

City Of Palo Alto ADU Ordinance, First Reading, Meeting Date 10/5/2020 Agenda Item #8

To the Members of The Palo Alto City Council:

We want to begin by expressing commendation for what has been done to date by Council and PTC but particularly by Staff. This is a complex political and technical topic and we consider the ordinance to be mostly in alignment with the State Statutes. We applaud the effort where choices have been made to exceed limitations in a reasonable way, and understand clearly the boundaries established by State legislation.

What we need to remember is that the State is promoting this legislation to incentivize and streamline the creation of ADUs. We should also remember to view all of this through the local lens of prioritizing residential development as a clearly stated Palo Alto goal. As professionals, we seek a clear and precise set of rules we can rely on in the design process to achieve a predictable result for our clients.

A number of individuals spoke in warning when we came before Council in January, and we have been proven correct in stating Palo Alto's urgency ordinance was seriously flawed. Many elements did not properly conform to State legislation. Since then, Staff has adjusted their interpretations, in some cases after being challenged by the professional community, and partly when influenced by input from HCD. The updated document before you makes good progress toward alignment, but we still fall short in some important areas.

The Palo Alto ADU Task Force (PAADUTF), now approximately 20 individuals and growing, was created out of a grassroots desire for peer communication between professionals who are active in ADU development. Sharing information regarding regulatory interpretations, design methodology, and construction strategy, this group came together to evaluate the August 17 staff report and associated ordinance language. Unfortunately, we were not aware of the May 27 PTC hearing and recognize this was a missed opportunity to interact with staff. Over the course of five meetings conducted during August and September, the group developed a narrative along with an annotated review of the proposed ordinance. As indicated, two additional meetings were conducted with staff included to review and discuss the information. Several significant points from that discussion have been captured in your staff report. There are others that were not, that we nonetheless feel are critical to implement as part of this update.

Through direct and frequent interaction with HCD and supported by other experts active in ADU regulatory action, The PAADUTF has identified several specific areas where the proposed local ordinance departs from the State intent. We recognize Staff feels they have rigorously evaluated the language presented to you tonight, but we do not believe they are entirely correct. The HCD ADU Handbook, released just last week, seems to confirm a few areas where the proposed language is in conflict with HCD's guidance. As you have heard, if inconsistency is not corrected, there is a significant possibility the ordinance will be challenged and potentially deemed invalid.

The most significant issue is the approach taken in the ordinance regarding the Statewide Exemption ADU and how that language relates to all other units, particularly those exceeding 800 square feet.

Gov. Code, § 65852.2, subd. (c)(2)(C) *“Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.”*

Staff's interpretation of this section includes a vision that the Exemption Unit is an isolated obligation. In fact, the Statute language says clearly "**at least**", so we have been told any attempt at creating limitations for units which are larger (daylight plane restrictions, placement on the lot, a limitation for subterranean construction, or basement construction) is simply inconsistent with the State Statute.

Another significant departure is the approach taken in regard to 2-story construction. Staff is seeking to create limits on the basis of privacy, but the restrictions they have offered are inconsistent with the statutes. It is important to remember that the State put these new rules in place to shake up the norms, and we need to understand and align with that intent. As an example, HCD has described a scenario where if a lot is so small that 800 sf cannot be accommodated on one level, then 2-stories can be the only option. Because of this, HCD has confirmed there can be no restriction against 2-story units, under any condition. Whether in conformance with an Exemption ADU or larger, 2-story construction must be embraced. We would offer that Santa Cruz has done an excellent job in this area and has elected to allow 22' of height with additional restrictions for distance from the property line once beyond 16' of height. (<https://www.cityofsantacruz.com/government/city-departments/planning-and-community-development/accessory-dwelling-units-adus>)

Again, there are a number of specific areas of improvement in the proposed ordinance, and we applaud that. What we ask of you tonight is the consideration of 15 areas of concern we identify below, some of which have already been described by Staff. We believe all of these are important and nuanced topics that are truly necessary to implement. Some are changes only included to simplify the development of ADUs, but others are very technical responses to costly or avoidably complex limitations. We ask that you remember our pace is 1,000 units short of our RHNA requirement and that we need to do better and move faster. This set of considerations provides an easy way to encourage the development of additional units with minimal collateral impact when compared to larger, more dense projects with their significant timelines and approval hurdles.

