



CITY OF
**PALO
ALTO**

City Council Staff Report

From: City Manager

Report Type: ACTION ITEMS

Lead Department: Planning and Development Services

Meeting Date: May 15, 2023

Report #:2303-1210

TITLE

PUBLIC HEARING/LEGISLATIVE: Adopt an Ordinance That Changes Palo Alto Municipal Code Chapters 18.04, 18.09, 18.10, 18.12, and 18.40 related to Accessory Dwelling Units and Accessory Structures. 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 City Council:

1. Adopt the attached Ordinance (Attachment A) amending Palo Alto Municipal Code Title 18 (Zoning) to amend regulations for Accessory Dwelling Units (ADUs), Junior Accessory Dwelling Units (JADUs), and Accessory Structures, including provision to respond to direction from the Department of Housing and Community Development (HCD).

Background

The Planning and Transportation Commission (PTC) recommends approval of the attached draft Ordinance (Attachment A). This ordinance updates various sections of Chapter 18 of the Palo Alto Municipal Code related to Accessory Dwelling Unit and Accessory Structure standards.

The attached draft Ordinance (Attachment A) incorporates:

- PTC-supported and recommended policies
- Necessary revisions to address the State Housing and Community Development (HCD) department's December 12, 2022 letter.

The staff reports, meeting minutes, and videos for those hearings can be found online⁽¹⁾⁽²⁾.

¹ <https://www.cityofpaloalto.org/Departments/Planning-Development-Services/Planning-and-Transportation-Commission-PTC/Previous-PTC-Agendas-Minutes> 2021/2 Staff reports, meeting minutes, and videos. Select the Agenda Item on the following dates: February 10, February 24, and May 26, for 2021. July 13, August 10, and September 28, 2022 for 2022.

² <https://www.cityofpaloalto.org/Departments/Planning-Development-Services/Planning-and-Transportation-Commission-PTC/Current-PTC-Agendas-Minutes> 2023 Staff reports, meeting minutes, and videos. Select the Agenda Item on the following dates: February 22, March 8, 2023.

Discussion

The staff report touches on the following subjects related to changes to Chapter 18:

- A. Staff Response to Housing and Community Development (HCD) Letter
 - i. Application of Daylight Planes for Table 2 Units
 - ii. Calculating Floor Area for ADUs/JADUs
 - iii. Noise Producing Equipment Location Standards
 - iv. Entryways for ADUs/JADUs
 - v. Parking Attached to ADUs Contributing to the Unit's Maximum Size
- B. Proposed Areas for Regulatory Change
 - i. Basements
 - ii. Noise Producing Equipment Location Standards
 - iii. Parking Provided for an Attached ADU
 - iv. Privacy
 - v. Retracting Prior Deed Restrictions
 - vi. Allowing Reconstruction/Expansion of Non-Conforming Structures
 - vii. Removing the "Existing" Garage/Carport Requirement for Conversions
 - viii. Conversion/Relocation of Uncovered Parking Stalls
 - ix. Alignment of ADU and Tree Ordinances
- C. Corner Lot Incentives to Maintain Street-side Setback on Corner Lots
- D. Incentives for Affordable ADUs
- E. Code Modifications to Definitions, Sanitation Facilities, and Accessory Structures
 - i. Clarifying How FAR/Lot Coverage is Calculated with Attached Units
 - ii. Translating Second Units through Demolition/Reconstruction
 - iii. Clarification on JADU Construction and Sanitation Facilities
 - iv. Calculating Gross Floor Area
 - v. Clarification on Accessory Buildings with Covered Porches or Patios (>120 sf)
 - vi. Allowed Accessory Structure Fixtures (PAMC 18.10, 18.12, 18.040)

A. Staff Response to HCD Letter

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). Five items were included in the revised HCD letter. On January 13, 2023, City staff met with HCD staff to discuss HCD's comments and concerns again. 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 2022 letter are summarized below:

i. 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 (sometimes 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. The Daylight Plane did alter the massing of the unit, to ensure ADUs would more appropriately fit into the context of Palo Alto neighborhoods and reduce impacts on adjacent properties.

In their response, HCD staff 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. HCD staff asserted 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 in this referenced code section has been updated to reflect this change.

ii. 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.

The City’s existing laws are far more generous than the state legislation in this regard and staff does not believe that additional clarification is needed in the City’s ordinance. Staff will continue to meet with HCD staff as needed to explain how this provision furthers the state’s interest in housing production and complies with state law. to ensure that the policies it has been enacting since 2020 are consistent with the State law.

iii. Noise Producing Equipment 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 JADUs and noise-producing producing equipment to have a 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 are necessary to address this comment.

iv. 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.

v. 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. This was agreed to by the PTC and has been incorporated into the attached ordinance.

Staff met with the PTC in July, August, and September of 2022 to discuss code changes to Chapter 18 as well as February and March of 2023 to discuss the items raised in the HCD letters. After receiving additional direction from PTC, staff recommends proceeding with the updated draft ordinance in Attachment A.

