



# City of Palo Alto

## City Council Staff Report

(ID # 9631)

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**Report Type: Action Items**

**Meeting Date: 10/1/2018**

**Summary Title: Accessory Dwelling Unit (ADU) Ordinance Update & Discussion**

**Title: PUBLIC HEARING: Adoption of an Ordinance Amending Palo Alto Municipal Code (PAMC) Section 18.42.040 Related to Accessory and Junior Accessory Dwelling Units to Clarify or Modify Various Provisions Including Setback Requirements for Detached ADU Basements, Allowance for Setback and Daylight Plane Encroachments for Detached ADUs, Bonus Lot Coverage and Floor Area Eligibility, Bonus Floor Area Amount to Match Minimum Unit Size as Established by Building Code, Reduced Height Limit for Detached ADUs Located Within Identified Eichler Tracts, Replacement Parking Provisions as Applicable to JADUs, Allowance for Replacement Parking to be Located Within Driveways Located in Street-side Setbacks, Allowance for Existing Driveways to be Expanded to Accommodate Replacement Parking, Allowance for Noncomplying Structures to be Rebuilt as Part of Conversion to ADU, and Applicable Zoning Districts that Allow ADU Development; Finding the Ordinance Exempt from Review Under the California Environmental Quality Act (CEQA) Pursuant to CEQA Guidelines Section 15061(b)(3); and Discussion of Other Potential ADU-related Regulations. Planning & Transportation Commission Recommended Approval of the Ordinance.**

**From: City Manager**

**Lead Department: Planning and Community Environment**

### **Recommendation**

Staff recommends that the City Council take the following actions to amend the Accessory Dwelling Units regulations:

1. Find the proposed Ordinance exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15061(b)(3); and
2. Adopt an Ordinance (Attachment A) amending Palo Alto Municipal Code Section 18.42.040, Accessory and Junior Accessory Dwelling Units.

## **Executive Summary**

On May 8, 2017, City Council adopted [Ordinance No. 5412](#) amending Title 18 (Zoning) of the Palo Alto Municipal Code to implement the new State requirements related to Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU). These new regulations have eased the development requirements for ADUs for property owners and support the creation of additional, more affordable, housing units. With the implementation of the new regulations, the City has seen an increase in the number of ADU permit applications filed. In 2017, 31 ADU applications were submitted for review. For 2018, 26 applications have been submitted so far this year. In previous years, the City had an average of four ADUs reviewed each year.

Although local regulations have only been in effect for 13 months, staff has encountered some challenges implementing the current code and proposes revisions to address these concerns. On April 25, 2018, the Planning and Transportation Commission (PTC) reviewed and recommended approval of the proposed ordinance with a 5-0-2 (Laing, Riggs absent) vote.

This report also discusses Council direction to make ADUs available to low and moderate income households and options to address illegally established ADUs.

## **Background**

In October 2015, the City Council approved a Colleagues Memo that directed the PTC to review the Palo Alto Municipal Code (PAMC) related to ADUs and recommend strategies to increase production of these units. Subsequently, the PTC conducted two study sessions in January and July 2016 (reports [#6462](#) & [#6944](#)), just prior to the State of California's adoption of ADU and JADU<sup>1</sup> legislation in September 2016. In response to the state ADU regulations, the City prepared a draft ordinance to incorporate the mandatory state requirements and some optional provisions with the existing local regulations. The PTC reviewed the ordinance on November 30, 2016 (report [#7368](#)) and made recommendations. In March 2017, the City Council held its first public hearing on ADUs (report [#7517](#)) and discussed the ordinance and directed certain modifications. On April 17, 2017, the Council adopted the ADU ordinance with further refinements (reports [#7921](#) & [#8048](#)), which became effective on June 8, 2017. The City Council also directed staff to provide a [quarterly report](#) on ADU permits and to conduct a study

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

session with the PTC to analyze the results of the ordinance; the study sessions were held on December 13, 2017 ([meeting minutes](#)) and January 10, 2018 (report [#8773](#) & [meeting minutes](#)).

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

As of the preparation of this report, the City has reviewed 54 ADU permit applications since the State and local regulations were implemented. In 2017, the City received 31 applications to establish ADUs, which exceeds the average of four units per year that the City has historically processed. For 2018, the City has received 26 ADU applications to date.

As part of the ADU code update process, staff has set up a project webpage ([http://cityofpaloalto.org/gov/depts/pln/advance/accessory\\_dwelling\\_units\\_regulations\\_update.asp](http://cityofpaloalto.org/gov/depts/pln/advance/accessory_dwelling_units_regulations_update.asp)) to provide information to the public.

