

ATTACHMENT 4
Planning Commission
Agenda Report

June 24, 2020
Item 5

SUBJECT: P20-0412

APPLICANT: City of Pleasanton

PURPOSE: Consider amendments to Chapters 18.08, 18.20, 18.28, 18.32, 18.36, 18.44, 18.84, and 18.106 of the Pleasanton Municipal Code to comply with state legislation for accessory dwelling units

LOCATION: Citywide

**GENERAL PLAN/
SPECIFIC PLAN/
ZONING:** Various

EXHIBITS:

- A. Draft resolution with proposed amendments to the Pleasanton Municipal Code
- B. Adopted California Government Code Section 65852.2, Health and Safety Code Section 17980.12, Government Code Section 65583, Health and Safety Code Section 50504.5, Government Code Section 65852.22, Government Code Section 65852.26, Civil Code Section 4751

STAFF RECOMMENDATION

Staff recommends that the Planning Commission discuss the draft amendments to the Pleasanton Municipal Code (PMC) and adopt a resolution recommending approval of Case P20-0412 to the City Council with the proposed amendments shown in Exhibit A. At this particular meeting, however, staff is not requesting the Planning Commission take action on the draft amendments, to ensure an opportunity for the Commission to receive public comments, discuss and provide any needed direction.

EXECUTIVE SUMMARY

In 2019, the Governor signed into state law six different bills (Senate Bill 13, Assembly Bill 68, Assembly Bill 881, Assembly Bill 670, Assembly Bill 587, and Assembly Bill 671) that change the regulations for accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs). These new rules build upon the changes to law regarding ADUs enacted in 2017, and still have the overall objective of encouraging the construction of ADUs. Since local ADU ordinances are required to be in conformance with state law, amendments to the City's existing regulations are proposed, to match the new requirements for ADUs and JADUs.

Along with the draft amendments, staff has identified several key topics for discussion for and direction by the Planning Commission. Amendments to the zoning chapter of the PMC require

review and recommendation from the Planning Commission to the City Council. Accordingly, the key topics for discussion and the draft amendments are before the Planning Commission for its consideration and recommendation.

BACKGROUND

For the past several years, the State has adopted a series of new laws intended to encourage the production of ADUs, principally by reducing regulatory barriers to property owners being able to construct these units. In 2017, the City updated the PMC in response to a significant set of changes in state law governing ADUs. An additional series of regulations were adopted by the State in 2019, effective in January 2020, for which additional updates to the PMC are required.

ADUs, also known as granny flats, in-law units, and second dwelling units, are often cited as a beneficial form of housing provided they are constructed legally and meet applicable standards. ADUs are conducive to: on-site independent living space for family members or aging relatives, a convenient place of residence for care givers, a way for less-abled or aging homeowners to stay in their homes, or simply as another option for rental housing. Other benefits include providing a source of affordable housing, while maintaining the character of single-family neighborhoods, and providing a source of rental income to offset the cost of buying or owning a home. ADUs and JADUs cannot be subdivided and subsequently sold separately from the primary dwelling.

Unlike a duplex, an ADU is subordinate to the single-family dwelling in both function and design. ADUs are permitted in various forms. An ADU may be completely within an existing single-family home. Or an ADU may be built as an extension of a single-family dwelling or as a detached unit. And with the latest update to the state law, an ADU may now be located within a multifamily structure or as a detached unit within a multifamily development.

JADUs must be completely within the walls of a single-family dwelling and must have an entrance into the unit from inside the main dwelling as well as an entrance to the JADU from the outside.

While much of the new legislation effective January 1, 2020 regarding ADUs is complex and difficult to interpret, it is clear on its intent: provide greater flexibility for the construction and conversion of existing space to ADUs or JADUs, limit the imposition of impact fees, and streamline approvals by eliminating discretionary review of ADUs and JADUs.

The draft amendments to the PMC included as Exhibit A are proposed to implement the state law within the context of the City's existing regulations while retaining the City's authority over ADU and JADUs to the maximum extent permitted by state law.

SUMMARY OF STATE LAW AND PROPOSED PMC AMENDMENTS

The full text of the state law is attached to this report as Exhibit B and is summarized below. These various requirements are reflected in various sections of the draft PMC amendments, included as Exhibit A.

A significant change in the new state law is that ADUs are now permitted for both single-family and multifamily properties. The summary below outlines some of the key concepts that inform the draft PMC amendments; outlines proposed standards applicable to single-family

development (both attached and detached ADUs); standards applicable to ADUs within multifamily developments; standards applicable to Junior ADUs; and then outlines a series of generally-applicable requirements that would apply for all types of ADU.

1. Key Concepts in new ADU laws

Major concepts that inform the structure and content of the proposed PMC amendments include:

a. Minimum ADU Standards

A key concept in the new state law is that of “Minimum ADU Standards,” which are the minimum size, heights and setbacks that local ordinances must allow for, including a size of at least 800 square feet; side and rear setbacks of four feet; and a height of at least 16 feet. Staff interprets this provision of state law to mean that an accessory dwelling unit that does not meet any one of the Minimum ADU Standards (i.e. is larger than 800 square feet, taller than 16 feet, or proposes less than four foot setbacks) must, with some limited exceptions¹, then also comply with applicable development regulations established by the PMC, and the zoning district or planned unit development in which the property is located (e.g. floor area ratio maximums, minimum open space requirements, setbacks, etc.) This concept is reflected in the various regulations outlined below.

b. Application of Standards by Use, versus Zoning District

While state law makes mention of zoning districts that allow single-family or multifamily residential dwelling uses, the majority of the law is structured to rely on the existing use of the property to determine which standards are to be applied (i.e. regardless of zone, interpretation of the ADU regulations are based on whether a property contains single-family or multifamily development).² Therefore, staff proposes definitions to distinguish between single-family and multifamily development, and apply regulations accordingly (with some limited exceptions) instead of identifying standards by zoning districts.³ Please see section titled, *Defining Single-Family and Multifamily Development* in this report for further discussion on this topic.

c. Objective Standards

The City’s current regulations make ADUs subject to the same design review standards and procedures as other types of development. The new state law makes it clear that any form of discretionary review for ADUs is disallowed, including processes such as design review, and preclude application of anything other than strictly objective standards and ministerial approval procedures. With this limitation, and while recognizing the high value placed in Pleasanton on

¹ State law provides that if the ADU is: (1) the result of the conversion of existing living space or an existing accessory structure; or (2) the result of removing and replacing a structure of the same footprint, the existing non-conforming setback(s) may be retained.

² It should be noted that, for the most part, existing land use correlates closely with zoning – Single-family zoning districts predominantly contain single-family developments and multifamily zoning districts contain multifamily developments of various types. However, this is not universally true in Pleasanton, particularly in multifamily residential districts, where a range of housing types, from apartments, to townhomes and compact/small-lot detached single-family residences are often found.

³ In Pleasanton, the PMC sections for single-family and multifamily districts identify ADU and JADUs as permitted uses; single-family districts include the R-1 and A districts; multifamily zoning districts include the RM and MU districts. The Central-Commercial (C-C) District also allows multifamily dwellings and thus in accordance with the new state law, must now also allow ADUs; JADUs would be allowed in existing single-family dwellings.

neighborhood compatibility, design quality, and minimization of neighbor impacts, the proposed PMC amendments incorporate a series of objective standards (specific, measurable and verifiable parameters), to ensure that impacts of ADUs are minimized. See “Discussion” Section below for more detail on this topic.

2. Single Family ADUs

a. Number of Permitted ADUs [see Exhibit A, PMC 18.106.020(C)]

On a property with single-family development, the new regulations allow an ADU plus a JADU in addition to a primary residential unit on a parcel with a single-family use. Therefore, a property containing a single-family use could have up to three units: the primary residential unit, a JADU, and an ADU.

b. Attached Single-Family ADUs [see Exhibit A, PMC 18.106.040]

The following standards apply to attached ADUs on single-family developments (i.e., an ADU that is within an addition to the primary residence, or constructed within a portion of the existing residence).

(i) *Height and Setbacks*

The state law does not specify height and setback requirements for attached ADUs beyond those established as Minimum ADU Standards. Staff proposes that attached ADUs be subject to the maximum height and the minimum setback requirements of the main structure. However, consistent with State law, an attached ADU that is less than 16 feet in height and less than 800 square feet may be located 4-feet from property lines even if the setbacks for the zoning district require greater setbacks.

Another exception to minimum setbacks specified in state law is that no setbacks are required for a legally existing living area that is converted to an ADU or to a portion of an ADU. For example, if a legally-existing portion of a residence is 3 feet from a side property line where a minimum of 5 feet is required and this portion of the residence is converted to an ADU, the ADU would be compliant with setback requirements per state law since no setbacks are required for the ADU.

Staff also proposes that an attached ADU must meet a series of prescribed objective design standards; these are outlined further in the *Proposed Objective Standards* section of this report.

(ii) *Square Footage*

The maximum floor area of an attached single-family ADU would be the greater of the following:

1. 800 square feet; or
2. 850 square feet for a studio or one-bedroom and 1,000 square feet for a two- or more-bedroom unit; or
3. 50 percent of the gross floor area of the existing main dwelling unit, with a maximum increase in floor area of 1,200 square feet.

Staff would like to recognize that the above square footage limitations appear to blend together several different concepts, such as overall maximum square footage and number of bedrooms, in addition to factoring in the size of the existing primary dwelling. And, on a

practical level, since the PMC applies the greater of the three maximum sizes listed, a maximum of 1,200 square feet will be allowed in many instances, consistent with the maximum ADU size currently allowed in the PMC. Nonetheless, this approach mirrors the (difficult to interpret and apply) state law such that the proposed amendments to the PMC are consistent with these different variables and limitations, while at the same time upholding the standards currently in the PMC.

Despite this, it is important to reiterate that, the PMC would require that an attached ADU exceeding any of the Minimum ADU Standards comply with applicable development regulations for the zoning district or PUD in which it is located; thus application of floor-area-ratio maximums, minimum open space requirements etc. may further restrict the above-listed maximums, although in no case can the ADU be restricted to less than 800 square feet.

c. Detached Single-Family ADUs [see *Exhibit A, PMC 18.106.045*]

The changes proposed to the PMC related to detached ADUs principally pertain to square footage maximums, as well as requiring second-story ADUs to meet objective standards.

(i) *Height*

The maximum height for a detached ADU is 16 feet, consistent with the Minimum ADU Standards (one foot greater than the existing height maximum of 15 feet); detached ADUs are limited to one-story. In the current and revised PMC, an exception is provided for an ADU proposed above a detached garage, in which case the maximum height is 25 feet in the R-1, RM, and MU districts and 30 feet in the A district (the 25-foot height limit currently exists for the R-1 and RM districts and is proposed to be carried forward to the MU District). ADUs proposed above a detached garage in the C-C District would be limited to 40 feet, which is the existing height limit for accessory structures.

The provision to allow ADUs above detached garages was added as part of the modified ADU regulations adopted by the City in 2013 and no change to the overall height limits (or to the setback requirements) is proposed. The detached ADU above a garage would, however, need to meet objective standards (see the section titled, *Proposed Objective Design Standards*, intended to address such issues as neighbor privacy and compatibility with existing buildings).

(ii) *Setbacks*

Detached ADUs are required to be located a minimum of 4 feet from side and rear property lines if they are proposed as one-story structures up to 16 feet in height. If proposed above a garage, the ADU must be at least 5 feet from side and rear property lines, even in the C-C District where no setbacks are required for accessory structures. For corner lots, a 10-foot street side setback would be required (consistent with the current PMC) in situations where the ADU does not meet any one of the Minimum ADU Standards. An ADU that meets all of the Minimum ADU Standards could have a 4-foot setback, even on the street side of a corner lot.

The new state law indicates that no setbacks may be required when either of the following types of structures are converted to an ADU: (1) a legal, existing accessory structure; or (2) a non-conforming structure when the ADU is constructed in the same location and with the same dimensions as the non-conforming existing structure. This is more permissive than the existing requirement since the PMC currently indicates no setbacks are required for existing *garages*

that are converted to ADUs; the new state law applies to all accessory structures (not only garages).

