

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT: #19-13

AGENDA ITEM: 4.1

FROM & Kim Espinosa,
PREPARED BY: Planning Manager

PLANNING COMMISSION
MEETING DATE: May 8, 2019

CITY COUNCIL
MEETING DATE: June 17, 2019
(Tentative)

SUBJECT: **Zoning Ordinance Amendment #19-02**, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Merced Municipal Code Section 20.42 (“Second Units”). This amendment would modify the City’s requirements for “accessory dwelling units” (previously known as “second units” or “secondary dwelling units”) to meet the modified requirements of State Law in regards to dwelling unit size, parking requirements, location, occupancy standards, and fees.
PUBLIC HEARING

ACTION: **PLANNING COMMISSION:**

Recommendation to City Council

- 1) Environmental Review #19-04 (Categorical Exemption)
- 2) Zoning Ordinance Amendment #19-02

CITY COUNCIL:

Approve/Disapprove/Modify

- 1) Environmental Review #19-04 (Categorical Exemption)
- 2) Zoning Ordinance Amendment #19-02

SUMMARY

Based on changes in State law and recent City Council policy direction to try to encourage the construction of accessory dwelling units (ADU’s) in the City of Merced, the City’s Zoning Ordinance needs to be amended. This amendment would modify the City’s requirements for “accessory dwelling units” (previously known as “second units” or “secondary dwelling units”) to meet the modified requirements of State Law in regards to dwelling unit size, parking requirements, location, occupancy standards, and fees. Some optional changes regarding the location of parking in the exterior setback areas on the lot and the requirement that either the primary unit or accessory unit be owner occupied are also discussed. Staff is recommending approval of the revised Ordinance as outlined in Attachment A and is asking the Planning Commission to make a recommendation on the parking location and owner occupancy options.

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend approval to the City Council of a Categorical Exemption (Environmental Review #19-04—Attachment E) and Zoning Ordinance Amendment #19-02 (including the adoption of the Resolution at Attachment F) as

described in Attachment A, and recommending either Option 1A or Option 1B as described in Finding F regarding parking and either Option 2A or Option 2B as described in Finding H regarding owner occupancy.

PROJECT DESCRIPTION

This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Merced Municipal Code Section 20.42 (“Second Units”). This amendment would modify the City’s requirements for “accessory dwelling units” (previously known as “second units” or “secondary dwelling units”) to meet the modified requirements of State Law in regards to dwelling unit size, parking requirements, location, occupancy standards, and fees. Amendments are also proposed to Tables 20.08-1 (“Permitted Land Uses in the Residential Zoning Districts”), 20.16-1 (“Permitted Land Uses in the Urban Village Zoning Districts”), and 20.38-1 (“Off-Street Parking Requirements”); and Sections 20.08.030.F.1 (“Development Standards for Residential Zoning Districts, Parking”), 20.20.010.C.3 (“Urban Transition Zoning District, Development Standards”); 20.46.010 (“Residential Design Standards, Purpose”), and 20.90.020 (“Glossary, Definitions”).

BACKGROUND

State of California

The California Legislature has declared that allowing accessory dwelling units (ADU’s) in single-family and multi-family zones is an essential component in addressing housing needs in California. In 1982, the State enacted Government Code Section 65852.2 establishing a mandate that every local agency adopt provisions for permitting accessory dwelling units (then known as “secondary dwelling units” or “second units”). The intent of the legislation was to encourage housing for extended family members and to increase the availability of rental housing. In 2003, AB 1866 was adopted, requiring all local governments to allow ADU’s within single-family residential zones.

In 2016, Senate Bill 1069 and Assembly Bill 2299 were adopted which made specific amendments to State law to promote the production of ADU’s. Also in 2016, AB 2406 added provisions for the creation of “junior accessory dwelling units.” These bills amended various sections of the State Government Code (§ 65852.2.) related to ADU regulations and were intended to reduce barriers and streamline approval. Among other things, the new laws permit ADUs in all residential zoning districts, create two classes of ADUs for which different regulations apply (interior vs. new structure), eliminate off-street parking requirements in certain circumstances, regulate the unit size, and establish the review process and approval timelines. A brief summary of these three bills can be seen at Attachment B.

The amended Government Code section 65852.2 also contains a provision rendering null and void any local ordinance regulating ADU construction that does not comply with its provisions. The State laws also provide that until the time at which the agency adopts an ordinance that complies with the State laws, the agency must apply the State standards for the approval of ADUs. Local jurisdictions are required to submit their revised ordinances to the State Department of Housing and Community Development (HCD) within 60 days of adoption.

City of Merced

The City's existing "Second Unit" zoning standards in Chapter 20.42 of the Merced Municipal Code (and other sections of the Zoning Code) are inconsistent with the amended Government Code provisions regarding accessory dwelling units. Therefore, in order to retain some degree of local control over ADU construction, the City must amend the Zoning Ordinance to conform to state law.

On September 17, 2018, the City Council directed staff to review the City's Zoning Ordinance to determine what changes were needed in order to comply with the new State laws regarding Accessory Dwelling Units (ADU's), and to consider alternative approaches to facilitate the development of ADU's in the City of Merced. On November 19, 2018, the City Council reviewed the proposed changes as outlined in Finding D and possible new Housing Division programs that might be implemented to encourage the development of ADU's. The City Council, by unanimous vote, directed staff to prepare the changes to the Ordinance for consideration by the Planning Commission and City Council at public hearings in the early months of 2019, but prior to presenting the draft Ordinance, return to the City Council in late January 2019 for further policy direction regarding parking and the owner occupancy requirements for accessory dwelling units. The City Council also directed Housing staff to move forward with a program similar to the Clovis model presented at the meeting. (This Housing Division program is not part of the Ordinance revision so it is not discussed in this staff report.)

On January 22, 2019, City staff presented the City Council with the information provided in Findings E and G below regarding the parking and owner occupancy requirements. After discussion, the City Council, in general, indicated support for allowing required parking spaces to be in the front yard setback for both the primary unit and the accessory unit. However, the City Council was split on whether the owner occupancy requirement should remain. City staff indicated that staff would provide further information about this requirement at the time the revisions were proposed, so the Planning Commission could weigh in on the issue as part of its recommendation. Since that time, staff has done further research on the owner occupancy and parking requirements summarized in Findings F and H below.

FINDINGS/CONSIDERATIONS:

General Plan Policies Related to This Application

- A) The proposed zoning ordinance amendment would make changes in response to City Council direction. General Plan Implementing Action L-2.3.d calls for the City to review and update the Zoning Ordinance as needed.

Accessory Dwelling Units

- B) Although accessory dwelling units have been around for a long time (the City's Zoning Ordinance has allowed for them with certain restrictions since at least the early 1980's), there has recently been a lot of attention paid to them, especially in California. Accessory dwelling units (ADU's) have been called "in-law units," "granny flats," "casitas," "second units," and "secondary dwelling units," but whatever you call them, they are basically separate dwelling units on single-family lots. Some are converted garages or other living space completely within the primary dwelling unit, and some are separate structures in the

back or side yard. Most have cooking facilities and bathrooms, separate entrances, and their own address. Most have separate electrical utilities/meters, but not separate water or sewer utility connections or meters. (The City only allows one such water or sewer connection per lot.) For many years, the City of Merced allowed these units for family members, but they were not allowed to be rented out separately. In the late 1990's, the City began to let the units be rented, but either the primary unit or the accessory unit had to be owner occupied. The City's current ordinance still has the owner occupancy requirement (see Findings G and H below for a discussion of this issue).

- C) As noted above, accessory dwelling units have attracted a lot of attention lately. California lawmakers have addressed ADU's through legislation as noted in the Background section. According to a recent article in the L.A. Times, ADU's have exploded in popularity with Los Angeles receiving 25 times as many applications in 2017 as it did the previous 2 years, and Oakland, San Francisco, and San Jose also seeing major jumps. Backyard units are especially popular with older California families looking to downsize and rent out their main property. Such units are seen to be more affordable and also provide an income source for homeowners to help cover mortgage costs. They are also a popular option among college students. Portland, Oregon has been promoting ADU's for many years and in 2014, almost 8 percent of new housing units built are ADU's (only 0.5 percent of their total housing stock are ADU's.) The website, www.accessorydwellings.org, contains a lot of research and information about ADU's nationwide. In California, San Mateo County also has a lot of information about ADU's on their website, www.secondunitcentersmc.org.