15 Suggestions for Consideration:

1. Alignment with Gov. Code, § 65852.2, subd. (c)(2)(C)

- a. Remove language that improperly restricts daylight plane, placement on the lot, limitation for subterranean construction, or basement construction.

2. Two-Story

- a. Provide definition for subterranean 1st level construction. (1st level partially recessed in the ground)
 - i. Clarify how deep this can be without being interpreted as a 'basement'
 1. Suggest 36" max below existing natural grade as the threshold
- b. Confirm Staff's recommendations for privacy management
 - i. Windows obscured when sills are below 5' above adjacent finish floor on walls parallel to property lines when the structure is within 8' of a property line
 - ii. Set sills at 5' above adjacent finish floor on walls parallel to property lines when the structure is within 8' of a property line
 - iii. Sleeping rooms endeavor to have egress windows located on walls non-adjacent to property lines
 - iv. Use of (operable) skylights in bathrooms and other spaces where windows could be considered optional
 - v. No exterior lighting mounted above 7' on walls adjacent to property lines to keep it at or below maximum fence height
- c. Consider adopting language similar to that used in Santa Cruz:

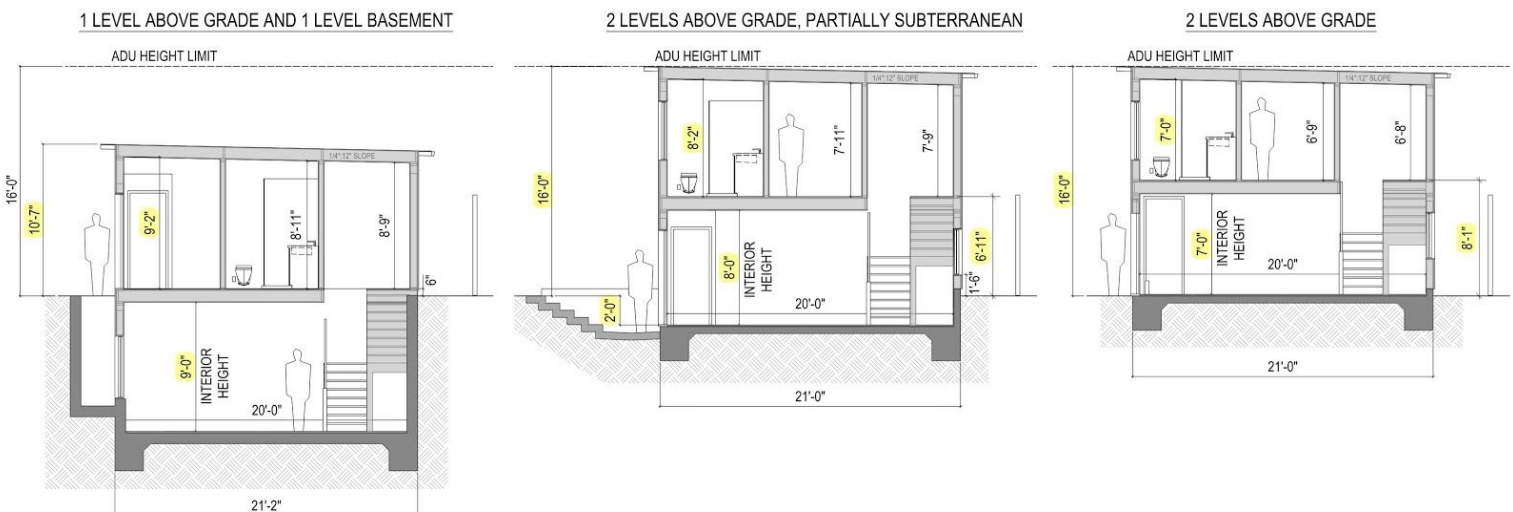
- i. ADUs higher than one story may be up to 22' tall at the peak, measured from average grade, and any portion of the structure that exceeds 16' in height must be set back a minimum of 5' from the side yard property line and 10' from the rear yard property line.
- ii. Exception: An ADU that faces an alley or street can be up to 22' tall and any portion of the structure that exceeds 16' in height must be set back 5' from the side and rear property lines.
- iii. Detached New Construction ADUs higher than one story shall limit the major access stairs, decks, entry doors, and windows to the interior of the lot or an alley if applicable. Windows that impact the privacy of the neighboring side or rear yards should be minimized or otherwise restricted as in (b.) above

