

HNP Committee Recommendations on the proposed COS ADU Ordinance

January 2025 - **Updated 12 January**

No.	Topic	HNP Committee Recommendations
1	Formal Notice of Proposed Zoning Change	Send City-wide Notification of Ordinance Change to each Single Family Property Owner
2	Number of ADUs per lot	Permit One (1) ADU per lot
3	Size of ADU	Limit ADU to 50 percent of the primary structure or 1,250 sq ft, whichever is less. If the primary structure is less than 1,500 sq ft, the ADU may be 750 sq ft
4	Maximum Height	Allow ADU to be up to maximum height of 16 ft Exception on ADUs over detached garages
5	ADU location on lot	Allow detached ADUs in rear yards only. Attached ADUs allowed only in rear of side yards. No ADUs in front yards Include language that specifically prohibits subdivision
6	Public Safety	Ask key questions & obtain answers Analyze/understand public safety impacts before adoption/implementation
7	ADUs on Historic Properties	Add clarifying language to Ordinance
8	Not as an STR	STRs not allowed in new ADUs Address existing STRs after April election
9	WUI and Insurance Impacts	Analyze/mitigate impacts before adoption and implementation
10	Limits on number of bedrooms in ADU (occupancy)	Limit bedrooms to no more than 2 per ADU Assumes recommended size limits in Topic 3
11	Compliance with HB-1152 and Sunset Clause	See recommendations in Topic 14 And, Incorporate a Sunset Clause to any City ADU Ordinance
12	Ownership of ADUs	Prohibit division of ownership and long-term leases
13	Changes in Dimensional Standards	Change setback language back to "whichever is greater" Clarify/update setback definition
14	Home Rule	Consider available policy options & decide direction First analyze/mitigate public safety & related impacts Modify proposed Ordinance to address above Topics

Historic Neighborhoods Partnership (HNP)
ADU Ordinance Discussion Topics
January 2025

ADU Ordinance Topic: Topic No. 1 – Formal Notice of Proposed Zoning Change

Discussion, Observations and Concerns: Trust between the Citizens of Colorado Springs and the City government is a fundamental principle that must be protected. Citizens must believe that their City government not only has their best interest at heart but is operating in an open and honest manner. This is especially important regarding ordinance changes that are significant and have a city-wide impact.

The City ADU Ordinance is significant and has a city-wide impact.

- All single-family lots, regardless of existing covenants, are being unilaterally changed to duplex multi-family. The proposed ADU ordinance is effectively eliminating all single-family zoning in the City.
- The net effect is a massive city-wide rezoning that impacts approx. 61% of the properties in the city. There are over 134,000 single family detached structures (lots) in the City that will be impacted by this ADU ordinance. (see Footnote 1)
- The cumulative impact of the ADU ordinance/legislation with state laws of no parking requirements, no limits on the number of occupants, removal of owner-occupancy requirements and no appeal process is consequential. This has a significant impact on existing neighborhoods.
- The proposed City ADU ordinance will allow the population to, effectively, double in size without equal infrastructure expansion to accommodate such growth and public safety needs.
- Once implemented, a surrounding neighbor will not be notified and will have no right to review or comment at any stage of the submittal for an ADU. The first notice neighboring homeowners will have of this major change in zoning is when the backhoe shows up to dig the foundation for the new adjacent residential building.

This is a profound and significant city-wide change. This is the most fundamental change to single-family homeowners' rights since zoning ordinances were first adopted.

This process is compressed and has been rushed. More time is needed to ensure the public is informed and knowledgeable. Considering the magnitude of this change, there has been limited public engagement and knowledge of what is going on. The proposed ADU ordinance was announced the week of 15 Nov and only one (lightly attended) public meeting was held a few days later (20 Nov) before the matter was taken to Planning Commission for formal consideration on 11 Dec. This is less public engagement and outreach than the City's UDC requires for the re-zoning of a single property.

Recommendation to City Council: HNP previously asked for at least a month's extension to afford more public engagement. HNP believes additional outreach is warranted and asks that City Council consider requesting City Planning mail a 5" X 8" Green Postcard to every single-family owner in the City notifying them of this proposed change and asking for input. That should be followed with a robust community engagement process involving multiple meetings in different neighborhoods throughout the City.

Impact if no action is taken by City Council: The public and community engagement process is shortchanged, only a small portion of the public is informed and knowledgeable of what is occurring. Many citizens will be surprised about what has happened and trust will be broken.

Footnote 1: Based on 2023 US Census Bureau numbers for COS: 134,219 single family detached structures/218,332 dwelling units (of all types) in the City)

Historic Neighborhoods Partnership (HNP)

ADU Ordinance Discussion Topics

January 2025

ADU Ordinance Topic: Topic No. 2 - Number of ADUs per Lot

Discussion, Observations and Concerns: Both the City Planning Commission and City Planning Department recommend one (1) ADU per lot. Assuming City Council chooses to comply with Colorado HB-1152, HNP recommends one (1) ADU per lot for all lot sizes. Reasons include:

- There is a significant impact on existing neighborhoods with even just one (1) ADU. The cumulative impact of the ADU ordinance/legislation with state laws of no parking requirements, no limits on the number of occupants, removal of owner-occupancy requirements and no appeal process is consequential. One (1) ADUs is challenging by itself.
- Impact assessments should be done on adding even one (1) ADU per lot, especially in WUI areas. One (1) ADU is effectively a twofold increase in density.
- Adding two (2) ADUs is effectively flipping single-family residential zoning to multi-family triplex zoning across the entire City. This is not gentle density; this is massive densification. Stay with 1 ADU per lot.
- A greater than twofold (2x) increase in density would result in negative impacts to neighborhood infrastructure, character, quality of life and overall safety. The City's aging infrastructure was not built to support such densification and will likely compromise services for all, creating expensive failures and public safety risks.
- Adding 2 ADUs is making single-family lot purchases in existing neighborhoods much more financially attractive to corporate investors. This could increase the number of "scrape and builds" by corporate investors and promote the displacement of existing low-moderate income households in existing neighborhoods. Stay with 1 ADU per lot.

Recommendation to City Council: Conduct full impact assessments before implementation. Assuming City Council chooses to comply with Colorado HB-1152, HNP recommends one (1) ADU per lot for all lot sizes.

Impact if no action is taken by City Council: See above narrative.

Historic Neighborhoods Partnership (HNP)
ADU Ordinance Discussion Topics
January 2025

ADU Ordinance Topic: Topics No 3&4, Size and Height of ADUs

Discussion, Observations and Concerns:

- A. It feels as though the ADU ordinance is largely focused on the encouragement and facilitation of ADU construction in existing neighborhoods. There needs to be more consideration and mitigation of the ADU impacts on adjacent homeowners and overall neighborhoods.
- B. Why should the concerns of adjacent property owners be a consideration? The purchase of a home is the largest single purchase/investment made by most households. Owners of homes in existing/established neighborhoods purchased their homes assuming current zoning rules and regulations. The proposed ADU ordinance changes those rules and regulations considerably. In effect, adjacent homeowners and neighborhoods have a huge stake in how and where ADUs are allowed.
- C. The allowable maximum size, height and location of an ADU can make a huge difference in terms of impacts on adjacent homeowners and neighborhoods. The City Planning Commission recommends a maximum ADU size equal to the size of the principal structure and a maximum height of 25 to 28 ft. depending upon the pitch of the roof of the ADU (essentially 2 stories). The latest revised proposal from City Planning staff is a maximum size equal to 75% of the principal structure or 1,000 sf, whichever is greater and a maximum height of 28 ft.
- D. To understand the implications of the proposed ordinance it is useful to consider a typical example of what can be done and how it may impact adjacent property owners and neighborhoods.
 - Imagine you own a home in a quiet single family (R-1 single family zoned) neighborhood. Your home and the home of your neighbors on both sides as well as the house on the lot behind your home are in the 3,000 sq ft range and are rancher style homes. Under the proposed ordinance, each of your neighbors would be able to construct an additional home in either their side or back yard. Under the Planning Commission's recommendation each of those three additional homes could be as large as the principal house, up to 3,000 sq ft. Under the revised staff recommendation, each home could be as large as 2,250 sq ft. But, also, each of those three new houses, under the proposed ordinance, can be as high as 28 feet tall.
 - Now, also consider that under a recently passed state law, there can be no limits as to how many persons can reside in each of those 3 new houses. Yet, under the proposed ordinance, no additional off-street parking will be required. So, many, if not all, of the folks living in the 3 new houses right next to your house and/or back yard,

will likely be forced to park on the street in front of your home and throughout the neighborhood. The size of the ADU will largely determine the occupancy of the ADU and the resultant number of additional automobiles that will have to be parked on the street. Larger ADU size translates into more automobiles that will have no off-street parking under the proposed ordinance.

- Any semblance of privacy you thought you had in your back yard is also now gone with the 3 new houses being up to 28 ft tall (2 stories) towering over your back yard. If ADUs are allowed to be licensed as a short-term rental (STR) imagine having a steady stream of strangers (non-neighbors) gazing directly into your back yard at all times. In that case, would you ever allow your kids or grandkids to play in the backyard unsupervised?
 - Further, regardless of which direction your home faces, your back yard and side yard will be subject to year-round, or seasonal, shading. Existing gardens and established vegetation in the yards of adjacent properties will likely be adversely impacted if 2 story ADUs are allowed. Click on the following link to view a picture of a recently constructed 28 ft. high detached ADU and the impact of 2 story ADUs on privacy and shading of back yards of adjacent homes:
https://drive.google.com/file/d/1z7Bxp2UyZ9gq6VIO_dj55Kz8RMGTEsDH/view?usp=sharing
 - Or, if that long cherished gorgeous view of the mountains you have is now suddenly obscured by one or more of the three 28 ft high ADUs that are constructed? One of the most desired and valued characteristics of a home in Colorado Springs has long been the ability to have a view of the mountains. Allowing two story ADUs (28+ ft) will likely block or impact the current viewshed of many hundreds, or perhaps thousands of existing homes. The following link will take you to a graphic of this potential impact:
https://drive.google.com/file/d/1xZihPgUQRgV10RjZo5f53NoGK6ClwCKh/view?usp=share_link
 - How then can a 28 ft height limit be justified when it will have substantial impacts on viewsheds, shading, and backyard privacy of neighboring properties...things that will really make folks mad when a new ADU goes in next door? Why would the City want to invite such future strife?
 - One could argue that under the current dimensional standards for residential zoning districts in the City a home or additions to that home can be up to 35 ft. in height. Thus, under current zoning rules there is always the threat of shading or loss of viewshed. However, the proposed ADU ordinance increases that risk substantially by allowing, promoting, and incentivizing the construction of ADUs of a size and mass that has a greater possibility of impacting adjacent property owners.
- E. As defined in the City's UDC, an accessory use is supposed to be "subordinate to and serves a principal building". The American Planning Association defines an accessory use as "a use of a structure, lot, or portion of a lot that is subordinate and incidental to a principal land use or development". Allowing an accessory dwelling unit of a size equal to (or even 75%) of the principal building and a height of two stories does not make

logical sense, is not consistent with the definition of an accessory use in the City's UDC, and is not intellectually honest.

- F. Colorado HB-1152 is seeking a way to provide “**compact** housing” with “**minimal** impacts to infrastructure.” A 2-story structure of up to several thousand ft. does not constitute an ADU. This is not granny flats, nor compact housing; this is not cottage housing or tiny housing and definitely not affordable housing. This makes it appear that the proposed ADU ordinance is simply a means of allowing duplexes or perhaps triplexes citywide to accomplish a greater objective of dramatically increasing the density of existing neighborhoods.
- G. Even with the changes proposed by Planning Commission and staff, there remain concerns that the proposed ADU ordinance, as amended by the Planning Commission and further by staff, will make “scrape and builds” more attractive to corporate investors. Allowing an ADU of nearly the same size of the principal structure and a 2-story height essentially allows a duplex to be built on any lot currently zoned for single family. This changes the economics of redeveloping an existing single family lot into a duplex. The ability to have two comparably sized dwelling units on a single-family zoned lot can lead to more existing homes being bought by corporations and equity investors, the existing home torn down and a duplex disguised as an ADU to be constructed. While HB-1152 was intended to help discourage displacement of existing low-moderate income households, the City's ordinance, as drafted, could have just the opposite effect by promoting scrape and builds and more displacement.
- H. Allowing 2-story ADUs will also increase the likelihood of strife with adjacent homeowners who have solar panel arrays that may be partially or fully blocked by the ADU.
- I. The proposed ADU ordinance specifically provides for applications for ADUs to be eligible for an “Administrative Adjustment” from otherwise applicable development standards as described in Section 7.5.524 of the UDC. Therefore, all the potential negative impacts on adjacent property owners resulting from excessively large height and size standards will be magnified by the Planning staff's ability to make an administrative adjustment to any dimensional standard of up to 15% without a public hearing. There is little doubt that the City staff will deny any request for a 15% adjustment in a dimensional standard. Therefore, the maximum height of a detached ADU, with the 15% adjustment, is actually over 32 feet and the maximum size of any ADU would be nearly 100% of the sq ft of the principal structure.
- J. The Pikes Peak Housing Network, in a recent newsletter, speculates that 10% of current single-family zoned lots could get an ADU amounting to over 12,000 new dwelling units. Assuming a neighbor on each side of the principal house and one in the back of each of those 12,000 lots, as many as 36,000 neighboring single-family homes could be impacted as those ADUs are constructed or installed. How many of those impacted property owners are going to be happy about having up to an ADU that is up to 28 ft high and potentially up to several thousand sq ft? And, they will have no recourse or method to obtain relief. Not a great way for the City to build future trust with citizens and neighborhoods.

Recommendation to City Council: The height and square foot size of detached ADUs are interrelated. Given a limited amount of area on lot for the construction of an ADU, the only way to accommodate an excessively large ADU (>1,200 – 1,300 sf) is to go to multiple stories. However, as explained above, allowing multiple story ADUs have considerable adverse impacts on adjacent property owners. Also, excessively large ADUs actually constitute a duplex unit and can serve to promote “scrape and builds” of existing single family homes and displacement of low and moderate income households. So, the logical option is to limit the maximum size of an ADU to something that can be accommodated on most existing lots and not requiring 2 stories. The HNP believes that amount is approximately 1,000 to 1,500 sf.

The City’s UDC currently limits ADUs to 50 percent of the primary structure or 1,250 sf, whichever is less. If the primary structure is less than 1,500 sf, the ADU may be up to 750 sf. The HNP believes these current maximums should be maintained and not changed in the UDC.

Further, the HNP recommends that all detached ADUs be limited to one story. Specifically, a maximum height of 16 ft is recommended. That height will accommodate nearly all roof types while limiting the ADU to one story. A 16 ft maximum has been the typical standard in other states, including in California which leads the nation in ADU permitting. An exception to the 16 ft maximum could be considered for ADUs that are constructed over detached garages.