General Overview of Proposed Changes to the Zoning Ordinance

- D) The City of Merced is proposing to adopt an Ordinance (Attachment A) to amend the Zoning Code to provide amended regulations for accessory dwelling units in conformance with changes in State law. Major modifications include:
- 1) The terms "Second Units" or "Secondary Dwelling Units" will need to be changed to "Accessory Dwelling Units" throughout the Zoning Ordinance, including the following chapters: Residential Zoning Districts, Urban Village Zoning District, Urban Transition Zoning District, Off-Street Parking, Second Units, and the Glossary. (See Sections 1, 2, 3, 4, 5, 6, 7, and 8 of Attachment A.)
 - 2) The maximum size of an attached ADU shall be changed from 1,000 square feet to 1,200 square feet. [See Section 6, new MMC 20.42.030(C)(1) and (2), of Attachment A.]
 - 3) Remove the "maximum number permitted" section as State law does not allow the number of ADU's to be capped per parcel although local ordinances should specify that "ADU's cannot exceed the allowable density for the lot." [See Section 6, previous MMC 20.42.030(C), of Attachment A.]
 - 4) Clarify that the standard that the ADU "be clearly subordinate to the primary dwelling" would not preclude an ADU from being located in the front of the property. [See Section 6, new MMC 20.42.030(D)(3), of Attachment A.]
 - 5) Clarify the setback requirements for ADU's. [See Section 6, new MMC 20.42.030(E)(1), of Attachment A.]

- 6) Change the parking requirements for ADU's with more than 3 bedrooms from 2 to 1 space as State law only allows the requirement for 1 parking space for all ADU's regardless of size. [See Section 5, Table 20.38-1, and Section 6, new MMC 20.42.030(G)(2), of Attachment A.]
- 7) Add a provision that "parking may be allowed in setback areas or as tandem parking on a driveway, unless the City determines that such options are not feasible on the existing property, based on fire and life safety concerns." [See Section 6, new MMC 20.42.030(G)(1), of Attachment A.]
- 8) Add a provision that states that the parking requirements do not apply in the five instances stated in State law, which include in official historic districts, within ½ mile of public transit, the ADU is part of an existing structure, on-street parking permits are required, or car share vehicles are located within one block. [See Section 6, new MMC 20.42.030(G)(3), of Attachment A.]
- 9) Add provisions regarding fees, including :
 - (a) ADU's are not considered "a new residential use for the purpose of calculating connection fees or capacity charges for utilities, including water and sewer service." [See Section 6, new MMC 20.42.040(C)(1), of Attachment A.]
 - (b) Any utility fee or charge imposed "must not exceed the cost of providing the service." [See Section 6, new MMC 20.42.040(C)(1), of Attachment A.]
 - (c) The City "cannot require applicants creating ADU's within the existing space of a single-family dwelling or accessory structure...to install a new or separate utility connection or impose a related connection fee or capacity charge." [See Section 6, new MMC 20.42.040(C)(2), of Attachment A.]
(Note: These provisions may also require changes to the Merced Municipal Code sections relating to the water and sewer connection fees as well. These provisions are not part of the Zoning Ordinance so they are not addressed in this amendment.)

Findings E, F, G and H below discuss some optional changes that could be made to the Zoning Ordinance in order to further encourage the development of ADU's in the City of Merced. Those changes are not required to conform to current State law, but may provide additional incentives to spur ADU development.

Policy Direction regarding Parking

E) *The following information was provided to the City Council on January 22, 2019:*

"One of the changes noted above is to add a provision that "parking may be allowed in setback areas or as tandem parking on a driveway, unless the City determines that such options are not feasible on the existing property, based on fire and life safety concerns." Per the current parking requirements for single-family homes in the Zoning Ordinance, each home is required to have 1 required parking space per unit and per Merced Municipal Code Section 20.08.030(F)(1), that "required" parking space cannot be within the required exterior setback areas in R-1 (single-family) and R-2 (duplex) zones. (However, those spaces are allowed to be in the setback area within R-3 and R-4 zones, which allow apartment units and have more traditional parking lot areas for tenants to park in.)

The driveway on a single-family home is usually within the front yard/exterior setback, and although there is nothing that prohibits the occupants from parking on the driveway, it cannot be counted as the legal required parking space. That legal required space is the one within the garage. Because of this requirement, if an owner wants to convert the garage into living space, they must either leave enough space for a legal 10 foot by 20 foot parking space within the garage (if it is a 2- or 3- car garage) or find another location within the lot (not within an exterior setback area) to install another parking space. The Ordinance also requires that any such uncovered space must be designed and located so that it can later be converted to a covered space. (This requirement means that the parking space cannot be within a required side yard setback area either.) On smaller lots especially, it can often be difficult to find such a location and this discourages garage conversions. It should be noted that this concern was brought up as part of the comprehensive Zoning Ordinance Update in 2015, but ultimately the Zoning Ordinance Focus Group (made up of 25 citizens), the Planning Commission, and City Council opted to remain with the existing requirements.

The Planning Commission/City Council could consider making broader changes to the Zoning Ordinance that would allow legal parking spaces for all uses to be in the exterior setback areas for all R-1 and R-2 zones throughout the City or a special exception could be granted for accessory dwelling units only. The special exception would meet the requirements of State law for ADU's and would likely have less impacts on single-family neighborhoods as City staff receives many more requests for garage conversions than for accessory dwelling units.”

- F) Since the January 22, 2019, City Council meeting, City staff has done additional research on the parking issue which is summarized below for the Planning Commission's consideration.

As indicated previously, the City Council showed a preference for allowing required parking spaces for all uses (not just ADU's) in the exterior setback area, which is generally the driveway in the front yard, but can also be a side yard that is adjacent to the street. As noted above, the City's current Ordinance does not allow required parking spaces to be located in the front yard setback area in R-1 and R-2 zones. In order to amend the ordinance to meet State law, an exception to that provision would need to be made for ADU's at the very least. A summary of what other California cities have done regarding the parking requirements (along with the owner occupancy requirement) is provided in Attachment C.

City staff still has some concerns about making the broader change which could lead to significantly more garage conversions and could potentially lead to more vehicles being parked on the streets in neighborhoods due to the reduced amount of on-site parking. More on-street parking can lead to more issues on trash collection days and more conflicts among neighbors. Although no one owns the on-street parking spot directly in front of their house, most people feel it should be left for their use instead of being used by one of their neighbors. At the very least, if parking for all uses is allowed in the front yard, City staff believes there should still be a restriction against covering those parking spaces so as not to have a proliferation of car ports and other such structures in the front yard which can be unsightly and can cause conflicts with utility lines, street trees, and required setbacks in the Building and Fire Codes.

After the Council meeting, staff received an email (Attachment D) from former Council Member Belluomini. He felt that the Council discussion had been too broad and simply should have focused on any possible fire and life safety issues of allowing the driveway to be widened for an ADU. As mentioned above, State law requires that parking for ADU's be allowed on the front driveway unless there were fire and life safety concerns.

The Draft Ordinance (see Section 2, MMC 20.08.030, of Attachment A) has been prepared with the following language, which would allow for the parking for ADU's only in the exterior setback areas (**Option 1A**):

**“20.08.030-“DEVELOPMENT STANDARDS FOR
RESIDENTIAL ZONING DISTRICTS**

F. PARKING

1. Within the R-1 and R-2 zoning districts, required off-street parking spaces may not be located within any required exterior setback area, except for required parking spaces for accessory dwelling units on the property.”

However, if the Planning Commission wishes to recommend parking allowed for all uses in the exterior setback areas, the following alternative language should be adopted (**Option 1B**):

**“20.08.030-“DEVELOPMENT STANDARDS FOR
RESIDENTIAL ZONING DISTRICTS**

F. PARKING

2. Within the R-1 and R-2 zoning districts, required off-street parking spaces may ~~not~~ be located within any required exterior setback area, but these spaces may not be covered.”

Policy Direction regarding Owner Occupancy

G) *The following information was provided to the City Council on January 22, 2019:*

“Merced Municipal Code Section 20.42.040(A) requires that “the owner of a parcel occupied by a second unit (to be changed to “accessory dwelling unit”) shall reside in either the primary dwelling unit or the second unit.” MMC 20.42.040(B) further goes on to require that a deed restriction be recorded that specifies that the ADU cannot be sold separately and that the property owner must reside in either the primary or accessory unit.