#### Updated State Regulations Effective January 2018

In 2017, the City adopted comprehensive regulations related to ADUs to conform to state law that became effective on January 1, 2017. Subsequently, the State legislature passed two additional bills AB 494 and SB 229, signed by the Governor in September 2017, clarifying the previously adopted ADU legislation. On February 26, 2018, the City Council adopted Ordinance No. #5430 that included modifications to remain consistent with State law and minor clarifications. Those State law changes incorporated into the Ordinance were (1) clarification that an ADU may be constructed on sites with either an existing *or proposed* single-family dwelling unit, and (2) a requirement that ADUs established through conversions of space within an existing single-family home or an existing accessory structure, be allowed in any zoning district where single-family residential is an allowed use.

Staff is aware that other ADU-related amendments are being considered by the State legislature in other pending bills (e.g. [AB-2890](#)). Staff will address any adopted changes once any bills have been adopted. Typically the State regulations take effect on January 1 of the following year, so Council can expect staff to return prior to that time to update the ADU regulations accordingly.

#### **Discussion**

Since the City adopted new ADU regulations in 2017, staff has reviewed over 50 applications and has had many more conversations with property owners regarding ADUs. It is from this experience that staff has prepared and recommends approval of the attached ordinance. The local ADU regulations have been in place for a relatively short time. As more time passes and

more projects are reviewed, staff will be able to provide additional feedback and analysis of the ADU provisions, but it is clear that the adopted 2017 regulations have increased the local production of ADUs.

#### Planning and Transportation Commission Review

Over the course of four public hearings, with two study sessions and two action meetings<sup>2</sup>, the PTC discussed and reviewed the proposed code clarifications as reflected in Attachment A and discussed in this report.

At its meeting on April 25, 2018, the PTC voted (5-0) to recommend approval of the draft ordinance with a few minor amendments. In addition to discussing the staff proposed revisions, the PTC discussed ideas for additional code revisions. Two of these ideas received majority support of the PTC. The first idea was to include a code change for the allowance of an eave on a detached ADU to encroach into the setback (and this is reflected in the attached ordinance). The second idea was for Council to consider a lower daylight plane for detached ADUs, in order to increase the access to daylight for units built in the rear yard of adjacent properties (and this is not included in the ordinance, but is described later in this report). Additional details of the PTC's deliberations are provided in the meeting minutes (see Footnote 2 for link).

#### Summary of Proposed ADU Ordinance Revisions

##### 1. Clarify the Applicable Zone Districts that Allow ADU Development

The proposed ordinance would provide greater clarity on which zoning districts allow for development of ADUs and JADUs. No policy change is associated with this amendment.

##### 2. Clarify the Setback Requirements for Detached ADU Basements

The setback requirement for detached ADUs is six feet from the rear and side property lines. This six foot rear yard setback allows the detached ADU to be placed within the standard rear yard setback that is applicable to the primary residence, which is 20 feet in R-1 zoned properties. The municipal code generally prohibits basements in the required rear and side yards and, while detached ADUs are permitted in the rear yard setback, the code is unclear as to whether ADU basements are similarly permitted in the rear yard. The attached ordinance clarifies this with an additional sentence "No basement shall encroach within a required rear yard setback."

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<sup>2</sup> [PTC Hearing 03/28/2018 staff report](#) and [meeting minutes](#)  
[PTC Hearing 04/25/2018 staff report](#) and [meeting minutes](#)

The PTC recommends no basements be allowed in the standard rear yard setback. Accordingly, only detached ADUs located outside of required rear yard setback would be permitted to have a basement, and the basement area is included in the ADU maximum floor area calculation. The PTC noted concerns regarding impacts to trees and dewatering as reasons supporting this prohibition. If Council concurs, no change is required to the attached ordinance. If, however, Council supports basements for rear yard ADUs, this direction would need to be provided to staff for inclusion in the ordinance for final adoption at the second reading. The Council could direct staff to delete the sentence “No basement shall encroach into a required rear yard setback”, which is found in paragraph D (Setbacks and Daylight Plane) under Item 9 (Additional Development Standards for Detached Accessory Dwelling Units). However, Council may consider requiring some basement setback (a greater setback than the allowable above-grade setback).

### *Trees and Dewatering*

In response to the concerns raised by the PTC, staff would note that there are existing regulations in place to address tree protection and dewatering issues. The City’s tree protection measures apply to all development in the City, including ADUs. All ADU permits submitted for review are screened for impacts to protected trees.

In recent years, concerns have been raised that temporary construction-related groundwater dewatering may be wasting water, potentially damaging structures, trees and vegetation, and depleting or altering the flow of groundwater. In response, the City established new requirements in February 2016 designed to minimize and standardize the process of pumping and discharge of groundwater from dewatering of below ground structures (e.g., basement or parking garage) during construction. These regulations apply to an ADU with a basement.

Note: A pending State bill (AB-2890), if passed, would establish a maximum four foot side and rear setback for newly developed ADUs.