3. Fees

- a. Significant cost is incurred relative to fees for Plan Check, Building Permit, Planning Impacts, Specialty Consultants, School Fees, etc. They are not always levied in a relative fashion.
 - i. Why not just charge a flat fee based on ADU floor area?
 - ii. Included in that methodology, remove some of the fees to further incentivize ADU construction.
- b. It is important to note that the proportionate language in regard to Planning Impact Fees for units >750 sf contained in Gov. Code, § 65852.2, subd. (f)(3)(A) creates a significant disincentive for individuals with existing small homes. Please note the following examples:
 - i. Project #1, Demolish an existing detached garage and replace it with a new conforming detached ADU.
 1. **Main house at 3,427 sf and new ADU at 800 sf = 23.3% = \$4,511.47**
 - ii. Project #2, Convert an existing detached garage and construct an addition to create a new detached ADU.
 1. **Main house at 1,209.6 sf and new ADU at 882 sf = 73.0% = \$14,101.46**
- c. *Both are roughly the same scope but because of the more modest house on Project #2, the weighted ratio pushes the fee to be \$10k more.*
- d. Add to this about \$9,000 for: School Impact Fees (\$3,000), Plan Check Fees (\$2,800) and Building Permit Fees (\$3,300) - That puts the fees for Project #2 at around \$23k, or almost 11% of the total anticipated project construction cost!

4. Subterranean/Basement Construction

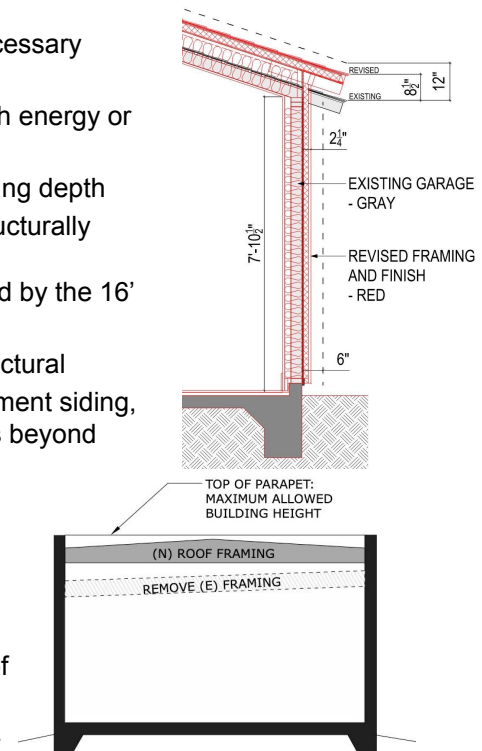
- a. Without some flexibility in this, floor to ceiling heights are substandard (+/- 7'-0"). Codifying this in a thoughtful way can provide tangible improvements in privacy management and enhancement to overall massing.
- b. Partially subterranean 1st floor lowers 2nd floor and allows 8' ceilings with a reasonable roof slope



- c. Adding a basement could reduce an entire floor of height/massing
 - 1. Reduce impact to neighbors
 - 2. Required exclusionary excavation techniques remove any concerns related to dewatering
- ii. Tree root impacts could be conditioned since the 800 sf exemption ADU is not obligated in regard to underground space
- iii. Add clarifying language requiring the interior basement FA to count toward the 800 sf exemption triggering the additional area beyond 800 sf to be deducted from overall site FA
- iv. No further encroachment other than that required for emergency egress.
- v. Consider, as an additional incentive, allowing a 1200 sf max ADU if 50% of FA is below grade?