B. Proposed Areas for Regulatory Change

The following changes are only in relation to ADU/JADUs that exceed the minimum standards that the City must approve under state law (“Table 2 units”):

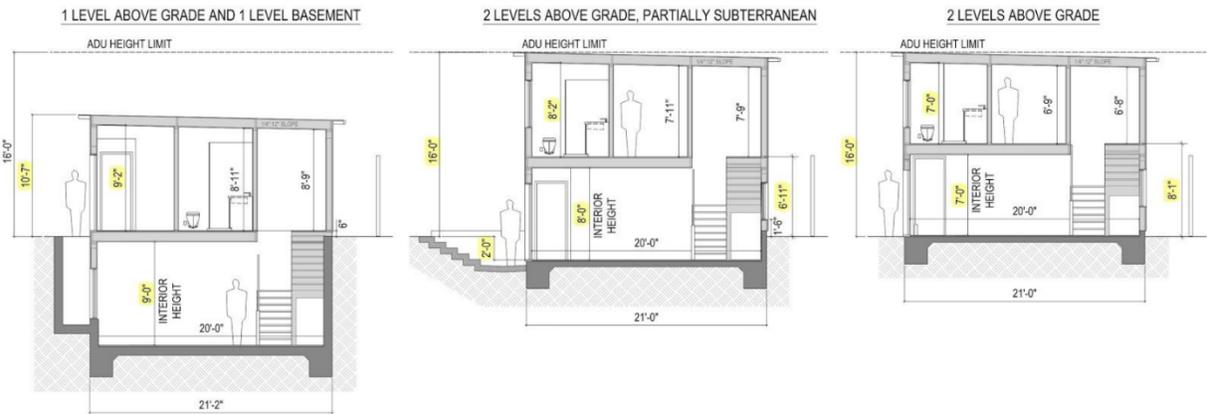
i. Basements

On July 13 and August 10, 2022, the PTC indicated support for allowing basements underneath ADU/JADUs. In that discussion, the PTC highlighted the following to incorporate into a draft ordinance:

- The basement cannot encroach into the four-foot ADU/JADU setback, unless a basement already exists in that area. In this case, the non-conforming area may remain but cannot be expanded, consistent with other non-conforming provision of City and State law.
- New ADU/JADU lightwells cannot be located closer than four feet to a property line. All lightwells would need to be screened from view from public rights of way using landscaping, consistent with the City’s current requirements for lightwells associate with the main house.
- A new basement must not negatively impact tree roots on adjacent lots such that it would cause the tree to be removed or fail. Protected trees would continue to be subject to the City’s tree regulations. Urban Forestry staff identified that roughly 25% of a tree’s protection zone could be affected without causing it to fail, on a case-by-case basis.

- All useable³ basement space for ADU/JADUs shall count towards the unit's gross floor area.

The PTC did not support requiring basements to be fully subterranean and were willing to allow any variation of the diagram below provided that all useable basement area contribute to the unit's allowable square footage.



Source: ATTACHMENT C

On February 22 and March 8, 2023, staff noted additional basement provisions for the PTC to consider. Basements in Palo Alto typically do not count towards the floor area, lot coverage, or maximum house size limitations for single-family homes. Basements are only allowed to be built underneath the footprint of the first floor. As a result, the size for a basement is inherently tied to the primary home's development potential. This can range from 2,550 sf (for a typical 6,000 sf lot) or less and up to the City's maximum house size (6,000 sf in the R1 zones). As it is currently written, the City's code does not distinguish between the footprint of a primary home or the footprint of a primary home *and* an attached second unit for the purposes of determining the maximum basement size. With new City and state laws, attached ADUs and JADUs can increase the size of a primary home's footprint by 500 sf or 800 sf, respectively. This creates an unintended consequence where a homeowner could build the maximum size house possible on their lot, build an attached ADU and/or JADU, and propose a basement for the primary home which extends underneath the attached second unit (right image below). Where a primary unit and basement would normally be limited to a maximum house size of 6,000 sf each, there could be scenarios where a primary unit is 6,000 sf and a basement that serves it is up to 6,800 sf.

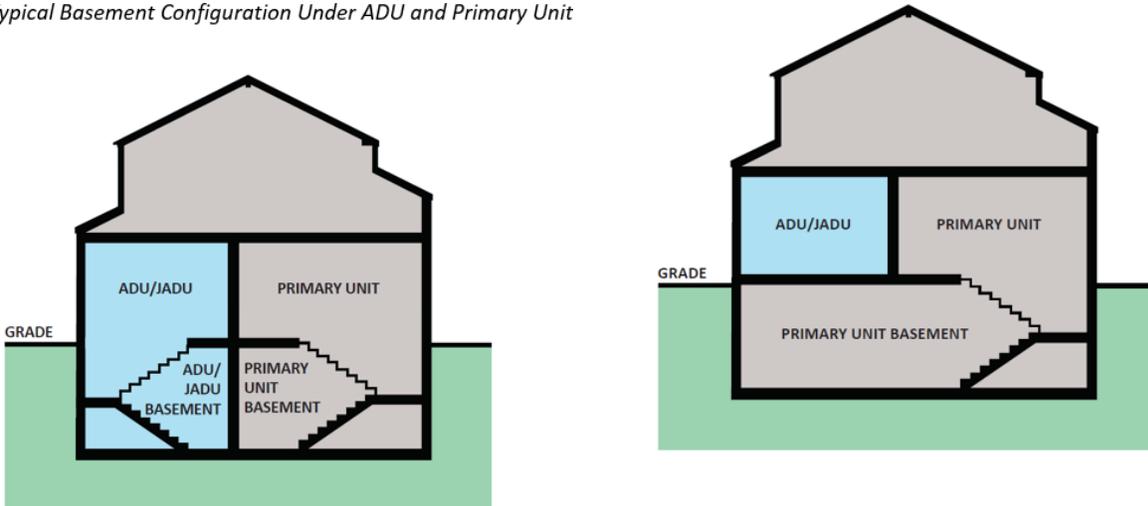
Staff's understanding of the intent behind the existing rule is to not allow basements to expand beyond the footprint of the primary dwelling unit, though it does not make this distinction clear. Additionally, the purpose of the bonus square footage for ADUs and JADUs is to encourage the development of additional housing units, not to build an attached second unit and propose/expand a basement that serves the primary home underneath it. During the February 22 PTC hearing, the Commissioners seemed open to including language to address this issue into

