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## Planning & Transportation Commission Staff Report

**From: Planning and Development Services Director**  
**Lead Department: Planning and Development Services**

**Meeting Date: April 9, 2025**  
**Report #: 2503-4302**

### **TITLE**

Recommendation on an Ordinance Amending Various Palo Alto Municipal Code Chapters in Title 16 and 18 due to Direction from the California Department of Housing and Community Development (HCD) Regarding State Accessory and Junior Accessory Dwelling Unit Law. CEQA Status - Exempt From the Provisions of the California Environmental Quality Act (CEQA) Pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15061(b)(3).

### **RECOMMENDATION**

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

1. Receive public testimony and review the draft ordinance (Attachments A and B), and responses to feedback received from HCD (Attachments C and D); and
2. Recommend that City Council adopt the draft Ordinance (Attachment A) amending Palo Alto Municipal Code (PAMC) Title 16 (Building Regulations) and Title 18 (Zoning) regulations for Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs).

### **EXECUTIVE SUMMARY**

On October 29, 2024, Palo Alto received a letter from HCD (Attachment C) regarding the City's ADU ordinance, which Council adopted in May 2023<sup>(1)(2)</sup>. HCD raised 20 aspects of the ordinance that they thought conflicted with State law or otherwise required further clarification in the ordinance based on recent State laws that were adopted between 2024 and 2025.

On November 26, 2024, City staff responded to HCD's letter, identifying where the City would update the ordinance to comply with State law and the requested clarifications (Attachment D). HCD did not provide additional feedback in response to this letter. Rather than wait for HCD to respond, staff recommends revising the City's ordinance to comply with HCD's requests. Attachment A is a clean draft of the proposed changes to the existing ordinance and

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<sup>1</sup> May 15, 2023 Council Meeting (Action Item #13):

<https://cityofpaloalto.primegov.com/Portal/Meeting?meetingTemplateId=11318>

<sup>2</sup> Ordinance 5587: <https://portal.laserfiche.com/Portal/DocView.aspx?id=66271&repo=r-704298fc>

Attachment B is an annotated version of the ordinance which keys to the specific changes HCD requested from their letter in Attachment C.

## **BACKGROUND**

### **State ADU Laws**

Between 2023 and 2025, the State legislature adopted the following laws which became effective at varying points in 2024/25. Below is a list of laws that were adopted by the State legislature which are relevant to the letter HCD provided:

#### **1. Assembly Bill (AB) 2533**

- a. Prohibits a local agency from denying a permit for an unpermitted ADU or JADU that was constructed before January 1, 2020, for those violations, unless the local agency makes a finding that correcting the violation is necessary to comply with conditions that would otherwise deem a building substandard.
- b. Requires a local agency to inform the public about the provisions prohibiting denial of a permit for an unpermitted ADU or JADU.
- c. Requires this information to include a checklist of the conditions that deem a building substandard and to inform homeowners that, before submitting a permit application, the homeowner may obtain a confidential third-party code inspection from a licensed contractor.
- d. Prohibits a local agency from requiring a homeowner to pay impact fees or connection or capacity charges except under specified circumstances.
- e. Authorizes an inspector from a local agency, upon receiving an application for a permit for a previously unpermitted ADU or JADU constructed before January 1, 2020, to inspect the unit for compliance with health and safety standards and provide recommendations to comply with health and safety standards.
- f. Prohibits the local agency from penalizing an applicant for having the unpermitted ADU and would require the local agency to approve necessary permits to correct noncompliance with health and safety standards.

#### **2. Senate Bill (SB) 1211**

- a. Defines “livable space” as a space in a dwelling intended for human habitation, as the term appears in Government Code sections 66313, subdivision (e), and 66323, subdivision (a)(3)(A).
- b. Specifies that uncovered, off-street parking spaces demolished in conjunction with the construction of an ADU do not need to be replaced.
- c. Authorizes up to eight detached ADUs on a lot with an existing multifamily dwelling, provided that the number of ADUs does not exceed the number of existing units on the lot.
- d. Prohibits a local agency from imposing any objective development standards on 66323 Units that are not authorized by the provisions of Government Code section 66323, subdivision (a).

#### **3. SB 477**

- a. Largely reorganized State law governing ADU/JADUs from the previous section 65852.2 to 66310-66342.

