DATE: July 13, 2020

SUBJECT

Urgency ordinance approving zoning text amendments to Accessory Dwelling Unit (ADU) requirements in the Zoning Ordinance and other miscellaneous updates, including permitted ADU types allowed, side and rear setbacks, height for detached ADUs, and to comply with State law

RECOMMENDATION

Adopt, by a vote of at least six City Council Members, an urgency ordinance approving Zoning Ordinance amendments related to ADUs to comply with State law and other miscellaneous amendments.

STRATEGIC PLAN GUIDING PRINCIPLE

Housing

BACKGROUND

On February 10, 2020, the Planning Commission and City Council held a Joint Study Session to discuss new State law ADU requirements that went into effect January 1, 2020. At the study session, staff provided an overview of the new State law requirements and raised policy questions on areas where cities have discretion, including maximum ADU square footage, floor area and lot coverage applicability, and maximum height for detached ADUs. The study session also provided guidance on adoption procedures and how new regulations would apply to active ADU permits. Much of the discussion centered on State law and clarifying the City’s ability to regulate ADUs with a new City ordinance; however direction was also provided on the policy questions. There was no formal action at the meeting as it was a study session.

Public comments included concerns with new regulations limiting short-term rentals, the City’s ability to comply with State law, and the ADU building permit review process. Public comments also encouraged
the City to permit additional flexibility beyond the minimum State law requirements and to consider establishing clear measures to provide certainty to those currently considering an ADU.

At their Joint Study Session, the following themes emerged for adoption of the new City ordinance:

- Comply with new state ADU law,
- Simplify regulations, and
- Maintain the 2019 City ADU ordinance standards to the extent feasible.

A discussion on ADU ordinance adoption procedures and staff recommendations was tentatively scheduled for the March 23, 2020 City Council hearing, however, this item was postponed so that the City could focus on health and safety issues related to the Covid-19 pandemic.

A total of 44 applications have been received since January 1, 2020, when the new State regulations became effective and replaced the local ordinance. Thirty of those applications (or 68% of the applications submitted in 2020) were submitted since the Shelter-In-Place order was issued on March 16, 2020. This level of interest in developing ADUs underscores the need for a local ordinance to provide discretion where allowed by the State.

**ANALYSIS / DISCUSSION**

The following updates to the ADU ordinance are based on the themes and feedback received from the study session and State law requirements.

*Required State Law Standards* - State law restricts what cities may require for new ADU construction to reduce barriers and streamline development of new ADUs. The State requires cities to amend their ordinance to comply with the provisions of the new laws, or the local ADU ordinance is considered invalid. Analysis of the new state ADU law is included in the February 10, 2020 Joint Study Session staff report and a summary of required changes to the City’s ADU ordinance to comply with State law is provided below:

- Allow “streamlined” detached ADUs of at least 800 sq. ft. and 16 ft. in height with 4 ft. side and rear setbacks.
- Allow Junior ADUs (JADU) as an interior conversion of less than 500 sq. ft. within single-family homes. Owner occupancy and deed restriction required.
- Allow both a JADU and ADU on the same single-family lot.
- Allow ADUs in multifamily buildings as conversions of non-livable space. Owners may convert at least one unit or up to 25% of the multifamily units into attached ADUs plus two detached ADUs.
- Allow 4 foot side and rear yard setbacks for both attached and detached new ADU construction.
- Allow at least an 850 sq. ft. ADU for studios/1-bedroom and 1,000 sq. ft. for 2-bedrooms or more.
- Allow ADUs in all single-family, multifamily, and mixed-use zoning districts (including the Downtown Precise Plan).
- No parking requirement for new ADUs and no replacement parking for garage conversions.
- Owner occupancy requirement removed for standard ADUs, but required for JADUs.
- 60-day ministerial review timeline for permit review, not subject to appeal.
City Regulations - The study session policy discussions included areas within the City’s discretion, such as height, setbacks for accessory structures, square footage, lot coverage, short-term rentals, permit applicability, and adoption procedure. The City’s ordinance regulating ADUs no longer meets State law. Currently, all ADU review and approvals presently revert to State regulations. State law could allow streamlined ministerial review of a detached two story ADUs of up to 1,000 square feet at 28 feet tall at four feet from the side and rear property lines without adopting a local ADU ordinance. Below are staff’s analysis and recommendations based on direction received:

Height
State law requires cities to allow new ADUs of at least to 16 ft. in height, however cities may choose to allow taller ADUs. The City’s 2019 ADU Ordinance allowed second-story ADU above a detached garage of up to 20 ft. in height plus additional height for roof slope. At the study session, the direction was to maintain the height provisions from the 2019 ADU Ordinance. In an effort to provide an objective standard (required by State law) and to provide clarity for the public, staff recommends modifying this to a maximum height of 22 ft. This would meet the intent of the ordinance and factor in plate heights and roof pitches. Considering the 60-day ministerial timeline to evaluate ADUs, this modification would also simplify implementation. Similarly, since the State law no longer requires ADUs to be built over existing garages, staff has stricken this requirement; thereby allowing ADU’s on the lower and upper floors. The urgency ordinance would allow a maximum height of 22 feet and two stories for detached ADUs.

