



DATE: March 14, 2017

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Discussion on State Law Regulating Accessory Dwelling Units within the City of Hayward

RECOMMENDATION

That the City Council reviews the staff report and provides policy direction and feedback to City staff regarding accessory dwelling units (ADUs).

BACKGROUND

The State of California, especially the San Francisco Bay Area, is currently in a severe housing crisis with a substantially higher demand for housing than exists. This directly impacts housing affordability, including homeowners and renters. Accessory dwelling units, or ADUs (also known as “second dwelling units”, “granny units”, and “in-law units”), provide housing opportunities in a flexible manner to address the unmet demand for affordable housing for the community including, but not limited to, students, young professionals, small families, disabled individuals, senior citizens, etc., while also simultaneously assisting homeowners to offset the cost of homeownership and maintenance by renting out accessory units as an additional source of revenue.

On September 27, 2016, Governor Brown signed Assembly Bill 2299 (Bloom) and Senate Bill 1069 (Wieckowski) into law (Attachment II), requiring local agencies to revise and ease their restrictions on ADUs. This new set of legislation changed development standards and regulations to provide greater flexibility associated with the construction of ADUs, including, but not limited to, location criteria, dwelling unit sizes, setbacks, parking requirements, garage conversions, fire sprinkler requirements, utility fees, etc.

On January 1, 2017, new State regulations related to ADUs became effective requiring cities, counties, and utility agencies to relax restrictions placed on the construction of ADUs. State law mandates that any existing local ordinance that fails to fully meet the requirements of State law shall be deemed null and void, unless and until the local agency adopts an ordinance

that complies with the provisions identified within the above-referenced laws. Given that the City’s local ordinance is not in compliance with the provisions of State law, it is null and void. Therefore, until Hayward develops a State law-compliant local ordinance, ADUs are subject to the standards of the State.

DISCUSSION

Currently, Planning Division staff is receiving a high volume of inquiries regarding the conversion, legalization, and construction of ADUs on single-family residential properties by homeowners, residents, architects, contractors, and developers. However, as of the writing of this staff report, no applications have been formally submitted for ADUs. Per State law, local agencies are required to review the ADU applications ministerially, without discretionary review or hearing, within 120 days after receiving the application. Staff plans to take feedback and direction from Council and develop a new set of regulations and present those recommendations via a new ordinance to the Planning Commission sometime in late spring/early summer. The Commission’s recommendations will then be forwarded to Council soon after.

Table 1 identifies some of the conflicts between the Hayward Municipal Code and recent State law requirements regarding Accessory Dwelling Units.

Table 1: COMPARISON BETWEEN THE HAYWARD MUNICIPAL CODE AND STATE LAW

	HAYWARD MUNICIPAL CODE (NULL AND VOID)	STATE LAW
REVIEW PROCESS:	Ministerial	Ministerial
SIZE:		
ATTACHED	Minimum: 400 Square-Feet Maximum: 640 Square-Feet	Shall not Exceed 50% of Existing Floor Area, with Maximum Floor Area of 1,200 Square-Feet
DETACHED	Not Allowed	Shall Not Exceed 1,200 Square-Feet
SETBACK REQUIREMENTS:	Previous City provisions only allowed attached ADUs, which were subject to the same setbacks for the primary residential structure.	No setback shall be required for an existing garage that is converted to an ADU, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

	HAYWARD MUNICIPAL CODE (NULL AND VOID)	STATE LAW
PARKING STANDARDS:	Additional parking not required for ADU; however, minimum requirement shall be provided for main residence.	Maximum one parking space per unit or bedroom may be required for ADU. Local jurisdictions shall be flexible in parking accommodations and configurations, such as tandem parking on an existing driveway. Parking shall be permitted in setback areas, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction. When a garage and the local agency requires that those parking spaces be replaced, the replacement spaces may be in any configuration, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or using mechanical automobile parking lifts.
OWNER OCCUPANCY RESTRICTIONS:	Owner Shall Reside in Primary Dwelling at Time of Building Permit Application	Local Agencies <u>May</u> Require Owner Occupancy in Primary Dwelling or in the ADU
UTILITY AND IMPACT FEES:	Requires Sewer Connection, Utility Fee, and Parkland Dedication In-Lieu Fee	For ADUs that are not contained in existing structures, local agencies may require new or separate utility connections, with fees related to costs for such service. ADUs within existing structures shall not be required to install new connections.
HEIGHT RESTRICTIONS:	Main Structures Shall Be Limited to 30'-0" in Height; Detached ADUs were not Permitted	Local Agencies May Determine Height Restriction for Detached and Attached ADUs.
FIRE SPRINKLERS:	Fire Sprinklers Required	Fire sprinklers shall not be required if sprinklers are not required for the main residence.