There is nothing in State law that requires the City to change the above requirements. However, at the November 19, 2018, meeting, the City Council asked for a discussion of options regarding this requirement. At the Council meeting, at least one citizen testified that they would be concerned about eliminating this requirement.

Some cities have eliminated this occupancy requirement in recent years in order to encourage the development of ADU's and others are considering that now. The City of

Chico is one of those, but specifically in response to the Camp Fire that destroyed much of the nearby City of Paradise. However, from a limited survey by City staff, it appears that most communities, including Modesto, Turlock, Burlingame, Redwood City, San Bruno, San Carlos, etc., still retain this requirement.

While eliminating the requirement might encourage the development of more ADU's, it might have impacts on the character of single-family neighborhoods throughout the City. If the property owner is not required to live in one of the units, that would allow both units to be rentals, thereby creating two "apartment" units on each lot with no landlord onsite.

The occupancy requirement is thought to encourage property owners to minimize possible negative impacts (such as excessive noise, or lack of property upkeep) because they are living on the same property as their tenants. For many years, the City required ADU occupants to be "related by blood or marriage" (generally elderly relatives or teenagers). That requirement was eliminated a number of years ago to allow homeowners to rent ADU's to anyone to generate extra income and to give more housing choices to college students or others."

- H) Since the January 2, 2019, City Council meeting, City staff has done additional research on the owner occupancy issue which is summarized below for the Planning Commission's consideration.

City staff reviewed the Accessory Dwelling Unit Ordinances adopted by 28 California cities and also referred to a survey done in 2018 for 7 cities in San Mateo County. A summary of the provisions in these ordinances regarding owner occupancy, short-term rentals, parking, and other special provisions of note can be seen in Attachment C. Regarding owner occupancy, 28 cities retained a requirement for either the primary or accessory unit be owner occupied while 7 cities and 1 county did not have such a requirement. According to www.accessorydwellings.org, although Portland, Oregon eliminated its owner occupancy requirement in 1998, 30 of 46 Oregon cities still retained the requirement in 2013.

Some reasons cited for retaining the requirement were as noted in Finding G above regarding "absentee landlords" and concerns for retaining the character of single-family neighborhoods. There could also be disputes around the fact that the City only allows one sewer and water meter and trash collection service per single-family lot. If there are issues with tenants contaminating the green waste container, violating the rules regarding excessive watering, or even paying their fair share of the bill, this could cause problems for the City in trying to impose fines or cutting off service for non-payment. Many Merced neighborhoods are already experiencing some of these issues with single-family homes being rented to multiple tenants. (More traditional apartments would have on-site managers and consolidated billing to deal with such issues.)

However, there are also reasons cited by various sources in favor of eliminating the owner occupancy requirement, chief among them that the restrictions tend to discourage the construction of ADU's. An article from www.sightline.org, notes that the owner occupancy requirement "gives bankers the jitters, which prevents many homeowners from securing home loans to finance ADU construction. Owner occupancy sharply limits the

value appraisers can assign to a house and the ADU and makes property less valuable for loan collateral. If a bank forecloses on a house and ADU covered by an owner occupancy rule, it cannot rent out both units.” Another article from www.accessorydwellings.org indicates “Owner occupancy requirements make properties with ADU’s unsuitable for income-based valuation by appraisers, constraining their value, and making them difficult to finance.” It goes on to indicate that owner occupancy requirements can badly hurt the market for ADU’s and create obstacles for “mom and pop” landlords that are trying to provide affordable housing options.

Given the above, there seems to be good reasons on both sides. However, since the City currently has the owner occupancy restriction in place, City staff has included it in the proposed Ordinance. It should be noted that this all may be a moot point in the future since there is currently a bill, SB 13, being considered in the California Legislature which, if passed, would prohibit a local agency from requiring owner occupancy of either the primary or accessory unit. (This same bill would also limit the impact fees that could be charged to ADU’s and prohibit local agencies from requiring the replacement of parking spaces eliminated by converting a garage into an ADU.)

The Draft Ordinance (see Section 6, MMC 20.42.040, of Attachment A) has been prepared with the following language, which would still require owner occupancy and is almost the same language as the current ordinance with a few modifications (**Option 2A**):

20.42.040 Occupancy Standards

A. *Owner Occupancy.* The owner of a parcel occupied by a an accessory dwelling second unit shall reside in either the primary dwelling or the accessory dwelling second unit.

B. *Deed Restrictions.* Prior to the issuance of a building permit for an accessory dwelling second unit, a covenant of restriction to run with the land shall be recorded by the property owner which specifies that the second accessory dwelling unit cannot be sold separately, transferred, or otherwise disposed of independently from the primary dwelling unit that the property owner shall reside in either the primary or accessory dwelling unit, and that these restrictions shall be binding on successors in ownership.

However, if the Planning Commission would like to recommend that the owner occupancy requirement be removed, the following alternative language should be adopted (**Option 2B**):

20.42.040 ~~Occupancy Standards~~ Fees and Other Requirements

A. ~~*Owner Occupancy.* The owner of a parcel occupied by a an accessory dwelling second unit shall reside in either the primary dwelling or the accessory dwelling second unit.~~

B. ~~*Deed Restrictions.* Prior to the issuance of a building permit for an accessory dwelling second unit, a covenant of restriction to run with the land shall be recorded by the property owner which~~

~~specifies that the second accessory dwelling unit cannot be sold separately, transferred, or otherwise disposed of independently from the primary dwelling unit that the property owner shall reside in either the primary or accessory dwelling unit, and that these restrictions shall be binding on successors in ownership.~~

(Note: Section C as described in Attachment A would now become Section A of MMC 20.42.040)

Timetable/Next Steps

- I) After the Planning Commission makes a recommendation on the Draft Ordinance, a public hearing will be scheduled before the City Council, tentatively scheduled for June 17, 2019. If the Council introduces the Ordinance at that meeting, the 2nd reading and adoption of the Ordinance would be at the next City Council meeting on July 1, 2019, and then the Ordinance would be effective 30 days later or on approximately August 1, 2019.

Environmental Clearance

- J) The Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption (i.e., no further environmental review is required) is being recommended (see Attachment E).

Attachments:

- A) Draft Ordinance
- B) Summary of California Legislation RE: ADU's
- C) Survey of Other Cities' Accessory Dwelling Unit Ordinances
- D) Email from Former Council Member Belluomini
- E) Environmental Review #19-04 (Categorical Exemption)
- F) Draft Planning Commission Resolution

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING SECTIONS 20.42 (“SECOND UNITS”) AS WELL AS TABLES 20.08-1 (“PERMITTED LAND USES IN THE RESIDENTIAL ZONING DISTRICTS”), 20.16-1 (“PERMITTED LAND USES IN THE URBAN VILLAGE ZONING DISTRICTS”), AND 20.38-1 (“OFF-STREET PARKING REQUIREMENTS”); AND SECTIONS 20.08.030.F.1 (“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS, PARKING”), 20.20.010.C.3 (“URBAN TRANSITION ZONING DISTRICT, DEVELOPMENT STANDARDS”); 20.46.010 (“RESIDENTIAL DESIGN STANDARDS, PURPOSE”), AND 20.90.020 (“GLOSSARY, DEFINITIONS”) OF THE MERCED MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT TO CODE. Table 20.08-1, “Permitted Land Uses in the Residential Zoning Districts,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’)” is replaced with “Accessory Dwelling Units.”

SECTION 2. AMENDMENT TO CODE. Section 20.08.030(F)(1), “Development Standards for Residential Zoning Districts, Parking” of the Merced Municipal Code is hereby amended to read as follows:

“20.08.030-“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS

F. PARKING

1. Within the R-1 and R-2 zoning districts, required off-street parking spaces may not be located within any required exterior setback area, except for required

parking spaces for accessory dwelling units on the property.”

SECTION 3. AMENDMENT TO CODE. Table 20.16-1, “Permitted Land Uses in the Urban Village Zoning Districts,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’)” is replaced with “Accessory Dwelling Units.”

