



PLANNING & DEVELOPMENT SERVICES

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February 3, 2022

Lauren Lajoie
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Dear Ms. Lajoie,

This letter represents the City of Palo Alto's response to your letter dated December 23, 2021 received by email, and received by hard copy on January 27, 2022. The content of the Housing and Community Development's letter is *italicized*. The City of Palo Alto's responses are **bolded**.

1. ADU Size - *Section 18.09.030(a)(3) Units Exempt from Generally Applicable Local Regulations: The text of this Section and the applicable portion of Table 1 indicate the maximum size of a newly constructed detached ADU is 800 square feet. Although a local agency may establish minimum and maximum size requirements for ADUs pursuant to subdivision (c)(1) of Government Code section 65852.2 within limits, a local agency shall not establish a maximum square footage requirement for either attached or detached ADUs that is less than 850 square feet and 1,000 square feet for an ADU that provides more than one bedroom. (Gov. Code, § 65852.2, subd. (c)(2)(B).) Therefore, all relevant sections of the ordinance must be amended to comply with this mandate in State ADU Law.*

PAMC Section 18.09.030 is intended to describe the requirements for ADUs built under Gov. Code 65852.2, subdivision (e). This is not intended to create any limitation on ADUs built under subdivisions (a)-(d), which are governed by PAMC Section 18.09.040. The City will add clarifying language to this effect at the top of PAMC Section 18.09.030.

2. ADU & JADU - *Section 18.09.030 Units Exempt from Generally Applicable Local Regulations: There appears to be a conflict between the text of this section and Table 1. The number of allowable units are correctly noted in Table 1 as "1 ADU and 1 JADU." The text of section 18.09.030(a) appears to limit allowable units to "an ADU or JADU." Government Code section 65852.2, subdivision (e)(1)(A), requires an ordinance to allow "one ADU and one JADU per lot..." The City must amend the ordinance to correct this inconsistency, clarifying that "one ADU and one JADU" are permitted if all the conditions of section 65852.2, subdivision (e)(1)(A) apply.*

The City will update its ordinance to reflect the changes made by AB 3182 with respect to 1 ADU and 1 JADU.

3. Front Setback - *Section 18.09.030(b) Application of Development Standards: Local agencies may establish standards for ADUs pursuant to Government Code section 65852.2, subdivision (a); however, these standards do not apply to ADUs constructed pursuant to subdivision (e). Table 1 impermissibly applies "underlying zoning" "for front setback[s]" to subdivision (e) ADUs. (Mun. Code, §18.09.030(b).) Subdivision (e)(1) describes permitted setbacks in full. Unless underlying zoning for*

all residential areas conforms to subdivision (e) limits, this table must be amended to comply with statute. (Gov. Code, § 65852.2, subd. (e)(1)(A).)

During our conversation on February 2, 2022, you explained that local rules may apply for front setbacks, including ADUs built under subdivision (e), and that it is not HCD's position that subdivision (e) ADUs must be allowed at the front lot line. You explained that the issue with the current City ordinance is that it does not make clear that "underlying zoning" is only for front setbacks. The City will clarify this point in its ordinance.

4. *Height - Section 18.09.030(b)(1) ADU Height in Flood Zones: The City has impermissibly restricted the height of ADUs. It appears that the City establishes minimum elevations for the first floor of structures in the flood zone, which is essentially the entire city to varying degrees. To account for this, the zoning code allows most residential structures to exceed otherwise maximum allowable heights for development. The City does not extend this accommodation to ADUs. Currently, Table 1 states that the maximum height for new, detached ADUs is 16 feet, but includes a caveat that "units built in a flood zone are not entitled to any height extension." (Mun. Code, § 18.09.030(b).) In many instances, this would operate as an impermissible restriction on ADUs. Under State ADU Law, the City must accommodate an ADU of at least 800 square feet and 16 feet in height. Thus, the caveat in Table 1 is potentially confusing and could restrict the height to less than 16 feet. If it would in fact operate to effectively limit the height of ADUs to less than 16 feet, it would operate as an impermissible restriction on ADUs. As such, Table 1 should be revised to clarify that this limitation does not apply where necessary to permit an 800-square foot ADU that is at least 16 feet tall. (Gov. Code, § 65852.2, subds. (c)(2)(C) and (e)(1)(B)(ii).)*

