



COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA
95014-3255 TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333
CUPERTINO.ORG

PLANNING COMMISSION STAFF REPORT

Meeting: January 28, 2020

SUBJECT

Municipal Code Amendments to Chapter 19.112 - Accessory Dwelling Units, Chapter 19.20 - Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones and Chapter 19.08 – Definitions, for Clarifications, and Consistency with recently adopted State Bills (Application No. MCA-2018-04; Applicant: City of Cupertino; Location: City-wide)

RECOMMENDED ACTION

That the Planning Commission adopt the draft resolution (Attachment 1) recommending that the City Council adopt an ordinance to:

1. Find that the proposed actions are exempt from CEQA; and
2. Amend Chapter 19.112, Accessory Dwelling Units, Chapter 19.20, Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones, and Chapter 19.08 Definitions of the Municipal Code.

DISCUSSION

Background

The City has worked to incentivize the production of Accessory Dwelling Units (ADUs) under the Community Livability and Sustainable Infrastructure sections of the last two City Work Programs. This included, but was not limited to, fee reductions, and modifications to development standards in accordance with State Bills. Further, the City's Housing Element encourages the increased supply of these types of units to provide affordable housing opportunities that meet the City's Regional Housing Needs Allocation (RHNA) for moderate level housing. A proposed modification to Chapter 19.112 was proposed to Planning Commission on June 11, 2020 which would have allowed larger units by removing the 10% lot size restriction. The recommendation was denied 1-3-1 (Takahashi absent) since State Bills were anticipated to be passed later in the year which would have required the City to adopt further conforming amendments.

In October of 2019, the state adopted significant changes to Government Code section 65852.2 and related statutes in the 2019 legislative session aimed to further streamline permitting and construction of ADUs (See Attachment 2.) These went into effect on January 1, 2020. The primary new requirements are itemized in Table 1 *Summary of California Legislative Amendments Concerning Accessory Dwelling Units* below.

Table 1 Summary of California Legislative Amendments Concerning Accessory Dwelling Units

California Legislative Amendments	
State Bills	Primary requirements
AB 68 (Ting), AB 881 (Bloom), SB 13 (Wieckowski)	<ul style="list-style-type: none"> • Certain types of ADUs are considered “streamlined” so long as basic minimum requirements are met. <ul style="list-style-type: none"> ○ Within existing single-family residences, accessory structures, or certain multifamily spaces. ○ Certain detached ADUs on both single-family and multi-family lots. ○ Junior accessory dwelling units (JADUs), which must be within existing living space and smaller than 500 square feet, but can share a bathroom with the primary residence. • Processing time for streamlined units limited to 60 days and impact fees are either eliminated or reduced. • Short-term rentals prohibited in all streamlined units. • Cities may impose some additional development standards and requirements on all other, non-streamlined ADUs. However, state law limits cities’ ability to impose most setback and parking requirements, and constrains application of other standards relating to floor area ratios, site coverage, and lot size. • Not permitted to impose owner occupancy restrictions, except in JADUs, sun setting on January 1, 2025.
AB 587 (Friedman)	Cities must allow separate sale of ADUs, but only when certain stringent requirements are met. This provision is intended to facilitate separate conveyance of deed restricted affordable housing from a qualified non-profit corporation.
AB 670 (Friedman)	Homeowner’s associations can no longer prohibit or unreasonably restrict development of ADUs.
AB 671 (Friedman)	Requires Housing Elements to incentivize and promote the creation of affordable ADUs.

Under the amendments to Section 65852.2, the City’s existing ADU ordinance has been null and void as of January 1, 2020. The City proposes to adopt a “compliant” ordinance to enforce some city-specific development standards on some types of ADUs, where legally permitted. However, the new state laws significantly reduce the policy choices available to the city. As a result, the proposed draft ordinance is primarily based on the new regulations imposed by state law.

The amendments proposed have been identified with strikethroughs and underlines (as appropriate) in Attachment 3.

Analysis

Revisions

Chapter 19.08, Definitions

The definition of 'Accessory Dwelling Unit' was expanded to include Junior Accessory Dwelling Units. The definition of 'Single Family Residence' was clarified for consistency with the State's version, which could include townhomes as long as they are not air parcels or condominiums.

Chapter 19.20, Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones

The Accessory Dwelling Unit land use line in Table 19.20.020 *Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones* was amended to show it as a 'Permitted' use in the R1C, R-2, and R-3 zoning districts as long as the standards in Chapter 19.112, *Accessory Dwelling Units* are met.

Chapter 19.112, Accessory Dwelling Units

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

To reflect the amendments to Government Code section 65852.2, the ordinance has been delineated between streamlined and non-streamlined Accessory Dwelling Units.

