



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 09/13/2023

ITEM NO: 3

DATE: September 8, 2023

TO: Planning Commission

FROM: Joel Paulson, Community Development Director

SUBJECT: Forward a Recommendation to the Town Council on Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding Accessory Dwelling Units. The Proposed Amendments Also Correct Outdated References to Sections of the Town Code Included in Sections Pertaining to Termination of Nonconforming Use Status, Requirements for a Two-Unit Development Under Senate Bill 9 (SB 9), and Civil Penalties. The Environmental Impacts of the Proposed Amendments to the Town Code were Analyzed in the Environmental Impact Report for the 2040 General Plan. Additionally, the Proposed Amendments are Exempt Pursuant to CEQA, Section 15061(b)(3). Town Code Amendment Application A-23-002. **Project Location: Town Wide.** Applicant: Town of Los Gatos.

RECOMMENDATION:

Forward a recommendation to the Town Council for approval of the amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding accessory dwelling units. The proposed amendments also correct outdated references to sections of the Town Code included in sections pertaining to termination of nonconforming use status, requirements for a two-unit development under Senate Bill 9 (SB 9), and civil penalties.

CEQA:

The legal advertisement printed in the newspaper indicated that the proposed amendments to the Town Code are not considered a project under CEQA since they only affect processing of applications. CORRECTION: The environmental impacts of the proposed amendments to the Town Code were analyzed in the Environmental Impact Report for the 2040 General Plan. In addition, the Proposed Amendments are Exempt Pursuant to CEQA, Section 15061(b)(3), because it can be seen with certainty that they will not significantly affect the physical environment in that they make minor changes to the regulations applicable to accessory dwelling units and junior accessory dwelling units.

PREPARED BY: Sean Mullin, AICP
Senior Planner

Reviewed by: Planning Manager, Community Development Director, and Town Attorney

FINDINGS:

- The environmental impacts of the proposed amendments to the Town Code were analyzed in the Environmental Impact Report for the 2040 General Plan, and that the proposed amendments are Exempt Pursuant to CEQA, Section 15061(b)(3); and
- The amendments to Chapter 29 of the Town Code are consistent with the General Plan.

BACKGROUND:

In 2016, the Governor signed several bills intended to address the State's housing crisis by creating new housing opportunities through accessory dwelling units (ADU) and junior accessory dwelling units (JADU). Through 2022, the Governor continued to sign additional bills into law that further streamlined the permitting process for ADUs and JADUs. As a result, the Town updated the Town Code regarding ADUs/JADUs in 2017 and 2020 to comply with updated State laws. Since the current ADU/JADU regulations have been in place, additional bills have been signed into law and the Town has received clarification from the California Department of Housing and Community Development (HCD) on specific aspects of the Town's ADU/JADU regulations. Additionally, staff has received feedback from Town residents regarding privacy impacts caused by new ADUs on neighboring properties.

In September 2022, the Governor signed Senate Bill (SB) 897 and Assembly Bill (AB) 2221, which made substantial changes in the development standards applicable to ADUs, including height, front yard setbacks, owner-occupancy, permit review time limits, and fire sprinklers (Exhibits 3 and 4). The new State ADU/JADU regulations took effect on January 1, 2023. Local ordinances that do not wholly conform to the new State regulations (Exhibit 5) are superseded until conforming local ordinances are adopted.

Below is a discussion of a Draft Ordinance that includes amendments to Chapter 29 of the Town Code (Zoning Regulations), Sections 29.10.195, 29.10.305 through 29.10.400, 29.10.630, and 29.10.960 (Exhibit 2).

DISCUSSION:

Through an audit of the Town's current ADU Ordinance (Exhibit 6) against the applicable sections of the CA Government Code (Exhibit 5), staff determined that a complete overhaul of the Town's ADU regulations is necessary. The Draft Ordinance, included as Exhibit 2, would align the Town's regulations with State law, respond to HCD feedback, and address privacy impacts created by construction of new ADUs. While the Draft Ordinance is mostly new, existing regulations have been carried forward as reflected in Exhibit 7, which shows existing language carried forward (highlighted in green), with a reference to where the existing language can be found in the Draft Ordinance (highlighted in yellow). The discussion below

DISCUSSION (continued):

goes through the Code sections and provides staff's assessment of the existing regulations and how and why they are modified under the Draft Ordinance.

Sec. 29.10.305. Intent and authority.

The current language has been carried forward. References to CA Government Code have been updated.

Sec. 29.10.310. Definitions.

The existing definitions have been carried forward with modifications in content and formatting. Several new definitions have been added, with many taken from the CA Government Code.

Sec. 29.10.315. Review process.

A framework for the permit review process is not included in the current Ordinance. This new section explicitly states that review of a Building Permit for an ADU/JADU shall be ministerial, and that final action must be taken by the Town within sixty days of receiving a complete application, per State law. The State law does not allow the Town to require an applicant to provide written notice or post a placard for the demolition of a detached garage that is to be replaced with an ADU, unless the property is located within an architecturally or historically significant district. The Draft Ordinance would not require an applicant to provide written notice for the construction of any ADU/JADU. This reflects the ministerial nature of the ADU/JADU Building Permit process and aligns with the Town's Housing Element by removing barriers to development of ADUs and JADUs. Lastly, the Draft Ordinance states that the ministerial decision of the Town is not subject to appeal and provides findings for denial of an application.

Sec. 29.10.320. General requirements and restrictions.

The Draft Ordinance includes a new section detailing general requirements and regulations applicable to ADU and JADU projects.

Incentive program: This language has been carried over from the current Ordinance.

Parcel requirements: Portions of this information are currently included in the definition of an ADU. This new subsection clarifies what parcels qualify for an ADU/JADU, project consistent with State law.

DISCUSSION (continued):

Number: The language in this subsection has been slightly modified from the current Ordinance to reflect that JADUs may only be located within the space of a proposed or existing single-family dwelling.

FAR Standards: This revised subsection carries forward the Town Council's previous decision to allow a ten percent increase in FAR standards to help create opportunities for ADUs on properties with limited unbuilt FAR. The Draft Ordinance exempts up to 800 square feet from the FAR standards, consistent with current Ordinance and State law. The language also clarifies that the increased FAR standard is not applicable to JADUs, which are subject to the regular house FAR requirements.

Lot coverage: The current Ordinance requires that ADUs comply with the regulations of the Zone, while exempting up to 800 square feet of coverage for an ADU consistent with State law. The current language is silent on the accessory structure lot coverage limitations included in Section 29.40.015 (A)(5) of the Town Code, limiting accessory structure lot coverage to no more than 15 percent of the lot area exclusive of the required yard areas. This creates some conflict between these two sets of regulations, with staff deferring to the State law requirements to exempt 800 square feet of coverage. The draft lot coverage language exempts ADUs and JADUs from the zone's lot coverage limitations and the accessory structure lot coverage, regardless of size. This draft language is more permissible than the current Ordinance; is consistent with State law which states that lot coverage cannot be used to preclude the development of an 800-square foot ADU; and aligns with the Town's Housing Element by removing barriers to development of ADUs and JADUs.

Parking: The parking regulations in the Draft Ordinance remain largely unchanged. Some reorganization has occurred to group all exceptions together.

Design standards: The current Ordinance includes a "design, form, materials, and color" section whose purpose is to ensure that an ADU is compatible with the primary dwelling and the neighborhood and that it maintains the residential appearance of the property. The current Ordinance lacks clear objective criteria that can be enforced in the effort to achieve this purpose. Additionally, the current Ordinance prohibits entrances serving an ADU on a street-facing elevation; a requirement that HCD has deemed inconsistent with State law. The Draft Ordinance would add enforceable objective design standards intended to meet the stated purpose. The Draft Ordinance would also introduce objective design standards aimed at protecting the privacy of adjacent properties. The draft standards would limit second-story window types for an ADU/JADU within 10 feet of a side or rear property line and prohibit balconies, rooftop terraces, and second-story decks. Since these design standards are objective, they would be consistent with State law. These design standards are consistent with some of those included in the recently adopted SB 9 Ordinance.

DISCUSSION (continued):

Additional development standards: In addition to the new design standards, the Draft Ordinance introduces a number of development standards that are consistent with those in the recently adopted SB 9 Ordinance. These development standards are related to cut and fill; retaining walls; light reflectivity value in the hillside area; landscaping; lighting; trees; and stormwater management. Since these development standards are objective, they would be consistent with State law.

Conveyance: The draft conveyance subsection allows an ADU to be rented, but not sold separately from the primary dwelling except as provided in CA Government Code Section 65852.26. This section of the Government Code allows separate sale of an ADU to a qualified buyer (persons and families of low or moderate income) when the residence and/or the ADU was built or developed by a qualified nonprofit corporation. The sale must meet all of the conditions detailed in CA Government Code Section 65852.26.

Other requirements and restrictions: The regulations in the following subsections remain unchanged in the Draft Ordinance:

- Town Codes and ordinances;
- Building Codes;
- Rentals longer than 30 days; and
- Maximum number of dogs, cats, or litters.

Sec. 29.10.325. Accessory dwelling unit development standards.

The Draft Ordinance includes a new section that provides requirements and regulations specific to ADU projects. A separate section specific to JADU projects follows.

Location: The regulations in the location subsection of the Draft Ordinance remain consistent with the current Ordinance. The regulations pertaining to historic resources have expanded to detail what is considered a historic resource by the Town.

Setbacks: The Draft Ordinance includes a revised setbacks section that expands upon the current Ordinance and reorganizes setback requirements into a table. The new table separates ADU setback requirements for single-family and multi-family properties and provides regulations specific to several development scenarios.

Maximum unit size: The Draft Ordinance continues to limit the size of an ADU to 1,200 square feet and clarifies that detached ADUs are not subject to a discretionary application process as may be required for other detached accessory structures of certain sizes. As required by State law, the Draft Ordinance restricts the size ratio of an ADU to primary dwelling to 50 percent for

DISCUSSION (continued):

ADU not created through conversion of existing space. An exception is included that exempts up to 800 square feet of an attached ADU from the ratio restriction.

Maximum number of bedrooms: The Draft Ordinance reflects guidance from HCD that clarifies that the Town cannot impose a maximum number of bedrooms in an ADU.

Stories: The regulations in the stories subsection of the Draft Ordinance remain consistent with the current Ordinance; however the language has been revised slightly.

Height: The height regulations in the Draft Ordinance replace those included in the current Ordinance to align with State law. The draft regulations provide four different maximum heights based on different scenarios:

- 16 feet for a detached ADU on a property with a proposed or existing single-family or multi-family dwelling throughout the Town;
- 18 feet when located within one-half mile walking distance of a major transit stop or high-quality transit corridor, which are terms defined by the State. Currently, there is only one VTA bus route meeting the State's definitions that runs along a short portion of Los Gatos Boulevard and Samaritan Drive adjacent to the Town boundary. Only properties within one-half mile walking distance of this bus route would be allowed an ADU with a maximum height of 18 feet;
- 18 feet for a detached ADU on a property with a proposed or existing multi-family, multi-story dwelling; and
- 25 feet or the height limitation of the zone for an ADU attached to a proposed or exiting two-story primary dwelling.

The height regulations in the Draft Ordinance continue to allow for an ADU to be constructed directly above an existing one-story detached accessory structure on a lot with a proposed or existing two-story residence. The Draft Ordinance clarifies that an ADU constructed above a detached structure may not be internally connected to the structure below, consistent with the Town's limitation that ADUs be located within a single story.

Entrances: The Draft Ordinance requires that attached ADUs include a separate entrance from the main entrance to the proposed or existing primary dwelling, including those located on the second floor. Further, a passageway connecting the ADU to the street is allowed, but not required.

Interior connection: The Draft Ordinance allows for, but does not require, interior connections between the primary dwelling and the attached ADUs.

DISCUSSION (continued):

Conversion of existing floor area: The regulations in the Draft Ordinance pertaining to converting existing floor area to an ADU remain unchanged.

