



Item No. 9 Town of Atherton

CITY COUNCIL STAFF REPORT – CONSENT AGENDA

TO: HONORABLE MAYOR AND CITY COUNCIL

THROUGH: GEORGE RODERICKS, CITY MANAGER

FROM: STEPHANIE B. DAVIS, AICP PRINCIPAL PLANNER

DATE: OCTOBER 21, 2020

SUBJECT: ADOPTION OF MUNICIPAL CODE ORDINANCE AMENDMENTS TO ATHERTON MUNICIPAL CODE CHAPTERS 17.52 ACCESSORY DWELLING UNITS AND CHAPTER 17.60 DEFINITIONS.

RECOMMENDATION

Adoption of Municipal Code Ordinance amendments to Chapter 17.52 “Accessory Dwelling Units” and Chapter 17.60 “Definitions” of the Atherton Municipal Code.

BACKGROUND

In October 2019 the Governor signed into law a number of bills that amended Government Code sections 65852.2 and 65852.22 which impose new limits on a local authority to regulate Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) in order to further ease local restrictions. These State laws restrict what cities may require when new ADUs are considered with the intent of further reducing barriers and streamlining approvals to accommodate the development of ADUs.

These new ADU laws took effect January 1, 2020. Per this new legislation, if a jurisdiction’s ADU ordinance does not comply with the new ADU laws, that ordinance becomes null and void as a matter of law. Cities are more accountable now to the California Department of Housing Community Development (HCD) for confirming their local ordinances to the state ADU law, and HCD may refer a violation to the Attorney General.

The amendments presented were to adopt regulations governing the development of ADUs and JADUs to meet the minimum regulations in accordance with the changes made to State ADU laws by various Senate and Assembly Bills.

On August 26, 2020 the Planning Commission considered amendments to Chapter 17.52 “Accessory Dwelling Units” and Chapter 17.60 “Definitions” and voted 3-1 to recommend that the City Council reject the amendments. The Commission vote was expressed not with opposition of the proposed

Ordinance amendments presented by staff, but to convey the Commission's position that they are opposed to this type of mandate by the State.

The City Council, at its September 16, 2020 regular meeting, conducted a public hearing and voted 5-0 to introduce Municipal Code amendments to Chapter 17.52 "Accessory Dwelling Unit" and Chapter 17.60 "Definitions" with direction to make the following three (3) revisions:

1. Incorporation of language expressing the Council's disagreement with the mandated changes in state law.
2. Adding severability language that in the event any of the changes compelled by state law are reversed, that the Town's prior ADU ordinance is revived and effective.
3. Clarifying language requiring an owner occupancy deed restriction after January 1, 2025, with language referencing the ability of a property owner with a lot that contains a main residence, ADU and/or JADU who no longer lives at the property, but doesn't sell it, to rent out the entire property, however to only one tenant. This would prohibit a property owner who no longer lives at the property to rent out the main residence, ADU, and/or JADU up to three (3) different tenants.

ANALYSIS

The Ordinance amending the Municipal Code pertaining to the regulations associated with Accessory Dwelling Units (ADUs) is attached for adoption by the City Council (Attachment 1). Such Ordinance amendments were crafted to meet the minimum State requirements but also attempt to address local conditions to the greatest extent feasible.

The Council directed a series of three (3) revisions to the Ordinance introduced at the September 16, 2020 meeting, as summarized in the "Background" section above. These revisions have been incorporated into Attachment 1. Following the September 16, 2020 City Council meet Staff subsequently presented the revised Ordinance to HCD for their final review and comment. HCD did not have any comment on the three (3) revisions as directed by Council at the September 16, 2020 meeting. However, HCD did present a series of additional comments related to clarification of other components of the ADU Ordinance that they did not discuss when staff presented the same language during the original preliminary discussion in May 2020. These additional revisions for clarification on implementation of state law per HCD recent comments are incorporated into Attachment 1 and summarized below. The City Attorney's office has reviewed these revisions and determined such changes are clarification of state law rather than new substantive changes to the Ordinance.

- Incorporation of a statement that implies every allowable lot can have a minimum 800 square foot ADU regardless of development standards.
- Clarifying language that attached ADU's are allowed to have 4-foot side and rear setbacks.
- That the separation requirement between a detached ADU and main house, can be less than 8 feet if necessary to accommodate a minimum 800SF ADU.

- Clarifying language related to an ADU’s entrance requirement, lighting, and landscaping standards.