³ Habitable basement is when there is at least seven feet distance between basement floor and basement ceiling

the draft ordinance and recommend on March 8 to include the suggested language to Chapter 18.10.090(a) and 18.12.090(a) as shown under Sections 10 and 11 in the draft ordinance.

Potential Basement Configurations Based on Current Code

Typical Basement Configuration Under ADU and Primary Unit



ii. Noise Producing Equipment Location Standards

The draft ordinance reduces the current standard for placement of all noise-producing equipment associated with an ADU/JADU along the interior side and rear property lines. This would allow additional development flexibility for homeowners. The current standard requires noise-producing equipment to follow a 4-foot setback to the property line for second units. The proposed ordinance would allow this equipment to be located between the property line and 4 feet under circumstances, including compliance with the City’s noise ordinance.

Most municipalities and other agencies specify noise limits in units of dBA, which is intended to mimic the reduced receptivity of the human ear to Sound Pressure (“ L_p ”) at particularly low or high frequencies. Sound attenuates over distance. Sound waves are an ever-expanding circle, moving away from the sound source. The wave starts with an initial amount of energy. That amount of energy is gradually spread out over a wider and wider area as the wave expands.⁴

The attenuation of a sound wave's intensity follows an inverse square law. In other words, the observed intensity of a sound wave decreases depending on the square of the observer's distance from the source. The intensity of a sound wave will decrease faster and faster the further it gets from the source. According to the inverse square law, it can be shown that for each doubling of distance from a point source, the sound pressure level decreases by approximately six dBA.⁵ Given that most noise-producing equipment that has been provided for ADU/JADU applications tends to be at or lower than 66 dBA, each successive doubling of distance would bring a unit further into compliance with the City’s Noise Ordinance.

⁴ Sound Attenuation – Inverse Square Law: <https://bit.ly/3Uc6V9t>

⁵ Attenuation of Sound: <https://bit.ly/3dgL54g>

The PTC also asked staff to confirm that reduced setbacks for noise-producing equipment would not conflict with ingress/egress requirements for the Fire Department. The Fire Department noted that noise-producing equipment can impact ingress/egress requirements but also noted that an ADU/JADU can be designed in a way that resolves this issue. In essence, the design of the building is flexible such that locating noise-producing equipment within a zero-to-four-foot setback would not create a scenario that is impossible to design around and still provide adequate life safety access to the unit.

With this additional information, the PTC supported staff's proposed language changes to the placement of noise-producing equipment for ADU/JADUs.

iii. Parking Provided for an Attached ADU

PTC considered whether or not an ADU can have an attached garage. Though there is potential for illegal conversion of a garage to living space without proper permitting, the PTC did not see these concerns as any more severe than for other attached garage structures. The PTC directed staff to modify PAMC 18.09.040(iv) (now 18.09.040(k)(v)) to remove the inclusion of an attached garage counting towards a second unit's maximum size. This decision occurred prior to HCD's December 2022 letter indicating the City needed to modify this policy.

iv. Privacy

The PTC indicated that the City needs to maintain stringent privacy measures for ADU/JADUs as they can be placed closer to property lines than a typical house. The PTC wanted to focus the City's current policies to limit impacts from windows on the first and second floor of a second unit.

During the July 13, 2022 PTC meeting, two commissioners asked how to best implement the City's privacy measures for Table 2 units. They asked whether the City should adopt more stringent privacy requirements for windows facing adjacent properties, based on a *height standard* rather than simply requiring privacy when there is a second floor or equivalent space, as the code currently requires. At the time, 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.

Since then, staff have been receiving more complaints from neighbors regarding privacy impacts from larger ADUs built close to their property lines, as State law now allows. Staff noted on February 22, 2023 a desire to revisit this discussion with the PTC. The below images are provided to illustrate the issue of views from two different floor levels:

View with standard finished floor 1.5 ft above grade View if a finished floor were 2.5 ft above grade



There are no privacy measures in place for one-story, single-family homes with taller first-floor levels, and only building permits are required for one-story homes. However, new primary homes in the R1 zones are generally located at least 6 to 8 feet from an interior side property line, and at least 20 feet from a rear property line.

Privacy measures cannot be imposed on ADU or JADU buildings that are set back four feet from an interior property line, for units that qualify under PAMC 18.09.030 (aka Table 1). This is true also for units that do not have a second-floor level, even when the ADU height is 16 feet or more. The City can introduce privacy measures for ADUs and JADUs with higher first-floor levels placed at four feet from an interior property line into Chapter 18.09; however, staff can only apply such privacy measures to units that fall under PAMC 18.09.040 (aka Table 2 units). During the February 22nd PTC hearing, the Commissioners supported staff's proposal to present additional privacy regulations for ADUs under PAMC 18.09.040(k)(2).

As a result, staff updated section 18.09.040(k)(2) in the attached draft ordinance, to incorporate the following provisions:

- Clarification that privacy measures will only be applied when there are second floors, lofts, or equivalent spaces.
- Egress windows shall not be located on walls which face adjacent property lines, when feasible. When infeasible, these windows shall utilize opaque glazing on the whole window.
- If the first finished floor of an ADU or JADU is two feet or more above grade, then first floor windows shall include the following:
 - a. Non-egress, operable windows facing an adjacent interior property line shall have a windowsill(s) that start five feet above the first finished floor for the unit;
 - b. Non-egress, non-operable windows facing an adjacent interior property line shall have the lower half of window(s) (minimum of five feet above the first finished floor) utilize opaque glazing.

- Where feasible, requiring the use of skylights in bathrooms and other spaces where windows could be considered optional.
- No exterior lighting mounted above seven feet and lighting must be directed downwards to prevent light spillover onto adjacent properties.

These added measures would provide guidance for applicants and additional protections for neighbors from the potential privacy impacts from new second units.

v. Retracting Prior Deed Restrictions

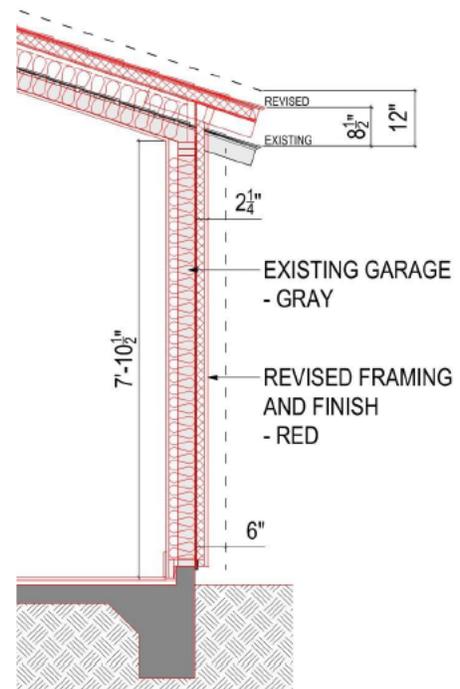
The PTC directed staff to review the appropriate process to allow homeowners to remove the prior owner-occupancy deed restrictions placed on units built prior to 2020. Removing these restrictions would allow residents who built ADUs before 2022 to rent a primary dwelling unit and ADU separately. In order to remove deed restrictions that the City has already approved for ADUs, staff will create a new document that can be recorded with the Santa Clara County Recorder’s Office to supersede the prior deed restriction noting that the restrictions no longer apply.

vi. Allowing Reconstruction/Expansion of Non-Conforming Structures

The PTC indicated support for allowing owners to expand legal, non-conforming walls in order to allow a converted structure to provide a better living unit and better meet insulation and energy requirements for modern habitable buildings. Several commissioners also expressed concerns with how close some non-conforming buildings can be to adjacent property lines and fences and how conflicts can come up when work needs to occur in those spaces.

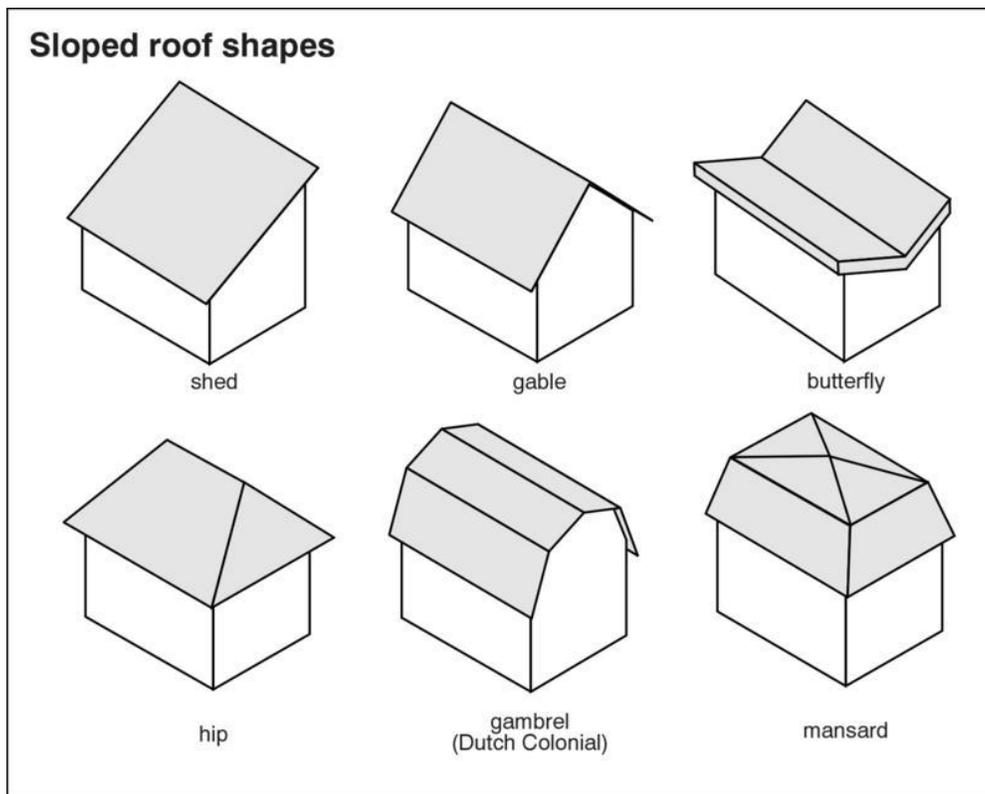
In the draft ordinance, staff sought to address this concern by limiting when and where a non-conforming wall can be expanded. Specifically, the proposed language in section 18.09.060(c)(ii) states that walls that do not currently have a one-foot separation from the property line would not be able to benefit from this provision. For walls that currently have this separation, they could be expanded up to a maximum of six inches in width depending on whether or not they would encroach closer than one foot to a property line. Staff believes this captures the support, and concerns, raised by the PTC.

The PTC also supported allowing legal, non-conforming structures to increase in height. Section 18.09.060(c)(i) indicates that an applicant may modify the height of a legal, non-conforming structure by up to 12 inches or to a maximum of 12 feet, whichever is less. Staff anticipates that most owners that would seek to utilize this process will most likely be able to use the full one-foot extension.



However, it would be important to limit how tall these structures can be given their closer proximity to adjacent neighbors.

For example, if an existing structure was 11 feet and two inches tall, then the height could be increased by only 10 inches, rather than one foot. This section also would require retention of the existing roof line and style. For example, a structure with a shed roof cannot be converted to a gabled roof. Staff believes that this will help to mitigate potential massing and aesthetic impacts upon adjacent neighbors. Neighbors will already be familiar with the existing structure's outline, albeit slightly taller and closer to their property (see example roofline images below).



Source: Google Images

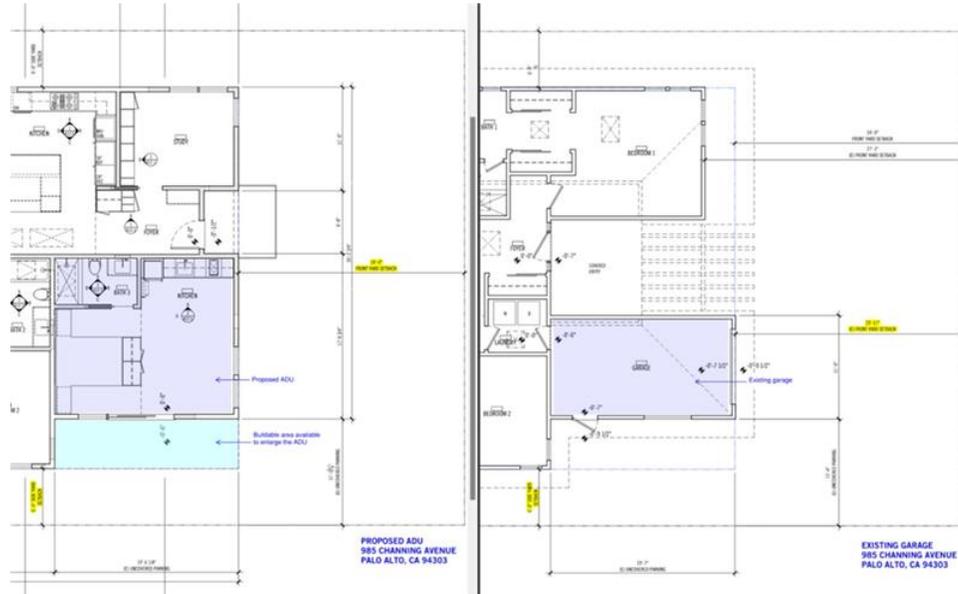
vii. Removing the “Existing” Garage/Carport Requirement for Conversions

Staff included in the draft ordinance section 18.09.060(d), which follows the PTC’s direction to eliminate the need to have an existing garage/carport when applying to convert a garage to an ADU/JADU when a new home is also proposed on site. This would eliminate the current two-step process that prevents homeowners from proposing a new home and ADU with no covered parking on site.

viii. 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 located beyond the front yard setback, and one of which must be a covered parking space. Over time, staff has recognized a disconnect between requirements for single-car garages with

adjacent uncovered parking spaces converted to an ADU, and two-car garages converted to an ADU. Namely, PAMC Chapter 18.09 and state law do not require the replacement of *covered* parking spaces lost through the conversion of a garage to an ADU, but also do not provide direction on what should occur for *uncovered* parking spaces. Staff's current application of the law reflects an interpretation that there is no such relaxed replacement allowance for uncovered parking spaces and such spaces must comply with the typical siting requirements – i.e., that these spaces 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 left-most 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 a final occupancy permit is issued for that building permit, 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 whereas, under a different existing configuration, an owner 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 in the driveway as uncovered spaces.

On February 22, 2023, Commissioners expressed support for eliminating this two-step process. The attached draft ordinance captures this new policy under PAMC 18.09.040(l)(2).

ix. Alignment of ADU and Tree Ordinances

Following the PTC review of the ADU ordinance, staff engaged with several applicants seeking to build ADUs but struggling with the Tree Disclosure Statement required in the new Tree Ordinance. The new Tree Ordinance, adopted in June 2022, requires all applicants to complete a Tree Disclosure Statement prepared by a licensed arborist. In reviewing this requirement as it applies to ADUs, staff determined that the licensed arborist requirement could represent an undue burden on ADU construction. Accordingly, for projects that solely involve an ADU, the attached ordinance proposes to permit a property owner, rather than an arborist, complete the Tree Disclosure Statement.

C. Corner Lot Incentives

Corner lots can be difficult to develop due to their more limiting setback requirements. Draft ordinance section 18.09.040(j) captures the PTC's direction to allow reduced setbacks for the primary house when ADU/JADUs are built in tandem. The draft ordinance allows for a primary home to be placed at a 10-foot street-side setback and a 16-foot front yard setback, provided the ADU/JADU follows these same setbacks. The PTC felt that this will serve as a strong incentive for homeowners on a corner lot to build an ADU at a greater setback than allowed by state law which will help to maintain the City's desired aesthetic character for single-family neighborhoods.

Staff noted to the PTC that this policy may create the opportunity for a homeowner to abuse the City's provisions through a two-step process given the authority state law provides to homeowners when building ADU/JADUs. That is, an owner could build a house and ADU at a 10-foot setback, then after the final occupancy permit is issued, propose an ADU that conforms with state law requirements. While that would be a significant financial burden to overcome for a homeowner and is not likely, it is not an impossible situation to occur later at the site or if the property were sold to another individual whose interests did not align with the City's policy. Staff suggested to the PTC that a deed restriction could be enacted on the property which serves as an agreement between the City and homeowner which prevents this from occurring; however, it could be fraught with legal and practical implementation challenges should a current or future homeowner contest it conflicts with state law. As a result, the PTC suggested that no restriction be recorded against the property and floated the question to City Council to decide whether this concern would be worthwhile to protect against.

D. Incentives for Affordable ADUs

i. Exempting Affordable Units from Impact Fees and Plan Review Fees

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 additional 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, there are currently several 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. With this additional information, the PTC recommended at the February 22, 2023 hearing to not proceed with this program.

E. Code Modifications to Definitions, Sanitation Facilities, and Accessory Structures

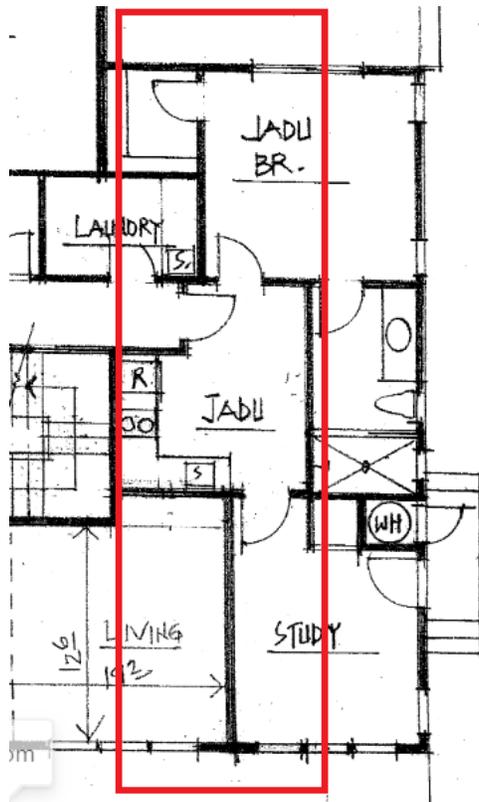
The PTC voted unanimously to approve staff's recommended changes to the following sections of the City's municipal code.

i. Clarifying How FAR/Lot Coverage is Calculated with Attached Units

The City provided a uniform bonus for ADU/JADU development in accordance with state law requirements. As a result, there have been challenges presented regarding how to calculate floor area for the main home versus the floor area ratios (FAR) with respect to attached units.

Overall, the City's definitions guide how staff calculates these allowed ratios on residential and commercial lots. However, when it comes to an attached ADU/JADU in an RE, R-1, R-2, and RMD district, the code states that: "*Gross floor area means the total covered area of all floors of a main structure and accessory structures greater than one hundred and twenty square feet in area, including covered parking and stairways, measured to the outside of stud walls*" (PAMC 18.04.030(a)(65)(C)). When there is an attached unit, there is a shared wall between the two structures and it is unclear to applicants and staff how this area should be counted between the units as it is not technically an "exterior wall" (see image below). If the shared wall spans a large portion of the two units, it can add up to a significant amount of square feet.

Staff suggests adding language in sections 18.09.030(c) as well as 18.09.040(e) that states that FAR, Lot Coverage, and Maximum House size should be related to the exterior stud of the primary unit's shared wall. Staff believes this mirrors the existing policy in PAMC 18.04.030(a)(65)(C) and in the event a second unit is built, this would provide clear direction on how to calculate these spaces. The PTC supported staff's approach and voted to incorporate this policy in the draft ordinance as they felt it would be more accommodating for ADU/JADU development.



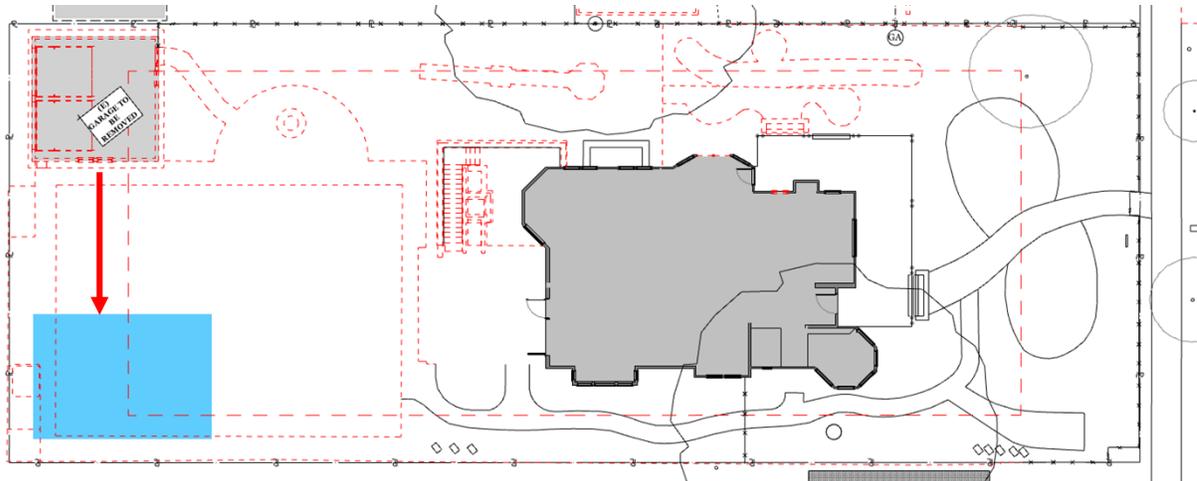
Source: Kohler Architects

ii. Relocating Second Units through Demolition/Reconstruction

PAMC section 18.09.030(k) identifies that replacement parking is no longer required when a garage or carport are demolished “in conjunction with the construction of an ADU.” Staff understands this to mean that an applicant may choose to demolish a structure and replace it “in-kind”, as noted in PAMC section 18.09.030(h), or they may relocate it elsewhere on the property and still not replace parking on site.

Demolishing and replacing an accessory structure in kind to create an ADU was protected in the City's ordinance prior to 2020 when the updated state law incorporated a similar framework. However, state law and the City's ordinance were not entirely specific on what may happen should an applicant seek to relocate a structure elsewhere on site and what policies (either Table 1 or 2) would apply.

Generally, staff and applicants have agreed that one would not be able to relocate a legal, non-conforming structure from one side of a property to another and establish a new non-conforming situation on site. Staff propose to clearly codify this practice and understanding with the suggested language in 18.09.040(j)(v). This language directly captures an instance like the example below and succinctly identifies that an applicant must follow the regulations in Table 2. Staff believes this will clarify that any type of construction that occurs in this manner must follow the City's local regulations outlined in Table 2 rather than the state policies outlined in Table 1. The PTC supported staff's interpretation and application of this rule in the draft ordinance.



Source: FG Architects

iii. Clarification on Type of JADU Construction and Sanitation Facilities

Staff has received multiple questions from applicants and the public since the adoption of the City's ordinance last year as to whether JADUs can be developed through new construction or only through the conversion of existing spaces. PAMC 18.09.050(a) currently states: "A junior accessory dwelling unit shall be created within the walls of an existing or proposed primary dwelling."

Through the implementation of the City's ordinance, the intention was to encourage the creation of more JADUs by allowing JADUs to also benefit from the bonus FAR/Lot Coverage/House Size provisions as well as allowing attached garages to be converted to JADUs and benefit from the replacement parking policies identified in 18.09.040(k). With this understanding, staff indicated to applicants and the public that new construction involving the creation of a JADU would be in keeping with the intent behind the policies adopted by City Council, rather than limiting a JADU to existing within the walls of an existing or new structure. Staff suggests modifying section 18.09.050(a) to align with staff's implementation of the City's ordinance and provide clarity to the public.

Additionally, staff has included a new policy that seeks to clarify an already established practice for JADUs that was not apparent in the previously adopted ordinance. Section 18.09.050(b)(iii) seeks to clarify that sanitation facilities are required for JADUs but that they may be shared with

the primary unit. This policy has been in place since the establishment of JADUs in the 2017 state and City codes. The practice, however, was not codified.

Adding this clarification will provide an easier reference point for staff, the public, and applicants as it relates to the City's requirements for sanitation facilities for JADUs.

iv. Calculating Gross Floor Area

Applicants have provided many ways of calculating floor area by representing it in whole numbers, to the tenths, hundredth, and thousandth decimal places. General mathematical principals indicate that expressing a number to a thousandth decimal or greater is technically more accurate; however, going beyond the thousands place is not necessarily appropriate when converting between inches and decimals, which often end in hundreds and thousandths decimal numbers (e.g. 4½ inches is expressed as 0.375, 11 inches is expressed as 0.92).

Over time, staff has not established a consistent policy for how floor area should be captured to maintain consistency and accuracy of construction. This is especially important when certain "triggers" occur. Two such triggers are when a building exceeds its allowable floor area/lot coverage allowances, or when a second unit is subject to payment of development impact fees. Some applicants have proposed 749.99 square foot structures and successfully argued they are not be required to pay development impact fees. In speaking with the Chief Building Official, a contractor would not realistically build a 749.99 square foot structure; it would be built to 750 square feet or slightly larger, given the nature of the construction methods and materials available today.

Staff believes the suggested language in 18.04.030(65)(E) of the draft ordinance would address these issues. It would set a clearer standard for how floor area needs to be expressed in block area diagrams on a plan set. It would also establish a clear and consistent policy for staff and applicants to implement when determining whether a project exceeds a trigger point, as described above. Any ADU equal to or greater than 749.995 square feet would be associated with payment of development impact fees.

v. Clarification on Accessory Buildings with Covered Porches or Patios (>120 sf)

In the last few years, there have been a greater number of proposals for 120 square foot accessory buildings with covered porches or patios. PAMC 18.04.030(C) identifies that accessory buildings which exceed 120 square feet in area are included in the overall gross floor area calculations for a site. The use of the term "square feet" is non-specific to the terms "floor area" and "lot coverage" staff commonly use to determine size allowances. The code requires that any addition to this structure beyond 120 square feet immediately triggers an accessory building to count as floor area. This is regardless of whether that specific addition would traditionally count as lot coverage based on its design.

Based on this, an accessory building with a substantially open covered porch or patio would automatically count towards floor area for the site, even though these would be excluded from

floor area for the primary house if it is substantially open (see Attachment C for substantially open criteria).



Source: Kohler Architects

Due to this conflict, 120 square foot accessory buildings with covered porches or patios that are substantially open are currently only counted as lot coverage rather than floor area. This interpretation provides a consistent approach for including these spaces as floor area when they are not substantially open. Staff propose codifying this as an exclusion under the Low-Density Residential Exclusions portion of the Definitions (proposed as 18.04.030(a)(65)(D)(ix)).

vi. Allowed Accessory Structure Fixtures (PAMC 18.10, 18.12, 18.040)

As ADU/JADUs have become more commonplace applications due to relaxed regulations at the state and local level, staff has also recognized an increase in permits for accessory structures. Some of these structures have started including additional fixtures such as showers (indoor and outdoor), utility lines, washers/dryers, and other facilities that seek to provide the framework for a second unit to be created on site but without committing to creating one.

PAMC 18.12 and 18.40 currently limit accessory structures to only two plumbing fixtures. Some districts, like the RE, R-2, and RMD districts, allow more fixtures for buildings that are less than

200 square feet or outside of setbacks for the property. As staff has typically relied on the building code's definition of a plumbing fixture, it does not always capture fixtures such as a gas line or other appurtenance.

Staff is frequently limited to negotiating with applicants to remove fixtures using vague comparisons of proposals to "something equivalent to an ADU/JADU" as the code does not give more clear direction. Staff is concerned this will encourage individuals to use an accessory building as a housing unit even when a structure is not designed for human habitation.

Due to this, staff propose to better distinguish what are acceptable plumbing fixtures in accessory buildings. The purpose of this language is to target features that may lead to unsafe conditions for human habitation. Staff suggests limiting accessory buildings from having certain plumbing fixtures like a shower and/or bathtub. These will be more challenging and costly to place in a building than a sink and toilet. While approving this code change will make a significant number of previously permitted structures non-conforming, staff believes this will help to reduce the number of illegally constructed units going forward.

ALTERNATIVE ACTIONS

In addition to the recommended action, the City Council 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.

ENVIRONMENTAL REVIEW

The adoption of the 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), 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.

ATTACHMENTS

Attachment A: Draft ADU Ordinance
Attachment B - Task Force Letter
Attachment C - Substantially Open Porches
Attachment D - HCD Letter on ADU Ordinance (2021)
Attachment E - Staff Response to HCD (2022)
Attachment F - HCD Letter on ADU Ordinance (2022)
Attachment G - Staff Response to HCD (2023)
Attachment H - Government Code Section 65852.2

APPROVED BY:

Jonathan Lait, Planning and Development Services Director