Finally, since ADU applications will be administratively reviewed and approved and will not be subject to any public process or hearing, ADU applications should not be eligible for any “Administrative Adjustment”.

Impact if no action is taken by City Council: See above narrative.

Historic Neighborhoods Partnership (HNP)
ADU Ordinance Discussion Topics
January 2025

ADU Ordinance Topic: Topic No 5 - ADU Location on Lot

Discussion, Observations and Concerns:

Attached ADUs in Front Yards

- A. The ordinance allows attached ADUs in rear, side or front yards. And, detached ADUs in rear or side yards.
- B. The HNP agrees with the City staff and Planning Commission that it is not desirable to have detached ADUs in front yards. However, it appears the current language in the proposed ADU ordinance will effectively enable the construction of detached ADUs in front yards.
- C. An attached ADU is defined in the ordinance as “An accessory dwelling unit connected to the principal residential dwelling unit by a wall or other permanent connection.” Further, the maximum height of an attached ADU is proposed in the ordinance to be 35 feet. While detached ADUs are proposed to have a maximum height of 28 ft.
- D. As currently drafted, the ADU ordinance does not prevent the construction of a “tunnel” ADU. Such ADUs are essentially a separate structure from the principal structure that is connected by either a short or long tunnel passageway that is either locked off or not. The practice has been used in Colorado Springs in recent years to game the City zoning code to allow uses not intended or allowed under the UDC. The definition of an attached ADU in the ADU ordinance will effectively allow a detached ADU, cloaked as an attached ADU, to be constructed in the front yard. With the Planning Commission and City Planning now recommending different building heights for attached vs. detached ADUs, the potential for further gaming using “tunnel” connections is also enabled. This can be resolved by simply not allowing attached, or detached ADUs in front yards.

Detached ADUs in Side Yards

- E. The draft ADU ordinance allows detached ADUs in rear or side yards.
- F. The draft ordinance purportedly prevents the separate sale of an ADU from the primary structure. However, the specific language in the ordinance does not prohibit the subdivision of an ADU from the primary structure. With subdivision, ownership of the land, and presumably, the ADU on the land can be transferred.
- G. There are a significant number of residential lots in HNP member neighborhoods that have large side yards due to more irregular lot configurations. The concern is that allowing detached ADUs in side yards will encourage more subdivisions of existing lots.

This can be resolved by simply not allowing detached ADUs in side yards, or by inserting language in the ordinance that specifically prohibits the subdivision of any ADU.

Recommendation to City Council: The ADU ordinance should be modified to only allow detached ADUs in the rear yard only and attached ADUs should only be allowed in the rear or side yards. No ADUs of any type should be allowed in front yards.

Alternatively, the definition of an “attached ADU” can be refined to preclude the use of “tunnel” ADUs and the language in the ADU ordinance can be modified to clearly prohibit the subdivision of any ADU.

Impact if no action is taken by City Council: See above narrative.

Historic Neighborhoods Partnership (HNP)
ADU Ordinance Discussion Topics
January 2025

ADU Ordinance Topic: Topic No 6 – Public Safety and Impact of Proposed ADU Ordinance

Note: Public safety and impact concerns outlined in this paper are heightened in Wildland Urban Interface (WUI) areas. We will address WUI concerns in Topic 9.

Discussion, Observations and Concerns: Colorado Springs has drawn recognition ranking as one of the top ten cities by several national publications in recent years. While we can all take pride in these rankings, it would be wise for us all to take notice of other recent rankings and data trends which are significant for the wellbeing of our citizens (and visitors). Increasing crime, first responder shortages, traffic/transportation complexities and infrastructure challenges are just a few of these other distinctions.

The new ADU construct brings forth a way to build more homes in existing neighborhoods. An increase in the number of homes increases the number of people, cars, and demand for services. We recommend the City Council ask key questions regarding public safety and analyze/understanding impacts before implementing the ADU Ordinance. We believe such analysis will drive key decisions, for example, on things such as number, size, height.

We realize that no one can predict the number of ADUs that will be built. We understand the numbers have historically been low. Regardless, the new ordinance impacts 61% of the properties in COS. If a mere 10% of those properties build ADUs, we are talking about 13,400 more homes. If 50% build, 67,000 more homes. Double those numbers for the increase in people and cars.

The Planning Commissioners briefly touched on this concern and asked a few questions of City leaders in the Police and Fire Departments, Public Works, and Utilities. While city staff did an excellent job speaking extemporaneously, they did not have the opportunity to conduct analysis before responding and openly admitted that.

Again, we recommend more City analysis before making decisions (e.g., impact analysis assuming 10%, 50% or 100% increase in # of homes in existing single-family neighborhoods).

Examples of key questions include:

1. What is the potential impact to emergency response rates with a doubling of residences in single family properties? Or even less than doubling but half more? What options exist to ensure crime and safety is not impacted?
2. Given no off-street parking is required for the new homes, what are the increased risks in fire safety/emergency vehicle response due to increased street parking and decreased access? What options exist to ensure safety is not jeopardized?
3. What is the impact on traffic congestion and volumes on neighborhood streets if the number of cars double? Or increase by 50%
4. Since no off-street parking is required and there is no appeal process, how will the City help neighbors when significant issues arise over parking problems?

5. What is the impact on water pipes and gas/electricity lines if the number of homes in the older, established neighborhoods double? And the number of occupants increases two-four times over?
6. What can CSU do to ensure the new homes pay for associated increases in fees for increased demands or changes to the supporting infrastructure?
7. What are the biggest concerns if there is a 10%, 50% or 100% increase in the # of homes in existing neighborhoods...biggest concerns of Police, Fire, Traffic and Transportation and Utilities?

A few examples of concern:

- A.** Overburdened First Responders / Crime – Crime statistics show that our city has seen a significant increase in both violent and property crimes in recent years. Here is a recent reference to our rankings in the news:

[Two Colorado cities among 'most dangerous' places to live nationwide, says data analysis | outtherecolorado.com](https://denvergazette.com/outtherecolorado/news/two-colorado-cities-among-most-dangerous-places-to-live-nationwide-says-data-analysis/article_3065485c-8658-11ef-903e-0f1ebd0399db.html#:~:text=Also%20ranking%20low%20among%20cities,in%20this%20category%20of%20data.)
https://denvergazette.com/outtherecolorado/news/two-colorado-cities-among-most-dangerous-places-to-live-nationwide-says-data-analysis/article_3065485c-8658-11ef-903e-0f1ebd0399db.html#:~:text=Also%20ranking%20low%20among%20cities,in%20this%20category%20of%20data.

We already struggle to fund, hire, train, and maintain first responders and 911 operators necessary to provide adequate and timely response to the increasing number of calls coming into our emergency lines, we have an untenable community safety problem. It is a concern to add more to that without projecting demand, impact and resulting need.

- B.** Parking and Emergency Response Access - During the Planning Commission hearing, the Fire Department representative was asked about any safety concerns they might have. The representative commented on increased risks due to street parking. Video link here, time marker 3:46 or so):

[Planning Commission on 2024-12-11 9:00 AM](https://coloradosprings.granicus.com/player/clip/2308?view_id=1&redirect=true)
https://coloradosprings.granicus.com/player/clip/2308?view_id=1&redirect=true

In addition, it was explained that many neighborhood streets were designed for only single-family homes with off street parking requirements. Consequently, many neighborhood streets are not wide enough to allow on-street parking without obstructing the ability of emergency vehicles to operate safely. There are existing problems today with cul-de-sacs and hillside topography that make it exceedingly difficult for fire department equipment to access. There already are challenges in how best to address this.