POLICY FOCUS

To respond to the current state housing crisis, the State Legislature passed a series of bills designed to encourage the production of both ADUs and JADUs. Cities are expected to update their local ordinances to comply with the state legislation. If the Town fails to conform its local ordinance, applicants would be permitted to develop under the state legislation. Failure to adopt an ordinance that the HCD supports by their approval or maintaining an ordinance that is not compliant with State law means that the Town’s ordinance would be considered null and void by any developer. No State action would be required to invalidate the Town’s ordinance. Failure to adopt an ordinance that the HCD will approve (required by State law), results in making the Town’s non-compliant ordinance null and void. A null and void ordinance allows development to occur under the State’s more permissive guidelines without regard for local zoning law.

Since the Town currently has several ADU applications pending, adopting the local updates will allow the Town to process applications with more clarity and compliance. The attached Ordinance is drafted to comply with the minimum, more permissive state regulations. Additionally, adoption of amendments to the ADU Ordinance to incorporate the more permissive state requirements, may further promote the development of ADUs in Town, which may in turn assist the Town fulfilling its Regional Housing Needs Allocations (RHNA) requirements which will be assigned by the state during the next upcoming, required Housing Element cycle.

FISCAL IMPACT

The cost associated with the preparation of the draft Ordinance amendments are included within the annual Planning Department budget. The cost to implement the Ordinance will be paid for the applicants of related development projects.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town’s electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town’s electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item X has or has not been before a Town Committee or Commission.

 Audit/Finance Committee (meets every other month)

 Bicycle/Pedestrian Committee (meets as needed)

 Civic Center Advisory Committee (meets as needed)

- Environmental Programs Committee (meets every other month)
- Park and Recreation Committee (meets each month)
- Planning Commission (meets each month) - August 26, 2020
- Rail Committee (meets every other month)
- Transportation Committee (meets every other month)
- Tree Committee (meets each month)

ATTACHMENT

1. Ordinance X - Amend Chapters 17.52 and 17.60 of the Atherton Municipal Code Regulating Accessory Dwelling Units and Junior Accessory Dwelling Units

ORDINANCE X

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON TO AMEND CHAPTERS 17.52 AND 17.60 OF THE ATHERTON MUNICIPAL CODE REGULATING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS

WHEREAS, the Town of Atherton has historically regulated the construction of accessory structures within zones designated for residential use in a manner that is consistent with the character of the Town and that values the privacy of the Town’s residents, and

WHEREAS, California has a shortage of housing and particularly affordable housing and the State Legislature has in recent years undertaken a number of measures to incentivize the construction of additional housing stock to address this shortage, and

WHEREAS, the City Council supports the construction of additional housing stock throughout the state but strongly opposes the State Legislature’s approach to incentivizing such construction where that approach usurps local land use control, and

WHEREAS, the City Council opposes the changes in state law that take away local land use control over the development of accessory dwelling units and junior accessory dwelling units, and makes conforming changes to the Atherton Municipal Code under protest.

The City Council of the Town of Atherton does hereby ordain as follows:

Section 1. TITLE

This Ordinance shall be known as the Town of Atherton ("Town") Accessory Dwelling Unit Ordinance. This Ordinance shall be applicable in the incorporated territory of the Town.

Section 2. PURPOSE & AUTHORITY

The purpose of this Ordinance is to adopt regulations governing the development of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs") in accordance with the changes made to State ADU laws found at Government Code section 65852 et seq. by various Senate and Assembly Bills, including SB 13, AB 68, and AB 881.

Section 3. AMENDMENTS TO ATHERTON MUNICIPAL CODE CHAPTER 17.52

Chapter 17.52 is hereby deleted and re-enacted to read as follows:

**Chapter 17.52
ACCESSORY DWELLING UNITS**

Sections:

- 17.52.010 Purpose.
- 17.52.020 Zones Allowed.
- 17.52.030 Definitions.
- 17.52.040 Development Standards and General Requirements.
- 17.52.050 Application Review.

17.52.010 Purpose.

The purpose of this chapter is to regulate accessory dwelling units in residential zoning districts and on residential property consistent with state law (California Government Code Section 65852 et seq.). Implementation of this chapter is intended to provide for additional housing opportunities by increasing the number of units available within existing neighborhoods while maintaining the character of the area. The City Council of the Town of Atherton adopts this chapter to comply with SB 13, AB 68, and AB 881 under protest, as it is the Council's position that in enacting these laws, the legislature has improperly usurped local land use authority.

17.52.020 Zones Allowed.

Accessory dwelling units and junior accessory dwelling units shall be allowed in all areas zoned to allow single family residential uses in compliance with the development standards set forth in section 17.52.040 (Development Standards and General Requirements) of this Chapter. Regardless of any development standards, a minimum ADU of 800 square feet shall be allowed.

