

EMERYVILLE PLANNING COMMISSION

STAFF REPORT

Agenda Date: March 23, 2017

Report Date: March 16, 2017

TO: Emeryville Planning Commission

FROM: Diana Keena, Associate Planner
Community Development Department

SUBJECT: Accessory Dwelling Units (ORD16-004)

SUMMARY:

Consideration of amendments to Article 14 of Chapter 5 and related provisions of the Planning Regulations to make state-mandated changes related to Accessory Dwelling Units, formerly known as Secondary Residential Units.

BACKGROUND:

An Accessory Dwelling Unit (ADU) is a single dwelling unit located on a lot with an existing Single-Unit Dwelling (the main house). An ADU is an accessory use. The owner must occupy either the Single-Unit Dwelling or the ADU (Planning Regulations Section 9-5.1410).

The State-mandated Secondary Dwelling Unit provisions of the 1988 Zoning Ordinance (called “Residential Second Units” in the Emeryville code) required a conditional use permit for such dwelling units. Since two units on a lot were permitted by right if the density requirement was met, the Secondary Dwelling Unit provisions were not utilized.

In 2003, the State mandated that Secondary Dwelling Unit permits be ministerial, meaning that if they meet code requirements staff must approve them (as opposed to discretionary permits such as a conditional use permit).

In the 2013 Planning Regulations, Secondary Residential Units were made ministerial, as required by State law, and the parking and rear setback requirements were reduced. In 2016, two Secondary Residential Units were approved.

In 2016, in order to create additional housing for low-income households, the California legislature passed and Governor Brown signed SB1069 and AB2299 which further relaxed the requirements for Secondary Residential Units and changed their name to “Accessory Dwelling Units” or ADUs. These requirements took effect on January 1, 2017, and are mandatory on all cities in California.

The proposed amendments to the Planning Regulations would implement these requirements. A summary of the changes required by the SB 1069 and AB 2299 is provided below:

VII.E.

Standards Generally

- Approval Process – Jurisdictions must approve or deny ADUs within 120 days of receiving an ADU application. They may not impose requirements beyond those specified in State law. Approval of ADU applications is exempt from CEQA.
- Density – ADUs do not count against the maximum density of sites.
- Fire Sprinklers – Jurisdictions may not require ADUs to provide fire sprinklers if they are not also required for the primary residence.

Accessory Dwelling Units in Additions or New Accessory Structures

- Size Limits – Jurisdictions must allow detached ADUs to be at least 1,200 square feet and attached ADUs to be at least 1,200 square feet or 50% of the main dwelling, whichever is less.
- Parking – ADUs within half a mile of transit do not need to provide parking. If a garage is demolished to build a second unit and the jurisdiction requires the homeowner to replace the parking, the homeowner may provide the parking in any configuration.

Accessory Dwelling Units Located in Existing Structures

- Applications must be approved if the ADU is in a single family zone, is in an existing legal structure, provides direct outside access, and has sufficient setbacks for fire safety.

FINDINGS:

In order to recommend adoption of the changes to the Planning Regulations, the Planning Commission is required by Section 9-7.1305 to make the following findings:

(a) The proposed amendment is consistent with the General Plan.

The proposed amendment helps to implement General Plan goal LU-G-4, “A mix of housing types” and Housing Element Goal H-4 “Provide a wide variety of housing types appropriate for households at all socioeconomic levels and with a variety of lifestyles and preferences”, because it encourages development of a housing type that generally accommodates smaller household sizes and lower incomes.

(b) The proposed amendment is necessary for public health, safety and welfare or will be of benefit to the public.

The proposed amendment will be of benefit to the public because it will help to allow a diverse range of households to live in Emeryville.

