



Planning & Transportation Commission

Staff Report (ID # 9059)

Report Type: Action Items **Meeting Date:** 3/28/2018

Summary Title: ADU Ordinance Revisions

Title: PUBLIC HEARING: Recommendation of an Ordinance to the City Council Amending Palo Alto Municipal Code Section 18.42.040 Pertaining to Accessory and Junior Dwelling Units. The Proposed Ordinance is Exempt from the California Environmental Quality Act (CEQA) Pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15061(b)(3). For More Information, Please Contact Clare Campbell at clare.campbell@cityofpaloalto.org.

From: Hillary Gitelman

Recommendation

Staff recommends that the Planning and Transportation Commission (PTC) take the following action(s):

1. Find the proposed draft ordinance exempt from the provision of CEQA pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15061(b)(3); and
2. Recommend to the City Council adoption of an Ordinance (Attachment A) amending Palo Alto Municipal Code Section 18.42.040, Accessory and Junior Accessory Dwelling Units.

Report Summary

On May 8, 2017, City Council adopted [Ordinance No. 5412](#) amending Title 18 (Zoning) of the Palo Alto Municipal Code to implement the new State requirements related to Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU). These new regulations have eased the development requirements for ADUs for property owners and support the creation of additional, more affordable, housing units. With the implementation of the new regulations, the City has seen a significant increase in the number of ADU permits filed. In 2017, 31 ADU applications were submitted for review, whereas in previous years, the City had an average of 4 ADUs reviewed each year.

Although the local regulations have only been in effect for nine months, staff has encountered some challenges implementing the current code and has prepared proposed revisions to try to address these concerns. This report also discusses Council direction to make ADUs available to low and moderate income households and options to address illegally established ADUs. The following is a list of the proposed ADU code revisions:

1. Clarify that ADUs may be established in all zoning districts that permit single-family use
2. Clarify that the setbacks for detached ADUs apply to the basement level
3. Clarify the bonus lot coverage and floor area to apply to existing homes constructed as of January 1, 2017
4. Clarify that detached ADUs are not subject to the maximum 50% rear yard coverage
5. Reduce the height limit for detached ADUs located within identified Eichler tracts
6. Clarify that the replacement parking provisions also apply to JADUs
7. Allow replacement parking to be located within driveways located in a street-side setback
8. Allow existing driveways to be expanded to accommodate replacement parking
9. Clarify when accessory structures may be rebuilt to comply with technical building codes when converting to a new ADU

Additionally, there are a few other minor clarifications to correct references and improve readability.

Background

In October 2015, the City Council approved a Colleagues Memo that directed the PTC to review the Palo Alto Municipal Code (PAMC) related to ADUs and recommend strategies to increase production of these units. Following this, the PTC conducted two Study Sessions in January and July 2016 (reports [#6462](#) & [#6944](#)), just prior to the State of California adopting ADU and JADU¹ legislation in September 2016. In response to the new state ADU regulations, the City prepared a draft ordinance to incorporate the mandatory state requirements and some optional provisions with the existing local regulations. The PTC reviewed the ordinance on November 30, 2016 (report [#7368](#)) and made recommendations. In March 2017, the City Council held its first public hearing on ADUs (report [#7517](#)) and discussed in-depth the ordinance, making substantial revisions. On April 17, 2017, the Council adopted the ADU ordinance with further refinements (reports [#7921](#) & [#8048](#)), which became effective on June 8, 2017. The City Council also directed staff to provide a [quarterly report](#) on ADU permits and to conduct a Study Session with the PTC to analyze the results of the ordinance, which was done on December 13, 2017 ([meeting minutes](#)) and January 10, 2018 (report [#8773](#) & [meeting minutes](#)).

¹ The establishment of Junior Accessory Dwelling Units (JADU) as a permitted use was not required by state law and was left to the discretion of the local jurisdiction. With the local adoption of the ADU regulations in April 2017, the City Council allowed for these JADU units in Palo Alto.

Prior to the implementation of the City's ADU ordinance, the State regulations that became effective on January 1, 2017 governed all ADU permit applications submitted for review in the City. Once the City's ordinance became effective on June 8, 2017, all ADU permit applications not already approved were subject to the new local regulations.

In total, the City has reviewed 38 ADU applications since the State and local regulations were implemented. In 2017, the City received 31 permits to establish ADUs, which is far beyond the average of four units per year that the City has historically been getting. We can see that the new ADU regulations have been very successful in encouraging development of this housing type.

As part of the ADU code update process, staff has set up a project webpage (http://cityofpaloalto.org/gov/depts/pln/advance/accessory_dwelling_units_regulations_update.asp) to provide current information to the public.

Updated State Regulations Effective January 2018

In 2017, the City adopted comprehensive regulations related to ADUs to conform to state law that became effective on January 1, 2017. Subsequently, the state Legislature passed two additional bills AB 494 and SB 229, signed by the Governor in September 2017, clarifying the previously adopted ADU legislation. On February 26, 2018, the City Council adopted Ordinance #5430 that included modifications to remain consistent with state law and minor clarifications. The changes are summarized below:

State law was revised to clarify that an ADU may be constructed on sites with either an existing *or* *proposed* single-family dwelling.

