DATE: October 12, 2020

SUBJECT

Zoning Ordinance amendments related to Accessory Dwelling Units (ADU)

RECOMMENDATION

Waive the first reading and introduce Zoning Ordinance amendments to Accessory Dwelling Unit (ADU) requirements and miscellaneous provisions, in order to comply with State law, and to address permitted ADU types, side and rear setbacks, floor area, lot coverage, a maximum 16-foot height for detached ADUs and attached ADUs within rear setback area, and short-term rental regulations.

STRATEGIC PLAN GUIDING PRINCIPLE

Housing

BACKGROUND

On July 13, 2020, the City Council considered an urgency ordinance to process amendments to the Accessory Dwelling Unit (ADU) zoning regulations, consistent with State law (Government Code sections 65852.2 and 65852.22). An urgency ordinance requires six votes for adoption, which was not achieved. A key issue discussed related to the building height for detached ADUs. A motion was made to adopt an ADU ordinance on an urgency basis that would have imposed a 16-foot maximum height for detached ADUs, applied lot coverage and FAR standards for ADUs over 800 sq. ft., and grandfathered in the short-term rental of ADUs built prior to January 1, 2020, but would have prohibited the short-term rental of all ADUs built on or after January 1, 2020. The City Council vote was 4–3 with the majority in favor, however the motion failed because as noted above, six affirmative votes are required in order to pass an urgency ordinance. Because the urgency ordinance was not adopted, staff was instructed to conduct a standard ordinance adoption process and present the ADU ordinance to the Planning Commission prior to returning to the City Council for consideration.
On **August 18, 2020**, the Planning Commission considered the proposed ADU ordinance amendments with a focus on height, application of floor area and lot coverage for ADUs over 800 sq. ft., and short-term rentals in ADUs. The Commission expressed concerns with the size of two-story detached ADUs within neighborhood context and concerns with possible attached ADUs up to 28 feet built 4 feet from the property line. The Commission also expressed concerns with homeowners using floor area exemptions for ADUs to circumvent the current single-family home soft cap floor area review thresholds in order to obtain additional square footage without Planning Commission review. The Commission supported ADUs as long-term rentals and prohibiting short-term rentals within ADUs. Some of the public comment received expressed support for a 16-foot height maximum for both attached and detached ADUs and to prohibit ADUs greater than 800 sq. ft. and over 16 feet in height when attached to the main home. The Planning Commission voted 6-1 for a resolution recommending adoption of an ADU ordinance to the City Council for the following:

- Allow 16-foot maximum height detached ADUs and attached ADUs when not meeting rear yard setbacks.
- Apply floor area ratio to all attached ADUs, but allow 800 sq. ft. ADUs as allowed by State law.
- Exempt all ADUs from lot coverage.
- Prohibit short-term rentals from any existing or new ADU.

**ANALYSIS**

ADU regulations to comply with State law have been discussed at previous meetings including the **February 10, 2020** Planning Commission and City Council study session, **July 13, 2020** City Council meeting, and **August 18, 2020** Planning Commission. Below is a discussion on the issues of height, floor area, lot coverage, and short-term rentals.

**Height:** State law requires cities to allow new ADUs of at least 16 ft. in height, however cities may choose to allow taller ADUs. As the City’s ADU ordinance is not presently consistent with State law, ADU applications continue to be reviewed under State law and are allowed to meet the height maximums of the underlying zoning, up to 28 ft. in most cases, with 4 ft. setbacks from side and rear property lines, until a local ordinance is adopted.

The City's 2019 ADU Ordinance allowed a second-story ADU above a detached garage of up to 20 ft. in height plus additional height for roof slope. The factors that determine the height of a structure include lot slope, floodplain, foundation systems, ceiling joist thickness, building code requirements for habitable space ceiling heights, and roof slope.

Planning staff consulted with the Building Division to estimate viable heights for foundation system, floor height for each story, ceiling joists, and roof pitch. Adding conservative building dimensions for the requirements, a two-story ADU would be 17-18 ft. with a flat roof and 20-21 ft. with a typical 4:12 pitch, see Figure 1 below. In order to further study potential ADU height, the City engaged a private design consultant/architect, to prepare exhibits to better understand building heights which are included in Attachment #3.
At the July 13th City Council hearing, a majority of the Council supported a 16 ft. height limit, while some councilmembers supported taller heights to allow more flexibility in ADU design, including the ability to have a livable second story. Based on the diagrams by the design consultant, a maximum height of 16 ft. would allow for a one-story building with loft space suitable for storage but not a second floor living area. An 18 ft. ADU would allow for a two-story with a flat roof and short ceiling heights, but adequate for living space and sleeping quarters. A 22 ft. ADU would allow for multiple designs for both a partial two-story ADU and a two-story ADU with full plate heights on the entire upper floor and a pitched roof. ADUs with lower heights could cause some architectural constraints to roof slope that may not allow an ADU to match the architectural style of the main home.

The City Council also asked staff to compile ADU data from the last two years. In 2019 and 2020 a total of 143 ADUs were proposed and of those 21 (15%) were detached ADUs above 16 ft. in height.

