



# City of Palo Alto

## City Council Staff Report

(ID # 9707)

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**Report Type: Consent Calendar**

**Meeting Date: 11/5/2018**

**Summary Title: 2nd Reading - Accessory Dwelling Unit Ordinance Update**

**Title: SECOND READING: Adoption of an Ordinance Amending Title 18 (Zoning) of the Palo Alto Municipal Code to Amend Requirements Relating to Accessory Dwelling Units and Junior Accessory Dwelling Units (FIRST READING: October 1, 2018 PASSED: 8-1 Kou no)**

**From: City Manager**

**Lead Department: Planning and Community Environment**

### **RECOMMENDATION**

Staff recommends that the Council conduct a second reading and adopt the attached ordinance (Attachment A).

### **BACKGROUND**

On October 1, 2018, the City Council reviewed and approved on first reading a draft ordinance amending various elements of Palo Alto Municipal Code (PAMC) Section 18.42.040, Accessory and Junior Accessory Dwelling Units ([staff report #9631](#)).

The motion cited below, moved by Council Member Fine and seconded by Council Member Scharff, passed with an 8-1 vote (Kou voting no):

- A. Find the proposed Ordinance exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15061(b)(3);
- B. Adopt an Ordinance amending Palo Alto Municipal Code Section 18.42.040, Accessory and Junior Accessory Dwelling Units;
- C. Direct Staff to investigate private ADU financing that would provide financing in exchange for deed restricted affordable ADUs;
- D. Eliminate the development fees for JADUs or for garage conversions;

- E. Remove “the minimum lot size for the establishment of an accessory dwelling unit of 5,000 feet” from the Ordinance; and
- F. Refer to Staff and the Planning and Transportation Commission to study the following:
  - i. Perform additional financial analysis to understand the impacts of waiving fees;
  - ii. Establish a few ADU template plans that provide an “off the shelf” approvable project;
  - iii. Create partnership program that identifies architects who specialize in ADUs who can be engaged by home owners to streamline the permit review process;
  - iv. 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; and
  - v. Utilize a third party (e.g. Palo Alto Housing) to administer the program.

The Ordinance has been modified to incorporate the Council’s changes cited in item E above. The summary of the Action Minutes are available online at the following link: <https://www.cityofpaloalto.org/civicax/filebank/documents/67315>. The modifications to the ordinance from the original ordinance are shown in double-strikethrough (deletions) and double-underlines (additions).

The Council direction regarding the elimination of development impact fees for JADUs and ADU garage conversions, where no expansion is allowed (item D in the motion), requires changes to the chapters in PAMC Title 16 that establish the development impact fees and exemptions (Chapter 16.58, Development Impact Fees, and Chapter 16.59 Citywide Transportation Impact Fee). A separate ordinance will be prepared to make this change and will be forwarded to Council for approval. This ordinance is tentatively scheduled for Council action on November 26, 2018.

**Attachments:**

**Attachment A: Ordinance Amending ADU and JADU Regulations (PDF)**

\*NOT YET ADOPTED\*

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~~ there is no minimum lot size for the ~~development establishment~~ 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~~ development establishment of an accessory dwelling unit is 10 acres.

(34) Setbacks and Daylight Plane

- 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)(~~5~~6) 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 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 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

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 Accessory Dwelling 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.

(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~~ccessory ~~D~~dwelling ~~U~~nits 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

- 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.
  - iii. ~~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.~~
- ~~D.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.
- ~~E.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.
- ~~F.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.
- 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-leasing 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 ~~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 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 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)(ivD) 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 it constitutes minor adjustments to the City’s zoning ordinance to implement State law requirements related to accessory dwelling units as established in Government Code Section 65852.2, and these changes are also likely to result in few additional dwelling units dispersed throughout the City. As such, it can be seen with certainty that the proposed action will not have the potential for causing a significant effect on the environment.

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**SECTION 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