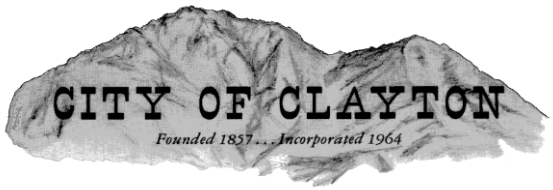

PLANNING COMMISSION
AGENDA
Regular Meeting
Tuesday, February 28, 2023
7:00 p.m.

Hoyer Hall at Clayton Community Library
6125 Clayton Road, Clayton, California

This meeting is being held with accommodations for both in-person and virtual attendance and participation by the public. Members of the public who prefer to view or listen to the meeting and to address the Planning Commission remotely during the meeting may do so using the methods listed under "Instructions for Participating in the Planning Commission Meeting Remotely," below.

Chair: Daniel Richardson
Vice Chair: Richard Enea
Commissioner: Justin Cesarin
Commissioner: Maria Shulman
Commissioner: Ed Miller

Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; and 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton. A digital copy of the Agenda with a complete packet of information including staff reports and exhibits related to each agenda item is available for public review on the City's website at https://claytonca.gov/community-development/planning/planning-commission/planning-commision-agendas/.

Any writings or documents provided to a majority of the Planning Commission after distribution of the Agenda Packet and regarding any public item on this Agenda are available for review on the City's website at https://claytonca.gov/community-development/planning/planning-commission/planning-commision-agendas/.

If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at 925-673-7300.

Most Planning Commission decisions are appealable to the City Council within 10 calendar days of the decision. Please contact Community Development Department staff for further information immediately following the decision. If the decision is appealed, the City Council will hold a public hearing and make a final decision. If you challenge a final

decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing(s), either in spoken testimony at the hearing(s) or in written correspondence delivered to the Community Development Department at or prior to the public hearing(s). Further, any court challenge must be made within 90 days of the final decision on the noticed matter.

Instructions for Participating in the Planning Commission Meeting Remotely

The following options are provided as a courtesy for those who would prefer to view, listen to, or provide comments remotely for the meeting. While City staff will make every effort to facilitate remote participation in the meeting, the City cannot guarantee that the public's access to teleconferencing technology will be uninterrupted, and technical difficulties may occur from time to time.

Videoconference: To join the meeting on-line via smart phone or computer, click on the link: https://us02web.zoom.us/j/81860235830; or, through the Zoom application, enter **Webinar ID: 818 6023 5830.** No registration or meeting password is required. Attendees indicate their request to speak on an item during the meeting by using the "Raise Hand" feature in the Zoom application.

Phone-in: Dial toll free 877-853-5257. When prompted, enter the Webinar ID above. Attendees indicate their request to speak on an item during the meeting by dialing *9.

Email Public Comments: If preferred, please email public comments to the Community Development Director at danaa@claytonca.gov by 5:00 p.m. on the day of the Planning Commission meeting. All emailed public comments received prior to 5:00 p.m. on the day of the Planning Commission meeting will be forwarded to the entire Planning Commission.

Each person attending the meeting via video conferencing or telephone and who wishes to speak on an agendized or non-agendized matter shall have a set amount of time to speak as determined by the Planning Commission Chair.

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL**

4. **PRESENTATIONS**

5. **ACCEPTANCE OF THE AGENDA:** The Planning Commission will discuss the order of the agenda, may amend the order, add urgency items, note disclosures or intentions to abstain due to conflict of interest on agendized public hearing or action items, and request Consent Calendar items be removed from the Consent Calendar for discussion. The Planning Commission may also remove items from the Consent Calendar prior to that portion of the Agenda.

6. **PUBLIC COMMENT (Non-Agenda Items):** This time has been set aside for members of the public to address the Planning Commission on items of general interest within the subject matter jurisdiction of the City. Although the Planning Commission values your comments, pursuant to the Brown Act, the Planning Commission generally cannot take any action on items not listed on the posted agenda. Each speaker shall have a set amount of time to speak as determined by the Planning Commission Chair.

7. **CONSENT CALENDAR:** The following routine matters may be acted upon in one motion. Individual items may be removed by the Planning Commission for separate discussion at this time or under Acceptance of the Agenda.

   A. MINUTES:
   Planning Commission Regular Meeting of February 14, 2023

8. **PUBLIC HEARING**

   A. Recommendation on an Amendment to Clayton Municipal Code Chapter 17.47, Sections 17.04.083 and 17.44.030, and Schedule 17.37.030A Pertaining to Accessory Dwelling Units, and Finding that Such Amendment is Exempt from CEQA Pursuant to Public Resources Code Section 21080.17.
   This is a public hearing on a City-initiated request for the Planning Commission to recommend City Council adoption of an ordinance amending the City's development and permitting regulations applicable to accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) to comply with statutory requirements of California law. This proposed amendment is statutorily exempt from the California Environmental Quality Act (CEQA, Public Resources Code section 21000 *et seq.*), pursuant to Public Resources Code section 21080.17 (Application of Division to Ordinances Implementing Law Relating to Construction of Dwelling Units and Second Units).

9. COMMUNICATIONS: This time is set aside for the Planning Commission to make requests of staff, and/or for issues of concern to Planning Commissioners to be briefly presented, prioritized, and set for future meeting dates. This time is also provided for staff to share any informational announcements with the Commission.

10. ADJOURNMENT

The next Planning Commission Regular Meeting is Tuesday, March 14, 2023.

Minutes
City of Clayton Planning Commission
Regular Meeting
Tuesday, February 14, 2023

1. CALL TO ORDER

Chair Daniel Richardson called the meeting to order at 7:01 p.m.

2. PLEDGE OF ALLEGIANCE

Chair Richardson led the Pledge of Allegiance.

3. ROLL CALL

Present: Chair Daniel Richardson
Vice Chair Richard Enea
Commissioner Justin Cesarin
Commissioner Maria Shulman
Commissioner Ed Miller

Planning Commission Secretary/Community Development Director Dana Ayers and Assistant Planner Milan Sikela were present from City staff.

4. PRESENTATIONS

There were no presentations.

5. ACCEPTANCE OF THE AGENDA

There were no changes to the agenda as submitted.

6. PUBLIC COMMENT

There were no public comments on any item not on the agenda.

7. CONSENT CALENDAR

A. Minutes of Planning Commission Special Meeting of January 11, 2023.

There being no member of the public attending in person or virtually who wished to comment on the Consent Calendar, Chair Richardson invited a motion.

Vice Chair Enea moved to adopt the Consent Calendar with Minutes of the Planning Commission Special Meeting of January 11, 2023 as submitted. Commissioner Miller seconded the motion. The motion passed by vote of 5 to 0.

8. PUBLIC HEARING

A. Request for Extension of Approval of the Development Plan Permit (DP-01-19) for the Oak Creek Canyon Residential Development.

This is a public hearing to consider a request by Doug Chen of West Coast Home Builders, Inc. (Applicant), for a one-year extension to exercise the Development Plan Permit approval granted by the Clayton City Council on June 29, 2021, for the Oak Creek Canyon Residential Development (Project). The Project encompasses grading and site preparation, removal of nine of the 21 existing trees on the property, installation of a new roadway and utilities infrastructure, and construction of six detached single-family residences ranging from approximately 3,049 to 4,488 square feet in area and between 23 to 32 feet in height, along with Project-related landscaping, drainage, fencing, lighting, and retaining walls on a 9.03-acre property located on the north side of Marsh Creek Road at its intersection with Diablo Parkway (Assessor's Parcel No. 119-070-008).

