



Town of Moraga	Agenda Item
<b>PUBLIC HEARINGS</b>	<b>10. A.</b>

Meeting Date: February 10, 2021

## **TOWN OF MORAGA**

## **STAFF REPORT**

**To: Honorable Mayor and Councilmembers**

**From: Afshan Hamid, Planning Director  
Brian Horn, Associate Planner**

**Subject: Consider Waiving the First Reading and Introducing by Title Only an Ordinance Amending Moraga Municipal Code Section 8.04.020, Definitions and Repealing and Replacing Chapter 8.124 of the Moraga Municipal Code, Accessory Dwelling Units of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code.**

### **California Environmental Quality Act**

*The proposed Ordinance is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), which exempt the adoption of Accessory Dwelling Unit Ordinances, and therefore no additional review is required.*

### **Executive Summary**

Based on new State regulations effective January 1, 2020, staff is updating the current Accessory Dwelling Unit to comply with State requirements. The Town Council is requested to consider introduction of an Ordinance amending Moraga Municipal Code Section 8.04.020, Definitions and repealing and replacing Chapter 8.124 of the Moraga Municipal Code, Accessory Dwelling Units (ADUs) of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code. The purpose of the Ordinance is to bring the Town's ADU regulations into conformance with the most recent State law.

At the Town Council Goal setting session for 2020, updating the ADU regulation was identified as a Council priority. Staff has been working on the updates since October 2020. Furthermore, the ADU Ordinance amendment advances the 2002 adopted General Plan policies and the 2015 adopted Housing Element policies.

On December 7, 2020, the Planning Commission held a public hearing to consider the proposed amendments and voted 6-0 (with one position open) to recommend Council adoption, with the understanding that staff was still in consultation with the State

1 Department of Housing and Community Development (HCD), and that additional  
2 changes as recommended by HCD may be made and included in the Ordinance  
3 presented to the Town Council. The draft Ordinance, including revisions recommended  
4 by HCD and several additional staff recommended revisions consistent with HCD  
5 guidance, is attached hereto as Attachment A.

## 6 7 **Background**

8  
9 HCD has stated that California's housing production is not keeping pace with demand.  
10 In the last decade, less than half of the homes needed to keep up with the population  
11 growth were built. Additionally, new homes are often constructed away from job-rich  
12 areas. This lack of housing that meets people's needs is impacting affordability and  
13 causing average housing costs, particularly for renters in California, to rise significantly.  
14 As affordable housing becomes less accessible, people drive longer distances between  
15 housing they can afford and their workplace, or pack themselves into smaller shared  
16 spaces, both of which reduce the quality of life and produce negative environmental  
17 impacts. Beyond traditional construction, widening the range of housing types can  
18 increase the housing supply and help more low-income Californians thrive. Examples  
19 of some of these housing types are Accessory Dwelling Units (ADUs - also referred to  
20 as second units, in-law units, casitas, or granny flats) and Junior Accessory Dwelling  
21 Units (JADUs).

22  
23 Over the past several years the State of California has passed legislation aimed at  
24 increasing housing production within the State. The intent of the new laws is to enable  
25 ADU construction in communities throughout California by minimizing local restrictions,  
26 better streamline approval processes and expand capacity to accommodate the  
27 development of ADUs and JADUs. Local jurisdictions may default to the requirements  
28 of State law or have a local ADU Ordinance in place, provided this Ordinance complies  
29 with the requirements of State law.

## 30 31 **State Law:**

32 On September 27, 2016, then Governor Brown signed Assembly Bill 2299 (AB 2299),  
33 Senate Bill 1069 (SB 1069) and Assembly Bill 2406 (AB 2406) into law, becoming  
34 effective on January 1, 2017. These bills established new statewide regulations and  
35 permitting requirements for ADUs under California Government Code 65852.2  
36 (abbreviated in this report as "State law") and for California Government Code 65852.22  
37 for JADUs.

38  
39 On October 9, 2019, Governor Newsom signed Assembly Bill 881 (AB 881), Assembly  
40 Bill 68 (AB 68) and Senate Bill 13 (SB 13) which built upon the laws passed in 2016 to  
41 further address barriers to the development of ADUs and JADUs. To further clarify this  
42 legislation, the California Department of Housing and Community Development (HCD)  
43 released an Accessory Dwelling Handbook in September 2020, which was updated in  
44 December 2020 (Attachment D).

45  
46 Consistent with State Law, the Town of Moraga currently regulates the development of  
47 ADUs through Chapter 8.124 of the Moraga Municipal Code (MMC). Chapter 8.124  
48 was last amended on February 14, 2018 to address changes in State law that went into

1 effect on January 1, 2017. An ADU is an attached or a detached residential dwelling  
2 unit, or a unit entirely enclosed within an existing building, that provides complete  
3 independent living facilities for one or more persons on the same parcel as a single-  
4 family or multifamily dwelling (the primary unit). It includes permanent provisions for  
5 living, sleeping, eating, cooking, and sanitation.

6  
7 The State Law amendments effective January 1, 2020 are summarized as follows:  
8

- 9 • *Creates new statewide exemption ADUs that must be approved ministerially*  
10 *through a building permit in residential or mixed-use zones if certain criteria are*  
11 *met (Gov. Code, § 65852.2, subd. (e).)*
- 12 • *Prohibits local agencies from including in development standards for ADUs*  
13 *requirements on minimum lot size (Gov. Code, § 65852.2, subd. (a)(1)(B)(i)).*
- 14 • *Clarifies areas designated by local agencies for ADUs may be based on the*  
15 *adequacy of water and sewer services as well as impacts on traffic flow and*  
16 *public safety (Gov. Code, § 65852.2, subd. (a)(1)(A)).*
- 17 • *Eliminates all owner-occupancy requirements by local agencies for ADUs*  
18 *approved between January 1, 2020 and January 1, 2025 (Gov. Code, § 65852.2,*  
19 *subd. (a)(6)).*
- 20 • *Prohibits a local agency from establishing a maximum size of an ADU of less*  
21 *than 850 square feet, or 1,000 square feet if the ADU contains more than one*  
22 *bedroom and requires approval of a permit to build an ADU of up to 800 square*  
23 *feet (Gov. Code, § 65852.2, subd. (c)(2)(B) & (C)).*
- 24 • *Clarifies that when ADUs are created through the conversion of a garage, carport*  
25 *or covered parking structure, replacement off-street parking spaces cannot be*  
26 *required by the local agency (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi)).*
- 27 • *Reduces the maximum ADU and JADU application review time from 120 days to*  
28 *60 days (Gov. Code, § 65852.2, subd. (a)(3) and (b)).*
- 29 • *Clarifies that “public transit” includes various means of transportation that charge*  
30 *set fees, run on fixed routes and are available to the public (Gov. Code, §*  
31 *65852.2, subd. (j)(10)).*
- 32 • *Establishes impact fee exemptions and limitations based on the size of the ADU.*  
33 *ADUs up to 750 square feet are exempt from impact fees (Government Code*  
34 *Section 65852.2, Subdivision (f)(3)); ADUs that are 750 square feet or larger may*  
35 *be charged impact fees but only such fees that are proportional in size (by*  
36 *square foot) to those for the primary dwelling unit (Gov. Code, § 65852.2, subd.*  
37 *(f)(3)).*
- 38 • *Defines an “accessory structure” to mean a structure that is accessory or*  
39 *incidental to a dwelling on the same lot as the ADU (Gov. Code, § 65852.2, subd.*  
40 *(j)(2)).*
- 41 • *Authorizes HCD to notify the local agency if HCD finds that their ADU Ordinance*  
42 *is not in compliance with state law (Gov. Code, § 65852.2, subd. (h)(2)).*
- 43 • *Clarifies that a local agency may identify an ADU or JADU as an adequate site to*  
44 *satisfy RHNA housing needs (Gov. Code § 65583.1, subd. (a), and § 65852.2,*  
45 *subd. (m)).*
- 46 • *Permits JADUs even where a local agency has not adopted an Ordinance*  
47 *expressly authorizing them (Gov. Code, § 65852.2, subd. (a)(3), (b), and (e)).*

- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the single-family residence (Gov. Code § 65852.22, subd. (a)(4); Former Gov. Code § 65852.22, subd. (a)(5)).
- Requires, upon application and approval, a local agency to delay enforcement against a qualifying substandard ADU for five (5) years to allow the owner to correct the violation, so long as the violation is not a health and safety issue, as determined by the enforcement agency (Gov. Code, § 65852.2, subd. (n); Health and Safety Code § 17980.12).

#### Planning Commission Action:

On December 7, 2020, the Planning Commission voted 6-0 (with one position open) to recommend Council adoption of the proposed Ordinance. The Planning Commission understood that Planning staff had concurrently submitted the draft Ordinance to HCD for review. In their recommendation, the Planning Commission acknowledges that revisions may be made to the draft Ordinance based on input from HCD. Several revisions were made which are discussed later in this report. The overall modifications from HCD are clarifications. There were no comments from the public at the meeting or any written correspondence from any residents. Staff received one email from Californians for Homeownership at 7:02 p.m. after the start of the PC meeting. The email was read into the record during the staff presentation as follows.

