



STAFF REPORT

AGENDA NO: 9b

MEETING DATE: July 6, 2020

To: Honorable Mayor and City Council

Date: July 6, 2020

From: Kevin Gardiner, Community Development Director – (650) 558-7253
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Subject: Public Hearing to Consider Proposed Amendments to Chapter 25.59 (Accessory Dwelling Units), Chapter 25.60 (Accessory Structures in R-1 and R-2 Districts), Chapter 25.26 (R-1 District Regulations) and Chapter 25.70 (Off-Street Parking) of the Burlingame Municipal Code Related to Accessory Dwelling Units to be Consistent with Recently Adopted Amendments to California Government Code Sections 65852.2 and 65852.22 and Additional Changes to Remove Constraints to Creating Accessory Dwelling Units

RECOMMENDATION

Staff recommends that the City Council consider proposed amendments to the Burlingame Municipal Code regarding accessory dwelling units. In order to do so, the City Council should:

1. Receive the staff report and ask any questions of staff.
2. Request the City Clerk to read the title of the proposed ordinance.
3. By motion, waive further reading and introduce the proposed ordinance.
4. Conduct a public hearing on the proposed ordinance.
5. Following closure of the public hearing, discuss the proposed ordinance and provide any direction to staff; if no changes are requested, direct staff to bring it back for adoption and ask the City Clerk to publish a summary of the ordinance at least five days before proposed adoption.

If Council so directs, the ordinance along with a resolution addressing compliance with the California Environmental Quality Act (CEQA) will be presented for adoption at the August 17, 2020 meeting.

BACKGROUND

In response to California's statewide and the Bay Area's regional housing shortages, the Governor signed into law a number of bills (AB 881, AB 68, and SB 13) to encourage the construction of accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) by reducing the regulatory barriers commonly found in local zoning ordinances. The recently

adopted legislation defines the standards local jurisdictions can apply to ADUs and JADUs. Details of this legislation are contained in amended Government Code Sections 65852.2 and 65852.22 (see attached for reference). This legislation was signed into law in late 2019 and took effect on January 1, 2020.

This State legislation supersedes the City's regulations for ADUs as currently outlined in Municipal Code Chapter 25.59 - Accessory Dwelling Units. The proposed changes are to bring the City of Burlingame's Accessory Dwelling Unit regulations into conformity with State law.

At its meeting of February 24, 2020, the Planning Commission reviewed the proposed amendments to the Zoning Regulations and recommended that the City Council adopt the changes as proposed in the attached Draft Ordinance.

On March 2, 2020, the City Council introduced the proposed ordinance to amend Chapter 25.59 (Zoning Regulations) of the Municipal Code and other related Municipal Code sections pertaining to Accessory Dwelling Units. After discussing the proposed amendments further, the Council continued action on the item, requesting that staff provide additional information and clarifications regarding allowable rooflines, permeable surfaces, and windows and skylights (see attached March 2, 2020 City Council meeting minutes). Staff provided responses and made the applicable changes to the proposed ordinance.

On May 18, 2020, the City Council re-introduced the proposed ordinance. The Council accepted the adjustments to the proposed ordinance made by staff, but also expressed a concern regarding building ADUs that are less than 850 square feet as a way to circumvent the floor area ratio and lot coverage limits in order to gain additional space for use in the primary dwelling. The Council continued action on the item and asked staff to research whether it would be possible to monitor the use of ADUs to ensure that they are used for housing and not just an extension of the primary dwelling (see attached May 18, 2020 City Council meeting minutes).

Following the May 18th Council meeting, Planning staff requested that the State Department of Housing and Community Development (HCD) review and comment on the Draft Ordinance. Staff also asked HCD to review the letter submitted by Californians for Homeownership, dated May 18, 2020 (attached). The following discussion and proposed ordinance address comments submitted by HCD and Californians for Homeownership.

1. Monitoring Use of ADUs

Planning staff contacted HCD for guidance on this issue. HCD staff noted that the statute does not anticipate that cities would monitor the use of ADUs, and it doesn't provide any safeguards for this issue.

While there may be pauses in the use of the ADU, and the use may change over time, it would continue to provide the opportunity for housing in various forms over its lifetime. For example, someone may build a new ADU to provide a residence to another household (plus benefit from the added income), then in the future may choose to have a child move back in, and then eventually elderly parents might move in. The separate nature of an ADU would allow this type of adaptation over time relatively easily, more so than a regular bedroom

addition. Furthermore, even if someone built an ADU today and used it as a recreation room instead, the next household would be able to use the ADU for housing purposes.