Environmental Determination: At its meeting of June 29, 2021, the City Council adopted the Oak Creek Canyon Final Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program (MMRP) in accordance with the requirements of the California Environmental Quality Act (CEQA, Public Resources Code section 21000 *et seq*.), and the State CEQA Guidelines (California Code of Regulations, Title 14, section 15000 *et seq*.). No additional findings are necessary for CEQA compliance for the current request for extension of entitlements of the approved Project.

Director Ayers introduced the item and summarized the staff report.

Chair Richardson invited questions from the Commissioners. No Commissioners had any questions. Chair Richardson opened the public hearing and invited the Applicant to speak.

Doug Chen, representing West Coast Home Builders, Inc., thanked the Commission for hearing the Applicant's request for extension of the Development Plan Permit approval. He re-iterated that the developer had experienced a delay in the plan preparation process. He had submitted the Final Map, grading plans and improvement plans for the Project and hoped to go through the plan check process for those submittals in the next few months.

Commissioner Miller asked when the Applicant anticipated breaking ground for the Project. Mr. Chen said he hoped to get through the grading plan and improvement plan check process in the next six months, and to start the architectural plan check process during that same time. He hoped to have a grading permit by Fall 2023.

Commissioner Shulman asked if the Applicant had a contingency plan if that schedule changed. Mr. Chen explained that the request for extension of

the Development Plan Permit approval did not affect the term of approval of the Vesting Tentative Map or the plan checking of the grading plan. The Development Plan Permit essentially approved just the architecture of the houses so, if it was not extended, then the Applicant would need to re-apply for approval of the design of the houses.

In response to a question from Commissioner Miller, Chair Richardson confirmed that Development Plan Permit approvals could be extended in one-year increments. Chair Richardson stated that the Commission's role at tonight's meeting was to approve or deny the Applicant's request to extend the Development Plan Permit approval for one year. He further confirmed with staff that there was no limit to the number of times an extension could be requested. Director Ayers added that the approval of the Vesting Tentative Map was valid for another year and a half and did not currently need an extension of approval.

There being no one else in attendance in person or virtually who wished to speak on the item, Chair Richardson closed the public hearing and invited discussion among Commissioners.

Commissioner Miller said that he served on the Planning Commission when the Project was first reviewed. He wanted to clarify that the Commission's previous action to recommend denial of the project without prejudice was done because the staff recommendation for approval included several dozen conditions requiring revisions to the Project, and the recommended revisions made it difficult to understand the Project. The Project and the recommended conditions were subsequently revised, and the Council approved the revised Project with the revised recommended conditions. Commissioner Miller understood the Commission's role this evening was narrow in scope, being limited only to the extension request, and not a re-assessment of the Project's merits.

Commissioner Cesarin asked if the Project would be required to comply with the General Plan policies that were in effect at the time of Project approval or at the time of Project construction. Director Ayers advised that, when the Project was approved by the City Council, the Project included amendments to the General Plan, Marsh Creek Road Specific Plan (MCRSP) and Zoning Map. The Project was subject to the policies and regulations of the General Plan, MCRSP and Zoning Code as they were approved with the Council's action. Further, in response to Commissioner Cesarin, Director Ayers clarified that the Project's Vesting Tentative Map entitlement gave the developer assurance that the land use policies that were in place when the Project was approved would be the ones with which the Project must comply. She added that there were no pending General Plan amendments that would affect the entitled Project.

Commissioner Cesarin asked if some of the previously conducted studies, such as the rare plant survey, biological resource assessment, stormwater

control plan and geotechnical report, had expiration dates. Noting that some of the reports were up to five years old, he asked if the studies would be updated prior to Project construction. Director Ayers advised that not all reports were required to be updated. For example, a new geotechnical report might not be required since geology and soils do not change rapidly. However, some of the biological resources surveys would need to be re-done prior to construction as part of the Project's compliance with the permitting requirements of the East Contra Costa County Habitat Conservation Plan (HCP), and the Applicant would need to finalize the Project's stormwater control plan prior to getting approval of the subdivision Final Map to meet requirements of stormwater quality permits. Commissioner Cesarin confirmed with staff that the HCP provides permit coverage for both plant and animal species.

Vice Chair Enea said he anticipated that the Commission would see additional requests for extensions of approvals. He confirmed with staff that the action of tonight's meeting was just an extension of the previously-approved entitlement, and that any significant changes to the Project that might affect its compliance with adopted regulations, such as building setbacks, would be brought back to the Commission and City Council.

Chair Richardson explained that the only request the Commission was being asked to consider tonight was one of time, and whether the Applicant should get additional time for their Project. He said that, given impacts caused by COVID-19 and pandemic-associated slowdown in activities, he believed that the Applicant had adequate justification for that additional time. There being no other comments from Commissioners, Chair Richardson invited a motion.

Vice Chair Enea made a motion to adopt the draft Resolution No. 02-2023 attached to the staff report. Commissioner Shulman seconded the motion. There being no discussion on the motion, Chair Richardson called for the vote. The motion passed by vote of 5 to 0.

9. COMMUNICATIONS

There were no communications from staff or Commissioners.

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10. ADJOURNMENT

The meeting was adjourned at 7:23 p.m. to the next regular meeting of the Planning Commission on February 28, 2023.

Respectfully submitted:

_____
Dana Ayers, AICP, Secretary

Approved by the Clayton Planning Commission:

_____
Daniel Richardson, Chair

AGENDA REPORT

To: **Honorable Chair and Planning Commissioners**

From: **Dana Ayers, AICP**
Community Development Director

Date: **February 28, 2023**

Subject: **Agenda Item 8.A**
Recommendation on an Amendment to Clayton Municipal Code Chapter 17.47, Sections 17.04.083 and 17.44.030, and Schedule 17.37.030A Pertaining to Accessory Dwelling Units, and Finding that Such Amendment is Exempt from CEQA Pursuant to Public Resources Code Section 21080.17.

SUMMARY

This is a public hearing on a City-initiated request for the Planning Commission to recommend City Council adoption of an ordinance amending the City's development and permitting regulations applicable to accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) to comply with statutory requirements of California law. This proposed amendment is statutorily exempt from the California Environmental Quality Act (CEQA, Public Resources Code section 21000 *et seq.*), pursuant to Public Resources Code section 21080.17 (Application of Division to Ordinances Implementing Law Relating to Construction of Dwelling Units and Second Units).

RECOMMENDATION

That the Commission open the public hearing and accept testimony, close the public hearing, and after deliberation, adopt proposed Resolution No. 03-2023 recommending City Council adoption of an ordinance amending Clayton Municipal Code (CMC) chapter 17.47 to comply with state law, and making other revisions to CMC Title 17 as necessary to ensure internal consistency of the municipal code in light of the amendments to CMC chapter 17.47.

BACKGROUND

On December 17, 2019, the City Council of the City of Clayton (City) adopted Resolution No. 50-2019 authorizing City staff to submit an application for funding through the Senate

Bill 2 Planning Grants Program implemented by the California Department of Housing and Community Development (HCD). The scope of the planning efforts to which the grant funds were to be applied included amendment of the City's ADU ordinance to align with California law, and creation of pre-checked architectural plans for ADUs to shorten residents' planning and permitting processes for construction of ADUs.

On March 22, 2021, the City Council established a set of goals for the Council and staff to aim to accomplish in 2021/2022. Land Use and Housing Goal 2 was amendment of Clayton's ADU ordinance to comply with state law.