*"Californians for Home Ownership is a 501 C3 non-profit organization devoted to using tools to address California's housing crisis. You have been provided with a letter we submitted as part of our work monitoring local compliance with California laws regarding Accessory Dwelling Units. We encourage you to review this letter closely. Thank you for your consideration."*

The letter has been included as Attachment E of this staff report and outlined the following concerns:

- Local setbacks cannot be applied to ADUs permitted under Government Code Section 65852.2(e)(1) (streamlined ADUs).
- The draft ADU Ordinance limited ADUs permitted under Government Code Section 65852.2(e)(1)(A) to existing buildings and should include proposed buildings as well.
- The draft ADU Ordinance included a requirement that JADUs must have interior access to the primary residence, which was a requirement that had been eliminated in the new State laws.
- The draft Ordinance improperly required standard ADUs to comply with generally applicable setbacks. For new construction, side and rear setbacks are limited to four feet and for rebuilds and conversions of existing buildings, no setback may be required.
- The draft Ordinance needed to relax all square footage, positional, and other limitations where needed to allow an 800 square foot ADU.

After the PC meeting staff continued their consultation with HCD and revised sections of the Ordinance based on HCD comments which are discussed later in this staff report.

Staff believes the above items have been addressed through the revisions as directed by HCD.

## **Discussion**

Currently, the Town must process applications in accordance with State required standards, as applicable. Where there is a discrepancy between the State law and the Town's ADU regulations, the State law prevails, therefore necessitating the update. The following is a summary of proposed amendments to Moraga Municipal Code Section 8.04.040 and Chapter 8.124 to align with State Law effective January 1, 2020. Items 1 through 15 were provided to the Planning Commission and included in their adopted resolution. Items 16 through 23 were revised based on feedback from HCD of the draft Ordinance and items 24 through 28 propose some additional revisions to further clean up the code and address less substantive HCD comments.

1. Creation of a new classification called "Streamlined ADUs." These ADUs are not subject to the Town's development and design standards, such as Floor Area Ratio (FAR), parking requirements, some standard zoning district setbacks or any discretionary permit such as a Hillside Development Permit. They include the following types.
  - a. On single-family residential properties, a Fully Contained ADU, which is a definition that already exists within the Town code and includes an ADU built within the existing space of a single-family dwelling, or an ADU within an existing accessory building provided side and rear setbacks and building separations are sufficient for fire safety. Additionally, the new State law allows these ADUs to include expansions of up to 150 square feet that is limited to accommodating ingress and egress.
  - b. On multifamily or mixed-use properties, multiple ADUs within portions of existing multifamily dwelling buildings that are currently 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. At least one converted ADU is allowed within an existing multifamily dwelling building, and multiple converted ADUs shall be permitted up to 25 percent of the number of existing multifamily dwelling units.
  - c. A Junior Accessory Dwelling Unit (JADU) on single-family residential zoned properties. These are limited to 500 square feet in size and must be located within the primary unit and not an accessory building.
  - d. On single family residential properties, one detached new construction ADU with side and rear setbacks of at least four (4) feet, an interior floor area of 800 square or smaller and a height of 16 feet or less. This ADU may be combined on the same lot with a JADU.
  - e. On multifamily or mixed-use zoned properties, up to two detached ADUs with side and rear setbacks of at least four (4) feet, an interior floor area of 800 square or smaller and a height of 16 feet on a lot with multifamily dwellings.
2. An ADU must be permitted within any zoning district that allows for residential development. This includes mixed use districts, which the Town recently

1 adopted with the Moraga Center Specific Plan, as well as the Study district and  
2 the Non-MOSO and MOSO open space districts, which currently allow Fully  
3 Contained ADUs by right, but require a Conditional Use Permit for attached and  
4 detached ADUs. The attached and detached ADUs now must be permitted by  
5 right.

- 6 3. Reduces the allowed processing time for an ADU from 120 days to 60 days.
- 7 4. ADUs not qualifying for streamlined review must comply with Development  
8 Standards of Section 8.124.130 and the Design Standards of Section 8.124.140  
9 for ministerial approval. The following standards have been amended from the  
10 existing code to be consistent with State law.
  - 11 a. The maximum size for an ADU is increased from 800 square feet of  
12 interior floor area under the Towns current code to 850 square feet, for a  
13 studio or one bedroom or 1,000 square feet if the ADU contains more than  
14 one bedroom.
  - 15 b. Parking for an ADU must be allowed within a required setback area.  
16 Previous language in the Town code that encourages parking outside of  
17 the required setback area would be removed.
  - 18 c. When a garage, carport, or covered parking structure is demolished in  
19 conjunction with the construction of a fully contained, attached or  
20 detached ADU, or converted to an ADU, no replacement parking shall be  
21 required. The existing Town code requires that they be replaced.
- 22 5. A JADU kitchen is no longer limited to a sink with a maximum waste line  
23 diameter of one and one half (1.5) inches and limitations on the cooking facility or  
24 appliance to less than 120 volts, or natural or propane gas.
- 25 6. A new section has been added to address development impact fees.  
26 Development impact fees can no longer be charged for ADUs that are less than  
27 750 square feet in size. ADUs that are 750 square feet or larger must be  
28 charged proportionately in relation to the square footage of the primary unit.  
29 (E.g., the floor area of the primary unit, divided by the floor area of the ADU,  
30 times the typical fee amount charged for a new dwelling). The next update of the  
31 Town's fee schedule will include revised language to reflect State ADU law.
- 32 7. State law does not allow owner occupancy requirements to be required from  
33 January 1, 2020 until January 1, 2025. This has been reflected in proposed  
34 Section 8.124.210.B.
- 35 8. An exemption section has been added to clarify that a Hillside Development  
36 Permit cannot be required for ADUs qualifying for ministerial approval.

37  
38 In addition to the State mandated changes, several amendments to the existing code  
39 were recommended by the PC which are intended to support the State mandated  
40 changes to the code and other general clean ups and improvements to the code.

- 41  
42 9. Relocated definitions related to ADUs back into MMC Chapter 8.124, so that it is  
43 a standalone document, and any future modifications will be more efficient to  
44 address. Previously, they had been relocated to the general definitions in  
45 Section 8.04.020 as part of the Moraga Center Specific Plan Implementation  
46 Project to consolidate all definitions into one section. However, staff believes  
47 that a standalone document would be more responsive to any future ongoing

- 1 State Law modifications for ADUs and therefore is recommending that these  
2 definitions be relocated back into Chapter 8.124.
- 3 10. New and revised definitions which include “streamlined ADU” and “multifamily  
4 building” and amendment to the definition of “existing primary unit.”
- 5 11. References to the Design Review Board have been removed.
- 6 12. Remove Courtesy Notice: This previous notice added additional processing time  
7 to the application and provided minimal benefit since approval of a ministerial  
8 ADU cannot be appealed and may conflict with the new requirements for  
9 expedited review.
- 10 13. Standards applicable to all ADUs have been relocated to a new General  
11 Requirements Section 8.124.080 and modified where necessary to reflect State  
12 law changes.
- 13 14. Revise design standards from the existing code applicable to standard ADUs  
14 which requires windows on an exterior wall within 30 feet of a neighboring  
15 residence, where the windows would have sight lines to the neighboring  
16 residence, to have a minimum sill height of not less than five feet-six inches  
17 above the interior finished floor height. Additional language has been added to  
18 allow the Planning Director to waive this requirement if the window is required for  
19 egress under the California Building Code.
- 20 15. The design standard for a standard ADU currently includes a requirement that  
21 landscaping associated with an attached or detached ADU be irrigated and  
22 maintained for one year. Staff recommends this be removed as typically ADUs  
23 are incorporated into the existing landscaping on the property making it difficult to  
24 distinguish between landscaping for an ADU and landscaping for the primary  
25 residence.

26  
27 The following revisions were made in response to HCD’s review of the draft Ordinance.  
28

- 29 16. The new State laws allow attached and detached ADUs to be constructed within  
30 four feet of a side or rear property. The recommended Ordinance had included  
31 amendments to “exterior side yard” definition and a new definition of “secondary  
32 front yard” in the definitions section of the MMC to clarify that the exterior side  
33 yard should not be considered a side yard regarding the four-foot setback.  
34 However, HCD confirmed that the four-foot setbacks must be allowed within the  
35 “exterior side yard.” Therefore, the proposed modification to the definition of  
36 “exterior side yard” and new “secondary front yard” definition are no longer  
37 included in the draft Ordinance. “Secondary front yard” has also been stricken  
38 from draft sections 8.124.110.C.2 and 8.124.110.D.1.
- 39 17. HCD requested that the language in the purpose statement in draft section  
40 8.124.010 clarify that ADUs are permitted in all zoning districts that allow  
41 residential development, that ministerial approval is encouraged and that the  
42 ministerial requirements are intended to increase opportunities for ADUs within  
43 the Town.
- 44 18. The JADU definition was clarified to state that the owner of the property must  
45 reside in either the JADU, the primary unit, or in a circumstance where there is  
46 also an ADU on the property, the ADU.

