



City Council Staff Report

From: City Manager

Report Type: CONSENT CALENDAR

Lead Department: Planning and Development Services

Meeting Date: December 16, 2024

Report #:2412-3845

TITLE

FIRST READING: Adoption of a Temporary Ordinance Amending Various Sections of Titles 18 (Zoning) and 21 (Subdivisions and Other Divisions of Land) to Implement Laws from the 2024 Legislative Session; Adoption of an Identical Emergency Ordinance; and Adoption of a Resolution Repealing SB 9 Objective Design Standards and Replacing Them with Single Family Objective Standards. CEQA Status – Exempt Pursuant to CEQA Guidelines 15061(b)(3).

RECOMMENDATION

Staff recommends the City Council adopt the attached ordinances and resolution.

EXECUTIVE SUMMARY

On November 12, 2024, the Palo Alto City Council directed staff to draft an emergency ordinance to align with recent state planning and land use laws, specifically addressing required updates to the municipal code in response to SB 937, SB 1211, AB 2694, AB 3116, and SB 450. These laws introduce changes such as deferred impact fee payments, expanded allowances for accessory dwelling units (ADUs), enhancements to density bonus provisions for affordable, senior, and student housing, and updated SB 9 regulations to streamline lot splits and residential development in single-family zones. The ordinance includes interim measures while the city plans a more comprehensive update in 2025 to address additional legislative requirements and feedback from the Architectural Review Board and Planning and Transportation Commission. Staff anticipates these changes will impact application processes, require community engagement, and may have departmental budget implications due to fewer Single Family Individual Review applications.

BACKGROUND

On November 12, 2024, the City Council directed staff to return with an emergency ordinance implementing key planning and land use laws from the 2024 legislative session [link to minutes]. The staff report for the November 12 item included a brief summary of all planning

and land use legislation of interest for Palo Alto.¹ This report focuses on the few bills that require updates to the Palo Alto Municipal Code.

The amendments proposed in the attached documents are intended to be interim measures only, and staff will return to the Council in 2025 for a fuller discussion of these issues following review by the Architectural Review Board and/or Planning and Transportation Commission, as appropriate.

ANALYSIS

The following bills require updates to the Palo Alto Municipal Code.

SB 937 – Deferred Impact Fees

SB 937 amends California Government Code Section 66007 to allow residential development projects to delay the payment of development impact fees until the date of the first certificate of occupancy or temporary certificate of occupancy. If the project consists of more than one dwelling, the City may require that fees be paid on a pro rata basis as each dwelling receives a certificate of occupancy. Fees may be collected at an earlier date in certain circumstances, including if they are related to providing water, wastewater, public safety facilities, or transportation facilities that serve the subject residential development. The fees may be secured by a performance bond or letter of credit. If they are not so secured, any unpaid fees shall constitute a lien on the property and be collected in the same manner and time as property taxes.

Palo Alto already allows this type of fee deferral pursuant to Municipal Code Section 16.64.030 (Deferred Payment). The primary change required by SB 937 is to specify that the amount of the fees to be paid is based on the fees in effect on the date the building permit is issued. This is a change from the City's current practice, which is to charge fees based on the amounts in effect on the date of payment. The ordinance has been drafted to allow an applicant the opportunity to pay the fee in effect at the time of building permit issuance or at the time of payment. This reflects the possibility that Council may adjust housing-related development impact fees in the future based on additional nexus studies or feasibility analysis.

SB 1211 – ADUs

SB 1211 amends state ADU law to clarify and expand the allowances for ADUs on properties with multifamily residential development. First, the law adds a definition of "livable space," to mean "a space in a dwelling intended for human habitation, including living, sleeping, eating, cooking, or sanitation. This definition is currently only relevant to a provision that allows existing multifamily developments to convert non-livable space, such as "storage rooms, boiler

¹ Staff Report, dated November 12, 2024:

<https://cityofpaloalto.primegov.com/api/compilemeetingattachmenthistory/historyattachment/?historyId=84859ed8-51e8-428d-83c3-56d45f7bb5dd>

rooms, passageways, attics, basements, or garages,” into ADUs. It is not clear that the added definition provides any more guidance than the existing law.

SB 1211 also amends a provision that allows existing or proposed multifamily developments to construct up to two detached ADUs. Now, existing multifamily projects can construct up to eight detached ADUs, but no more than the number of units existing on the lot. Proposed developments are still limited to two detached ADUs.

Finally, SB 1211 expands a provision of ADU law that prohibits requirements for replacement parking. Currently, local agencies cannot require replacement parking when a garage, carport, or other covered parking structure is demolished for an ADU. Under SB 1211, the City also cannot require replacement of an uncovered parking space that is demolished for an ADU.

These changes are not included in the attached ordinance, as the City received a letter from HCD on October 28, 2024, detailing a wide variety of perceived inconsistencies between the City’s ADU ordinance and state law. Staff will bring forward a more comprehensive update to the ADU ordinance responding to both the HCD letter and SB 1211 in early 2025.

AB 2694 and AB 3116 – State Density Bonus Law

State Density Bonus Law offers a variety of benefits to developers that provide certain levels of affordable housing as part of a housing development. The law also offers these benefits to senior housing and student housing projects.

