



AGENDA SUMMARY EUREKA CITY COUNCIL

TITLE: Neighbor Privacy Concerns and Accessory Dwelling Units

DEPARTMENT: Development Services

PREPARED BY: Cristin Kenyon, AICP, Development Services Director

PRESENTED FOR: Action Information only Discussion

RECOMMENDATION

Receive report and provide comment.

FISCAL IMPACT

No Fiscal Impact Included in Budget Additional Appropriation

COUNCIL GOALS/STRATEGIC VISION

Housing Element Goal H-2: The City government actively facilitates the creation of a range of new affordable and market rate housing units to accommodate future growth and to address the needs of all socioeconomic segments of the community.

Housing Element Policy H-2.10: Promote and encourage the creation of Accessory Dwelling Units (ADUs) as:

- a) An opportunity for property owners to create a source of rental income on their property;
- b) A means to develop residential units on already developed sites;
- c) A way for a property owner to build a new residential unit while retaining and preserving existing structure(s);
- d) A vehicle for creating smaller-than-average (and thereby "Affordable-by-design") housing units; and
- e) A means of increasing the actual (as opposed to the maximum allowed) housing density in single-family residential zone districts.

DISCUSSION

The topic of privacy concerns related to Accessory Dwelling Units (ADUs) was raised during the Future Agenda Items portion of the June 20th City Council meeting. The purpose of this report is to discuss how the City could potentially address such concerns. Ultimately Staff recommends the City create informational materials on

privacy considerations and best practices to provide to people interested in developing ADUs, rather than adopting new privacy-related regulations.

State Limitations on ADU Regulation

City regulation of ADUs is limited by State Law, specifically California Government Code (CGC) §65852.2 (Attachment 1). Pursuant to CGC §65852.2, the City may adopt objective standards regulating ADUs, but may not require discretionary review or a hearing, and must approve an ADU within 60 days of receiving a completed application if there is an existing single- or multi-family dwelling on the lot. CGC §65852.2 establishes the maximum standards that local agencies can use to evaluate a proposed ADU (i.e., the local agency is not allowed to impose any additional standards beyond what is provided for in CGC §65852.2, but may adopt less restrictive requirements). For instance, CGC §65852.2 only allows a local government to require a setback of four feet or less from interior side or rear property lines, and prohibits local governments from requiring any setbacks if the ADU is proposed within an existing structure (e.g., the local government must permit the conversion of an existing shed into an ADU even if the shed is located directly adjacent to an interior property line).

Subsection (a) of CGC §65852.2 allows local governments to impose certain objective ADU standards like landscaping and design standards that would help with neighbor privacy concerns. However, subsection (e) of §65852.2 also includes a list of ADU types that must be approved even if they don't meet objective standards allowed for by other subsections of the State law. Pursuant to CGC §65852.2(e), the City cannot apply privacy standards to the following types of ADUs:

1. An ADU and/or Junior ADU (JADU) within the existing space of a single-family dwelling or an ADU within the existing space of an accessory structure (i.e. conversion without substantial addition).
2. An ADU and/or JADU within the proposed space of a single-family dwelling.
3. A detached, new construction ADU on a lot with a proposed or existing single-family dwelling, provided the ADU does not exceed 800 square feet, sixteen feet in height, or four-foot side and rear (i.e. interior) setbacks.
4. ADUs created by conversion of portions of existing multi-family dwellings not used as livable space.
5. Up to two detached ADUs on a lot with an existing multi-family dwelling.

In summary, the City could adopt privacy standards for ADUs, as long as the standards are objective and do not apply to the five types of ADUs listed above.

Types of Privacy Standards

City Staff performed a brief search of other local governments' ADU regulations and found that some jurisdictions have objective standards meant to create privacy between ADUs and adjacent residential lots, including Miranda, Palo Alto, Fort Bragg, Antioch, Temple, and San Bernardino. Staff found the following types of objective standards to address privacy:

- 1) Landscaping and/or fencing requirements between the ADU and adjacent properties.
 - a. Example: Evergreen landscape screening must be planted and maintained between each dwelling and adjacent lots (but not rights of way). At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall. Alternatively, at least one 24-inch box size plant shall be provided for every ten linear feet of exterior wall. As an alternative to landscaping, a solid fence of at least 6 feet in height may be installed between each dwelling and adjacent lots.

