



## COMMUNITY DEVELOPMENT DEPARTMENT

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### CITY COUNCIL STAFF REPORT

Meeting: December 5, 2023

#### Subject

Proposed amendments to Municipal Code Chapter 19.12, Chapter 19.28 and Chapter 19.112 regarding Two-Story Permit and Accessory Dwelling Unit (ADU) laws. (Application No. MCA-2023-002; Applicant: City of Cupertino; Location: City-wide)

#### Recommended Action

That the City Council conduct the public hearing and conduct the first reading of Ordinance No. 23-\_\_\_\_\_ (Attachments A &B) to amend the following:

- a. Chapter 19.12, Administration, and
- b. Chapter 19.28 Single-Family Residential (R-1) Zones.
- c. Chapter 19.112, Accessory Dwelling Units (ADU)

#### Discussion

#### Background

##### *Two Story Permit Process*

The Community Development Department conducts periodic assessments of the City's development review processes and requirements. To ensure the most efficiency with current permit review processes that is consistent with the neighborhood development trends, staff proposes to remove the discretionary review of the Two-Story Permit. This Planning entitlement is required when a two-story addition or new two-story home is proposed in an R1 zoning district. Of the 768 Planning permit applications that have been received since November 2021, 98 were Two-Story Permit applications<sup>1</sup>, the most of any codified permitting<sup>2</sup> process. Eliminating this process has the potential to streamline the sometimes-cumbersome permitting process, saving residents time and money to upgrade

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<sup>1</sup> 39 Two-story permits have been received in 2023.

<sup>2</sup> The Planning Division took in 295 Preliminary Review applications during this time. However, this is not a codified process. Therefore, a Municipal Code amendment is not required to eliminate or modify it.

their homes. All applications for new two-story residences or additions to existing single-family residences will remain subject to the approval of a building permit, which will be reviewed by Planning staff for compliance with codified development standards, such as building setbacks and height, but the discretionary Two-Story Permit that precedes building permit approval will be eliminated. Minor Residential Permits<sup>3</sup>, as well as Residential Design Review Permits,<sup>4</sup> are proposed to remain.

### *Accessory Dwelling Units*

Chapter 19.112, *Accessory Dwelling Units* is intended to implement the State's Accessory Dwelling Unit (ADU) requirements, which furthers the City's own affordable housing goals by providing additional housing in all zoning districts where single-family homes and multi-family residences are allowed in a manner which minimizes adverse impacts. This Chapter has been modified several times since 2016 to keep current with the State of California's various Assembly and Senate Bills affecting ADU production.

Based on recent changes in state law, the City's ADU ordinance is out of date and in some instances unenforceable. Staff recommends adopting the following revisions to Chapter 19.112 to be in full compliance with state laws.

The amendments proposed have been identified with strikethroughs and underlines (as appropriate) in Attachment A.

### *Planning Commission Recommendation*

The Planning Commission convened at a regular scheduled hearing on November 14, 2023, to consider the proposed Municipal Code Amendments. The Planning Commission recommended (5-0) that City Council adopt the proposed amendments to the Municipal Code as indicated in Exhibit A Planning Commission Resolution No. 2023-

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<sup>3</sup> Minor Residential Permits are required for one-story single-family encroachment into a required rear yard setback, one-story extension of an existing side yard nonconforming building wall line, new or expanded second story deck or balcony with views into neighboring residential side or rear yards, and one or two-story additions or new homes on a sloped single-family residential lot with development on building pads/graded areas with actual slopes equal to or greater than 20% and with total floor area ratio of all structures on the lot greater than 35%.

<sup>4</sup> Residential Design Review is required when a second floor to first floor area ratio is greater than 66%, except any second to first floor ratio for development on building pads/graded areas with actual slopes equal to or greater than 20%; and/or where second story side yard setback(s) are less than 15 feet to any interior side property line.

17 (Attachment C), with the following modifications:

- Modify 19.28.110(A)(5) to read:  
Mechanical, heating or cooling equipment or associated piping installed on the roof shall be screened from the public right of way.
- Tables 19.112.030A, 19.112.030B, and 19.112.040 – Remove major transit stop and transit corridor thresholds for height and second story allowances.
- Modify Table 19.112.040 Row A to read:  
A maximum of three ADUs per single-family lot in any combination of the following, subject to the underlying zoning standards for lot coverage, floor area, open space, and setback:
  - a. No More than one attached ADU
  - b. No More than one conversion of existing space ADU (whether in principal dwelling unit or existing accessory structure),
  - c. No More than one detached ADU, or
  - d. No More than one Junior ADU

The Planning Commission's recommended modifications have been incorporated into the Draft Ordinance (Attachments A & B).

### Analysis

#### *Chapter 19.12, Administration*

The Two-Story permit is removed from Table 19.12.030, as well as describing any sort of site noticing requirements required for the Two-Story Permit and detailed in 19.12.110 Noticing.