AB 2694 expands the definition of senior housing development to include residential care facilities for the elderly, which may also consist of shared housing arrangements where units do not have individual kitchens.

AB 3116 amends the law to allow the student housing to serve part-time students, where previously the housing units were required to be occupied by full-time students. The law also creates a sliding scale of bonus density available based on the amount of affordable, lower income units. Previously a developer was only eligible for a 35 percent density bonus if it restricted 20 percent of the units to affordable rates. Now, the density bonus can reach 50 percent, if the developer restricts at least 24 percent of the units to affordable rates. The law also adds clarifying definitions and provides that no parking may be required for student housing projects.

The attached ordinances update PAMC Chapter 18.15 (Density Bonus) to reflect the changes enacted by AB 2694 and AB 3116.

SB 450 – SB 9 Updates

SB 450 updates and expands SB 9 from the 2021 legislative session. SB 9 allows the owner of a single-family zoned property to divide one lot into two, and build up to two units on each resulting lot. SB 9 included several qualifying limitations – for example that an SB 9 project may

not demolish more than 25 percent of the exterior walls of a property that was tenant-occupied in the past three years. SB 450 removes this restriction.

SB 450 also creates new, strict, timelines for local agency processing of SB 9 applications. Now, the City must render a decision on an SB 9 project within 60 days after receiving a complete application. If the City fails to act within this timeframe, the application is deemed approved.

SB 450 also amends the legislative findings supporting SB 9 to find that the state law is necessary to support the creation of housing at all affordability levels. This addresses a court decision in *City of Redondo Beach v. Bonta* (2024) Los Angeles County Super. Ct. Case No. 22STCP1143, which narrowly invalidated SB 9 as to the plaintiff charter cities because the prior legislation had been founded on the creation of affordable housing.

Finally, and most significantly for Palo Alto, SB 450 precludes the imposition of standards on SB 9 projects unless they apply uniformly to development within the underlying zone. Currently, the City has adopted a series of objective design standards for SB 9 development that are derived from the City's experience with Single Family Individual Review applications over the past several years.² The objective SB 9 standards are notably distinguished from the underlying zone in height (30 feet for R1 and 22 or 27 feet for SB 9 projects); interior side yard daylight plane (starting at 10 feet in the R1 district and 8 feet for SB 9 projects); and several other requirements intended to objectively address privacy and other contextual standards typically achieved through a discretionary application process.

The attached ordinance repeals these SB 9-specific regulations and re-adopts a modified version as two-story development standards to apply throughout the R-1 zone. For both SB 9 and single-family development, a project applicant may choose to deviate from these standards by going through the Single Family Individual Review process.

It is anticipated the implementation of state law and the proposed changes will reduce the number of Single Family Individual Review applications filed with the City and may alter the community's expectations on what projects may be subject to public comment and how public engagement may impact certain outcomes.

Currently, construction of two-story homes requires public notice to neighbors within 150 feet of a project site and creates an opportunity for a neighbor to request a hearing to address concerns with a staff-level decision. A Single Family Individual Review is a discretionary action, however, a homeowner will now have an option to have their new two-story home processed ministerially through a building permit if it meets the (formerly SB 9) objective standards set forth in the attached resolution.

² City Council Resolution No. 10150: <https://portal.laserfiche.com/Portal/DocView.aspx?id=71129&repo=r-704298fc&searchid=3bff70fb-243a-4be0-9385-f7b09e650c1a>

As staff works on preparing an ordinance in 2025 through the City's legislative process, it will use that opportunity to inform appointed officials making recommendations to the Council and engage the community, particularly those invested in the Single Family Individual Review process to make them aware of these changes. Staff will also consider how a reduction in these applications may impact the department's budget and implications for historic review.

FISCAL/RESOURCE IMPACT

The recommendation in this report requires addition staff work and analysis that will be needed for the upcoming calendar year, potentially impacting the amount of work that can be assigned or completed by the Planning and Development Services department as the City Council considers its budget priorities and priority objectives.

Additionally, a reduction in Single Family Individual Review applications as a result of these state law changes and local implementation efforts may result in less revenue to the Planning and Development Services department. This may have long term implications to department staffing and professional service contracts, which staff will analyze as it prepares a permanent ordinance. Any change in application filing in the short term as a result of the subject recommendation would be a minor relative to the overall department budget.

STAKEHOLDER ENGAGEMENT

Staff prepared a report for November 12, 2024 summarizing the state law changes and highlighting this recommended action to implement state housing laws, which take effect on January 1, 2025. Additional engagement will occur in 2025 as staff prepares a permanent ordinance.

ENVIRONMENTAL REVIEW

The project is exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15061(b)(3) in that it can be seen with certainty that implementation of superseding state laws maintains the status quo.

ATTACHMENTS

Attachment A: Temporary Ordinance Amending Various Sections of Titles 18 (Zoning) and 21 (Subdivisions and Other Divisions of Land)

Attachment B: Emergency Ordinance Amending Various Sections of Titles 18 (Zoning) and 21 (Subdivisions and Other Divisions of Land)

Attachment C: Resolution Repealing SB 9 Objective Design Standards and Replacing Them with Single Family Objective Standards

APPROVED BY:

Jonathan Lait, Planning and Development Services Director