

ZONING ORDINANCE AMENDMENT #19-02 RE: ACCESSORY DWELLING UNITS



CITY COUNCIL MEETING—AUGUST 5, 2019

KIM ESPINOSA, PLANNING MANAGER

JULY 1, 2019 CITY COUNCIL MEETING

- On July 1, 2019, the City Council held a public hearing on the proposed Ordinance and discussed the options regarding parking and owner occupancy.
- Two members of the public testified and indicated that they did not favor eliminating the owner occupancy requirement for either the primary or accessory dwelling unit because of concerns about impacts on neighborhoods.
- After an extensive discussion, the City Council adopted a motion to continue the public hearing to August 5, 2019, and directed staff to prepare an alternative ordinance which would allow for parking within the setback areas for accessory dwelling units only and to retain the owner occupancy requirement only within R-1 zoning districts.
- After tonight's public hearing, the City Council will have an option of adopting one of two draft ordinances.

LETTER FROM CALIFORNIANS FOR HOMEOWNERSHIP

- On July 12, 2019, the City received correspondence from Matthew Gelfand representing the Californians for Homeownership (Attachment 6).
- State law requires if an existing parking structure is converted to an ADU (which must include bathroom and kitchen facilities), then the replacement parking would need to be allowed in any configuration on the lot, including tandem spaces within the setback areas.
- Section 20.42.030(G)(2) should be amended as follows (in either Option 1 or 2):

2. When all or a portion of a garage, carport, or other parking structure is converted or demolished to construct an accessory dwelling unit, the parking spaces displaced by the conversion may be allowed in any configuration on the lot, including, but not limited to, covered spaces, or tandem spaces, or by use of mechanical automobile parking lifts. The creation of an accessory dwelling unit through the conversion of all or a portion of a garage is prohibited unless replacement parking is provided elsewhere on the property in conformance with required parking standards as defined in Chapter 20.38 (Parking and Loading).

OPTIONS FOR CITY COUNCIL ACTION

OPTION 1

- A. Adopting a Categorical Exemption (Environmental Review #19-04); and,

B. Introducing **Ordinance ____**, Per City Council Direction on July 1, 2019, which would allow for parking within the setback areas for accessory dwelling units only and to retain the owner occupancy requirement within R-1 zoning districts only.

OR

OPTION 2

- A. Adopting a Categorical Exemption (Environmental Review #19-04); and,

B. Introducing **Ordinance 2502**, As Recommended by the Planning Commission, which would allow parking for all uses within setback areas and would eliminate the owner occupancy requirement in all zones, with amendments to 20.42.030(G)(2).

Any Questions?

SLIDES FROM JULY 1, 2019 CITY COUNCIL MEETING

BACKGROUND—STATE OF CA

- The California Legislature has declared that allowing accessory dwelling units (ADU's) in single-family and multi-family zones is an essential component in addressing housing needs in California.
- In 1982, the State enacted a mandate that every local agency adopt provisions for permitting accessory dwelling units (then known as "secondary dwelling units" or "second units"). The intent was to encourage housing for extended family members and to increase the availability of rental housing.
- In 2003, AB 1866 was adopted, requiring all local governments to allow ADU's within single-family residential zones.
- In 2016, Senate Bill 1069, Assembly Bill 2299, and Assembly Bill 2406 were adopted which made specific amendments to State law to promote the production of ADU's. These bills were intended to reduce barriers and streamline approval.

BACKGROUND—CITY OF MERCED

- September 2018—City Council asked for review of Accessory Dwelling Unit Ordinance.
- November 19, 2018—City Council Directed Staff to:
 - Prepare Ordinance Changes for Public Hearings before Planning Commission & City Council.
 - Develop a Housing program similar to the Clovis Cottage model of having pre-approved plans for ADU's to make it easier for Property Owners to Develop ADU's.
 - Return to City Council in January 2019 to discuss Policy Issues regarding Parking and Owner Occupancy Requirements.
- January 22, 2019—City Council reviewed Policy Issues and Generally Supported changes to the Location of Required Parking for all uses, but asked for further information on the Owner Occupancy issue.

PROPOSED CHANGES TO MERCED ZONING ORDINANCE FOR ACCESSORY DWELLING UNITS



ZONING ORDINANCE CHANGES

- Change “Second Units” or “Secondary Dwelling Units” to “Accessory Dwelling Units” throughout the Zoning Ordinance.
- The maximum size of an attached ADU shall be changed from 1,000 square feet to 1,200 square feet.
- Remove the “maximum number permitted” section, but include that “ADU’s cannot exceed the allowable density for the lot.”
- Clarify that the standard that the ADU “be clearly subordinate to the primary dwelling” would not preclude an ADU from being located in the front of the property.
- Clarify the setback requirements for ADU’s.

ZONING ORDINANCE CHANGES (CONT.)

- Change the parking requirements for ADU’s with more than 3 bedrooms from 2 to 1 space as State law only requires 1 parking space for all ADU’s regardless of size.
- Add a provision that “parking may be allowed in setback areas or as tandem parking on a driveway, unless the City determines that such options are not feasible on the existing property, based on fire and life safety concerns.”
- Add a provision that states that the parking requirements do not apply in these cases:
 - Official Historic districts
 - Within ½ mile of public transit
 - Part of an existing structure
 - On-street parking permits are required
 - Car share vehicles are located within one block



ZONING ORDINANCE CHANGES (CONT.)

- Add provisions regarding fees, including:
 - ADU's are not considered "a new residential use for the purpose of calculating connection fees or capacity charges for utilities, including water and sewer service."
 - Any utility fee or charge imposed "must not exceed the cost of providing the service."
 - The City "cannot require applicants creating ADU's within the existing space of a single-family dwelling or accessory structure...to install a new or separate utility connection or impose a related connection fee or capacity charge."
 - *These provisions may also require changes to the Merced Municipal Code sections relating to the water and sewer connection fees as well.*

See Attachment 5 for Draft Ordinance.

