new SMC Section 19.77 (Accessory Dwelling Units). The Sunnyvale Municipal Code must be amended to be consistent with the new laws by January 1, 2020, when the bills take effect. If the update is not completed by January 1, 2020, City regulations would be deemed null and void and the State provisions would be used to process ADU applications. Because a regular ordinance will not go into effect until 30 days after the second reading (after January 1, 2020), an urgency interim ordinance must also be adopted that will go into effect immediately, which will be extended in early January, and expire when the regular ordinance becomes effective in February 2020.

The City Council is scheduled to consider this item on December 10, 2019.

BACKGROUND

The City has amended its ADU regulations several times since 2016 due to frequent changes in state legislation aimed at promoting ADUs as a partial solution to the housing crisis. The latest round of legislation was signed by the Governor on October 19, 2019, which requires a major update to the City’s ADU regulations before the end of the year.

The three ADU bills (AB 881, AB 68, and SB 13) are similar, but contain some conflicting provisions and apparent drafting errors. The Legislature will likely enact clean-up legislation to clarify certain issues. In the meantime, the City is required to adopt an ADU ordinance that is consistent with state

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law prior to January 1, 2020, when the three ADU bills go into effect. Further revisions may be necessary next year in response to any legislative changes.

Staff has drafted proposed revisions to the City's Zoning Code based on Section 1.5 of AB 881, which was the last of the three bills to be signed by the Governor, and therefore supersedes the first two. The other parts of the legislation that will be effective on January 1, 2020, are Section 2 of AB 68 regarding junior accessory dwelling units (JADUs) and Section 3 of SB 13, which creates a 10-year grace period during which owners of existing ADUs may request a 5-year delay in enforcement of building codes not related to health or safety.

The City's ADU regulations are currently contained in SMC Chapter 19.68, which also includes provisions related to mobile living units, mobile homes, and single-room occupancy hotels. Due to the complexity of the ADU regulations, staff recommends moving ADUs to a new chapter (19.77).

The major changes as a result of the state legislation include:

- **JADUs.** Cities are now required to allow Junior ADUs (JADUs), which are small ADUs (up to 500 square feet) within a single-family dwelling. The primary difference between a standard ADU and a JADU is that JADUs can share a bathroom with the main house. In addition, JADUs are not considered separate dwellings for purposes of fire and life safety requirements that would otherwise apply to standard ADUs. The proposed ordinance creates new definitions for "standard accessory dwelling units" and "junior accessory dwelling units". The general term "accessory dwelling unit" will apply to both.
- **Streamlined Approval of Certain ADUs/JADUs.** The legislature expanded the categories of ADUs that must be approved with a building permit only. The proposed ordinance refers to this as "streamlined approval." These include "interior space conversions" in both single-family dwellings and multi-family structures, and detached units up to 800 square feet in size and 16 feet in height with minimum 4-foot side and rear yard setbacks. The setbacks may be less than 4 feet if the ADU replaces and exactly replicates the size and footprint of an existing structure that was demolished to build the ADU.
- **Multifamily Dwellings.** A lot containing an existing multifamily dwelling structure can include two detached ADUs up to 800 square feet in size and 16 feet in height. In addition, non-livable space within the multifamily structure can be converted to ADUs equal to 25% of the number of existing dwelling units in the structure, as long as the ADUs can be constructed to meet building codes.
- **JADU + Detached ADU.** One JADU can now be combined with one detached ADU on a single-family lot, meeting certain requirements, resulting in 3 dwelling units on one single-family lot.
- **No Owner-Occupancy Restrictions.** The legislation invalidates owner-occupancy restrictions on standard ADUs until 2025, but owner-occupancy restrictions are mandatory for JADUs (this is a potential conflict between the statutes that might be further clarified by clean-up legislation). The proposed ordinance contains an owner-occupancy restriction for standard ADUs that will go into effect on January 1, 2025, when the state law sunsets.
- **Use of ADUs as Short-Term Rentals.** The legislation prohibits ADUs that are built under the

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streamlined provisions of the statute from being used as short-term rentals (STRs). Sunnyvale currently allows all ADUs to be used as STRs. Staff recommends prohibiting any ADU approved on or after January 1, 2020, from being used as a STR. However, further outreach or study may be appropriate to determine if the ban should be extended to existing ADUs.

