



# City of Palo Alto

## City Council Staff Report

(ID # 7921)

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**Report Type: Consent Calendar**

**Meeting Date: 4/17/2017**

**Summary Title: Accessory Dwelling Unit Ordinance (First Reading)**

**Title: FIRST READING: Adoption of an Ordinance Amending Chapter 18 (Zoning) to Implement New State Law Related to Accessory Dwelling Units and Junior Dwelling Units and to Reorganize and Update the City's Existing Regulations. The Ordinance is Exempt from the California Environmental Quality Act per Public Resource Code Section 21080.17 and CEQA Guideline Sections 15061(b), 15301, 15303 and 15305 and was Recommended for Approval by the Planning & Transportation Commission on November 30, 2016. (FIRST READING: March 6, 2017 PASSED: : 6-2-1 (DuBois, Holman no, Kou abstain)**

**From: City Manager**

**Lead Department: Planning and Community Environment**

### **Recommendation**

Staff recommends the City Council introduce for additional first reading and adopt the attached draft ordinance (Attachment A) amending Palo Alto Municipal Code provisions regarding accessory dwelling units and find the ordinance exempt from review under the California Environmental Quality Act.

### **Background**

On March 7, 2017 the City Council held a public hearing and considered an ordinance to amend the Palo Alto Municipal Code to implement State law regarding Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU) and to reorganize and update the City's existing regulations. Due to the extent of changes, the City Attorney's Office has advised that this ordinance be presented to the City Council as an additional first reading. However, because the Council has already held and closed a public hearing on this subject, the ordinance is returning for a first reading on the Council's consent calendar. More background information regarding this subject, including the original draft of the proposed ordinance and an explanation of the new State laws, can be found in the March 7, 2017 Council report available online at: <http://www.cityofpaloalto.org/civica3/filebank/documents/56095>.

This report transmits the updated ordinance, which is based on the Council motion below. Staff annotations are provided in *italics*.

**MOTION AS AMENDED AND RESTATED:** Council Member Wolbach moved, seconded by Council Member Fine to move the staff recommendation adopting an Ordinance amending Chapter 18 (Zoning) of the Palo Alto Municipal Code to update Code sections regarding Accessory Dwelling Units (ADUs), with the following changes and clarifications:

- a. Require no more than 6-ft side and rear setback for ADUs;

*Incorporated into 18.42.040 (a) 8 (iv).*

*Current code requires attached or detached ADUs to be located outside of the required setbacks and these structures are subject to the same setbacks and daylight plane requirements as the principal residence. This change allows detached accessory structures to be constructed in the rear yard and establishes a six-foot setback. Based on this direction, staff recommends two additional development standards for detached SDUs that establish 1) a 16-foot setback from a street side yard, consistent with existing regulations, and, 2) a daylight plane standard that borrows from the existing 'accessory structure' and principal building daylight plan requirements. The proposed daylight plane requirement begins at a height of 8 feet from the side and rear property lines and extends in and upward toward the property at a 45-degree angle. Regulations for projections into the daylight plane would be subject to the current standards that apply to the primary residence.*

- b. Allow ADUs on all residential lot sizes;

*Incorporated into 18.42.040 (a) 2.*

*The prior draft ordinance would have permitted ADUs on R1 properties with conforming lot sizes and retained the minimum lot size for other districts that permit accessory dwelling units, including the Open Space (OS) district. The zoning code defines residential districts as the following lots: RE, R1 (including all subdistricts), R2, RMD, RM-15, RM-30, and RM-40. The attached ordinance has been updated to permit ADUs, regardless of lot size, on all lots in residential districts, except the RM-15, RM-30 and RM-40 multi-family districts. OS zoned lots, as drafted, remain subject to the 10-acre minimum lot size requirement.*

- c. Allow an additional 175 sq-ft of FAR for an ADU, but not for a two-story ADU

*Incorporated into 18.42.040 (a) 4.*

*This provision permits an additional 175 square feet of building area beyond the maximum floor area (FAR) allowed, on lots with a one-story ADU. The additional square footage cannot be used to increase the size of the attached or detached ADU beyond the 600 or 900 square foot floor area limitation, respectively, but could give property owners the ability to add such units when they are close to the applicable FAR limit. This provision would similarly apply to existing properties with ADUs.*

- d. Allow an additional 50 sq-ft of FAR for a JADU

*Incorporated into 18.42.040 (b) 2 (iii) b.*

*Similar to above, but allows 50 additional square feet of FAR for property owners wishing to add a Junior Accessory Dwelling Units (JADU). The additional square footage cannot be used to increase the size of the JADU beyond 500 square feet.*

- e. Increase the maximum size of attached ADUs to 600 sq-ft;

*Incorporated into 18.42.040 (a) 7 (iii).*

*This provision increases the maximum size of an attached ADU from 450 to 600 square feet.*

- f. Remove Lot Coverage requirements for ADUs on properties that are no smaller than 10 percent smaller than standard lot sizes;

*Incorporated into 18.42.040 (a) 4 (i) (a).*

*This provision exempts ADUs from the lot coverage requirement when that ADU is located on a lot that is substandard by no more than 10 percent of the zoning district's minimum lot area standard.*

- g. Limit ADUs to 17-ft high and single-story in Single Story Overlay (SSO) neighborhoods, even if the main house is a grandfathered 2-story house;

*The Zoning Code currently prohibits any new two story structures or a new second story for properties located in the Second Story Overlay Combining District. Because this is already a requirement, no additional text was added to the draft ordinance. However, staff has added a provision to the ordinance that clarifies the 17-foot height restriction also applies to flood zone properties. A deviation from this standard could be requested and acted upon by filing a variance application with the planning department.*

- h. Remove design review and requirements;

*Removed from 18.42.040 (a) 8 (iv).*

*ADU architectural design compatibility requirements have been removed. However, privacy related requirements, which retain some design features have been retained (Section 18.42.040 (a) 6) and, for detached accessory structures, a provision prohibiting windows, doors, mechanical equipment, or venting or exhaust systems within six feet of a property line has been retained as this standard attempts to mitigate privacy impacts and other nuisances from existing structures located in close proximity to a property line. (Section 18.42.040 (a) 8 (vi)).*

- i. Remove door orientation requirements for ADUs;

*Removed from 18.28.040 (a) 7 (vi).*

*This requirement has been deleted.*

- j. ADUs to have the same parking requirements as JADUs;

*Incorporated into throughout the ordinance.*

*This change provides that parking is not required for any ADU; JADUs are already exempt from parking. Upon implementation, previously approved ADUs will not be required to retain parking spaces that were previously required.*

- k. Remove requirements for covered parking on properties with an ADU or JADU;

*Incorporated throughout the ordinance.*

*With the Council-directed motion, there is no parking requirement for any ADU; JADU is already exempted from parking requirements pursuant to state law.*

- l. Allow required replacement parking on an existing driveway within the front setback;

*Incorporated into 18.28.040 (a) 10 (ii).*

*If an ADU will occupy the existing parking for the primary residence (i.e., garage conversion to ADU), replacement required parking would be able to be provided on an existing driveway within the front setback.*

1. Add the following language to Section 18.42.040 to address potential impacts on historic properties from new detached and attached ADUs: “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 will be required, as determined by the Planning Director.”

*This provision has been incorporated as directed.*

2. Add to the Ordinance Section 18.42.040 (a) 9 (xi) Tree Preservation: “No protected tree shall be removed for the purpose of establishing an accessory dwelling unit unless the tree should be removed because it 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.”

*This provision has been incorporated as directed.*

3. Staff to return to council next year with options and discussion of possible incentives to make ADUs available for moderate or low income residents, seniors, people with disabilities, or public employees; and

*This item will be incorporated into the department’s work program when feasible.*

4. Staff to return next year with options and discussion of mechanisms to bring existing ADUs into compliance, including when existing ADUs which do not meet new standards; and

*This item will be incorporated into the department's work program when feasible.*

5. Direct staff to revise the Ordinance to allow a property owner to rent both the ADU and principal residence to one tenant without subletting.

*The ordinance has been revised to provide that owner occupancy of either the principal residence or ADU is required unless both units are rented to one tenant. (see 18.42.040 (a) 9 (v))*

**MOTION AS AMENDED PASSED:** 6-2-1 DuBois, Holman no, Kou Abstain

#### Historic Resources Board (HRB)

Subsequent to the Council's action on March 7<sup>th</sup>, the HRB held discussions on March 9<sup>th</sup> and 23<sup>rd</sup> and expressed an interest in reviewing building permit applications for ADUs when proposed within historic districts, similar to existing procedures related to Category 1 resources. Based on advice from the City Attorney's Office, staff informed the HRB that HRB review would be in conflict with the State's objectives to process ministerial applications for ADUs. Staff informed the HRB that it would, however, communicate its interest on this matter to the Council. The draft excerpt minutes from the March 23<sup>rd</sup> HRB meeting (Attachment B) are provided for reference.

#### **Timeline**

If approved, the ordinance will be scheduled for a second reading by the City Council. The ordinance will be effective 31 days following the City Council's adoption on the second reading. The ordinance would then be submitted to the State Department of Housing and Community Development within 60 days after adoption.

#### **Environmental Review**

The proposed ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code section 21080.17 (Application of Division to Ordinances Implementing Law Relating to Construction of Dwelling Units and Second Units) and CEQA Guidelines sections 15061(b), 15301, 15303 and 15305 because it simply provides a comprehensive permitting scheme for accessory dwelling units whose construction is exempt from CEQA.

#### **Attachments:**

**Attachment A - Draft ADU Ordinance (PDF)**

**Attachment B - HRB Excerpt Minutes March 23 2017 (PDF)**

Ordinance No. \_\_\_\_

Ordinance of the Council of the City of Palo Alto Amending Chapter 18 (Zoning) of the Palo Alto Municipal Code to Implement New State Law Requirements Relating to Accessory Dwelling Units and Junior Accessory Dwelling Units and to Reorganize and Update City's Existing Regulations

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 becoming increasingly unaffordable. The average California home currently costs about 2.5 times the national average home price and the monthly rent is 50% higher than the rest of the nation. Rent in San Francisco, San Jose, Oakland, and Los Angeles are among the top 10 most unaffordable in the nation. With rising population growth, California must not only provide housing but also ensure affordability.

B. Despite a high median income in Palo Alto, nearly 30 percent of all households overpaid for their housing (more than 30 percent of their income) in 2010;

C. It is estimated that 63 percent of extremely low income renter households and 75 percent of extremely low income owner households overpaid for housing in 2010. Of the estimated 1,520 low income households, 75 percent of renter households and 44 percent of homeowner households paid more than 30 percent of their income for housing.