### 3. Clarify Allowable Setback and Daylight Plane Encroachments for Detached ADUs

In the discussions with the PTC on the setbacks for basements, attention was given to the possible projections that could be allowed into the required setbacks for detached ADUs. Several commissioners expressed strong support for allowing the building eave to encroach into the required setback and the PTC included this direction in its motion to recommend approval of the ordinance.

Although it was not specifically discussed by the PTC, staff recommends that eaves also be allowed to extend into the daylight plane, as reflected in the draft ordinance (under Item 9 paragraph D). For eaves, these two development standards, setbacks and daylight plane, often have a causal effect on one another. If Council supports adding some flexibility for setback

encroachments for eaves, the same flexibility could be applied to eaves encroaching, to a limit extent, into the daylight plane.

#### 4. Clarify Bonus Lot Coverage and Floor Area Eligibility<sup>3</sup>

The general intent of providing bonus lot coverage and floor area is to give some development flexibility for existing developed sites that may be at or near the related maximums allowed. With the current bonus provisions, the additional lot coverage needed for an ADU would be 100% exempt, and up to an additional 175 square feet (SF) of floor area would be allowed.

The code specifically states that these bonuses are given when development of an ADU is on a site “with an existing single-family residence.” Staff believes this takes into consideration that existing developed lots upon which ADUs could not be established previously, but now otherwise could include ADUs, may have insufficient lot area to accommodate the ADU. The bonuses allow flexibility for existing developed sites to promote this housing alternative. In contrast, staff believes the bonuses were not intended for new construction of single family homes. With new development, the lot is not or no longer constrained by existing improvements, floor plans, other accessory structures, and there are options for designing and incorporating an ADU on the lot without the need for the bonus lot coverage or floor area.

However, in staff’s experience, some property owners who are building completely new homes also want to take advantage of these bonuses. Many new homes maximize permitted floor area and the interest for additional floor area sets forth a two-step process whereby someone can build a new home and receive final approval, thus becoming an “existing home,” and then file plans for an ADU and an additional 175 SF.

If it is Council’s intent to apply these exemptions to existing homes (before the new ADU regulations were adopted), then an amendment to the code is required to clarify this intent. If, however, the Council determines that new construction qualifies for the exemption, the code should also be amended to eliminate the two-step process and more explicitly state the intent of this provision.

As drafted in the attached ordinance, lot coverage and floor area bonuses would apply only to properties with existing homes or proposed homes with a valid building permit as of January 1, 2017, which is when the State adopted the ADU regulations. If the Council’s intent is different, direction should be provided in its motion and staff would draft corresponding changes to the ordinance for final adoption at the second reading.

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<sup>3</sup> Note: In the following discussion section 5, staff recommends increasing the 175 square foot floor area exemption bonus up to 220 square feet.

Note: A pending State bill (AB-2890), if passed, would fully exempt ADUs from a site's floor area and lot coverage calculation.

#### 5. Adjust Bonus Floor Area Amount to Match Minimum Unit Size as Required by Building Code

The current ADU and JADU regulations establish a maximum unit size for ADUs and JADUs, but do not expressly address a minimum unit size. With respect to ADUs, the code and state law both provide that an ADU includes an "efficiency unit" as defined under state law. Based on the current California Building Code requirements (Section 1208.4) for an efficiency unit, the minimum size for a new ADU is 220 SF, absent adoption of a local ordinance reducing the minimum size (for example to 150 SF). For JADUs, the minimum size is based on California Residential Code requirements for a minimum room size (Section R304.1), currently 70 SF. Staff will continue to rely on the relevant building codes for determining the minimum unit size.

As discussed in the above section, ADUs may qualify for a 175 SF floor area bonus, but this additional floor area does not fully cover the 220 SF minimum ADU unit size requirement. Because of this, there may be instances where an owner is unable to establish an ADU on their property unless a greater allowance is given for bonus floor area. To account for this discrepancy, staff, with PTC support, recommends the bonus floor area be increased up to a maximum of 220 SF. This change is found on page 2, Section 1 of the Ordinance (Attachment A).

Staff's recommendation is to:

- a. Add clarifying language to the code for ADUs and JADUs that states the minimum unit size shall be based on the respective building code requirements.
- b. Add revised language to the code for ADUs (and not JADUs) that states that the allowed bonus floor area shall match the minimum unit size as required by the current building codes. Based on today's building code requirements, the bonus floor area would therefore increase by 45 SF, expanding it from 175 to 220 square feet.

Note: Please see note for #4 above. Additionally, as this discussion relates to unit size, the State is considering a maximum unit size of not less than 800 square feet; this would have the potential to impact the existing 600 square foot maximum for attached ADUs.