(c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

The proposed amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) under the “general rule” at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment;

DISCUSSION:

The State statutes adopted in the fall of 2016 require cities to amend their planning regulations for ADUs in terms of approval time, unit size, parking and setbacks. The following table summarizes the current and proposed regulations for the topics that would change:

Topic	Current Regulations	Proposed Regulations
Title	Secondary Residential Units (SRUs)	Accessory Dwelling Units (ADUs)
Approval time	No requirement	Within 120 days of application if requirements are met
Floor area limit where main house area is 1,000 square feet or more	50% of main house up to 900 square feet	50% of main house up to 1200 square feet for attached ADUs, 100% of main house up to 1200 square feet for detached ADUs
Parking for SRU/ADU	None for studio or one-bedroom SRU, one for two-bedroom SRU	None for any ADU
Parking for main house if garage is converted	Behind front of house, out of front yard setback, out of street side yard setback	In front of house or in front yard or side yard setback if there is no other place for the parking
Setback	Same as main house except 5 feet rear setback	Same except no setback for garage conversion

Emeryville does not need to make all of the mandated changes because some are already in the City’s current code, including limits on what standards the City can set for ADUs, exempting ADUs from residential density regulations, and relaxing rules for ADUs in existing houses.

Another recently adopted statute, SB 2406, enables cities to allow “Junior Accessory Dwelling Units” that share a kitchen and/or bathroom with other units. This fits the definition of Group Residential - Small, which is already permitted by right in Emeryville’s residential zones, so no code changes are needed for this.

RECOMMENDATION:

Staff recommends that the Planning Commission recommend City Council adoption of the proposed amendments to the Planning Regulations as detailed in the attached resolution.

Attachment: Resolution

RESOLUTION CPC NO. ORD16-004

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF EMERYVILLE RECOMMENDING CITY COUNCIL ADOPTION OF AN ORDINANCE AMENDING THE PLANNING REGULATIONS IN TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE REGARDING ACCESSORY DWELLING UNITS

WHEREAS, Article 14, “Secondary Residential Units”, of Chapter 5, “Citywide Use and Development Regulations”, of Title 9, “Planning Regulations”, of the Emeryville Municipal Code includes provisions mandated by the State in the past; and

WHEREAS, in 2016, the California legislature passed and Governor Brown signed SB1069, AB2299, and AB2406 to encourage development of accessory dwelling units; and

WHEREAS, local jurisdictions are required to adopt the amendments by January 1, 2017, or enforce the State law starting on that date; and

WHEREAS, the City desires to update its Secondary Residential Unit regulations and rename them the Accessory Dwelling Unit regulations to make them consistent with current state law; and

WHEREAS, on March 23, 2017, the Emeryville Planning Commission held a duly and properly noticed public hearing on the proposed ordinance; and

WHEREAS, the Planning Commission has reviewed and considered the staff report and attachments thereto, all public comments, and the proposed amendments to Title 9 of the Emeryville Municipal Code, as set forth below, and the applicable provisions of the Emeryville Municipal Code; now, therefore, be it

RESOLVED, that the Planning Commission of the City of Emeryville hereby finds that the proposed amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) under the “general rule” at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment; and be it further

RESOLVED, that the Planning Commission makes the following findings, pursuant to Section 9-7.1305 of the Emeryville Municipal Code:

(a) The proposed amendment is consistent with the General Plan.

The proposed amendment helps to implement General Plan goal LU-G-4, “A mix of housing types” and Housing Element Goal H-4 “Provide a wide variety of housing types appropriate for households at all socioeconomic levels and with a variety of lifestyles and preferences”, because it encourages development of a housing type that generally accommodates smaller household sizes and lower incomes.

(b) The proposed amendment is necessary for public health, safety and welfare or will be of benefit to the public.

The proposed amendment will be of benefit to the public because it will help to allow a diverse range of households to live in Emeryville.

(c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

The proposed amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) under the “general rule” at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment;

and be it further

RESOLVED, that the Planning Commission hereby recommends that the City Council adopt an Ordinance amending Title 9 of the Emeryville Municipal Code as follows, with deletions shown in ~~strikeout~~ and additions shown in double underline:

Amendments to Article 14 of Chapter 5:

ARTICLE 14. ~~SECONDARY RESIDENTIAL UNITS~~ ACCESSORY DWELLING UNITS

9-5.1401 Purpose.

This Article establishes regulations for ~~Secondary Residential Units~~ Accessory Dwelling Units. ~~Secondary Residential Units~~ Accessory Dwelling Units provide a valuable housing resource and help to achieve the goals, objectives, and policies of the Housing Element of the General Plan to promote a range of affordability levels. The purpose of these regulations is to encourage the establishment of ~~Secondary Residential Units~~ Accessory Dwelling Units as accessory uses in conjunction with principal Single Unit residential uses, and to provide for their ministerial approval in conformance with State law.

