



Item No. 9
Town of Atherton

CITY COUNCIL STAFF REPORT – PUBLIC HEARINGS

**TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER**

FROM: BRITTANY BENDIX, TOWN PLANNER

DATE: NOVEMBER 15, 2023

**SUBJECT: INTRODUCE AN ORDINANCE TO REPEAL AND REPLACE
ATHERTON MUNICIPAL CODE CHAPTER 17.52 “ACCESSORY
DWELLING UNITS,” AND TO AMEND CHAPTER 17.36 “PUBLIC
FACILITIES AND SCHOOLS DISTRICT (PFS)” AND CHAPTER 17.60
“DEFINITIONS.”**

RECOMMENDATION:

Staff recommends that the City Council conduct a public hearing to introduce an ordinance that repeals and replaces Chapter 17.52 “Accessory Dwelling Units” and amends Chapter 17.36 “Public Facilities and Schools District (PFS)” and Chapter 17.60 “Definitions.”

BACKGROUND

In January of this year the Town initiated an effort to update its Accessory Dwelling Unit (ADU) Ordinance to align with recent changes in State law, as well as the Town’s adopted Housing Element for 2023-2031. Given the breadth of changes required to align with state law and a desire to apply local standards, the Town held a joint study session with the Planning Commission and City Council on May 10, 2023. The staff report and supplemental list of questions and answers that facilitated the study session are provided at Attachments 1 and 2. A link to the recording of the session is provided at Attachment 3.

The study session provided valuable direction on many items and on October 25, 2023, the Planning Commission held a public hearing to consider updates to the Accessory Dwelling Ordinance. The staff report for the October 25, 2023, Planning Commission meeting (Attachment 4) summarizes the discussion at the study session and highlighted the following five topic areas where staff sought special attention from the Commissioners:

1. Definitions*
2. Accessory Dwelling Use*

3. Maximum Number of Units*
4. Exemptions from Maximum Floor Area Requirements*
5. Height*
6. Heritage Trees*
7. Privacy, Screening and Landscaping*
8. Owner Occupancy*

After discussion of these topics, the Planning Commission voted unanimously to approve the staff recommendation with amendments as follows:

- Review the appropriateness of the 15 years' timeline requirement for the deed restriction in Section B(3) of the Ordinance,
- Add language relative to clerestory windows or no windows on walls facing adjacent properties for ADUs that are located above a detached garage; and
- Direction to staff to continue to work with the Town Arborist to modify the tree protection zone exception process in a manner that incentivizes applicants to comply with the Town's setback standards. (Attachment 5)

The remainder of this report supplements the October 25, 2023, staff report by addressing the Planning Commission recommendations in the context of the Town's goal to incentivize the production of ADUs that (1) provide a lower income housing typology and (2) that comply with the Town's existing setback standards.

ANALYSIS

The following analysis considers the total number of ADUs or Junior ADUs (JADUs) allowed on a single-family property and how that may influence the Town's pursuit of a Bonus ADU program, standards for ADUs located above detached garages, an administrative review process for large ADUs in tree protection zones, and a discussion on fencing requirements.

Number of Units Allowed, Bonus Units and Deed Restriction Program

As discussed in the October 25, 2023, staff report, the total number of ADUs allowed by State law on a single-family zoned property is three units: one JADU, one ADU (internal to the main house or through conversion of a structure) and one detached ADU. This is a shift from what many jurisdictions previously perceived as two units and has become a common error flagged in ADU Ordinances flagged by the State's Housing and Community Development Department (HCD).

Staff is highlighting this change because it is distinct from what the Planning Commission and City Council has previously understood and may influence the Town's decision to facilitate a "bonus" ADU through Housing Element Program 3.812(F) which seeks to allow two ADUs to be constructed on properties that are two acres, or greater, in area. This topic was discussed by the Planning Commission, which recommended retaining the bonus program given that it would apply to lots that are two acres or greater.

Past discussions of the bonus ADU program have also included a potential deed restriction component that would require the bonus unit to be affordable to low-income households for a period of 15 years or more. This program is included in the Draft Ordinance (Attachments 6 and 7) as 17.52.040(B)(3):

On lots that allow single-family dwellings and are a minimum of two (2) acres, the property owner may have up to two (2) detached ADUs provided that one of the two units is deed restricted as low-income for a period of 15 years or more.

The Planning Commission considered the deed restriction program and although they ultimately voted to recommend approval of the draft ordinance, the Commission added a recommendation that the Council review the appropriateness of the 15-year timeline requirement for the deed restriction. To facilitate this discussion, staff has provided additional information on related deed-restricted programs below.