D. The Palo Alto City Council, recognizing the severity of the regional housing crisis, requested that the Planning and Transportation Commission review constraints affecting the production of second (accessory) dwelling units and recommend modifications to the City's development standards.

E. While existing law enables accessory dwellings as a source of housing, recent studies show that local standards like Palo Alto's, perhaps unintentionally, prevent homeowners from building ADUs with standards like lot coverage, large set-backs, off-street parking, or costly construction requirements.

F. In September 2016, Governor Brown signed into law Senate Bill 1069, Assembly Bill 2299 and Assembly Bill 2406 relating to the creation of accessory dwelling units (ADUs) and junior accessory dwelling units.

G. These new bills were intended to address the housing crisis by easing regulatory barriers for homeowners who choose to build affordable housing in their own backyards.

H. This ordinance is adopted to comply with these new State mandates regarding ADUs and junior accessory dwelling units, and to reduce regulatory constraints affecting their production.

~~1. As required by these new State mandates, the Palo Alto City Council hereby finds that no residential parking is permitted anywhere in the City within front setbacks or closer than ten feet from the street side setback of a corner lot.~~

**SECTION 2.** Section 18.04.030 (Definitions) of Chapter 18.04 (Definitions) of Title 18 (Zoning) is amended to read as follows:

**18.04.030 Definitions**

...

(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.

~~(46.5) “Dwelling unit, second” means a separate and complete dwelling unit, other than and subordinate to the main dwelling unit, whether a part of the same structure or detached, on the same residential lot.~~

(74.5) “Junior accessory dwelling unit” means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(132) “Single-family use” means the use of a site for only one dwelling unit and, where permitted, an accessory second dwelling unit or a junior accessory dwelling unit.

...

**SECTION 3.** In Section 18.10.010 (a) substitute the term “accessory dwelling unit(s)” for “second dwelling unit(s)”.

**SECTION 4.** Section 18.10.030 Table 1 and Footnote (2) are amended as follows:

**TABLE 1**  
**PERMITTED AND CONDITIONALLY PERMITTED LOW-DENSITY RESIDENTIAL USES**  
**[P = Permitted Use -- CUP = Conditional Use Permit Required]**

	R-E	R-2	RMD	Subject to Regulations in:
<b>ACCESSORY AND SUPPORT USES</b>				
Accessory facilities and uses customarily incidental to permitted uses (no limit on number of plumbing fixtures)	P	P	P	18.10.080
Home Occupations, when accessory to permitted residential uses.	P	P	P	18.42.060
Horticulture, gardening, and growing of food products for consumption by occupants of the site.	P	P	P	
Sale of agricultural products produced on the premises (1)	P			18.10.110
<del>Second</del> <u>Accessory Dwelling Units</u>	P	p <sup>(2)</sup>	p <sup>(2)</sup>	<del>18.42.040</del> <u>18.42.0470</u>
<u>Junior Accessory Dwelling Units</u>	<u>P</u>	<u>p<sup>(2)</sup></u>	<u>p<sup>(2)</sup></u>	<u>18.42.040</u>
<b>AGRICULTURE AND OPEN SPACE USES</b>				
Agriculture	P			18.10.110
<b>EDUCATIONAL, RELIGIOUS, AND ASSEMBLY USES</b>				
Private Educational Facilities	CUP	CUP	CUP	
Religious Congregations and Institutions	CUP	CUP	CUP	
<b>PUBLIC/QUASI-PUBLIC USES</b>				
Community Centers	CUP	CUP	CUP	
Utility Facilities essential to provision of utility services to the neighborhood, but excluding business offices, construction or storage yards, maintenance facilities, or corporation yards.	CUP	CUP	CUP	
<b>RECREATION USES</b>				
Neighborhood Recreational Centers			CUP	
Outdoor Recreation Services	CUP	CUP		
<b>RESIDENTIAL USES</b>				
Single-Family	P	P	P	
Two-Family use, under one ownership		P	P	
Mobile Homes	P	P	P	18.42.100
Residential Care Homes	P	P	P	



<b>RETAIL USES</b>				
Cemeteries	CUP			
Commercial Plant Nurseries	CUP			
<b>SERVICE USES</b>				
Convalescent Facilities	CUP			
Day Care Centers	CUP	CUP	CUP	
Small Adult Day Care Homes	P	P	P	
Large Adult Day Care Homes	CUP	CUP	CUP	
Small Family Day Care Homes	P	P	P	
Large Family Day Care Homes	P	P	P	
Bed & Breakfast Inns			p <sup>(3)</sup>	
P = Permitted Use		CUP = Conditional Use Permit Required		

...

(2) Second Accessory Dwelling Units in R-2 and RMD Zones: An accessory ~~second~~ 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 ~~18.10.070~~ 18.42.040, and such that no more than two units result on the lot.

...

**SECTION 5.** Section 18.10.040 (Development Standards) of Chapter 18.10 (Low-Density Residential (RE, R-2 and RMD) Districts) of Title 18 (Zoning) is amended to read as follows:

**18.10.040 Development Standards**

(a) Site Specifications, Building Size, Height and Bulk, and Residential Density

...

(5) Maximum House Size: The gross floor area of attached garages and attached ~~second~~ accessory dwelling units and junior accessory dwelling units are included in the calculation of maximum house size. If there is no garage attached to the house, then the square footage of one detached covered parking space shall be included in the calculation. This provision applies only to single-family residences, not to duplexes allowed in the R-2 and RMD districts.

...

(B) Flag Lot Development Standards: (i) Individual Review

...

(i) Individual Review

The Individual Review provisions of Section 18.12.110 of the Zoning Ordinance shall be applied to any single-family or two-family residence in the R-2 or RMD districts to those sides of a site that share an interior side lot line with the interior side or rear lot line of a property zoned for or used for single-family or two-family dwellings, ~~except where architectural review board review is required for an accessory second dwelling on an RMD-zoned site.~~ The individual review criteria shall be applied only to the project's effects on adjacent single-family and two-family uses.

**SECTION 6.** Section 18.10.060 Table 3 is amended as follows:

**TABLE 3  
PARKING REQUIREMENTS FOR R-E, R-2 AND RMD  
USES**

Use	Minimum Off-Street Parking Requirement
Single-family residential use (excluding <del>second</del> - <u>accessory</u> dwelling units)	2 spaces per unit, of which one must be covered
Two family (R2 & RMD districts)	3 spaces total, of which at least two must be covered
<del>Second</del> - <u>Accessory</u> dwelling unit, attached or detached: >450-sf in size 4450-sf in size	<del>2 spaces per unit, of which one must be covered</del> 1 space per unit, which may be covered or uncovered  See Section 18.42.040(a)(10). No parking required
<u>Junior accessory dwelling unit</u>	No parking required <del>None</del>
Other Uses	See Chapter 18.40

...

**SECTION 7.** Section 18.10.070 (Second Dwelling Units) of Chapter 18.10 (Low-Density Residential (RE, R-2 and RMD) Districts) of Title 18 (Zoning) is repealed in its entirety and a new 18.10.070 is added to read as follows:

**18.10.070 Accessory and Junior Accessory Dwelling Units**

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

**SECTION 8.** Section 18.10.120 (Architectural Review) of Chapter 18.10 (Low-Density Residential (RE, R-2 and RMD) Districts) of Title 18 (Zoning) is amended to read as follows:

**18.10.120 Architectural Review**

Architectural review, as required in Section 18.76.020, is required in the R-E, R-2, and RMD districts whenever three or more adjacent residential units are intended to be developed concurrently, whether through subdivision or individual applications. ~~Architectural review is also required for **second dwelling units** of more than 900 square feet, when located in the Neighborhood Preservation Combining District (NP).~~

**SECTION 9.** Section 18.10.140 (Neighborhood Preservation Combining District (NP) Standards) of Chapter 18.10 (Low-Density Residential (RE, R-2 and RMD) Districts) of Title 18 (Zoning) is amended to read as follows:

**18.10.140 Neighborhood Preservation Combining District (NP) Standards**

...

(2) Design Review Required

For properties on which two or more residential units are developed or modified, design review and approval shall be required by the architectural review board in compliance with procedures established in Section 18.76.020 for any new development or modification to any structure on the property and for site amenities. No design review is required for construction of or modifications to single-family structures that constitute the only principal structure on a parcel of land or for accessory dwelling units or junior accessory units.

~~No design review is required for construction of **second dwelling units** on a parcel except when the **second unit** exceeds 900 square feet in size.~~

...

**SECTION 10.** ~~Section 18.10.150(e) is deleted in its entirety and reserved for future use, substitute the term “accessory dwelling units” for “second dwelling units”.~~

...

**SECTION 11.** Section 18.12.010(a) is amended as follows:

(a) Single Family Residential District [R-1]

The R-1 single family residential district is intended to create, preserve, and enhance areas suitable for detached dwellings with a strong presence of nature and with open area affording maximum privacy and opportunities for outdoor living and children's play. Minimum site area requirements are established to create and preserve variety among neighborhoods, to provide adequate open area, and to encourage quality design. Second Accessory dwelling units, junior accessory dwelling units and accessory structures or buildings are appropriate. ~~where consistent with the site and neighborhood character.~~ Community uses and facilities, such as churches and schools, should be limited unless no net loss of housing would result.

...

**SECTION 12.** Section 18.12.030 Table 1, is amended as follows:

**Table 1  
PERMITTED AND CONDITIONAL R-1 RESIDENTIAL USES**

	R-1 and all R-1 Subdistricts	Subject to Regulations for:
<b>ACCESSORY AND SUPPORT USES</b>		
Accessory facilities and uses customarily incidental to permitted uses with no more than two plumbing fixtures and no kitchen facility, or of a size less than or equal to 200 square feet	P	18.04.030(a)(3) 18.12.080
Accessory facilities and uses customarily incidental to permitted uses with more than two plumbing fixtures (but with no kitchen), and in excess of 200 square feet in size, but excluding second accessory dwelling units	CUP	18.12.080
Home occupations, when accessory to permitted residential	P	18.42.060
Horticulture, gardening, and growing of food products for consumption by occupants of the site	P	
<del>Second</del> <u>Accessory Dwelling Units</u>	<del>P<sup>(1)</sup></del>	<del>18.42.040</del> <u>18.070</u>
<u>Junior Accessory Dwelling Unit</u>	<del>P<sup>(1)</sup></del>	<del>18.42.040</del>
<b>EDUCATIONAL, RELIGIOUS AND ASSEMBLY USES</b>		
Private Educational Facilities	CUP	
Churches and Religious Institutions	CUP	
<b>PUBLIC/QUASI PUBLIC USES</b>		
Community Centers	CUP	
Utility Facilities essential to provision of utility services to the neighborhood, but excluding business offices, construction or storage yards, maintenance facilities, or corporation yards	CUP	
<b>RECREATION USES</b>		
Outdoor Recreation Services	CUP	
<b>RESIDENTIAL USES</b>		
Single-Family	P	
Mobile Homes	P	18.42.100
Residential Care Homes	P	
<b>SERVICE USES</b>		

Day Care Centers	CUP	
Small Adult Day Care Homes	P	
Large Adult Day Care Homes	CUP	
Small Family Day Care Homes	P	
Large Family Day Care Homes	P	
<b>P = Permitted Use</b>		<b>CUP = Conditional Use Permit Required</b>

(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 18.42.040, and such that no more than two total units result on the lot.

