Planning and Community Development Department
City of Bellingham

April 9, 2018 City Council Public Hearing
Proposed Amendments to Accessory Dwelling Units Regulations

Fact Sheet

The Proposal

1. **What is being considered tonight?**

Tonight's City Council public hearing is to consider the Planning Commission's recommended amendments to the Bellingham Municipal Code relating to accessory dwelling units (ADUs). The following is a list of the more significant changes to ADU regulations recommended by the Planning Commission:

1. Allow detached ADUs in all single family zoned areas. Only attached ADUs are currently allowed in single family zoned areas.
2. Reduce the minimum lot size for detached ADUs from 10,000 sq.ft. to 5,000 sq.ft.
3. Change the maximum number of occupants for all ADUs from three to four.
4. Limit the number of bedrooms in all ADUs to two.
5. Require a minimum of one off-street parking space for all ADUs.
6. Eliminate transportation and park impact fees for all ADUs.
7. Reduce the maximum building height for detached ADUs from 25-feet to 20-feet.
8. Include a requirement to review the ordinance when 200 detached ADU permits are issued city-wide; or 25 in any one neighborhood; or by year 2025, whichever occurs first.

The proposed allowance for detached ADUs citywide in single family zones, increased ADU size limits, flexible setbacks, reduced parking standards, and waiver of impact fees has been proposed by the Planning Commission to increase options and opportunities to build both attached and detached ADUs.

**Frequently Asked Questions**

1. **Why doesn't the proposed addition of Detached Accessory Dwelling Units (D-ADU) require a rezone?**

The proposed amendments being brought forward by Planning Commission would amend the development standards pertaining to ADUs in single family zones; they would not change the zoning for single family zones. Attached ADUs are currently allowed in all single family zoned areas citywide. Any proposal to allow detached ADUs in single family zones would only provide an alternative option of how an ADU may be accommodated on a single family zoned lot.

It is important to note that the review process being used for the proposed ADU amendments and a rezone are identical (Both are Type VI review processes).
2. **Would the proposed addition of D-ADUs change single-family zoning to multi-family and allow apartment and townhomes to be constructed in areas that are currently zoned single-family?**

It would not. If adopted by the City Council it would only allow for Detached ADUs in areas where they are currently not permitted. However, Attached ADUs are already allowed in those same areas. Only one ADU (either attached or detached - but not both) would be permitted per single-family lot. ADUs are just that - accessory to a primary use (single-family home). ADUs cannot be sold separately or have a separate ownership. Like other accessory uses, they are currently allowed as supporting uses in single-family zones.

3. **Does the proposed Ordinance require the property owner to live on site?**

Yes. The owner must reside in either the ADU or the single-family home, and a covenant of owner occupancy is required to be filed on the property. The property owner cannot rent both the home and the ADU.

4. **Would the proposed short-term rental regulations currently being reviewed by the Planning Commission allow a detached ADU to be used as a short-term rental like a VRBO or AirBnB?**

No, not in single family residential zones.

5. **The Comprehensive Plan has a policy (H-9) that directs the City to evaluate and inventory ADUs in City. Has the City completed this inventory? Why doesn’t the City do an inventory of illegal ADU units?**

The City does have an inventory of all legal ADUs. Some have requested that units which are asserted to be "illegal ADUs" should also be inventoried. In order to determine if a suspected unit is illegal, a detailed investigation of each unit would be required. In facilitating this type of investigation, the City is required (as it should be) to act on facts not on conjecture or assumptions. The burden of proof is on the City and parties are innocent until proven guilty - which is an essential precept of our American legal system. Although you may assert that the facts are obvious and the City should take immediate action, we cannot cite parties if they merely appear guilty. We need to establish the facts and act when they are conclusive.

Lights on after dark, curtains in the windows, repeated sightings of individuals or parked vehicles are not actionable and conclusive in themselves. Each requires detailed investigations and research. Some alleged units are legally allowed based on prior land use approval and/or the date of their establishment. Some may be accommodating family-members which is permitted. Additionally, there are relatively simple steps that can be used to evade a complete accounting of who is in residence (if anyone is at all).

