



Planning & Transportation Commission

Staff Report (ID # 14599)

Report Type: Action Items **Meeting Date:** 8/10/2022

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 (Continued From July 13, 2022).

From: Jonathan Lait

Recommendation

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

1. Recommend the City Council adopt the attached Ordinance (Attachment A) amending Palo Alto Municipal Code Titles 16 (Building) and 18 (Zoning) to amend regulations for Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) as well as standards for Accessory Structures.

Report Summary/Background

The PTC considered the ADU ordinance on May 27, 2020 and voted to recommend the City Council adopt the ordinance. On October 26, 2020, the City Council reviewed and adopted Palo Alto's Accessory Dwelling Unit and Junior Accessory Dwelling Unit (ADU and JADU) Ordinance (Attachment B). 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 by staff and also verbally directed staff to continue working with stakeholders and to present any additional changes to the PTC, however, this was

not recorded formally in the Council motion.

On February 10, February 24, and May 26 of 2021, the PTC reviewed the policy proposals identified by members of the public as well as policies staff considered as incentives to encourage property owners to deed restrict ADU/JADUs to meet affordable levels. The staff reports and meeting minutes for those hearings can be found online¹. The attached draft Ordinance (Attachment A) incorporates PTC-supported policies based on feedback received during the three public hearings.

December 23, 2021, the City received a letter from the California Department of Housing and Community Development (HCD) noting areas of the City's J/ADU ordinance that required adjustment to comply with state law (Attachment E). On February 3, 2021, staff verbally discussed the items in the letter with HCD staff. On February 4, staff provided a written response to the HCD (Attachment F). At this time, and despite following up, HCD staff has not responded in writing. Nevertheless, staff recommends PTC consider the changes proposed to comply with HCD's comments where City and HCD staff agreed further clarity is warranted.

Finally, Staff is also looking to update other sections of Title 18 to clean up references to the previous ADU/JADU code section (18.42). Additionally, staff is looking to address deficiencies in the code related to Accessory Structures to avoid inappropriate conversions to dwelling units.

Recognizing the large volume of changes contained in this proposed ordinance, the PTC may consider discussing and deciding on the ordinance over two PTC meetings. The PTC may have discussion and even make motions on a portion of the proposed ordinance on July 13, 2022. Any remaining items that cannot be fully exhausted on the 13th may be continued to the following PTC meeting.

Discussion

The staff report touches on the following subjects related to potential changes to the ADU ordinance:

- A. Staff Response to Housing and Community Development (HCD) Letter
- B. Proposed Areas for Regulatory Change
 - i. Basements
 - ii. Noise Producing Equipment Location Standards
 - iii. Parking Provided for an Attached ADU
 - iv. Privacy
 - v. Refunding Prior Development Impact Fees
 - vi. Retracting Prior Deed Restrictions

¹ <https://bit.ly/3P8QuHQ> 2021 Staff Reports and meeting minutes. Select the Agenda Item on the following dates: February 10, February 24, and May 26, 2021.

- C. Corner Lot Incentives to Maintain Street-side Setback on Corner Lots
- D. Incentives for Affordable ADUs
 - i. Allowing Reconstruction/Expansion of Non-Conforming Structures
 - ii. Removing the “Existing” Garage/Carport Requirement for Conversions
 - iii. Exempting Affordable Units from Impact Fees and Plan Review Fees
 - iv. Other Dimensions of Affordable ADU Policy
- E. Code Modifications Not Discussed Previously
 - i. Applicable Review Process – Developing Three Units at Once
 - ii. Clarifying How FAR/Lot Coverage is Calculated with Attached Units
 - iii. Translating Second Units through Demolition/Reconstruction
 - iv. Clarification on Type of JADU Construction and Sanitation Facilities
 - v. Calculating Gross Floor Area
 - vi. Clarification on Accessory Buildings with Covered Porches or Patios (>120 sf)
 - vii. Allowed Accessory Structure Fixtures (PAMC 18.10, 18.12, 18.040)
 - viii. Text Edits Based on Prior Code Changes

A. Staff Response to HCD Letter

On December 23, 2021, the City received a letter from HCD regarding the ordinance the City adopted in November of 2020 (Attachment E). HCD raised 12 issues with the City’s ordinance which they thought conflicted with state law or required further clarification in the ordinance. On February 3, 2022, City staff met with HCD staff to discuss HCD’s comments and concerns as well as to explain the structure and intent of the language incorporated into the City’s ordinance. Following that discussion, City staff provided detailed responses to the HCD letter, indicating areas where the City would incorporate changes and where staff required clarification (Attachment F). Staff has sought multiple times to receive additional written feedback from HCD on the City’s response, but no response has been issued.

Many of the changes HCD noted were minor clarifications, which staff has made in the draft ordinance and which are noted with comment bubbles. In nearly all cases, the proposed adjustments clarify existing policy to provide assurance to the state and the public that these changes comply with state law. These adjustments do not enact significant policy change.

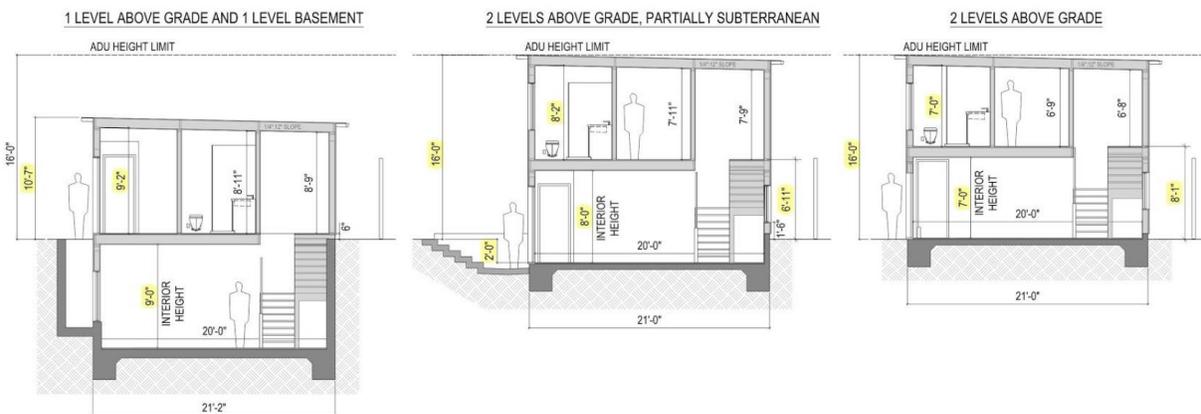
Other items (such as #3, #4, and #5 in the HCD letter) are more significant changes to City policy, for which staff is awaiting further clarification before proposing a change. While staff believes that there are strong arguments in support of the City’s position on these issues, it is possible that HCD’s eventual response will require further modifications to the ordinance. Given the uncertainty around when the City can expect a detailed response from HCD, staff recommends proceeding with the ordinance update and may adjust any proposals based on any additional feedback received.

B. Proposed Areas for Regulatory Change**i. Basements**

During the February 10 and 24, 2021 hearings, the PTC indicated support for allowing basements underneath ADU/JADUs. In that discussion, the PTC highlighted four items out of the five staff had proposed to incorporate into a draft ordinance:

- The basement cannot encroach into the four-foot ADU/JADU setback, unless the basement is already existing in that area. In this case, the non-conforming area may remain but cannot be expanded, consistent with other non-conforming provision of City and State law.
- New ADU/JADU 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.
- A new basement must not negatively impact tree roots on adjacent lots such that it would cause the tree to be removed or fail. Protected trees would continue to be subject to the City's tree regulations. Urban Forestry staff identified that roughly 25% of a tree's protection zone could be affected without causing it to fail, on a case-by-case basis.
- All habitable² basements for accessory units shall count towards the unit's gross floor area.

Some PTC members requested a reduction in the potential for privacy impacts on adjacent neighbors. Staff believes that one way this could be achieved is to require basements be fully subterranean rather than allowing for a partially submerged first floor as identified in the graphic below:



Source: ATTACHMENT C

As identified in the center graphic, partially subgrade first floors could allow for a full second floor to be developed at a closer proximity to adjacent property lines for detached ADUs where

² Habitable basement is when there is at least seven feet distance between basement floor and basement ceiling

current policies would only allow for a loft. If the PTC is interested in requiring this, staff can modify the draft ordinance in addition to what has already been included above under section 18.09.040(j)(ii).

ii. Noise Producing Equipment Location Standards

In response to PTC's support for further reducing the side and rear noise producing equipment standards for ADU/JADUs, staff updated the Draft Ordinance Section 18.09.040(i) to indicate that an owner may place equipment anywhere on site provided they maintain a 10-foot street-side yard setback (see Corner Lot Incentives below) and respect the property's underlying front yard setback requirement.

It is important to maintain consistency with the current street-side and front yard setback requirements established in 18.10, 18.12, and 18.13, especially as it relates to the street-side setback requirements.

Additionally, it is important to identify that this reduced setback applies only to equipment that serves ADU/JADUs rather than equipment that serves both an ADU/JADU *and* a primary unit. Equipment associated with primary units has typically been much louder than equipment that serves ADU/JADUs. Staff has not heard support from the PTC nor City Council to reduce the current setback requirements for equipment associated with the primary unit(s). The PTC will need to direct staff to study modifying those standards if that is a policy the PTC wants to incorporate in this code update.

iii. Parking Provided for an Attached ADU

PTC considered whether or not an ADU can have an attached garage. Though there is potential for illegal conversion of a garage to living space without proper permitting, the PTC did not see these concerns as any more severe than for other attached garage structures. The PTC directed staff to modify 18.09.040(iv) (now 18.09.040(k)(v)) to remove the inclusion of an attached garage counting towards a second unit's maximum size.

To deter illegal conversion of a garage to habitable space, the proposed ordinance does not allow a garage that is attached to an ADU/JADU to have a door between the two spaces. This can be removed or adjusted pending PTC direction.

iv. Privacy

The PTC indicated during the February 10 and 24 hearings that the City needs to maintain stringent privacy measures for ADU/JADUs as they can be placed closer to property lines than a typical house. Additionally, the height of these units can be up to 16 feet above grade. The architect group had highlighted additional policies that could bolster the City's privacy policies.

The PTC wanted to focus the City's current policies to limit impacts from windows on the second floor, or equivalent spaces, of a second unit. As a result, staff updated section 18.09.040(k)(ii) in the attached draft ordinance, to incorporate the following provisions:

- Clarification that privacy measures will only be applied when there are second floors, lofts, or equivalent spaces.
- Egress windows shall not be located on walls which face adjacent property lines.
- Where feasible, requiring the use of skylights in bathrooms and other spaces where windows could be considered optional.
- No exterior lighting mounted above seven feet and lighting must be directed downwards to prevent light spillover onto adjacent properties.

These added measures would provide guidance for applicants and additional protections for neighbors from the potential privacy impacts from new second units.

v. Refunding Prior Development Impact Fees

The PTC directed staff to review all permits that had been issued after the 2020 state law went into effect that expanded the number of units that would be exempt from paying development impact fees. After a review of the permits that had been issued since 2020, there were no instances where a unit less than 750 square feet improperly paid impact fees.

vi. Retracting Prior Deed Restrictions

The PTC direction to staff was to review the appropriate process to allow homeowners to remove the prior owner-occupancy deed restrictions placed on units built prior to 2020. This effort would require Council to direct this work. Staff will ask Council to consider this when they consider the ordinance.

C. Corner Lot Incentives

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

Corner lots can be difficult to develop due to their more limiting setback requirements. Following the discussion with the PTC, staff deleted the floor area/lot coverage allowance incentive from the draft ordinance. This had been intended to encourage—not require—corner lots to provide greater setbacks than the state law minimums of 4 ft.

Draft ordinance section 18.09.040(j) now captures the PTC direction to allow reduced setbacks for the primary house when ADU/JADUs are built in tandem. As discussed in the February hearing, the draft ordinance allows a primary home placement at a 10-foot street-side setback and a 16-foot front yard setback, provided the ADU/JADU also conforms to these setbacks.

