

TO: HONORABLE CITY COUNCIL

**FROM: CITY MANAGER DEPARTMENT: PLANNING
& COMMUNITY ENVIRONMENT**

DATE: MARCH 14, 2005 CMR: 180:05

SUBJECT: ZONING ORDINANCE UPDATE: ORDINANCE ADOPTING A REVISED SINGLE FAMILY RESIDENTIAL (R-1) CHAPTER (18.12) OF THE ZONING ORDINANCE (TITLE 18) AMENDING RELATED DEFINITIONS CONTAINED IN CHAPTER 18.04 AND RELATED HOME IMPROVEMENT EXCEPTION PROVISIONS IN 18.76 AND 18.77 AND INCORPORATING RELATED R-1 SINGLE-STORY HEIGHT COMBINING DISTRICT (S) REGULATIONS CONTAINED IN 18.13, RELATED SPECIAL RESIDENTIAL BUILDING SITE COMBINING DISTRICT REGULATIONS CONTAINED IN CHAPTER 18.15, AND RELATED R-1 SINGLE FAMILY INDIVIDUAL REVIEW PROVISIONS CONTAINED IN CHAPTER 18.14 INTO CHAPTERS 18.12, 18.76 (PERMITS AND APPROVALS) AND 18.77 (PROCESSING OF PERMITS AND APPROVALS) OF TITLE 18 (ZONING ORDINANCE) OF THE PALO ALTO MUNICIPAL CODE.

RECOMMENDATION

Staff and the Planning and Transportation Commission (P&TC) recommend Council approval of the proposed ordinance (Attachment A), including Exhibit A, comprising the revised Single Family Residential (R-1) Chapter 18.12 of the Zoning Ordinance.

BACKGROUND

Staff brought the stand-alone R-1 chapter to the Council on October 4, 2004 (CMR 437:04). At that meeting the Council directed staff to conduct additional outreach through community meetings to residents and property owners of single family and other low-density residential properties in the City. Staff held five community meetings in November and December 2004, and summarized the meetings for the Planning and Transportation Commission (P&TC) on December 15, 2004. A discussion of the community meetings, other outreach surrounding the meetings, the comments received, and attendance numbers is contained in the December 15th P&TC staff report. This information was provided to the Council under a separate cover last week. The October 4, 2004 CMR, the December 15, 2004 P&TC staff report, and related community meeting material is also available on the City and ZOU website at www.cityofpaloalto.org or <http://www.cityofpaloalto.org/zoning/>.

DISCUSSION

A comprehensive list of comments from the community meetings was included with the December 15, 2004 P&TC staff report. As indicated in the comments and general discussion at the community meetings, several issues of key concern to the community were identified, including:

- Second stories on substandard lots;
- Second units;
- Maximum lot sizes/lot mergers;
- Location of noise-producing equipment;
- Single story overlays;
- Basements; and
- Contextual setbacks.

Recognizing all the community members who took time to review the code and summary tables, attend one or more meetings, and provide their comments, staff has reviewed all of the public comments prior to preparing this report to Council, but has limited discussion to the substantive issues identified above. Additionally, a few of the individual comments comprised minor clarifications or corrections to the code language that did change the overall intent. Most of these changes were simply incorporated into the code and ordinance contained in Attachment A, and are listed on the attached errata sheet (Attachment C). For each of the substantive issues identified, staff has summarized the public concerns and outlined additional information or options available for Council review. Under the first two discussion items, second stories on substandard lot and second units, an alternative consideration for Council is added. After the P&TC meeting of December 15, 2004, staff also met with the P&TC Low Density Residential Working group on January 12, 2005 to go over these alternative considerations and the minor modifications (errata sheet) to the code.