Density: As required by State law, the Draft Ordinance deems ADUs an accessory use that shall not be considered to exceed the allowable density of the zone and that ADUs are a residential use that is consistent with the General Plan and the zone.

Fire Sprinklers: The revised language in the Draft Ordinance pertaining to fire sprinklers reflects the limitations imposed by the State law.

Sec. 29.10.330. Junior accessory dwelling unit development standards.

The current Ordinance contains all regulations specific to JADUs within the definition of a *junior accessory dwelling unit*. The Draft Ordinance continues to include a definition for a JADU but moves the requirements and regulations for JADUs into a new section. All the requirements and regulations for JADUs in the Draft Ordinance have been updated to reflect State law and guidance from HCD.

Location: The current Ordinance allows a JADU within the proposed or existing space of a primary dwelling or detached ADU. The Draft Ordinance specifies that a JADU may only be located within the proposed or existing space of a single-family residence consistent with State law. This change clarifies that a JADU may not be located within the space of a detached ADU or multi-family dwelling.

Setbacks: The Draft Ordinance specifies that a JADU shall be subject to the setback requirements of the zone for a single-family residence, or the setbacks established by an existing single-family residence, whichever is less. This allows for an existing legal nonconforming setback of a single-family residence to be continued consistent with Section 29.10.245 (e)(1) of the Town Code.

Maximum unit size: The Draft Ordinance specifies that the maximum size of a JADU is 500 square feet, consistent with State law.

Entrances: The Draft Ordinance requires that JADUs include a separate entrance from the main entrance to the proposed or existing primary dwelling, including those located on the second floor. If the JADU shares a bathroom with the single-family residence, as allowed by State law, an interior doorway must be provided between the JADU and the living area of the single-family dwelling. Further, a passageway connecting the ADU to the street is allowed, but not required.

Kitchen: The Draft Ordinance clarifies that a JADU may include either a kitchen or an efficiency kitchen, as defined in the definitions section of the Draft Ordinance.

DISCUSSION (continued):

Sanitation facilities: The Draft Ordinance allows for a JADU to share a bathroom with the single-family residence, consistent with State law, and requires a doorway between the JADU and the living space of the single-family residence.

Owner-occupancy: Pursuant to State law, the property owner shall reside in either the JADU or the remaining portion of the single-family residence. The Draft Ordinance reflects this requirement.

Deed restriction: Consistent with State law, the Draft Ordinance requires that a Deed Restriction be recorded prohibiting the sale of the JADU separate from the single-family residence; restricting the size and attributes of the JADU; and requiring owner-occupancy of the JADU or the remaining portion of the single-family residence.

Fire or life protection: The Draft Ordinance clarifies that a JADU shall not be considered a separate or new dwelling unit for the purposes of fire or life protection.

Sec. 29.10.335. Unpermitted units.

The Draft Ordinance includes regulations pertaining to unpermitted ADUs/JADUs. The new section establishes applicability and outlines a process for remedy, which includes the review process established under Section 29.10.315 of the Draft Ordinance.

Sec. 29.10.340. Nonconforming accessory dwelling units and junior accessory dwelling units.

A nonconforming accessory dwelling unit is a term defined in the current and Draft Ordinances. The definition recognizes situations where an ADU or JADU is created lawfully, but made nonconforming through changes to the Town Code or annexation from the County. The Draft Ordinance eliminates outdated requirements for a nonconforming ADU/JADU contained in the current Ordinance and defaults review to draft Section 29.10.315 (Review process).

Sec. 29.10.350. Elimination and/or demolition of existing accessory dwelling units and/or junior accessory dwelling units.

The regulations in the Draft Ordinance regarding elimination and/or demolition of existing ADUs/JADUs remain largely unchanged.

Sec. 29.10.355. Legal nonconforming zoning conditions.

Consistent with State law, the Draft Ordinance indicates that the Town cannot deny a permit for an ADU or JADU based on the need to correct a legal nonconforming zoning condition,

DISCUSSION (continued):

Building Code violation, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the ADU/JADU.

Sec. 29.10.360. Utilities.

Consistent with State law, the Draft Ordinance clarifies that separate utility connections may be required and that a connection fee may apply. The Draft Ordinance outlines scenarios when separate connections may not apply.

Sec. 29.10.365. Fees.

Connection fees and capacity charges: The Draft Ordinance indicates that an ADU shall not be considered a new residential unit for the purposes of calculating utility connection fees.

Impact fees: Consistent with State law, the Draft Ordinance exempts ADUs less than 750 square feet and all JADUs from impact fees proposed by the Town. When an impact fee does apply, the Draft Ordinance establishes that the fee be charged proportionally in relation to the square footage of the primary dwelling unit. Further, the Draft Ordinance specifies that an ADU that is 750 square feet or greater is subject to the Town's Transportation Impact Policy 1-08 (Exhibit 8), as may be amended from time to time, which currently exempts all ADUs from traffic impact fees regardless of size.

Amendments to other Code Sections.

Since the Draft Ordinance includes a reorganization of the ADU/JADU regulations, several minor changes are required in other Sections of Chapter 29 to update cross-referencing and update terminology. The following impacted sections are included in the Draft Ordinance:

- Sec. 29.10.195. Termination of nonconforming use status.
- Sec. 29.10.630. Requirements.
- Sec. 29.20.960. Civil penalties.

PUBLIC COMMENTS:

Staff conducted outreach through the following media and social media resources, as well as direct communication with stakeholders as summarized below:

- The Town's website home page, What's New;
- The Town's Facebook page;
- The Town's Twitter account;
- The Town's Instagram account;

PUBLIC COMMENTS (continued):

- The Town's NextDoor page; and
- Direct email communication to local architects and designers.

CEQA DETERMINATION:

The environmental impacts of the proposed amendments to the Town Code were analyzed in the Environmental Impact Report for the 2040 General Plan. In addition, the Proposed Amendments are Exempt Pursuant to CEQA, Section 15061(b)(3), because it can be seen with certainty that they will not significantly affect the physical environment in that they make minor changes to the regulations applicable to accessory dwelling units and junior accessory dwelling units.

CONCLUSION:

A. Summary

The Draft Ordinance aligns the Town's ADU/JADU regulations with State law, responds to HCD feedback, and addresses privacy impacts created by construction of new ADUs. The Draft Ordinance provides a clear set of regulations and process framework for residents to follow when pursuing an ADU/JADU project. The Draft Ordinance also corrects outdated references to sections of the Town Code included in sections pertaining to termination of nonconforming use status, requirements for a two-unit development under Senate Bill 9 (SB 9), and civil penalties.

B. Recommendation

Staff recommends that the Planning Commission review the information included in the staff report and forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code in the Draft Ordinance Amendments (Exhibit 2). The Planning Commission should also include any comments or recommended changes to the Draft Ordinance in taking the following actions:

1. Make the finding that the environmental impacts of the proposed amendments to the Town Code were analyzed in the Environmental Impact Report for the 2040 General Plan. In addition, the Proposed Amendments are Exempt Pursuant to CEQA, Section 15061(b)(3), because it can be seen with certainty that they will not significantly affect the physical environment in that they make minor changes to the regulations applicable to accessory dwelling units and junior accessory dwelling units (Exhibit 1);
2. Make the required finding that the amendments to Chapter 29 of the Town Code in the Draft Ordinance are consistent with the General Plan (Exhibit 1); and

CONCLUSION (continued):

3. Forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code in the Draft Ordinance (Exhibit 2).

C. Alternatives

Alternatively, the Commission can:

1. Forward a recommendation to the Town Council for approval of the Draft Ordinance with modifications; or
2. Forward a recommendation to the Town Council for no changes to the Town Code; or
3. Continue the matter to a date certain with specific direction.

EXHIBITS:

1. Required Findings
2. Draft Ordinance Amendments
3. Senate Bill 897
4. Assembly Bill 2221
5. CA Government Code Sections 65852.2, 65852.22, 65852.23, and 65852.26
6. Current Town ADU/JADU Ordinance
7. Disposition of Current Ordinance
8. Transportation Impact Policy 1-08

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