For purposes of health and safety, the City of Palo Alto requires structures built in a flood zone to have a minimum finished floor height based on FEMA regulations. For a primary residence, the City provides an extra height allowance of 50% the minimum finished floor height. The City does not provide this allowance for any accessory structures, including ADUs. Nevertheless, ADUs in the flood zone can still be built to a height of 16 feet. It is unclear to the City how the failure to provide additional height above 16 feet represents an impermissible restriction on ADUs. During our conversation, you related that HCD prefers to have as few restrictions as possible on ADU production. The only restriction here is on finished floor height in the flood zone, which cannot be waived or relaxed without impacts on health and safety. Even in areas requiring the most extreme height above the base flood elevation, an ADU remains feasible within the 16 foot height limit.

5. *Daylight Plane - Section 18.09.040(b) Daylight Plane and ADU Height Standards: Table 2 states that "daylight plane" acts as a limit on the height of ADUs. In many instances, this may not be a problem; however, daylight plane concerns cannot be used to unduly limit the height of an ADU. ADUs are permitted up to 16 feet high. (Gov. Code, § 65852.2, subds. (c)(2)(C), (e)(1)(B)(ii).) Therefore, in considering restrictions that the City is imposing on ADUs for daylight planes, the ordinance should note the 16-foot height allowable for ADUs. This Table must be amended to clarify this point.*

Please note that the City's daylight plane regulations do not apply to subdivision (e) ADUs, which are governed by PAMC Section 18.09.030. The City will add a clarifying sentence at the top of Section 18.09.040 explaining that none of the regulations in PAMC 18.09.040 apply to subdivision (e) ADUs. In addition, the City will add a clarifying statement that the regulations in PAMC 18.09.040 are not intended to limit the conversion of existing structures to ADUs or JADUs.

For all other ADUs, however, the City has requested clarity on HCD's position on daylight plane on numerous occasions, most recently by email dated August 8, 2021. Please see this email, which is

attached, for an explanation of the City's position. The City looks forward to continued discussion of this topic.

6. Clarify - *Section 18.09.040(b) Units Subject to Local Standards: Table 2 sets out the development standards for ADUs that do not qualify under section 18.09.030. Although the City has more freedom to establish development standards for these ADUs, that is not without limitation. This section, and Table 2, must be amended to clarify that—notwithstanding the development standards—an ADU of at least 800 square feet, 16 feet in height, and with four-foot rear and side- yard setbacks is permitted as required by State ADU Law. (Gov. Code, § 65852.2, subd. (c)(2)(C).)*

The City will add a clarifying statement to this effect.

7. Floor Area & JADUs - *Section 18.09.040(b) Floor Area and JADUs: Development standards can account for ADUs in their measurement of the floor area restrictions or ratio (FAR). But these standards may not account for or consider JADUs. A JADU may not be included in this calculation, because a JADU is a unit that is contained entirely within a single-family residence. (Gov. Code § 65852.22, subd. (h)(1).) Footnote 4 of Table 2 impermissibly includes JADUs as part of the FAR calculations. This footnote must be amended to clarify this point.*

Footnote 4 of Table 2 provides additional FAR on a site for ADUs and JADUs. This is an incentive to promote production of such units without limiting the development potential of a primary unit. Because a JADU is contained entirely within the space of a single-family residence, it would normally be included in the floor area of the primary unit. Footnote 4 provides an opportunity for a property owner to exempt all JADU square footage from the calculation of floor area for the primary unit. The removal of JADUs from footnote 4 would only serve to restrict the development of JADUs. The City will attempt to clarify the language of this footnote.