9-5.1402 Applicability.

The provisions of this Article apply to any proposal to establish a ~~Secondary Residential Unit~~ an Accessory Dwelling Unit, as defined in Section 9-2.702(b), as an accessory use in conjunction with a principal Single Unit residential use.

9-5.1403 Approval Procedure.

A proposal for a ~~Secondary Residential Unit~~ an Accessory Dwelling Unit shall be reviewed by the Director, in consultation with the Chief Building Official and Fire Marshal, for conformance with

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the provisions of this Article pursuant to the zoning compliance review procedures in Article 3 of Chapter 7. If the Director determines that the proposal conforms to the requirements of this Article, a zoning compliance approval shall be issued within 120 days after receipt of a complete application. If the Director determines that the proposal does not conform to the requirements of this Article, a zoning compliance approval shall not be issued, and the applicant shall be advised as to how the proposal could be brought into compliance. The Director's determination of compliance or non-compliance may be appealed to the Planning Commission pursuant to Article 14 of Chapter 7.

9-5.1404 Where Allowed.

- (a) **Districts.** ~~Secondary Residential Units~~ Accessory Dwelling Units are permitted only in the Residential zones, and in the MUR Mixed Use with Residential and MURS Mixed Use with Residential South zones.
- (b) **Other Uses.** ~~Secondary Residential Units~~ Accessory Dwelling Units are permitted only on lots containing a legal, conforming Single Unit Residential use and no other principal use. (A Single Unit residential use outside the RM Medium Density Residential zone may be deemed conforming pursuant to Section 9-5.1003(b).) ~~A Secondary Residential Unit~~ An Accessory Dwelling Unit may be established in conjunction with the establishment of a new principal Single Unit residential use provided that no other principal use exists, or will exist, on the same lot.

9-5.1405 Building Intensity and Residential Density

~~Secondary Residential Units~~ Accessory Dwelling Units are exempt from the building intensity (floor area ratio or FAR) and residential density regulations in Article 2 of Chapter 4.

9-5.1406 Size of Unit.

- (a) **Floor Area.** ~~A Secondary Residential Unit~~ An Accessory Dwelling Unit may not have a greater floor area than the principal Single Unit with which it is associated. In addition, the floor area of the ~~Secondary Residential Unit~~ Accessory Dwelling Unit shall be limited as follows:
 - (1) If the Accessory Dwelling Unit is attached to the principal Single Unit, the floor area shall be limited as follows:
 - a. If the principal Single Unit is less than 1,000 square feet, the ~~Secondary Residential Unit~~ Accessory Dwelling Unit shall not exceed 500 square feet.
 - (2) b. If the principal Single Unit is at least 1,000 square feet but less than ~~1,800~~ 2,400 square feet, the ~~Secondary Residential Unit~~ Accessory Dwelling Unit shall not exceed 50% of the floor area of the principal Single Unit.

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(3) c. If the principal Single Unit is ~~1,800~~ 2,400 square feet or more, the ~~Secondary Residential Unit~~ Accessory Dwelling Unit shall not exceed ~~900~~ 1,200 square feet.

(2) If the Accessory Dwelling unit is detached from the principal Single Unit, the floor area shall not exceed 1,200 square feet.

(b) **Bedrooms.** The ~~Secondary Residential Unit~~ Accessory Dwelling Unit may not have more bedrooms than the principal Single Unit with which it is associated.

9-4.1407 Parking.

(a) **Parking for Principal Single Unit.** ~~A Secondary Residential Unit~~ An Accessory Dwelling Unit may only be established if off-street parking is provided for the principal Single Unit as required by Article 4 of Chapter 4. ~~If a garage is converted to an Accessory Dwelling Unit, the replacement parking for the primary Single Unit must meet the standards in Section 9-4.406(b)(2) and (3) regarding location of parking, unless there is no other feasible way to provide that required parking.~~

~~Parking shall be provided for the Secondary Residential Unit as follows:~~

~~(a) If the Secondary Residential Unit contains no bedrooms or one bedroom, no parking spaces are required.~~

~~(b) If the Secondary Residential Unit contains two or more bedrooms, one parking space is required.~~

(b) **Parking for Accessory Dwelling Unit.** ~~Parking is not required for the Accessory Dwelling Unit. If provided, p~~Parking for the Secondary Residential Unit Accessory Dwelling Unit shall comply with the Design Standards for Parking Lots and Structures in Section 9-4.406, except that parking spaces for the principal Single Unit and Secondary Residential Unit Accessory Dwelling Unit may be in tandem.

