



CITY OF
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Planning & Transportation Commission Staff Report

From: Jonathan Lait, Planning and Development Services Director

Lead Department: Planning and Development Services

Meeting Date: February 22, 2023

TITLE

PUBLIC HEARING/LEGISLATIVE: Adoption of Amendments to Palo Alto Municipal Code Chapter 18.09, Accessory and Junior Accessory Dwelling Units due to Direction from the California Department of Housing and Community Development (HCD). Environmental Assessment: 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), 15301, 15302 and 15305.

RECOMMENDATION

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

1. Receive public testimony on the ordinance revisions, which include responses to address feedback received from HCD, and
2. Recommend that the City Council adopt the attached Ordinance (Attachment A) amending Palo Alto Municipal Code Title 18 (Zoning) regulations for Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs).

REPORT SUMMARY/BACKGROUND

On December 23, 2021, the City received a letter from HCD regarding the ordinance the City adopted in November 2020 (Attachment B). HCD raised 12 issues with the City's ordinance which they thought conflicted with state law or required further clarification in the ordinance. On February 3, 2022, City staff met with HCD staff to discuss HCD's comments and concerns as well as to explain the structure and intent of the language incorporated into the City's ordinance. Following that discussion, City staff provided detailed responses to the HCD letter, indicating areas where the City would incorporate changes and where staff required clarification (Attachment C).

On December 21, 2022, the City received a follow up letter from HCD responding to the City's comments (Attachment D). Only five items were included in the letter HCD provided and primarily discussed the items that the City contended were consistent between the adopted ordinance from 2020 and state law at the time. On January 13, 2023, City staff met with HCD staff to discuss HCD's comments and concerns. City staff provided detailed responses to the HCD letter on the same day, indicating areas where the City would incorporate changes to its ordinance

(Attachment E). The five items from HCD's recent letter are summarized below and are discussed in greater detail in the report:

- A. Application of Daylight Planes for Table 2 Units*
- B. Calculating Floor Area for ADUs/JADUs*
- C. Noise Producing Equipment Location Standards*
- D. Entryways for ADUs/JADUs*
- E. Parking Attached to ADUs Contributing to the Unit's Maximum Size*

Separate from the items HCD requested changes from, staff has recently encountered issues they wanted to discuss with the PTC regarding uncovered parking spaces and privacy issues. These policies are not raised as issues in HCD's letter. These two items are discussed in greater detail in the report, but are not included in the draft ordinance:

- F. Conversion/Relocation of Uncovered Parking Stalls*
- G. Privacy Measures for ADUs/JADUs*

Finally, staff wish to convey early feedback received from Alta Housing regarding an affordable ADU program (topic H below) and seek input from the PTC on whether it will reaffirm its prior recommendation or modify it in some way.

Staff previously met with the PTC in July, August, and September of 2022 to discuss code changes relative to other items raised by HCD in their original letter from 2021. The meeting minutes, video, and staff reports are available here: <https://www.cityofpaloalto.org/Departments/Planning-Development-Services/Planning-and-Transportation-Commission-PTC/Previous-PTC-Agendas-Minutes>. After receiving additional direction from HCD, staff recommends proceeding with the updated draft ordinance in Attachment A which will be incorporated into the draft ordinance the PTC previously recommended to City Council in July, August, and September of 2022.

DISCUSSION

A. Application of Daylight Planes for Table 2 Units

Section 18.09.040 of the City's zoning ordinance identifies that daylight planes can be applied to ADUs for which the City has some regulatory authority (commonly referred to as "Table 2 units"). This was based on staff's interpretation of the framework and language that was adopted by State law in 2020. Staff's interpretation of state law was that requiring a Daylight Plane did not prohibit units from achieving the 16-foot height guaranteed by State law but did alter the massing of it to ensure ADUs would more appropriately fit into the context of Palo Alto neighborhoods and reduce impacts on adjacent properties.

