

May 6, 2019

MEMORANDUM

To: Sustainability and Transportation Committee
From: Aly Pennucci, Analyst
Subject: Accessory Dwelling Units: Floor Area Ratio and Owner Occupancy Requirements

On May 7, 2019, the Sustainability and Transportation Committee (Committee) will begin discussing a proposal to amend the Land Use Code to remove regulatory barriers to the creation of Accessory Dwelling Units (ADUs) in single-family zones. ADUs include detached accessory dwelling units (DADUs), also known as backyard cottages, and attached accessory dwelling units (AADUs), also known as in-law apartments. The proposed changes to the Land Use Code include: allowing two ADUs on a lot, removing the existing off-street parking and owner-occupancy requirements for ADUs, introducing a Floor Area Ratio (FAR) limit for single-family lots, increasing the maximum household size for lots that have two ADUs, and other changes to the size and location development standards regulating DADUs.¹

The Committee will begin deliberations on May 7 with a briefing and discussion on two aspects of the proposal: applying FAR limits in single-family zones; and removing owner occupancy requirements for ADUs. These two aspects of the proposal represent the areas that differ most from the previous proposal Councilmember O'Brien released in 2016.²

This memorandum:

- 1) Provides background information about development of the ADU proposal;
- 2) Describes the proposed FAR limit, removal of the owner occupancy requirement, and potential policy options for the Committee's consideration; and
- 3) Outlines next steps.

Background

Since 1994 and 2010, respectively, ADUs are allowed citywide as part of a main house or in the backyard of lots in single-family zones. Section 23.44.041 of the Seattle Municipal Code (SMC) includes ADU regulations. The proposed code changes would modify certain provisions of Section 23.44.041 pertaining to development standards and other regulations, modifying the rules regulating when and where a property owner can create an ADU. These policy changes would affect future development in Seattle's single-family zones.

¹ For more information on the proposal see a summary of the preferred alternative here:

http://www.seattle.gov/Documents/Departments/Council/ADU_FEIS_onepager.pdf and additional detail here:
<http://www.seattle.gov/council/meet-the-council/mike-obrien/backyard-cottages-and-basement-units>.

² 2016 Draft Ordinance: <http://www.seattle.gov/Documents/Departments/Council/Members/OBrien/OPCD-ADU-DADU-ORD-v6.pdf>

In September 2014, the City Council adopted [Resolution 31547](#), directing the Department of Planning and Development staff, now the Office of Planning and Community Development (OPCD), to explore policy changes to encourage development of ADUs. In response, OPCD proposed changes to the Land Use Code and, under the leadership of Councilmember O'Brien, drafted legislation for environmental review under the State Environmental Policy Act (SEPA). OPCD prepared an [environmental checklist](#) evaluating the potential environmental impacts of the proposed changes and issued a [determination of non-significance](#) in 2016. The determination of non-significance was appealed, and in December 2016, the Seattle Hearing Examiner issued a decision on the appeal that required a more thorough review of the potential environmental impacts of the proposal.

Based on the Hearing Examiner's decision, Council Central Staff initiated the process to develop an Environmental Impact Statement (EIS) in 2017.³ On October 4, 2018, the [Final EIS](#) was issued, identifying potential environmental impacts of the proposed changes and proposing a preferred alternative in line with the legislation Councilmember O'Brien will introduce in late May or early June.⁴

Following the release of the Final EIS in October 2018, an appeal of the adequacy of the Final EIS was filed with the City's Hearing Examiner. The hearing for this appeal concluded on March 29, 2019. A decision from the Examiner is expected in mid-May 2019. Depending on the outcome of the decision, the City Council could take final action on legislation related to ADUs this summer. Committee work can proceed in advance of the decision being issued; however, Council cannot take final action while the appeal is pending, and action may be delayed depending on the outcome of the appeal.

