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RE: Accessory Dwelling Unit (ADU) Ordinance

DATE: March 6, 2017:

Dear Mayor Scharff, Vice Mayor Kniss and Honorable Council Members,

The Board of Directors of Palo Alto Forward thanks you for your attention to all the details of this very important ordinance. After water, food, and clothing, housing is a basic need. Finding ways to expand housing options (like ADUs and JADUs) for our community members is an economic, environmental, social justice and humanitarian issue. Above all it enables us to continue nurturing the vibrant and diverse community already here in the city we call home, Palo Alto.

In 2015, Council introduced a Colleague's Memo to reform our ADU ordinance to 1) facilitate ADU creation while minimizing impacts to community character with sensitivity to neighborhood design standards, 2) consider steps to bring non-compliant ADUs into compliance and 3) consider other recommendations.

The demand for ADUs is very high - NextDoor group and Stanford lists showcase frequent requests for backyard cottages or second units. The recent housing shortage has pushed former residents out of the area, and many PA commuters further out in search of affordable housing. The [National Citizen's Survey](#) revealed "Availability of Affordable Quality Housing" as the area of greatest dissatisfaction *by far* in Palo Alto (it was rated an 8.2 out of 100). During the May 2015 Comp Plan Summit, Granny Units/In-Laws/Second Units were frequently prioritized as [Top Housing Ideas](#). Policies H1.1.2 and H3.3.5 of Palo Alto's 2015-2023 Housing Element supports creation of ADUs throughout the city as an easy way to create housing stock without significantly impacting a neighborhood's physical character. State law also changed in 2016 with Senate Bill 1069 and Assembly Bills 229 and 2406 to encourage and simplify creation of ADUs in communities like ours.

We encourage you to adopt a new ADU ordinance ASAP, **but also to go beyond state law and establish the City of Palo Alto as a strong leader to facilitate creation ADUs.** In particular, the following nine recommendations should also be considered and adopted.

**1. Lot Size:** Please allow ADUs on any size R-1, lot, provided the square footage of the main structure and the ADU do not exceed the allowable Floor Area Ratio (FAR) and is in compliance with state regulations. From a community design perspective, having two smaller structures on a lot is more compatible with typical single family residential character, and more pleasant, than a single monolithic building which maximizes FAR for a parcel.

**2. ADU Size:** State law allows ADUs up to 1200 sf, while Palo Alto's ordinance has a maximum ADU size of 900 sf. For lots that are larger than its zone minimum, please allow a higher ADU

size in proportion to the lot area size, up to the state maximum of 1,200 SF. For example, a 10,659 sf lot in an R-1 (8,000) zone is 33% larger than the minimum. The ADU size could then increase proportionally by 33%, to 1200 sf.

**3. Transit Proximity:** State law utilizes the HUD definition of transit options, and is not limited to transit routes with a minimum of 15 minute headways. Please use the transit options listed in the Comp Plan Transportation Element Update, including all Public and Private funded options like PA Shuttle, Marguerite. While the PTC recommended expanding the transit proximity definition to 0.75 miles, we encourage you to expand it further to 1.0 miles.

**4. Parking:** Please allow ADU/JADU parking spaces to be designated in the front setback. This reflects how most people use their driveway, keeps exhaust fumes closer the street, and not further on site or near neighbors. Front setback parking also allows side setbacks to be have more pervious surfaces, accommodate trees and landscape and remain as open space for occupants of the ADU and main residence. [Mountain View's proposed Section 36.12.70 proposes shared driveway parking](#) for ADUs and [Redwood City's ADU Ordinance Article 30.5 allows front setback parking](#) for ADUs, especially for tandem parking.

You should also consider removing all parking requirements for ADUs, not just JADUs. There is rightful concern about areas with limited on-street parking, but future ADUs in areas with RPPs can be regulated by considering [Mountain View's proposed Section 36.12.75](#) which *requires but does not offer on-street parking permits to occupants of ADUs*.

**5. Utilities:** Please allow ADUs and JADUs to have the same requirements and be allowed on the same meter. Requiring additional electric, water and gas meters for ADUs can inhibit ADU creation due to expense. [Redwood City exempts homeowners from a water main upgrade](#). The owner should be allowed make the decision whether to create new utilities or prorate utility service among residents - *many existing residences with ADUs currently prorate utility use*.

**6. Entitlements:** Please keep in mind state law requires that ADUS and JADUs be approved by ministerial review and not be bogged down by an onerous entitlement process. If proposal complies with zoning guidelines, it should be approved. Palo Alto does not have design review, and issues such as door placement or style choices violates the standard of ministerial review, which *is a function performed without the use of judgment by the person performing the act or duty*.

**7. Height:** Two-story ADUs or a new ADU addition over an existing garage may be the best design solution to minimize lot coverage, or preserve existing tree canopy. Provided these units comply with privacy issues (like 5' high sills or no openings above 7' facing adjacent property lines) and other zoning standards, the maximum height for an ADU should be 25', not 17'.