Square Footage
Based on direction to simplify regulations and to comply with existing regulations, staff proposes to exempt ADUs from floor area ratio requirements for single-family homes. Current floor area exemptions include lots less than 5,000 sq. ft., ground floor additions, and second story additions of 100 sq. ft. or less. State law requires floor area exemptions for ADUs of up to 800 sq. ft., whether the ADU is attached, detached, located on the ground floor, or an upper floor. Any application of floor area ratio would be limited to ADUs above 800 sq. ft on the second story. ADUs associated with duplexes or multifamily dwellings are not subject to a floor area ratio limitation. Because of the limited allowable application of floor area to ADUs by State Law and in order to simplify regulations, the urgency ordinance would exempt ADUs from all floor area requirements.

In addition, the study session provided direction to maintain the standards of the 2019 ADU Ordinance, which allowed additional square footage for ADA compliant ADUs and ADUs on lots of 10,000 sq. ft. or larger. In order to maintain consistency with the 2019 ADU Ordinance, the urgency ordinance would increase the allowable square footage for ADA compliant ADUs from 1,000 sq. ft. to 1,200 sq. ft. and would increase the allowable size of ADUs on large lots from 900 sq. ft. to 1,000.

Lot Coverage
State law dictates that cities cannot impose lot coverage, floor area, or open space standards, which would prohibit development of an 800 sq. ft. ADU (attached or detached). However, cities could impose a lot coverage requirement for ADUs larger than 800 sq. ft. Lot coverage would only be applicable to a narrow range of ADUs between 800 sq. ft. to 1,000 sq. ft. in most cases. To conform to the joint study session direction to simplify new regulations, the ADU urgency ordinance would exempt all ADUs from lot coverage requirements.
Setbacks – Accessory Structures
Accessory structures, which include pool cabanas, office, sheds, etc., currently require a 6 ft. side and rear setback. New State Law allows ADUs with a reduced side and rear setback of 4 ft. To simplify regulations and for consistency, the urgency ordinance would reduce setbacks to 4 ft. for all accessory structures.

Short-Term Rentals
Short-term rentals are defined as dwelling units or portions thereof that are rented for periods lasting less than 30 days, commonly offered through online hosting platforms such as Airbnb, VRBO, and HomeAway. New State law requires cities to prohibit short-term rentals of “streamlined” ADUs (up to 800 sq. ft. and up to 16 ft. tall with 4 ft. side and rear setbacks) and allows cities to prohibit short-term rentals of other ADUs.

Current short-term rental regulations, adopted in 2018, do not allow an ADU to be used exclusively as a short-term rental. ADUs may only be used as a short-term rental if the ADU is the primary residence of the short-term rental host, and is limited to 120 calendar days within a year if the host is not present (there is no limit if the host is present). Given the existing constraints on short-term rentals for ADUs, it is unlikely that a substantial number of ADUs are currently being used as legal short-term rentals.

While new State law prohibits short-term rentals of rentals of “streamlined” ADUs and allows cities to prohibit short-term rentals of other ADUs, there would be administrative and enforcement challenges verifying that short-term rentals corresponded with one of the limited types of eligible ADUs for legal operation. Because of these challenges, and in order to follow the study session direction to simplify new regulations, staff recommends prohibiting short-term rentals for any existing or new ADUs. Accordingly, the urgency ordinance would not allow the short-term rental of ADUs. However, the proposed ordinance would not prohibit the longer-term rental of ADUs, for periods of 30 days or more.

ADU Ownership
State Law provides cities the option to allow for the separate sale of ADUs if built by a qualified non-profit organization (Government Code 65852.26). The City’s subdivision ordinance requires at least 5 units for condominium maps and the current development standards are not optimized to allow smaller (“postage stamp”) lots with no direct access to City streets. Allowing sales of ADUs separate from the single-family home would require a significant overhaul of the City’s subdivision ordinance and in order to be consistent with current subdivision regulations, staff recommends not allowing the sale of ADUs by non-profit organizations at this time. This option can be re-evaluated when the subdivision ordinance is amended at a later date, such as in connection with allowing condominium developments of less than five units.