The proposed ordinance does not allow for a full development review process. As such, the burden to deal with the flood of parking problems would fall on the community and the first responders. Imagine the problems this will foment between neighbors as well. Cars parked on the streets are a major source of opportunity driven crime as well.

Recommendation to City Council: We recommend City Council ask key questions regarding public safety and analyze/understanding city-wide impacts before implementing the ADU Ordinance. There needs to be comprehensive data driven analysis of public safety impacts before decisions are made and the ADU Ordinance is implemented.

Additionally, any new ADU Ordinance should be consistent with the purpose of the UDC as described in Section 7.1.103, Purpose Statement, in particular “promote...safety, and general welfare of the public” https://codelibrary.amlegal.com/codes/coloradospringsco/latest/coloradosprings_co/0-0-0-50415.

Further, given the importance and wide impacts of the proposed ADU Ordinance, the ADU Ordinance should also be evaluated against the City’s Development Plan Purpose and Criteria to ensure it satisfies all the public safety and infrastructure. Including but not limited to:

1. Evaluating utilities (infrastructure) “to determine if they are adequate”
2. Ensuring “impacts are mitigated or offset” and “minimize potential adverse effects”
3. Addressing “increased impacts on existing roadways and intersections”

https://codelibrary.amlegal.com/codes/coloradospringsco/latest/coloradosprings_co/0-0-0-54534

Impact if no action is taken by City Council: Negative impacts on public and community safety.

Historic Neighborhoods Partnership (HNP)
ADU Ordinance Discussion Topics
January 2025

ADU Ordinance Topic: Topic No 7, ADUs on Historic Properties

Discussion, Observations and Concerns:

1. Page 10 – paragraph d.(3) – The language in this paragraph is unclear. It seems to imply that an ADU to a historic property in an Historic Preservation Overlay Zone will be subject to design review for conformance with the applicable design standards for that overlay zone. But the words do not clearly state that. And, what about specifics regarding historic properties, including ones within Historic Districts? The paragraph rather simply says that the “ADU shall be allowed only in accord with the design standards and procedures for said historic property”.
2. This obviously triggered a number of questions that were posed to City staff. What is meant by “procedures”? Will the proposed ADU be subjected to the same level of design review as all other building permits in the overlay zone? Who will do the design review? Will it be conducted by staff, or will the City’s Historic Preservation Board conduct the design review (as it does currently for all ADUs in the overlay zone)? Will a report of acceptability from the City Historic Preservation Board be required before a building permit is approved for an ADU in an HP overlay zone? (As a point of reference, all building permit applications for ADUs in Historic Preservation Overlay Zones are currently subject to, under the current UDC, design review by the HP Board and require a report of acceptability from the Board).
3. Staff has verbally confirmed that it intends to have all applications for ADUs in historic preservation overlay zones reviewed and formally considered by the Historic Preservation Board. A report of acceptability from the HP Board, not staff, would be required before the ADU application is approved. In other words, all ADU building permits in HP Overlay Zones would be handled no differently than they are today. But, staff further reported that the City Attorney has indicated that under HB-1152 any decision by the HP Board regarding an ADU application could not be appealable by either the applicant or any other party.
4. The City staff also indicated that the intent is that any ADU on a lot with a structure that is currently on the National or State Register of Historic Places, but not in a HP Overlay Zone, would also be subject to some kind of review for compatibility with either existing City approved design guidelines for the property or historic district or the Secretary of the Interior’s Standards for Rehabilitation. For example, ADUs for properties in the Weber-Wahsatch National Historic District would be subject to such a design review.
5. However, the language in the ADU Ordinance does not explicitly provide for any of this. The HNP subsequently submitted to City Planning some clarifying language to consider. The language was rejected by the staff and they responded that “Moving forward, as a companion piece to the ordinance, City Planning is committed to developing policy and processing guidance to support implementation of the ordinance.” We are not sure exactly what this statement means, but it seems to imply that City Planning is proposing to develop some type of side agreement or procedures manual for how ADUs on historic properties will be handled. That is not acceptable to the HNP nor should it be acceptable to City Council since any and all policies and procedures regarding the administration of the City’s zoning code should be clearly spelled out in the City’s UDC.

Recommendation to City Council: Again, HNP recommends the ADU Ordinance explicitly include clarifying language regarding ADUs on historic properties. Following is the clarifying language that the HNP submitted to City Planning. It is two sentences that we believe provide the necessary clarity as to how ADUs on historic properties would be handled. We continue to recommend this additional language to the ADU ordinance.

Page 10 ,paragraph d.(3) Add the following two sentences at the end of the paragraph:

Any application for an ADU within an Historic Preservation Overlay Zone shall be subject to all the procedures described in section 7.5.528 and any approval of that application will require a report of acceptability from the Historic Preservation Board. For all other historic properties not in an Historic Preservation Overlay Zone, the Historic Preservation Board shall conduct a design review of any ADU application to ensure the proposed ADU complies with any existing city approved design standards or guidelines for the historic property or with the Secretary of the Interior's Standards for Rehabilitation (36 CFR Part 67, 1990) if no city approved design standards or guidelines for the historic property or district exist at the time of application.

Additionally, since the City Attorney has indicated that under HB-1152 any decision by the HP Board regarding an ADU application could not be appealable by either the applicant or any other party, other changes to the City's UDC may be required to make any decisions by the Historic Preservation Board regarding ADUs on historic properties non-appealable.

Impact if no action is taken by City Council: See above narrative.

Historic Neighborhoods Partnership (HNP)
ADU Ordinance Discussion Topics
January 2025

ADU Ordinance Topic: Topic No 8 - Not as an STR

Discussion, Observations and Concerns:

Since the purpose of this ADU ordinance is to give the City another tool to help relieve the housing crisis, we are glad to see the updated language that prohibits new ADUs from being used as STRs and sunsets the licenses of existing STRs that later add an ADU. After all, the math is simple: any housing unit used as a non-owner occupied STR is one less housing unit available to the residents of Colorado Springs.

Recommendation to City Council:

At a minimum, please keep the STR language as-is in the new ADU ordinance. We are fully behind City Staff when it comes to new ADUs not being used as STRs.

We suggest two further steps that could be taken:

- 1) Sunset STR permits for all properties that have existing ADUs.
- 2) Sunset all non-owner-occupied STR permits, regardless of the properties' ADU status (this may best be discussed and passed separately from the new ADU ordinance). This action would bring back at least 823 housing units to our City's stock (per number of known, licensed non-owner-occupied STR units in Spring 2024). If illegal STRs are included, the impact could approach 1,500 housing units. It would have a much larger impact on our housing supply and affordability than this ADU ordinance could (see Footnote 1).

Impact if no action is taken by City Council:

Many ADUs are already being used as STRs in Colorado Springs. If City Council decides to remove the prohibition of new ADUs as STRs, the practice will certainly continue. Each time that happens it defeats the stated purpose of ADUs (attainable and affordable housing) and the housing supply is not increased. It would be a shame to see that happen after all this work on the new ADU ordinance.