Staff also updated section 18.09.040(l) to clarify that a covered parking space is not required

when a new home is permitted with an ADU/JADU. Therefore, the need for a garage or carport to “exist” to then be converted into an ADU/JADU and benefit from the reduced parking requirements would no longer apply to corner lot properties.

D. Incentives for Affordable ADUs

Following the May 26 PTC hearing, the PTC directed staff to establish policies that would serve as an incentive to the production of affordable ADU/JADUs. Staff created a new section of the ADU/JADU code, 18.09.060, with policies that target these units. As a reminder, the PTC directed staff to draft an ordinance that contained these measures as incentives for affordable J/ADUs. PTC members noted that, upon seeing these items together, they may decide to have some policies apply to all J/ADUs. PTC members are asked to distinguish which policies are incentives for affordable units versus policies that apply to all J/ADUs.

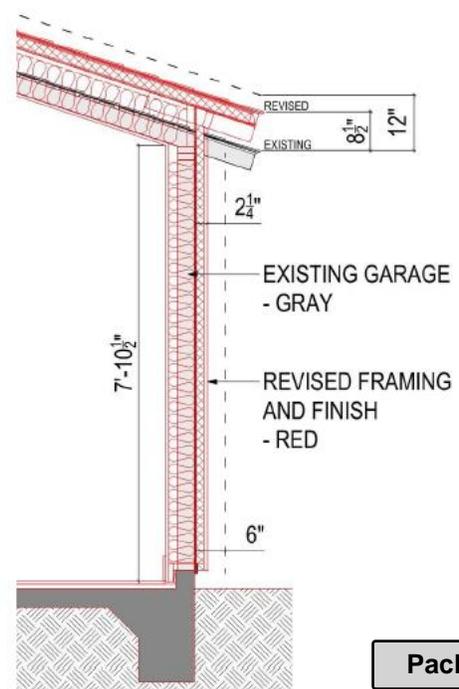
i. Allowing Reconstruction/Expansion of Non-Conforming Structures

During the May 26 hearing, the PTC indicated support for allowing owners to expand legal, non-conforming walls in order to allow a converted structure to provide a better living unit and better meet insulation and energy requirements for modern habitable buildings. Several commissioners also expressed concerns with how close some non-conforming buildings can be to adjacent property lines and fences and how conflicts can come up when work needs to occur in those spaces.

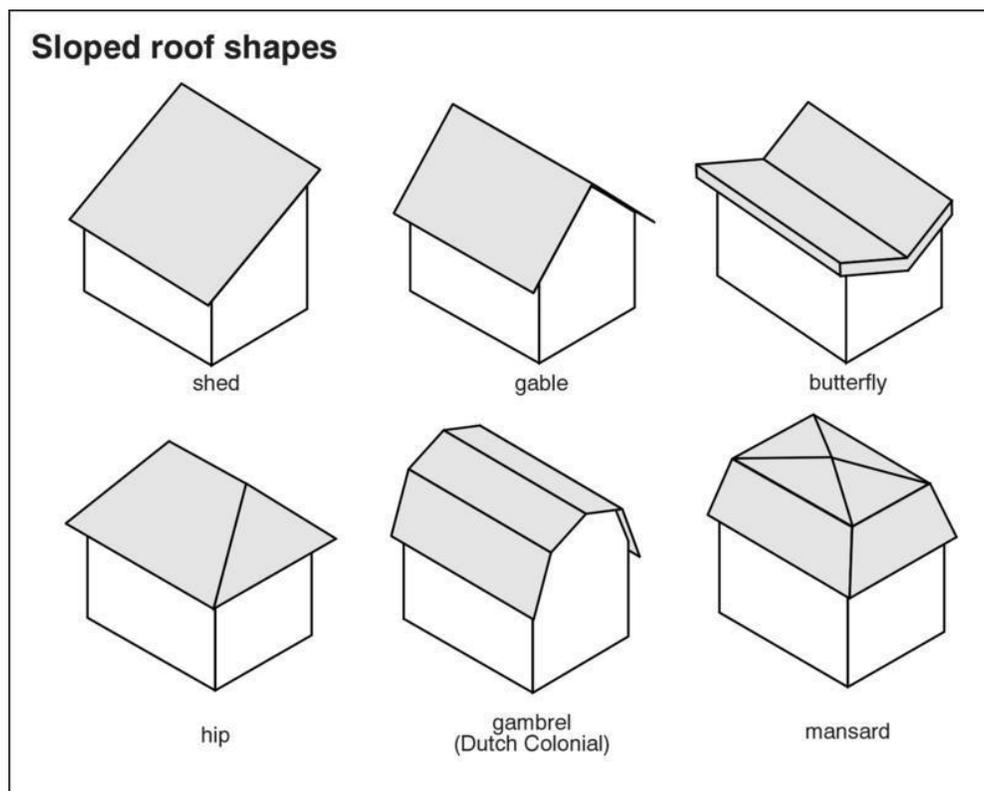
In the draft ordinance, staff sought to address this concern by limiting when and where a non-conforming wall can be expanded. Specifically, the proposed language in section 18.09.060(c)(ii) states that walls that do not currently have a one-foot separation from the property line would not be able to benefit from this provision. For walls that currently have this separation, they could be expanded up to a maximum of six inches in width depending on whether or not they would encroach closer than one foot to a property line. Staff believes this captures the support, and concerns, raised by the PTC.

The PTC also supported allowing legal, non-conforming structures to increase in height. Section 18.09.060(c)(i) indicates that an applicant may modify the height of a legal, non-conforming structure by up to 12 inches or to a maximum of 12 feet, whichever is less. Staff anticipates that most owners that would seek to utilize this process will most likely be able to use the full one-foot extension. However, it would be important to limit how tall these structures can be given their closer proximity to adjacent neighbors.

For example, if an existing structure was 11 feet and two inches tall, then the height could be increased by only 10 inches, rather than one foot. This section also would



require retention of the existing roof line and style. For example, a structure with a shed roof cannot be converted to a gabled roof. Staff believes that this will help to mitigate potential massing and aesthetic impacts upon adjacent neighbors. Neighbors will already be familiar with the existing structure's outline, albeit slightly taller and closer to their property (see example roofline images below).



Source: Google Images

ii. Removing the "Existing" Garage/Carport Requirement for Conversions

Staff included in the draft ordinance section 18.09.060(d), which follows the PTC's direction to eliminate the need to have an existing garage/carport. The PTC indicated that this may serve as an incentive to encourage homeowners to create affordable units. In the discussion, the PTC also wanted to consider allowing this policy to apply to all units, not just units that apply to deed restricted, affordable ADU/JADUs. This would eliminate the current two-step process that prevents homeowners from proposing a new home and ADU with no covered parking on site.

If the PTC wishes to propose this policy for all units in the City, they will need to direct staff to update the draft ordinance.

iii. Exempting Affordable Units from Impact Fees and Plan Review Fees

In the May 26 meeting, the PTC suggested that the City broaden its approach to encouraging affordable ADU/JADUs by eliminating the fees owners of these units would need to pay. The

PTC suggested ADU/JADUs that are deed restricted to 80-100% affordability levels should be fully exempt from impact fees regardless of size.

Staff updated section 16.58.030(f) “Development Impact Fees - Exemptions” to capture units that would fit into these categories. The PTC also suggested that the City consider waiving all plan check review fees provided the City Council can find a means to compensate the loss of income within the City’s budget. Plan review fees pay for staff to review and approve these applications and building permit fees support required inspections. Staff will bring this suggestion to the City Council for consideration.

iv. Other Dimensions of Affordable ADU Policy

The PTC did not reach a consensus in its previous discussions regarding the length of affordability provided for these units. Staff requests the Commission discuss the duration of the affordability requirements. If the PTC wishes to create an affordable incentive program, then they need to decide on the length of affordability for these units.

The ADU could be subject to restrictions for 55 or 99 years, similar to the treatment of inclusionary BMR units; however, this might not be tolerable for many homeowners and could lead to limited affordable J/ADU production. The PTC might consider a shorter time period such as 10, 15, 20, or 30 years. During the affordable time period the J/ADU must be leased to an income qualified household. After the time ends, the owner could lease the unit to any household.

For further information, please refer to the previous staff reports and PTC discussion on this topic.

E. Code Modifications Not Discussed Previously

i. Applicable Review Process – Developing Three Units at Once

Section 18.03.040(a)(102) of the PAMC defines Multiple-family use as, “the use of a site for three or more dwelling units, which may be in the same building or in separate buildings on the same site.” When three or more units are developed on a single site or three separate properties are developed in tandem, the City requires the development to go through the Architectural Review process, which is a discretionary process.

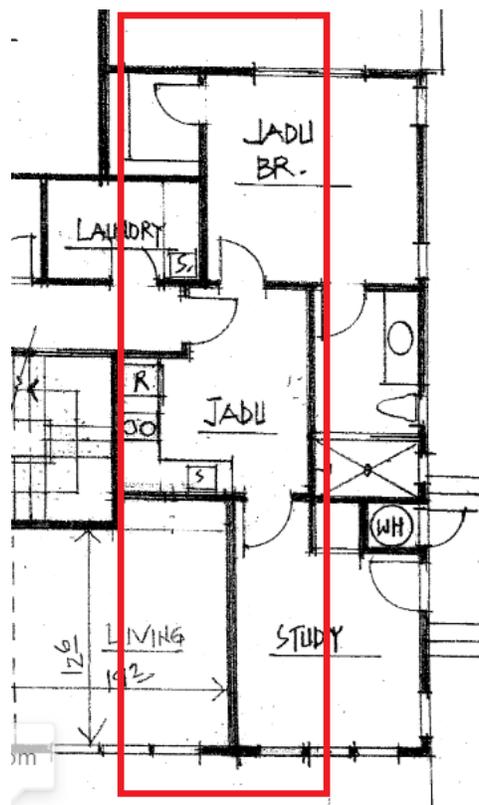
However, administrative review or ‘ministerial review’ is required for ADUs and JADUs in accordance with the 2020 state law update. As a result, staff added language to section 18.09.020 in the draft ordinance to clarify that development of a single-family home as a primary unit, along with an ADU, and a JADU on a single lot is not considered as a “Multiple-family use” in the same context as the City’s existing definition. This is to align with the state code requirements that this type of development project be reviewed ministerially, with the exception that a new two-story home will go through the Individual Review process prior to a building permit submittal.

ii. Clarifying How FAR/Lot Coverage is Calculated with Attached Units

The City provided a uniform bonus for ADU/JADU development in accordance with state law requirements. As a result, there have been challenges presented regarding how to calculate floor area for the main home vs the floor area ratios (FAR) with respect to attached units.

Overall, the City's definitions guide how staff calculates these allowed ratios on residential and commercial lots. However, when it comes to an attached ADU/JADU in an RE, R-1, R-2, and RMD district, the code states that: *"Gross floor area means the total covered area of all floors of a main structure and accessory structures greater than one hundred and twenty square feet in area, including covered parking and stairways, measured to the outside of stud walls"* (PAMC 18.04.030(a)(65)(C)). When there is an attached unit, there is a shared wall between the two structures and it is unclear to applicants and staff how this area should be counted between the units as it is not technically an "exterior wall" (see image below). If the shared wall spans a large portion of the two units, it can add up to a significant amount of square feet.

Staff suggests adding language in sections 18.09.030(c) as well as 18.09.040(e) that states that FAR, Lot Coverage, and Maximum House size should be related to the exterior stud of the primary unit's shared wall. Staff believes this mirrors the existing policy in PAMC 18.04.030(a)(65)(C) and in the event a second unit is built, this would provide clear direction on how to calculate these spaces.



