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Public Hearing to Consider Proposed Zoning Code Amendments to Article 5, Section 2-576, "Secondary Dwelling Units," and Related Conforming Amendments to Respond to New State of California Mandates for Accessory Dwellings

**SUMMARY AND RECOMMENDATION**

In September 2016, Governor Brown signed SB 1069 and AB 2299 into law. Both bills are intended to address California’s affordable housing crisis by making it easier to develop Accessory Dwelling Units (ADUs). The principal impacts of the new rules are the elimination of parking requirements for ADUs in most urban settings, allowances for garage conversions to ADUs when replacement parking for the primary residence is provided, and reduction of impact fees and utility connection fees for ADUs. The proposed San Leandro Zoning Code amendments will bring the City into compliance with the new State regulations while retaining or updating certain provisions of the existing Code addressing unit size, neighborhood compatibility, safety, and architectural design.

Staff recommends that the Planning Commission review the attached text changes to the Zoning Code Article 5, Section 2-576, "Accessory Dwelling Units," and provide a recommendation of approval to the City Council to adopt the proposed Ordinance to amend Article 5 of the Zoning Code to comply with applicable State mandates.

In its deliberations, the Planning Commission should consider the following two housing policy issues related to the Accessory Dwelling Unit ordinance:

- Should the City allow both the primary unit and the ADU to be rented, or should owner occupancy continue to be required in one of the two units?
- Should the City prohibit short-term rental of ADUs, in order to encourage the use of these units

as long-term rental housing?

The City Council is tentatively scheduled to open its hearing and conduct a first reading of the ordinance implementing the proposed code changes at its March 20, 2017 meeting. The Council would then conduct a second reading at its first hearing in April. The code changes would take effect 30 days after the second reading.

## BACKGROUND

Accessory Dwelling Units (ADUs), also called secondary dwelling units, in-law apartments, or granny flats, are an important housing resource in California. ADUs are typically created in one of three ways:

1. Through the construction of a new detached structure on a property
2. Through the addition of new habitable floor space to an existing residence
3. Through the conversion of existing habitable space within the envelope of a home to a separate dwelling unit

The State Government Code generally treats the first and second categories the same, but recognizes the third category as a separate class of dwelling (subject to streamlined regulations).

Over the last two decades, the state has adopted a number of laws that encourage ADUs and limit the requirements that may be imposed by cities on them. ADUs are generally regarded as an effective way to increase housing options without changing neighborhood character. They provide housing that is often affordable for renters, a source of income for homeowners, and a housing resource for extended families, seniors, college students, and others.

On September 27, 2016, Governor Brown signed two pieces of legislation that required California cities and counties to substantially revise their ADU regulations by January 1, 2017. SB 1069 was sponsored by State Senator Wieckowski (D-Fremont) and AB 2299 was sponsored by State Assemblyman Bloom (D-Santa Monica). The two bills include the following provisions:

- Zoning Code references to “secondary dwelling” must be replaced with the term “accessory dwelling unit”
- Local ordinances must state that ADU applications will be approved or disapproved within 120 days after a complete application is received
- ADUs up to 1,200 square feet or up to 50 percent of the living area in an existing dwelling may be permitted
- Cities cannot require more than one parking space per bedroom, however the following provisions apply:

- Cities must waive parking requirements for ADUs that do not increase the net habitable space on the property, or that are within one-half mile of public transit, one block of a car share vehicle, or are within a historic district
- Cities must allow off-street parking requirements for ADUs to be met through tandem parking or within required setback areas
- Garages may be converted to ADUs, provided that off-street parking requirements for the primary residence and ADU are met
- Fire sprinklers can only be required for an ADU if they would be required for an equivalent improvement to the primary residence without an ADU
- Cities are given an opportunity to limit the use of ADUs as short-term rentals
- Local agencies may not collect water and sewer connection fees for ADUs that do not add habitable floor space, and must structure fees for other types of ADUs so they are proportional to the impacts on service demand.