Footnote 1: HNP and the Neighborhood Preservation Alliance (NPA) have a discussion paper with supporting data facts on the existing STR situation in COS. We have been meeting with City Planning on existing STRs and offer the paper to City Council (please reach out if interested). City Planning plans to address existing STRs after the April election. We identified three key issues:

1. Impacts of non-owner occupied STRs
2. Impacts of unlicensed STRs
3. Impacts of renewing STRs, even after transfer of ownership

**Historic Neighborhoods Partnership (HNP)
ADU Ordinance Discussion Topics
January 2025**

ADU Ordinance Topic: Topic No 9 – Wildland Urban Interface/Insurance Impacts

Discussion, Observations, and Concerns: Colorado Springs has drawn national attention in recent years due to our extreme wildfire hazard risk ratings. Our residents are currently dealing with what is being labeled as “an insurance accessibility and affordability crisis.” Homeowners are experiencing rapidly increasing insurance premiums, nonrenewal notices, and cancellations from a myriad of major insurance carriers. Some carriers are leaving the area entirely. A primary reason Colorado Springs is such a focus of these actions is that we have an unusually large Wildland Urban Interface (WUI) and rapidly increasing density of costly structures within that WUI combined with specific weather-related hazards here of wildfire risk, straight-line winds, and hail. This combination of factors is a huge red flag warning to the insurers and their reinsurers. The insurance industry has a name for this type of risk rating, it is called a **Wildfire Risk Hazard Rating**. This can have a cascading economic impact that is far greater than most folks in Colorado have had to realize in the past. Increased density is not our solution to the housing affordability problems in the WUI nor in surrounding older, established neighborhoods. Since the ADU Ordinance allows for increased density in the WUI (and elsewhere), HNP recommends the new ADU Ordinance be denied and not adopted until impacts are analyzed, discussed, and addressed.

- A. **Insurability and Cost** - Insurers rely on Core Logic Wildfire Risk Hazard Report for their highly respected, data driven information when determining their risk modeling and setting premiums. Colorado Springs is specifically called out in this respected National report, which is not a desirable distinction. We can see the impact of this on the escalating premium costs and admitted insurers leaving the market.

“A Closer Look at Colorado Wildfire Risk

If we take a closer look at the Colorado Springs, Colorado metro area, which ranks No. 10 on our list, there are nearly 40,000 homes with an elevated risk of wildfire damage due to their proximity to wildland terrain typical of a potentially destructive wildfire. Of course, not all those homes are under threat from a single fire. But if we total the reconstruction cost value for the entirety of these higher-risk homes, the potential sum is more than \$17.3 billion.”

“Also of concern is the fact that many of the high-extreme wildfire risk areas are in states that lead the nation in housing shortages. This likely means many homes will be built in the WUI, raising risks for properties and people alike.”

“The result is that the need for wildfire education, thoughtful urban planning and development, and wildfire insurance coverage that supports risk mitigation has never been greater.”

Please see this link to the report here:

[Core Logic Wildfire Risk Hazard Report](https://www.corelogic.com/intelligence/top-15-us-metros-wildfire-risk/)

<https://www.corelogic.com/intelligence/top-15-us-metros-wildfire-risk/>

- B. **Real Estate Market Impact** - The Real Estate market and Venture Capital Funders also take note. Zillow and other platforms have recently added a **Climate Risk Score** to their listings which is provided by a company called First Street that provides property specific data of how a specific risk (fire/hail) might impact the home now and in the future while also offering information on insurance requirements. When insurance is costly and/or full coverage is not available, it dramatically

decreases the number of buyers who can afford a home. Please check out the link to this announcement here:

[Zillow's new climate risk score brings transparency to home shoppers - Zillow Group](https://www.zillowgroup.com/news/zillows-new-climate-risk-score-brings-transparency-to-home-shoppers/)
<https://www.zillowgroup.com/news/zillows-new-climate-risk-score-brings-transparency-to-home-shoppers/>

- C. Mortgage Financing Requirements – All home mortgage companies require that they be named as insureds on a valid homeowner's policy that is intended to fully cover the replacement value cost of the mortgaged property. In fact, if a homeowner with a mortgage were to allow the coverage to lapse, mortgage companies will place a "force placed policy" and require that the homeowner pay the premium. When insurers leave high risk markets like Colorado Springs, the cost of those policies increase further. If a home becomes uninsurable due to risk, home buyers are unable to purchase a home other than with cash. This also impacts the Mortgage Companies' bottom lines.
[Insurance Crisis Hits Lenders' Bottom Lines – NMP](https://nationalmortgageprofessional.com/news/insurance-crisis-hits-lenders-bottom-lines)
<https://nationalmortgageprofessional.com/news/insurance-crisis-hits-lenders-bottom-lines>
- D. Colorado's FAIR PLAN "Insurer of Last Resort" - Because of this negative economic cascade that is now upon us, the State of Colorado has passed legislation and is standing up our own insurer of last resort, just as Florida and California have done. This is scheduled to come online this month and is sorely needed, but hardly a full solution to this economic crisis brewing. The maximum coverage for a residential dwelling structure is \$750,000, and the premiums are extremely high and other coverages such as for personal property, liability and loss of use are either nonexistent or limited. While this will help some hold onto their mortgages and provide some measure of catastrophic coverage, it is hardly the formula for true economic resiliency. Here is a link to the landing page for that program:
<https://www.coloradofairplan.com/>.

We understand that City Planning has indicated they are not planning to address the concerns around the WUI at this time in the ordinance. City Planning has relayed that the WUI issue will be addressed separately and be dealt with later. The concern is if City Council passes the ADU Ordinance now, there will be immediate consequences to the WUI that would go unaddressed. We cannot ignore the impacts this massive ADU zoning waiver will clearly have on community evacuation safety, insurability and thus economic vitality and resiliency. If this open-door ordinance of establishing property rights to further increasing density in our WUI is set in place by passing an ordinance that does not exclude the WUI, we are literally asking to bring on a major escalation of our already serious insurance crisis, evacuation safety concerns, and all the cascading negative impacts. Please be aware also that any increased risk in the WUI is an increase in wildfire risk and hazard ratings for adjacent communities such as our historic districts. This is already being reflected in the risk ratings maps and premium costs.

Recommendation to City Council: The Colorado Springs UDC's stated purpose is to "Promote health, safety and general welfare of the public." City Council has a responsibility to ensure that no new zoning ordinance is set in place that will inflame the many risks that we are already dealing with in our uniquely beautiful, but high-risk WUI and surrounding older, established neighborhoods. Evacuation safety and planning as well as the economic viability of living in the WUI--in particular---must be front of mind when considering any new ordinance. Given what we are witnessing in LA right now, we must realize that our resiliency to these risks must be planned for, not ignored. We respectfully request that City Council deny this proposed, new ADU Ordinance and allow the existing ADU language to remain in effect until such time that adequate, data driven analysis of the negative community safety impacts have been conducted and can be demonstrated to follow the UDC stated purpose and City leaders' commitments to citizens (referenced and linked below).

Impact if no action is taken by City Council: See above

if any development standard, sign regulation, procedure, or other requirement of this UDC is declared to be unconstitutional or invalid, this UDC shall be interpreted to produce a result as close as possible to that which would have occurred if the development standard, sign regulation, procedure or other requirement had not been ruled unconstitutional or invalid.

7.1.103 Purpose

The purpose of this UDC is to:

- A. Promote health, safety, and general welfare of the public;
- B. Protect private property from adjacent nuisances such as incompatible uses and noise;
- C. Implement the Colorado Springs Comprehensive Plan;
- D. Establish the orderly subdivision of land;
- E. Ensure the logical growth of the City's physical elements;
- F. Encourage adequate multi-modal transportation facilities;
- G. Promote opportunities for affordable and attainable housing throughout the City; and
- H. Facilitate adequate provision of utilities, schools, parks, and other public infrastructure services.
- I. Enhance the quality, diversity, and safety of neighborhoods by encouraging pride and investment.