2. HCD Review of Draft Ordinance

As noted above, Planning staff requested that HCD review the draft ordinance prior to bringing it back to the City Council for adoption. Planning staff had numerous discussions with HCD staff, and they were very responsive in offering their assistance. HCD staff noted that overall the draft ordinance does a good job at covering the more difficult portions of ADU statute.

HCD staff offered the following comments on Burlingame's draft ordinance:

- a. Limiting ADUs to 50% of the living area of an existing single family dwelling only applies to new attached ADUs, not interior ADUs created from converting space within an existing primary dwelling (see Code Section 25.59.070 (c) (1)). New attached ADUs would be limited to 50% of the existing primary dwelling, with a maximum allowed size of 850 SF, or 1,000 SF for two or more bedrooms. HCD staff noted that conversion of space within an existing primary dwelling cannot be restricted.
- b. Cannot limit the number of kitchen facilities within an ADU. The intent of allowing one kitchen facility in the draft ordinance was to prevent someone from converting an ADU into two ADUs. However, HCD noted that the statute does not limit the number of kitchen facilities, and furthermore it is not used to define an ADU, noting that ADUs "...shall include permanent provisions for living, sleeping, eating, cooking, and sanitation...". If a complaint is received that there is more than one ADU created on a lot, it would be addressed through the City's Code Enforcement process. This limitation has been removed from Code Section 25.59.070.
- c. Cannot apply front setback requirements to an ADU that meets the following criteria as provided in the statute: 800 square foot maximum size, 16 foot maximum height and 4 foot side and rear setbacks (see Code Section 25.59.070 (e)).
- d. In multifamily structures, cannot prohibit conversion of spaces required as part of a condition of approval or zoning requirement (bike storage room, gym, etc.) as these are considered to be non-livable spaces. Conversion of non-livable spaces is permitted under the statute. Therefore, this restriction has been removed from Code Section 25.59.090.

DISCUSSION

The attached draft ordinance makes changes to Chapter 25.59 (Zoning Regulations) of the Municipal Code and other related Municipal Code sections pertaining to Accessory Dwelling Units to comply with State law. Jurisdictions are required to provide a copy of the changes to the Accessory Dwelling Unit regulations to the State Department of Housing and Community Development (HCD) for their review within 60 days of adoption (although as discussed above, HCD has already conducted a preliminary review of the draft ordinance).

Changes Mandated by State Law

The key areas of change mandated by the State legislation include the following:

1. There is no minimum lot size requirement for construction of an ADU, whether it is a conversion of existing space, an addition, or a new detached structure.
2. In addition to an ADU, a JADU (up to 500 SF in size and located within an existing or proposed single family dwelling) may be created on a single family zoned property.
3. The maximum allowed size for an ADU is 850 SF, or 1,000 SF for two or more bedrooms.
4. ADUs up to 800 SF in size are exempt from lot coverage and floor area regulations. For simplicity and to avoid confusion, staff has proposed that the lot coverage and floor area ratio exemption be applied to 850 SF ADUs to be consistent with the maximum allowed size.
5. Required side and rear setbacks can be no greater than 4'-0". This does not affect detached ADUs since they are exempt from side and rear setbacks if located within the rear 30% of the lot. However, this does reduce the rear setback requirement for an attached ADU from 15'-0" to 4'-0".
6. No replacement parking for the primary dwelling can be required if an existing detached or attached garage is converted to an ADU or JADU.
7. No parking is required for a JADU.
8. ADUs are now permitted in all districts zoned to allow multifamily dwelling residential uses (allowed on properties where a multifamily dwelling structure exists). Up to 25 percent of the existing dwelling units within a multifamily dwelling structure, but at least one ADU, may be created within existing non-livable space(s). In addition, up to two new detached ADUs may allowed.
9. Approval for a compliant ADU or JADU must be issued within 60 days of receiving a complete application.