(iii) Square Footage

The maximum floor area of a detached ADU is the greater of the following:

1. 800 square feet; or
2. 850 square feet for a studio or 1-bedroom and 1,000 square feet for a two or more-bedroom unit; or
3. 1,200 square feet.

As mentioned above, as drafted, the PMC would require that a detached ADU exceeding any of the Minimum ADU Standards must comply with applicable floor-area-ratio maximums, minimum open space requirements, and any other applicable development regulations established by the PMC and the zoning district or planned unit development in which the property is located, which may further restrict these maximums but in no case can the ADU be restricted to less than 800 square feet.

3. Multifamily ADUs

The new state law permits ADUs within multifamily developments; however, it does not define what is to be considered a multifamily development. As mentioned previously, since the rules applicable to single-family and multifamily ADUs are quite different, the amendments include a definition of multi-family development that would clearly distinguish between single-family (generally considered to only include detached housing types) and multifamily development, encompassing most types of attached units, including apartments, condominiums, townhomes and similar units. This approach is outlined in more detail in the Discussion section, below.

a. Number of Permitted ADUs [see Exhibit A, PMC 18.106.020(C)]

On multifamily properties, non-habitable portions of the existing structure(s), such as storage rooms, garages, and attics, are permitted to be converted to ADU(s). The modifications to the PMC indicate that a minimum of one such accessory dwelling unit is permitted, and the maximum number of such accessory dwelling units must not exceed 25 percent of the existing multifamily dwelling units located in the *development project*, whichever is greater.

Staff's interpretation of state law is to apply 25% of the existing multifamily units in the *development project* to allow for an aggregated total across a development⁴. In development projects that have both single-family and multifamily housing types, staff proposes that the "25%" apply only to the multifamily units; any single-family units within the same development,

⁴ Staff did not interpret state law as being 25% of the units on the *parcel* since a single multifamily development may traverse multiple parcels, or to mean 25% of units in the *building* since a development may consist of multiple buildings. The maximum number of permitted ADUs for a given multifamily development will vary depending on the configuration of the development; in one type of development applying 25% of the existing multifamily units in the *development project* may yield a greater maximum number of ADUs over applying 25% to the units in the *building* and the converse would be true in a different development. However, staff expects that consistently utilizing any one of the approaches to establish the maximum number of ADUs will "even out" once aggregated across various development types in the city. Applying the 25% rule to the *development project* would facilitate tracking of the ADUs in each development, making the state law easier to administer, and is therefore staff's recommended approach.

and located on its own separate parcel, would be subject to regulations applicable to ADUs for single-family developments.

Finally, a maximum of two additional detached accessory dwelling units are permitted if they meet a minimum rear and side yard setback of four feet, and a maximum height of 16 feet.⁵

b. ADUs resulting from Conversion of Space [see Exhibit A, PMC 18.106.050]

The draft PMC amendment includes the following development standards for ADUs resulting from conversion of space in an existing multifamily building.

(i) *Limitation on Space that May be Converted*

While State law provides a series of examples of non-habitable space that may be converted to an ADU, including storage rooms, boiler rooms, passageways, attics, basements, or garages, staff proposes to include language that prohibits the conversion of space to an accessory dwelling unit if it results in the elimination of an existing on-site amenity such as a laundry facility, gymnasium, community room, etc.

(ii) *Height and Setbacks*

ADUs resulting from converted space that also require expansion in multifamily development would be subject to the maximum height and the minimum setback requirements of the main structure.

(iii) *Square Footage*

In most situations, the size of an ADU resulting from conversion of existing space will be limited to the existing size of the space. In order to place a limit on size, the PMC amendments propose that the maximum floor area of an ADU resulting from converting existing space in multifamily developments be 1,200 square feet.

c. Detached ADUs on Multifamily Developments [see Exhibit A, PMC 18.106.045]

As noted, a maximum of two detached ADUs are permitted in multifamily developments, in addition to ADUs resulting from conversion of existing space. Since state law treats all detached ADUs similarly, the same development standards are proposed for detached units on multifamily properties as those outlined for single-family detached ADUs, above.

4. Junior Accessory Dwelling Units [see Exhibit A, PMC 18.106.070]

Changes related to JADUs are less extensive when compared to those related to ADUs.

However, there are a few key modifications related to JADUs:

- As mentioned in this report, one primary dwelling unit, one ADU, and one JADU may be proposed on the same property with a single-family residence.
- When code-required parking in the primary residence's garage is eliminated or modified in conjunction with the creation of a JADU, no replacement parking is required.
- The City may still require owner-occupancy in the single-family residence in which the JADU is located. In other words, the owner may reside in either the remaining portion of the dwelling or the newly created JADU but may not rent out both to different parties.
- The rental period for a JADU must be longer than 30 days.

⁵ For example: A multifamily property with eight apartments could build a total of four ADUs – two resulting from conversion of existing space such as a garage and an attic area; plus two additional units elsewhere on the property that conform to the above-noted development standards.

5. Other Requirements [see Exhibit A, PMC 18.106.060]

a. Review Authority and Process

City permits for ADUs and Junior ADUs must be reviewed and acted on ministerially (i.e., no public hearings can be required); and action must be taken within 60 days of the receipt of a complete application, and the 60-day window begins on the date of a submittal, provided it is complete. The amendments to the PMC reflect revised submittal requirements since discretionary review is no longer permitted. Please also refer to the section titled, *Proposed Objective Standards* in this report.

b. Owner Occupancy

The City's current regulations require that the owner of a property with an ADU occupy either the primary residence or the ADU and that a deed restriction be recorded which reflects this requirement. New state laws remove the City's ability to enforce this provision for ADUs that are approved between January 1, 2020 to January 1, 2025. Therefore, the text of the PMC is proposed to be modified accordingly. Note that the owner occupancy requirements and deed restrictions that exist for ADUs approved *before* January 1, 2020, remain enforceable.

c. Additions to Accessory Structures for Ingress/Egress

State law allows small (less than 150 square feet) additions beyond the same physical dimensions to accessory structures to accommodate ingress/egress to the ADU. That is, if an ADU is within the existing space of an accessory structure, up to 150 additional square feet is permitted if the expansion is limited to accommodating ingress and egress.

d. Short-term Rentals

Per the new state law, no short-term rentals (less than 30 days) are allowed in an ADU. This approach is consistent with existing City policy that does not allow for short-term rentals.

e. Parking

The state law carries over a number of provisions from prior ADU legislation, including that only one parking space for an ADU is required, and that parking for a new ADU is not required at all, if the ADU is:

1. located within a one-half mile of public transit;
2. located within an architecturally and historically significant historic district;
3. located in part of an existing primary residence or an existing accessory structure;
4. located in an area requiring on-street parking permits, but not offered to the occupant of the accessory dwelling unit; or
5. located within one block of a car share vehicle.

State law also already reflected in the PMC is that off-street parking for an ADU is permitted in setbacks areas (but not in the front yard setback unless on the driveway) or through tandem parking, and that parking will not be required if the City finds that it is not feasible due to topography or would create fire and life safety concerns.

An important new provision of state law now is that replacement parking may not be required when a garage, carport, or covered parking is converted to an ADU. This is now reflected in the proposed changes to the PMC.

f. Impact Fees

Under the new law, the City is not allowed to charge impact fees for ADUs that are less than 750 square feet in size but may impose fees on larger units in proportion to the primary dwelling on a square footage basis. Staff will propose an amendment to the City's Master Fee Schedule to comply with this requirement, for approval by City Council.

g. Non-conforming Zoning Conditions

As a condition for ministerial approval for an ADU or JADU, the City is not permitted to require correction of non-conforming zoning conditions. For example, if an ADU does not comply with a zoning requirement such as floor-area-ratio (FAR), approval of the ADU cannot require that the square footage of the ADU be reduced to comply with the maximum permitted FAR as a condition for approval of the ADU.

h. Fire Sprinklers

If not required for the primary residence, fire sprinklers may not be required for an ADU.

DISCUSSION: CONSIDERATIONS FOR PLEASANTON

The requirements of state law apply uniformly throughout Pleasanton. Below is a discussion of the application of state law in several key areas that staff feels may be of particular interest to the Planning Commission or on which staff is seeking input from the Commission. These include: Planned Unit Developments; objective standards for second story ADUs in single-family and multifamily developments and above a detached garage; and the appearance of garage conversions.

Planned Unit Developments

Many areas of Pleasanton are zoned *Planned Unit Development*, or PUD. One of the purposes of the PUD zoning district is to allow for customized development standards for properties, particularly those that may have unique circumstances. For example, some of the PUDs in the areas west of Foothill Road have prescribed building envelopes or development areas. Development outside of these areas is typically prohibited to preserve natural open space and view corridors, maintain large separation between homes, and reduce the area of hillsides that are graded. In some instances, building envelopes are defined to avoid areas of unstable slopes or sensitive resources. With the new legislation, however, the requirements established by project-specific PUDs are generally preempted. For example, a homeowner may propose a detached ADU four feet from the property line, even if the ADU is outside the graded building envelope. Notwithstanding this general preemption, if the detached ADU is greater than 16 feet in height or greater than 800 square feet, the City may enforce the requirements of the PUD; that is, in the example above, the City may require that the ADU be constructed within the approved graded building envelope.

Other Locally-Adopted Ordinances

The City maintains the ability to enforce certain locally-adopted laws. For example, state law allows local jurisdictions to limit locations of ADUs based on public health and safety issues: e.g., if the ADU is proposed within a fault line or geologically-unstable area, or a protected creek setback, the City could make public health and safety findings in order to require the ADU to be constructed outside of those areas. Similarly, staff believes the City may enforce its Heritage Tree Ordinance, if the proposed ADU would require removal of a tree or otherwise threaten the health of the tree, staff may deny the application or require the ADU to be relocated to not threaten the tree.

Defining Single-Family and Multifamily Development [see Exhibit A, PMC 18.106.020(B)]
State law for ADUs applies to both single-family and multifamily developments in varying ways.

The PMC amendments in Exhibit A to this report propose that for purposes of the ADU ordinance, a single-family development is that which contains only one dwelling unit and is completely separated from any other unit (except an ADU). In practical terms, this means that a single-family residence would not share a wall or walls with adjacent units, irrespective of whether the unit is on the same lot, or a separate, adjacent lot (such as a “duet”-type configuration, in which two units may share a wall, but where each unit is on a separately-owned lot). In contrast, a multifamily building or structure is designed to accommodate more than one household in two or more separate housing units, distinguished from single-family development by attached or shared walls. Applying this distinction would generally mean that multifamily apartment units, condominiums, duets (two attached units under separate ownership), attached townhomes/rowhouses, and two-, three-, and four-plexes are considered multifamily.

Staff recommends this approach since it is customarily how single-family and multifamily developments are thought of, is consistent with the state law which provides differentiated standards for single- and multi-family ADUs, and makes application of the state law for ADUs relatively simple and uniform across various development types. Further, this approach, which sets a proportion of total units eligible to construct an ADU in across a multi-family developments, would have the benefit of reducing the impact to these typically denser residential areas, particularly with respect to parking, open-space, and common area amenities that contribute to neighborhood livability.

Objective Standards [see Exhibit A, PMC 18.106.060(C)]

In addition to standards specific to attached and detached ADUs, the PMC currently identifies required standards for all accessory dwelling units. Some of these standards are mentioned above in this report, such as owner-occupancy and parking.

Absent a design review process to require materials for an ADU to match that of the primary dwelling, staff proposes a standard to require exactly this; that the ADU incorporate roof and exterior wall material, building color, trim to match the primary dwelling structure to the maximum extent feasible.

And, with the objective of maintaining the appearance of a single-family home from the public right-of-way, staff proposes to add a requirement that the entrance to an ADU is located on the side or rear of the single-family dwelling.