- 2) Requirements for ADU windows to be placed above eye level, or to have obscured glazing.
 - a. Example: Second story windows, excluding those required for egress, shall have a five-foot sill height as measured from the second-floor level, or utilize obscured glazing on the entirety of the window when facing adjacent properties. Second story egress windows shall utilize obscured glazing on the entirety of the windows which face adjacent properties.

- 3) Prohibition on second-story balconies, windows, doors, exterior staircases, and/or decks facing adjacent properties.
 - a. Example: A second unit that is two stories or located over a garage shall not have windows or balconies that directly face a neighboring yard. This limitation applies only to side yards, not to windows facing alleys.

- 4) Requirement for screening barriers on second story decks and balconies.
 - a. Example: Second story decks and balconies shall utilize screening barriers to prevent views into adjacent properties. These barriers shall provide a minimum five-foot, six-inch, screen wall from the floor level of the deck or balcony and shall not include perforations that would allow visibility between properties.

- 5) More general limitations that allow flexibility in how privacy is addressed.
 - a. Example: No window or door of an ADU may have a direct line of sight to an adjoining residential property.

Some of the example regulations only apply to the second story of ADUs, and some only apply if an ADU is located within a certain distance (e.g., 20 feet) of a property line or another residential unit on an adjacent parcel. Example regulations that are consistent with state law include an “override” provision whereby the types of ADUs listed under CGC §65852.2(e) are not required to abide by the privacy standards.

ADUs Are Critical to Meeting Our Housing Goals

The City’s Housing Element identifies five strategies as the most realistic means of generating new housing in the largely built-out City of Eureka. One of these strategies is ADU construction. The Housing Element (adopted in 2019) states:

“The City of Eureka contains approximately 10,000 total parcels and approximately 6,000 single-family residential parcels, which means that a majority of the

residential units in the City are in the single-family residential zone district. According to estimates based on utility data, only 5 percent of these single-family parcels already contain an ADU (also known as a mother-in-law unit, granny flat, etc.). Given these numbers, the creation of ADUs constitutes a substantial opportunity for the creation of housing in Eureka. If just 10 percent of these parcels created an ADU, 600 new housing units would be created and the City would see a six percent increase in total housing units, which is more than has been generated in Eureka in the past several decades. For context, the average number of new housing units created City-wide in Eureka over the past 10 years was approximately 12 units per year. If just one percent of single-family parcels developed a new ADU each year, then the City would have 60 new housing units per year which is five times more than what has been developed each year in Eureka for the past 10 years. Clearly, ADUs present one of the best opportunities for Eureka to create new housing units.”

Staff Recommendation

The City’s Inland Zoning Code currently has very limited, streamlined ADU standards that are consistent with State law (See Attachment 2 for the current City standards). As a result, City Staff is able to process ADU applications quickly, owner-builders are successfully moving through the permitting and construction process, and there doesn’t appear to be any significant regulatory barriers to ADU development in Eureka, although the City is well-below our goal of 60 new ADUs per year.

Staff recommends against imposing any additional regulations that could become a barrier to ADU development. Adding both privacy standards and the exemptions from those privacy standards for certain types of ADUs as required by state law would add length and complexity to the City’s existing ADU standards, and would increase the amount of Staff review time required. Most ADUs in Eureka are built on lots with an existing (rather than proposed) primary residence, and are often built within or above an existing structure, such as a detached garage. In this context, applicants may not always have the flexibility to adapt their project to meet objective design standards, such as limitations on the placement of windows or exterior staircases.

In addition, adding ADU design standards would not always effectively achieve privacy, because many ADUs would be exempt from the standards pursuant to state law, and because primary residences within the City’s inland residential districts can also create privacy issues, since they are allowed to be located within five feet of interior and rear property lines, and in certain cases, even closer to property lines. Residents who are concerned about privacy can address their own concerns by planting landscaping or installing fencing or privacy screens. The City could increase allowed maximum fence heights along interior side and rear property lines to allow people to construct fences as high as necessary to address their privacy concerns.

For all the reasons stated above, instead of adding privacy standards for ADUs, staff recommends providing informational guidance to people interested in developing ADUs covering best practices for avoiding privacy complaints from neighbors. Development

Services – Planning is already planning to develop ADU promotional material within the next year, and can add a component on privacy considerations.

Attachments

1. State ADU Law (CGC §65852.2)
2. City of Eureka Inland Zoning Code ADU Standards

REVIEWED AND APPROVED BY:

City Attorney

City Clerk/Information Technology

Community Services

Development Services

Finance

Fire

Human Resources

Police

Public Works