



**ITEMS FOR  
DISCUSSION/ACTION  
Agenda Item # 3**

**AGENDA REPORT SUMMARY**

**Meeting Date:** June 4, 2020

**Subject:** Repeal and Replace Chapter 14.14 of the Los Altos Municipal Code (Accessory and Junior Dwelling Units) by adopting Zoning Text Amendment 20-0001

**Prepared by:** Guido F. Persicone, Planning Services Manager, AICP

**Reviewed by:** Jon Biggs, Community Development Director and  
Jolie Houston, City Attorney

**Attachment(s):**

- A. Draft ADU Ordinance
- B. Daylight Plane Diagrams
- C. Californians Letter to the Planning Commission, date May 21, 2020
- D. City of Los Altos Response to the Californians for Homeownership Letter

**Initiated by:**

City staff

**Previous Council Consideration:**

2018

**Fiscal Impact:**

No direct fiscal impact is anticipated

**Environmental Review:**

Adoption of an accessory dwelling unit ordinance is subject to a statutory exemption from environmental review (Public Resource Code Section 15282(h)). In addition, the action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15061(b)(3) as the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Projects that are subject to the ADU regulations will be evaluated pursuant to CEQA on an individual basis. However, ADUs are generally exempt from CEQA review under CEQA Guidelines Section 15301 (Existing Facilities) and/or Section 15303 (New Construction or Conversion of Small Structures).

**Policy Question(s) for Council Consideration:**

- Do the proposed code amendments ensure the Los Altos Municipal Code is consistent with recent changes to state law?



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**Summary:**

- The ordinance repeals and replaces Chapter 14.14, Accessory Dwelling Units, to ensure consistency with State law.

**Staff Recommendation:**

Staff suggests that the Planning Commission recommend adoption of the proposed ordinance to the City Council.

**Purpose**

The purpose of the proposed amendments is to ensure compliance with new state laws affecting the development of accessory dwelling unit and junior accessory dwelling units in the residential zone districts of the City.

**Background**

On April 16, 2020 the Planning Commission reviewed the draft accessory dwelling unit ordinance (ADU). At the conclusion of the meeting, the Commission requested that the ordinance be revised and be reviewed by the legislative body at the May 7, 2020 meeting.

In addition to the Commission's edits, on the day of the hearing the State Housing and Community Development Department (State HCD) reached out to City staff to provide some direction on edits that would be necessary to receive State support for the draft ordinance. This was extremely helpful as State approval within sixty (60) days of adoption is a legal requirement from the most recent legislation.

On May 7, 2020, the Planning Commission reviewed the draft ordinance and directed staff to bring the ordinance back for review at the May 21, 2020 meeting.

On May 21, 2020, approximately forty-five minutes before the public hearing, City staff received a detailed letter from the Californian's For Homeownership. Due to the detailed comments, City staff requested, and the Commission agreed, that continuing the item to the June 4, 2020 meeting would be the best scenario so the City could adequately respond to the comment letter. The responses to the letter are included as Attachment 'D' to this agenda report.

**May 7, 2020 Major Modifications to the Ordinance**

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May 21, 2020



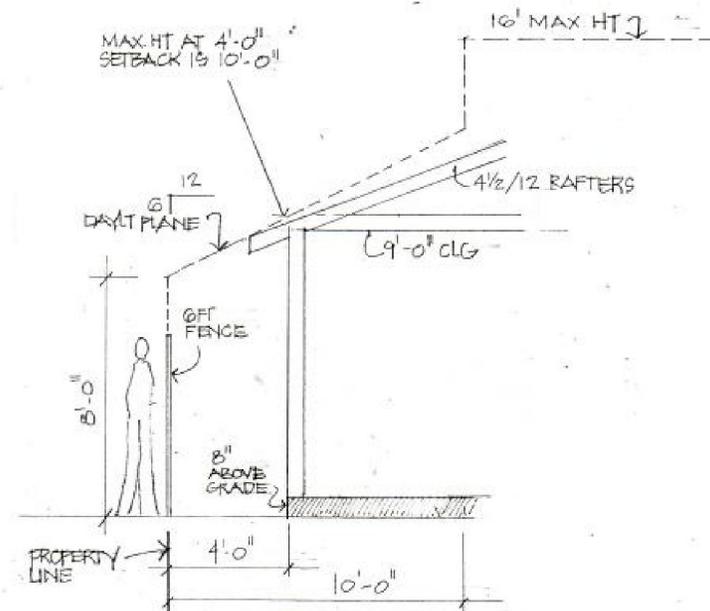
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**Categories of ADU-A** chart has been added to the ordinance to summarize the key standards that apply to the various types of ADU's in the new regulations.

**Section 14.14.021 (Square Footage Chart)**-The Planning Commission requested that City staff revise the square footage chart identified within Section 14.14.025 of the draft ordinance. Said modifications have been made.

**Daylight Plane Provisions**-At the May 7, 2020 meeting the Planning Commission modified the daylight plane provisions to start at eight feet above the property line and slope in at a 6/12 roof pitch. At ten feet from the property line the maximum height of 16 feet would be allowed.



**50% Rule**-City staff kept this provision in the proposed ordinance because it was thoroughly discussed by the City Council during the last ADU ordinance update. It should be noted this ordinance has two key parts:

Subsection i) related to an **attached** ADU, in which case the basement is not included in the square footage. This is done because per the definition of gross floor area within the Los Altos Muni Code, basements are not counted toward the allowable floor area ratio for a property



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- (i) *The total floor area for an attached accessory dwelling unit shall not exceed one thousand two hundred (1,200) square feet, excluding the basement areas, and shall not be more than fifty (50) percent of the floor area of the existing or proposed principal residence. Notwithstanding this 50% threshold requirement, an ADU of 850 square feet or smaller cannot be denied.*

Subsection ii) which relates to a **detached** ADU, in which case the City Council wanted to presumably limit the size of said units by including the square footage of basements in this definition.

- (ii) *The total floor area for a detached accessory dwelling unit shall not exceed one thousand two hundred (1,200) square feet, including basement areas of the detached unit, and shall not be more than fifty (50) percent of the floor area of the existing or proposed principal residence. Notwithstanding this 50% threshold requirement, an ADU of 850 square feet or smaller cannot be denied.*

In either scenario State HCD wanted it to be very clear that at least an 800 square foot ADU (either attached or detached) would be allowed on a property, regardless of the 50% rule within this ordinance. However, as the distinction between an 800 and 850 square foot unit is negligible and has caused confusion among members of the public, City staff along with the City Attorney are recommending that up to 850 square feet be allowed for an ADU on a site that is at or in excess of lot coverage and floor area standards, with the words up to meaning an applicant can create a unit smaller but the City must grant up to 850 square feet for the ADU if desired by the property owner. After Planning Commission review, the entire ordinance will be reviewed by State HCD, but presumably will be supported as the 850 sq. ft. is above the 800 sq. ft. mandated by State law.

**Fees**-In light of the regional housing crisis, reducing fees for all accessory dwelling units (ADUs) is a concrete step Los Altos could take to demonstrate to the community and the California Department of Housing and Community Development (State HCD) that Los Altos wants to encourage production of these units. No final direction was provided to staff regarding potential reduction of said fees. At the conclusion of the May 21, 2020 meeting, City staff are requesting that the motion for the zoning text amendment to the City Council include a recommendation either in the affirmative, namely reduction of fees, or in the negative (to keep fees as identified in the Master Fee Schedule).

**Hybrid Model** - During the April 23<sup>rd</sup> and May 7<sup>th</sup> Commission meetings members of the public provided a possible scenario in which a property owner could take square footage already existing in a house (500 square feet) have it refurbished for an ADU and then add 350 square feet for an 850 square foot ADU. This suggestion was to then take the 500 square feet used for the ADU and add this area to another portion of the house with the end result the same square footage allowable for the lot.



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Table 1 (Hybrid Scenario)	
3800 square foot max for a house	3,300 main house
850 square foot max for an ADU	+500 square foot ADU remodel with a 350 sq. ft. addition) +500 for another addition to the house
Total=4,560 total square feet	Total 4,650 total square feet.