- 1 19. Draft section 8.124.110.A.1(b) was modified to remove setback and building  
2 separation language related to fire safety and clarified that setbacks cannot be  
3 required for a preexisting accessory building.
- 4 20. Draft section 8.124.010.B.5 was modified to clarify that a JADU only needs to  
5 have access directly into the primary unit if it shares sanitary facilities with the  
6 primary unit.
- 7 21. Draft section 8.124.130.D was revised to state that an attached or detached ADU  
8 shall have side and rear setbacks of at least four feet.
- 9 22. Draft section 8.124.130.F was modified to remove language that would limit an  
10 ADU to the height of the existing primary unit. HCD was concerned that this  
11 could be inconsistent with State law if primary unit was less than 16 feet in  
12 height.
- 13 23. Draft section 8.124.130.I was modified to remove an example, which describes a  
14 scenario that would not be consistent with State law. At minimum, an ADU with  
15 an interior living area of 800 square feet must be allowed.
- 16 24. Town staff and HCD agreed that the section requiring plans to show the location  
17 of trash and recycling containers should be removed as there would likely not be  
18 any monitoring of this.
- 19 25. As noted previously in item 21, HCD clarified that four-foot side and rear yard  
20 setbacks must be allowed for attached and detached ADUs. Therefore, staff  
21 recommends that the administrative adjustment in draft Table 8.124-1 be  
22 removed as the four-foot setbacks would exceed what would be allowed by the  
23 adjustment.

24  
25 Finally, staff is recommending several additional revisions to the Ordinance consistent  
26 with the requested HCD revisions. These include revisions to make the Ordinance  
27 internally consistent and some changes that would make the Ordinance more consistent  
28 with state law supporting construction of ADUs.

- 29  
30 26. The PC recommended Ordinance included the definition of “primary unit” or  
31 “primary residence.” The term used in the existing Ordinance is “existing primary  
32 unit,” however term “existing” was removed for consistency with State law. There  
33 were several references in the draft Ordinance to “existing primary unit,” which  
34 are now recommended for removal.
  - 35 27. In response to the revision to draft MMC Section 8.124.130.D that allows all  
36 attached and detached ADUs to have four-foot side and rear setbacks, staff is  
37 recommending that draft MMC section 8.124.130.E language be modified to  
38 require a detached ADU to be located at least as close to the primary unit than  
39 that of any residence on an adjacent property. The language in the existing and  
40 Planning Commission recommended code requires that a detached ADU be  
41 located at least as close to the primary unit as any adjacent property line. Staff  
42 believes that the modified language will still achieve the intent of this section,  
43 which is to direct potential impacts of an ADU towards the property where the  
44 ADU is located rather than an adjacent property, while allowing for more flexibility  
45 in locating the ADU further away from the primary unit and adjacent residences.
  - 46 28. Draft section 8.124.180.C relating to ADU sizes within the Conditional Use Permit  
47 to and match draft section 8.124.130.E.
- 48



## **General Plan and Housing Element Conformance**

The proposed ADU Ordinance amendments support and advance the goals and policies of the Town's 2002 General Plan and the 2015 Housing Element, as follows. The policy is listed first in bold with the conformance in regular text as follows:

### **2002 General Plan Community Design Element**

***Policy CD1.1 Location of New Development. To the extent possible, concentrate new development in areas that are least sensitive in terms of environmental and visual resources, including:***

***a) Areas of flat or gently sloping topography outside of flood plain or natural drainage areas.***

***b) The Moraga Center area and Rheem Park area.***

***c) Infill parcels in areas of existing development.***

The amended ADU Ordinance will establish local regulations that provide for the development of ADUs as additional housing opportunities on properties that allow residential and mixed-use development, while maintaining standards that minimize their visual impacts to the extent allowable under State law. ADUs in most cases will be infill development on properties developed as an accessory to an existing residential or mixed-use building although they may also occur concurrently with approvals for new residential or mixed-use buildings. State law limits the Town's ability to regulate ADUs and ensure that they all are built in flat areas or gently sloping topography outside of a flood plain or natural drainage area.

***Policy CD4.1 Property Development Standards. Maintain and enforce existing property development standards for the Town's single-family residential neighborhoods.***

The proposed zoning code amendments clarify and update existing development standards related to ADUs and bring them into conformance with the new State laws. For standard attached and detached ADUs, the design and development standards specified in the Ordinance will be applied to preserve the scale, character, and quality of the Town's residential neighborhoods. Streamlined ADUs that are not built within existing structures include limits on size and height which will help to minimize their potential neighborhood impacts.

### **2015 – 2023 Housing Element**

***Policy H2.1. Housing Variety. The Town shall ensure that new residential developments provide the Town with a wide range of housing types to meet the various needs and income levels of people who live and work in Moraga, including single family and multifamily homes, senior housing, workforce housing, dormitory units, and secondary units.***

The proposed amendments establish standards under the Moraga Municipal Code that provide for the development of ADUs consistent with State law. Development of ADUs

1 provide for smaller homes for a range of income levels within existing neighborhoods  
2 and contributes to the variety of housing opportunities available in Moraga.

3  
4 ***Policy H2.4. Promote Secondary Units. The Town shall allow for and encourage***  
5 ***the development of attached or detached secondary living units in existing and***  
6 ***new single family and multifamily developments, including Moraga Open Space***  
7 ***Ordinance (MOSO) areas, to provide additional housing opportunities for***  
8 ***residents, provided they comply with the Town's Municipal Code and Design***  
9 ***Guidelines.***

10  
11 The proposed amendments modify and clarify the standards and permitting  
12 requirements within the Town's Municipal Code to ensure compliance with State law,  
13 and therefore provides additional housing opportunities. Housing Element policies  
14 H2.1, H2.4, H2.5 promote creation of accessory dwelling units and implementation  
15 program IP-H6 calls for the Town to "implement changes to simplify the accessory  
16 dwelling unit approval process to encourage new units." As required by State law,  
17 ADUs meeting the criteria for streamlined approval will not be subject to the design  
18 standards beyond those set forth in State law. All other ADUs will be subject to review  
19 for conformance with the design standards of MMC §8.124.070. The Ordinance allows  
20 for the ministerial approval of ADU's and JADU's on Study, MOSO and Non-MOSO  
21 open space zoned properties.

22  
23 ***Implementation Program IP-H6 Secondary Unit Ordinance. The Town shall review***  
24 ***and update the requirements for secondary units and implement changes to***  
25 ***simplify the secondary unit approval process to encourage new units, potentially***  
26 ***including but not limited to separation requirements, height/location limitations,***  
27 ***and permit procedures, to facilitate the development of second units. The Town***  
28 ***shall also consider fee waivers for deed restricted affordable second units.***

29  
30 The proposed amendments ensure that the Ordinance reflects current State law  
31 requirements. Among the amendments, the approval process now includes a  
32 streamlined ministerial review process to further expedite the creation of ADUs in  
33 addition to the standard ADU process, and therefore simplifies the ADU approval  
34 process to encourage new units. Furthermore, the Ordinance provides a discretionary  
35 review option for considering certain ADUs that may not meet all ministerial standards –  
36 allowing more opportunities for ADU development.

### 37 38 **California Environmental Quality Act**

39  
40 The proposed Ordinance is exempt from the provisions of the California Environmental  
41 Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) pursuant to Public  
42 Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), which  
43 exempt the adoption of Accessory Dwelling Unit Ordinances, and therefore no  
44 additional review is required.

### 45 46 **Public Notice**

1 Notice of this Ordinance was published in the East Bay Times on 1/29/2021, in  
2 compliance with California Government Code Section 65090 and Moraga Municipal  
3 Code §8.12.070.

#### 4 5 **Fiscal Impact** 6

7 None. The proposed amendments would continue to allow for the permitting of  
8 accessory dwelling units, and for the costs of processing such applications to be  
9 recovered through an application fee or deposit. Pursuant to the Town's Master Fee  
10 Schedule, the developer of an ADU is required to pay a Development Impact Fee for  
11 ADUs that have more than 750 square feet of interior floor area, at a rate in proportion  
12 to the square footage of the primary unit, at the single-family residential rate. (E.g., the  
13 floor area of the ADU divided by the floor area of the primary unit, multiplied by the fee  
14 amount charges for a new dwelling.)  
15

#### 16 **Alternatives** 17

- 18 1. Waive the First Reading and Introduce an Ordinance Deleting, Retitling and  
19 Replacing Chapter 8.124 of the Moraga Municipal Code, Accessory Dwelling  
20 Units of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code.  
21
- 22 2. Provide alternate direction to staff.  
23

#### 24 **Recommendation** 25

26 Consider waiving the first reading and introduce by title only an Ordinance amending  
27 Moraga Municipal Code Section 8.04.020, Definitions and repealing and replacing  
28 Chapter 8.124 of the Moraga Municipal Code, Accessory Dwelling Units of Title 8,  
29 Planning and Zoning, of the Town of Moraga Municipal Code.  
30  
31

32 **Report reviewed by: Cynthia Battenberg, Town Manager**  
33 **Karen Murphy, Assistant Town Attorney**  
34

#### 35 **Attachments:**

- 36 **A.** Draft Ordinance
- 37 **B.** Planning Commission Resolution 19-2020
- 38 **C.** MMC Existing and Proposed Redline
- 39 **D.** State ADU Handbook (Updated December 2020 - Includes the new  
40 government code sections regulating ADUs and JADUs)
- 41 **E.** Written Correspondence Received  
42  
43

# **ATTACHMENT A**

Draft Ordinance \_\_\_\_ - 2021

## BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the matter of:

Amending Moraga Municipal Code )  
Section 8.04.020, Definitions and )  
Repealing and Replacing Chapter )  
8.124, Accessory Dwelling Units, of )  
Title 8, Planning and Zoning, of the )  
Town of Moraga Municipal Code )

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ORDINANCE NO. \_\_\_\_

**WHEREAS**, the State of California's Department of Housing and Community Development has determined that California's housing production is not keeping pace with demand. In the last decade, less than half of the homes needed to keep up with the population growth were built; and

**WHEREAS**, the availability of housing is a substantial concern for individuals of all demographics, ages, and economic backgrounds in communities throughout the State of California; and