In their response, HCD appeared to state that the nuance staff was trying to assert between total height allowed for an ADU and allowing for a 16-foot-tall structure at a four-foot setback was inaccurate and that the City could not apply daylight planes to detached ADUs that prohibit them from achieving these minimum height standards. HCD further clarified that Senate Bill 897 modified the language of the previous statute to allow for taller attached and detached ADUs that met certain provisions. In response to this direction, staff has removed the ADU-specific

daylight plane requirement from PAMC 18.09.040 for detached ADUs and JADUs. Based on the language adopted under SB 897, the State allows for attached ADUs to be built in conformance with the height requirements of the main house in the local zoning ordinance. This would mean that for attached ADUs, daylight planes still apply, and Table 2 has been updated to reflect this as well.

B. Calculating Floor Area for ADUs/JADUs

The City's 2020 ordinance provided a "bonus" floor area and lot coverage exemption for ADUs and JADUs to incentivize the development of these units and provided staff a clear term to convey development rights to homeowners under PAMC 18.09.040, Table 2. The City also updated its ordinance in 2020 to allow for JADUs to be expansions of existing or proposed single-family homes rather than limiting them to only occur as conversions of an existing home, as required by the State. The purpose was to eliminate a multi-stepped process requiring a portion of a house to first be built and then receive a new permit to convert it to a JADU. Additionally, the underlying house would be limited by its existing floor area and lot coverage restrictions which would continue to disincentivize the creation of JADUs as a homeowner would need to choose to sacrifice the allowable square footage of their home to build a JADU.

In the HCD staff's letter, they contest that JADUs do not count towards a property's floor area or lot coverage limit as they can only exist within the buildable area of an existing or proposed single-family home. Without expanding the allowances for the primary dwelling to have more floor area, the City cannot allow JADUs to be additions, nor allow a certain amount to be considered exempt from floor area and lot coverage. When staff met with HCD staff and highlighted the way the City uses terms such as "floor area" and "lot coverage" to convey development rights to homeowners, HCD staff agreed that the issue between their understanding of Palo Alto's local terms and the State's approach to implementing ADU/JADU law may be an issue of semantics, with respect to this specific issue, because they were supportive of what the City was doing to encourage JADU development. Regardless, HCD reiterated its position on that state law only allows for JADUs to occur within existing or proposed single-family homes and that Palo Alto would need to provide more floor area or lot coverage for the primary home to allow the JADU to benefit from the City's "bonus" provisions. Staff does not believe that additional clarification is needed in the City's ordinance to ensure that the policies it has been enacting since 2020 are consistent with the State law. Staff will continue to be flexible with how floor area and lot coverage are afforded homeowners to encourage ADU/JADU development.

C. Noise Producing Equipment/JADU Location Standards

In concert with State law, the City updated its 2020 ordinance to allow for reduced setbacks for ADUs. As an incentive to encourage more units to be built, and in line with what is noted in the response above, the City also allowed for JADUs and noise-producing equipment four-foot setback from the rear and side property lines. HCD repeated its concern that the City was inappropriately applying setback standards to JADUs that should not exist given that JADUs are only supposed to exist within the existing or proposed walls of a single-family home. From HCD's perspective, for a JADU to have a four-foot setback the City would need to update its zoning code to allow the primary dwelling unit to have a four-foot setback. While it may be technically more

accurate to call this four-foot setback a “setback for the new construction portion of a single-family home that is dedicated to a JADU,” staff believe it is easier for applicants and staff to refer to this as a “setback for a new construction JADU.” For noise-producing equipment, the City has already updated its code to allow for reduced allowances when that equipment serves an ADU or JADU. As a result, staff does not believe additional modifications to the City’s ordinance is necessary to address this comment.

D. Entryways for ADUs/JADUs

Since the City updated its ordinance in 2017 to allow for attached ADU/JADUs, the Palo Alto Municipal Code requires attached units to have a doorway that faces toward a different property line than the doorway for the primary dwelling unit. The only exceptions allowed were when an attached unit was on a corner lot, or the unit was in the rear half of the lot. In 2020, staff updated this provision to also require that any exterior staircase to second-floor units face towards and interior side or rear yard. The purpose of this design requirement was to ensure that the primary façade did not appear cluttered or visually confusing with entries to the building(s).

