



DATE: October 30, 2017

TO: Mayor and City Council

FROM: Interim Development Services Director

SUBJECT Zoning Text Amendment to Update Regulations Related to Accessory Dwelling Units and Establish a New Fee Associated with Amendment 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 City Council adopts an Ordinance (Attachment II) and Resolutions (Attachment III and IV) for the Zoning Text Amendment to Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code to update regulations for 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 enacted 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 currently 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. These units typically provide housing for, but is 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 V), 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, 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.

On October 8, 2017, Governor Brown signed two additional pieces of legislation related to ADUs, Assembly 494 (Bloom) and Senate Bill 229 (Wieckowski), into law (Attachment VI) with clarifying language to the previously adopted amendments to Section 65852.2 of the Government Code referenced above. These two pieces of legislation provided defined instances and locations where ADUs shall be permitted for internal conversions of existing square-footage and revised to what extent a local agency may impose parking requirements.

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. 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 that allows greater flexibility in development standards to promote the creation of ADUs, to review staff's recommendations on proposed regulations consistent with State law, and to 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 included:

- 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) Need to 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.

Planning Commission Public Hearing. On July 27, 2017, the Planning Commission held a public hearing ([Staff Report](#) and [Minutes](#)) to review staff's recommendations on the proposed regulations including, but not limited to ADUs within the City. Staff presented a synopsis of the proposed most significant changes from the City's current ADU standards (listed below) and received comments, questions, and suggestions from the commission and the general public. The Planning Commission voted 4-0-0 (two absent) to recommend approval of the Zoning Text Amendment to the HMC and to establish a new review fee for ADUs to the City Council.

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, Exhibit "A" – Land Use Ordinance, 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 attached, detached, and internal ADUs in the following zoning districts as accessory, secondary uses: Agricultural (A), Single-Family Residential (RS), Residential Nature Preserve (RNP), Medium-Density Residential (RM), Residential Office (RO), 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.

Staff previously concluded that in consideration of the flexible development configurations granted for Planned Development (PD) rezones, 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, based on recent State legislation signed October 8, 2017, State law now requires that internal ADUs (i.e. conversion or repurpose of existing square-footage) be permitted on sites with existing or proposed single-family dwellings in any zoning district which allows single-family residences by-right regardless of whether they are located in the permitted zoning districts identified above. As such, the following zoning districts would be limited to the internal conversion or repurpose of existing square-footage or structures to create an ADU: Planned Development (PD), Central-City Commercial (CC-C), Central-City Residential (CC-R), Central-City Plaza (CC-P), and Airport-Terminal Medium Density Residential (AT-RM), provided the ADU maintains compliance with the remaining provisions of the proposed Ordinance.

Notwithstanding recent clarifications to State law, detached and attached ADUs will be permitted to be constructed within new single-family residential PD projects provided they are identified within the original development proposal of the PD to encourage homeownership, flexible design, a variety of housing types, and to provide additional housing stock. However, consistent with State law, existing PD developments of single-family dwellings will be limited exclusively to internal conversions of square-footage to create an ADU with respect to the CC&Rs of the appropriate Homeowners Association(s).

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 in 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 to maintain an ADU that is subordinate and proportional to the primary dwelling. Habitable floor area shall not include patio covers, porches, garages, balconies, decks, etc. 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 previous HMC provisions are in relation to parking. State law provides immense flexibility with respect to required parking for ADUs, especially with Assembly Bill 494 and Senate Bill 229 which now mandate a new maximum standard of one parking space per unit or bedroom, *whichever is less*. Previous HMC standards did not require any additional parking for ADUs, provided the primary structure maintained their parking requirement of a two-car garage. As such, amended per recent legislation, the proposed ordinance will require only one (1) off-street parking space for ADUs, regardless of bedroom count. 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 on-site, but may also be provided in the flexible configurations listed above.

In any case, parking requirements for ADUs shall be exempt if it meets the following standards: a) the unit is located within one-half 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 parking 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 ADU or the principal residence located on the property similar to the City's previous standards. At no time, shall the property owner rent out the principal residence and the ADU separately while the property owner resides elsewhere. As such, the ADU 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 will be required to submit proof of a recorded deed restriction with the County of Alameda Clerk's Office for current and subsequent property owners as a disclosure acknowledging and binding conformance with the proposed regulations. This restriction will further the State objectives of creating additional permanent housing, while avoiding negative impacts of absentee landlords and the deleterious effects of the conversion of housing stock into commercial enterprises (AirBnB, short-term rentals, etc.). Rather, the deed restriction will be a mechanism to have current and prospective homeowners maintain investment in the property and the community while also increasing rental housing stock for all demographics and populations including senior citizens, expanding families, young professionals, etc.