7.1.104 Applicability

The regulations of this UDC shall apply to all property within the corporate limits of the City of Colorado Springs, including land annexed into the City after the Effective Date.

7.1.105 Authority to Interpret

City Council has the authority to interpret this UDC as it relates to land use decisions.

7.1.106 Conformity with Regulations Required

It shall be unlawful to use any building, structure, or land or to erect, move, structurally alter, convert, extend, or enlarge any building or other structure except in conformity with the requirements established in the zone district in which said structure, building, or land is located and in compliance with all applicable provisions of this UDC.

Historic Neighborhoods Partnership (HNP)
ADU Ordinance Discussion Topics
January 2025

ADU Ordinance Topic: Topic No 10 – Number of Bedrooms in ADUs

Discussion, Observations and Concerns: There exists an easily understood direct relationship between the number of bedrooms in an ADU and the key impacts and concerns HNP has expressed about the proposed ADU ordinance. The greater the number of bedrooms in an ADU, the greater the number of associated vehicles parked in the neighborhood (given no requirement for off-street parking for ADUs). Similarly, the greater the number of allowed bedrooms in the ADU, the larger the ADU would have to be and the increased likelihood ADU would have to be 2 stories to fit on the lot. In an earlier topic paper, the HNP detailed all the problems associated with large and 2 story ADUs.

Clearly, limiting the number of allowed bedrooms in an ADU could help mitigate some expressed concerns about ADUs by helping mitigate parking problems and could help minimize the number of stories and size of ADUs. And help manage the number of occupants.

Nothing in HB-1152 prohibits a City from restricting the number of bedrooms in an ADU. Specifically, limiting the number of bedrooms is not listed as a “Restrictive Design or Dimension Standard” in HB-1152.

The City’s Housing Code (Section 6.12.303: SPACE, USE AND LOCATION) defines allowable and enforceable occupancy loads based on square footage. HNP conducted a simple analysis of how limiting the number of bedrooms in an ADU impacts maximum allowed occupancy:

- *Under Section 6.12.303 it appears a 1,250 sf ADU could have a maximum occupancy of 23 persons. But the sleeping space requirement of 40 sf per occupant would serve to reduce that 23 person limit. Assuming 40% of the 1,250 sf of the ADU is dedicated to sleeping space (500 sf) then it appears the final occupancy limit for the ADU would be 13 persons. A typical main bedroom in the U.S. is about 240 sf while a small bedroom is typically around 130 sf. So, the 500 sf of bedroom space could accommodate a total of 3 bedrooms.*
- *If the number of bedrooms is limited to 2 (assuming 1 main and 1 small bedroom) the total sleeping space would be about 370 sf, which would accommodate a total of just over 9 persons. **So, assuming the City’s Housing Code passes muster under HB-1152, limiting the number of bedrooms to 2 would serve to lower the maximum allowed occupancy of a 1,250 sf ADU by about a third.** That would mean that limiting the number of bedrooms could be an effective tool in reducing the number of cars from the ADU that would have to be parked on the street.*

Intuitively, limiting the number of bedrooms would help to minimize the occupancy of an ADU and the impacts on the neighborhood.

- *The City's occupancy maximum (under Section 6.12.303) for a 2,500 sf ADU (definitely allowable under either the staff's or CPC's recommendation) would be a staggering 54 persons (say for a party or get together). The occupancy limit from a sleeping perspective, assuming 4 bedrooms (1 main and 3 small bedrooms) would be 16 persons. All the negative impacts (particularly parking) clearly go up with a larger ADU.*
- *Bottom line with the current City Housing Code:*
 - *A 1,250 sq ft ADU w/3 bedrooms, could allow up to 13 persons*
 - *A 1,250 sq ft ADU limited to two bedrooms, could allow up to 9 persons*
 - *A 2,500 sq ft ADU w/4 bedrooms, could allow up to 16 persons*
 - *There is a direct correlation between the number of bedrooms with the number of persons. Limiting the number of bedrooms reducing the number of people, thus limiting the number of cars and impacts on neighborhoods.*

In summary, the demonstrable benefits of limiting the number of bedrooms include:

- Help control the number of individuals occupying the ADU.
- Help limit the need for parking spaces (on-street and/or off-street).
- Mitigate the need for 2 story ADUs and associated adverse impacts on adjacent property owners (e.g., excessive shading, loss of privacy, loss of precious mountain views).
- Help maintain the ADU's role as a secondary unit.
- Help prevent the ADU from being used as a primary residence.

Recommendation to City Council: Limit the total number of bedrooms in an ADU to two (2).

Note: this assumes an overall ADU size limitation of 50% of primary structure or 1,250 sq ft, whichever is less.

Impact if no action is taken by the City Council: See above narrative.

Historic Neighborhoods Partnership (HNP)
ADU Ordinance Discussion Topics
January 2025

ADU Ordinance Topic: Topic No 11, Compliance with HB-1152, and Sunset Clause

Discussion, Observations and Concerns:

Compliance:

As mentioned in HNP Topic 14, Home Rule, Colorado Springs is not legally required to comply with HB-1152. Discussion Paper 14 goes into detail about the series of “whereas” clauses within the proposed COS ADU Ordinance which affirm our home rule status and sovereignty in setting local zoning and use ordinances.

With that knowing, we want to emphasize, again, that City Council has a wider range of policy options available to address ADUs.

The City Council has at least four policy options for moving forward. We hope the Council will consider these compliance options and weigh the benefits vs. risks/impacts of each:

Options:

- a. **Do not comply.** Make no changes to existing City Code regulating ADUs.
- b. **Fully comply.** Comply with all aspects of HB-1152 (currently proposed draft); meet State timeline for adopting the ADU required changes.
- c. **Partially comply.** Craft ordinance that best meets the City’s unique needs (address topics & adjust)
 - a. **Meet State timeline**
 - b. **Do not meet State timeline** (ask for delay to analyze City impacts; address unique needs)
- d. **Place Ordinance on Ballot.** Let Voters decide

As one can see from all Discussion Papers, the ADU Ordinance is an extremely complicated topic. It has widespread impacts, not just in the number of properties (61%) but also in the communities themselves. Conscious time and focus should be given to how we comply with HB 1152.

Sunset Clause:

In April 1976, the State of Colorado led the nation in passing the first “sunset” clause to curb legislation by forcing a review after a specified length of time. By establishing a review after time has passed, ineffective laws can be fixed. Laws that result in inadvertent, negative consequences can be fixed. A Sunset Clause would level-set expectations with property owners on new land use rights and, among other reasons, can appease concerns over long-term negative impacts.

Another reason to have a Sunset Clause is the issue of Home Rule with the state requirements in HB-1152. As time progresses, there may be Colorado municipalities that choose to retain their home rule status and legally debate that right with the State. In time, home rule legislation from the State may

change. It would be wise for COS to have a preset avenue to adjust accordingly. The Sunset Clause would provide that avenue.

Last, but not least, another reason for incorporating a Sunset Clause is to establish a certain timeline for the City to evaluate impacts and adjust. In addition, the City can establish predetermined standards for success and track progress. With such an approach, the City can determine if the ADU ordinance causes more negative impacts than positive. What if the housing situation is different than expected and housing costs rise even further? Predetermined standards for success can be determined to allow honest evaluation for repeal or continuation of the ordinance. The analysis by HNP of the ADU ordinance has highlighted differing impacts that may result, thus further supporting the incorporation of a Sunset Clause.

