



_____ CALENDAR Agenda Item # _____

AGENDA REPORT SUMMARY

Meeting Date: October 15, 2020

Subject: An Ordinance of the City Council of the City of Los Altos amending Los Altos Municipal Code Chapters 14.02 (General Provisions) and 14.30 (Short Term Rental Prohibition) to prohibit boardinghouses.

Prepared by: Guido F. Persicone, Planning Services Manager, AICP
Erik Ramakrishnan, Deputy City Attorney

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

Attachment(s):
A. Draft Ordinance

Initiated by:
City staff

Previous Council Consideration:
2018

Fiscal Impact:
No direct fiscal impact is anticipated

Environmental Review:
The City Council finds the adoption of this ordinance to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because the adoption of the ordinance will not result in a foreseeable significant environmental effect. The Community Development Director or designee is hereby directed to prepare and file a notice of exemption in connection with this ordinance, pursuant to CEQA Guidelines Section 15062.

Policy Question(s) for Council Consideration:

- Do the proposed code amendments protect residential neighborhoods?

Summary:

- The ordinance prohibits boardinghouses in order to preserve the character of residential neighborhoods.



Subject: Boardinghouse Ordinance

Staff Recommendation:

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

Purpose

The establishment of boardinghouses has the potential to result in overcrowding, excessive noise, traffic congestion, illegal parking, and other effects. Shared living platforms have contributed to a rise in the number of single-family homes being used in the Bay Area as boardinghouses, the residents of which are often made to pay excessive rents to live in overcrowded conditions. This trend is not in furtherance of the City's interest in preserving the character of its residential neighborhoods or in maintaining an adequate supply of for-sale residential dwelling units.

Background

“It is now well settled that a city has broad authority to adopt zoning ordinances to protect the health and general welfare of its residents. Municipalities may establish strictly residential zoning districts as part of a general comprehensive zoning plan and maintenance of the character of residential neighborhoods is a proper use of the city's police powers. More specifically, the courts of the state have stated that the operation of boarding houses businesses may be excluded for residential zones. In short, preserving the residential character of a neighborhood is a legitimate government purpose that may be reasonable achieved by prohibiting commercial enterprises such as operating a boarding house business.”¹

As the City Council and Planning Commission are aware, there are several unpermitted boarding houses operating in Los Altos. However, without a boarding house definition, the City does not have any defined use that covers small multi-room or single-room rentals and subrentals. This makes for enforcement that is less straightforward than it could be and increases the likelihood of disputes. Therefore, the City should consider a clarifying amendment to the code to tighten up relevant land-use definitions by eliminating ambiguous overlap and needless gaps and to expressly prohibit what is now only implicitly prohibited by omission. This will aid in the city's enforcement efforts.

Draft Ordinance

The proposed ordinance adds a prohibition on boardinghouses to Chapter 14.30 of the Municipal Code, which contains the City's existing short-term rental prohibition. Placing the prohibition in Chapter 14.30 is proposed for three reasons. First, the reason for prohibiting boardinghouses are

¹ Opinion of the Attorney General Bill Lockyer, No 01-402, March 19, 2003



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substantially similar to the reasons for prohibiting short-term rentals, i.e., to protect the residential character of the City’s neighborhoods, to prevent overcrowding, and to maintain opportunities for home ownership. Additionally, the existing definition of “short-term rental” and proposed definition of “boardinghouse” both make use of the defined term “lodging.” Finally, like with the short-term rental prohibition, the intent of the proposed ordinance is to prohibit boardinghouses in all zoning districts.

“Boardinghouse” is defined by the ordinance to include any housing unit where lodging is furnished for compensation other than as a short-term rental to more than two individuals. Allowing a homeowner or renter to take on up to two boarders without having the home defined as a boardinghouse is recommended as a matter of policy in that renting a spare bedroom to one or two individuals is a relatively common practice that is unlikely to have significant community impacts. Allowing up to two lodgers will also preserve code enforcement resources.

For clarity, the definition of “boardinghouse” expressly excludes certain kinds of housing. These include residential care facilities for six or fewer individuals, which Health & Safety Code Section 1566.3 mandates to be excluded from the definition in any local zoning ordinance of a boardinghouse. Also excluded is any type of housing not provided in a “housing unit,” including, for example, nursing homes and dormitories, as well as hotels and motels, which are expressly identified. Finally, providers of supportive, transitional, and emergency housing will sometimes ask residents to contribute what they can to the cost of their housing once they acquire the means. To the extent that such contributions could be considered “compensation,” these forms of housing are also excluded from the definition of “boardinghouse.”

