



Legislation Text

File #: 19-393, **Version:** 1

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SUBJECT: Continued Public Hearing - Adoption of a Categorical Exemption (Environmental Review #19-04) and Introduction of Ordinance Amending Section 20.42 and Various Other Sections of the Merced Municipal Code Regarding Accessory Dwelling Units (Zoning Ordinance Amendment #19-02)

REPORT IN BRIEF

Considers the adoption of a Categorical Exemption and the introduction of an Ordinance (one of two options) which would modify the City's zoning regulations regarding accessory dwelling units.

RECOMMENDATION

City Council - Adopt a motion:

OPTION 1 (Based on City Council Direction on July 1, 2019)

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

B. Introducing **Ordinance 2502**, An Ordinance of the City Council of the City of Merced, California, Amending Sections 20.42 ("Second Units") as well as Tables 20.08-1 ("Permitted Land Uses in the Residential Zoning Districts"), 20.16-1 ("Permitted Land Uses in the Urban Village Zoning Districts"), and 20.38-1 ("Off-Street Parking Requirements"); and Sections 20.08.030.F.1 ("Development Standards for Residential Zoning Districts, Parking"), 20.20.010.C.3 ("Urban Transition Zoning District, Development Standards"); 20.46.010 ("Residential Design Standards, Purpose"), and 20.90.020 ("Glossary, Definitions") of the Merced Municipal Code.

OR

OPTION 2 (As Recommended by the Planning Commission)

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

B. Introducing **Ordinance 2502**, An Ordinance of the City Council of the City of Merced, California, Amending Sections 20.42 ("Second Units") as well as Tables 20.08-1 ("Permitted Land Uses in the Residential Zoning Districts"), 20.16-1 ("Permitted Land Uses in the Urban Village Zoning Districts"), and 20.38-1 ("Off-Street Parking Requirements"); and Sections 20.08.030.F.1 ("Development Standards for Residential Zoning Districts, Parking"), 20.20.010.C.3 ("Urban Transition Zoning District, Development Standards"); 20.46.010 ("Residential Design Standards, Purpose"), and 20.90.020 ("Glossary, Definitions") of the Merced Municipal Code, with Section 20.42.030(G)(2)

amended as outlined below.

ALTERNATIVES

1. Introduce the Ordinance (Option 1), per Council direction on July 1, 2019; or,
2. Introduce the Ordinance (Option 2), as recommended by the Planning Commission; or,
3. Introduce the Ordinance, subject to modifications by City Council (identify specific items to be amended in the motion; or,
4. Deny; or,
5. Refer to staff for reconsideration of specific items (to be addressed in the motion); or,
6. Continue to a future City Council meeting (date and time to be specified in motion).

AUTHORITY

Merced Municipal Code Section 20.80, "Zoning Ordinance Amendments," spells out procedures for amending the Zoning Ordinance.

CITY COUNCIL PRIORITIES

Infill Development and Housing are both listed as City Council Priorities for FY 2019/20.

DISCUSSION

City Council Direction/New Correspondence

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. Option 1 (draft Ordinance seen at Attachment 8 with a red-lined version at Attachment 7) reflects the direction of the City Council from July 1 and the change addressed below. Option 2 is the same Ordinance presented on July 1 as recommended by the Planning Commission, which allows for parking for all uses within the setback areas and eliminates the owner occupancy requirement. (If Option 2 is chosen, staff recommends that it be amended as shown below.)

On July 12, 2019, the City received correspondence from Matthew Gelfand representing the Californians for Homeownership (Attachment 6). Based on the information in the letter and a review of State law requirements, Staff has determined that 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. Staff is, therefore, recommending that Merced Municipal Code Section 20.42.030(G)(2) of the proposed Ordinance (in either Option) be amended to read as follows:

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).~~

The rest of this administrative report is the same as was presented on July 1, 2019, except for changes in dates in the “Next Steps” section and the addition of new Attachments 6, 7, and 8 and modifications to the presentation at Attachment 9.

Background

The City’s existing “Second Unit” zoning standards in Chapter 20.42 of the Merced Municipal Code (and other sections of the Zoning Code) are inconsistent with the amended California Government Code provisions regarding accessory dwelling units. Therefore, in order to retain some degree of local control over ADU construction, the City must amend the Zoning Ordinance to conform to state law. (See Attachment B of the Planning Commission Staff Report at Attachment 3 for a summary of recent State law changes.)

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 in Finding D of the Planning Commission Staff Report (Attachment 3) 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, 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. The City Council also directed Housing staff to move forward with a program similar to the Clovis model of providing pre-approved plans for ADU’s. (This Housing Division program is not part of the Ordinance revision so it is not discussed in this report.)