With respect to ADUs established through conversions of space within an existing single-family home or an existing accessory structure, the state legislation required that such conversions be allowed in any zoning district where single-family residential is an allowed use.

The changes above were previously reviewed by the PTC and adopted by the City Council by Ordinance #5430. The draft ordinance included with this report reflects those changes.

Staff is aware that other ADU-related amendments are being considered by the State legislature in another pending bill SB-831 (https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB831). Staff will address those changes if they are approved.

Discussion

Staff has reviewed over 30 applications and has had many more conversations with property owners regarding ADUs and it is from this experience that staff is recommended the attached ordinance. It should be noted that the local ADU regulations have been in place for a short

time, and as more time passes and more projects are reviewed, staff will be able to provide additional feedback and analysis of the ADU provisions, but it is clear that recent changes have increased the interest and production of ADUs locally.

Proposed Amendments

Many of the proposed code clarifications identified below were considered by the PTC in two recent Study Sessions in January 2018 and December 2017. There are some discussion items from the Study Sessions that have not been included in the draft ordinance, including:

- refining the definition of ADUs;
- removing the owner-occupancy requirements;
- adding an opt-out provision; and,
- prohibiting the siting of ADUs in front of the home.

These items have been removed from consideration because staff does not believe, based on public and commissioner comments, that there is not a compelling need for a change.

Since the PTC reviewed conceptual changes to the ADU regulations, the make-up of the commission has changed and many of the comments received offered different perspectives on how to address the identified issues. There was a suggestion for an ad hoc committee to participate in the drafting of a new ordinance, but one was not ultimately formed. Based on the foregoing, staff sought to advance language that would help address some administrative challenges and improve the effectiveness of the ordinance. Prior PTC comments are available and previously linked in this report. The section below summarizes the issue and how it is addressed in the ordinance.

1. Clarify that ADUs May be Established in All Zone Districts that Permit Single-family Use

The current regulations are not as clear as they can be with regards to identifying which zoning districts allow for development of ADUs and JADUs. The code generally refers to allowing these units in zones that permit single-family uses for attached and detached ADUs and for JADUs. To eliminate ambiguity, staff proposes adding language that identifies all the applicable zones that allow single-family development, and therefore, allows for ADUs and JADUs when a single-family use is established.

2. Clarify Setbacks Requirements for Detached ADUs Basements

Detached ADUs may be permitted in required rear and interior side yards. ADUs may also have basements. It has been unclear, however, based on other basement zoning restrictions in the code, whether or to what extent a detached ADU basement may encroach into a required yard. The proposed amendment clarifies that a basement may be located under the building footprint of the detached ADU structure and must maintain the minimum setbacks that apply to the detached ADU (i.e., maintain six feet clear from all interior and side property lines).

3. Clarify Bonus Lot Coverage and Floor Area Provisions Apply to Existing Homes Constructed prior to January 1, 2017.

The general intent of providing bonus lot coverage and floor area is to give some development flexibility for existing developed sites that may be at or near the related maximums allowed. With these bonus provisions, the additional lot coverage needed for an attached or detached ADU would be 100% exempt for many properties, and up to an additional 175 sq. ft. of floor area would be allowed. Below is the existing language from the code:

18.42.040(a)(4) Lot Coverage/FAR

A. An accessory dwelling unit shall be included in the lot coverage and FAR requirements applicable to the parcel.

B. Exceptions:

i. Lot Coverage. When the development of an accessory dwelling unit on a parcel with an existing single family residence would result in the parcel exceeding the lot coverage requirement, the accessory dwelling unit shall not be included in the calculation of lot coverage applicable to the property, so long as the parcel meets the underlying zoning district's minimum lot size requirement or is substandard by no more than ten percent (10%) of the underlying zoning district's minimum lot size requirement.

ii. Basement FAR. In the R-1 district and all R-1 subdistricts, basement space used as an accessory dwelling unit, or portion thereof, shall not be included in the calculation of floor area for the entire site, providing the measurement from first finished floor to grade around the perimeter of the building is no more than three (3) feet.

iii. FAR. When the development of a new one-story accessory dwelling unit on a parcel with an existing single family residence would result in the parcel exceeding the maximum floor area, an additional 175 square feet of floor area above the maximum amount of floor area otherwise permitted by the underlying zoning district shall be allowed. This additional area shall be permitted only to accommodate the development of the accessory dwelling unit.

The code specifically states that these bonuses are given when development of an ADU is on a site "with an existing single-family residence." Staff believes this takes into consideration that existing developed lots that previously were unable to establish an ADU, but now can, may have insufficient area to accommodate the accessory unit. The bonus allows flexibility for existing conditions to promote this housing alternative. New construction has a variety of options to plan for and design an ADU on the lot and is not as constrained by existing improvements, floor plans, or other accessory structures that may be located on a lot.

