



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 13, 2020

TO: Members of the City Council

SUBMITTED BY: Robert Reber, Community Development Director
Christie Crowl, Assistant City Attorney

SUBJECT: Report and recommendation regarding changes in state housing law affecting local regulation of Accessory Dwelling Units (“ADUs”)

RECOMMENDED ACTION:

Receive report, review proposed changes to City’s ADU Ordinance, and direct staff to (1) prepare any additional amendments to the City’s ADU Ordinance consistent with state law, and (2) bring the ADU Ordinance with any such changes back to Council for initial review, *or in the alternative*, take the ADU Ordinance directly to the Planning Commission for consideration and recommendation before introduction and adoption by the Council.

FISCAL IMPACT OF RECOMMENDATION:

There are no direct fiscal impacts associated with this item.

BACKGROUND:

An accessory dwelling unit (ADU), sometimes called a “second unit” or “in-law unit,” is a self-contained living unit on the same property as a primary residential building. These units must include a living and sleeping area, kitchen, and bathroom. They can be detached from or attached to a primary dwelling. An ADU can also be created by converting a garage or existing space in a home into a separate living unit. Typically, an ADU is utilized as a rental unit or as a home for an elderly relative, a caregiver, or an older son or daughter living at home.

In April 2018, the City adopted an updated ADU Ordinance to align with prior changes to state law. New state legislation was passed in late 2019 that further streamlines and clarifies the state’s evolving ADU requirements, expands opportunities for new ADUs, and limits the applicability of local zoning controls and requirements for certain ADUs.

These recent changes to state law are intended to encourage the development of ADUs to address the statewide housing shortage, and now arguably conflict with and preempt certain aspects of the City’s current ADU requirements. At its August 8, 2020 meeting, the Council was provided with a summary

of the changes to state law and considered potential changes to the City's ADU Ordinance (Attachment 1). At that meeting, the Council directed staff to prepare amendments to the City's ADU Ordinance consistent with state law, and to bring a draft of the amended ADU Ordinance back to the Council for consideration before introducing it to the Planning Commission for a recommendation.

DISCUSSION:

Overview of Draft Ordinance

Per the Council's previous direction, staff has incorporated new state law requirements into the City's ADU Ordinance, a draft of which is attached to this report (Attachment 2). The proposed ADU Ordinance amendments generally accomplish the following:

- Remove or clarify existing Hercules requirements pursuant to State law, including:
 - Owner occupancy no longer required (except for Junior ADUs, which are no bigger than 500 sq. ft. and can share a bathroom with the primary residence).
 - Impact fees are charged only for ADUs 750 sq. ft. or larger and only in proportion to the square footage of the primary dwelling (e.g., at 50% if the ADU is 1,000 square feet and the primary dwelling is 2,000 square feet). ADUs are not considered "new" residential uses when calculating connection and/or capacity fees unless they are constructed with a new single-family dwelling.
 - Definition of "ADUs Within Existing Space" clarified and development standards other than setbacks removed.
 - New or separate sewer connections can be required for Attached ADUs and Detached ADUs that exceed 500 square feet, but not for JADUs or ADUs Within Existing Space.
 - Note: The connection requirements are highlighted on the attached draft ordinance, as Staff does not recommend requiring separate connections as this will negatively impact the City's sidewalks and streets, and since the City can collect some sewer facilities fees to offset an ADU's impact, unless there is a technical reason for the need for a separate connection as determined by the City Engineer.
- Add new State law requirements, including:
 - Planning Director must act on a complete ADU application within 60 days.
 - Junior Accessory Dwelling Unit (JADU) requirements for ADUs 500 square feet or less (for example: deed restrictions prohibiting short-term rental and requiring owner occupancy of JADU or remainder of dwelling; efficiency kitchen; no parking required; etc.).
 - New maximum size requirements for attached/detached ADUs (Attached: 850 square feet if one bedroom, 1,000 if more than one bedroom, cannot exceed 50% of floor area of primary dwelling; Detached: 850 square feet if one bedroom, 1,000 square feet if more than one bedroom).
 - Note: The law imposes "minimum" maximum requirements – that is, the City cannot impose maximum size requirements that are *less* than what is listed here and in the draft ordinance. But the Council could increase these maximums if desired. The current ordinance has a maximum of 800 square

feet, and the new “minimum” maximum is 850 square feet for ADUs with one bedroom or less and 1,000 square feet for ADUs with two or more bedrooms, subject to some other standards for Attached versus Detached units. These maximums are highlighted in Section 5(C), and staff seeks the Council’s input on these figures. Please note that State law prohibits Detached ADUs from exceeding 1,200 square feet, so the Council can set a maximum between 850 and 1,200 for one-bedroom Detached ADUs and between 1,000 and 1,200 for two-bedroom Detached ADUs. State law also prohibits Attached ADUs from exceeding 50% of the square footage of the primary dwelling, which is required by our Subsection 5(B).

- Setback requirements are now generally at 4 feet instead of 5 feet (except for ADUs Within Existing Space, JADUs, and certain “special circumstance” ADUs (discussed further below) that are generally smaller and within existing space as well.
- Each ADU must provide the lesser of one off-street parking space or one off-street parking space per bedroom. However, the City cannot require any parking or replacement parking for garage/accessory structure conversions, JADUs, ADUs Within Existing Space, and the “special circumstances” ADUs.
- Certain smaller and/or ADUs Within Existing Space and JADUs are now permitted without having to comply with any design standards and are not subject to impact fees. The draft ordinance refers to these ADUs as “special circumstances” ADUs.

JADUs and Special Circumstances ADUs

A JADU is defined as an ADU that is 500 square feet or less. JADUs must include an efficiency kitchen, and the property owner must either reside in the JADU or the remainder of the dwelling. JADUs cannot be subject to any parking requirements.

As to the “special circumstances” approvals, State law requires *all* ADU approvals to be ministerial. State law also describes a class of ADUs – the “special circumstances” ADUs – that basically establishes a “minimum” ADU that is allowed by right (ADUs/JADUs Within Existing Space, Detached ADUs 800 square feet or less and 16 feet in height or less). These types of ADUs are not subject to the minimal design requirements that the City can impose on other ADUs, are not subject to impact fees, and cannot be required to install new or separate utility connections.

Utility Connections

There were questions of staff at the August 8, 2020 meeting regarding sewer capacity and the new State law provision allowing the City to designate areas for ADUs based on adequacy of water and sewer services.

The draft ordinance requires most ADUs to pay capacity and connection fees proportionate to the square footage of the primary dwelling, with the caveat that ADUs cannot be considered “new” residential uses for the purposes of calculating these fees unless the ADU is constructed with a new primary dwelling. These fees will provide funding for improvements necessary to address capacity shortages, so staff does not currently recommend excluding ADUs from specific areas.

Council Input Requested

In addition to any other comments on the draft ordinance from the Council, Staff is seeking the Council's input on the maximum unit size. Please see the notes in the "Overview of Draft Ordinance" section of this staff report above. Staff is available to answer questions as needed.

ATTACHMENTS:

1. Staff Report from August 8, 2020
2. Draft ADU Ordinance