State law governing construction of ADUs and JADUs is contained in Government Code sections 65852.2 (ADUs) and 65852.22 (JADUs), which were mostly recently amended on September 28, 2022, with the Governor's signing of Senate Bill 897 and Assembly Bill 2221. The statutes establish allowances and provisions for construction of ADUs and JADUs for any California jurisdiction that does not have its own local ordinance that complies with state law. The statutes also allow cities and counties to adopt local ordinances with more refined standards that fall within the parameters of state law, or in some cases, with more relaxed standards than those that are prescribed in state law.

Briefly summarized, and with certain exceptions, the Government Code allows cities and counties to adopt ordinances that:

- Designate areas within the jurisdiction where ADUs may be permitted on properties zoned to allow single-family or multifamily dwellings;
- Impose parking, height, setback, landscape, architectural, size and other objective standards on ADUs;
- Allow ADUs to be rented separately from the primary residence, and under certain circumstances, to be sold separately from the primary residence;
- Allow ADUs to be attached to, detached from, or within a primary residence or a residential accessory structure such as a garage or storage area;
- Limit the floor area of an ADU to no more than half the floor area of the primary residence;
- Establish minimum and maximum sizes for attached and detached ADUs; provided, that the ordinance does not prohibit an efficiency unit[1], nor set a maximum floor area that is less than 850 square feet, or 1,000 square feet for an ADU with two or more bedrooms;
- Prohibit rental of ADUs for fewer than 30 days; and
- Limit the number of JADUs to one per lot zoned for a single-family residence.

State law precludes a city or county from:

- Imposing a minimum setback requirement for an ADU that is converted from an existing structure;
- Imposing a side or rear yard setback greater than 4 feet for ADUs built in the same location and to the same dimensions as an existing structure;

[1] California Health and Safety Code section 17958.1 defines an efficiency unit as a unit designed for occupancy by up to two people, with a minimum floor area of 150 square feet and that may have partial kitchen or bathroom facilities.

- Imposing any lot coverage, floor area ratio (FAR), open space, or front setback requirement that would result in an ADU being smaller than 800 square feet;
- Imposing an ADU building height maximum that is fewer than 16 feet for any detached ADU on a lot with an existing or proposed single family or multifamily dwelling unit, or fewer than 18 feet (plus 2 additional feet to accommodate roof pitch) for a detached ADU on a lot with an existing or proposed single family or multifamily dwelling unit that is within 0.5 miles walking distance of a major transit stop or high-quality transit corridor, or fewer than 18 feet for a detached ADU on a lot with an existing or proposed multifamily, multistory dwelling, or fewer than 25 feet for an attached ADU where the primary dwelling is permitted to exceed 25 feet in height;
- Imposing any parking requirement for ADUs within one-half mile walking distance of public transit, within an historic district, within one block of a car share facility, if parking permits are not available to ADUs, and where the ADU is part of a proposed or new primary residence or accessory structure, or when a permit application for an ADU is submitted with the permit application to create a new single-family or multifamily dwelling on the same lot (provided the ADU or the parcel satisfies any aforementioned parking prohibition); in any other instance, the agency may not impose any parking requirement that exceeds the lesser of one stall per ADU or one stall per bedroom in the ADU;
- Requiring that covered parking (in a garage or carport, for example) be replaced in the event that the parking structure is demolished for the ADU or converted to living space in an ADU;
- Imposing an owner-occupant requirement on any ADU before January 1, 2025, or requiring owner occupancy of the single-family dwelling within which a JADU is built (other than for residences owned by a governmental agency, land trust or housing organization); or
- Requiring any permit beyond a building permit for an ADU and/or JADU, if specified conditions are met.

In addition to development and permitting regulations governing ADUs, state law precludes any ADU smaller than 750 square feet in size from being subject to impact fees. For ADUs of 750 or more square feet, fees are charged according to the proportion of the size of the ADU relative to the residence to which it is accessory (e.g., 50 percent if the ADU is half the size of the main residence). Local ADU ordinances adopted by decision-making bodies of cities and counties are also subject to review by staff of HCD for compliance with the regulations of state law.

PROJECT DESCRIPTION

The draft ordinance that is the subject of tonight's public hearing incorporates the required provisions of state law, including establishment of a ministerial (i.e., without discretionary review or a hearing) process for permitting of JADUs and certain ADUs. Section 17.47.030 of the proposed ordinance creates two categories of ADUs that state law requires the City to approve ministerially, specifically Type 1 and Type 2 ADUs. Both categories are discussed in turn, as follows.

Type 1 ADUs must be permitted by the City by building permit only. Generally, Type 1 ADUs are:

1. **Converted on a Single-Family Lot.** These are JADUs, which by their definition are built entirely within an existing residence, and/or ADUs that are built within an existing residence or an accessory structure and that may include an expansion of no more than 150 square feet (for purposes of accommodating ingress and egress).
2. **Limited Detached ADUs on a Single-Family Lot.** These are detached ADUs no larger than 800 square feet on single-family lots, where side and rear yard setbacks are at least 4 feet, and the peak of the ADU meets applicable height requirements.
3. **Converted on a Multifamily Lot.** These are ADUs constructed within storage rooms, attics, garages, passageways and other areas not used as living spaces within a multifamily residential building.
4. **Limited Detached ADUs on a Multifamily Lot.** These are detached ADUs on lots developed with multifamily residential units; provided, that the side and rear yard setbacks are at least 4 feet, and the roof peak of the ADU meets applicable height requirements.

For Type 1 ADUs, draft ordinance section 17.47.040 requires that the Community Development Director (or the Director's designee) approve or deny the building permit within 60 days of receipt of a complete permit application. If the Director denies a building permit for a Type 1 ADU, the Director must include with the denial a complete listing of the deficiencies of the application and a description of how the applicant can remedy or correct those deficiencies. Once built, a Type 1 ADU would be subject to a restriction that the unit be rented for a minimum of 30 days (i.e., no short-term rental of the unit). Each of these provisions is required by state statute.

Type 2 ADUs would encompass ADUs, with or without a JADU, that qualify for ministerial approval under state law but that do not fit into the category of a Type 1 ADU. Type 2 ADUs would require approval of an administrative ADU Permit and a building permit. Like Type 1 ADUs, the Community Development Director is responsible for reviewing Type 2 ADU applications and must render a decision within 60 days of receiving a complete application. In addition to the general ADU standards provided in section 17.47.050, Type 2 ADUs would be subject to development standards that are listed in sections 17.47.060 of the draft ordinance. In summary, the additional standards in section 17.47.060 would require that the ADU is:

- limited in size to 1,200 square feet, a standard that is within the parameters of state law (Government Code section 65852.2(a)(1)(D)(v)) and that aligns with the size of the largest ADU in the City's Pre-Checked ADU Plan Program currently being developed;[2]

[2] State law allows, but does not require, cities to limit Type 2 ADUs with two or more bedrooms to 1,000 square feet. (Gov. Code, § 65852.2(c)(2)(B)(ii)).

- subject to FAR maximums as listed in draft section 17.47.060, subsection B, of the ordinance (which are abbreviated from but generally align with the more detailed FAR standards in CMC chapter 17.78);
- subject to compliance with minimum 4-foot side and rear yard setbacks, as well as the minimum front yard setback of the zoning district in which the property is located;
- required to maintain at least 35 percent of the lot as open space; and
- required to match the appearance and architectural design elements of the principal dwelling on the property.

