



Planning & Transportation Commission

Staff Report (ID # 11756)

Report Type: Action Items **Meeting Date:** 2/10/2021

Summary Title: Action Item: ADU Code Changes to PAMC Chapter 18.09

Title: PUBLIC HEARING/LEGISLATIVE: Review and Discuss Potential Ordinance Changes to Palo Alto Municipal Code Chapter 18.09, Accessory and Junior Accessory Dwelling Units. Environmental Assessment: 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)(3), 15301, 15302 and 15305.

From: Jonathan Lait

Recommendation

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

1. Discuss potential modifications to Palo Alto Municipal Code Chapter 18.09;
2. Provide recommendations to staff on items to include in a draft ordinance.

Report Summary

The topics covered in this report are robust and complex. Staff hopes PTC may, through a motion(s), indicate and affirm items that should be further discussed as part of a draft ordinance(s). These items will return for future action when appropriate. The PTC need not decide tonight if each item should be incorporated into an ordinance and the exact parameters of an ordinance; but the PTC is asked to identify areas where modification is supported by many of the Commissioners.

The PTC considered the ADU ordinance on May 27, 2020 and voted to recommend the City Council adopt the ordinance. On October 26, 2020, City Council held a second reading and adopted Palo Alto's Accessory Dwelling Unit and Junior Accessory Dwelling Unit (ADU and JADU) Ordinance (Attachment A). The regulations for ADUs and JADUs are now consolidated into Palo Alto Municipal Code (PAMC) Chapter 18.09.

Between the time of PTC consideration and Council adoption, members of the local design community expressed concerns and desires for further changes to the ordinance. The Council adopted the ordinance as recommended but directed staff to continue working with stakeholders and to present any additional changes to the PTC.

The PTC is requested to consider the advantages and disadvantages of the topics below. Due to the variety and complexity of items, the PTC may choose to identify items for further work and eliminate others, with anticipation of focused discussions in the future to shape policy.

Staff will also bring forth a separate and future action item regarding incentives for affordable second units. Following that, staff will work on updating section 18.09 based on the collected feedback from both meetings.

A. Topics Staff Proposes for Regulatory Change

- i. Basements¹
- ii. Noise Producing Equipment Location Standards²

B. Regulatory Change Topics Proposed by Design Professionals (less staff support)

- i. Parking Provided for an ADU
- ii. Privacy
- iii. Increasing the Exemption for Development Impact Fees
- iv. Refunding Development Impact Fees
- v. Allowing Doorways Between Units

C. Topics Requiring Additional Analysis

- i. Street-side Setback on Corner Lots
 - a. Removing Requirement for Garages/Carports to be “Existing” Structures for Conversion on Corner Lots
 - b. Additional Bonus Floor Area and/or Reduced Setbacks for Unit Development
 - c. Allowing the Main House to Encroach into a 10 Foot Setback to Create an ADU/JADU
- ii. Retracting Prior Deed Restrictions
- iii. Flood Zone Height Exceptions

Background

On October 26, 2020, the Palo Alto City Council adopted Palo Alto Municipal Code Chapter 18.09, the most recent Accessory and Junior Accessory Dwelling Unit Ordinance (Attachment A). The October 5, 2020 first reading staff report³ and minutes⁴ are available online.

¹ A modification to PAMC Chapter 18.04 Section 18.04.030 (15) basement definition specific to detached ADUs and modification to PAMC Chapter 18.09.040 (units not exempt from city’s regulations).

² A modification to PAMC Section 18.09.040 (h) and Section 18.23.060 Noise and Vibration (B) Requirements.

³ Council staff report of October 5, 2020

<https://www.cityofpaloalto.org/civicax/filebank/blobdload.aspx?t=59061.88&BlobID=78541>

The Council's adoption of the ordinance followed the PTC discussion and recommendation made during the public hearing on May 27, 2020. The May 27th PTC report⁵ and minutes⁶ are available online. A PTC representative speaking to Council noted the PTC did not recommend ADUs include basements outside the buildable area and noted the PTC needed more time to review some topics.

In addition, a group of local design professionals submitted to staff and City Council additional changes they identified. The professionals indicated these changes would further the construction of ADUs in Palo Alto. This group named themselves the "ADU Task Force." While very knowledgeable and passionate, the group is not appointed by the City in a formal capacity.

With adoption of new Chapter 18.09, Council simultaneously directed staff to return to the PTC to review additional potential changes to the ordinance.

Discussion

A. Proposed Areas for Regulatory Change (Supported by Department Staff)

i. Basements

By allowing basements under accessory units—no matter where they are located on the property—units could have greater variety of configurations and accommodate a range of property-specific layouts. Currently, accessory units may only include basements when located within the property's buildable area.

For ADUs that are subject to local standards (Chapter 18.09, Table 2), basement construction is currently prohibited within the rear or side property setbacks.⁷ While the subterranean portion of a unit would not impact neighboring properties' privacy, basements within setbacks can impact mature trees on neighboring properties. The architect group suggested the ordinance allow construction of a portion of an ADU underground to accommodate two full floors without exceeding the height limit. ADUs with two stories above grade within rear and side setbacks could negatively impact neighboring properties and are not recommended. If the PTC supports two stories above grade, staff recommends additional privacy mitigations be placed on those ADUs.

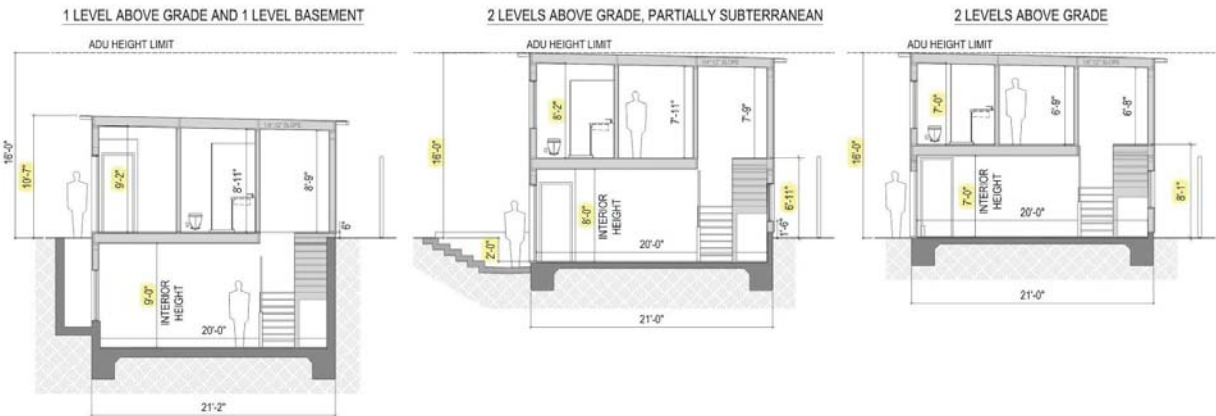
⁴ Council meeting minutes of October 5, 2020

<https://www.cityofpaloalto.org/civicax/filebank/blobdload.aspx?t=42759.83&BlobID=79414>

⁵ PTC staff report of May 27, 2020 <https://www.cityofpaloalto.org/civicax/filebank/documents/76826>

⁶ PTC meeting minutes <https://www.cityofpaloalto.org/civicax/filebank/documents/77368>

⁷ Note: The City is unable to regulate basements for ADUs that comply with the development standards in Chapter 18.09 Table 1 (e.g., new construction, detached ADUs up to 800 square feet – including basement square footage).



Source: ATTACHMENT B

Zoning regulations for designing and constructing basements are clarified within the Single-Family Residential Zones Zoning Technical Manual with graphics. These regulations could be applied to basements under ADU units.