SECTION 4. AMENDMENT TO CODE. Section 20.20.010(C)(3), “Urban Transition Zoning District, Development Standards, Residential Density,” of the Merced Municipal Code is hereby amended to read as follows:

“20.20.010 - Urban Transition (U-T) Zoning District

C. Development Standards _____

3. **Residential Density.** Except for ~~secondary units~~ accessory dwelling units permitted under Chapter 20.42 (~~Second Units~~-Accessory Dwelling Units), residential density of the lot may not be increased.

However, the accessory dwelling unit may not exceed the allowable density for the lot.”

SECTION 5. AMENDMENT TO CODE. Table 20.38-1, “Off-Street Parking Requirements,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’) is replaced by “Accessory Dwelling Units” and the corresponding “Required Number of Parking Spaces” is amended to read as follows:

**“One or ~~two~~ more bedrooms: 1 per unit;
Three or more bedrooms: ~~2~~ per unit”**

SECTION 6. AMENDMENT TO CODE. Chapter 20.42, “Second Units,” of the Merced Municipal Code is hereby repealed and amended to read as follows:

“20.42 Accessory Dwelling Units ~~Second Units~~

Sections:

20.42.010 Purpose

20.42.020 Minor Use Permit Required

20.42.030 Site and Design Standards

20.42.040 Occupancy Standards

20.42.010 Purpose

This chapter establishes standards for the location and construction of ~~second units (also known as “secondary dwelling units”)~~ accessory dwelling units (“ADU’s”) in conformance with Government Code Section 65852.2. These standards are intended to allow for ~~second~~ accessory dwelling units as an important form of affordable housing while preserving the character and integrity of residential neighborhoods within the City.

20.42.020 Minor Use Permit Required

Approval of a Minor Use Permit is required prior to the establishment of any ~~second~~ accessory dwelling unit or a subdivision with multiple ~~second~~ accessory dwelling units.

20.42.030 Site and Design Standards

A. Location. ~~Second~~ Accessory dwelling units shall be permitted in ~~residential zoning districts~~ districts zoned to allow single-family or multi-family use as provided in Part 2 (Zoning Districts).

B. Site Requirements

1. ~~Second~~ Accessory dwelling units that comply with this chapter shall be permitted on all legally established residential parcels, regardless of parcel size so long as the parcel size permits at least an ‘efficiency unit’ to be constructed in compliance with local design standards. [An ‘efficiency unit’ provides for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities.]
2. An accessory dwelling ~~second~~ unit may only be established if a single-family dwelling unit (“primary dwelling”) exists on the parcel or is being built at the same time.

~~C. Maximum Number Permitted~~

- ~~1. Only one second unit shall be allowed on a single parcel.~~

~~2. A second unit is not permitted on parcels already containing two or more dwelling units.~~

DC. Size

1. ~~Attached *Second-Accessory Dwelling Units*.~~ The floor area of an attached second unit shall not exceed 50 percent of the living area of the primary dwelling or ~~1,000~~1,200 square feet, whichever is ~~greater~~less. Garages and carports are excluded from floor area calculations for both the primary dwelling and ~~second accessory~~ accessory unit.
2. ~~Detached *Second-Accessory Dwelling Units*.~~ The floor area of a detached ~~second-accessory dwelling~~ unit shall not exceed 1,200 square feet, excluding any space devoted to a carport or garage.

ED. Relationship to Primary Dwelling

1. ~~An accessory dwelling second~~ unit may be within, attached to, or detached from the primary dwelling, ~~or within an attached or detached accessory structure.~~ Attachment to the primary dwelling shall be by sharing a common interior wall or common roof.
2. ~~An accessory dwelling second~~ unit shall have its own kitchen, bathroom facilities, and entrance separate from the primary dwelling.
3. The ~~secondary-accessory dwelling~~ unit shall be clearly subordinate to the primary dwelling by size ~~and~~; appearance, ~~and location on the parcel.~~

FE. Development Standards

1. ~~An accessory dwelling second~~ unit shall comply with all current development and design standards of the General Plan and Zoning Ordinance that are applicable to the primary dwelling, including, but not limited to, building setbacks, parcel coverage, building height, and architectural design, ~~with certain exceptions, discussed herein. As long as existing setbacks are sufficient for fire safety, no setback shall be required for an accessory dwelling unit contained within the existing space of a single-family residence or accessory structure, including an existing garage, and a setback of no more than five~~

feet from the side and rear lot lines shall be required for an accessory dwelling unit constructed above a garage.-

2. The ~~secondary~~accessory dwelling unit in compliance with this section shall not be considered to exceed the allowable density for the lot upon which it is located and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot.

3. No lot line adjustment, subdivision of land, air rights or condominium shall be allowed to enable the sale, transfer, or disposal of the ~~second~~accessory dwelling unit independently of the primary dwelling unit or any portion of the property. This stipulation shall be included in a recorded deed restriction on the property.

4. The ~~secondary~~accessory dwelling unit must be eligible to receive City sewer and water services. Creation of a detached accessory dwelling unit may require installation of a new or separate utility connection.

GF. Design Requirements

1. An accessory dwelling ~~second~~-unit shall be compatible with the primary dwelling and the surrounding neighborhood with respect to structure height, scale, and massing.

2. The architectural design and detailing, roof color and material, and exterior color and finish materials of an ~~second~~accessory dwelling unit shall match the primary dwelling to the extent possible.

3. The parcel shall retain a single-family appearance and the ~~second~~accessory dwelling unit shall be integrated into the design of the existing improvements of the property.

4. The addresses of both the primary dwelling and the ~~second~~accessory dwelling unit shall be displayed and clearly visible from the street.

HG. Parking

1. ~~Second-Accessory dwelling~~ units with ~~one or two~~ at least one bedrooms shall provide one additional off-street parking space in addition to those spaces required

for the primary dwelling. Off-street parking may be provided in the setback areas or as tandem parking on a driveway, unless the City determines that such options are not feasible on the existing property, based on fire and life safety conditions.

2. ~~If the second unit has three or more bedrooms, two off-street parking spaces shall be provided in addition to those spaces required for the primary dwelling.~~

32. The creation of an accessory dwelling second unit through the conversion of all or a portion of a garage is prohibited unless replacement parking is provided elsewhere on the property in conformance with required parking standards as defined in Chapter 20.38 (Parking and Loading).

3. The parking standards provided in this section and otherwise in this code does not apply to an accessory dwelling unit in any of the following instances: (a) it is located within one-half mile of public transit; (b) it is located within an official architecturally and historically significant historic district; (c) it is part of the proposed or existing primary residence or an accessory structure; (d) on-street parking permits are required but not offered to occupants of an accessory dwelling unit; and, (e) a car share vehicle is located within one block of the accessory dwelling unit. To qualify for any of the above exemptions, the applicant shall provide supporting evidence as part of a Minor Use Permit or building permit application.

20.42.040 Occupancy Standards

A. *Owner Occupancy.* The owner of a parcel occupied by an accessory dwelling second unit shall reside in either the primary dwelling or the ~~second~~ accessory dwelling unit.

B. *Deed Restrictions.* Prior to the issuance of a building permit for an accessory dwelling second unit, a covenant of restriction to run with the land shall be recorded by the property owner which specifies that the ~~second~~ accessory dwelling unit cannot be sold separately, transferred, or otherwise disposed of independently from the primary dwelling unit that the property owner shall

reside in either the primary or ~~second~~-accessory dwelling unit, and that these restrictions shall be binding on successors in ownership.

C. Fees and Other Requirements.

1. Accessory dwelling units are not a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, and any utility fee or charge imposed on the creation of a detached accessory dwelling unit must not exceed the reasonable cost of providing the service.

2. Accessory dwelling units contained within the existing space of a single family residence or accessory structure that have an independent exterior access and setbacks that meet fire safety requirements are not required to install a new or separate utility connection and cannot be charged for a related connection fee or capacity charge.

1. ~~— Prior to occupancy of the second unit, a new address shall be assigned by Department of Development Services.~~

23. A new ~~second~~-accessory dwelling unit shall be required to pay all applicable fees, including impact fees.

4. Prior to occupancy of the accessory dwelling unit, a new address shall be assigned by Department of Development Services.

