

City of Aliso Viejo

AGENDA ITEM



DATE: May 20, 2020

TO: Mayor and City Council

FROM: Omar Dadabhoy, Community Development Director

SUBJECT: CONTINUED - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO AMENDING TITLE 15 OF THE CITY OF ALISO VIEJO MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS

Recommended Actions:

1. Hold a public hearing;
2. Find that the adoption of the ordinance is statutorily exempt from the California Environmental Quality Act in accordance with CEQA Guidelines section 21080.17, which exempts from CEQA any ordinance that is adopted to implement Government Code section 65852.2; and
3. Introduce an Ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO AMENDING TITLE 15 OF THE CITY OF ALISO VIEJO MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND FINDING THE ORDINANCE TO BE EXEMPT FROM CEQA.

Fiscal Impact:

No fiscal impact will result from this report.

Background:

In 2019, the California Legislature approved, and the Governor signed into law a number of bills ("New ADU Laws") that, among other things, amended Government Code section 65852.2 and 65852.22 to impose new limits on local authority to regulate Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs). The New ADU Laws took effect January 1, 2020, and the City is currently subject to them. Adoption of the proposed ordinance would allow the City to create a regulatory framework for the development of ADUs and JADUs while maintaining consistency with state law.

Discussion:

An ADU is a residential unit, independent of the principal dwelling unit on a site, containing sleeping quarters, a kitchen, a bathroom, a closet, and a separate entrance. Such units can be detached or attached to the primary residence. Since ADUs are approved as independent living facilities, ADUs can have their own electrical meter, utility connections (with a limited exception), and may be rented out. Because the state considers ADUs as a form of below-market housing, the City may get credit for new ADUs for purposes of meeting its Regional Housing Needs Assessment (RHNA). Since April 2017, when the City adopted its previous ADU regulations, the City has received seven applications for new ADUs.

Last year, the state adopted Assembly Bills 881 and 68, and Senate Bill 13 which collectively impose new limits on a local jurisdiction's authority to regulate ADUs. The new state laws impose the following changes:

Allow ADUs in more locations

- Cities are prohibited from requiring a minimum lot size for ADUs.
- ADUs are allowed on lots with multi-family dwellings.
- Nonconforming structures may be converted to ADUs.
- The no-setback rule is expanded to include any new structure in the same place or with similar dimensions as an existing structure.
- The maximum property line setback for most ADUs is four feet.

Restrict opportunities to regulate the size of ADUs

- ADUs that qualify for only a building permit have no minimum or maximum size limitations.
- ADUs that trigger review beyond only a building permit have a maximum unit size of 850 sq. ft. for attached or detached units and 1,000 sq. ft. for units with two bedrooms (no more than two bedrooms are allowed).
- The conversion of existing space to an ADU is allowed with an expansion of up to 150 sq. ft. for ingress/egress.
- Attached ADUs can be as large as 50% of the existing primary unit.

Require less parking

- ADUs that qualify for only a building permit have no parking requirements.
- ADUs that trigger review beyond only a building permit no longer require replacement parking when a garage is converted to an ADU.

More limited City review

- Ministerial approval (without discretion) of an ADU application must occur within 60 days of receiving a complete application.
- Cities must approve most ADUs with only a building permit (as is currently done for converted ADUs) and may only apply the following standards: 4-foot setbacks, 800 sq. ft. max size, and 16-foot height limit.

- Cities may not require correction of physical nonconforming zoning conditions for an ADU.

Allowance of multiple ADUs

- Cities must allow both a Junior ADU (less than 500 sq. ft., contained entirely within an existing residential structure, with an efficiency kitchen) and a detached building-permit only ADU on the same lot.
- Cities must allow Junior ADUs even if cities do not have an ADU ordinance.
- Cities must allow up to two detached ADUs on lots with a multi-family dwelling subject only to a 16-foot height limit and 4-foot setbacks.

More limitations on fees

- Utility providers are now more limited on whether and how they can charge connection fees and capacity charges.
- Impact fees are prohibited on ADUs smaller than 750 sq. ft. and allowed on larger ADUs, but only proportional to the primary unit.

Working with the City Attorney's office, staff has drafted an Ordinance that repeals existing ADU regulations contained in the Municipal Code. The Ordinance conforms to the requirements of the newly adopted state laws while incorporating local factors and permitting processes. As noted above, for certain types of ADUs and JADUs, only a building permit will be required. However, certain information will be required that will allow the Planning Division to review for consistency with the Municipal Code. For units that do not qualify for a building permit only approval, they will be required to obtain a Development Review Permit, a discretionary permit, administratively considered by the Community Development Director.

As part of the public hearing for this item, correspondence was received from Samuel and Stina Hubinette and from Californians for Homeownership. The Hubinette family raised concerns regarding the 16-foot height limitation in the ordinance. As written, the ordinance would not allow an ADU to be taller than 16 feet and be approved ministerially, but the City may allow an ADU to be taller than 16 feet through a Conditional Use Permit. In addition, it is anticipated that the Hubinette family will have submitted an application for an ADU prior to the adoption of an ordinance and as such their application will be considered under only the state guidelines and the building code, neither of which imposes the 16-foot height limit. Californians for Homeownership raised concerns with a requirement for applicants to provide evidence that their HOA was notified of the application and about a parking exception that was limited to single family homes. Regarding the notification to HOAs, although Staff believes the requirement is legal and does not create an additional obstacle, the requirement has been removed as it is ultimately the homeowner's responsibility to notify and obtain HOA approval. Regarding the parking exception, while Staff believes that the proposed language was consistent with state law, the provision has been revised to refer to Subsection E, to clarify.

Environmental:

Under California Public Resources Code section 21080.17, the adoption of an ordinance by a city to implement section 65852.2 of the Government Code is statutorily exempt from review under the California Environmental Quality Act (“CEQA”). Government Code section 65852.2 is California’s ADU law, and it also regulates JADUs, as defined by section 65852.22. Therefore, the proposed ordinance is statutorily exempt from CEQA because it implements the State’s ADU law.

Public Notice:

In accordance with the requirements of Government Code section 65090, the ordinance was noticed in a newspaper of general circulation as of March 5, 2020 for the original hearing date of March 18, 2020. At the March 18 meeting of the City Council, the public hearing was opened and continued to a date certain, April 15, 2020. At the April 15 meeting of the City Council, the public hearing was opened and continued a date certain, May 20, 2020. Notices of continued public hearings were posted for public review on March 19 and April 16, 2020 at City Hall in accordance with Government Code section 54955.1.

City Attorney:

The City Attorney’s office reviewed and provided comments for this report.

Attachment(s):

1. Draft Ordinance
2. PowerPoint Presentation
3. Californians for Homeownership Letter Dated March 18, 2020
4. Hubinette Letter Dated March 23, 2020
5. Graphic Representations