5. Minimal increase to non-conforming structures

- a. Create an allowance to avoid complete demolition or unnecessary complexity due to energy or structural upgrades
 - i. Clarify that it can only be accessed for compliance with energy or structural obligations
 - 1. Grant an additional 12" of height – increase framing depth above top plate rather than hanging, which is structurally complex and reduces ceiling heights.
 - 2. Note that the structure height will still be restricted by the 16' height limit.
 - 3. Grant an additional 6" in plan on any side for structural seismic sheathing, exterior insulation, or replacement siding, so long as no portion of the structure encroaches beyond the property line.
 - ii. Add a clarification regarding structures with existing parapets. A non-conforming portion of the structure may be modified up to the height of the existing parapet. This can be done without creating an increased impact to neighbors. Previous interpretation of 'shrink-wrap' rules should not apply to recessed roof areas below the top of the parapet. This flexibility will allow the interior to be a reasonable residential height.

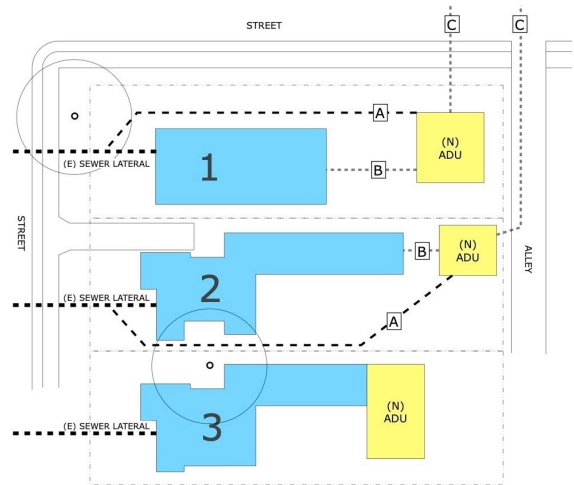


6. Utility Connections

- a. Separate meters placed only at the owner's discretion
- b. The requirement to provide a separate sewer line for detached ADUs has been directed by the Chief Building Official.
 - i. There is an exception in the Plumbing Code recognized in many jurisdictions to avoid the significant cost this causes (often greater than \$9,000) CPC 311.1 *Exception: Where one building stands in the rear of another building on an interior lot, and no private sewer is available or can be constructed to the rear building through an adjoining court, yard, or driveway, the building drain from the front building shall be permitted to be extended to the rear building.*
 - 1. Recognize that the high cost can be viewed as the basis for applying the exception
 - 2. Question - If no separate line is required for an attached ADU, why obligate the cost and complexity for a detached ADU. The outcome is the same so why regulate differently?
 - 3. An alternative to this might be a study performed by experts under CPC 301.3 "Alternate Materials and Methods of Construction Equivalency" with the establishment

of standards for equipment (backflow prevention) and cleaning/inspection schedules. Once established in the City, this could be relied on as an alternate approach.

- c. Routing of utilities at the discretion of property owner (rear alley or another alternate to avoid disruption to landscape or trees)
 - i. This graphic compares three lots with an alley behind. Parcel 3 has an attached ADU and the sewer may connect to the main house line. There is no impact to the site. Parcels 1 and 2 have detached ADUs and are currently required to run their sewer line shown as 'A', around the main house, and out to the street at the front yard. This is highly problematic, especially if there are protected trees on site. A reasonable option would be to allow the sewer line placement shown by the 'B' or 'C' routing.



7. Garage replacement associated with Detached ADU

- a. When replacement covered parking is provided, and attached to an ADU, that area should not count against the 800 sf 'bonus'
 - i. Staff has not indicated agreement with this.
 - ii. It represents a significant disincentive toward the creation of covered parking spaces.
 - iii. The space designated as a garage should count against the overall FA and not be allowed if the FAL or Lot Coverage will be exceeded as a result.