Any ADU that does not qualify for ministerial approval as either a Type 1 or Type 2 ADU (e.g., the ADU is larger than 1,200 square feet) would be subject to the City's discretionary **Site Plan Review Permit** process provided in CMC chapter 17.44 (and would require review and approval by the Planning Commission pursuant to that chapter).

ANALYSIS

Code Compliance: CMC section 17.56.010 authorizes the City Council to amend the Zoning Ordinance (CMC Title 17) upon recommendation from the Planning Commission, whenever the public necessity, convenience and general welfare require such amendment. Amendments to the Zoning Ordinance can be initiated by the City Council, Planning Commission, or qualified applicant pursuant to CMC section 17.56.020. The proposed amendment to the City's adopted ADU regulations in its Zoning Ordinance was initiated by the City Council through the Council goals set in March 2021.

In addition to a finding that the proposed amendment would serve the public necessity, convenience and general welfare, the Planning Commission must find that the proposed amendment is in general conformance with the General Plan, before the Commission can affirmatively recommend an amendment to the Zoning Ordinance (CMC section 17.56.060). The City Council must make the same findings before adopting the ordinance amendment.

Required Findings: Staff believes that the Planning Commission can make the necessary findings to recommend City Council adoption of the proposed Zoning Ordinance Amendment relative to ADUs and JADUs.

The proposed amendment is consistent with the Clayton General Plan as a matter of law. (Gov. Code, § 65852.2(a)(1)(C)). Additionally, the proposed amendment is consistent with the following adopted goals and policies of the Clayton General Plan Land Use Element and Housing Element Update for the 6th housing cycle.

> **Land Use Goal 2:** To encourage a balance of housing types and densities consistent with the rural character of Clayton, while accommodating higher density housing types in appropriate locations.

Land Use Goal 4: To control development through appropriate zoning, subdivision regulations and code enforcement.

Land Use Goal 10: To provide housing opportunities which serve the varied social and economic segments of the Clayton community.

Housing Element Goal 2: Encourage a variety of housing types, densities, and affordability levels to meet the diverse needs of the community, including a mix of ownership and rental.

Housing Element Policy 2.3: Accessory Dwelling Units. Promote construction of accessory dwelling units as a way to increase the housing stock, particularly for lower-income households, seniors, young adults and persons with disabilities, recognizing that ADUs also promote investment in existing properties and reduce ongoing housing costs for property owners.

The proposed amendment would result in greater diversity in the City's housing stock, in that it would facilitate a broader range in the construction of smaller, more affordable and rentable ADUs and JADUs ancillary to single-family and multifamily housing developments. These ADUs and JADUs would be in addition to the predominant single-family residential housing type in Clayton. The proposed amendment would establish zoning regulations and standards governing size, FAR, setbacks, off-street parking requirements, and architectural compatibility of ADUs to ensure that ADUs retain the visual character of the Clayton community while complying with the provisions and limitations specified in state law. The proposed amendment would implement Housing Element Program D1 by providing property owners and City staff with a clear path toward permitting for construction of ADUs and JADUs that is in compliance with state law.

Staff believes that the proposed amendment would serve the public necessity, convenience and general welfare of the City. The proposed ordinance simplifies and presents the extensive and detailed provisions of state law in a more approachable format for residents and staff, starting with classification of ADUs as Type 1, Type 2 or Site Plan Review projects (the latter of which is how ADUs that to not qualify for ministerial approval under Type 1 and Type 2 are reviewed and approved). This more approachable organization of the statutory regulations of state law adds better clarity to the regulations, reducing questions and potential areas of confusion for residents interested in building ADUs/JADUs and their designers, and creating a clearer and more efficient path for City staff to process ADU and JADU permit requests. The proposed ordinance also offers additional flexibility to local property owners, expanding on the provisions in state law to allow for otherwise nonconforming ADUs subject to Site Plan Review permit approval, and not carrying forward a requirement for owner-occupancy of a property with a Type 2 or Site Plan Review ADU. ADUs in themselves offer opportunities for smaller and more affordable units that accommodate existing residents to age in place, and provide opportunities for new residents and newly-independent people to live in affordably-priced rental housing in the City. By providing rental income or opportunities to house extended family, ADUs can also reduce mortgage costs and can eliminate the expenses of long-

term care residential care, resulting in more affordable housing and cost savings for existing residential property owners, as well.

Other Amendments: The proposed Zoning Ordinance Amendment would revise in entirety the text of CMC chapter 17.47 applicable to ADUs to comply with state law. In addition to the revision of CMC chapter 17.47, staff recommends revisions to CMC section 17.04.083 (definition of second dwelling unit), to CMC section 17.44.030 (Site Plan Review Permit exemptions) and to CMC schedule 17.37.030A (off-street parking requirements) for consistency with the amended text of the ADU/JADU zoning regulations.

CEQA: This proposed Zoning Ordinance Amendment is statutorily exempt from CEQA pursuant to Public Resources Code section 21080.17, Application of Division to Ordinances Implementing Law Relating to Construction of Dwelling Units and Second Units.

CONCLUSION

At tonight's meeting, the Planning Commission is asked to make a recommendation to the City Council on the draft amendments in the proposed Resolution attached to this staff report. Should the Planning Commission affirmatively recommend adoption of the attached code text amendments, the City Council will then be asked to consider the recommendation of the Planning Commission and to accept written and spoken testimony at its own noticed public hearing, before deciding whether to adopt the amendments into the Clayton Municipal Code.

ATTACHMENTS

1. Proposed Resolution No. 03-2023
2. California Government Code Section 65852.2
3. California Government Code Section 65852.22

CITY OF CLAYTON
PLANNING COMMISSION
PROPOSED
RESOLUTION NO. 03-2023

A RESOLUTION OF THE CLAYTON PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL AMEND CLAYTON MUNICIPAL CODE CHAPTER 17.47, SECTIONS 17.04.083 AND 17.44.030, AND SCHEDULE 17.37.030A PERTAINING TO ACCESSORY DWELLING UNITS (ZOA-02-2022), AND FINDING THAT SUCH AMENDMENTS ARE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO PUBLIC RESOURCES CODE SECTION 21080.17

WHEREAS, California state law governing construction of accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) is contained in Government Code section 65852.2 and Government Code section 65852.22, which were most recently amended on September 28, 2022, by Senate Bill 897 and Assembly Bill 2221; and

WHEREAS, Clayton Municipal Code (CMC) chapter 17.47, "Second Dwelling Units," was most recently amended in 2004 by adoption of Ordinance No. 373 and does not incorporate all of the provisions of Government Code sections 65852.2 and 65852.22; and

WHEREAS, Government Code sections 65852.2 and 65852.22 establish allowances and provisions for construction of ADUs and JADUs for any California jurisdiction that does not have its own local ordinance that complies with state law; and

WHEREAS, Government Code sections 65852.2 and 65852.22 also authorize cities and counties to adopt local ordinances with more refined standards that fall within the parameters of state law, or with more relaxed standards than those that are prescribed in state law; and

WHEREAS, on March 22, 2021, the City Council established a set of goals for the City Council and staff to aim to accomplish in 2021/2022, and Land Use and Housing Goal 2 was to amend Clayton's ADU ordinance to establish local ADU and JADU permitting procedures and regulations in compliance with state law; and

WHEREAS, CMC chapter 2.12 establishes a Planning Commission for the City of Clayton, and Government Code sections 65854 and 65855 require the Planning Commission to conduct a public hearing prior to making a recommendation to the legislative body (City Council) on a proposed amendment to the Zoning Ordinance (CMC Title 17); and

WHEREAS, in accordance with Government Code sections 65854 and 65090, on or prior to February 18, 2023, notice of the Clayton Planning Commission public hearing to consider the amendment to the City's adopted zoning regulations pertaining to ADUs and JADUs was published in the East Bay Times; was posted to the notice boards at Clayton City Hall and Clayton Community Library, and to Ohm's board in the Clayton Town Center; and was mailed electronically to interested parties who had requested such notice; and

WHEREAS, on February 28, 2023, the Clayton Planning Commission held a duly-noticed public hearing on the City-initiated Zoning Ordinance Amendment Application ZOA-02-2022 pertaining to the establishment of local permitting procedures and regulations for the construction of ADUs and JADUs in Clayton, and at that public hearing, received and considered spoken and written testimony and evidence on the matter.