**SECTION 13.** Section 18.12.040 Table 2, footnote (8) is amended as follows:

(8) **Maximum House Size:** The gross floor area of attached garages and attached accessory second dwelling units and junior accessory dwelling units are included in the calculation of maximum house size. If there is no garage attached to the house, then the square footage of one detached covered parking space shall be included in the calculation.

**SECTION 14.** Section 18.12.060 Table 4 is amended as follows:

Table 4 shows the minimum off-street automobile parking requirements for specific uses in the R-1 district.

<b>Table 4</b>	
<b>Parking Requirements for Specific R-1 Uses</b>	
Use	Minimum Off-Street Parking Requirement
Single-family residential use (excluding <del>second</del> <u>accessory</u> dwelling units)	2 spaces per unit, of which one must be covered.
<del>Second</del> <u>Accessory</u> dwelling unit , attached or detached	2 spaces per unit, of which one must be covered <u>See Section 18.42.040(a)(10). No parking required</u>
<u>Junior Accessory Dwelling Unit</u>	<u>No parking required</u> None
Other Uses	See Chs. 18.52 and 18.54

...

**SECTION 15.** Section 18.12.070 (Second Dwelling Units) of Chapter 18.12 (R-1 Single-Family Residential District) of Title 18 (Zoning) is repealed in its entirety and a new 18.12.070 is added to read as follows:

**18.12.070 Accessory and Junior Accessory Dwelling Units**

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

**SECTION 16.** Section 18.12.090(b)(2), substitute the term “accessory dwelling unit(s)” for “second dwelling unit(s)”. is amended to read as follows:

...

(2) basement area is deemed to be habitable space but the finished level of the first floor is no more than three feet above the grade around the perimeter of the building foundation.

Basement space used as a second dwelling unit or portion thereof shall be counted as floor area for the purpose of calculating the maximum size of the unit (but may be excluded from calculations of floor area for the total site). This provision is intended to assure that second units are subordinate in size to the main dwelling and to preclude the development of duplex zoning on the site.

...

**SECTION 17.** In Section 18.12.150(d), substitute the term “accessory dwelling unit(s)” for “second dwelling unit(s)”. is deleted in its entirety and reserved for future use.

...

**SECTION 18.** Section 18.28.040, Table 1, is amended as follows:

**Table 1  
Land Uses**

	PF	OS	AC	Subject to Regulations in Chapter:
<b>ACCESSORY AND SUPPORT USES</b>				
Accessory facilities and accessory uses		P		Chs. 18.40 and 18.42
Eating and drinking services in conjunction with a permitted use	CUP <sup>(1)</sup>			
Retail services as an accessory use to the administrative offices of a non-profit organization, provided that such retail services do not exceed 25% of the gross floor area of the combined administrative office services and retail service uses	CUP <sup>(1)</sup>			

Not Yet Approved

Retail services in conjunction with a permitted use	CUP <sup>(1)</sup>			
Sale of agricultural products produced on the premises; provided, that no permanent commercial structure for the sale or processing of agricultural products shall be permitted.			P	
<del>Second</del> Accessory dwelling units, subject to regulations in Section <del>18.28.070</del> <u>18.42.040</u>		p <sup>(2)</sup>		<del>18.28.070</del> 18.42.040
<u>Junior Accessory Dwelling Unit</u>		p <sup>(2)</sup>		<u>18.42.040</u>
<b>AGRICULTURAL AND OPEN SPACE USES</b>				
Agricultural Uses, including animal husbandry, crops, dairying, horticulture, nurseries, livestock farming, tree farming, viticulture, and similar uses not inconsistent with the intent and purpose of this chapter		P	P	
Botanical conservatories, outdoor nature laboratories, and similar facilities		P		
Native wildlife sanctuaries		P		
Park uses and uses incidental to park operation	P			
<b>EDUCATIONAL, RELIGIOUS, AND ASSEMBLY USES</b>				
Business or trade schools	CUP <sup>(1)</sup>			
Churches and religious institutions	CUP <sup>(1)</sup>			
Educational, charitable, research, and philanthropic institutions		CUP		
Private educational facilities	CUP <sup>(1)</sup>			
Public or private colleges and universities and facilities appurtenant thereto	CUP			
Special education classes	CUP <sup>(1)</sup>			
<b>OFFICE USES</b>				
Administrative office services for non-profit organizations	CUP <sup>(1)</sup>			
<b>OTHER USES</b>				
Other uses which, in the opinion of the director, are similar to those listed as permitted or conditionally permitted uses	CUP <sup>(1)</sup>			
<b>PUBLIC/QUASI-PUBLIC FACILITY USES</b>				
All facilities owned or leased, and operated or used, by the City of Palo Alto, the County of Santa Clara, the State of California, the government of the United States, the Palo Alto Unified School District, or any other governmental agency	P			
Communication Facilities		CUP		
Community Centers	CUP <sup>(1)</sup>			

Not Yet Approved

Utility Facilities	CUP	CUP	CUP	
<b>RECREATIONAL USES</b>				
Neighborhood recreation centers	CUP <sup>(1)</sup>			
Outdoor recreation services	CUP <sup>(1)</sup>		CUP	
Recreational uses including riding academies, clubs, stables, country clubs, and golf courses		CUP		
Youth clubs	CUP <sup>(1)</sup>			
<b>RESIDENTIAL USES</b>				
Single-family dwellings		P		
Manufactured housing (including mobile homes on permanent foundations)		P		18.40.
Guest ranches		CUP		
Residential care facilities, when utilizing existing structures on the site	CUP <sup>(1)</sup>			
Residential Care Homes		P		
Residential use, and accessory buildings and uses customarily incidental to permitted dwellings; provided, however, that such permitted dwellings shall be for the exclusive use of the owner or owners, or lessee or lessor of land upon which the permitted agricultural use is conducted, and the residence of other members of the same family and bona fide employees of the aforementioned			P	
<b>SERVICE USES</b>				
Animal care, including boarding and kennels		CUP	CUP	
Cemeteries			CUP	
Cemeteries, not including mausolea, crematoria, or columbaria		CUP		
Small day care homes		P		
Large day care homes		CUP		
Day care centers	CUP (1)			
Art, dance, gymnastic, exercise or music studios or	CUP (1)			
Medical Services:				
Hospitals	CUP			
Outpatient medical facilities with associated medical research	CUP			
<b>TEMPORARY USES</b>				
Temporary parking facilities, provided that such facilities	CUP (1)			
<b>TRANSPORTATION USES</b>				
Airports and airport-related uses	CUP (1)			

...

(2) An accessory dwelling unit or a Junior Accessory Dwelling Unit associated with a single-family residence on a lot in the OS District is permitted, subject to the provisions of Section 18.42.040, and such that no more than two total units result on the lot.



**SECTION 19.** Section 18.28.070(a) (Second Dwelling Units) is amended as follows:

**18.28.070 Additional OS District Regulations**

The following additional regulations shall apply in the OS district:

(a) Accessory~~Second Dwelling Units and Junior Dwelling Units~~

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

~~Not more than one attached or detached second dwelling units shall be allowed on a lot in the OS district, and shall be subject to the following regulations:~~

~~———— (1) Second dwelling shall only be permitted on sites with a minimum site area of 10 acres;~~

~~———— (2) Attached second dwelling units shall comply with the OS district height limitation of 25 feet;~~

~~and~~

~~———— (3) Second dwelling units shall follow the standards set forth in the Residential Estate (R-E) District for second dwelling units (18.10.070(b)), with the exceptions outlined in subsections 1 and 2 above.~~

~~...~~

**SECTION 20.** Section 18.42.040 (Accessory and Junior Dwelling Units) is added as follows:

**18.42.040 Accessory and Junior Dwelling Units**

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

(a) Accessory Dwelling Units

1. Purpose

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

2. Minimum Lot Sizes

(i) In the R-1 district and all R-1 subdistricts, RE district, R-2 district, and RMD district, there shall be no minimum lot size for the development of an accessory dwelling unit.