- **Parking.** The City can no longer require replacement parking when a garage or carport is demolished to create an ADU. In addition, no off-street parking is required for JADUs or ADUs that qualify for streamlined approval. Finally, no parking is required of any ADU that meets various statutory exceptions, including an ADU within ½ mile walking distance of any bus stop (not just a high-quality bus stop). This applies to almost every residential lot in Sunnyvale.
- **Correction of Zoning Violations.** The City cannot require that the applicant correct existing zoning violations on the property as a condition of granting a permit to build an ADU. Independent of issuing the permit for the ADU the City can still pursue code enforcement of zoning violations.
- **Timing.** The City must act on ADU applications within 60 days or the application will be deemed approved.
- **Utilities and Impact Fees.** Separate utility connections and associated fees and charges cannot be imposed on JADUs or standard ADUs converted from existing interior space, unless the ADU is proposed as part of a new single-family dwelling. All impact fees must be proportional to the size of the ADU. In addition, ADUs up to 750 square feet are exempt from impact fees, including traffic impact fees.
- **Delay of Building Permit Enforcement.** Until 2030, owners of existing ADUs may request a 5-year delay in enforcement of building codes applicable to the ADU. This request must be granted unless the building standard is necessary to protect life and safety.

EXISTING POLICY

SUNNYVALE GENERAL PLAN

Chapter 3: Land Use and Transportation

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.

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.

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

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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. Staff will need to request an extension to the urgency ordinance in early January to keep it in effect until early February when the regular ordinance becomes effective.

ENVIRONMENTAL REVIEW

Adoption of an accessory dwelling unit ordinance is subject to a statutory exemption from environmental review (Public Resource Code Section 15282(h)). In addition, the action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15061(b)(3) as the activity is covered by the general rule that CEQA applies only to projects which 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 activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Projects that are subject to the ADU regulations 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 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. The City has provided a simple permitting process of ADUs for many years, and with the required amendments to Title 19, will continue to facilitate the development of additional ADUs in accordance with State law.

To avoid a short period between the effective dates of the new legislation (January 1, 2020) and the City’s ADU ordinance (February 7, 2020), 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 10, 2019, the urgency interim ordinance will be effective immediately upon adoption, and will be effective for 45 days. Staff will return to the Council to extend the urgency ordinance in January until the regular ordinance goes into effect in early February. This provides enough time for the regular ordinance to take effect, 30 days after the second reading/adoption. Both ordinances include identical amendments to Title 19 (Zoning).

Staff has reviewed the legislation and related sections of the Sunnyvale Municipal Code related to ADUs, currently SMC Section 19.68.040, and recommends the creation of a new Section, 19.77 specific to Accessory Dwelling Units. The following summarizes the significant changes to the existing regulations.

Streamlined Approval of Certain ADUs

There are now three categories of ADUs that must be allowed through issuance of a building permit

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only.

(1) Interior Space Conversions. This type of ADU is converted from interior space in an existing or proposed single-family dwelling or an existing accessory structure. There is no upper size limit on standard ADUs converted from interior space. JADUs are essentially a sub-type of interior space conversions; they must be entirely within the walls of a single-family dwelling and cannot exceed 500 square feet. A JADU has its own kitchen facilities, and may have its own bathroom, or share a bathroom with the main dwelling. JADUs are not considered separate dwelling and are not subject to fire separation requirements that apply to ADUs. Finally, the JADU statute requires owner-occupancy with JADUs (of either the single-family house or the JADU), although this requirement is invalidated with respect to standard ADUs. To clarify the potential confusion between JADUs and small standard ADUs created from interior space, the proposed ordinance includes a provision that a standard ADU cannot be treated as a JADU unless the owner records an owner-occupancy restriction.