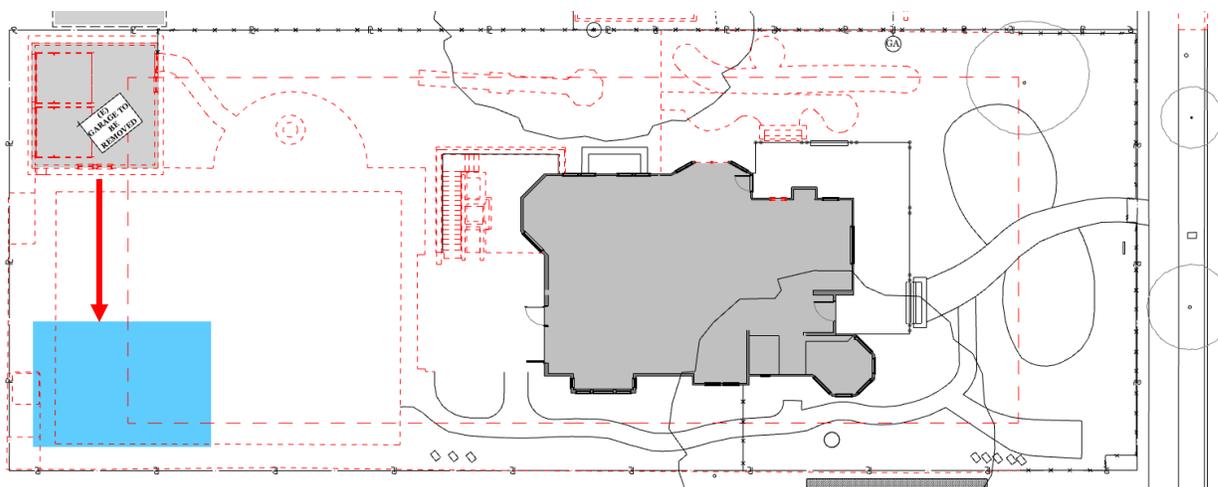
Source: Kohler Architects

iii. Relocating Second Units through Demolition/Reconstruction

PAMC section 18.09.030(k) identifies that replacement parking is no longer required when a garage or carport are demolished “in conjunction with the construction of an ADU.” Staff understands this to mean that an applicant may choose to demolish a structure and replace it “in-kind”, as noted in PAMC section 18.09.030(h), or they may relocate it elsewhere on the property and still not replace parking on site.

Demolishing and replacing a structure in kind to create an ADU was protected in the City’s ordinance prior to 2020 when the updated state law incorporated a similar framework. However, state law and the City’s ordinance were not entirely specific on what may happen should an applicant seek to relocate a structure elsewhere on site and what policies (either Table 1 or 2) would apply.

Generally, staff and applicants have agreed that one would not be able to relocate a legal, non-conforming structure from one side of a property to another and establish a new non-conforming situation on site as shown in the example below. Staff propose to clearly codify this practice and understanding in relation to J/ADUs with the suggested language in 18.09.040(j)(v). This language directly captures an instance like the example below and succinctly identifies that an applicant must follow the regulations in Table 2. Staff believes this will clarify that any type of construction that occurs in this manner must follow the City’s local regulations outlined in Table 2 rather than the state policies outlined in Table 1.



Source: FG Architects

iv. Clarification on Type of JADU Construction and Sanitation Facilities

Staff has received multiple questions from applicants and the public since the adoption of the City’s ordinance last year as to whether JADUs can be developed through new construction or only through the conversion of existing spaces. PAMC 18.09.050(a) currently states: “A junior accessory dwelling unit shall be created within the walls of an existing or proposed primary dwelling.”

Through the implementation of the City's ordinance, the intention was to encourage the creation of more JADUs by allowing JADUs to also benefit from the bonus FAR/Lot Coverage/House Size provisions as well as allowing attached garages to be converted to JADUs and benefit from the replacement parking policies identified in 18.09.040(k). With this understanding, staff indicated to applicants and the public that new construction involving the creation of a JADU would be in keeping with the intent behind the policies adopted by City Council rather than limiting it to existing within the walls of an existing or new structure. Staff suggests modifying section 18.09.050(a) to align with staff's implementation of the City's ordinance and provide clarity to the public.

Additionally, staff has included a new policy that seeks to clarify an already established practice for JADUs that was not apparent in the previously adopted ordinance. Section 18.09.050(b)(iii) seeks to clarify that sanitation facilities are required for JADUs but that they may be shared with the primary unit. This policy has been in place since the establishment of JADUs in the 2017 state and City codes. The practice, however, was not codified.

Adding this clarification will provide an easier reference point for staff, the public, and applicants as it relates to the City's requirements for sanitation facilities for JADUs.

Staff seeks input from the PTC regarding whether or not there should be a spatial relationship of these facilities to the JADU (either distance or placement). Example language could suggest:

- JADUs may share sanitation facilities (bathrooms, laundry facilities, etc.) with the primary unit. In this instance, the floor area and lot coverage associated with this space shall count towards the primary unit's maximum allowances only. The sanitation facilities shall include a shower, toilet, and sink fixture at a minimum and shall be located on the same floor level as the proposed JADU. All facilities shall conform to the minimum requirements specified in the Building Code.

v. Calculating Gross Floor Area

In all instances of plan review, applicants have provided many ways of calculating floor area by representing it in whole numbers, to the tenths, hundredth, and thousandth decimal places. General mathematical principals indicate that expressing a number to a thousandth decimal or greater is technically more accurate; however, going beyond the thousands place is not necessarily appropriate when converting between inches and decimals which often end in hundreds and thousandths decimal numbers (e.g. 4½ inches is expressed as 0.375, 11 inches is expressed as 0.92).

Over time, staff has not established a consistent policy for how floor area should be captured to maintain consistency and accuracy of construction. This is especially important when certain "triggers" occur. Two such triggers are when a building exceeds its allowable floor area, or when a second unit is subject to payment of development impact fees. Some applicants have proposed 749.99 square foot structures and successfully argued they are not be required to pay development impact fees. In speaking with the Chief Building Official, a contractor would not

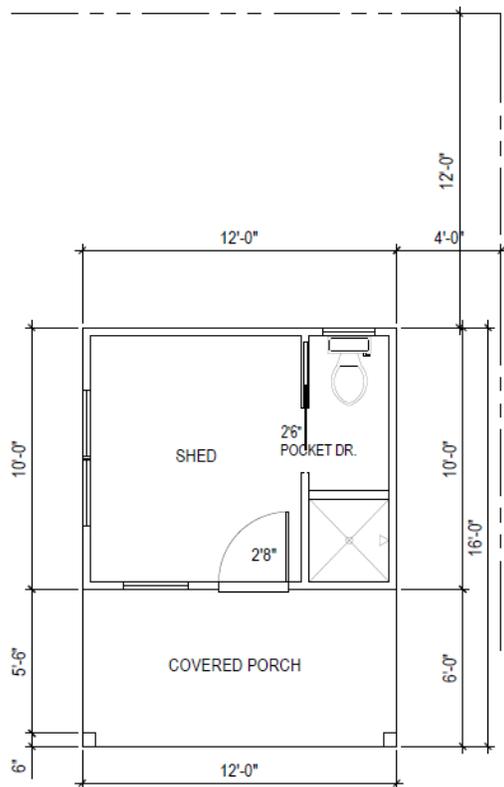
realistically build a 749.99 square feet structure; it would be built to 750 square feet or slightly larger, given the nature of the construction methods and materials available today.

Staff believes the suggested language in 18.04.030(65)(A) of the draft ordinance would address these issues. It would set a clearer standard for how floor area needs to be expressed in block area diagrams on a plan set. It would also establish a clear and consistent policy for staff and applicants to implement when determining whether a project exceeds a trigger point, as described above. Any ADU equal to or greater than 749.995 square feet would be associated with payment of development impact fees.

vi. Clarification on Accessory Buildings with Covered Porches or Patios (>120 sf)

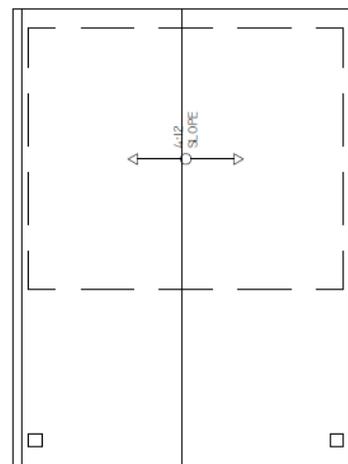
In the last few years, there have been a greater number of proposals for 120 square foot accessory buildings with covered porches or patios. PAMC 18.04.030(C) (now proposed as (D)) identifies that accessory buildings which exceed 120 square feet in area are included in the overall gross floor area calculations for a site. The use of the term “square feet” is non-specific to the terms “floor area” and “lot coverage” staff commonly use to determine size allowances. The code requires that any addition to this structure beyond 120 square feet immediately triggers an accessory building to count as floor area. This is regardless of whether that specific addition would traditionally count as lot coverage based on its design.

Based on this, an accessory building with a substantially open covered porch or patio would automatically count towards floor area for the site, even though these would be excluded from floor area for the primary house if it is substantially open (see Attachment D for substantially open criteria).



FLOOR PLAN

1/4" = 1'-0"



ROOF PLAN

1/4" = 1'-0"

Source: Kohler Architects

Due to this conflict, 120 square foot accessory buildings with covered porches or patios that are substantially open are currently only counted as lot coverage rather than floor area. This interpretation provides a consistent approach for including these spaces as floor area when they are not substantially open. Staff propose codifying this as an exclusion under the Low-Density Residential Exclusions portion of the Definitions (proposed as 18.04.030(a)(65)(E)(i)).

vii. Allowed Accessory Structure Fixtures (PAMC 18.10, 18.12, 18.040)

As ADU/JADUs have become more commonplace applications due to relaxed regulations at the state and local level, staff has also recognized an increase in permits for accessory structures. Some of these structures have started including additional fixtures such as showers (indoor and outdoor), gas lines, washers/dryers, and other facilities that seek to provide the framework for a second unit to be created on site but without committing to creating one.

PAMC 18.12 and 18.40 currently limit accessory structures to only two plumbing fixtures. Some districts, like the RE, R-2, and RMD districts, allow more fixtures for buildings that are less than 200 square feet or outside of setbacks for the property. As staff has typically relied on the building code's definition of a plumbing fixture, it does not always capture fixtures such as a gas line or other appurtenance.

Staff is frequently limited to negotiating with applicants to remove fixtures using vague comparisons of proposals to “something equivalent to an ADU/JADU” as the code does not give more clear direction. Staff is concerned this will encourage individuals to use an accessory building as a housing unit even when a structure is not designed for human habitation.

Due to this, staff propose to better distinguish what are acceptable plumbing fixtures in accessory buildings. The purpose of this language is to target features that may lead to unsafe conditions for human habitation. Staff suggests limiting accessory buildings from having certain plumbing fixtures like a shower and/or bathtub. These will be more challenging and costly to place in a building than a sink and toilet. While approving this code change will make a significant number of previously permitted structures non-conforming, staff believes this will help to reduce the number of illegally constructed units going forward.

viii. Text Edits Based on Prior Code Changes

Sections 8, 9, and 10 of the proposed ordinances seek to modify PAMC Sections 18.10, 18.12, and 18.13 to bring them into conformance with the provisions adopted under Ordinance 5507 and the new ADU state code. In some instances, the text edits are simply updating previous code references to identify the new code section for ADUs as 18.09 instead of 18.42. In others, text is eliminated that is contrary to the new allowances adopted under Ordinance 5507 regarding how many homes may be constructed on site.

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 PAMC 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 14, which is 12 days in advance of the meeting. Postcard mailing occurred on January 10, which is 16 days in advance of the meeting.

Alternative Actions

In addition to the recommended action, the Architectural Review Board may:

1. Provide direction to make further modifications to the ordinance prior to Council consideration, or
2. Continue the hearing to a date certain to enable staff to perform additional study.

