



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: December 1, 2020

TO: Christine Daniel, City Manager

FROM: Charles S. Bryant, Community Development Director

SUBJECT: **Ordinance Of The City Council Of The City Of Emeryville Amending The Planning Regulations In Title 9 And The Building Regulations In Title 8 Of The Emeryville Municipal Code Regarding Accessory Dwelling Units And Junior Accessory Dwelling Units (CEQA Status: Exempt Pursuant To Public Resources Code Section 21080.17)**

RECOMMENDATION

The Planning Commission and staff recommend that the City Council adopt the first reading of the attached ordinance amending Article 14 of Chapter 5 and related provisions of Title 9, Planning Regulations, and amending Section 8-1.05 of the Building Regulations, to make state-mandated changes related to Accessory Dwelling Units and Junior Accessory Dwelling Units.

BACKGROUND

On February 5, 2020, the Housing Committee considered proposed amendments to the Planning Regulations related to Accessory Dwelling Units (ADUs) and on February 27, 2020, the Planning Commission voted unanimously to recommend that the City Council adopt them. On April 7, 2020, the City Council held a public hearing on a draft ordinance. (See Attachment 1 for City Council staff report from April 7, 2020.) One commenter noted that the draft ordinance did not comply with several provisions of State law, and another commenter pointed out that the draft ordinance made one standard more restrictive. The Council continued the item to a future date to allow staff time to research and respond to the comments, and to make any necessary adjustments to the proposed ordinance. In September 2020, the California Department of Housing and Community Development (HCD) published an *Accessory Dwelling Unit Handbook*, which clarifies the requirements of State law for ADUs (see Attachment 2).

DISCUSSION

As detailed in the attached April 7, 2020, staff report, State laws passed in late 2019 require cities to implement changes to regulations making it easier to build ADUs and Junior ADUs. Below are paraphrased summaries of comments made at the Council hearing in April and an additional staff clarification, each followed by guidance provided in HCD's handbook, staff's response, and the location of the resulting change in the attached revised draft ordinance. In addition, AB 3182 was passed in 2020 and takes effect on January 1, 2021. Relevant provisions include that an application for an ADU or Junior ADU is deemed approved if the City does not act within 60 days, and that an owner may create one accessory dwelling unit and one junior accessory dwelling unit

per lot with a proposed or existing single-family dwelling. The proposed ordinance is consistent with these provisions of AB 3182.

Maximum ADU size for lots with small primary dwellings

Comment: The draft ordinance limited ADUs to the size of the main dwelling. Cities must allow an ADU to be 850 square feet for a one-bedroom unit or 1,000 square feet for a unit with more than one bedroom.

HCD Handbook (Page 10): The maximum size must be at least 850 square feet, and 1,000 square feet for an ADU with more than one bedroom. A city may use a percentage of the primary dwelling as the maximum size for attached or detached ADUs only if that does not restrict the size to less than 850 square feet, or 1,000 square feet for an ADU with more than one bedroom. Thus, a City could set the maximum at not more than a percentage of the main unit or 850 square feet for a studio or one-bedroom unit, or 1,000 square feet for a two-bedroom or larger unit, whichever is greater.

Staff's response: The earlier draft set the maximum size at 100% of the largest principal single unit with which it is associated (that is, the primary dwelling on lots with one existing or proposed unit). The proposed draft now sets the maximum size as no greater than the largest principal single unit with which it is associated or 1,200 square feet, whichever is greater. That is the simplest and most permissive option. The average house in Emeryville is about 1,200 square feet in area.

Location in proposed ordinance: Section 9-5.1408(a).

Bedrooms

Comment: The draft ordinance limited ADUs to the bedroom count of the main dwelling. HCD was advising cities that they may not impose bedroom count limits on ADUs.

HCD Handbook (Page 12): State ADU law does not allow for a limit on the number of bedrooms. It could be construed as discriminatory to families and would be considered a constraint on development of ADUs.

Staff's response: In the proposed revised ordinance, the section limiting the number of bedrooms in an ADU is deleted. (Note that Building Code requirements for bedroom dimensions and egress may create a de facto limit on number of bedrooms.)

Location in proposed ordinance: Section 9-5.1408(b).

