Planning & Transportation Commission
Staff Report

From: Jonathan Lait, Planning and Development Services Director
Lead Department: Planning and Development Services

Meeting Date: March 8, 2023
Report #: 2302-1017

TITLE

PUBLIC HEARING/LEGISLATIVE: Recommend an Amendment to Palo Alto Municipal Code Chapters 18.10 and 18.12, Sections 18.10.090(a) and 18.12.090(a) Related to Basements Under Accessory and Junior Accessory Dwelling Units and Amendments to Chapter 18.09 in a Continued Hearing on Chapter 18.09 Changes. 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 (PAMC) Title 18 (Zoning) regulations for Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs).

SUMMARY/BACKGROUND

Staff met with the PTC on February 22, 2023, to discuss changes relative to items raised by HCD's letter from 2022 and additional changes to the City's local regulations regarding J/ADU development. Links to the February 22nd PTC meeting video[1] and staff report[2] are provided in footnotes below. The PTC hearing was continued to March 8, 2023, and the proposed amendments to Chapters 18.10 and 18.12 were properly noticed. This staff report focuses on items that the PTC did not make motions on in February, including items raised in staff's

[1] Link to 2-22-23 PTC meeting video: https://midpenmedia.org/planning-transportation-commission-63-2222023/

[2] link to PTC report 2-22-23: https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2023/ptc-2.22-adu-hcd.pdf

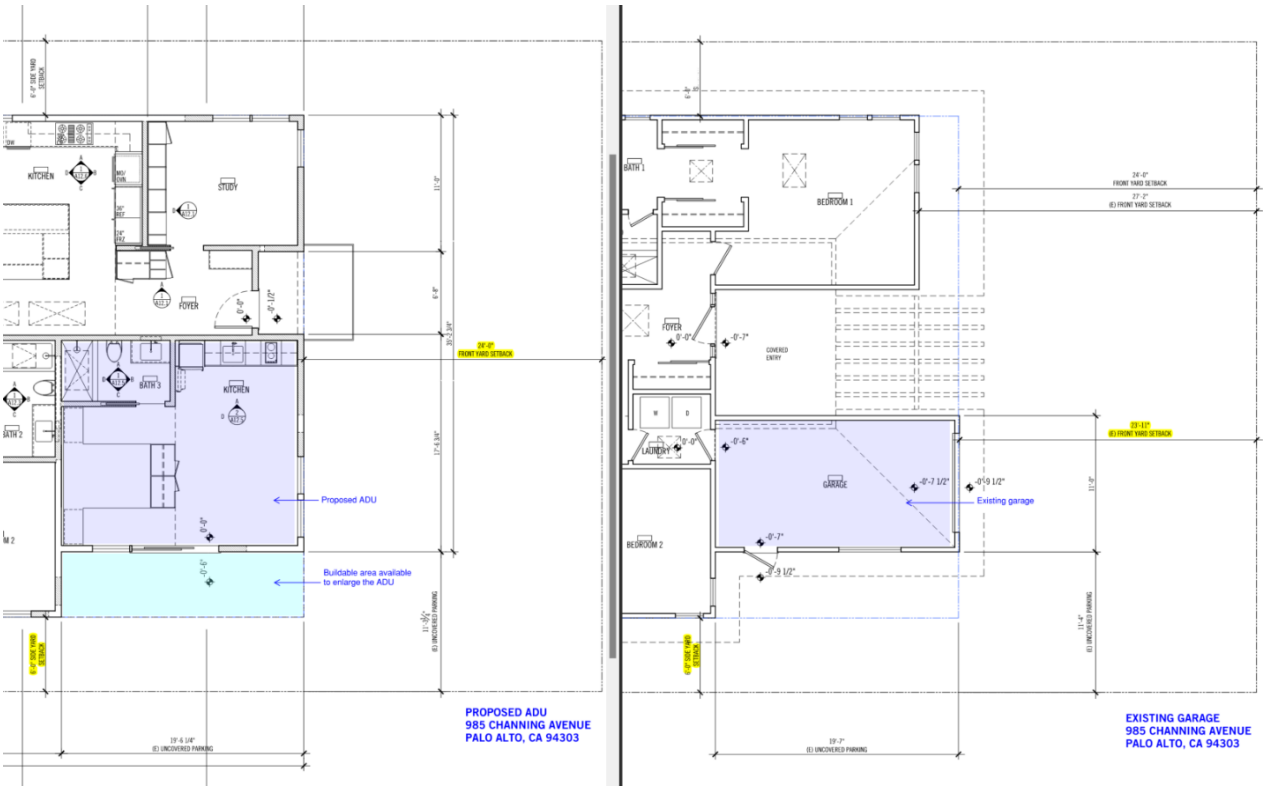
presentation. For consistency with the previous ordering of the staff report and presentation, the items are listed below:

F. Conversion/Relocation of Uncovered Parking Stalls
G. Privacy Measures for ADUs/JADUs
I. Basements Under J/ADUs that Serve the Primary Unit

DISCUSSION

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

G. Privacy Measures for ADUs/JADUs

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 22nd a desire to revisit this discussion with the PTC. To illustrate the issue, 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). Below are suggested provisions staff has incorporated into the attached draft ordinance, for Table 2 units:

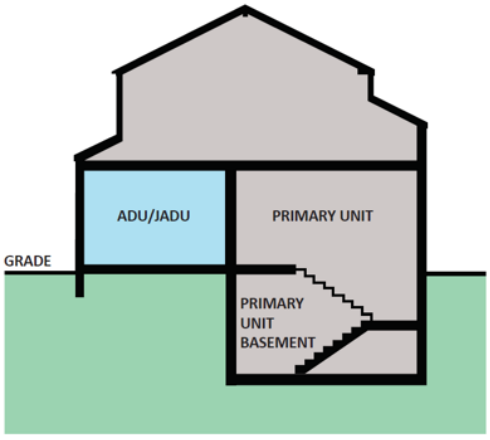
1. Non-egress windows on the ground floor of an ADU or JADU are not permitted to face towards an adjacent, interior property line.
2. If the finished floor of an ADU or JADU is three (3) feet or more above grade:
    a. First floor windowsill(s) shall be located five feet above the finished floor OR
    b. Lower half of window(s) (minimum of five feet above finished floor) shall be obscure glazing.

The Commission may wish to discuss whether the proposed finished floor level threshold of three feet is sufficient for the second set of privacy measures, or whether a range is desired. The range of finished floor levels for the PTC's consideration could begin at 18 inches above grade.

I. Basements Under J/ADUs that Serve the Primary Units

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 a loophole 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 (third image). 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.

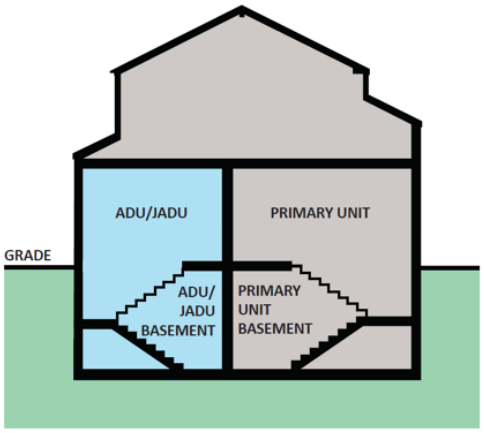
Typical Basement Configuration



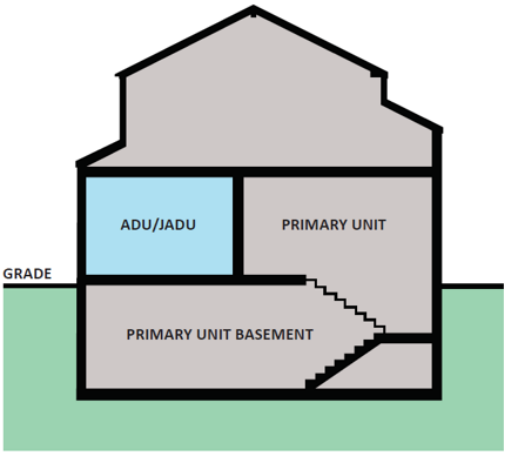
Staff's understanding of the intent behind the existing rule is to not allow basements to expand beyond the footprint of the primary dwelling unit, though it does not make this distinction clear. Additionally, the purpose of the bonus square footage for ADUs and JADUs is to encourage the development 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 the draft ordinance. As a result, staff has suggested adding language to Chapter 18.10.090(a) and 18.12.090(a) as shown under Sections 10 and 11 in the draft ordinance.