The Planning Commission inquired if this would require a revision to the ordinance to create a new subclass of ADUs. The City staff answer is no as this would still be classified as an attached ADU. This is a policy recommendation that City staff is not going to take a position on. On one hand, it makes sense that the amount of square footage would be the same and could create a better integrated attached ADU. On the other hand, it could be a potential way to circumvent the floor area ratio caps within the Municipal Code. Additionally, constant monitoring of this could be problematic. Under this scenario, a property owner could take out the kitchen, and separate bathroom facilities after approval by the City. Without monitoring, property owners could essentially be granted houses that exceed the allowable floor area ratio for a property while not meeting the real intent of the ADU legislation, which is to foster the development of units to help ease the affordable housing crisis.

However, having said all of that, in conversations with the 21 Elements Group and the City of Hillsborough, the City of Los Altos can receive Housing Element RHNA credit if it monitors the rent of ADUs moving forward. Hillsborough through submittal of a voluntary survey receives RHNA credits for its low and very low income units. Deed restrictions are not required. If the Planning Commission and City Council want to move forward with this hybrid approach, a policy compromise could be provided to allow this integrated approach but to require property owners to pay an annual inspection fee and to report the rental income data for the all ADUs within Los Altos.

**May 21, 2020 Letter from the Center for Californians For Homeownership**

On May 21, 2020 the City received a letter from an organization with the Center for Californians for Homeownership (see Attachment C). The City’s response to each comment can be found in Attachment D).

**Regional Housing Needs Allocation (RHNA) and ADUs**

**Hillsborough-**On May 5, 2020 Los Altos city staff spoke with Liz Ruess, Hillsborough Planning Manager. Hillsborough gets credit for their ADUs at the low and very low income RHNA levels. Every year they send out a survey and property owner self-report the rent for the unit. Liz indicated they get about a 50% response rate for the survey that is sent out.



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**Half Moon Bay-**City staff spoke with Scott Phillips from Half Moon Bay (HMB). HMB, similar to Hillsborough, collects rent data from property owner and then receives credit for their units as being moderate income ADUs.

The approach that Hillsborough and Half Moon Bay have taken to gather information to support meeting their RHNA goal is supported by State HCD per a memo prepared by the 21 Elements Group: <http://21elements.com/documents-mainmenu-3/housing-elements/rhna-5-2014-2022/sites-inventory/655-affordability-of-second-units>

Los Altos should begin a process of collecting ADU data to support meeting our long term RHNA goals. City staff are requesting that as part of the motion to approve the Zoning Text Amendment that the Planning Commission also encourage the City Council to adopt a resolution creating an annual ADU Recertification Program supported by payment of an annual inspection fee from property owners.

### **Conclusion**

The Planning Commission has asked City staff a lot of great questions and really forced members of the community to think about the overall intentions of implementing these state laws. As of January 1, 2020, state laws regarding ADUs prevail, without a daylight plane and other characteristics unique to Los Altos. City staff are recommending a vote on the ordinance, so the City Council has an opportunity to deliberate to maintain some semblance of local land use control for ADUs moving forward.

### **Los Altos General Plan Conformance**

*General Plan Land Use Goal 2:* Review and amend (as needed) the Zoning Ordinance to provide consistency with new state legislation and court decisions. Consider Zoning Ordinance amendments that implement the use and development of goals, policies and plan objectives for the identified planning areas (Downtown, El Camino Real Corridor, and Foothill Plaza).

*Housing Element Policy 4.2:* The City will encourage the development of affordable second dwelling units that conform to zoning regulations.

Program 4.2.1 – Facilitate new construction of second dwelling units.

Program 4.2.2-Study the feasibility of reducing minimum lot sizes for second living units.

### **Options**

- 1) Recommend approval of Zoning Text Amendment 20-0001 to the City Council.



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**Advantages:** Ensure compliance with new state laws.

**Disadvantages:** Results in less control over accessory dwelling units in Los Altos.

2) Recommend denial of the draft ordinance to the City Council

**Advantages:** There is no advantage to denying this ordinance as noncompliance with State law is not a viable position for a municipal agency to be in.

**Recommendation**

The staff recommends Option 1.

ORDINANCE NO. 2020-\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS  
REPEALING AND REPLACING THE ACCESSORY DWELLING UNIT  
ORDINANCE AND MAKING FINDINGS OF CEQA EXEMPTION**

**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 exempt from environmental review pursuant to Section 15061 and Section 15301 of the California Environmental Quality Act Guidelines, as amended.

**NOW THEREFORE**, the City Council of the City of Los Altos does hereby ordain as follows:

**SECTION 1. AMENDMENT OF CODE:** Chapter 14.14 of Title 14 of the Los Altos Municipal Code is hereby repealed in its entirety and replaced with the new standards and shall read as follows:

**Section 14.14.010 Purpose and Intent.**

The intent of this chapter is to provide for accessory dwelling units and junior accessory dwelling units, collectively known as an accessory dwelling, on lots zoned to allow single-family or multifamily dwelling residential use that include a proposed or existing dwelling. Accessory dwelling units contribute needed housing to the City of Los Altos housing stock and enhance housing opportunities. An accessory dwelling unit is considered a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit is not included in calculation of residential density for the purposes of determining general plan conformance.

#### **14.14.020 Definitions.**

As used in this section, the following terms mean:

“Accessory dwelling unit” (or “ADU”) means an attached or a detached residential dwelling unit that provides complete independent living facilities 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 multi-family dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

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

“Attached accessory dwelling unit” means a residential dwelling unit that is created as a result of internal conversion, addition, or combination thereof made to the primary residential dwelling unit.

“Existing,” when referring to an existing principal dwelling, accessory structure, or other building or structure, refers to a building or structure erected prior to the date of adoption of the appropriate building code, or one for which a legal building permit has been issued, as defined in Section 202 of the 2019 California Building Code. An unpermitted building or structure shall not be considered “existing” for purposes of this chapter.

“Multi-family housing” means a dwelling unit or group of dwelling units on one site that contains separate living units for two or more families that may have joined services or facilities or both.

“Junior accessory dwelling unit” (or “junior ADU” or “JADU”) means a unit that is no more than 500 square feet in size, includes an efficiency kitchen consistent with building code standards, is contained entirely within the walls of a single-family residence and may include separate sanitation facilities or may share sanitation facilities with the existing structure or unit.

“Living area” means the interior habitable area of a dwelling unit, including basements and attics, if defined as habitable by the California Residential Code (CRC) but does not include a garage or any accessory structure.

“Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.

“Passageway”. The term passageway has the meaning defined by Government Code Section 65852.2, which states: A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

“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.

“Tandem parking” means that two or more automobiles are parked in any location on a lot and lined up behind one another.

**14.14.021 Categories of ADUs**

Section 14.14.021 is a summary of the various accessory dwelling unit requirements. If this summary of information conflicts with other sections of this Chapter, those sections shall be binding. See Section 14.14.070 for additional requirements that apply to multi-family ADUs.

<b>Design Standards</b>	<b>Junior ADU</b>	<b>Attached ADU (single-family)</b>	<b>Detached ADU (single-family)</b>
<b>Maximum Size (see 14.14.025 for additional details)</b>	500 sq. ft. created from the existing square footage of the residential structure.	1,200 sq. ft. but no more than 50% of the floor area of an existing or proposed primary dwelling unit ( <u>excluding</u> basement area).	1,200 sq. ft. but no more than 50% of the floor area of an existing or proposed primary dwelling unit ( <u>including</u> basement area).
<b>Maximum Height</b>	NA	The greater of 16 feet or the height of zoning underlying zoning district	16 feet
<b>Side Setback</b>	NA	4 feet (see exception identified within 14.14.050(f)(5))	4 feet
<b>Rear Setback</b>	NA	4 feet (see exception identified within 14.14.050(f)(5))	4 feet
<b>Kitchen</b>	Cooking appliances can include hot plate, or counter-top cooking. A wall installed oven is not required.	Must include at least a sink, a refrigerator of no less than 10 cubic feet, and either a cooktop and an oven, or a range. A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the ADU are also required.	
<b>Parking Requirement</b>	None	1 uncovered parking space required. See Section 14.14.050(i)(1-6) for the exceptions to this requirement	
<b>Owner Occupancy</b>	Required	Not required	

<b>Short Term Rentals</b>	Prohibited	Prohibited
<b>Impact Fees</b>	None	750 sq. ft. or less-no impact fees 751 sq. ft or more-impact fees are proportionate to principal dwelling.
<b>Utility Fees and Connections</b>	None required.	The accessory dwelling may be served by the primary residence or may have separate utility meters.

