

Bay Area homeowner beats \$55,000 fee for expansion project after legal fight with city

By **Jessica Roy** , Personal Finance Columnist
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An aerial view of the city of East Palo Alto, which recently settled a federal lawsuit brought over its inclusionary zoning ordinance.
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Wesley Yu had a plan to create multigenerational housing on his residential property in East Palo Alto. But after getting hit with a nearly \$55,000 fee from the city, the small-scale project devolved into a legal fight — one that was eventually settled in his favor.

The case underscores a broader tension in California’s efforts to ease its severe housing crisis, and how it can wind up impacting homeowners.

Many local governments are struggling to meet the state’s ambitious mandates to build new affordable housing. The boom in accessory dwelling unit construction has been a bright spot: ADUs accounted for 37.7% of the state’s new single-family housing and 21.3% of total new housing in 2024, [according to the Department of Finance](#).

The state has also tried to facilitate denser development, including under [Senate Bill 9](#), a 2021 law that aimed to streamline the process for homeowners to subdivide their properties. But layered requirements and additional restrictions by cities have [hindered adoption](#) and can leave homeowners like Yu caught in the middle, experts say.

He's one of many Californians who have looked for creative solutions like lot splits, ADUs and other forms of multigenerational housing to tackle the rising costs of homes, child care and elder care.

His plan, according to his attorneys, had been to split his existing lot under SB9, then construct an additional single-family home and an accessory dwelling unit on the newly created lot. In the short term, his parents and other relatives would have a comfortable place to stay on their frequent visits; in the future, when his young daughter grew up, she would have the option of living there.

Property records on Zillow indicate the property on Laurel Street is a modest, updated single-family home just off Highway 101, about a mile from Meta's Menlo Park headquarters.

• **Read more:** [SB9 was supposed to end single-family zoning. Three years later, it's 'just symbolic'](#)

Yu first submitted his proposal in January 2024, and the city approved it the following October. In May, the city sent an email acknowledging an oversight on its end: Because Yu was building more than one unit of housing (both the new home and the ADU), his project was subject to the city's inclusionary zoning laws, which have been in place since 2019. According to the lawsuit, the ordinance mandated that he either charge below-market rates to rent out one of the units or pay an in-lieu fee, known as an exaction, of nearly \$55,000.

Yu decided to fight the city in court, with help from the Pacific Legal Foundation, a Sacramento-based nonprofit organization that represents property owners and individuals facing what it considers to be government overreach. ("Suing the government since 1973," its homepage declares.)

Austin Waisanen, a property rights attorney, was one of the foundation's lawyers assigned to Yu's case. The suit over East Palo Alto's fee, which the foundation characterized as "extortionate," was filed in federal court in July. (A statement from East Palo Alto officials said "the City does not agree" with that characterization.)

In general, inclusionary zoning mandates say if you're building a lot of housing, like a big apartment building, some of it has to be affordable or low-income. And if it's not, you have to pay a fee that goes toward building affordable housing elsewhere. According to a statement from East Palo Alto officials to the Chronicle, the fee is calculated based on the difference in cost to build an affordable housing unit compared to a market-rate one.

In this case, Waisanen said, Yu was not building market-rate housing because he wasn't planning to charge anyone to live there. He had no immediate plans to rent out either new unit, and no plans to charge family members or his own child for staying there. The city's ordinance would have forced him to either pay the fee or become a landlord and subsidize his tenant by charging below-market rent, Waisanen said.

The city disputed that: According to its statement, Yu could have avoided the fee by agreeing to a deed restriction that he charge affordable rates only if he rented the unit out. If he never rented out the unit, no price restriction would have come into play. The statement said Yu refused to agree to that.

Last week, Yu's attorneys announced the city had settled the lawsuit. The city of East Palo Alto did not admit fault or wrongdoing in the settlement. But the homeowner will be allowed to proceed without paying the \$54,891 affordable housing fee, and East Palo Alto agreed to pay \$5,000 in attorney fees. The city is also amending the inclusionary housing ordinance in its municipal code to exclude projects like Yu's.

Matt Regan, the senior vice president of policy for the Bay Area Council, a business advocacy group that backs housing growth, said taxing new housing to build more housing is "a circular firing squad of a policy." But the money to build affordable housing has to come from somewhere, which is how cities like East Palo Alto justify levying these types of fees.

"The policy issue underlying the in-lieu fee is a well-documented housing affordability crisis that plagues the entire state and has many downstream effects, including increasing homelessness. It is an intractable problem with no facile answers. The City is doing what it can to address it," the statement from city officials said.

Regan said the Bay Area Council's preference would be a permanent source of funding for affordable housing, like the [\\$20 billion Bay Area-wide bond that was pulled from ballots](#) last fall in the face of declining support in polls and opposition from taxpayer rights groups.

Regan called the city's choice to settle instead of fighting out the case in court "a wise decision."

In a City Council special meeting agenda from Nov. 18 that City Attorney John Le provided to the Chronicle, it was noted that Section 18.37.40 of East Palo Alto's municipal code would be amended to facilitate small-scale lot split projects by removing the in-lieu fees.

"In September 2025, as part of a larger effort to facilitate SB 9 lot splits, the City Council adopted an amendment to the City's Inclusionary Housing Ordinance (Ordinance No. 06-2025) to exempt parcels that are given an approval under SB 9 from the Inclusionary Housing Ordinance. The amendment mooted Mr. Yu's claims," Le wrote in a Nov. 18 City Council staff report that he also provided to the Chronicle. "Although the City may vigorously defend its rights in a court of law, in the interest of conserving resources, the City Council has decided to settle this matter."

Waisanen said Yu intended to move forward with construction under his originally permitted plan. Due to financial difficulties, he said, the Yu family is selling the original single-family home and plans to move into the house that will be built on their newly split lot. According to real estate websites such as Zillow and Redfin, the home has been for sale since September. The listing has no mention of a split lot or an ADU. Current list price: \$1.05 million.

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Jessica Roy

PERSONAL FINANCE COLUMNIST



Jessica Roy is the personal finance and utility columnist for the Chronicle. If you've got questions about how to live your best life or spend your money, email her at Jessica.Roy@sfchronicle.com.

She writes [No-Nonsense Money](#), an advice column on budgeting and spending money in California, and the [Wealth Challenge](#), a newsletter series that breaks down achieving your financial goals one small step at a time.

Previously, she spent nine years at the Los Angeles Times. Her work included a [newsletter about budgeting](#), an investigation into California's [failed plastic bag ban](#) and a series about [getting her identity stolen](#).