<table>
<thead>
<tr>
<th>Detached ADUs over 16’ height</th>
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<tbody>
<tr>
<td>2019: 11 (14%) Median height – 23.3’</td>
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<tr>
<td>2020: 10 (16%) Median height – 20.8’</td>
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At the August 18th Planning Commission meeting staff recommended a maximum height of 16 ft. for detached ADUs, based on the discussion from July’s Council meeting and the design diagrams. The Commission was in support of staff’s recommendation, but they also expressed concerns with the height of attached ADUs which are allowed to be 4 ft. from the side and rear property line by State law. The Planning Commission recommended that ADUs attached to the main home that do not meet the rear yard setback (typically 20 ft.) should not be allowed to extend up to the height maximum of the underlying zoning district (typically 28 ft.). Attached ADUs would still be allowed to be constructed within the rear yard setback, but with a height limit of 16 ft. similar to the proposed height limit for detached ADUs. Staff supports the Commission’s height recommendation as it would still allow for the construction of ADUs on virtually all residential lots and would retain the existing residential development pattern.

Recommendation: 16-foot maximum height for detached ADUs and for attached ADU that encroach within the required standard rear 20’ setback. Attached ADUs not encroaching on the rear setback would be subject to the standard height requirement of the underlying zoning district (typically 28 ft.)

**Floor Area:** State law requires allowance of an ADU of up to 800 sq. ft., exclusive of local FAR regulations, whether the ADU is attached, detached, located on the ground floor, or an upper floor. Attached ADUs
are not allowed to be greater than 50% of the floor area of the main home. State law requires that all ADU applications must be reviewed as ministerial with a building permit and does not allow for discretionary review for ADUs. ADUs associated with duplex or multifamily dwellings are not subject to the floor area ratio (FAR) ordinance.

At the July 13th, 2020 City Council hearing, staff recommended exempting all ADUs from floor area ratio calculations, however there was Council support to apply floor area regulations to ADUs above 800 sq. ft. On August 18th, the Planning Commission did not support staff’s recommendation to exempt all ADUs from the floor area ratio calculation, but rather to apply floor area to the extent allowed by State Law. The Commission expressed concern with homeowners using the ADU regulations to circumvent the additional procedures established by the soft cap floor area ratio ordinance.

The City’s FAR regulations for single-family homes include a soft cap threshold that requires Planning Commission consideration for single-family home projects that exceed in 3,000 sq. ft. or 0.45 FAR, whichever is greater. Exemptions from the FAR regulations include detached ADUs, projects on lots less than 5,000 sq. ft., ground floor additions, and second story additions of 100 sq. ft. or less. The FAR ordinance does not prohibit additional floor area, but requires additional findings (Section 48.4) and discretionary review. Since ground floor additions are already exempt, existing FAR regulations would be limited to second story additions attached to the main home. Applying floor area from attached ADUs towards the total floor area of the main home could trigger discretionary review of the ADU, which is not allowed by State law.

A second-story addition with an attached ADU would need to be designed and constructed concurrently as they would share walls, structural weight bearing loads, interior utilities, and roof design. City regulations for structural calculations, energy insulation calculations, and fire separation would need to be reviewed together at the design phase to ensure safety and code compliance. Floor joists, interior plumbing, electrical wiring, roofing, and exterior siding would be constructed generally at the same time in order to reduce the length of time and associated impacts of construction. Application of separate levels of review for the same structure is not reasonable given the shared design, code regulations, and construction phasing required for second story additions and attached ADUs. Staff recommends exempting all ADUs from floor area requirements.

Staff Recommendation: Exempt all ADUs from FAR calculations (as noted above, the Planning Commission did not support staff’s recommendation to exempt all ADUs from the floor area ratio calculation, but rather to apply floor area to the extent allowed by State Law).

Lot Coverage: State law dictates that cities cannot impose lot coverage standards which would prohibit development of an 800 sq. ft. ADU (attached or detached). Cities can apply lot coverage to ADUs, but this would only be applicable to a narrow range of ADUs between 800 sq. ft. to 1,000 sq. ft. in most cases.

During the July City Council meeting there was support for requiring lot coverage for ADUs above 800 sq. ft., however some of the support was contingent on a maximum allowable height that would allow a detached two-story ADU. There are tradeoffs with reducing height for detached ADUs that may require increasing lot coverage to maintain viable developable area in the rear yard. Of the 62 total ADUs proposed in 2020, nine were proposed above 800 square feet, all of which were detached from the main
home. The Planning Commission supported staff’s recommendation to exempt ADUs from lot coverage because of the limited allowable application of lot coverage to ADUs by State law and to provide more flexibility given the proposed 16 ft. height limit for detached ADUs.
Recommendation: Exempt all ADUs from lot coverage requirements.

Short Term Rentals: State law requires cities to prohibit short-term rentals of ADUs up to 800 sq. ft. and allows cities the option to prohibit short-term rentals of all other ADUs. 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. The City’s short-term rental regulations, adopted in 2018, do not allow an ADU to be used exclusively as a short-term rental and may only be used if the ADU is the primary residence of the short-term rental host and then would be limited to 120 calendar days within a year. There are currently seven properties in Redwood City that contain both an ADU and a registered short-term rental.