One set of standards staff wanted to bring to the specific attention of the Planning Commission are those related to second-story ADUs, discussed directly below.

a. Second-Story ADUs: Objective Standards and Review Process [see Exhibit A, PMC 18.106.060(C)(2)]

Property owners of single-family homes sometimes propose to construct a second-story addition that would contain an ADU, or propose to construct a two-story accessory structure such as a detached garage with an ADU above. Currently, additions and alterations to single-family homes and accessory structures greater than 10 feet in height (e.g., second story

additions) require approval via Administrative Design Review, which entails a notice to surrounding neighbors and allows for their comment and review, and, if requested by a neighbor or appealed, involve a public hearing.

In the Administrative Design Review process, the City considers the overriding objectives of state law to facilitate (not preclude) ADUs, while at the same time factoring in considerations such as height, setbacks, lot coverage, and potential impacts to neighbors. When, upon receiving project notification, neighbors raise concerns, staff try to facilitate a compromise to address concerns (e.g., adjustments to window location or screening to address privacy concerns). The Zoning Administrator typically reviews and approves Administrative Design Review applications, and if filed, an appeal of the Zoning Administrator's decision is referred to the Planning Commission for consideration.

The new state law, however, requires ministerial approval of ADUs and prevents local jurisdictions from imposing standards that would disallow an ADU of at least 800 square feet, up to 16 feet in height, and with 4-foot side and rear setbacks (Minimum ADU Standards). Therefore, the City may not require Administrative Design Review for these ADUs, or refer them to the Zoning Administrator, Planning Commission, or City Council. Further, although the state law is not explicit on this point, staff believes it would also be problematic to require discretionary review, even for ADUs that exceed the Minimum ADU Standards. Instead, where a second-story ADU is proposed, staff proposes that the ordinance include a series of objective standards that would be applicable to second-story ADUs in both single-family and multifamily development, and to ADUs proposed above a detached garage. These standards will meet the intent of state law while also ensuring that new ADUs will mitigate potential impacts to neighbors.

(i) Proposed Objective Standards for Second Story ADUs

The following objective standards would apply to accessory dwelling units proposed on a second story of an existing primary residential unit, multifamily development, or detached garage, and are proposed to include:

1. An accessory dwelling unit proposed as a second-story addition to a main structure must meet setback, height, floor-area-ratio, building separation and other development standards applicable to the main structure for the zoning district within which the accessory dwelling unit is proposed.
2. An accessory dwelling unit constructed above a detached garage must meet the standards identified in Section 18.106.045.
3. The accessory dwelling unit must be designed such that operable windows or windows required for emergency egress face away from the neighboring property(ies) that share property lines with the subject property when proposed on a lot with a single-family residence, and must face the existing multifamily dwellings when proposed on a lot with a multifamily development. Facades of the accessory dwelling unit that face neighboring properties with shared property lines may only have clerestory windows (i.e. with a window sill height at least 6 feet above finished floor). If strict application of the preceding requirements would not allow the unit to meet Building or Fire Code requirements for egress or ventilation and the windows facing neighboring properties that share property lines with the subject property are proposed where the sill height is

less than 6 feet above finished floor, the glazed portion of the windows must be of obscured glass.

4. The exterior stairway proposed to serve the accessory dwelling unit shall not be visible from the public right of way on the frontage abutting the front yard.

5. No balconies or upper-story decks shall be allowed for the accessory dwelling unit.

b. Garage Conversions – Appearance from the Public Right-of-Way [see Exhibit A, PMC 18.106.060(C)(5)]

New state laws make it easier to convert existing garages into ADUs because no replacement parking is required to be provided. In considering the aesthetic outcomes of these conversions, staff explored whether it would be preferable to require the garage door to remain, or to be removed and that wall refinished in a manner that blends into the rest of the home (possibly with a front door to the ADU).

Although prominent garage doors are a feature that the City will often seek to visually minimize in new developments, they are nonetheless a common feature of most single-family homes and neighborhoods in Pleasanton. It is possible that removing garage doors altogether may make these homes seem out-of-place relative to their neighbors, or if a garage door is replaced by an ADU entry door, result in a single-family home appearing more like a duplex. If a garage door is left in place, suitable framing, insulation and interior finishes can be used to successfully convert the garage space to living space.

At this time, staff recommends the choice to remove/refinish a garage-door wall, or leave the garage door in place, be left to the applicant subject to some objective standards (i.e. using materials and finishes to match the home). Further, irrespective of whether the garage door is replaced or not, and as mentioned above, the entrance to the ADU would be required to be located on the side or rear of the single-family residence, such that the home still appears as a single-family home from the public right-of-way. However, this topic may warrant discussion by the Planning Commission and thus is included as a discussion topic.

DISCUSSION POINTS

- A. *Does the Planning Commission have any questions or comments, in general, with the proposed application and interpretation of state law with respect to ADUs?*
- B. *Does the Planning Commission agree with staff's proposed objective standards for second story ADUs?*
- C. *Does the Planning Commission have a preference for the treatment of garage doors where the garage space is converted to an ADU?*

PUBLIC NOTICE

Notification of this code amendment has been published in The Valley Times and was noted in the Pleasanton Weekly as an upcoming agenda item for the June 24, 2020, Planning Commission meeting. At the time this report was prepared, staff has not received comments regarding the proposed code amendments. Staff has, however, received numerous inquiries from the public, interested in ADUs and standards specific to Pleasanton.

ENVIRONMENTAL ASSESSMENT

The proposed code amendments are statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant Public Resources Code Section 21080.17 and categorically exempt per CEQA Guidelines Section 15303.

SUMMARY/CONCLUSION

The proposed text amendments will facilitate the development of ADUs and bring the PMC into compliance with State law. Staff recommends that the Planning Commission discuss the topics identified in the agenda report, consider the proposed text amendments, and provide a recommendation to the City Council.

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Reviewed/Approved By:

Melinda Denis, Planning and Permit Center Manager
Ellen Clark, Director of Community Development
Julie Harryman, Assistant City Attorney

ATTACHMENT 4

Amendment to Title 18 of the Pleasanton Municipal Code

Consider amendments to Chapters 18.08, 18.20, 18.28, 18.32, 18.36, 18.84, and 18.106 of the Pleasanton Municipal Code to comply with state legislation for accessory dwelling units.

Senior Planner Shweta Bonn presented the specifics of the item in the Agenda Report.

Commissioner Allen inquired about the owner occupancy requirement and the reason for the sunset date of January 1, 2025. Community Development Director Ellen Clark responded there was no specific reason provided but it was probably an attempt of the State to balance the interests and desires of many different cities; it was a trial period in which the State could end the requirement after five years or extend it longer.

Commissioner Brown referenced information provided on one of the presentation slides regarding Accessory Dwelling Units (ADU) colors and materials which matched those of the primary residence and inquired if that would be considered an unnecessary barrier. Assistant City Attorney Julie Harryman explained there was room for objective design standards if they were included in advance, as this requirement would not result in discretionary review of the ADU but more of a simple review. Ms. Clark further clarified an outside legal expert was consulted, who noted the requirement was defensible and quite common in many ADU ordinances; it ensured ADUs would fit in with the existing home and the neighborhood without being too onerous.

Commissioner Balch referenced information from one of the presentation slides and asked for clarification on the maximum allowable square footage for different types of ADUs. He did not understand the reason 800 square feet was described as the maximum when the points below it identified 850 square feet and even 1,200 square feet to be the maximum in some cases. Commissioner Brown echoed this confusion. Ms. Bonn explained, although admittedly unclear, the language of the square footage was an attempt to mirror the wording of the State law.

Commissioner Balch stated he thought staff could find a clearer way to define these standards. He then asked staff to clarify if they expected to go back to deed restricted ADUs after the five-year period when the new law was over. Ms. Clark confirmed that was staff's understanding, they could not require deed restrictions for the next five years, however, barring the state extending these laws indefinitely, deed restrictions would resume in 2025. Commissioner Balch expressed concern over having three different groups of criteria depending on when the ADU was approved. Commissioner Balch referenced Exhibit B on Page 9 and suggested clarification, rather than introducing ambiguity. He questioned whether ADU deed restrictions would not be enforceable for a period then go back to being enforced. Ms. Clark explained any ADU approved prior to January 1, 2020, was enforceable and there would be a gap during the five-year period when ADUs were not deed restricted for owner occupancy. Commissioner Allen stated the legislature could remove the sunset at some point in time. Commissioner Balch stated it was conceivable there could be three different groups: prior to January 1, 2020; the five-year trial period; and following the five-year sunset.

Commissioner Pace inquired if a property with an existing free standing ADU could add another ADU, in addition to a Junior ADU (JADU), which would lead to two livable spaces being turned into four. Ms. Clark clarified it was possible for multifamily homes but not the case for single-family homes.

Commissioner Brown referenced measurements on page 3 of the agenda report, stating he did not believe they were an accurate representation of the requirements. He then expressed confusion with verbiage on pages 6 and 7 of the agenda report and asked staff to clarify the reason laundry rooms, gyms, and living spaces were included as items that could not be converted to ADUs in multifamily dwellings. He expressed concern it might be too restrictive because those spaces were sometimes underutilized. Ms. Clark explained the measurements were accurate; if an ADU were to exceed any of those standards, the City would have the ability to apply typical zoning and development standards to the structure. She then clarified those items were amenities which benefitted the entirety of multifamily units and staff's concern that their conversion would not be consistent with the development's original approval.

Commissioner O'Connor inquired if an ADU added to an existing, non-conforming structure, could be built to an existing, legal non-conforming setback. He then asked for clarification on the standards for windows and if the main structure already had windows which overlooked into a neighbor's property, whether those same windows would be allowable on an ADU. He expressed concern over this standard, stating if the main structure already had a view of the neighbor's property, it did not make sense to restrict the ADU, especially as it could impact the cross ventilation of the ADU, which would most likely be a small space. He also mentioned the restrictions could impact three of four facades, if the ADU was a corner property, which might look unappealing. Lastly, he expressed concern it could become very restrictive. Ms. Bonn confirmed the state law allowed an ADU be built to an existing, legal nonconforming setback if it maintained the footprint and dimensions of the legal nonconforming structure. Regarding windows, she confirmed the windows would have to be six feet above the finished floor or have obscured glass. Ms. Clark further noted, it might be reasonable to develop exceptions for existing windows to allow for those windows to be the same size, shape, and height.

Commissioner Balch inquired about the minimum and maximum size allowable for JADUs. Ms. Bonn explained it was a minimum of 150 square feet for an efficiency unit and up to 500 square feet, per State law. Commissioner Balch further clarified anything up to 500 square feet and within the home was a JADU, and the State has determined an ADU ranges from 800 square feet up to 1,200 square feet. Regarding a second story ADU, he mentioned staff's recommendation did not allow for a balcony, however, he inquired about instances where there might be Juliette balconies on the house. He then requested staff reconsider the restriction on balconies, as the ADU might have better symmetry with the house if it also had a Juliette balcony. Ms. Clark agreed to consider the suggestion and clarified the restriction was made while keeping in mind ADUs that would face a neighbor's property.

Commissioner Allen asked and confirmed if an ADU was over 800 feet it would fall under standard zoning requirements. She also referenced the height restrictions on page 5 of the agenda report, stating if an ADU was built in the C-C District at the 40-foot maximum height, it could be taller than an existing primary structure. Ms. Bonn confirmed and explained the 40-foot height limit proposed for ADUs is the same as the maximum height for accessory structures in the C-C District, and this approach to mirror maximum ADU height with maximum accessory structure height was what was done when ADUs above detached garages were established. Commissioner Allen questioned whether the standard should be updated for the C-C district to reflect an ADU could be 40 feet high, or as high as the primary structure, whichever was less. She then asked how staff would keep track of ADUs built in multifamily units, as there was a restriction only 25-percent of these units could have ADUs. Ms. Clark stated staff would need to establish a tracking system, similar to how large family daycares

were previously tracked, and could potentially be done through the City's Geographic Information System (GIS) to maintain the specific locations.

Chair Ritter confirmed the matter would come back to the Planning Commission and its recommendation forwarded to the City Council. He explained the State then approves the City's regulations. Ms. Clark confirmed the Planning Commission would make a recommendation to the Council; the Council would adopt an ordinance, then California Department of Housing and Community Development (HCD) would review for consistency with State law. Chair Ritter expressed concern the more restrictive regulations might be objected by the State. Ms. Clark stated staff felt the regulations were within the State regulations.