The scenario that staff has encountered is that property owners who are building completely new homes also want to take advantage of these bonuses. Many new homes maximize permitted floor area and the interest for additional floor area sets forth a two-step process whereby someone can build a new home and receive final approve, thus becoming an 'existing home', and then file plans for an ADU and an additional 175 square feet. Clearly this is a policy discussion that requires balancing the need for housing while preserving neighborhood

character. By establishing a clear date by which existing homes can take advantage of these bonuses is one approach toward clarifying what is understood to be the Council's intent when drafting the language and eliminates a time consuming and bureaucratic two-step process to achieve additional floor area.

PTC Study Session Comments: Three commissioners were in favor of applying the bonuses to existing and proposed homes and two commissioners were in favor of only allowing it for existing homes (where 'existing' would need to be defined). There was also a suggestion to eliminate the bonus altogether (01/10/2018).

4. Clarify that Detached ADUs are Not Considered Accessory Structures Subject to the Maximum 50% Rear Yard Coverage

The R-1, R-2, RE, and RMD development standards require that no more than 50% of a required rear yard be covered by accessory structures [e.g. [PAMC 18.12.080\(b\)\(6\)](#)]. There has been some debate as to whether ADUs are subject to this provision, which if it were, could be problematic for some property owners. Existing (and retained) garages along with other accessory structures located on a parcel could restrict a new detached ADU from being established on some properties. Since ADUs are not accessory structures, but rather accessory dwelling units, staff has not applied this 50% cover restriction. The proposed code amendment reinforces this perspective and makes clear the standard does not apply for ADUs.

5. Reduce the Height Limit for Detached ADUs Located Within Identified Eichler Tracts

On January 18, 2018, at a community meeting regarding the draft Eichler Guidelines, staff received input regarding reducing the height of ADUs in Eichler tracts. The current ADU height limit for a detached unit is 17 feet and one story. The eaves of a one-story Eichler home are low due to the slab-on-grade construction that was used; typical one-story Eichler homes are nine to 11 or 12 feet tall. Limited follow up discussion took place with the Historic Resources Board (HRB) in meetings on January 25 and February 22, 2018, which resulted in a recommendation that ADUs should not exceed the height of the primary home on the lot. There are 31 identified single family Eichler Tracts that contain approximately 2,700 properties. The proposed ordinance includes new height restrictions of 12 feet for detached ADUs and that attached ADUs be no taller than the primary residence at the area of attachment. The intent of the lower height limit is to reflect the size and type of construction typical of these properties, respect neighborhood character and preserve the sense of openness and privacy enjoyed by residents in these tracts.

6. Clarify that the Replacement Parking Provisions Also Apply to JADU Development

A JADU is only permitted within the existing building envelope of the primary dwelling unit, and must, at a minimum, utilize one existing bedroom. It could be possible that a JADU incorporates a portion of a garage for the new living unit. In this circumstance, the current provisions are not clear about the requirements for replacement parking for the primary residence if all or a

portion of the garage was utilized for the JADU. To address this, staff recommends that the replacement parking provisions for ADUs also be applied to JADUs. Specifically, this approach requires any required covered parking be re-established on site, but, consistent with State law, gives the owner flexibility as to how to provide that required parking space in terms of location and whether it is covered or uncovered. Similar to the city's local provision for ADUs, JADUs by State law do not require any parking.

7. Allow Replacement Parking to be Located Within Driveways Located in a Street-side Setback

State law specifies that required replacement parking (i.e. for the primary home) may be "located in any configuration" on the subject property. The existing regulations allow replacement parking to be located in the front yard setback on an existing driveway as an uncovered space. In the case of corner lots, the code is silent on allowing parking in the street side setback. Many corner lots have just the one driveway located on the street side and allowing replacement parking in this location on a driveway would be a reasonable accommodation for these types of lots. Staff suggests that replacement uncovered parking be allowed in the street side setback similar to what has been permitted for the front yard setback.

8. Allow Existing Driveways to be Expanded to Accommodate Replacement Parking

As mentioned above, the current provisions allow required replacement parking for the primary dwelling unit to be located within an existing driveway located within the front yard setback. In the review of ADU permits, the issue of allowing existing driveways to be expanded to accommodate replacement parking has been raised. In the R-1 district, the code allows driveways (and walkways) to be established providing the front yard remains 60% permeable. It is staff's recommendation that existing driveways in the front yard, and not street side yards, be allowed to expand to accommodate replacement parking only, when done in association with the establishment of an ADU or JADU.

9. Clarify when accessory structures may be rebuilt to comply with technical building codes when converting to a new ADU

Staff has encountered ADU proposals that included the conversion of existing non-habitable space (e.g. garage, accessory building, etc.) that had a legal non-complying element, such as a setback encroachment; and these types of conversions are permitted with the ADU regulations.