Report Author & Contact Information

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PTC³ Liaison & Contact Information

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Attachments:

- Attachment A: Draft Ordinance with Track Changes (DOCX)
- Attachment B: Adopted Ordinance 5507 (PDF)
- Attachment C: Architect Group's Letter (PDF)
- Attachment D: Substantially Open Porches (PDF)
- Attachment E: HCD Letter on ADU Ordinance (PDF)
- Attachment F: Staff Response to HCD (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. 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. The City adopted Ordinance 5507 which brought the City’s municipal code into conformance with state law.
- E. This ordinance is adopted to respond to additional policies advocated by members of the public as well as address issues staff has noticed when reviewing permits. This ordinance is also adopted to establish an affordable program for ADU/JADUs.

SECTION 2. Chapter 18.09 (Accessory Dwelling Units and Junior Accessory Dwelling Units) of Title 18 (Zoning) of the Palo Alto Municipal Code (“PAMC”) is amended 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. The development of a single-family home, ADU, and/or a JADU on a lot which allows for single-family development shall not be considered a multifamily development pursuant to PAMC Section 18.04.030, nor shall they require Architectural Review pursuant to other sections of Chapter 18.

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 ~~and~~er 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 ~~and~~er 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.

Commented [SG1]: Response to HCD item #2

Commented [SG2]: Response to HCD item #2

(b) The Development Standards for units governed by this section are summarized in Table 1. Regulations set forth in section 18.09.040 do not apply to units created under 18.09.030. The minimum and maximum sizes indicated in Table 1 do not reflect a prohibition on providing units that are greater than 800 square feet. These sizes simply serve to distinguish when a unit transitions from regulations set forth in Table 1 and section 18.09.030 to regulations set forth in Table 2 and section 18.09.040.

Commented [SG3]: Response to HCD item #5, #10, #11, #12

Commented [SG4]: Response to HCD item #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 ⁴ 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 ^{4,3}
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.
- (4) Units must be detached from existing primary dwellings but may be attached to each other.

(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. When there is an attached ADU/JADU to an existing or proposed single family home, the shared wall between these units shall only contribute to the maximum allowable Floor Area, Lot Coverage, and Maximum House Size of the primary unit. This measurement shall be taken to the outside stud of the primary unit's shared wall in accordance with 18.04.030(65)(a)(C).

(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/appurtenance).
- (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 of 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). Nothing in this section shall be interpreted to prohibit at least an 800 square foot ADU that can be up to 16 feet in height and have a four foot setback.
- (b) The Development Standards for units governed by this section are provided in Table 2. These regulations do not limit the height of existing structures converted into ADU/JADUs unless the envelope of the building is proposed to be modified beyond any existing legal, non-conforming condition.

Commented [SG5]: Response to HCD item #6, #9

Commented [SG6]: Response to HCD item #5

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)	30 feet		
Open Space (OS)	25 feet		
All other eligible zones	16 feet		
Parking	None		

Square Footage Exemption	Up to 800 sf ⁽⁴⁾	Up to 500 sf ⁽⁴⁾
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- (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. ~~One attached or detached ADU may be built in conjunction with an existing or proposed multifamily building.~~
- (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. ~~Any square footage in excess of this bonus shall contribute towards the FAR, Lot Coverage, and (if attached) Maximum House Size calculations for the subject property. This bonus is not afforded to lots with existing or proposed multifamily developments.~~

Commented [SG7]: Response to HCD direction.

(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.

~~(d)~~(e) When there is an attached ADU/JADU to an existing or proposed single family home, the shared wall between these units shall only contribute to the maximum allowable Floor Area, Lot Coverage, and Maximum House Size of the primary unit. This measurement shall be taken to the outside stud of the primary unit's shared wall in accordance with 18.04.030(65)(a)(C).

~~(e)~~(f) 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/apurtenance).

~~(f)~~(g) 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)~~(h) 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)~~(i) Noise-producing equipment such as air conditioners, water heaters, and similar service equipment, which specifically serves an ADU/JADU only shall may be located outside of the setbacks for the ADU/JADU anywhere on site, provided they maintain a 10-foot street-side setback and the underlying front yard setback requirements of the property. 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)~~(j) Setbacks

- i. Detached units shall maintain a minimum three-foot distance from the primary unit, measured from the exterior walls of structures.
- ii. ~~Any basement or other subterranean portion which serves of an ADU/JADU shall~~ may encroach into a setback required for the primary dwelling provided the following conditions are met:
 - A. Newly constructed basement walls are no closer than four feet to an adjacent interior side or rear property line.
 - B. A new lightwell associated with a basement shall not be placed closer than four feet to an adjacent property line. When visible from the right of way, these facilities shall be screened from view with vegetation.
 - C. The new basement shall not negatively impact tree roots on the subject property or on adjacent lots such that it would require the tree to be removed or fail.
 - ~~A-D.~~ ADU/JADU basements shall contribute toward the total unit's allowable FAR. Any FAR in excess of the bonus allowances prescribed in this Chapter shall contribute to the total allowable limits for the site.
- 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.
- iv. For corner lots developed as a single-family residence in the R-1 (and all subdistricts), R-2, RMD, DHS, and all RM zone districts only, when the primary dwelling unit exists or is constructed/improved simultaneously with the construction of a new ADU/JADU, all structures may be built to a 10-foot street-side setback and a 16-foot front yard setback, regardless of the presence of a special setback, unless a fire or life safety ordinance prevents this from occurring.
- ~~ii-v.~~ When covered parking is replaced with an ADU/JADU utilizing the provisions in 18.09.030(h) and (k) above or 18.09.040(l) below, any replacement ADU/JADU that is not located in the same location and built to the same envelope as the existing converted structure shall conform to the requirements in Table 2.

~~(j)(k)~~ 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 property line.~~ 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 by any means that would allow visibility between properties.
 - B. ~~Second story windows on a second floor, loft, or equivalent space, excluding those required for egress, shall have a five-foot sill height as measured from the second-floor level, or utilize obscured opaque glazing on the entirety of the any window when that facing adjacent properties.~~

~~Second story egress windows shall utilize obscured opaque glazing on the entirety of the windows which that face adjacent properties.~~

C. Second story windows on a second floor, loft, or equivalent space shall be offset from neighbor's windows to maximize privacy.

D. Egress windows on a second floor, loft, or equivalent space located in the primary building's side or rear yard setbacks shall not face adjacent property lines.

E. Where feasible, the use of skylights (whether operable or not) shall be used in lieu of operable windows that face adjacent buildings.

~~C-F.~~ No exterior lighting shall be mounted above seven feet. All lighting mounted on walls shall be directed downwards and shall not direct light towards adjacent property lines. Any ground lighting shall not direct light upwards to the building or sky.

~~(k)(l)~~ 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, carport, or covered parking structure 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. For corner lots developed as a single-family residence in the R-1 (and all subdistricts), R-2, RMD, DHS, and all RM zone districts only, when the primary dwelling unit exists or is constructed/improved simultaneously with the construction of new ADU/JADUs in accordance with 18.09.040(j)(iv), the primary unit's covered parking requirements do not need to be provided. Instead, two uncovered parking spaces shall be provided in any configuration on the lot including within the front or street-side setback for the property.
- ~~iv-v.~~ 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. Any attached garage shall not have an interior access point to the ADU/JADU (e.g. hotel door or other similar feature/appurtenance), unless attached to the unit.

~~##~~(m) 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 new construction attached to a proposed primary dwelling unit or 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.
 - ~~iii.~~ JADUs may share sanitation facilities (bathrooms, laundry facilities, etc.) with the primary unit. In this instance, the floor area and lot coverage associated with this space shall count towards the primary unit's maximum allowances only. The sanitation facilities shall include a shower, toilet, and sink fixture at a minimum and shall conform to the minimum requirements specified in the Building Code.
- (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.

18.09.060 Affordable ADU/JADU Program

- (a) This section shall govern applications for ADUs and JADUs that are deed restricted to provide affordable units that provide rents at 80-100% AMI for a minimum of 15 years. These units 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). These units shall follow the development standards in section 18.09.040 unless otherwise stated here.
- (b) The City's housing administrator shall income qualify potential tenants prior to issuing a permit for an affordable ADU/JADU. The property owner shall be responsible for paying the City's housing administrator to cover the cost associated with documenting a potential tenants income level as well as annually recertifying the tenant's income.
- (c) When an existing, legal, non-conforming structure is converted to an ADU/JADU, the envelope of the structure may be modified to encroach further into a setback or daylight plane as follows:
- i. The height of the existing structure may be increased by no more than one linear foot in height commensurate to the existing roofline of the structure provided the height of the addition does not exceed 12 feet from grade. The roofline shall not be changed to a style other than what currently exists on site.
 - ii. Each non-conforming wall may be expanded by no more than six inches in thickness, as measured to the surface of the exterior material, to provide for greater insulation and energy requirements provided that a minimum of one foot is maintained between the addition and an adjacent property line. An existing wall of a structure that does not currently have a separation of one foot from a parallel property line shall not be expanded.
 - iii. All other additions not specified here shall follow the standard setbacks for the ADU/JADU identified in Table 2.
- (d) When the primary dwelling unit is permitted simultaneously with the construction of new ADU/JADUs, the primary unit's covered parking requirements identified in Chapter 18.10 and 18.12 do not need to be provided. Two uncovered parking spaces shall be provided in any configuration on the lot including within the front or street-side setback for the property.

SECTION 3. 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. Any unit that is deed restricted to be rented at a rate of 80-100% AMI, in accordance with the City's established Affordable ADU/JADU program, shall be exempt from impact fees;

SECTION 4. Subsections (a)(4) and (a)(65) 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 ADU bathroom shall include a shower, toilet, and sink fixture at a minimum and shall conform to the minimum requirements specified in the Building Code. An accessory dwelling unit also includes the following:

[. . .]

(65) “Gross Floor Area” is defined as follows:

(A) In all districts, gross floor area shall be calculated to the nearest 1000th decimal point and represented on plans to the nearest 100th decimal point (e.g. 123.456 sf shall be rounded to 123.50 sf). Standard rounding shall apply such that a number of four or less shall be rounded down and a number of five or more shall be rounded up.

~~A~~(B) Non-residential & Multifamily Inclusions: ...

~~B~~(C) Non-residential & Multifamily Exclusions: ...

~~C~~(D) Low Density Residential Inclusions and Conditions: ...

~~D~~(E) Low Density Residential Exclusions: ...

i. Accessory structures equal to or less than one hundred and twenty square feet in area shall not contribute to floor area provided that any attached porches, patios, or similar features are substantially open;

SECTION 5. Subsections (b)(5) of Section 18.10.080 (Accessory Uses and Facilities) of Chapter 18.10 (Low-Density Residential) of Title 18 (Zoning) of the Palo Alto Municipal Code (“PAMC”) is amended to read:

[. . .]

~~(5) When located within a required interior yard as permitted by this section, no such accessory building shall have more than two plumbing fixtures. No such accessory building shall have more than two plumbing fixtures. Accessory buildings shall not be allowed to be turned into conditioned space nor shall these structures be allowed to have showers (indoor or outdoor), gas lines, washer/dryers, and/or cooking facilities to be provided inside or attached to the structure, unless the structure is proposed as an ADU/JADU that satisfies all requirements of the Palo Alto Municipal Code.~~

SECTION 6. Section 18.12.070 (Accessory and Junior Accessory Dwelling Units) and Subsection (b)(5) of Section 18.12.080 (Accessory Uses and Facilities) of Chapter 18.12 (Single-Family Residential District) of Title 18 (Zoning) of the Palo Alto Municipal Code (“PAMC”) is amended to read:

[. . .]

Accessory Dwelling Units and Junior Accessory Dwelling Units are subject to the regulations set forth in Section 18.42.040.

[. . .]

(5) When located within a required interior yard as permitted by this section, ~~no such~~ accessory building ~~greater than 200 square feet in size~~ shall have more than two plumbing fixtures.

