



**STAFF REPORT**

**City Council**

**Meeting Date:**

**2/7/2017**

**Staff Report Number:**

**17-030-CC**

**Consent Calendar:**

**Waive the reading and adopt zoning ordinance amendments relating to Secondary Dwelling Units**

**Recommendation**

Staff recommends that the City Council waive the full reading of and adopt an Ordinance Amending Chapters 16.04 and 16.79 of the Menlo Park Municipal Code (Attachment A) in order to make City regulations consistent with applicable California law regarding secondary dwelling units.

**Policy Issues**

The proposed Zoning Ordinance Amendments would ensure that the Municipal Code would be in compliance with relevant State regulations. The amendments would also support Housing Element Policy H4.11, which encourages the development of secondary dwelling units.

**Background**

At the January 24, 2017 City Council meeting, the Council voted 5-0 to introduce an Ordinance Amending Chapters 16.04 and 16.79 of the Menlo Park Municipal Code, relating to secondary dwelling units. The amendments address requirements of Assembly Bill 2299 (AB 2299) and Senate Bill 1069 (SB 1069), passed in the 2015-2016 State legislative session. The Council's January 24 action included one revision, removing a staff-suggested limit on short-term rentals.

**Analysis**

The proposed amendments (Attachment A) would do the following:

1. Amend the definition of Secondary Dwelling Unit to coordinate with the State law definition amendment to Accessory Dwelling Unit, to include specific definitions for "Attached Secondary Dwelling Units," and "Detached Secondary Dwelling Units."
2. Amend the Secondary Dwelling Unit regulations and conditions to comply with the State law requirements.
3. Include a Secondary Dwelling Unit application review process that complies with State law.

Per standard requirements for Ordinances, the draft Ordinance was introduced at the January 24, 2017 City Council meeting. Since an Ordinance requires both a first and second reading, the proposed Ordinance is before the City Council again for the second reading and adoption. The attached Ordinance reflects the Council's direction on January 24 to eliminate the proposed short-term rental limit. The proposed Ordinance would remain consistent with State law.

### **Impact on City Resources**

This consistency update is being accommodated within the existing budgets of the Planning Division and City Attorney, and is not expected to otherwise affect City resources. Secondary dwelling unit building permits will remain subject to existing fees that were established to cover City costs and address impacts.

### **Environmental Review**

The proposed ordinance amendment is not subject to the provisions of the California Environmental Quality Act ("CEQA") because the activity is not a project as defined by Section 15378 of the CEQA Guidelines. The proposed ordinance amendments have no potential for resulting in physical change to the environment either directly or indirectly.

### **Public Notice**

Public Notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

### **Attachments**

- A. Draft Ordinance of the City Council of the City of Menlo Park Amending Section 16.04.295 [Definition of Dwelling Unit, Secondary] and Amending and Restating Chapter 16.79 [Secondary Dwelling Units] of Title 16 [Zoning] of the Menlo Park Municipal Code to Conform to Changes in State Law

Report prepared by:

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Jennifer A. Bregante Beyers and William L. McClure, City Attorney's Office

ORDINANCE NUMBER \_\_\_\_\_

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK AMENDING SECTION 16.04.295 [DEFINITION OF DWELLING UNIT, SECONDARY] AND AMENDING AND RESTATING CHAPTER 16.79 [SECONDARY DWELLING UNITS] OF TITLE 16 [ZONING] OF THE MENLO PARK MUNICIPAL CODE TO CONFORM TO CHANGES IN STATE LAW**

The City Council of the City Menlo Park does hereby ordain as follows:

**SECTION 1.** FINDINGS AND DETERMINATIONS.

- A. There is an increased need for housing in the San Francisco Bay Area as more than two million new residents will be added by 2040.
- B. Secondary units (also called in-law units or accessory dwelling units) are well-suited as an infill strategy for low-density residential areas because they offer hidden density, housing units not readily apparent from the street and are relatively less objectionable to neighbors.
- C. Recognizing the potential for secondary units as a housing strategy, California has passed several laws to lower local regulatory barriers to construction, which includes a requirement that each City have a ministerial process for approving secondary units.
- D. The most recent California legislation (AB 2299 and SB 1069) was passed as a means to streamline current statewide regulations as well as encourage the building of new secondary units to create more housing options.
- E. In order to fully comply with the most recent California legislation, the City of Menlo Park must amend its Zoning Ordinance.
- F. The City Council of the City of Menlo Park finds and declares an amendment to Chapters 16.04 [Definitions] and 16.79. [Secondary Dwelling Units] is necessary for the above reasons.