PARKING AND OWNER OCCUPANCY REQUIREMENTS FOR ACCESSORY DWELLING UNITS



PARKING

- State Law requires that “parking may be allowed in setback areas or as tandem parking on a driveway, unless the City determines that such options are not feasible on the existing property, based on fire and life safety concerns.”
- Each Single-Family Home requires one parking space (10' x 20'), but that space cannot be within the exterior setback area in R-1 and R-2 zones.
- Parking is **NOT** prohibited in the Driveway, but it does **NOT COUNT** as the Legal Required Parking Space. That Space is usually Located within the Garage.
- This Provision can make it difficult to convert the garage into living space.
- Survey showed that Most Cities Opt for Special Exemptions for ADU Parking Only.



PARKING (CONT.)

- In January 2019, the City Council Expressed Preference for Allowing Legal Required Parking Within the Setback Areas for All Uses, Not Just the ADU.
- Some Concerns about this change which could:
 - Lead to More Garage Conversions
 - Lead to More Vehicles being Parked On the street in neighborhoods
 - Lead to More Conflicts on Trash Collection Days
 - Lead to More Conflicts between Neighbors about the Use of On-Street Parking
 - Covered Parking could conflict with Street Trees and Utility Lines
- The Majority of the Planning Commission felt that Allowing for Parking in the Setback area could help Add to the City's Housing Stock by encouraging their Conversion to ADU's or Just Additional Living Space, and Recommended that Uncovered Parking be allowed in the Setback Area/Driveway.

OWNER OCCUPANCY

- The City's current Ordinance requires "the owner of a parcel occupied by a second unit (now ADU) shall reside in either the primary dwelling unit or the second unit."
- A Deed Restriction is also Required to be Recorded to Implement the Above.
- State Law does NOT require the City to Eliminate this Requirement, but some Cities are considering it in order to encourage the construction of ADU's.
- Survey of 35 California Cities found that 28 still require owner occupancy while 7 Cities and 1 County did not have such a requirement.
- Survey in Oregon showed 30 of 46 cities retained the requirement while Portland eliminated it in 1998.



OWNER OCCUPANCY—REASONS FOR

- Eliminating the Requirement May Have Impacts on Single-Family Neighborhoods in that Both Units could be Rentals with No Landlord Onsite.
- The Occupancy Requirement is thought to Minimize Negative Impacts (i.e. excessive noise, lack of property upkeep, etc.) because the Property Owner is Living on the Same Property as Their Tenants.
- Possible Disputes Regarding Sewer, Water, and Trash Collection Service since City only allows one such service per single-family lot. Issues Could Arise with Tenants Contaminating the Green Waste Container, Violating the Watering Rules, or Paying their Fair Share of the Bill, which Could Cause Problems for the City in Collecting Fines or Cutting off Service for Non-Payment.
- Many Merced Neighborhoods are already Experiencing Some of these Issues with Single-Family Homes Being Rented to Multiple Tenants.

OWNER OCCUPANCY—REASONS AGAINST

- Owner Occupancy Restrictions Tend to Discourage the Construction of ADU's.
- Makes It Harder to Secure Home Loans to Finance ADU Construction.
- Limits the Value Appraisers Can Assign to a House and Makes the Property Less Valuable for Loan Collateral.
- If such a Home and ADU is Foreclosed on, the Bank Can't Rent Out Both Units.
- Make Properties with ADU's Unsuitable for Income Based Valuation by Appraisers, Constraining Their Value, and Making Them Difficult to Finance.
- Hurts the Market for ADU's and Creates Obstacles for "Mom and Pop" Landlords Trying to Provide Affordable Housing Options.
- All of This May Be a Moot Point if Current SB 13 Being Considered at the State is Passed...It would Prohibit Local Agencies from Requiring Owner Occupancy.

OWNER OCCUPANCY—PLANNING COMMISSION RECOMMENDATION

- After an extensive discussion at its May 8, 2019 public hearing, the Planning Commission voted 4-1-2 (4 ayes, 1 no, 2 absent) to recommend that the Owner Occupancy Requirement Be Removed.
- The Majority of the Planning Commissioners felt that the State was very likely to Pass Legislation which would Remove the City's Discretion to Require Owner Occupancy and that the Removal of the Requirement would Encourage the Construction of ADU's in Merced.
- The Planning Commissioner who voted "No" was Concerned about the Effect of "Absentee Landlords" on the Maintenance and Appearance of the Property.

PLANNING COMMISSION & CITY COUNCIL ACTION



PLANNING COMMISSION ACTION

- On May 8, 2019, the Planning Commission held a public hearing on the Draft Ordinance.
- No one from the Public testified at the hearing but One Email was received prior to the meeting.
- After extensive discussion, the Planning Commission voted (4-1-2) to Recommend Adoption of the Draft Ordinance with Revisions, including Allowing for Required Parking Spaces in the Front Yard Setback Area for All Uses (not just ADU's) and Eliminating the Owner Occupancy requirement for both the Primary and Accessory Unit.
- The Commissioner who voted "No" did not agree with Eliminating the Owner Occupancy Requirement or Allowing Required Parking in the Setback due to Increased Numbers of Vehicles Parked On the Street.

CITY COUNCIL ACTION

After the public hearing, the City Council should consider adopting a motion:

- Adopting a Categorical Exemption (Environmental Review #19-04); and,
- Introducing Ordinance No. ____ amending the City's zoning requirements for Accessory Dwelling Units as recommended by the Planning Commission.

Any Questions?