Floor Area Ratio Limit

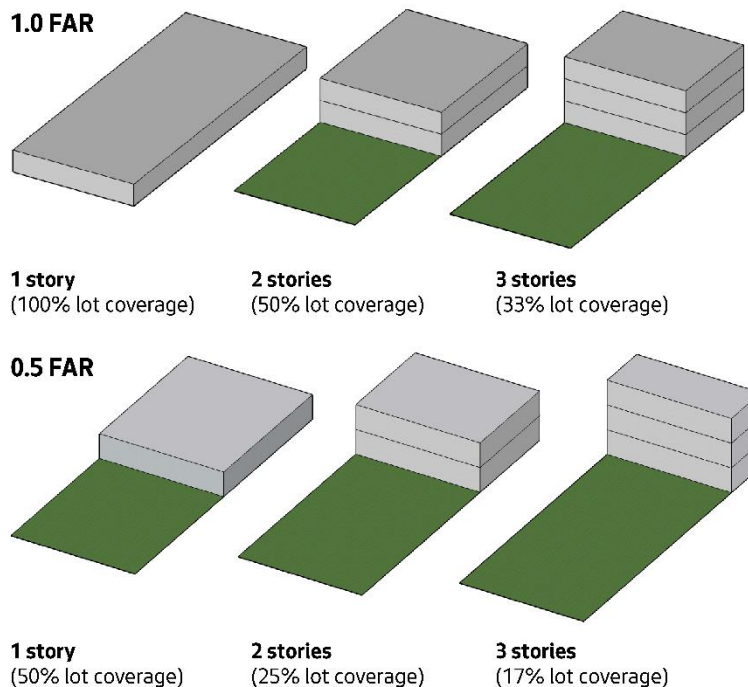
What is FAR?

FAR is the ratio of a building's total square footage (floor area) to the size of the piece of land it sits on. For example, if the FAR limit is 0.5, then the total square footage in any new developments must be no more than half the area of the parcel itself. In other words, if the lot is 5,000 square feet, then the square footage of the buildings cannot exceed 2,500 square feet. The illustration in Exhibit 1 provides examples of FAR limits.

³ The Executive at that time chose not to pursue the ADU work, which resulted in the Legislative branch taking the lead on the developing the EIS. Council Central Staff led the effort and the Executive provided subject matter expertise and project management support by allocating staff from OPCD to assist Central Staff on the efforts.

⁴ Detailed information about the EIS process, the preferred alternative, and the EIS document itself, can be found online at: <http://www.seattle.gov/council/adu-eis>. Information and text from the Final EIS is incorporated in this memo.

Exhibit 1: Illustrations of FAR Limits



Under existing regulations, FAR limits are used in multifamily and commercial zones to regulate the bulk and scale of buildings. In single-family zones, there are no FAR limits today, instead, the maximum size of structures on lots in single-family zones are effectively controlled by yard requirements, height limits, and lot coverage limits. These standards establish the allowed three-dimensional space new single-family development can occupy (called the "zoning envelope").

Generally, older homes are one- or two-story structures and, on average, are smaller than the maximum allowed zoning envelope. Many recently built homes are three stories and fill the allowed zoning envelope. This often results in one, older and smaller housing unit, being replaced with one larger, more expensive housing unit. Under current regulations, a new home on a typical 5,000 square-foot lot that maximizes the zoning envelope could contain over 5,000 square feet of floor area.

Proposed FAR Limit:

The proposed FAR limit would apply to all development in single-family zones. New principal single-family homes would be subject to a FAR limit of 0.5 or 2,500 square feet (whichever is greater). On a 5,000-square-foot lot, for example, this would limit the size of a new house to 2,500 square feet; on lots under 5,000 square feet, the size limit of 2,500 square feet would apply.

Below-grade floor area and floor area in ADUs would not count toward the FAR limit. Exempting floor area in an ADU would incentivize builders of new homes to include ADUs in

their projects and encourage additions to existing homes to add an AADU rather than tearing down the home and rebuilding. On lots where an existing home exceeds the FAR limit an allowance would be made for a one-time addition that is equal to or less than 20 percent of the existing floor area. In addition, a property could add or convert existing space to an AADU and add a DADU.

