



PUBLIC HEARING

Agenda Item # 11

AGENDA REPORT SUMMARY

Meeting Date: May 23, 2017

Subject: Accessory Dwelling Units

Prepared by: David Kornfield, Planning Services Manager—Advance Planning

Reviewed by: Jon Biggs, Community Development Director

Approved by: Chris Jordan, City Manager

Attachments:

1. Ordinance No. 2017-432

Initiated by:

Staff

Previous Council Consideration:

May 9, 2017

Fiscal Impact:

None

Environmental Review:

The code amendment is exempt from environmental review in accordance with Section 15601 of the CEQA Guidelines since a code amendment does not cause a significant effect on the environment. Accessory dwelling units subsequently developed under the code are ministerial, single-family uses, which are statutorily exempt in accordance with Section 15268 of the CEQA Guidelines.

Policy Question for Council Consideration:

- May the Council increase the maximum permitted size of accessory dwelling units to 1,200 square feet in exchange for an affordable housing restriction?

Summary:

- The revised ordinance reflects a majority of the City Council's input.

Staff Recommendation:

Move to introduce and waive further reading of Ordinance No. 2017-432 amending the accessory dwelling unit regulations.



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Purpose

The purpose of amending the accessory dwelling unit (ADU) regulations is to comply with recent changes to state law and to implement Housing Element Program No. 4.2.1 and Program No. 4.2.2 regarding facilitating the development of ADUs and the consideration of reducing the minimum lot size requirements for such units.

Background

At its May 9, 2017 meeting the City Council considered an ordinance amending the regulations for ADUs. Following the public hearing, Council directed staff to return with a revised ordinance that:

1. Maintains the recommended ADU size limit of 800 square feet but consider provisions to allow them up to 1,200 square feet if offered at an affordable rent;
2. Requires the ADU to be “compatible” with the principal dwelling to allow some flexibility in the design;
3. Allows a property owner’s flexibility in providing an internal access to the principal dwelling unit when developing integral ADUs; and
4. Removes the deed restriction recording the owner’s property occupancy requirement.

At the May 9, 2017 meeting, staff suggested returning with two potential ordinances providing the Council with options to consider the ADU size and affordability issue. However, in consideration of the City Attorney’s recommendations (see discussion below) staff provided a single ordinance. The modified provisions in the attached ordinance are highlighted.

Discussion/Analysis

Unit Size Requirements

A councilmember has inquired whether the city may adopt a minimum unit size of 800 square feet and only allow an ADU of up to 1,200 square feet if the property owner agreed to affordability restrictions.

Per the City Attorney, because staff does not know how the courts will interpret the validity of an 800-square-foot unit size limit for ADUs, staff cannot say for certain that the decision to only conditionally allow up to 1,200 square feet would be legal. The 1,200-square-foot size limits are contained in the mandatory content of the ordinance a city must adopt (Gov. Code § 65852.2(a)(1)(D)(iv) & (v)). A city could adopt a maximum unit size that is greater than 1,200 square feet because this would be a less restrictive requirement on ADUs (Gov. Code §65852.2(c) & (g)). The California Department of Housing and Community Development (HCD) has interpreted the statute to allow a local government to choose a maximum unit size less than 1,200 square feet as long



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as the size limit is not “burdensome” on the creation of ADUs. While local agencies must submit a copy of their ADU ordinances to HCD within 60 days of adoption, HCD has no authority to approve the local ordinance or otherwise implement Government Code Section 65852.2 (See Gov. Code §65852.2(h)). Accordingly, the more conservative approach is to adopt the unit size maximums provided in the statute.

Assuming the City Council is comfortable with the legal uncertainties in adopting an 800-square-foot maximum unit size, then the question is whether state law would permit the City to secure a property owner’s agreement to affordable rent restrictions in exchange for approval to build an ADU greater than 800 square feet. With few exceptions, rental units constructed after February 1, 1995 are statutorily exempt from affordable rent controls (Costa-Hawkins Rental Housing Act, Civ. Code §1954.52(a); Palmer/Sixth St. Props. LP v City of Los Angeles (2009) 175 Cal. App. 4th 1396, 1410). However, the prohibition on rent control does not apply where the owner has “otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.” (Civ. Code §§1954.52(b), 1954.53(a)(2).) The decision to allow an ADU up to 1,200 square feet in size would not be a direct financial contribution, nor would it qualify as a density bonus or one of the other incentives provided in Government Code Sections 65915-65918. Based on the initial review of this matter it does not appear that the City could adopt this requirement.

However, if the City Council feels that accessory units up to a maximum of 1,200 square feet are appropriate, it should amend the ordinance at subsection 14.14.040 A. to allow for accessory units of this size prior to voting on the introduction of the ordinance.