The issue that has emerged is that during the permit review process, it comes to light that the legal non-complying structure is not structurally sound and cannot be converted to an ADU, as-is. To be building code compliant, the non-complying structure must be demolished and rebuilt. The general zoning rule is that once a legal non-complying structure is removed, all new construction must be code compliant (Section [18.70.100\(b\)](#) Noncomplying facility – Replacement).

The general intent of the ADU code was to allow the conversion of existing structures to create living units, including the conversion of legal non-complying structures. But, the circumstance of requiring existing non-complying structures to be rebuilt (retaining the non-compliance) to accommodate the new units was not fully considered. At the PTC Study Session, the options discussed initially were at the opposite ends of the spectrum, where at one end all new rebuilds, regardless of circumstance, should be fully zoning compliant, and at the opposite end, allow reconstruction of non-complying structures, or portions thereof, to be rebuilt retaining the non-complying condition.

Where the need to rebuild existing accessory structures has been presented to staff, a decision was made to allow reconstruction. The proposed ordinance continues to advance this concept but also includes some specific parameters to ensure there is no enlargement to the degree of any non-conforming standard and requires a minimum three-foot setback from interior side and rear property lines.

City Council Follow-up Discussion Items

At the March 7, 2017 Council meeting regarding the ADU regulations, Council directed staff to return in 2018 with additional information regarding the two issues below. These issues were briefly discussed at the PTC Study Session.

Options to Make ADUs Available to Moderate or Low Income Residents

City Council directed staff to explore further the possible options to make ADUs accessible to moderate or low income residents, seniors, people with disabilities, or public employees. This type of program reflects the larger concern regarding the lack of affordable housing in Palo Alto and the greater Bay Area. Staff continues to seek PTC feedback for options on how best to implement such a policy.

One consistent comment staff hears from interested parties is that the development impact fees to establish an ADU are too high, nearly \$10,000 per unit. These fees have been a concern for many wanting to construct ADUs, but are assessed to support city services, parks, libraries and other programs that benefit the community, including residents of an ADU. For some property owners, it may be worthwhile to deed restrict their ADU as affordable housing for a period of time (for example 10 years) in exchange for reduced or waived impact fees. In such circumstances, a property owner may be less interested in generating rental income and more interested in providing independent living facilities for a relative with disabilities or aging parents. For others, reducing or waiving the impact fees would not likely be a sufficient motivator to deed restrict the ADU to a certain income level. The City of Pasadena recently implemented this kind of a program.

Another possible approach would be to partner with an organization that can provide financing in exchange for affordability. As an example, [Housing Trust Silicon Valley](#), a local non-profit organization based in San Jose, is currently developing a pilot program that would provide low-cost flexible loans to homeowners for the purpose of constructing an ADU in exchange for their agreement to rent the units at affordable costs to low- and middle-income earners. The

Housing Trust's funding "will be used to make capital loans to homeowners — who can easily spend \$100,000 or \$200,000 on ground-up construction of an ADU. But the Housing Trust also intends to create an educational outreach program — involving classes, workshops and technical assistance — to help homeowners navigate the ADU process."² The partnership option ideally would place responsibility of the program management on the agreeable non-profit organization.

Given sufficient staff and financial support, the City could also offer technical and educational assistance. For example, the city could develop prototype designs for ADUs that can be readily utilized for the permit process and can be approved more expeditiously.

Strategies for Legalizing Illegally Constructed ADUs

As with the item above, on March 7, 2017 Council directed staff to return in 2018 with options and discussion of mechanisms to bring existing unpermitted ADUs into compliance, including when existing ADUs do not meet the new standards.

There are a few cities in the bay area that have implemented protocols to legalize illegal ADUs. These cities include San Francisco, Santa Cruz, and Oakland. Generally, the units are required to be building code compliant for all health and safety concerns, and then special consideration was given to other non-complying development standards (e.g. setbacks, height, lot coverage, etc.).

Staff has considered what could be an appropriate method to review and support the legalization of unpermitted ADUs. The City currently has a Home Improvement Exception (HIE) process that could be utilized for this legalization purpose. The City would require that the unit be compliant with all life safety standards as required by the building codes and then, on a case-by-case basis, review the existing zoning conditions to determine what is appropriate for the project. Other than the size limitation, the Director would have the discretion to waive development standards using the HIE review process to accommodate legalization of the unit, providing it is deemed safe for habitation. The overall objective would be to allow an ADU that is safe for habitation and would not be considered a nuisance.

Such programs, however, can create other challenges and should be considered carefully. Illegal units that cannot meet building codes or are not approved through a city process would have to be removed and existing tenants would be displaced. It may be that illegally established ADUs may cost too much to be structurally upgraded resulting in further displacement. Then there is the question of how to implement a program. The Council would need to consider whether these units are addressed on a case by case basis when brought to the city's attention, or if there is a brief amnesty period where owners of illegal units could seek permits to legalize these units. Again, not all units would likely be approved. And, the administrative time

² *The Mercury News* "Bank funds 'granny' units project in affordable housing experiment for San Jose, L.A." October 9, 2017: <http://www.mercurynews.com/2017/10/09/an-affordable-housing-experiment-for-san-jose-and-los-angeles-bank-funds-pilot-project-to-help-build-granny-units/>

establishing and following through on such a program would be significant. Presumably, building permit and HIE review fees would cover the cost of staff time, but this would take time away from processing other applications.

