

DATE: July 27, 2017

TO: Planning Commission

FROM: Sara Buizer, Planning Manager

SUBJECT: Zoning Text Amendment to Update Regulations Related to Accessory Dwelling Units and Establish a New Review Fee Associated with Amendments to Chapter 10, Planning, Zoning and Subdivisions, of the Hayward Municipal Code (Zoning Text Amendment Application No. 201701087); City of Hayward (Applicant).

RECOMMENDATION

That the Planning Commission recommend to the City Council adoption of the Zoning Text Amendment to Chapter 10, Planning, Zoning, and Subdivisions, of the Hayward Municipal Code to update regulations related to the construction of Accessory Dwelling Units and to establish a new review fee in the City's Master Fee Schedule.

SUMMARY

City staff is proposing amendments to Chapter 10, Planning, Zoning, Subdivisions, of the Hayward Municipal Code (HMC) to be consistent with recently effective State legislation regarding the construction of Accessory Dwelling Units (ADUs). Additionally, City staff is proposing an amendment and update to the City's Master Fee Schedule for Zoning Conformance Permits to cover staff time review for ensuring all proposed ADUs comply with the proposed regulations.

BACKGROUND

The State of California, especially the San Francisco Bay Area, is currently experiencing a severe housing crisis with a substantially higher demand for housing than exists. This directly impacts housing affordability, including homeowners and renters alike. ADUs, commonly referred to as in-law units, granny flats, second dwellings, and/or cottages, assist to 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, extended family, 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 III), 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, minimum setbacks, parking

requirements, owner occupancy, 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.

Current Regulations. Given that the City's current local ordinance for the construction of ADUs is not in compliance with the provisions of State law, it is deemed null and void pursuant to Section 65852.2 of the Government Code. Therefore, until the City of Hayward develops and adopts a local ordinance for ADUs consistent with the provisions of State law, ADUs are subject to the standards of the State.

Previously, the regulations for ADUs (now void) were located within the Minimum Design and Performance Standards section within the underlying residential zoning district, as well as within specified transect zones within the Mission Boulevard Corridor and South Hayward BART Form Based Code areas. In order to maintain consistency between development standards and various permitted zoning districts for ADUs, a new section within the Hayward Zoning Ordinance will be codified for consolidation purposes.

City Council Work Session. On March 14, 2017, the City Council held a Work Session ([Staff Report](#) and [Minutes](#)) to examine recent State legislation which allows greater flexibility in development standards to promote the creation of ADUs, review staffs' recommendations on proposed regulations consistent with State law, and discuss grey areas within State law that allow for local discretion on certain standards and provisions. Key issues that were identified between City Council and staff were the following:

- a) Conflict between the authority and provisions of State legislation and existing Conditions, Covenants, and Restrictions (CC&Rs) enforced by Homeowners Associations, as applicable;
- b) Additional on-street parking and traffic impacts in already congested residential neighborhoods within the community due to permitted garage conversions and relaxed parking requirements imposed by the State;
- c) Develop a notification method to adjacent property owners and/or tenants of proposed ADUs to be constructed nearby; and
- d) Prohibition of ADUs to be used as short-term rentals (e.g. AirBNB, VRBO, Homeaway, etc.) instead of long-term (greater than 30-day rental period) housing stock.

DISCUSSION

Staff recommends that Chapter 10 of the HMC be amended to include Section 10-1.2740 for the proposed regulations and development standards for ADUs within the City. The proposed

amendments are included in Attachment II, with deletions shown in ~~striketrough~~ and new text shown in underlined red text. The items below highlight the most significant changes from the existing regulations to the HMC.

Location Criteria. To ensure that all proposed ADUs are consistent with the goals and policies of the *Hayward 2040 General Plan* and the intent of appropriate zoning districts, City staff proposes permitting the construction of ADUs in the following zoning districts as accessory, secondary uses: Agricultural (A), Single-Family Residential (RS), Residential Nature Preserve (RNP), Medium-Density Residential (RM), and the Suburban (T3) transect zone within the Mission Boulevard Corridor Form Based Code area provided the property contains a singular existing, lawfully constructed single-family residence.

Additionally, based on the flexible development configurations granted for Planned Development (PD) rezones, staff concludes that ADUs would not be permitted in already developed PD zones due to conflicting CC&Rs, minimal parking availability, setbacks, and architectural consistency within the development. However, ADUs will be permitted to be constructed into new single-family residential PD projects at the time of development as an amenity to the development to encourage homeownership and flexible design, as well as provide additional housing stock.