17.52.030 Definitions.

A. "Accessory dwelling unit" or "ADU" means a building or portion of a building designed for use and occupancy by people living independently of the occupants of the main residence building and containing separate kitchen, bath, sleeping, or living facilities. The term "attached accessory dwelling unit" means an accessory dwelling unit that is structurally attached to the main residence but which has independent, direct access from the exterior. The term "detached accessory dwelling unit" means an accessory dwelling unit that is not structurally attached to the main residence.

B. "Junior Accessory dwelling unit" or "JADU" means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit shall include an efficiency kitchen, which shall include all of the following a cooking facility with appliances and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.

17.52.040 Development Standards and General Requirements.

Unless otherwise stated in Section 17.52.050 of this Ordinance, ADUs and JADUs are permitted, provided the following standards and requirements are incorporated and met.

A. Maximum Number. Only one ADU and one JADU shall be allowed on each lot or parcel with a zoning designation of single-family residential.

B. Location. The ADU shall be attached to the existing main residence or located within the habitable area of the existing main residence or detached from the main residence and located on the same lot as the main residence.

C. Heritage Tree, Setbacks, Height, Other Development Requirements.

1. Heritage Trees. In all instances, the location of any newly constructed ADU or JADU shall meet the minimum requirements in accordance with Chapter 8.10 Removal of and Damage to Heritage Trees for any existing heritage trees.

2. Height. The maximum height of an attached ADU shall meet the height requirements for the main residence of the zone in which the unit is to be located. The maximum height of a detached ADU shall be one-story and shall not exceed a maximum overall height of sixteen (16) feet and maximum sidewall height of eleven (11) feet.
3. Setbacks and other Development Standards. Except as specified below, all ADUs and JADUs shall comply with the setback requirements of the zone in which a unit is to be located.
 - i. Attached ADUs shall be located in the main building area and may encroach into the side and rear yard setbacks by not more than twenty percent (20%) of the required setback, and may apply additional exemptions from floor area limitations as noted in Section 17.52.040 (C)(5) of this Chapter, however; such rear and side setbacks may be reduced to four (4) feet but will then not be eligible for additional exemptions from floor area limitations as noted in Section 17.52.040 (C)(5) of this Chapter.
 - ii. Detached accessory dwelling units shall be subject to the setback and other development standards as set forth in Chapter 17.40 Accessory Buildings and Structures of the Atherton Municipal Code. Detached ADU's which meet the minimum side and rear setbacks of Chapter 17.40 Accessory Buildings and Structures may apply additional exemptions from floor area limitations as noted in Section 17.52.040 (C)(5) of this Chapter, however; such rear and side setbacks may be reduced to four (4) feet without applying the additional exemptions from floor area limitations as noted in Section 17.52.040 (C)(5) of this Chapter.
 - iii. No setback requirement shall apply to any ADU or JADU constructed in an existing living area, a converted existing accessory structure or building, or for a new ADU or JADU constructed in the same location and built to the same dimensions as an existing structure.
4. Floor Area.
 - i. No ADU or JADU may be smaller than the size required to allow an efficiency unit pursuant to Health and Safety Code Section 17958.1.
 - ii. The maximum size of a detached or attached ADU shall not exceed twelve hundred (1,200) square feet.
 - iii. The increased floor area of an attached ADU shall not exceed fifty percent of the existing floor area of the main residence, unless necessary to accommodate at least an eight hundred (800) square foot ADU.
 - iv. No floor area limitation shall be required for any conversion of an existing legal non-conforming building to an ADU.
5. Exemption from Maximum Floor Area Limitations.
 - i. The first eight hundred (800) square feet of floor area of each newly constructed ADUs or JADUs shall be excluded from maximum floor area calculations.

- ii. Additional floor area for newly constructed ADUs or JADUs may be excluded from maximum floor area calculations where staff determines the following conditions are met:
 - a. Newly constructed detached ADUs which meet and/or exceed the minimum side and rear setbacks of Chapter 17.40 Accessory Buildings and Structures will be allowed additional floor area exemptions in addition to the first eight hundred (800) square feet of floor area up to a total of twelve hundred (1,200) square feet.
 - b. Newly constructed attached ADUs which are located in the main buildable area and encroach into the side and rear yard setbacks by not more than twenty percent (20%) of the required setback shall be allowed additional floor area exemptions in addition to the first eight hundred (800) square feet of floor area up to a total of twelve hundred (1,200) square feet.

D. Existing Garage. No setback shall be required for an existing, legal attached or detached garage and/or other existing structure that is converted to an ADU or JADU.

E. Passageway. No passageway, as defined in California Government Code Section 65852.2, shall be required in conjunction with the construction of an ADU or JADU.