Staff welcomes other feedback from the PTC to forward to the City Council on both of these policy issues above.

Environmental Review

The proposed code amendments have been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. Specifically, the proposed amendments have been determined to be exempt from further environmental review pursuant to CEQA Guidelines Section 15061(b)(3) (Review for Exemption) because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and it can be seen with certainty that there is no possibility that the activity in question may have a significantly effect on the environment. The ordinance is also exempt under Public Resources Code Section 21080.17 that applies to local ordinances implementing State regulations related to accessory dwelling units.

Public Notification, Outreach & Comments

The Palo Alto Municipal Code requires notice of this public hearing be published in a local paper at least ten day in advance. Notice of a public hearing for this project was published in the Palo Alto Weekly on March 16, 2018.

For the discussion in this report, staff did send out a notification email to an established group of interested parties and the meeting was noted on the City's ADU project webpage.

Next Steps

Upon recommendation from the PTC, staff will forward the staff recommended ordinance with agreed upon changes to City Council for review. In instances where a majority of the PTC has a different recommendation from staff, that viewpoint will be represented in the staff report along with implementing language for the Council's consideration. Only one ordinance, however, will be presented to the Council, which is anticipated to occur in June.

Alternative Actions

In addition to the recommended action, the Planning and Transportation Commission may:

1. Recommend adoption of the draft ordinance to the City Council with modifications.
2. Continue the discussion to a future PTC hearing with the expectation that a recommendation to the City Council would be forwarded that time.

Report Author & Contact Information

Clare Campbell, AICP, Senior Planner
(650) 617-3191

clare.campbell@cityofpaloalto.org

PTC³ Liaison & Contact Information

Jonathan Lait, AICP, Assistant Director
(650) 329-2679

jonathan.lait@cityofpaloalto.org

Attachments:

- Attachment A: Ordinance Amending Requirements of ADU and JADU (PDF)

³ Emails may be sent directly to the PTC using the following address: planning.commission@cityofpaloalto.org

Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Amending Title 18 (Zoning) of the Palo Alto Municipal Code to Amend Requirements Relating to Accessory Dwelling Units and Junior Accessory Dwelling Units

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Section 18.42.040 (Accessory and Junior Accessory Dwelling Units) of **Chapter 18.42 (Standards for Special Uses)** of Title 18 (Zoning) of the Palo Alto Municipal Code ("PAMC") is amended to read as follows:

18.42.040 Accessory and Junior Accessory Dwelling Units

The following regulations apply to zoning districts where accessory dwelling units and junior accessory dwelling units are permitted.

(a) Accessory Dwelling Units

(1) Purpose

The intent of this section is to provide regulations to accommodate accessory dwelling units, in order to provide for variety to the city's housing stock and additional affordable housing opportunities. Accessory Dwelling Units shall be separate, self-contained living units, with separate entrances from the main residence, whether attached or detached. The standards below are provided to minimize the impacts of accessory dwelling units on nearby residents and throughout the city, and to assure that the size and location of such dwellings is compatible with the existing or proposed residence on the site and with other structures in the area.

(2) Applicable Zoning Districts

The establishment of an accessory dwelling unit is permitted in the following zoning districts when single family residential is a permitted land use: Single-Family (R-1), including subdistricts; Two Family Residential (R-2); Residential Estate (RE); Two Unit Multiple Family Residential (RMD); Open Space (OS); Multiple Family Residential (RM); and Planned Community (PC).

~~(2)~~(3) Minimum Lot Sizes

- A. In the R-1 district and all R-1 subdistricts, RE district, R-2 district, and RMD district, and properties zoned Planned Community (PC) where single-family residential is an allowed use, the minimum lot size for the ~~development~~ establishment of an accessory dwelling unit is 5,000 square feet.
- B. In the OS District, the minimum lot size for the ~~development~~ establishment of an accessory dwelling unit is 10 acres.

~~(3)~~(4) Setbacks and Daylight Plane

- A. Except as otherwise provided in this section, accessory dwelling units shall comply with the underlying zoning district's setbacks, including daylight plane requirements.
- B. Notwithstanding subsection (iA) above, no setback shall be required for an existing garage that is converted to an accessory dwelling unit, except as provided in subsection (a)(~~56~~) below.
- C. In districts permitting second story accessory dwelling units, a setback of five feet from the side and rear lot lines shall be required for an accessory dwelling unit constructed above a garage.