#### **4. AB 976 and AB 1033**

- a. Removed the existing 2025 sunset prohibition on a local agency imposing an owner-occupancy requirement on any ADU and would instead prohibit a local agency from requiring owner-occupancy for an ADU (Gov. Code, § 66315).
- b. Authorized a local agency to adopt a local ordinance to allow the separate conveyance of the primary dwelling unit and ADU(s) as condominiums, subject to certain conditions (Gov. Code, §§ 66340-66342). Specifically:
  - i. Condominiums shall be created pursuant to the Davis-Stirling Common Interest Development Act.
  - ii. Condominiums shall be created in conformance with the Subdivision Map Act.
  - iii. Requires a safety inspection of the ADU prior to recordation of the condominium plan.
  - iv. Requires lienholders' consent prior to recordation of the subdivision map or condominium plan.
  - v. The local agency shall provide notice to consumers regarding requirements, establishment of condominium, and lienholder consent.
  - vi. Requires homeowner notice to utilities.
  - vii. The owner of a separate interest in an existing planned development must obtain express written authorization from the association.

#### Staff Response to HCD Letter

After providing a response to HCD, staff revisited their responses. While in some cases staff believes no changes are needed to comply with State law, staff also endeavors to avoid the continued ambiguity in whether the City's ordinance complies with State law caused by HCD's delayed responses. When asked, HCD staff noted that they do not provide official pre-reviews of ADU/JADU ordinances prior to adoption.

#### **ANALYSIS**

Many of HCD's comments were minor clarifications, which appear in the annotated draft ordinance (Attachment B) with comment bubbled responses indicating which response addresses specific items listed in the HCD letter. In many cases, the proposed adjustments clarify existing policy to provide assurance to the State and the public that the City's ordinance should be interpreted in a manner consistent with State law.

Other items (such as #3, #10, #12, #17 and #20 in the HCD letter, Attachment C) are more significant changes to City policy. HCD has not responded to the City's November 26, 2024 letter (Attachment D). These changes are discussed in more detail below. While staff believes that there are strong arguments in support of the City's position on these issues, it is possible that HCD's eventual response will require further modifications to the ordinance. Given the uncertainty around when the City can expect a detailed response from HCD, staff recommends proceeding with the updated ordinance.

#### Unit Allowance (Item #3 in HCD Letter)

As noted in HCD's comment (Attachment C), the phrasing in Government Code Section 66323 provides the opportunity for homeowners to develop four units on their parcel inclusive of the primary home: one attached ADU (converted from existing or proposed space within the

buildable area), one detached ADU, and one JADU (also converted from existing or proposed space within the buildable area). This is a recent interpretation of State law since 2024 which was reinforced in HCD's recently updated *Accessory Dwelling Unit Handbook* (January 2025)<sup>3</sup> published on their ADU website.<sup>4</sup>

While this interpretation allows for greater density to be developed, it is also important to note:

- 1) This only applies to single-family homes – duplexes and multifamily limits remain the same;
- 2) There is no defined limit to the size of this new type of ADU – this could result in attached ADUs equal to the size of the primary home; and
- 3) The City could expand the 800 square foot bonus the City provides under PAMC Section 18.09.040 for ADU/JADUs to split it between three units instead of two.

Expanding the 800 square foot exemption under PAMC Section 18.09.040 could provide for additional unit development at a smaller scale if a property owner does not want to build an attached ADU, without limiting their allowable square footage for the primary home. Staff has updated the draft ordinance to allow these three units to share the bonus square footage in order to incentivize additional unit development.

While not included in HCD's letter, the City is also required to update the number of multifamily detached units required under PAMC Section 18.09.030. AB 1211 requires Cities to allow up to eight detached ADUs on an existing multifamily property, or the existing number of units on a multifamily property; projects with a proposed multifamily development are limited to only two detached ADUs. These units do not have a maximum size associated with them, nor can the City require additional open space or landscape requirements that could provide a buffer between the existing units on site or neighboring properties as the State prohibits local regulations from applying to these project types. Staff has received more applications on multifamily sites for detached ADUs or conversions of existing garages to ADUs and expect that more projects will be received in the future with this additional change to the regulations.

*PAMC Section 18.09.040 JADU Provisions (Item #10 in HCD Letter)*

In 2020, the City updated its regulations to provide additional flexibility for JADU development by:

- 1) Allowing JADUs to be an addition to a home rather than a conversion of existing space;
- 2) Allowing JADUs to have a four-foot setback similar to attached or detached ADUs;
- 3) Providing a 500 square foot bonus to a property's allowable floor area and lot coverage to build a JADU; and

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<sup>3</sup> HCD ADU Handbook (January 2025): <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/adu-handbook-update.pdf>

<sup>4</sup> HCD ADU Website: <https://www.hcd.ca.gov/policy-and-research/accessory-dwelling-units>

4) Sharing the bonus floor area between a JADU and ADU.