#### 14.14.025 Square Footage Chart

For clarity the following chart provides the square footage thresholds for the various forms of accessory dwelling units

<b>Unit Type</b>	<b>Square Footage Limitations</b>
Efficiency Unit	The minimum size of an efficiency unit as defined by the Health and Safety Code shall be 150 square feet.
Junior Accessory Dwelling Unit	The maximum size of a Junior Accessory Dwelling Unit (JADU) shall be 500 square feet created by the conversion of existing square footage of the dwelling unit. However, up to 150 square feet can be added to the existing structure for purposes of ingress and egress to the JADU. The additional square footage shall count towards the 500 square foot maximum.
<b><u>Attached accessory dwelling unit</u></b>	The total floor area for an <b><u>attached</u></b> accessory dwelling unit shall not exceed one thousand two hundred (1,200) square feet, <b><u>excluding</u></b> the basement areas, and shall not be more than fifty (50) percent of the floor area of the existing or proposed principal residence. Notwithstanding this 50% threshold requirement, an ADU of 850 square feet or smaller cannot be denied. More specific requirements are set forth in Section 14.14.050(d).
<b><u>Detached accessory dwelling unit</u></b>	The total floor area for a <b><u>detached</u></b> accessory dwelling unit shall not exceed one thousand two hundred (1,200) square feet, <b><u>including</u></b> basement areas of the detached unit, and shall not be more than fifty (50) percent of the floor area of the existing or proposed principal residence. Notwithstanding this 50% threshold requirement, an ADU of 850 square feet or smaller cannot be denied. More specific requirements are set forth in Section 14.14.050(d).

Maximum size of an accessory dwelling unit that must be approved even if the site is at or above lot coverage and floor area ratio limits	A detached or attached ADU of 850 square feet or smaller cannot be denied for size alone.
Accessory dwelling unit subject to objective design standards	An ADU between 851-1,200 square feet are subject to a zoning clearance review for objective design standards as identified in Chapter 14.06-Chapter 14.16-24.

**Section 14.14.030 Location Permitted**

A. Accessory dwelling units may be permitted in the following zones: on lots zoned for multifamily or single-family dwellings.

B. Nothing in this chapter shall be construed to authorize construction of new single-family residences in multiple-family districts where such single-family residential use is not otherwise allowed.

**14.14.040 General Requirements.**

Notwithstanding any local ordinance regulating the issuance of variances or special use permits, or regulations adopted herein to the contrary, an application for a building permit to construct an accessory dwelling unit, or junior accessory dwelling unit, or efficiency unit (“accessory dwelling”) shall be approved or denied ministerial without discretionary review or hearing within sixty (60) days from the date the city receives a completed application if there is an existing single-family or multifamily structure on the lot. The following requirements apply to all accessory dwellings:

- (a) An accessory dwelling shall not be rented for periods less than thirty (30) days. Short term rentals are prohibited.
- (b) Except as allowed by State law, an accessory dwelling shall not be sold or have its title transferred separately from the primary residential structure.
- (c) Deed Restriction. Prior to the issuance of the building permit for the accessory dwelling unit, the owner must record a deed restriction stating that the accessory dwelling unit may not be rented for periods less than thirty (30) days, and that it may not be transferred or sold separate from the primary residential structure.
- (d) The installation of fire sprinklers shall not be required for an accessory dwelling if sprinklers are not required for the primary residence.

- (e) Accessory dwellings are subject to the design standards and other zoning requirements of the zoning district in which the existing single-family dwelling is located and must be built in accordance with the building code set forth in Title 12 of the Los Altos Municipal Code, except for those design, zoning, and building standards inconsistent with state requirements under California Government Code Section 65852.2.
- (f) An accessory dwelling is not subject to residential accessory structure regulations.
- (g) An accessory dwelling will not be subject to any charges and fees other than planning and building permit fees generally applicable to residential construction in the zone in which the property is located, except as otherwise provided herein.
- (h) Any connection fees and capacity charges that may be required must be assessed in compliance with the provisions of State Government Code Section 65852.2 and 65852.22, and as the sections may be amended over time by the State.
- (i) The accessory dwelling must contain water, sewer and gas and/or electric utility connections that are in working condition upon its occupancy. The accessory dwelling may be served by the primary residence or may have separate utility meters. The accessory dwelling will not be considered a new residential use for the purpose of calculating connection fees or capacity charges for these utilities.
- (j) An accessory dwelling unit must have an independent electrical sub-panel, water heating and space heating equipment within the unit or be readily accessible to the occupant on the exterior of the unit.
- (k) Ministerial approval of a permit for creation of an accessory dwelling shall not be conditioned on the correction of pre-existing nonconforming zoning conditions.
- (l) A certificate of occupancy for any accessory dwelling shall not be issued before the local agency issues a certificate of occupancy for the primary dwelling.
- (m) If the applicant requests a delay in processing, the 60-day time period shall be suspended for the period of the delay.
- (n) A kitchen shall be provided for an accessory dwelling unit. A full kitchen requires habitable space used for preparation of food that contains at least a sink, a refrigerator of no less than 10 cubic feet, and either a cooktop and an oven, or a range. A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the ADU are also required.
- (o) Minimum sill height of 5' (60) inches for windows on the second story within 15' of the property line that face out to the neighbors to mitigate privacy concerns shall be required.

#### **14.14.050 Single-Family Residential Accessory Dwelling Unit Standards**

Notwithstanding any other provisions of this chapter to the contrary, a single-family residential accessory dwelling unit shall be a permitted as a single-family residential use that shall comply with the following:

(a) Zoning. A single-family residential accessory dwelling unit shall be located on a lot with an existing or proposed primary dwelling in a residential or mixed-use zone district.

(b) Number. Only one (1) detached single-family residential accessory dwelling unit may be permitted on a parcel that contains not more than one existing or proposed single-family residence. Additionally, one Junior Accessory Dwelling Unit JADU may be allowed within the confines of the existing house.

(c) Relationship to Primary Dwelling. A single-family residential accessory dwelling unit may be within, attached to, or detached from, the proposed or existing primary dwelling, provided that a single-family residential accessory dwelling unit contained within or attached to an existing primary dwelling unit shall have independent exterior access from the existing residence) A detached single-family residential accessory dwelling unit must be located at least five (5) feet from the proposed primary dwelling.

(d) Size.

(1) A studio or one (1) bedroom, attached or detached single-family residential accessory dwelling unit shall be permitted, and limited to eight hundred fifty (850) square feet in floor area, garage areas excluded.

(2) An attached or detached single-family residential accessory dwelling unit with more than one (1) bedroom shall be permitted, and limited to twelve hundred (1,200) square feet in floor area, garage areas excluded. The additional square footage above the 850 square foot allowed by State law shall only be allowed if the lot meets the lot coverage and floor area ratio requirements for the applicable zoning district they are located in.

i. The total floor area for an **attached** accessory dwelling unit shall not exceed one thousand two hundred (1,200) square feet, **excluding** the basement areas, and shall not be more than fifty (50) percent of the floor area of the existing or proposed principal residence. Notwithstanding this 50% threshold requirement, an attached ADU of 850 square feet or smaller cannot be denied.

ii. The total floor area for a **detached** accessory dwelling unit shall not exceed one thousand two hundred (1,200) square feet, **including** basement areas of the detached unit, and shall not be more than fifty (50) percent of the floor area of the existing or proposed principal residence. Notwithstanding this 50% threshold requirement, a detached ADU of 850 square feet or smaller cannot be denied.

(e) Height.

(1) The maximum height for a detached single-family residential accessory dwelling unit shall be one-story and sixteen (16) feet.

(2) Attached single-family residential accessory dwelling units shall have a maximum height of equal to the greater of (i) sixteen (16) feet, or (ii) the height limit established for the primary residential structure pursuant to applicable zoning.