Typical Basement Configuration Under ADU and Primary Unit



Potential Basement Configurations Based on Current Code



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.

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 for March 8, 2023 PTC Consideration
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

AUTHOR/TITLE:
Garrett Sauls, Planner

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Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Amending Title 18 (Zoning) of the Palo Alto Municipal Code to Amend Requirements Relating to Accessory Dwelling Units and Junior Accessory Dwelling Units

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Chapter 18.09 (Accessory Dwelling Units and Junior Accessory Dwelling Units) of Title 18 (Zoning) of the Palo Alto Municipal Code ("PAMC") is amended to read as follows (additions underlined and deletions ~~struck-through~~):

18.09.010 Purpose

The intent of this Chapter is to provide regulations to accommodate accessory and junior accessory dwelling units (ADU/JADU), in order to provide for variety to the city's housing stock and additional affordable housing opportunities. These units shall be separate, self-contained living units, with separate entrances from the main residence, whether attached or detached. The standards below are provided to minimize the impacts of units on nearby residents and throughout the city, and to assure that the size and location of such dwellings is compatible with the existing or proposed residence(s) on the site and with other structures in the area.

18.09.020 Applicable Zoning Districts

The establishment of an accessory dwelling unit is permitted in zoning districts when single-family or multi-family residential is a permitted land use. The development of a single-family home, ADU, and/or a JADU on a lot that allows for single-family development shall not be considered a multifamily development pursuant to PAMC Section 18.04.030, nor shall they require Architectural Review pursuant to other sections of Chapter 18.

18.09.030 Units Exempt from Generally Applicable Local Regulations

(a) Government Code section 65852.2, subdivision (e) provides that certain units shall be approved notwithstanding state or local regulations that may otherwise apply. The following types of units shall be governed by the standards in this section. In the event of a conflict between this section and Government Code section 65852.2, subdivision (e), the Government Code shall prevail.

    i. An ADU and JADU within the existing space of a single-family dwelling or an ADU within the existing space of an accessory structure (i.e. conversion without substantial addition).

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ii. An ADU and JADU within the proposed space of a single-family dwelling.

iii. A detached, new construction ADU on a lot with a proposed or existing single-family dwelling, provided the ADU does not exceed 800 square feet, sixteen feet in height, or four-foot side and rear (i.e. interior) setbacks.

iv. ADUs created by conversion of portions of existing multi-family dwellings not used as livable space.

v. Up to two detached ADUs on a lot with an existing multi-family dwelling.

(b) The Development Standards for units governed by this section are summarized in Table 1. Regulations set forth in section 18.09.040 do not apply to units created under 18.09.030. The minimum and maximum sizes indicated in Table 1 do not prohibit units that are greater than 800 square feet. These sizes simply serve to distinguish when a unit transitions from regulations set forth in Table 1 and section 18.09.030 to regulations set forth in Table 2 and section 18.09.040.

Table 1: Development Standards for Units Described in Government Code Section 65852.2(e)

<table>
<tr><td></td><td colspan="3">Single-Family</td><td colspan="2">Multi-Family</td></tr>
<tr><td></td><td>Conversion of Space Within the Existing Space of a Single-Family Home or Accessory Structure</td><td>Construction of Attached ADU Within the Proposed Space of a Single-Family Home</td><td>New Construction of Detached ADU</td><td>Conversion of Non-Habitable Space Within Existing Multi-family Dwelling Structure</td><td>Conversion or Construction of Detached[4] ADU</td></tr>
<tr><td>Number of Units Allowed</td><td colspan="3">1 ADU and 1 JADU</td><td>25% of the existing units (at least one)</td><td>2</td></tr>
<tr><td>Minimum size[1]</td><td colspan="5">150 sf</td></tr>
<tr><td>Maximum size[1]</td><td colspan="2">N/A[2]</td><td>800 sf</td><td colspan="2">N/A</td></tr>
<tr><td>Setbacks</td><td>N/A, if condition is sufficient for fire and safety</td><td rowspan="2">Underlying zone standard for Single Family Home

(ADU must be within</td><td>4 feet from side and rear lot lines; underlying zoning for front setback</td><td>N/A</td><td>4 feet from side and rear lot lines; underlying zoning for front setback</td></tr>
<tr><td>Daylight</td><td>N/A</td><td colspan="3">N/A</td></tr>
</table>

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Plane		allowable space of Single-Family Home)			
Maximum Height[(3)]	N/A		16[(5)]	N/A	16[(5)(6)]
Parking	None				
State Law Reference	65852.2(e)(1)(A)	65852.2(e)(1)(A)	65852.2(e)(1)(B)	65852.2(e)(1)(C)	65852.2(e)(1)(D)

(1) Lofts where the height from the floor level to the underside of the rafter or finished roof surface is 5' or greater shall count towards the unit's floor area.
(2) New construction must be consistent with allowable space (e.g. FAR, Lot Coverage) of a single family residence, except that up to 150 sf may be added for the purpose of ingress and egress only, without regard to underlying zone standards.
(3) Units built in a flood zone are not entitled to any height extensions granted to the primary dwelling.
(4) Units must be detached from existing primary dwellings but may be attached to each other.
(5) A height of 18 feet for a detached ADU on a lot with an existing or proposed single family or multifamily dwelling unit that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. An additional two feet in height shall be provided to accommodate a roof pitch on an ADU that is aligned with the roof pitch of the primary dwelling unit.
(6) A height of 18 feet for a detached ADU on a lot with an existing or proposed multifamily, multistory dwelling.

(c) Development standards stated elsewhere in this Section or Title 18, including standards related to FAR, lot coverage, and privacy, are not applicable to ADUs or JADUs that qualify for approval under this section. When there is an ADU or JADU attached to an existing or proposed primary dwelling, the shared wall between these units shall contribute to the maximum allowable Floor Area, Lot Coverage, and Maximum House Size of the primary unit. For a single-family home, this measurement shall be taken to the outside stud wall in accordance with Section 18.04.030(a)(65)(D). For a multi-family dwelling, this measurement shall be taken to the outside surface of exterior walls in accordance with Section 18.04.030(a)(65)(B) and (C).

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(d) The establishment of accessory dwelling units and junior accessory dwelling units pursuant to this section shall not be conditioned on the correction of non-conforming zoning conditions; provided, however, that nothing in this section shall limit the authority of the Chief Building Official to require correction of building standards relating to health and safety.

(e) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. Nothing in this section shall preclude the Fire Marshal from accepting fire sprinklers as an alternative means of compliance with generally applicable fire protection requirements.

(f) Rental of any unit created pursuant to this section shall be for a term of 30 days or more.

(g) Attached units shall have independent exterior access from a proposed or existing single-family dwelling. Except for JADUs, attached units shall not have an interior access point to the primary dwelling (e.g. hotel door or other similar feature/appurtenance).

(h) Conversion of an existing accessory structure pursuant to Government Code section 65852.2(e)(1)(A) may include reconstruction in-place of a non-conforming structure, so long as the renovation of reconstruction does not increase the degree of non-compliance, such as increased height, envelope, or further intrusion into required setbacks. Any portion of an ADU that exceeds the envelope of the existing accessory structure shall be subject to Section 18.09.040.

Commented [YA2]: Previously recommended by PTC

(i) Street addresses shall be assigned to all units prior to building permit final to assist in emergency response.

(j) The unit shall not be sold separately from the primary residence.

(k) Replacement parking is not required when a garage, carport, or covered parking structure is converted to, or demolished in conjunction with the construction of, an ADU.

(l) JADUs shall comply with the requirements of Section 18.09.050.

18.09.040 Units Subject to Local Standards

(a) This section shall govern applications for ADUs and JADUs that do not qualify for approval under section 18.09.030 and for which the City may impose local standards pursuant to Government Code section 65852.2, subdivisions (a) through (d). Nothing in this section shall be interpreted to prohibit an ADU of up to 800 square feet, at the heights stated in Table 2, with a four foot side and rear setbacks.

(b) The Development Standards for units governed by this section are provided in Table 2. These regulations do not limit the height of existing structures converted into ADU/JADUs unless the envelope of the building is proposed to be modified beyond any existing legal, non-conforming condition.