As a result of these changes, between late 2020 through the 2024 Annual Report,<sup>5</sup> the City has received roughly 120 JADU applications. Prior to the code change, the City only received three JADU applications. HCD's comment letter (Attachment C) contests that these provisions conflict with State law as JADUs may only be constructed within existing or proposed areas for the single-family home – effectively limiting JADU creation to the underlying setbacks, floor area, lot coverage, and similar regulations that apply to the primary home.

Staff notes that Government Code Sections 66333 through 66339 provides cities with the authority to establish regulations for JADUs that is distinct from the authority cited by HCD. As a Charter City, Palo Alto is also able to adopt local development programs that do not conflict with State law. Staff believes that these local incentives do not conflict with State law because they are more permissive than what State law provides. The State has not substantially modified its JADU regulations since 2017 to incentivize JADU development, only ADU development. Eliminating these provisions would significantly hinder the City's ability to develop JADUs and limit homeowner's options to develop second units that meet their needs.

To address HCD's concerns while still incorporating these incentives into the ordinance, the draft ordinance recommends the following:

- 1) Remove the existing provisions for JADUs from PAMC Section 18.09.040;
- 2) Adopt a bonus provision for the primary home when a JADU is created (now reflected as PAMC Section 18.09.050(f)); and
- 3) Adopt a finding which declares PAMC Section 18.09.050(f) is consistent with State law.

It is important to note that this provision could be interpreted to allow for a larger home to be built regardless of the size of a JADU (e.g. a homeowner could build a 150 square foot JADU and use the remaining square footage as an addition to the home). Alternatively, the PTC could recommend removing the provisions entirely from the ordinance, as HCD requested, or maintaining the provisions in PAMC Section 18.09.040 and adopting the suggested finding that these regulations are more lenient than State law.

*Palo Alto Local Inventory of Historic Resources (Item #12 in HCD Letter)*

HCD states the City may not require ADU/JADUs to comply with the Secretary of Interior's Standards for the Treatment of Historic Properties if the property is not listed on the California Register of Historical Resources (CRHR). This would impact roughly 350 properties on the local historic registry that are not on the CRHR and vary from Category 1 to 4 in terms of historical significance (the lower number rating being the more historically significant). Currently, the City may require any exterior alteration to a historic structure/site that is a Category 1 or 2 resource, or within a historic district, to be reviewed by the Architectural Review Board and/or Historic Review Board to ensure the modification doesn't impact the integrity of the resource.

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<sup>5</sup> 2024 Annual Report: <https://www.cityofpaloalto.org/files/assets/public/v/1/planning-amp-development-services/long-range-planning/adu/2024-annual-adu-report.pdf>

By removing this provision, any attached ADU/JADU proposed on a Category 1 or 2 property may result in modifications that impact the integrity of these local resources, without a remedy. While the City does not have the authority to require additional changes based on the language in State law, it is important to note there could be impacts to the integrity of existing and future local resources.

*Kitchen Requirements for ADU/JADUs (Items #17 and 20 in HCD Letter)*

In 2020, the City updated its regulations to establish an objective standard for kitchen requirements for ADU/JADUs. State law does not provide clear guidance on what constitutes a kitchen and the lack of an objective standard for kitchen requirements created uncertainty in the review process. Consistent with the State's mandate to create ministerial and objective review standards for ADU/JADUs, it was prudent for the public and staff to have a consistent standard to ensure a streamlined review process. Absent a consistent, objective, and published standard, HCD's comments appear to conflict with other parts of State law which mandate a ministerial and streamlined review process for ADU/JADUs by introducing subjective decision making into the review process.

Since 2020, there have only been two instances when applicants have sought to deviate from this regulation; meanwhile, there have been over 500 units approved of varying sizes from 150 square feet to 1,000 square feet in size using the kitchen definitions the City established. To address HCD's comments, staff recommends updating PAMC Section 18.04.030(a)(75)(A) and PAMC Section 18.09.050(b) to adopt the language noted in State law. However, staff intends to continue to use the standards published in the City's recently updated handbook as a guideline for kitchen requirements<sup>6</sup> (see page 8 of 18).

