



# STAFF REPORT

DATE: May 10, 2023

TO: Chair Ferris and Members of the Planning Commission

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*Development Services Department*

**SUBJECT:** Public Hearing on a proposed Land Use Code Amendment (LUCA) to remove barriers to, and encourage construction of, attached accessory dwelling units (ADUs), and to provide a mechanism for separate ownership of ADUs. File No. 23-102618-AD

## I. BACKGROUND

The purpose of this LUCA is to remove barriers to constructing attached ADUs and to allow separate ownership of ADUs. Currently, attached ADUs are permitted as a subordinate use to any single-family lot. However, certain permitting requirements imposed on ADUs under Land Use Code (LUC) Chapter 20.20.120 can create hurdles to their development due to the lack of flexibility and the extended permit review process required.

ADUs can offer an alternative housing option in neighborhoods that are otherwise designated for single-family residential land uses. Because these units are smaller than the primary residence, they can also provide a lower-cost alternative to renting an entire single-family home in these neighborhoods. Property owners also often use ADUs to generate supplemental rental income, subsidize their existing mortgages, or they simply use them as additional living space for guests and family members as needed. Because of these potential benefits of ADUs to City residents, Council has identified them as part of a suite of housing solutions under the Affordable Housing Strategy and Next Right Work to address the housing shortage in the City.

## II. PROPOSED LUCA

This LUCA is tailored to address items in the LUC that were identified as impediments to ADU construction through staff outreach and experience. Below is a description of these barriers, as well as the amendments proposed under this LUCA:

### Owner Occupancy Requirement

Currently, the LUC requires that any property with an ADU must have the owner residing on site, either in the primary residence or ADU. This restricts ADUs only to lots where the property owner resides, thereby limiting the number of units that can be rented in the City.

Additionally, owner occupancy requirements can limit ADUs on investment properties, as lenders are less prone to loan against properties with owner-occupancy deed restrictions. Thus, the owner occupancy requirement is proposed for removal.

#### Prohibition of Sale

The LUC does not allow for ADUs to be sold or otherwise segregated from ownership of the primary residence. In determining the scope of this Next Right Work action, Council directed staff to explore establishment of a mechanism for separate ownership of ADUs. Staff have determined that this prohibition is the primary barrier to ownership of ADUs, and, therefore, it is proposed for removal.

#### Off-Street Parking Requirement

In addition to two (2) parking spaces required for a single-family residence, the LUC requires one (1) off-street parking space is for an ADU, except when located within one-quarter mile of frequent transit. Under the code, frequent transit is defined as either transit stops with service 4 times per hour at least 12 hours out of the day, or a light rail or bus rapid transit stop with service scheduled to open within 2 years.

This minimum parking requirement can pose design challenges on smaller properties, or on lots with irregular shapes or topography. It can also limit ADU development to property owners with large enough lots, as well as increasing the hardscape coverage or requiring removal of vegetation to accommodate the additional parking space. In general, the lack of flexibility in parking requirements can serve as a barrier to ADU development, and thus it is proposed for removal.

Removing the off-street parking requirement may result in more vehicles parked on the street. However, in most cases, there is adequate parking available, and because the City limits on-street parking to no more than 24 hour durations, parking spaces regularly become available. Further, although it would not be required, property owners may still provide off-street parking to ADU tenants as an amenity, or they may have enough driveway area to accommodate additional vehicles. Therefore, staff do not anticipate significant impacts from removal of the parking requirement.

#### Size limitations

Currently, ADUs must be limited to a range of 300 sq. ft. to 800 sq. ft. in size, with an exception for certain ADUs to increase to up to 40% of the combined floor area of the primary residence and ADU if on a single floor. This requirement prohibits larger, family sized ADUs, which typically require 1,000 sq. ft. or more in floor area, and can pose design challenges for applicants and reviewers. In order to promote flexibility in ADU sizing, the limits are proposed to be changed to a maximum of 1,000 sq. ft., or 40% of the overall structure, whichever is larger.

### Design Controls

The LUC restricts houses with ADUs from having a second entry door located on the front façade and prohibits ADUs from using second front entry doors where they do exist. This creates design challenges for the applicant, particularly in cases where there are two front entry doors for a home, by requiring the ADU to be accessed from an entry that may not yet exist. Therefore, this prohibition is proposed for removal.

### Procedural Requirements

In addition to any ancillary construction permits, an applicant must also register an ADU with Development Services. Following registration, Land Use staff must inspect the site to ensure all requirements for ADUs have been met, and a notice is issued to all neighbors within 500 feet of the site notifying them of the ADU. Finally, the applicant must record a Notice on Title indicating the existence of the ADU and the applicable requirements. In total, these requirements can cause delay in the permitting process. Additionally, these processes require multiple separate permits and inspections that may not add significant value to the overall process. Thus, to support simplifying the permitting process and encouraging ADU construction, these requirements are proposed to be removed.

## **III. 2023 STATE LEGISLATION**

House Bill (HB) 1337 is progressing through the Washington State Legislature, which, at the time of this writing, and if passed and signed into law by the Governor, would require additional amendments to the LUC. The bill would require the following LUC-related changes for ADUs in Bellevue:

- Removal of owner occupancy requirement;
- Allowance for up to two ADUs;
- Allowance for DADUs;
- May not establish:
  - ADU size limits less than 1,000 sq. ft.;
  - DADU height limits less than 24 feet;
  - Form and design controls that would not otherwise apply to a principal unit;
  - Off-street parking requirements exceeding: 0 for ADUs within ½ mile of major transit stops; 1 for ADUs on lots smaller than 6,000 sq. ft.; and 2 for ADUs on lots larger than 6,000 sq. ft.
- May not restrict existing nonconforming accessory structures from being converted to DADUs.

### **III. REVIEW PROCESS**

City Council initiated and requested that the Planning Commission process this LUCA on January 17, 2023.

On March 22, 2023, the proposed ADU Reform LUCA was introduced to the Planning Commission for review and discussion. After discussion, the Planning Commission directed staff to schedule the required public hearing for May 10. Following the public hearing, the Planning Commission will be asked to make a recommendation for transmittal to the City Council for final action.

### **IV. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The notice of application, including the draft SEPA environmental checklist, was noticed on January 19, 2023. The environmental review indicates no probability of significant adverse environmental impacts resulting from the proposed ADU Reform LUCA. A Determination of Non-significance (DNS) was issued on April 20, 2023, pursuant to the threshold determination requirements in WAC 197-11-310.

### **V. PUBLIC ENGAGEMENT**

#### Required Public Notice

The notice required for City Council Legislative Actions (Process IV) is governed by LUC 20.35.415 through 20.35.450. Notice of the LUCA application including a link to the City webpage and community meeting information was published in the Weekly Permit Bulletin on January 19, 2023, and availability of the Weekly Permit Bulletin was noticed in the Seattle Times. Notice of the Public Hearing and Final SEPA Threshold Decision was published in the Weekly Permit Bulletin on April 20, 2023, along with availability of this staff report.

#### Department of Commerce Notice

Pursuant to the Washington State Growth Management Act, proposed amendments to the LUC must be sent to the Washington State Department of Commerce to review and comment on the proposed amendments to the LUC. The required notice to the Department of Commerce and the initial draft LUCA were transmitted on March 29, 2023, and a copy of both documents is available for review in the code amendment file. No comments have been received by Commerce as of the date of this report.

#### Enhanced Public Engagement

In addition to the requirements of LUC 20.35.415 *es seq* for the City Council Legislative Actions under Process IV, staff engaged with the public and stakeholders in the following ways:

- Conversations with the building community and permit review staff familiar with the ADU permitting process and common bottlenecks;
- Public feedback regarding ADUs sourced from recent Comprehensive Plan Periodic Update efforts;
- A virtual public information session was held on February 28, 2023, during which staff presented the scope of the proposed LUCA and responded to questions; and
- An article in the March 2023 *Neighborhood News* describing the proposed LUCA, linking to the City webpage, and detailing the Planning Commission process.

#### Public Comments

As of the date of this staff report, several public comments and questions have been submitted to staff. Most comments received are general questions on the LUCA, including how the mechanism for separate ownership would work and whether the LUCA would conflict with private covenants. Commenters in opposition to the LUCA cite parking impacts and express a desire for owner occupancy requirements. Additionally, some commenters have expressed a desire for detached ADUs, although those are not included in the scope of this LUCA.

## **VI. DECISION CRITERIA**

LUC 20.30J.135 establishes the decision criteria for an application to amend the text of the Land Use Code. Those criteria, and the relationship of these proposed amendments to them, are discussed below:

### **A. The amendment is consistent with the Comprehensive Plan; and**

**Finding:** The proposed LUCA is consistent with the Comprehensive Plan. The LUCA serves to encourage housing opportunity and diversity of type and price within the residential land use districts in the City. The LUCA is also consistent with the following Comprehensive Plan policy:

**Comprehensive Plan Policy HO-15.** Allow attached accessory dwelling units in single family districts subject to specific development, design, location, and owner occupancy standards. Allow detached accessory dwelling units where expressly allowed by neighborhood subarea plans.

### **B. The amendment enhances the public health, safety or welfare; and**

**Finding:** This LUCA will enhance the public health, safety, and welfare by removing barriers to a lower cost housing type within the City. The LUCA also encourages

housing diversity within the City, providing residents with options when it comes to housing choices and preferences.

- C. The amendment is not contrary to the best interest of the citizens and property owners of the City of Bellevue.

**Finding:** This LUCA is not contrary to the best interests of citizens and property owners as it will benefit residents by providing additional housing types, options, and price points within the City, particularly within single-family neighborhoods.

## **VII. RECOMMENDATION**

Staff has concluded that the ADU Reform LUCA, as drafted in Attachment A, is consistent with the decision criteria required for adoption of amendments to the text of the LUC, pursuant to Part 20.30J LUC. Staff recommends that the Planning Commission direct staff to prepare the LUCA for recommendation to Council.

### **ATTACHMENT:**

- A. Proposed ADU Reform LUCA Strike-Draft