THE PUBLIC HEARING WAS OPENED

Staff confirmed there were no speaker cards received on this item.

THE PUBLIC HEARING WAS CLOSED

Discussion Point A: Does the Planning Commission have any questions or comments, in general, with the proposed application and interpretation of state law with respect to ADUs?

Commissioner Allen thanked staff for integrating complex information in the clearest way possible. She reiterated her concern about the height of accessory structures in the C-C District and stated it was not her preference to allow all of those who have deed restricted ADUs to be required to change those restrictions under the new law; they came in under certain assumptions and have met that assumption. If the legislature pushed out the sunset date of 2025, she would be open to allowing everyone to follow the same rules for consistency but would prefer deciding following the five year period. She was in agreement with other Commissioners about the confusing language on the bottom of page 4 regarding square footage.

Commissioner Balch echoed Commissioner Allen's comments about how staff interpreted and represented the information. He pointed out the language on page 11 and suggested it as a better way of communicating square footage standards. He also mentioned staff interpreted the State law well, and the purpose of the law was to build more ADUs. He was not sure about keeping the deed restricted class of ADUs, stating he had never seen a prohibition/restriction "grandfathered" versus an approval/entitlement.

Commissioner Brown expressed his appreciation of staff taking complicated language and putting into clearer terms, however, he mentioned he would like to see a different language used to convey square footage requirements, particularly for detached ADUs. He then referenced correspondence received by Mike Carey and stated he understood the concern yet did not know if it was right to enforce the standards that were imposed prior to the new law.

Commissioner O'Connor stated he was in agreement with Commissioner Allen. He continued by stating he was concerned about removing existing restrictions previously put in place and then having to reinstate them at the end of five years. He was also in agreement with Commissioner Allen on the height of ADUs in the C-C District.

Chair Ritter stated he was in agreement if staff could utilize some of the language used by the State to help guide some of the decisions. He encouraged the Commissioners and staff to think about what the State was trying to accomplish with the new laws, explaining it was to create more housing and if too many restrictions were imposed, then the City would not be following the intent of the State. He also encouraged staff to use the State's wording within the ordinance whenever possible, which would give the City more latitude in its discussion versus just adding more words to the state's concepts and making it more complex, while losing the intent.

In regard to Commissioner Allen's previous comment referencing height, Commissioner Balch asked staff whether it was conceivable to have an 800-square-foot ADU, if the only allowable space was at the top of an existing multi-family residence. Ms. Clark clarified the requirement was to ensure the City's ordinance allowed for a unit of those minimum standards to be built. Commissioner Balch requested more clarification about the 40-foot requirement. Ms. Clark stated it could, in theory, result in some structures being taller than others, if allowed to be built vertically, and admitted there was complexity to the question and the different allowable standards for accessory units and ADUs. She advised that staff would come up with a recommendation for the next meeting.

Commissioner Balch expressed his support for additional discussion at the next meeting and asked how ADUs were measured. Ms. Bonn provided further clarification stating the Pleasanton Municipal Code (PMC) required ADUs be measured differently than primary structures; with primary structures measured from ground to the mean height between eaves and ridges and ADUs measured from the ground to the top of the structure. Commissioner Balch requested staff review the method of measurement and determine whether it impacts Commissioner Allen's request to have ADUs be 40 feet tall, or the height of the primary structure, whichever was less.

Commissioner Brown inquired whether the measurement of the ADU to the peak of the roof was defined in the State guidelines. Ms. Clark responded it was defined in the PMC, not State guidelines. Commissioner Brown further inquired whether the City's requirement to allow 16 feet was in compliance with the State. Ms. Clark clarified as long as the City's standards are reasonable and consistent, there should not be an issue with the City's proposal, and the State would require a change if it did not think the ordinance complied with the law. Ms. Bonn further explained the method of measuring accessory structures from the ground to the top of the structure was established by a previous Director of Community Development and codified in 2012. Commissioner Brown suggested the standard was acceptable for some accessory structures, but an ADU was supposed to be habitable.

Commissioner Pace mentioned the State was likely to continue changing the legislation and it would be beneficial when creating the City's ordinance to adhere as closely as possible to the language the State had outlined to make things easier on staff with future potential changes by the State.

Commissioner Balch inquired about the number of deed restricted ADUs built before January 1, 2020. Ms. Bonn responded 22 ADUs were approved in the last five years and the restriction required the owner to live in the primary home or ADU. Chair Ritter asked why: staff speculated that it may have been out of a desire to preserve single family neighborhoods that are principally owner-occupied. Commissioner Balch wondered if PUDs restrict the amount of

owners vs rentals in a neighborhood and how that would factor in to ADUS and how it would be tracked.

Commissioner Allen asked if the new ordinance allowing 25-percent of the units in multifamily units to have ADUs prevented HOAs from making the restriction lower. Ms. Bonn confirmed.

Commissioner Balch expressed his support of letting people with deed restricted ADUs convert to the new rules as there were only 22 and Chair Ritter agreed. Commissioner Allen requested staff ensure there were only 22 ADUs in the City of Pleasanton that had been deed restricted.

Discussion Point B: Does the Planning Commission agree with staff's proposed objective standards for second story ADUs?

Commissioner O'Connor reiterated his concern about the restrictions on second story windows on ADUs. He did not want the approved ordinance eventually getting kicked back from the State because of window standards. Chair Ritter asked if the State provided specific guidelines regarding windows and Ms. Clark indicated the State regulations did not outline window regulations. She explained staff decided on these standards, in the absence of being able to conduct design review, because they were the most common points of contention between neighbors. Commissioner O'Connor suggested looking at each unit individually instead of applying blanket standards.

Commissioner O'Connor referenced the condition around second-story windows, stating it could become too restrictive if it became part of the regulation. Commissioner Balch inquired whether Commissioner O'Connor was referencing the side windows. Commissioner O'Connor responded the proposed regulations might be too restrictive. Commissioner Balch referenced a previously approved ADU, potentially a JADU, where neighbors had concerns over the second-story windows. Commissioner Allen recalled additional screening was imposed to help mitigate the privacy concerns as a result of the windows. Ms. Clark responded it was difficult to develop a single standard that met all the necessary requirements and staff could further look into how to make adjustments to respond to some of the concerns. Commissioner O'Connor stated the concern was to prevent being too restrictive where the State would respond over how restrictive the ordinance had become. Commissioner Allen confirmed that obscured glass windows could still be operable.

Discussion Point C: Does the Planning Commission have a preference for the treatment of garage doors where the garage space is converted to an ADU?

Commissioner Pace stated that either approach would preserve the look and feel of the neighborhoods, while honoring the legislature.

Commissioner O'Connor stated he did not have a preference as long as it did not change the look of the structure and ensuring it did not look like a duplex.

Commissioner Brown stated either style was acceptable.

Commissioner Balch agreed and indicated he was amenable to either style.

Commissioner Allen also agreed and indicated she would like to leverage ADUs over time to count for Regional Housing Needs Allocation (RHNA) numbers. She then stated it would be beneficial to promote ADUs. Ms. Clark stated ADUs were already counted towards moderate-income housing for the City's RHNA based on a survey conducted of rental spaces and properties throughout Pleasanton. She also mentioned it may change but if the rental prices remained consistent, they could continue to be counted. Commissioner Balch further clarified that counting it towards RHNA was why ADUs were required to have a separate address.

Commissioner Balch requested future discussion of height restrictions and clarification on the minimum square footage.

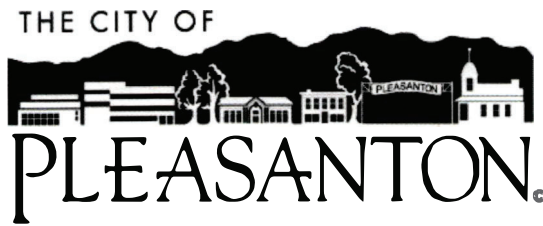
Commissioner Brown suggested consideration of whether it was necessary to prevent conversion of unused shared spaces in multifamily.

Commissioner Balch moved to continue the item to the July 8 Planning Commission meeting.

Commissioner Pace seconded the motion.

ROLL CALL VOTE:

AYES:	Commissioners Allen, Balch, Brown, O'Connor, Pace and Ritter
NOES:	None
ABSENT:	None
ABSTAIN:	None



**Planning Commission
Agenda Report**

July 8, 2020

Item 5

- SUBJECT:** P20-0412
- APPLICANT:** City of Pleasanton
- PURPOSE:** Consider amendments to Chapters 18.08, 18.28, 18.32, 18.36, 18.44, 18.84, and 18.106 of the Pleasanton Municipal Code to comply with state legislation for accessory dwelling units
- LOCATION:** Citywide
- GENERAL PLAN/
SPECIFIC PLAN/
ZONING:** Various
- EXHIBITS:**
- A. Draft resolution with proposed amendments to the Pleasanton Municipal Code
 - B. Adopted California Government Code Section 65852.2, Health and Safety Code Section 17980.12, Government Code Section 65583, Health and Safety Code Section 50504.5, Government Code Section 65852.22, Government Code Section 65852.26, Civil Code Section 4751
 - C. Planning Commission Agenda Report dated June 24, 2020 (without attachments)
 - D. Draft minutes of the June 24, 2020 Planning Commission meeting (included as Item 3 in this agenda packet)

STAFF RECOMMENDATION

Staff recommends that the Planning Commission discuss the draft amendments to the Pleasanton Municipal Code (PMC) and adopt a resolution recommending approval of Case P20-0412 to the City Council with the proposed amendments shown in Exhibit A.

EXECUTIVE SUMMARY

In 2019, the Governor signed into law six different bills (Senate Bill 13, Assembly Bill 68, Assembly Bill 881, Assembly Bill 670, Assembly Bill 587, and Assembly Bill 671) that change the regulations for accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs). These new rules build upon the changes to law regarding ADUs enacted in 2017, and still have the overall objective of encouraging the construction of ADUs. Since local ADU ordinances are required to be in conformance with state law, amendments to the City's existing regulations are proposed, to match the new requirements for ADUs and JADUs.

The Planning Commission reviewed the proposed amendments to the PMC and discussed several key elements of the proposed changes at its June 24, 2020, meeting. Enclosed as Exhibit A to this report is the draft ordinance amending the PMC, reflective of the Planning Commission's discussion, which is being provided to the Commission for its consideration and recommendation to City Council.

BACKGROUND

At its June 24, 2020, meeting, the Planning Commission reviewed draft amendments to the PMC intended to implement state law that took effect January 2020 (please refer to the agenda report for this meeting, enclosed to this report as Exhibit C for background). To facilitate the Commission's review, staff suggested three discussion questions. Below is a brief summary of the general consensus among the Commission members regarding the discussion questions; draft minutes for the meeting are referenced as Exhibit D in this report (included as Item 3 in this agenda packet).

A. Does the Planning Commission have any questions or comments, in general, with the proposed application and interpretation of state law with respect to ADUs?

The Planning Commission had the following comments:

- Expressed a desire to simplify the City's ordinance and adhere to the basic requirements of the state law as much as possible, without adding unnecessary complexity.
- Noted that language regarding maximum permitted square footage for ADUs was confusing and overly complex and directed staff to clarify and simplify this section.
- Requested staff to consider modifying the maximum permitted height for ADUs in the Central-Commercial (C-C) District – proposed to be consistent with the generally allowable height limit for accessory structures, 40 feet - such that the height of the ADU was less than or the same as the primary structure.
- Requested clarification and background information on deed restrictions and owner-occupancy requirements for ADUs and sought more information on the total number of such deed-restricted ADUs.
- One Planning Commissioner questioned whether an existing amenity space in a multifamily development (e.g. a recreation room) should be allowed to be converted to an ADU, particularly if it was not being utilized often. The draft ordinance called for limiting conversion of these types of spaces.

B. Does the Planning Commission agree with staff's proposed objective standards for second story ADUs?

The Planning Commission indicated that the objective standards for upper windows in two-story ADUs were too restrictive as proposed and directed staff to draft more flexible standards that would 1) Account for existing windows and 2) Allow more flexibility on placement and size of new windows. One Commissioner also commented that a provision for decorative balconies should be added to the standards.

C. *Does the Planning Commission have a preference for the treatment of garage doors where the garage space is converted to an ADU?*

The Planning Commission concurred with staff's recommendation, that the property owner should be allowed to decide whether to keep a garage door or to infill its space with colors and materials to match the primary dwelling unit when a garage space is converted to an ADU.

DISCUSSION

The following discussion points are follow-up to the Planning Commission's June 24, 2020, meeting.

ADU Square Footage

In response to Planning Commission's direction to simplify language regarding maximum permitted square footage, staff proposes the following revisions to Section 18.106.040(B) and Section 18.106.045(C) for attached and detached ADUs respectively:

Attached ADUs, PMC 18.106.040(B):

The gross floor area of an attached accessory dwelling unit shall not exceed 50 percent of the gross floor area of the existing main dwelling unit, with a maximum increase in floor area of 1,200 square feet. The gross floor area of the existing main dwelling unit is to be calculated based on the size of the unit prior to the accessory dwelling unit/conversion. In no case shall this requirement necessitate an accessory dwelling unit to be less than: (1) a 150 square foot efficiency unit; (2) 850 square feet if the accessory dwelling unit is a studio or one-bedroom unit; or (3) 1,000 square feet if the accessory dwelling unit is two or more bedrooms.

Detached ADUs, PMC 18.106.045(C):

The gross floor area of a detached accessory dwelling unit shall not exceed 1,200 square feet.

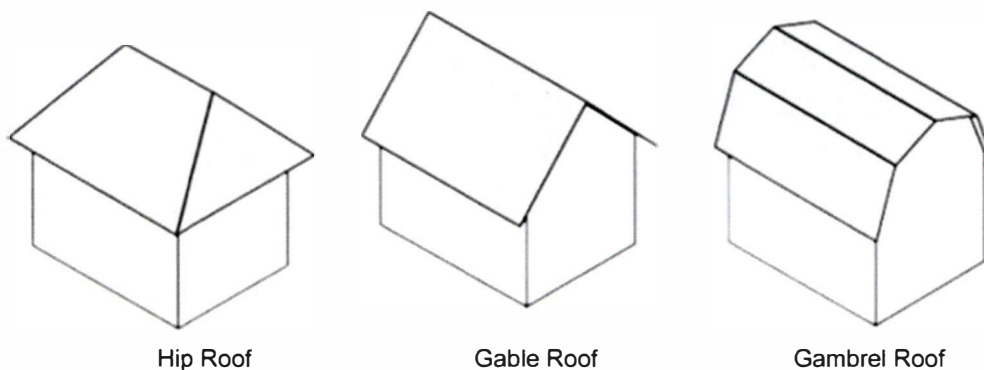
Staff believes this language is consistent with the state law. It more clearly states that the actual maximum allowable increase in square footage is not to exceed 50 percent of the existing square footage. Since the allowable ADU size based on the 50 percent calculation could vary widely, depending on the size of the primary unit, the text clarifies that the maximum size allowable would be 1,200 square feet, and that an 850 or 1,000 square foot unit must be allowed, even if it would exceed the 50 percent limit.

Maximum Permitted ADU Height in the C-C District

The maximum permitted height for ADUs in the C-C District was originally proposed to be 40 feet, consistent with the maximum height for the principal structure and with the maximum height for all accessory structures in the C-C District. As noted during the June 24 Planning Commission meeting, the method of height measurement per the PMC differs between principal structures (the main building on a site) and accessory structures.

According to the PMC, the height of a principal structure is measured from the "average elevation of the natural grade of the ground covered by the structure to the highest point of the structure." However, roof types such as hip, gable, or gambrel roofs are measured to the "mean height between eaves and ridges." This allows the protruding elements of the roof (e.g., the sloping and peak elements of a gabled roof) to exceed the maximum height for purposes of articulation along the roofline, with the bulk of the building height at or below the maximum permitted height. The illustration in Figure 1 shows hip, gable, and gambrel roof styles.

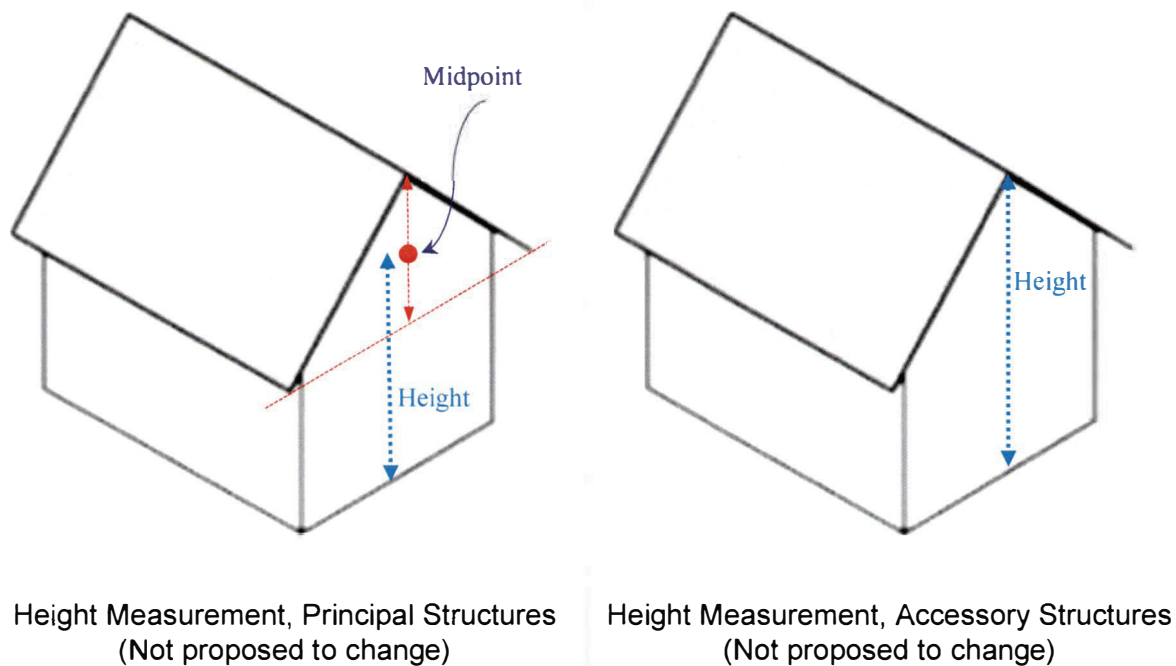
Figure 1: Roof Styles



Accessory structures (including ADUs) are measured from the "lowest grade adjacent to the structure to the highest ridge or top of structure." The height measurement for principal structures and accessory structures is shown in Figure 2. Unlike principal structures, no part of the roof of an ADU may exceed the maximum permitted height. Therefore, even if the height limitations are the same numerical value for a principal structure and an accessory structure, the height of the accessory structure will appear less once constructed because this method of height measurement does not allow any portion of the roof to exceed the height limit.

This approach to measuring the height of accessory structures is a long-standing interpretation dating to the 1990s and was codified to the PMC in 2012. Further, the Downtown Specific Plan Task Force reviewed this methodology in April 2018, and supported staff's recommendation to retain this methodology. Staff continues to propose retaining this methodology for height measurement for consistency and to avoid potentially creating nonconforming heights throughout the city.

Figure 2: Height Measurement



Nonetheless, recognizing the intent of the Planning Commission’s comments, to ensure that ADUs remain compatible in height with existing primary structures, staff proposes to limit the maximum height for ADUs above detached garages in the C-C District, to a maximum height of 25 feet. This height limit is consistent with the existing height limit for ADUs above detached garages in the R-1 (One-family residential) and R-M (Multi-family residential) districts, and consistent with the height limit for ADUs above detached garages proposed for the MU (Mixed-use) District. This approach would allow for uniformity across zoning districts that also include a mix of one- and two-story buildings today, and would continue to allow flexibility, for example, to build an ADU over a garage and retain on-site parking. Combined with the height methodology, a 25-foot height limit (instead of a 40-foot height limit) is expected to result in ADUs above garages in the C-C District that are consistent with massing and scale more typically seen in residential neighborhoods.

Owner Occupancy Requirement and Deed Restrictions

As mentioned in the agenda report for the June 24 meeting, the City’s current regulations require that the owner of a property with an ADU occupy either the primary residence or the ADU. New state laws remove the City’s ability to enforce this provision for ADUs that are approved between January 1, 2020 to January 1, 2025. The Planning Commission requested staff provide background information on deed restrictions and owner-occupancy requirements.

Generally, Chapter 18.106 of the PMC, which provides regulations related to ADUs, has been modified intermittently to comply with state law and to provide more flexibility when warranted. As a notable example, the City modified the PMC to indicate that *both* the primary residence and the ADU could be rented to a *single* party in 2018. Staff estimates that deed restrictions became common practice for ADUs in the mid-1990s and were made a requirement in the

PMC in the early 2000s¹. Therefore, not all properties with an accessory dwelling unit also have a deed restriction on file with the City.

In 2003, City Council directed that deed restrictions for ADUs include generic language and refer to the PMC for current regulations. Accordingly, the PMC currently indicates the following language be included in a deed restriction for an ADU²:

“The property contains an approved accessory dwelling unit pursuant to Chapter 18.106 of the Pleasanton Municipal Code and is subject to the restrictions and regulations set forth in that chapter. These restrictions and regulations generally address subdivision and development prohibitions, owner occupancy and lease requirements, limitations on the size of the accessory dwelling unit, parking requirements, and participation in the city’s monitoring program to determine rent levels of the accessory dwelling units being rented. Current restrictions and regulations may be obtained from the city of Pleasanton planning division. These restrictions and regulations shall be binding upon any successor in ownership of the property.”

As directed by City Council, the language in the deed restriction itself does not specify the owner-occupancy requirements. If the Planning Commission desires to remove owner-occupancy requirements for ADUs approved *before* January 1, 2020, the language in the PMC [specifically Section 18.106.060(A)] related to the owner-occupancy requirement would be modified, as would the language in the PMC related to deed restrictions. However, the requirement specifically for the deed restriction would remain since the deed restriction serves to inform a future purchaser about limitations other than just the owner-occupancy requirement.

The analysis for several of the Senate and Assembly bills that led to the amendment of state law included the following points regarding owner-occupancy requirements:

- Parties supportive of retaining the owner-occupancy requirement indicating that removing the owner-occupancy requirement “would incentivize operating the property as a commercial enterprise and could have the unintended effect of large-scale investors purchasing many single-family homes and adding ADUs, thus operating more like a property management company, not a homeowner seeking some additional income.”

¹ As an example, in the Carlton Oaks and Walnut Hills neighborhoods (located near Interstate 680, Foothill Road, and Bernal Avenue), ADUs were constructed as part of the original Planned Unit Development. Conditions of approval for the project required, among other things, owner occupancy of either the primary unit or the ADU. In other developments known to have ADUs, primarily those where a long time has elapsed since ADU approval, staff was not able to locate a deed restriction, condition of approval, CC&Rs, or other document requiring owner occupancy of either the principal unit or the ADU. However, as mentioned in this report, the deed restriction typically indicates that the ADU is subject to the requirements of the PMC, and it is the PMC (not the deed restriction) that stipulates the owner occupancy requirement.

² In order to make clear the City’s compliance with current state law requirements, the amendments to the PMC propose to add the following language:

Restrictive covenants for accessory dwelling units approved between January 1, 2020 and January 1, 2025 shall not include a provision requiring owner occupancy of the primary dwelling or the accessory dwelling unit.

After the June 24 Planning Commission meeting, staff also modified the language in PMC Section 18.106.060(A) such that it refers to ADUs approved both before and after January 1, 2020.

- Parties opposed to owner-occupancy requirements indicating that deed restrictions can “preclude the lender from occupying the property if lenders must foreclose on the property.”

At this time, particularly since it is uncertain whether the state law will be amended to prohibit owner-occupancy permanently, staff recommends retaining the owner-occupancy requirement related to ADUs approved prior to January 1, 2020. If the owner-occupancy provision is permanently removed in state law, the PMC could be amended at that time to indicate that all properties with ADUs, including those approved prior to January 1, 2020, do not require either the principal residence or the ADU to be owner-occupied.

Conversion of Existing Amenities in Multifamily Developments

As mentioned in this report, a Commissioner at the June 24 meeting suggested that multifamily developments not be prohibited from converting certain amenity areas to an ADU(s), particularly if that amenity is not well-used. Amenities such as laundry rooms, gyms, and community halls serve to provide a convenient facility to residents and are oftentimes negotiated during the approval process of multifamily development. Without reliable prescriptive measures to determine the level of use of a particular amenity, and assuming the amenity is used at least some of the time by a proportion of residents, staff proposes to retain language proposed in the PMC related to prohibiting amenity areas to be converted to ADUs.

Windows in Second Story ADUs

The Planning Commission asked staff to make the requirements for windows on second story ADUs more flexible by factoring in existing windows and allowing more flexibility on placement and size of new windows.

The standards for windows in second story ADUs are intended to address two elements: new second story windows potentially overlooking (or looking into) an adjacent residence; and into an adjacent private yard. For adjacent residences, the PMC establishes separation requirements between structures on adjacent properties, in addition to typical setback requirements. These separations range from 17 to 20 feet, depending on the relative number of stories of the adjacent structures.³ These standards apply to accessory structures and would be applicable to second story ADUs, whether attached or detached.

The following standards are proposed to address these two conditions. They seek to allow flexibility where windows are not directly facing an adjacent residence or private yard. They would not be required the distance between the ADU and an existing structure is more than 25 feet, or when facing a yard, the ADU is more than 15 feet from the shared property line.

Windows in an ADU Proposed as a Second-Story Addition to a Main Structure, or within a detached ADU

The following standards are proposed:

- At least one of the following measures must be implemented for new windows facing any neighboring residence that is less than 25 feet from the proposed ADU:

³ Specifically, two, two-story structures must be separated by a minimum of 20 feet, whereas a single-story and a two-story structure must be separated by at least 17 feet.

1. Offset the edge of the proposed windows of the ADU by four feet to the edge of an adjoining neighbor's second-story window, such that the windows do not directly face each other;
2. Position the proposed window of the ADU such that the window sill is at least five feet above finished floor;
3. Utilize obscured glass in the glazing portion of the window.

Note: All windows may be operable.

- For windows facing the private yard of an adjacent residence, where the shared property line is less than 15 feet from the respective wall of the ADU, then either measures 2 or 3, above, should be implemented.

Decorative Balconies in Second Story ADUs

An exception for decorative balconies is now included in PMC Section 18.106.060(C)(2) as follows:

No balconies or upper-story decks shall be allowed for the accessory dwelling unit, except for decorative/faux balconies without decks that match the primary dwelling structure.

Other Modifications to the PMC

Staff made the following additional clarifying changes to the PMC amendments since the June 24 meeting:

- Added the word, "attached" to the standard for an ADU entry door to be located on the side or rear of a single-family residence (since the entry door to a detached ADU would be located on the ADU itself, not on the single family home, and the detached ADU would be setback from the street far enough not to make the existing home appear as a duplex). The modified version of PMC 18.106.060(C)(6) is as follows (with text added since the June 24 meeting in underline):

With the objective of retaining the appearance of a single-family residence, the entry door to an attached accessory dwelling unit proposed on a property with a single-family development shall be located on the side or rear of the single-family residence.

- The June 24 staff presentation included an example showing a single-family and multifamily development type on a single parcel. In this example, there was one single-family residence and a two-unit apartment building behind the residence, resulting in one ADU that could result from the conversion of existing space (25% of the two multifamily units, rounded up), and two detached units. The amendments to the PMC enclosed with this agenda report make clear staff's interpretation that the ADU resulting from the conversion of space could be in *either* the single-family residence or in the multifamily units (i.e., that it is not limited to only space in the multifamily units). The modified version of PMC 18.106.020(C)(2)(a) is as follows (with text added since the June 24 meeting in underline):

Non-habitable portions of the existing main structure are permitted to be converted to an accessory dwelling unit. A minimum of one such accessory dwelling unit is permitted. The maximum number of such accessory dwelling units shall not exceed 25 percent of the existing multifamily dwelling units located in the development

project. A fraction of 0.5 or more is rounded up and a fraction that is less than 0.5 is disregarded. In development projects that have both single-family and multifamily housing types, 25 percent shall apply only to the multifamily units, and any single-family units that are within a multifamily development but are own their own parcel are subject to regulations applicable to accessory dwelling units for single-family developments. If the multifamily unit is eligible for an accessory dwelling unit, the accessory dwelling unit resulting from the conversion of space may be located in either the multifamily unit or in the single-family unit.

- The text leading to the standards for second story ADUs in Section 18.106.060(C) was simplified.
- Removed “attached or detached” at the beginning of Section 18.106.060(C)(4) to simplify the text (omission of this phrase implies the standards applies to both attached and detached ADUs):

~~Attached and detached~~ accessory dwelling units shall incorporate roof and exterior wall material, building color(s), trim that matches the primary dwelling structure to the maximum extent feasible.

- Modified reference in PMC sections 18.106.040(A) and 18.106.045(A) to say, 18.106.060(C)(2). This is to correct a reference error.

PUBLIC NOTICE AND PUBLIC COMMENTS

Notification of this code amendment has been published in The Valley Times as an upcoming agenda item for the July 8, 2020, Planning Commission meeting. The Planning Commission continued its meeting of June 24, 2020 to a date certain of July 8, 2020. As part of the June 24, 2020, meeting, the Planning Commission received an email from a local developer advocating to eliminate enforcement of deed restrictions that require owner occupancy for ADUs approved before January 1 of this year. At the time this report was prepared, staff has not received additional comments regarding the proposed code amendments. Staff does, however, continue to receive numerous inquiries from the public, interested in ADUs and standards specific to Pleasanton.

ENVIRONMENTAL ASSESSMENT

The proposed code amendments are statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant Public Resources Code Section 21080.17 and categorically exempt per CEQA Guidelines Section 15303.

SUMMARY/CONCLUSION

The proposed text amendments will facilitate the development of ADUs and bring the PMC into compliance with State law. Staff recommends that the Planning Commission discuss the topics identified in the agenda report, consider the proposed text amendments, and provide a recommendation to the City Council.

Primary Authors: Shweta Bonn, Senior Planner, 925-931-5611 or sbonn@cityofpleasantonca.gov

Reviewed/Approved By:

Melinda Denis, Planning and Permit Center Manager
Ellen Clark, Director of Community Development
Julie Harryman, Assistant City Attorney

ATTACHMENT 5

Amendment to Title 18 of the Pleasanton Municipal Code

Consider amendments to Chapters 18.08, 18.20, 18.28, 18.32, 18.36, 18.84, and 18.106 of the Pleasanton Municipal Code to comply with state legislation for accessory dwelling units.

Senior Planner Shweta Bonn presented the specifics of the item in the Agenda Report.

Commissioner Balch referenced a slide in the presentation and inquired about the decision process for offset windows, not looking into the neighbor's yard. Ms. Bonn agreed that the simulations in the presentation did not capture every vantage point and there were infinite configurations where the proposed objective standards might not entirely mitigate privacy impacts. Commissioner Balch asked the next steps if the neighbor complained as the window was already set five feet above the floor. Ms. Bonn clarified that the owner would only have to utilize one of the mitigation techniques: offsetting the window by four feet; situating the window more than five feet above the floor; or obscuring the glass. Commissioner Balch expressed concern with potential subjectivity.

Commissioner Pace expressed appreciation for the work of staff.

Chair Ritter asked and confirmed whether there was any deviation from the State requirement for efficiency units and the reason for allowing 150-square-foot minimum. He expressed concern with the ordinance complying with State law as the law states the City shall not establish minimum square feet. Ms. Bonn clarified that the 150-square-foot minimum was as defined by the State for an efficiency unit according to the City's Chief Building Official and the proposal was consistent with the Pleasanton Municipal Code (PMC). Chair Ritter then inquired if having the window of a second story Accessory Dwelling Unit (ADU) five feet above the ground was the recommendation for all windows. Ms. Bonn again clarified that one of the three measures would be required for windows in second story ADUs: the four-foot offset, five feet above the floor, or obscured glass. Chair Ritter expressed concern through an example of a neighbor who might purchase a shed and put it close to where the proposed ADU would go to prevent it from being built. Ms. Clark explained that the condition would be evaluated, based on conditions in place at the time the ADU was submitted. Though she felt it was unlikely, she agreed that it was possible a neighbor could preemptively erect new structures. Ms. Bonn further clarified the language in the ordinance addressed windows facing the neighbor's residence, not an accessory structure. She also offered to strengthen the language to avoid future issues. In response to Chair Ritter, Ms. Clark stated whether to do away with previously imposed conditions, with respect to owner-occupancy, would be a policy decision of the Commission.

Commissioner Brown inquired about obscured windows and whether it was defined or subjective. Ms. Bonn stated the definition would need to be added. Ms. Clark stated staff would have to come up with a precise definition. Commissioner Brown expressed concern with owners attempting "do it yourself" (DIY) window tinting. He also inquired about the State's reasoning for ending the owner-occupancy provisions in 2025. Ms. Clark assumed the five-year period was an effort by the legislature to seek a compromise for groups with differing positions on the topic. Commissioner Brown asked for clarification on the different types of deed restricted ADUs. Ms. Bonn explained the three categories: deed restrictions that expressly indicated the owner-occupancy requirements; deed restrictions referring to the owner-occupancy requirements identified in the PMC; and properties that have the owner occupancy requirement identified in a different instrument such as Covenants, Codes, and

Restrictions (CC&Rs) or project conditions of approval. Commissioner Brown expressed concern with the use of sheds not requiring a building permit as an ADU. Ms. Clark stated it would be difficult, since an ADU would require electrical, plumbing and a proper foundation, all of which required a building permit.

Ms. Clark informed the Commissioners of the public comments received via email, including correspondence from Mr. Mike Carey regarding owner occupancy regulations. She also noted a comment received just prior to the start of the meeting from Californians for Home Ownership, stating the proposed ordinance was inconsistent with State law. Given the nature of these latter comments, Ms. Clark recommended that the Planning Commission receive public comments, discuss the currently proposed draft ordinance, then continue the item to allow staff the opportunity to review the late correspondence and determine if further revisions were necessary.

Commissioner Pace asked if the matter could be brought back as a Consent item if there were not substantial changes. Ms. Clark confirmed that the matter could come back on the Consent Calendar in that case.

Chair Ritter discussed the short time frame with the holiday weekend and agreed with continuing the matter following Commission comments.

THE PUBLIC HEARING WAS OPENED

Staff confirmed there were no requests to speak on the item.

THE PUBLIC HEARING WAS CLOSED

Commissioner Allen commended staff on synthesizing the previous meeting's discussion. She indicated support for the recommendations, although the issue of owner occupancy was somewhat unclear due to the lack of clarity on the State's future actions. She stated she was amenable to eliminating the deed restrictions for the 22 ADUs built after 2003 but requested the City make individual notifications to those communities, especially the Carlton Oaks and Walnut Hill developments. She also expressed support for the window recommendations though she was concerned with the additional flexibility and open to revisiting the matter if there were issues or neighbor complaints.

Commissioner Balch expressed appreciation for the revised language regarding square footage limitations. He mentioned support for the way staff addressed balconies. He expressed confusion as to why staff recommended a 25-foot height maximum for ADUs above detached garages in the Central-Commercial District, as he thought the discussion at the prior meeting focused on the height maximum being no higher than the primary residence. He expressed concern with potential inconsistency in neighborhoods with higher elevation limits. In terms of deed restrictions, he stated he understood the item on title referring to the PMC and was amenable to retaining that as a disclosure item but was concerned by not changing the deed restrictions on the 22 ADUs. He suggested a uniform standard and discussed potential differences in homeowner's associations. He stated the windows were somewhat subjective, but he could support the recommendation without a definition of opaque.

Commissioner Brown concurred with Commissioner Balch and did not want to prohibit ADUs approved prior to the change in State law and wanted to keep the PMC consistent. With regards to amenity spaces, he reiterated his opinion not to restrict ADUs in those spaces. He stated he would like a definition for opacity. He also complimented staff on its straightforward scenarios depicted with graphics and suggested similar graphics to be added to the PMC.

Chair Ritter expressed his agreement with Commissioner Balch regarding the deed restricted ADUs and recommended replacing Section 18.106.060.A with the Civil Code Section 4751. He expressed concern with the separation requirement between structures and suggested just requiring windows five-foot-high above the finished floor of the ADU or opaque windows on a second story ADU, and not including the 4-foot offset option.

Commissioner Balch suggested allowing a default option for five-foot, opaque windows.

Chair Ritter agreed with the concept of limiting the words in the code and matching the State regulations.

Commissioner Allen inquired as to which rules would be the standard between the eliminated deed restrictions for the 22 units and the HOA rules. Ms. Clark noted that there were in fact more than 22 deed restricted units – the smaller number just reflected those approved in the last five years or so.

Commissioner Balch inquired about CC&R's in a Planned Unit Development (PUD).

Assistant City Attorney Julie Harryman explained the legislation, Civil Code, referenced by Mike Carey, indicating that Homeowner's Associations (HOAs) could not have CC&R's restricting ADUs.

Commissioner Allen inquired whether an HOA could retain the owner-occupancy requirement even if the City removed it. Ms. Harryman stated she did not think the bill addressed that, but rather than any deed, CC&Rs prohibiting the building of an ADU was prohibited. Commissioner Allen concurred with her colleagues on simplicity but again suggested individual notification to the residential communities of Carlton Oaks and Walnut Hill.

Commissioner Balch stated he had seen CC&Rs that were illegal under current State law. He asked why current City notifications would not be sufficient to notify the residential communities of Carlton Oaks and Walnut Hill. Commissioner Allen explained she had thought there were only 22 units that would be impacted before she had all the information and did not think the citizens of Pleasanton were thoroughly informed of the Commission's consideration. She suggested the upcoming notice list the specifics under discussion. Commissioner Balch explained the existing public notification in the Valley Times and expressed concern with limiting notice to specific neighborhoods. Commissioner Allen agreed there might be risk and requested the next public notice in the Valley Times reference the sublevel of discussion.

Ms. Harryman explained there were many more than 22 deed restricted ADUs in the City and further explained the legislative bill previously referenced, Civil Code Section 4751, was written in such a way that would make it illegal for HOAs to have an owner occupancy requirement, even though it was not directly stated.

Commissioner Pace expressed his agreement with Commissioner Balch regarding the current public notification process, stating it was adequate and separate public notices for different neighborhoods created cost and liability.

Commissioner Allen expressed her support of the City's current public noticing standards and requested addition information on the specific language and topics being discussed. She then inquired about the number of deed restricted ADUs in the City. Commissioner Balch explained that there were a large number of ADUs with various kinds of deed restrictions but after the language change in the PMC in 2003 there had only been 22. Ms. Clark further clarified staff estimated 200 ADUs in the City with some sort of owner-occupancy requirement. Commissioner Balch inquired how many were from PUDs with CC&R's and Ms. Clark responded she did not have that data and it would likely require extensive research.

Commissioner Balch expressed his opinion that HOAs would continue to enforce their rules until they were directly challenged. Chair Ritter mentioned the State law regarding deed restrictions being void and unenforceable and the Commission would need to consider how to develop appropriate language. Commissioner Balch also expressed concern with the way the ordinance was worded, and potential for future modifications in five years.

Commissioner Balch asked for further clarification regarding where the language surrounding the conversion of amenities was developed. Ms. Clark explained that the State law listed, non-exhaustively, specific spaces that could be converted into ADUs and the City wanted to list some spaces that would be protected, in the interests of maintaining the livability of these projects. Commissioner Brown reiterated his desire to allow under-utilized amenities to be converted, spaces controlled by an HOA and needing agreeance from the residents for conversion.

Ms. Clark summarized the consensus of the Commission but requested clarification on the off-set window requirement and the conversion of amenities.

Chair Ritter stated he did not support the separation requirement for off-set windows. Commissioners Allen and Balch concurred with requiring obscured windows and five-foot height.

Commissioner Balch expressed his indecision regarding the conversion of amenities.

Commissioner Allen suggested retaining the prohibition of converting amenity space to ADUs, with the possibility of individual consideration.

Chair Ritter concurred with Commissioner Allen but expressed concern with going against the State's intent. Ms. Clark stated the detail was more specific than the State law suggested, and the State could reject the standard, but it was intended to protect amenities from needlessly being converted to ADUs.

Commissioner Brown explained that he brought the issue up as an attempt to be objective; if the State were to allow the conversion of a boiler room, he found it unlikely they would disallow the conversion of a pool room just because it was not specifically listed. Ms. Clark stated staff would further review the regulation and ensure it was defensible.

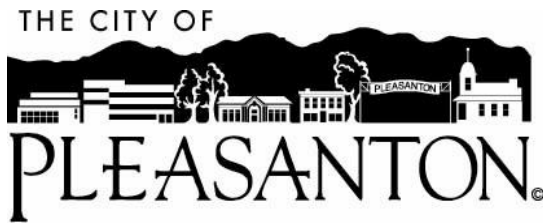
Commissioner Balch inquired if any of the Commissioners were concerned about the 25-foot height restriction. Commissioner Allen stated she could support the recommendation because it was simple and consistent. She stated she would have been open to stating ADUs should be no higher than the primary residence, but she was amenable with the current proposal. Commissioner Balch stated the ADU would always be a few feet shorter than the primary residence based on the means of measuring ADUs and primary residences. Ms. Clark explained staff's decision on the 25-foot height maximum to address Commissioner Allen's concern about neighborhood uniformity. It could also provide an opportunity for parking under the ADU, which would benefit neighborhoods.

Chair Ritter expressed his desire to give Exhibit A to the stakeholders obtaining permits, as they were familiar with the process and the challenges and could provide valuable feedback. Ms. Clark informed Chair Ritter the goal was to make handouts and guides to assist people in interpreting the complicated rules.

**Commissioner Allen moved to continue the item to a date uncertain.
Commissioner Balch seconded the motion.**

ROLL CALL VOTE:

AYES:	Commissioners Allen, Balch, Brown, Pace and Ritter
NOES:	None
ABSENT:	Commissioner O'Connor
ABSTAIN:	None



ATTACHMENT 6

Planning Commission Agenda Report

October 28, 2020
Item 6

- SUBJECT:** P20-0412
- APPLICANT:** City of Pleasanton
- PURPOSE:** Consider amendments to Chapters 18.08, 18.28, 18.32, 18.36, 18.44, 18.46, 18.84, 18.88 and 18.106 of the Pleasanton Municipal Code to comply with state legislation for accessory dwelling units
- LOCATION:** Citywide
- GENERAL PLAN/
SPECIFIC PLAN/
ZONING:** Various
- EXHIBITS:**
- A. Draft resolution with proposed amendments to the Pleasanton Municipal Code
 - B. Adopted California Government Code Section 65852.2, Health and Safety Code Section 17980.12, Government Code Section 65583, Health and Safety Code Section 50504.5, Government Code Section 65852.22, Government Code Section 65852.26, Civil Code Section 4751
 - C. Planning Commission Agenda Report dated June 24, 2020 (without attachments) and Approved Excerpt Minutes
 - D. Planning Commission Agenda Report dated July 8, 2020 (without attachments) and Approved Excerpt Minutes
 - E. Public Comment

STAFF RECOMMENDATION

Staff recommends that the Planning Commission discuss the draft amendments to the Pleasanton Municipal Code (PMC) and adopt a resolution recommending approval of Case P20-0412 to the City Council with the proposed amendments shown in Exhibit A.

EXECUTIVE SUMMARY

In 2019, the Governor signed into law six different bills (Senate Bill 13, Assembly Bill 68, Assembly Bill 881, Assembly Bill 670, Assembly Bill 587, and Assembly Bill 671) that change the regulations for accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs). These new rules build upon the changes to law regarding ADUs enacted in 2017, and still have the overall objective of encouraging the construction of ADUs. Since local ADU ordinances are required to be in conformance with state law, amendments to the City's existing regulations are proposed, to match the new requirements for ADUs and JADUs.

The Planning Commission reviewed the proposed amendments to the PMC and discussed several key elements of the proposed changes at its June 24, 2020 and July 8, 2020 meetings. As a result of detailed public comments submitted just before the July 8, 2020 meeting, the Planning Commission continued the ordinance to a future meeting to allow staff to address those comments. Enclosed as Exhibit A to this report is the revised version of the draft ordinance amending the PMC, reflective of the Planning Commission's discussion and response to both public comment and guidance recently issued by the State Department of Housing and Community Development (HCD). These amendments to the PMC are being provided to the Commission for its consideration and recommendation to City Council.

BACKGROUND

At its June 24 and July 8, meetings, the Planning Commission reviewed draft amendments to the PMC intended to implement state law that took effect January 2020 (please refer to the agenda reports and meeting minutes for these meetings, enclosed as Exhibit C and Exhibit D to this report).

The Planning Commission's principal comments and direction to staff from its July 8 meeting are summarized as follows:

- Add a definition for window opacity as it relates to privacy impacts resulting from new windows in ADUs
- Remove the requirement to offset new ADU windows, intended to mitigate privacy impacts
- Modify the owner-occupancy requirement for ADUs in the PMC, such that owner-occupancy would not be required for any ADU (not just those approved between January 2020 and 2025).

Shortly before the July 8 meeting, the Planning Commission received public comments from an attorney representing a non-profit housing advocacy group, Californians for Homeownership (CFH), challenging some of staff's interpretations of the state law as they related to the proposed PMC amendments. As requested in the CFH letter, its correspondence is included as an exhibit to this report (Exhibit E). Since the comments were received very shortly before the meeting, the Planning Commission continued the item to allow staff to review the comments in greater detail and determine if additional modifications to the municipal code amendments were needed. The Discussion section of this report itemizes the changes made to the ordinance since the Planning Commission's review on July 8.

DISCUSSION

After the July 8 meeting, staff revised the ordinance to address comments from the Planning Commission and from the public. Due to the complex nature of the state law and in response to some of the public comments, staff also provided the draft ordinance to the City's outside legal counsel that specializes in state law related to housing (including accessory dwelling units). Further, staff solicited feedback from HCD on the draft ordinance; and, separately, in late September, HCD released an "ADU Handbook" intended to provide guidance on interpretation and application of the new state laws. Feedback from these various sources is reflected in the version of the ordinance before the Planning Commission. A summary of the changes made to the ordinance is provided below.

Two-story Attached ADUs

The draft ordinance presented to the Planning Commission for the July 8 meeting indicated that two-story attached ADUs (greater than 16 feet in height) must meet the setbacks and separation requirements of the primary structure. Since the state law does not include provisions for ADUs greater than 16 feet in height, staff's interpretation was that an ADU greater than 16 feet in height (i.e., a two-story ADU) could be required to meet the setbacks, separation, and other applicable development standards of the primary structure.

Comments from CFH challenged this interpretation, indicating that the state law does not permit any setback greater than 4 feet from side and rear property lines (and implying that such could not be required of any ADU, irrespective of its height). The feedback that staff received from HCD, however, indicates that an ADU greater than 16 feet in height could be required to meet the development standards including setbacks and separation for the primary structure. Accordingly, the draft ordinance included with this report reflects that ADUs greater than 16 feet in height are allowed, provided they meet the development standards for the primary structure.