NOW, THEREFORE, THE COMMISSION DOES HEREBY FIND:

A. The foregoing recitals are true and correct and are incorporated herein by reference.

B. The proposed Zoning Ordinance Amendment is consistent with the General Plan, and specifically, Land Use Goals 2, 4 and 10; and Housing Element Policy Goal 2 and Policy 2.3. Together, these goals and policies encourage diversity in housing types and tenures, support appropriate development controls through zoning regulation, and encourage construction of accessory dwelling units. The proposed amendment would facilitate construction of smaller, more affordable and rentable ADUs and JADUsin addition to the predominant single-family residential housing type in Clayton. The proposed amendment would establish zoning regulations and standards governing size, floor area ratio, setbacks, off-street parking requirements, and architectural compatibility of ADUs to ensure that ADUs retain the visual character of the Clayton community while complying with the provisions and limitations specified in state law. The proposed amendment would implement Housing Element Program D1 by providing property owners and city staff with a clear path toward permitting of ADUs and JADUs that is in compliance with state law. In addition to the foregoing, the proposed Zoning Ordinance Amendment is consistent with the General Plan as a matter of law pursuant to Government Code section 65852.2(a)(1)(C).

C. The proposed Zoning Ordinance Amendment would serve the public necessity, convenience and general welfare. The proposed ordinance simplifies and presents the extensive and detailed provisions of state law in a more approachable format for residents and city staff, starting with classification of ADUs as Type 1, Type 2 or Site Plan Review projects. This more approachable organization of the statutory regulations of state

law adds better clarity to the city's regulations, reducing questions and potential areas of confusion for residents interested in building ADUs/JADUs and their designers, and creating a clearer and more efficient path for city staff to process ADU and JADU permit requests. The proposed ordinance also offers additional flexibility to local property owners, expanding on the provisions in state law to allow for ADUs not otherwise conforming with statute subject to Site Plan Review permit approval, and not carrying forward a requirement for owner-occupancy of a property with Type 2 or Site Plan Review ADUs. ADUs in themselves offer opportunities for smaller and more affordable units that accommodate existing residents to age in place, and provide opportunities for new residents and newly-independent people to live in affordably-priced rental housing in the city. By providing rental income or opportunities to house extended family, ADUs can also reduce mortgage costs and eliminate the expenses of long-term care residential care, resulting in more affordable housing and cost savings for existing residential property owners, as well.

D. Other revisions to CMC Title 17 are necessary to ensure consistency of these municipal code titles with the amended text of the ADU/JADU zoning regulations.

E. This recommended amendment to Clayton Municipal Code is statutorily exempt from the California Environmental Quality Act (Public Resources Code section 21000 *et seq.*), pursuant to Public Resources Code section 21080.17, Application of Division to Ordinances Implementing Law Relating to Construction of Dwelling Units and Second Units.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission does hereby make the following recommendations to the City Council for amendments to Clayton Municipal Code sections 17.04.083 and 17.44.030, schedule 17.37.030A and chapter 17.47 pertaining to ADUs and JADUs:

A. **Deletion of Clayton Municipal Code Section 17.04.083.** That Clayton Municipal Code section 17.04.083 be hereby amended and restated as shown in underline/strike-through to read as follows:

"17.04.083 Dwelling Unit, Accessory or Second.
'Accessory dwelling unit' or '~~S~~second dwelling unit' are synonymous and shall refer to an Accessory Dwelling Unit as defined in section 17.47.020A. ~~mean an attached or detached dwelling unit, which provides complete independent living facilities for one or more persons including, but not limited to the permanent provisions for living, sleeping, eating, cooking and sanitation. A second dwelling unit also includes an efficiency unit and manufactured home, as defined in California Health and Safety Code §§ 17958.1 and 18007, respectively."~~

B. Amendment of the Off-Street Parking Space Requirements in Schedule 17.37.030A. That the parking requirements for the residential use classification, "Second Dwelling Unit," in Clayton Municipal Code schedule 17.37.030A be hereby amended and restated as shown in underline/strike-through to read as follows:

"**Use Classification**	**Required Off-Street Parking Spaces**
~~Second~~ Accessory Dwelling Unit	See section ~~17.47.020.B~~ 17.47.060.G"

C. Amendment to Clayton Municipal Code Section 17.44.030. That Clayton Municipal Code section 17.44.030 be hereby amended and restated as shown in underline/strike-through to read as follows:

"**17.44.030 Exemptions.**

Any new development meeting one of the following characteristics shall be exempt from a Site Plan Review Permit. Such exempt development may directly apply for a building permit which is administratively reviewed by staff.

A. Construction not meeting one of the criteria listed above;

B. Construction receiving specific design authorization pursuant to an approved:

1. Development Plan Permit;
2. Vesting Tentative Map;
3. Development Agreement.

C. ~~Second~~ Type 1 and Type 2 accessory dwelling units and junior accessory dwelling units ~~administratively~~ ministerially approved in accordance with Chapter 17.47; provided, that Type 2 accessory dwelling units shall also require an ADU Permit in accordance with the requirements of Chapter 17.47."

D. Amendment to Clayton Municipal Code Chapter 17.47. That Clayton Municipal Code chapter 17.47 be repealed and replaced in its entirety to read as shown in the attached Exhibit A.

[Remainder of page intentionally left blank.]

PASSED AND ADOPTED by the Planning Commission of the City of Clayton at a regular meeting on the ____ day of _____, 2023.

AYES:

NOES:

ABSTAINED:

ABSENT:

APPROVED:

_____
Daniel Richardson
Chair

ATTEST:

_____
Dana Ayers, AICP
Community Development Director

Exhibit A

Chapter 17.47
Accessory Dwelling Units

17.47.005 - Purpose.
The purpose of this chapter is to allow, regulate and establish procedures for permitting of accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in compliance with California Government Code sections 65852.2 and 65852.22.

17.47.010 - Effect of Conforming.
An ADU or JADU that conforms to the standards in this chapter will not be:

A. Deemed to be inconsistent with the city's general plan and zoning designation for the lot on which the ADU or JADU is located.

B. Deemed to exceed the allowable density for the lot on which the ADU or JADU is located.

C. Considered in the application of any local ordinance, policy, or program to limit residential growth.

D. Required to correct a nonconforming zoning condition, as defined in subsection G of section 17.47.020. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code section 17980.12.

17.47.020 - Definitions.
As used in this chapter, terms are defined as follows:

A. "Accessory dwelling unit" or "ADU" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An accessory dwelling unit also includes the following:

   1. An efficiency unit, as defined by section 17958.1 of the California Health and Safety Code; and

   2. A manufactured home, as defined by section 18007 of the California Health and Safety Code.

B. "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

C. "Complete independent living facilities" means permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.

D. “Efficiency kitchen” means a kitchen that includes all of the following:

1. A cooking facility with appliances.

2. A food preparation counter and storage cabinets that are of a reasonable size in relation to the size of the JADU.

E. “Junior accessory dwelling unit” or “JADU” means a residential unit that satisfies all of the following:

1. It is no more than 500 square feet in size.

2. It is contained entirely within an existing or proposed single-family structure. An enclosed use within the residence, such as an attached garage, is considered to be a part of and contained within the single-family structure.

