

**From:** [Palo Alto Forward](#)  
**To:** [Council, City; Planning Commission; HeUpdate; Building](#)  
**Subject:** Re: Adoption of an Ordinance Amending Title 8 of the PAMC  
**Date:** Saturday, June 18, 2022 2:13:46 PM  
**Attachments:** [June 18 2022 Letter.pdf](#)

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Hello!

Attached is a letter regarding the adoption of an Ordinance Amending Title 8 of the PAMC - we believe the tree protection ordinance expansion in particular conflicts with state law, and makes it more difficult for the city to reach a compliant housing element.

Thank you!



June 18, 2022

Re: Adoption of an Ordinance Amending Title 8 of the PAMC

Dear Palo Alto City Council; Palo Alto Planning and Transportation Committee; Palo Alto Housing Element Working Group; and City Staff:

We are writing today to discuss existing and proposed tree ordinances in the context of state housing law.

We understand you are in receipt of communications from Mr. Randolph Popp, and he has provided you with remarks from Housing and Community Development (HCD) affirming the supremacy of state housing law in the context of the proposed ADU ordinance. We urge you to take this seriously. HCD is correct. No local ordinance can make an ADU illegal beyond the extent permitted by state law.

Going further: this is also true of the existing tree ordinance. It is also true of SB-9 projects. The city should ensure its ordinances are compliant with state housing law in all cases.

We believe this is an urgent matter in the context of the Housing Element. As part of the Housing Element, the city must identify and mitigate constraints on development<sup>1</sup>. The city has not provided any public information on its constraints analysis to-date, but the existing ordinance is a constraint, and the proposed one will be a constraint, if adopted. Even where superseded by state law, such ordinances are still barriers to development because they require delays and costs to override.

Tree ordinances impact the Housing Element in three places. The first is the site inventory. The city has 409 specific sites for the housing element to accommodate its RHNA<sup>2</sup>, and computed realistic capacities based on raw acreage. These realistic capacities do not seem to reflect reductions in developable acreage created by either the existing or proposed tree ordinances. Take, for example, this inventory site at 990 Commercial St:

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<https://www.hcd.ca.gov/community-development/housing-element/docs/housing%20element%20completeness%20checklist.pdf>, pg 6

<sup>2</sup> Inventory spreadsheet at paloaltohousingelement.com, dated 4/26/2022

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A significant portion of this lot is illegal to develop around the perimeter, and especially at the corner. Note the rock path to see how much depth beyond the setback is reserved for urban canopy. If not for the ordinance, a developer would likely find much of this surface area useful for satisfying the city's parking requirements. With the ordinance, the effective acreage is reduced below the .79 acres reflected in the site inventory. We support urban canopy, but absent offsetting policies, the city's inventory must count fewer housing units at sites such as this, to reflect the reduced capacity for development created by the city's policies. This would require identification of more sites, or higher allowed densities on existing sites in the inventory.

We think this site is an example of a site affected by the existing ordinance. This reflects the fact that our members' groundtruthing reports<sup>3</sup> can not incorporate feedback regarding

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<sup>3</sup> See past letters from Rob Nielson, Scott O'Neil, and Robert Chun offering site-by-site analysis of the proposed Housing Element inventory.



ordinances that did not exist when the groundtruthing was performed. Even so, it illustrates a principle that would apply to any site that is affected by the new ordinance.

Second, the city is projecting development of 512 ADU units in its Housing Element<sup>4</sup>. This projection is based in part on a historical baseline the city has established for actual ADU production. The current tree protection ordinance is reflected in this baseline, but the one under consideration is not. If the city creates a new constraint on ADU development, its existing projections are invalidated. The city would probably claim that because the proposed ordinance defers to Government Code section 65882 subdivision (e), there is no new constraint. This is false. By shifting the burden of demonstrating a necessity for an exemption with the ordinance to the applicant, the city is making ADU development less economically feasible. The requirement of an arborist report compounds this. The city must study these impacts, and reduce its projected housing yield from ADUs, and/or find offsetting capacity.

Third, and taking the above two together: the city must account for its tree protection ordinances in the constraints analysis and policies sections. The city can surely make these policies legal and get to a compliant housing element, but doing this may require offsetting policies if more sites are not identified. For example, the city could adopt a program that gives height, FAR, density, and parking-reduction bonuses proportional to the area required to support urban canopy.

The city needs to ensure ordinances -existing and new- are compliant with state housing law. We believe the tree protection ordinance expansion in particular conflicts with state law, and makes it more difficult for the city to reach a compliant housing element. The city should pull the ordinance, rework it to ensure legal compliance, and find ways to offset development impacts to avoid threatening Housing Element compliance and certification.

Thank you for your consideration in this matter.

A handwritten signature in black ink, appearing to read 'Katie Causey'.

Katie Causey Community Engagement Manager on behalf of the Board of Palo Alto Forward

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<sup>4</sup> Inventory spreadsheet.