### **Current Allowances for Accessory Dwelling Units (ADUs) in San Leandro**

In July 2003, the San Leandro City Council established Zoning Code regulations to allow ADUs “by right” (i.e., via the ministerial action of issuing a building permit) if the proposal met parameters related to size, height and building coverage, setbacks, parking, and occupancy. The maximum floor area of an ADU was established at 450 square feet or 30% of the principal dwelling’s floor area, whichever was less.

Regulations for ADUs were amended in 2012 to implement policies in the 2010 San Leandro Housing Element. At that time, the City adopted a sliding scale for the size of ADUs based on lot size. For attached ADUs (ADUs within the “envelope” of an existing home, or created through an addition to an existing home), the revised regulations included a size limit equal to 10% of the lot area or 50% of the principal dwelling’s heated floor area, whichever was smaller, with a maximum unit size of 750 square feet (SF). For detached ADUs (accessory structures), a minimum lot size of 10,000 SF was established for ministerial approval. A site plan review process was created for detached units on smaller lots, with a square foot maximum ranging from 500 to 750 SF.

It should be noted that SB 1069 and AB 2299 effectively render some of the City’s standards unenforceable as of January 1, 2017. State law allows ADUs to be up to 1,200 square feet or 50% of the floor area of the principal residence, whichever is less, on all single family residential properties. The regulations laid out below would establish a new set of size requirements and would only allow the State maximum to be achieved on large lots.

### **PROPOSED REGULATIONS**

This section of the staff report outlines the proposed regulations for ADUs in the City of San Leandro. It is organized into four sections:

- An overview of how the regulations are organized
- A discussion of what has not changed (e.g., what is being carried forward from existing Section 2-576)
- A discussion of proposed changes to Section 2-576
- A discussion of other changes to the Zoning Code to ensure internal consistency with the changes being made to Section 2-576

## Organization of the Regulations

Accessory Dwelling Units (ADUs) are regulated under Section 2-576 of the Zoning Code. Section 2-576 appears in Article 5 (Residential Districts), Division 3 (Discretionary Permits). The existing title of Division 3 will be changed to “Discretionary and Ministerial Permits,” since the sections under this title also include ministerial permits (such as those issued for ADUs).

Section 2-576 begins with a definition of ADUs (Subsection A), followed by provisions for where ADUs are permitted (Subsection B). This is followed by the requirements for applications and ministerial approval (Subsection C). Subsection D includes design and development standards for ADUs, addressing topics such as setbacks and parking. Subsections B, C, and D are largely carried forward from the existing Code but have been edited and expanded to reflect the new legislation.

Subsections E, F, and G are all new. Subsection E addresses fees, while Subsection F is a prohibition on short-term rental of ADUs. Subsection G addresses building safety.

Subsections H and I address requirements for deed restrictions and a prohibition on subdivisions (e.g., the creation of a separate parcel for an ADU); these are both carried forward from the existing regulations.

## Provisions Carried Forward

Section 2-576 carries the following requirements forward:

- ADUs are permitted in any residential zone where single family homes are permitted, but are only allowed on lots with one principal dwelling
- Ministerial approval (e.g., no public hearing) will continue to be granted to applications meeting the design and development criteria in the Zoning Code
- The application requirements for an ADU are largely unchanged. Applicants must submit a plot plan, floor plans, elevations, cross-sections (for hillside homes), and a deed restriction ready for recordation
- The procedure and findings for approval of ADUs are largely unchanged.
- ADUs must still conform to the lot coverage, setback, and height standards in the residential zoning districts. A few exceptions apply; these are discussed in the next section.

- A sliding scale for unit size still applies. For lots smaller than 7,500 square feet, which includes most single family lots in San Leandro, the maximum size limits will not change
- The ADU must be visually subordinate to the existing dwelling
- Residential site plan review standards still apply
- A deed restriction will be required prohibiting the sale of an ADU as a separate parcel or dwelling unit.