SECTION 7. AMENDMENT TO CODE. Section 20.46.010, “Residential Design Standards, Purpose,” of the Merced Municipal Code is hereby amended to read as follows:

“20.46.010 -Purpose

This chapter establishes design standards for residential uses, in addition to regulations set forth in Chapter 20.08 (Residential Zones), except that parking, location, and address requirements in Section 20.46.020 do not apply to accessory dwelling units.”

SECTION 8. AMENDMENT TO CODE. Section 20.90.020, “Definitions,” of the Merced Municipal Code is hereby amended to read as follows:

“20.90.020 - Definitions

~~1861a.~~ ~~Second Units or Secondary Accessory Dwelling Units.~~ Attached or detached accessory residential dwelling units, which provide complete independent living facilities for one or more persons. Secondary dwelling units provide permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel occupied by a primary dwelling. A single attached suite of rooms (consisting of living, sleeping, cooking, and sanitation facilities) but with unimpeded access to the rest of the dwelling unit, no separate ~~address~~, lease, or utility service, and still functioning as one “household” per 20.90.020(99) may not be considered to be a ~~second unit~~. See Chapter 20.42 (~~Second Units~~ Accessory Dwelling Units).

186. *Second Units or Secondary Dwelling Units.* See Accessory Dwelling Units (#1a).”

SECTION 9. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 10. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 11. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 2019, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2019, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED:

Mayor

**ATTEST:
STEVE CARRIGAN, CITY CLERK**

**BY: _____
Assistant/Deputy City Clerk**

(SEAL)

APPROVED AS TO FORM:

City Attorney Date

PUBLIC NOTICE OF ADOPTION OF ORDINANCE

CITY OF MERCED

ORDINANCE NO. _____

NOTICE IS HEREBY GIVEN that on _____, 2019, the City Council of the City of Merced adopted Ordinance No. _____, entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING SECTIONS 20.42 (“SECOND UNITS”) AS WELL AS TABLES 20.08-1 (“PERMITTED LAND USES IN THE RESIDENTIAL ZONING DISTRICTS”), 20.16-1 (“PERMITTED LAND USES IN THE URBAN VILLAGE ZONING DISTRICTS”), AND 20.38-1 (“OFF-STREET PARKING REQUIREMENTS”); AND SECTIONS 20.08.030.F.1 (“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS, PARKING”), 20.20.010.C.3 (“URBAN TRANSITION ZONING DISTRICT, DEVELOPMENT STANDARDS”); 20.46.010 (“RESIDENTIAL DESIGN STANDARDS, PURPOSE”), AND 20.90.020 (“GLOSSARY, DEFINITIONS”) OF THE MERCED MUNICIPAL CODE

Ordinance No. _____ amends Merced Municipal Code Section 20.42 (“Second Units”), which regulates Accessory Dwelling Units (previously known as “second units”), as well as other sections of the Municipal Code which make reference to Accessory Dwelling Units.

Ordinance No. _____ was adopted by the following roll call vote of the City Council:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

A copy of the full text of Ordinance No. _____ is available for review in the Office of the City Clerk, City of Merced, 678 West 18th Street, Merced, California, and on the City's website at www.cityofmerced.org.

ASSISTANT CITY CLERK

PUBLISH:

SUMMARY OF RECENT CALIFORNIA LEGISLATION RE: ACCESSORY DWELLING UNITS

The following is a brief summary of each of the three accessory dwelling unit bills that took effect on January 1, 2017.

Summary of SB 1069 (Wieckowski): This law makes several changes to address barriers to the development of accessory dwelling units (ADUs), including parking requirements, utility fees, and existing single-family space repurposed as an ADU.

Parking: SB 1069 reduces maximum parking requirements to one space per bedroom or unit, and authorizes off street parking to be tandem or in setback areas unless specific findings such as fire and life safety conditions are made. SB 1069 also prohibits parking requirements if the ADU meets any of the following:

- Is within a half mile from public transit.
- Is within an architecturally and historically significant historic district.
- Is part of an existing primary residence or an existing accessory structure.
- Is in an area where on-street parking permits are required, but not offered to the occupant of the ADU.
- Is located within one block of a car share area.

Fees: SB 1069 provides that ADUs shall not be considered new residential uses for the purpose of calculating utility connection fees or capacity charges, including water and sewer service. The bill prohibits a local agency from requiring an ADU applicant to install a new or separate utility connection or impose a related connection fee or capacity charge for ADUs that are contained within an existing residence or accessory structure. For attached and detached ADUs, this fee or charge must be proportionate to the burden of the unit on the water or sewer system and may not exceed the reasonable cost of providing the service.

Fire Requirements: SB 1069 provides that fire sprinklers shall not be required in an accessory unit if they are not required in the primary residence.

ADUs within Existing Space: Local governments must ministerially approve an application to create an ADU on a single-family lot if the unit is:

- Contained within an existing residence or accessory structure.
- Has independent exterior access from the existing residence.
- Has side and rear setbacks that are sufficient for fire safety.

No additional parking or other development standards can be applied except for building code requirements.

No Total Prohibition: SB 1069 prohibits a local government from adopting an ordinance that precludes ADUs.

Summary of AB 2299 (Bloom): This law requires a local government to ministerially approve ADUs if the unit complies with certain parking requirements, and establishes maximum size and setback requirements, as follows:

- The unit is not intended for sale separate from the primary residence and may be rented.
- The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.
- The unit is either attached to an existing dwelling or located within the living area of the existing dwelling or detached and on the same lot.
- The increased floor area of an attached ADU does not exceed 50% of the existing living area, with a maximum floor area of 1,200 square feet.
- The total area of floor space for a detached accessory dwelling unit does not exceed 1,200 square feet.
- No passageway can be required.
- No setback can be required from an existing garage that is converted into an ADU.
- Compliance with local building code requirements.
- Approval by the local health officer where private sewage disposal system is being used .

Summary of AB 2406 (Thurmond): This law creates more flexibility for housing options by authorizing local governments to permit junior accessory dwelling units (JADU) through an ordinance. The bill defines JADUs to be a unit that cannot exceed 500 square feet and must be completely contained within the space of an existing residential structure. In addition, the bill requires specified components for a local JADU ordinance.

Required Components: The ordinance authorized by AB 2406 must include the following parameters:

- Limit to one JADU per residential lot zoned for single-family residences with a single-family residence already built on the lot.
- The single-family residence in which the JADU is created or JADU must be occupied by the owner of the residence.
- The owner must record a deed restriction stating that the JADU cannot be sold separately from the single-family residence and restricting the JADU to the size limitations and other requirements of the JADU ordinance.
- The JADU must be located entirely within the existing structure of the single-family residence and JADU must have its own separate entrance.
- The JADU must include an efficiency kitchen which includes a sink, cooking appliance, counter surface, and storage cabinets that meet minimum building code standards. No gas or 220V circuits are allowed.
- The JADU may share a bath with the primary residence or have its own bath.

Prohibited Components: This bill prohibits a local JADU ordinance from requiring:

- Additional parking as a condition to grant a permit.
- Applying additional water, sewer and power connection fees.

Survey of Other Cities' Accessory Dwelling Unit Ordinances

(April 2019--Merced City Staff)

City	Require Owner Occupancy of ADU or Primary Unit	Deed Restriction Required	Special Exemption for Parking in Setback for ADU's Only	Prohibits Short-Term Rentals (Less than 30 days) of ADU's	Any Special Provisions of Note	Amended Recently to Meet State Law Reqts
Barstow	Yes	Yes	Yes	No	None	Adopted 2015
Carmel	Yes	Yes	Allows Tandem Parking on Driveway for ADU per State Law	Yes	Retains Limitation of 1 ADU per lot (despite state law reqts which seem to limit this);	Adopted April 2017
Chico	Yes (but currently considering removing due to Camp Fire impacts on local housing)	Yes (but currently considering removing reqt)	Allows Tandem Parking for Primary Dwelling & ADU on an existing driveway	Yes (no mention of removing this reqt)	Currently considering ADU fee reductions and other incentives that would require affordability covenants	Amended March 2018 but considering further amendments (Jan 2019)
Clovis	Yes	Yes	Requires 3 parking spaces for ADU & primary unit (does not appear to meet current State reqts)	No	Cottage Home Program of providing pre-approved building plans for ADU's in Central Clovis	Adopted October 2014
Citrus Heights	No	No	Allows driveway parking within setback areas to count for all single-family residences, not just ADU's, and does not require any additional parking for ADU's since 80% of City would likely qualify for an exemption	No	None	Adopted May 2017

