

Page 7

- “Mayor Beach thanked staff, developers, and the community for engaging in this conversation. She stated *it makes a difference to her that the reach codes being considered apply to new construction, not remodels.*”

Councilmember Brownrigg noted the importance of watching the Council meeting and not just reading the meeting minutes in order to understand the nuance of the Council’s comments.

Councilmember Ortiz made a motion to approve the City Council Meeting Minutes for February 18, 2020; seconded by Vice Mayor O’Brien Keighran. The motion passed unanimously by voice vote, 5-0.

**b. QUARTERLY INVESTMENT REPORT, PERIOD ENDING DECEMBER 31, 2019**

Councilmember Colson stated that the Quarterly Investment Report covered the period ending December 31, 2019. However, she explained that the past two weeks have been rocky in the investment market. She asked that when the City discusses the FY 2020-21 budget and pension liabilities in May, that staff provide an update on the investment numbers. She explained that she wanted to understand if the market’s fluctuation impacted the CalPERS contribution rates.

Councilmember Brownrigg stated that at the mid-year budget study session, he would like to hear about the potential impact of the coronavirus on the travel industry and therefore the City’s TOT.

Mayor Beach opened the item up for public comment. No one spoke.

Councilmember Brownrigg made a motion to accept the City’s Quarterly Investment Report for the period ending December 31, 2019; seconded by Councilmember Colson. The motion passed unanimously by voice vote, 5-0.

**9. PUBLIC HEARINGS**

- a. 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**

Planning Manager Ruben Hurin stated that in response to the statewide and Bay Area regional housing shortages, the Governor signed into law a number of bills to encourage the construction of accessory dwelling units (“ADU”) and junior accessory dwelling units (“JADU”) by reducing the regulatory barriers commonly found in local zoning ordinances. He explained that the recently adopted legislation defines the

standards local jurisdictions can apply to ADUs and JADUs. He noted that the legislation took effect on January 1, 2020.

Planning Manager Hurin stated that the State legislation supersedes the City's regulations for ADUs as currently outlined in Municipal Code Chapter 25.59 – Accessory Dwelling Units. He explained that the proposed changes are to bring the City's Accessory Dwelling Unit regulations into conformity with State law.

Planning Manager Hurin stated that at the Planning Commission's February 24, 2020 meeting, the Commission reviewed the proposed amendments to the Zoning Regulations and recommended that the Council adopt the changes as proposed in the draft ordinance.

Planning Manager Hurin stated that before explaining the key changes in the State law, he wanted to review the different types of ADUs and JADUs.

- Attached ADU – when the structure is attached to the single-family home
- Detached ADU – a new structure that is separate from the single-family home
- Converted Garage
- Conversion/interior – convert a portion of the single-family home into an ADU

Planning Manager Hurin reviewed the key areas of change mandated by the State legislation:

- 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.
- In addition to an ADU, a JADU (up to 500 square feet in size and located within an existing or proposed single-family dwelling) may be created on a single-family zoned property.
- The maximum allowed size for an ADU is 850 square feet, or 1,000 square feet for two or more bedrooms.
- ADUs up to 800 square feet in size are exempt from lot coverage and floor area regulations. For simplicity and to avoid confusion, staff is proposing that the lot coverage and floor area ratio exemption be applied to 850 square feet ADUs to be consistent with the maximum allowed size.
- 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 30% of the lot. However, this does reduce the rear setback requirement for an attached ADU from 15'-0" to 4'-0".
- No replacement parking for the primary dwelling can be required if an existing detached or attached garage is converted to an ADU or JADU.
- No parking is required for a JADU.
- 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% 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 be allowed.
- Approval for a compliant ADU or JADU must be issued within 60 days of receiving a complete application.

Vice Mayor O'Brien Keighran stated that the staff report notes that the maximum square footage for an ADU is 850 square feet. She asked if she was correct that an individual could have both an 850 square foot ADU and a 500 square foot JADU. Planning Manager Hurin replied in the affirmative.

Vice Mayor O'Brien Keighran asked about converting a basement into an ADU where the basement is more than 850 square feet. Planning Manager Hurin stated that under the law, an individual can build a two-bedroom ADU with a maximum square footage of 1000.

Councilmember Brownrigg asked why the State put a limit on the square footage of an ADU. Planning Manager Hurin replied that the State law allows ADUs to be as large as 1200 square feet. But under the State law, cities can limit the square footage to 850 for a one-bedroom ADU and 1000 for a two-bedroom ADU.

Councilmember Brownrigg asked why the State cares about the size of ADUs. City Attorney Kane explained that the legislative purpose was to create smaller, more naturally affordable ADUs.

Vice Mayor O'Brien Keighran stated that if a garage is converted into an ADU, under State law the owner isn't required to provide parking. She asked what would happen if a property owner converted the garage but didn't utilize the space as an ADU. Planning Manager Hurin stated staff would utilize code enforcement in these situations. He added that the proposed ordinance states that when an ADU is no longer being used as an ADU, the structure would need to revert to its previous use.