**WHEREAS**, allowing accessory dwelling units (ADUs) provides additional rental housing stock; and

**WHEREAS**, ADUs offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods; and

**WHEREAS**, the Town of Moraga 2002 General Plan and 2015-2023 Housing Element include policies and programs that support the creation of affordable housing in a diverse range of housing types, and implementation actions, and implementing changes to simplify the approval process and encourage new units; and

**WHEREAS**, on February 14, 2018 the Town of Moraga adopted amendments to Title 8, Section 8.124 Accessory Dwelling Units, to address changes in State law regulating ADUs and JADUs; and

**WHEREAS**, on October 9, 2019, Governor Newsom signed Assembly Bill 881 (AB 881), Assembly Bill 68 (AB 68) and Senate Bill 13 (SB 13) which built upon the laws passed in 2016 to further address barriers to the development of ADUs and JADUs that have discouraged homeowners from adding affordable accessory units. The amended state law establishes new standards and regulations for ADUs and junior accessory dwelling units (JADUs), simplifies the approval process and reduces costs associated with their creation; and

**WHEREAS**, this ordinance includes provisions relating to unit size, development standards, parking, fees, and other requirements for the creation of ADUs, which do not

unreasonably restrict the ability of homeowners to create accessory dwelling units in compliance with amended state law, consistent with recent state law amendments; and

**WHEREAS**, the Town of Moraga 2015 – 2023 Housing Element includes the goal to “provide a variety of housing types and affordability levels to help meet the Town’s projected housing needs.” Housing Element policies H2.1, H2.4, H2.5 promote creation of accessory dwelling units and implementation program IP-H6 calls for the Town to “implement changes to simplify the accessory dwelling unit approval process to encourage new units”.

**WHEREAS**, on November 27, 2020 notice of the Planning Commission public hearing was published in the East Bay Times in compliance with California Government Code Section 65090 and Moraga Municipal Code §8.12.070; and

**WHEREAS**, on December 7, 2020 the Planning Commission held a duly noticed public hearing to consider the proposed Zoning Code amendments related to ADUs, received the staff report and staff presentation, received comments from the public and interested parties, and discussed the matter; and

**WHEREAS**, following the public hearing on December 7, 2020, the Planning Commission adopted Resolution No. 19-2020, recommending that the Town Council adopt proposed amendments to Section 8.04.020, Definitions and repealing and replacing Chapter 8.124: Accessory Dwelling Units of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code with any subsequent changes made by staff in consultation with the Department of Housing and Community Development (HCD) prior to the Town Council meeting; and

**WHEREAS**, the Town Council considered introduction of this Ordinance on February 10, 2021, after a duly noticed public hearing.

**THE TOWN COUNCIL OF THE TOWN OF MORAGA DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** CEQA determination: This ordinance is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), which exempt the adoption of accessory dwelling unit ordinances.

**SECTION 2.** Pursuant to Moraga Municipal Code Section 8.12.100, the Town Council hereby finds as follows:

- A. **The change proposed is consistent with the objectives, policies, general land uses and programs specified in the general plan and applicable specific plan.** The Town of Moraga 2015 – 2023 Housing Element includes the goal to “provide a variety of housing types and affordability levels to help meet the Town’s projected housing needs.” Housing Element policies H2.1, H2.4, H2.5 promote creation of accessory dwelling units and implementation program IP-H6

calls for the Town to “implement changes to simplify the accessory dwelling unit approval process to encourage new units”.

- B. **The change proposed is compatible with the uses authorized in, and the regulations prescribed for, the land use district which it is approved.** The proposed ordinance would ease the permitting process for the development of accessory dwelling units, which are accessory residential uses, in all zoning districts that allow for residential development consistent with state law. The ordinance provides review standards for streamlined ADUs and JADUs consistent with Government Code §65852.2 (e) and includes Development and Design standards for standard ADUs to ensure that such units will be compatible with the land use district and neighborhoods where they are constructed, including reasonable regulations for height, setbacks, building design, parking and landscaping consistent with the requirements of State law, and that are intended to preserve the quality and character of residential land use districts.
- C. **A community need is demonstrated for the proposed use.** Housing and land costs within Moraga are high and the smaller size of accessory dwelling units would serve to provide lower cost housing for extended family members, students, young adults, seniors, caregivers and other small households and additional income for property owners.
- D. **The adoption of the ordinance will be in conformity with public convenience, general welfare and good zoning practice.** The proposed amendments are necessary to ensure that the Town’s local ordinance is consistent with State law and promote and simplify the process for development of ADUs. The State law requires a process for approval of ADUs that the Town has classified as streamlined which are Include JADUs and ADUs that are fully contained within and existing residence or building or detached ADUs that are limited in height and/or size. All other ADUs are subject to development and design standards set by the Town and consistent with State law to ensure that the units are compatible with the surrounding neighborhood and do not result in impacts to the privacy, use and enjoyment of existing residences within the zoning districts in which accessory dwelling units are permitted.

**SECTION 3.** The Town Council hereby amends the Moraga Municipal Code, as shown in Exhibit A, attached hereto and incorporated herein by reference.

**SECTION 4.** Effective Date. This Ordinance becomes effective thirty (30) days after its final passage and adoption.

**SECTION 5.** Severability. If any provision of the Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions or applications of the Ordinance. To this end, the provisions of this

Ordinance are severable. This Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Moraga, California, held on February 10, 2021, and was adopted and ordered published at an adjourned regular meeting of the Town Council held on \_\_\_\_\_ by the following vote:

**AYES:**  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**

AFFIRMED:

\_\_\_\_\_  
Mike McCluer, Mayor

ATTEST:

\_\_\_\_\_  
Marty C. McInturf, Town Clerk



**Section 8.04.020 – Definitions.** The following definitions are hereby deleted from Section 8.04.020, Definitions, of Title 8, Planning and Zoning:

"Accessory dwelling unit," or "ADU," means a residential dwelling unit attached to or detached from an existing primary unit, or entirely enclosed within an existing building, which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel where the existing primary unit is situated. An accessory dwelling unit also includes the following:

- A. An efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code.
- B. A manufactured home, as defined in Section 18007 of the California Health and Safety Code.

"Adjacent to the parking spaces for the existing primary unit" means within fifteen (15) feet of the nearest edge of the parking structure (garage or carport) including any storage areas within the parking structure; or within fifteen (15) feet of a legal, uncovered parking space for the existing primary unit.

"Attached ADU" means an ADU that does not qualify as a fully contained ADU and that is located at least partially within a newly constructed expansion of, or addition to, an existing primary unit.

"Detached ADU" means an ADU that does not qualify as a fully contained ADU and that is located at least partially within new construction that is part of a physical structure which is detached from the existing primary unit. More specifically, a detached ADU is located within a newly and legally constructed separate accessory building, or a newly constructed expansion of, or addition to, a pre-existing legally constructed separate accessory building.

"Existing primary unit" means an existing single-family residence with a valid certificate of occupancy.

"Fully Contained ADU" means an ADU which is established entirely within the pre-existing building envelope of either (i) an existing primary unit or (ii) any other pre-existing, legally constructed building located upon any lot containing an existing primary unit.

"Interior living area" means the gross interior horizontal area of a dwelling unit including but not limited to all rooms, hallways, closets, bathrooms and storage areas and specifically including the depth of all walls that divide any interior spaces but excluding the depth of all exterior walls and excluding an enclosed garage.

"Junior accessory dwelling unit," or "JADU," means a residential dwelling unit that provides independent and permanent living facilities for one or more persons (including provisions for living, sleeping, and eating), is no more than 500 square feet in size, and is contained entirely within the pre-existing building envelope of an existing primary unit.

A junior accessory dwelling unit shall include either separate sanitation facilities, or sanitation facilities shared with the existing primary unit.

"Outdoor living areas" means an area on the exterior of an ADU that is designed for human use or habitation including but not limited to a patio, deck or yard that can accommodate appurtenances including but not limited to a barbecue pit, an outdoor dining table, a hammock, a lounge chair, a bench or a spa.

"Passageway" means a pathway that is unobstructed clear to the sky and extends from the street to one entrance of an ADU.

**Chapter 8.124 – Accessory Dwelling Units:** Moraga Municipal Code Section 8.124 – Accessory Dwelling Units, of the Moraga Municipal Code Title 8, Planning and Zoning is repealed and replaced with the following:

## **Chapter 8.124 – ACCESSORY DWELLING UNITS**

### **Sections:**

#### **Article 1. - General Provisions**

##### **8.124.010. - Purpose.**

This chapter provides for the creation of accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in the town as required by state law, and in accordance with the Town's General Plan and Housing Element as a means to provide a variety of housing types to meet the town's projected housing needs. This chapter provides for the ministerial approval of accessory dwelling units and junior accessory dwelling units in areas zoned to allow residential uses. The Town encourages ministerial review of ADUs and JADUs when possible. This ordinance also provides procedures and standards for review of accessory dwelling units that do not meet the ministerial requirements are set forth herein that are intended to increase opportunities for ADUs to be developed within the Town

##### **8.124.020. - Definitions.**

"Accessory dwelling unit," or "ADU," means a residential dwelling unit attached or detached from a primary unit, or entirely enclosed within an existing building, which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel where an existing or proposed primary unit is situated. An accessory dwelling unit also includes the following:

- A. An efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code.
- B. A manufactured home, as defined in Section 18007 of the California Health and Safety Code.