**8. Compliance for Grandfathered ADUs:** Many homeowners may have already taken matters into their own hands and built ADUs. If people currently occupy these units, they should be

reviewed for life safety. The city can run a short 2 year program to bring these units into compliance or have them taken down. [San Francisco recently created a legalization process](#) as part of their new ADU Ordinance.

**9. Pre-Approved Designs:** City staff time is limited, and because ADUs must be approved ministerially, one way to expedite approval of ADUs is to pre-approve several new ADU designs. This will save on building (architectural & structural) and fire review. Planning, Public Works or Utilities review could even be completed over the counter. This provides homeowners with predictability, which is important in such a process. [Santa Cruz has an ADU Development Program which offers 7 preapproved plan sets](#).

Let's make it easier for our community members to construct ADUs. Even modest numbers can make a difference - If we could see 500 ADUs/JADUs constructed by 2030 (about 40 per year) we could meet an eighth of our Regional Housing Needs Allocation (RHNA), and do so:

- without impacting the physical character of our community,
- by distributing (not concentrating) the traffic impacts and
- by putting revenue directly in the pockets of local homeowners, not large outside landowners or developers.

Thank you again for your consideration of our points. For your reference, we have attached an [appendix](#) with additional policy options and information including city ordinance sections, state language, and ADU resources from other cities where applicable. We look forward to your discussion on Tuesday night.

Sincerely,  
Elaine Uang  
Secretary, Board of Directors  
Palo Alto Forward

## Appendix - ADU Ordinance Points

**65852.150. (a)** The Legislature finds and declares all of the following:

**(8)(b)** It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.

Topic with ( <i>State Code Reference</i> )	Palo Alto Municipal Code Section	Minimum Standard (MUST HAVE)	Recommended Standard (NICE TO HAVE - REACH OPTION)
<b>1. Lot Size</b>	18.42.040.2	<p>Any lot which meets the zoning minimum area for lot size is eligible.</p> <p><i>Remove the “35% over minimum” rule.</i></p>	<p><b>Option 1:</b> Any lot which meets the zoning minimum area for lot size is eligible. Lots which are no more than 5% smaller than the zoning minimum area for lot size are eligible but the allowable FAR for the ADU shall be reduced by 5% from the standard.</p> <p><i>Many lots in Palo Alto are slightly smaller than the minimum. This can occur because of eminent domain, creek easement, etc. Could add an exclusion for non-conforming lots where the main residence has a basement.</i></p> <p><b>Option 2:</b> Any lot is eligible if there is available FAR. Use FAR to regulate size, up to the maximum allowed, for any lot.</p> <p><i>Having the FAR distributed between a Main Residence and an ADU will always create a more pleasant and less intense massing at the street frontage. Using FAR to regulate is much more consistent overall.</i></p>

<p><b>2. ADU Size</b></p> <p>65852.2 (b)(1)(F)</p>	<p>18.42.040.8(ii)</p>	<p>900 SF maximum</p>	<p>If lot size is larger than the minimum for the zone, the ADU FAR can increase by a percentage to match the increased lot area up to a maximum of 1,200 SF (A 10,659 sf lot in a zone with a minimum of 8,000 sf is 33% over the minimum. The 900 SF ADU limit could increase by 33% to 1,200 sf)</p>
<p><b>3. Transit Proximity</b></p> <p>65852.2 (a)(1)(8)(d)(1)</p>	<p>18.42.040.10(iii)a</p>	<p>Refer to the HUD interpretation of State Code <i>(essentially all available public transportation options for train and bus routes)</i> and increase to include all options within <b>0.75</b> miles</p> <p><i>All motorized transit modes should be considered. State Code describes 0.5 mile radius</i></p>	<p>Match the transit options used in the Comp Plan Transportation Element Update. Include all options within 1.0 miles</p> <p><i>Include all Public and Private funded options including PA Shuttle, Marguerite, etc.</i></p>
<p><b>4. Parking – JADU’s</b></p> <p>65852.22 (b)(1)</p>	<p>18.42.040.10(iv)</p>	<p>State Code stipulates no additional parking required.</p>	<p>Allow parking in front setback area.</p> <p><i>This could occur as a result of the JADU taking the place of one covered space in a garage requiring the relocation of the 2nd stall. Encourage the use of side-yard area for entryway and outdoor open-space for the JADU.</i></p> <p><i>Redwood City and Mountain View permit this.</i></p>

<p><b>4. Parking – ADU’s</b></p> <p>65852.2 (b)(5)(d)</p>	<p>18.42.040.10(ii)</p>	<p>Additional required parking should be permitted to be uncovered and may be located in the front setback area.</p> <p><i>Benefits of allowing parking to be located in the front setback include: Increased area for trees/urban canopy, Landscaping and garden opportunities (200 sf = 25% of food for 1 person for a year), Emissions from vehicle located at street area vs. adjacent to rear play or neighbor’s outdoor space, increased pervious surface.</i></p> <p><i>Additional benefit - Simplifies design. Parking behind the front setback often forces challenges for house design and site planning - massing/placement relative to privacy at adjacent structures if house pushed to one side.</i></p>	<p>Match JADU regulation.</p> <p><i>No rationale for different rules when the use is the same.</i></p>
<p><b>5. Utilities – JADU’s</b></p> <p>65852.2 (g)(2)(A) 65852.22 (b)(2)(e)</p>	<p>18.42.040.5 (d)</p>	<p>Consistent with State Code. No additional requirements. Single meter/connection for the parcel. Not considered a separate or new dwelling unit.</p>	<p>No extra Public Works constraints or obligations. For example, no new sewer connection lateral, upgraded gas meter or other ‘automatic’ requirement unless warranted by demand.</p>

<p><b>5. Utilities – ADU’s</b> 65852.2 (g)(2)(B)</p>	<p>None</p>	<p>Match JADU regulations. Single meter/connection for the parcel.</p> <p><i>Decision to just prorate costs of the utilities or to have a separate service should be left to the property owner. It comes down to single ownership/responsibility ultimately.</i></p>	<p>Cost and requirements for any Public Works upgrades should be relative to the cost of the work. The option to maintain a Single meter/connection for the parcel should be offered at the Owner’s discretion.</p> <p><i>The State describes: 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 size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.</i></p>
<p><b>6. Entitlements and Permits – JADU’s</b> 65852.2 (f) 65852.22 (c)</p>	<p>18.42.040.7(vi)</p>	<p>Ministerial approval required. No entitlement process. Plan review conducted as an over-the-counter appointment. (2 hrs total for all departments) No design restrictions.</p> <p><i>Door placement or other design restrictions should all be removed.</i></p>	

<p><b>6. Entitlements and Permits – ADU’s</b> 65852.2 (f)</p>	<p>18.42.040.8(iv)</p>	<p>Ministerial approval required. No entitlement process. Plan review conducted as an expedited process (2 weeks maximum) Design restrictions should all be removed.</p> <p><i>Palo Alto does not have single-family design review and ADU regulations should <u>not</u> become an excuse to over-reach. Door placement, consistency of style or other design restrictions should all be removed. Having an ADU match style could be counter-productive.</i></p> <p><i>Note: Individual review cannot be applied to ADU’s. State Code requires “ministerial review” which means if the design conforms to standard zoning regulations, approval must be granted.</i></p>	<p>Pre-approved designs (possibly 3-4 options) with the inclusion of a site-specific site plan can be offered for over-the-counter permit.</p> <p><b><i>Ministerial describes an act or a function that <u>conforms to an instruction or a prescribed procedure</u>. A ministerial act or duty <u>is a function performed without the use of judgment by the person performing the act or duty.</u></i></b></p>
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<p><b>7. Height</b></p>	<p>18.42.040.8(iii) 18.42.040.8(vi)</p>	<p>2-story ADU maximum height should be 25' and structure should be consistent with side-yard daylight plane regulations. Rear yard daylight plane restrictions should be modified to match side yard restriction. No IR since approval is required to be ministerial.</p> <p>Windows at 2<sup>nd</sup> story on sides facing neighbors, when less than 12' from property line shall be limited to protect privacy (Sill height &gt;5' or obscure glazing) Openings not more than 7' above grade could be allowed when facing adjacent property lines.</p> <p><b>65852.2 (b)(1)(G) - From State Code</b> <i>Requirements relating to <u>height</u>, <u>setback</u>, <u>lot coverage</u>, <u>architectural review</u>, <u>site plan review</u>, <u>fees</u>, <u>charges</u>, and other zoning requirements <u>generally applicable to residential construction in the zone in which the property is located</u>.</i></p>	<p>2-story ADU should be consistent with State Code (no setback for single-story, 5' min. setback for 2<sup>nd</sup> story. Side yard daylight plane restrictions apply to ADU's and rear yard daylight plane restrictions should be modified to match side yard restriction) Maximum height should be 25'</p> <p>Windows at 2<sup>nd</sup> story on sides facing neighbors, when less than 12' from property line shall be limited to protect privacy (Sill height &gt;5' or obscure glazing)</p>
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<b>8. Existing Non-permitted ADU/JADU - Grandfathering</b>	18.42.040.5b	<p>For a period of 24 months, beginning (date of ordinance adoption) the Owner of a non-permitted Accessory Dwelling Unit may request review by a Building Inspector in regard to Building Code mandated life-safety topics such as: utilities, construction standards, light, ventilation, and egress. An Accessory Dwelling Unit in place as of (date of ordinance adoption) shall not be required to be removed solely on the basis of zoning conformance. If a non-permitted Accessory Dwelling Unit is deemed uninhabitable and the necessary corrections would require substantially replacing the structural elements, the Building Official and Planning Director together shall issue a decision regarding the ability of the Owner to make repairs or for removal.</p>	
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