(f) Setbacks. A single-family residential accessory dwelling unit is subject to the design criteria and zoning requirements of the district in which the existing single-family dwelling is located and as follows:

(1) A single-family residential accessory dwelling unit either attached or detached from the main house must not encroach upon the required front lot line area or four feet from the side yard property line.

(2) A setback of four (4) feet from the interior side and rear lot lines shall be required for a newly constructed, detached or attached single-family residential accessory dwelling unit that is not constructed in the same location and to the same dimensions as an existing structure. Proposed structures that are four (4) feet or less from the property line shall be required to provide a record survey to the City for proof of setbacks and existing property lines.

(3) The separation from the principal dwelling and any other accessory structure on the lot shall be at least five (5) feet unless implementation of this requirement would prohibit the construction of an 850 square foot detached accessory dwelling unit, in which case this requirement shall be waived provided the ADU complies with California Building Code (CBC) requirements for separation.

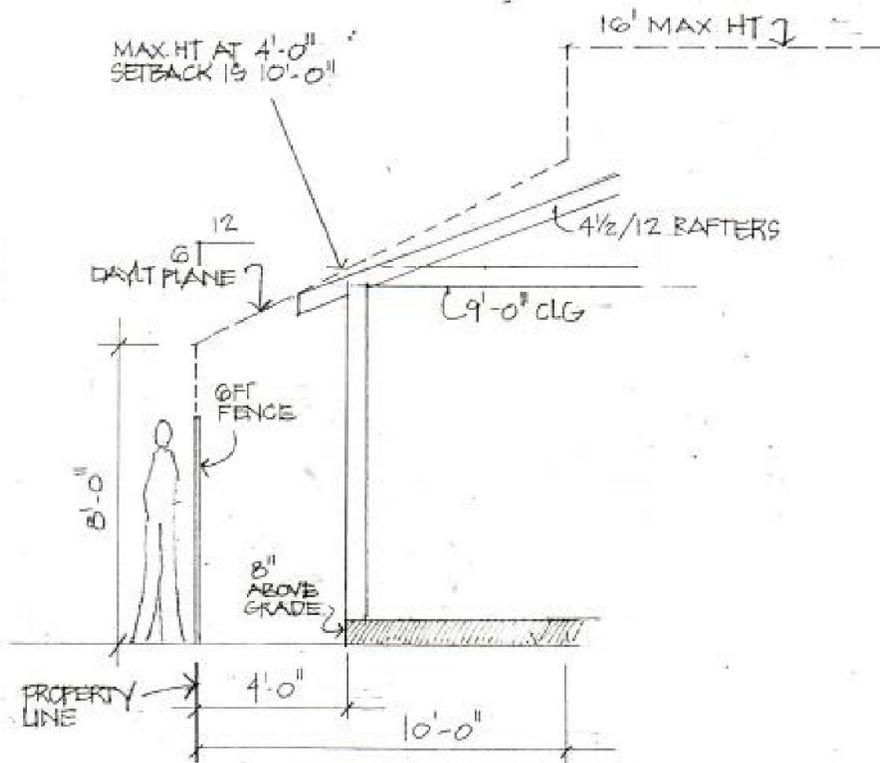
(5) No additional zoning setback is required for conversion of an existing permitted accessory structure, living area, or garage space, or conversion of a structure that is constructed in the same location and to the same dimensions as the existing structure.

(g) Detached Accessory Dwelling Unit Daylight Plane

(1) No portion of an attached or detached accessory dwelling unit shall extend above or beyond a daylight plane as follows:

(2) The daylight plane starts at a height of eight feet at the property line and proceeds inward at a 6:12 slope. At ten feet from the property line the structure can increase in height to sixteen (16) feet. All appurtenances, including chimneys, vents and antennas, shall be within the daylight plane. The daylight plane is not applied to a side or rear property line when it abuts a public alley or public street. However, the accessory dwelling unit (ADU) daylight plane shall not be enforced if it prohibits the development of an 850 square foot ADU which is required by state law.

(3) Daylight plane shall not be enforced for an ADU if the structure abuts a city street or alleyway in the rear of the property.



(h) A single-family residential accessory dwelling unit must be built in accordance with the building code set forth in Title 12, except that any design, zoning, and building standards inconsistent with state requirements under California Government Code Section 65852.2 shall not apply.

(i) Parking. One (1) additional uncovered parking space of nine feet by eighteen feet (9X18) shall be required for a newly constructed single-family residential accessory dwelling unit, which may be located within the front setback, in tandem and in an existing driveway including within an interior side yard setback area, unless a specific finding is made that such parking is not feasible due to specific site, topographical or fire and life safety. Notwithstanding the above, a parking stall will not be required for a residential accessory dwelling unit that meets any of the following criteria:

(1) The single-family residential accessory dwelling unit is created as a result of the conversion of existing area of the single-family residence or existing permitted residential accessory structure.

(2) An existing garage, carport or parking structure is converted or demolished to accommodate a single-family residential accessory dwelling unit in the same location. If the required parking for the main single-family residence is removed the property owner must submit a notarized letter to the City acknowledging removal of said parking could create a nonconformity for future expansions of the single-family dwelling.

(3) The single-family residential accessory dwelling unit is within one-half (1/2) mile walking distance of a public transit station, such as a bus stop or train station.

(4) The property is within an architecturally and historically significant historic district.

(5) On-street parking permits are required in the area but not offered to the occupant of the residential accessory dwelling unit.

(6) A vehicle share site is located within one (1) block of the single-family residential accessory dwelling unit.

(j) Design Standards. Architectural review of attached or detached single-family residential accessory dwelling units over 851 square feet or greater will be limited to the following:

(1) Notwithstanding any other provision of this code, a zoning clearance letter shall be issued for accessory dwelling units and shall be reviewed by the director of community development or their designee for compliance with objective design standards as identified within Chapter 14.06(Single Family Zoning Districts or Chapters 14.16-14.24 (Multi Family Zoning Districts). The permit shall be considered ministerial without discretionary review within the time frames required by Section 65852.2 of the Government Code; when the application is in compliance with the relevant standards, the permit shall be issued.

(2) In those instances where an applicant seeks permission to deviate from the standards, a variance shall be filed in accordance with 14.76.070. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the City may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create 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 suspended for the period of the delay.

(3) The architectural features, window styles, roof slopes, exterior materials, colors, appearance, and design of the single-family residential accessory dwelling unit must be compatible with the existing single-family dwelling.

(4) Minimum sill height of 5' (60) inches for windows on the second story within 15' of the property line that face out to the neighbors to try to mitigate privacy concerns shall be required.

(5) A new single-family residential accessory dwelling unit located within a historic site or neighborhood combining district will be subject to ministerial review for compliance with the design review criteria set forth in section Chapter 12.44 of the Los Altos Municipal Code and must be consistent with the Secretary of Interior's Standards for the Treatment of Historic Properties.

(6) Outside stairways serving a second story single-family residential accessory dwelling unit shall not be constructed on any building elevation facing a public street.

(7) No passageway will be required in conjunction with the construction of any single-family residential accessory dwelling unit.

(k) Streamlined Approval of Accessory Dwelling Units. Notwithstanding the restrictions above, a building permit application for a detached, single-family residential accessory dwelling unit within a residential or mixed-use zone must be a ministerial approved if it is:

(1) Setback four (4) feet from the interior side and rear lot lines.

(2) No larger than eight hundred and fifty (850) square feet in floor area; and

(3) No taller than sixteen (16) feet in height.

(l) Annual recertification. On an annual basis property owners will provide City staff access to the accessory dwelling unit to ensure compliance with the approved plans and voluntarily submit rental data for use by the City for the City's Regional Housing Needs Allocation

#### **14.14.060 Junior accessory dwelling unit standards.**

Notwithstanding any other provisions in this Article or of this chapter to the contrary, a junior accessory dwelling unit shall be permitted and comply with the following:

(a) Owner-occupancy of the property shall be required for junior accessory dwelling units or the main dwelling unit. The owner may reside in the primary residence, junior accessory dwelling unit or separate residential accessory dwelling unit constructed on the property in compliance with this Article.