Many residents are concerned about impacts from basement construction, particularly impacts upon existing trees and groundwater (subsidence and dewatering). Public Works' dewatering regulations strive to address some concerns such as wasting removed groundwater. Dewatering can only occur during certain months of the year, and measures are in place to lessen impacts of dewatering. These measures only apply to sites with a high-water table, and not to all properties. Staff believes dewatering regulations appropriately address some impacts. Neighbors, however, will continue to have concerns about subsidence, impacts from basement construction noise and vibration, the health of nearby trees, potential for tree removals to enable ADUs.

If PTC supports allowing basements within rear and side setbacks, the following are proposed as regulations:

- The basement cannot encroach into the four-foot ADU setback.
- ADU Lightwells cannot be located closer than four feet to a property line. All lightwells would need to be screened from view from public rights of way.
- The new basement must not negatively impact tree roots on adjacent lots such that it would require the tree to be removed or fail. Protected trees on the subject property would continue to be subject to the City's tree regulations. Urban Forestry has identified that roughly 25% of the tree could be affected without significantly damaging it.
- Require that ADU basements⁸ be fully, such that the finished first floor is placed at grade underground (the left most option of the above image). A primary single-family home in the 'buildable area' of a lot is allowed finished first floor placement up to three feet above grade such that the basement beneath it does not count toward gross floor area.

⁸ Definition for basement: 18.04.030 (15) "Basement" means that portion of a building between the lowest floor and the ceiling above, which is fully below grade or partly below and partly above grade, but so located that the vertical distance from grade to the floor below is more than the vertical distance from grade to ceiling.

ADUs would not be allowed sunken first floor where a greater portion of the floor volume is located above grade to protect privacy impacts.

- All basements for accessory units shall count towards the unit's gross floor area.

ii. Noise Producing Equipment Location Standards

Instead of regulating the placement of noise-producing equipment on a site, the City could require less noisy equipment. Technological advancements have resulted in quieter equipment. Recent applications have included equipment purported to generate lower decibel (dB) levels than the lowest level that the Noise Ordinance allows (66 dB at the property line).

To provide more flexibility in the design of ADUs, the City could allow noise producing equipment within the minimum property setbacks. The PTC may recall that the ADUs (in most cases) must be set back a minimum of 4 feet from the property line. This would deviate from the current requirements (PAMC 18.09.040(h)), which requires the noise-producing equipment follow the same setback requirements as the ADU.

The PTC could also codify staff's current practice of requesting applicants provide documentation about the equipment to confirm the equipment and location conform to the Noise Ordinance. Currently, staff requests (1) a specification sheet identifying equipment decibel rating, and/or (2) a noise analysis when a louder unit is proposed, to determine appropriate placement. The added flexibility of location within property setbacks may help to alleviate ADU siting constraints, while also codifying requirements for additional documentation.

B. Regulatory Changes Proposed by Design Professionals (Limited or No Support from Department Staff)

i. Parking Provided for an ADU

The architect group raised concerns about PAMC Section 18.09.040(k)(iv). This section states that covered parking that is attached to an ADU will count towards the maximum size of the unit. The architect group asserts this dissuades property owners from providing parking for these units. The group recommends that covered parking attached to the ADU to not count towards the unit's maximum size and only count towards the parcel's total FAR allowance. As presently enacted in the ordinance, the way covered parking is counted for ADUs mirrors how covered parking is counted for single family homes.

The City receives very few applications for providing covered parking along with an ADU—whether that parking is attached or detached from the unit. The only zone where staff has seen owners propose covered parking for accessory units is the Residential Estate (RE) zone. The RE zoned properties are larger and often have excess floor area that cannot be used for the primary dwelling. Since the RE zone is not predominant throughout Palo Alto, unless changes

are made as the group suggest, it is unlikely that more applications for replacement parking would be received at scale.

Overall, staff are concerned that allowing the construction of covered parking attached to an ADU may not yield the outcomes the city is seeking. This could result in garages taking space where the City would prefer to have larger ADUs that provide quality homes for individuals and families. Furthermore, the stated purpose would be to provide on-site parking. If this occurs, it would reduce demand for on-street parking and be an amenity for ADU residents—a benefit for the property owner and neighbors. The City remains skeptical, however, if the garages would be used for this purpose. The garages could be used for storage of personal items and not vehicles. A garage also creates an opportunity for unauthorized expansion of the ADU after construction and occupancy. Finally, not counting the covered parking towards the ADU size could result in overly large structures, with massing that is incompatible with its context and undesirable.

If the goal is to find ways to encourage homeowners to develop covered parking when they construct an accessory unit, where they otherwise would not be required to provide covered parking, carports may be an avenue to consider. Carports are not as easily converted to habitable space outside the permit process. As an alternative, the City could identify a maximum size of garage that is not counted toward an ADU's size; staff recommend attached garages be no more than 220 square feet.

The PTC may suggest staff explore the carport, maximum garage size, or other options.

ii. Privacy

ADUs can impact the privacy of neighboring homes, especially when close to the property line. The ordinance recognizes and, to the extent feasible, mitigates these impacts by establishing objective measures that are easy to implement. The ordinance relies heavily on the words “second story” which some applicants have interpreted as not applicable to a loft space in an ADU. The PTC is requested to discuss the potential benefits and consequences of including “loft space” specifically in these regulations, and associated window regulations. Staff would recommend clarifying when privacy measures apply or adding additional language as an amendment to section 18.09.040.

In accordance with state law, privacy measures are only applied to ADUs that are subject to local standards (Chapter 18.09, Table 2). PAMC Section 18.09.040, subdivision (j) describes these measures and their applicability in greater detail.

The architect group also suggested additional ways to address privacy concerns. The group's suggestions are as follows:

- a) Windows obscured when sills are below five feet above adjacent finish floor on walls parallel to property lines when the structure is within eight feet of a property line.

- b) Set sills at five feet above adjacent finish floor on walls parallel to property lines when the structure is within eight feet of a property line.
- c) Sleeping rooms endeavor to have egress windows located on walls non-adjacent to property lines.
- d) Use of (operable) skylights in bathrooms and other spaces where windows could be considered optional.
- e) No exterior lighting mounted above seven feet on walls adjacent to property lines to keep it at or below maximum fence height.

The City's current privacy regulations require fully obscured windows for any second story/loft area facing adjacent properties. The architect group's proposal would reduce this requirement to only the portion of the window above five feet and only when less than eight feet from a property line. In the Individual Review process for two story homes, staff notes the five feet sill height requirement does sufficiently reduce privacy impacts for a full second story.

In loft areas, however, a person's eye level is much higher; therefore, staff would recommend the PTC support the existing Code which requires the obscure glazing on the full window. This would simplify pre-application discussions with applicants, minimize neighbor conflicts, and reduce post-construction site visits. Establishing a distance requirement that claims privacy is no longer an issue after a certain distance severely restricts staff's ability to best implement these practices and sets a bad precedent for where the City thinks privacy is no longer an issue that residents may not agree with

iii. Increasing the Exemption for Development Impact Fees

The State's 2020 laws exempt payment of impact fees for ADUs having less than 750 sf of floor area. For units equal to and greater than 750 sf, the impact fees charged must be proportional in size to the main house. The architect group suggested increasing exemptions beyond 750 sf. As seen in the City's published Quarterly ADU reports, the average unit size tends to be 446 square feet. Therefore, increasing the floor area exemption will not affect a substantial number of applications that the City receives. With the updated ADU ordinance, staff anticipates that the overall size of units will increase such that the average ADU size will be closer to the 750 square foot exemption.