Streamlined ADUs

Under the new state law, four types of streamlined ADUs are defined as follows in Table 2 *Types of Streamlined Accessory Dwelling Units*:

Table 2 Types of Streamlined Accessory Dwelling Units

Single Family	Multi-Family
<p><i>“Conversion of space within principal dwelling unit or accessory structures”</i></p> <ul style="list-style-type: none"> • 1 ADU or JADU • Lot with existing or proposed Single Family Residence • Residential or mixed-use zoning • Within existing or proposed space, or within an expansion of an Accessory Structure of up to 150 sq. ft., if expansion is to accommodate ingress or egress • Direct exterior access • Side and rear yard setbacks sufficient for fire safety • If JADU, meets requirements in Government Code 65852.22 	<p><i>“Conversions of interior space within multifamily dwelling structures”</i></p> <ul style="list-style-type: none"> • At least 1 ADU, and up to 25 percent of existing units in MF dwelling • Existing MF dwelling • ADU is within existing, non-livable space (i.e., storage rooms, boiler rooms, passageways, attics, basements, garages) • Complies with state building standards for dwellings.
<p><i>“New Construction Detached ADU ≤ 800 s.f.”</i></p> <ul style="list-style-type: none"> • 1 ADU • Lot with existing or proposed Single Family Residence • Detached • New construction • Meets 4 foot side and rear yard setbacks • Also allowed if primary residence already has a JADU • <u>IF CITY ADOPTS ORDINANCE:</u> <ul style="list-style-type: none"> ○ 800 sq. ft. max ○ 16 ft. height limit 	<p><i>“Detached, New Construction ADU”</i></p> <ul style="list-style-type: none"> • Up to 2 ADUs • Lot with existing MF dwelling • Detached • 16 ft. height limit • Meets 4 foot side and rear yard setbacks • Maximum size: 800 sf
<p><u>For all four categories:</u></p> <ul style="list-style-type: none"> • Must prohibit short-term rentals • City cannot require correction of non-conforming conditions • City cannot require parking • If on-site water system, City can require certain percolation tests. 	

Junior ADUs, mentioned in Table 1 above, must meet the requirements of Govt. Code Section 65852.22 which include the following:

- Limited to no more than 500 s.f. and contained entirely within the existing single family structure.
- Either the single-family residence or JADU must be owner-occupied, unless the owner is a governmental agency, land trust, or housing organization.
- Owner required to record a deed restriction, expressly enforceable against future purchasers, containing a prohibition on the sale of the JADU separate from the single-family residence, and a restriction on the size and attributes of the JADU to conform to State law.

Attached Accessory Dwelling Units are not streamlined. Processing time for streamlined units limited to 60 days and impact fees are either eliminated or reduced.

Non-Streamlined Accessory Dwelling Units

Attached ADUs of any size and detached ADUs over 800 sf are not addressed in the state's regulations as requiring streamlining and therefore, may be categorized as non-streamlined ADUs. The proposed ordinance imposes the City's development standards, including those for building heights, setbacks, site coverage, floor area ratio, and building envelopes where applicable and allowed per the Government Code. State law requires certain modifications, which are incorporated into the proposed ordinance:

- The City is not permitted to require any changes to setbacks on existing structures being converted into an ADU or when an existing structure is being replaced with a new ADU, as long as the replacement structure is constructed to the same dimensions and in the same location. Additionally, for new construction ADUs, the City is not permitted to impose a side or rear yard setback greater than 4 feet.
- The City cannot impose building envelope requirements, floor area ratios, or site coverage requirements that would reduce the size of the ADU below 16 feet in height or 800 square feet in gross floor area. Any ADU larger than 800 sf may be limited by the floor area, landscape coverage, and lot coverage requirements of the underlying zoning districts.
- The City cannot set a maximum size of less than 850 square feet (for studio or one-bedroom units) or 1,000 square feet (for two or more bedroom units). If desired, the City could set a greater maximum size, potentially up to 1,200 square feet.
- Unless otherwise limited, the City can require an additional parking space. Garage conversions, however, do not require replacements.

The proposed regulations incorporate all state regulations and propose to retain the size of non-streamlined ADUs at 850 sf for studio and one-bedroom units and 1,000 sf for two or more bedroom units. As mentioned above, the Planning Commission may make a recommendation to allow larger sizes of ADUs.

Impact Fees

State law prohibits cities from imposing impact fees on ADUs that are smaller than 750 square feet. For ADUs that are greater than 750 square feet, the fees must be proportional to the size of the primary unit. The proposed ordinance reflects this requirement.

ENVIRONMENTAL ASSESMENT

Public Resources Code Sec. 21080.17 provides a statutory CEQA exemption to ADU ordinances adopted to implement Government Code Sec. 65852.2.

PUBLIC NOTICING & OUTREACH

The following noticing has been conducted for this project:

Notice of Public Hearing, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none"> ▪ Legal ad placed in newspaper <i>(at least 10 days prior to hearing)</i> ▪ Display ad placed in newspaper <i>(at least 10 days prior to hearing)</i> 	<ul style="list-style-type: none"> ▪ 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

On January 10, 2020, the Housing Commission received a presentation regarding the proposed ordinance revision and recent changes in State Law and regional laws regarding the encouragement of ADU development. The Commission asked clarifying questions and incentivize parking and other incentives in exchange for affordable deed restrictions.

One comment has been received from the public and is attached (Attachment 4).

NEXT STEPS

The recommendations made by the Planning Commission will be forwarded to the City Council for consideration at the February 4, 2020 meeting.

Prepared by: Gian Paolo Martire, Senior Planner
Reviewed by: Piu Ghosh, Planning Manager
Approved by: Benjamin Fu, Director of Community Development

ATTACHMENTS

1. Draft Resolution
2. CA Govt. Code Sections 65852.2 and 65852.22
3. Redline document indicating changes in Chapters 19.112, 19.20, and 19.08
4. Public Comment