



COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

Date: September 3, 2025

Subject

Proposed amendments to Municipal Code Chapters 19.08 (Definitions), and 19.112 (Accessory Dwelling Units) and Associated Environmental Review. (Application No. MCA-2025-001; Applicant: City of Cupertino; Location: City-wide)

Recommended Action

That the City Council Conduct the first reading of Ordinance No. 25-____ (Attachment A): “An Ordinance of the City Council of the City of Cupertino amending Municipal Code Chapters 19.08 (Definitions), and 19.112 (Accessory Dwelling Units) regarding Accessory Dwelling Units.”

Background

On February 29, 2024, the City of Cupertino, in accordance with Government Code section 66326, subdivision (a)¹, submitted Accessory Dwelling Unit (ADU) Ordinance No. 23-2254, adopted February 23, 2024, to the California Department of Housing and Community Development (HCD). HCD reviewed the Ordinance and summarized their written findings in a letter dated April 24, 2025 (Attachment B). HCD identified some areas where it believed the City’s code needs to be updated. Upon review it was found that many of HCD’s conclusions in finding the City’s Municipal Code different from state law were because the requirements were not in effect or adopted by the state when the City last amended its ordinance.

Pursuant to Government Code section 66326, subdivision (b)(1), the City provided a written response to HCD’s findings on May 19, 2025. In that letter, the City stated its intent to comply with all the provisions of State Law as it relates to Accessory Dwelling Units. The City informed HCD about its intent to amend the Municipal Code by September 30, 2025, to address items listed in HCD’s letter to the City as it relates to California Government Code Sections 66310 – 66342.

Planning Commission Recommendation

¹ A local agency shall submit a copy of the ordinance adopted pursuant to Section 66314 to the Department of Housing and Community Development within 60 days after adoption.

The Planning Commission considered the proposed Municipal Code Amendments at its July 8, 2025 meeting and recommended (4-0, Fung Absent) that City Council adopt the proposed amendments to the Municipal Code per Planning Commission Resolution No. 2025-14 (Attachment C) and find the actions exempt from CEQA, with the following modifications:

- Remove the proposed design standard for Non-Streamlined ADUs in Table 19.112.040(I)(a)

The Planning Commission's modification has been incorporated into the Draft Ordinance. The changes discussed in the *Analysis* section below, are incorporated in Attachment A and have been identified with strikethroughs and underlines (as appropriate) in Attachment D. Note that one notable amendment has been made to the draft ordinance after the Planning Commission's recommendation, which is further discussed below.

Analysis

A. Edits to address HCD comments

HCD's letter to the City included findings of non-compliance with current State laws as they relate to ADUs. These include conflicts with recently adopted State laws, statutory numbering, and conformance with various standards as it relates to California Government Code Sections 66310 – 66342.

1. Senate Bill (SB) 1211 & Assembly Bill (AB) 2533

Both State bills went into effect January 1, 2025, and were not in effect when the City last updated its ordinance and submitted it for HCD's review in February 2024. The City recognizes the need to update the ADU ordinance to reflect these new requirements. The following sections of Chapter 19.112 *Accessory Dwelling Units* were revised to address the passage of SB 1211 and AB 2533:

- a. SB 1211: Table 19.112.030B *Site Development Regulations for Streamlined Accessory Dwelling Units Associated with Existing Multi-Family Residential Uses* is modified to allow up to eight (8) detached units on existing multi-family lots. However, the number of ADUs allowable pursuant to this clause shall not exceed the number of existing units on the lot. On a lot with a proposed multifamily dwelling, not more than two detached ADUs.
- b. AB2533: Section 19.112.050 *Review Process* was updated to reflect changes in the Government Code related to the permit review thresholds for applications received by the City for unpermitted ADUs and JADUs, particularly those constructed prior to January 1, 2020, and setting additional restrictions for the City's review of ADU and JADU applications. For example, the City may not require correction of non-conforming zoning violations (as defined by state law) in conjunction with the approval of a permit for either an ADU or a JADU and may not require the correction of building standard violations or unpermitted structures which are not a threat to public health and safety or are not affected by the construction of a JADU, in conjunction with the approval of a permit for a JADU.

2. *Updated References to Government Code Sections and other minor corrections/clarifications*

Government Code Sections related to ADUs were updated by the state on March 25, 2024, after the City had last amended its ordinance and submitted it for HCD's review. All Government Code Section references in Chapters 19.08 and 19.112 have been updated.

In addition, minor grammatical errors and language from the Government Code have been added to the City's ordinance – including a requirement that an ADU cannot receive a certificate of occupancy before any principal unit on the property. Finally, an Enforcement section (Section 19.112.070) has been added to reference new requirements of state law which allow applicants to request deferral of enforcement of building code standards in some cases.

3. *Multi-Family ADU Development*

These standards apply to ADUs proposed on multifamily properties, whether existing or proposed.