HCD contends that this policy could have the potential to unduly restrict ADU/JADU development by adding additional cost and site development constraints to homeowners. Since 2017, after reviewing at least 500 applications for ADU/JADUs, staff has yet to encounter a scenario where this has prevented a unit from being developed on a property. Regardless, HCD states that the City must either eliminate this provision or add language which states that this provision applies “when feasible”. Staff is concerned that adding “when feasible” to this provision has no clear definition in the City’s municipal code nor state law and will likely create an un-enforceable standard when applicants don’t want to comply with it. As a result, staff recommends removing the provision altogether if HCD believes that the City’s ordinance will not comply with state law because of this rule.

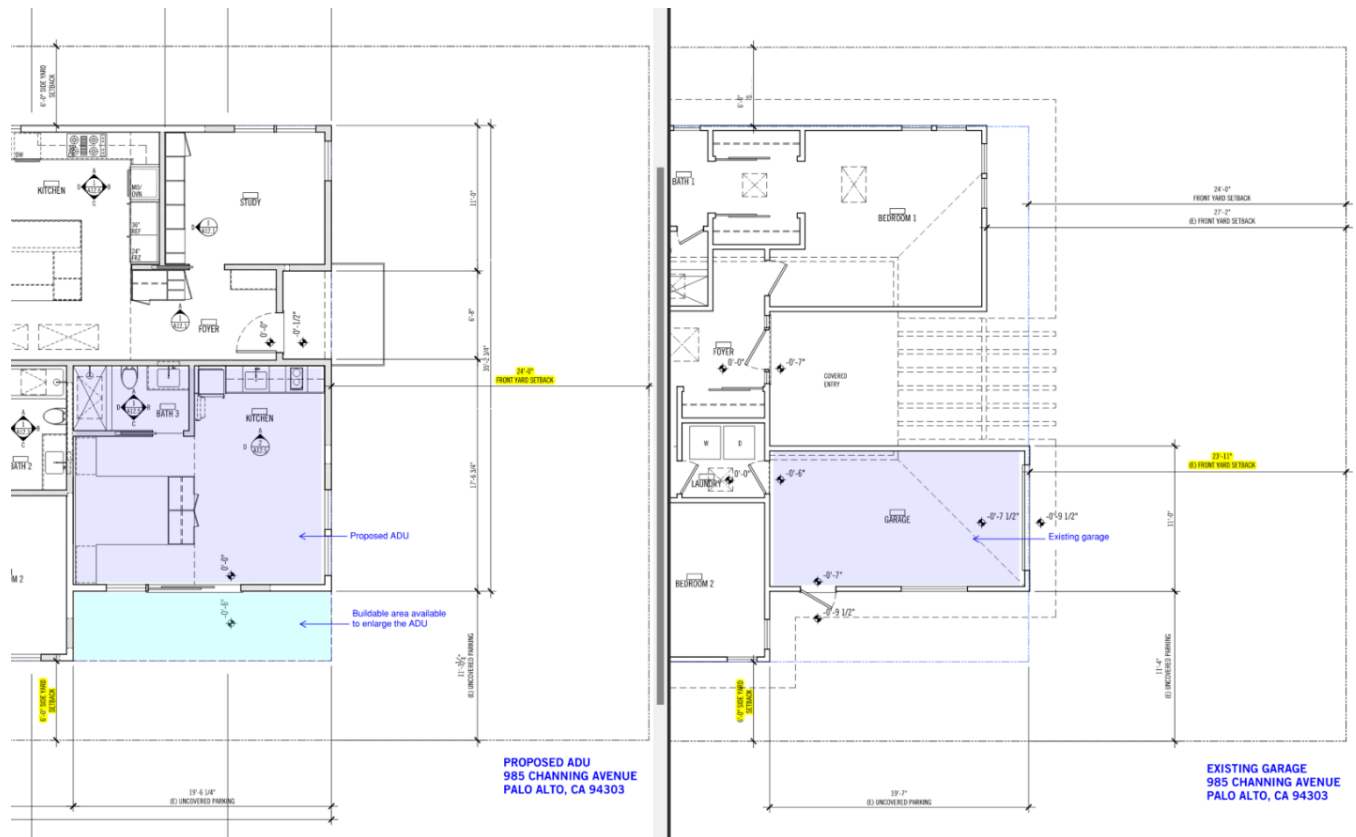
E. Parking Attached to ADUs Contributing to the Unit’s Maximum Size