On January 22, 2019, City staff presented the City Council with the information provided in Findings E and G of the Planning Commission Staff Report (Attachment 3) regarding the parking and owner occupancy requirements. After discussion, the City Council, in general, indicated support for allowing required parking spaces to be in the front yard setback for both the primary unit and the accessory unit. However, the City Council was split on whether the owner occupancy requirement should remain. City staff indicated that staff would provide further information about this requirement at the time the revisions were proposed, so the Planning Commission could weigh in on the issue as part of its recommendation. Since that time, staff has done further research on the owner occupancy and parking requirements summarized in Findings F and H of the Planning Commission Staff Report and below.

General Overview of Proposed Changes to the Zoning Ordinance

The City of Merced is proposing to adopt an Ordinance to amend the Zoning Code to provide amended regulations for accessory dwelling units in conformance with changes in State law. A red-lined version of the Draft Ordinance that shows all the changes from the current ordinance is at Attachment A of the Planning Commission Resolution at Attachment 1 while a clean copy of the Draft Ordinance is at Attachment 5. Major modifications include:

- 1) The terms “Second Units” or “Secondary Dwelling Units” will need to be changed to “Accessory Dwelling Units” throughout the Zoning Ordinance, including the following chapters: Residential Zoning Districts, Urban Village Zoning District, Urban Transition Zoning District, Off-Street Parking, Second Units, and the Glossary. (See Sections 1, 2, 3, 4, 5, 6, 7, and 8.)
- 2) The maximum size of an attached ADU shall be changed from 1,000 to 1,200 square feet. [See Section 6, new MMC 20.42.030(C)(1) and (2).]
- 3) 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.” [See Section 6, previous MMC 20.42.030(C).]
- 4) 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. [See Section 6, new MMC 20.42.030(D)(3).]
- 5) Clarify the setback requirements for ADU’s. [See Section 6, new MMC 20.42.030(E)(1).]
- 6) 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. [See Section 5, Table 20.38-1, and Section 6, new MMC 20.42.030(G)(2).]
- 7) 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.” [See Section 6, new MMC 20.42.030(G)(1).]
- 8) Add a provision that states that the parking requirements do not apply in the five instances stated in State law, which include in official 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. [See Section 6, new MMC 20.42.030(G)(3).]
- 9) Add provisions regarding fees, including:
 - (a) 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.” [See Section 6, new MMC 20.42.040(C)(1).]
 - (b) Any utility fee or charge imposed “must not exceed the cost of providing the service.” [See Section 6, new MMC 20.42.040(C)(1).]
 - (c) 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.” [See Section 6, new MMC 20.42.040(C)(2).]

There are some optional changes that could be made to the Zoning Ordinance in order to further encourage the development of ADU’s in the City of Merced. Those changes are not required to conform to current State law, but may provide additional incentives to spur ADU development. Below is a summary of the information presented to the Planning Commission and City Council on those issues. A more extensive discussion can be found in Findings E, F, G and H of the Planning Commission Staff Report (Attachment 3).

Policy Direction regarding Parking

The following is a summary of the information first presented to City Council in January 2019:

Per the current parking requirements for single-family homes in the City Zoning Ordinance, each home is required to have 1 required parking space per unit and that “required” parking space cannot be within the required exterior setback areas in R-1 (single-family) and R-2 (duplex) zones. 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. The parking space within the garage is the legal required space since it is outside of the setback area.

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. On smaller lots especially, it can often be difficult to find such a location and this discourages garage conversions.

The Planning Commission/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.”

The following additional information was provided to the Planning Commission on May 8, 2019, and is a summary of Finding F of the Planning Commission Staff Report (Attachment 3):

In January 2019, the City Council showed a preference for allowing required parking spaces for all uses (not just ADU's) in the exterior setback area, which is generally the driveway in the front yard, but can also be a side yard that is adjacent to the street. A summary of what other California cities have done regarding the parking requirements for ADU's (along with the owner occupancy requirement) is provided in Attachment C of the Planning Commission Staff Report at Attachment 3.

This proposed change could lead to significantly more garage conversions and could potentially lead to more vehicles being parked on the streets in neighborhoods due to the reduced amount of on-site parking. More on-street parking can lead to more issues on trash collection days and more conflicts among neighbors regarding on-street parking. A restriction against covering those parking spaces (car ports, etc.) would reduce possible aesthetic concerns and reduce conflicts with utility lines and street trees.

After the January Council meeting, staff received an email (Attachment D of the Planning Commission Staff Report) from former Council Member Belluomini. He felt that the Council discussion had been too broad and simply should have focused on any possible fire and life safety issues of allowing the driveway to be widened for an ADU. State law requires that parking for ADU's be allowed on the front driveway unless there were fire and life safety concerns.

Two options were presented to the Planning Commission on May 8, 2019 (summarized in Finding F

of the Planning Commission Staff Report). After an extensive discussion, the Planning Commission voted 4-1-2 (4 ayes, 1 no, 2 absent) to recommend to the City Council Option 1B, which would allow uncovered parking for all uses within the exterior yard setback area. Most Commissioners expressed support for this Option as it could potentially add to the City's housing stock by encouraging garage conversions for ADU's or simply for additional living space. The Commissioner that voted "no" was concerned about the increase in on-street parking. The Draft Ordinance at Attachment 5 reflects the Planning Commission's recommendation in Section 2, amendments to MMC 20.08.030(F)(1).