8. Noise-Producing Equipment - *Section 18.09.040(h) Noise-Producing Equipment: Local agencies may impose development standards on ADUs; however, these standards shall not exceed state standards. Section 18.09.040(h) states that noise-producing equipment “shall be located outside of the setbacks.” This section must be revised to only refer to ADUs since setbacks are not required for JADUs. In addition, this setback for noise-producing equipment for ADUs must be revised to make clear that this setback requirement will not impede the minimum state standards of four-foot setbacks. (Gov. Code, § 65852.2, subd. (c)(2)(C)).*

As noted above, the City will add a clarifying statement that the regulations in PAMC 18.09.040 are not intended to limit the conversion of existing structures to ADUs or JADUs. For new construction, however, the City permits JADUs to build at a lesser setback than a single-family home normally would. Therefore, the removal of JADUs from this section will only serve to restrict the development of JADUs.

Additionally, the City's ordinance states that noise producing equipment needs to be placed outside the setback for an ADU or JADU. This means that the noise producing equipment *itself* cannot be placed closer than four-feet to a property line for either type of structure; not that the ADU or JADU cannot be placed at those locations. This is consistent with the state setback requirements for an ADU.

9. Basements - *Section 18.09.040(i)(2) Setbacks: Currently, this section states, “No basement or other subterranean portion of an ADU/JADU shall encroach into a setback required for the primary dwelling.” Under state law, new attached and detached ADUs have maximum four-foot rear and side-yard setbacks. (Gov. Code, § 65852.2, subds. (a)(1)(D)(vii), (c)(2)(C), (e)(1)(B), and (e)(1)(D).) Local*

agencies may impose setback requirements if the minimum rear and side-yard setbacks established by state law are not exceeded. This restriction is concerning on a number of grounds. First, setbacks may not be required for JADUs as they are constructed within the walls of the primary dwelling. Second, this requirement imposes excessive restrictions on ADUs converted from an existing area of the primary dwelling or accessory structure with a basement or subterranean space. Again, these structures are not subject to setback requirements. Finally, this section would violate State ADU Law if the side or rear setback requirement for an ADU or JADU located in a basement or other subterranean structure exceeded four feet. Requiring ADUs and JADUs to meet the side and rear setbacks for the primary dwellings could exceed the maximum four-foot setbacks set out in State ADU Law. The ordinance must be revised to eliminate these concerns.

As noted above, the City will add a clarifying statement that the regulations in PAMC 18.09.040 are not intended to limit the conversion of existing structures to ADUs or JADUs. In addition, as with the previous section, the inclusion of JADUs here only serves to increase flexibility of JADU production.

As noted above, the City will add a clarifying statement an ADU of at least 800 square feet, 16 feet in height, and with four-foot rear and side- yard setbacks is permitted as required by State ADU Law.

With these clarifications the City does not believe it would violate State ADU Law to require that a newly constructed ADU limit any below-grade space to a setback greater than 4 feet. It is the City's understanding that it could simply state that basements are not permitted for ADUs built under subdivisions (a)-(d), so long as it was still feasible to construct an ADU of at least 800 square feet. If this is the case, the City should have the lesser authority to direct the placement of below-grade development.

The City has significant concerns about basements in general, and those concerns extend to basements constructed as part of ADUs. Due to a high water table throughout most of Palo Alto, the construction of basements requires dewatering (pumping water from the construction site). While this is allowed, there are significant restrictions on timing and procedures taken during the dewatering process.

Secondly, development of homes in Palo Alto often includes requirements for the planting and maintenance of trees used to enhance privacy between properties. Placing ADUs with basements as close as 4 feet from the property line may jeopardize the health of these trees on the subject property as well as trees on adjacent properties. The trees could fail, which would both diminish the tree canopy—important for our environment and adaptation to climate change—and diminish the privacy between properties.

Building below ground is not required in order to achieve a unit which follows the requirements in Section 65852.2 and can lead to potential impacts on adjacent lots, such as to large stature trees on adjacent lots which is a common occurrence in Palo Alto. Building a basement in these scenarios may cause the tree to fail which is a life, safety, and health hazard which would unduly affect both homeowners as a result of the action by one individual. There are construction methods which can be implemented for above ground construction to help limit root damage caused by this construction to preserve trees but that is not possible for below ground construction and can lead to significant impacts as noted above.