(b) One (1) junior accessory dwelling unit may be permitted per residential lot zoned for a single-family residential use, provided that the lot has not more than one (1) existing or proposed single-family residence. A single-family residential lot is allowed to have both 1 junior accessory dwelling unit and one detached accessory dwelling unit.

(c) The unit must be constructed within the existing walls of a single-family dwelling except that an expansion of 150 square feet beyond the existing physical dimensions of the accessory structure may be permitted to accommodate required ingress and egress.

(d) The square footage of the unit shall be at least the minimum size (150 square feet) required for an efficiency unit, up to a maximum size of five hundred (500) square feet in floor area, and must include one bedroom or studio sleeping area.

(e) A separate entrance from the unit to the exterior of the residence, and an interior connection to the main living area may be provided. A second interior doorway for sound attenuation may also be permitted.

(g) At least an efficiency kitchen must be provided in the unit which shall include all of the following:

(1) A cooking facility with appliances. Appliances can include hot plate, or counter top cooking. A property owner does not need to a wall installed oven or stove to qualify for a cooking appliances.

(2) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(h) The unit may include separate bathroom facilities or may share bathroom facilities contained within the primary residence.

(i) No separate utility connection, connection fee or capacity charge, or parking space shall be required for a junior accessory dwelling unit.

(j) a deed restriction shall be required for junior accessory dwelling units and must include the following stipulations:

(1) prohibition on the sale of the JADU separate from the sale of the single family residence

(2) if a JADU is rented, the unit shall not be rented for a period of less than thirty (30) consecutive days

(3) owner occupancy is required for the JADU or the main house, unless the owner is another government agency, land trust or housing organization as allowed by State Law.

(k) Annual recertification deed restriction. On an annual basis property owners will provide City staff access to the accessory dwelling unit to ensure compliance with the approved plans and voluntarily submit rental data for use by the City for the City's Regional Housing Needs Allocation.

#### **14.14.070 Multi-family accessory dwelling unit Standards.**

Notwithstanding any other provisions of this chapter to the contrary, multi-family accessory dwelling units shall be permitted and comply with the following:

(a) Portions of existing multi-family dwelling structures that are not used as livable space (including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages), but excluding any residential amenities required to be provided for the facility by the zoning ordinance, or as a condition of project approval, may be converted for use as accessory dwelling units provided that total number of units must not exceed twenty-five (25) percent of the existing multi-family dwelling units or one (1) unit, whichever is greater.

(b) An owner may also construct up to a maximum of two detached accessory dwelling units on a lot that has an existing multifamily dwelling, subject to a height limit of sixteen (16) feet and four (4) foot rear yard and side setbacks. If there are inconsistencies between this Chapter and other provisions of the Los Altos municipal code, this Chapter shall prevail over those other provisions.

(c) Accessory dwelling units in multi-family zone districts shall comply with all the objective standards of the zone district they are located in unless inconsistent with the standards provided in this Chapter.

(d) Annual recertification. On an annual basis property owners will provide City staff access to the accessory dwelling unit to ensure compliance with the approved plans and voluntarily submit rental data for use by the City for the City's Regional Housing Needs Allocation.

**14.14.080 Voluntary Additional Setback**

For a detached accessory dwelling unit, the minimum setbacks shall be five feet (5) from the house, and four feet (4) from the side yard and rear yard setbacks. However, so as to reduce the privacy impacts to abutting property owners, applicants are encouraged to voluntarily increase the setbacks to be ten (10) feet from the rear yard and eight feet (8) from the interior side yard.

**14.14.090 Voluntary Annual ADU Recertification Process**

City staff are directed to send out an annual ADU rental income survey to be released no later than September 1<sup>st</sup> of every calendar year. The property owner can voluntarily share the rental income for the unit with the City for purposes of Los Alto meeting its Regional Housing Needs Allocation (RHNA Housing Element figures).

**SECTION 2. 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 3. CEQA.** The City Council finds the adoption of this ordinance to be statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 21080.17 of the Public Resources Code because it is an ordinance regarding second units in single-family and multifamily residential zones to implement the provisions of Government Code Section 65852.2.

**SECTION 4. PUBLICATION.** This ordinance shall be published as provided in Government Code section 36933. Within 15 days of the passage of this ordinance, the City Clerk shall cause the full text of the ordinance, with the names of those City Council members voting for and against the ordinance, to be published in an adjudicated newspaper. In lieu of publishing the full text of the ordinance, the City Clerk, if so directed by the City Attorney and within 15 days, shall cause a summary of the ordinance, prepared by the City Attorney and with the names of the City Council members voting for and against the ordinance, to be published in an adjudicated newspaper, and shall post in the office of the City Clerk a certified copy of the full text of the ordinance, along with the names of those City Council members voting for and against the ordinance. The publication of a summary of the ordinance in lieu of the full text of the ordinance is authorized only where the requirements of Government Code Section 36933(c)(1) are met.

**SECTION 5. EFFECTIVE DATE.** This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

**SECTION 6. TRANSMISSION TO HCD.** The City Clerk shall send a certified copy of this ordinance to the Department of Housing and Community Development (HCD) within sixty (60) days after adoption, as required by state law.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on \_\_\_\_\_, 2020 and was thereafter, at a regular meeting held on \_\_\_\_\_, 2020 passed and adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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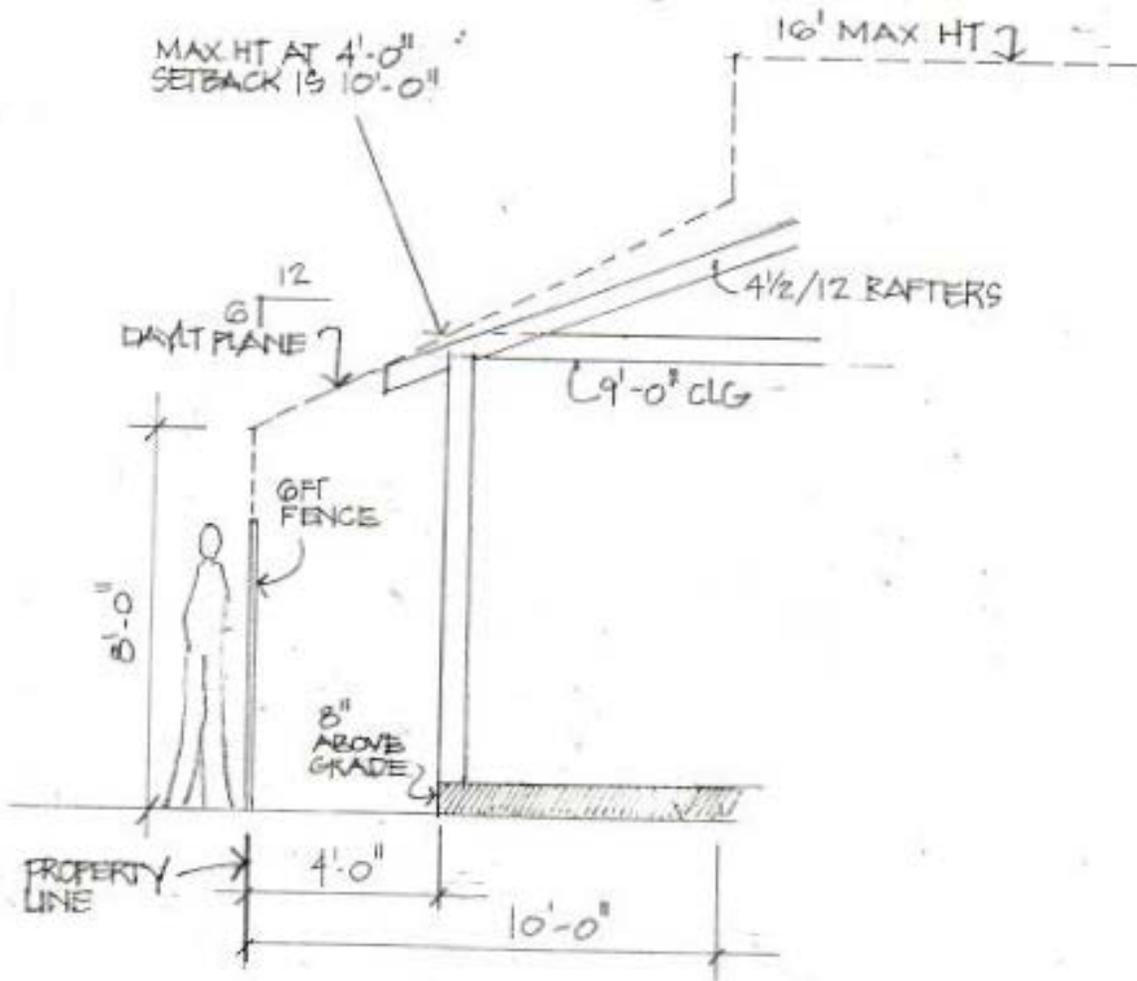
Janis C. Pepper, MAYOR