Policy Direction regarding Owner Occupancy

The following is a summary of the information first presented to City Council in January 2019:

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 current State law that requires the City to change the above requirements.

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.

The following additional information was provided to the Planning Commission on May 8, 2019, and is a summary of Finding H of the Planning Commission Staff Report (Attachment 3):

City staff reviewed the Accessory Dwelling Unit Ordinances adopted by 28 California cities and also referred to a survey done in 2018 for 7 cities in San Mateo County. A summary of the provisions in these ordinances regarding owner occupancy, short-term rentals, parking, and other special provisions of note can be seen in Attachment C of the Planning Commission Staff Report at Attachment 3. Regarding owner occupancy, 28 cities retained a requirement for either the primary or accessory unit be owner occupied while 7 cities and 1 county did not have such a requirement. According to www.accessorydwellings.org, although Portland, Oregon eliminated its owner occupancy requirement in 1998, 30 of 46 Oregon cities still retained the requirement in 2013.

Some reasons cited for retaining the requirement were concerns with "absentee landlords" and retaining the character of single-family neighborhoods. There could also be disputes around the fact that the City only allows one sewer and water meter and trash collection service per single-family lot. If there are issues with tenants contaminating the green waste container, violating the rules regarding excessive watering, or even paying their fair share of the bill, this could cause problems for the City in trying to impose 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. (More traditional apartments would have on-site managers and consolidated billing to deal with such issues.)

However, there are also reasons cited by various sources in favor of eliminating the owner occupancy requirement, chief among them that the restrictions tend to discourage the construction of ADU's. One article notes that the owner occupancy requirement makes it difficult to secure home loans to construct ADU's while another notes that it sharply limits the value appraisers can assign to a house and the ADU and makes property less valuable for loan collateral. Another article indicates that owner occupancy requirements can badly hurt the market for ADU's, make them hard to finance, and create obstacles for "mom and pop" landlords that are trying to provide affordable housing options.

Given the above, there seems to be good reasons on both sides. However, all this may be a moot point in the future since there is currently a bill, SB 13, being considered in the California Legislature which, if passed, would prohibit a local agency from requiring owner occupancy of either the primary or accessory unit.

Two options were presented to the Planning Commission on May 8, 2019 (summarized in Finding H of the Planning Commission Staff Report). After an extensive discussion, the Planning Commission voted 4-1-2 (4 ayes, 1 no, 2 absent) to recommend to the City Council Option 2B, which would remove the requirement for owner occupancy for both the primary and accessory unit and the corresponding deed restriction. Most Commissioners expressed support for this Option as they believed that the State would likely adopt legislation that would prohibit the City from requiring owner occupancy and felt that removing the requirement would encourage the construction of ADU's in the City. The Commissioner who voted "no" was concerned about the possible effect on property maintenance and appearance. The Draft Ordinance at Attachment 5 reflects the Planning Commission's recommendation to remove the requirements for owner occupancy and a deed restriction which were formerly in MMC 20.42.040. This section now only contains provisions regarding fees and addressing.

Planning Commission Recommendation

As noted above, on May 8, 2019, the Planning Commission held a public hearing on the proposed Ordinance changes. No one from the public testified, but staff did receive one email from former City Council Member Michael Belluomini regarding the changes (Attachment 4). After an extensive discussion, the Planning Commission voted to recommend approval to the City Council of the Draft Ordinance with revisions by a 4-1-2 vote (4 ayes, 1 no, 2 absent). The revisions were as noted above regarding allowing parking in the front setback area and removing the requirement for owner occupancy along with a few other minor revisions. The Draft Ordinance in Attachment 5 reflects the Planning Commission's recommended changes as does the red-lined version attached to the Planning Commission Resolution at Attachment 1. (Planning Commission minute excerpts can be seen at Attachment 2.)

Timetable/Next Steps

If the Council introduces the Ordinance at tonight's meeting (August 5, 2019), the second reading and adoption of the Ordinance would be at the next City Council meeting on August 19, 2019. The Ordinance would then be effective 30 days later or on approximately September 20, 2019.

Environmental Clearance

The Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption (i.e., no further environmental review is required) is being recommended (see Attachment E of the Planning Commission Staff Report at Attachment 3).

IMPACT ON CITY RESOURCES

No appropriation of funds is needed.

ATTACHMENTS

1. Planning Commission Resolution #4020 with Red-lined Ordinance
2. Planning Commission Minute Excerpts
3. Planning Commission Staff Report #19-13
4. Correspondence Received Prior to Planning Commission Meeting
5. Draft Ordinance (Option 2-As Recommended by the Planning Commission)
6. Correspondence from Californians for Homeownership (July 12, 2019)
7. Draft Ordinance (Option 1-Redlined Version)
8. Draft Ordinance (Option 1-Based on City Council Direction from July 1, 2019)
9. Presentation