



## City Council Staff Report

**From: City Manager**

**Report Type: ACTION ITEMS**

**Lead Department: Planning and Development Services**

**Meeting Date: May 12, 2025**

Report #:2503-4326

### **TITLE**

FIRST READING: Adoption of an Ordinance Amending Various Palo Alto Municipal Code Chapters in Title 16 and 18 in Response 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 City Council (Council) take the following actions: 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 identified several aspects of the ordinance that they thought conflicted with 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 noting concerns with the agency's interpretation of some provision but also with a commitment to update the ordinance before July 2025 to align with State law (Attachment D). HCD did not provide additional feedback in response to this letter, however, the agency did publish updates its ADU Handbook<sup>3</sup> in January amplifying requirements that were included in the letter to Palo Alto. Staff recommends revising the City's ordinance to comply with HCD's letter and the supporting ADU Handbook.

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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>

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

Attachment A is a clean draft of the proposed changes to the existing ordinance and Attachment B is an annotated version of the ordinance which keys to the specific changes HCD requested from their letter in Attachment C.

On April 9, 2025,<sup>4</sup> the Planning and Transportation Commission (PTC) discussed the proposed changes to the City's ordinance and recommended, on a 7-0 vote, to adopt the ordinance, with a specific modification to the draft language in PAMC Section 18.09.050(f), discussed further below.

## **BACKGROUND**

### State ADU Laws

Between 2023 and 2025, the State legislature adopted numerous laws which became effective at varying points in 2024/25. The April 9, 2025, PTC Staff Report<sup>4</sup> includes a list of the relevant State laws with a summary of their provisions relevant to the HCD comments.

### Staff Response to HCD Letter

After providing an initial response to HCD, staff revisited its responses in the context of the recently released 2025 ADU Handbook. 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, and therefore the City may not receive a response until a revised ordinance has been adopted.

## **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, #9, #10, #12, #17 and #20 in the HCD letter, Attachment C) are more significant changes to City policy; 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

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<sup>4</sup> April 9, 2025 Staff Report (Action Item #3):

<https://cityofpaloalto.primegov.com/Portal/Meeting?meetingTemplateId=16512>

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 updated *Accessory Dwelling Unit Handbook* (January 2025) published on their website.<sup>5</sup> This effectively means that single family zoning in California can include up to four units on a parcel.

While this interpretation of an allowed fourth unit provides for greater housing density, 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 ADU – this could result in attached ADUs equal to the size of the primary home; and
- 3) Use of the City's 800 square foot bonus provided under PAMC Section 18.09.040 for ADU/JADUs could be split it between three units instead of two.

The 800 square foot ADU bonus under PAMC Section 18.09.040 has been updated in the draft ordinance to allow this floor area to be shared among the allowed J/ADUs.

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. Assembly Bill (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.

#### Tree Ordinance (Item #9 in HCD Letter)

HCD identified that unless a provision exists within PAMC Chapter 18.09, the City may not enforce those provisions of the City code for ADU development. To address this issue and preserve the City's ability to apply the tree ordinance to certain ADUs, staff has established a new provision under PAMC Section 18.09.040(m) which incorporates the following:

1. Definitions of protected trees;
2. Threshold for impacts to trees which cause them to be removed;

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<sup>5</sup> HCD ADU Website: <https://www.hcd.ca.gov/policy-and-research/accessory-dwelling-units>

3. Replacement requirements based on the City's Tree Technical Manual Table 3-1;<sup>6</sup>
4. A statement that this provision shall not result in the delay or denial of a building permit for a second unit.

For projects that do not qualify for review under PAMC 18.09.030, the City's tree protection and removal requirements would apply through Title 8. Whenever future modifications to the City's tree ordinance occur, staff will need to update these provisions at the same time, otherwise it would result in various standards for tree protection/removal based on the scope of work for the permit.

*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
- 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>7</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:

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<sup>6</sup> Tree Technical Manual: [https://www.cityofpaloalto.org/files/assets/public/v/1/public-works/tree-section/ufmp/tree-technical-manual/cover-corecombined\\_cpa\\_ttm-2016-final-copy.pdf](https://www.cityofpaloalto.org/files/assets/public/v/1/public-works/tree-section/ufmp/tree-technical-manual/cover-corecombined_cpa_ttm-2016-final-copy.pdf)

<sup>7</sup> 2024 Annual Report: <https://www.cityofpaloalto.org/files/assets/public/v/1/planning-and-development-services/long-range-planning/adu/2024-annual-adu-report.pdf>

- 1) Remove the existing provisions for JADUs from PAMC Section 18.09.040;
- 2) Adopt a bonus provision for the primary home equal to the square footage of a proposed JADU (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.