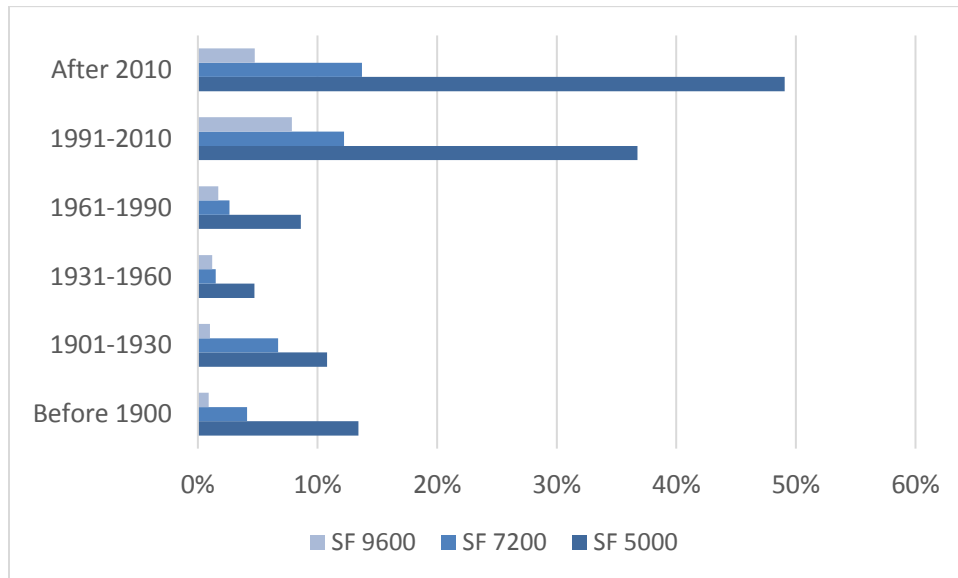
Implementing FAR limits tend to reduce the size of new houses thus also reducing the aesthetic changes in neighborhoods by reducing the bulk and scale of new homes, which is more consistent with historic development patterns, and disincentivizing teardowns. The table below (Exhibit 2) compares development outcomes under current code with the proposed FAR limit, based on a typical 5,000-square-foot lot in a single-family zone:

Exhibit 2: Development outcomes under current code versus with the proposed FAR limit

Proposed development	CURRENT REGULATIONS		PROPOSAL WITH FAR LIMIT	
	Maximum achievable floor area	FAR Achieved	Maximum achievable floor area	FAR Achieved
New house, no ADUs	5,250 sq. ft. + a basement	1.05	2,500 sq. ft. + basement	0.5
New house + 1 ADU	5,250 sq. ft. + a basement	1.05	3,500 sq. ft. + basement	0.7
New house + 2 ADUs	<i>Not allowed</i>		4,500 sq. ft. + basement	0.9
Renovate existing <u>smaller</u> house (1,500 square feet), no ADUs	5,250 sq. ft. + a basement	1.05	2,500 sq. ft. + basement	0.5
Renovate existing <u>smaller</u> house (1,500 square feet) + 2 ADUs	5,250 sq. ft. + a basement	1.05	3,500 sq. ft. + basement	0.7
Renovate existing <u>larger</u> house (3,000 square feet) no ADUs	5,250 sq. ft. + a basement	1.05	3,600 sq. ft. + basement	0.72
Renovate existing <u>larger</u> house (3,000 square feet) + 2 ADUs	5,250 sq. ft. + a basement	1.05	5,250 sq. ft. + basement	1.05

Exhibit 3 illustrates the percent of existing homes that would exceed the proposed FAR limit by year built. In single-family zones citywide, approximately 9 percent of existing homes would exceed the proposed limit; approximately 42 percent of homes built after 2010 would exceed the proposed limit. It is worth noting that while the size of single-family homes has increased overtime, average household sizes have decreased.

Exhibit 3: Percent of existing homes that would exceed the proposed FAR limit, by year built



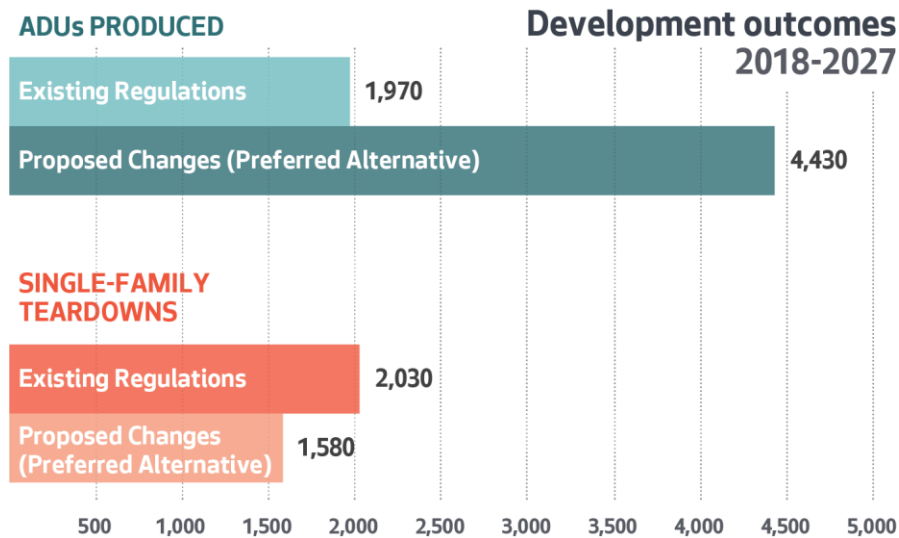
Why implement FAR limits in Single-family zones?