"Adjacent to the parking spaces for the primary unit" means within fifteen (15) feet of the nearest edge of the parking structure (garage or carport) including any storage areas within the parking structure; or within fifteen (15) feet of a legal, uncovered parking space for the primary unit.

"Attached ADU" means an ADU that does not qualify as a fully contained ADU and that is located at least partially within a newly constructed expansion of, or addition to, an existing primary unit.

"Detached ADU" means an ADU that does not qualify as a fully contained ADU and that is located at least partially within new construction that is part of a physical structure which is detached from the primary unit. More specifically, a detached ADU is located within a newly and legally constructed separate accessory building, or a newly constructed expansion of, or addition to, a pre-existing legally constructed separate accessory building.

"Primary unit" or "primary residence" means a single-family or multifamily residential dwelling unit that either exists on or is proposed for a lot zoned for any residential or mixed-use zone, either through a permitted use or a conditional use, and is constructed prior to or concurrently to the ADU or JADU.

"Fully Contained ADU" means an ADU which is established entirely within the pre-existing building envelope of either (i) a primary unit, a multifamily building, or (ii) any other pre-existing, legally constructed building located upon any lot containing a primary unit.

"Interior living area" means the gross interior horizontal area of a dwelling unit including but not limited to all rooms, hallways, closets, bathrooms and storage areas and specifically including the depth of all walls that divide any interior spaces but excluding the depth of all exterior walls and excluding an enclosed garage.

"Junior Accessory Dwelling Unit," or "JADU," means a residential dwelling unit that provides independent and permanent living facilities for one or more persons (including provisions for living, sleeping, and eating), is no more than 500 square feet in size, and is contained entirely within the building envelope of an existing or proposed primary unit. A junior accessory dwelling unit shall include either separate sanitation facilities, or sanitation facilities shared with the primary unit. The property owner shall reside onsite in either the primary residence, an ADU, or the JADU

"Multifamily building" for purposes of this Chapter 8.124 means a structure with two or more attached dwelling units on one lot.

"Outdoor living areas" means an area on the exterior of an ADU that is designed for human use or habitation including but not limited to a patio, deck, balcony or yard that can accommodate appurtenances including but not limited to a barbecue pit, an outdoor dining table, a hammock, a lounge chair, a bench or a spa.

"Passageway" means a pathway that is unobstructed clear to the sky and extends from the street to one entrance of an ADU.

"Streamlined ADU" or "JADU" means an ADU or "JADU" applied for under Article 2 below.

8.124.030. - Subdivision.

The primary unit and an ADU or JADU, as applicable, may not be sold separately from each other and no subdivision of land or air rights is authorized by this chapter.

8.124.040. - Permit required.

No person shall develop, construct, cause to be rented, or occupy an ADU or JADU on any lot within the town unless a permit is obtained pursuant to the procedures and standards set forth in this chapter.

8.124.050. Density and use.

To the extent required by state law, an ADU or JADU built in conformance with this chapter does not count towards the allowed density for the lot upon which the ADU or JADU is located and is a residential use that is consistent with the General Plan and Zoning Ordinance.

8.124.060. - ADUs Authorized as Part of New Construction.

Notwithstanding any other provision of this chapter, the Town may authorize the construction of fully contained, and attached and detached ADUs as an accessory use to a single-family dwelling in conjunction with the approval of, or an amendment to, any of the following:

- A. Design review approval of a new single-family dwelling.
- B. A residential subdivision pursuant to the Moraga Subdivision Ordinance and Subdivision Map Act;
- C. A Planned Development pursuant to Chapter 8.48; and
- D. A Conditional Use Permit, including but not limited to a Conditional Use Permit for a single-family dwelling or dwellings within the MOSO Open Space District, provided that an application for a Conditional Use Permit, or the amendment thereof, to permit the establishment of an ADU shall be processed as set forth in Section 8.124.180.

8.124.070 – Impact Fees.

All ADUs shall be subject to any applicable impact fees adopted by the Town, except as provided below.

- (a) No impact fee is required for an ADU that is less than 750 square feet in floor area.
- (b) Any impact fee that is required for an ADU that is 750 square feet or larger in floor area must be charged proportionately in relation to the square footage of the primary unit. (E.g., the floor area of ADU divided by the floor area of the primary unit, multiplied by the fee amount charged for a new dwelling.)

For purposes of this section, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of California Government Code Section 66000, except that it also includes fees specified in California Government Code Section 66477.

#### 8.124.080. – General requirements.

The following general requirements apply to all ADUs and JADUs.

- A. The ADU is not required to provide fire sprinklers if they are not required for the primary unit.
- B. No passageway shall be required in conjunction with construction of an ADU unless mandated by the Americans with Disabilities Act or other state or federal safety code standard.
- C. If the ADU or JADU will connect to an onsite water-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 ten years.
- D. Prior to issuance of a building permit for an ADU or JADU, a deed restriction shall be recorded against the title of the property as required in Article 5 of this title.
- E. When an ADU is approved with concurrently with a proposed primary unit, final occupancy of the ADU shall not be issued before final occupancy of the primary unit.

#### 8.124.090. Exemption for Hillside Development Permit.

ADUs qualifying for ministerial approval under Articles 2 and 3 of this Chapter that are proposed on any hillside lot or area are exempt from the hillside development permit requirements described in Chapter 8.136. Non-ministerial ADUs allowed under Article 4 of this Chapter, grading in addition to that necessary for excavation of the footprint of the ADU, or other attached or detached buildings or structures proposed as part of an ADU are not exempt from the hillside development permit process when applicable.

#### Article 2. - Ministerial review for Streamlined ADUs and JADUs.

#### 8.124.100. - Procedures.

- A. This article shall provide for and govern the ministerial review for Streamlined ADUs and JADUs as set forth in Section 8.124.110 below.
- B. Building permit applications for Streamlined ADUs and JADUs that meet the requirements in Section 8.124.110 shall be approved ministerially by the planning director without discretionary review, further design review, or public hearing, pursuant to the procedures of this Article.

C. Procedure for Review.

- (1) Within sixty (60) days after receiving an application, the Planning Director shall approve a building permit application for an ADU or JADU if the requirements of Section 8.124.110 have been satisfied.
- (2) The planning director shall deny an application for a Streamlined ADU if the requirements of Section 8.124.110 have not been satisfied.

D. Right to Appeal. The applicant may appeal the decision of the planning director in accordance with the provisions of Moraga Municipal Code Chapter 8.12, Article 4. The appeal shall be limited to a consideration of whether the objective criteria in Sections 8.124.110 have been met.

8.124.110.-Development Standards for Streamlined ADUs and JADUs

Pursuant to California Government Code Section 65852.2(e), the Town shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of following types of ADUs and JADUs ("Streamlined ADUs and JADUs") that comply with the general requirements of Section 8.124.080 and the applicable standards described in subsections A through D.

A. Fully contained ADU.

- 1) One fully contained ADU may be established entirely within the building envelope of the primary unit or another pre-existing, legally constructed accessory building located on any lot, if it complies with the following standards:
  - (a) The fully contained ADU shall have an exterior access independent from that of the primary unit. An addition of up to 150 square feet is permitted if the expansion is limited to accommodating ingress and egress. For any fully contained ADU located on a second floor, any stairway, whether enclosed or open, needed to access that second floor ADU must be established entirely within the pre-existing building envelope of the primary unit or pre-existing, legally constructed, building within which the ADU is contained, or may be enclosed within an addition that does not exceed 150 square feet.
  - (b) A pre-existing legally constructed accessory building may be fully or partially converted into a fully contained ADU and no setback shall be required for a pre-existing legally constructed accessory building that is converted (or partially converted) to a fully contained ADU.
- 2) Multiple ADUs within portions of existing multifamily dwelling buildings that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each fully contained converted ADU complies with state building standards for dwellings. At least one fully contained converted ADU is allowed within an existing multifamily building or mixed-use building with existing dwelling

units, and multiple fully contained converted ADUs shall be permitted up to 25 percent of the number of existing multifamily dwelling units.

B. A JADU complying with the following standards:

- 1) One JADU is allowed on a lot containing an existing single-family dwelling.
- 2) The owner of a parcel proposed for a JADU shall occupy as a principal residence either the primary unit or the JADU.
- 3) As set forth in Section 8.124.210, neither the JADU nor the primary unit shall be sold independently of each other.
- 4) As set forth in Section 8.124.210, neither the JADU nor the primary unit shall be rented for periods of less than thirty (30) consecutive days.
- 5) A JADU shall have an exterior entry separate from the primary unit to serve the JADU, and must have interior access if the JADU shares sanitary facilities with the primary unit.
- 6) The interior living area of a JADU shall not be larger than 500 square feet in size.
- 7) The JADU shall include an efficiency kitchen, requiring and limited to the following components:
  - (a) A cooking facility with appliance(s); and
  - (b) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.
- 8) No additional parking is required beyond that required for the primary unit.

C. One detached ADU, new construction with a proposed or existing single-family dwelling that complies with the following standards:

- 1) The lot on which the ADU is located does not contain another ADU, but may contain a JADU permitted pursuant to Section 8.124.110.B
- 2) Front yard setbacks consistent with the applicable zoning district to the extent such setbacks do not preclude development of an ADU.
- 3) The side and rear setbacks are at least four (4) feet.
- 4) The total interior floor area is not more than 800 square feet.
- 5) The height is 16 feet or less.