Non-Residential Principal Use

Comment: The draft ordinance prohibited an ADU where there was a non-residential principal use of the lot. Cities must allow an ADU on any lot zoned to allow residential use if the lot includes a proposed or existing dwelling.

HCD Handbook (Page 8): Cities must allow ADUs in any residential or mixed-use zones. Residential or mixed-use zone should be construed broadly to mean any zone where residential uses are permitted by-right or by conditional use.

Staff's response: The proposed revised ordinance deletes the requirement that no other principal use exists on the lot. The proposed ordinance allows ADUs in all zoning districts in which residential uses are allowed.

Location in proposed ordinance: Section 9-5.1405.

Appeal to Planning Commission

Comment: The draft ordinance allowed appeals to the Planning Commission. This is not allowed because the City is not allowed to require a hearing. This is to prevent neighbor appeals.

HCD Handbook (Page 9): ADUs must not be subject to a hearing.

Staff response: The proposed ordinance has been revised accordingly.

Location in proposed ordinance: Section 9-5.1403.

Side Setback

Comment: The draft ordinance required 4-foot side setbacks for ADUs. That increased the setback from the currently required 3 feet.

HCD Handbook (Page 12): Setbacks must not unduly constrain the creation of ADUs, and side and rear setbacks may not be more than 4 feet.

Staff response: This was an inadvertent increase from the current setback requirement of 3 feet when staff inserted the State allowable setbacks of 4 feet for rear and side yards. The proposed ordinance sets the setbacks at 3 feet for side yards in the setback section. In the dimension section, it deletes reference to side yards because 3-foot side setbacks are the same requirements as for existing residential structures.

Location in proposed ordinance: Section 9-5.1404 and Section 9-5.1410(b).

Size of Attached ADU on Multi-Unit Lot

Staff clarification: The draft ordinance was silent on the size of an attached ADU on a lot with more than one existing or proposed unit.

HCD Handbook (Page 10): A local government may establish maximum unit size requirements for attached and detached ADUs.

Staff response: To fill in a gap in the state laws, staff had extended the size requirement for detached ADUs to ADUs that are attached to, but not within, the existing dwelling on a lot with one unit. In the proposed ordinance, staff has extended this language to lots with more than one unit as well.

Location in proposed ordinance: Section 9-5.1408.

FINDINGS

Emeryville Municipal Code Section 9-7.1305 provides that the City Council, in approving amendments to the Planning Regulations, must make the following findings:

- (a) The proposed amendment is consistent with the General Plan.
- (b) The proposed amendment is necessary for public health, safety and welfare or will be of benefit to the public.
- (c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.
- (d) For a change to the Zoning Maps, that the subject property is suitable for the uses permitted in the proposed zone in terms of access, size of parcel, relationship to similar or related uses, and other relevant considerations, and that the proposed change of zoning district is not detrimental to the use of adjacent properties.

In the Planning Commission's view, these findings can be made, as detailed in the attached proposed ordinance.

ENVIRONMENTAL REVIEW

The proposed ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17, which provides that CEQA does not apply to the adoption of an ordinance to implement the provisions of Government Code Section 65852.2 pertaining to Accessory Dwelling Units.

FISCAL IMPACT

This ordinance would not have substantial fiscal impacts on the City; however, Accessory Dwelling Units are not subject to development impact fees because they are an accessory use.

STAFF COMMUNICATION WITH THE PUBLIC

As noted above, the Housing Committee considered the proposed amendments to the Planning Regulations on February 5, 2020, and the Planning Commission voted unanimously to recommend that the City Council adopt them on February 27, 2020. The City Council held a public hearing on the proposed amendments on April 7, 2020 and continued the item to a future meeting.

CONCLUSION

Staff recommends that the City Council take the following actions:

1. Introduce the proposed ordinance after a motion to read by title only.
2. Take public testimony regarding the proposed ordinance.
3. Adopt the first reading of the proposed ordinance.

PREPARED BY: Diana Keena, Associate Planner

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Christine Daniel, City Manager

ATTACHMENTS

- Staff report from April 7, 2020
- HCD Accessory Dwelling Unit Handbook - September 2020
- Proposed Ordinance