9-4.1408 Dimensional Requirements.

(a) **Lot.** The lot on which a ~~Secondary Residential Unit~~ an Accessory Dwelling Unit is to be located must comply with the minimum lot size and width requirements of Section 9-4.701.

(b) **Setback.** ~~A Secondary Residential Unit~~ An Accessory Dwelling Unit shall be subject to the same setback requirements as the principal Single Unit, as set forth in Section 9-4.301, except that the minimum rear setback shall be five feet, and no setback is required for conversion of a garage to an Accessory Dwelling Unit.

(c) **Height.** The maximum height limit of a ~~Secondary Residential Unit~~ an Accessory Dwelling Unit shall be 30 feet, except that it shall step down at an angle from a maximum height of

30 feet at 15 feet from the rear lot line to a maximum height of 15 feet at five feet from the rear lot line.

- (d) **Separation.** ~~A Secondary Residential Unit~~ An Accessory Dwelling Unit may be either attached to or detached from the principal Single Unit with which it is associated. If detached, the ~~Secondary Residential Unit~~ Accessory Dwelling Unit shall be separated from the principal Single Unit by no less than six feet.

9-5.1409 Design

Any proposal for a ~~Secondary Residential Unit~~ an Accessory Dwelling Unit shall be subject to the applicable provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to the area of the city in which the proposed ~~Secondary Residential Unit~~ Accessory Dwelling Unit is to be located, and to any other applicable design guidelines. ~~A Secondary Residential Unit~~ An Accessory Dwelling Unit shall be compatible with the principal Single Unit with which it is associated in terms of form, materials, style, and other relevant design factors. No formal design review approval shall be required, but the design shall be evaluated as part of the zoning compliance review for conformance to the requirements of this Section.

9-5.1410 Other Requirements.

- (a) **Owner Occupancy Required.** The owner of the property must occupy either the principal Single Unit or the ~~Secondary Residential Unit~~ Accessory Dwelling Unit.
- (b) **One ~~Secondary Residential Unit~~ Accessory Dwelling Unit Per Lot.** No more than one ~~Secondary Residential Unit~~ Accessory Dwelling Unit is permitted on a lot.
- (c) **Units May Not Be Sold Separately.** ~~A Secondary Residential Unit~~ An Accessory Dwelling Unit and its associated principal Single Unit may not be sold separately ~~either~~ by conversion to condominiums, division of the lot on which they are located, or by other means.
- (d) **Sewer Lateral.** A proposal to establish a ~~Secondary Residential Unit~~ an Accessory Dwelling Unit shall comply with the provisions of Chapter 8 of Title 7 concerning sewer laterals, including the inspection, replacement or upgrading of the sewer lateral if required.
- (e) **Other Code Requirements.** ~~A Secondary Residential Unit~~ An Accessory Dwelling Unit shall comply with all other applicable provisions of the Emeryville Municipal Code and State and Federal law, including, but not limited to, building and fire code requirements.

Amendment to Section 9-4.406(b):

- (b) **Location of Parking Areas.** Except as otherwise allowed by Section 9-4.407, required parking spaces must be located on the same lot as the use to be served by the parking. Additionally, parking areas shall be located in accordance with the following standards:

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- (1) No vehicle shall be required to cross a loading space or another parking space in order to gain access to a required parking space, except that tandem parking may be permitted pursuant to subsection (h) below.
- (2) Except as provided in subsection (3) below and in Section 9-5.1407(a), off-street parking shall not be located in required front yards or in required street side yards.
- (3) No off-street parking spaces shall be located between the front lot line and the front wall of a building or its projection across the lot, except upon the granting of a conditional use permit. To grant such a conditional use permit, the following findings must be made in addition to the findings required by Article 5 of Chapter 7:
 - a. That the parking spaces are required by this Article.
 - b. That there is no other feasible way to provide the required parking.
 - c. That all applicable provisions of the design standards in this Section have been met.
 - d. That the applicable landscaping and screening requirements of Article 5 of this Chapter have been met.
 - e. That the applicable provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to Parking and access, have been met.