Survey of Other Cities' Accessory Dwelling Unit Ordinances

(April 2019--Merced City Staff)

City	Require Owner Occupancy of ADU or Primary Unit	Deed Restriction Required	Special Exemption for Parking in Setback for ADU's Only	Prohibits Short-Term Rentals (Less than 30 days) of ADU's	Any Special Provisions of Note	Amended Recently to Meet State Law Reqts
Colma	Yes	Yes	Allows parking within the setback for the primary dwelling & ADU but only if the garage is being converted to an ADU	Yes	None	Adopted March 2017
Davis	No	No	Unclear	No	None	Amended Feb 2019
Diamond Bar	Yes	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	None	Amended May 2017
Dublin	Yes	No	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	None	Adopted January 2017
Emeryville	Yes	No	Parking for ADU only may be provided in the setback area or in tandem arrangements	No	ADU cannot have more bedrooms than the primary unit; Requires at least 200 SF of open space	Amended November 2017
Fremont	Yes	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	Allow "Junior ADU's" of 500 SF or less (one bedroom) entirely within the primary structure with an efficiency kitchen and access to a bathroom; No outside stairs to the ADU on the front of the house.	Amended Feb 2017

Survey of Other Cities' Accessory Dwelling Unit Ordinances

(April 2019--Merced City Staff)

City	Require Owner Occupancy of ADU or Primary Unit	Deed Restriction Required	Special Exemption for Parking in Setback for ADU's Only	Prohibits Short-Term Rentals (Less than 30 days) of ADU's	Any Special Provisions of Note	Amended Recently to Meet State Law Reqts
Fresno	Yes	Yes	Parking for ADU cannot impede access to required parking for primary unit	No	None	Has not been amended since 2015
Gilroy	Yes	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	None	Amended January 2018
Los Altos	No (Removed in June 2018)	No	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	None	Amended June 2018
Los Angeles	No	No	Parking for ADU only may be provided in the setback area or in tandem arrangements	No	None	2017
Modesto	Yes	Yes	Does not allow parking for the ADU in the front setback (State law requires this be allowed for at least the ADU)	No, but affordability restrictions would make it difficult to do such short-term rentals	Requires that ADU's and the primary unit meet affordability restrictions for at least 30 years	Doesn't appear to have been amended per new State reqts
Napa	No (But required for Junior ADU's)	No (But required for Junior ADU's)	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	Provides for "Junior ADU's" similar to Fremont above	Adopted April 2017
Orinda	No	No	Parking for ADU only may be provided in the setback area or in tandem arrangements	No	None	Amended in 2017 & 2018

Survey of Other Cities' Accessory Dwelling Unit Ordinances

(April 2019--Merced City Staff)

City	Require Owner Occupancy of ADU or Primary Unit	Deed Restriction Required	Special Exemption for Parking in Setback for ADU's Only	Prohibits Short-Term Rentals (Less than 30 days) of ADU's	Any Special Provisions of Note	Amended Recently to Meet State Law Reqts
Redondo Beach	Yes	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	No (Recommended by Planning Commission but not included)	Appeared to be controversial as several public hearings were held by both the Planning Commission and City Council	Adopted February 2019
San Dimas	Yes	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	Requires that ADU's that are rented be "affordable" for 50 years	Amended December 2016
Santa Barbara	Yes (Actually requires that it be the owner's "primary place of residence")	Yes (have very specific reqts for these covenants)	Parking for ADU's allowed in setback areas but only in non "high fire hazard" areas	Yes (Does not allow rental terminations prior to at least 31 days expiring)	Allows "Hardship Waivers" of no more than 3 years for the owner occupancy reqt; Requires minimum open space be provided based on lot size; special design standards for 2-story units	Amended May 2018
Santa Fe Springs	Yes	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	Includes provisions for "Junior ADU's"	Amended February 2017
Santa Rosa	Yes (unless owned by a governmental agency or non-profit housing agency)	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	Includes provisions for "Junior ADU's"; and requires affordability covenants	Circa 2018

Survey of Other Cities' Accessory Dwelling Unit Ordinances

(April 2019--Merced City Staff)

City	Require Owner Occupancy of ADU or Primary Unit	Deed Restriction Required	Special Exemption for Parking in Setback for ADU's Only	Prohibits Short-Term Rentals (Less than 30 days) of ADU's	Any Special Provisions of Note	Amended Recently to Meet State Law Reqs
Simi Valley	Yes	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	Includes provisions for "Junior ADU's"; and specifically prohibits the rental of "guest houses"	Adopted November 2017
Turlock	Indicates that ADU may be rented but doesn't mention otherwise	No	Parking for ADU only may be provided in the setback area or in tandem arrangements	No	Requires architectural review of ADU's	Adopted May 2015
Visalia	Yes	Yes	Doesn't allow tandem parking for ADU's	No	None	Adopted 2017
Walnut Creek	Yes	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	No	Includes restrictions on 2nd story windows	Amended January 2019
Whittier	Yes	Yes	Requires 2 covered, non-tandem spaces for ADU's if on a lot of 20,000 SF or greater, except as where exempt from parking under State Law	No	None	Adopted June 2017
SUMMARY	21-Yes; 7-No	19-Yes; 9-No	N/A	14-Yes; 14-No	N/A	N/A

Survey of Other Cities' Accessory Dwelling Unit Ordinances

(April 2019--Merced City Staff)

City	Require Owner Occupancy of ADU or Primary Unit	Deed Restriction Required	Special Exemption for Parking in Setback for ADU's Only	Prohibits Short-Term Rentals (Less than 30 days) of ADU's	Any Special Provisions of Note	Amended Recently to Meet State Law Reqs
San Mateo County :						<i>From 2018 Survey Performed by Others</i>
Burlingame	Yes	Yes	Information Not Included in Survey ("Not Included")	"Not Included"	Junior ADU's Not Allowed	"Not Included"
Daly City	Yes	Yes	"Not Included"	"Not Included"	Junior ADU's Not Allowed	"Not Included"
Redwood City	Yes	No	"Not Included"	"Not Included"	Junior ADU's Not Allowed	"Not Included"
San Bruno	Yes	Yes	"Not Included"	"Not Included"	Junior ADU's Not Allowed	"Not Included"
San Carlos	Yes	Yes	"Not Included"	"Not Included"	Junior ADU's Not Allowed	"Not Included"
San Mateo (City)	Yes	Yes	"Not Included"	"Not Included"	Allows "Junior ADU's"	"Not Included"
San Mateo County	No	No	"Not Included"	"Not Included"	Allows "Junior ADU's"	"Not Included"
South San Francisco	Yes	Yes	"Not Included"	"Not Included"	Junior ADU's Not Allowed	"Not Included"
SUMMARY	7-Yes; 1-No	6-Yes; 2-No	N/A	N/A	N/A	N/A

From: [Michael Belluomini](#)
To: [Murphy, Mike](#); [Serratto, Matthew](#); [Blake, Kevin](#); [Shelton, Delray](#); [Echevarria, Fernando](#); [McLeod, Jill](#); [Martinez, Anthony](#)
Cc: [Carrigan, Steve](#); [Norton, Phaedra](#); [McBride, Scott](#); [Espinosa, Kim](#); [Dietz, Stephanie](#); [Alcorn, Billy](#)
Subject: PARKING FOR ACCESSORY DWELLING UNITS
Date: Friday, January 25, 2019 9:30:32 AM

There seemed to be confusion regarding regulating parking for accessory dwelling units at the last council meeting. Perhaps rephrasing the basic question will clarify the issue.

The state law on ADUs states that parking for ADUs is allowed in the front yard setback (enlarged driveway) unless not feasible based on fire and life safety concerns.

So the question for the council is: Are there fire and life safety concerns with allowing widening of the driveway to create a parking space for an ADU ?

That is the only question that needs to be answered. Garage conversions, or the parking requirements for the main dwelling or other issues are irrelevant, and confuse the issue.

Fire and life safety concerns associated with widening a driveway exist in steep mountain home developments with concerns about snow/ice and forest fires/trees falling, and mudslides. I do not believe there is a life safety or fire issue with widening driveways for one additional parking space for an ADU in Merced.