Recommendation to City Council: The HNP recognizes that matters involving compliance with HB 1152 are complex and consequential.

If City Council chooses to comply with HB-1152, HNP recommends partial compliance with the recommendations outlined in Topics 1-14. Additionally, HNP recommends the City first analyze/mitigate public safety and related impacts (especially in high-risk areas) and then craft an ADU ordinance that best meets the City's public safety needs. If needed, we recommend COS tell the State that Colorado Springs is delaying compliance with HB-1152 to ensure safety concerns are fully evaluated and assessed.

HNP recommends the City incorporate a Sunset Clause into the ADU Ordinance.

Impact if no action is taken by the City Council: See above narrative.

Historic Neighborhoods Partnership (HNP)
ADU Ordinance Discussion Topics
January 2025

ADU Ordinance Topic: Topic No 12, Ownership of ADUs

Discussion, Observations and Concerns:

99-Year Lease of Real Property

The current City UDC prohibits the separate sale of an ADU from the primary structure. The proposed ADU ordinance attempts to carry forward that prohibition. However, at the December 11 City Planning Commission meeting, some Commissioners raised concerns about the potential use of 99-year land leases as a means of getting around the sale prohibition. The HNP echoed those concerns in pre-holiday discussions with City staff. Staff has declined to add any additional language prohibiting or restricting 99-year leases of ADUs. The concern is that the 99-year lease option could be something that could attract corporate investors (Real Estate Investment Trusts (REITs), private equity, or institutional investors) approaching existing homeowners with proposals to have them enter a 99-year lease with the corporate investor who in-turn constructs, owns, and leases the ADU. This would work counter to the intent of the current and proposed ADU ordinance of keeping the ownership of ADUs with the owner of the primary structure. The use of 99-year leases to develop ADUs should be specifically prohibited in the ADU ordinance changes.

Subdivision of ADUs

The draft ADU ordinance allows detached ADUs in rear or side yards. The draft ordinance prevents the separate sale of an ADU from the primary structure. However, the specific language in the ordinance does not prohibit the subdivision of an ADU from the primary structure. With subdivision, ownership of the land, and, the ADU on the land can be transferred.

There are a significant number of residential lots in HNP member neighborhoods that have large side yards due to more irregular lot configurations. The concern is that allowing detached ADUs in side yards will encourage more subdivision of existing lots (even allowing detached ADUs in back yard may encourage more subdivisions). This can be resolved by inserting language in the ordinance that specifically prohibits the subdivision of any ADU.

Scrape and Builds

The proposed ADU ordinance, as currently drafted, will make “scrape and builds” more attractive to corporate investors (largely because of proposed size, height, removal of owner occupancy requirements). The current requirement (in the City’s current UDC) that the principal residence on the lot or the ADU to be occupied by the owner of the lot is eliminated in the proposed ADUs Ordinance. This opens the door to corporate or equity investor development and ownership of ADUs.

Further, allowing an ADU of nearly the same size as the principal structure and a 2-story height essentially allows a duplex to be built on any lot currently zoned for single family. For corporate investors, this changes the economics of redeveloping an existing single-family lot into a duplex. The ability to have two comparably sized dwelling units on a single-family zone can lead to more existing homes being bought by corporations and equity investors, the existing home torn down and a duplex

disguised as an ADU to be constructed. While HB-1152 was intended to help discourage displacement of existing low-moderate income households, the City's ordinance, as drafted, could have just the opposite effect by promoting scrape and builds and more displacement.

While HB-1152 prohibits local governments from requiring any ADU or the principal structure to be owner-occupied, it does specifically allow (in 29-35-1032(b)) a local government to require a property owner to demonstrate that the property owner resides on the lot when an application for an ADU is submitted. Inserting an owner occupancy requirement at the time of application could help, to a small extent, in stemming the likely tide of redevelopment of existing single-family lots into duplexes. Corporate investors can get around the requirement by placing the home under contract with the condition that the current homeowner continues to reside in the principal residence until the ADU application is submitted.

Recommendation to City Council:

99-Year Lease of Real Property

The use of 99-year leases to develop ADUs should be specifically prohibited in the ADU ordinance changes.

Subdivision of ADUs

Insert language in the ordinance that specifically prohibits the subdivision of any ADUs.

Scrape and Builds

Maintain the current requirement (in the City's current UDC) that the principal residence on the lot or the ADU to be occupied by the owner of the lot. Do not eliminate this provision as HB-1152 would require.

Impact if no action is taken by City Council: See above narrative.

Historic Neighborhoods Partnership (HNP)
ADU Ordinance Discussion Topics
January 2025

ADU Ordinance Topic: Topic No 13, Changes in Dimensional Standards

Discussion, Observations and Concerns:

Front Setbacks for R1-6 and R-2

The proposed ADU Ordinance contains some changes to the front setbacks for the R1-6 and R-2 zoning districts. Based on staff's explanation, these changes are not related to the question of ADUs.

For R1-6 the proposed change to the front setback is from the current "15 ft or average of two adjacent or nearest developed properties facing the same street frontage, whichever is greater" to "15 ft of average of two adjacent nearest developed properties facing the same street frontage, whichever is less."

For R-2 the proposed change to the front setback is from the current "10 ft or average of two adjacent or nearest developed properties facing the same street frontage, whichever is greater" to "10 ft of average of two adjacent nearest developed properties facing the same street frontage, whichever is less."

During the RetoolCOS zoning code re-write process, the front setbacks for R-1 6 and R-2 were reduced considerably from the 25 ft. front setback in the earlier legacy zoning code. The reductions were of particular concern to the HNP. The member neighborhoods of the HNP have the highest concentration of R-2 zoned lots in the City. The existing front setback of most R-2 zoned lots in the City, and particularly in the older/established neighborhoods is closer to 25 feet. The HNP expressed considerable concerns that the reduction from 25 ft to 10 ft during RetoolCOS would have a considerable impact on the streetscape of historic and established neighborhoods. Thus, the staff proposed the language in the current UDC which reduces the front setback to either the greater of 10 ft or the average of the two adjacent lots. This was specifically to mitigate the impact on existing streetscapes. The change was extensively debated and discussed at both the Planning Commission and City Council meetings regarding RetoolCOS. Both bodies directed that the setback be the "greater" of either 10 ft or the average of the 2 adjacent properties.

When asked why the City staff are now recommending the setback to be the "lesser" of 10 ft. or the average of the two adjacent properties, we were told it was because staff had run into some instances in which the current existing setbacks of the adjacent properties to an existing R-2 lot being redeveloped were considerably greater than 25 ft and that is was unfair for the owner of the lot being redeveloped to have to set back the structure to match the two adjacent properties in those instances. While it is understandable that there may be some instances in which dimensional standards can be overly restrictive, it would be foolish to make a change to accommodate a minority that can have adverse impacts on several thousand R-2 property owners in established neighborhoods.

The HNP asked the City staff if they would consider alternatives to the proposed change in dimensional standards, which again, have no apparent relationship with the rest of the ADU ordinance. We were told that “we would just have to agree to disagree.” So, after approaching staff with no success, the HNP is proposing to the City Council that the setback language for both R-2 and R1-6 be modified to read as follows:

For R-2

10 ft or average of the developed R-2 properties of the blockface on the same street frontage, whichever is greater.

For R1-6

15 ft or average of the developed R-2 properties oof the blockface on the same street frontage, whichever is greater.

We believe this alternative language should help resolve the few instances of problems with redeveloping individual lots while serving to help preserve the streetscapes of existing/established neighborhoods having a substantial amount of R-2 or R1-6 zoned properties.