Additional Suggested Changes – Not Mandated by State Law

In addition to amending Chapter 25.59 (Accessory Dwelling Units), there are several other Municipal Code sections that address accessory dwelling units that should be updated for consistency including:

- Chapter 25.26 - R-1 District Regulations
- Chapter 25.60 - Accessory Structure Regulations
- Chapter 25.70 - Off-Street Parking Regulations

In order to work toward the spirit of having more ADUs approved to add to Burlingame's housing stock, there are several changes suggested by staff that are not required for compliance with State law but would be anticipated to facilitate the development of ADUs. In particular, Sections 25.60.010 (Conditional Use Permit Requirements for Accessory Structures) and 25.26.035 (Uses Allowed with a Special Permit) currently include a number of provisions that may serve to discourage ADUs. Therefore, staff recommends the following changes to these sections:

- a) Currently, C.S. 25.60.010 (i), requires a Conditional Use Permit for glazed openings (windows) in an accessory structure within 10 feet of the property line or any portion of a glazed opening higher than 10 feet above grade. This section limits the locations of windows and skylights in accessory structures.

Per the previous discussions with the City Council, staff is suggesting that C.S. 25.60.010 (i) be amended to reflect the following:

- Allow skylights on sloping roofs that face interior yards and flat roofs by right. Require approval of a Conditional Use Permit for skylights on sloped roofs facing side yards that are located within 10'-0" of property line and on sloping roofs facing rear property lines.

The previously proposed draft ordinance allowed windows located 4'-0" or greater from property line by right, and a Conditional Use Permit for any windows located closer than that to the property line. Since the May 18th meeting, the Building Division clarified that in most cases no windows are allowed within 3'-0" of property line. Therefore, staff is suggesting that Code Sections 25.59.070(h) and 25.60.010(i) be adjusted to align with building code requirements as follows:

- Allow windows located 3'-0" or greater from property line by right. Require approval of a Conditional Use Permit for windows located within 3'-0" of property line on walls that are parallel with side and rear property lines.

Staff would note that if a window is required by the Building and Fire Codes for egress in an unusual or unique circumstance, a Conditional Use Permit could not preclude the construction of an ADU, and therefore in those circumstances the window would need to be allowed.

Discussion: This amendment would apply to ADUs, a detached garage, or any other permitted accessory structure. It has been the experience of staff that most properties contain existing fencing or vegetation that screen the view of and reduce any impacts from windows and skylights in accessory structures. Windows and skylights are standard features typically found in living areas, are required to comply with egress requirements (windows), and provide necessary natural light and ventilation, and therefore should not be restricted in terms of placement.

The Planning and Code Enforcement Divisions have not received any complaints regarding placement of windows and skylights in accessory structures previously

allowed near property lines. In the past, requests for Conditional Use Permits for windows and skylights have generally been granted.

- b) Removal of C.S. 25.26.035 (f), which requires a Special Permit for a direct exit from a basement to the exterior of the structure that is anything other than a light or window well.

Discussion: This would apply to ADUs, JADUs, and for all single family dwellings. This change is necessary in order to be consistent with State law, which requires a separate exterior entrance for an ADU or JADU. This would encourage ADUs and JADUs in basements, which would reduce the visible mass and bulk above ground if a detached ADU were to be built as an alternative.

This change would also apply to all single family dwellings in the R-1 zoning district, regardless if an ADU was being created. In the case of a single family dwelling, the exit would presumably be used less frequently than if it were for an ADU or JADU, so for consistency, staff recommends that this restriction also be removed altogether.

- c) Removal of C.S. 25.26.037, which prohibits bedrooms, bathtubs, and shower stalls in basements. This amendment was previously approved by the Planning Commission and City Council with adoption of ADU amendments in 2018 as a way to encourage ADUs in basements. However, due to an oversight, this section was not removed from the Municipal Code. There is no new language or revision being introduced; this is a code cleanup from a previous action.

The attached Draft Ordinance sets forth text amendments to the City's existing Accessory Dwelling Unit regulations (Chapter 25.59) to ensure that the Burlingame Municipal Code is consistent with the new, recently adopted State regulations and to help clarify and improve various provisions of the accessory dwelling unit law to promote the development of accessory dwelling units and junior accessory dwelling units; as reflected in the edits to Title 25, Chapters 25.59, 25.60, 25.26 and 25.70.

The Draft Ordinance is provided as an attachment to this report. Regulations to be added are underlined, and text to be deleted is indicated in strikeouts.

FISCAL IMPACT

None.

Exhibits:

- Draft Ordinance
- Proposed CEQA Resolution
- March 2 and May 18, 2020 City Council Minutes
- Email submitted by Neel N. Mehta, dated March 8, 2020
- Letter submitted by Matthew Gelfand, Californians for Homeownership, dated May 18, 2020
- Revised Chapters - Clean Version

- Government Code Sections 65852.2 and 65852.22