Effective Date
Staff recommends that the ADU urgency ordinance apply to building permit applications submitted after the Ordinance’s effective date. Such applications would be subject to standards such as height, setbacks and location. Any application submitted to the City prior to the effective date may be allowed to proceed under existing State law regulations. However, the urgency ordinance would apply short-term rental regulations to all ADUs, whether existing or proposed. In addition, the owner occupancy requirement would no longer apply to all standard ADUs, but would still be required for JADUs.
Neighbor Notification
At the study session, City Council asked staff to study whether neighbor notification for second story ADUs would be appropriate. Although neighbor notification is not prohibited by the new state law, other similar ministerial building permits do not require neighbor notification. Ministerial permits are reviewed against objective design standards and are not subject to appeal. Since review of ADU applications requires application of objective design standards, neighbor notification could create a false perception that neighbor input could change the design of a proposed structure that meets all development standards. Direct neighbor notification would require extensive administrative resources to implement and enforce. Currently, the City’s eTRAK-iT permit search portal and the Buildingeye website allow for transparency to view active building permits, receive notifications for new permit applications, and obtain general contact information for each permit. To simplify the process the City will continue to use the existing tools, including eTRAK-iT and Buildingeye, for permit tracking new ADUs in keeping with similar additions filed with a building permit. No additional neighbor notification will be provided beyond these tools.

Adoption Procedure
Staff received direction in the study session to pursue a standard ordinance adoption procedure, which requires Planning Commission, two separate City Council meetings, and a 30-day adoption period. Several months have passed since the study session and City Hall staff are working remotely to assist the public due to the Covid-19 pandemic. As noted above, the City has received 44 applications for ADUs since January 1, including 30 applications since the County Shelter-In-Place order was issued on March 16. This represents an upward trend in the number of ADU applications, and reinforces the need for a local ADU ordinance to be put into place as soon as possible. In addition, staff recommends an urgency ordinance in order to provide clarity on the ADU regulations to property owners, to ensure the ability of the City to exercise local discretion regarding the development of ADUs to the maximum extent allowed by State law, to help maximize the compatibility of ADUs with neighborhood character, and to restore privacy-related regulations adopted by the City Council in 2019, all as expeditiously as possible.

GENERAL PLAN CONFORMANCE

The proposed Zoning Amendments would further the City Housing Element’s policies and programs that promote a variety of housing types that are accessible to all income levels. Specific General Plan sections are cited below:

Program H-12: Second Units. Second units offer an additional source of affordable housing to homeowners and the community. Redwood City’s Zoning Ordinance establishes development standards for second units on lots in residential areas with an existing single-family use. The development of this important housing type should be facilitated, while ensuring compatibility with and limited impact on existing neighborhoods.

Program BE-1: Amend Zoning Ordinance and Map. Update the Zoning Ordinance and Zoning map to reflect the General Plan Land Use Map upon adoption of the General Plan. Create zoning districts as needed to implement the Land Use and Urban Form Chapter. Establish specific development standards for each newly created zoning district.
• Consider modifying second unit standards to facilitate increased density while preserving older structures

**FISCAL IMPACT**

None.

**ENVIRONMENTAL REVIEW**

This activity is not a project under California Environmental Quality Act (CEQA) as defined in CEQA Guidelines, section 15378, because it has no potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment.

The adoption of an ordinance to implement Government Code section 65852.2 (the Accessory Dwelling Unit Law) is exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Code section 21080.17. The related amendments not specifically related to the State law are considered exempt from CEQA as there is no possibility of a significant impact on the environment, per Section 15061(b)(3), because the proposed zoning amendments are minor changes that would not substantially increase the intensity or the use of the structures.

**PUBLIC NOTICE**

On July 2, 2020, more than ten days before to the hearing date, notice of the City Council hearing was posted on the City website, placed in the San Mateo Daily Journal, emailed to an interested parties list, and posted on www.redwoodcity.org/adu. Staff also announced the study session via the City’s electronic newsletter and via social media and notified participants from recent ADU workshops.

**ALTERNATIVES**

1. Short-term rentals:
   a. Allow the short-term rental of ADUs that are existing or for which a building permit was submitted prior to July 13, 2020, except those that are “streamlined” (pursuant to State law).
   b. Allow the short-term rental (less than 30 days) of all ADUs, whether existing or proposed, except those that are “streamlined” (pursuant to state law).
2. Neighbor notification. Require applicants for ADUs to notify neighbors as a prerequisite to a complete application.
3. Request different modifications to the ADU standards discussed above and adopt an urgency ordinance.
4. Direct staff to initiate a standard ordinance adoption procedure.
ATTACHMENTS

Attachment A – Urgency ordinance amending Articles 5, 6, 8, 9, 10, 33, 36, 37, 45 and 48 regarding Accessory Dwelling Unit requirements

LINKS

1. Planning Commission/City Council Joint Study Session Staff Report
2. San Mateo County - ADU Summary State Law Flyer

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