Second Stories on Substandard Lots

The draft R-1 code, as recommended by the P&TC, proposes allowing second stories on substandard lots, subject to Individual Review and existing daylight plane requirements that limit second story development on these narrow lots. Under existing code, a second story on a substandard lot requires a variance. The existing substandard lot regulations were developed prior to the adoption of the Individual Review process in R-1. The intent of the revisions is to allow flexibility for modest expansions of these small homes and to acknowledge that the Individual Review process now exists to address massing and privacy issues. There are approximately 468 substandard lots in R-1 and R-1 combining districts. The average size of substandard R-1 lots is 3,694 square feet (which would have an allowable floor area of 1,662 square feet). A map of the distribution of substandard lots was provided to City Council under separate cover and is available on the ZOU website. Staff has also looked at the pattern of underlying lot lines in the city and there are 5 general areas where underlying lot lines exist: College Terrace, Ventura, Old South Palo Alto, Seale Addition (in part), and to a lesser degree in Crescent Park. Homes in the College Terrace and Ventura neighborhoods are frequently on 50'-60' wide

lots. Lots with underlying lot lines in Old South Palo Alto are typically larger than those in College Terrace with 50'-65' foot wide lots. The neighborhoods near Seale addition and in Crescent Park have a much lower density of underlying lot lines and the lots are typically larger with 60'-100' wide lots. The underlying lots in these two neighborhoods are often not substandard, according to the zoning definition.

This subject was clearly the most intensely discussed issue at the community meetings. Many community members had concern about the number of these lots (particularly in College Terrace where 25' foot wide substandard lots are common) and the potential for second stories that could be out of character with small adjacent homes. In order to address these concerns at the community meetings, staff offered two specific suggestions to further limit the size of second stories, including:

- 1) Limiting the height of homes to 24 feet to reduce the impacts to neighborhood character; and/or
- 2) Allowing second stories only on lots greater than 25 feet in width. This would also preclude the potential for building second stories on the many underlying lot lines that could create 25-foot wide lots, particularly in College Terrace.

Several members of the public strongly supported retaining the current single story restriction for substandard lots, though there was also some support to provide for second story application and review, at least with some limitations. Other ideas from the public included a proportional height restriction based on the width of the substandard lot and limits of the daylight plane and a more context-based application to allow second story homes only where there is not a clustering of substandard lots. There are a variety of other options that could be considered to limit second story impacts on substandard lots, including restricting the size of the second story (e.g. 25% of total house size or 30% of the allowable floor area), and/or limiting further encroachments into setbacks or daylight planes. The Low Density Residential Working Group recommended that when substandard lots are upgraded, including potentially adding second stories under the current recommendation, that the development must meet the existing code requirements, including parking requirements. The Working Group incorrectly thought that the City was possibly prompting more curb cuts by requiring this. Staff subsequently inspected areas with substandard lots to find that where some lots do not have required parking on-site, the majority of substandard lots already have driveways/curbcuts and provide some parking on-site.

Alternative recommendation: Allow second stories on substandard lots, but with a maximum of 24 feet in height and only on lots with widths of 30 feet or greater. All second story additions would be subject to the Individual Review process. Also, direct staff to monitor the number and impacts of second stories built on substandard lots and to report back to the P&TC annually. Staff believes this effectively addresses the potential for second stories on narrow substandard lots or underlying narrow lots, for lots that qualify to keep the second story to a compatible scale by limiting the height to 24 feet, and providing for a public review process for each proposal.

Second Dwelling Units

The proposed code includes revisions to encourage second dwelling units, including allowing small (less than 450 square feet) units on lots meeting the minimum R-1 lot size, with reduced parking requirements for smaller units. The proposed revisions also include larger attached units (up to 900 square feet), and permitting second story units subject to the Individual Review process. The maximum size of 900 square feet and other development standards, such as setback requirements and overall site floor area limitations, would be retained. These revisions are intended to implement City housing policies, particularly Housing Element Program H-7, which states (in part):

“Evaluate the provisions for second dwelling units in single family areas to determine how additional units might be provided” including “increased flexibility in the regulations such as reduced parking requirements, limiting the maximum size of the unit, allowing for attached units, and reducing the minimum lot size requirement.”

Regarding State Legislation that has been directed at provisions for second units in single-family zones, AB1866 (Wright) is the only legislation that has been adopted and gone into effect. This was adopted in September 2002. Subsequent to it becoming effective, the R-1 Zoning District was amended to comply with the basic provisions of that legislation and these provisions are in the existing Chapter 18.12. Other legislation has been proposed addressing second units. However, these have either been vetoed (AB27022) or did not make it out of Committee (AB1160). As far as this year, nothing yet has been introduced specifically on second units. As mentioned above, in addition to implementing AB 1866, the proposed revisions in this CMR are also intended to implement specific Housing Element Programs adopted by the City Council (H-6, H-7, and H-8).

Comments and questions received from community members indicated a wide range of opinions and some confusion as to the existing standards for second dwelling units. Some community members were concerned about relaxing any of the standards for second units, especially the minimum lot size requirement, because many more of these units could be constructed and potentially exacerbate traffic, parking and noise. Other community members were supportive of the changes and indicated that they were a good step towards encouraging second dwelling units as the Comprehensive Plan directs. Some community members encouraged the City to go slightly further than the proposal by treating R-1 combining districts which tend to be larger in size the same as smaller R-1 parcels in regards to allowing a small second unit (up to 450 square feet) on lots of 7,000 square feet or more. Additionally, there were several comments that indicated a lack of understanding of the purpose of accommodating additional second units and what is already permitted under present zoning and State law, as well as the Comprehensive Plan policies. Staff has created a “question and answer” handout (Attachment E) to provide further background information on second units, and has made this available at City offices and on the zoning website.

Considering the concern regarding increased development of second units in R-1, staff researched the number of building permits issued for the approximately 3,000 single-family lots that are now eligible to have second units, in order to develop a typical rate of development. In 2004, 2 building permits were issued for the construction of second dwelling units in single-family zones (in 2003 the number was also 2, and 3 were issued in 2002). This indicates that new second units are requested for only about 1/10 of one percent (0.00098) of eligible properties per year. Attachment E contains the Summary of Second Unit Analysis. Under the proposed regulations (allowing a smaller second dwelling unit for lots meeting minimum lot size requirements (6,000 square feet in R-1), approximately 7,800 additional R-1 and R-1 combining district lots could be eligible for second units, considering lot size alone. If a similar percentage of these property owners avail themselves of this opportunity, an additional 8-second dwelling units could be built within the City annually. Most of those would be smaller units, providing greater variety and affordability to the City's housing stock. Staff believes that the revisions are not likely to result in an excessive number of new second units, but will monitor construction and report to the P&TC on an annual basis. Alternatively, requiring an increased minimum lot size for a small second unit could reduce the potential total number of units.

The P&TC and staff recommendation is to adopt the proposed changes, including a minimum lot size of 6,000 square feet for a small (up to 450 square feet) second unit, and direct staff to monitor the number of second units built and related issues and report annually to the P&TC.

Alternative recommendation: In place of the 6,000 square feet minimum lot size for small second dwelling units in R-1, set the minimum lot size required for a second dwelling unit at 7,000 square feet for both R-1 and R-1 combining districts. At the 7,000 square feet minimum lot size, approximately 2,400 additional R-1 district lots and 1,800 R-1 combining districts could be eligible for second dwelling units. At the development rate discussed above, staff would anticipate an additional 4 second dwelling units in R-1 and R-1 combining districts to be constructed each year.

Other Issues:

Additional issues were commented on by some speakers at the community meetings. While staff does not believe that the comments justify modifications to the P&TC/staff recommendation as presented in the ordinance, these comments are noted below.