(2) Detached New Construction. This type of ADU consists of newly-constructed, detached ADUs on a single-family or multi-family lot that are not more than 800 square feet in size, 16 feet in height measured from the ground to the highest point on the roof, and have 4-foot side and rear-yard setbacks. The setbacks may be less than 4 feet if the ADU is built on the footprint, and to the exact dimensions, of an existing structure that was demolished to build the ADU). On multifamily lots, up to two detached ADUs are allowed. On single-family lots, one detached ADU may be combined with one JADU converted from interior space within the single-family home.

(3) ADUs Within Multi-Family Structures. One of the Legislature's more significant innovations during this legislative session was the concept of ADUs converted from interior non-livable space within a multi-family dwelling structure, such as garages or storage rooms. The legislation provides that the number of ADUs created in this fashion can be equal to up to 25% of the existing units in the multifamily dwelling. The ADUs must meet building codes for habitable dwellings, which should preclude ADU construction in most basements and underground garages, as well as interior, windowless spaces.

HOAs in multifamily developments can continue to enforce Covenants, Conditions and Restrictions (CC&Rs) that prevent garage conversions; however, separate legislation (AB 670) invalidates any CC&Rs that prohibit construction of ADUs in single-family developments. The City may still be able to enforce conditions of approval that require minimum parking in multifamily developments that were approved with a use permit or special development permit, although the law is not clear on this point. Otherwise, the state law does not allow the City to require parking for the ADUs, or replacement parking for spaces that are lost as a result of ADU construction.

ADUs that do not qualify for streamlined approval

ADUs that do not meet the criteria for streamlined approval may be subject to additional review and zoning requirements, including design review, location, Floor Area Ratio (FAR), and lot coverage (but not lot size). However, these requirements cannot be used to prohibit an ADU that is at least 800 square feet in size, 16 feet in height, with minimum 4-foot side and rear-yard setbacks. It should be noted that the review process is ministerial and subject to the same time limits (60 days) that apply to streamlined ADUs.

The City may cap the size of an ADU at 850 square feet, or 1,000 square feet if the ADU has two bedrooms. Examples of the types of ADUs that would require additional review include:

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- Detached ADUs that are larger than 800 square feet.
- ADU construction that involves adding square footage or a second story addition to a single-family home (single-story overlay restrictions and other regulations pertaining to second story construction will still apply).

Staff recommends that ADUs larger than 750 square feet be required to pay impact fees. Therefore, staff anticipates that most applicants will want to build smaller ADUs that meet the criteria for streamlined review and avoid the additional fee.

The 16-foot height restriction would not allow construction of a two-story ADU. The proposed ordinance will not permit a second-story addition on an existing accessory structure.

If any ADU is proposed to be built within a proposed new single-family dwelling, the City may delay acting on the ADU application until the single-family dwelling is approved. However, the ADU application must be reviewed ministerially without a hearing or appeal. For practical purposes, this means that the floor area of the proposed ADU could be considered part of the total size of the home, but the fact that the space is intended to be used as an ADU will not be part of the discretionary approval process.

Parking

The state has severely curtailed the ability of cities to require parking for ADUs, or replacement parking for converted garages or carports. Parking cannot be required of any JADUs or “by right” ADUs. Also, parking cannot be required if the ADU is within a half-mile walking distance of public transit, which includes any bus stop, not just a high- quality bus stop. Staff recommends eliminating all parking requirements for ADUs, as there are essentially no locations within the City where ADU parking can be required.

Ordinance Summary

Highlights of the other significant changes are listed below. The entire new Section of the Sunnyvale Municipal Code, containing additional new provisions, can be reviewed in Attachment 2 or 3 (urgency and regular ordinances).