The recently adopted City Budget funds the first dedicated Code Enforcement Officer for Planning and Community Development. This will allow for the proactive investigation necessary to resolve many of the outstanding allegations associated with potential illegal dwelling units. Additionally, the City Attorney's Office has committed to revising the Municipal Code in early 2018 to establish a comprehensive code enforcement chapter detailing code enforcement practices, evidentiary requirements, and establishing civil citation authority - tools that will more effectively expedite the investigation and resolution of alleged violations.
Finally, we are facing a housing emergency in Bellingham. Clearly, the current housing stock (including both legal ADUs and potentially illegal units) is insufficient to meet the needs of our community. It is undisputed that additional units are needed immediately. To delay establishing them is not a responsible option.

6. Has there been an evaluation of the environmental impacts of the proposed changes.

Yes. The State Environmental Policy Act (SEPA) requires the City to assess the potential impacts on the environment from the proposed changes to ADU development regulations. The SEPA review process evaluated the potential impacts from the Planning Commission’s recommended changes to current ADU regulations. A preliminary Determination of Non-significance (DNS) was issued on January 2, 2018. All public comments received prior to the issuance of the DNS were used to inform the preliminary SEPA analysis and determination.

Staff received a number of letters and emails in response to the preliminary SEPA determination. All comments received during the comment period were used to inform the final determination. A final DNS was issued on April 3.

The Process

1. Who is the Planning Commission and what is their role?

The Planning Commission is an appointed advisory body that conducts hearings on the City’s Comprehensive Plan and implementation of the plan’s goals and policies. It reviews and makes recommendations to the City Council on the adoption and enforcement of plans and regulations for the physical development of the City. The final decision is made by the City Council. The Council can accept, reject or modify the recommendations of the Planning Commission.

2. How can I participate in the process? Can I comment after this evening on the proposal?

Anyone who wishes to testify will be provided the opportunity. To ensure that all who are present have the opportunity to testify, a time limit for individual testimony will be established. Written comment is always welcome and will be accepted throughout the process. Written and public comment provided at a hearing is weighted equally.

3. Will there be a decision tonight? What will be the next steps in the review process?

By established protocol, the City Council does not make a final decision on the same night as the public hearing. Typically, the matter will be taken up again at a later date and may be assigned to a committee of the Council for one or more work sessions. After consideration of written comment and public testimony and a review of the facts and record, the City Council will make a final decision sometime in the future.

4. What has been the review process so far?

The City has held numerous meetings, both focused and broad, in conducting outreach and providing opportunities for the public to participate in the ADU Ordinance update. During the update process which resulted in the update of Comprehensive Plan (adopted 2016), the City conducted surveys to gather information relating to ADUs:
In 2015, the Planning and Community Development Department (PCDD) formed an ADU Focus Group of 13 members from a cross section of different interest groups and tasked them with identifying opportunities and concerns with allowing Detached and Attached ADUs. Some members of the Focus Group pointed to the benefits of allowing Detached ADUs (D-ADUs) in certain circumstances. However, other members raised a number of concerns regarding the establishment of D-ADUs in existing areas. Similarly, the members were divided on a proposed Pilot Program to allow a limited number of DADUs in Happy Valley Neighborhood.

The Happy Valley Pilot Program is the result of a joint process between the Happy Valley Neighborhood and PCDD. The Happy Valley Neighborhood Association formed an ADU Committee and conducted outreach within the neighborhood promoting innovative small scale infill housing, including D-ADUs, and engaged PCDD staff for assistance, culminating in a vote of its officers at a quarterly meeting for a Pilot Program allowing D-ADUs in single family zoned areas of the Happy Valley Neighborhood which was submitted to the City for incorporation into the City’s ADU Ordinance update.

PCDD also convened a Technical Group of local architects, designers, and builders to review the City’s current ADU development and design standards and identify recommended technical changes to the existing regulations to enhance consistency and provide more specificity.

Additionally, prior to consideration by the Planning Commission, PCDD's Director and Staff participated in over 10 different neighborhood meetings (at their invitation) to discuss ADUs and potential code changes.

The Planning Commission initiated their review by holding two work sessions in 2015, and three in 2017. The Commission’s public hearing was held on January 25, 2018. Sixty-one people offered comments at the hearing. Two additional work sessions were held on February 1 and 15. Additionally, a significant amount of written comments has been entered into the record. Based on the staff report and public feedback, the Commission adopted findings of fact, conclusions, and recommendations which have been forwarded to the City Council for consideration.