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

On January 18, 2018, at a community meeting regarding the draft "[Eichler Neighborhood Design Guidelines](#)," staff received input regarding reducing the height of ADUs in Eichler tracts. The current ADU height limit for a detached unit is 17 feet and one story. The eaves of a one-story Eichler home are low due to the slab-on-grade construction that was used; typical one-story Eichler homes are nine to 11 or 12 feet tall. Limited follow up discussion took place with

the Historic Resources Board (HRB) in meetings on January 25 and February 22, 2018, which resulted in a recommendation that ADUs should not exceed the height of the primary home on the lot. There are 31 identified single family Eichler Tracts ([map](#)) that contain approximately 2,700 properties. The proposed ordinance includes new height restrictions of 12 feet for detached ADUs and that attached ADUs be no taller than the primary residence at the area of attachment. The intent of the lower height limit is to reflect the size and type of construction typical of these properties, respect neighborhood character and preserve the sense of openness and privacy enjoyed by residents in these tracts. This action would also be consistent with the “Eichler Neighborhood Design Guidelines” that was approved by Council on April 2, 2018.

During the PTC discussion, two of the six commissioners present did not support the proposed reduced height limit within the Eichler Tracts. One commissioner expressed the position that the height limits should be consistent for all ADU development; and the other expressed a desire to have more flexibility with the height provided it was consistent with the Eichler Neighborhood Design Guidelines.

Note: A pending State bill (AB-2890), if passed, would establish a height limit of no less than 16 feet for detached ADUs.

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

A JADU is only permitted within the existing building envelope of the primary dwelling unit, and must, at a minimum, utilize one existing bedroom. It could be possible that a JADU incorporates a portion of a garage for the new living unit. In this circumstance, the current provisions are not clear about replacement parking requirements for the primary residence, if all or a portion of an existing garage was utilized for the JADU. To address this, staff recommends that the same replacement parking provisions for ADUs also be applied to JADUs. Specifically, this approach requires any required covered parking to be re-established on site, but, consistent with State law, gives the owner flexibility as to how to provide that required parking space in terms of location and whether it is covered or uncovered. Similar to the City’s local provision for ADUs, JADUs by State law do not require any parking.

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

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



these types of lots. Staff suggests that replacement uncovered parking be allowed in the street side setback similar to what has been permitted for the front yard setback.

In addition, for the street-side replacement parking only, a provision has been added to allow the Director the discretion to modify the required parking space dimensions, if necessary to accommodate parking when appropriate. This flexibility is proposed because in the R-1 zone, the street-side yard setback (i.e. 16 feet) does not meet the required parking space length of 17.5 feet. This limited discretion further supports ADU development, allows for site specific review, and reduces the need for exception requests through the Variance process.

#### 9. Allow Existing Driveways to be Expanded to Accommodate Replacement Parking

As mentioned above, the current ADU provisions allow required replacement parking for the primary dwelling unit to be located within an *existing* driveway located within the front yard setback. In the review of ADU permits, some homeowners have wanted to expand the existing driveway to accommodate more parking, which the ADU regulations do not allow. Removing the ADU development from the scenario, today a homeowner is permitted to expand the existing driveway without City permits, providing it meets code provisions (i.e. driveways and walkways may be established subject to paving permeability requirement). As a work-around to get a larger driveway, an ADU applicant can first complete a driveway expansion, which then becomes 'existing,' and then submit for the ADU permit with plans reflecting the 'existing' expanded driveway. In order to facilitate streamlining the permit process, staff recommends modifying the ADU requirements to allow the expansion of existing driveways in the front and street-side yards to accommodate the required replacement parking.

#### 10. Clarify When Non-complying Accessory Structures May be Rebuilt to Convert to an ADU

The ADU regulations permit the conversion of existing legal structures to establish an ADU. Staff has received ADU proposals that include the conversion of existing non-habitable space, such as a garage (attached and detached) or accessory structure, which had a legal non-complying element (e.g. height too tall, daylight plane encroachment, setback encroachment). As already mentioned, providing these are existing legal structures, they can be converted to ADUs.

The issue that staff did not anticipate when the local ADU regulations were prepared was that these existing non-complying structures are sometimes deemed structurally unsound for establishing a living unit by building code standards. In order to be building code compliant, the structure must be demolished, wholly or partially, and rebuilt. The general zoning rule is that once a non-complying structure is removed, all new construction must meet current applicable codes (PAMC Section [18.70.100\(b\)](#) Noncomplying facility – Replacement).

The intent of the ADU regulations, however, is to allow the conversion of existing structures to create living units, including the conversion of garages and similar structures. At the PTC study session, the options the PTC initially discussed were at the opposite ends of the spectrum; at one end, the PTC noted that all new rebuilds, regardless of circumstance, should be fully zoning compliant, and at the opposite end, the PTC noted the City should allow reconstruction of non-complying structures, or portions thereof - a a “rebuild” that retains the non-complying condition. When the PTC took action on the draft ordinance, they supported the language as proposed by staff (and this is reflected in the attached ordinance), which allows reconstruction.