Increase ADU Production and reduce teardowns:

Under current regulations, it is not uncommon for older, smaller existing houses to be torn down and redeveloped with one large, very expensive houses. The analysis in the ADU EIS found that the proposed code changes would not accelerate teardowns and redevelopment of single-family homes.⁵ Overall, the analysis indicates that establishing a maximum FAR limit is one of the factors that would decrease the number of teardowns and yield more ADUs compared to current regulations. Exhibit 4 illustrates the estimated number of ADUs and teardowns of single-family homes that could occur under existing regulations versus the preferred alternative studied in the ADU Final EIS.

⁵For a more detailed discussion, see Chapter 4.1 – Housing and Socioeconomics, and Appendix A, in the Accessory Dwelling Unit Final EIS.).

Exhibit 4: Estimated number of ADUs and Single-family Teardowns



Minimize Aesthetics Changes:

New single-family homes that replace existing older homes typically maximize the size allowed under current regulations, resulting in many new houses being larger than surrounding older residences. Newer houses often exhibit modern designs and different architectural characteristics than older structures. As described above, imposing FAR limits may reduce the number of teardowns of older, existing single-family homes. The proposed FAR limit has is intended, at least in part, to encourage, but not mandate, smaller principal single-family dwellings with new ADUs.

Policy Considerations

As the Committee continues to discuss the proposal to remove regulatory barriers to ADU development and increase the number and variety of housing choices in single-family zones, there are several policy levers to consider. FAR limits are one strategy to increase ADU production and address concerns about the architectural changes resulting from new single-family home construction by disincentivizing tear downs and incentivizing ADU development. However, others may be concerned that imposing the limit is too restrictive for new development or not restrictive enough. Councilmembers may want to consider modifications or removal of this component.

Options councilmembers could consider include:

- (1) No action (do not introduce FAR limits);
- (2) Adopt the 0.5 FAR limit as proposed in the Preferred Alternative;
- (3) Adopt FAR limits that are higher than 0.5; or

- (4) Expand or remove the floor area that would be exempt from the FAR limit (i.e. do not exempt floor area in ADUs, or exempt floor area in all accessory structures, such as garages).

Note: option four could be combined with option two or three.

Owner Occupancy Requirement

Under existing regulations, an ADU is only permitted if the property owner occupies either the single-family dwelling or the ADU as their permanent and main residence. The owner-occupant must have at least a 50 percent interest in the property, must live in the structure for more than six months of each calendar year, and must sign, notarize, and record with King County an owner-occupancy covenant. The proposed changes would eliminate the owner occupancy requirement. The Preferred Alternative in the Final EIS contemplated a connected but different requirement related to ownership: a second ADU would be permitted only if the property was in continuous ownership for a minimum of one year prior to permit application.

Why consider removing the owner-occupancy requirement?

Equity:

Current regulations treat owners and renters inequitably by applying a different standard for properties in single-family zones with an ADU versus all other properties that contain potential rental units. Currently, a property owner can offer a single-family home on the rental market within Single-family zones without any requirement that the owner lives on the property, but that property owner could not add an ADU. If a property in a single-family zone has an ADU and the current property owner needs to relocate for some period they could not offer both the ADU and the main house for rent, leaving either the main house or the ADU empty. In addition, the presence of an owner-occupant is not required for any other housing unit in any other zone (i.e. duplexes, apartment buildings, etc., in multifamily or mixed-use zones), including properties in multifamily zones that have an ADU.

Flexibility:

The owner-occupancy requirement limits how homeowners can use their property now and in the future. This may deter people from making the substantial investment required to create an ADU. If a homeowner must move for an expected job change or care for a family member who lives outside the area, they cannot rent the house and the ADU to recoup their investment.

Financing:

The owner-occupancy requirement is frequently cited as a barrier, either real or perceived, to securing financing. Lenders typically will not consider potential rental income from both the main house and the ADU because of the existing owner occupancy requirement. For some homeowners, the potential rental income may be necessary to qualify for a financing. It may also limit the number of homebuyers that could qualify for a mortgage for properties with existing ADUs.

Increased ADU production:

There are roughly 135,000 lots in single-family zones. Approximately 20 percent of those lots in single-family are renter occupied; ADUs are not allowed on these lots under existing regulations. Removing the owner occupancy requirement increases the number of lots eligible to add an ADU, potentially increasing housing options in single-family zones. In addition, even in situations where the property owner occupies the lot, the prohibition on renting out any units on the property if they need to relocate for some period, but want to retain the property, is sometimes a deterrent. And finally, whether real or perceived, it may allow people to access financing necessary to develop an ADU. Removal of the owner occupancy requirement is one of the factors that contributes to the expected increase in ADU production resulting from the proposed changes.