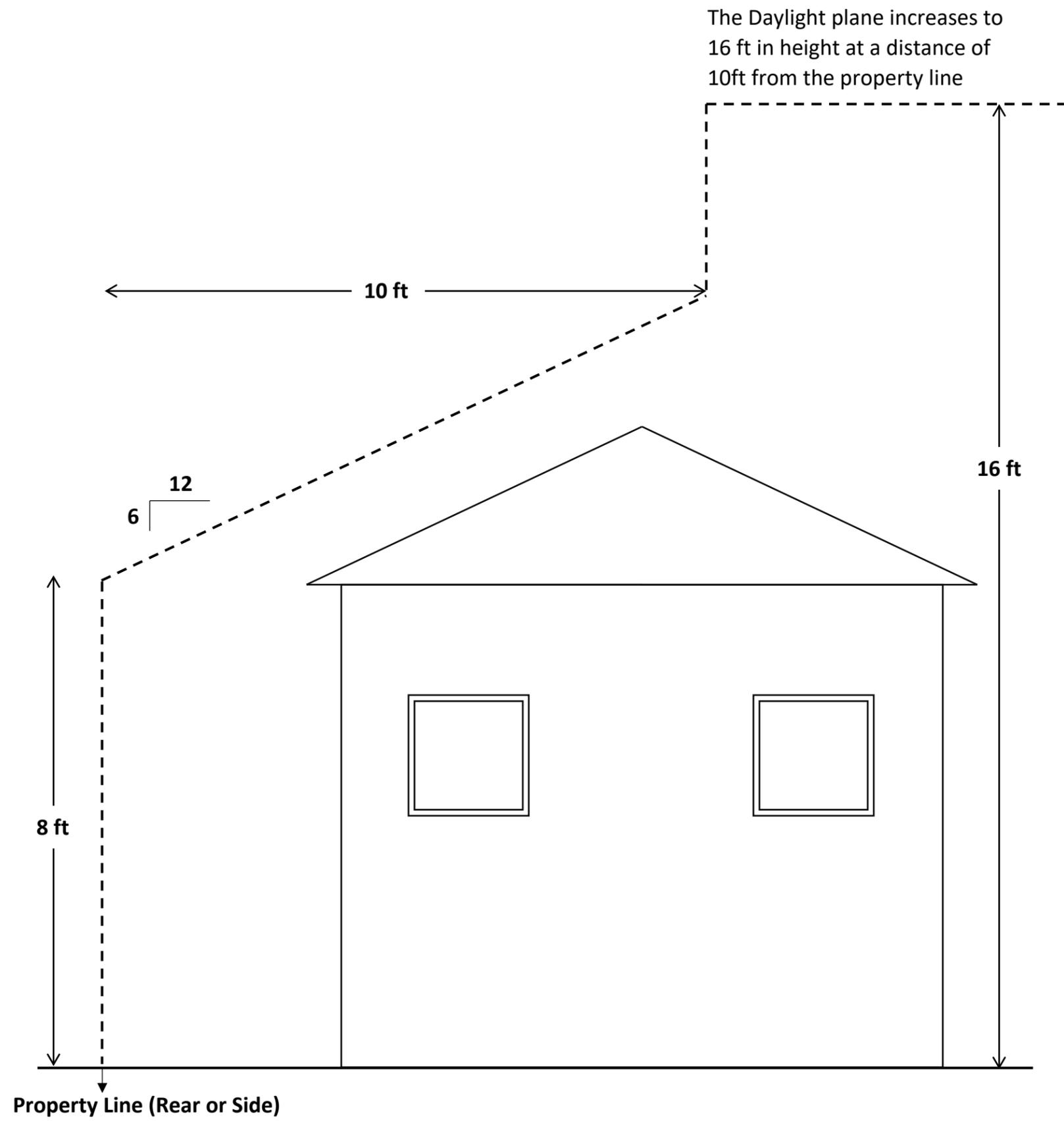
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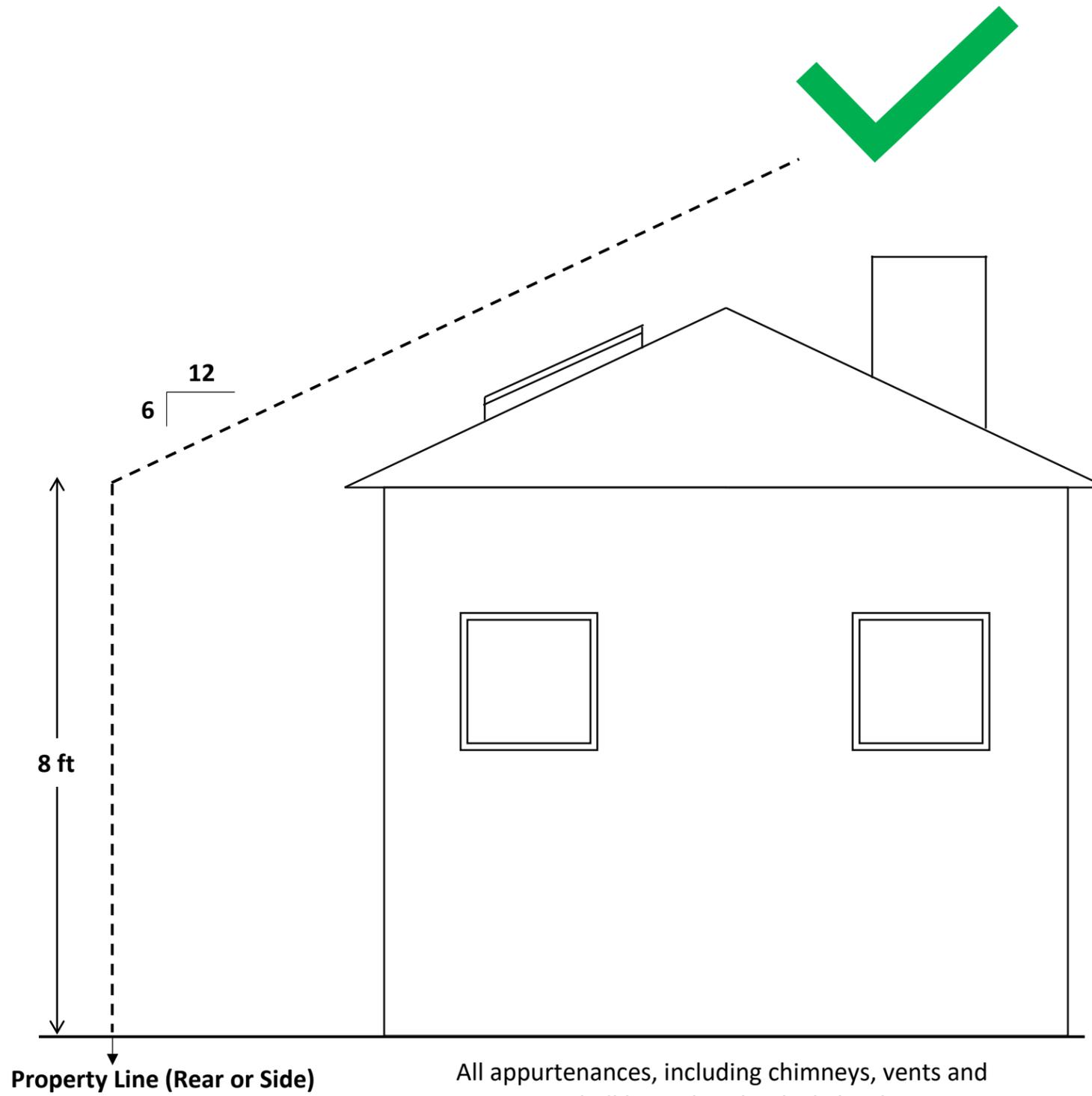
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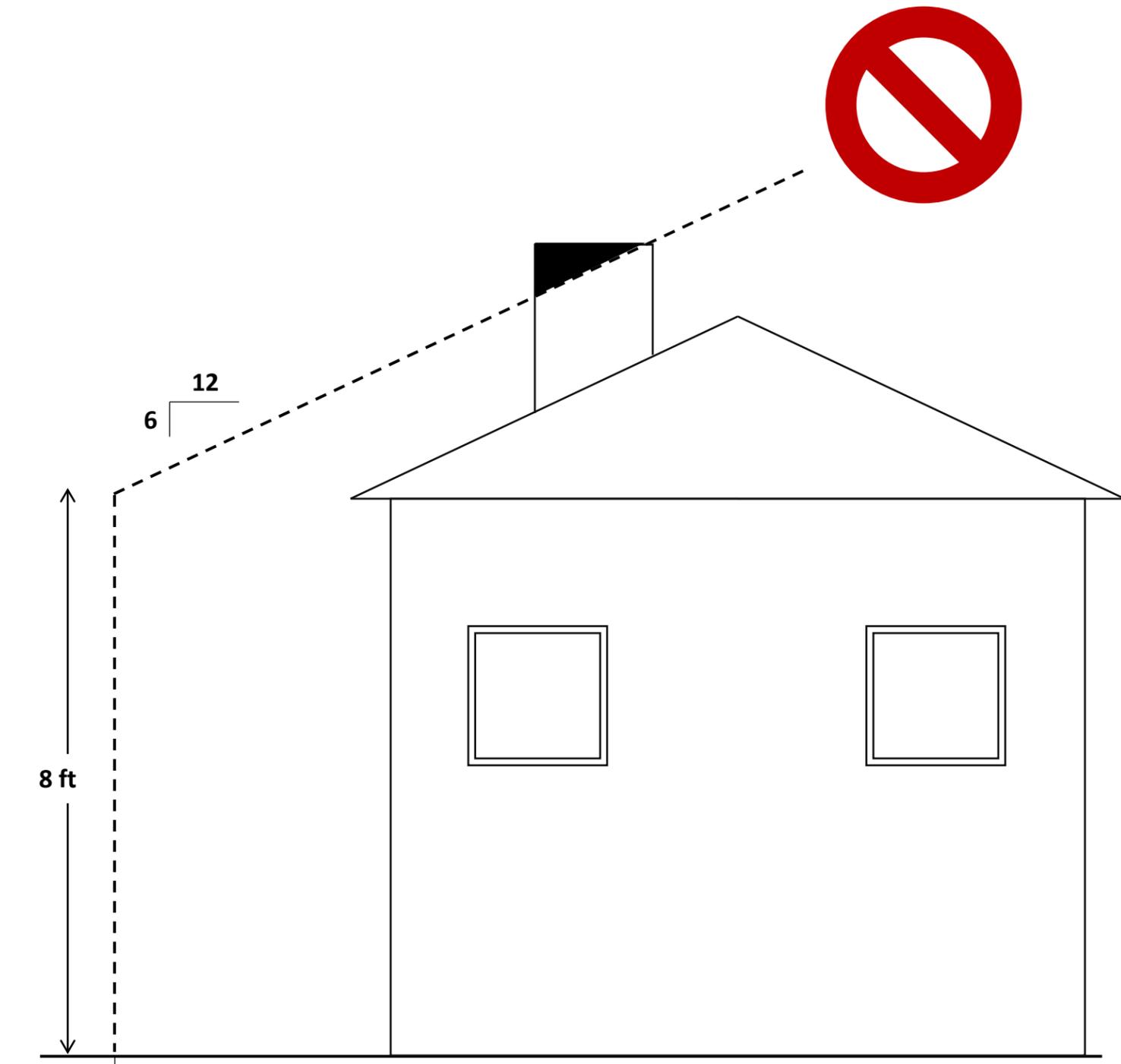
Jon Maginot, CMC, CITY CLERK