Design and Development Standards for All ADUs. All proposed ADUs, either attached, detached, or internal, shall conform to the design and development standards; however, ADUs proposed to be within an existing accessory structure (workshop, pool house, garage, etc.) shall also be subject to the additional provisions of Section 10-1.2745 of the HMC. New language has been proposed to limit the size of all proposed ADUs to a maximum of 50% of the existing habitable floor area of the primary residence, or 1,200 square-feet whichever is less. Habitable floor area shall not include patio covers, porches, garages, balconies, decks, etc. to maintain an ADU that is subordinate and proportional to the primary dwelling. In addition, regardless of ADU type, the unit shall not exceed two bedrooms and there shall be no more than one ADU per parcel.

Parking Requirements. The most significant deviation from the previous provisions are in relation to parking. State law provides immense flexibility with required parking for ADUs, with a maximum standard of one parking space per unit or bedroom. Previous HMC standards did not require any additional parking for ADUs, provided the primary structure maintained their parking requirement. As such, the proposed regulations will require one additional off-street parking space for a studio/one-bedroom unit, and two additional off-street parking spaces for a two-bedroom unit. The parking spaces will be permitted in a flexible configuration including covered, uncovered, and tandem on the parcel in which the ADU is proposed, including parking within the required front yard setback. In the event the parking requirement for the primary residence is converted (i.e. enclosed garage) for the purposes of creating an ADU, then replacement parking shall be required in the same amount and located on-site, but can also be provided in the flexible configurations listed above.

However, pursuant to State law, parking requirements shall be exempt if it meets the following standards: a) the unit is located within one-mile of public transit and bus stations, b)

the unit is located within an architecturally and historically significant historic district, c) the unit is located within the existing building envelope of the primary residence or accessory structure, and d) where there is designated car-share vehicle parking within one block of the unit. Staff will evaluate each ADU on a case-by-case basis to determine whether the listed exemptions would be applicable.

Owner Occupancy and Deed Restriction. The proposed regulations will require that the legal property owner of the parcel shall be required to reside in either the accessory dwelling unit or the principal residence located on the property. At no time, shall the property owner rent out the principal residence and the accessory dwelling unit separately while the property owner resides elsewhere. This restriction will further the State objectives of creating additional permanent housing, while avoiding the deleterious effects of the conversion of housing stock into commercial enterprises. As such, the accessory dwelling unit and the principal residence shall not be permitted to be used as short-term rentals, with lease periods less than 30 days. In addition, the property owner shall be required to submit proof of a recorded deed restriction with the County of Alameda County Clerk's Office for current and subsequent property owners acknowledging and binding conformance with the proposed regulations.

Permits Required. Under the proposed regulations, ADUs would be subject to the review and approval of a Zoning Conformance Permit (ZCP) prior to the submission of construction level drawings to the Building Division. The ZCP application is a non-discretionary, ministerial Planning permit that will be reviewed administratively and shall be either disapproved or approved within 120 days of the submission of a complete application per State law. Staff believes that the ZCP process is warranted to ensure all proposed ADUs comply with the underlying zoning district and adopted design and development standards. Further, a ZCP will assist in maintaining a current record of ADUs as rentable housing stock for the City's Regional Housing Needs Allocation (RHNA), and to ensure ongoing compliance with the City's Rental Inspection Program monitored by the Code Enforcement Division.

However, a discretionary Site Plan Review application will be required for all accessory dwelling units to be proposed atop of existing, legally constructed detached garages that exceed the maximum height limitations for detached, accessory structures. To address concerns of privacy impacts on adjacent properties posed by minimal setback requirements permitted by the State, the Site Plan Review process will allow staff to notice proposed projects and determine whether any mitigation measures can be incorporated into two-story ADUs such as design features, landscaping buffers, or increased setbacks. In addition, this will also allow staff to ensure that the proposed detached, two story ADU remains architecturally subordinate and accessory to the primary residential structure.