Minimum Rental Terms

Per the City Attorney, cities probably cannot adopt minimum rental terms longer than 30 days (e.g. 60-90 day minimum rentals) specific to ADUs. Government Code Section 65852.2(a) establishes the “maximum” standards that local agencies may use to evaluate a proposed ADU and “[n]o additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require ... that the property be used for rentals of terms longer than 30 days” (Gov. Code §65852.2(a)(6)). While a local agency can adopt less restrictive requirements for ADUs than provided in the new state law (Gov. Code §65852.2(g)), a longer minimum rental term would be more restrictive and therefore is likely preempted.

Options

- 1) Adopt the ADU regulations as revised by the City Council and as recommended by staff.



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Advantages: The lower lot size threshold of 10,000 square feet increases the ADU potential and meets the intent of the State law. Removing the property owner's deed restriction simplifies the requirements.

Disadvantages: May increase the number of ADUs and perceived parking and density impacts. Removing the deed restriction may cause some enforceability concerns as subsequent property owners may not be aware of the residency requirement.

2) Adopt ADU regulations with a higher lot size threshold such as 12,000 square feet for detached accessory dwellings.

Advantages: May reduce the overall number of ADUs in the community and may address perceived parking impacts.

Disadvantages: May reduce the potential number of ADUs and differ from the intent of State law to facilitate ADUs.

Recommendation

The staff recommends Option 1.

ORDINANCE NO. 2017-432

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS
ALTOS AMENDING THE REGULATIONS FOR ACCESSORY
DWELLING UNITS (SECOND LIVING UNITS)**

WHEREAS, the State Legislature has found that accessory dwelling units are a necessary and valuable form of housing in California; and

WHEREAS, accessory dwelling units help diversify the City’s housing stock and help provide rental units that are affordable; and

WHEREAS, accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting neighborhood character; and

WHEREAS, accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others within existing neighborhoods; and

WHEREAS, it is the intent of this ordinance to allow and promote the development of accessory dwelling units; and

WHEREAS, this Ordinance implements Program 4.2.1 and Program 4.2.2 of the City’s 2015-2023 Housing Element by facilitating the development of new accessory dwelling units; and

WHEREAS, this Ordinance is in the best interest for the protection or promotion of the public health, safety, comfort, convenience, prosperity, or welfare and is in conformance with the adopted General Plan of the City since it implements Housing Element Programs 4.2.1 and 4.2.2; and

WHEREAS, this Ordinance is exempt from environmental review pursuant to Section 15061 and Section 15268 of the California Environmental Quality Act Guidelines, as amended.

NOW THEREFORE, the City Council of the City of Los Altos hereby ordains as follows:

SECTION 1. AMENDMENT OF CODE: Adding and amending the following definitions to Chapter 14.02.070 of the Municipal Code:

“Accessory dwelling unit” means an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provision for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling unit is situated. Accessory dwelling units also include efficiency units as defined by Section 17958.1 of the Health and Safety Code.

“Manufactured home” is as defined in Section 18007 of the Health and Safety Code.

“Passageway” means a pathway that is unobstructed, clear to the sky, and extends from a street to one entrance of the accessory dwelling unit.

“Second living unit” means a second dwelling on a single-family residential lot; refer to the definition of “accessory dwelling unit.”

SECTION 2. AMENDMENT OF CODE: Renaming the Permitted Uses sections of the single-family zoning districts in the Municipal Code as follows:

14.06.020 – Permitted uses (R1-10)

B. Accessory dwelling ~~Second living~~ units as provided in Chapter 14.14 of this title;

14.08.020 – Permitted uses (R1-H)

B. Accessory dwelling ~~Second living~~ units as provided in Chapter 14.14 of this title;

14.10.020 – Permitted uses (R1-20)

B. Accessory dwelling ~~Second living~~ units as provided in Chapter 14.14 of this title;

14.12.020 – Permitted uses (R1-40)

B. Accessory dwelling ~~Second living~~ units as provided in Chapter 14.14 of this title;

SECTION 3. AMENDMENT OF CODE: Amending Chapter 14.14 of the Municipal Code regarding Accessory Dwelling Units in R1 Districts as follows:

Chapter 14.14 - ~~SECOND-LIVING~~ ACCESSORY DWELLING UNITS IN R1 DISTRICTS

14.14.010 – Purpose.

A. The Legislature found that accessory dwelling units are a valuable form of housing in California.

B. Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others within existing neighborhoods.

C. Homeowners who create accessory dwellings units benefit from added income, and an increased sense of security.

D. Allowing accessory dwelling units in single-family districts provides additional rental housing stock in California.

E. Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.

F. Accessory dwelling units are, therefore, an essential component of California’s housing supply.

G. It is the intent of this ordinance to allow and promote the development accessory dwelling units.

14.14.020 14.14.010 - Permitted uses.