In July, the City Council indicated that these existing seven properties may be financially impacted by retroactively restricting them from using their properties as short-term rentals. The Planning Commission supported ADUs as long-term rentals to address housing supply and housing affordability. Homeowners would still be able to rent ADUs on a long-term basis greater than 30 days.
Recommendation: Prohibit short-term rentals for any existing or new ADUs.

INFORMATIONAL UPDATES

California Dept. of Housing and Community Development (HCD) Update
Since the Planning Commission hearing, staff has received feedback from HCD on their review of the City’s proposed ADU ordinance amendments and in September HCD also released an ADU Handbook summarizing the changes to State law. The City is required to submit the finalized ADU ordinance to HCD to review for compliance with State law. The following clarifying comments are based on the HCD ADU handbook, HCD’s review of the City’s draft ordinance, and HCD’s responses to staff questions:

- The proposed height recommendation for a 16 ft. height maximum for an attached ADU within the rear setback would comply with State law.
- ADUs are required to be allowed along secondary frontages with a 4-foot setback on corner lots. (As a result of this feedback, revisions to various Zoning Ordinance articles to alter secondary street frontage standards are no longer being proposed.)
- On multifamily lots, cities must allow either a conversion of uninhabited space for up to 25% of units in multifamily buildings or allow up to two detached ADUs. The City is not required to combine the requirement, however the proposed ordinance would allow for both in order to provide a variety of ADU opportunities.
- Fire sprinklers are allowed as a voluntary alternative to address fire code compliance. Cities may request fire flow tests to show sufficient water service to the site and sufficient hose pull.
- The cumulative ministerial 60-day review timeline for ADUs is tolled once staff provides comments and continue again once the applicant resubmits.
City ordinances are considered null and void only to the extent that existing ADU ordinance conflicts with State law. Cities may continue the compliant provisions of an ordinance and apply the state standards where pertinent until the ordinance is amended or replaced to fully comply with ADU law.

Fire and Building Code Compliance
In the interests of clarity, the draft ordinance will explicitly state that ADUs must comply with all applicable building and fire code requirements. Consistent with State law, ADUs shall not be required to provide fire sprinklers if they are not required for the primary residence. The ordinance does however permit fire sprinklers to address fire code compliance, as needed.

The California Fire Code requires an approved water supply for additions and newly constructed buildings, among other circumstances. Under the Fire Code and local amendments set forth in the City Code, the minimum amount of fire flow for all residential buildings, including ADUs, is 1,000 gallons per minute.

The California State Fire Marshal published a bulletin that addresses appropriate options if there is inadequate fire flow available to build an ADU. The bulletin suggests that automatic fire sprinklers are an appropriate option to mitigate deficient fire flows. For technical reasons, buildings with automatic fire sprinklers do not require the same amount of water to extinguish a fire. The other option is to upgrade the water system infrastructure, but that is frequently cost prohibitive when compared to the cost of automatic fire sprinklers.

FISCAL IMPACT
None.

ENVIRONMENTAL REVIEW

Multiple CEQA provisions apply to the proposed ordinance. The adoption of an ordinance to implement State law pertaining to ADUs (Government Code section 65852.2) is a statutory exemption from the California Environmental Quality Act (CEQA) pursuant to Public Resources Code section 21080.17. This applies to State law requirements that would be implemented by the proposed ordinance including the number of ADUs allowed, junior ADUs, ADUs in multifamily structures, setbacks, maximum allowable square footage, and providing for certain “streamlined” ADUs, all as specified in the linked July 13, 2020 staff report.

In addition to implementing State law requirements, the proposed ADU ordinance would implement local requirements. Implementation of these additional requirements is not considered a project under CEQA because it has no potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines Section 15378). The implementation of both height-related standards and additional regulations related to short-term rentals (generally prohibiting), and ordinance effectiveness would not result in increases in density or intensity and would not be consider an
environmental impact, and as such would be covered under the “common sense exemption” (CEQA Guidelines Section 15061(b)(3)).

PUBLIC NOTICE

Public notification was sent achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. On October 1, 2020, 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 www.redwoodcity.org/adu. Staff mailed a public notice to the seven sites that contain both an ADU and a short-term rental.

ALTERNATIVES

1. Allow all existing short-term rentals in ADUs constructed prior to January 1, 2020. Remove primary residency requirement for ADUs and prohibit any new short-term rentals in all other ADUs.
2. Allow an alternative maximum height for detached ADUs.
3. Apply lot coverage requirements to attached ADUs.

ATTACHMENTS & LINKED DOCUMENTS

Attachment A – Draft ordinance
Attachment B – Planning Commission Resolution 20-07
Attachment C – Design consultant (Larry Cannon) diagram
Attachment D – Public comment

LINKED DOCUMENTS
Staff Report – PC Aug 18
Staff Report – CC Jul 13

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