Text Amendment Findings for Approval. In order for the Zoning Text Amendment to be adopted, the following findings shall be made by the City Council:

- a) *Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward;*

The proposed text amendment will promote the public health, safety, convenience, and general welfare of the residents of Hayward by providing the flexibility to create a diverse type of housing options for students, young professionals, small families, disabled individuals, extended families, senior citizens, and residents to live, work, study, and play. Additionally, the State Legislature finds, as substantial proof, that ADUs are a valuable form of rental housing stock in California, homeowners benefit from the creation of ADUs as added income, ADUs offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character, and California is in a severe housing crisis. The owner occupancy deed restriction will also ensure that all ADUs are compatible with existing single-family neighborhoods they are to be located in. It will maintain accountability with the property owner to verify that all ADU rentals are compliant with health, safety, general welfare, and housing conditions for prospective tenants.

b) *The proposed change is in conformance with all applicable, officially adopted policies and plans;*

The proposed text amendment will be consistent with the following goals, policies, and objectives of the *Hayward 2040 General Plan* and Complete Communities Strategic Plan:

- Infill Development in Neighborhood Land Use Policy LU-3.7: The City shall protect the pattern and character of existing neighborhoods by requiring new infill developments to have complimentary building forms and site features.
- Diversity of Housing Types Policy H-3.1: The City shall implement land use policies that allow for a range of residential densities and housing types, prices, ownership, and size.
- Flexible Development Standards Policy H-4.1: The City shall review and adjust as appropriate residential development standards, regulations, ordinances, departmental processing procedures, and residential fees that are determined to be a constraint on the development of housing.
- Complete Communities Strategic Plan Goal 2: Provide a mix of housing stock for all Hayward residents and community members, including the expansion of affordable housing opportunities and resources.

c) *Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified; and*

No properties are proposed to be reclassified with the proposed text amendment. The zoning districts in which ADUs will be permitted within the proposed regulations will remain consistent with the previous voided regulations. Therefore, streets and public facilities existing and proposed will be adequate to serve the potential development of ADUs as accessory, secondary uses.

d) *All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.*

No properties are proposed to be reclassified with the proposed text amendment. A beneficial effect will be achieved with the proposed revision to the HMC, as it will allow for more flexible development standards than previously existed and spur greater development of ADUs with infill development consistent with the existing neighborhood character and scale.

ENVIRONMENTAL REVIEW

The proposed text amendment is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15282(h) of the Public Resources Code that exempts the adoption of an ordinance regarding accessory dwelling units in single-family and multi-family zones by cities and counties that implement the provisions of Section 65852.2 of the California Government Code. Therefore, no environmental review is necessary.

ECONOMIC IMPACT

The proposed regulations for ADUs will have a positive economic impact in the community as the updated regulations will provide greater flexibility to spur the development of additional rental stock in the City. Such relaxed development standards will assist in removing constraints on housing development in accordance with the intent of State law which can help address housing needs in the City by expediting construction, and lowering development costs.

FISCAL IMPACT

The ZCP permit fee for ADUs is proposed to be a \$328 flat fee, which is the equivalent of two hours of planning staff time (Attachment IV). Similar to other ministerial permits, the proposed flat fee is based on the average amount of time spent processing an ADU request during the application in-take, plan review, verification of code compliance, issuance of the Zoning Conformance Permit, and the post-permit records management. Based on the existing fee structure of other ministerial permits issued by the City, staff believes the new fee amount for ADU's is appropriate, reasonable and necessary for full cost recovery and administrative efficiency.

PUBLIC CONTACT

In April 2017, City staff implemented the Hayward Empathy Action Response Team (HEART) and visited nine different residential neighborhoods within City boundaries to gather a survey sample (in-person and electronically) from the community on the potential benefits and impacts associated with the new State legislation. Approximately seventy-five responses were collected identifying the interest, obstacles, motivators, and impacts from the potential construction of ADUs in their neighborhoods. Survey responses were collected, compiled, and incorporated into the creation of the proposed ADU regulations. In summary, the survey showed that while the public would support the construction of an ADU for additional income and/or for extended family, the biggest obstacle was project cost and unfamiliarity with the City's permitting process for ADUs. Additionally, residents identified on- and off-street

parking as their most significant concern. As such, staff has incorporated and is recommending a minimum parking requirement within the proposed regulations, which are consistent with the provisions and intent of State law.

On July 14, 2017, notice of the public hearing related to the proposed Zoning Text Amendment was published in The Daily Review, and around that date, notices were posted at City Hall and the Hayward Public Library for review by the general public. In addition, the notice and agenda was sent to an interested parties list via electronic mail.

NEXT STEPS

City staff will incorporate the input from the Planning Commission and forward the Commission's recommendation to the City Council for a public hearing tentatively scheduled for October 17, 2017. The City Council meeting will be noticed in compliance with the procedures set forth in Section 66016 of the California Government Code for adopting and levying a new fee.

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