ATTACHMENT B









Property Line (Rear or Side)

All appurtenances, including chimneys, vents and antennas, shall be within the daylight plane.



May 21, 2020

**VIA EMAIL**

Planning Commission  
City of Los Altos  
1 North San Antonio Road  
Los Altos, CA 94022  
Email: [planningcommission@losaltosca.gov](mailto:planningcommission@losaltosca.gov)

RE: May 21, 2020 Planning Commission Meeting, Agenda Item 2

To the Planning Commission:

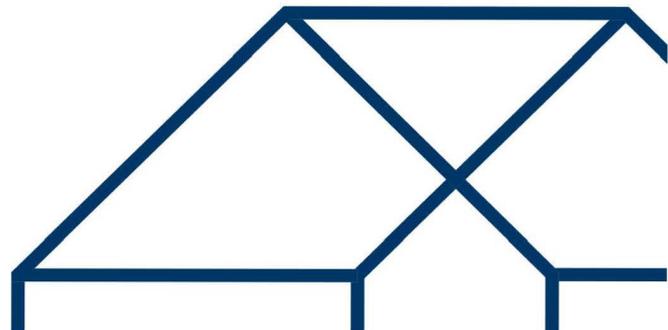
As you know, Californians for Homeownership is a 501(c)(3) non-profit organization devoted to using legal tools to address California's housing crisis. This letter follows up on our prior letters providing feedback on the City's draft ADU ordinance. At your May 21 meeting, you will again review the ordinance, which continues to suffer from very serious defects.

The problems include:

- The draft ordinance appears to prohibit the development of ADUs under Government Code Section 65852.2(a) in connection with multifamily structures, by limiting ADUs under proposed Municipal Code Section 14.14.050 to the single-family context. While it is true that many owners of multifamily buildings will choose to develop multiple ADUs under Sections 65852.2(e)(1)(C) and (D), an applicant may instead choose to develop a single ADU under Section 65852.2(a)—for example, through the conversion of existing livable space. As of January 1, 2020, subdivision (a) has been modified to replace references to “single-family dwelling” with “primary dwelling.”

- The draft ordinance limits detached ADUs to 50% of the size of the primary dwelling. The 50% limit only applies to attached ADUs, not to detached ADUs. *See* Gov. Code § 65852.2(a)(1)(D)(iv). Detached ADUs must be allowed up to 1,000 square feet (for ADUs with two or more bedrooms). Gov. Code § 65852.2(c)(2)(B).

- The draft ordinance defines “attached” ADUs to include internal ADUs, and purports to apply a maximum unit size to such ADUs. Because an interior ADU will always qualify for mandatory approval under Section 65852.2(e) regardless of local standards, from a practical perspective, the City will never be allowed to apply its maximum unit size to an interior ADU.



May 21, 2020

Page 2

- The draft ordinance prohibits ADUs from “encroach[ing] upon the . . . side yard-area.” This is a setback requirement, and is subject to the state law limits on setbacks for ADUs. *See* Gov. Code § 65852.2(a)(1)(D)(vii).
- The draft ordinance only applies the state law 4-foot setback maximums to detached ADUs. State law overrides larger setbacks for all ADUs. Gov. Code § 65852.2(a)(1)(D)(vii).
- The requirement for a property owner to acknowledge that the elimination of parking constitutes a “nonconformity” is unlawful and inappropriate. The development of an ADU does not create a zoning nonconformity, because an ADU permitted under state law (including a garage conversion) is “deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot.” Gov. Code § 65852.2(a)(8). The parking replacement rule in state law reflects the Legislature’s deliberate decision to override local parking requirements.
- Proposed Municipal Code Section 14.14.070 appears intended to account for the streamlined ADU categories described in Government Code Sections 65852.2(e)(1)(C) and (D). But it improperly prohibits the conversion of “any residential amenities required to be provided for the facility by the zoning ordinance, or as a condition of project approval.” California is in the midst of a housing crisis of historic proportions, and ADUs are a critical part of the Legislature’s effort to address that crisis. *See* Gov. Code § 65852.150(a). The purpose of Section 65852.2(e)(1)(C) is to substitute the Legislature’s preference for housing for local governments’ preference for providing non-housing residential amenities, such as storage areas.
- Proposed Municipal Code Section 14.14.070 also improperly requires these ADUs to comply with “all the objective standards of the zone district they are located in unless inconsistent with the standards provided in this Chapter.” All Section 65852.2(e)(1) ADUs must be permitted regardless of any local standards other than those specifically allowed by Section 65852.2(e).