**SECTION 2.** AMENDMENT OF CODE. Section 16.04.295 [Dwelling unit, secondary] of Chapter 16.04 [Definitions] of Title 16 [Zoning] is hereby amended in its entirety as follows:

**16.04.295 Dwelling unit, secondary.**

A "secondary dwelling unit" (which is referred to as an "accessory dwelling unit" in State law) means a dwelling unit on a residential lot which provides complete independent living facilities for one or more persons, and shall include permanent provisions for living, sleeping, eating, cooking, and sanitation independent of the main dwelling existing on the residential lot. For purposes of a secondary dwelling unit, permanent provisions for eating and cooking include the following: (1) permanent range, (2)

counters, (3) refrigerator, and (4) sink. There are two (2) types of secondary dwelling units: (1) units attached to the existing dwelling, including units located within the living area of an existing dwelling unit (“Attached Secondary Dwelling Units”); and (2) units detached from the existing dwelling unit and located on the same lot as the existing dwelling unit (“Detached Secondary Dwelling Units”).

**SECTION 3. AMENDMENT OF CODE.** Chapter 16.79 [Secondary Dwelling Units] of Title 16 [Zoning] is hereby amended in its entirety as follows:

Sections:

<u>16.79.010</u>	Purpose.
<u>16.79.020</u>	Permitted use.
<u>16.79.030</u>	Conditional use.
<u>16.79.040</u>	Development regulations.
<u>16.79.045</u>	Conversion of accessory buildings.
<u>16.79.050</u>	Mitigation monitoring.
<u>16.79.060</u>	Application review and approval process.

**16.79.010 Purpose.**

The purpose of this chapter is to provide for the creation of secondary dwelling units in single-family residential zones and to set forth criteria and regulations of those secondary dwelling units.

**16.79.020 Permitted use.**

Secondary dwelling units as defined in Section 16.04.295 are a permitted use in the City’s single-family residential zoning districts for residential use that is consistent with the City’s general plan and the specific zone for the lot on which the secondary dwelling unit is to be located. Secondary dwelling units must comply with the development standards applicable to the single-family zoning district in which the lot is located, including, but not limited to parking, height, setback, lot coverage, landscape, architectural review, maximum size, and to other standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places, except as otherwise provided elsewhere in this Chapter 16.79.

**16.79.030 Conditional use.**

Secondary dwelling units that require modification to the development regulations set forth in this Chapter, except for items (3) density and (4) subdivision, are conditionally permitted in the single-family residential zoning districts, subject to the use permit requirements of Chapter 16.82.

**16.79.040 Development and use regulations.**

Secondary dwelling units are permitted within single-family residential zones, subject to the following standards, restrictions and regulations. Development and use regulations for secondary dwelling units are as follows:

- (1) Minimum lot area: six thousand (6,000) square feet.
- (2) Primary Residence.

- (A) A single-family residence must be located on the lot.
  - (B) The secondary dwelling unit may not be sold separately from the primary residence.
- (3) Density. No more than one (1) secondary dwelling unit may be allowed on any one lot.
- (4) Subdivision. A lot having a secondary dwelling unit may not be subdivided in a manner that would allow for the main dwelling and secondary dwelling unit to be located on separate lots that do not meet the minimum lot area, width and/or depth required by the single-family zoning district in which the lot is located.
- (5) Minimum Yards.
- (A) Attached Secondary Dwelling Units shall comply with all minimum yard requirements for the main dwelling established by the single-family zoning district in which the lot is located;
  - (B) Detached Secondary Dwelling Units shall comply with all minimum yard requirements for the main dwelling established by the single-family zoning district in which the lot is located, with the exception that the minimum rear yard is ten (10) feet. Furthermore, the interior side and rear yards may be reduced to five (5) feet, subject to written approval of the owner(s) of the contiguous property abutting the portion of the encroaching structure. If the contiguous interior side or rear property line is an alley, the minimum setback is five (5) feet. If a secondary dwelling unit is constructed above an existing detached garage, the side and rear yard setback is five (5) feet. The provisions of Section 16.62.020 (1) shall not apply to a Detached Secondary Dwelling Unit.
- (6) Unit Size.
- (A) Detached Secondary Dwelling Units shall not exceed six hundred forty (640) square feet, except buildings complying with all aspects of the disabled access requirements for kitchens, bathrooms, and accessible routes established in the California Building Code for adaptable residential dwelling units shall have a maximum square footage of seven hundred (700) square feet.
  - (B) Attached Secondary Dwelling Units shall not exceed fifty percent (50%) of the existing living area, with a maximum increase in floor area of six hundred forty (640) square feet, except buildings complying with all aspects of the disabled access requirements for kitchens, bathrooms, and accessible routes established in the California Building Code for adaptable residential dwelling units shall have a maximum square footage of seven hundred (700) square feet.
  - (C) All secondary dwelling units shall be limited to studio or one (1) bedroom units and one (1) bathroom.
  - (D) No passage way shall be required in conjunction with the construction of a secondary dwelling unit.