In accordance with the provisions of this chapter ~~and upon the granting of design review as provided in Chapter 14.76,~~ one ~~second living~~ accessory dwelling unit may be permitted on a lot or parcel within a single-family residential zoning district that has a minimum of ~~the greater of: (1) one hundred fifty (150) percent of the lot area required in the residential zoning district in which the second living unit is proposed to be located; or (2) fifteen thousand (15,000) square feet of lot area~~ 10,000 square feet except as specified herein. ~~A second living~~ An accessory dwelling unit may be established through:

A. The conversion of existing floor space in a ~~conforming, principal or accessory~~ single-family structure regardless of lot size; ~~in which case the figures of one hundred fifty (150) percent and fifteen thousand (15,000) square feet set forth above shall be reduced to one hundred thirty (130) percent and thirteen thousand (13,000) square feet respectively in the R1-10 zoning district, and reduced to one hundred (100) percent of the minimum required lot area in the R1-20, R1-II, and R1-40 zoning districts;~~

B. An integral addition to a principal single-family structure; ~~in which case the figures of one hundred fifty (150) percent and fifteen thousand (15,000) square feet set forth above shall be reduced to one hundred thirty (130) percent and thirteen thousand (13,000) square feet respectively in the R1-10 zoning district, and reduced to one hundred (100) percent of the minimum required lot area in the R1-20, R1-II, and R1-40 zoning districts;~~

C. The conversion addition to an existing accessory structure ~~provided its location on the property is in conformance with present setback regulations and that has side and rear setbacks that are sufficient for fire safety;~~ or

D. The construction of a new accessory structure.

E. Accessory dwelling units do not exceed the allowable density for the lot upon which it is located, and that such units are a residential use consistent with the general plan and zoning designation for the lot.

F. Accessory dwelling units may not be sold separately from the primary residence and may be rented.

14.14.030 - Required findings for approval. (Reserved)

~~In addition to the findings required by Chapter 14.76, the following findings shall be made prior to approval of a second living unit:~~

~~A. That public benefit will result because the proposed second living unit will be maintained as affordable for a lower- or very low-income household;~~

~~B. That appropriate administrative measures, including disclosure of the maximum rent allowed and the income level of the occupant(s), have been required which will ensure that if~~

~~the second living unit is rented or leased, it will be at a rate which is affordable to a person or persons of lower- or very low-income levels as required by Section 14.14.040, and that the income level of the resident(s) of the second living unit meets the appropriate limits for a lower- or very low-income household as determined by the city based on state and federal guidelines;~~

~~C. That required parking areas are located on the site;~~

~~D. That the parcel size is adequate in size to maintain a second unit and related parking in terms of its status as an accessory use both visually and functionally;~~

~~E. That when a property has frontage on more than one street, the access for the main residence and second living unit has been combined in such a way as to reduce the prominence and visibility of the second living unit parking to the surrounding neighborhood; provided, however, that on a corner lot, the appropriateness of combining the access of the main residence and the second living unit shall be determined on a case-by-case basis;~~

~~F. Appropriate conditions have been applied as necessary to ensure that the second living unit will not adversely impact neighboring property owners due to:~~

- ~~1. Inappropriate location, amount, and/or design of on-site parking;~~
- ~~2. Inappropriate location with respect to the character of the existing neighborhood;~~
- ~~3. Excessive noise potential, particularly when neighboring homes are in close proximity;~~
- ~~4. An excessive number of second living units in the vicinity;~~
- ~~5. Insufficient screening of the unit; and~~
- ~~6. Lack of compliance with the floor area ratio, setback, lot coverage, and other development standards of the R1 zoning districts.~~

14.14.040 - Unit size and ~~occupancy~~ residency requirements.

~~A. The maximum size of a second living an accessory dwelling unit, not including basements or any covered parking, shall be eight hundred (800) square feet. However, a second living accessory dwelling unit of greater than the maximum size, may be considered only within a residential or accessory structure which existed prior to March 1, 1995, and subject to the required findings in Section 14.14.030. The maximum size of an accessory dwelling unit shall not exceed 50 percent of the existing living area of a principal living unit.~~

~~B. No more than two persons shall reside in a second living unit. Accessory dwelling units may not be rented for terms of less than 30 days.~~

~~C. Either the principal living unit or the second living accessory dwelling unit shall be the principal residence of at least fifty (50) percent of record owners of the property.~~

~~D. If the property owner resides in the second living unit, then the primary residence can be rented at market rate, but shall have no effect on the affordability requirement for the second living unit for future occupancies.~~

~~E. If rented or leased, second living units with a size of greater than six hundred forty (640) square feet shall be affordable to a person or persons of very low income levels, and the income level of the person(s) renting the second living unit shall not be greater than the limits for a very low income household as determined by the city based on state and federal guidelines.~~

~~F. If rented or leased, second living units with a size of not more than six hundred forty (640) square feet shall be affordable to a person or persons of low income levels, and the income level of the resident(s) of the second living unit shall not be greater than the limits for a lower-income household as determined by the city based on state and federal guidelines.~~

~~G. The resident income limits in subsections E and F of this section shall not apply if the second living unit is occupied by an immediate family member.~~

14.14.050 - Development and design standards.