Where the need to rebuild existing accessory structures has been presented to staff by ADU applicants, reconstruction in place has been approved. The proposed ordinance continues to advance this concept but also includes some specific parameters to ensure there is no increase in the degree of the non-conformity, and requires a minimum three-foot setback from interior side and rear property lines. Alternative approaches to this issue are to require the rebuild to be code compliant, consistent with PAMC Section 18.70.100(b), or establish other parameters where a rebuild could be permitted.

Note: A pending State bill (AB-2890), if passed, would prohibit the correction of nonconforming conditions as a requirement for ministerial approval.

### Other Considerations

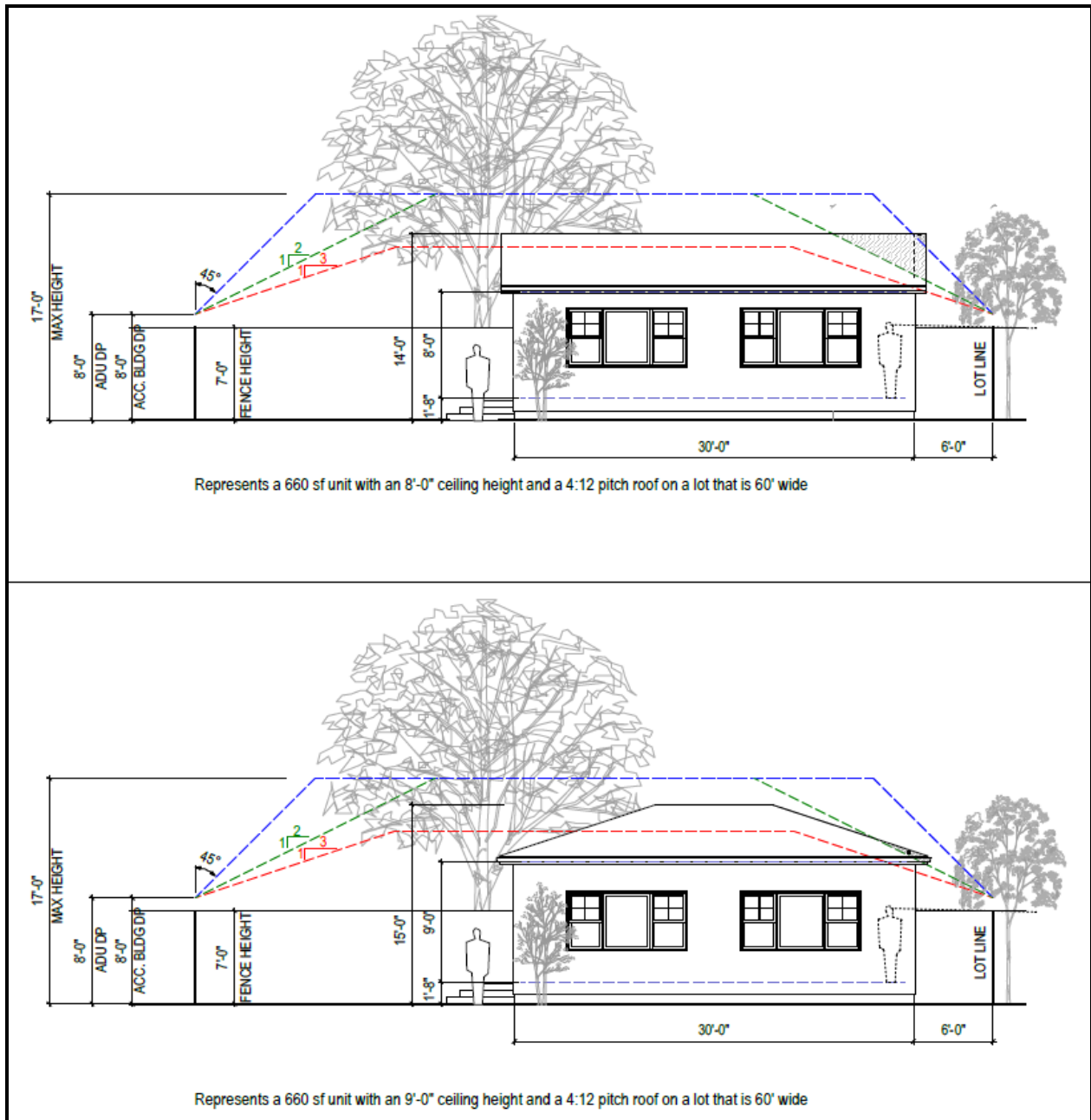
#### *Removed Amendment – ADUs and Maximum 50% Rear Yard Coverage*