- (E) Secondary dwelling units shall count towards the total floor area for the lot, and the entire floor area of all buildings may not exceed the permitted Floor Area Limit (FAL) established by the single-family zoning district in which the lot is located.
- (7) Building Coverage. Secondary dwelling units shall count towards the total building coverage for the lot, and the entire building coverage of all buildings may not exceed the permitted building coverage established by the single-family zoning district in which the lot is located.
- (8) Height. The maximum permitted height of a secondary dwelling unit is the same as the maximum permitted height for the single-family zoning district in which the lot is located, except that in no instance shall the maximum total height for any detached secondary dwelling unit exceed seventeen (17) feet.
- (9) Daylight Plane. A daylight plane shall begin at a horizontal line nine (9) feet, six (6) inches above the average natural grade at a line three (3) feet from the side property lines and shall slope inwards at a forty-five (45) degree angle. There are no permitted intrusions into the daylight plane. "Average natural grade" means the average of the highest and lowest points of the natural grade of the portion of the lot directly below a line three (3) feet from the side property lines.
- (10) Parking. One (1) off-street parking space is required, except as provided in Section 11 (Parking Exceptions) below, in addition to the required parking for the main dwelling unit, that may be provided in the following configurations and areas in addition to the areas allowed for the main dwelling:
  - (A) In tandem, meaning one (1) car located directly behind another car, including a single-car driveway leading to two (2) required parking spaces for the main dwelling;
  - (B) Within required interior side yards;
  - (C) Within required front yards if no more than five hundred (500) square feet of the required front yard are paved for motor vehicle use (inclusive of the main residence driveway and parking areas) and a minimum setback of eighteen (18) inches from the side property lines is maintained.

The required off-street parking can be provided in either a covered or uncovered space, but all covered parking shall comply with the setback requirements of the main dwelling, if the parking is attached, or the accessory building regulations, if the parking is detached.
- (11) Parking Exceptions. The off-street parking requirement of Section (10) Parking, does not apply to the following secondary dwelling units:
  - (A) Secondary dwelling units located within one-half mile of public transit as determined by the community development director.
  - (B) Secondary dwelling units located within an architecturally and historically significant historic district.

- (C) Existing secondary dwelling units that were permitted without additional parking.
  - (D) When on-street parking permits are required but not offered to the occupant of the secondary dwelling unit.
  - (E) When a car share vehicle is located within one block of the secondary dwelling unit as determined by the community development director.
- (12) Consistency. All secondary dwelling units shall comply with all applicable development regulations for the single-family zoning district in which the lot is located and building code requirements set forth in Title 12, Buildings and Construction, unless otherwise specifically provided for in this section.
- (13) Aesthetics. The secondary dwelling unit shall have colors, materials, textures and architecture similar to the main dwelling.
- (14) Tenancy. Either the main dwelling or the secondary dwelling unit shall be occupied by the property owner when both units are occupied as dwelling units. If a property owner does not occupy one of the dwelling units, the property owner may apply for a non-tenancy status for a term of one (1) year through a registration process established by the community development director. To be eligible for the registration process, a property owner must have lived at the subject property for a minimum of two (2) years of the previous five (5) years from the date of application. The property owner may renew the registration annually, not to exceed four (4) years in total, subject to the review and approval of the community development director, pursuant to the following criteria and process established by the community development director.
- (A) The application for the registration and renewal(s) shall be accompanied by a fee, set by the city council.
  - (B) The application for registration and renewal shall state the reason for the request and provide supporting documentation. The registration shall be approved for any of the following reasons: (i) temporary job relocation, with the intent to return, (ii) relocation for school (e.g., mid-year career change), and (iii) physically unable to live in the house.
  - (C) The application shall provide a property management plan that includes the name and contact information to address issues or concerns about the use of the property should they arise. The plan should also include information about parking, including (i) a site plan with the parking layout for the property, (ii) how parking will be assigned between tenants, and (iii) an action plan that demonstrates how parking issues will be resolved effectively and efficiently between tenants if tandem parking is provided.
  - (D) A use permit is required for non-tenancy status longer than four (4) years or for waiver of the requirement that the owner reside in the unit for not less than two (2) of the previous five (5) years prior to the date of application or for a reason other than those stated in subsection (11)(B) of this section.