General Regulations Pertaining to New Units

- Replacement parking is not required if existing parking spaces are converted into an ADU;
- No additional parking is required for the ADU or JADU;
- Owner occupancy requirements (ensuring that the property owner is the primary occupant of one of the units) are only required if a property contains both an ADU and JADU;
- The City can only charge a proportional Traffic Impact Fee (TIF) for ADUs that are 750 square feet or larger (no TIF if ADU is less than 750 square feet);
- If an ADU is constructed in the same location and to the same dimensions as an existing detached accessory structure it may maintain the existing setbacks, even if they are less than the four-foot minimum side and rear yard requirement; and
- No new or separate utility connections, connection charges, or capacity fees can be required

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for a new ADU or JADU; a property owner can opt to install a new or separate connection.

ADUs Allowed By-right (Through the Issuance of a Building Permit only)

The first category of ADUs described are those that must be permitted only through the building permit process. The purpose of ADU's are to increase the number of housing units in the City. Therefore, ADUs are required to be rentable for a term longer than 30 days and cannot be used as short-term rentals (e.g., Airbnb). The following are allowed with a Building Permit only, with the City having no discretion regarding issuance:

1. Single-family dwellings:
 - a. One ADU or JADU within a proposed or existing single-family dwelling or existing permitted accessory structure (on a single-family property) that includes the following:
 - i. Exterior access;
 - ii. Sufficient side and rear setbacks for fire and safety;
 - iii. Entryways and foyers no larger than 150 additional square feet; and,
 - iv. The JADU must also comply with specific requirements described in the draft ordinance (Attachments 2 and 3).
 - b. One detached, new construction, ADU that does not exceed the following standards:
 - i. Minimum four-foot side and rear yard setbacks;
 - ii. No more than 800 square feet; and
 - iii. Maximum height of 16 feet.
2. Multi-family dwelling complexes:
 - a. ADU's can be added to multi-family properties up to 25% of the existing units
 - b. Those ADU's may be constructed within the portions of existing multi-family dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages if each unit complies with the Building Code standards for dwellings and no other legal restrictions would preclude this allowance;
 - c. No more than two detached ADUs which must also be at least four feet from the side or rear yards, maximum of 16 feet in height or less, and no more than 800 square feet in size each.

ADUs Subject to Additional Planning Review

This category of ADUs are those that do not fit into the parameters described above, and may be subject to more regulations; the recommended ordinance includes a requirement for approval of a Miscellaneous Plan Permit (from the Planning Division).

1. ADUs larger than 800 square feet and meet the following criteria:
 - a. Maximum ADU size, if other requirements of Title 19 are met:
 - i. 850 square feet for one bedroom or 1,000 square feet for 2 or more bedrooms.
 - ii. If the ADU is attached to the main structure it cannot exceed 50% of the size of the existing primary dwelling.
2. ADUs located on the second level of a primary dwelling unit.

Junior Accessory Dwelling Units (JADUs)

JADU's are subject to many of the regulations discussed above, and the following requirements (specific to JADU's):

- Must be constructed within the existing, or proposed, walls of the primary single-family

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dwelling;

- A maximum size of 500 square feet
- Must contain an efficiency kitchen.
- If built in conjunction with an ADU, or on a lot that already contains an ADU, JADUs require the property owner to live in one of the units, also known as owner-occupancy requirements, and the City would require the recordation of a deed restriction on the property.

Changes to Short-Term Rental Allowances for ADUs

The City's short-term rental ordinance currently allows ADUs to be used as short-term rentals as long as the host lives in either the ADU or the single-family dwelling. However, the new state law expressly prohibits the use of new by-right ADUs, and JADUs, to be rented for a period of less than 30 days. Prohibiting short-term rentals in ADUs protects housing from other uses and promotes ADUs as a type of affordable long-term housing. At the same time, it may be unfair to prohibit homeowners whose ADUs were built under the existing requirements from using their ADUs as for short-term rentals.

It is expected that the majority of ADUs will be ministerially permitted, staff is recommending that no ADU approved on or after January 1, 2020 may be used as a short-term rental and has updated SMC Section 19.76 (Short-term Rental of Residential Property) to reflect this change (Attachments 2 & 3). This will allow the Planning Division to efficiently approve, and track, ADUs without having to determine which could be used as short-term rentals, and which could not; a process that would be difficult to administer by staff when approving by-right ADU permits or short-term rental applications since both types of permits are typically approved over the counter.