In the draft Ordinance the PTC reviewed, staff included a clarification that ADUs not be considered in the calculation of R-1 maximum rear yard coverage and the PTC supported the clarification. After additional consideration of this proposed amendment, staff determined the proposed clarification is not necessary. Once an accessory structure is converted to an ADU, the accessory structure regulations (including the one referenced in this paragraph) would no longer be applicable. As background information, the R-1, R-2, RE, and RMD development standards limit accessory structure coverage to no more than 50% of a required rear yard [e.g. [PAMC Section 18.12.080\(b\)\(6\)](#)]. There has been some debate as to whether ADUs should be subject to this provision, which could be problematic for some property owners. Existing (and retained) garages, along with other accessory structures located on a parcel, could restrict a new detached ADU from being established on some properties if the 50% coverage restriction included ADU coverage. Accessory structures, once converted to ADUs, are no longer considered to be accessory structures (e.g. tool sheds and detached garages); they have become habitable, accessory dwelling units, and therefore staff does not apply this 50% coverage restriction to ADUs.

#### *Consider Reductions to the Daylight Plane*

The PTC motion to recommend approval of the draft ADU ordinance included a recommendation that the City Council consider a lower daylight plane (DLP) limit for detached ADUs. This recommendation has not been included in the draft ordinance, Attachment A. Currently, a detached ADU is subject to a daylight plane measured at the property line at eight feet high with a slope of 1:1 (45 degrees) to a maximum height of 17 feet, as shown with the blue dashed line (top line) in Figure 1. The concern raised by the PTC about the DLP was its impact on the access to daylight for ADUs when developed side by side on two adjacent lots; these two ADUs would be separated by a minimum of 12 feet (six foot setbacks on each property).

In Figure 1, there are three DLPs shown in two ADU scenarios, one with a gable roof and one with a hip roof. The blue line (top) represents the current requirement with a 1:1 ratio for the angle; the green line (middle) represents a 1:2 ratio for the angle; and the red line (bottom) represents a 1:3 ratio for the angle and a 12 foot height limit (this is the current DLP and height restrictions for detached accessory structures on R-1 lots). The graphic provided is to help visualize the various DLPs and better facilitate the Council's discussion on this topic.



**Figure 1: Daylight Plane Examples on a Gable and Hip Roof ADU**

City Council Follow-up Discussion Items

At the March 7, 2017 Council meeting regarding the ADU regulations, Council directed staff to return in 2018 with additional information regarding the two issues below. The PTC discussed these issues and their comments are provided below.

*Options to Make ADUs Available to Moderate or Low Income Residents*

City Council directed staff to explore further the possible options to make ADUs accessible to moderate or low income residents, seniors, people with disabilities, or public employees. This

type of program reflects the larger concern regarding the lack of affordable housing in Palo Alto and the greater Bay Area.

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

Another possible approach would be to partner with an organization that can provide financing in exchange for affordability. As an example, [Housing Trust Silicon Valley](#), a local non-profit organization based in San Jose, is currently developing a pilot program that would provide low-cost flexible loans to homeowners for the purpose of constructing an ADU in exchange for their agreement to rent the units at affordable costs to low- and middle-income earners. The Housing Trust's funding "will be used to make capital loans to homeowners — who can easily spend \$100,000 or \$200,000 on ground-up construction of an ADU. But the Housing Trust also intends to create an educational outreach program — involving classes, workshops and technical assistance — to help homeowners navigate the ADU process."<sup>4</sup> The partnership option, where the City contributes funding, ideally would place responsibility of the program management on the agreeable non-profit organization.

Given sufficient staff and financial support, the City could also offer technical and educational assistance. For example, the City could develop prototype designs for ADUs that can be readily utilized for the permit process and can be approved more expeditiously. To be clear, however, staff is not sufficiently resourced at this time to take on this responsibility without adjustment to the department's work program.

The PTC's comments were generally in line with the above noted options. There was majority support for providing a fee waiver in exchange for a long term commitment (10-15 years) to provide affordable housing. Other comments included:

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<sup>4</sup> *The Mercury News* "Bank funds 'granny' units project in affordable housing experiment for San Jose, L.A." October 9, 2017: <http://www.mercurynews.com/2017/10/09/an-affordable-housing-experiment-for-san-jose-and-los-angeles-bank-funds-pilot-project-to-help-build-granny-units/>

- Perform additional financial analysis to understand the impacts of waiving fees.
- Establish a few ADU template plans that provide an “off the shelf” approvable project.
- Create partnership program that identifies architects who specialize in ADUs who can be engaged by home owners to streamline the permit review process.
- Allow an opt-out provision for homeowners that no longer want to continue to provide their unit as affordable and require payment of fees that were waived.
- Utilize a third party (e.g. Palo Alto Housing) to administer the program.

The State was considering eliminating all development impact fees charged by local agencies and school districts, but these amendments, at the time of this report, did not have support to move forward.