Amendments to other sections to change “Secondary Residential Unit” to “Accessory Dwelling Unit”:

9-2.205 Two Unit.

Two dwelling units located on a single lot that may be either attached or detached. This use type is distinguished from a ~~Secondary Residential Unit~~ an Accessory Dwelling Unit, which is an accessory residential unit as defined by State law and Article 7 of this Chapter.

9-2.702 Uses That Are Always Accessory Uses.

...

(b) ~~Secondary Residential Unit~~ Accessory Dwelling Unit. A single, attached or detached, dwelling unit located on a lot with an existing Single-Unit. This use type is distinguished from the Two-Unit use classification, which is not an accessory use. See also Article 14 of Chapter 5.

9-4.301 Setbacks.

...

Table 9-4.301(e): Features Allowed in Required Yards with Restrictions

Feature	Distances that features may extend over setback line into required yard.			
	Front Setback	Street Side Setback	Interior Side Setback	Rear Setback
...				
(16) Secondary Residential Units <u>Accessory Dwelling Units.</u>	Not allowed.			Up to 5 feet from the rear lot line, and 3 feet from the side lot lines, subject to the dimensional requirements of Section 9-5.1408.

9-4.702 Minimum Dwelling Unit Area.

(a) **RM Zone.** In the RM Medium Density Residential zone, each dwelling unit, except a ~~Secondary Residential Unit~~ an Accessory Dwelling Unit, shall have a minimum floor area of not less than 500 square feet.

9-6.104 Exceptions.

These Subdivision Regulations shall not apply to:

...

The construction, financing or leasing of ~~secondary residential units~~ Accessory Dwelling Units, subject to the provisions of Article 14 of Chapter 5.

9-7.105 Director of Planning and Building.

The Director of ~~Planning and Building~~ Community Development (“Director”) is appointed by the City Manager pursuant to Article 5 of Chapter 7 of Title 2 of the Emeryville Municipal Code. The Director has the following powers and duties under these Planning Regulations, which he or she may delegate to staff of the ~~Planning and Building Department~~ Division who are supervised by and report to him or her. The Director may refer any administrative decision to the Planning Commission for consideration. In that case the Commission’s decisions may be appealed to the City Council:

...

(g) **Zoning Compliance.** Determine whether new or expanded uses or structures, including Home occupations and ~~Secondary Residential Units~~ Accessory Dwelling Units, comply

with the applicable requirements of these Planning Regulations pursuant to the provisions of Article 3 of this Chapter.

9-7.202 General Processing Requirements.

...
Table 9-7.202: Decision Making, Public Hearing and Notice Requirements

Permit or Action Type	Reference	Decision Process			Public Hearing Required?	Type of Notice		Required Findings	Combined or Concurrent Processing
		Advisory	Decision	Appeal		Required	Optional		
Zoning Compliance including Home Occupations and Secondary Residential Units <u>Accessory Dwelling Units</u>	Chapter 7 Article 3	N/A	Director	PC ²	No	None	N/A	None	N/A

9-7.403 Exemptions

The following exterior changes to a property shall be exempt from design review:

- ...
 (f) ~~Secondary Residential Units~~ Accessory Dwelling Units, the design of which shall be reviewed as part of the zoning compliance review, pursuant to Section 9-5.1409.

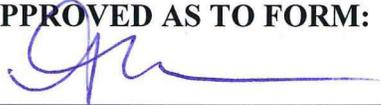
APPROVED by the Planning Commission of the City of Emeryville at a regular meeting held on Thursday, March 23, 2017, by the following votes:

AYES: _____

NOES: _____ **ABSTAINED:** _____

EXCUSED: _____ **ABSENT:** _____

CHAIRPERSON

APPROVED AS TO FORM:


ASSISTANT CITY ATTORNEY



RECORDING SECRETARY