(~~45~~) Lot Coverage/Floor Area Ratio

- A. An accessory dwelling unit shall be included in the lot coverage and floor area ratio FAR requirements applicable to the parcel.
- B. Exceptions:
 - i. Lot Coverage. When the ~~development~~ establishment of an accessory dwelling unit on a parcel with an existing single family residence, which was legally permitted and existing as of January 1, 2017, would result in the parcel exceeding the lot coverage requirement, the accessory dwelling unit shall not be included in the calculation of lot coverage applicable to the property, so long as the parcel meets the underlying zoning district's minimum lot size requirement or is substandard by no more than ten percent (10%) of the underlying zoning district's minimum lot size requirement.
 - ii. Basements FAR. In the R-1 district and all R-1 subdistricts, basement space used as an accessory dwelling unit, or portion thereof, shall not be included in the calculation of floor area for the entire site, providing the measurement from first finished floor to grade around the perimeter of the building is no more than three (3) feet.
 - iii. Additional Floor AreaR. When the development of a new one-story accessory dwelling unit on a parcel with an existing single family residence, which was legally permitted and existing as of January 1, 2017, would result in the parcel exceeding the maximum floor area ratio, an additional 175 square feet of floor area above the maximum amount ~~of floor area~~ otherwise permitted by the underlying zoning district shall be allowed. This additional floor area shall be permitted only to accommodate the development of the accessory dwelling unit and shall not be applied to the primary residence.

(~~56~~) Conversion of Space in Existing Single Family Residence or Existing Accessory Structure

Notwithstanding the provisions of subsections (a)(~~23~~), (a)(~~34~~), (a)(~~45~~), (a)(~~78~~) and

(a)(89), in the R-1 district and all R-1 subdistricts, ~~the~~ RE, R2, RMD and OS districts, and properties zoned RM or ~~Planned Community (PC)~~ where single-family residential is an allowed use, an Accessory Dwelling Unit shall be permitted if the unit is contained within the existing space of a single-family residence or an existing accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety, and if the accessory dwelling unit conforms with the following:

- i. For the purposes of this subsection (6), the portion of the single-family residence or accessory structure subject to the conversion shall be legally permitted and existing as of January 1, 2017.
- ii. ~~Notwithstanding the allowance in this section, only one accessory dwelling unit or junior accessory dwelling unit may be located on any lot subject to this section.~~ Conversion of an accessory structure to an accessory dwelling unit may require rebuilding or substantial renovation to comply with the California Code of Regulations Title 24, as adopted by the City of Palo Alto. In such instances, and where the existing accessory structure does not comply with applicable accessory dwelling unit development standards in the zoning district, the structure may be renovated or rebuilt, provided that:
 - A. If the existing structure does not comply with the applicable development standards for accessory dwelling units in the zoning district, the renovated or rebuilt structure shall not increase the degree of non-compliance, such as increased height or size, or further intrusion into required setbacks;
 - B. The renovated or rebuilt structure provides a minimum three foot setback from any interior side and rear lot lines, and 16 foot setback from any street side property line, if applicable; and
 - C. The renovated or rebuilt structure shall comply with subsection (a)(7), below, pertaining to privacy requirements.
 - D. Nothing in this subsection (a)(6)(ii) shall restrict or prevent a renovated or rebuilt structure from being designed to achieve or improve compliance with the development standards applicable to an accessory dwelling unit in the zoning district.
- iii. No new or separate utility connection shall be required between the accessory dwelling unit and utility service, such as water, sewer, and power.
- iv. The accessory dwelling unit shall comply with the provisions of subsections ~~(a)(67), (a)(910), and (a)(1011).~~
- v. New floor area may be added to a space converted in accordance with this subsection (a)(6) and shall comply with the all regulations set forth in subsection (a), including but not limited to setbacks, maximum accessory dwelling unit size, and height.

(67) Privacy

Any window, door or deck of a second story accessory dwelling unit shall utilize techniques to lessen views onto adjacent properties to preserve the privacy of residents. These techniques may include placement of doors, windows and decks to minimize overview of neighboring dwelling units, use of obscured glazing, window placement above eye level, and screening between the properties.

(78) Additional Development Standards for Attached Accessory Dwelling Units

- A. Attached accessory dwelling units are those attached to the ~~main~~ primary dwelling. All attached accessory dwelling units shall be subject to the additional development requirements specified below.
- B. Attached unit size counts toward the calculation of maximum house size.
- C. Unit Size: The maximum size of an attached accessory dwelling unit living area, inclusive of a habitable basement, shall not exceed 600 square feet and shall not exceed 50% of the proposed or existing living area of the primary ~~existing~~ dwelling unit. The accessory dwelling unit and any covered parking provided for the accessory dwelling unit shall be included in the total floor area for the site, but the covered parking area is not included in the maximum 600 square feet for attached unit. ~~Any basement space used as an accessory dwelling unit or portion thereof shall be counted as floor area for the purpose of calculating the maximum size of the accessory unit.~~
- D. Maximum height (including property in a special flood hazard zone): One story and 17 feet, or no taller than the primary residence at the area of attachment if located in an Eichler Tract identified in the adopted Palo Alto Eichler Neighborhood Design Guidelines. However, in the RE District attached ~~a~~ Accessory d ~~D~~ welling u ~~Units~~ may be two stories and 30 feet. In the OS ~~zone~~ District, attached ~~A~~ ccessory D ~~d~~ welling U ~~units~~ may be two stories and 25 feet.
- E. Separate Entry Required for Attached Units: A separate exterior entry shall be provided to serve an accessory dwelling unit.
- F. Except on corner lots, the accessory dwelling unit shall not have an entranceway facing the same lot line (property line) as the entranceway to the main dwelling unit unless the second entranceway is located in the rear half of the lot. Exterior staircases to second floor units shall be located toward the interior side or rear yard of the property.
- G. If covered parking for an accessory dwelling unit is provided in the RE zone, the maximum size of the covered parking area for the accessory dwelling unit is 200 square feet.