8. Retroactive Actions for all ADUs in process after 1/1/2020 (for projects without Building Final)

- a. Retract all enacted Deed Restrictions which are not in compliance with the updated regulations
 - i. Require new Deed Restrictions in conformance with the updated requirements
- b. Refund any overpayment of fees for all projects in process (between approvals and Building Final) since January 1, 2020 for:
 - i. Proportionate Impact Fees, if they remain in place
 - ii. Other fees as adjusted by the revised ordinance
 - iii. Council could elect to refund the full amount or an adjusted amount according to 16.06.110/R108.5 at 80%?

9. Green Building

- a. The current detached ADU regulations require Tier 2 with exceptions
 - i. Tier 2 obligates requirements for third party preparation of documents and site evaluation which comes at significant cost
- b. If a homeowner proposes an addition/alteration to their home under 1,000sf, a third party is not required and the project is only required to meet CALGreen Mandatory measures
- c. To streamline the ADU permitting and construction process, detached ADUs under 1,000 sf should only be required to comply with CALGreen Mandatory for consistency

10. Noise producing equipment

- a. Allow placement at any location on the property as long as documentation is provided which confirms noise level will be below the 66 decibel limit at the property line. What should be codified for these issues are rules that direct the desired result. Don't overcomplicate what can be achieved simply.
 - i. Equipment should be <66 dB without accessories such as blankets (can fail/degrade over time)

- ii. Asking for site-specific studies creates an additional unreasonable cost burden and must be avoided

11. Doorway between ADU and Primary Unit

- a. This really should be allowed as long as it is a hotel style communicating door. Note that it is allowed for a JADU so why not for an ADU?
 - i. Provides indoor access to care for or interact with the occupant but can be closed if privacy or separation is needed
- b. Don't create rules people will routinely circumvent - just remove the unnecessary regulation - Some may take advantage but there is little stopping them anyway

12. 60-day Processing

- a. Sets unrealistic expectations without clear narrative
- b. Explain how this will be interpreted/implemented
- c. Note that HCD has indicated the State says once an application is submitted, the City must approve within 60 days or it is automatically approved.
 - i. It is assumed that the clock is stopped when waiting for applicant response to comments, but there is nowhere this is codified and creates frustration for homeowners

13. Sprinkler requirements

- a. Clarify rules relative to the California State Fire Marshal Information Bulletin 17-001 (1/24/17)
 - i. Current PA implementation is not in alignment with Senate Bill 1069
 - ii. Safety concerns and physical constraints must be balanced against compliance with the State language

14. Flood Zone

- a. Better articulate requirements and permitted exceptions
 - i. Consider an example of the Exemption 800 sf ADU in the flood zone on a small lot – if reconstructing a non-conforming structure, it must be allowed to go higher than the 16 foot limitation by the delta between existing grade and the project site base flood elevation to raise the first floor level.

15. Remove requirement to convert “existing” garage/carport

- a. Only applies to projects where a new home is constructed with the intent of the garage or carport being converted to an ADU as a second ‘step’ after final inspection.
- b. Allow for a one-phase process
 - i. Offer incentive for streamlining
 - 1. Cannot be setbacks, height, etc. as these are enshrined in Gov. Code, § 65852.2, subd. (c)(2)(C)
 - 2. Could offer an additional fee reduction for saved staff time or something similar

While we recognize the Ordinance before you has been in process for the better part of a year, your action tonight will set the tone for what is possible until the next iteration of this language evolves. We are hopeful the commitment you have voiced toward incentivizing residential development, aligned with a stated goal of streamlining the approval of ADUs, will lead you to adopt some version of the 15 points we have presented. As professionals serving as guides to those who wish to construct an ADU, and being tasked with implementing the regulations, we want you to understand how important we believe these items are. If anything, we hope you might consider this as a starting point. We welcome your willingness to perhaps go further and, as many other cities have done, consider the adoption of additional language which will make ADUs more livable, desirable, and affordable.

Respectfully submitted,

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Randy Popp, Architect