### **New or Changed Provisions**

The following provisions of Section 2-576 are new or changed from the existing requirements:

- All references to “secondary dwelling units” have been changed to “accessory dwelling units,” as required by the new State legislation
- A definition of ADU matching the current Government Code has been added at 2-576(A)
- Approval of an ADU that meets all the design and development standards of Section 2-576 is required within 120 days of receipt of a complete application (2-576(C)). This is now required by the Government Code.
- Detached ADUs of 750 square feet (SF) or smaller will be permitted ministerially on lots between 7,500 and 10,000 SF (such units are currently discretionary and require Site Plan Review).
- Per the Government Code, the new regulations allow ADUs up to 1,200 square feet (SF). However, such units would only be permitted on lots larger than 40,000 SF. There are very few single family residential lots in the city in this size category. The regulations also allow ADUs up to 1,050 SF on lots between 20,000-39,999 SF and ADUs up to 900 SF on lots between 10,000-19,999 SF. There are a relatively small number of lots in these size categories.
- Government Code explicitly states that ADUs may not be counted as new dwelling units when determining consistency with General Plan and zoning densities. This provision has been deleted from Section 2-576.
- In the RS, RS-VP, and RO zones, the owner of the ADU must currently reside on the property, either in the principal residence or in the ADU. Staff is recommending this provision be removed in the proposed changes. The Planning Commission may provide direction on whether this provision should be retained in the Code, or whether the City should allow both the principal unit and the ADU to be rented
- Section 2-576(D)(4)(a) prohibits new ADUs above the roofline of the first floor of a residence unless they are contained entirely within the envelope of the existing residence. An applicant would need to go through the Site Plan Review process (a discretionary process) to add a second story, and then convert that space to an ADU once it was completed.

- Section 2-576(D)(5) and (6) include new provisions for parking. These provisions are now required by the Government Code, and effectively exempt ADUs from all off-street parking requirements if they are located:
  - Within one-half mile of public transit;
  - In a historic district or the site of a listed historic resource;
  - Entirely within the footprint of an existing home, with no increase in habitable square footage resulting from creation of the ADU;
  - In an area where on-street parking permits are required but not available to the tenant;  
or
  - Within one block of a designated parking area for car-share vehicles available to the general public on a subscription basis.

Most of San Leandro's single family homes are within one-half mile of an AC Transit bus stop, which effectively means that they are exempt from off-street parking requirements. While the legislation does not define "public transit," the guidelines developed by the State Department of Housing and Community Development indicate that the intent is to include local bus stops regardless of service frequency. The proposed definition used in Section 2-576 would exclude the LINKS shuttle and the Transbay buses, but would include BART and local AC Transit lines.

- Where off-street parking is required, the proposed Code revisions allow for more flexibility than the current Code.
- The new California Government Code requirements allow for garages to be demolished and replaced by ADUs, provided that the parking requirements for the principal dwelling and the ADU are replaced as off-street parking. In this instance, the State regulations prevent the City from requiring construction of a new garage if an existing garage is demolished - even to serve the primary dwelling unit. The new State law does not address this allowance for garages which are converted to ADUs.
- As required by the revised California Government Code, the revised 2-576 also stipulates that if an existing garage is located in a setback area, it may still be converted to an ADU.
- The City cannot require the ADU to have a continuous pathway from the street to the front door (referred to as a "passageway" by the new legislation)
- Section 2-576 (E) has been added, explicitly entitling the City to collect fees for permitting and inspection of ADUs. However, as required by the revised California Government Code, the City may not collect impact fees for an ADU that adds no habitable space, and it cannot treat an ADU as a new residence for the purpose of determining fee amounts. Impact fees must be proportional to the burden the ADU will place on City services.
- Section 2-576 (F) prohibits the leasing of an ADU for a term shorter than 30 days. This is to

encourage the use of ADUs as permanent rental housing and discourage their use as “hotel” type rentals. While this provision is specifically referenced by the revised California Government Code, it is not mandatory.

- Section 2-576(G) identifies building safety requirements for ADUs. These include smoke alarm and carbon monoxide detectors, permanent foundations, and mandatory inspections for any private sewage disposal systems. Consistent with the revised Government Code, these requirements also state that ADUs may not be held to a higher standard than the principal residence relative to fire sprinkler requirements.