#### *Chapter 19.28, Single-Family Residential (R-1) Zones*

The Two-Story permit is removed from Table 19.28.040. However, all prescriptive standards applied to Two-Story homes, including but not limited to, setbacks, Floor Area Ratio, height, privacy protection, and parking remain in effect. New two-story homes or expanded second story additions will be ministerially approved if Minor Residential Permits and/or Design Review Permits are not triggered.

In Section 19.28.110 *Single-Family Residential Design Guidelines and Principles*, many of the formerly discretionary design standards have been made mandatory for all single-family homes by, for instance, replacing the word "should" with the word "shall". Many of

these design standards have been implemented over the years as non-discretionary by staff. These include:

- Eliminating three-car wide curb cuts.
- Ensuring no more than fifty percent of the front elevation of a house shall consist of garage area, unless the lot is not wide enough to accommodate standard.
- Ensuring Usable Living area shall be closer to the street, while garages should be set back more.
- Ensuring Mechanical, heating, or cooling equipment or associated piping installed on the roof shall be screened from the public right of way.
  - Staff recommended exception would apply to homes in the Eichler (R1-e) zoned neighborhood (Fairgrove).
- Porches shall appear proportionately greater in width than in height.

Two-Story Permit Findings have been removed from 19.28.140 *Findings*.

#### *Chapter 19.112, Accessory Dwelling Units*

To reflect the amendments to Government Code section 65852.2, Chapter 19.112, *Accessory Dwelling Units*, is proposed to be updated to ensure consistency with State Law, as well as clarifying impact fees charged on Accessory Dwelling Units (ADU) greater than 750 square feet in floor area.

#### *Streamlined ADUs*

Streamlined ADUs are defined as accessory units within a single-family development that are attached or detached and under 800 square feet, or a conversion of space within the principal dwelling unit or accessory structures, and internal conversions and detached structures within multi-family developments. Updates include:

- A maximum of three ADUs per single-family lot in any combination of the following:
  - One attached ADU (under 800 square feet)
  - One conversion of existing space ADU (whether in principal dwelling unit or existing accessory structure),
  - One detached ADU (under 800 square feet), or
  - One Junior ADU
- Allowance for heights of 18 feet for a detached ADU and 25 feet if it's attached to a principal dwelling unit.
- Allowance for a second story on attached or detached ADUs.

#### *Non-Streamlined ADUs*

Non-Streamlined ADUs do not meet the requirements for approval under Government Code section 65852.2(e)(1). Updates to develop standards for non-streamlined ADUs include:

- A maximum of three ADUs per single-family lot in any combination of the following, subject to the underlying zoning standards for lot coverage, floor area, open space, and setback:
  - No more than one attached ADU
  - No more than one conversion of existing space ADU (whether in principal dwelling unit or existing accessory structure),
  - No more than one detached ADU, or
  - No more than one Junior ADU
- Allowance for heights of 18 feet for a detached ADU, and 25 feet if it's attached to a principal dwelling unit.
- Allowance for second story on attached or detached ADU.

Staff has further strengthened language in this section that would not allow more than three (3) ADUs as well as clarifying that streamlined ADU standards cannot be combined with non-streamlined standards to create more than three (3) ADUs on a single-family site.

#### Public Noticing & Outreach

The following noticing has been conducted for this project:

Notice of Public Hearing, Site Notice & Legal Ad	Agenda
▪ Display ad placed in newspaper <i>(at least 10 days prior to hearing)</i>	▪ Posted on the City's official notice bulletin board <i>(five days prior to hearing)</i> ▪ Posted on the City of Cupertino's Web site <i>(five days prior to hearing)</i>

#### Public Comments

Please refer to Attachment E for public comments.

#### Next Steps

If Council approves the introduction of the ordinance, a second reading would be scheduled for the next regular meeting of the City Council.

#### Fiscal Impacts

As Two-Story Permits are no longer required, the City will no longer receive the fee payments from those applications. However, the ordinance would result in savings of staff time required to process two-story applications.

### Sustainability Impacts

No Sustainability impacts.

### 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, or alternatively, is exempt from CEQA under CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

The proposed ordinance is further exempt from CEQA under Public Resources Code section 21080.17, which provides a statutory CEQA exemption to ADU ordinances adopted to implement Government Code section 65852.2.

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Benjamin Fu, Director of Community Development  
Approved for Submission by: Pamela Wu, City Manager

### **ATTACHMENTS**

- A. Draft Ordinance No. 23-\_\_\_\_\_(clean)
- B. Draft Ordinance No. 23-\_\_\_\_\_(redline)
- C. Planning Commission Resolution No. 2023-17
- D. Gov. Code Sections 65852.2 and 65852.22
- E. Public Comment