Accessory buildings shall not be allowed to be turned into conditioned space nor shall these structures be allowed to have showers (indoor or outdoor), gas lines, washer/dryers, and/or cooking facilities to be provided inside or attached to the structure, unless the structure is proposed as an ADU/JADU that satisfies all requirements of the Palo Alto Municipal Code.

SECTION 7. Subsection (b)(5) of 18.40.050 (Location and Use of Accessory Buildings) of Chapter 18.40 (General Standards and Exceptions) of Title 18 (Zoning) of the Palo Alto Municipal Code (“PAMC”) is amended to read:

[. . .]

(5) ~~No such~~ accessory building shall have more than two plumbing fixtures. Accessory buildings shall not be allowed to be turned into conditioned space nor shall these structures be allowed to have showers (indoor or outdoor), gas lines, washer/dryers, and/or cooking facilities to be provided inside or attached to the structure, unless the structure is proposed as an ADU/JADU that satisfies all requirements of the Palo Alto Municipal Code.

SECTION 8. Table 1 of 18.10.030 (Land Uses) and Table 1 sub note two (2) of Chapter 18.10 (Low-Density Residential) of Title 18 (Zoning) of the Palo Alto Municipal Code (“PAMC”) is amended to read:

[. . .]

	R-E	R-2	RMD	Subject to Regulations in:
Accessory Dwelling Units	P	p ⁽²⁾	p ⁽²⁾	18.0942.040
Junior Accessory Dwelling Units	P	p ⁽²⁾	p ⁽²⁾	18.0942.040

(2) **Accessory Dwelling Units in R-2 and RMD Zones:** An accessory dwelling unit or a Junior Accessory Dwelling Unit associated with a single-family residence on a lot in the R-2 or RMD zones is permitted, subject to the provisions of Section 18.0942.040, and such that no more than two units result on the lot.

SECTION 9. Table 1 of 18.12.030 (Land Uses) and Table 1 sub note one (1) of Chapter 18.12 (Single-Family Residential District) of Title 18 (Zoning) of the Palo Alto Municipal Code (“PAMC”) is amended to read:

[. . .]

	R-1 and all R-1 Subdistricts	Subject to Regulations for:
Accessory Dwelling Units	p ⁽¹⁾	18.0942.040

Junior Accessory Dwelling Units	P ⁽¹⁾	18.42.09040
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(1) An Accessory Dwelling Unit or a Junior Accessory Dwelling Unit associated with a single-family residence on a lot is permitted, subject to the provisions of Section 18.0942.040, and such that no more than two total units result on the lot.

SECTION 10. Table 1 of 18.13.030 (Land Uses) and Table 1 sub note four (4) of Chapter 18.13 (Multiple-Family Residential Districts) of Title 18 (Zoning) of the Palo Alto Municipal Code (“PAMC”) is amended to read:

[. . .]

	RM-20	RM-30	RM-40	Subject to Regulations in:
Accessory Dwelling Unit when accessory to permitted single-family residence	P ⁽¹⁾⁻⁽⁴⁾	P ⁽¹⁾⁻⁽⁴⁾	P ⁽¹⁾⁻⁽⁴⁾	18.0942.040

(4) An accessory dwelling unit associated with a single-family residence on a lot is permitted if it is contained within the existing space of a single family residence or an existing accessory structure in accordance with and pursuant to Section 18.0942.040(a)(5), subject to the provisions of Section 18.42.040 and such that no more than two total units result on the lot.

SECTION 11. 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 12. 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 13. 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 14. 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 & Development
Services

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
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/apurtenance).
- (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 of 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
27523117DA804D7...
City Clerk

DocuSigned by:
Adrian Fine
289F2F6A891E448...
Mayor

APPROVED AS TO FORM:

DocuSigned by:
Albert Yang
1586C45220134DC...
Assistant City Attorney

APPROVED:

DocuSigned by:
Ed Shibada
F2DCA19CC8D4F9...
City Manager

DocuSigned by:
[Signature]
293CF322E1294F6...
Director of Planning & Development Services

Certificate Of Completion

Envelope Id: 9071942B9F384F1BB4988D8AE22A87BE	Status: Completed
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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
	IP Address: 199.33.32.254

Record Tracking

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Security Appliance Status: Connected	Pool: StateLocal	
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

DocuSigned by:

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 Signature Adoption: Pre-selected Style
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Electronic Record and Signature Disclosure: Not Offered via DocuSign

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

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 Resent: 11/4/2020 8:17:48 AM
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 Signed: 11/5/2020 12:35:44 PM

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)

DocuSigned by:

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 Signature Adoption: Pre-selected Style
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 Signed: 11/5/2020 4:14:43 PM

Electronic Record and Signature Disclosure: Not Offered via DocuSign

Adrian Fine
 adrian.fine@cityofpaloalto.org
 Security Level: Email, Account Authentication
 (None)

DocuSigned by:

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 Signature Adoption: Pre-selected Style
 Using IP Address: 76.218.106.48
 Signed using mobile

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 Signed: 11/5/2020 5:21:09 PM

Electronic Record and Signature Disclosure: Not Offered via DocuSign

Signer Events	Signature	Timestamp
Beth Minor Beth.Minor@CityofPaloAlto.org City Clerk City of Palo Alto Security Level: Email, Account Authentication (None)	 <p>Signature Adoption: Pre-selected Style Using IP Address: 199.33.32.254</p>	<p>Sent: 11/5/2020 5:21:12 PM Resent: 11/9/2020 8:12:46 AM Viewed: 11/9/2020 8:17:29 AM Signed: 11/9/2020 8:17:48 AM</p>

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Signing Complete	Security Checked	11/9/2020 8:17:48 AM
Completed	Security Checked	11/9/2020 8:17:48 AM

Payment Events	Status	Timestamps
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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:

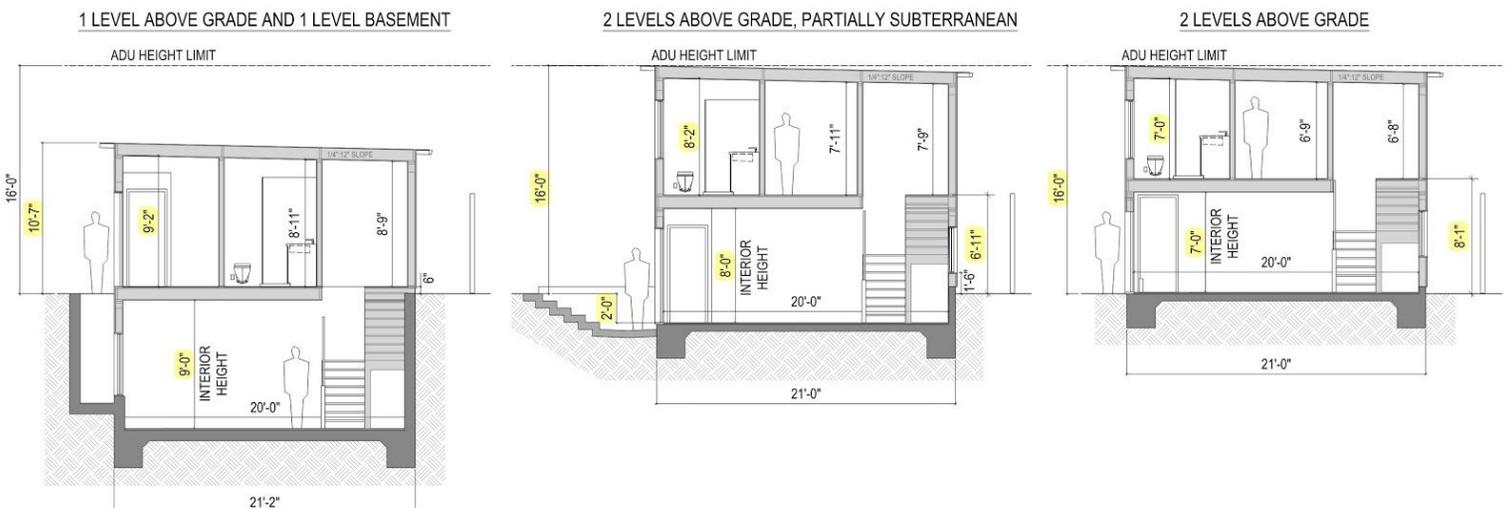
- i. ADUs higher than one story may be up to 22' tall at the peak, measured from average grade, and any portion of the structure that exceeds 16' in height must be set back a minimum of 5' from the side yard property line and 10' from the rear yard property line.
- ii. Exception: An ADU that faces an 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

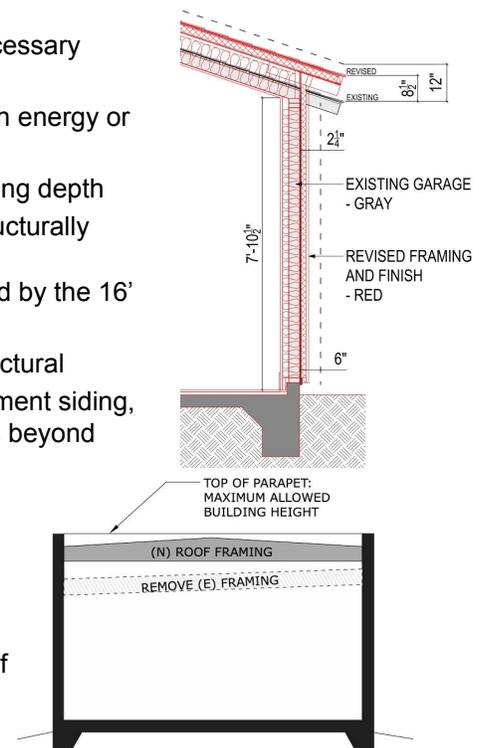
- a. Without some flexibility in this, floor to ceiling heights are substandard (+/- 7'-0"). Codifying this in a thoughtful way can provide tangible improvements in privacy management and enhancement to overall massing.
- b. Partially subterranean 1st floor lowers 2nd floor and allows 8' ceilings with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



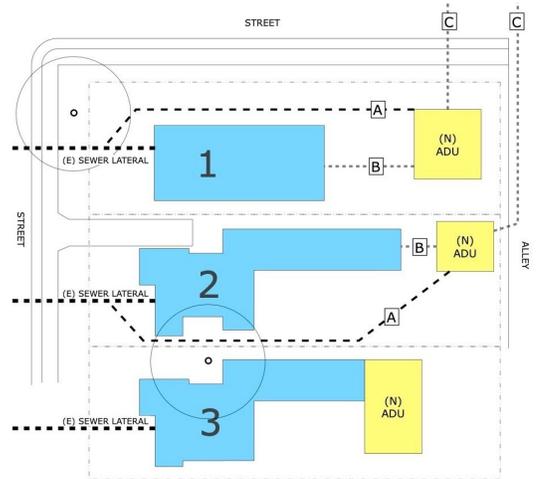
6. Utility Connections

- 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,

Jessica Resmini, Architect

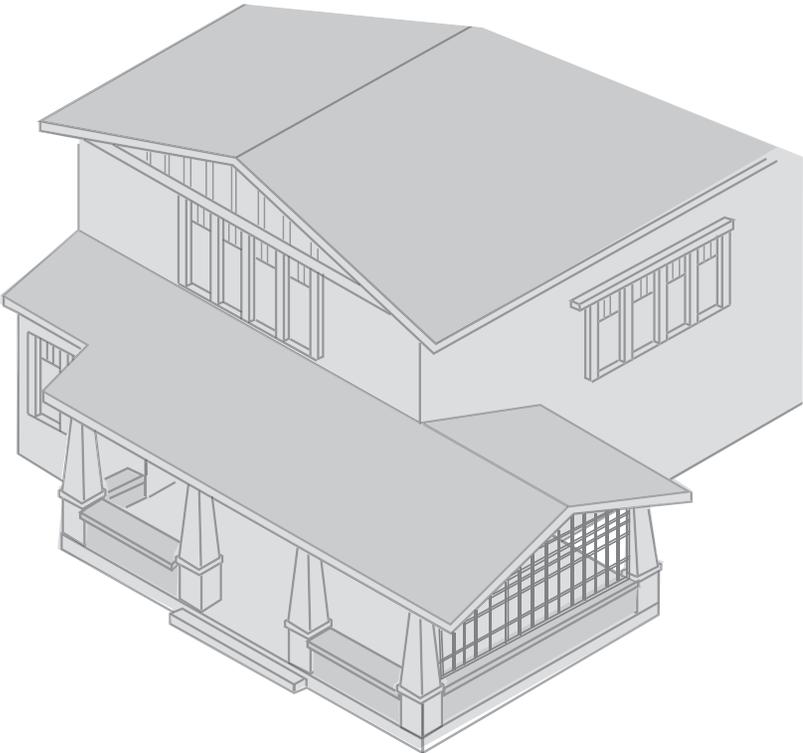
Randy Popp, Architect

Roofed porches on the 1st floor

Roofed porches on the 1st floor do NOT count toward the gross floor area if at least 50% of the perimeter is at least 50% open.