~~(i) In the R-1 district and all R-1 subdistricts, the minimum lot size for an accessory dwelling unit shall equal the minimum lot size established for the district or subdistrict.~~

~~(ii) In the RE district, the minimum lot size for an accessory dwelling unit is one acre.~~

~~However, for flag lots in the RE District, the minimum lot size shall be 35% greater than the minimum lot size established by Section 21.20.301 of the Subdivision Ordinance.~~

~~(iii) — In the R-2 District the minimum lot size for an accessory dwelling unit is 6,000 square feet and in the RMD District it is 5,000 square feet. All flag lots in the R-2 and RMD Districts shall comply with the lot size requirements set forth in Section 21.20.301 of the Subdivision Ordinance. For R-2 zoned lots of 6,000 square feet or greater, but less than 7,500 square feet, an Accessory Dwelling Unit of 450 square feet or less is permitted.~~

~~(iv) (ii) In the OS District, the minimum lot size for an accessory dwelling unit is 10 acres.~~

### 3. Setbacks

~~(i) Except as otherwise provided in this section, Accessory dwelling units shall comply with the underlying zoning district's setbacks, including daylight plane requirements.~~

~~(ii) — Notwithstanding section (i) above, no setback shall be required for an existing garage that is converted to an accessory dwelling unit, except as provided in subsection (a)(5) below.~~

~~(iii) In districts permitting second story accessory dwelling units, a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit constructed above a garage.~~

### 4. Lot Coverage/FAR

~~(i) An accessory dwelling unit shall be included in the lot coverage and FAR requirements applicable to the primary dwelling unit.~~

~~(ii) Exceptions:~~

~~a. An accessory dwelling unit shall not be included in the calculation of lot coverage applicable to the property, if the parcel is substandard by no more than ten percent (10%) of the underlying zoning district's minimum lot size requirement.~~

~~b. In the R-1 district and all R-1 subdistricts, basement space used as an accessory dwelling unit, or portion thereof, shall not be included in the calculation of floor area for the entire site.~~

~~c. A lot with a one-story accessory dwelling unit shall be permitted to develop an additional 175 square feet of floor area above the maximum amount of floor area otherwise permitted by the underlying zoning district.~~

~~(iii) — An accessory dwelling unit shall not be included in the calculation of lot coverage applicable to the property unless the property is a nonconforming lot that is no smaller more than ten percent (10%) smaller than the minimum lot size permitted in the underlying zoning district.~~

### 5. Conversion of Space in Existing Single Family Residence or Existing Accessory

Structure

Notwithstanding the provisions of subsections ~~(a)(2), (a)(3), (a)(4), (a)(7) and (a)(8)~~, in the R-1 district and all R-1 subdistricts and RE district only and RE Districts only, an Accessory Dwelling Unit shall be permitted if the unit is contained within the existing space of a single-family residence or and existing accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety, and if the accessory dwelling unit conforms with the following:

a. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

b. For the purposes of this section, the portion of the single-family residence or accessory structure subject to the conversion, must be legally permitted and existing as of January 1, 2017.

c. Notwithstanding the allowance in this section, only one accessory dwelling unit or junior accessory dwelling unit may be located on any lot subject to this section.

d. No new or separate utility connection may be required between the accessory dwelling unit and utility service, such as water, sewer, and power.

e. The accessory dwelling unit shall comply with the provisions of subsections (a)(6), (a)(9), and (a)(10).

6. Privacy

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

7. Additional Development Standards for Attached Accessory Dwelling Units

(i) Attached accessory dwelling units are those attached to the main dwelling. All attached accessory dwelling units shall be subject to the additional development requirements specified below.

(ii) Attached unit size counts toward the calculation of maximum house size.

(iii) Unit Size: The maximum size of an attached accessory dwelling unit living area shall not exceed 600450 square feet and shall not exceed 50% of the existing living area of the primary existing dwelling unit. The accessory dwelling unit and any covered parking provided for the accessory dwelling unit shall be included in the total floor area for the site, but the covered parking area is not included in the maximum 600450 square feet for attached unit. Any basement space used as an accessory dwelling unit or portion thereof shall be counted as floor area for the purpose of calculating the maximum size of the accessory unit.

(iv) Maximum height (including property in a special flood hazard zone): ~~one~~One story and 17 feet. However, in the RE District attached Accessory Dwelling Units may be two stories and 30 feet. In the OS zone, attached Accessory Dwelling Units may be two stories and 25 feet.

(v) Separate Entry Required for Attached Units: A separate exterior entry shall be provided to serve an accessory dwelling unit.

(vi) Except on corner lots, the accessory dwelling unit may not have an entranceway facing the same lot line (property line) as the entranceway to the main dwelling unit unless the second entranceway is located in the rear half of the lot. Exterior staircases to second floor units shall be located toward the interior side or rear yard of the property.

(vii) If covered parking for an accessory dwelling unit is provided in the RE zone, the maximum size of the covered parking area for the accessory dwelling unit is 200 square feet.

#### 8. Additional Development Standards for Detached Accessory Dwelling Units

(i) Detached accessory dwelling units are those detached from the main dwelling. All detached accessory dwelling units shall be subject to the additional development standards specified below.

(ii) The maximum size of the detached accessory dwelling unit living area shall be 900 square feet.

a. The accessory dwelling unit and any covered parking shall be included in the total floor area for the site, but the covered parking area is not included within the maximum 900 square feet for detached unit.

b. Any basement space used as an accessory dwelling unit or portion thereof shall be counted as floor area for the purpose of calculating the maximum size of the accessory unit.

c. For R-2 zoned lots of 6,000 square feet or greater, but less than 7,500 square feet, a detached Accessory Dwelling Unit of 450 square feet or less is permitted.

(iii) Maximum height (including property in a special flood hazard zone): one story and 17 feet.

(iv) Design: The detached accessory dwelling unit shall be similar to the main residence with respect to style, roof pitch, color and materials. Setbacks: notwithstanding section (a)(3)(i), a detached accessory dwelling unit may be located in a rear yard, but must maintain a minimum setback of six feet (6') from the interior side and rear property lines and sixteen feet (16') from a street side yard. No portion of a building may encroach into a daylight plane beginning at a height of eight feet (8') at the property line and increasing at a slope of one foot (1') for every one foot (1') of distance from the property line.

(v) If covered parking is provided for an accessory dwelling unit in the RE District, the maximum size of covered parking area for the detached accessory dwelling unit is 200 square feet.

(vi) There shall be no windows, doors, mechanical equipment, or venting or exhaust systems located within six feet of a property line.

#### 9. Additional Requirements for All Accessory Dwelling Units

(i) Sale of Units: The Accessory dwelling unit shall not be sold separately from the primary residence.

(ii) Short term rentals. The accessory dwelling unit shall not be rented for periods of less than 30 days.

(iii) Number of Units Allowed: Only one accessory dwelling unit or junior accessory dwelling unit may be located on any residentially zoned lot.

(iv) Existing Development: A single-family dwelling must exist on the lot or shall be constructed on the lot in conjunction with the construction of the accessory dwelling unit.

~~(i)(v)~~ Occupancy: The owner of a parcel proposed for accessory dwelling use shall occupy as a principal residence either the primary dwelling or the accessory dwelling, unless both the primary dwelling and the accessory dwelling are rented to the same tenant and such tenant is prohibited from sub-leasing the primary dwelling or the accessory dwelling.

(vi) Prior to issuance of a building permit for the accessory dwelling unit, the owner shall record a deed restriction in a form approved by the city to notify future owners of the owner occupancy requirements and restrictions on short term rentals that: includes a prohibition on the sale of the accessory dwelling unit separate from the sale of the single-family residence; requires owner-occupancy consistent with subsection (a)(9)(v) above; does not permit short-term rentals; and restricts the size and attributes of the accessory dwelling unit to those that conform with this section.

(vii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(viii) Street Address Required: Street addresses shall be assigned to all accessory dwellings to assist in emergency response.

(ix) Street Access: ~~The~~ When parking is provided, the accessory dwelling unit shall have street access from a driveway in common with the main residence in order to prevent new curb cuts, excessive paving, and elimination of street trees, unless separate driveway access is permitted by the director upon a determination that separate access will result in fewer environmental impacts such as excessive paving, unnecessary grading or unnecessary tree removal, and that such separate access will not create the appearance, from the street, of a lot division or two-family use.

(x) 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 will be required, as determined by the Planning Director.

(xi) 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.

(xii) Except as modified by this Section 18.42.040, the accessory dwelling unit shall conform to all requirements of the underlying zoning district, any applicable overlay combining district, and all other applicable provisions of this Title 18 chapter, including but not limited to height, setback, lot coverage, floor area ratio, landscape, and historic preservation requirements.

## 10. Parking

(i) No additional parking shall be required for accessory dwelling units. The following parking criteria apply to both detached and attached accessory dwelling units:

(i) One parking space per unit or one parking space per bedroom, whichever is greater, shall be provided for the accessory dwelling unit.

(ii) Such parking may be provided as tandem parking, may be located on an existing driveway and may be located in side and rear setbacks, but not in front setback. For a corner lot, parking may be located within the corner street side setback if located at least ten (10) feet from the property line.

(iii) Notwithstanding subsection (i) above, no parking shall be required for:

- a. Accessory dwelling units located within one-half mile of public transit or within 0.75-mile of the Palo Alto, California Avenue, or San Antonio Caltrain stations. For purposes of this section, "public transit" shall include a bus stop with fixed route bus service that provides transit service at 15-minute intervals or better during peak commute periods.
- b. Accessory dwelling units located within an architecturally and historically significant National, California or locally designated historic district.
- c. Accessory dwelling units part of the existing primary residence or an existing accessory structure.
- d. Accessory dwelling units located within a Residential Parking Program District.
- e. When on-street parking permits are required but not offered to the occupant of the Accessory dwelling unit.
- f. When there is a car-share vehicle located within one block of the Accessory dwelling unit. For purposes of this section, "car-share vehicle" shall mean part of an established program intended to stay in a fixed location for at least 10 years and available to the public.

(ivii) If an accessory dwelling unit replaces an existing garage, replacement spaces must be provided. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, any required replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, within the front setback if on an existing driveway, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts.

### (b) Junior Accessory Dwelling Units

1. Purposes: This Section provides standards for the establishment of junior accessory dwelling units, an alternative to the standard accessory dwelling unit. Junior accessory dwelling

units will typically be smaller than an accessory dwelling unit, will be constructed within the walls of an existing single family structure and requires owner occupancy in the single family residence where the unit is located.

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

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

(ii) Size: A junior accessory dwelling unit shall not exceed 500 square feet in size.

(iii) Lot Coverage/FAR:

a. A junior accessory dwelling unit shall be included in the calculation of lot coverage and FAR requirements applicable to the primary dwelling unit property.

b. A lot with a junior accessory dwelling unit shall be permitted to develop an additional 50 square feet of floor area above the maximum amount of floor area otherwise permitted by the underlying zoning district.

(iv) Owner Occupancy: The owner of a parcel proposed for a junior accessory dwelling unit shall occupy as a principal residence either the primary dwelling or the junior accessory dwelling. Owner-occupancy is not required if the owner is another governmental agency, land trust, or housing organization.

(v) Sale Prohibited: A junior accessory dwelling unit shall not be sold independently of the primary dwelling on the parcel.

(vi) Short term rentals: The junior accessory dwelling unit shall not be rented for periods of less than 30 days.

(vii) Location of Junior Accessory Dwelling Unit: A junior accessory dwelling unit must be created within the existing walls of an existing primary dwelling, and must include conversion of an existing bedroom.

(viii) Separate Entry Required: A separate exterior entry shall be provided to serve a junior accessory dwelling unit, with an interior entry to the main living area. A junior accessory dwelling may include a second interior doorway for sound attenuation.

(ix) Kitchen Requirements: The junior accessory dwelling unit shall include an

efficiency kitchen, requiring and limited to the following components:

- a. A sink with a maximum waste line diameter of one-and-a-half (1.5) inches,
- b. A cooking facility or appliance which does not require electrical service greater than one hundred and twenty (120) volts, or natural or propane gas, and
- c. A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(x) Parking. No additional parking is required beyond that required at the time the existing primary dwelling was constructed.