Policy Considerations

A key concern that has been raised about the proposed changes to increase ADU production, and specifically about removing the owner occupancy requirement, is that it will accelerate redevelopment generally in single-family zones, increasing speculation and displacement.

The ADU EIS analysis evaluated:

- (1) How the proposed changes might alter the underlying real-estate economics in single-family zones (i.e. would it change the most profitable development outcome); and
- (2) Would the changes make single-family zones more attractive as rental investments rather than as owner-occupied assets?

If the proposal were to increase speculation and displacement, we would expect that the number of teardowns and redevelopment of single-family homes would increase, and that renting three units on one single-family lot would be the most profitable development option. The analysis does not support that conclusion. The analysis conducted for the EIS considered whether the changes would modify land values such that a developer who intends to redevelop the property could afford to pay more for land and, thus, outbid other buyers or pressure current homeowners to sell. The analysis suggests that land prices are unlikely to change substantially due to the proposed code changes. Further, the analysis shows that the proposed changes could result in decreasing the number of teardowns occurring in all single-family neighborhoods throughout the city compared to what would be expected if no changes are made, as illustrated previously in Exhibit 4.⁶

The changes that are intended to make it easier to build ADUs may also marginally improve affordability by: (1) providing new income sources for homeowners, though this may disproportionately benefit those homeowners who have access to credit or other resources available to finance the construction of ADUs; and (2) because larger rental units tend to be more expensive, increasing the number of ADUs could increase the number of smaller, less

⁶ For a more detailed discussion, see Chapter 4.1 – Housing and Socioeconomics, and Appendix A, in the Accessory Dwelling Unit Final EIS

expensive units in single-family zones. Increases in rental housing supply, with more variety of houses sizes, may have a positive impact on housing affordability.

However, with or without changes to ADU regulations, housing affordability and displacement will continue to be a concern. Ultimately, housing demand generated by a strong job market and Seattle's amenities will likely continue to lead to result in a tight housing inventory that will likely continue to contribute to high housing costs, especially when demand is fueled by a higher-wage workforce. Below are some options councilmembers may want to consider related to the proposed regulatory changes. Given that Land Use Code changes alone are insufficient to address displacement, additional strategies are being pursued so that more people could benefit from policies aimed at increasing the number of ADUs.⁷

Options councilmembers could consider include:

- 1) No action (do not eliminate the owner occupancy requirement);
- 2) Eliminate the owner occupancy requirement;
- 3) Eliminate the owner occupancy requirement and add a modified ownership requirement when adding a second ADU, requiring continuous ownership for a minimum of one year prior to permitting an ADU;
- 4) Eliminate the owner occupancy requirement and adopt an incentive zoning program for the second ADU. This could include
 - a) Adopting an incentive zoning approach that would only allow a second ADU if one of the units on the lot is a rent- and income restricting unit⁸;
 - b) Adopting an incentive zoning approach that would only allow a second ADU if it meets certain green building requirements.

⁷ See <http://www.seattle.gov/council/meet-the-council/mike-obrien/backyard-cottages-and-basement-units> for additional strategies being pursued in 2019.

⁸ An incentive program that requires rent- and income-restricted units must include an affordability term of at least 50 years. Often, the cost of providing affordable units on-site is combined with allowing the developer to build a larger building that often results in more market rate units. However, requiring that one of a of three units maximum on a property is rent- and income-restricted for a 50-year term may not provide enough certainty that rental income will support the development and may be deemed too risky to pursue. This may reduce the number of properties that choose to add a second ADU. Staff will continue to examine strategies for an incentive zoning program that considers this concern.

Next Steps

Councilmember O'Brien has scheduled the following times to continue deliberations on proposed changes to the Land Use Code to promote ADU production:

2019 Date	Topic
Tuesday, May 7	Discussion on FAR limits and removal of the owner occupancy requirement
Wednesday, May 29 <i>(special meeting of the S&T committee)</i>	Briefing and discussion on proposed legislation
Tuesday, June 11 <i>(special evening meeting of the S&T committee)</i>	Public Hearing on the proposed legislation
Tuesday, June 18	Discussion and possible vote on amendments and proposed legislation

At the May 29 meeting, all the proposed changes to the Land Use Code to promote ADU production will be discussed. At that point, the outcome of the Hearing Examiners decision should be known and the remaining scheduled will be confirmed.

cc: Kirstan Arestad, Central Staff Director