New Definition for How Front Setbacks are Determined

The proposed ADU Ordinance also contains changes to the UDC to clarify how front setbacks are to be calculated. The City Planning staff have indicated that the changes are necessary to clarify how setbacks are calculated in instances in which a lot does not have a sidewalk or perhaps is adjacent to a roadway without curb and gutter. These areas are primarily in the Broadmoor and in the HNP member neighborhoods and the west side. Unfortunately, the staff unfortunately would not address our question as to how the proposed change relates to the ADU ordinance or if it is a proposed change to allow larger ADUs.

The specific change being proposed in the ADU ordinance is for most residential zoning districts and states: “Setbacks are measured from back of sidewalk, curb or property line, whichever is less.”

The proposed change, however, is not clear. It includes the phrase “whichever is lesser.” “Lesser” compared to what? The city Planning staff has not yet answered this question. Again, how does this relate to the topic of ADUs. Such changes to clean up the UDC should be addressed through a separate ordinance.

Recommendation to City Council:

The HNP proposes that the setback language for both R-2 and R1-6 be modified to read as follows:

For R-2

10 ft or average of the developed R-2 properties of the blockface on the same street frontage, whichever is greater.

For R1-6

15 ft or average of the developed R-2 properties oof the blockface on the same street frontage, whichever is greater.

Regarding the setback definition, we cannot yet provide recommended language because we are unsure what the current proposal really means. We have raised the question and have not yet discussed details. We recommend staff provide clarification on what is intended with the wording change on definition of setback.

Additionally, since neither of the proposed changes (Front setbacks for R1-6 and R-2; and the new definition as to how front setbacks are determined) do not directly relate to the topic of ADUs, those changes should be addressed through a separate ordinance and public process.

Impact if no action is taken by City Council: See above narrative.

Historic Neighborhoods Partnership (HNP)
ADU Ordinance Discussion Topics
January 2025

ADU Ordinance Topic: Topic No 14, Home Rule

Discussion, Observations and Concerns:

HB-1152 is a Significant Infringement on Home Rule Cities Zoning Authority.

According to many legal and local government perspectives, HB-1152 in Colorado is considered a significant and unprecedented infringement on local control of land use decision making. HB-1152 mandates that municipalities allow the construction of Accessory Dwelling Units (ADUs) with limited ability for local governments to regulate their design, size, or parking requirements, essentially taking away much of their zoning authority in this area. The Colorado Municipal League and a number of Colorado local governments opposed HB-1152. Many critics of HB-1152 asserted that it does not allow for local communities to tailor ADU regulations to their specific needs and concerns. Yet, for Colorado cities with "home rule" status, which grants them more autonomy over local land use, HB-1152 is seen as a significant overreach by the state government.

Colorado Springs Home Rule Powers

Section 7.1.102 of the City of Colorado Springs UDC clearly states that the city's zoning code was adopted pursuant to the City's home rule powers and that it is the intent of the City to have available all home rule powers in its control of land uses and land development.

- **7.1.102 A.** *This UDC is adopted pursuant to the Home Rule powers granted to the City by Article XX of the Colorado Constitution, the Charter of the City of Colorado Springs, and the powers and authority conferred by the laws of the State of Colorado upon all municipal corporations.*
- **7.1.102 C.** *It is the intent of the City to have available all powers of a home rule municipality under Colorado law to control land uses, land development, and the impacts of land use and development.*

Colorado Springs is Not Legally Required to Comply with HB-1152

The ADU ordinance proposed by the City Planning staff has been carefully tailored to meet all the requirements, restrictions, and limitations of HB-1152. As a result, many falsely believe that the City is legally required to comply with all the provisions of HB-1152. The proposed COS ADU ordinance has a series of whereas clauses at the beginning in which the City attempts to re-affirm its home rule status and tries to assert its supremacy and sovereignty in setting local zoning and land use regulations. Those whereas statements of facts include the statement **that HB-1152 is a bill that “purports to bind and place ADU requirements on home rule municipalities”** and also states that **“the authority to regulate land uses is a traditional home rule power within the purview of the City, and state laws that conflict with the same may be superseded by local law”** and finally provides that **“without waiving or abandoning the home rule authority that allows the City to promulgate land use regulations for ADUs, which would control over the Bill, the City desires to adjust its existing ADU regulations to align with the Bill.”**

It is notable that those whereas clauses have more than likely been crafted by the City's attorneys to effectively state that while the city re-affirms its home rule powers it is **choosing** to bend to the over-reaching provisions of HB-1152 and accepting all its requirements and mandates. This approach skirts the issue of local control. And it does not recognize that the City Council has a wider range of policy options available to address ADUs.

We believe the City Council has essentially four policy options for moving forward:

1. Claim home rule supremacy and ignore HB-1152 and the whole ADU issue (make no changes to the existing City code regulating ADUs).
2. Fully comply with the restrictions and requirements of HB-1152 (as the latest proposed ADU Ordinance does),
3. Claim home rule supremacy but craft an ADU ordinance that best meets the City's needs. Delay the adoption of the ADU ordinance to first analyze/mitigate the impacts accordingly (see HNP Topic 6 on Public Safety, Topic 9 on WUI/Insurance Impacts and Topic 11 on Compliance/Sunset Clause).
4. Place any ADU ordinance on the upcoming April municipal ballot and let voters decide.

The latest ADU ordinance proposed by City Planning is squarely within Option 2. However, Option 3 would provide the City Council with the opportunity to craft an ADU ordinance that is in the best interests of Colorado Springs residents and hopefully resolve the many important issues that have been raised. Those issues include: no off-street parking, no occupancy limits, dimensional standards, size of ADU, no public process or appeals, impacts on density, wildland/urban interface/insurability, public safety, and adequacy of existing infrastructure. Option 4 should also be attractive and would be most appropriate given the importance and controversial nature of the ADU matter.

City staff have indicated that the proposed ADU ordinance was intentionally crafted to fully comply with all the provisions of HB-1152 and fix short-comings in the current code so that Colorado Springs could be certified as an "ADU supportive Jurisdiction" under HB-1152. Such a designation would allow the city to be eligible to participate in a State of Colorado sponsored grant program intended to subsidize and promote the construction of ADUs in Front Range Cities. The grants, however, would be provided on a competitive basis and a total of just \$8 million has been appropriated by the state for an estimated 61 Front Range cities that may be eligible for the grant program. Presumably, under policy Options 1 and 3 (as described above) the city would not be eligible for any such grants. However, it would seem foolish to make major changes to the City's UDC that has significant ramifications for the city's urban form to just be eligible to participate in such a small grant program.

Recommendation to City Council: The HNP recognizes that matters involving home rule are complex and consequential. Decisions when to invoke home rule powers should not be taken lightly. The purpose of this discussion topic is to ensure that the City Council is aware of available policy options and that there are alternative approaches that can be taken if the Council disagrees with any or all the requirements of HB-1152.

If City Council chooses to forgo our home-rule powers, the HNP recommends that the ADU ordinance be modified to address the issues with: no off-street parking, no occupancy limits, dimensional standards, size of ADU, no public process or appeals, and impacts on density, and adequacy of existing infrastructure. Additionally, the HNP recommends the City first analyze/mitigate public safety and related impacts (especially in high-risk areas) and then craft an ADU ordinance that best meets the City's public safety needs. If needed, tell the State that Colorado Springs is delaying compliance with HB-1152 to ensure safety concerns are fully evaluated and addressed.

Impact if no action is taken by City Council: See above narrative.