A. ~~A second living~~ An accessory dwelling unit shall meet all the current development standards of the residential zoning district in which the ~~second living~~ accessory dwelling unit is located, except as may be modified by the criteria set forth in this chapter.

B. ~~A second living unit shall be clearly subordinate to the principal living unit by size and location. No passageway shall be required in conjunction with the construction of an accessory dwelling unit.~~

C. The exterior design appearance of a ~~second living~~ an accessory dwelling unit shall be compatible with the principal living unit.

D. Entrances to a ~~second living~~ an accessory dwelling unit shall be screened from street view.

E. ~~A second living unit~~ Accessory dwelling units shall not be allowed in mobile housing units, including, but not limited to, mobile homes, trailers, and motor homes. Accessory dwelling units shall be allowed in manufactured homes.

F. Accessory dwelling ~~Second living~~ units that are constructed by the conversion of existing floor space in a single-family structure or by an integral addition to a single-family structure shall may include a common wall with, and internal access to, the main residence to the degree determined appropriate by the City.

G. Notwithstanding the setback requirements in the R1 Districts, no setback shall be required for an existing garage that is converted into an accessory dwelling unit. A setback of five feet shall be required from the side and rear property line for an accessory dwelling unit constructed above a garage; and in such cases, no second story window shall be located within 17.5 feet of the side property line and/or 25 feet from the rear property line.

H. In existing principal dwellings and existing accessory structures, new or separate utilities may be allowed but not subject to connection or capacity fees.

I. In new structures separate utilities may be permitted subject to connection and capacity fees.

J. Notwithstanding Title 12 (Buildings and Construction) of the Municipal Code, fire sprinklers shall not be required in accessory dwelling units if they are not required in the principal residence.

14.14.060 - Parking requirements.

~~(As provided in Chapter 14.74 of this title.)~~ Notwithstanding Chapter 14.74 of this title, accessory dwelling units shall meet the following parking standards:

1. No parking is required if the accessory dwelling unit complies with any of the following:
 - a. Located within ½ mile of public transit stop;
 - b. Located within an historic district;
 - c. The accessory dwelling unit is part of an existing principal residence or an existing accessory structure;
 - d. In an area requiring on-street parking permits but they are not offered to accessory dwelling unit occupants; or
 - e. Within one block of car-share vehicle pick-up and drop-off location.
2. One (1) off-street parking space shall be required per accessory dwelling unit and the parking may be provided as tandem parking on an existing driveway or in a paved parking space within the front yard.
3. When an existing garage or carport required for the principle living unit is removed or converted into an accessory dwelling unit, the required covered parking shall be replaced in conformance with the district requirements.

14.14.070 - Required conditions.

~~A. At the time the initial rental contract or lease is executed, the owner shall furnish the tenant(s) with a written disclosure of the maximum rent allowed in order for the unit to meet the requirements of the use permit and this chapter. The maximum rent disclosure shall be signed by the tenant(s) and a copy retained by the property owner.~~

~~B. At the time the initial rental contract or lease is executed with a tenant, the tenant(s) shall execute an affidavit certifying that their household income level currently meets the requirements of the use permit and this article. The affidavit shall be signed by the tenant(s) and a copy retained by the property owner.~~

~~C. Upon request, the property owner shall furnish a copy of the signed rent disclosure, rental contract/lease and tenant affidavit to the city.~~

~~D-A. The property owner shall ensure that the property and improvements thereon are maintained in a commonly acceptable manner as determined by the planning department division.~~

~~E-B. The property owner shall ensure that unreasonable noise disturbances do not occur.~~

~~F-C. A deed restriction shall be recorded setting forth the occupancy requirements that not more than two persons shall reside in the second living unit and that the principal residence of the property owner shall be maintained on the property.~~

~~G. The affordability of the second living unit shall be maintained at all times.~~

SECTION 4. AMENDMENT OF CODE: Amending Chapter 14.74 of the Municipal Code regarding R1 Parking Requirements as follows:

14.74.010 – R-1 District requirements.

A. Not less than two parking spaces, one of which shall be covered, shall be required for the single-family dwelling each living unit, including second living units developed under the provisions of Chapter 14.14 of this title.

SECTION 5. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 6. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 7. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on May 23, 2017 and was thereafter, at a regular meeting held on ____, 2017 passed and adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mary Prochnow, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK