

Published March 18th, 2020

City reacts to state law changes regarding accessory dwelling units

By Sora O'Doherty



LW archive

which were adopted in 2019 and went into effect Jan. 1, cover a broad range of issues including minimum setbacks, maximum size, and the number of ADUs allowed per lot.

The urgency ordinance allows four types of "streamlined" ADUs that are not subject to the city's non-discretionary standards: ADUs within existing single family homes or accessory structures; new, detached ADUs on lots with single family dwellings; ADUs within existing, non-living space within a multifamily dwelling; and up to two new detached ADUs on lots with multifamily dwellings. The urgency ordinance specified that no short-term rentals are allowed in any streamlined ADU.

The ordinance also allows standard ADUs that are subject to the city's standard non-discretionary standards, such as floor area ratio regulations, height limits, parking requirements or environmental protection overlays, with some state-mandated modifications. Side and rear yard setback requirements are limited to four feet for new construction, and are eliminated for conversions or replacement structures. The maximum size for these ADUs is 850 square feet for a one-bedroom unit and 1,000 square feet for a unit of more than one bedroom. This replaces the 1,200 square foot maximum in the existing code. FAR cannot be used to reduce an ADU to below 800 square feet. The city cannot require replacement parking when a garage is converted to an ADU, but can require one parking space per ADU, with some exceptions, such as if an ADU is within one-half mile from transit. The ordinance also eliminates impact fees for units smaller than 750 square feet and imposes a proportionality requirement of fees for units larger than 750 square feet. Processing time was reduced from 120 days to 60 days.

Council Member Nick Kosla asked Buckley if two-story ADUs are allowed. Buckley said that the answer is confusing, because there are different rules governing the conversion of an existing structure. Buckley said that discretionary review, as opposed to ministerial, is only allowed if an ADU results in buildings exceeding the FAR, which is the relationship between the total amount of usable floor area of buildings and the total area of the lot on which the buildings stand.

Kosla asked, "So no discretionary process for a two-story ADU?" Buckley explained that it would be allowable to establish a 16-foot maximum for all ADUs, which would effectively prohibit two-story ADUs. Kosla also asked about using landscaping to screen ADUs, but Buckley noted that with only four feet to the lot line, there isn't a lot of space for landscaping. He added that the planning commission has recommended that the city council adopt a 16-foot limit for all ADUs.

David Hop urged the council to allow 1,200 square feet, two-bedroom ADUs. He said that he and his wife live on a large lot in a home that covers five levels. They want to downsize, but also want to have enough space to entertain large family groups. Chris Kniel urged the council to challenge the state law.

Buckley said it would be possible to have an ADU of 1,300 square feet with design review. Kosla suggested that Orinda could limit ADUs to one story, but allow larger, two-story units with discretionary approval. When Vice Mayor Amy Worth asked what the process would be for an ADU on top of a garage, Buckley said that the state has not said anything about building over a garage. Worth also asked if it would be possible to allow ADUs up to 27 feet with design review, and Buckley said he thought it would be okay "if it applies to all buildings."

City Attorney Osa Wolff suggested that the city should conform the requirements for accessory structures to

New state regulations allow accessory dwelling units to rise to a height of 16 feet and as close as 4 feet from a lot line, and there are also new state rules about "junior" ADUs that do not exceed 500 square feet and are to be handled according to a streamlined, ministerial approval process. The Orinda City Council is now considering codifying its urgency ordinance that was put in place last December in response to the state rules.

At the March 3 council meeting, Planning Director Drummond Buckley discussed amendments to the Orinda municipal code proposed in response to the state law changes. According to the staff report, the state legislature has continued to pursue even greater production of ADUs. "Much like the 2017 and 2018 versions, these laws are convoluted and difficult to interpret, but indicate a clear intent to limit local control even further," the staff report notes. The state rules,

those for ADUs because accessory structures can be easily converted to ADUs, and, even without conversion, it is possible for people to live in accessory structures. She added that further research is required to determine exactly what may be allowable. Worth agreed that she sees the wisdom of having the same requirements for accessory structures as for ADUs. After further research, the matter will return to the council on April 7.

Reach the reporter at: sora@lamorindaweekly.com

[back](#)

Copyright © Lamorinda Weekly, Moraga CA