Policy Direction

While State law limits local agencies from enacting restrictions that are excessively burdensome on the construction of ADUs, cities do, however, maintain discretion over several development standards and provisions, which include:

- owner occupancy requirements;
- location criteria for ADUs;
- replacement parking configuration;
- number of bedrooms;
- quantity of ADUs per lot;
- maximum unit sizes, and
- design standards.

Below is an analysis, policy considerations and staff recommendations for Council discussion. Staff requests direction and feedback from Council to determine which of these standards should reflect the utmost flexibility and which provisions should require stricter regulations prior to developing a revised ordinance for Council consideration.

- Owner Occupancy Requirement: As identified in Table 1 above, State law continues to allow local jurisdictions to determine whether the legal owner of a property shall be required to reside in either the primary residence or the ADU during the occupation of the ADU.
 - Recommendation: Staff recommends requiring the legal owner of the property to occupy either the main residential unit or ADU to help ensure properties are properly maintained and managed, to assist homeowners in affording their properties, and to ensure that neither unit is being utilized for short-term rentals less than 30 days as permitted by State law.
- Location Criteria: State law allows local jurisdictions discretion to establish criteria as to where ADUs may be permitted in the City based on adequacy of water and sewer systems, and the impact on traffic flow and public safety.
 - Recommendation: Staff recommends allowing ADUs in any single-family or multi-family zone, provided there is an existing lawfully-constructed single-family residence located on the property consistent with State law.
- Replacement Parking for Primary Residence: State law requires that if the required off-street parking facility (garage, carport, or other parking structure) for the primary residence is converted into an ADU, that local agencies allow for replacement parking to be in any configuration on the same lot as the ADU including, but not limited to, as covered spaces, uncovered spaces, tandem spaces, or using mechanical automobile parking lifts. This provision would allow replacement parking to be located within the required front, side, street-side, or rear setback areas inconsistent with the parking standards within the Hayward Municipal Code.

- Recommendation: Staff recommends allowing replacement parking as covered, uncovered, or in a tandem parking configuration on the property, but shall be limited to improved paved surfaces, prohibiting parking on landscaped areas. However, per the Hayward Municipal Code, the combined driveway and paving surface area in the front yard shall not exceed a maximum of 50-percent of the required front yard area, unless otherwise approved by the Planning Director. The remaining 50-percent shall be landscaped.
- Parking Requirement for ADU: As identified above, State law states that parking requirements for ADUs shall not exceed one parking space per unit or per bedroom. However, local agencies cannot require any ADU parking in the following instances: (a) the ADU is located within one-half mile of public transit; (b) the ADU is located within an architecturally and historically significant historic district; (c) the ADU is part of the existing primary residence or an existing accessory structure; (d) when on-street parking permits are required but not offered to the occupant of the accessory dwelling unit; and (e) when there is a car share vehicle located within one block of the accessory dwelling unit.
 - Recommendation: Staff recommends that ADUs not meeting criteria above be required to have one parking space per bedroom, which may be uncovered, covered, or in a tandem configuration on same lot the ADU is located and on an improved paved surface. Alternatively, Council may wish to not require parking for ADUs consisting of one bedroom or less, which would allow more opportunities for ADUs.
- Limit on Number of Bedrooms: Past City provisions limited the number of bedrooms to a maximum of one. Currently, State law still allows the City to maintain discretion over the maximum number of bedrooms in an ADU, but limits required parking spaces to one space per unit or bedroom.
 - Recommendation: Staff recommends that the maximum number of bedrooms in an ADU be limited to two bedrooms.
- Limit on Quantity of ADUs per Lot: Staff recommends that on any one parcel of land, there shall not be more than one ADU, attached or detached, permitted on a property.
- Maximum Unit Sizes: As identified in Table 1 above, State law mandates that detached ADUs shall not exceed 1,200 square-feet of floor space and attached ADUs shall not exceed 50 percent of the existing living area of the main residence, with a maximum increase in floor area of 1,200 square-feet.
 - Recommendation: Staff recommends that ADUs, attached or detached, not exceed 50 percent of the existing habitable floor area of the main residential structure or 1,200 square-feet, whichever is less, to maintain that all ADUs are physically and aesthetically accessory to the primary residence.