3. It includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure.

4. If the unit does not include its own separate bathroom, then it contains an interior entrance to the main living area of the existing or proposed single-family structure in addition to an exterior entrance that is separate from the main entrance to the primary dwelling.

5. It includes an efficiency kitchen, as defined in subsection D above.

F. “Living area” means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

G. “Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.

H. “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.

I. “Proposed dwelling” means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

J. “Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

K. “Tandem parking” means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

17.47.030 – Permits Required.
The following permitting requirements apply to ADUs and JADUs under this chapter:

A. Type 1 ADU - Building Permit Only. If an ADU or JADU complies with each of the general requirements in section 17.47.050, it is allowed with only a building permit in the following scenarios:

1. Converted on Single-family Lot. One ADU as described in this subsection A.1 and one JADU on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:

a. Is either: within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or, in the case of an ADU only, within the existing space of an accessory structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress; and

b. Has exterior access that is independent of that for the single-family dwelling; and

c. Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes; and

d. The JADU complies with the requirements of California Government Code section 65852.22.

2. Limited Detached on Single-family Lot: One detached, new-construction ADU on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot under subsection A.1 above), if the detached ADU satisfies each of the following limitations:

a. The side- and rear-yard setbacks are at least 4 feet.

b. The total floor area is 800 square feet or smaller.

c. The peak height above grade does not exceed the applicable height limit in subsection B of section 17.47.050.

3. Converted on Multifamily Lot: One or more ADUs within portions of existing multifamily dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each converted ADU complies with state

building standards for dwellings. Under this subsection A.3, at least one converted ADU is allowed within an existing multifamily dwelling, up to a quantity equal to 25 percent of the existing multifamily dwelling units.

4. Limited Detached on Multifamily Lot: No more than two detached ADUs on a lot that has an existing or proposed multifamily dwelling if each detached ADU satisfies both of the following limitations:

    a. The side- and rear-yard setbacks are at least 4 feet. If the existing multifamily dwelling has a rear or side yard setback of less than 4 feet, then the Director shall not require any modification to the multifamily dwelling as a condition of approving the ADU.

    b. The peak height above grade does not exceed the applicable height limit provided in subsection B of section 17.47.050.

B. Type 2 ADU - Administrative ADU Permit Required. An ADU that does not qualify as a Type 1 ADU (as set forth in subsection A above) may be constructed with Director approval of a building permit and an ADU Permit in compliance with the standards set forth in sections 17.47.050 and 17.47.060. An application for an ADU Permit shall be submitted on a form prescribed by the Community Development Department and be accompanied by any ADU Permit application processing fee established by City Council resolution.

17.47.040 – Process and Timing.

A. Applications for Type 1 and Type 2 ADUs (under subsections A and B of section 17.47.030, respectively) will be considered and approved ministerially, without discretionary review or a hearing.

B. The Director must approve or deny an application to create an ADU or JADU within 60 days from the date that the City receives a completed application. If the Director has not approved or denied the completed application within 60 days, the application is deemed approved unless either of the following occurs:

1. The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay; or

2. When an application to create an ADU or JADU is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the Director may delay acting on the permit application for the ADU or JADU until the Director approves or denies the permit application to create the new single-family or multifamily dwelling, but the application to create the ADU or JADU will still be considered ministerially without discretionary review or a hearing.

C. If the Director denies an application to create an ADU or JADU, the Director must provide the applicant with a full set of comments that include, among other things, a list of all the defective or deficient items and a description of how the application may be remedied by the applicant. The Director must provide the applicant with the notice of the denial and the corresponding comments within the 60-day time period established by subsection B above.

D. A demolition permit for a detached garage that is to be replaced with an ADU is reviewed with the application for the ADU and issued at the same time.

17.47.050 – General ADU and JADU Requirements.

The following requirements apply to all Type 1 and Type 2 ADUs and JADUs that are approved under section 17.47.030:

A. Zoning.

1. A Type 1 ADU or JADU subject only to a building permit under subsection A of section 17.47.030 may be created on a lot in a residential or mixed-use district.

2. A Type 2 ADU or JADU subject to an ADU permit under subsection B of section 17.47.030 may be created on a lot that is zoned to allow single-family dwelling residential use or multifamily dwelling residential use.

B. Height.

1. Except as otherwise provided by subsections B.2 and B.3 below, a detached ADU created on a lot with an existing or proposed single-family or multifamily dwelling unit may not exceed 16 feet in height.

2. A detached ADU may be up to 18 feet in height if it is created on a lot with an existing or proposed single-family or multifamily dwelling unit that is located within one-half mile walking distance of a major transit stop or a high quality transit corridor, as those terms are defined in section 21155 of the Public Resources Code, and the ADU may be to 2 additional feet in height (for a maximum of 20 feet) if necessary to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.

3. A detached ADU created on a lot with an existing or proposed multifamily dwelling that has more than one story above grade may not exceed 18 feet in height.

4. An ADU that is attached to the primary dwelling may not exceed 25 feet in height or the height limitation imposed by the underlying zone that applies to the primary dwelling, whichever is lower. Notwithstanding the

foregoing, ADUs subject to this subsection B.4 may not exceed two stories.

5. For purposes of this subsection B, height is measured above existing legal grade to the peak of the structure.

C. Fire Sprinklers.

1. Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.

2. The construction of an ADU does not trigger the requirement for fire sprinklers to be installed in the existing primary dwelling.

D. Rental Term. No Type 1 ADU or JADU may be rented for a term that is shorter than 30 days.

E. No Separate Conveyance. An ADU or JADU may be rented, but, except as otherwise provided in Government Code Section 65852.26, no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multifamily lot).

F. Septic System. If the ADU or JADU will connect to an onsite wastewater treatment system, the owner must include with the application a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.

G. Owner Occupancy.

1. Owner occupancy is not required on a property on which an ADU has been created.

2. As required by state law, properties on which a JADU has been created are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement in this subsection G.2 does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.

H. Deed Restriction. Prior to final inspection for occupancy of an ADU or JADU, a deed restriction must be recorded against the title of the property in the County Recorder's office and a copy filed with the Director. The deed restriction must run with the land and bind all future owners. The form of the deed restriction will be provided by the Director and must provide that:

1. Except as otherwise provided in Government Code Section 65852.26, the ADU or JADU may not be sold separately from the primary dwelling.

2. The ADU or JADU is restricted to the approved size and to other attributes allowed by this section.

3. The deed restriction runs with the land and may be enforced against future property owners.

4. The deed restriction may be removed if the owner eliminates the ADU or JADU, as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request of the Director, providing evidence that the ADU or JADU has in fact been eliminated. The Director may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated. Appeal may be taken from the Director's determination consistent with other provisions of this Code. If the ADU or JADU is not entirely physically removed, but is only eliminated by virtue of having a necessary component of an ADU or JADU removed, the remaining structure and improvements must otherwise comply with applicable provisions of this Code.

5. The deed restriction is enforceable by the Director for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining the use of the ADU or JADU in violation of the recorded restrictions or abatement of the illegal unit.

I. Income Reporting. In order to facilitate the City's obligation to identify adequate sites for housing in accordance with Government Code sections 65583.1 and 65852.2, with the building permit application, the applicant must provide the City with an estimate of the projected annualized rent that will be charged for the ADU or JADU. Notwithstanding the foregoing, the requirements of this subsection shall only apply to properties for which the ADU or JADU is being built to satisfy affordable inclusionary housing requirements of a development or is subject to an affordable housing agreement between the City and the property owner.

J. Building & Safety.

1. Compliance with building code. Subject to subsection J.2 below, all ADUs and JADUs must comply with all local building code requirements.

2. No change of occupancy. Construction of an ADU does not constitute a Group R occupancy change under the local building code, as described in

section 310 of the California Building Code, unless the building official or code enforcement officer makes a written finding based on substantial evidence in the record that the construction of the ADU could have a specific, adverse impact on public health and safety. Nothing in this subsection J.2 prevents the city from changing the occupancy code of a space that was uninhabitable space or that was only permitted for nonresidential use and was subsequently converted for residential use in accordance with this section.

17.47.060 - Development Standards. The following requirements apply only to Type 2 ADUs that require an ADU permit under subsection B of section 17.47.030.

A. Maximum Size.

1. The maximum size of a detached or attached ADU subject to this section is 1,200 square feet.

2. An attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of the existing primary dwelling.

3. Application of other development standards in this section 17.47.060, such as FAR or lot coverage, might further limit the size of the ADU, but no application of the percent-based size limit in subsection A.2 above or of an FAR, lot coverage limit, minimum front yard setback or open-space requirement may require the ADU to be less than 800 square feet.

B. Floor Area Ratio (FAR). Subject to subsection A.3 above, no ADU subject to this section may cause the floor area ratio of all residential and accessory structures on a lot to exceed the maximum FAR as specified according to the following schedule:

Net Parcel Area (square feet)	Maximum FAR
Up to 7,000	0.55
7,001 to 8,000	0.53
8,001 to 9,000	0.51
9,001 to 10,000	0.49
10,001 to 11,000	0.47
11,001 to 12,000	0.45
12,001 to 13,000	0.43
13,001 to 14,000	0.41
14,001 to 15,000	0.39
15,001 to 16,000	0.37
Over 16,000	0.35

C. Setbacks.

1. An ADU that is subject to this section must conform to the following minimum front-yard setbacks, subject to subsection A.3 above:

   a. R-10, R-12, R-15 and All Multiple Family Residential Districts: 20 feet

   b. R-20 District: 25 feet

   c. R-40 and R-40-H Districts: 40 feet

2. An ADU that is subject to this section must conform to minimum 4-foot side- and rear-yard setbacks.

3. No setback is required for an ADU that is subject to this section if the ADU is constructed in the same location and to the same dimensions as an existing structure.

D. Lot Coverage. Subject to subsection A.3 above, no ADU subject to this section may cause the total lot coverage of the lot to exceed either:

   a. 50 percent on a lot with an area less than 15,000 square feet; or

   b. 35 percent on a lot with an area of 15,000 or more square feet.

E. Minimum Open Space. No ADU subject to this section may cause the total percentage of open space of the lot to fall below 35 percent, subject to subsection A.3.

F. Passageway. No passageway, as defined by subsection H of section 17.47.020, is required for an ADU.

G. Parking.

1. Generally. One off-street parking space is required for each ADU. The parking space may be provided in setback areas or as tandem parking, as defined by subsection K of section 17.47.020 above.

2. Exceptions. No parking under subsection G.1 above is required in the following situations:

   a. The ADU is located within one-half mile walking distance of public transit, as defined in subsection J of section 17.47.020 above.

b. The ADU is located within an architecturally and historically significant historic district.

c. The ADU is part of the proposed or existing primary residence or an accessory structure under subsection A of section 17.47.040.

d. When on-street parking permits are required but not offered to the occupant of the ADU.

e. When there is an established car share vehicle stop located within one block of the ADU.

f. For an ADU constructed as an efficiency unit as defined by section 17958.1 of the California Health and Safety Code.

g. When the permit application to create an ADU is submitted with an application to create a new single-family or new multifamily dwelling on the same lot; provided, that the ADU or the lot satisfies any other criteria listed in subsections a through f, above.

3. No Replacement. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, those off-street parking spaces within the garage, carport, or covered parking structure are not required to be replaced.

H. Architectural Requirements.

1. The materials and colors of the exterior walls, roof, and windows and doors must match the appearance and architectural design elements of those of the primary dwelling.

2. The roof slope must match that of the dominant roof slope of the primary dwelling. The dominant roof slope is the slope shared by the largest portion of the roof.

3. The exterior lighting must be limited to down-lights or as otherwise required by the building or fire code.

4. The ADU must have an independent exterior entrance, apart from that of the primary dwelling.

5. The interior horizontal dimensions of an ADU must be at least 10 feet wide in every direction, with a minimum interior wall height of 7 feet.

6. Windows and doors of the ADU may not have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.

7. All windows and doors in an ADU that are less than 30 feet from a property line that is not a public right-of-way line must either be (for windows) clerestory with the bottom of the glass at least 6 feet above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.

I. Landscape Requirements. Evergreen landscape screening must be planted and maintained between the ADU and the side and rear lot lines of the property , as follows:

1. At least one 15-gallon size tree shall be planted for every 15 linear feet of exterior wall, or at least one 15-gallon size shrub shall be planted for every 10 linear feet of exterior wall.

2. Plant specimens must be capable of reaching a height of at least 6 feet tall at maturity.

3. Notwithstanding the foregoing, a solid fence of at least 6 feet in height may be installed in lieu of landscaping where the distance between the ADU and property line is less than 5 feet.

4. All landscaping must be low water use and drought-tolerant.

J. Historical Protections. An ADU that is on or within 300 feet of real property that is listed in the California Register of Historic Resources must do both of the following:

1. Comply with the objective ministerial standards for Preservation, Rehabilitation, Restoration, or Reconstruction in the Secretary of the Interior’s Standards for the Treatment of Historic Properties, as applicable.

2. Be located so as to not be visible from any public right-of-way.

17.47.070 - Fees.

The following requirements apply to all ADUs that are approved under section 17.47.030 of this chapter.

A. Impact Fees.

1. No impact fee is required for an ADU that is less than 750 square feet in size. For purposes of this subsection A, “impact fee” means a “fee” under the Mitigation Fee Act (Gov. Code § 66000(b)) and a fee under the

Quimby Act (Gov. Code § 66477). “Impact fee” here does not include any connection fee or capacity charge for water or sewer service.

2. Any impact fee that is required for an ADU that is 750 square feet or larger in size must be charged proportionately in relation to the square footage of the primary dwelling unit. (E.g., the floor area of the ADU, divided by the floor area of the primary dwelling, times the typical fee amount charged for a new dwelling.)

B. Utility Fees.

1. If an ADU is constructed with a new single-family home, a separate utility connection directly between the ADU and the utility, and payment of the normal connection fee and capacity charge for a new dwelling are required.

2. Except as described in subsection B.1 above, converted ADUs on a single-family lot that are created under subsection A.1 of section 17.47.030 are not required to have a new or separate utility connection directly between the ADU and the utility. Nor is a connection fee or capacity charge required.

3. Except as described in subsection B.1, all ADUs that are not covered by subsection B.2 require a new, separate utility connection directly between the ADU and the utility.

a. The connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU based on either the floor area or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system.

b. The portion of the fee or charge that is charged by the City may not exceed the reasonable cost of providing this service.