While increasing the exemption for ADUs to include units of any size is an option, it is worth recognizing impact fees pay for the increased use of and need for parks, community centers, libraries, public safety, and general government services that would come with an increase in population caused by the construction of additional units. Staff does not support increasing the size exemption beyond 750 square feet for impact fees. Such fee reductions would reduce revenue for the City's programs that would serve the new ADU tenants. Replacing that lost revenue would need to come either from the City's General Fund or other revenue source. Given this, staff do not support this recommendation.

For reference, prior to 2018, Development Impact fees were charged for all ADUs; the cost was roughly \$7,000 to \$12,000 for a new ADU, depending on whether the property was within any traffic impact districts. In 2018, Palo Alto updated its ADU ordinance to enable JADUs and garage conversions that did not expand the square footage of the unit to be exempt from impact fees. This captured a fair number of ADU applications.

iv. Refunding Prior Development Impact Fees

The updated 2020 state law eliminated development impact fees for any unit less than 750 square feet. The architect group indicated a desire for Council to refund all development impact fees assessed for the units developed prior to the state law changes.

To refund all development impact fees that were paid for units less than 750 square feet before 2020, City Council would need to fill the gap refunds would create in the General Fund. According to Planning's Accela database, this would be approximately \$1 million. Effectively, this would mean the fees for these units would be paid by Palo Alto taxpayers. Staff do not support this recommendation.

v. Allowing Doorways Between Units

The architect group requested that the City enable attached ADUs to have a doorway or other means of access between the primary and secondary unit. Previous City ordinances and state law define ADUs as independent and self-sustaining units. Staff interpreted this to mean that no doorway connection is allowed between the primary and secondary units. The City's most recent ADU ordinance used more explicit language (PAMC 18.09.030(b)(g) and 18.09.040(e)) codifying staff's understanding that a doorway, or any means of access, is not allowed between the primary dwelling unit and an attached ADU.

Staff and the PTC noted discomfort with connections between the primary and secondary units. The concern expressed previously is that the units will be treated as an addition to the house, rather than as a separate housing unit. Given that the City does not have a program or the staffing capability in place to confirm how these units are used, staff does not recommend modifying this Code Section.

Topics Requiring Additional Analysis

i. Incentives to Maintain Street-side Setback on Corner Lots

Corner lots are unique, having both a front yard and street-side yard that are visible to and impact the streetscape. Palo Alto's local code generally provides restrictions specific to street side yards, including the required minimum setback. The California Housing and Community Development Department (HCD) has indicated that state law does not recognize this unique feature; the state law treats street-side yards as equivalent to other interior rear and side yards. Thus, the maximum setback that can be imposed on an ADU is four-feet from the

property line—even on a street-side yard.

This State law also impacts special setbacks, such as along Alma and Embarcadero. These streets, among others, require special setbacks that anticipate future road widening. On corner lots in these areas, ADUs may be constructed in the special setback as the City is not imposing any restriction on ADU development on street-side yards. In fact, some argue that the City is prohibited from placing further restrictions on street-side yards.

ADUs constructed on corner lots on the street facing side yard just 4 feet from the property line will be disruptive to the city’s development pattern and contrary to its standing urban design policies. Staff recommend developing strategies that incentivize construction of ADUs further back than four feet. Below are three incentive-based ideas to consider.

a. Removing Requirement that Garages be converted from “Existing” Garages/Carports on Corner Lots

Current state and local regulations require that there must be an “existing” garage or carport in order to benefit from reduced parking requirements; specifically not requiring covered parking for an ADU or JADU. In maintaining this requirement, it ensures that a structure must first be built and then later modified in order to benefit from the reduced parking requirements.

From a process standpoint, this means applicants must apply for two different permits. Imagine a property owner creating a home with a detached garage; then later applying for a permit to convert the garage to an ADU. This adds time, cost, and barriers to unit production without adding any value to the public. Instead the City could, as an incentive for properties to construct ADUs set back 16 feet from the lot line on the street-side, allow the construction of a new home along with an ADU at the same time. This incentive would only affect corner lots where a new primary home is constructed; as existing corner lots are allowed to build new ADUs without replacing any lost parking.

b. Providing Additional Bonus FAR and/or Reduced Setbacks for ADUs on Corner Lots

Another incentive to consider would be to provide for additional floor area or more flexible setbacks along the rear and side yards (i.e. less than four feet). Given corner lots’ present design challenges, increasing any bonus square footage may not eliminate the barriers inherent in developing a corner lot property. However, by providing a reduced setback(s) along the rear and interior side yards (e.g. no setbacks for accessory units on a corner lot) residents may feel more compelled to develop units in conformance with Palo Alto’s intended neighborhood context.

c. Allowing the Main House to have a 10 Foot Street-Side Setback if combined with an ADU/JADU

A third incentive for corner lots could be to allow the main house to have a reduced street-side

setback only under the condition that an accessory unit is also developed on the property with a 10-foot street side setback (instead of just 4 feet). Staff believes that providing this incentive will help to simultaneously encourage accessory unit development and provide additional flexibility to develop corner lots, while also supporting the City's streetscape and urban design principles established by the front yard setback requirement. Typically, a home on a corner lot is set back 16 feet from the property line on the street side yard. Having the distance become 10 feet, but aligned for both the ADU and primary home will have lesser impact and more visual continuity than having an ADU at 4-foot setback and the home at 16 feet on the street side.

Any one of these corner lot policies, or combination thereof, could provide an adequate enough incentive for a homeowner to not propose a four foot setback in the street-side yard. However, if PTC suggests staff continue enabling the four foot setback for street sides, as suggested by the Housing and Community Development Department, then these items need not be addressed. It would instead be important to identify that these reduced setbacks are applicable to standard corner lots as well as those with a special setback along the street-side frontage.

ii. Retracting Prior Deed Restrictions

The updated 2020 state law suspends owner occupancy requirements until January 1, 2025 for permits issued after January 1, 2020. Previously, policy stated a home must be owner occupied in order to construct an ADU. This restriction was included in deed-restrictions. The architect group indicated a desire for Council to rescind all prior deed restrictions that require owner occupancy.

Staff could require a homeowner to fill out, and have notarized, a designated form the City remove the deed restriction and owner occupancy requirements for applicants who received permits prior to the new state regulations. This would be an administrative process that the City would create for recordation at the Santa Clara County Recorder's office. The City would charge an hourly fee to process this type of application.

iii. Flood Zone Height Extension

The PTC is asked to consider if detached ADUs in flood zones should have the same height allowances as primary dwelling units. Likewise, the PTC is asked to consider if the height allowance should be conferred to existing structures planned for conversion to an ADU.

Currently, single family residences located in a flood zone can benefit from added height allowances in the Code. Sections 18.10 and 18.12 both allow for the maximum heights of the primary residence to be increased by one half the amount required to meet a property's base flood elevation (BFE). In addition to local law, the California Residential Code (R322.2) requires that "Buildings and structures in flood hazard areas, including flood hazard areas designated as Coastal A Zones, shall have the lowest floors elevated to or above the base flood elevation plus 1 foot (305 mm), or the design flood elevation, whichever is higher." This impacts the base flood elevation, and the additional height conferred to a home in the flood hazard area.

This height allowance, however, is not afforded to accessory buildings which are limited to a maximum height of 12 feet above grade when located within a property's setback. The 12-foot height limit applies to sheds, garages, and other such structures. In accordance with local and state laws ADUs have a 16-foot height limit.

