



Item No. 1
Town of Atherton

CITY COUNCIL (WITH THE PLANNING COMMISSION)
STUDY SESSION STAFF REPORT

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

FROM: SUNG H. KWON, TOWN PLANNER

DATE: MAY 3, 2023

SUBJECT: STUDY SESSION TO DISCUSS CHANGES AND UPDATES TO THE
ACCESSORY DWELLING ORDINANCE AND ASSOCIATED MUNICIPAL
CODE SECTIONS.

CEQA: Statutorily Exempt from CEQA under Section 15262, Feasibility and Planning
Studies

RECOMMENDATION

Staff recommends that the City Council and Planning Commission discuss and consider changes to the Accessory Dwelling Unit Ordinance and associated Municipal Code Sections. Staff requests that direction regarding changes be provided to staff.

BACKGROUND

In September 2022, the Governor signed into law AB2221 and AB 2097 that amended Government Code Sections 65585 and 65852.2. These Sections impose new limits on a local authority to regulate Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) 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, 2023.

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 conforming their local ordinances to State ADU law; and, HCD was granted authority to refer violations to the Attorney General. Once the revised ADU Ordinance is adopted, the Town must send the revised Ordinance to HCD within 60 days for a compliance review.

The Planning Commission was initially going to review the draft ADU Ordinance update on January 25, 2023; however, staff asked the Planning Commission to change the meeting to a Study Session so that staff could also bring forward ADU changes outlined in the Housing Element. Given the wide range of changes required, staff is recommending a complete rewrite of the Ordinance to provide a clear distinction between what is required under State law and what can be considered as local options.

At the January 25 Planning Commission Study Session, a variety of comments were provided by the Planning Commission and members of the public. These comments are highlighted below:

- Consider waiving ADU fees (Planning and Building) for the first 1-2 years
- Privacy and noise are important issues
- Onsite parking for ADUs are important
- Provide flexibility on entrances for ADUs. No entrance limitations for flag lots are necessary.
- Provide some flexibility in kitchen design and provide examples how other Cities are defining kitchens.

Other comments are provided as attachments.

Attachment #4 to this Staff Report is the Planning Commission Staff Report for the January 25, 2023 Study Session. The Report goes into further detail on the required ADU Ordinance Amendments. Specifically, page 2 of the Staff Report outlines the list of key areas of change as mandated by the State. Beginning on page 2, the Staff Report discusses the recommended changes to the Ordinance to address key areas. These include:

- Internal Connections from Attached ADUs to the Main Residence
- Kitchen Definition (more below)
- Efficiency Units
- ADU Allowances
- Impact Fees
- Heritage Trees
- ADU Height
- Setbacks
- Garage Structures
- Parking
- Fire Sprinklers
- Non-conformities
- Utility Connections
- Sidewall Heights
- ADUs in the PFS Zone

The Report also included a redline version of the Ordinance. Attachment #1 is a color-coded plain language ordinance. The highlights in yellow are those areas mandated by the State. The highlights in turquoise are those areas where the Town has authority. Staff will review this attachment in detail at the City Council Study Session on May 3.

Kitchen Definitions from other Agencies

Staff reached out to other local agencies to compare kitchen definitions. As shown in the table below, there is a wide variety of approaches as to how kitchens are defined. Many ADU applicants in Atherton have requested more specifics on kitchen requirements.

Table 1 – Kitchens Defined on other Agencies

Agency	Kitchen	Efficiency Kitchen (and JADU Kitchen)
Town of Woodside Section 153.005	KITCHEN. A portion of a dwelling designed and used for food preparation and food storage, and equipped with a sink, a permanent stove/conventional oven that complies with applicable Building Codes, and other appliances such as a refrigerator.	EFFICIENCY KITCHEN. A kitchen with 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.
City of Menlo Park Section 16.79.020	"Accessory dwelling unit" (ADU) means an attached or a detached residential dwelling unit that provides complete independent living facilities for one (1) or more persons and is located on a lot with a proposed or existing primary residence. The unit shall contain permanent provisions for: (A) Living; (B) Sleeping; (C) Eating; (D) Cooking; (E) Sanitation; (F) Exterior access separate from the primary dwelling.	"Junior accessory dwelling unit" (JADU) means a dwelling unit that is no more than five hundred (500) square feet in size and contained entirely within an existing or proposed single-family dwelling. A JADU shall include cooking facility with appliances and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the JADU.
County of San Mateo Zoning Regulations	KITCHEN. Any room used, or intended, or designed to be used for cooking and preparing food. For ADUs (not JADUs) A kitchen area containing a refrigerator, sink, and permanently installed cooking appliance, which must include at least a fixed stovetop.	Efficiency Kitchen. An efficiency kitchen, as defined in Government Code Section v65852.22, is a kitchen that contains at least 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.
City of Redwood City Article 37	Accessory Dwelling Unit. An accessory dwelling unit, commonly known as a second unit or in-law unit, is an attached or detached residential dwelling unit that is located on the same parcel as an existing or proposed single-family dwelling, duplex, or multifamily dwelling and provides permanent provisions for complete independent living, sleeping, eating, cooking, and sanitation facilities	JADU Shall contain a <i>kitchen</i> or an <i>efficiency kitchen</i> that includes cooking appliances, a food preparation counter, and storage cabinets that are of reasonable size in relation to the junior accessory dwelling unit.
City of San Mateo Section 27.04.133	"Cooking facility/kitchen" means a room or portion thereof designated and/or customarily used as a place for the preparation and sanitation of food and containing a sink, stove, refrigerator, oven, microwave, freezer, or any other customarily used appliance or fixture for the preparation and sanitation of food as determined by the Zoning Administrator. A "cooking facility/kitchen"	"Efficiency food preparation area" means a small food preparation area for a junior accessory dwelling unit which includes sink dimensions with a maximum width of 16 inches and length of 16 inches, waste line diameter of 1.5 inches; food preparation with appliances that do not require electrical service greater than 120 volts, or natural or propane gas; a food preparation counter and storage cabinets which do not exceed six feet in length.