Two-story Detached ADUs

The current PMC, based on revisions made in 2017, allows for ADUs above detached garages up to 5 feet from the side and rear property lines; in accordance with this existing standard and HCD's guidance on ADUs above 16 feet in height, this language will be retained. However, since discretionary review of the ADU is no longer permitted, the draft amendments to the PMC indicate that ADUs above detached garages must meet the objective design standards for two-story ADUs, intended to minimize potential privacy and other impacts.

Also, language indicating that detached ADUs above a garage may not exceed two-stories¹ and 25 feet in height in all zoning districts has been added (except in the Agriculture District, where the existing maximum height of 30 feet remains unchanged).

Conversion of Existing Space in Multifamily Developments

The prior draft ordinance included language that would have prohibited the conversion of an "existing on-site amenity" in a multifamily development to an ADU. The CFH letter suggested that the term, "existing on-site amenity" was too vague, and not allowing conversion of such space would be contrary to the intent of the legislature. The revised ordinance indicates that the existing space within a multifamily development that is converted to an ADU must be space that is not habitable space. The state law provides examples of such spaces that include: storage rooms, attics, basements, or garages, as long as each unit complies with state building standards for dwellings. However, since spaces such as a community gym or community room could be classified as habitable space, these spaces could not be converted to an ADU.

¹ The PMC already indicates that detached ADUs that are *not* above a detached garage are limited to one-story: this standard would be retained. The modifications to the PMC propose that the maximum height of such one-story detached ADUs is 16 feet (instead of 15 feet) to comply with state law. Also, the PMC modifications indicate that *attached* ADUs are limited to two-stories and are subject to the height limitation of the primary structure. An attached accessory dwelling unit that is 800 square feet or less may be 16 feet in height regardless of the maximum height limits on the main structure, as prescribed by state law.

Objective Design Standards

The following changes were made regarding objective design standards for two-story ADUs:

- The requirement to offset windows in an ADU from the existing windows in neighboring residences was deleted, as directed by the Planning Commission
- The term “frosted” was added to the window mitigation measure (the term, “obscure” was retained). The meaning and purpose of both of these were clarified to indicate, “glass which is patterned or textured such that objects, shapes, and patterns beyond the glass are not easily distinguishable.”

The PMC amendments as drafted still include a “distance requirement,” meaning that a new window(s) in an ADU must implement one of the privacy mitigations if it is located 25 feet or less from a property line². Although one Planning Commissioner at the July 8 meeting commented that the “distance requirement” should not be maintained, staff proposes to keep it so that ADUs located a substantial distance from a property line would not be required to implement privacy measures (an effort to be less, rather than more, restrictive in these cases).

Owner-occupancy Requirements for ADUs

The City has received public comment regarding owner-occupancy requirements for ADUs constructed prior to 2020 (state law prohibits local jurisdictions from imposing owner-occupancy requirements for ADUs approved between 2020 and 2025). This was also a point of discussion between the Planning Commission at the June 24 and July 8 meetings: the Planning Commission directed staff to modify the PMC such that owner-occupancy for either the ADU or the primary residence would not be required. This change has been implemented to the draft PMC amendments and would apply retroactively to properties for which owner-occupancy has been required, as well as to new approvals. Owner-occupancy between the primary residence and a JADU, if proposed, is still required. For both an ADU and JADU, the rental period is required to be longer than 30 days.

Secondly, existing language in the PMC that states the property owner can rent both the primary residence and the ADU to a single party is proposed to be deleted.³ Therefore, the primary residence and the ADU could be rented to a single tenant or each could be rented to two different tenants, as long as the rental periods are longer than 30 days.

Finally, as drafted, the PMC also removes the requirement for a deed restriction for both ADUs and JADUs. The deed restriction was to serve as documentation regarding the ADU to future buyers of a property with an ADU, but the usefulness of the deed restriction has been called into question by members of the public that are interested in removing owner-occupancy requirement for all ADUs. Since the deed restriction language refers property owners to enforceable provisions contained within the PMC, and there are no provisions of the deed

² This 25-foot measurement is to replace the previously proposed requirement imposing one of the window mitigations if a new window in a proposed ADU was facing either a neighboring residence or a neighboring private yard. This change is intended to simplify the standard and remove ambiguity that could arise from the term, “facing” as was discussed in response to the example presented at the July 8 Planning Commission meeting.

³ The PMC will continue to include the provision that the owner of a property with a JADU may rent *both* the primary unit and the JADU to a *single party*.

restriction that are not reflected in the PMC, having a recorded deed restriction appears to be an unnecessary requirement.

Other Changes

The following additional changes to the ordinance since the July 8 meeting provide clarifying language to better articulate the objective of the code, and/or to better align with state law:

- Modified the asterisk to Table 18.84.010 to refer to standards in 18.106 (the asterisk currently refers only to height exceptions). Also, this asterisk and note were added to the zoning districts that allow ADUs.
- Referenced Chapter 18.106 in parking section of PMC (Chapter 18.88) so that parking standards for ADUs are itemized in Chapter 18.106 and not Chapter 18.88.
- Modified proposed language to 18.106.020(F) to indicate when PUD standards do and do not apply.
- Added language to describe height measurement methodology for attached ADUs.
- Removed 10-foot streetside yard setback for ADUs.
- Clarified that attached ADUs must meet front yard setbacks for the primary structure, except, as noted in recent guidance provided by HCD, encroachment into the front yard setback is allowed if strict compliance would preclude an ADU on the subject property, with such encroachment limited to the extent necessary to accommodate the accessory dwelling unit.
- Following recent guidance from HCD, clarified that a property with multiple single-family dwellings on the same lot is considered a one-family development. And, that in a development project that has both one-family and multifamily housing types, the regulations applicable to each type of housing are to be applied, irrespective of whether those single-family or multifamily units are each located on its own lot or on a common parcel.
- Reorganized the text referring to the prohibition of upper-story decks and balconies such that it applies to all ADUs (not just second-story ADUs). Therefore, a single-story ADU would also not be permitted to have a rooftop deck.
- Following recent guidance from HCD, clarified that in multifamily developments, one of the following types of ADUs are permitted: ADUs resulting from conversion of non-habitable space, or up to two detached ADUs subject to specific development standards in state law. Further, also based on guidance from HCD, the maximum number of ADUs resulting from the conversion of non-habitable space is not to exceed 25% of the existing multifamily units located within each multifamily structure (not 25% of the units located in the development project as previously proposed).
- Modified text that relates to the location of the entry door such that it requires the entry door to the ADU to be on a “different façade” than the door to the primary residence as

opposed to specifying that the ADU door be on the “side or rear of the one-family residence.”

- Consistent with recent guidance from HCD, instead of striking out existing PMC that requires parking for the primary residence to be replaced when a JADU is created in a garage, this language will be retained. Therefore, JADUs resulting from a garage conversion would be required to provide replacement parking.
- Clarified language to indicate that, for an ADU resulting from conversion of existing space, any expansion of the building not directly a part of the ADU is subject to the development standards for the main structure.
- Deleted proposed text that limited the square footage of ADUs resulting from conversion of existing space in accordance with HCD guidance.
- Omitted ADUs from Design Review references in various sections of Title 18.
- Clarified the height to indicate, “16 feet or less” to Sections 18.106.060(C)(7), which refers to FAR and 18.106.060(C)(8), which refers to open space.
- Modified the definition of JADU to reflect more general requirements for cooking facilities.
- Modified text to indicate, “one-family” instead of “single-family” since Chapter 18.106 used both terms interchangeably.
- Modified reference to indicate the California Register of Historical *Resources* (instead of the California Register of Historical *Places*).
- Modified the phrase, “Minimum Accessory Dwelling Unit Standards” to, “Statewide Exemption Accessory Dwelling Unit Standards” to be consistent with recent guidance issued by HCD.

PUBLIC NOTICE AND PUBLIC COMMENTS

Notification of this code amendment has been published in The Valley Times as an upcoming agenda item for the October 28, 2020, Planning Commission meeting. Additionally, staff sent a courtesy email notifying those interested in the update to the PMC as it relates to ADUs.

As part of the June 24, 2020, meeting, the Planning Commission received an email from a local developer advocating to eliminate enforcement of deed restrictions that require owner-occupancy for ADUs approved prior to 2020. Since the July 8 meeting, staff has received additional feedback supporting removal of the owner-occupancy requirement for all ADUs from another property owner. As mentioned previously in this report, the City received a letter from CFH shortly before the July 8, 2020, meeting. At the time this report was prepared, staff has not received additional comments regarding the proposed code amendments. Staff does, however, continue to receive numerous inquiries from the public, interested in ADUs and standards specific to Pleasanton.

ENVIRONMENTAL ASSESSMENT

The proposed code amendments are statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant Public Resources Code Section 21080.17 and categorically exempt per CEQA Guidelines Section 15303.

SUMMARY/CONCLUSION

The proposed text amendments will facilitate the development of ADUs and bring the PMC into compliance with state law. Staff recommends that the Planning Commission discuss the topics identified in the agenda report, consider the proposed text amendments, and provide a recommendation to the City Council.

Primary Authors: Shweta Bonn, Senior Planner, 925-931-5611 or sbonn@cityofpleasantonca.gov

Reviewed/Approved By:

Melinda Denis, Planning and Permit Center Manager
Ellen Clark, Director of Community Development
Julie Harryman, Assistant City Attorney

ATTACHMENT 6

P20-0412, Amendment to Title 18 of the Pleasanton Municipal Code

Consider amendments to Chapters 18.08, 18.28, 18.32, 18.36, 18.44, 18.46, 18.84, 18.88 and 18.106 of the Pleasanton Municipal Code to comply with state legislation for accessory dwelling units.

Senior Planner Shweta Bonn presented the specifics of the item in the Agenda Report.

Commissioner Balch inquired about the process for existing deed restrictions. Ms. Harryman stated she would draft a termination of deed restrictions that would extinguish the restriction for the title. She explained the termination would be provided to property owners upon them contacting the City.

Chair Ritter clarified language in the deed restrictions indicate the restrictions could only be removed with written permission from the City of Pleasanton.

Commissioner Pace suggested informing realtors in the City about the removal of the restriction as a good way to proactively identify the properties as they have a vested interest in the marketability of their properties.

Commissioner Balch asked for clarification about one-story accessory dwelling units (ADUs) since the PMC amendments indicate an ADU could not have a rooftop deck. Ms. Bonn clarified the prior draft of the ADU Ordinance prohibited decks on two-story ADUs, and the current version applied this restriction to all ADUs; the principal reason for this is attributed to the fact there is no discretionary review for ADUs. She reminded the Commission that state law and the ADU Ordinance were intended to encourage units that are affordable by design. Commissioner Balch stated he understood the restriction but would still love a Juliet balcony in an ADU if that were his unit.

Chair Ritter stated the termination of the deed restriction process was important.

THE PUBLIC HEARING WAS OPENED

Speaker Vamshi Palkonda discussed ADUs on top of detached garages, specifically within the Walnut Hills neighborhood. He expressed that the Planned Unit Development (PUD) conditions of approval and Covenants, Conditions, and Restrictions (CC&Rs) do not allow additions to detached garages, thus prohibiting an owner from adding an ADU above a detached garage.

Ms. Bonn provided a short presentation on the detached garages in the Walnut Hills neighborhood. She discussed the request to allow ADUs on top of detached garages in this specific neighborhood. She suggested not modifying the PMC as was requested by written public comment submitted earlier in the day, but rather individually considering the Walnut Hills neighborhood and other PUDs as requests such this are submitted.

Commissioner Allen asked about the hierarchy of laws. Ms. Harryman stated state law would take precedence over specific conditions in a PUD if they were not consistent with the law.

Speaker Alok Damireddy suggested the PMC be modified to allow ADUs above detached garages in all PUDs.

THE PUBLIC HEARING WAS CLOSED

Ms. Harryman clarified that CC&Rs prohibiting ADUs were no longer allowed by state law.

Commissioner Allen moved to adopt a resolution recommending approval of Case P20-0412 to the City Council with the proposed amendments shown in Exhibit A. Commissioner Balch seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Allen, Balch, Brown, Pace, and Ritter

NOES: None

ABSENT: Commissioner O'Connor

ABSTAIN: None