Mayor Beach asked if the ordinance contains any protection against the ADU being used as a short-term rental. Planning Manager Hurin stated that State law provides that ADUs and JADUs cannot be rented for fewer than 30 consecutive calendar days.

Planning Manager Hurin discussed the additional changes to the City's ADU ordinance that staff is proposing:

- No longer require a Conditional Use Permit for windows located within 10'-0" of property line or for skylights
- No longer require a Special Permit for a direct exit from a basement to the exterior of the structure

Councilmember Colson stated that under the current code, basements have to have a lightwell for an emergency exit. She asked if staff's proposal would allow them to change the lightwell into a door. Planning Manager Hurin replied in the affirmative.

Councilmember Colson asked if it is possible that you could have an ingress through the single-family home. Planning Manager Hurin stated that State law requires a separate entrance for an ADU or JADU.

Councilmember Brownrigg discussed the ridge line of the roof and that the proposed ordinance requires a pitch on two sides of the roof. He asked if this was a shed roof. Planning Manager Hurin stated that the ridge can be 16 feet tall with a plate height of 9 feet.

Councilmember Brownrigg stated that he would have thought that the City wouldn't want to be this prescriptive concerning the roof's ridge. He explained that he believed shed roofs and flat roofs can be more sensitive to their neighbors.

City Attorney Kane stated that one of the ambiguities of the State law is that the cities can establish a maximum height of 16 feet. However, the State law does not address whether the roof needs to have a pitch. Therefore, she stated that staff's thought process was that a 16-foot ridge height as opposed to a flat roof would be less impactful on neighbors as a result of removing side and rear setbacks.

Councilmember Brownrigg suggested allowing a 10-foot plate height for a flat roof with a very low pitch.

Councilmember Colson stated that she believes there are more flat roof garages in the community. She discussed her experience with converting the top of a flat roofed garage into garden space. Planning Manager Hurin explained that the proposed ordinance is requiring the ADU to be in line with the single-family home. Therefore, if the single-family home has a pitched roof, the converted garage would also have to have a pitched roof.

Councilmember Colson stated that she was against requiring the same roof design on the ADU and single-family home. She explained that she's had a pitched roof with a flat roof garage. She noted that she believed there were so many benefits to having a flat-roofed garage.

Councilmember Ortiz asked if he was correct that the staff's suggestion of requiring pitch on two sides of the roof is to prevent an individual from building a 16-foot tall flat-roofed ADU. Planning Manager Hurin replied in the affirmative.

Councilmember Brownrigg stated that staff could require a pitch if the building height reaches 16 feet. Or if the individual wants to have a flat roof, the City could lower the plate height to prevent a 16-foot tall building with a flat roof. He explained that if the City limits the plate height to 9 feet, the individual wouldn't be able to build to 16 feet.

Councilmember Brownrigg explained that in communities where ADUs are common, the backyards shrink to almost nothing. He stated that the City would need to figure out a way to balance the community's housing needs with Burlingame's "City of Trees" designation.

Councilmember Colson asked if the City could require property owners that are building ADUs to put in trees. City Attorney Kane stated that the point of the legislation is to force an administrative process for the construction of ADUs. Therefore, she stated that the City had to be careful with what it required.

Vice Mayor O'Brien Keighran voiced concern about skylights on pitched roof ADUs that face the neighbor's property.

Mayor Beach discussed sea level rise and the City's water table during storms. She voiced concern about building ADUs in basements and how sea level rise could cause those basements to flood. City Attorney

Kane stated that property owners would be informed of the City's water table and flooding concerns during plan review.

Mayor Beach opened the public hearing.

Jennifer Pfaff voiced concerns about the proposed ordinance including staff's suggestion to remove the Conditional Use Permit requirement for skylights.

Mona, a local licensed architect, stated that San Mateo is interpreting the 16-foot height limit as a plate height limit. She added that the dual pitch would not aesthetically agree with the historical Eichlers.

Mayor Beach closed the public hearing.

Mayor Beach asked about setback requirements for basements. Planning Manager Hurin stated that if the basement is below the top of existing grade, then it is not subject to setback requirements except on El Camino Real.

Councilmember Colson asked if she was correct that the basement could be in the rear corner of the house and that it can extend to the fence line. Planning Manager Hurin replied in the affirmative.

Planning Manager Hurin stated that currently, up to 700 square feet of a basement is exempt from the floor area coverage of the house. Under the proposed ADU ordinance, it would be 850 square feet.

Mayor Beach asked if the City should be considering limiting the allowable footprint of basements. Planning Manager Hurin stated that this is another discussion that the Planning Commission and City Council could address in the future.

City Attorney Kane stated that based on Council discussion, staff would need to further refine the proposed ordinance. Therefore, the Council didn't have to ask the City Clerk to read the title of the ordinance and make a motion to introduce the ordinance. She explained that as of January 1, 2020, the State law was in effect, and staff was obligated to review plans pursuant to the State's mandates, until the City adopts its own ordinance.