Existing accessory buildings—that are not habitable living space—located in the flood zone that are converted to ADUs must meet the elevation requirements. To meet this standard, an existing structure may need to be raised. Alternatively, under current law, the accessory building could be demolished and reconstructed within the 16-foot height limit.

Staff do not recommend conferring the same height allowances to new, detached ADUs in flood zones as are conferred to single family dwellings. Such allowance is not required to accommodate an ADU. Furthermore, and more specifically, staff are concerned that providing additional height will impact the privacy of neighboring properties.

In the flood hazard area, new, detached ADUs are restricted to a maximum height of 16 feet. In nearly all cases, this height can accommodate the necessary flood elevation while still having a ceiling height for a quality housing unit (sloped properties have other dynamics and applicable codes). Similarly, existing structures can be demolished and reconstructed with the proper base floor elevation without being significantly impacted by the 16-foot height limit. It is true, however, that units located in a flood zone may not be able to accommodate a second story within the 16-foot height limit while also raising the foundation as necessary. Again, not having a second story would minimize privacy concerns.

The PTC may wish to consider recommending Council allow accessory dwelling units increased height above grade. If this is the will of the PTC, staff will return with specific recommendations. For example, for specific types of units such as conversions of existing structures, the PTC could recommend height increases only if the existing structure meets or exceeds the four-foot minimum ADU setback. Staff would also establish parameters or limits such that "X square foot" additions are allowed a height increase to "Y feet above grade" that would supersede maximum allowances established elsewhere in the code.

Environmental Review

This Study Session for the ADU 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)(3), 15301, 15302 and 15305 because it implements 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.

Public Notification, Outreach & Comments

The Palo Alto Municipal Code requires notice of this public hearing be published in a local paper and mailed to owners and occupants of property within 600 feet of the subject property at least ten days in advance. Notice of a public hearing for this project was published in the *Daily Post* on January 29, 2021 which is 12 days in advance of the meeting. Postcard mailing occurred on January 27, 2021, which is 14 in advance of the meeting.

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Attachments:

- Attachment A: Ordinance 5507 (PDF)
- Attachment B: Task Force Letter (PDF)

⁹ Emails may be sent directly to the PTC using the following address: planning.commission@cityofpaloalto.org

Ordinance No. 5507

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. Findings and Declarations. The City Council finds and declares as follows:

- A. Housing in California is increasingly unaffordable. In 2017, the average California home cost about 2.5 times the national average home price and the monthly rent was 50% higher than the rest of the nation. Rents in San Francisco, San Jose, Oakland, and Los Angeles are among the top 10 most unaffordable in the nation.
- B. Housing in Palo Alto is especially unaffordable. The average Palo Alto home currently costs about 8 times the national average home price and the monthly rent is about 2.5 times the national average.
- C. Palo Alto has a jobs/housing imbalance. When addressing this imbalance, the City must not only provide housing but also ensure affordability.
- D. Assembly Bills (“ABs”) 68, 587, 671, and 881 and Senate Bill (“SB”) 13 (“State ADU Law”) pertain to accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”) and were approved by the California Legislature on September 13, 2019 and signed by the Governor on October 9, 2019. These bills, codified primarily in California Government Code sections 65952.2 and 65952.22, are intended to spur the creation of lower cost housing by easing regulatory barriers to the creation of ADUs and JADUs.
- E. This ordinance is adopted to comply with the mandates of the State ADU Law.

SECTION 2. 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 deleted in its entirety.

SECTION 3. Chapter 18.09 (Accessory Dwelling Units and Junior Accessory Dwelling Units) of Title 18 (Zoning) of the Palo Alto Municipal Code (“PAMC”) is added to read:

18.09.010 Purpose

The intent of this Chapter is to provide regulations to accommodate accessory and junior accessory dwelling units (ADU/JADU), in order to provide for variety to the city's housing stock and additional affordable housing opportunities. These 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 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(s) on the site and with other structures in the area.

18.09.020 Applicable Zoning Districts

The establishment of an accessory dwelling unit is permitted in zoning districts when single-family or multi-family residential is a permitted land use.

18.09.030 Units Exempt from Generally Applicable Local Regulations

(a) Government Code section 65852.2, subdivision (e) provides that certain units shall be approved notwithstanding state or local regulations that may otherwise apply. The following types of units shall be governed by the standards in this section. In the event of a conflict between this section and Government Code section 65852.2, subdivision (e), the Government Code shall prevail.

- i. An ADU or JADU within the existing space of a single-family dwelling or an ADU within the existing space of an accessory structure (i.e. conversion without substantial addition).
- ii. An ADU or JADU within the proposed space of a single-family dwelling.
- iii. A detached, new construction ADU on a lot with a proposed or existing single-family dwelling, provided the ADU does not exceed 800 square feet, sixteen feet in height, or four-foot side and rear (i.e. interior) setbacks.
- iv. ADUs created by conversion of portions of existing multi-family dwellings not used as livable space.
- v. Up to two detached ADUs on a lot with an existing multi-family dwelling.

(b) The Development Standards for units governed by this section are summarized in Table 1.

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Table 1: Development Standards for Units Described in Government Code Section 65852.2(e)

| | Single-Family | | | Multi-Family | |
|---------------------------|--|---|--|---|--|
| | Conversion of Space Within an Existing Single-Family Home or Accessory Structure | Construction of Attached ADU Within the Space of a Proposed Single-Family Home | New Construction of Detached ADU | Conversion of Non-Habitable Space Within Existing Multi-family Dwelling Structure | Conversion or Construction of Detached ADU |
| Number of Units Allowed | 1 ADU and 1 JADU | | | 25% of the existing units (at least one) | 2 |
| Minimum size ¹ | 150 sf | | | | |
| Maximum size ¹ | N/A ² | | 800 sf | N/A | |
| Setbacks | N/A, if condition is sufficient for fire and safety | Underlying zone standard for Single Family Home (ADU must be within space of Single-Family Home) | 4 feet from side and rear lot lines; underlying zoning for front setback | N/A | 4 feet from side and rear lot lines; underlying zoning for front setback |
| Daylight Plane | N/A | | N/A | | |
| Maximum Height | N/A | | 16 ³ | N/A | 16 ⁴ |
| Parking | None | | | | |
| State Law Reference | 65852.2(e)(1)(A) | 65852.2(e)(1)(A) | 65852.2(e)(1)(B) | 65852.2(e)(1)(C) | 65852.2(e)(1)(D) |

- (1) Lofts where the height from the floor level to the underside of the rafter or finished roof surface is 5' or greater shall count towards the unit's floor area.
- (2) Up to 150 sf may be added for the purpose of ingress and egress only.
- (3) Units built in a flood zone are not entitled to any height extensions granted to the primary dwelling.

- (c) Development standards stated elsewhere in this Section or Title 18, including standards related to FAR, lot coverage, and privacy, are not applicable to ADUs or JADUs that qualify for approval under this section.
- (d) The establishment of accessory dwelling units and junior accessory dwelling units pursuant to this section shall not be conditioned on the correction of non-conforming zoning conditions; provided, however, that nothing in this section shall limit the authority of the Chief Building Official to require correction of building standards relating to health and safety.
- (e) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. Nothing in this section shall preclude the Fire Marshal from accepting fire sprinklers as an alternative means of compliance with generally applicable fire protection requirements.
- (f) Rental of any unit created pursuant to this section shall be for a term of 30 days or more.
- (g) Attached units shall have independent exterior access from a proposed or existing single-family dwelling. Except for JADUs, attached units shall not have an interior access point to the primary dwelling (e.g. hotel door or other similar feature/apprtenance).
- (h) Conversion of an existing accessory structure pursuant to Government Code section 65852.2(e)(1)(A) may include reconstruction in-place of a non-conforming structure, so long

as the renovation or reconstruction does not increase the degree of non-compliance, such as increased height, envelope, or further intrusion into required setbacks.

- (i) Street addresses shall be assigned to all units prior to building permit final to assist in emergency response.
- (j) The unit shall not be sold separately from the primary residence.
- (k) Replacement parking is not required when a garage, carport, or covered parking structure is converted to, or demolished in conjunction with the construction of, an ADU.
- (l) JADUs shall comply with the requirements of Section 18.09.050.

18.09.040 Units Subject to Local Standards

(a) This section shall govern applications for ADUs and JADUs that do not qualify for approval under section 18.09.030 and for which the City may impose local standards pursuant to Government Code section 65852.2, subdivisions (a) through (d).

(b) The Development Standards for units governed by this section are provided in Table 2.

Table 2: All other Units

| | Attached | Detached | JADU |
|--|--|--|-----------------------------|
| Number of Units Allowed ¹ | 1 | | 1 |
| Minimum size | 150 sf | | |
| Maximum size | 900 sf (1,000 sf for two or more bedrooms); no more than 50% of the size of the single-family home | 900 sf (1,000 sf for two or more bedrooms) | 500 sf |
| Setbacks | 4 feet from side and rear lot lines; underlying zone standard for front setback | | |
| Daylight Plane Initial Height Angle | 8 feet at lot line | | |
| | 45 degrees | | |
| Maximum Height ³ Res. Estate (RE) Open Space (OS) All other eligible zones | 30 feet | | |
| | 25 feet | | |
| | 16 feet | | |
| Parking | None | | |
| Square Footage Exemption | Up to 800 sf ⁽⁴⁾ | | Up to 500 sf ⁽⁴⁾ |

- (1) An attached or detached ADU may be built in conjunction with a JADU on a lot with an existing or proposed single family home
- (2) Lofts where the height from the floor level to the underside of the rafter or finished roof surface is 5' or greater shall count towards the unit's floor area.
- (3) Units built in a flood zone are not entitled to any height extensions granted to the primary dwelling.
- (4) Lots with both an ADU and a JADU may exempt a maximum combined total of 800 square feet of the ADU and JADU from FAR, Lot Coverage, and Maximum House Size calculations.

(c) A single-family dwelling shall exist on the lot or shall be constructed on the lot in conjunction with the construction of an ADU/JADU.

- (d) ADU and/or JADU square footage shall not be included in FAR, Lot Coverage, and Maximum House Size calculations for a lot with an existing or proposed single family home, up to the amounts stated in Table 2. ADU and/or JADU square footage in excess of the exemptions provided in Table 2 shall be included in FAR, Lot Coverage, and Maximum House Size calculations for the lot.
- (e) Attached units shall have independent exterior access from a proposed or existing single-family dwelling. Except for JADUs, attached units shall not have an interior access point to the primary dwelling (e.g. hotel door or other similar feature/appurtenance).
- (f) 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.
- (g) 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.
- (h) Noise-producing equipment such as air conditioners, water heaters, and similar service equipment, shall be located outside of the setbacks for the ADU/JADU. All such equipment shall be insulated and housed, except that the planning director may permit installation without housing and insulation, provided that a combination of technical noise specifications, location of equipment, and/or other screening or buffering will assure compliance with the city's Noise Ordinance at the nearest property line. All service equipment must meet the city's Noise Ordinance in Chapter 9.10 of the Municipal Code.
- (i) Setbacks
 - i. Detached units shall maintain a minimum three-foot distance from the primary unit, measured from the exterior walls of structures.
 - ii. No basement or other subterranean portion of an ADU/JADU shall encroach into a setback required for the primary dwelling.
 - iii. Projections, including but not limited to windows, doors, mechanical equipment, venting or exhaust systems, are not permitted to encroach into the required setbacks, with the exception of a roof eave of up to 2 feet.
- (j) Design
 - i. Except on corner lots, the unit shall not have an entranceway facing the same lot line (property line) as the entranceway to the main dwelling unit unless the entranceway to the accessory unit 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.
 - ii. Privacy
 - A. Second story doors and decks shall not face a neighboring dwelling unit. Second story decks and balconies shall utilize screening barriers to prevent views into adjacent properties. These barriers shall provide a minimum five-foot, six-inch, screen wall from the floor level of the deck or balcony and shall not include perforations that would allow visibility between properties.

- B. Second story windows, excluding those required for egress, shall have a five-foot sill height as measured from the second-floor level, or utilize obscured glazing on the entirety of the window when facing adjacent properties. Second story egress windows shall utilize obscured glazing on the entirety of the windows which face adjacent properties.
- C. Second story windows shall be offset from neighbor's windows to maximize privacy.

(k) Parking

- i. Replacement parking is not required when a garage, carport, or covered parking structure is converted to, or demolished in conjunction with the construction of, an ADU.
- ii. Replacement parking is required when an existing attached garage is converted to a JADU. These replacement spaces may be provided as uncovered spaces in any configuration on the lot including within the front or street side yard setback for the property.
 - A. The Director shall have the authority to modify required replacement parking spaces by up to one foot in width and length upon finding that the reduction is necessary to accommodate parking in a location otherwise allowed under this code and is not detrimental to public health, safety or the general welfare.
 - B. 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.
- iii. When parking is provided, the 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 will result in fewer environmental impacts such as paving, grading or tree removal.
- iv. If covered parking for a unit is provided in any district, the maximum size of the covered parking area for the accessory dwelling unit is 220 square feet. This space shall count towards the total floor area for the site but does not contribute to the maximum size of the unit unless attached to the unit.

(l) Miscellaneous requirements

- i. Street addresses shall be assigned to all units prior to building permit final to assist in emergency response.
- ii. The unit shall not be sold separately from the primary residence.
- iii. Rental of any unit created pursuant to this section shall be for a term of 30 days or more.
- iv. The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. Nothing in this section shall preclude the Fire Marshal from accepting fire sprinklers as an alternative means of compliance with generally applicable fire protection requirements.

18.09.050 Additional Requirements for JADUs

- (a) A junior accessory dwelling unit shall be created within the walls of an existing or proposed primary dwelling.
- (b) The junior accessory dwelling unit shall include an efficiency kitchen, requiring the following components: A cooking facility with appliances, and; food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.
 - i. A cooking facility with appliances shall mean, at minimum a one burner installed range, an oven or convection microwave, a 10 cubic foot refrigerator and freezer combination unit, and a sink that facilitates hot and cold water.
 - ii. A food preparation counter and storage cabinets shall be of reasonable size in relation to a JADU if they provide counter space equal to a minimum 24-inch depth and 36-inch length.
- (c) 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.
- (d) The owner of a parcel proposed for a junior accessory dwelling unit shall occupy as a 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) 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 (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 4. Subsection (g) of Section 16.58.030 of Chapter 16.58 (Development Impact Fees) of Title 16 (Building) of the Palo Alto Municipal Code (“PAMC”) is amended to read:

- (f) Accessory dwelling units (ADU) less than 750 square feet in size. Any impact fees to be charged for an accessory dwelling unit of 750 square feet or more shall be proportional to the square footage of the primary dwelling unit ~~established by the conversion of an existing garage or carport, provided that the existing garage or carport was legally constructed, or received building permits, as of January 1, 2017, and is converted to an ADU with no expansion of the existing building envelope;~~

SECTION 5. Subsections (a)(4) and (a)(75) of Section 18.04.030 (Definitions) of Chapter 18.04 (Definitions) of Title 18 (Zoning) of the Palo Alto Municipal Code (“PAMC”) is amended to read:

[. . .]

- (4) “Accessory dwelling unit” means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-

family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

In some instances this Code uses the term second dwelling unit interchangeably with accessory dwelling unit. For the purposes of this definition, in order to provide “complete independent living facilities,” a dwelling unit shall not have an interior access point to another dwelling unit (e.g. hotel door or other similar feature/appurtenance).

[. . .]

(75) “Kitchen” means a room designed, intended or used for cooking and the preparation of food and dishwashing. Kitchen facilities include the presence of major appliances, utility connections, sink, counter, for storing, preparing, cooking, and cleaning.

(A) For ADUs, major appliances shall mean a minimum two burner installed range, and an oven or convection microwave, as well as a minimum 16 cubic foot freezer and refrigerator combination unit. Kitchens shall also include counter space for food preparation equal to a minimum 24-inch depth and 36-inch length, and a sink that facilitates hot and cold water.

[. . .]

SECTION 6. 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 7. 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 8. 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)(3), 15301, 15302 and 15305 because it constitutes 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.

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SECTION 9. This ordinance shall be effective on the thirty-first date after the date of its adoption.

INTRODUCED: October 5, 2020

PASSED: October 26, 2020

AYES: CORMACK, DUBOIS, FILSETH, FINE, KNISS, KOU, TANAKA

NOES:

ABSENT:

NOT PARTICIPATING:

ATTEST:

DocuSigned by:
Beth Minor
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City Clerk

DocuSigned by:
Adrian Fine
289F2F8A891E448...
Mayor

APPROVED AS TO FORM:

DocuSigned by:
Albert Yang
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Assistant City Attorney

APPROVED:

DocuSigned by:
Ed Shibada
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City Manager

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Director of Planning & Development Services

Certificate Of Completion

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| Source Envelope: | |
| Document Pages: 9 | Signatures: 5 |
| Certificate Pages: 2 | Initials: 0 |
| AutoNav: Enabled | Envelope Originator: |
| Envelopeld Stamping: Enabled | Kim Lunt |
| Time Zone: (UTC-08:00) Pacific Time (US & Canada) | 250 Hamilton Ave |
| | Palo Alto , CA 94301 |
| | kimberly.lunt@cityofpaloalto.org |
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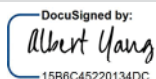
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| Storage Appliance Status: Connected | Pool: City of Palo Alto | Location: DocuSign |

Signer Events

Albert Yang
 Albert.Yang@CityofPaloAlto.org
 Assistant City Attorney
 City of Palo Alto
 Security Level: Email, Account Authentication
 (None)

Signature


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Jonathan Lait
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 Interim Director Planning and Community
 Environment
 City of Palo Alto
 Security Level: Email, Account Authentication
 (None)

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Electronic Record and Signature Disclosure: Not Offered via DocuSign

Ed Shikada
 ed.shikada@cityofpaloalto.org
 Ed Shikada, City Manager
 City of Palo Alto
 Security Level: Email, Account Authentication
 (None)


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Adrian Fine
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 Security Level: Email, Account Authentication
 (None)

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City Of Palo Alto ADU Ordinance, First Reading, Meeting Date 10/5/2020 Agenda Item #8

To the Members of The Palo Alto City Council:

We want to begin by expressing commendation for what has been done to date by Council and PTC but particularly by Staff. This is a complex political and technical topic and we consider the ordinance to be mostly in alignment with the State Statutes. We applaud the effort where choices have been made to exceed limitations in a reasonable way, and understand clearly the boundaries established by State legislation.

What we need to remember is that the State is promoting this legislation to incentivize and streamline the creation of ADUs. We should also remember to view all of this through the local lens of prioritizing residential development as a clearly stated Palo Alto goal. As professionals, we seek a clear and precise set of rules we can rely on in the design process to achieve a predictable result for our clients.

A number of individuals spoke in warning when we came before Council in January, and we have been proven correct in stating Palo Alto's urgency ordinance was seriously flawed. Many elements did not properly conform to State legislation. Since then, Staff has adjusted their interpretations, in some cases after being challenged by the professional community, and partly when influenced by input from HCD. The updated document before you makes good progress toward alignment, but we still fall short in some important areas.

The Palo Alto ADU Task Force (PAADUTF), now approximately 20 individuals and growing, was created out of a grassroots desire for peer communication between professionals who are active in ADU development. Sharing information regarding regulatory interpretations, design methodology, and construction strategy, this group came together to evaluate the August 17 staff report and associated ordinance language. Unfortunately, we were not aware of the May 27 PTC hearing and recognize this was a missed opportunity to interact with staff. Over the course of five meetings conducted during August and September, the group developed a narrative along with an annotated review of the proposed ordinance. As indicated, two additional meetings were conducted with staff included to review and discuss the information. Several significant points from that discussion have been captured in your staff report. There are others that were not, that we nonetheless feel are critical to implement as part of this update.

Through direct and frequent interaction with HCD and supported by other experts active in ADU regulatory action, The PAADUTF has identified several specific areas where the proposed local ordinance departs from the State intent. We recognize Staff feels they have rigorously evaluated the language presented to you tonight, but we do not believe they are entirely correct. The HCD ADU Handbook, released just last week, seems to confirm a few areas where the proposed language is in conflict with HCD's guidance. As you have heard, if inconsistency is not corrected, there is a significant possibility the ordinance will be challenged and potentially deemed invalid.

The most significant issue is the approach taken in the ordinance regarding the Statewide Exemption ADU and how that language relates to all other units, particularly those exceeding 800 square feet.

Gov. Code, § 65852.2, subd. (c)(2)(C) *“Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.”*

Staff's interpretation of this section includes a vision that the Exemption Unit is an isolated obligation. In fact, the Statute language says clearly "**at least**", so we have been told any attempt at creating limitations for units which are larger (daylight plane restrictions, placement on the lot, a limitation for subterranean construction, or basement construction) is simply inconsistent with the State Statute.

Another significant departure is the approach taken in regard to 2-story construction. Staff is seeking to create limits on the basis of privacy, but the restrictions they have offered are inconsistent with the statutes. It is important to remember that the State put these new rules in place to shake up the norms, and we need to understand and align with that intent. As an example, HCD has described a scenario where if a lot is so small that 800 sf cannot be accommodated on one level, then 2-stories can be the only option. Because of this, HCD has confirmed there can be no restriction against 2-story units, under any condition. Whether in conformance with an Exemption ADU or larger, 2-story construction must be embraced. We would offer that Santa Cruz has done an excellent job in this area and has elected to allow 22' of height with additional restrictions for distance from the property line once beyond 16' of height. (<https://www.cityofsantacruz.com/government/city-departments/planning-and-community-development/accessory-dwelling-units-adus>)

Again, there are a number of specific areas of improvement in the proposed ordinance, and we applaud that. What we ask of you tonight is the consideration of 15 areas of concern we identify below, some of which have already been described by Staff. We believe all of these are important and nuanced topics that are truly necessary to implement. Some are changes only included to simplify the development of ADUs, but others are very technical responses to costly or avoidably complex limitations. We ask that you remember our pace is 1,000 units short of our RHNA requirement and that we need to do better and move faster. This set of considerations provides an easy way to encourage the development of additional units with minimal collateral impact when compared to larger, more dense projects with their significant timelines and approval hurdles.

15 Suggestions for Consideration:

1. Alignment with Gov. Code, § 65852.2, subd. (c)(2)(C)

- a. Remove language that improperly restricts daylight plane, placement on the lot, limitation for subterranean construction, or basement construction.