(xi) Fire Protection; Utility Service. For the purposes of any fire or life protection ordinance or regulation or for the purposes of providing service for water, sewer, or power, a junior accessory dwelling unit shall not be considered a separate or new unit.

(xii) Deed Restriction. Prior to the issuance of a building permit for a junior accessory dwelling unit, the owner shall record a deed restriction in a form approved by the city that includes a prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, requires owner-occupancy consistent with subsection (b)(2)(iii) 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 21.** Section 18.52.040 (6)(c) Table 1, is amended as follows:

**Table 1  
Minimum Off-Street Parking Requirements**

Use	Vehicle Parking Requirement (# of spaces)	Bicycle Parking Requirement	
		Spaces	Class <sup>1</sup> Long Term (LT) and Short Term (ST)
<b>RESIDENTIAL USES</b>			
<b>Single -Family Residential (Primary Unit)</b>	Tandem Parking Allowed		
(a) In the OS district	4 spaces, of which at least one space must be covered	None	
(b) In all other districts	2 spaces, of which at least one space must be covered		
(c) Underground parking for single family uses is prohibited, except pursuant to a variance granted in accordance with the provisions of Chapter 18.76 (Permits and Approvals) of this title, in which case the area of the underground garage shall be counted toward the gross floor area.			



Not Yet Approved

<p><del>Second Accessory Dwelling Unit</del> (In addition to main dwelling unit requirements)  <del>————&gt;450 sf in size</del>  <del>————&lt;450 sf in size</del></p>	<p><del>2 spaces, of which at least one must be covered</del></p> <p><del>1 space, covered or uncovered</del></p> <p><del>See Section 18.42.040(a)(10).</del>  <del>No parking required</del></p>	<p>None</p>	
<p><u>Junior Accessory Dwelling Units</u></p>	<p><del>No parking required</del> None</p>	<p>None</p>	
<p><b>Two-Family Residential</b> (R-2 &amp; RMD Districts)</p>	<p>1.5 spaces per unit, of which at least one space per unit must be covered</p> <p>Tandem Parking Allowed, with one tandem space per unit, associated directly with another parking space for the same unit</p>	<p>1 space per Unit</p>	<p>100% – LT</p>
<p><b>Multiple -Family Residential</b></p>	<p>1.25 per studio unit  1.5 per 1-bedroom unit  2 per 2-bedroom or larger unit  At least one space per unit must be covered</p> <p>Tandem parking allowed for any unit requiring two spaces (one tandem space per unit, associated directly with another parking space for the same unit, up to a maximum of 25% of total required spaces for any project with more than four (4) units)</p>	<p>1 per unit</p>	<p>100% – LT</p>

(a) Guest Parking	For projects exceeding 3 units; 1 space plus 10% of total number of units, provided that if more than one space per unit is assigned or secured parking, then guest spaces equal to 33% of all units is required.	1 space for each 10 units	100% – ST
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**SECTION 2122.** In Section 18.76.020 (D), substitute the term “accessory dwelling unit(s)” for “second dwelling unit(s)”.

**SECTION 2223.** 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 2324.** 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 2425.** The Council finds that the adoption of this ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to Public Resources Code section 21080.17 (Application of Division to Ordinances Implementing Law Relating to Construction of Dwelling Units and Second Units) and CEQA Guideline sections 15061(b) and 15301, 15303 and 15305 because it simply provides a comprehensive permitting scheme for accessory dwelling units whose construction is exempt from CEQA.

**SECTION 2526.** 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:

\_\_\_\_\_  
Senior Asst. City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Planning & Community  
Environment



## HISTORIC RESOURCES BOARD MEETING EXCERPT DRAFT MINUTES: March 23, 2017

City Hall/City Council Chambers  
250 Hamilton Avenue  
8:30 A.M.

Present: Chair Martin Bernstein; Board Member Wimmer, Beth Bunnenberg, Brandon Corey, Roger Kohler, Michael Makinen

Absent: Vice Chair Bower

Staff: Jonathan Lait, Amy French, Chitra Moitra

### **ITEM 3. Accessory Dwelling Unit (ADU) Discussion**

Chair Bernstein: Next on our agenda is a study session number three. It's accessory dwelling unit (ADU) discussion and please - is there are any report for us, please?

Ms. French: Yes, so you have the information that we transmitted to you. I should say that the staff report says that it's going – the updated ordinance will be going to the Council on April 10<sup>th</sup>; that is not true, it's going on the 11<sup>th</sup>. Apparently, there was a move in dates and so you have – last time we spoke, you didn't have anything in front of you. I think Elena Lee talked to you about what was going on and there was access via a link to the staff report that went to Council. Now, what we have is just bullets in this report and it talks about what the State legislation, that became effective in January of this year, allows and encourages. Then, you also have the Council proposed changes and clarifications, and so this is what happened on March 7<sup>th</sup>. This is on page 3 of your staff report. The key section that the HRB may wish to understand/review is on page 3 or packet page 9 and it's number 1 on that page, a full paragraph that says this, "the language was added to address potential impacts on historic properties from new detached and attached ADUs," in quotes there. The legal language is this, "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 Standards will be required as determined by the Planning Director." Now, this does not mean that somebody that comes in for an accessory dwelling unit in Professorville or some other context where there's a historic resource, this does not mean that it's going to be coming to the HRB for review. This is going to be a staff level situation because it does not – cannot be contrary to the State's mandate that we facilitate these and encourage these and expedite these; just to be clear about that. Staff did add this in to acknowledge that we need to look at the Secretary of Interior Standards and it would appear that we are going to require compliance with the Secretary of Interior Standards.

Board Member Kohler: Maybe you should clarify what you are talking about, these detached structures, is this the one that the State mandated that you can do any unit in the back of your house, no matter what the zoning ordinance says? Is that what you're talking about?

Ms. French: What I am talking about is the ordinance that's going back to Council that has some wording regarding when a detached structure or attached structure – they're called Junior Units, are going through our process. It's just a building permit but as part of that, we are...

Board Member Kohler: But you're not talking about the one that was last week that was a big deal. This...

Ms. French: Yes, I am talking about that.

Board Member Kohler: Ok, so there's – according to that – what I'm hearing about this and I may be wrong but you are allowed to do 150-square foot building in your back yard no matter what the (inaudible) situation is. If you're maxed out, you can build 150-square foot building.

Chair Bernstein: (Inaudible)

Board Member Kohler: But – if it isn't, then maybe we should find out about it because that means anyone can build a 150-square foot building...

Chair Bernstein: It's not 150.

Ms. French: Rodger, I think...

Board Member Kohler: No, no, no, I have it. I have it and I should have brought it. There's two of them. There's 120 but there's 150 one as well. I think...

Ms. French: Can I just – I just want to make sure that we're not getting too deep in the weeds as far as zoning because I really want this to just be transmitting information to alert you to the fact that we are inserting into this for Council adoption that these accessory dwelling units, that we're supposed to facilitate, will be looked at for Secretary of Interior Standards compliance and will be required to have compliance. Despite the fact that it's only a building permit - so this is actually a win because currently when something is in – only requiring a building permit, it's – these are all encouragements to follow the Secretary of Interior Standards, but people might come in and do something different at the building permit stage. It's actually great that this is in there.

Chair Bernstein: Excuse me Board Member Kohler; the April 11<sup>th</sup>, is that the first reading of the ordinance?

Ms. French: Well, it's the second first reading. The first reading happened on March 7<sup>th</sup> and then the changes were so significant that they are doing another first reading.

Chair Bernstein: It's still considered first reading so there won't be any adoption of an ordinance on April...

Ms. French: They would have the opportunity to say, yes, we approve this ordinance and then it comes back to them on second reading...

Chair Bernstein: Oh, I understand, yes.

Ms. French: ...which is – yeah.

Chair Bernstein: Ok, thank you.

Board Member Kohler: Is this ordinance just for Professorville or are you talking...

Chair Bernstein: No, it's for the whole City.

Board Member Kohler: The whole City, ok.

Chair Bernstein: Great.

Board Member Kohler: You're relating to it because it will impact us in historic buildings?

Chair Bernstein: We're going to...

Ms. French: I don't know if it will impact you because we are not going to bring them to the HRB. What will be impactful is to your knowledge. Your knowledge is that we are looking at these things for Secretary of Interior Standards compliance so if you asked out in the public, "are these coming in and they are just being plopped onto a historic property without review of Secretary of Interior Standards?", you can say, "oh no, they will be reviewed, just not by us as a Board, but by staff." I'm going to introduce Chitra, who is responsible for the next staff report, and if you want to ask her for further questions about other things.

Chair Bernstein: Welcome and can you pronounce your name again, please?

Mrs. Chitra Moitra: Chitra. Chitra Moitra, Planning -- Planner.

Chair Bernstein: Chichum?

Ms. Moitra: Chitra, C-H-I-T-R-A.

Chair Bernstein: I'm sorry.

Ms. Moitra: I just want to add something to what Amy said. We are – the City Council is hearing this item on April 11<sup>th</sup> as a consent item and the Council will decide whether to hear it on that night or may decide to pull it off so based on the Council's decision, we'll know more – what happens.

Chair Bernstein: During that April 11<sup>th</sup> meeting, is there a process where an HRB Member can speak to the Council asking that that consent item to be pulled from the agenda as a consent item?

Ms. French: It would not be a consent item.

Chair Bernstein: Oh, I just heard it was.

Ms. French: If it's a first reading, I don't believe that that is on consent, is it?

Mr. Jonathan Lait, Assistant Director of Planning: (Inaudible)

Chair Bernstein: Hi, Mr. Lait, welcome.

Mr. Lait: Hello, good evening. Good evening? I attend night meetings so it's programmed that way. (Crosstalk)(Inaudible)

Chair Bernstein: We did have a time change recently, your right.

Mr. Lait: I'm Jonathan Lait and I'm the Assistant Director to the Planning and Community Environment Department that we work for. This ordinance did actually have a first reading already before the City Council and they gave us some – I think it was about eight or ten discreet changes to make to the ordinance. The City Attorney has advised that we need to do another first reading of that ordinance but that's going to be on the consent calendar. To the question that was asked, certainly, any member of the public could approach the Council and ask that any item be taken off the consent calendar. It's the Council's discretion to do so.