Table 2: All other Units

	Attached	Detached	JADU
Number of Units Allowed[1]	1		1
Minimum size	150 sf		

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Maximum size	900 sf (1,000 sf for two or more bedrooms); no more than 50% of the size of the single-family home	900 sf (1,000 sf for two or more bedrooms)	500 sf
Setbacks	4 feet from side and rear lot lines; underlying zone standard for front setback		
Daylight Plane	Underlying zone standard per footnote (7)	N/A	Underlying zone standard
~~Initial Height~~	~~8 feet at lot line~~		
~~Angle~~	~~45 degrees~~		
Maximum Height[3]			
Res. Estate (RE)	30 feet		Underlying zone standard
Open Space (OS)	25 feet		
All other eligible zones	16 feet[(5)(6)(7)]		
Parking	None		
Square Footage Exemption when in conjunction with a single family home[(4)]	Up to 800 sf[~~(4)~~]		Up to 500 sf[~~(4)~~]

(1) An attached or detached ADU may be built in conjunction with a JADU on a lot with an existing or proposed single family home. One attached or detached ADU may be built in conjunction with an existing or proposed multifamily building.
(2) Lofts where the height from the floor level to the underside of the rafter or finished roof surface is 5' or greater shall count towards the unit's floor area.
(3) Units built in a flood zone are not entitled to any height extensions granted to the primary dwelling.
(4) Lots with both an ADU and a JADU may exempt a maximum combined total of 800 square feet of the ADU and JADU from FAR, Lot Coverage, and Maximum House Size calculations. Any square footage that exceeds this exemption shall contribute to the FAR, Lot Coverage, and (if attached) Maximum House Size calculations for the subject property. This exemption is not afforded to lots with existing or proposed multifamily dwellings.
(5) A height of 18 feet for a detached ADU on a lot with an existing or proposed single family or multifamily dwelling unit that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. An additional two feet in height shall be provided to accommodate a roof pitch on an ADU that is aligned with the roof pitch of the primary dwelling unit.
(6) A height of 18 feet for a detached ADU on a lot with an existing or proposed multifamily, multistory dwelling.
(7) A height of 25 feet or the height limitation in the underlying zone district that applies to the primary dwelling, whichever is lower, for an ADU that is attached to a primary dwelling. These ADUs shall not exceed two stories in height.

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Commented [YA4]: Response to HCD direction re daylight plane

Commented [YA5]: Response to HCD direction re JADUs

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(c) A single-family dwelling shall exist on the lot or shall be constructed on the lot in conjunction with the construction of an ADU/JADU.

(d) ADU and/or JADU square footage shall not be included in FAR, Lot Coverage, and Maximum House Size calculations for a lot with an existing or proposed single family home, up to the amounts stated in Table 2. ADU and/or JADU square footage in excess of the exemptions provided in Table 2 shall be included in FAR, Lot Coverage, and Maximum House Size calculations for the lot.

~~(d)~~(e) When there is an ADU or JADU attached to an existing or proposed primary dwelling, the shared wall between these units shall contribute to the maximum allowable Floor Area, Lot Coverage, and Maximum House Size of the primary unit. For a single-family home, this measurement shall be taken to the outside stud wall in accordance with Section 18.04.030(a)(65)(D). For a multi-family dwelling, this measurement shall be taken to the outside surface of exterior walls in accordance with Section 18.04.030(a)(65)(B) and (C).

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~~(e)~~(f) Attached units shall have independent exterior access from a proposed or existing single-family dwelling. Except for JADUs, attached units shall not have an interior access point to the primary dwelling (e.g. hotel door or other similar feature/appurtenance).

~~(f)~~(g) No protected tree shall be removed for the purpose of establishing an accessory dwelling unit unless the tree is dead, dangerous or constitutes a nuisance under Section 8.04.050. Any protected tree removed pursuant to this subsection shall be replaced in accordance with the standards in the Tree Technical Manual.

~~(g)~~(h) For properties listed in the Palo Alto Historic Inventory, the California Register of Historical Resources, the National Register of Historic Places, or considered a historic resource after completion of a historic resource evaluation, compliance with the appropriate Secretary of Interior's Standards for the Treatment of Historic Properties shall be required.

~~(h)~~(i) Noise-producing equipment such as air conditioners, water heaters, and similar service equipment that exclusively serves an ADU/JADU may be located anywhere on the site, provided they maintain the underlying front yard setback requirements of the property and, if the property is a corner lot, a 10-foot street-side setback. ~~shall be located outside of the setbacks for the ADU/JADU.~~ All such equipment shall be insulated and housed, except that the Director may permit installation without housing and insulation, provided that a combination of technical noise specifications, location of equipment, and/or other screening or buffering will assure compliance with the city's Noise Ordinance at the nearest property line. All service

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equipment must meet the city's Noise Ordinance in Chapter 9.10 of the Municipal Code.

~~(i)~~(j) Setbacks

(1) Detached units shall maintain a minimum three-foot distance from the primary unit, measured from the exterior walls of structures.

(2) ~~No~~ A basement or other subterranean portion that serves ~~of~~ an ADU/JADU ~~shall~~ may encroach into a setback required for the primary dwelling provided the following conditions are met:~~.~~

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(A) Newly constructed basement walls are no closer than four feet to an adjacent interior side or rear property line.

(B) A new lightwell associated with a basement shall not be placed closer than four feet to an adjacent property line. When visible from the right of way, these facilities shall be screened from view with vegetation.

(C) The new basement shall not negatively impact tree roots on the subject property or on adjacent lots such that it would require a protected tree to be removed or cause the tree to die.

(D) ADU/JADU basements shall contribute toward the unit's total allowable square footage. Any square footage in excess of the exemptions provided in this Section shall contribute to the total allowable limits for the site.

(3) Projections, including but not limited to windows, doors, mechanical equipment, venting or exhaust systems, are not permitted to encroach into the required setbacks, with the exception of a roof eave of up to 2 feet.

~~(3)~~(4) For corner lots developed as a single-family home only, when an existing or proposed primary dwelling unit is expanded or constructed simultaneously with the construction of a new ADU/JADU, all structures may be built to a 10-foot street-side setback and a 16-foot front yard setback, regardless of the presence of a special setback, unless a fire or life-safety regulation requires a greater setback.

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~~(4)~~(5) When an existing, legal, nonconforming structure is converted or reconstructed to create an ADU/JADU, any portion of the ADU/JADU that is in the same location and falls within the building envelope of the original structure shall not be subject to the development standards stated in this Section. Any portion of the ADU/JADU that is in a different location or

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exceeds the envelope of the original structure shall comply with the development standards stated in this Section.

~~(5)~~(6) Notwithstanding the development standards stated in Table 2 and paragraph (5) above, when an existing, legal, non-conforming structure is converted in-place to an ADU/JADU, the envelope of the structure may be modified to encroach further into a setback or daylight plane as follows:

(A) The height of the existing structure may be increased by no more than one linear foot in height commensurate to the existing roofline of the structure provided the height of the addition does not exceed 12 feet from grade. The roofline shall not be changed to a style other than what currently exists on the structure.

(B) Each non-conforming wall may be expanded by no more than six inches in thickness based on its existing location and configuration, as measured to exterior surface of the material, to provide for greater insulation and energy requirements provided that a minimum of one foot is maintained between the addition and an adjacent property line. An existing wall of a structure that does not currently have a separation of one foot from a parallel property line shall not be expanded outward.

(C) All other additions not specified here shall follow the standard setbacks for the ADU/JADU identified in Table 2.

~~(j)~~(k) Design

(1) Except on corner lots, it shall be encouraged but not required that 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 toward the interior side or rear yard of the property.

(2) Privacy

(A) Second story doors and decks shall not face a neighboring ~~dwelling unit~~ property line. Second story decks and balconies shall utilize screening barriers to prevent views into adjacent properties. These barriers shall provide a minimum five-foot, six-inch, screen wall from the floor level of the deck or balcony and shall not include perforations of any kind that would allow visibility between properties.

(B) ~~Second story w~~ Windows on a second floor, loft, or equivalent elevated space, excluding those required for egress, shall have a five-

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foot sill height as measured from the second-finished floor level, or utilize ~~obscured~~ opaque glazing on the entirety of ~~the window when facing~~ any window that faces adjacent properties. ~~Second story e~~Egress windows shall utilize ~~obscured~~ opaque glazing on the entirety of the windows ~~which face~~ that face adjacent properties.

(C) ~~Second story w~~Windows on a second floor, loft, or equivalent elevated space, shall be offset from neighbor's windows to maximize privacy.

(D) Egress windows on a second floor, loft, or equivalent elevated space shall not face adjacent property lines.

(E) Non-egress windows on the ground floor of an ADU or JADU are not permitted to face towards an adjacent interior property line.

(F) If the finished floor of an ADU or JADU is three (3) feet or more above grade:

i. First-floor windowsill(s) shall be located five feet above the finished floor; OR

ii. The lower half of window(s) (minimum of five feet above finished floor) shall utilize obscured glazing.

Commented [SG16]: Response to Item G

(G) Where feasible, the use of skylights (whether operable or not) shall be used in lieu of operable windows that face adjacent properties

(H) No exterior lighting shall be mounted above seven feet. All lighting mounted on walls shall be directed downwards and shall not direct light towards adjacent property lines. Any ground lighting shall not direct light upwards to the building or sky.

~~(k)~~(I) Parking

(1) Replacement parking is not required when a garage, carport, or covered parking structure is converted to, or demolished in conjunction with the construction of, an ADU.

(2) Replacement parking is required when an existing attached garage, carport, or covered parking structure is converted to a JADU or when a required, existing, uncovered parking space is expanded into by an ADU. These replacement spaces may be provided as uncovered spaces in any configuration on the lot including within the front or street side yard setback for the property.

Commented [YA17]: Previously recommended by PTC

Commented [SG18]: Suggested code for Item F

(A) The Director shall have the authority to modify required replacement parking spaces by up to one foot in width and length upon finding that the reduction is necessary to accommodate parking in a location otherwise allowed under this code and is not detrimental to public health, safety or the general welfare.

(B) Existing front and street side yard driveways may be enlarged to the minimum extent necessary to comply with the replacement parking requirement above. Existing curb cuts shall not be altered except when necessary to promote public health, safety or the general welfare.

(3) When parking is provided, the unit shall have street access from a driveway in common with the main residence in order to prevent new curb cuts, excessive paving, and elimination of street trees, unless separate driveway access will result in fewer environmental impacts such as paving, grading or tree removal.

~~(3)~~(4) When a single-family dwelling unit is permitted simultaneously with the construction of new ADU/JADUs, the primary unit's covered parking requirements identified in Chapter 18.10 and 18.12 do not need to be provided. Two uncovered parking spaces shall be provided in any configuration on the lot including within the front or street-side setback for the property.

Commented [YA19]: Previously recommended by PTC

~~(4)~~(5) 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. This space shall count towards the total floor area for the site but does not contribute to the maximum size of the unit unless ~~attached to the unit~~. Any attached garage shall not have an interior access point to the ADU/JADU (e.g. hotel door or other similar feature/appurtenance).

Commented [YA20]: Previously recommended by PTC
Also responsive to HCD direction

~~(l)~~(m) Miscellaneous requirements

(1) Street addresses shall be assigned to all units prior to building permit final to assist in emergency response.

(2) The unit shall not be sold separately from the primary residence.

(3) Rental of any unit created pursuant to this section shall be for a term of 30 days or more.

(4) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. Nothing in this section shall preclude the Fire Marshal from accepting fire sprinklers as an alternative means of compliance with generally applicable fire protection requirements.

18.09.050 Additional Requirements for JADUs

NOT YET APPROVED

(a) A junior accessory dwelling unit may only be created on a lot in a single-family residential zone with an existing or proposed single family residence. A junior accessory dwelling unit shall be attached to or created within the walls of an existing or proposed primary dwelling.

Commented [YA21]: Previously recommended by PTC
Also responsive to HCD direction

(b) The junior accessory dwelling unit shall include an efficiency kitchen, requiring the following components: A cooking facility with appliances, and; food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

i. A cooking facility with appliances shall mean, at minimum a one burner installed range, an oven or convection microwave, a 10 cubic foot refrigerator and freezer combination unit, and a sink that facilitates hot and cold water.

ii. A food preparation counter and storage cabinets shall be of reasonable size in relation to a JADU if they provide counter space equal to a minimum 24-inch depth and 36-inch length.

~~ii.~~iii. JADUs may share sanitation facilities (bathrooms, laundry facilities, etc.) with the primary unit. In this instance, the floor area and lot coverage associated with shared space shall count towards the primary unit's maximum allowances only. The combined sanitation facilities between the units shall include shower, toilet, and sink fixtures at a minimum and shall conform to the minimum requirements specified in the Building Code

Commented [YA22]: Previously recommended by PTC

(c) For the purposes of any fire or life protection ordinance or regulation or for the purposes of providing service for water, sewer, or power, a junior accessory dwelling unit shall not be considered a separate or new unit.

(d) The owner of a parcel proposed for a junior accessory dwelling unit shall occupy as a primary residence either the primary dwelling or the junior accessory dwelling. Owner-occupancy is not required if the owner is a governmental agency, land trust, or housing organization.

(e) Prior to the issuance of a building permit for a junior accessory dwelling unit, the owner shall record a deed restriction in a form approved by the city that includes a prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, requires owner-occupancy consistent with subsection (d) above, does not permit short-term rentals, and restricts the size and attributes of the junior dwelling unit to those that conform with this section.

~~18.09.060 Affordable ADU/JADU Pilot Program~~

NOT YET APPROVED

~~(a) This section shall govern applications for ADUs and JADUs that will be deed restricted for a minimum of 8 years to provide affordable rental units for households earning up to 80% of area median income. These units shall be exempt from all development impact fees, regardless of size, up to a maximum of $50,000 unit and a Citywide total of $400,000 per calendar year. To participate in this program, units shall follow the development standards in section 18.09.040 unless otherwise stated here.~~

~~(b) The City's affordable housing administrator shall income qualify potential tenants prior to issuing a permit for an affordable ADU/JADU. The property owner shall be responsible for paying the City's housing administrator to cover the cost associated with documenting a potential tenants income level as well as annually recertifying the tenant's income.~~

Commented [YA23]: Previously recommended by PTC

Commented [SG24R23]: Removed due to prior PTC motion

SECTION 2. Subsection (g) of Section 16.58.030 of Chapter 16.58 (Development Impact Fees) of Title 16 (Building) of the Palo Alto Municipal Code ("PAMC") is amended to read:

(f) Accessory dwelling units (ADU) less than 750 square feet in size. Any impact fees to be charged for an accessory dwelling unit of 750 square feet or more shall be proportional to the square footage of the primary dwelling unit. Any unit that is deed restricted to be rented at a rate of up to 80% of AMI, in accordance with the City's established Affordable ADU/JADU program, shall be exempt from all impact fees, regardless of size, up to a maximum of $50,000 per unit and a Citywide total of $400,000 per calendar year;

Commented [YA25]: Previously recommended by PTC

SECTION 3. Subsections (a)(4) and (a)(65) of Section 18.04.030 (Definitions) of Chapter 18.04 (Definitions) of Title 18 (Zoning) of the Palo Alto Municipal Code ("PAMC") is amended to read:

[. . .]

(4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An ADU bathroom shall include a shower, toilet, and sink fixture at a minimum and shall conform to the minimum requirements specified in the Building Code. An accessory dwelling unit also includes the following:

Commented [YA26]: Previously recommended by PTC

[. . .]

(65) "Gross Floor Area" is defined as follows:

[. . .]

(D) Low Density Residential Exclusions: In the RE and R-1 single-family residence districts and in the R-2 and RMD two-family residence districts, "gross floor area"

shall not include the following:

[. . .]

(ix) Accessory structures equal to or less than one hundred and twenty square feet in area shall not contribute to floor area provided that any attached porches, patios, or similar features are substantially open;

(E) In all districts, gross floor area shall be calculated to the nearest 1000th decimal point and represented and rounded on plans to the nearest 100th decimal point (e.g. 123.456 sf shall be rounded to 123.46 sf). Standard rounding shall apply such that a number of four or less shall be rounded down and a number of five or more shall be rounded up.

SECTION 4. Subsections (b)(5) of Section 18.10.080 (Accessory Uses and Facilities) of Chapter 18.10 (Low-Density Residential) of Title 18 (Zoning) of the Palo Alto Municipal Code ("PAMC") is amended to read:

[. . .]

(5) ~~When located within a required interior yard as permitted by this section, no such~~ No accessory building shall have more than two plumbing fixtures. Accessory buildings shall not be allowed to be turned into habitable space nor shall these structures be allowed to have showers (indoor or outdoor), gas lines, washer/dryers, and/or cooking facilities to be provided inside or attached to the structure, unless the structure is proposed as an ADU/JADU that satisfies all requirements of the Palo Alto Municipal Code.

[. . .]

SECTION 5. Subsections (b)(5) of Section 18.12.080 (Accessory Uses and Facilities) of Chapter 18.12 (Single-Family Residential District) of Title 18 (Zoning) of the Palo Alto Municipal Code ("PAMC") is amended to read:

[. . .]

(5) No ~~such~~ accessory building greater than 200 square feet in size shall have more than two plumbing fixtures. Accessory buildings shall not be allowed to be turned into habitable space nor shall these structures be allowed to have showers (indoor or outdoor), gas lines, washer/dryers, and/or cooking facilities to be provided inside or attached to the structure, unless the structure is proposed as an ADU/JADU that satisfies all requirements of the Palo Alto Municipal Code.

[. . .]

Commented [YA27]: Previously recommended by PTC

Commented [YA28]: Previously recommended by PTC

Commented [YA29]: Previously recommended by PTC

NOT YET APPROVED

SECTION 6. Subsection (b)(5) of 18.40.050 (Location and Use of Accessory Buildings) of Chapter 18.40 (General Standards and Exceptions) of Title 18 (Zoning) of the Palo Alto Municipal Code ("PAMC") is amended to read:

[. . .]

(5) No ~~such~~ accessory building shall have more than two plumbing fixtures. Accessory buildings shall not be allowed to be turned into habitable space nor shall these structures be allowed to have showers (indoor or outdoor), gas lines, washer/dryers, and/or cooking facilities to be provided inside or attached to the structure, unless the structure is proposed as an ADU/JADU that satisfies all requirements of the Palo Alto Municipal Code.

[. . .]

Commented [YA30]: Previously recommended by PTC

SECTION 7. Table 1 of 18.10.030 (Land Uses) of Chapter 18.10 (Low Density Residential) of Title 18 (Zoning) of the Palo Alto Municipal Code ("PAMC") is amended to read:

Commented [YA31]: Previously recommended by PTC

Table 1 shows the permitted and conditionally permitted uses for the low-density residential districts.

TABLE 1
PERMITTED AND CONDITIONALLY PERMITTED LOW-DENSITY RESIDENTIAL USES
[P = Permitted Use -- CUP = Conditional Use Permit Required]

	RE	R-2	RMD	Subject to Regulations in:
[. . .]				
Accessory Dwelling Units	P	P(2)	P(2)	~~18.42.040~~ 18.09
Junior Accessory Dwelling Units	P	P(2)	P(2)	~~18.42.040~~ 18.09
[. . .]				

(1) **Sale of Agricultural Products**: No permanent commercial structures for the sale or processing of agricultural products are permitted.
(2) **Accessory Dwelling Units in R-2 and RMD Zones:** An accessory dwelling unit or a Junior Accessory Dwelling Unit associated with a single-family residence on a lot in the R-2 or RMD zones is permitted, subject to the provisions of ~~Section 18.42.040~~ Chapter 18.09, and such that no more than two units result on the lot.
(3) [. . .]

SECTION 8. Table 1 of 18.12.030 (Land Uses) of Chapter 18.12 (Single-Family Residential District) of Title 18 (Zoning) of the Palo Alto Municipal Code ("PAMC") is amended to read:

Commented [YA32]: Previously recommended by PTC

The permitted and conditionally permitted uses for the single family residential districts are shown in Table 1:

Table 1
PERMITTED AND CONDITIONAL R-1 RESIDENTIAL USES

	R-1 and all R-1 Subdistricts	Subject to Regulations ~~for~~ in:
[. . .]		
Accessory Dwelling Units	P(1)	~~18.42.040~~ 18.09
Junior Accessory Dwelling Unit	P(1)	~~18.42.040~~ 18.09
[. . .]		

(1) An Accessory Dwelling Unit or a Junior Accessory Dwelling Unit associated with a single-family residence on a lot is permitted, subject to the provisions of Chapter 18.09~~Section 18.42.040, and such that no more than two total units result on the lot~~.

SECTION 9. Table 1 of 18.13.030 (Land Uses) of Chapter 18.13 (Multiple-Family Residential Districts) of Title 18 (Zoning) of the Palo Alto Municipal Code ("PAMC") is amended to read:

Commented [YA33]: Previously recommended by PTC

Table 1 specifies the permitted and conditionally permitted land uses in the multiple-family residence districts.

Table 1
Multiple Family Residential Uses
[P = Permitted Use • CUP = Conditional Use Permit Required]

	RM-20	RM-30	RM-40	Subject to Regulations in:
[. . .]				
Accessory Dwelling Unit ~~when accessory to permitted single-family residence~~	P~~(1) & (4)~~	P~~(1) & (4)~~	P~~(2) & (4)~~	~~18.42.040~~ 18.09
Junior Accessory Dwelling Unit when accessory to permitted single-family residence	P(1)	P(1)	P(2)	18.09
[. . .]				

(1) Permitted use only on lots less than 8,500 square feet in size.
(2) Permitted use only on lots less than 6,000 square feet in size.
(3) Permitted use only if lot is substandard in size, e.g., less than 8,500 square feet or less than 70 feet in width, or at the perimeter of a site in excess of one acre where used as a transition to low-density residential area.
~~(4) An accessory dwelling unit associated with a single-family residence on a lot is permitted if it is contained within the existing space of a single-family residence or an existing accessory structure in accordance with and pursuant to Section 18.42.040(a)(5), subject to the provisions of Section 18.42.040 and such that no more than two total units result on the lot.~~

SECTION 10. Subsection (a) of Section 18.10.090 (Basements) of Chapter 18.10 (Low Density Residential) of Title 18 (Zoning) of the Palo Alto Municipal Code ("PAMC") is amended to read:

NOT YET APPROVED

[. . .]

(a) Permitted Basement Area
Basements may not extend beyond the building footprint and basements are not allowed below any portion of a structure that extends into required setbacks, except to the extent that the main residence is permitted to extend into the rear yard setback by other provisions of this code. Basements which serve the primary unit may not extend under an attached ADU or JADU when those secondary units utilize the bonus floor area, lot coverage, and/or maximum house size exemptions identified in Section 18.09.

[. . .]

SECTION 11. Subsection (a) of Section 18.12.090 (Basements) of Chapter 18.13 (Single-Family Residential District) of Title 18 (Zoning) of the Palo Alto Municipal Code ("PAMC") is amended to read:

[. . .]

(a) Permitted Basement Area
Basements may not extend beyond the building footprint and basements are not allowed below any portion of a structure that extends into required setbacks, except to the extent that the main residence is permitted to extend into the rear yard setback by other provisions of this code. Basements which serve the primary unit may not extend under an attached ADU or JADU when those secondary units utilize the bonus floor area, lot coverage, and/or maximum house size exemptions identified in Section 18.09.

[. . .]

Commented [SG34]: Response to item I in staff report

SECTION 12. Any provision of the Palo Alto Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 13. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 14. The Council finds that the adoption of this 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 it constitutes minor adjustments to the City's zoning ordinance to implement State law 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.

SECTION 15. This ordinance shall be effective on the thirty-first date after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

_____
City Clerk

_____
Mayor

APPROVED AS TO FORM:

APPROVED:

_____
Assistant City Attorney

_____
City Manager

_____
Director of Planning and
Development Services

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
SOM, *Governor*

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

December 23, 2021

Jonathan Lait, Planning Director
Planning Department
City of Palo Alto
250 Hamilton Avenue – Fifth Floor
Palo Alto, CA 94301

Dear Jonathan Lait:

RE: Review of Palo Alto's Accessory Dwelling Unit (ADU) Ordinance under ADU Law (Gov. Code § 65852.2)

Thank you for submitting the City of Palo Alto (City) accessory dwelling unit (ADU) ordinance (Ordinance No.5507) adopted September 26, 2020, to the California Department of Housing and Community Development (HCD). The ordinance was received on October 20, 2020. HCD has reviewed the ordinance and is submitting these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD has determined that the ordinance does not comply with section 65852.2 in the manner noted below. Under the statute, the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than January 23, 2022. HCD will review and consider any written response received from the City before that date in advance of taking further action authorized by Government Code section 65852.2.

The adopted ADU ordinance meets many statutory requirements. However, the ordinance must be revised to comply with State ADU Law (Gov. Code, § 65852.2), as follows:

- 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.

- 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.

- 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).)

- 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 it at least 16 feet tall. (Gov. Code, § 65852.2, subds. (c)(2)(C) and (e)(1)(B)(ii).)

- 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.

- 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).)

- 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.

- 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).)

- 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.

- 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."

- 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."

- 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.

In these respects, revisions are necessary to comply with statute.

HCD will consider any written response to these findings, such as a revised ordinance or a detailed plan to bring the ordinance into compliance with law by a date certain, before taking further action authorized pursuant to Government Code section 65852.2. Please note that HCD may notify the Attorney General's Office in the event that the City fails to take appropriate and timely action under section 65852.2, subdivision (h).

HCD appreciates the City's efforts in the preparation and adoption of the ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please contact Lauren Lajoie of our staff, at (916) 776-7495 or at Lauren.Lajoie@hcd.ca.gov if you have any questions or would like HCD's technical assistance in these matters.

Sincerely,

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

PLANNING & DEVELOPMENT SERVICES

CITY OF PALO ALTO
250 Hamilton Avenue, 5th Floor
Palo Alto, CA 94301
(650) 329-2441

February 3, 2022

Lauren Lajoie
Housing & Community Development
Division of Housing Policy Development
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
Lauren.Lajoie@hcd.ca.gov

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 it 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,

DocuSigned by:
293CF322E1294F6...
Jonathan Lait
Director of Planning and Development Services

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Jonathan Lait Jonathan.Lait@CityofPaloAlto.org Interim Director Planning and Community Environment City of Palo Alto Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	DocuSigned by: 293CF322E1294F6... Signature Adoption: Uploaded Signature Image Using IP Address: 99.88.42.180	Sent: 2/3/2022 4:42:20 PM Viewed: 2/3/2022 4:42:59 PM Signed: 2/3/2022 4:43:06 PM

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Certified Delivered	Security Checked	2/3/2022 4:42:59 PM
Signing Complete	Security Checked	2/3/2022 4:43:06 PM
Completed	Security Checked	2/3/2022 4:43:08 PM

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DIVISION OF HOUSING POLICY DEVELOPMENT
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December 21, 2022

Jonathan Lait, Director
Planning and Development Services
City of Palo Alto
250 Hamilton Avenue, 5th Floor
Palo Alto, CA 94301

Dear Jonathan Lait:

RE: City of Palo Alto Accessory Dwelling Unit (ADU) Ordinance – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) thanks the City of Palo Alto (City) for submitting accessory dwelling unit (ADU) Ordinance Number 5507 (Ordinance) and for its response to HCD's December 23, 2021, written findings of non-compliance. HCD appreciates the time and effort the City took in crafting its February 3, 2022, response, and for the conversation between City staff and HCD Analyst Lauren Lajoie on February 2, 2022. Nevertheless, HCD has concerns with the City's response as it fails to address identified inconsistencies between the City's ADU ordinance and State ADU Law, as outlined in this letter.

HCD requests that the City respond to this letter no later than January 20, 2023, with a detailed plan of action and timeline, to bring its Ordinance into compliance pursuant to Government Code section 65852.2, subdivision (h)(2)(B).

Background and Summary of Issues
In its December 23, 2021, findings, HCD detailed where it found the Ordinance violates Government Code section 65852.2. In its February 3, 2022, letter, the City responded point by point to the findings as they were presented in the HCD letter. While the responses indicate a willingness to come into compliance with state law, HCD remains concerned that the proposed changes to the City's Ordinance are insufficient. This letter will address HCD's findings for which the City's response and/or commitment to correct was not satisfactory and where HCD still considers an inconsistency between the Ordinance and State ADU Law.

1) **HCD's Original Finding**
Daylight Plane - Section 18.09.040(b): 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.

Palo Alto's Response
"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."

HCD's Follow-up Response
On February 23, 2022, HCD received a copy of an email from Assistant City Attorney (ACA) Albert Yang dated August 30, 2021. ACA Yang sought clarification on behalf of the City on whether local government could enforce a development standard that would require that any portion of an ADU fall below 16 feet in height. The email states: "Subdivision (c)(2)(C) provides that a local agency may not establish "[1] any other minimum or maximum size for an accessory dwelling unit, [2] size based upon a percentage of the proposed or existing primary dwelling, or [3] limits on lot coverage, [4] floor area ratio, [5] open space, and [6] minimum lot size [. . .] 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." ACA Yang argues that the law is very specific regarding the development standards addressed and it (*the subdivision)* specifically recognizes that the list does not encompass all development standards. ACA Yang states, "The specific development standards addressed in subdivision (c)(2)(C) do not include daylight plane standards." ACA Yang impliedly concludes that because the development standards, which ACA Yang numbered from [1] through [6], do not list daylight plane standards, the City may impose daylight plane standards over the minimum 16-foot height requirement.

However, the City incorrectly cited subdivision (c)(2)(C) above; thereby, creating a list of "development standards" from portions of (c)(2)(A) and (c)(2)(B)(i) and (ii) and conflated these with "other local development standards" found in subdivision (c)(2)(C). Accurately cited, subdivision (c)(2)(C) states:

> (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.

State ADU Law authorizes a local agency to establish the minimum and maximum size requirements for ADUs in subdivision (c)(1), but any such size requirement must allow for a minimum height of 16 feet while being constructed in compliance with all other local development standards. This height requirement is meant to be in harmony with local development standards. Because the subdivision has set the minimum height, authorized by statute, local design standards set in the ordinance cannot invalidate this provision, pursuant to Government Code section 65852.2 (a)(5). Therefore, **the minimum height of all proposed ADUs is 16 feet and cannot be limited by Daylight Plane restrictions**. Table 2 must be amended to clarify this point. Please note that SB 897 (2022), effective January 1, 2023, amends this subdivision, and adds provisions regarding the minimum height for detached and attached ADUs.

2) **HCD's Original Finding**
Floor Area & JADUs - Section 18.09.040(b): 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.

Palo Alto's Response
"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."

HCD's Follow-up Response
HCD supports the City's attempt to add clarifying language. Converting an area within an existing home should not be counted. To clarify footnote 4 in Table 2, the City could include, for example, "This provision applies to JADUs in **proposed** single-family dwellings, or remodels that increase the square footage of a single-family dwelling."

3) **HCD's Original Finding**
Noise-Producing Equipment - Section 18.09.040(h): 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)).

Palo Alto's Response
"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."

HCD's Follow-up Response
JADUs are entirely within the walls of a proposed or existing single-family dwelling and as such not subject to any setback requirements. Therefore, the City should remove the reference to JADU from *Section 18.09.040(h).* The City writes, "For new construction; however, the City permits JADUs to be built at a lesser setback than a single-family home normally would." Please clarify this statement for us. HCD applauds the City's intention to promote JADUs by relaxing setback requirements. However, since setbacks do not apply to JADUs, the City would have to relax the setback requirements for the primary single-family dwelling to achieve the desired effect.

4) **HCD's Original Finding**
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."

Palo Alto's Response
"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."

HCD's Follow-Up Response
Requirements such as stipulating the facing of entranceways or the location of stairways may unduly restrict the creation of ADUs on some lots. Statute for both ADUs (Gov. Code, § 65852.2, subd. (e)(1)(A)(ii)) and JADUs (Gov. Code, § 65852.22, subd. (a)(5)) require independent entry into the unit, and a constraint on the location of an entry door may prohibit the creation of an additional housing unit. In addition, this requirement could add significant expense if entry doors must be installed in an exterior wall instead of utilizing an existing doorway facing the same direction as the entryway to the primary dwelling. The City must either eliminate this restriction or modify it such that it applies "when feasible."

5) **HCD's Original Finding**
Parking - Section 18.09.040(k)(iv) 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.

Palo Alto's Response
"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."

HCD's Follow-up Response
Covered parking does not count towards the total floor area of the ADU. An ADU is defined in Government Code section 65852.2, subdivision (j)(1), as "complete independent living facilities," and subdivision (j)(4) further specifies that the living area for the ADU "does not include a garage..." Thus, a covered parking space or garage, whether or not attached to a unit, would be considered "non-livable" space. Therefore, as stated in our original finding, covered parking should not count towards the total floor area of the site as it would unduly limit the allowable size of an ADU established by state law. Similarly, it should not directly count toward the area available for the ADU, as this could also restrict the size of the ADU. The addition of garage space to the ADUs livable space would violate ADU size requirements found in Government Code section 65852.2, subdivisions (a)(1)(D)(iv) and (v), and (c).

While the City raises concerns of potential illegal expansion, the City may not adopt an ordinance that would violate State ADU Law. The City may rely on its enforcement of codes and standards to mitigate its concerns. The City should remove the portion of this section stating "unless attached to the unit" or otherwise modify the section to comply with State ADU Law.

Conclusion

Given the deficiencies described above and in HCD's December 23, 2021, letter, the City's Ordinance is inconsistent with State ADU Law. HCD requests that the City respond to this letter no later than January 20, 2023, with a detailed plan of action and timeline, to bring its Ordinance into compliance pursuant to Government Code section 65852.2, subdivision (h)(2)(B). Specifically, to bring its ADU ordinance into compliance, the City must either amend the Ordinance according to HCD's findings to comply with State ADU Law (Gov. Code, § 65852.2, subd. (h)(2)(B)(i)) or readopt the Ordinance without changes. Should the City choose to readopt the Ordinance without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinance complies with State ADU Law despite the findings made by HCD. (Gov. Code, § 65852.2, subd. (h)(2)(B)(ii), (h)(3)(A).)

HCD will review and consider any plan of action and timeline received from the City before January 20, 2023, in advance of taking further action authorized by Government Code section 65852.2.

HCD appreciates the City's efforts provided in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Mike Van Gorder, of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov.

Sincerely,

Shannan West
Housing Accountability Unit Chief

PLANNING & DEVELOPMENT SERVICES

CITY OF PALO ALTO
250 Hamilton Avenue, 5th Floor
Palo Alto, CA 94301
(650) 329-2441

January 13, 2023

Mike Van Gorder
Housing & Community Development
Division of Housing Policy Development
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
Mike.VanGorder@hcd.ca.gov

Dear Mr. Van Gorder,

Thank you for the telephone call today regarding HCD's letter dated December 21, 2022, which is attached to and referenced in this response. Staff appreciates HCD's thorough review of the City's ADU ordinance and consideration of the City's prior comments in response to HCD compliance concerns. There are five outstanding issues referenced in the letter related to various development standards. City staff responses to each topic area is provided below; in short, staff will recommend that the City's ordinance be updated in accordance with HCD's comments.

1. **Daylight Plane**. Staff understands HCD's response to mean that all portions of an ADU must be permitted at the heights now provided Government Code section 65852.2(c)(2)(D). City staff will recommend to its legislative body updating the ordinance to reflect that daylight plane does not limit ADU heights below the heights provided in the Government Code.

2. **Floor Area and JADUs**. The City's intention with respect to JADUs has always been that they will not impact the development potential for single-family dwelling, whether through floor area, lot coverage, or any other development standard. The City believes this is consistent with HCD's direction and will ensure that its ordinance reflects this intention in a manner that makes sense in the context and structure of the City's other zoning regulations.

3. **Noise Producing Equipment/JADU setbacks**. The City does not believe there is a substantive disagreement in this area. Typically, in Palo Alto, new construction related to a single-family residence requires a six-foot side yard and 20-foot rear yard setback. However, as an incentive for JADU production, the City's zoning regulations provide a more lenient four-foot setback for new construction that is proposed to contain a JADU. While, it may be technically more accurate to call this this four-foot setback a "setback for the new construction portion of a single-family home that is dedicated to a JADU," we

believe it is easier for applicants and staff to refer to this as a "setback for a new construction JADU." Nevertheless, staff will explore whether there are clearer ways to express this in the upcoming ADU code amendment.

With respect to the topic of noise producing equipment, the City's municipal regulations prohibit such freestanding or attached appurtenances from being located closer to the property line than is already allowed by state law for the ADU/JADU structure. The City is currently working on amendments to the regulations pertaining to certain noise producing equipment to allow greater flexibility for the primary unit in an effort to advance the City's carbon reduction goals.

4. **Corner Lots**. The City continues to be unaware of any evidence that a simple objective design requirement related to entryways creates an excessive constraint on ADU production – that has certainly not been our experience processing over 527 ADU permits since 2018. Nevertheless, City staff will recommend an additional clarifying statement to the effect of "when feasible," or removal of this provision altogether.

5. **Parking**. The City was not able to find a relationship in state law between the term "living area" and minimum or maximum sizes for an ADU. Indeed, the term "living area" is only used in Gov. Code 65852.2(a)(1)(D)(vii) with respect to conversion of existing structures. Nonetheless, the City understands HCD's position that garage area should not count toward the "size" of an ADU. City staff will recommend removal of the phrase "unless attached to the unit", as suggested by HCD.

City staff intends to propose amendments to the City's ADU ordinance consistent with HCD direction at the earliest practical opportunity. At this time, staff anticipates a hearing before the Planning and Transportation Commission (PTC) by the end of March to discuss and address the requested changes from HCD. Following the PTC's recommendation, staff will then place the ordinance on the City Council's agenda for adoption; anticipated for May, if not sooner. If the City deviates from this schedule, staff will contact HCD and provide relevant updates.

Thank you again for reviewing our response letters, if you have any questions, please contact me at (650) 329-2676 or by email at jonathan.lait@cityofpaloalto.org.

Sincerely,

DocuSigned by:
Jonathan Lait
Director of Planning and Development Services

Attachment: HCD Letter, dated December 21, 2022

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY — SOM, *Governor*

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

December 21, 2022

Jonathan Lait, Director
Planning and Development Services
City of Palo Alto
250 Hamilton Avenue, 5th Floor
Palo Alto, CA 94301

Dear Jonathan Lait:

RE: City of Palo Alto Accessory Dwelling Unit (ADU) Ordinance – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) thanks the City of Palo Alto (City) for submitting accessory dwelling unit (ADU) Ordinance Number 5507 (Ordinance) and for its response to HCD's December 23, 2021, written findings of non-compliance. HCD appreciates the time and effort the City took in crafting its February 3, 2022, response, and for the conversation between City staff and HCD Analyst Lauren Lajoie on February 2, 2022. Nevertheless, HCD has concerns with the City's response as it fails to address identified inconsistencies between the City's ADU ordinance and State ADU Law, as outlined in this letter.

HCD requests that the City respond to this letter no later than January 20, 2023, with a detailed plan of action and timeline, to bring its Ordinance into compliance pursuant to Government Code section 65852.2, subdivision (h)(2)(B).

Background and Summary of Issues
In its December 23, 2021, findings, HCD detailed where it found the Ordinance violates Government Code section 65852.2. In its February 3, 2022, letter, the City responded point by point to the findings as they were presented in the HCD letter. While the responses indicate a willingness to come into compliance with state law, HCD remains concerned that the proposed changes to the City's Ordinance are insufficient. This letter will address HCD's findings for which the City's response and/or commitment to correct was not satisfactory and where HCD still considers an inconsistency between the Ordinance and State ADU Law.

1) **HCD's Original Finding**
Daylight Plane - Section 18.09.040(b): 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.

Palo Alto's Response
"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."

HCD's Follow-up Response
On February 23, 2022, HCD received a copy of an email from Assistant City Attorney (ACA) Albert Yang dated August 30, 2021. ACA Yang sought clarification on behalf of the City on whether local government could enforce a development standard that would require that any portion of an ADU fall below 16 feet in height. The email states: "Subdivision (c)(2)(C) provides that a local agency may not establish "[1] any other minimum or maximum size for an accessory dwelling unit, [2] size based upon a percentage of the proposed or existing primary dwelling, or [3] limits on lot coverage, [4] floor area ratio, [5] open space, and [6] minimum lot size [. . .] 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." ACA Yang argues that the law is very specific regarding the development standards addressed and it (*the subdivision)* specifically recognizes that the list does not encompass all development standards. ACA Yang states, "The specific development standards addressed in subdivision (c)(2)(C) do not include daylight plane standards." ACA Yang impliedly concludes that because the development standards, which ACA Yang numbered from [1] through [6], do not list daylight plane standards, the City may impose daylight plane standards over the minimum 16-foot height requirement.

However, the City incorrectly cited subdivision (c)(2)(C) above; thereby, creating a list of "development standards" from portions of (c)(2)(A) and (c)(2)(B)(i) and (ii) and conflated these with "other local development standards" found in subdivision (c)(2)(C). Accurately cited, subdivision (c)(2)(C) states:

> (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.

State ADU Law authorizes a local agency to establish the minimum and maximum size requirements for ADUs in subdivision (c)(1), but any such size requirement must allow for a minimum height of 16 feet while being constructed in compliance with all other local development standards. This height requirement is meant to be in harmony with local development standards. Because the subdivision has set the minimum height, authorized by statute, local design standards set in the ordinance cannot invalidate this provision, pursuant to Government Code section 65852.2 (a)(5). Therefore, **the minimum height of all proposed ADUs is 16 feet and cannot be limited by Daylight Plane restrictions**. Table 2 must be amended to clarify this point. Please note that SB 897 (2022), effective January 1, 2023, amends this subdivision, and adds provisions regarding the minimum height for detached and attached ADUs.

2) **HCD's Original Finding**
Floor Area & JADUs - Section 18.09.040(b): 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.

Palo Alto's Response
"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."

HCD's Follow-up Response
HCD supports the City's attempt to add clarifying language. Converting an area within an existing home should not be counted. To clarify footnote 4 in Table 2, the City could include, for example, "This provision applies to JADUs in **proposed** single-family dwellings, or remodels that increase the square footage of a single-family dwelling."

3) **HCD's Original Finding**
Noise-Producing Equipment - Section 18.09.040(h): 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)).

Palo Alto's Response
"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."

HCD's Follow-up Response
JADUs are entirely within the walls of a proposed or existing single-family dwelling and as such not subject to any setback requirements. Therefore, the City should remove the reference to JADU from *Section 18.09.040(h).* The City writes, "For new construction; however, the City permits JADUs to be built at a lesser setback than a single-family home normally would." Please clarify this statement for us. HCD applauds the City's intention to promote JADUs by relaxing setback requirements. However, since setbacks do not apply to JADUs, the City would have to relax the setback requirements for the primary single-family dwelling to achieve the desired effect.

4) **HCD's Original Finding**
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."

Palo Alto's Response
"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."

HCD's Follow-Up Response
Requirements such as stipulating the facing of entranceways or the location of stairways may unduly restrict the creation of ADUs on some lots. Statute for both ADUs (Gov. Code, § 65852.2, subd. (e)(1)(A)(ii)) and JADUs (Gov. Code, § 65852.22, subd. (a)(5)) require independent entry into the unit, and a constraint on the location of an entry door may prohibit the creation of an additional housing unit. In addition, this requirement could add significant expense if entry doors must be installed in an exterior wall instead of utilizing an existing doorway facing the same direction as the entryway to the primary dwelling. The City must either eliminate this restriction or modify it such that it applies "when feasible."

5) **HCD's Original Finding**
Parking - Section 18.09.040(k)(iv) 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.

Palo Alto's Response
"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."

HCD's Follow-up Response
Covered parking does not count towards the total floor area of the ADU. An ADU is defined in Government Code section 65852.2, subdivision (j)(1), as "complete independent living facilities," and subdivision (j)(4) further specifies that the living area for the ADU "does not include a garage..." Thus, a covered parking space or garage, whether or not attached to a unit, would be considered "non-livable" space. Therefore, as stated in our original finding, covered parking should not count towards the total floor area of the site as it would unduly limit the allowable size of an ADU established by state law. Similarly, it should not directly count toward the area available for the ADU, as this could also restrict the size of the ADU. The addition of garage space to the ADUs livable space would violate ADU size requirements found in Government Code section 65852.2, subdivisions (a)(1)(D)(iv) and (v), and (c).

While the City raises concerns of potential illegal expansion, the City may not adopt an ordinance that would violate State ADU Law. The City may rely on its enforcement of codes and standards to mitigate its concerns. The City should remove the portion of this section stating "unless attached to the unit" or otherwise modify the section to comply with State ADU Law.

Conclusion

Given the deficiencies described above and in HCD's December 23, 2021, letter, the City's Ordinance is inconsistent with State ADU Law. HCD requests that the City respond to this letter no later than January 20, 2023, with a detailed plan of action and timeline, to bring its Ordinance into compliance pursuant to Government Code section 65852.2, subdivision (h)(2)(B). Specifically, to bring its ADU ordinance into compliance, the City must either amend the Ordinance according to HCD's findings to comply with State ADU Law (Gov. Code, § 65852.2, subd. (h)(2)(B)(i)) or readopt the Ordinance without changes. Should the City choose to readopt the Ordinance without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinance complies with State ADU Law despite the findings made by HCD. (Gov. Code, § 65852.2, subd. (h)(2)(B)(ii), (h)(3)(A).)

HCD will review and consider any plan of action and timeline received from the City before January 20, 2023, in advance of taking further action authorized by Government Code section 65852.2.

HCD appreciates the City's efforts provided in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Mike Van Gorder, of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov.

Sincerely,

Shannan West
Housing Accountability Unit Chief

State of California

GOVERNMENT CODE

Section 65852.2

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) Except as provided in Section 65852.26, the accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, except that the construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code (Title 24 of the California Code of Regulations), unless the building official or enforcement agency of the local agency makes a written finding based on substantial evidence in the record that the construction of the accessory dwelling unit could have a specific, adverse impact on public health and safety. Nothing in this clause shall be interpreted to prevent a local agency from changing the occupancy code of a space that was unhabitable space or was only permitted for nonresidential use and was subsequently converted for residential use pursuant to this section.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) (A) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance

regulating the issuance of variances or special use permits. The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(B) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subparagraph (A), the permitting agency shall, within the time period described in subparagraph (A), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(4) The ordinance shall require that a demolition permit for a detached garage that is to be replaced with an accessory dwelling unit be reviewed with the application for the accessory dwelling unit and issued at the same time.

(5) The ordinance shall not require, and the applicant shall not be otherwise required, to provide written notice or post a placard for the demolition of a detached garage that is to be replaced with an accessory dwelling unit, unless the property is located within an architecturally and historically significant historic district.

(6) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(7) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(8) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a

proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, except that, subject to subparagraphs (B) and (C), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

(B) (i) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit before January 1, 2025.

(ii) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit that was permitted between January 1, 2020, and January 1, 2025.

(C) Notwithstanding subparagraphs (A) and (B), a local agency may require that an accessory dwelling unit be used for rentals of terms longer than 30 days.

(9) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(10) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) (1) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create or serve an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create or serve a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create or serve the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved.

(2) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to paragraph (1), the permitting agency shall, within the time period described in paragraph (1), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any requirement for a zoning clearance or separate zoning review or 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, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(D) Any height limitation that does not allow at least the following, as applicable:

(i) A height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit.

(ii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. A local agency shall also allow an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit.

(iii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.

(iv) A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. This clause shall not require a local agency to allow an accessory dwelling unit to exceed two stories.

(d) Notwithstanding any other law, and whether or not the local agency has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), all of the following shall apply:

(1) The local agency shall not impose any parking standards for an accessory dwelling unit in any of the following instances:

(A) Where the accessory dwelling unit is located within one-half mile walking distance of public transit.

(B) Where the accessory dwelling unit is located within an architecturally and historically significant historic district.

(C) Where the accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(D) When onstreet parking permits are required but not offered to the occupant of the accessory dwelling unit.

(E) When there is a car share vehicle located within one block of the accessory dwelling unit.

(F) When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this paragraph.

(2) The local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation as provided in clause (i), (ii), or (iii) as applicable, of subparagraph (D) of paragraph (2) of subdivision (c).

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) (i) Not more than two accessory dwelling units that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limitation in clause (i), (ii), or (iii), as applicable, of subparagraph (D) of paragraph (2) of subdivision (c) and rear yard and side setbacks of no more than four feet.

(ii) If the existing multifamily dwelling has a rear or side setback of less than four feet, the local agency shall not require any modification of the existing multifamily dwelling as a condition of approving the application to construct an accessory dwelling unit that satisfies the requirements of this subparagraph.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing multifamily dwelling.

(4) A local agency may require owner-occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (8) of subdivision (a).

(5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose objective standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square

feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section shall supersede a conflicting local ordinance. This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the

reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(7) "Objective standards" means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.

(8) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(9) "Permitting agency" means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.

(10) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(11) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(12) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(*l*) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2), a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(Amended (as amended by Stats. 2021, Ch. 343, Sec. 1) by Stats. 2022, Ch. 664, Sec. 2.5. (SB 897) Effective January 1, 2023.)