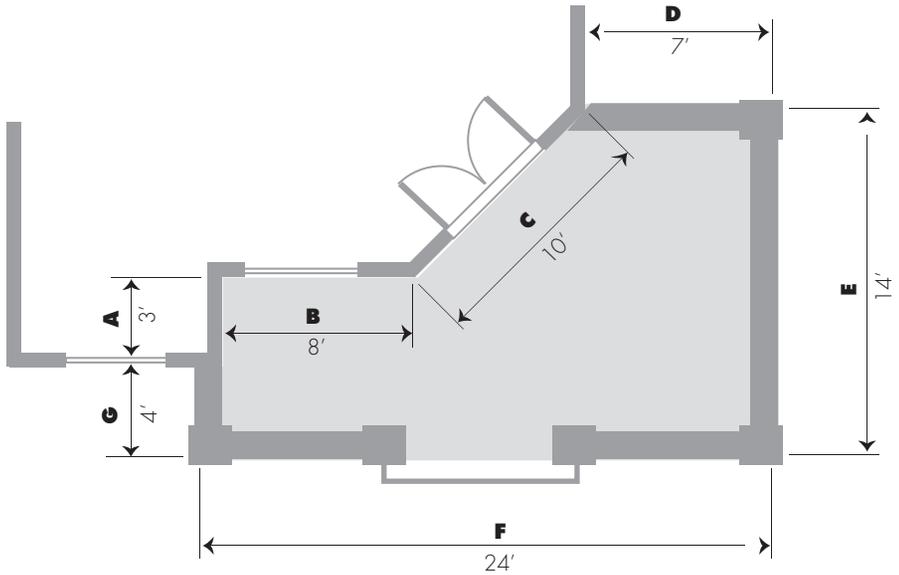
How to determine if a porch is at least 50% open (using Fig 5 as an example)

Fig 5 Roofed 1st floor porch



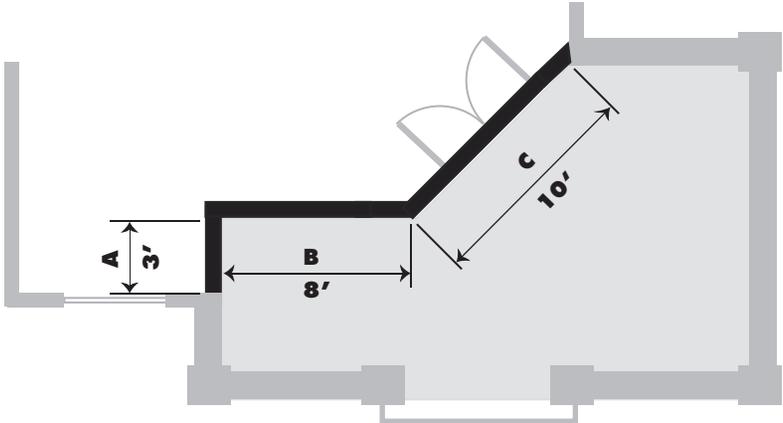
Step 1: Determine the perimeter of the porch and divide it into segments that will allow a comparison of closed and open segments.

The perimeter of the porch in Fig 5 is shown below. It is the sum of segments **A** through **G**. It is 70 linear feet.



Step 2: Determine which perimeter segments about the house walls. These are closed segments, or sides.

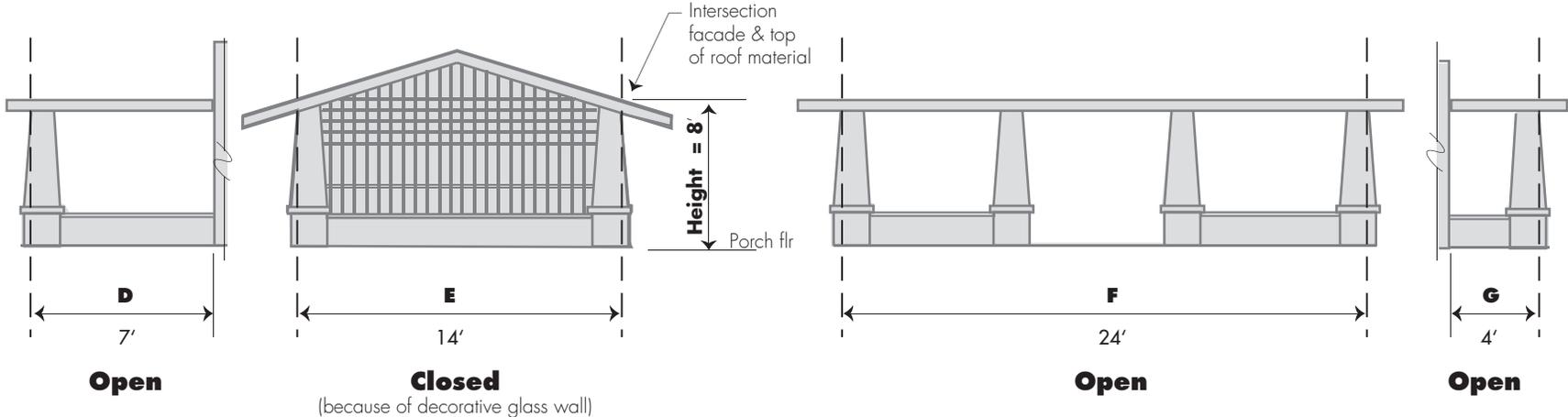
In *Fig 5* sides **A**, **B**, & **C** about the house walls. These are considered to be closed segments.



Step 3: Determine the status (open/closed) of the remaining segments based on the design. If at least 50% of the facade area is open, then the segment or side is considered open.

For purposes of assessing the openness of the facade:

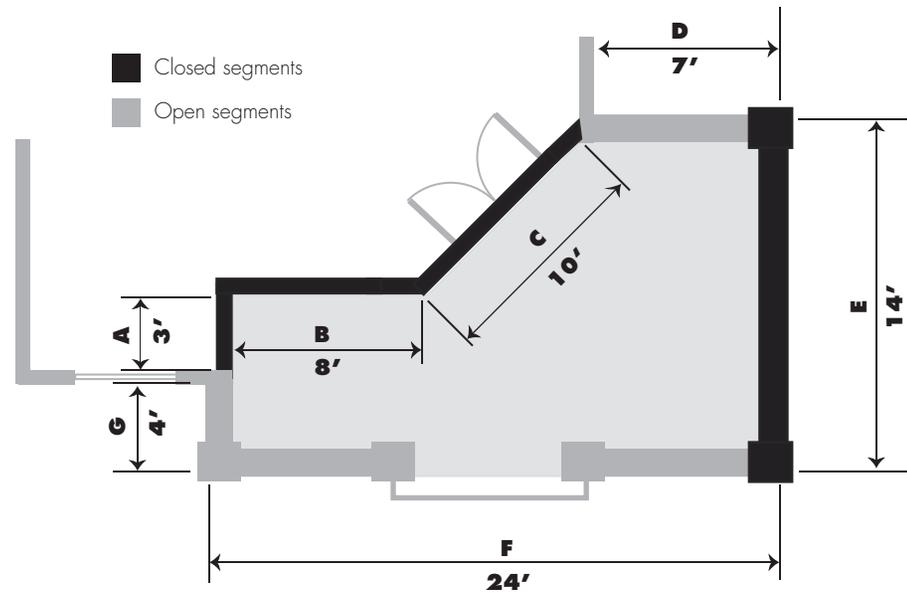
- The height of the segment facades is measured from the top of the porch floor to the the point where the segment facade intersects with the top of the roof material.
- The widths of the segment facades are measured from the same plane. Allowances may be made for structural supports that are not excessive.



Step 4: Finalize the determination of which segments are closed and which are open, total the linear feet in each category, and compare the totals.

For the porch in *Fig 5*, the summary is as follows:

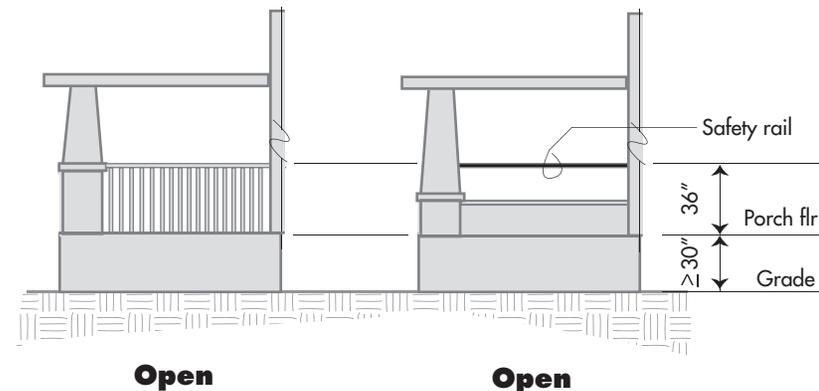
Closed		Open	
Segment	Feet	Segment	Feet
A	3'	D	7'
B	8'	F	24'
C	10'	G	4'
E	14'		
	<u>35'</u>		<u>35'</u>



Conclusion: The perimeter of the porch in *Fig 5* is 50% open and so the porch would **NOT** count toward gross floor area

Note: If a porch floor is more than 30" above grade, the porch sides may need to be 36" high for safety reasons. This may cause the porch facade to be considered closed. Possible solutions to make sure the porch sides are considered open are illustrated to the right:

- Railings (ballisters) instead of solid half walls.
- A single safety rail above lower, solid half walls.



**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



December 23, 2021

Jonathan Lait, Planning Director
Planning Department
City of Palo Alto
250 Hamilton Avenue – Fifth Floor
Palo Alto, CA 94301

Dear Jonathan Lait:

RE: Review of Palo Alto's Accessory Dwelling Unit (ADU) Ordinance under ADU Law (Gov. Code § 65852.2)

Thank you for submitting the City of Palo Alto (City) accessory dwelling unit (ADU) ordinance (Ordinance No.5507) adopted September 26, 2020, to the California Department of Housing and Community Development (HCD). The ordinance was received on October 20, 2020. HCD has reviewed the ordinance and is submitting these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD has determined that the ordinance does not comply with section 65852.2 in the manner noted below. Under the statute, the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than January 23, 2022. HCD will review and consider any written response received from the City before that date in advance of taking further action authorized by Government Code section 65852.2.

The adopted ADU ordinance meets many statutory requirements. However, the ordinance must be revised to comply with State ADU Law (Gov. Code, § 65852.2), as follows:

- Section 18.09.030(a)(3) *Units Exempt from Generally Applicable Local Regulations*: The text of this Section and the applicable portion of Table 1 indicate the maximum size of a newly constructed detached ADU is 800 square feet. Although a local agency may establish minimum and maximum size requirements for ADUs pursuant to subdivision (c)(1) of Government Code section 65852.2 within limits, a local agency shall not establish a maximum square footage requirement for either attached or detached ADUs that is less than 850 square feet and 1,000 square feet for an ADU that provides more than one bedroom. (Gov. Code, § 65852.2, subd. (c)(2)(B).) Therefore, all relevant

sections of the ordinance must be amended to comply with this mandate in State ADU Law.