Unique circumstances sometimes arise where it is necessary to provide additional exceptions to a boardinghouse ordinance to comply with state and federal disability access laws, including the Americans with Disabilities Act. The proposed ordinance therefore includes a procedure to request such an accommodation, which could be granted by the Community Development Director.

The definition of “lodging” currently provided in Municipal Code Section 14.02.070 refers to furnishing accommodations to individuals who are not “members of the family residing in the dwelling unit.” According to the court in *Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, a community’s zoning laws must treat groups of unrelated individuals who choose to live together in a family-like atmosphere the same as families bound together by blood, marriage, or adoption. However, the court in *Barrett v. Lipscomb* (1987) 194 Cal.App.3d 1524 clarified that the rule in *Adamson* does not extend to a “commercial venture in which persons are brought together not by social or compatibility bonds but as paying tenants.”



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The proposed ordinance amends the definition of “lodging” and adds additional definitions to Section 14.02.070 to clarify and reflect this distinction. The proposed definition of “lodging” is intended to be broad enough to encompass a group of individuals brought together through a shared living platform to rent a single home, but it would exclude a group of individuals who have chosen to live together in a family-like atmosphere.

Los Altos General Plan Conformance

General Plan Goal 1: Preserve and enhance the identify and unique character of Los Altos

General Plan Land Use Goal 2: Plan for a compatible and harmonious arrangement of land uses by providing a mix of uses consistent with projected future social and economic conditions of Los Altos.

General Plan Land Use Element Policy 2.1: Continue to apply land use designations which recognize existing development patterns and expected future conditions.

Options

- 1) Recommend approval of Zoning Text Amendment 20-0002 to the City Council.

Advantages: Provide greater protection to residential districts

Disadvantages: Restricts use of residential properties

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

Advantages: There is no advantage to denying this ordinance as use of residential properties in a manner that is inconsistent with a neighborhood is contrary to the Los Altos General Plan.

Recommendation

The staff recommends Option 1.

ORDINANCE NO. 2020-___

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS
AMENDING LOS ALTOS MUNICIPAL CODE CHAPTERS 14.02 (GENERAL
PROVISIONS) AND 14.30 (SHORT TERM RENTAL PROHIBITION) TO
PROHIBIT BOARDINGHOUSES, AS DEFINED,
AND MAKING FINDINGS PURSUANT TO CEQA**

WHEREAS, the California Constitution, Article XI, Section 7, confers on the City the power to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the City finds that the regulation of boardinghouses is necessary to preserve the health, safety, or welfare of the general public; and

WHEREAS, the City further finds that it has a legitimate interest in preserving the character of its residential neighborhoods; and

WHEREAS, the City also has an interest in maintaining an adequate stock of for-sale residential dwelling units; and

WHEREAS, the establishment of boardinghouses has the potential to result in overcrowding, excessive noise, traffic congestion, illegal parking, and other effects; and

WHEREAS, shared living platforms have contributed to a rise in the number of single-family homes being used in the Bay Area as boardinghouses, the residents of which are often made to pay excessive rents to live in overcrowded conditions; and

WHEREAS, this trend is not in furtherance of the City's interest in preserving the character of its residential neighborhoods or in maintaining an adequate supply of for-sale residential dwelling units.

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

SECTION 1. AMENDMENT OF CHAPTER 14.02: Los Altos Municipal Code Section 14.02.070 is hereby amended in relevant part as follows, underlined text indicating additions and stricken text indicating deletions:

For the purposes of this chapter, certain words and phrases used in this chapter are defined as follows:

[no changes to definitions of "abut" to "enclosed accessory structure"]

"Family" means (i) two or more individuals residing together as a single housekeeping unit, whether or not related by blood, marriage, or adoption; or (ii) an individual who resides alone, or who shares housing with other individuals who do not form a single housekeeping unit with that individual.

[no changes to definitions of “family daycare home” to “hotel”]

“Housekeeping unit” means a group of people residing together, the makeup of which is determined ~~exclusively~~ by the individuals themselves ~~without the participation of a landlord, shared living platform, property manager, or the like, who have made economic and social commitments to each other, and who jointly use common areas and share responsibility for household activities and chores.~~

Deleted: rather than by the

Deleted: or

“Housing unit” means a transient or a nontransient housing unit.

"Housing unit, nontransient" means a dwelling, mobile home or trailer, single room, or group of rooms that is occupied as separate living quarters for a period of more than thirty (30) consecutive days or, if vacant, intended for occupancy as separate living quarters for a period of more than thirty (30) consecutive days. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have direct access from outside the building or through a common hall.