- a. Applicable standards: State law defines two or more existing or proposed attached primary dwellings on the same lot, such as duplexes, as multifamily dwellings. However, in the City's Municipal Code, duplexes were treated in the same manner as single-family homes in Table 19.112.030A *Site Development Regulations for Streamlined Accessory Dwelling Units and Junior Accessory Dwelling Units Associated with Single-Family Residential Uses* since the City allowed a different mix of ADUs than allowed under state law at the time the City's ordinance was adopted in February 2024. However, because state law has been amended since then, references to "Duplexes" in Table 19.112.030A *Site Development Regulations for Streamlined Accessory Dwelling Units and Junior Accessory Dwelling Units Associated with Single-Family Residential Uses* have been removed. Therefore, ADUs proposed on all properties with existing and proposed duplexes will be subject to the multi-family standards of CMC 19.112.
- b. Size of ADUs on multi-family properties: In addition to the changes to Table 19.112.030B as they relate to SB 1211, ADUs on multifamily properties are subject to the standards specifically outlined in Government Code section 66323(a)(1)-(4). Additionally, Government Code section 66323, subdivision (b) states, "A local agency shall not impose any objective development or design standard that is not authorized by this section upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a)." Since Government Code section 66323(a)(1) through (4) do not identify a limit on ADU size, HCD has identified that the City's Municipal Code conflicts with state law. As a result, the limit of 1,200 square feet for detached ADUs for multi-family developments has been removed.

4. *Non-Streamlined ADUs*

Non-streamlined ADUs are defined as ADUs, whether attached and detached to a single-family residence, that are over 800 square feet. HCD identified changes to Table 19.112.040: *Site Development Regulations for Non-Streamlined Accessory Dwelling Units Created by New*

Construction and/or Additions to the Principal Dwelling Unit the following to address the following:

a. Parking

State law includes a new requirement that if an applicant submits an ADU for property in conjunction with a new single-family home, the City may not require parking if the site or the ADU satisfies the other criteria listed in Table 19.112.040(F)(1). This has been added to Table 19.112.040.

b. Structure Design

Section 19.112.040(I) currently requires that the ADU “structure design” “Should be compatible with the architectural style and materials of the principal structure.” HCD states that this language is not objective and, therefore, should be amended.

Table 19.112.040(I) has been modified to require the design of large, non-streamlined ADUs located in certain architecturally sensitive areas of town identified below to match the architectural style identified in the policy documents for these areas:

- Planned Development (P)
- Eichler (R1-e)
- Monta Vista Design Guidelines
- Residential Hillside (RHS)
- Single Family Residential District with Semi-Rural Characteristics (R1-a)

As mentioned above, the Planning Commission recommended removing the standard to require compatible design for ADUs greater than 800 sq. ft. in size and the principle dwelling unit in single-family zoned districts not specifically listed above. Staff feels the recommendation alleviates potential hardships on residents when designing their ADUs. These standards are not included in the draft ordinance (Attachment A).

B. Post Planning Commission Recommendation Revision for Housing Element Compliance/Duplex

The Housing Element adopted by the City Council on May 14, 2024, and determined to be in substantial compliance with state law by HCD on September 4, 2024, contains a strategy under Goal HE-1: *An adequate supply of residential units for all economic segments*, that states:

Strategy HE-1.3.8: Accessory Dwelling Units - a maximum of up to two 800 s.f. attached or detached ADUs, JADUs or conversion ADUs on all duplex zoned properties, which is in excess of the number of ADUs allowed under state law.

The draft ordinance approved by the Planning Commission on July 8, 2025 inadvertently removed the local allowance duplexes which allow for multiple streamlined ADUs on duplex zoned sights, which is beyond the requirements of state ADU law. Staff has included this standard in the draft ordinance under Table 19.112.030B: *Site Development Regulations for Streamlined Accessory Dwelling Units Associated with Existing Multi-Family Residential Uses* in order to ensure the city’s continued consistency with its Housing Element.

Sustainability Impact

No sustainability impact.

Fiscal Impact

No fiscal impact.

City Work Program (CWP) Item/Description

None

California Environmental Quality Act

This Ordinance is not a project under the requirements of the California Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to projects which have the potential of 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. In this circumstance, the amendments to the City Code would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment.

Prepared by: Gian Paolo Martire, Senior Planner

Reviewed by: Benjamin Fu, Director of Community Development
Floy Andrews, Interim City Attorney

Approved for Submission by: Tina Kapoor, Interim City Manager

Attachments:

- A. Draft Ordinance (clean)
- B. Letter from the CA Department of Housing and Community Development dated April 24, 2025. (Review of Cupertino's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, §§ 66310 - 66342))
- C. Planning Commission Resolution No. 2025-14
- D. Draft Ordinance (redline)