#### **16.79.045 Conversion of accessory buildings.**

- (1) An accessory building may be eligible to convert into a secondary dwelling unit, subject to meeting criteria as outlined in subsection (2) of this section and approval through the process outlined in Section 16.79.060. No additional off-street parking shall be required to convert an accessory building into a secondary dwelling unit.
- (2) Eligibility. The following criteria must be met in order to be eligible for the conversion of an accessory building:
  - (A) The accessory building must have received building permits and commenced construction prior to January 1, 2017. Other supporting documentation to show the building was legally built may be substituted for a building permit subject to review by the community development director.
  - (B) The accessory building must be upgraded to meet the building code requirements based on the change of occupancy at the time of the conversion.
  - (C) The accessory building must meet all of the development regulations of Section 16.79.040, with the exception of items (5) minimum yards, (8) height, and (9) daylight plane.
- (3) All or any portion of an accessory building that meets the eligibility criteria as provided in this section may be demolished and reconstructed to meet the building code requirements based on the change of occupancy at the time of conversion. The secondary dwelling unit that replaces the accessory building may retain the setbacks and the footprint of the legally constructed accessory building. The existing setbacks and footprint of the accessory building must be evidenced by valid building permits or other supporting documentation subject to review by the community development director. Nothing in this section shall be deemed to authorize the expansion of the footprint or reduction of the setbacks beyond that evidenced by a valid building permit or other supporting documentation subject to review by the community development director or to allow the continuation of any other nonconformity.

#### **16.79.050 Mitigation monitoring.**

All second unit development shall comply, at a minimum, with the mitigation monitoring and report program (MMRP) established through Resolution No. 6149 associated with the Housing Element Update, General Plan Consistency Update, and Zoning Ordinance Amendments Environmental Assessment prepared for the Housing Element adopted on May 21, 2013.

#### **16.79.060 Application Review and Approval Process.**

Each development of a secondary dwelling unit requires review for compliance with this Chapter 16.79 as part of the building permit review process for the creation of a secondary dwelling unit.

- (1) Application. Concurrent with the submittal of a complete building permit application for the secondary dwelling unit, the secondary dwelling unit checklist, which demonstrates compliance with all of the secondary dwelling unit development regulations, shall be submitted. The application shall include plans showing the details of the proposed secondary dwelling unit per submittal guidelines established by the community development director.
- (2) Compliance Determination. The community development director or his or her designee shall make a determination of compliance prior to issuance of the building permit for the secondary dwelling unit. The determination of the community development director is final and not subject to appeal.
- (3) All applications for secondary dwelling units that meet and comply with the requirements under this Chapter shall be approved without discretionary review or a hearing within one-hundred twenty (120) days after receipt of a substantially complete application. The application shall be denied if the proposed secondary dwelling unit does not comply with all applicable requirements of this Chapter or it may be conditionally approved subject to conditions that will bring the proposed secondary dwelling unit into compliance with this Chapter.

**SECTION 4. SEVERABILITY.** If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

**SECTION 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.** The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act (“CEQA”) because the activity is not a project as defined by Section 15378 of the CEQA Guidelines. The ordinance has no potential for resulting in physical change to the environment either directly or indirectly.

**SECTION 6. EFFECTIVE DATE AND PUBLISHING.** This ordinance shall take effect 30 days after adoption. The City Clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, the posting in at least three public places in the city. Within 15 days after the adoption of the ordinance amendment, a summary of the amendment shall be published with the names of the council members voting for and against the amendment.

INTRODUCED on the twenty-fourth day of January, 2017.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the seventh day of February, 2017, by the following vote:

AYES:                      Councilmembers:  
 NOES:                      Councilmembers:

ABSENT:  
ABSTAIN:

Councilmembers:  
Councilmembers:

APPROVED:

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Kirsten Keith  
Mayor

ATTEST:

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Pamela Aguilar  
City Clerk