D. No more than two ADUs on a lot that has an existing multifamily building with the following standards:

- 1) Front yard setbacks consistent with the applicable zoning district to the extent such setbacks do not preclude development of an ADU.
- 2) The side and rear setbacks are at least four (4) feet.

- 3) The height 16 feet or less.
- 4) The ADUs are detached from the multifamily building.

#### Article 3 – Ministerial review for standard ADUs

##### 8.124.120. - Procedures.

- A. This article shall provide for and govern the ministerial review of certain applications for ADUs on lots with a primary unit in single-family residential districts, planned development districts that allow single-family residential development, study districts, or MOSO or non-MOSO open space districts.
- B. Ministerial Review. Applications for the following types of ADUs shall be approved ministerially by the planning director without discretionary review, further design review, or public hearing, pursuant to the procedures of this Article:
  - (1) No more than one attached or detached ADU per lot that meets the general standards in Section 8.124.080, development standards in Section 8.124.130 and the design standards in Section 8.124.0140.
- C. The applicant shall be required to obtain a building permit prior to the construction any ADU and shall also meet the requirements set forth in Article 5 of this chapter.
- D. Procedure for Review.
  - 1) Within sixty (60) days after receiving an application, the Planning Director shall approve an application through a ministerial review process and issue an ADU permit if the requirements of Sections 8.124.080, 8.124.130 and 8.124.140, as applicable, have been satisfied for an ADU.
  - 2) Unless an administrative adjustment is granted pursuant to Section 8.124.170 which excuses noncompliance which would otherwise require denial of the application, the planning director shall deny an application for an ADU if the requirements of Sections 8.124.080, 8.124.130 and 8.124.140, as applicable, have not been satisfied.
- F. Right to Appeal. The applicant may appeal the decision of the planning director in accordance with the provisions of Moraga Municipal Code Chapter 8.12, Article 4. The appeal shall be limited to a consideration of whether the objective criteria in Sections 8.124.080, 8.124.130 and 8.124.140 for a standard attached or detached ADU have been met.
- G. Notwithstanding the procedures in Sections 8.124.100(A)-(F) above, an applicant for an attached or detached ADU that does not meet both the development standards of Sections 8.124.130 and the design standards of Section 8.124.140, may seek discretionary approval of an ADU in accordance with the alternative procedures set forth in Article 4 of this Chapter.

##### 8.124.130 - Development standards for standard attached and detached ADUs



The following section applies to attached or detached ADUs that do not qualify as a Streamlined ADU. An attached or detached ADU may be established upon any lot containing an existing or proposed primary unit in in any single-family residentially zoned district, planned development districts that allow single-family residential development, study districts, or MOSO or non-MOSO open space districts, if it complies with the following standards, as well as the general standards set forth in Section 8.124.080 and design standards set forth in Section 8.124.140:

- A Except as set forth in Section 8.124.130(C), a portion of an existing primary unit or a pre-existing legally constructed accessory building (or portion thereof) may be incorporated into an attached or detached ADU only if the side and rear setbacks and building separations are sufficient for fire safety.
- B Except as set forth in Section 8.124.130(C), any expansion of or addition to either an existing primary unit or a pre-existing legally constructed accessory building to accommodate an attached ADU or detached ADU shall meet all development standards of the zoning district in which it is located.
- C Notwithstanding any other standard set forth in this Section 8.124.130:
  - 1) No setback shall be required for an existing legally constructed garage that is fully or partially incorporated into an attached or detached ADU.
  - 2) A second-floor setback of no more than five feet from the side and rear lot lines shall be required for an ADU that is constructed over a legally constructed garage.
- D. An attached or detached ADU shall have side and rear setbacks of at least four (4) feet. Front yard setback requirements of the zoning district in which the attached or detached ADU is to be located shall apply.
- E. The distance of the detached ADU from the primary unit shall be less than the distance of the detached ADU from any residence on an adjacent property, to the extent possible.
- F. The maximum aggregate building height for a detached ADU, or for an addition constructed to wholly or partially accommodate an attached ADU, shall not exceed nineteen (19) feet in height as measured between the highest point of the building including the roof and the lowest point of the building at natural grade, whichever is less. A skirt wall (if any) shall be included in the maximum height measurement.
- G. The area within the construction footprint of the attached or detached ADU, including the area required for the unit, associated grading, and outdoor living space, shall not have an average predevelopment slope greater than twenty (20) percent.
- H. The cumulative volume of cut and/or fill for construction of the attached or detached ADU, exclusive of areas for building foundations and footings, shall not exceed 200 cubic yards.
- I. The interior living area of an attached or detached ADU shall be at least one hundred fifty (150) square feet and not more than eight hundred fifty (850) square feet for an ADU with one bedroom or less and up to one thousand (1,000) square feet that is more than one bedroom. The square footage of an attached ADU shall

not exceed fifty (50) percent of the pre-existing interior living area of the primary unit, calculated before the addition of the attached ADU. If the existing gross floor area of the lot exceeds the maximum permitted in the Town of Moraga Design Guidelines, Appendix D, Maximum Floor Area Table prior to establishment of an ADU, or if the development of the ADU will result in the total gross floor area exceeding the maximum permitted in the Maximum Floor Area Table, the ADU may have an interior floor area of no more than 800 square feet.

- J. The attached or detached ADU shall have an external access separate from the primary unit, and an attached ADU may also have internal access to the primary unit.
- K. No attached or detached accessory dwelling unit shall be located within the drip line of any native, orchard or historic tree as defined by Moraga Municipal Code Section 12.12.020.
- L. In addition to parking required for the primary unit, one off-street parking space measuring at least nine feet by nineteen (19) feet and not more than seventeen (17) feet by nineteen (19) feet, which may be open or covered, shall be provided for an attached or detached ADU, subject to the following requirements:
  - 1) The parking space for the attached or detached ADU shall be located adjacent to the parking spaces for the primary unit, and shall not be accessed by means of a driveway separate from that which accesses required parking spaces for the primary residence, unless such access is specifically authorized by the Moraga Municipal Code. The size of the existing driveway curb cut shall not be increased, and no new driveway curb cut shall be created. The guest parking spaces required by Moraga Municipal Code Section 8.76.100(C) and (D) are not required for an accessory dwelling unit.
  - 2) The required parking space shall be surfaced with a permeable material that is approved by the planning director, except that a pre-existing non-permeable driveway, paved parking area or new or existing covered parking space may be used. The required parking space may be located within required setback areas if it is uncovered. When required parking for the attached or detached ADU, other than tandem parking within an existing driveway, is located within a setback area, the planning director may require the parking be screened from off-site views with vegetation not less than thirty-six (36) inches in height above the parking surface.
  - 3) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of a fully contained, attached or detached ADU or converted to an attached or detached ADU, no replacement parking shall be required for the converted ADU.
  - 4) Notwithstanding any other provisions of this Subsection 8.124.130(L), attached or detached ADUs are exempt from off-street parking space in any of the following circumstances:
    - (a) The attached or detached ADU is located within one-half mile walking distance of a public transit stop.

- (b) The attached or detached ADU is located within an architecturally and historically significant historic district.
- (c) When on-street parking permits are required but not offered to the occupant of the attached or detached ADU.
- (d) When there is a car share vehicle storage space, at which car shares may be picked up and dropped off, located within one block of the attached or detached ADU.
- (e) Nothing in this section 8.124.130(L) shall be construed as requiring parking to be provided for a streamlined ADU.

#### 8.124.140. – Design standards for standard attached and detached ADUs

This section sets forth design standards that must be met for the establishment of attached and detached ADUs in addition to the requirement to comply with the general standards set forth in section 8.124.080 and the development standards set forth in Sections 8.124.130. An attached or detached ADU must meet the following design standards:

- A. Exterior colors, materials, architectural and landscape designs of the attached or detached ADU and its appurtenances (e.g. mailboxes) shall be compatible with those of the primary unit.
- B. All exterior lighting shall be directed downward and/or inward toward the property.
- C. Any new retaining walls necessary for the construction of the attached or detached ADU shall be no higher than three feet. If a fence is located within two feet of a retaining wall the combined retaining wall and fence height shall not exceed six feet. There shall be no more than two new retaining walls located within thirty (30) feet of one another in conjunction with the construction of the attached or detached ADU.
- D. Any blank exterior wall proposed as part of the construction of the attached or detached ADU that is without windows and is more than fifteen (15) feet long or one hundred eighty (180) square feet in area, whichever is less, shall have landscaping installed and maintained along the wall which reaches a minimum height of four feet within three years.
- E. Windows on any exterior wall proposed as part of the construction of the attached or detached ADU located within thirty (30) feet of a neighboring residence, where the windows would have sight lines to the neighboring residence, shall have a minimum sill height not less than five feet, six inches above the interior finished floor height. This requirement may be waived by the Planning Director for a window required for egress under the California Building Code.
- F. The aggregate area of new deck(s), balcony(ies) or porch(es) for the attached or detached ADU shall not exceed one hundred and twenty (120) square feet, and no such feature shall have a depth greater than eight feet. No deck, porch

or balcony shall have a height more than twenty-four (24) inches above existing grade, measured to the top of the finished floor or deck surface.

- G. Stairways constructed to access an attached or detached ADU with an upper landing floor height of more than six feet from natural grade shall be enclosed, except where all parts of the stairway are located more than thirty (30) feet from a property line or would not be visible from an adjacent property or public street.
- H. The skirt height associated with the construction of the attached or detached ADU shall not exceed four feet.
- I. There shall be a minimum of six feet near-level clearance area from any top or bottom of a slope associated with the construction of the attached or detached ADU. The post-development slope of the near-level clearance area shall not exceed five percent. This requirement is also applicable to split-level lots, with the exception of the primary pad split.