We urge you to direct staff to make changes to address these concerns.

Sincerely,



Matthew Gelfand

cc: City of Los Altos  
Guido F. Persicone, Planning Services Mgr. (by email to [gpsicone@losaltosca.gov](mailto:gpersicone@losaltosca.gov))  
Jon Biggs, Community Development Director (by email to [jbiggs@losaltosca.gov](mailto:jbiggs@losaltosca.gov))  
Chris Jordan, City Manager (by email to [cjordan@losaltosca.gov](mailto:cjordan@losaltosca.gov))  
Jolie Houston, Esq., City Attorney (by email to [jolie.houston@berliner.com](mailto:jolie.houston@berliner.com))

California Department of Housing and Community Development  
Greg Nickless, Housing Policy Analyst (by email to [greg.nickless@hcd.ca.gov](mailto:greg.nickless@hcd.ca.gov))

## ATTACHMENT D

Comment Letter	City Staff Response
<p>#1-The draft ordinance appears to prohibit the development of ADUs under Government Code Section 65852.2(a) in connection with multifamily structures, by limiting ADUs under proposed Municipal Code Section 14.14.050 to the single-family context. While it is true that many owners of multifamily buildings will choose to develop multiple ADUs under Sections 65852.2(e)(1)(C) and (D), an applicant may instead choose to develop a single ADU under Section 65852.2(a)—for example, through the conversion of existing livable space. As of January 1, 2020, subdivision (a) has been modified to replace references to “single-family dwelling” with “primary dwelling.</p>	<p>Guido’s Statement-This is incorrect as Section 14.14.070 (Multi Family Accessory Dwelling Unit Standards) specifically allow ADUs in multifamily zones. The statute does not require a City to approve a multifamily ADU other than as identified within Government Code section 65852.2(e).</p>
<p>#2-The draft ordinance limits detached ADUs to 50% of the size of the primary dwelling. The 50% limit only applies to attached ADUs, not to detached ADUs. See Gov. Code § 65852.2(a)(1)(D)(iv). Detached ADUs must be allowed up to 1,000 square feet (for ADUs with two or more bedrooms). Gov. Code § 65852.2(c)(2)(B).</p>	<p>Per Section 65852.2(c)(2)(C) of the Government Code, this allows a City to impose standards on detached and attached ADUs.</p> <p><i>65852.2(c)(2)(C): [A] local agency shall not establish by ordinance . . . [a]ny <u>other</u> minimum or maximum size for an accessory dwelling unit, size <u>based upon a percentage of the proposed or existing primary dwelling</u>, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached <u>or detached</u> 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.</i></p>
<p>#3-The draft ordinance defines “attached” ADUs to include internal ADUs, and purports to apply a maximum unit size to such ADUs. Because an interior ADU will always qualify for mandatory approval under Section 65852.2(e) regardless of local standards, from a practical perspective, the City will never be allowed to apply its maximum unit size to an interior ADU.</p>	<p>Staff Response: The commenter seems to be making an argument that there is a third category of ADUs called “internal ADUs”. City staff does not agree with this interpretation ((see GC 65852.2 (j)(1)). Additionally, nothing in the statute states that an internal ADU can be unlimited in size. No additional edits are necessary.</p> <p><i>“Accessory dwelling unit” <u>means an attached or a detached residential</u> 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.</i></p>

<p>#4-The draft ordinance prohibits ADUs from “encroach[ing] upon the . . . side yard-area.” This is a setback requirement, and is subject to the state law limits on setbacks for ADUs. See Gov. Code § 65852.2(a)(1)(D)(vii).</p>	<p>Staff Response: This is a helpful edit. I will make it clear that the setback from the side property line shall be four (4) feet.</p> <p><i>Proposed Modification</i> A single-family residential accessory dwelling unit either attached or detached from the main house must not encroach upon the required front lot line area or <u>four feet from the side yard property line.</u></p>
<p>#5-The draft ordinance only applies the state law 4-foot setback maximums to detached ADUs. State law overrides larger setbacks for all ADUs. Gov. Code § 65852.2(a)(1)(D)(vii).</p>	<p>Staff Response: This is a helpful edit. It will be made clear that the four (4) foot setback shall apply to both attached and detached units.</p> <p><i>Proposed Modification</i> (2) A setback of four (4) feet from the interior side and rear lot lines shall be required for a newly constructed, <u>detached or attached</u> single-family residential accessory dwelling unit that is not constructed in the same location and to the same dimensions as an existing structure. Proposed structures that are four (4) feet or less from the property line shall be required to provide a record survey to the City for proof of setbacks and existing property lines.</p>
<p>#6-The requirement for a property owner to acknowledge that the elimination of parking constitutes a “nonconformity” is unlawful and inappropriate. The development of an ADU does not create a zoning nonconformity, because an ADU permitted under state law (including a garage conversion) is “deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot.” Gov. Code § 65852.2(a)(8). The parking replacement rule in state law reflects the Legislature’s deliberate decision to override local parking requirements.</p>	<p>Staff response: This is factually incorrect. The nonconforming situation is for the parking for the main house not for the purposes of the ADU. No changes are needed at this time.</p> <p><i>Existing Language</i> An existing garage, carport or parking structure is converted or demolished to accommodate a single-family residential accessory dwelling unit in the same location. If the required parking for the main single-family residence is removed the property owner must submit a notarized letter to the City acknowledging removal of said parking <u>could</u> create a nonconformity for future expansions of the single-family dwelling.</p>

#7-Proposed Municipal Code Section 14.14.070 appears intended to account for the streamlined ADU categories described in Government Code Sections 65852.2(e)(1)(C) and (D). But it improperly prohibits the conversion of “any residential amenities required to be provided for the facility by the zoning ordinance, or as a condition of project approval.” California is in the midst of a housing crisis of historic proportions, and ADUs are a critical part of the Legislature’s effort to address that crisis. See Gov. Code § 65852.150(a). The purpose of Section 65852.2(e)(1)(C) is to substitute the Legislature’s preference for housing for local governments’ preference for providing non-housing residential amenities, such as storage areas.

Staff Response: No modifications are needed at this time. We are following state law by allowing modifications of non-livable area while also maintaining local control of project amenities that we want to see in multi family housing projects (pools, gyms, common open space.)<sup>1</sup>

(a) Portions of existing multi-family dwelling structures that are not used as livable space (including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages), but excluding any residential amenities required to be provided for the facility by the zoning ordinance, or as a condition of project approval, may be converted for use as accessory dwelling units provided that total number of units must not exceed twenty-five (25) percent of the existing multi-family dwelling units or one (1) unit, whichever is greater.

#8-Proposed Municipal Code Section 14.14.070 also improperly requires these ADUs to comply with “all the objective standards of the zone district they are located in unless inconsistent with the standards provided in this Chapter.” All Section 65852.2(e)(1) ADUs must be permitted regardless of any local standards other than those specifically allowed by Section 65852.2(e).

Staff Response: What City staff has written is fine, but to make it completely clear we wanted to say that if there is a conflict between the ADU ordinance and other portions of the municipal code, this ordinance shall prevail.

*Proposed Modification*  
 (c) Accessory dwelling units in multi-family zone districts shall comply with all the objective standards of the zone district they are located in unless inconsistent with the standards provided in this Chapter. If there are inconsistencies between this Chapter and other provisions of the Los Altos municipal code, this Chapter shall prevail over those other provisions.

<sup>1</sup> <https://legal-dictionary.thefreedictionary.com/Ejusdem+generis>.