- **Section 18.09.030 *Units Exempt from Generally Applicable Local Regulations:*** There appears to be a conflict between the text of this section and Table 1. The number of allowable units are correctly noted in Table 1 as “1 ADU *and* 1 JADU.” The text of section 18.09.030(a) appears to limit allowable units to “an ADU *or* JADU.” Government Code section 65852.2, subdivision (e)(1)(A), requires an ordinance to allow “one ADU and one JADU per lot... .” The City must amend the ordinance to correct this inconsistency, clarifying that “one ADU *and* one JADU” are permitted if all the conditions of section 65852.2, subdivision (e)(1)(A) apply.
- **Section 18.09.030(b) *Application of Development Standards:*** Local agencies may establish standards for ADUs pursuant to Government Code section 65852.2, subdivision (a); however, these standards do not apply to ADUs constructed pursuant to subdivision (e). Table 1 impermissibly applies “underlying zoning” “for front setback[s]” to subdivision (e) ADUs. (Mun. Code, §18.09.030(b).) Subdivision (e)(1) describes permitted setbacks in full. Unless underlying zoning for all residential areas conforms to subdivision (e) limits, this table must be amended to comply with statute. (Gov. Code, § 65852.2, subd. (e)(1)(A).)
- **Section 18.09.030(b)(1) *ADU Height in Flood Zones:*** The City has impermissibly restricted the height of ADUs. It appears that the City establishes minimum elevations for the first floor of structures in the flood zone, which is essentially the entire city to varying degrees. To account for this, the zoning code allows most residential structures to exceed otherwise maximum allowable heights for development. The City does not extend this accommodation to ADUs. Currently, Table 1 states that the maximum height for new, detached ADUs is 16 feet, but includes a caveat that “units built in a flood zone are not entitled to any height extension.” (Mun. Code, § 18.09.030(b).) In many instances, this would operate as an impermissible restriction on ADUs. Under State ADU Law, the City must accommodate an ADU of at least 800 square feet and 16 feet in height. Thus, the caveat in Table 1 is potentially confusing and could restrict the height to less than 16 feet. If it would in fact operate to effectively limit the height of ADUs to less than 16 feet, it would operate as an impermissible restriction on ADUs. As such, Table 1 should be revised to clarify that this limitation does not apply where necessary to permit an 800-square foot ADU that it at least 16 feet tall. (Gov. Code, § 65852.2, subds. (c)(2)(C) and (e)(1)(B)(ii).)
- **Section 18.09.040(b) *Daylight Plane and ADU Height Standards:*** Table 2 states that “daylight plane” acts as a limit on the height of ADUs. In many instances,

this may not be a problem; however, daylight plane concerns cannot be used to unduly limit the height of an ADU. ADUs are permitted up to 16 feet high. (Gov. Code, § 65852.2, subds. (c)(2)(C), (e)(1)(B)(ii).) Therefore, in considering restrictions that the City is imposing on ADUs for daylight planes, the ordinance should note the 16-foot height allowable for ADUs. This Table must be amended to clarify this point.

- Section 18.09.040(b) *Units Subject to Local Standards*: Table 2 sets out the development standards for ADUs that do not qualify under section 18.09.030. Although the City has more freedom to establish development standards for these ADUs, that is not without limitation. This section, and Table 2, must be amended to clarify that—notwithstanding the development standards—an ADU of at least 800 square feet, 16 feet in height, and with four-foot rear and side-yard setbacks is permitted as required by State ADU Law. (Gov. Code, § 65852.2, subd. (c)(2)(C).)
- Section 18.09.040(b) *Floor Area and JADUs*: Development standards can account for ADUs in their measurement of the floor area restrictions or ratio (FAR). But these standards may not account for or consider JADUs. A JADU may not be included in this calculation, because a JADU is a unit that is contained entirely within a single-family residence. (Gov. Code § 65852.22, subd. (h)(1).) Footnote 4 of Table 2 impermissibly includes JADUs as part of the FAR calculations. This footnote must be amended to clarify this point.
- Section 18.09.040(h) *Noise-Producing Equipment*: Local agencies may impose development standards on ADUs; however, these standards shall not exceed state standards. Section 18.09.040(h) states that noise-producing equipment “shall be located outside of the setbacks.” This section must be revised to only refer to ADUs since setbacks are not required for JADUs. In addition, this setback for noise-producing equipment for ADUs must be revised to make clear that this setback requirement will not impede the minimum state standards of four-foot setbacks. (Gov. Code, § 65852.2, subd. (c)(2)(C).)
- Section 18.09.040(i)(2) *Setbacks*: Currently, this section states, “No basement or other subterranean portion of an ADU/JADU shall encroach into a setback required for the primary dwelling.” Under state law, new attached and detached ADUs have maximum four-foot rear and side-yard setbacks. (Gov. Code, § 65852.2, subds. (a)(1)(D)(vii), (c)(2)(C), (e)(1)(B), and (e)(1)(D).) Local agencies may impose setback requirements if the minimum rear and side-yard setbacks established by state law are not exceeded. This restriction is concerning on a number of grounds. First, setbacks may not be required for JADUs as they are constructed within the walls of the primary dwelling. Second, this requirement imposes excessive restrictions on ADUs converted from an existing area of the primary dwelling or accessory structure with a basement or subterranean space. Again, these

structures are not subject to setback requirements. Finally, this section would violate State ADU Law if the side or rear setback requirement for an ADU or JADU located in a basement or other subterranean structure exceeded four feet. Requiring ADUs and JADUs to meet the side and rear setbacks for the primary dwellings could exceed the maximum four-foot setbacks set out in State ADU Law. The ordinance must be revised to eliminate these concerns.

- Section 18.09.040(j) *Design*: This section states, “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 towards the interior side or rear yard of the property.” These standards appear to apply only to the creation of ADUs and may unduly restrict the placement of an ADU on some lots. Local development standards provided by ordinance pursuant to subdivisions (a) through (d) of Government Code section 65852.2 do not apply to ADUs created under subdivision (e). Please consider eliminating this restriction or modifying it such that it applies “when feasible.”
- Section 18.09.040(j)(2)(A) *Privacy*: The section states, “Second story doors and decks shall not face a neighboring dwelling unit.” This limitation, however, may place an impermissible constraint on an ADU. For example, excessive constraints would be placed on the creation of a second story ADU if residential units were located on all adjacent parcels. In addition, when operating in conjunction with Section 18.09.040(j), noted above, this restriction may prohibit ADUs created under subdivision (e) of Government Code section 65852.2. Accordingly, this provision must be revised to allow for more flexibility. The City could revise the first sentence of this section to state, “Second story doors and decks shall not face a neighboring dwelling unit, where feasible.”
- Section 18.09.040(k)(4) *Parking*: The ordinance indicates 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. Further, under this section, the space for the covered parking count towards the total floor area for the site *and* the ADU if attached to the unit. Covered parking should not count towards the total floor area of the site as if it would unduly limit the allowable size of an ADU established by state law, nor should it directly count toward the area available for the ADU. Although standards within an underlying zone may apply when noted in the adopted ADU ordinance, they may not be more restrictive than those contained in state statute. (See, e.g., Gov. Code, § 65852.2, subs. (a)(1)(B), (a)(1)(D)(vii), (a)(1)(D)(x), (c), and (e).) The portion of this section stating “unit unless attached to the unit” should be deleted, or the section should otherwise be modified to comply with state law.

Jonathan Lait, Planning Director
Page 5

In these respects, revisions are necessary to comply with statute.

HCD will consider any written response to these findings, such as a revised ordinance or a detailed plan to bring the ordinance into compliance with law by a date certain, before taking further action authorized pursuant to Government Code section 65852.2. Please note that HCD may notify the Attorney General's Office in the event that the City fails to take appropriate and timely action under section 65852.2, subdivision (h).

HCD appreciates the City's efforts in the preparation and adoption of the ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please contact Lauren Lajoie of our staff, at (916) 776-7495 or at Lauren.Lajoie@hcd.ca.gov if you have any questions or would like HCD's technical assistance in these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability



PLANNING & DEVELOPMENT SERVICES

CITY OF
**PALO
 ALTO**
 250 Hamilton Avenue, 5th Floor
 Palo Alto, CA 94301
 (650) 329-2441

February 3, 2022

Lauren Lajoie
 Housing & Community Development
 Division of Housing Policy Development
 2020 W. El Camino Avenue, Suite 500
 Sacramento, CA 95833
Lauren.Lajoie@hcd.ca.gov

Dear Ms. Lajoie,

This letter represents the City of Palo Alto's response to your letter dated December 23, 2021 received by email, and received by hard copy on January 27, 2022. The content of the Housing and Community Development's letter is *italicized*. The City of Palo Alto's responses are **bolded**.

1. ADU Size - *Section 18.09.030(a)(3) Units Exempt from Generally Applicable Local Regulations: The text of this Section and the applicable portion of Table 1 indicate the maximum size of a newly constructed detached ADU is 800 square feet. Although a local agency may establish minimum and maximum size requirements for ADUs pursuant to subdivision (c)(1) of Government Code section 65852.2 within limits, a local agency shall not establish a maximum square footage requirement for either attached or detached ADUs that is less than 850 square feet and 1,000 square feet for an ADU that provides more than one bedroom. (Gov. Code, § 65852.2, subd. (c)(2)(B).) Therefore, all relevant sections of the ordinance must be amended to comply with this mandate in State ADU Law.*

PAMC Section 18.09.030 is intended to describe the requirements for ADUs built under Gov. Code 65852.2, subdivision (e). This is not intended to create any limitation on ADUs built under subdivisions (a)-(d), which are governed by PAMC Section 18.09.040. The City will add clarifying language to this effect at the top of PAMC Section 18.09.030.

2. ADU & JADU - *Section 18.09.030 Units Exempt from Generally Applicable Local Regulations: There appears to be a conflict between the text of this section and Table 1. The number of allowable units are correctly noted in Table 1 as "1 ADU and 1 JADU." The text of section 18.09.030(a) appears to limit allowable units to "an ADU or JADU." Government Code section 65852.2, subdivision (e)(1)(A), requires an ordinance to allow "one ADU and one JADU per lot... ." The City must amend the ordinance to correct this inconsistency, clarifying that "one ADU and one JADU" are permitted if all the conditions of section 65852.2, subdivision (e)(1)(A) apply.*

The City will update its ordinance to reflect the changes made by AB 3182 with respect to 1 ADU and 1 JADU.

3. Front Setback - *Section 18.09.030(b) Application of Development Standards: Local agencies may establish standards for ADUs pursuant to Government Code section 65852.2, subdivision (a); however, these standards do not apply to ADUs constructed pursuant to subdivision (e). Table 1 impermissibly applies "underlying zoning" "for front setback[s]" to subdivision (e) ADUs. (Mun. Code, §18.09.030(b).) Subdivision (e)(1) describes permitted setbacks in full. Unless underlying zoning for*

all residential areas conforms to subdivision (e) limits, this table must be amended to comply with statute. (Gov. Code, § 65852.2, subd. (e)(1)(A).)

During our conversation on February 2, 2022, you explained that local rules may apply for front setbacks, including ADUs built under subdivision (e), and that it is not HCD's position that subdivision (e) ADUs must be allowed at the front lot line. You explained that the issue with the current City ordinance is that it does not make clear that "underlying zoning" is only for front setbacks. The City will clarify this point in its ordinance.