Utility Impact Fees. ADUs, which can be as large as 1,200 square-feet, can, and in many cases, will, have impacts on water and sewer systems similar to those of a townhouse or a dwelling unit within a multi-family development. Before the current state law regulating utility connections for ADUs, City regulations required all proposed ADUs, either attached, detached, or internal, to have a separate water connection and water meter, and subject to payment of facilities fees and installation fees for the new water connection. Additionally, while the ADU would be allowed to connect to the property's existing sanitary sewer lateral, it would be subject to a sewer connection fee. Separate utility connections allow for the tenants in each dwelling unit to be responsible for their own water and sewer service costs as well as promote water conservation by providing tenants water consumption information for their own household, allowing them to make conscientious decisions about their water usage.

Pursuant to recently enacted State law, proposed ADUs constructed within the building envelope of the existing principal residence, garage, or accessory structure cannot be required to install a new or separate utility connection between the accessory dwelling unit and the utility nor may the local agency impose a related connection fee or capacity charge. These types of ADUs would be treated like a typical residential addition, with review by Utilities and Environmental Services staff to determine if the existing water meter is sufficiently sized to accommodate the additional water fixtures, such as a kitchen sink, bathroom sink, shower, etc. proposed within the ADU. If the additional water fixtures proposed would require that the existing water meter be upsized, a facilities fee (or connection fee as it is commonly referred)

equal to the difference between facilities fees for the larger meter and the existing smaller meter, and a water meter installation fee, would be due. The most common example of this is a property that has an existing 5/8" water meter and with the addition of new water fixtures, requires a 3/4" water meter. The current cost for this would be \$3,446, which includes a facilities fee for a 3/4" water meter of \$9,730, less a facilities fee for the existing 5/8" water meter of \$6,484, plus an installation fee for the new 3/4" water meter of \$200.

For proposed ADUs constructed outside the building envelope of the existing principal residence, garage, or accessory structure, State law allows for a local agency to require a separate utility connection between the accessory dwelling unit and the utility, and to assess a connection fee or capacity charge proportionate to the burden of the proposed accessory dwelling unit upon the water or sewer system. These types of ADUs will be required to install a separate water connection and water meter and will be subject to facilities fees, installation fees, and sewer connection fees. Currently, the utilities fees for a new water connection for an ADU would be \$9,984, which includes a facilities fee of \$6,484 for a 5/8" water meter and a \$3,500 installation fee for equipment, materials, and City labor costs for the installation of the new water service line in the street and water meter. The proposed sewer connection fee for an ADU is equivalent to the fee for a dwelling unit within a multi-family development, which is \$6,853. This is less than what is the sewer connection for single family homes, which is currently \$7,700 per dwelling unit.

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 by staff and shall be either disapproved or approved within 120 days of the submission of a complete application per State law; however, it is anticipated that review of a ZCP for an ADU will not exceed a week based on the project scope of work. 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 Housing 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.

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 housing stock. 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.

SUSTAINABILITY FEATURES

The adoption of the Zoning Text Amendment to relax restrictions and standards placed on the development of ADUs will allow for appropriate infill development in already established and existing residential neighborhoods. As such, with the increased development of ADUs, additional housing stock will be generated for the local and regional area to assist in alleviating the housing crisis in the Bay Area as mentioned earlier in this report and also potentially easing commute distances and times. Additionally, the construction of ADUs will allow for homeowners to make use of underutilized/excess land and/or square-footage on their property to create an additional dwelling unit and take advantage of existing utility infrastructure, such as water and sewer.

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 interests, 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 concerns. 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 October 6, 2017, notice of the public hearing related to the proposed Zoning Text Amendment and adjustment to the City's Master Fee Schedule 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.

On October 7, 2017, Planning Division staff received one public comment from a Hayward property owner stating opposition to the owner occupancy requirement. However, staff finds that the owner occupancy requirement follows the provisions of State law, is consistent with the City's previous second dwelling unit ordinance, and warranted based on the reasons identified in "Owner Occupancy and Deed Restriction" section above.

On October 17, 2017, the City Council made a motion and voted 7:0:0 to continue the public hearing item to the October 30th Special City Council meeting.

STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the strategic initiative is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work and play for all consistent with the objectives of the *Hayward 2040 General Plan* with respect to the "Land Use and Community Character" and "Community Health and Quality of Life" Elements. Further, the item supports the following goals and objectives:

Goal 2: Provide a mix of housing stock for all Hayward residents and community members, including the expansion of affordable housing opportunities and resources.

Objective 2: Facilitate the development of diverse housing types that serve the needs of all populations.

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. The proposed amendment to the City's Master Fee Schedule is referenced in Attachment IV, Exhibit "A" – Resolution to Establish New Fees.

NEXT STEPS

Should the City Council adopt the attached Resolutions (Attachments III and IV) and introduce the Ordinance (Attachment II), staff will bring back the Ordinance for adoption at the next City Council meeting scheduled on Tuesday, November 7, 2017. The Ordinance will then become

effective 30 days after the adoption by City Council. Lastly, the Planning Division will submit a copy of the Ordinance to the California Department of Housing and Community Development (HCD) within 60 days as required by State law.

Prepared by: Marcus Martinez, Assistant Planner

Recommended by: Stacey Bristow, Interim Development Services Director

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written in a cursive style.

Kelly McAdoo, City Manager