#### *Strategies for Legalizing Illegally Constructed ADUs*

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

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

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

Such programs, however, can create other challenges that should be considered. Illegal units that cannot meet building codes or are not approved through a City process would have to be removed and existing tenants would be displaced. Illegally established ADUs may cost too much to be structurally upgraded, resulting in further displacement. Program implementation is another significant consideration. The Council would need to consider whether these units are addressed on a case by case basis when brought to the City’s attention, or if there is a brief

amnesty period whereby owners of illegal units could seek permits to legalize these units. Again, it is possible that not all units could be approved. And, the administrative time establishing and following through on such a program would be significant. Presumably, building permit and HIE review fees would cover the cost of staff time, but this would take time away from staff time for processing other applications.

The PTC did not have any additional suggestions on how to approach this issue. They did express concerns about the displacement of residents, and about the importance of addressing life safety conditions. There was an overall sentiment that trying to address this issue was complex and required a sensitive strategic approach.

As noted in the earlier discussion in section #10 regarding non-complying accessory structures, the State is considering prohibiting the correction of nonconforming conditions as a requirement for ministerial approval. If approved, this State regulation could have a direct impact on this discussion.

Based on existing resources and pending State legislation, staff encourages Council to defer making any final determinations on this topic until more information is gathered and decisions are made about the planning department's work program for next year.

### **Policy Implications**

The proposed ordinance is consistent with the Comprehensive Plan provisions and would advance related housing element programs. The Comprehensive Plan emphasizes the importance of the City's residential neighborhoods and the quality of life for residents. Policy L-2.3 of the Land Use and Community Design Element emphasizes the need to allow and encourage diversity of the City's housing stock and supports ADU development. Additionally, the Housing Element provides specific goals and programs to encourage ADU development. Goal H1 directs the preservation of the unique character of the city's residential neighborhoods and Programs H1.1.2 and H3.3.5 encourage modifying existing second unit development standards in the Zoning Code, such as lowering the minimum lot size and allow for increased floor area, in order to facilitate the creation of additional ADUs while maintaining neighborhood character and increasing the City's affordable housing supply.

### **Resource Impacts**

The proposed ordinance is not anticipated to have any resource impacts. Building permits would be required for new ADUs and JADUs and the associated building permit fees would be collected for the review/permitting process.

### **Timeline**

With Council approval of these revisions or further modifications on the first reading, the second reading would be scheduled as a consent calendar review for adoption. Following the second reading, the ordinance would become effective 31 days after adoption.

### **Environmental Review**

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

#### **Attachments:**

**Attachment A: Draft Ordinance (DOCX)**



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Ordinance No. \_\_\_\_\_

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

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

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

**18.42.040 Accessory and Junior Accessory Dwelling Units**

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

(a) Accessory Dwelling Units

(1) Purpose

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

(2) Applicable Zoning Districts

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

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

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

~~(3)~~ Setbacks and Daylight Plane

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

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

- A. An accessory dwelling unit shall be included in the lot coverage and floor area ratio FAR requirements applicable to the parcel.
- B. Exceptions:
  - i. Lot Coverage. When the ~~development establishment~~ of an accessory dwelling unit on a parcel with a an existing single family residence that was legally permitted and existing or proposed with a valid building permit as of January 1, 2017, would result in the parcel exceeding the lot coverage requirement, the accessory dwelling unit shall not be included in the calculation of lot coverage applicable to the property, so long as the parcel meets the underlying zoning district's minimum lot size requirement or is substandard by no more than ten percent (10%) of the underlying zoning district's minimum lot size requirement.
  - ii. Basements ~~FAR~~. In the R-1 district and all R-1 subdistricts, basement space used as an accessory dwelling unit, or portion thereof, shall not be included in the calculation of floor area for the entire site, providing the measurement from first finished floor to grade around the perimeter of the building is no more than three (3) feet.
  - iii. Additional Floor Area~~R~~. When the development of a new one-story accessory dwelling unit on a parcel with a an existing single family residence that was legally permitted and existing or proposed with a valid building permit as of January 1, 2017, would result in the parcel exceeding the maximum floor area ratio, an additional 220 ~~175~~ square feet of floor area above the maximum amount ~~of floor area~~ otherwise permitted by the underlying zoning district shall be allowed. This additional floor area shall be permitted only to accommodate the development of the accessory dwelling unit and shall not be applied to the primary residence.