The initial draft language for this provision was phrased in a way that 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). During the April 9, 2025 PTC hearing, the PTC recommended modifying staff's draft language to specify that the bonus afforded the home is limited to the size of the proposed JADU, which is now included in the draft Ordinance. This eliminates the potential for the primary home to receive bonus square footage that is not used specifically for a JADU.

Alternatively, the Council could direct removing the provisions entirely from the ordinance, as HCD requested, or maintaining the provisions in PAMC Section 18.09.040 and adopt a finding that declares these regulations are more lenient than State law.

Staff does not have data on how many of the permitted JADUs are being used as separate units and available to households beyond the principal single family residential occupants.

#### *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.

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 led to 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, staff is only aware of 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 – that is to remove any reference to dimension requirements – 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>8</sup> (see page 8 of 18). Applicants that seek to deviate from the kitchen dimension guidelines would be permitted to do so.

#### *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.

#### **FISCAL/RESOURCE IMPACT**

The impact to the City's resources as a result of adopting this ordinance would be minimal. Resources expended would be limited staff trainings on the materials, implementation and communication of this ordinance to the public, and staff time spent updating checklists or webpage information.

#### **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 May 2, 2025, which is 10 days in advance of the meeting.

Staff received a letter from a local resident (Attachment E) in response to the October 29, 2024, HCD letter (Attachment C). The public comment noted agreement with HCD and requested 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 City to adopt. The following comments identified by the commenter were previously discussed with the PTC and Council in 2021, 2022, and 2023 but didn't have support:

1. Increasing the maximum size of ADUs to 1,200 square feet;
2. Excluding ADU/JADU basements from contributing to the floor area for the unit;

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<sup>8</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>

3. Allowing height increases for ADU/JADUs in the flood zone;
4. Increasing base height allowances for ADU/JADUs;
5. Waiving/adjusting impact fee calculations for ADUs.

These suggested policy changes are not required to be done to comply with state but may be revisited by Council and updated policy direction given.

The commenter has some additional remarks, some are addressed below:

#### Calculating Impact Fees for 750 SF ADUs

In 2020, the State began limiting when impact fees can be applied to newly constructed ADUs, allowing them only for units that are 750 square feet or larger. When applicable, State law requires that these fees be assessed proportionally, based on the ADU's size relative to the primary dwelling. For example, if an ADU is 20% the size of the main home, it would pay only 20% of the standard impact fee (e.g.,  $\$79,124.22 \times 0.2 = \$15,824.84$ ).<sup>9</sup>

The commenter raised concerns that the City's ordinance may not align with State law because it does not impose impact fees on home additions unless a new unit is being created. However, neither Government Code section 66324 nor HCD's ADU Handbook (p. 22) requires impact fees to be tied to an addition occurring simultaneously with the ADU. State law simply authorizes cities to charge impact fees when a new unit over the size threshold is created — not based on whether the primary home is being expanded.<sup>10</sup> This approach is consistent with PAMC Sections 16.58.010(b) and 16.58.030(g), which bases impact fees on unit creation and size.

At present, the City only applies impact fees to net new dwelling units. In response to ongoing policy discussions, the City Council has directed staff to re-examine this approach. As part of the Council's work plan objective to update development impact fees, staff will evaluate the application of impact fees more broadly through that process.

To further reduce costs for homeowners and housing developers, the City recently revised its impact fee structure to a per-square-foot model, providing a more predictable and equitable fee system.

#### Impact Fee Deferral

During the April 9, 2025 hearing, the PTC briefly discussed adjusting the City's process around recording a lien against a property to defer impact fee payment until final occupancy. However, a motion was not seconded to recommend changes to those policies during the hearing. The PTC requested staff return in the future to discuss potential changes to that policy and

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<sup>9</sup> 2024 Development Impact Fee Spreadsheet: <https://www.paloalto.gov/files/assets/public/v/2/development-services/planning-review/6.-planning-fees/fy25-impact-fee-information-sheet.pdf>

<sup>10</sup> Govt. Code Section 66324:

[https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=66324.&nodeTreePath=12.1.32.2&lawCode=GOV](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=66324.&nodeTreePath=12.1.32.2&lawCode=GOV)

encouraged staff to seek ways to streamline the internal process for recording the lien in the meantime.

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

### **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

### **APPROVED BY:**

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