10. Corner Lots - Section 18.09.040(j) Design: This section states, “Except on corner lots, the unit shall not have an entranceway facing the same lot line (property line) as the entranceway to the main dwelling unit unless the entranceway to the accessory unit is located in the rear half of the lot. Exterior staircases to second floor units shall be located towards the interior side or rear yard of the property.” These standards appear to apply only to the creation of ADUs and may unduly restrict the placement of an ADU on some lots. Local development standards provided by ordinance pursuant to subdivisions (a) through (d) of Government Code section 65852.2 do not apply to ADUs created under subdivision (e). Please consider eliminating this restriction or modifying it such that it applies “when feasible.”

As noted above, the City will add a clarifying sentence at the top of Section 18.09.040 explaining that none of the regulations in PAMC 18.09.040 apply to subdivision (e) ADUs. The City will clarify this is not applicable for subsection (e) ADUs. We are not aware of any evidence that this simple design requirement creates an excessive constraint on ADU production and that has not been our experience.

11. Privacy - Section 18.09.040(j)(2)(A) Privacy: The section states, “Second story doors and decks shall not face a neighboring dwelling unit.” This limitation, however, may place an impermissible constraint on an ADU. For example, excessive constraints would be placed on the creation of a second story ADU if residential units were located on all adjacent parcels. In addition, when operating in conjunction with Section 18.09.040(j), noted above, this restriction may prohibit ADUs created under subdivision (e) of Government Code section 65852.2. Accordingly, this provision must be revised to allow for more flexibility. The City could revise the first sentence of this section to state, “Second story doors and decks shall not face a neighboring dwelling unit, where feasible.”

As noted above, the City will add a clarifying sentence at the top of Section 18.09.040 explaining that none of the regulations in PAMC 18.09.040 apply to subdivision (e) ADUs. We are not aware of any evidence that this simple design requirement creates an excessive constraint on ADU production and that has not been our experience.

The City will clarify this is not applicable for subsection (e) ADUs. We are not aware of any evidence that this creates an excessive constraint and that has not been our experience.

12. Parking - Section 18.09.040(k)(4) Parking: The ordinance indicates if covered parking for a unit is provided in any district, the maximum size of the covered parking area for the accessory dwelling unit is 220 square feet. Further, under this section, the space for the covered parking count towards the total floor area for the site and the ADU if attached to the unit. Covered parking should not count towards the total floor area of the site as if it would unduly limit the allowable size of an ADU established by state law, nor should it directly count toward the area available for the ADU. Although standards within an underlying zone may apply when noted in the adopted ADU ordinance, they may not be more restrictive than those contained in state statute. (See, e.g., Gov. Code, § 65852.2, subs. (a)(1)(B), (a)(1)(D)(vii), (a)(1)(D)(x), (c), and (e).) The portion of this section stating “unit unless attached to the unit” should be deleted, or the section should otherwise be modified to comply with state law.

As noted above, the City will add a clarifying sentence at the top of Section 18.09.040 explaining that none of the regulations in PAMC 18.09.040 apply to subdivision (e) ADUs.

Currently, all covered parking in the single-family zones counts towards floor area for the site and dwelling unit. The City does not understand how this creates a standard that is more restrictive than that contained in state statute; none of the subsections cited in your letter speak to whether a garage for an ADU must be exempted from the unit size for the ADU. Moreover, this provision does

not create a constraint on ADU production, as a property owner may always choose to provide a detached garage, uncovered parking, or no parking at all for the ADU.

The City has concerns that allowing attached garages onto these structures will incentivize individuals to illegally expand the unit into the garage, which would both exceed the City's ordinance, contain unpermitted construction, and potentially place the health and safety of the occupants at risk.

Sincerely,

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Jonathan Lait

Director of Planning and Development Services

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