Other alternatives for the City Council to consider are to prohibit all ADUs from being used for short-term rentals (regardless of when the ADU was approved), or providing a grace period for existing ADU owners, after which short-term rentals will no longer be allowed.

Other Associated Changes

The proposed ordinance will create a new definition for ADU, which includes both "standard" and "junior" accessory dwelling units. There are other minor changes to provisions in the Zoning Code for consistency with the new ADU regulations.

Summary

Subsequent to the many state law revisions for ADUs to simplify the process of approval by the City, the proposed changes to the Zoning Code provide some options when approving ADUs and JADUs. The main areas of oversight include:

- Properties containing a single-family dwelling, an ADU, and potentially a JADU must remain under one ownership. ADUs or JADUs cannot be sold separately from the single-family dwelling.
- Architectural review, and requirements for ADU compatibility, are still allowed through the ministerial permitting process for new construction/expanded space ADUs that exceed 800 square feet, or more than 16 feet in height.

State Direction on Adopted ADU Legislation

Staff has contacted the State Department of Housing and Community Development (HCD) to ask if a technical advisory on the new legislation will be produced, and HCD staff members agreed that there are sections of the Bills that warrant guidance. However, HCD is not expected to produce technical

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guidelines until after January 1, 2020. Therefore, staff will continue to monitor what other cities adopt and will review the HCD technical guidelines, once available, which may result in future amendments to the regulations.

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 outside City Hall and by making the agenda and report available at the Sunnyvale Public Library and on the City's website and with publication in the *Sun* newspaper, at least 10 days prior to the hearing.

ALTERNATIVES

Forward a Recommendation to the City Council to:

1. Find that the Action is Exempt from CEQA pursuant to Public Resource Code Section 15282 (h) and does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) and Adopt an Urgency Interim Ordinance (Attachment 2 to the report) and Introduce an Ordinance (Attachment 3 to the report) Amending Title 19 (Zoning) of the Sunnyvale Municipal Code related to new State Legislation on Accessory Dwelling Units.
2. Find that the Action is Exempt from CEQA pursuant to Public Resource Code Section 15282 (h) and does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) and Adopt an Urgency Interim Ordinance and Introduce an Ordinance (Attachment 2 to the report) and Introduce an Ordinance (Attachment 3 to the report) Amending Title 19 (Zoning) of the Sunnyvale Municipal Code related to new State Legislation on Accessory Dwelling Units with modifications.
3. Take no action and do not amend the Sunnyvale Municipal Code and allow the language in the California Government Code to dictate how accessory dwelling units are administered in Sunnyvale.

STAFF RECOMMENDATION

Recommend to City Council:

Alternative 1: Find that the Action is Exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resource Code Section 15282(h) and does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) and Adopt an Urgency Interim Ordinance (Attachment 2 to the report) and Introduce an Ordinance (Attachment 3 to the report) Amending Title 19 (Zoning) of the Sunnyvale Municipal Code related to new State Legislation on Accessory Dwelling Units.

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 January 1, 2020. In addition, the recommended modifications ensure that the City retains some local authority to regulate ADUs on applications received after January 1, 2020.

The draft ordinances (regular and urgency) include language that reinstates owner occupancy requirements for standard ADUs in 2025 (see SMC Section 19.77.050 (b)). The City Council has

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previously expressed a preference for this regulation; if the City Council finds that this regulation is no longer desired, it can be removed.

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 Zoning Ordinance, where allowed. Staff expects to see an increase in ADU permits with these modifications, resulting in an increase of housing units within the City for long-term renters.

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Reviewed by: Trudi Ryan, Director, Community Development

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Reserved for Report to Council
2. Draft Urgency Interim Ordinance
3. Draft Ordinance
4. Assembly Bill 881, Section 1.5