



May 18, 2020

VIA EMAIL

City Council
City of Burlingame
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Burlingame, CA 94010
Email: council@burlingame.org; publiccomment@burlingame.org

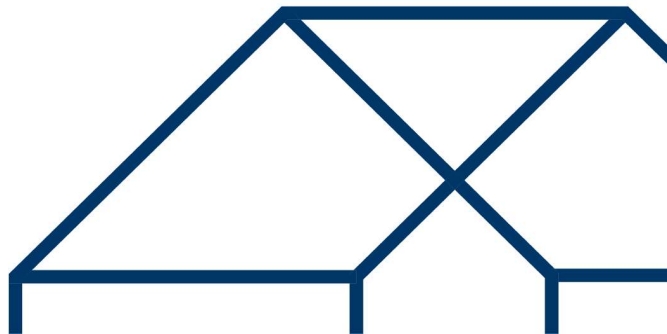
RE: May 18, 2020 City Council Meeting, Agenda Item 9.b.

To the City Council:

Californians for Homeownership is a 501(c)(3) non-profit organization devoted to using legal tools to address California's housing crisis. I am writing as part of our work monitoring local compliance with California's laws regarding accessory dwelling units (ADUs).

At your May 18 meeting, you will consider an ordinance intended to address recent changes to state ADU law. If the City adopts a compliant ADU ordinance, it will be able to maintain certain local controls on ADU development. Unfortunately, we have significant concerns about the draft ordinance, including:

- The draft ordinance appears to prohibit ADUs within livable areas of multifamily buildings, which appears to reflect a misunderstanding regarding the structure of state ADU law. It is true that, in order to take advantage of the *special provisions* to develop multiple ADUs in multifamily structures under Government Code Section 65852.2(e)(1)(C), the units must be developed from non-livable spaces. But an applicant may instead choose to develop a single ADU under *subdivision (a)* of the ADU law, which permits conversions of any space, livable or not. As of January 1, 2020, subdivision (a) has been modified to replace references to "single-family dwelling" with "primary dwelling." Proposed Municipal Code Section 25.59.070(a) should be adjusted to remove language limiting standard ADUs to single-family dwellings.
- The draft ordinance does not provide the required special treatment for the categories of ADUs listed in Government Code Section 65852.2(e)(1). These ADUs must be ministerially permitted "notwithstanding" the provisions allowing cities to pass local ADU ordinances, meaning that these ADUs must be approved without applying any local development standards, such as front-yard setbacks. According to guidance from the Department of Housing and Community Development, these ADUs "do[] not necessitate a zoning clearance and must not be limited to certain zones or areas or subject to height, lot size, lot coverage, unit size, architectural review, landscape or parking requirements," and the Department has issued non-compliance letters to cities



that have improperly applied local development standards to these ADUs. To assist the City in crafting appropriate language, we are providing (below) example language based on ordinances adopted by other cities.

- The draft ordinance purports to apply a maximum unit size to interior ADUs. Because an interior ADU will always qualify for mandatory approval under Section 65852.2(e) regardless of local standards, from a practical perspective, the City will never be allowed to apply its maximum unit size to an interior ADU.
- Proposed Municipal Code Section 25.59.090(b) appears intended to account for the streamlined ADU category described in Government Code Section 65852.2(e)(1)(C). But it improperly prohibits the conversion of “[s]paces required as part of a condition of approval or zoning requirement” into ADUs. California is in the midst of a housing crisis of historic proportions, and ADUs are a critical part of the Legislature’s effort to address that crisis. *See* Gov. Code § 65852.150(a). The purpose of Section 65852.2(e)(1)(C) is to substitute the Legislature’s preference for housing for local governments’ preference for providing non-housing residential amenities, such as storage areas.
- Proposed Municipal Code Section 25.59.090(c)(1) improperly limits the location of ADUs described in Government Code Section 65852.2(e)(1)(D). Section 65852.2(e)(1) ADUs must be permitted regardless of any local standards, including limits on location within a lot.
- Proposed Municipal Code Section 25.59.130 limits the amnesty provisions required by Government Code Section 65852.2(n) to structures constructed before January 1, 2020. This is unlawfully narrow. Because the City does not currently have a compliant ADU ordinance, it must apply these provisions to structures constructed until it adopts one. Gov. Code § 65852.2(n)(2).

We recommend that you continue this item to allow staff to address our concerns and return with a compliant ordinance at a later meeting. We request that the City include us on the notice list for all future public meetings regarding the City’s ADU policies, and we request that this letter be included in the correspondence file for those meetings.

Sincerely,



Matthew Gelfand

cc: City of Burlingame
Kevin Gardiner, Comm. Dev. Director (by email to kgardiner@burlingame.org)
Ruben Hurin, Planning Manager (by email to rhurin@burlingame.org)
Kathleen Kane, Esq., City Attorney (by email to kkane@burlingame.org)

California Department of Housing and Community Development
Greg Nickless, Housing Policy Analyst (by email to greg.nickless@hcd.ca.gov)

Example Language For Government Code Section 65852.2(e)(1) ADUs

Units Subject to Limited Standards.

Notwithstanding [the other sections of the local ADU ordinance], accessory dwelling unit and junior accessory dwelling unit permits shall be issued based solely on the standards set forth in this section and all applicable Building Code standards, as follows:

- (a) Internal ADUs. One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:
 - (1) The ADU or JADU unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.
 - (2) The space has exterior access from the proposed or existing single-family dwelling.
 - (3) The side and rear setbacks are sufficient for fire and safety.
 - (4) The JADU complies with the requirements of Section 65852.22.
- (b) Detached ADUs. One detached, new construction, ADU that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The ADU may be combined with a JADU described in subsection (a)(1) of this section. A local agency may impose the following conditions on the accessory dwelling unit:
 - (1) A total floor area limitation of not more than 800 square feet.
 - (2) A height limitation of 16 feet.
- (c) Multifamily Dwelling ADUs
 - (1) Multiple ADUs within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.
 - (2) A local agency shall allow at least one ADU within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.
- (d) Not more than two ADUs that are located on a lot that has an existing multifamily dwelling but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.
- (e) Rentals of ADU and JADU permitted pursuant to this section shall be for a term longer than 30 days.
- (f) Installation of fire sprinklers are not required in an ADU or JADU if sprinklers are not required for the primary residence.
- (g) ADUs and JADUs permitted under this section shall not be required to install a new or separate utility connection directly between the ADU and the utility nor shall a related connection fee or capacity be charged unless the ADU or JADU is proposed to be constructed with a new single-family home.