F. Owner Occupancy. The owner occupancy requirements detailed in this section shall apply to all lawfully permitted ADUs and JADUs within the Town:

1. ADUs and JADUs permitted before January 1, 2020. The owner-occupancy requirements applicable to the ADU or JADU at the time of its permitting shall apply.
2. ADUs and JADUs permitted between January 1, 2020 and January 1, 2025. No owner-occupancy requirements shall apply.
3. ADUs and JADUs permitted after January 1, 2025. Prior to finaling of the project for an ADU or JADU, the property owner shall record a deed restriction requiring that the owner of the property occupy either the primary dwelling unit, ADU, or JADU, or if the owner will not be residing in one of the units, lease the entire property including the primary dwelling unit, ADU, and JADU to a single tenant.

G. ADU Rental. An ADU or JADU may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence. Rentals of any ADU or JADU must be for longer than thirty days.

H. Parking Requirement.

1. Unless subject to one of the exceptions immediately below, each ADU shall have assigned to it one parking space per ADU. Parking shall be accessible from a public street and screened from view of the public street. These spaces may be provided as tandem parking on an existing driveway.
2. No additional parking required. No additional parking shall be required if one of the following conditions applies to the ADU:
 - i. ADU is located within one-half mile of public transit.

- ii. ADU is part of a proposed or existing primary residence or an existing accessory structure.
- iii. On-street parking permits are required but not offered to the occupant of the ADU.
- iv. A car share vehicle is located within one block of the ADU.

I. Separation Requirement. A separation of at least eight feet shall be maintained between any detached ADU and the proposed or existing primary residence, unless necessary to accommodate at least an eight hundred (800) square foot ADU.

J. Entrance Requirements. Any new ADU or JADU that is incorporated into a proposed or existing primary residence shall have a separate entrance facing the side or rear yard, where feasible. Any new detached ADU or JADU shall have a separate entrance facing towards the interior of the lot.

K. Compliance with Applicable Requirements. ADUs and JADUs unit shall meet all applicable zoning and fire regulations and shall comply with local building codes. Fire sprinklers shall not be required for the accessory dwelling unit if they are not required for the primary residence.

L. Lighting Restrictions. Any lighting associated with an ADU or JADU shall be shielded or downlit and shall not shine onto adjoining properties, while meeting the minimum Building Code.

M. Landscape Screening. Landscape screening shall be installed to the greatest extent feasible.

N. Density. Any ADU or JADU does not count towards the allowable density for the lot upon which it is located.

17.52.050 Application Review.

A completed application for an ADU or JADU that complies with the provisions of this chapter shall be considered ministerial, without discretionary review or a hearing, within sixty days after receiving a complete application unless either:

- A. The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay; or
- B. If a permit application for an ADU or JADU is submitted along with a permit application to create a new primary residence, the Town may delay acting on the permit application for the ADU or JADU until the Town acts on the permit application to create the new primary residence. At such time the permit application for such ADU or JADU is considered, it will still be considered ministerially without discretionary review or a hearing, regardless of its having been submitted along with an application for a new primary residence.

Section 4. AMENDMENTS TO ATHERTON MUNICIPAL CODE CHAPTER 17.60

Chapter 17.60 is hereby amended to the definition of "Second Dwelling Unit" and add the definition of "Junior Accessory Dwelling Unit, as follows:

“Accessory Dwelling Unit” or “ADU” means a building or portion of a building designed for use and occupancy by people living independently of the occupants of the main residence building and containing separate kitchen, bath, sleeping, or living facilities. The term “attached accessory dwelling unit” means an accessory dwelling unit that is structurally attached to the main residence but which has independent, direct access from the exterior. The term “detached accessory dwelling unit” means an accessory dwelling unit that is not structurally attached to the main residence.

“Junior Accessory dwelling unit” or “JADU” means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit shall include an efficiency kitchen, which shall include all of the following a cooking facility with appliances and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.

Section 5. SEVERABILITY & REVIVAL OF PRIOR TOWN ADU ORDINANCE

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. To the extent that prior Town ordinances governed any portion of this Ordinance held invalid, such prior Town ordinances shall again become effective if any portion of this Ordinance is held invalid.

Section 6: EFFECTIVE DATE

This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

Introduced on the 16th day of September, 2020.

ATTACHMENT 1

Passed and adopted as an ordinance of the City Council of the Town of Atherton at a regular meeting thereof held on the ___ day of _____, 2020 by the following vote:

Ayes:

Noes:

Abstentions:

Rick DeGolia, Mayor Town of Atherton

ATTEST:

APPROVED AS TO FORM:

Anthony Suber, City Clerk

Mona Ebrahimi, City Attorney