1. **Maximum Lot Size/Loss of Housing Units** – While there was general support for the P&TC/staff recommendation to establish maximum lot sizes, representatives from the Realtors Association objected to the loss of flexibility for buyers/sellers and characterized the recommendation as a “solution in search of a problem”. The proposed provisions are intended to implement Housing Element Program H-5 which states (in part):

“Address the loss of housing due to the combination of single family residential lots. Consider modifying the R-1 zoning district to create a maximum lot size to prevent the loss of housing or housing opportunities.”

The proposed R-1 chapter includes the creation of maximum lot sizes that are just less than twice the minimum lot size (and 9,999 square feet in R-1) to discourage lot mergers that could result in the reduction of potential housing (buildable lots) in the city and would protect against construction of larger homes after the lot merger that could be out of character for the neighborhood. Exceptions are provided for cases where lot mergers are required to eliminate nonconformities and to allow for lot mergers that do not reduce the number of potential housing units. Staff has continued to work with the realtors, but feels that the current proposal implements the Comprehensive Plan/Housing Element policy. Staff researched Certificates of Compliance that were filed for single family residential parcels over the last 5 years. Certificates of Compliance are filed with the Public Works Department for lot mergers, lot line adjustments, removal of underlying lot lines, and lot splits. A majority of the certificates filed were for the removal of underlying lot lines (52 over the last 5 years), where typically a single-family home is improved upon through an addition or replacement with a new single family home. The removal of underlying lot lines where units are not lost would continue to be allowed under the proposed maximum lot size exceptions. However, over the last 5 years there were 9 lot mergers that resulted in the loss of 5 housing units in the City that under the proposed regulations would not be allowed (Attachment E contains a Summary Analysis of Lot Mergers).

2. Noise Producing Equipment - The proposed R-1 code would require that noise-producing equipment be located out of the required setbacks and that such equipment be housed and insulated. The intent of the regulation is to minimize potential noise impacts on neighbors. The community indicated general support for this provision but some questioned details such as whether “housed and insulated” is feasible, how it would be implemented, and whether it was necessary given noise reduction in newer equipment. Other members of the community expressed concern that the existing noise ordinance was not adequate to enforce the noise intrusions from equipment. It was suggested that the zoning ordinance contain more specific noise standards for enforcement. The Building Department has also questioned the “housed and insulated” requirement and suggested instead that the equipment be located outside of setbacks and required to demonstrate compliance with the noise ordinance, which may then not require that it be housed and insulated. Staff will continue to work with the Building Division to define possible approaches while allowing some flexibility. It is expected that such guidance and flexibility will be provided administratively with the aid of the Building Department subsequent to adoption of the R-1 ordinance.
3. Single Story (S) Overlay - The intent of the proposed revisions is to codify provisions of the current Council policy (single story overlay guidelines) and to establish percentages for clarification of some undefined terms such as “overwhelming support” and “predominant single story character”. The revisions also apply a similar

process to remove a single story overlay. There was general support in the community for putting the guidelines and process in the code, as well as for clarifying some of the terms and process. A community member suggested to staff following the Commission meetings a slight modification of the (S) overlay removal process so that instead of the 70% support (60% if CC&Rs are present) used to establish an (S) overlay, the removal would require 70% support (even if CC&Rs are present) to remove. It was not staff's intent to make it any easier to remove an (S) overlay than it is to apply one, and this correction has been made to the code. A few community members expressed preferences for either higher or lower percentage numbers for "overwhelming support," as compared to the proposed 70% (60% if single story deed restrictions apply). One speaker also suggested establishing a height requirement with each single story overlay to allow for a specific height, perhaps less than the current 17 foot height restrictions (with referencing similar regulations in Mountain View). Staff contacted the City of Mountain View planning staff who indicated that an overlay to establish a specific height has not been applied anywhere in the city. Instead, its -H overlay, similar to Palo Alto's -S overlay has been applied to establish single story limitations. A single-family single story structure in Mountain View is defined as up to 24 feet in height. Staff believes that the current regulations have been well established and that further changes would create potential inconsistencies, nonconformities and increased disagreement between neighbors.