If the city attorney agrees with this interpretation then one version of the draft ordinance presented to the council could make revisions necessary for ADU parking with a widened driveway and not change any of the other parking requirements of the zoning ordinance which were mentioned at the council meeting.

I hope this helps. Michael Belluomini

NOTICE OF EXEMPTION

To: _____ Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

From: (Public Agency)
City of Merced
678 West 18th St.
Merced, CA 95340

X County Clerk
County of Merced
2222 M Street
Merced, CA 95340

Project Title: Zoning Ordinance Amendment #19-02/Environmental Review #19-04

Project Applicant: City of Merced

Project Location (Specific): City of Merced (City wide)

Project Location - City: Merced **Project Location - County:** Merced

Description of Nature, Purpose, and Beneficiaries of Project: This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Merced Municipal Code Section 20.42 (“Second Units”). This amendment would modify the City’s requirements for “accessory dwelling units” (previously known as “second units” or “secondary dwelling units”) to meet the modified requirements of State Law in regards to dwelling unit size, parking requirements, location, occupancy standards, and fees. Amendments are also proposed to Tables 20.08-1 (“Permitted Land Uses in the Residential Zoning Districts”), 20.16-1 (“Permitted Land Uses in the Urban Village Zoning Districts”), and 20.38-1 (“Off-Street Parking Requirements”); and Sections 20.08.030.F.1 (“Development Standards for Residential Zoning Districts, Parking”), 20.20.010.C.3 (“Urban Transition Zoning District, Development Standards”); 20.46.010 (“Residential Design Standards, Purpose”), and 20.90.020 (“Glossary, Definitions”).

Name of Public Agency Approving Project: City of Merced

Name of Person or Agency Carrying Out Project: City of Merced

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State Type and Section Number: _____
- Statutory Exemptions. State Code Number: _____.
- General Rule (Sec. 15061 (b)(3))

Reasons why Project is Exempt: The proposed Ordinance has been reviewed by City staff in accordance with the Environmental Checklist Form (Appendix G of the CEQA Guidelines) to determine if there would be any possibility that the proposed ordinance would create any significant environmental impacts, and City staff has determined that the amendment of regulations for accessory dwelling units do not meet any of the thresholds contained in the Checklist that would trigger a significant environmental impact, and thus according to the “general rule exemption” (Section 15061(b)(3) of the CEQA Guidelines), projects which have no potential for causing a significant effect on the environment are not subject to CEQA, no further environmental analysis is required.

Lead Agency: City of Merced

Contact Person: Kim Espinosa **Area Code/Telephone:** (209) 385-6858

Signature:  **Date:** April 18, 2019 **Title:** Planning Manager

X Signed by Lead Agency Date Received for Filing at OPR: _____ n/a
(If applicable)

CITY OF MERCED
Planning Commission

Resolution #4020

WHEREAS, the Merced City Planning Commission at its regular meeting of May 8, 2019, held a public hearing and considered **Zoning Ordinance Amendment #19-02**, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Merced Municipal Code Section 20.42 (“Second Units”). This amendment would modify the City’s requirements for “accessory dwelling units” (previously known as “second units” or “secondary dwelling units”) to meet the modified requirements of State Law in regards to dwelling unit size, parking requirements, location, occupancy standards, and fees; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through J of Staff Report #19-13; and,

NOW THEREFORE, after reviewing the City’s Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Categorical Exemption regarding Environmental Review #19-04, and approval of Zoning Ordinance Amendment #19-02, as set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner _____, seconded by Commissioner _____, and carried by the following vote:

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)

ABSTAIN: Commissioner(s)

PLANNING COMMISSION RESOLUTION #4020

Page 2

May 8, 2019

Adopted this 8th day of May 2019

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Draft Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING SECTIONS 20.42 (“SECOND UNITS”) AS WELL AS TABLES 20.08-1 (“PERMITTED LAND USES IN THE RESIDENTIAL ZONING DISTRICTS”), 20.16-1 (“PERMITTED LAND USES IN THE URBAN VILLAGE ZONING DISTRICTS”), AND 20.38-1 (“OFF-STREET PARKING REQUIREMENTS”); AND SECTIONS 20.08.030.F.1 (“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS, PARKING”), 20.20.010.C.3 (“URBAN TRANSITION ZONING DISTRICT, DEVELOPMENT STANDARDS”); 20.46.010 (“RESIDENTIAL DESIGN STANDARDS, PURPOSE”), AND 20.90.020 (“GLOSSARY, DEFINITIONS”) OF THE MERCED MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT TO CODE. Table 20.08-1, “Permitted Land Uses in the Residential Zoning Districts,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’)” is replaced with “Accessory Dwelling Units.”

SECTION 2. AMENDMENT TO CODE. Section 20.08.030(F)(1), “Development Standards for Residential Zoning Districts, Parking” of the Merced Municipal Code is hereby amended to read as follows:

“20.08.030-“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS

F. PARKING

1. Within the R-1 and R-2 zoning districts, required off-street parking spaces may not be located within any required exterior setback area, except for required

parking spaces for accessory dwelling units on the property.”

SECTION 3. AMENDMENT TO CODE. Table 20.16-1, “Permitted Land Uses in the Urban Village Zoning Districts,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’)” is replaced with “Accessory Dwelling Units.”

SECTION 4. AMENDMENT TO CODE. Section 20.20.010(C)(3), “Urban Transition Zoning District, Development Standards, Residential Density,” of the Merced Municipal Code is hereby amended to read as follows:

“20.20.010 - Urban Transition (U-T) Zoning District

C. Development Standards _____

3. **Residential Density.** Except for ~~secondary units~~ accessory dwelling units permitted under Chapter 20.42 (~~Second Units~~-Accessory Dwelling Units), residential density of the lot may not be increased. However, the accessory dwelling unit may not exceed the allowable density for the lot.”

SECTION 5. AMENDMENT TO CODE. Table 20.38-1, “Off-Street Parking Requirements,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’) is replaced by “Accessory Dwelling Units” and the corresponding “Required Number of Parking Spaces” is amended to read as follows:

**“One or ~~two~~ more bedrooms: 1 per unit;
~~Three or more bedrooms: 2 per unit”~~**

SECTION 6. AMENDMENT TO CODE. Chapter 20.42, “Second Units,” of the Merced Municipal Code is hereby repealed and amended to read as follows:

“20.42 Accessory Dwelling Units ~~Second Units~~

Sections:

- 20.42.010 Purpose**
20.42.020 Minor Use Permit Required
20.42.030 Site and Design Standards
20.42.040 Occupancy Standards

20.42.010 Purpose

This chapter establishes standards for the location and construction of ~~second units (also known as “secondary dwelling units”)~~ accessory dwelling units (“ADU’s”) in conformance with Government Code Section 65852.2. These standards are intended to allow for ~~second~~ accessory dwelling units as an important form of affordable housing while preserving the character and integrity of residential neighborhoods within the City.

20.42.020 Minor Use Permit Required

Approval of a Minor Use Permit is required prior to the establishment of any ~~second~~ accessory dwelling unit or a subdivision with multiple ~~second~~ accessory dwelling units.

20.42.030 Site and Design Standards

A. Location. ~~Second~~ Accessory dwelling units shall be permitted in ~~residential zoning districts~~ districts zoned to allow single-family or multi-family use as provided in Part 2 (Zoning Districts).

B. Site Requirements

1. ~~Second~~ Accessory dwelling units that comply with this chapter shall be permitted on all legally established residential parcels, regardless of parcel size so long as the parcel size permits at least an ‘efficiency unit’ to be constructed in compliance with local design standards. [An ‘efficiency unit’ provides for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities.]
2. An accessory dwelling ~~second~~ unit may only be established if a single-family dwelling unit (“primary dwelling”) exists on the parcel or is being built at the same time.

~~C. Maximum Number Permitted~~

- ~~1. Only one second unit shall be allowed on a single parcel.~~

~~2. A second unit is not permitted on parcels already containing two or more dwelling units.~~

DC. Size

1. ~~Attached *Second-Accessory Dwelling Units*.~~ The floor area of an attached second unit shall not exceed 50 percent of the living area of the primary dwelling or ~~1,000~~1,200 square feet, whichever is ~~greater~~less. Garages and carports are excluded from floor area calculations for both the primary dwelling and ~~second accessory~~ accessory unit.
2. ~~Detached *Second-Accessory Dwelling Units*.~~ The floor area of a detached ~~second-accessory dwelling~~ unit shall not exceed 1,200 square feet, excluding any space devoted to a carport or garage.