(89) Additional Development Standards for Detached Accessory Dwelling Units

- A. Detached accessory dwelling units are those detached from the ~~main~~ primary dwelling. All detached accessory dwelling units shall be subject to the additional development standards specified below.
- B. The maximum size of the detached accessory dwelling unit living area, inclusive of a habitable basement, shall be 900 square feet.
 - i. The accessory dwelling unit and any covered parking shall be included in the total floor area for the site, but the covered parking area is not included within the maximum 900 square feet for detached unit.
 - ii. ~~Any basement space used as an accessory dwelling unit or portion thereof shall be counted as floor area for the purpose of calculating the maximum size of the accessory unit.~~
- C. Maximum height (including property in a special flood hazard zone): one story and 17 feet, or one story and 12 feet, if located in an Eichler Tract identified in the adopted Palo Alto Eichler Neighborhood Design Guidelines.
- D. Setbacks: ~~Notwithstanding subsection (a)(34)(iA),~~ a detached accessory dwelling unit may be located in a rear yard, but must maintain a minimum setback of six feet (6') from the interior side and rear property lines and sixteen feet (16') from a street side yard. No portion of a building may encroach into a daylight plane beginning at a height of eight feet (8') at the property line and increasing at a slope of one foot (1') for every one foot (1') of distance from the property line. These requirements shall also apply to a basement level, as applicable.
- E. If covered parking is provided for an accessory dwelling unit in the RE District, the maximum size of covered parking area for the detached accessory dwelling unit is 200 square feet.
- F. There shall be no windows, doors, mechanical equipment, or venting or exhaust systems located within six feet of a property line.
- G. A detached accessory dwelling unit shall not be subject to the requirement that no more than 50% of the required rear yard be covered by structures in the R-1, R-2, RE and RMD zoning districts.

(910) Additional Requirements for All Accessory Dwelling Units

- A. Sale of Units: The ~~A~~ accessory dwelling unit shall not be sold separately from the primary residence.
- B. Short term rentals. The accessory dwelling unit shall not be rented for periods of less than 30 days.
- C. Number of Units Allowed: Only one accessory dwelling unit or junior accessory dwelling unit may be located on any residentially zoned lot.

- D. Existing Development: A single-family dwelling shall exist on the lot or shall be constructed on the lot in conjunction with the construction of the accessory dwelling unit.
- E. Occupancy: The owner of a parcel proposed for accessory dwelling use shall occupy as a ~~principal~~ primary residence either the primary dwelling or the accessory dwelling, unless both the primary dwelling and the accessory dwelling are rented to the same tenant and such tenant is prohibited from sub-leasing the primary dwelling or the accessory dwelling.
- F. Prior to issuance of a building permit for the accessory dwelling unit, the owner shall record a deed restriction in a form approved by the city that: includes a prohibition on the sale of the accessory dwelling unit separate from the sale of the single-family residence; requires owner-occupancy consistent with subsection (a)(~~9~~10)(~~v~~E) above; does not permit short-term rentals; and restricts the size and attributes of the accessory dwelling unit to those that conform with this ~~S~~section 18.42.040.
- G. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.
- H. Street Address Required: Street addresses shall be assigned to all accessory dwellings to assist in emergency response.
- I. Street Access: When parking is provided, the accessory dwelling unit shall have street access from a driveway in common with the main residence in order to prevent new curb cuts, excessive paving, and elimination of street trees, unless separate driveway access is permitted by the director upon a determination that separate access will result in fewer environmental impacts such as excessive paving, unnecessary grading or unnecessary tree removal, and that such separate access will not create the appearance, from the street, of a lot division or two-family use.
- J. For properties listed in the Palo Alto Historic Inventory, the California Register of Historical Resources, the National Register of Historic Places, or considered a historic resource after completion of a historic resource evaluation, compliance with the appropriate Secretary of Interior's Standards for the Treatment of Historic Properties shall be required, as determined by the ~~Planning~~ Director.
- K. No protected tree shall be removed for the purpose of establishing an accessory dwelling unit unless the tree is dead, dangerous or constitutes a nuisance under Section 8.04.050. Any protected tree removed pursuant to this subsection shall be replaced in accordance with the standards ~~in~~ the Tree Technical Manual.
- L. Except as modified by this Section 18.42.040, the accessory dwelling unit shall conform to all requirements of the underlying zoning district, any applicable combining district, and all other applicable provisions of this Title 18.