- **Height Restrictions:** State law allows ADUs to be constructed on top of existing garages, provided the ADU observes a minimum five-foot setback from the side and rear property lines and all applicable Building and Fire codes are met.
 - **Recommendation:** Staff recommends the following with respect to height and ADUs, in compliance with State law requirements:
 - **Attached to Primary Residence:** ADUs attached to the primary residential structure, including atop of existing attached garages, shall be subject to the development standards including height, setbacks, lot coverage, and design standards for the underlying zoning district.
 - **Detached ADUs:** ADUs detached from the main residential structure shall be subject to the development standards and provisions identified in Chapter 10, Article 1, Zoning Ordinance of the Hayward Municipal Code regarding detached accessory structures, which limits the height to maximum of 14 feet or one story.
 - **ADUs Atop of Existing Detached Garages:** As identified above, State law allows ADUs to be constructed on top of existing garages (attached and detached) provided they maintain a minimum five-foot setback from the rear and side property lines. Given the difficulty in complying with a 14-foot height limit and adding an ADU atop a garage, staff will further study this standard to ensure that proper provisions are developed to comply with the law and mitigate as much as possible issues of privacy associated with a second-story component on an existing detached garage.

Proposed Additional State Legislation

In February of 2017, [Assembly Bill 494 \(Bloom\)](#) and [Senate Bill 229 \(Wieckowski\)](#) were introduced with the intent to amend Section 65852.2 of the Government Code to provide clarification on recent State laws, AB 2299 and SB 1069, regarding ADU parking requirements, definitions, utility connection fees, and maximum unit sizes. Assembly Bill 494 defines tandem parking, and further clarifies that when garages, carports, and other similar parking structures are converted into ADUs that provided off-street parking for the main residence, the replacement parking may be located on the lot in any configuration. Additionally, AB 494 makes clear that accessory structures shall include studios, pool houses, or similar structures with respect to the conversion of such structures into ADUs, provided that the structure is located within a single-family zone with an existing single-family residence on the lot. Senate Bill 229 prohibits a special district from considering an ADU a new residential use for the purposes of calculating connection fees or capacity charges for utilities, and clarifies that local agencies including cities, counties, and utility districts, may allow a more permissive maximum floor area for attached and detached ADUs.

ECONOMIC AND FISCAL IMPACT

This discussion of ADUs will not have an economic or fiscal impact on the City.

PUBLIC NOTICE

On Friday, March 3, 2017, a Notice of Public Hearing legal ad was published in *The Daily Review* newspaper regarding the Accessory Dwelling Unit(s) agenda item. Additionally, a notice was sent to interested parties via electronic mail.

NEXT STEPS

Following feedback received from the City Council regarding ADUs, staff will undertake a study and analysis of the State laws, effective and upcoming, to determine which provisions and development standards are compatible and consistent with Council direction, community interests, concerns, applicable neighborhood plans, and the Hayward 2040 General Plan. Outreach will allow staff to obtain sufficient data and interest to draft an ADU Ordinance that is consistent with the aforementioned policies and documents, while remaining in compliance with established statutes. The Hayward Empathy Action Response Team (HEART) will be responsible for communicating with the public, creating surveys, gathering data, and generating reports to determine stakeholder concerns and feedback that can be used to develop an ordinance for Planning Commission and City Council review prior to the end of the fiscal year.

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