ED. Relationship to Primary Dwelling

1. ~~An accessory dwelling second~~ unit may be within, attached to, or detached from the primary dwelling, ~~or within an attached or detached accessory structure.~~ Attachment to the primary dwelling shall be by sharing a common interior wall or common roof.
2. ~~An accessory dwelling second~~ unit shall have its own kitchen, bathroom facilities, and entrance separate from the primary dwelling.
3. The ~~secondary-accessory dwelling~~ unit shall be clearly subordinate to the primary dwelling by size ~~and~~; appearance, ~~and location on the parcel.~~

FE. Development Standards

1. ~~An accessory dwelling second~~ unit shall comply with all current development and design standards of the General Plan and Zoning Ordinance that are applicable to the primary dwelling, including, but not limited to, building setbacks, parcel coverage, building height, and architectural design, ~~with certain exceptions, discussed herein. As long as existing setbacks are sufficient for fire safety, no setback shall be required for an accessory dwelling unit contained within the existing space of a single-family residence or accessory structure, including an existing garage, and a setback of no more than five~~

feet from the side and rear lot lines shall be required for an accessory dwelling unit constructed above a garage.-

2. The ~~secondary~~accessory dwelling unit in compliance with this section shall not be considered to exceed the allowable density for the lot upon which it is located and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot.

3. No lot line adjustment, subdivision of land, air rights or condominium shall be allowed to enable the sale, transfer, or disposal of the ~~second~~accessory dwelling unit independently of the primary dwelling unit or any portion of the property. This stipulation shall be included in a recorded deed restriction on the property.

4. The ~~secondary~~accessory dwelling unit must be eligible to receive City sewer and water services. Creation of a detached accessory dwelling unit may require installation of a new or separate utility connection.

GF. Design Requirements

1. An accessory dwelling ~~second~~-unit shall be compatible with the primary dwelling and the surrounding neighborhood with respect to structure height, scale, and massing.

2. The architectural design and detailing, roof color and material, and exterior color and finish materials of an ~~second~~accessory dwelling unit shall match the primary dwelling to the extent possible.

3. The parcel shall retain a single-family appearance and the ~~second~~accessory dwelling unit shall be integrated into the design of the existing improvements of the property.

4. The addresses of both the primary dwelling and the ~~second~~accessory dwelling unit shall be displayed and clearly visible from the street.

HG. Parking

1. ~~Second-Accessory dwelling~~ units with ~~one or two~~ at least one bedrooms shall provide one additional off-street parking space in addition to those spaces required

for the primary dwelling. Off-street parking may be provided in the setback areas or as tandem parking on a driveway, unless the City determines that such options are not feasible on the existing property, based on fire and life safety conditions.

2. ~~If the second unit has three or more bedrooms, two off-street parking spaces shall be provided in addition to those spaces required for the primary dwelling.~~

32. The creation of an accessory dwelling second unit through the conversion of all or a portion of a garage is prohibited unless replacement parking is provided elsewhere on the property in conformance with required parking standards as defined in Chapter 20.38 (Parking and Loading).

3. The parking standards provided in this section and otherwise in this code does not apply to an accessory dwelling unit in any of the following instances: (a) it is located within one-half mile of public transit; (b) it is located within an official architecturally and historically significant historic district; (c) it is part of the proposed or existing primary residence or an accessory structure; (d) on-street parking permits are required but not offered to occupants of an accessory dwelling unit; and, (e) a car share vehicle is located within one block of the accessory dwelling unit. To qualify for any of the above exemptions, the applicant shall provide supporting evidence as part of a Minor Use Permit or building permit application.

20.42.040 Occupancy Standards

A. *Owner Occupancy.* The owner of a parcel occupied by an accessory dwelling second unit shall reside in either the primary dwelling or the ~~second~~ accessory dwelling unit.

B. *Deed Restrictions.* Prior to the issuance of a building permit for an accessory dwelling second unit, a covenant of restriction to run with the land shall be recorded by the property owner which specifies that the ~~second~~ accessory dwelling unit cannot be sold separately, transferred, or otherwise disposed of independently from the primary dwelling unit that the property owner shall

reside in either the primary or ~~second~~-accessory dwelling unit, and that these restrictions shall be binding on successors in ownership.

C. Fees and Other Requirements.

1. Accessory dwelling units are not a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, and any utility fee or charge imposed on the creation of a detached accessory dwelling unit must not exceed the reasonable cost of providing the service.

2. Accessory dwelling units contained within the existing space of a single family residence or accessory structure that have an independent exterior access and setbacks that meet fire safety requirements are not required to install a new or separate utility connection and cannot be charged for a related connection fee or capacity charge.

1. ~~— Prior to occupancy of the second unit, a new address shall be assigned by Department of Development Services.~~

23. A new ~~second~~-accessory dwelling unit shall be required to pay all applicable fees, including impact fees.

4. Prior to occupancy of the accessory dwelling unit, a new address shall be assigned by Department of Development Services.

SECTION 7. AMENDMENT TO CODE. Section 20.46.010, “Residential Design Standards, Purpose,” of the Merced Municipal Code is hereby amended to read as follows:

“20.46.010 -Purpose

This chapter establishes design standards for residential uses, in addition to regulations set forth in Chapter 20.08 (Residential Zones), except that parking, location, and address requirements in Section 20.46.020 do not apply to accessory dwelling units.”

SECTION 8. AMENDMENT TO CODE. Section 20.90.020, “Definitions,” of the Merced Municipal Code is hereby amended to read as follows:

“20.90.020 - Definitions

~~1861a.~~ ~~Second Units or Secondary Accessory Dwelling Units.~~ Attached or detached accessory residential dwelling units, which provide complete independent living facilities for one or more persons. Secondary dwelling units provide permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel occupied by a primary dwelling. A single attached suite of rooms (consisting of living, sleeping, cooking, and sanitation facilities) but with unimpeded access to the rest of the dwelling unit, no separate ~~address~~, lease, or utility service, and still functioning as one “household” per 20.90.020(99) may not be considered to be a ~~second unit~~. See Chapter 20.42 (~~Second Units~~ Accessory Dwelling Units).

186. *Second Units or Secondary Dwelling Units. See Accessory Dwelling Units (#1a).*”

SECTION 9. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 10. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 11. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 2019, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2019, by the following called vote:

AYES: **Council Members:**

NOES: **Council Members:**

ABSTAIN: **Council Members:**

ABSENT: **Council Members:**

APPROVED:

Mayor

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney Date

PUBLIC NOTICE OF ADOPTION OF ORDINANCE

CITY OF MERCED

ORDINANCE NO. _____

NOTICE IS HEREBY GIVEN that on _____, 2019, the City Council of the City of Merced adopted Ordinance No. _____, entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING SECTIONS 20.42 (“SECOND UNITS”) AS WELL AS TABLES 20.08-1 (“PERMITTED LAND USES IN THE RESIDENTIAL ZONING DISTRICTS”), 20.16-1 (“PERMITTED LAND USES IN THE URBAN VILLAGE ZONING DISTRICTS”), AND 20.38-1 (“OFF-STREET PARKING REQUIREMENTS”); AND SECTIONS 20.08.030.F.1 (“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS, PARKING”), 20.20.010.C.3 (“URBAN TRANSITION ZONING DISTRICT, DEVELOPMENT STANDARDS”); 20.46.010 (“RESIDENTIAL DESIGN STANDARDS, PURPOSE”), AND 20.90.020 (“GLOSSARY, DEFINITIONS”) OF THE MERCED MUNICIPAL CODE

Ordinance No. _____ amends Merced Municipal Code Section 20.42 (“Second Units”), which regulates Accessory Dwelling Units (previously known as “second units”), as well as other sections of the Municipal Code which make reference to Accessory Dwelling Units.

Ordinance No. _____ was adopted by the following roll call vote of the City Council:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

A copy of the full text of Ordinance No. _____ is available for review in the Office of the City Clerk, City of Merced, 678 West 18th Street, Merced, California, and on the City's website at www.cityofmerced.org.

ASSISTANT CITY CLERK

PUBLISH: