



City Council Agenda Report

Meeting Date: April 9, 2024

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Approved By: Gabriel Engeland

Subject:

Comprehensive Accessory Dwelling Unit (ADU) Update – Housing Element Implementing Ordinance

COUNCIL PRIORITY AREA

- Business Communities
- Circulation Safety and Efficiency
- Environmental Sustainability
- Housing
- Neighborhood Safety Infrastructure
- General Government

RECOMMENDATION

Introduce and Waive Further Reading of Zoning Ordinance Text Amendments which implement programs identified in the adopted housing element, Program 2.D: Encourage and streamline Accessory Dwelling Units (ADUs), and Program 6.G: Housing Mobility, and necessary amendments to comply with State law; and consideration of the City of Los Altos Planning Commission's March 21, 2024, recommendation with modifications and find that this ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970.

INITIATED BY:

City of Los Altos adopted 6th Cycle Housing Element, Program 2.3, and 6.G

FISCAL IMPACT

No fiscal impacts are associated with the adoption of these implementing regulations.

ENVIRONMENTAL REVIEW

This Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970.

BACKGROUND

On January 24, 2023, the Los Altos City Council adopted the City's 6th Cycle Housing Element 2023-2031. As required by law, the adopted housing element has several housing programs contained within. The City of Los Altos identified specific programs in its housing element that will allow it to implement the stated policies and achieve the stated goals and objectives. Programs

must include specific action steps the City will take to implement its policies and achieve its goals and objectives. Programs must also include a specific timeframe for implementation, identify the agencies or officials responsible for implementation, describe the city's specific role in implementation, and (whenever possible) identify specific, measurable outcomes.

In November 2022, the City of Los Altos was informed by the California Department of Housing and Community Development (HCD) that the existing Accessory Dwelling Unit (ADU) Ordinance was out of compliance and not consistent with State law; the existing ordinance was last updated on October 27, 2020. Additionally, HCD informed the Development Services Director during the Housing Element Update process that the Proactive Enforcement Unit had received complaints regarding existing regulations not being consistent with law. The draft ordinance is to bring the Accessory Dwelling Unit ordinance into compliance.

ANALYSIS

The City's adopted 6th Cycle Housing Element 2023-2031, included Program 2.D. The housing program requires the proposed ordinance amendments to *Encourage and streamline Accessory Dwelling Units (ADUs)*.

Program 2.D: Encourage and streamline Accessory Dwelling Units (ADUs).

The city will continue to promote ADU production through streamlined review and clear informational resources, including handouts and other materials. To increase the number of ADU's constructed, the city will:

- *Prepare permit ready standard ADU plans with a variety of unit sizes, bedroom count, and architectural styles.*
- *Publicize and promote the standard ADU plans through multiple outreach methods and languages, targeting single-family households and neighborhoods. Outreach material will also include fair housing information (e.g., source of income protection).*
- *Remove any barriers in the review process of an ADU (a preliminary planning review was previously required; the city has eliminated this requirement and will continue to no longer require the preliminary planning review).*
- *Ensure ministerial processing of all ADUs.*
- *Hire one additional planning staff position to review ministerial applications which includes ADUs.*
- *Promote the availability of funding for ADUs, including the CalHFA ADU Grant Program that currently provides up to \$40,000 to reimburse homeowners for predevelopment costs necessary to build and occupy an ADU.*
- *With completion of a comprehensive fee study (see Program 3.D), the city will adopt a zero cost (\$) permit fee for ADUs to incentivize the creation of ADUs.*
- *Amend the ADU ordinance to comply with State law, pending formal comment from HCD.*
- *Annually review ADU ordinance for compliance with State law and process any necessary amendments within six months.*

The city will also monitor ADU production and affordability throughout the planning period and implement additional action if target ADU numbers are not being met.

Responsible Body: Development Services Department

Funding Source: General Fund

Time Frame: Ongoing; if ADU targets are not being met by January 2027, the city will review and revise efforts to increase ADU construction (e.g., fee waivers, local financing program for ADUs, etc.) no later than July 2027. Outreach will occur annually, targeting single-family households and neighborhoods. The City's action shall be commensurate with the level of shortfall from construction targets (i.e., if shortfall is significant, a rezoning action may be required, if shortfall is slight, additional incentives may be appropriate). Additional planning staff position will be budgeted and hired by the end of 2022. The city will release an RFQ by July 2023 for permit ready standard ADU plans; by the end of year 2024 the city will have adopted standard ADU design plans. The City will adopt amendments to the ADU ordinance six months from receipt of HCD's formal comment letter.

Objective: Adopt and provide City Standard Permit Ready ADU Plans (2024). 322 ADUs by the end of the planning period with at least 80 percent of ADUs (260 ADUs) located in the highest resource areas of the city.

Geographic Targeting: Highest resource, single-family neighborhoods throughout Los Altos.

The City's adopted 6th Cycle Housing Element 2023-2031, included Program 6.G. The housing program requires the proposed ordinance amendments to create *Housing Mobility*.

Program 6.G: Housing Mobility

Housing mobility strategies consist of removing barriers to housing in areas of opportunity and strategically enhancing access (Los Altos is entirely highest resource in terms of access to opportunity and a concentrated area of affluence). To improve housing mobility and promote more housing choices and affordability throughout Los Altos, including in lower-density neighborhoods, the city will employ a suite of actions to expand housing opportunities affordable to extremely low, very low, low, and moderate income households. Actions and strategies include:

- *Accessory Dwelling Units (ADUs) – Encourage and streamline ADUs in single-family neighborhoods by preparing standardized ADU plans with a variety of unit sizes and by affirmatively marketing and outreach to increase awareness and the diversity of individuals residing in Los Altos. See Program 2.D.*
- *Junior ADUs – Develop and adopt objective standards to allow more than one (at minimum two) Junior ADU per structure by July 2025. The objective is to achieve at least 10 JADUs in lower-density neighborhoods by January 2031.*

Responsible Body: Development Services Department

Funding Source: General Fund

Time Frame: Annually review overall progress and effectiveness in April and include information in the annual report to HCD. If the City is not on track to meet its 150 affordable housing unit goal for the 8-year RHNA cycle by 2027 (i.e., 75 affordable units built or in process by 2027), the City will consider alternative land use strategies and make necessary amendments to zoning or other land use documents to facilitate a variety of housing choices, including but not limited to, strategies that encourage

missing middle zoning (small-scale multi-unit projects), adaptive reuse, and allowing additional ADUs and/or JADUs, within six months, if sufficient progress toward this quantified objective is not being met.

Objective: *Provide 150 housing opportunities affordable to lower income households by January 2031.*

Geographic Targeting: *Citywide, but especially lower-density neighborhoods.*

DISCUSSION

The actions included within the attached draft ordinance are requirements pursuant to the City's adopted 6th Cycle Housing Element. The existing Accessory Dwelling Unit Ordinance is out of compliance with State law which necessitates several revisions to the ordinance. The proposed ordinance incorporates all necessary changes to the city's local ADU regulations based on State law, and guidance documents published by the Housing and Community Development Department.

Daylight Plane-Removed

Daylight Plane means an inclined plane beginning at a stated height above grade at each side property line and extending perpendicularly from the side property line into the site at a stated upward angle relative to the horizontal.

The City's daylight plane provision is unenforceable as it is impossible to "protect" a daylight plane with a structure that is allowed four feet from the rear and side property lines. The provision of the daylight plane has been unenforceable since codified within the Los Altos Municipal Code and provides a false sense of hope to opposing parties for enforcement of such regulations.

Attachment #5 to the Agenda Report helps to explain the viewpoint of HCD and conflict of daylight plane regulations for any jurisdiction. The City of Palo Alto's Accessory Dwelling Unit (ADU) Ordinance is also out of compliance with State law as reflected in the Letter of Technical Assistance dated December 21, 2022. HCD accepts requests for technical assistance from local jurisdictions and requests for review of potential violations from any party through our online Housing Accountability Unit Portal. HCD makes enforcement letters and actions available to the public. A report of all letters issued is organized by jurisdiction, date, and subject matter (e.g., housing element, fair housing, Housing Accountability Act, etc.). Letters of Technical Assistance issued can be found here:

<https://www.hcd.ca.gov/planning-and-community-development/accountability-and-enforcement>

Voluntary Additional Setback-Removed

The voluntary additional setback is intended to reduce the privacy impacts to abutting property owners, and applicants are encouraged to voluntarily increase the setbacks. Although this section is not in conflict with any State laws, the inclusion of such language within the ordinance creates a false sense of hope of opposing parties, and results in City staff playing mediator of residents. As with any proposed development no proposal must build to the "minimum" setbacks, it is the

choice of the property owner to do such, the “Voluntary Additional Setback” is problematic and does not result in a best practice for ADU regulations within the City of Los Altos.

Public Notice of Proposed ADUs-Not Allowed

Pursuant to Government Code Section 65852.2(a)(6) “(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. “As articulated in the Government Code cited above a jurisdiction cannot require any provision or process that is discretionary in nature. Ministerial permits do not include notification to the public of a proposed permit.

Planning Commission Recommendation – March 21st, 2024:

On March 21, 2024, the Los Altos Planning Commission received a staff report, presentation, asked clarifying questions of staff, considered the proposed ordinance, and conducted in-depth discussion regarding the item. Modifications were recommended by the commission and have been integrated into the draft ordinance before the City Council. The modifications recommended by the Planning Commission are minor in nature but help to further clarify language within the Zoning Code for ease of application.

Housing Element Noncompliance:

The draft ordinance is a component and implementing ordinance of the city’s adopted housing element. Should the City of Los Altos not proceed with the implementing actions discussed in this report the City will be vulnerable to penalties and consequences of housing element noncompliance. HCD is authorized to review any action or failure to act by a local government that determines is inconsistent with an adopted housing element or housing element law. This includes failure to implement program actions included in the housing element. HCD may revoke housing element compliance if the local government’s actions do not comply with state law. Examples of penalties and consequence of housing element noncompliance:

- General Plan Inadequacy: the housing element is a mandatory element of the General Plan. When a jurisdiction’s housing element is found to be out of compliance, its General Plan could be found inadequate, and therefore invalid. Local governments with an invalid General Plan can no longer make permitting decisions.
- Legal Action and Attorney Fees: local governments with noncompliant housing elements are vulnerable to litigation from housing rights’ organization, developers, and HCD. If a

jurisdiction faces a court action stemming from its lack of compliance and either loses or settles the case, it often must pay substantial attorney fees to the plaintiff's attorneys in addition to the fees paid by its own attorneys. Potential consequences of lawsuits include mandatory compliance within 120 days, suspension of local control on building matters, and court approval of housing developments.

- **Loss of Permitting Authority:** courts have authority to take local government residential and nonresidential permit authority to bring the jurisdiction's General Plan and housing element into substantial compliance with State law. The court may suspend the locality's authority to issue building permits or grant zoning changes, variances, or subdivision map approvals – giving local governments a strong incentive to bring its housing element into compliance.
- **Financial Penalties:** court-issued judgement directing the jurisdiction to bring its housing element into substantial compliance with state housing element law. If a jurisdiction's housing element continues to be found out of compliance, courts can multiply financial penalties by a factor of six.
- **Court Receivership:** courts may appoint an agent with all powers necessary to remedy identified housing element deficiencies and bring the jurisdiction's housing element into substantial compliance with housing element law.

Petition for Writ of Mandate – California Housing Defense Fund, Yes In My Back Yard v. City of Cupertino.

So that the City Council and public are well-informed the City of Los Altos has included this information with this agenda item so that all circumstances are understood as housing law is rapidly evolving.

Early this year Californians for Homeownership, California Housing Defense Fund, and YIMBY Law had filed 12 lawsuits in Contra Costa, Santa Clara, Marin, and San Mateo County Superior Courts with the intention to file more in the coming weeks. The cities and counties sued include Belvedere, Burlingame, Cupertino, Daly City, Fairfax, Martinez, Novato, Palo Alto, Pinole, Pleasant Hill, Richmond, and Santa Clara County. Each municipality has been sued by one or two of the non-profits.

With the Bay Area's 109 cities and counties at widely varied stages in the process of Housing Element adoption and compliance, these twelve lawsuits mark the first round of what will likely be many rounds of judicial review for noncompliance with state housing law in the Bay Area. The initial lawsuits focus on cities with a long history of exclusionary housing practices, cities that adopted housing elements unlawfully, and localities that have made little progress in developing their draft housing elements. The organizations will continue to file suits in the coming weeks, prioritizing cities with the most egregious violations in each organization's judgment.

A Petition for Writ of Mandate in the State of California is used by superior courts, courts of appeal and the Supreme Court to command lower bodies (such as lower level of government agencies, in this case a city) to do or not do specific actions. In this case, a Writ of Mandate can result in the

city being directed to adopt a compliant housing element or other associated actions to comply with State law. A Writ of Mandate could also be petitioned for and direct a city to specifically implement programs that were included in their adopted housing element.

Given the current and ongoing legal climate around housing element law it is vital for the City of Los Altos to expeditiously implement the adopted 6th Cycle Housing Element 2023-2031. As noted above the potential legal risks associated with housing element noncompliance could be further enforced by similar legal actions.

December 21, 2023 – HCD Letter of Inquiry

On December 21, 2023, the Development Services Director received written correspondence from the Department of Housing and Community Development (HCD) Proactive Enforcement Unit of HCD. The Letter of Inquiry was regarding the Rezone Requirements of the City of Los Altos, and the status of the City’s progress to complete such actions by January 31, 2024. As of November 28, 2023, the City of Los Altos has completed all necessary rezoning actions.

The Letter of Inquiry should serve as a cautionary warning to the City of Los Altos that all adopted programs must be implemented timely and completed with strict adherence to the strong commitments contained within the adopted Housing Element.

Countywide Compliance Report:

Of the sixteen (16) jurisdictions in Santa Clara County at the time of this report only seven (9) jurisdictions are in compliance with Housing Element Law as of March 31, 2024. The following table shows the status of all jurisdictions within Santa Clara County:

Jurisdiction:	Compliance Status:	Date:
Campbell	IN	5/30/2023
Cupertino	IN REVIEW	2/27/2024
Gilroy	IN	8/21/2023
Los Altos	IN	9/5/2023
Los Altos Hills	IN	5/30/2023
Los Gatos	IN REVIEW	3/18/2024
Milpitas	IN	5/17/2023
Monte Sereno	IN REVIEW	2/22/2024
Morgan Hill	IN	11/29/2023
Mountain View	IN	5/26/2023
Palo Alto	OUT	8/3/2023
San Jose	IN	11/30/2023
Santa Clara (City)	IN REVIEW	3/27/2024
Santa Clara (County)	OUT	12/18/2023
Saratoga	IN REVIEW	3/22/2024
Sunnyvale	IN	3/6/2024

ATTACHMENTS

1. Draft Ordinance
2. Appendix A
3. Existing Accessory Dwelling Unit (ADU) Ordinance
4. Accessory Dwelling Unit Handbook – California Department of Housing and Community Development (HCD)
5. HCD Letter of Technical Assistance – City of Palo Alto Accessory Dwelling Unit (ADU) Ordinance