Chair Bernstein: Procedure, can an HRB Member address the Council during that consent discussion – and speak to the ADU Ordinance or does it need to be pulled off consent before a Member of the HRB can speak to the Council at that meeting? Do you know?

Mr. Lait: I think during the consent, there is an opportunity for members of the public to speak to items on the consent calendar before the Council makes an action to pull it or not pull it.

Chair Bernstein: Can that member of the public be a Member of the HRB?

Mr. Lait: Yes. Sorry, yes.

Chair Bernstein: Thank you. Alright, any other comments from Staff? Ok. Alright. I'm glad you're here Jonathan. I'll have a series of questions and comments regarding the proposed ordinance but I'll see to any other -- Board Member Makinen.

Board Member Makinen: Just a little clarification. I was reading over this material and I think you touched on it just a minute ago, Amy. The junior accessory unit and it's JADU, I saw that pop up as a term but it was never defined and I really hate it when I read documents and they don't give a clear definition on what these terms are. Now, where was that actually defined what a JADU is?

Chair Bernstein: That is a -- well, you're just making a rhetorical comment, right?

Board Member Makinen: Yeah, I think we should know what it is.

Chair Bernstein: Well, it's a junior accessory dwelling unit, is what it is but -- I understand.

Ms. French: Yeah so, we believe that the State defines that as a 500-square foot unit, in our staff report packet page 9. There is a local modification to increase the maximum size of an attached ADU to 600-square feet. I don't know how that relates to the junior accessory.

Ms. Moitra: For a detached ADU -- I'm sorry, for a junior accessory dwelling unit, the State regulation requires you to have a maximum size of 500-square feet and that is to be included in the building envelope. Like it should be a conversion of an existing room, maybe a bedroom, to a junior accessory unit.

Board Member Makinen: Ok, so that's within an existing structure, then?

Ms. Moitra: That's detached -- attached ADU, that's different. There's a little bit of confusion here. For attached ADUs the existing size was 450-square feet and the Council at the March 7<sup>th</sup> discussion has requested Staff to increase that to 600-square feet so an addition of 150-square feet.

Chair Bernstein: Right. If we add the -- if that gets approved, the 600-square feet, if that puts the total FAR of the property over the allowable that's ok by this proposed ordinance?

Ms. Moitra: It should be within the existing FAR.

Chair Bernstein: Ok, so then 600 is not a right then?

Ms. French: It would be a building permit...

Chair Bernstein: But if that exceeds the FAR...

Ms. French: but wouldn't exceed the FAR to get a building permit only.

Mr. Lait: Thank you. Jonathan Lait again. The -- to answer the first question, a junior accessory dwelling unit is a defining term in the ordinance. In the draft ordinance that went to Council, it's defined as a unit that -- as Chitra has mentioned - it means that a unit that is no more than 500-square feet in size and contained entirely within the existing single family structure. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure. That is a

defining term. With respect to the floor area question, the – all accessory dwelling units do need to meet the City's floor area requirements and the City Council gave – in a couple instances, did exempt – I think it was 50 additional square feet for one type of accessory unit and like another 150-square foot for floor area, where they added that to the base standards. The codes being changed to accommodate a little bit more floor area.

Chair Bernstein: Do that mean that the FAR – let's see. If the 600-square feet, if that exceeds the FAR on the property, that's – you cannot do the 600-square feet, is that correct?

Mr. Lait: Is the question, can the accessory dwelling unit exceed 600-feet or the 600-feet in combined with the primary residence exceeded what the code has established as the maximum buildable floor area?

Chair Bernstein: It says, increases the – oh I see. (Inaudible) it says, the maximum size is 600-square feet but you still have to comply to the FAR so you meet...

Mr. Lait: That's correct.

Chair Bernstein: Ok, thank you for that. Thank you. Yes, Board Member...(crosstalk)

Board Member Bunnenberg: I have a question...

Chair Bernstein: ...Bunnenberg.

Board Member Bunnenberg: ... along that line. What are the setback requirements or are there setback requirements?

Ms. Moitra: Yes, there are setback requirements for new accessory dwelling units. Council's recommendation on March 6<sup>th</sup> was no more than 6-feet required side and rear setbacks for ADUs but for converted – existing garage conversion to an ADU, there is no setback requirement and that's for a single story.

Chair Bernstein: Right, good.

Board Member Wimmer: But it still has to comply with the daylight plane if it's detached.

Ms. Moitra: Yes.

Chair Bernstein: Unless (inaudible) – unless it's an existing, non-conforming situation, right. Thank you. Board – Beth, your lights still on, do you have a question? Board Member Makinen.

Board Member Makinen: Nothing at the present time, Chair.

Chair Bernstein: I just saw your light on. Board Member Wimmer.

Board Member Wimmer: Is there still an assessment that is going to be charged for the secondary dwelling units? I believe there were two assessments and there was a \$18,000 one-time assessment for an ADU that was less than a certain square footage. Then a higher assessment charge if the ADU was a higher square footage, is that still in the plan, an impact fee.

Ms. French: When we're saying assessment, we are talking – yeah, development impact fee.

Board Member Wimmer: Development impact fee. It's a one-time fee, is that still being planned?



Ms. Moitra: I'm not sure on that but I will get back to you on that. As far as I know, it will be charged but there would be no requirement for new utility hookups or any other kind of utility hookups and fire sprinklers, if the main dwelling unit does not have it for attached.

Board Member Wimmer: If the main dwelling unit does not have fire sprinklers, then the ADU is not required to...(crosstalk)

Ms. Moitra: Not required to have (inaudible).

Board Member Wimmer: ...have fire sprinklers because that's how -- Los Altos has the same rule. However, I do this in different Cities, I have several ADU projects and Palo Alto is the only one that is proposing an impact fee. I just thought that was interesting.

Chair Bernstein: Where does -- is the fee listed? Is it published somewhere?

Ms. Moitra: Yes, the impact fees are published.

Chair Bernstein: Huh? What?

Ms. Moitra: The impact fees are published.

Chair Bernstein: I'd like to learn that. For an applicant to apply for an AD Unit, there's a \$18,000 fee?

Ms. French: That's -- ok -- that is -- it sounds like you're talking about a permit fee, that's not a permit fee. Development impact fees are assessed at the time of building permit to be paid to cover any new dwelling unit...

Chair Bernstein: Oh, I see.

Ms. French: ... which an accessory dwelling unit is, to pay into the parks, libraries, and community facilities fees.

Chair Bernstein: Ok, so that's nothing new then?

Ms. French: Nothing new, yes. Whether -- it sounds like this ordinance is not addressing that. In other words, not changing that fact in Palo Alto.

Ms. Moitra: Yes.

Board Member Wimmer: On top of that, would you still need to pay school impact fees?

Chair Bernstein: Great question.

Ms. Moitra: There's no change. There's no change to that. You have...

Board Member Wimmer: That means because -- I think if you're adding more than 500-square feet, you have to pay school impact fees, right? I think that's the trigger point, 500-square feet?

Mr. Lait: Yeah, I'm sorry Board Member. I don't know that we know all the different fees that are assigned to the different projects right now but this ordinance that's going to Council does not change any fee structure that we have presently. If there is a concern about the existing fee system that we apply to these units, then I think that's an appropriate conversation or a comment that we could understand. We can also take a look at that when our fee study goes to the Council, I think it's in June this year. If there's an additional fee -- if there is somehow a fee that is discouraging this, we can take a look at that and identify that. We'll take that comment and try to explore the different fees that would

apply to any accessory dwelling unit, whether it's an existing or a conversion to a JADU and see what that looks like and how that might need to change if at all.

Chair Bernstein: Go ahead, Board Member Kohler.

Board Member Kohler: I guess I'm – I read a pretty long article about all this and it sounds like Palo Alto's – is incorporating as part of their ordinance of what to do because what I read about this was that there weren't going to be any zoning rules other than square feet. That's good to hear that Palo Alto will still have a daylight plane because the article I read was kind of scary. You could – there were no rules, you had this 150 or whatever the number square feet and you could build it and it was not required to go through any other rules. I'm mean, I'm glad you're – what you're saying is what will be here in Palo Alto because I think that's going to be a much more reasonable approach to this situation. The one I read was floor area wasn't (inaudible), if you wanted to add this square foot, you could do it. That's probably in general but I'm glad to hear Palo Alto has this limit. I think that's good.

Ms. French: One thing I would call the attention to when we talk about existing zoning standards and what this is talking about. Currently, you can't have a living area within the rear setback. You can have a garage but it can't be used for living. What this says is that there will be no greater setback than 6-feet at the side and rear yards. Now, with this ordinance, you will be able to have a living unit six feet from the rear property line, and that's a change.

Board Member Kohler: That's a pretty big change.

Chair Bernstein: My understanding of the proposal, there are three types of accessory dwelling units. There's detached, there's attached and then a junior, correct? There are three kinds?

Ms. Moitra: Correct.

Chair Bernstein: Great, thank you for that. What I understand, the detached maximum proposed is 900-square feet?

Ms. Moitra: Yes, correct.

Ms. French: That is no change from the existing.

Chair Bernstein: Right. Then the attached ADU is 450. There might be – correct? 450 is the current proposal?

Ms. Moitra: Existing is 450 and Council proposed attached to be 600.

Chair Bernstein: Up to 600 and then the junior ADU is – State is – is 500-square feet?

Ms. Moitra: 500-square feet.

Chair Bernstein: I'm going to repeat it so that I get this right. Detached - 900-square feet, attached is proposed 600-square feet and then junior ADU is 500-square feet. Thank you. Board Member Brandon Corey?

Board Member Corey: One clarification, is the only difference between an attached and junior the max square footage or is there something – I did hear the junior must be attached by I'm still not 100% clear.

Ms. Moitra: Yes, a junior is when you carve out the existing 500-square feet from an existing bedroom or a spare living space that you have.

Board Member Corey: Isn't that also an attached – the attached? How is that different?

Ms. Moitra: Attached can be added.

Chair Bernstein: An attached would be an addition – house addition basically.

Ms. Moitra: A house addition, it can be added but the junior is something from the existing.

Board Member Corey: From the existing so you can't add to create a junior?

Ms. Moitra: No, you cannot add a junior.

Board Member Corey: Add a junior so that's the difference. It's just whether or not it's existing or not, ok.

Chair Bernstein: Great, thank you.

Board Member Corey: Can you create – if you have existing, can you make that an attached or that would just automatically become a junior based on that?

Ms. Moitra: Right.

Board Member Corey: Interesting.

Board Member Wimmer: Can I have – ask a follow-up question.