(1011) Parking

- A. No additional parking shall be required for accessory dwelling units.
- B. If an accessory dwelling unit replaces existing required covered parking, replacement spaces shall be provided. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, any required replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit. To comply with this requirement, uncovered or tandem spaces may be provided on existing driveways within the required front and street side yards; and covered parking and mechanical automobile parking lifts may be located in required side and rear yard setbacks in compliance with Section 18.40.050. ,including, but not limited to, within the front setback if on an existing driveway, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. All new parking spaces and structures shall comply with development standards of the underlying zoning and the applicable parking design standards in Chapter 18.54, except as provided below:-

- i. The Director shall have the authority to modify required replacement parking spaces by one foot in width and length upon finding that the reduction is not detrimental to public health, safety or the general welfare.
- ii. Existing front and street side yard driveways may be enlarged to the minimum extent necessary to comply with the replacement parking requirement above. Existing curb cuts shall not be altered except when necessary to promote public health, safety or the general welfare.

(b) Junior Accessory Dwelling Units

(1) Purposes:

This Section provides standards for the establishment of junior accessory dwelling units, an alternative to the standard accessory dwelling unit. Junior accessory dwelling units will typically be smaller than an accessory dwelling unit, will be constructed within the walls of an existing single family structure and requires owner occupancy in the single family residence where the unit is located.

(2) Development Standards. Junior accessory dwelling units shall comply with the following standards:

- A. Number of Units Allowed: Either one accessory dwelling unit or one junior accessory dwelling unit, may be located on any residentially zoned lot that permits a single-family dwelling except as otherwise regulated or restricted by an adopted Coordinated Area Plan or Specific Plan. A junior accessory dwelling

unit shall only be located on a lot which already contains one legal single-family dwelling.

- B. Size: A junior accessory dwelling unit shall not exceed 500 square feet in size.
- C. Lot Coverage/Floor Area Ratio:
 - i. A junior accessory dwelling unit shall be included in the calculation of lot coverage and ~~FAR~~ floor area ratio applicable to the property.
 - ii. A primary residence ~~lot~~ with a junior accessory dwelling unit shall be permitted to develop an additional 50 square feet of floor area above the maximum amount of floor area otherwise permitted by the underlying zoning district. ~~This additional area shall be permitted to accommodate the junior accessory dwelling unit.~~
- D. Owner Occupancy: The owner of a parcel proposed for a junior accessory dwelling unit shall occupy as a ~~principal~~ primary residence either the primary dwelling or the junior accessory dwelling. Owner-occupancy is not required if the owner is a governmental agency, land trust, or housing organization.
- E. Sale Prohibited: A junior accessory dwelling unit shall not be sold independently of the primary dwelling on the parcel.
- F. Short term rentals: The junior accessory dwelling unit shall not be rented for periods of less than 30 days.
- G. Location of Junior Accessory Dwelling Unit: A junior accessory dwelling unit shall be created within the existing walls of an existing primary dwelling, and shall include, at a minimum, the conversion of an existing bedroom.
- H. Separate Entry Required: A separate exterior entry shall be provided to serve a junior accessory dwelling unit, with an interior entry to the main living area. A junior accessory dwelling may include a second interior doorway for sound attenuation.
- I. Kitchen Requirements: The junior accessory dwelling unit shall include an efficiency kitchen, requiring and limited to the following components:
 - i. A sink with a maximum waste line diameter of one-and-a-half (1.5) inches,
 - ii. A cooking facility or appliance which does not require electrical service greater than one hundred and twenty (120) volts, or natural or propane gas, and
 - iii. A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

- J. Parking. No additional parking is required beyond that required at the time the existing primary dwelling was constructed. Any required parking displaced with the establishment of a junior accessory dwelling unit shall be restored in compliance with Section 18.42.040(a)(11)(B).
- K. Fire Protection; Utility Service. For the purposes of any fire or life protection ordinance or regulation or for the purposes of providing service for water, sewer, or power, a junior accessory dwelling unit shall not be considered a separate or new unit.
- L. Deed Restriction. Prior to the issuance of a building permit for a junior accessory dwelling unit, the owner shall record a deed restriction in a form approved by the city that includes a prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, requires owner-occupancy consistent with subsection (b)(2)(~~iv~~D) above, does not permit short-term rentals, and restricts the size and attributes of the junior dwelling unit to those that conform with this section.

SECTION 2. Any provision of the Palo Alto Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The Council finds that the adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines sections 15061(b), 15301, 15302 and 15305 because constitute minor adjustments to the City's zoning ordinance to implement State law requirements related to accessory dwelling units as established in Government Code Section 65852.2, and these changes are also likely to result in few additional dwelling units dispersed throughout the City. As such, it can be seen with certainty that the proposed action will not have the potential for causing a significant effect on the environment.

SECTION 5. This ordinance shall be effective on the thirty-first date after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

NOT PARTICIPATING:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Director of Planning & Community
Environment

DRAFT