#### Article 4. - Procedures and Standards for Review of Accessory Dwelling Units not Qualifying for Ministerial Review

##### 8.124.150. - Purpose.

The purpose of this article is to provide procedures and standards for the review and approval of ADUs that do not meet one or more of the development and/or design standards set forth in Sections 8.124.130 and 8.124.140, respectively. The intent of these procedures is to reasonably allow such units to be established, subject to administrative adjustment or discretionary review, even when they would not qualify for ministerial review and approval pursuant to the requirements of state law, thereby increasing the opportunities for ADUs to be developed in the town.

##### 8.124.160. - Applicability.

This article is only applicable to provide alternative processes to the statutory requirements for ministerial review, and to thereby provide for minor administrative adjustments and a system of discretionary review in a manner designed to increase opportunities for ADUs to be developed in the town beyond that which is required by state law. In no event shall this article be interpreted to expand or otherwise amend the requirements for ministerial review set forth in Article 3.

##### 8.124.170. - Administrative Adjustment.

- A. Allowable Adjustments. The planning director may approve a minor adjustment to the development or design standards applicable to an application for an attached or detached standard ADU governed by Article 3, to the extent identified in Table 8.124-1. Only a maximum of two of the allowable adjustments may be granted for such an ADU per parcel. A request for more than two adjustments or that exceeds the adjustment limitations identified in Table 8.124-1 may not be reviewed under Article 3, governing ministerial review, and this Section 8.124.170 and shall require an application for a conditional use permit in accordance with Section 8.124.180.

**Table 8.124-1: Allowable Adjustments**

Type of Adjustment Allowed	Maximum Adjustment
1. Height. An increase in the maximum aggregate building height.	10 percent, or two feet, whichever is greater, provided that such height does not exceed that of the primary unit
2. Parking Space Dimensions. A decrease in the minimum dimensions of a required parking space.	Reduction to not less than 8 feet by 18 feet
3. New deck(s), balcony(ies) or porches: Increase in aggregate area.	25 percent increase
4. The nature of the material used for the parking spaces required under Section 8.124.060(B)(13)(b)	A non-permeable surface may be allowed if the applicant presents site-specific civil and geotechnical evidence, satisfactory to the Planning Director and Town Engineer, that the use of a permeable material for the required parking space on the lot would be inappropriate.

- B. Application. An application for an administrative adjustment shall be made to the Planning Department pursuant to the procedures set forth in Chapter 8.12.
- C. Findings and Decision. The Planning Director shall, after notice and hearing in accordance with the procedures set forth in Government Code Section 65905, approve, approve with conditions or deny an adjustment application. The Director may approve an adjustment application, with or without conditions, only after the following findings are made:
- 1) The adjustment would allow for an ADU of superior design, livability or quality than could be constructed without the adjustment.
  - 2) The ADU will not adversely affect the privacy, light, air or views of neighboring properties.
  - 3) The adjustment will not be detrimental to the public health, safety and welfare.

- 4) The ADU complies with the other applicable standards set forth in Sections 8.124.130 and 8.124.140.

D. Appeal. The decision of the Planning Director may be appealed, in accordance with the procedures set forth in Chapter 8.12.

#### 8.124.180. - Conditional Use Permit Procedures.

A proposed attached or detached ADU that an applicant seeks to establish that does not comply with the development standards set forth in Section 8.124.130 may be allowed subject to a Conditional Use Permit. The applicant shall be required to obtain a building permit prior to the construction of any attached or detached ADU for which a Conditional Use Permit is required, and shall also meet the requirements set forth in Article 5 of this chapter. Design review for such attached or detached ADUs may also be required pursuant to Section 8.124.190. An application for a Conditional Use Permit (CUP) for an ADU subject to this Article 4 shall be processed in accordance with Chapter 8.12 of the Moraga Municipal Code, except as expressly set forth in this Section 8.124.180 and Section 8.124.190. In addition to the required findings set forth in Section 8.12.120, the following supplemental findings shall also be made prior to the issuance of a CUP for an attached or detached ADU:

- A. There shall be no more than one ADU or JADU per lot.
- B. The area within the development footprint of the proposed ADU, including the area required for the unit, associated grading, and outdoor living space, will not have an average predevelopment slope greater than twenty percent (20%).
- C. The interior living area of an attached or detached ADU shall be at least one hundred fifty (150) square feet and not more than eight hundred fifty (850) square feet for an ADU with one bedroom or less and up to one thousand (1,000) square feet that is more than one bedroom.
- D. The square footage of an attached ADU shall not exceed fifty percent (50%) of the pre-existing interior living area of the existing primary unit, calculated before the addition of the attached ADU, subject to the authority of the reviewing body to apply a more restrictive standard where it is deemed appropriate to do so.
- E. The ADU will comply with all of the required setbacks of the applicable zoning district.
- F. The owner of the property upon which the ADU is located will occupy either the primary unit or the ADU, unless the applicant establishes by substantial evidence to the satisfaction of the Planning Director that strict application of the requirement on a temporary basis would constitute a hardship warranting an exemption to this requirement.
- G. At least one dedicated off-street parking space for the ADU, which may be covered, uncovered, or provided as tandem parking, will be provided, except that no off-street parking space is required when one of the circumstances described in Section 8.124.130(L)(4) would apply,
- H. The ADU complies to the extent practicable with the standards set forth in Sections 8.124.130 and 8.124.140.

- I. Provisions have been made for a deed restriction as provided in Article 5 of this Chapter to be recorded against the property.

#### 8.124.190. - Design Review Procedures.

An attached or detached ADU that does not comply with the design standards set forth in Section 8.124.140 shall be reviewed pursuant to the procedures, and approved or denied pursuant to the standards, set forth in Moraga Municipal Code Chapter 8.72, the Planning Commission shall be the review body for design review approval following the procedure for review specified in Section 8.72.030(D) or Section 8.72.090, as applicable.

#### Article 5: - Deed Restriction

#### 8.124.200. - Applicability.

The requirements of this Article 4 shall apply to the following:

- A. Streamlined ADUs and JADUs approved under Article 2;
- B. A detached or attached ADU approved under Article 3;
- C. An ADU approved under Article 4.

#### 8.124.210. - Requirements.

Prior to the issuance of a building permit for any ADU or JADU, the property owner shall record in the office of the Contra Costa County Recorder a deed restriction setting forth the following requirements, in a form satisfactory to the Planning Director and the Town Attorney:

- A. The primary unit and the ADU or JADU, as applicable, established on the same lot may not be sold independently of each other, and the lot may not be subdivided so as to create separate legal lots for the primary unit and the ADU or JADU.
- B. An owner of a lot upon which the ADU or JADU is located, that is accessory to a single-family residence, may be subject to the owner occupancy requirements as set forth below. a principal residence either the primary unit or the ADU or JADU, unless the applicant establishes by substantial evidence to the satisfaction of the Planning Director that strict application of the requirement on a temporary basis would constitute a hardship warranting an exemption to this requirement.
  - 1) All ADUs approved before January 1, 2020 are subject to the owner-occupancy requirements or restrictions that were in place when the ADU was approved.
  - 2) An ADU that is approved after that date but before January 1, 2025, is not subject to any owner-occupancy requirement.
  - 3) All ADUs that are approved on or after January 1, 2025 are subject to an owner-occupancy requirement under Section 8.124.210(B). A

natural person with legal or equitable title to the property must reside on the property as the person's legal domicile and permanent residence.

4) All JADUs are subject to an owner-occupancy requirement under Section 8.124.210(B). A natural person with legal or equitable title to the property must reside on the property, in either the primary residence or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement of this paragraph does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.

- C. No ADU or JADU, as applicable, or primary unit on a lot that contains an ADU or JADU shall be rented to the same party for fewer than 30 consecutive days at a time.
- D. The restrictions described in this Section 8.124.210 shall be binding upon any successor in ownership of the property and lack of compliance may result in legal action against the property owner.
- E. The Town shall have the right at any time to request and have the owner provide such information deemed necessary by the Town to confirm compliance with these restrictions.



# **ATTACHMENT B**

Planning Commission Resolution 19-2020

**BEFORE THE PLANNING COMMISSION OF THE TOWN OF MORAGA,  
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

In the Matter of:

Resolution No. 19-2020

**Recommending the Town Council )  
Adopt an Ordinance Amending )  
Moraga Municipal Code Section )  
8.04.020, Definitions and Repealing )  
and Replacing Chapter 8.124, )  
Accessory Dwelling Units, of Title 8, )  
Planning and Zoning, of the Town of )  
Moraga Municipal Code.**

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**WHEREAS**, the State of California's Department of Housing and Community Development has determined that California's housing production is not keeping pace with demand. In the last decade, less than half of the homes needed to keep up with the population growth were built.