4. Basements - The intent of the proposed R-1 revisions is to provide some added flexibility for basement light wells and below-grade patios to address one of the "Parking Lot" issues (a list of items that could not be addressed, but are goals for the future) from the Single Family Advisory Committee process. Several members of the community expressed concerns about basements during the meetings, some indicating that they should be counted toward floor area if they are habitable and some concerned about the construction effects of basements, particularly the cumulative effects of pumping on neighboring sites and on groundwater hydrology. At the P&TC hearings, an analysis conducted by a consulting hydrologist was presented, indicating that no significant impacts on either groundwater levels or on neighboring properties should occur, given the size and depth of Palo Alto's aquifers, as well as the increased level of review of basements by the Public Works Department. Planning staff believes the minor modifications are appropriate and Public Works' standards address these construction concerns.
5. Contextual Setbacks – Modifications to the R-1 regulations included clarification of how contextual setbacks are calculated and provided that contextual setbacks would not be applicable unless the average setback for the block is at least 30 feet. A few speakers asserted that 30 feet is excessive and could result in new homes or additions with front setbacks out of character with other homes on the block. P&TC and staff believe that the 30-foot threshold focuses the contextual setback requirement on neighborhoods with substantially greater setbacks than 20 feet and avoids conflicts between neighbors and/or staff regarding minor (2 or 3 foot) differences in setbacks.

RESOURCE IMPACT

The implementation of the proposed ordinance is not expected to significantly impact staff resources or the City's budget. The standard community facilities impact fee for second dwelling units (\$3,723) would apply to those additional units that could be developed in the city (4-8 additional units per year depending on the minimum lot size chosen). Some additional staff time will be required to initially call out all the proposed changes to both staff and the public. Through the discussion on contextual front setbacks, staff has agreed to memorialize contextual front setbacks for blocks as applications come in or as Planning staff time allows. Staff anticipates that the clarifications and reformatting of the regulations will result in an ordinance that is more readily accessible and understood by applicants and staff, with no increase in the time or resources required for staff review.

POLICY IMPLICATIONS

Recommendations of this staff report are consistent with the overall land use and housing goals of the Comprehensive Plan, which are listed in the discussion above and also contained in the May 26, 2004 P&TC staff report. The Zoning Ordinance Update is intended to bring the Zoning Ordinance into compliance with the 1998-2010 Comprehensive Plan. Staff and the Commission believe that the proposed amendments are a significant step in that direction.

ENVIRONMENTAL REVIEW

The proposed R-1 Chapter changes are covered by the environmental analysis conducted for the adoption of the Comprehensive Plan. The Comprehensive Plan Environmental Impact Report (EIR) was certified by the City Council on July 20, 1998. The Addendum to the Comprehensive Plan EIR was adopted by the City Council on December 2, 2002 with the update to the Housing Element policies and programs. The proposed revisions to the R-1 district are not changes to or new information not analyzed in previous environmental analysis. Additionally, they do not have any additional significant environmental effects or increase any previously analyzed effects that were contained within the Comprehensive Plan EIR and Addendum EIR.

ATTACHMENTS

- Attachment A: Proposed Ordinance Adopting Changes to the R-1 Chapter (18.12) and Definitions (18.04) of the Zoning Code
 - Exhibit A: Final (Clean) Version of R-1 Code
- Attachment B: Summary of Changes being made to the R-1 Chapter
- Attachment C: Errata Sheet (Corrections to R-1 Code)
- Attachment D: Edited (Redlined) Version of R-1 Code & Definitions (Chapter 18.04)
- Attachment E: Additional Staff information and analysis
- Attachment F: Comment letters/e-mails

PREPARED BY:

JOHN LUSARDI
Planning Manager

DEPARTMENT HEAD:

STEVE EMSLIE
Director of Planning and Community Environment

CITY MANAGER APPROVAL:

EMILY HARRISON
Assistant City Manager