



Legislation Text

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SUBJECT: Policy Direction Regarding Parking and Owner Occupancy Requirements for Accessory Dwelling Units

REPORT IN BRIEF

The City Council will be asked to provide further policy direction regarding parking and occupancy requirements for accessory dwelling units (ADU's) in preparation for amendments to the Zoning Ordinance to meet recent State law changes.

RECOMMENDATION

The City Council should provide policy direction to staff regarding parking and owner occupancy requirements for accessory dwelling units.

ALTERNATIVES

Not applicable.

AUTHORITY

SB 1069 and AB 2299 provided changes to State law regarding accessory dwelling units. Merced Municipal Code (MMC) Section 20.42 of the Zoning Ordinance (Attachment 1) addresses "second units" (the prior term used for accessory dwelling units).

CITY COUNCIL PRIORITIES

This item relates to both "Housing" and "Infill Development" referenced in the FY 2018-19 Council Goals and Priorities.

DISCUSSION

Background

On September 17, 2018, the City Council directed staff to review the City's Zoning Ordinance to determine what changes were needed in order to comply with the new State laws regarding Accessory Dwelling Units (ADU's), and to consider alternative approaches to facilitate the development of ADU's in the City of Merced. On November 19, 2018, the City Council reviewed the proposed changes as outlined below and possible new Housing Division programs that might be implemented to encourage the development of ADU's. The City Council, by unanimous vote, directed staff to prepare the changes to the Ordinance for consideration by the Planning Commission and City Council at public hearings in the early months of 2019, but prior to presenting the draft Ordinance, return to the City Council in late January 2019 for further policy direction regarding

parking and the owner occupancy requirements for accessory dwelling units. The City Council also directed Housing staff to move forward with a program similar to the Clovis model presented at the meeting. There are no updates on those programs at this time.

Proposed Changes to the Zoning Ordinance

Chapter 20.42 of the Merced Municipal Code allows the construction of “Second Units” or “Secondary Dwelling Units,” the terms that had previously been used in State law and was written to be in compliance with State law which was effective at the time of adoption in 2015. Former Interim City Attorney Jolie Houston asked a member of her firm, Berliner Cohen, to prepare a list of suggested changes to the City’s Zoning Ordinance to address the latest revisions to State law, SB 1069 and AB 2299.

A summary of those changes are as follows (these same changes were presented to the City Council in November 2018):

- The terms “Second Units” or “Secondary Dwelling Units” will need to be changed to “Accessory Dwelling Units” throughout the Zoning Ordinance, including the Residential Zoning Districts Chapter, the Parking Chapter, and the Glossary.
- 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 as State law does not allow the number of ADU’s to be capped per parcel although local ordinances should specify 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.
- Change the parking requirements for ADU’s with more than 3 bedrooms from 2 to 1 space as State law only allows the requirement for 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 the five instances stated in State law, which include in historic districts, within ½ mile of public transit, the ADU is part of an existing structure, on-street parking permits are required, or car share vehicles are located within one block.
- 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.)

Planning staff will prepare these changes to the Zoning Ordinance for consideration at public hearings by the Planning Commission and City Council in the coming months.

Policy Direction regarding Parking and Owner Occupancy

Parking:

One of the changes noted above is to 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.” Per the current parking requirements for single-family homes in the Zoning Ordinance, each home is required to have 1 required parking space per unit and per Merced Municipal Code Section 20.08.030(F)(1), that “required” parking space cannot be within the required exterior setback areas in R-1 (single-family) and R-2 (duplex) zones. (However, those spaces are allowed to be in the setback area within R-3 and R-4 zones, which allow apartment units and have more traditional parking lot areas for tenants to park in.)

The driveway on a single-family home is usually within the front yard/exterior setback, and although there is nothing that prohibits the occupants from parking on the driveway, it cannot be counted as the legal required parking space. That legal required space is the one within the garage. Because of this requirement, if an owner wants to convert the garage into living space, they must either leave enough space for a legal 10 foot by 20 foot parking space within the garage (if it is a 2- or 3- car garage) or find another location within the lot (not within an exterior setback area) to install another parking space. The Ordinance also requires that any such uncovered space must be designed and located so that it can later be converted to a covered space. (This requirement means that the parking space cannot be within a required side yard setback area either.) On smaller lots especially, it can often be difficult to find such a location and this discourages garage conversions. It should be noted that this concern was brought up as part of the comprehensive Zoning Ordinance Update in 2015, but ultimately the Zoning Ordinance Focus Group (made up of 25 citizens), the Planning Commission, and City Council opted to remain with the existing requirements.

The City Council could consider making broader changes to the Zoning Ordinance that would allow legal parking spaces for all uses to be in the exterior setback areas for all R-1 and R-2 zones throughout the City or a special exception could be granted for accessory dwelling units only. The special exception would meet the requirements of State law for ADU’s and would likely have less impacts on single-family neighborhoods as City staff receives many more requests for garage conversions than for accessory dwelling units.

Owner Occupancy:

Merced Municipal Code Section 20.42.040(A) requires that “the owner of a parcel occupied by a second unit (to be changed to “accessory dwelling unit”) shall reside in either the primary dwelling unit or the second unit.” MMC 20.42.040(B) further goes on to require that a deed restriction be recorded that specifies that the ADU cannot be sold separately and that the property owner must reside in either the primary or accessory unit.

There is nothing in State law that requires the City to change the above requirements. However, at the November 19, 2018, meeting, the City Council asked for a discussion of options regarding this requirement. At the Council meeting, at least one citizen testified that they would be concerned

about eliminating this requirement.

Some cities have eliminated this occupancy requirement in recent years in order to encourage the development of ADU's and others are considering that now. The City of Chico is one of those, but specifically in response to the Camp Fire that destroyed much of the nearby City of Paradise and has caused a severe housing shortage in the area. However, from a limited survey by City staff, it appears that most communities, including Clovis, Modesto, Turlock, Walnut Creek, Burlingame, Redwood City, San Bruno, San Carlos, etc., still retain this occupancy requirement.

While eliminating the requirement might encourage the development of more ADU's, it might have impacts on the character of single-family neighborhoods throughout the City. If the property owner is not required to live in one of the units, that would allow both units to be rentals, thereby creating two "apartment" units on each lot with no landlord onsite.

The occupancy requirement is thought to encourage property owners to minimize possible negative impacts (such as excessive noise, or lack of property upkeep) because they are living on the same property as their tenants. For many years, the City required ADU occupants to be "related by blood or marriage" (generally elderly relatives or teenagers). That requirement was eliminated a number of years ago to allow homeowners to rent ADU's to anyone to generate extra income and to give more housing choices to college students or others.

Council Policy Direction:

The City Council should provide City staff with policy direction for parking and owner occupancy requirements described above so that changes to the Zoning Ordinance for accessory dwelling units can be prepared.

IMPACT ON CITY RESOURCES

No appropriation of funds is necessary for the amendments to the Zoning Ordinance.

ATTACHMENTS

1. Current "Second Unit" Ordinance
2. City Council Presentation