Mr. Lait: Hold on, I think there are a couple of things here. The other distinction is the junior accessory structure can rely on the sanitation facilities within the primary residences. Whereas, an attached accessory dwelling unit needs to provide full, independent living on its own. Merely taking an existing one and attaching it to that house, doesn't make it a JADU. It's the conversion of an existing bedroom and meeting these other things within the existing structure. We have a primary residence and an adjacent detached structure and you wanted to merge those together somehow, there may be a way to do that in the code but that doesn't make it a JADU, it may make it an attached accessory dwelling unit.

Board Member Corey: Then if you removed the separate sewage system, wouldn't it then become a junior? Is that the only difference then?

Mr. Lait: I think the – the purpose of the junior accessory dwelling unit is to create a lower threshold opportunity to – for a unit in the home. It's sort of a lower bar to do an accessory dwelling unit. You don't have to meet the same standards as you – not all the same standards that you do for the accessory dwelling unit. Right.

Chair Bernstein: Board Member Bunnenberg.

Board Member Bunnenberg: Somehow, I always pictured the attached dwelling unit on the back. Is there any provision against you taking in a large front porch that – this was done a lot in Professorville before we had – or adding a thing to the changing the front façade? Is that allowed?

Mr. Lait: If you're – and if you interest specifically in Professorville, in general? Ok. To the extent that the code would allow – to the extent that the development standards that are in place today, would allow for that kind of a conversion. That would be reviewed and it could be approved. In Professorville or for any historic resource, there is a requirement that it be consistent with the Secretary of Interior Standards, which Staff will review with a consultant to ensure that it doesn't detract from the character defining features.

Board Member Bunnenberg: There are a lot of houses that are just out of Professorville but have similar kinds of construction and I could view a lot of front porches being taken in.

Chair Bernstein: Thank you. I have a copy of the draft ordinance and I just highlighted a couple questions to help my understanding of it. The first one is, this is – I'll give you the page number or the chapter number so it's 18.42.040A8(VI). Let's see, it's page number 15 or it was the Council's packet page 450. It's page 15 of the ordinance. Do you have that Jonathan? Ok, thanks. It's the paragraph where it says, under VI, it says that there shall be no windows, doors, mechanical equipment or venting exhaust system located within 6-feet of a property line. The California Fire Code that the City of Palo Alto Council adopted allows those opening to be 5-feet from the property line. My suggestion for Council review would be that changed from 6-feet to 5-feet so it's consistent with the fire – California State Fire Code that the City of Palo Alto adopted or are they having that different?

Mr. Lait: Thank you for that comment and I will say that the Council did give us direction to remove the design review and other similar requirements. I think that might be a provision that is slated to be removed.

Chair Bernstein: Thank you. Also, on that same page, I'll give you the location, 18.42.040(A8) (IV) and that's also on page 15. Let me – let's see – let me look for it here. IV — here it is right there. It says – I'll read it, it says "Design the detached accessory structure so that's a separate building, shall be similar to the main residence with respect to style, roof pitch, color, and materials." The Secretary of Interior Standards require compatibility and differentiation. If that's the only statement that an applicant reads, that it must be similar. There's a chance that it could be a replication of a style and it could be considered to be leading toward false historicism if it's – if there is a tutor style main house and then the new dwelling unit looks exactly the same amount of details. It might look like it's a historic structure and that's conflicting with SISR.

Mr. Lait: Right and...

Chair Bernstein: So, there should be a – somehow if the ordinance can somehow address SISR.

Mr. Lait: That provision is going to be struck in the new ordinance that's going to the Council on April 11<sup>th</sup> as that is a design standard that will be modified.

Chair Bernstein: Great. Thank you for that. Next page, it's 18 – let's see, it would be page 17 and it's 18.42.040(B2VI) and VII. Let me find those here. The code says – I'll read it, a junior accessory dwelling unit must be created within the existing walls and the existing primary dwelling – and must include conversion of an existing bedroom. It should just be – why does it specify that it must be – include a bedroom? For example, if you look at an Eichler, there may be no bedrooms in the back, all the bedrooms are in the front. If you must attach it to a bedroom, that puts that ADU in the front. It should – a bedroom to me becomes too much of a prescription of where that ADU has to – I think this should not have a prescribed room.

Mr. Lait: That just comes from – straight from State law. That's how the State drafted it.

Chair Bernstein: If we look at the Eichlers where the bedrooms are in the front and none in the back, that puts the ADU in the front, if you follow that prescription. That's what that means.

Mr. Lait: Yeah and I don't – is there something inherently wrong with that?

Chair Bernstein: Let's see, from a – we have some National Historic Districts of Eichlers, I guess that may end up with ADUs in the front.

Mr. Lait: The building doesn't change.

Chair Bernstein: Ok, that's true. That's a true statement but you need a separate entrance. Ok.

Ms. French: Obviously, they can still do a 600-square foot attached ADU at the back but – they build it new and you won't see it. That might be the choice of many people.

Chair Bernstein: The explanation was that's verbally from State law so that's by that word is there. Alright, then Chein, you said?

Ms. Moitra: Chitra.

Chair Bernstein: Chitra also mentioned that there are some revisions on the square footages so that's just a technicality. Thank you for that. On 18.42.040b2VIIB, for the kitchen requirements for the junior accessory, you're limited for cooking only an electric range. Do you know why a gas range would not be allowed?

Mr. Lait: Again, this is State law. It's explicitly spelled out (inaudible) State provision.

Chair Bernstein: Could be some energy concerns there or environmental concerns. Ok, well that explains that. On 18.42.040b2(XI), it talks about deed restrictions and it says do not permit short term rentals. Short terms should be defined so that a building owner understands what a short-term definition is. Is it one week or one year or 30 days or whatever. That should be specified unless that's just verbatim from State law.

Mr. Lait: Right, I think the – elsewhere in the code we talk about a minimum rental of – yeah, short term rentals. It's up above on page 17.

Chair Bernstein: Ok, great.

Mr. Lait: It's short term rentals, the junior accessory dwelling unit shall not be rented for periods of less than 30 days.

Chair Bernstein: Ok, great. Thanks. Next is on – there's a map of accessory dwelling unit parking exemption areas and I'll just hold that up for the camera. There's a diagram that talks about the shuttle stops and if I look on the map in Professorville, I think there's a Palo Alto bus stop on Embarcadero that's outside that circle. As I understand, there are exception that if you're near public transportation but Palo Alto shuttle bus stop -- I think that's a listed public transportation thing.

Mr. Lait: The code also defines what public transit is and I'm not sure the local shuttle meets the standard.

Chair Bernstein: Oh, ok.

Mr. Lait: Nevertheless, the City Council has waived or at least proposed – announced its intent to waive any parking requirement for any ADUs and so the whole radius around train stations or bus lines is relevant.

Chair Bernstein: Ok. Thanks for that. Board Member Wimmer.

Board Member Wimmer: I also wanted to mention that there's also the second impact of some these secondary dwelling units, for instance, the attached secondary dwelling units. I know today that we are just talking about planning issues but then once an applicant actually applies for one of these things, then there's a layer of building codes and things like that, that are then realized. One of those codes is that if the secondary dwelling unit is attached, you have to create a firewall between the main dwelling and the secondary dwelling, which is a special – a specified wall system that goes from the foundation up to the roof. An attached secondary dwelling has to have its own HVAC system because you can't penetrate through this wall unless you have fire dampers, which is a very expensive HVAC ducting system. The secondary dwellings have to have their own exclusive HVAC system. That's something that I'm again, realizing with the experience that I'm doing on these projects in other Cities. I just think it's

something to be aware of – the constructability that what the building department will require. It can be very involved and complicated, especially, if you're altering – like with a junior accessory dwelling, where you're taking existing square footage, you are going to have to alter the structure to really realize that and make that happen. Sometimes these – when we talk about it in planning, it seems doable but then that – you also have to focus on what is required by the code. I'm just putting that out there.

Mr. Lait: (Crosstalk) If I can...

Chair Bernstein: Board Member...

Mr. Lait: ... take a moment to respond to that. The – you're correct, the accessory dwelling unit – an attached accessory dwelling unit would need to meet the required life safety provisions to be established. However, for the junior accessory dwelling units, there's a provision that says, for the purposes of any fire or life protection ordinance or regulation or for the purpose of providing service for water, sewer or power, a junior accessory dwelling unit shall not be considered a separate or new unit.

Chair Bernstein: Board Member Corey, you had a...

Board Member Corey: I have to excuse myself to leave. Thank you. Sorry.

Chair Bernstein: Thank you for your attendances so far. Board Member Kohler.

Board Member Kohler: Yeah, I have going to...

Chair Bernstein: You need your mic on.

Board Member Kohler: I have a scheduled meeting. I need to run too, thank you.

Chair Bernstein: Ok, 1, 2, 3, 4. We still have a quorum present, thank you. Thank you, gentlemen, for your – ok. Thank you, I just have some other comments regarding the proposed ordinance and I also see Jonathan, that you and staff and Council are doing a good job of trying to fine tune this. Go through all the historic issues – I'm sorry, what?

Board Member Wimmer: (Inaudible)

Chair Bernstein: I do have some concerns that I would like to express and I have some notes that I would just like to read. I'm just going to read my notes here so I don't miss anything. I'm concerned about the design of proposed new construction on properties with listed historic resources. How will they be designed to be consistent with the Secretary of Interior Standards of Rehabilitation? The City of Palo Alto is a Certified Local Government (CLG). The Historic Resources Board is the agency that meets this certification requirement to be a CLG and then you can see the 5 requirements. I put that At Places, I put that at the public desk and I gave it to the members of Staff also and that's being distributed to Staff right now. Those are the five requirements to – for a CLG such as the City of Palo Alto and the Historic Resources Board is the agency that meets that certification requirement. My next note is failing to meet these requirements puts the City of Palo Alto at risk of becoming de-certified as a CLG and on my next page, the Staff and public and HRB Members can see the de-certification process. To remain a CLG, the CLG must enforce the local Preservation Ordinance. This means that new construction on properties with listed historic resources must be consistent with the Secretary of Interior Standards of Rehabilitation. As a CLG, HRB Members require annual State mandated training for applying the standards for historic review. The Secretary of Interior Standards are not prescriptive standards, they are subject to scholarly interpretation based on the required annual training that HRB Members need to receive. The newly enacted State legislation permitting ADUs and JADUs, require ministerial review of ADUs. If all reviews of ADU and JADU applications involving historic structures are restricted to Staff review, how will the CLG requirement be met without input from the certified CLG agency of the HRB? This is today's challenge. The answer that challenge is that CLG allows the City of Palo Alto to enact appropriate local historic

preservation to meet the requirements of CLG. So, suggestions for local legislation to allow HRB input into the ADU/JADU review processing include a no fee study session with the full HRB, a no-fee study session with an HRB subcommittee, a full HRB public hearing or HRB participation in some manner. To my point, my concluding comment is that local ordinances are in response to our cultural values. The City values historic preservation as evidence by our Historic Preservation Ordinance. Our ordinance requires new construction involving historic resources to be consistent with the Secretary of Interior Standards for Rehabilitation. HRB Members receive the required State mandated training for reviewing applications for new construction. It is appropriate that the HRB in some manner review proposed new construction involving historic resources. I look forward to continued continuing with Council and Staff to ensure the cultural values of historic preservation continue to strengthen. I look forward to any other comments from HRB Members of the importance of the HRB involvement during this review of any changes or new construction on historic properties or any other comments from Staff too.