"Housing unit, transient" means a dwelling, mobile home or trailer, single room, or group of rooms that is occupied as separate living quarters for a period of thirty (30) consecutive days or less or, if vacant, intended for occupancy as separate living quarters for a period of thirty (30) consecutive days or less. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have direct access from outside the building or through a common hall.

[no changes through to the definition of “lodging”]

“Lodging” means the furnishing of rooms or groups of rooms within a ~~dwelling unit or an accessory structure~~ housing unit to persons other than members of the family residing in said ~~dwelling housing unit; or in the case of an accessory structure, a dwelling unit on the same site,~~ for overnight occupancy on a residential occupancy basis, whether or not meals are provided to such persons. This includes the hiring of rooms in an owner-occupied housing unit, or the subleasing of rooms in a renter-occupied housing unit, to boarders or lodgers on a short or long-term basis. “Lodging” also means the leasing of a non-owner-occupied housing unit for occupancy by more than one family, but does not include the furnishing of room or board to a domestic employee or personal caretaker.

[no additional changes]

SECTION 2. AMENDMENT OF CHAPTER 14.30: Los Altos Municipal Code Section 14.30 is hereby amended as follows, underlined text indicating additions:

Chapter 14.30 - SHORT-TERM RENTAL AND BOARDINGHOUSE PROHIBITION

14.30.010 - Purpose and intent.

The purpose of this chapter is to establish regulations governing boarding houses and the short-term rental of residential property within the city of Los Altos. The city has a legitimate interest in fostering and preserving the long-term residential character of its residential neighborhoods. The establishment of these regulations will help maintain adequate housing stock for permanent residents while ensuring that short-term-rental activities and boardinghouses do not become a nuisance or threaten the public health, safety, or welfare due to excessive noise, disorderly conduct, overcrowding, traffic congestion, illegal parking, the accumulation of refuse, and other effects related to short-term rentals.

14.30.020 - Definitions.

For purposes of this chapter, the following definitions apply:

“Boardinghouse” means any housing unit where lodging is furnished for compensation to more than two (2) individuals for a period of more than thirty (30) consecutive calendar days. A “boardinghouse” does not include: (i) housing described in Health & Safety Code Section 1566.3; (ii) a city-approved hotel or motel; (iii) transitional, supportive, or emergency housing that is city-approved or otherwise permitted to operate pursuant to applicable law; or (iv) any housing not provided in a housing unit.

"Short-term rental" means a use that provides lodging in a dwelling unit, for compensation, for a period of fewer than thirty (30) consecutive calendar days. "Short-term rental" does not include transient lodging in city-approved hotels and motels.

14.30.030 - Short-term rentals prohibited.

A short-term rental is a prohibited use in every zoning district in the city.

14.30.040 – Boardinghouses prohibited.

A boardinghouse is a prohibited use in every zoning district of the city. The planning director shall grant an exception to this prohibition if he or she finds that such exception:

1. Is necessary to make housing available to persons with disabilities;
2. Would not place an undue financial or administrative burden on the city; and
3. Would not require a fundamental alteration in the nature of a city program or law, including land use and zoning.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held by a court of competent jurisdiction to be invalid or unenforceable, such decision shall not affect the validity of the remaining portions hereof.

SECTION 4. CEQA. The City Council finds the adoption of this ordinance to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because the adoption of the ordinance will not result in a foreseeable significant environmental effect. The Community Development Director or designee is hereby directed to prepare and file a notice of exemption in connection with this ordinance, pursuant to CEQA Guidelines Section 15062.

SECTION 5. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933. Within 15 days of the passage of this ordinance, the City Clerk shall cause the full text of the ordinance, with the names of those City Council members voting for and against the ordinance, to be published in an adjudicated newspaper. In lieu of publishing the full text of the ordinance, the City Clerk, if so directed by the City Attorney and within 15 days, shall cause a summary of the ordinance, prepared by the City Attorney and with the names of the City Council members voting for and against the ordinance, to be published in an adjudicated newspaper, and shall post in the office of the City Clerk a certified copy of the full text of the ordinance, along with the names of those City Council members voting for and against the ordinance. The publication of a summary of the ordinance in lieu of the full text of the ordinance is authorized only where the requirements of Government Code Section 36933(c)(1) are met.

SECTION 6. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

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

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Janis C. Pepper, MAYOR

Attest:

Andrea Chelemengos, CMC, CITY CLERK