	does not include a "wetbar" or "efficiency food preparation area."	
City of Los Altos Section 14.14	ADU A kitchen shall be provided for an ADU. A full kitchen requires habitable space used for preparation of food that contains at least a sink, a refrigerator of no less than ten (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.	JADU At least an efficiency kitchen must be provided in the unit which shall include all the following: (1) A cooking facility with appliances. Appliances can include hot plate, or counter-top cooking. A property owner does not need to have a wall installed oven or stove to qualify for a cooking appliance. (2) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the JADU.
City of Palo Alto Title 18 Zoning	"Kitchen" means a room designed, intended or used for cooking and the preparation of food and dishwashing. Kitchen facilities include the presence of major appliances, utility connections, sink, counter, for storing, preparing, cooking, and cleaning. (A) For ADUs, major appliances shall mean a minimum two burner installed range, and an oven or convection microwave, as well as a minimum 16 cubic foot freezer and refrigerator combination unit. Kitchens shall also include counter space for food preparation equal to a minimum 24-inch depth and 36-inch length, and a sink that facilitates hot and cold water.	JADU The junior accessory dwelling unit shall include an efficiency kitchen, requiring the following components: A cooking facility with appliances, and; food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit. 1. A cooking facility with appliances shall mean, at minimum a one burner installed range, an oven or convection microwave, a ten cubic foot refrigerator and freezer combination unit, and a sink that facilitates hot and cold water. 2. A food preparation counter and storage cabinets shall be of reasonable size in relation to a JADU if they provide counter space equal to a minimum 24-inch depth and 36-inch length.

POLICY QUESTIONS

In addition to discussion of Attachment #1, there are specific topics that staff would like the City Council and Planning Commission to discuss so that staff can provide more detailed language for the ADU Ordinance. The list of questions are as follows:

- 1) Should the Tree Protection Ordinance (Section 8.10 Removal and Damage to Heritage Trees) apply to ADUs over 800 sq. ft.? Should Tree Protection be required for the extra floor area above 800 sq. ft.?
- 2) Can the Town Arborist have greater authority to approve tree exceptions for ADUs?
- 3) Should ADUs be allowed to be accessed from the rear of a double frontage lot? Can they be given a different street address?
- 4) Should ADUs between 800 and 1,200 feet be located outside the Accessory Structure/Building setbacks?
- 5) How should privacy be addressed considering Fire District comments for fire safety? (See Attachment #2)
- 6) Should ADUs be allowed over carports as well as garages?
- 7) How should kitchens be defined?
- 8) Should a third ADU be allowed on lots greater than 2 acres with a deed restriction? Should this also apply to SB9 lots?
- 9) What is the minimum size for a closet?

- 10) Should an accessory building attached to a detached ADUs be allowed to be 16 feet high to match the ADU? (Accessory buildings have a height limit of 15 feet.)

To frame these policy questions, the City Council and Planning Commission may wish to resolve these issues through a ministerial process as State law will prohibit reviews longer than 60-days. This condensed timeline would make it very difficult for any ADU permit processes to be non-ministerial (i.e. Commission review).

A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create the new single-family or multifamily dwelling, but the application to create or serve 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 tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

Draft ADU Ordinance language has been provided for reference to further frame the issues. The text highlighted in yellow are State Requirements and would be required. The text highlighted in turquoise would be Town specific requirements. The City Council and Planning Commission may wish to focus on the Town specific requirements. Please see Attachment #1.

CEQA

This Study Session is statutorily exempt from CEQA under Section 15262, Feasibility and Planning Studies.

NOTICE

Public notification was achieved by posting the City Council 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 Almanac* newspaper, 15 days prior to the hearing date. At the time of the publication of this report, the Town has not received any public comment or inquiries on the application beyond what was attached to this staff report.

CONCLUSION

Staff requests that the City Council along with the Planning Commission discuss policy issues for ADUs/JADUs and provide direction to staff.

ATTACHMENTS

1. Color Coded Draft Language for ADU Ordinance
2. Email from Fire District
3. Comments received from the public received after 1/25/23 PC Study Session
4. January 25, 2023 Packet
5. January 25, 2023 Minutes