Deed-restrictions are requirements on a property that are communicated through that property's deed. For land use planning purposes, jurisdictions may require a property to record a restriction on the deed that relates to conditions of approval that run with the property and not the owner. This is an effective tool to ensure that all future property owners are aware of conditions of approval, restrictions or requirements associated with land use entitlements, prior to purchasing the property. The timeframe for a deed restriction varies based on the nature of the restriction. Many jurisdictions that require affordable housing units constructed in conjunction with an inclusionary housing program are maintained at certain affordability levels (very low, low, moderate, etc) for periods ranging from 30 to 55 years. However, this timeframe is characteristic of affordable housing built as part of multifamily developments including five or more primary residences, not ADUs.

Requiring deed-restricted affordable housing through ADUs is a new approach to capturing and documenting the lower income housing options that ADUs provide. This documentation is important because it helps demonstrate to the state that the Town's strategy to provide lower income housing through ADUs is effective. However, because this approach is new, there is no standard for a timeframe. Staff is aware of one California jurisdiction that has fully enacted a deed-restricted ADU program. The City of San Diego enacted a program in 2020 that requires a 15-year commitment for moderate-income ADUs and a 10-year commitment for very low- or low-income ADUs.

ADUs Above Detached Garages

At the May 10, 2023, study session the Councilmembers and Planning Commissioners provided feedback to incentivize compliance with the Town's setback standards by facilitating ADUs larger than 800 square feet and enabling ADUs above detached garages. Inclusion of ADUs above detached garages is also consistent with the adopted Housing Element. However, the Housing Element indicates that the maximum height for such structures is 18 feet. Based on discussion at the May 10, 2023 study session, staff drafted the ADU Ordinance to reference a height limit to no more than 25 feet based on the following:

- The Town desires an ADU program that incentivizes alignment with existing setback standards for main buildings and accessory structures. Existing garages comply with these standards with the exception of unique cases for garages that are legally noncomplying.
- Existing garages that are compliant with the Town's zoning ordinance have a maximum height requirement of 15 feet or one story.
- A general standard for the height of one story is ten feet.
- The allowance of an ADU above a garage, with an 18-foot height limit may deter applicants by resulting in less favorable floor to ceiling heights, preventing a preferred roofline articulation, or resulting in the loss of attic/storage space within the existing garage.

Additionally, in response to concerns raised at the May 10, 2023 study session regarding the scale of a potential 1,200 square foot above a larger multi-car garage characteristic to the Town, staff also recommended the following set of objective development standards for such a proposal:

- The total height is inclusive of the garage,
- The garage complies with the accessory structure setback requirements of the Zoning Code
- The ADU is accessed through a ground level entry vestibule and an interior stair.
- The roofline shall be consistent with the style of the main residence. For example, a gabled roof form on the main residence shall require a gabled roof form on the ADU above garage.
- If the second story floor area accommodating the ADU is less than the ground floor area, the residual roofing above the ground floor shall not accommodate a roof deck or balcony.

The Planning Commission discussed the 25-foot height limit, noting that an ADU attached to the primary residence and above a garage would also have a height limit of 25-feet, as required by state law. The Planning Commission also modified staff's recommendation to add two design techniques intended to preserve privacy: the use of clerestory windows and the absence of any windows on facades facing adjacent properties. This language has been added to 17.52.040(J)(1):

New ADUs constructed above the ground floor shall also be designed to reasonably preserve the privacy of adjacent property owners. Appropriate design techniques to preserve privacy include obscured glazing, the use of clerestory windows that are above eye level, screening treatments, locating windows toward the existing on-site residence or providing no windows on facades facing adjacent properties.

The Planning Commission also discussed the implications of the fencing requirements in the draft ADU Ordinance, which requires the following per section 17.52.040(J)(3):

A solid 8-foot-high fence shall be provided along the entire front, side, or rear property line adjacent to where the ADU is located. Fences shall be at the property line.

Although the Planning Commission did not make changes to this language, staff is calling attention to the requirement for the Council's consideration as the direction on this point was not solidified at the May 10, 2023 study session and it reflects a general change to fence height requirements in the Town where 6-feet, with some exceptions, is the requirement on side and rear property lines and where there is no requirement at the front property line. Further, one concern repeated at both the study session and the Planning Commission meeting is the actual benefit achieved for privacy or screening when State law facilitates a 16-foot tall detached ADU four feet from the side and rear property lines and zero feet from the front property line.

Heritage Trees

In response to the Town's desire to incentivize ADUs that comply with the Town's setback standards. Planning staff and the Town Arborist recommended language to Planning Commission that enabled detached ADUs greater than 800 square feet to seek an administrative exception to the Tree Protection Zone (TPZ) requirements for a distance up to 8x in the R1-A zoning district. The Town Arborist would review such requests for ADUs concurrently with review by Planning staff. The Planning Commission supported this effort; however, they directed staff to modify the tree protection zone exception process in a manner that further incentivizes applicants to comply with the Town's setback standards.