17.47.080 – Nonconforming Zoning Code Conditions, Building Code Violations, and Unpermitted Structures

A. Generally. The Director will not deny an application to construct an ADU or JADU due to a nonconforming zoning condition, building code violation or unpermitted structure on the lot that does not present a threat to the public health and safety and that is not affected by the construction of the ADU or JADU.

B. Unpermitted ADUs constructed before 2018.

1. Permit to Legalize. As required by state law, the Director may not deny a permit to legalize an existing but unpermitted ADU that was constructed before January 1, 2018, if denial is based on either of the following grounds:

    a. The ADU violates applicable building standards; or

    b. The ADU does not comply with the state ADU law (Government Code section 65852.2) or this ADU ordinance (chapter 17.47).

2. Exceptions.

    a. Notwithstanding subsection B.1 above, the Director may deny a permit to legalize an existing but unpermitted ADU that was constructed before January 1, 2018, if the Director makes a finding that correcting a violation is necessary to protect the health and safety of the public or of the occupants of the structure.

    b. Subsection B.1 above does not apply to a building that is deemed to be substandard in accordance with California Health and Safety Code section 17920.3.

17.47.090 - Nonconforming ADUs and Discretionary Approval.

Any proposed ADU or JADU that does not conform to the objective standards set forth in sections 17.47.005 through 17.47.080 of this chapter may be allowed by the City with a Site Plan Review Permit, in accordance with chapter 17.44 of this title.

GOVERNMENT CODE - GOV

TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] *(Heading of Title 7 amended by Stats. 1974, Ch. 1536.)*

DIVISION 1. PLANNING AND ZONING [65000 - 66301] *(Heading of Division 1 added by Stats. 1974, Ch. 1536.)*

CHAPTER 4. Zoning Regulations [65800 - 65912] *(Chapter 4 repealed and added by Stats. 1965, Ch. 1880.)*

ARTICLE 2. Adoption of Regulations [65850 - 65863.13] *(Article 2 added by Stats. 1965, Ch. 1880.)*

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) Except as provided in Section 65852.26, the accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, except that the construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code (Title 24 of the California Code of Regulations), unless the building official or enforcement agency of the local agency makes a written finding based on substantial evidence in the record that the construction of the accessory dwelling unit could have a specific, adverse impact on public health and safety. Nothing in this clause shall be interpreted to prevent a local agency from changing the occupancy code of a space that was unhabitable space or was only permitted for nonresidential use and was subsequently converted for residential use pursuant to this section.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) (A) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior

accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(B) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subparagraph (A), the permitting agency shall, within the time period described in subparagraph (A), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(4) The ordinance shall require that a demolition permit for a detached garage that is to be replaced with an accessory dwelling unit be reviewed with the application for the accessory dwelling unit and issued at the same time.

(5) The ordinance shall not require, and the applicant shall not be otherwise required, to provide written notice or post a placard for the demolition of a detached garage that is to be replaced with an accessory dwelling unit, unless the property is located within an architecturally and historically significant historic district.

(6) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(7) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(8) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, except that, subject to subparagraphs (B) and (C), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

(B) (i) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit before January 1, 2025.

(ii) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit that was permitted between January 1, 2020, and January 1, 2025.

(C) Notwithstanding subparagraphs (A) and (B), a local agency may require that an accessory dwelling unit be used for rentals of terms longer than 30 days.

(9) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(10) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) (1) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create or serve an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create or serve a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create or serve the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved.

(2) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to paragraph (1), the permitting agency shall, within the time period described in paragraph (1), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(D) Any height limitation that does not allow at least the following, as applicable:

(i) A height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit.

(ii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. A local agency shall also allow an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit.

(iii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.

(iv) A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. This clause shall not require a local agency to allow an accessory dwelling unit to exceed two stories.

(d) Notwithstanding any other law, and whether or not the local agency has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), all of the following shall apply:

(1) The local agency shall not impose any parking standards for an accessory dwelling unit in any of the following instances:

(A) Where the accessory dwelling unit is located within one-half mile walking distance of public transit.

(B) Where the accessory dwelling unit is located within an architecturally and historically significant historic district.

(C) Where the accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(D) When onstreet parking permits are required but not offered to the occupant of the accessory dwelling unit.

(E) When there is a car share vehicle located within one block of the accessory dwelling unit.

(F) When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this paragraph.

(2) The local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation as provided in clause (i), (ii), or (iii) as applicable, of subparagraph (D) of paragraph (2) of subdivision (c).

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) (i) Not more than two accessory dwelling units that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limitation in clause (i), (ii), or (iii), as applicable, of subparagraph (D) of paragraph (2) of subdivision (c) and rear yard and side setbacks of no more than four feet.

(ii) If the existing multifamily dwelling has a rear or side setback of less than four feet, the local agency shall not require any modification of the existing multifamily dwelling as a condition of approving the application to construct an accessory dwelling unit that satisfies the requirements of this subparagraph.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing multifamily dwelling.

(4) A local agency may require owner-occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (8) of subdivision (a).

(5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose objective standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section shall supersede a conflicting local ordinance. This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent

provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(7) "Objective standards" means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.

(8) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(9) "Permitting agency" means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.

(10) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(11) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(12) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2), a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(Amended (as amended by Stats. 2021, Ch. 343, Sec. 1) by Stats. 2022, Ch. 664, Sec. 2.5. (SB 897) Effective January 1, 2023.)

GOVERNMENT CODE - GOV

TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] *(Heading of Title 7 amended by Stats. 1974, Ch. 1536.)*

DIVISION 1. PLANNING AND ZONING [65000 - 66301] *(Heading of Division 1 added by Stats. 1974, Ch. 1536.)*

CHAPTER 4. Zoning Regulations [65800 - 65912] *(Chapter 4 repealed and added by Stats. 1965, Ch. 1880.)*

ARTICLE 2. Adoption of Regulations [65850 - 65863.13] *(Article 2 added by Stats. 1965, Ch. 1880.)*

65852.22. (a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.

(2) Require owner-occupancy in the single family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the walls of the proposed or existing single-family residence. For purposes of this paragraph, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.

(5) (A) Require a permitted junior accessory dwelling unit to include a separate entrance from the main entrance to the proposed or existing single-family residence.

(B) If a permitted junior accessory dwelling unit does not include a separate bathroom, the permitted junior accessory dwelling unit shall include a separate entrance from the main entrance to the structure, with an interior entry to the main living area.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A cooking facility with appliances.

(B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine if the junior accessory dwelling unit complies with applicable building standards.

(c) (1) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. The permitting agency shall either approve or deny the application to create or serve a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create or serve a junior accessory dwelling unit is submitted with a permit application to create or serve a new single-family dwelling on the lot, the permitting agency may delay approving or denying the permit application for the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create or serve the new single-family dwelling, but the application to create or serve the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(2) If a permitting agency denies an application for a junior accessory dwelling unit pursuant to paragraph (1), the permitting agency shall, within the time period described in paragraph (1), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(d) A local agency shall not deny an application for a permit to create a junior accessory dwelling unit pursuant to this section due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and that are not affected by the construction of the junior accessory dwelling unit.

(e) For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(f) For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(g) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation related to a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(h) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.

(i) For purposes of this section, the following terms have the following meanings:

(1) “Junior accessory dwelling unit” means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(2) “Local agency” means a city, county, or city and county, whether general law or chartered.

(3) “Permitting agency” means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.

(Amended by Stats. 2022, Ch. 664, Sec. 4. (SB 897) Effective January 1, 2023.)