4. *Height - Section 18.09.030(b)(1) ADU Height in Flood Zones: The City has impermissibly restricted the height of ADUs. It appears that the City establishes minimum elevations for the first floor of structures in the flood zone, which is essentially the entire city to varying degrees. To account for this, the zoning code allows most residential structures to exceed otherwise maximum allowable heights for development. The City does not extend this accommodation to ADUs. Currently, Table 1 states that the maximum height for new, detached ADUs is 16 feet, but includes a caveat that "units built in a flood zone are not entitled to any height extension." (Mun. Code, § 18.09.030(b).) In many instances, this would operate as an impermissible restriction on ADUs. Under State ADU Law, the City must accommodate an ADU of at least 800 square feet and 16 feet in height. Thus, the caveat in Table 1 is potentially confusing and could restrict the height to less than 16 feet. If it would in fact operate to effectively limit the height of ADUs to less than 16 feet, it would operate as an impermissible restriction on ADUs. As such, Table 1 should be revised to clarify that this limitation does not apply where necessary to permit an 800-square foot ADU that it at least 16 feet tall. (Gov. Code, § 65852.2, subds. (c)(2)(C) and (e)(1)(B)(ii).)*

For purposes of health and safety, the City of Palo Alto requires structures built in a flood zone to have a minimum finished floor height based on FEMA regulations. For a primary residence, the City provides an extra height allowance of 50% the minimum finished floor height. The City does not provide this allowance for any accessory structures, including ADUs. Nevertheless, ADUs in the flood zone can still be built to a height of 16 feet. It is unclear to the City how the failure to provide additional height above 16 feet represents an impermissible restriction on ADUs. During our conversation, you related that HCD prefers to have as few restrictions as possible on ADU production. The only restriction here is on finished floor height in the flood zone, which cannot be waived or relaxed without impacts on health and safety. Even in areas requiring the most extreme height above the base flood elevation, an ADU remains feasible within the 16 foot height limit.

5. *Daylight Plane - Section 18.09.040(b) Daylight Plane and ADU Height Standards: Table 2 states that "daylight plane" acts as a limit on the height of ADUs. In many instances, this may not be a problem; however, daylight plane concerns cannot be used to unduly limit the height of an ADU. ADUs are permitted up to 16 feet high. (Gov. Code, § 65852.2, subds. (c)(2)(C), (e)(1)(B)(ii).) Therefore, in considering restrictions that the City is imposing on ADUs for daylight planes, the ordinance should note the 16-foot height allowable for ADUs. This Table must be amended to clarify this point.*

Please note that the City's daylight plane regulations do not apply to subdivision (e) ADUs, which are governed by PAMC Section 18.09.030. The City will add a clarifying sentence at the top of Section 18.09.040 explaining that none of the regulations in PAMC 18.09.040 apply to subdivision (e) ADUs. In addition, the City will add a clarifying statement that the regulations in PAMC 18.09.040 are not intended to limit the conversion of existing structures to ADUs or JADUs.

For all other ADUs, however, the City has requested clarity on HCD's position on daylight plane on numerous occasions, most recently by email dated August 8, 2021. Please see this email, which is

attached, for an explanation of the City's position. The City looks forward to continued discussion of this topic.

6. Clarify - *Section 18.09.040(b) Units Subject to Local Standards: Table 2 sets out the development standards for ADUs that do not qualify under section 18.09.030. Although the City has more freedom to establish development standards for these ADUs, that is not without limitation. This section, and Table 2, must be amended to clarify that—notwithstanding the development standards—an ADU of at least 800 square feet, 16 feet in height, and with four-foot rear and side- yard setbacks is permitted as required by State ADU Law. (Gov. Code, § 65852.2, subd. (c)(2)(C).)*

The City will add a clarifying statement to this effect.

7. Floor Area & JADUs - *Section 18.09.040(b) Floor Area and JADUs: Development standards can account for ADUs in their measurement of the floor area restrictions or ratio (FAR). But these standards may not account for or consider JADUs. A JADU may not be included in this calculation, because a JADU is a unit that is contained entirely within a single-family residence. (Gov. Code § 65852.22, subd. (h)(1).) Footnote 4 of Table 2 impermissibly includes JADUs as part of the FAR calculations. This footnote must be amended to clarify this point.*

Footnote 4 of Table 2 provides additional FAR on a site for ADUs and JADUs. This is an incentive to promote production of such units without limiting the development potential of a primary unit. Because a JADU is contained entirely within the space of a single-family residence, it would normally be included in the floor area of the primary unit. Footnote 4 provides an opportunity for a property owner to exempt all JADU square footage from the calculation of floor area for the primary unit. The removal of JADUs from footnote 4 would only serve to restrict the development of JADUs. The City will attempt to clarify the language of this footnote.

8. Noise-Producing Equipment - *Section 18.09.040(h) Noise-Producing Equipment: Local agencies may impose development standards on ADUs; however, these standards shall not exceed state standards. Section 18.09.040(h) states that noise-producing equipment “shall be located outside of the setbacks.” This section must be revised to only refer to ADUs since setbacks are not required for JADUs. In addition, this setback for noise-producing equipment for ADUs must be revised to make clear that this setback requirement will not impede the minimum state standards of four-foot setbacks. (Gov. Code, § 65852.2, subd. (c)(2)(C)).*

As noted above, the City will add a clarifying statement that the regulations in PAMC 18.09.040 are not intended to limit the conversion of existing structures to ADUs or JADUs. For new construction, however, the City permits JADUs to build at a lesser setback than a single-family home normally would. Therefore, the removal of JADUs from this section will only serve to restrict the development of JADUs.

Additionally, the City's ordinance states that noise producing equipment needs to be placed outside the setback for an ADU or JADU. This means that the noise producing equipment *itself* cannot be placed closer than four-feet to a property line for either type of structure; not that the ADU or JADU cannot be placed at those locations. This is consistent with the state setback requirements for an ADU.

9. Basements - *Section 18.09.040(i)(2) Setbacks: Currently, this section states, “No basement or other subterranean portion of an ADU/JADU shall encroach into a setback required for the primary dwelling.” Under state law, new attached and detached ADUs have maximum four-foot rear and side-yard setbacks. (Gov. Code, § 65852.2, subds. (a)(1)(D)(vii), (c)(2)(C), (e)(1)(B), and (e)(1)(D).) Local*

agencies may impose setback requirements if the minimum rear and side-yard setbacks established by state law are not exceeded. This restriction is concerning on a number of grounds. First, setbacks may not be required for JADUs as they are constructed within the walls of the primary dwelling. Second, this requirement imposes excessive restrictions on ADUs converted from an existing area of the primary dwelling or accessory structure with a basement or subterranean space. Again, these structures are not subject to setback requirements. Finally, this section would violate State ADU Law if the side or rear setback requirement for an ADU or JADU located in a basement or other subterranean structure exceeded four feet. Requiring ADUs and JADUs to meet the side and rear setbacks for the primary dwellings could exceed the maximum four-foot setbacks set out in State ADU Law. The ordinance must be revised to eliminate these concerns.

As noted above, the City will add a clarifying statement that the regulations in PAMC 18.09.040 are not intended to limit the conversion of existing structures to ADUs or JADUs. In addition, as with the previous section, the inclusion of JADUs here only serves to increase flexibility of JADU production.

As noted above, the City will add a clarifying statement an ADU of at least 800 square feet, 16 feet in height, and with four-foot rear and side- yard setbacks is permitted as required by State ADU Law.

With these clarifications the City does not believe it would violate State ADU Law to require that a newly constructed ADU limit any below-grade space to a setback greater than 4 feet. It is the City's understanding that it could simply state that basements are not permitted for ADUs built under subdivisions (a)-(d), so long as it was still feasible to construct an ADU of at least 800 square feet. If this is the case, the City should have the lesser authority to direct the placement of below-grade development.

The City has significant concerns about basements in general, and those concerns extend to basements constructed as part of ADUs. Due to a high water table throughout most of Palo Alto, the construction of basements requires dewatering (pumping water from the construction site). While this is allowed, there are significant restrictions on timing and procedures taken during the dewatering process.

Secondly, development of homes in Palo Alto often includes requirements for the planting and maintenance of trees used to enhance privacy between properties. Placing ADUs with basements as close as 4 feet from the property line may jeopardize the health of these trees on the subject property as well as trees on adjacent properties. The trees could fail, which would both diminish the tree canopy—important for our environment and adaptation to climate change—and diminish the privacy between properties.

Building below ground is not required in order to achieve a unit which follows the requirements in Section 65852.2 and can lead to potential impacts on adjacent lots, such as to large stature trees on adjacent lots which is a common occurrence in Palo Alto. Building a basement in these scenarios may cause the tree to fail which is a life, safety, and health hazard which would unduly affect both homeowners as a result of the action by one individual. There are construction methods which can be implemented for above ground construction to help limit root damage caused by this construction to preserve trees but that is not possible for below ground construction and can lead to significant impacts as noted above.

10. Corner Lots - Section 18.09.040(j) Design: This section states, “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 towards the interior side or rear yard of the property.” These standards appear to apply only to the creation of ADUs and may unduly restrict the placement of an ADU on some lots. Local development standards provided by ordinance pursuant to subdivisions (a) through (d) of Government Code section 65852.2 do not apply to ADUs created under subdivision (e). Please consider eliminating this restriction or modifying it such that it applies “when feasible.”

As noted above, the City will add a clarifying sentence at the top of Section 18.09.040 explaining that none of the regulations in PAMC 18.09.040 apply to subdivision (e) ADUs. The City will clarify this is not applicable for subsection (e) ADUs. We are not aware of any evidence that this simple design requirement creates an excessive constraint on ADU production and that has not been our experience.

11. Privacy - Section 18.09.040(j)(2)(A) Privacy: The section states, “Second story doors and decks shall not face a neighboring dwelling unit.” This limitation, however, may place an impermissible constraint on an ADU. For example, excessive constraints would be placed on the creation of a second story ADU if residential units were located on all adjacent parcels. In addition, when operating in conjunction with Section 18.09.040(j), noted above, this restriction may prohibit ADUs created under subdivision (e) of Government Code section 65852.2. Accordingly, this provision must be revised to allow for more flexibility. The City could revise the first sentence of this section to state, “Second story doors and decks shall not face a neighboring dwelling unit, where feasible.”

As noted above, the City will add a clarifying sentence at the top of Section 18.09.040 explaining that none of the regulations in PAMC 18.09.040 apply to subdivision (e) ADUs. We are not aware of any evidence that this simple design requirement creates an excessive constraint on ADU production and that has not been our experience.

The City will clarify this is not applicable for subsection (e) ADUs. We are not aware of any evidence that this creates an excessive constraint and that has not been our experience.

12. Parking - Section 18.09.040(k)(4) Parking: The ordinance indicates 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. Further, under this section, the space for the covered parking count towards the total floor area for the site and the ADU if attached to the unit. Covered parking should not count towards the total floor area of the site as if it would unduly limit the allowable size of an ADU established by state law, nor should it directly count toward the area available for the ADU. Although standards within an underlying zone may apply when noted in the adopted ADU ordinance, they may not be more restrictive than those contained in state statute. (See, e.g., Gov. Code, § 65852.2, subs. (a)(1)(B), (a)(1)(D)(vii), (a)(1)(D)(x), (c), and (e).) The portion of this section stating “unit unless attached to the unit” should be deleted, or the section should otherwise be modified to comply with state law.

As noted above, the City will add a clarifying sentence at the top of Section 18.09.040 explaining that none of the regulations in PAMC 18.09.040 apply to subdivision (e) ADUs.

Currently, all covered parking in the single-family zones counts towards floor area for the site and dwelling unit. The City does not understand how this creates a standard that is more restrictive than that contained in state statute; none of the subsections cited in your letter speak to whether a garage for an ADU must be exempted from the unit size for the ADU. Moreover, this provision does

not create a constraint on ADU production, as a property owner may always choose to provide a detached garage, uncovered parking, or no parking at all for the ADU.

The City has concerns that allowing attached garages onto these structures will incentivize individuals to illegally expand the unit into the garage, which would both exceed the City's ordinance, contain unpermitted construction, and potentially place the health and safety of the occupants at risk.

Sincerely,

DocuSigned by:

293CF322E1294F6...

Jonathan Lait

Director of Planning and Development Services

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