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

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Notwithstanding the provisions of subsections (a)(~~23~~), (a)(~~34~~), (a)(~~45~~), (a)(~~78~~) and (a)(~~89~~), in the R-1 district and all R-1 subdistricts, ~~the~~ RE, R2, RMD and OS districts, and properties zoned RM or ~~Planned Community (PC)~~ where single-family residential is an allowed use, an ~~a~~Accessory ~~d~~Dwelling ~~u~~Unit shall be permitted if the unit is contained within the existing space of a single-family residence or an existing accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety, and if the accessory dwelling unit conforms with the following:

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

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(67) Privacy

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

(78) Additional Development Standards for Attached Accessory Dwelling Units

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

(89) Additional Development Standards for Detached Accessory Dwelling Units

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- A. Detached accessory dwelling units are those detached from the [main-primary](#) dwelling. All detached accessory dwelling units shall be subject to the additional development standards specified below.
- B. The maximum size of the detached accessory dwelling unit living area, [inclusive of a habitable basement](#), shall be 900 square feet, and the minimum unit size shall be [established consistent with the Building Code](#).
  - i. The accessory dwelling unit and any covered parking shall be included in the total floor area for the site, but the covered parking area is not included within the maximum 900 square feet for detached unit.
  - ~~ii. Any basement space used as an accessory dwelling unit or portion thereof shall be counted as floor area for the purpose of calculating the maximum size of the accessory unit.~~
- C. Maximum height (including property in a special flood hazard zone): one story and 17 feet, [or one story and 12 feet, if located in an Eichler Tract identified in the adopted Palo Alto Eichler Neighborhood Design Guidelines](#).
- D. Setbacks [and Daylight Plane](#): ~~Notwithstanding~~ [subsection \(a\)\(34\)\(iA\)](#), a detached accessory dwelling unit may be located in a rear yard, but must maintain a minimum setback of six feet (6') from the interior side and rear property lines and sixteen feet (16') from a street side yard. [No basement shall encroach into a required rear yard setback](#). 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.
  - a. [No projections, such as but not limited to windows, doors, mechanical equipment, venting or exhaust systems, shall be permitted to encroach into the required setbacks and daylight plane, with the exception of a roof eave up to two feet.](#)
- E. If covered parking is provided for an accessory dwelling unit in the RE District, the maximum size of covered parking area for the detached accessory dwelling unit is 200 square feet.

~~(910)~~ Additional Requirements for All Accessory Dwelling Units

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

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- D. Existing Development: A single-family dwelling shall exist on the lot or shall be constructed on the lot in conjunction with the construction of the accessory dwelling unit.
- E. Occupancy: The owner of a parcel proposed for accessory dwelling use shall occupy as a ~~principal~~ primary residence either the primary dwelling or the accessory dwelling, unless both the primary dwelling and the accessory dwelling are rented to the same tenant and such tenant is prohibited from sub-letting the primary dwelling or the accessory dwelling.
- F. Prior to issuance of a building permit for the accessory dwelling unit, the owner shall record a deed restriction in a form approved by the city that: includes a prohibition on the sale of the accessory dwelling unit separate from the sale of the single-family residence; requires owner-occupancy consistent with subsection (a)(~~910~~)(~~VE~~) above; does not permit short-term rentals; and restricts the size and attributes of the accessory dwelling unit to those that conform with this ~~S~~section [18.42.040](#).
- G. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.
- H. Street Address Required: Street addresses shall be assigned to all accessory dwellings to assist in emergency response.
- I. Street Access: When parking is provided, the accessory dwelling unit shall have street access from a driveway in common with the main residence in order to prevent new curb cuts, excessive paving, and elimination of street trees, unless separate driveway access is permitted by the director upon a determination that separate access will result in fewer environmental impacts such as excessive paving, unnecessary grading or unnecessary tree removal, and that such separate access will not create the appearance, from the street, of a lot division or two-family use.
- J. For properties listed in the Palo Alto Historic Inventory, the California Register of Historical Resources, the National Register of Historic Places, or considered a historic resource after completion of a historic resource evaluation, compliance with the appropriate Secretary of Interior's Standards for the Treatment of Historic Properties shall be required, as determined by the ~~Planning~~ Director.
- K. No protected tree shall be removed for the purpose of establishing an accessory dwelling unit unless the tree is dead, dangerous or constitutes a nuisance under Section 8.04.050. Any protected tree removed pursuant to this subsection shall be replaced in accordance with the standards ~~it~~ in the Tree Technical Manual.
- L. Except as modified by this Section 18.42.040, the accessory dwelling unit shall conform to all requirements of the underlying zoning district, any applicable combining district, and all other applicable provisions of this Title 18.

(1011) Parking

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

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

(b) Junior Accessory Dwelling Units

(1) Purposes:

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

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

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

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an adopted Coordinated Area Plan or Specific Plan. A junior accessory dwelling unit shall only be located on a lot which already contains one legal single-family dwelling.

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



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size in relation to the size of the junior accessory dwelling unit.

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

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

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

**SECTION 4.** The Council finds that the adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines sections 15061(b)(3), 15301, 15302 and 15305 because constitute minor adjustments to the City’s zoning ordinance to implement State law requirements related to accessory dwelling units as established in Government Code Section 65852.2, and these changes are also likely to result in few additional dwelling units dispersed throughout the City. As such, it can be seen with certainty that the proposed action will not have the potential for causing a significant effect on the environment.

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

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

NOT PARTICIPATING:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Assistant City Attorney

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

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