In response to the Planning Commission, staff has modified Section 17.52.040(I)(2) to facilitate administrative review of TPZ requests for a distance up to 6x. However, the Town Arborist would

request specific information as part of an application submittal process to facilitate that review. The required information and terms of this process in the application would note the following:

1. An application and fee are required to be completed prior to a Town Arborist TPZ exception review. Submitting and paying for the application does not guarantee approval to reduce the TPZ. If the Town Arborist denies an application submitted for a Town Arborist exception to the TPZ, the application can be appealed to the Planning Commission in accordance with the Atherton Municipal Code. The application for a Town Arborist TPZ exception shall be submitted to the Town of Atherton with a narrative stating why the exception is requested, what the impact to any Heritage trees would be, why alternate locations do not work and any identified mitigation. The following information shall accompany the application and application fee:
 - a. A plan showing location of the structure and the Heritage trees with size and species stated. Show TPZ zones from 5x to 10x on the plan.
 - b. Project Arborist report – stating what the damage and mitigation would be.
 - c. Any Trenching less than 10x the dbh is required to be hand dug including exploratory Trenching if approved to trench closer than 10x.
 - d. The percentage of Heritage tree roots to be cut.
 - e. Site plan showing alternative locations.
 - f. Any utility easements.
 - g. Any supporting letters from Menlo Fire, PG&E and/or other utility providers.
 - h. The Town Arborist can require a meeting at site or with all parties to discuss further.
 - i. The Town Arborist can request any further information as needed to review.
2. Any application to be submitted shall be reviewed by the Town Arborist for demonstrated compliance with any the following criteria, to the satisfaction of the Town Arborist:
 - a. If the species is tolerant of construction based on species, health, size and age from Matheny and Clark tolerance chart.
 - b. Health of the tree.
 - c. Are their alternative locations for an ADU on site.
 - d. There are no roots over 2” diameter that need to be cut.
 - e. Percentage of the roots disturbed and foundation type.
 - f. Other criteria as may be required by the Town Arborist.
3. Appeal to the Planning Commission. Decisions of the Town Arborist may be appealed to the Planning Commission by filing the following:
 - a. A completed appeal form along with payment of the appeal fee deposit.
 - b. A copy of the original application submitted to the Town Arborist.
 - c. A copy of the decision made by the Town Arborist.
 - d. Any new information not considered by the Town Arborist.
 - e. The Planning Commission shall consider the criteria set forth above in Section 2.2 B in ruling on the outcome of any appeal of a decision of the Town Arborist.

FINDINGS:

The proposed zoning text amendments are consistent with the General Plan goals, policies, and implementation programs. The proposed Zoning Ordinance amendments allow the Town to be compliant with recent changes in state law related to the development of Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs). Amendments proposed address the following General Plan Goal, Objectives, and Policy:

Housing Element Goal 3.720 Use Accessory Dwelling Units to meet a substantial portion of the Town's moderate to very low-income housing need.

Housing Element Objective 3.721 A. Realize the construction of 280 new accessory dwelling units planned for occupancy by moderate to extremely low-income households in Atherton from 2023-2031.

Housing Element Policy 3.722 A. Actively promote the Accessory Dwelling Unit provision of the Atherton Zoning Ordinance by encouraging homeowners and developers to include attached or detached Accessory Dwelling Units in existing or new homes.

B. Comprehensively update the Town's Accessory Dwelling Unit (ADU) Ordinance to amend any identified zoning development standards which may unduly constrain development of ADUs.

Housing Element Policy 3.762 B. The Town shall continue to encourage the production and availability of more affordable housing through the development of new accessory dwelling units, and private and public-school faculty and student housing.

CONCLUSION:

To respond to the current state housing crisis, the state 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. 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 for the adopted 6th Cycle Housing Element.

ENVIRONMENTAL CONSIDERATIONS

The project is Categorically Exemption per Section 15305 of the CEQA Guidelines. Section 15305 relates to Minor Alterations in Land Use Limitations, as the ordinance amendments would not result in any changes to land use or density.

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. Legal advertisement of this hearing was published in *The Alamanac* newspaper. Notice of this hearing was also mailed to all property owners within the Town. 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.

ATTACHMENTS

1. [Joint City Council & Planning Commission Study Session - May 10, 2023 Staff Report](#) (Link)
2. Study Session Questions to Staff & Answers
3. [Recording of May 10, 2023 Study Session](#) (Link)
4. [Planning Commission Meeting – October 23, 2023 Staff Report](#) (Link)
5. Planning Commission Resolution No. 2023-01
6. Draft ADU Ordinance (Changes shown in red)
7. Draft ADU Ordinance (Tracked changes)