



## STAFF REPORT

### City Council

**Meeting Date:** 2/25/2020  
**Staff Report Number:** 20-048-CC

**Public Hearing:** **Adoption of urgency Ordinance No. 1066 Amending Chapter 16.79 and Section 16.04.295 [Definition of Dwelling Unit, Secondary] of the Menlo Park Municipal Code to comply with recent State Legislation pertaining to accessory dwelling units and junior accessory dwelling units and direction regarding additional updates**

### Recommendation

Staff recommends that the City Council:

1. Adopt the attached urgency ordinance amending Chapter 16.79 and Section 16.04.295 [Definition of Dwelling Unit, Secondary] of the Menlo Park Municipal Code to comply with recent State legislation pertaining to accessory dwelling units and junior accessory dwelling units (Attachment A.)
2. Provide direction on additional steps, including time frame for tracking efficacy of urgency ordinance, efficiently leveraging possible grant funds and coordination between advisory committee roles. (This direction can be deferred to a subsequent City Council meeting, but is included here to allow for coordination between City Council goals and advisory commission work.)

### Policy Issues

To respond to the current state housing crisis, the Legislature passed a series of bills designed to encourage the production of accessory dwelling units (ADU) and junior accessory dwelling units (JADU.) This legislation went into effect January 1. Cities are expected to update their local ordinances to comply with the state legislation. If cities fail to conform their local ordinances, applicants are permitted to develop under the state legislation. The attached ordinance is drafted to comply with the more permissive state regulations. The attached ordinance is consistent with the City Council Districts 2-5 subcommittee's recommendation to enact a more permissive ADU ordinance.

### Background

Governor Newsom signed six bills related to ADUs (previously referred to as secondary dwelling units in Menlo Park.) These new laws became effective January 1 and pre-empt all local ordinances that do not comply with the new standards. The City of Menlo Park's ADU regulations require updating to comply with state law. If the City does not update its existing ordinance, the new state laws automatically apply. The state laws are unclear in some areas and many cities are struggling with how to implement them. The Department of Housing and Development (HCD) announced that it would be publishing a model ordinance, but HCD has not yet published one given the complexities and inconsistencies within the state law.

Due to the uncertainties surrounding the enforceability of cities' existing noncompliant ADU ordinances, some cities are electing to adopt an urgency ordinance to bring their local codes into compliance. By adopting an urgency ordinance, a city may ensure that its local ordinance is consistent with the broad mandates of state law. More importantly, it allows the city to clarify the gaps and uncertainties contained in state law and to incorporate local regulations to protect long-standing community values. The urgency ordinance amends local ADU/JADU standards needed to comply with state law, carries forward former code provisions which previously exceeded state law, and fills in the gaps contained in state law. For example, state law requires cities to approve an 800 square foot minimum ADU, but contains other provisions inferring that cities must permit an 850 square foot ADU if the unit contains one bedroom and up to 1,000 square feet ADU if the unit provides more than one bedroom. Presumably state law intended to distinguish between these size categories, but as written the language is confusing and arguably inconsistent. A local ordinance is needed to reconcile these provisions and provide clarity for applicants and the public.

The attached urgency ordinance requires approval from four-fifths of the City Council and becomes effective immediately.

### Summary of new legislation

Below is a summary of the state-mandated changes with references to the five relevant bills:

- AB 68 (Ting) / AB 881 (Bloom) / SB 13 (Wieckowski:) Together these three bills amend existing ADU law as follows:
  - One ADU and one JADU permitted by right on a single-family lot, subject to certain constraints.
  - ADUs allowed by right in multifamily and mixed-use zones permitting residential. Up to two detached ADUs, plus conversion of uninhabited spaces for multiple ADUs (up to 25 percent of units in multifamily buildings.)
  - No minimum lot size for ADUs.
  - Zero setback if conversion of an existing structure at property line.
  - Maximum 4 feet side and rear setbacks for newly constructed ADUs.
  - Lot coverage, floor ratios or open space requirements must allow at least an 800 square feet ADU.
  - Minimum 16 feet height allowed.
  - Cannot set maximum square footage less than 850 for one-bedroom ADU, or 1,000 square feet for two+ bedrooms.
  - JADUs are no longer limited to smaller kitchen appliances and sewer connections.
  - Sixty-day permit processing timeline.
  - No replacement parking for garage conversions.
  - Proximity to transit must be "walkable" to qualify for parking waiver.
  - No impact fees on ADUs less than 750 square feet, if larger, impact fees to be proportional to main house.
  - Five-year moratorium on local owner-occupancy restrictions until January 1, 2025.
  - Five-year stay of building code enforcement available on unpermitted ADUs if they meet health and safety standards.
  - ADUs count toward RHNA.
  - No short-term rentals of ADUs or JADUs for newly created units.
  - HCD and attorney general can enforce compliance if new local ordinance is out of compliance, but cities must be given 30-day right to cure or state findings to support ordinance.

- AB 670 (Friedman:) Homeowners associations must allow ADUs and JADUs.
- AB 671 (Friedman:) Housing elements will need to incentivize and promote the creation of ADUs at all income levels. HCD will develop, and post, a list of existing state grants and financial incentives for ADUs.
- AB 587 (Friedman:) Allows a nonprofit to separately convey title to ADUs. This is known as the “Habitat for Humanity” exception. Staff has included a local provision in case the need arises.

### Planning Commission study session

On February 10, the Planning Commission conducted a study session on the new legislation. The Commissioners all seemed to be generally in favor of making ADUs easier and going beyond the requirements of state law. One commissioner noted a desire to conduct more community engagement before adopting an urgency ordinance. The following were the main discussion items:

- A desire to work with the Housing Commission on possible ordinance updates
- Allowing ADUs with two bathrooms
- The possibility of increasing height limits and allowing two-story ADUs, especially over garages or on larger lots
- Property owners’ fears of trying to legalize existing ADUs because of building code requirements
- Encouraging the building official to waive some building code requirements for conversions and legalizations of existing ADUs
- Providing standard ADU plans to the public
- Possible rent caps
- Impacts on schools if ADUs don’t pay school impact fees

### **Analysis**

While the Planning Commission reviews all changes to Title 16 ordinances, the adoption of an urgency ordinance is not subject to Planning Commission review.

### Overview of urgency ordinance

The proposed urgency ordinance (Attachment A) primarily includes modifications to the Menlo Park Municipal Code Title 16 necessary to comply with state law. In cases where the state law is unclear or contains gaps, the City’s local ordinance implements clarifying changes. The urgency ordinance also carries forward aspects of the current City ordinance that are more permissive than state law. Key modifications are as follows:

- Includes definitions for ADU, detached ADU, attached ADU, interior ADU, JADU
- Deletes requirements regarding minimum lot sizes.
- Increases the number of ADUs that can be developed on a single-family lot to two (one exterior and one interior.)
- Allows ADUs in multifamily lots consistent with state law.
- For ADUs 800 square feet or less, modifies existing side and rear setback regulations throughout the ordinance that exceed the 4-foot setbacks authorized by state law.
- Updates FAR, lot coverage, and maximum unit size to permit at least an 800 square feet ADU.
- Adds new categories of ADUs that must be ministerially approved: including one JADU or interior ADU plus one detached ADU; non-livable space in multifamily buildings; up to two detached ADUs on multifamily lots.
- Updated parking requirements to comply with state law.

- Eliminates subjective design compatibility regulations.
- Removes owner-occupancy requirements for ADUs built after January 1 and maintains the previous provisions for non-tenancy status for units issued a building permit before January 1.
- Removes all discretionary processes, except for ADUs greater than 1,000 square feet.
- Creates a new category of ADUs called JADUs and allows for permitting.
- Decreases the permit processing time from 120 days to 60 days.
- Deleted mitigation monitoring and reporting program (MMRP) requirement for consistency with CEQA exemption (Public Resources Code Section 21080.17.)

A table summarizing the ordinance changes is included as Attachment B.

The majority of the above changes are required to implement state law. Further, some of the changes are needed to clarify state law, as the new legislation contains many ambiguous and internally inconsistent provisions. While the Legislature is expected to adopt further cleanup legislation, it has not done so yet. Since Menlo Park currently has several ADU applications pending, adopting the local updates on an urgency basis will allow the City to process current and future applications with more clarity.

#### HCD approval

State law now requires HCD to approve all newly adopted ADU ordinances. The City is not aware of any City ordinance that has yet been approved by HCD. The City's urgency ordinance contains a "savings clause" providing that to the extent there is any inconsistency between the City's ordinance and the state law, state law shall govern. As mentioned, the new state law is extremely complicated and unclear in places. The City has made its best effort at interpreting and implementing the state law (and even going beyond the state law in places where previous relaxed regulations existed,) but there is no guarantee that HCD will agree with the City's interpretations. To help gain HCD approval, the urgency ordinance contains a savings clause providing that to the extent our local ordinance is inconsistent with state law, the state law controls. (See ordinance section 16.79.130.)

#### Next steps

The state law permits significantly more ADUs than currently allowed under the City's Code. In fact, many of the suggestions for expanding ADU production previously discussed by the Planning Commission and Housing Commission have been incorporated into state law. The Housing Endowment and Regional Trust of San Mateo County (HEART) is developing a set of off-the-shelf ADU design plans for public use. It is likely other toolkits will be developed.

The City may elect to adopt further regulations to incentivize ADU production. Further, staff anticipates the need for additional cleanup changes to address items not specifically spelled out in the state legislation, internal consistency in the zoning code (e.g., updating 'secondary dwelling unit' to accessory dwelling unit' in each of the single-family residential zoning districts and adding ADUs as a permitted use in the multifamily and mixed-use districts,) and to address issues that arise in connection with implementing comprehensive state law changes on an expedited basis.

Both the Planning Commission and Housing Commission have expressed interest in forming subcommittees to work on additional updates; however, many of the issues raised by the committees have been addressed through the urgency ordinance. 21 Elements has also been leading a county wide effort to decipher and implement the new State law changes. In addition, the City has applied for an SB 2 grant and plans to apply for a further HCD grant both of which could help fund consultant services to assist with ADU development. Finally, the Legislature plans on adopting some additional ADU clean up legislation.

At this point, staff recommends giving the urgency ordinance some time to take effect. The changes adopted through the urgency ordinance are quite substantial and staff resources will be required to effectively roll out. Once the grant funding has been secured, staff can come back to the City Council with suggestions on how to best leverage the funds and utilize the City's advisory committees.

### **Impact on City Resources**

Additional planning and legal time would likely be needed during implementation of the new regulations. In addition, staff or consultant resources would likely be needed to proceed with an ADU reach code or development of ADU construction incentives, depending on the prioritization of the City Council's work plan.

### **Environmental Review**

This urgency ordinance implements new state law requirements related to ADUs and JADUs as established in Government Code Section 65852.2. The ordinance is therefore statutorily exempt from review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17, which states that CEQA does not apply to a city's adoption of an ordinance to implement the provisions of Government Code Section 65852.2. The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act ("CEQA") Guidelines sections 15061(b)(3,) 15301, 15302 and 15305 because it constitutes minor adjustments to the City's zoning ordinance to implement state law requirements related to ADUs and JADUs which will likely result in additional dwelling units dispersed throughout the City over the course of a number of years. As such, it can be seen with certainty that the proposed action will not have the potential for causing a significant effect on the environment.

### **Public Notice**

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. Public notification also consisted of publishing a notice in the local newspaper and an email to potentially interested parties.

### **Attachments**

- A. Urgency Ordinance No. 1066 adopting state compliant ADU/JADU regulations
- B. Summary table showing new ADU requirements in single-family districts

Report prepared by:

Cara Silver, Assistant City Attorney

Deanna Chow, Interim Community Development Director





































## City of Menlo Park – ADUs/JADUs in Single-Family Residential Districts

Development Regulation <sup>1</sup>	Detached ADUs				Attached/Interior ADUs				JADU
Maximum Unit Size	Up to 800 sf	800 sf to 850 sf	850 sf to 1,000 sf	More than 1,000 sf	50 percent of existing primary dwelling (if addition)				500 sf – must be within existing or proposed primary unit
Number of Bedrooms	1 max	1 max	2 max	n/a	Up to 800 sf	800 sf to 850 sf	850 sf to 1,000 sf	More than 1,000 sf	n/a
					1 max	1 max	2 max	n/a	
Minimum Setback: Front	Same as main building								
Minimum Setback: Side	4 ft	Same as primary dwelling			Interior ADU conversions: sufficient for compliance with Fire and Life Safety				n/a
					Attached ADUs: 4 ft				
Minimum Setback: Rear	4 ft	10 ft			Interior ADU conversions: sufficient for compliance with Fire and Life Safety				n/a
					Attached ADUs: 4 ft				
Maximum Height	16 ft	17 ft			Same as the primary dwelling				n/a
Daylight Plane	n/a	At 3 ft setback, measure up 9.5 ft, then slope inwards at 45 degrees			Same as the primary dwelling				n/a
Permitted to exceed overall parcel FAL and Building Coverage limit	Yes, if built with, or after, primary unit and other structures	No			Yes, if built with, or after, primary unit and other structures	No			n/a
Parking	One off-street parking space required; OK in tandem/setback configuration; No replacement parking is required for garage conversions No off-street parking space required if any of the following are met: <ul style="list-style-type: none"> <li>• JADU</li> <li>• Located within a 0.5-mile walking distance of public transit.</li> <li>• Located within an architecturally and historically significant historic district</li> <li>• When on-street parking permits are required but not offered to the occupant of the ADU</li> <li>• When there is a car share vehicle located within one block of the ADU</li> </ul>								None

<sup>1</sup>.An applicant may seek a use permit to modify any development regulations of this chapter, except subdivision and number of units.