*Miscellaneous PAMC Updates to Comply with ADU/JADU Regulations*

Since the previous update, staff noticed several sections in the zoning code that are not consistent with the current regulations and procedures governing ADU/JADUs under State law and PAMC Chapter 18.09. This has led to confusion during application reviews or conversations with the public. The proposed changes under sections 5 through 8 of the draft ordinance are intended to bring these sections into compliance with State law and staff's understanding of how to apply those regulations.

**STAKEHOLDER ENGAGEMENT**

The PAMC requires notice of this public hearing be published in a local paper at least 10 days in advance. Notice of a public hearing for this project was published in the Daily Post on March 28, which is 12 days in advance of the meeting.

Staff received a letter from a resident (Attachment E) in response to the October 29, 2024, HCD letter (Attachment C). The public comment noted agreement with the comments from HCD and encouraged additional changes to the City's ordinance to further encourage unit development. As proposed, the draft ordinance does not incorporate changes beyond what HCD requires the

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<sup>6</sup> Palo Alto ADU Handbook: <https://www.cityofpaloalto.org/files/assets/public/v/1/development-services/planning-review/1.-single-family-and-duplexes/2024-adu-handbook.pdf>

City to adopt; however, there are topics from the letter that staff has previously received Commission and Council direction on (e.g. Utility project review process improvements, impact fee changes, etc.). A few topics, such as increasing the height of detached ADUs to 20 feet, increasing the maximum size of ADUs to 1,200 square feet, or allowing flood zone height extensions were previously discussed with the PTC and didn't have support for adoption at those times. Regardless, staff is available to discuss these items in more detail during the hearing, if needed.

#### Deferring Impact Fee Payment for ADUs

One item raised in the letter suggests modifying how the City requires an applicant to record a lien against their property if they want to defer impact fees for ADUs their ADU. Traditionally, all impact fees are paid prior to building permit issuance. However, SB 937<sup>7</sup> allows certain residential development projects to defer payment of those fees until occupancy of the building. In response to this State law, the City now has a template<sup>8</sup> for applicants to fill out and submit to their project planner to streamline the process. Once the form is filled out and submitted to staff, it is circulated internally to get all the necessary signatures from City staff; afterwards, it would go back to the property owner to record at the County. There are nominal recordation fees at the County for recording documents against a property. These additional steps and recordation at the County are only required if differed payment is requested. Current options include:

1. Payment of impact fees prior to building permit issuance; or
2. Fill out template for signature and record at the County to allow payment of impact fees prior to building occupancy.

Having a recorded document is a legally binding agreement between the City and owner/future owners that provides the City the legal framework and capacity to collect fees for community services impacted directly by the creation of new units. The commenter suggests that the City should allow differed payment of impact fees without the agreement of recorded lien on the property. If recommended by the PTC, staff could prepare for consideration a third alternative that allows the property owner to defer payment of impact fees without recording a lien against their property, through modifications to PAMC 16.64.030. If PTC supports this option, staff suggests that it only apply to ADUs with impact fees under a specific dollar amount, to limit the City's risk that fees are not paid.

#### **ENVIRONMENTAL REVIEW**

The adoption of the Draft 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), because it constitutes amendments to the City's zoning code to conform with preemptive State law, including Article 2 (commencing with Section 66314) and Article 3 (commencing with Section 66333) of Chapter 13 of Division 1 of Title 7 of, the Government Code. As such, it can be seen with certainty that the proposed action will not

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<sup>7</sup> SB 937 Text: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240SB937](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB937)

<sup>8</sup> Deferred Fees Template: <https://www.cityofpaloalto.org/files/assets/public/v/1/development-services/planning-review/6.-planning-fees/template-deferral-of-impact-fees.pdf>

have the potential for causing a significant effect on the environment.

### **ALTERNATIVE ACTIONS**

In addition to the recommended action, the PTC may:

1. Recommend approval with modifications to the ordinance;
2. Recommend denial of the draft ordinance with revised findings; or
3. Continue the hearing to a date (un)certain with specific direction.

### **ATTACHMENTS**

Attachment A: Draft Ordinance (Clean Version)

Attachment B: Draft Ordinance (Annotated Version)

Attachment C: HCD Response to ADU Ordinance

Attachment D: Staff Response to HCD

Attachment E: Public Comment

### **AUTHOR/TITLE:**

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