In HCD’s recent letter, the HCD staff reiterated their previous position that garages attached to ADUs should not contribute to the maximum size or floor area of the ADU. At the PTC meeting on July 13 of 2022, the PTC included in their motion a recommendation to remove this requirement from the City’s ordinance which is specified in PAMC 18.09.040(k)(4). As a result, an additional motion is not required to be made on this topic and staff will carry forward the PTC’s previous direction to City Council.

F. Conversion/Relocation of Uncovered Parking Stalls

The City’s current zoning code requires that single-family homes include two parking spaces on site, both of which need to be beyond the front yard setback and one of which must be a covered parking space. Through multiple plan reviews, staff has recognized a disconnect between the parking requirements for single-car garages with adjacent uncovered parking spaces that are converted to an ADU and two-car garages converted to an ADU. Namely, both City codes and State laws do not require the replacement of *covered* parking spaces lost through conversion of space to an ADU, but also do not provide direction on what should occur for *uncovered* parking spaces. Staff’s current application of the law is that there is no such relaxed replacement

allowance for uncovered parking spaces and that they must comply with the typical siting requirements – that these must be placed on site and beyond the front yard setback. Below is an example to demonstrate this issue:



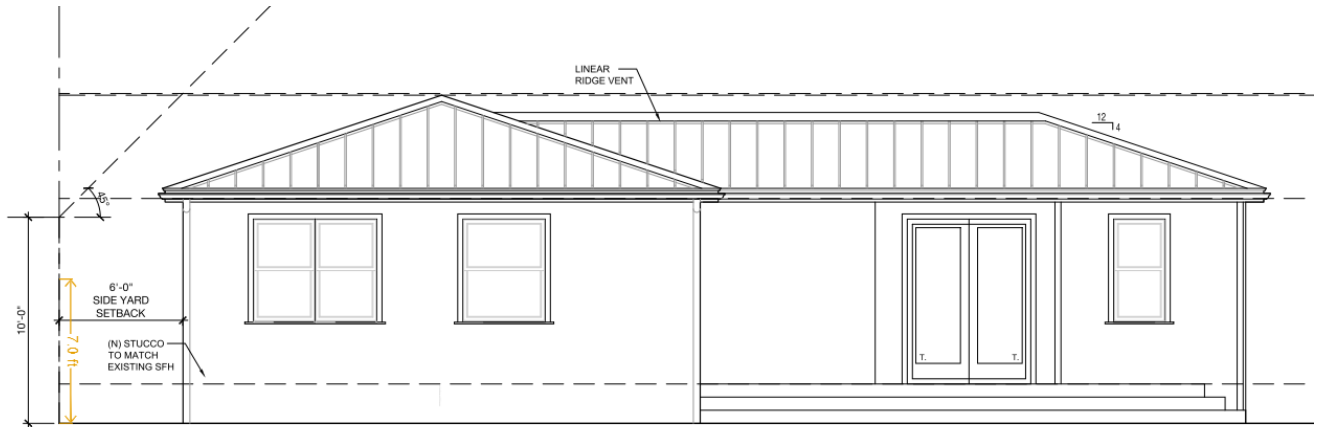
An owner who wants to eliminate the uncovered parking stall in the example above would first need to expand a garage within the blue area to accommodate two, 10-foot wide by 20-foot-deep parking stalls. Once that building permit is finalized, the owner could then file another permit to convert the new garage into an ADU. This creates a two-step process that adds time, money, and constraints to developing an ADU that, under a different existing configuration, could already take advantage of the relaxed conversion allowances. The City currently allows JADUs under PAMC 18.09.040(k) to replace parking lost through garage conversions to be replaced in the driveway as uncovered space. If the PTC is supportive of this approach, staff could update the draft ordinance. Staff would extend this provision to uncovered parking spaces when a single-car garage is converted into an ADU. Staff would expand this provision into the home's required uncovered parking space. If PTC is not supportive of this approach, staff will continue to enforce the existing policy, which requires the uncovered parking space to be located beyond the front yard setback.