2. Two-Story

- a. Provide definition for subterranean 1st level construction. (1st level partially recessed in the ground)
 - i. Clarify how deep this can be without being interpreted as a 'basement'
 1. Suggest 36" max below existing natural grade as the threshold
- b. Confirm Staff's recommendations for privacy management
 - i. Windows obscured when sills are below 5' above adjacent finish floor on walls parallel to property lines when the structure is within 8' of a property line
 - ii. Set sills at 5' above adjacent finish floor on walls parallel to property lines when the structure is within 8' of a property line
 - iii. Sleeping rooms endeavor to have egress windows located on walls non-adjacent to property lines
 - iv. Use of (operable) skylights in bathrooms and other spaces where windows could be considered optional
 - v. No exterior lighting mounted above 7' on walls adjacent to property lines to keep it at or below maximum fence height
- c. Consider adopting language similar to that used in Santa Cruz:

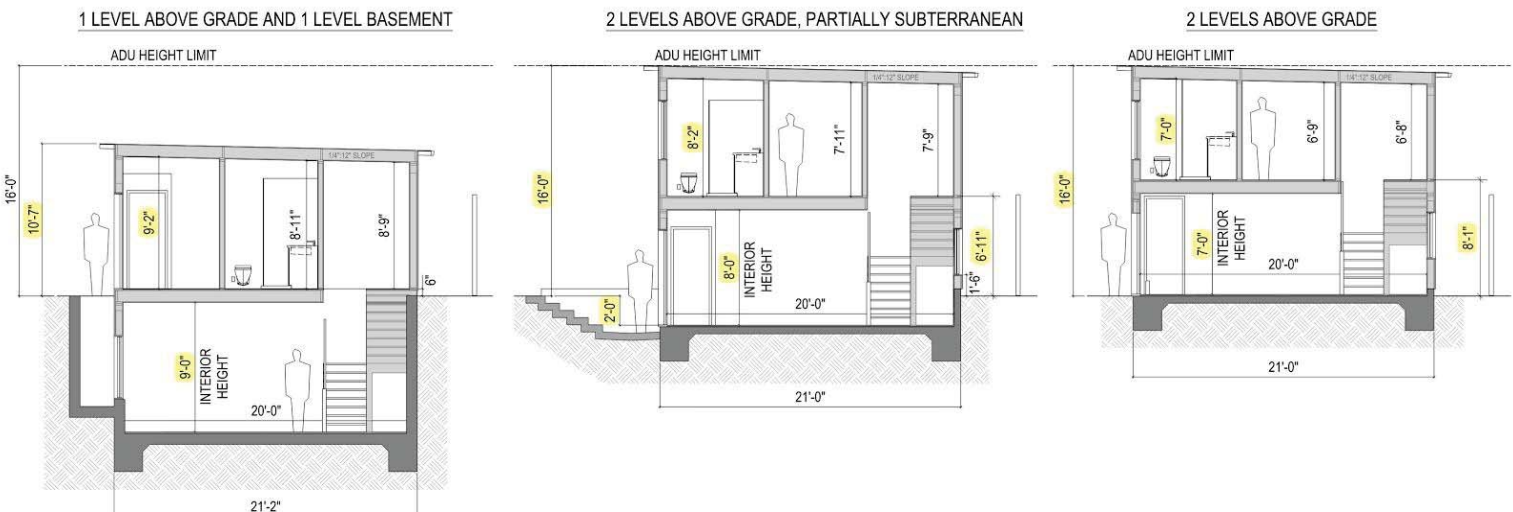
- i. ADUs higher than one story may be up to 22' tall at the peak, measured from average grade, and any portion of the structure that exceeds 16' in height must be set back a minimum of 5' from the side yard property line and 10' from the rear yard property line.
- ii. Exception: An ADU that faces an alley or street can be up to 22' tall and any portion of the structure that exceeds 16' in height must be set back 5' from the side and rear property lines.
- iii. Detached New Construction ADUs higher than one story shall limit the major access stairs, decks, entry doors, and windows to the interior of the lot or an alley if applicable. Windows that impact the privacy of the neighboring side or rear yards should be minimized or otherwise restricted as in (b.) above

3. Fees

- a. Significant cost is incurred relative to fees for Plan Check, Building Permit, Planning Impacts, Specialty Consultants, School Fees, etc. They are not always levied in a relative fashion.
 - i. Why not just charge a flat fee based on ADU floor area?
 - ii. Included in that methodology, remove some of the fees to further incentivize ADU construction.
- b. It is important to note that the proportionate language in regard to Planning Impact Fees for units >750 sf contained in Gov. Code, § 65852.2, subd. (f)(3)(A) creates a significant disincentive for individuals with existing small homes. Please note the following examples:
 - i. Project #1, Demolish an existing detached garage and replace it with a new conforming detached ADU.
 1. **Main house at 3,427 sf and new ADU at 800 sf = 23.3% = \$4,511.47**
 - ii. Project #2, Convert an existing detached garage and construct an addition to create a new detached ADU.
 1. **Main house at 1,209.6 sf and new ADU at 882 sf = 73.0% = \$14,101.46**
- c. *Both are roughly the same scope but because of the more modest house on Project #2, the weighted ratio pushes the fee to be \$10k more.*
- d. Add to this about \$9,000 for: School Impact Fees (\$3,000), Plan Check Fees (\$2,800) and Building Permit Fees (\$3,300) - That puts the fees for Project #2 at around \$23k, or almost 11% of the total anticipated project construction cost!

4. Subterranean/Basement Construction

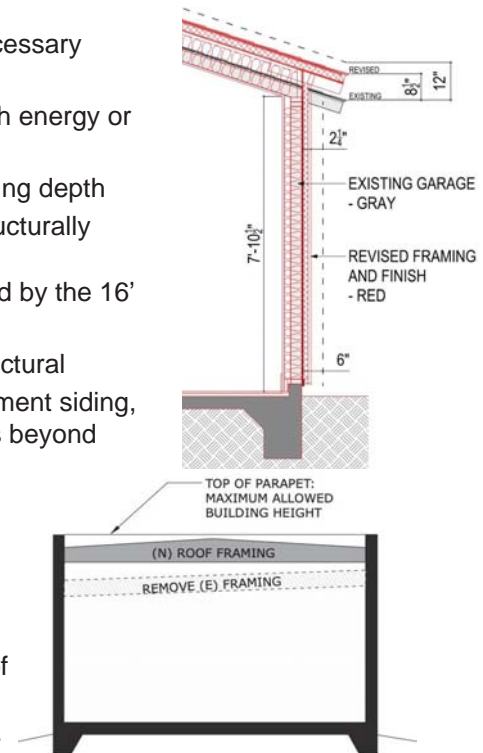
- a. Without some flexibility in this, floor to ceiling heights are substandard (+/- 7'-0"). Codifying this in a thoughtful way can provide tangible improvements in privacy management and enhancement to overall massing.
- b. Partially subterranean 1st floor lowers 2nd floor and allows 8' ceilings with a reasonable roof slope



- c. Adding a basement could reduce an entire floor of height/massing
 - 1. Reduce impact to neighbors
 - 2. Required exclusionary excavation techniques remove any concerns related to dewatering
- ii. Tree root impacts could be conditioned since the 800 sf exemption ADU is not obligated in regard to underground space
- iii. Add clarifying language requiring the interior basement FA to count toward the 800 sf exemption triggering the additional area beyond 800 sf to be deducted from overall site FA
- iv. No further encroachment other than that required for emergency egress.
- v. Consider, as an additional incentive, allowing a 1200 sf max ADU if 50% of FA is below grade?