### **Conforming Revisions to Other Code Sections**

The Zoning Code Amendments also include:

- Conforming amendments to Article 3 (Section 1-304, Definitions) to reflect the State definition of an ADU and the mandatory shift in terminology from “secondary dwelling unit” to “accessory dwelling unit”
- Conforming amendments to Article 5 (Sections 2-504, 2-506, 2-508, and 2-510) regarding permitted uses in the RS, RO, RD, and RM zones. The revisions add “Accessory Dwelling Units” as a permitted use in RS and RO, and as a permitted use in existing single family homes in RD and RM.
- A conforming amendment to Article 5 (Section 2-546) exempting detached ADUs from the 500 square foot limit on accessory structures on single family lots
- A clarification to Section 2-578 noting that detached ADUs are counted as habitable floor area (unlike other accessory buildings)
- An amendment to the parking table in Article 17 (4-1704, Off-street Parking and Loading Requirements) cross-referencing the parking standards for ADUs in Section 2-576
- A clarification to Article 25 (Section 5-2502, Site Plan Approval) confirming that accessory dwellings meeting all development and design standards are exempt from Site Plan Review (and a discretionary Zoning Enforcement Officer hearing)
- Changing an Article 30 reference from “Secondary” dwelling to “Accessory” dwelling.

### **CONSISTENCY WITH THE GENERAL PLAN**

The proposed amendment is supported by Land Use Element policy in the 2035 General Plan as well as polices in the current 2015-2023 Housing Element.

Policy LU-1.11 (Second Units) states:

Recognize second units as an important part of the city's housing stock, and encourage their continued development in single family neighborhoods. Maintain permitting requirements for second units which address parking, design, owner-occupancy, and other potential neighborhood impacts.

The revised regulations recognize the importance of Accessory Dwelling Units and strongly encourage their development. The revisions also maintain permitting requirements, and regulate parking to the extent the City is able under the new State requirements. Implementation actions in the General Plan include a directive to explore incentives and development standards which make it easier to construct a second unit. The proposed Ordinance revisions effectively carry out this directive.

The Housing Element includes narrative supporting accessory dwellings, as well as additional policy and action language to foster their development. Relevant policies include:

Policy 56.11: Recognize second units as an essential part of the city's housing stock and a resource for lower income households, students and young adults, seniors, extended families, and small households.

Action 59.01-F: Develop zoning amendments which would facilitate the construction of additional dwelling units in single family neighborhoods.

The proposed Code revisions implement Policy 56.11, and carry out Action 59.01-F. The revisions to Section 2-576 are explicitly aimed at recognizing the importance of second units, and would facilitate the construction of additional dwelling units in single family neighborhoods. The revisions would improve San Leandro's ability to meet its housing needs, achieve its Regional Housing Needs Allocation, and respond to changing demographics.

Other related Housing Element policies include Action 59.02-A, which encourages reduction in parking requirements for housing near transit, and Policy 59.04, which encourages reductions in residential development fees for affordable housing. The proposed revisions would waive parking requirements for housing within one-half mile of an AC Transit stop or BART station and would reduce impact fees for accessory dwellings.

## ENVIRONMENTAL REVIEW

The proposed amendments are statutorily exempt from the requirements of the California Environmental Quality Act under Public Resources Section 21080.17 and do not have the potential to cause a significant effect on the environment.

## PUBLIC OUTREACH

Notification of this meeting included a legal advertisement in the Daily Review and posting of a notice of the meeting at City Hall a minimum of 72 hours in advance of the Planning Commission meeting date. In addition, a courtesy notice was sent to all San Leandro homeowner associations.

## ATTACHMENTS

- Attachment A - Zoning Code, Article 2-576, Accessory Dwelling Units and Conforming Revisions to the Zoning Code (Excerpts) - Redline version with strikeout and underlining.

*For clean versions of Article 2-576 and Conforming Revisions to the Zoning Code (Excerpts), see Exhibits A and B attached to Resolution No. 2017-002, Recommending that the City Council Adopt an Ordinance Amending Section 2-576 of the San Leandro Zoning Code*



*(Accessory Dwelling Units), and Make Conforming Amendments to other Sections of the Zoning Code for Internal Consistency.*

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