G. Privacy Measures for ADUs/JADUs

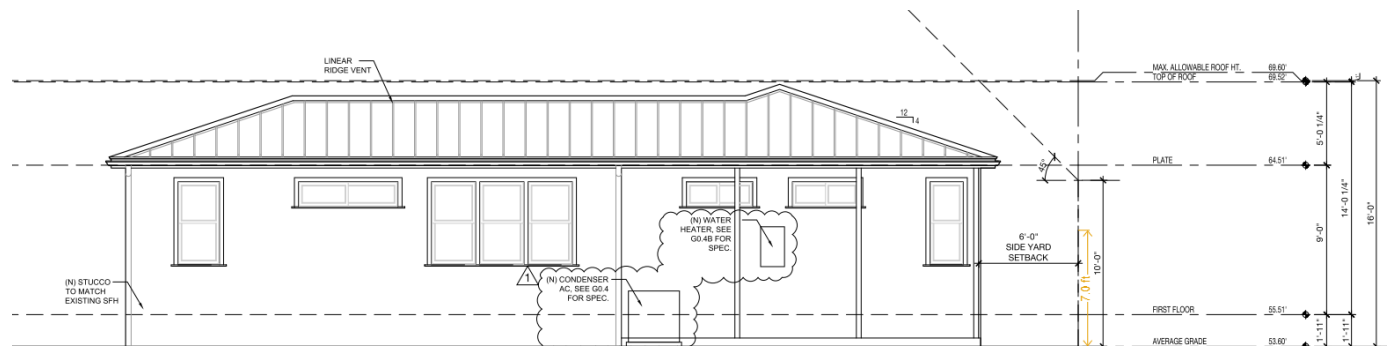
During the July 13, 2022, PTC meeting, two commissioners raised the question of how to best affect the City's privacy measures for Table 2 units. The specific issue raised was whether the City should adopt a more stringent privacy requirement for windows that face adjacent properties based on a height standard instead of whether there is a second floor, or equivalent space, as is required by the City's current ordinance under PAMC 18.09.040(j)(2). The example provided at

the time was to modify the City's current standard to require windows at and above 12 feet in height to have obscured glazing regardless of interior floor level. However, the PTC did not adopt a motion to change the existing policy, other than to clarify that these policies only applied when a second-floor level was proposed for an ADU.

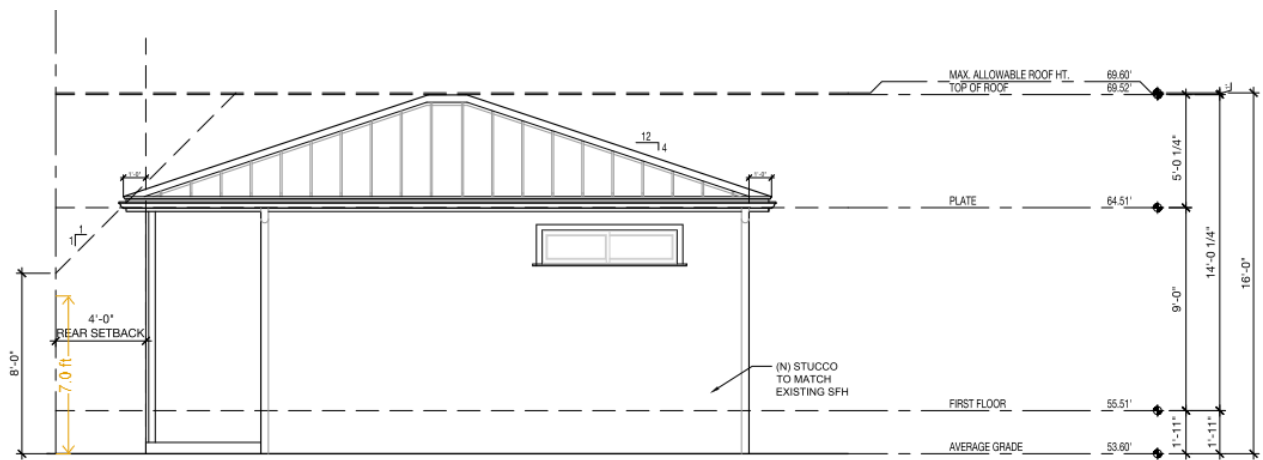
Staff have been receiving more complaints from neighbors regarding privacy impacts from ADUs built near their property lines and wanted to revisit this discussion with the PTC. Below is an example of an ADU that was built in conformance with current ADU law:



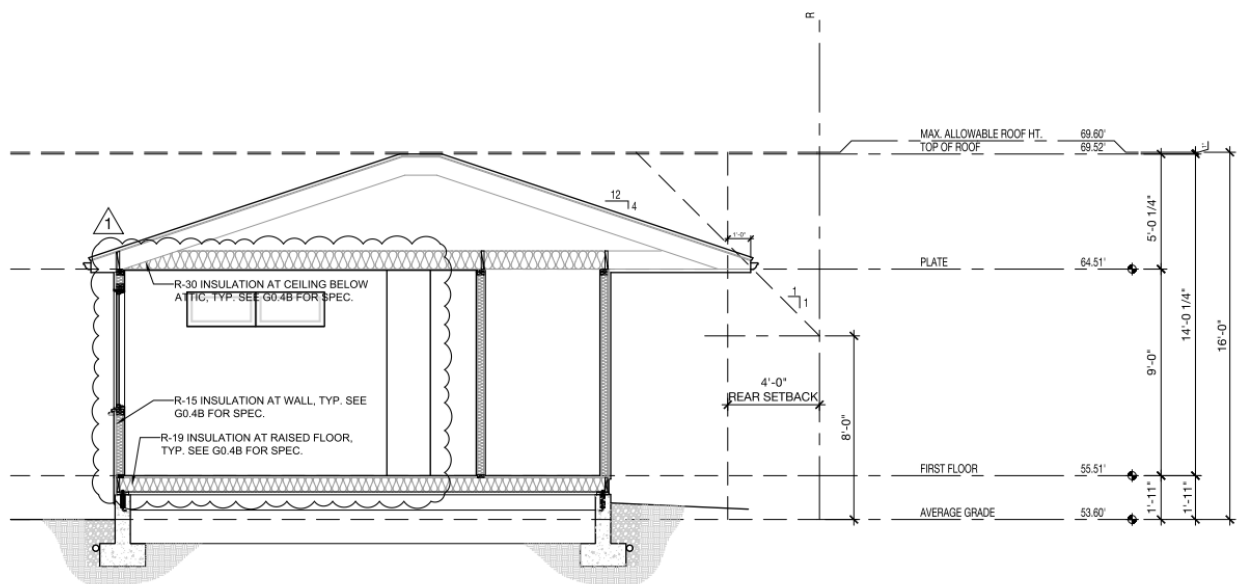
East Elevation



West Elevation



South Elevation



Building Section

When reviewing the application, staff was unable to apply any privacy measures to the building as it did not have a second-floor level, even though it was proposed to be a 16-foot-tall structure. Staff added a height measurement of seven feet to the drawing image to simulate where an adjacent fence would likely be relative to the height of the windows on the structure. Due to the nature of how state law is structured, the only area staff has discretion to apply privacy measures is when a unit does not qualify under PAMC 18.09.030. Given the recent concerns raised by residents, staff requests the PTC discuss whether the City's privacy measures need to be codified to recognize and protect against these issues, when applicable.

H. Pilot Affordable ADU Program

On September 28, 2022, the PTC recommended that the Council adopt a pilot program for deed-restricted, affordable ADUs. Under this pilot program, property owners who agreed to deed

restrict an ADU to rents affordable to households earning no more than 80% of area median income would have development impact fees waived, up to \$50,000 per unit. The pilot program would be limited to a total of \$400,000 of waived fees per year. Staff indicated that, prior to bringing the recommendation to Council, staff would discuss administrative details like income certification, tenant selection, and monitoring with Alta Housing, the City's affordable housing administrator.

Early feedback from Alta Housing included several reservations about an affordable ADU program as recommended by the PTC. Alta's concerns were as follows:

- The eight-year period is shorter than the typical length that affordable housing tenants remain in one location. This raises additional concerns about transition when the affordability restriction is over.
- In larger projects, tenants who exceed income thresholds can often convert to a market rate unit and remain in the same development. That won't be possible for ADUs.
- The program may result in fair housing/discrimination issues if homeowners are responsible for choosing tenants. Personality or preferred tenant clashes could create additional administrative burden.
- Homeowners are typically not in the business of being landlords. Significant outreach is needed to educate homeowners on what they would be signing up for (vis-à-vis renter rights, fair housing laws, relocation compensation if work needs to occur on-site and tenants must move out, etc.).

In short, it appears that the program would result in an inordinate administrative burden compared to affordable units typically administered by Alta Housing. Currently, when Alta Housing works with a private property owner, they typically administer multiple units at a single site and these units are deed restricted for terms ranging from 55 to 99 years. This limits the amount of onboarding and education required per unit. By contrast, an affordable ADU program would involve a different property owner for each unit, and these units would only participate for a period of 8 years.

In addition, staff have noticed that there is currently an unprecedented level of affordable housing projects in Palo Alto, which have already sought or may seek support from the City's affordable housing funds. Projects at various stages of the process include 231 Grant, 525 E Charleston, Palo Alto Homekey, Buena Vista Mobile Home Park, and 3001 El Camino Real. In addition, some existing affordable housing projects have recently reached out to the City to inquire about support for unexpected expenses. As a result, staff believe there are ample other opportunities for the City to support affordable housing, which may provide greater overall benefit than an affordable ADU program.

Quarterly ADU report dated June 20, 2022

The Council received a quarterly report on ADUs – prior reports to the PTC on ADUs may or may not have been included this link: <https://cityofpaloalto.primegov.com/Portal/Meeting?meetingTemplateId=1073> . In the report, the average size of ADUs was reported to be around 589 square feet, which is an increase largely

associated with the additional flexibility the State provides for minimum sizes of second units that homeowners can develop by-right.

ENVIRONMENTAL REVIEW

The adoption of the Draft Ordinance would be 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), 15301, 15302, and 15305, because of requirements related to accessory dwelling units as established in Government Code Section 65852.2, and these changes are also likely to result in few additional dwelling units dispersed throughout the City. 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.

Public Notification, Outreach & Comments

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 February 10, which is 12 days in advance of the meeting.

ALTERNATIVE ACTIONS

In addition to the recommended action, the PTC may:

1. Provide direction to make further modifications to the ordinance, or
2. Continue the hearing to a date (un)certain to enable staff to perform additional study.

ATTACHMENTS

Attachment A: Draft ADU Ordinance Feb 2023
Attachment B: HCD Letter on ADU Ordinance (2021)
Attachment C: Staff Response to HCD (2022)
Attachment D: HCD Letter on ADU Ordinance (2022)
Attachment E: Staff Response to HCD (2023)
Attachment F: Government Code Section 65852.2

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