Councilmember Colson asked if ADUs are counted towards the City's RHNA allocation. Planning Manager Hurin stated that his understanding is that they can count, but staff is unable to track the affordability rate.

Councilmember Colson stated that she believed Hillsborough was able to count their ADUs towards their low income RHNA allocation. Planning Manager Hurin stated that he would talk with his colleagues in Hillsborough.

Mayor Beach stated that it seemed that there were three issues that the Council had to discuss regarding the proposed ordinance:

1. Roof line
2. Permeable space

### 3. Windows and skylights on ADUs

Mayor Beach voiced concern about being too prescriptive and noted that she believed the Planning Commission would thoroughly review each application to ensure it fit within the neighborhood. City Attorney Kane noted that the three issues that the Mayor brought up are nondiscretionary and would be handled by staff at the counter.

Councilmember Ortiz stated that he liked Councilmember Brownrigg's suggestion that if an individual decides to build up to 16 feet, that the roof would be double pitched.

Vice Mayor O'Brien Keighran stated that she agreed with Councilmember Ortiz. She stated that because the City can't conduct design review on ADUs, her preference would be that the ADU match the existing architecture.

Councilmember Colson asked if the City could require a pitched roof with exceptions based on the circumstances of an individual's property. City Attorney Kane replied in the affirmative but stated that the criteria must be objective. She noted that where possible, the City should craft a standard as the purpose of the State's mandate is to streamline the ADU process.

Councilmember Colson asked if ADUs would be required to have solar panels. Planning Manager Hurin stated that he would review the requirement with the Chief Building Official.

Mayor Beach stated that she agreed with Vice Mayor O'Brien Keighran that you wouldn't want a skylight pointing towards a neighbor's second floor. However, she noted that if the ADU was designed to have a flat roof, she thought a skylight would be a reasonable request.

Councilmember Colson asked if an individual builds a 16-foot tall ADU and adds a loft, would the loft count towards the 850 square feet. Planning Manager Hurin stated that current Code section for measurement of the floor area states that if you have an open space that is more than 12 feet in height, the area counts twice. Therefore, he noted that this might exceed the maximum square footage allowed.

Councilmember Brownrigg stated that the proposed ordinance states that the roof shall be pitched from ridge to plate on at least two sides. He suggested that if the maximum plate height is 9 feet, the developer could determine the appropriate style of roof, with the exception that if the ridge is over 12 feet, then the ridge should be at least 5 feet off the center.

Councilmember Brownrigg discussed lot coverage as a result of the State's mandates. He stated that the Planning Commission should consider whether the City should reduce lot coverage for the main house when a house gets rebuilt. He noted that it would be a tradeoff, as it would allow for the City to maintain backyards but might require the City to allow for more height in single-family houses.

Vice Mayor O'Brien Keighran explained that the proposed ordinance states that the maximum allowed plate height is 9 feet. She noted that she wouldn't want that changed. She stated that this would help avoid the creation of large box shaped ADUs.

Planning Manager Hurin stated that regarding windows and skylights, staff could require a conditional use permit for any skylights that are not facing the interior or windows along the rear or side property lines.

Vice Mayor O'Brien Keighran voiced support for the Planning Manager's suggestion.

Councilmember Colson agreed with Planning Manager Hurin's suggestion.

City Attorney Kane stated that if there's a window requirement for egress under the City's fire or building code and imposing a CUP would defeat the ability to build an ADU, then staff would need to allow the construction of the ADU.

Councilmember Colson asked if the City could require opaque windows within a certain distance of the lot line. City Attorney Kane stated that windows aren't allowed on lot lines.

Councilmember Brownrigg asked that the proposed ordinance include a line under Section K referring to balconies and decks that states that a green roof does not count as a rooftop terrace or balcony to cover Councilmember Colson's concerns.

## **10. STAFF REPORTS**

### **a. CONSIDERATION OF APPOINTMENT TO THE PLANNING COMMISSION**

City Manager Goldman stated that there was an opening on the Planning Commission and one candidate, John Schmid, had applied. She noted that Council interviewed Mr. Schmid.

Mayor Beach opened the item for public comment. No one spoke.

City Clerk Hassel-Shearer read the Council's ballots. John Schmid was unanimously selected by the Council to serve on the Planning Commission.

Congratulations to John Schmid.

### **b. CONSIDERATION OF TWO APPOINTMENTS TO THE MEASURE I CITIZENS' OVERSIGHT COMMITTEE**

City Manager Goldman stated that three candidates applied for the two openings on the Measure I Citizens' Oversight Committee. She noted that Council interviewed the three candidates.

Mayor Beach opened the item up for public comment. No one spoke.

City Clerk Hassel-Shearer read the Council's ballots. Stephanie Lee and Sandeep Shroff were unanimously selected by the Council to be reappointed to the Measure I Citizens' Oversight Committee.