5. Minimal increase to non-conforming structures

- a. Create an allowance to avoid complete demolition or unnecessary complexity due to energy or structural upgrades
 - i. Clarify that it can only be accessed for compliance with energy or structural obligations
 - 1. Grant an additional 12" of height – increase framing depth above top plate rather than hanging, which is structurally complex and reduces ceiling heights.
 - 2. Note that the structure height will still be restricted by the 16' height limit.
 - 3. Grant an additional 6" in plan on any side for structural seismic sheathing, exterior insulation, or replacement siding, so long as no portion of the structure encroaches beyond the property line.
 - ii. Add a clarification regarding structures with existing parapets. A non-conforming portion of the structure may be modified up to the height of the existing parapet. This can be done without creating an increased impact to neighbors. Previous interpretation of 'shrink-wrap' rules should not apply to recessed roof areas below the top of the parapet. This flexibility will allow the interior to be a reasonable residential height.



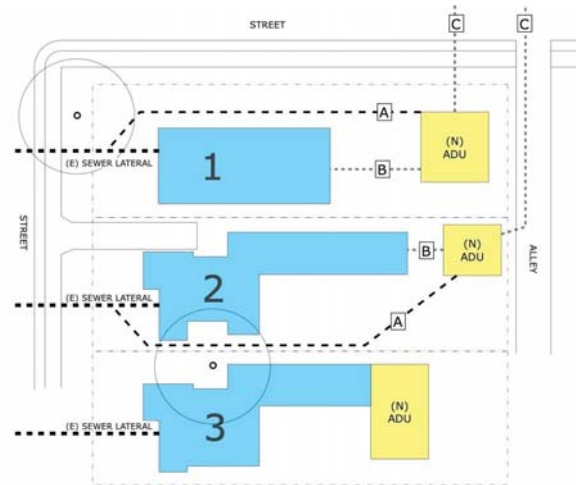
6. Utility Connections

- a. Separate meters placed only at the owner's discretion
- b. The requirement to provide a separate sewer line for detached ADUs has been directed by the Chief Building Official.
 - i. There is an exception in the Plumbing Code recognized in many jurisdictions to avoid the significant cost this causes (often greater than \$9,000) CPC 311.1 *Exception: Where one building stands in the rear of another building on an interior lot, and no private sewer is available or can be constructed to the rear building through an adjoining court, yard, or driveway, the building drain from the front building shall be permitted to be extended to the rear building.*
 - 1. Recognize that the high cost can be viewed as the basis for applying the exception
 - 2. Question - If no separate line is required for an attached ADU, why obligate the cost and complexity for a detached ADU. The outcome is the same so why regulate differently?
 - 3. An alternative to this might be a study performed by experts under CPC 301.3 "Alternate Materials and Methods of Construction Equivalency" with the establishment

of standards for equipment (backflow prevention) and cleaning/inspection schedules. Once established in the City, this could be relied on as an alternate approach.

- c. Routing of utilities at the discretion of property owner (rear alley or another alternate to avoid disruption to landscape or trees)

- i. This graphic compares three lots with an alley behind. Parcel 3 has an attached ADU and the sewer may connect to the main house line. There is no impact to the site. Parcels 1 and 2 have detached ADUs and are currently required to run their sewer line shown as 'A', around the main house, and out to the street at the front yard. This is highly problematic, especially if there are protected trees on site. A reasonable option would be to allow the sewer line placement shown by the 'B' or 'C' routing.



7. Garage replacement associated with Detached ADU

- a. When replacement covered parking is provided, and attached to an ADU, that area should not count against the 800 sf 'bonus'
- Staff has not indicated agreement with this.
 - It represents a significant disincentive toward the creation of covered parking spaces.
 - The space designated as a garage should count against the overall FA and not be allowed if the FAL or Lot Coverage will be exceeded as a result.

8. Retroactive Actions for all ADUs in process after 1/1/2020 (for projects without Building Final)

- a. Retract all enacted Deed Restrictions which are not in compliance with the updated regulations
- Require new Deed Restrictions in conformance with the updated requirements
- b. Refund any overpayment of fees for all projects in process (between approvals and Building Final) since January 1, 2020 for:
- Proportionate Impact Fees, if they remain in place
 - Other fees as adjusted by the revised ordinance
 - Council could elect to refund the full amount or an adjusted amount according to 16.06.110/R108.5 at 80%?

9. Green Building

- a. The current detached ADU regulations require Tier 2 with exceptions
- Tier 2 obligates requirements for third party preparation of documents and site evaluation which comes at significant cost
- b. If a homeowner proposes an addition/alteration to their home under 1,000sf, a third party is not required and the project is only required to meet CALGreen Mandatory measures
- c. To streamline the ADU permitting and construction process, detached ADUs under 1,000 sf should only be required to comply with CALGreen Mandatory for consistency

10. Noise producing equipment

- a. Allow placement at any location on the property as long as documentation is provided which confirms noise level will be below the 66 decibel limit at the property line. What should be codified for these issues are rules that direct the desired result. Don't overcomplicate what can be achieved simply.
- Equipment should be <66 dB without accessories such as blankets (can fail/degrade over time)

- ii. Asking for site-specific studies creates an additional unreasonable cost burden and must be avoided

11. Doorway between ADU and Primary Unit

- a. This really should be allowed as long as it is a hotel style communicating door. Note that it is allowed for a JADU so why not for an ADU?
 - i. Provides indoor access to care for or interact with the occupant but can be closed if privacy or separation is needed
- b. Don't create rules people will routinely circumvent - just remove the unnecessary regulation - Some may take advantage but there is little stopping them anyway

12. 60-day Processing

- a. Sets unrealistic expectations without clear narrative
- b. Explain how this will be interpreted/implemented
- c. Note that HCD has indicated the State says once an application is submitted, the City must approve within 60 days or it is automatically approved.
 - i. It is assumed that the clock is stopped when waiting for applicant response to comments, but there is nowhere this is codified and creates frustration for homeowners

13. Sprinkler requirements

- a. Clarify rules relative to the California State Fire Marshal Information Bulletin 17-001 (1/24/17)
 - i. Current PA implementation is not in alignment with Senate Bill 1069
 - ii. Safety concerns and physical constraints must be balanced against compliance with the State language

14. Flood Zone

- a. Better articulate requirements and permitted exceptions
 - i. Consider an example of the Exemption 800 sf ADU in the flood zone on a small lot – if reconstructing a non-conforming structure, it must be allowed to go higher than the 16 foot limitation by the delta between existing grade and the project site base flood elevation to raise the first floor level.

15. Remove requirement to convert “existing” garage/carport

- a. Only applies to projects where a new home is constructed with the intent of the garage or carport being converted to an ADU as a second ‘step’ after final inspection.
- b. Allow for a one-phase process
 - i. Offer incentive for streamlining
 - 1. Cannot be setbacks, height, etc. as these are enshrined in Gov. Code, § 65852.2, subd. (c)(2)(C)
 - 2. Could offer an additional fee reduction for saved staff time or something similar

While we recognize the Ordinance before you has been in process for the better part of a year, your action tonight will set the tone for what is possible until the next iteration of this language evolves. We are hopeful the commitment you have voiced toward incentivizing residential development, aligned with a stated goal of streamlining the approval of ADUs, will lead you to adopt some version of the 15 points we have presented. As professionals serving as guides to those who wish to construct an ADU, and being tasked with implementing the regulations, we want you to understand how important we believe these items are. If anything, we hope you might consider this as a starting point. We welcome your willingness to perhaps go further and, as many other cities have done, consider the adoption of additional language which will make ADUs more livable, desirable, and affordable.

Respectfully submitted,

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