Ms. French: I would just comment, for sure JADUs which are contained in existing structures, that statement would not relate to that, (inaudible) speaking to just additions.

Chair Bernstein: I agree, ok. With an attached ADU, that is a new addition to – if a project that's listed on a historic (inaudible), that's a new addition to a historic structure, correct? An attached ADU?

Ms. French: That's my understanding.

Chair Bernstein: Then no HRB review of an attachment – let's say you have a Category – say the Squire House, for example. If an owner wants, and if it meets all the requirements for FAR, for example. If you can do a non-compatible addition to the Squire House, correct? This State law would allow that?

Ms. French: The Staff would be entrusted – delegated really in this situation to ensure Secretary of Interior Standards compliance. That's how it's currently going to the Council.

Chair Bernstein: Does a CLG certification allow a non-HRB member to address the Secretary of Interior Standard Compliance or consistency because the CLG specifically says that the HRB is the agency for that.

Ms. French: Yes, well...

Chair Bernstein: If the HRB is not involved how does that meet the CLG requirement? (Crosstalk)

Ms. French: I believe that we have instances and – where Staff on minor – the code does allow – the Preservation Code 16.49 of the Palo Alto Municipal Code does allow Staff to act on behalf of the HRB for minor modifications and that has occurred over the years with qualified staff and consultants that assist staff as is the current situation.

Chair Bernstein: Ok. Alright. It sounds like then that there's going to be some kind of good monitoring of any proposed additions to historic structures. Board Member Bunnenberg.

Board Member Bunnenberg: It does seem to me that I would support your position.

Chair Bernstein: I think that wasn't recorded. Can you repeat the comment?

Board Member Bunnenberg: It does seem to me that I would support your point that it needed to be a subcommittee or someone from the HRB involved.

Chair Bernstein: Go ahead, Board Member Wimmer.

Board Member Wimmer: Just to clarify what you're asking. If there a historic category house and they're proposing to create a secondary dwelling – if it's attached and they are altering and doing an addition to

the house, then yes, that would come to the Board I would guess because that would just go through – just because it's an accessory dwelling unit, that doesn't dismiss it from having to be reviewed. I guess if it's detached, that's the wild card. If it's a detached structure in their yard, does that trigger an HRB review? Is that what you're – is that kind of summarizing? I'm trying to understand better – I think that's what you are asking.

Chair Bernstein: Yeah, if it's a new – if it's a house addition to a historic structure and it's a list historic structure...

Board Member Wimmer: It would come to the Board.

Chair Bernstein: ...does it come to the Board even if it's an ADU application?

Board Member Wimmer: That shouldn't dismiss it. I don't know.

Ms. French: It would seem that the ordinance is saying that it would no longer come to the Board if it's specifically an accessory dwelling unit but I'll let Jon correct me if I am wrong.

Mr. Lait: We have consulted with the City's Attorney's office about this issue because we know it's important to the HRB to – I mean, you're interested in protecting these wonderful historic resources that we have in the community. Understandably, if somebody is building a new 600 or 900-square foot accessory structure, you want to make sure that it's not detracting from the character of what's going on or impacting the key character-defining features of a residence. However, our attorney's office has informed us that they believe that a review process such as coming to the HRB for the accessory dwelling unit would be inconsistent with the intent of the State legislation and that's why the Council has added the provision, which I think is in the Staff report, requiring the review of any accessory dwelling unit that's on the City's historic resources inventory to have this assessment that's being done. If it's a minor thing and we have a staff member available to assist us with this -- we now have the one vacant position and because of that, we have a consultant that is helping us. Page and Turnbull are helping us with some reviews and that's how we would continue to do that. That review would ensure – there would be two reviews. One, there would be the consultant review and then there would be the staff sort of review of that work too – that works with this Board and has been working with these issues. That's how we feel like that we are going to ensure consistency with the Secretary of Interior Standards. I was looking at the five requirements for CLG Certification and I don't think anything in the process that we've laid out here would be in conflict with that. The CLG is granted to the local government. It's the City of Palo Alto that is a CLG City and the five basic perimeter's talk about enforcing State and local regulations for designated resources and our attorney's office has (inaudible) that State law for the ADUs is moving those to a ministerial process, as efficiently as possible is the State's concern, and having a review process where it comes to the HRB would be in conflict with that. I don't think we're, as a City, running into a legal challenge but I do understand the interest of wanting to be engaged in that discussion. That's one of the things we are trying to understand and balance more.

Chair Bernstein: If an applicant proposes a non-compatible addition to a historic structure and if the staff says no, isn't that discretionary?

Mr. Lait: No, we would treat that as an objective development standard in terms of its compliance with the Secretary of Interior Standards. Ideally, though, we're working with – we do this all the time, where we are working with applicants to identify those concerns up front and have them design a structure that is in compliance. However, if it is not consistent with the Secretary of Interior Standards, we will not issue a building permit for the construction of that accessory dwelling unit.

Chair Bernstein: Standard 9, it's not a checklist of yes or no like – so I take some judgment.

Mr. Lait: It does.



Chair Bernstein: Isn't that discretionary if there's judgment involved because ministerial says that it meets the seismic code or not. That's yes or no, that's just mathematics.

Mr. Lait: There is a certain amount of – even in an applying objective – so there are the clear objective standards where you can't go above 30-feet in height...

Chair Bernstein: Correct.

Mr. Lait: ...or whatever that is and zoning codes from time to time have objective standards that blur the line a little bit and this ordinance included some other standards such as design compatibility. You read a couple under the record which are also subjective but the balance is – one of the questions that we asked the Council is are these descriptive enough to give enough guidance to somebody for – to do this without it being too subjective in its review and therefore ministerial? If we have a question -- I would say to go to your scenario that you described. If we've done a review and we've concluded no, it's not consistent with the Secretary of Interior Standards, we'd probably give the applicant an opportunity for us to get another third-party consultant if they wanted to challenge that because we understand that there can be different points of views. In the end, we're going to look for where the evidence leaning toward and make a decision based on that.

Chair Bernstein: Can that third party review be the HRB?

Mr. Lait: I don't know. I think we would have to figure that out.

Chair Bernstein: Well, you've got the seven people who pretty well understand what's going on in Palo Alto regarding historic properties.

Mr. Lait: Yeah, no, I listen, I understand (inaudible)(crosstalk)

Chair Bernstein: That's why we were appointed.

Mr. Lait: ... I'm not – I'm trying to give you – I'm trying to be responsive to your question but then also be mindful of the direction that we've received from the City's Attorney's Office but I think you can be an opportunity – probably at this point because we are going April 11<sup>th</sup> and I don't think you're having another meeting before then. It could be worthwhile for individual Board Members to write letters to the Council expressing your point of view of certainly come up to the – show up to the meeting.

Chair Bernstein: Yeah, great. Ok.

Ms. French: Can I also say one thing? You had – in your discussion, you had mentioned study sessions. Of course, we can encourage anybody, including those that are looking to do accessory dwelling units to come as a study session at the earliest opportunity. Whether we catch those people or not at that earlier stage is a question but it's not a requirement so it's voluntary and it could be helpful to people to get to that point of compliance. We would still encourage people.

Chair Bernstein: Yeah, that's why this is added as a way for the HRB to at least see the proposed application. Just so the applicant hears our comments and that's what we've been encouraging even before this proposed ordinance came. If there is some way that – again, that goes back to my question a long time ago is how would an applicant that goes to the Development Center know that there's this free, no fee study session with the HRB? That would be a good – I don't have an answer to how the Development People know to say that.

Ms. French: Because the ordinance hasn't been passed, there's nothing that's being said at this point but following passage, certainly administrative policy and practices are something that we can – in flyers and website announcements is all within the realm of things that staff can do without Council weighing in on that.

Chair Bernstein: Right. Board Member Wimmer.

Board Member Wimmer: I would think that if an applicant came with an addition that – if it wasn't a secondary dwelling unit and if that addition needed to be reviewed by the HRB, then I think – I guess whether or not, it's a secondary dwelling unit. If an addition would traditionally trigger a review by the HRB then I think that should remain a requirement, whether or not it's an accessory dwelling unit or not. I can – I guess I can kind of see how because the City is trying to expedite this process that if it's a detached structure that doesn't – would not alter the existing historic main buildings, then that can be Staff reviewed just because coming to the HRB is -- it's a time requirement and doing drawings and presentation. I can see that being ok – I mean, it would be ok with me, as a Board Member, if an applicant wanted to come and do a detached structure. They – it meets all the planning codes and yes, we want it to be differentiated and naturally, it's going to be because it's probably going to be a different looking building. I would entrust that the end result with the Staff review would be admissible or acceptable. That's just my comment.

Chair Bernstein: Board Member Bunnenberg.

Board Member Bunnenberg: I also think that it's important for all of us to think about that there are – we're often talking about lots that are in the middle of the block but there are corner lots that their open space will be very visible from the street. That would be an extremely important point to have something that is very compatible because it will have a distinct visual impact on the historic structure.

Chair Bernstein: Any other items regarding this agenda item? Board Member Wimmer.

Board Member Wimmer: I think also once the ordinance is put into place and then these applications start coming through and these accessory dwelling units become – are realized in our community, it's kind of not until then that we can see the impact of what's really – how this is really going to play out and I think the Council has the power to adjust the ordinance. If – once we put the wheels in motion and the wheels are going off to the wrong path, I think the City Council will correct it. I think I do have faith in that sometimes we just need a little history to see how this thing is really going to impact the community and I'm sure community members will complain or offer their opinions, then the City Council can make adjustments at that time.