**WHEREAS**, the availability of housing is a substantial concern for individuals of all demographics, ages, and economic backgrounds in communities throughout the State of California; and

**WHEREAS**, allowing accessory dwelling units (ADUs) provides additional rental housing stock; and

**WHEREAS**, ADUs offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods; and

**WHEREAS**, the Town of Moraga 2002 General Plan and 2015-2023 Housing Element include policies and programs that support the creation of affordable housing in a diverse range of housing types, and implementation actions, and implementing changes to simplify the approval process and encourage new units; and

**WHEREAS**, on October 9, 2019, Governor Newsom signed Assembly Bill 881 (AB 881), Assembly Bill 68 (AB 68) and Senate Bill 13 (SB 13) which built upon the laws passed in 2016 to further address barriers to the development of ADUs and JADUs that have discouraged homeowners from adding affordable accessory units. The amended state law establishes new standards and regulations for ADUs and junior accessory dwelling units (JADUs), simplifies the approval process and reduces costs associated with their creation; and

**WHEREAS**, Government Code Section 65852.2 provides that a local agency may, by ordinance, provide for the creation of ADUs and shall designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted

and the designation of areas may be based on criteria that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety; and

**WHEREAS**, on February 14, 2018 the Town of Moraga adopted amendments to Title 8, Section 8.124 Accessory Dwelling Units, to address changes in State law regulating ADUs and JADUs; and

**WHEREAS**, new amendments are proposed to Title 8, Section 8.124, consistent with new State Law amendments effective on January 1, 2020 and the proposed ordinance includes provisions relating to unit size, development standards, parking, fees, and other requirements for the creation of ADUs, which do not unreasonably restrict the ability of homeowners to create accessory dwelling units in compliance with amended state law; and

**WHEREAS**, on November 27, 2020 notice of the Planning Commission public hearing was published in the East Bay Times in compliance with California Government Code Section 65090 and Moraga Municipal Code §8.12.070; and

**WHEREAS**, on December 7, 2020 the Planning Commission held a duly noticed public hearing to consider the proposed Zoning Code amendments related to ADUs, received the staff report and staff presentation, received comments from the public and interested parties, and discussed the matter; and

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Commission of the Town of Moraga:

**SECTION 1.** Pursuant to Moraga Municipal Code Section 8.12.100, the Planning Commission hereby makes the following findings:

**A. The change proposed is consistent with the objectives, policies, general land uses and programs specified in the general plan and applicable specific plan.** The Town of Moraga 2015 – 2023 Housing Element includes the goal to “provide a variety of housing types and affordability levels to help meet the Town’s projected housing needs.” Housing Element policies H2.1, H2.4, H2.5 promote creation of accessory dwelling units and implementation program IP-H6 calls for the Town to “implement changes to simplify the accessory dwelling unit approval process to encourage new units”.

**B. The change proposed is compatible with the uses authorized in, and the regulations prescribed for, the land use district which it is approved.** The proposed ordinance would ease the permitting process for the development of accessory dwelling units, which are accessory residential uses, in all zoning districts that allow for residential development. The ordinance provides review standards for streamlined ADUs and JADUs consistent with Government Code §65852.2 (e) and includes Development and Design standards for standard ADUs to ensure that such units will be compatible with the land use district and neighborhoods where they are constructed, including reasonable regulations for height, setbacks, building design,

parking and landscaping consistent with the requirements of State law, and that are intended to preserve the quality and character of residential land use districts.

**C. A community need is demonstrated for the proposed use.** Housing and land costs within Moraga are high and the smaller size of accessory dwelling units would serve to provide lower cost housing for extended family members, students, young adults, seniors, caregivers and other small households and additional income for property owners.

**D. The adoption of the ordinance will be in conformity with public convenience, general welfare and good zoning practice.** The proposed amendments are necessary to ensure that the Town's local ordinance is consistent with State law and promote and simplify the process for development of ADUs. The State law requires a process for approval of ADUs that the Town has classified as streamlined which are Include JADUs and ADUs that are fully contained within and existing residence or building or detached ADUs that are limited in height and/or size. All other ADUs are subject to development and design standards set by the Town and consistent with State law to ensure that the units are compatible with the surrounding neighborhood and do not result in impacts to the privacy, use and enjoyment of existing residences within the zoning districts in which accessory dwelling units are permitted.

**SECTION 2.** The proposed ordinance is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), which exempt the adoption of accessory dwelling unit ordinances.

**SECTION 3.** The Planning Commission of the Town of Moraga does hereby recommend the Town Council Amend Moraga Municipal Code Title 8, Section 8.04.020, Definitions and repeal and replace Chapter 8.124, Accessory Dwelling Units, of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code, attached as Exhibit A to this Resolution, with any changes made by staff in consultation with the Department of Housing and Community Development (HCD) prior to the Town Council meeting.

**PASSED AND ADOPTED** by the Planning Commission of the Town of Moraga at a regular meeting held on December 7, 2020, by the following vote:

**Ayes:** Chair Luster, Vice Chair Hillis, D'Arcy, Helber, Lueder, Theil

**Noes:**

**Abstain:**

**Absent:**

**Recused:** Stromberg

  
Brenda Luster, Chair

Attest:

  
Afshan Hamid, AICP, Planning Director

## EXHIBIT A

**Section 8.04.020 – Definitions.** The following definitions are hereby deleted from Section 8.04.020, Definitions, of Title 8, Planning and Zoning:

"Accessory dwelling unit," or "ADU," means a residential dwelling unit attached to or detached from an existing primary unit, or entirely enclosed within an existing building, which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel where the existing primary unit is situated. An accessory dwelling unit also includes the following:

- A. An efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code.
- B. A manufactured home, as defined in Section 18007 of the California Health and Safety Code.

"Adjacent to the parking spaces for the existing primary unit" means within fifteen (15) feet of the nearest edge of the parking structure (garage or carport) including any storage areas within the parking structure; or within fifteen (15) feet of a legal, uncovered parking space for the existing primary unit.

"Attached ADU" means an ADU that does not qualify as a fully contained ADU and that is located at least partially within a newly constructed expansion of, or addition to, an existing primary unit.

"Detached ADU" means an ADU that does not qualify as a fully contained ADU and that is located at least partially within new construction that is part of a physical structure which is detached from the existing primary unit. More specifically, a detached ADU is located within a newly and legally constructed separate accessory building, or a newly constructed expansion of, or addition to, a pre-existing legally constructed separate accessory building.

"Existing primary unit" means an existing single-family residence with a valid certificate of occupancy.

"Fully Contained ADU" means an ADU which is established entirely within the pre-existing building envelope of either (i) an existing primary unit or (ii) any other pre-existing, legally constructed building located upon any lot containing an existing primary unit.

"Interior living area" means the gross interior horizontal area of a dwelling unit including but not limited to all rooms, hallways, closets, bathrooms and storage areas and specifically including the depth of all walls that divide any

interior spaces but excluding the depth of all exterior walls and excluding an enclosed garage.

"Junior accessory dwelling unit," or "JADU," means a residential dwelling unit that provides independent and permanent living facilities for one or more persons (including provisions for living, sleeping, and eating), is no more than 500 square feet in size, and is contained entirely within the pre-existing building envelope of an existing primary unit. A junior accessory dwelling unit shall include either separate sanitation facilities, or sanitation facilities shared with the existing primary unit.

"Outdoor living areas" means an area on the exterior of an ADU that is designed for human use or habitation including but not limited to a patio, deck or yard that can accommodate appurtenances including but not limited to a barbecue pit, an outdoor dining table, a hammock, a lounge chair, a bench or a spa.

"Passageway" means a pathway that is unobstructed clear to the sky and extends from the street to one entrance of an ADU.

**Section 8.04.020 – Definitions.** The following definitions are hereby amended in Section 8.04.020, Definitions, of Title 8, Planning and Zoning:

"Yard, exterior side." "Exterior side yard" means the area of a corner lot fronting on a public or private street that extends from the front yard to the rear yard between the exterior side lot line and the nearest wall of a building on the lot, and for purposes of the minimum exterior side yard setback requirement, it is measured perpendicular from the exterior side lot line to the nearest point on the nearest wall of a building on the lot. An exterior side yard may also be referred to as a "secondary front yard."

**Section 8.04.020 – Definitions.** The following definitions are hereby added in Section 8.04.020, Definitions, of Title 8, Planning and Zoning:

"Yard, secondary front." See the definition of "exterior side yard."

**Chapter 8.124 – Accessory Dwelling Units:** Moraga Municipal Code Section 8.124 – Accessory Dwelling Units, of the Moraga Municipal Code Title 8, Planning and Zoning is repealed and replaced with the following:

## **Chapter 8.124 – ACCESSORY DWELLING UNITS**

### **Sections:**

#### **Article 1. - General Provisions**

##### **8.124.010. - Purpose.**

This chapter provides for the creation of accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in the town as required by state law, and in accordance with the Town's General Plan and Housing Element as a means to provide a variety of housing types to meet the town's projected housing needs. This chapter provides for the ministerial approval of accessory dwelling units and junior accessory dwelling units in certain single-family and multifamily dwelling zoning districts on lots with existing or proposed single-family dwellings, multifamily buildings and mixed use buildings provided certain criteria are met. Procedures and standards for review of accessory dwelling units that do not meet the ministerial requirements are set forth herein.

##### **8.124.020. - Definitions.**

"Accessory dwelling unit," or "ADU," means a residential dwelling unit attached or detached from an existing primary unit, or entirely enclosed within an existing building, which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel where an existing or proposed primary unit is situated. An accessory dwelling unit also includes the following:

- A. An efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code.
- B. A manufactured home, as defined in Section 18007 of the California Health and Safety Code.

"Adjacent to the parking spaces for the existing primary unit" means within fifteen (15) feet of the nearest edge of the parking structure (garage or carport) including any storage areas within the parking structure; or within fifteen (15) feet of a legal, uncovered parking space for the existing primary unit.

"Attached ADU" means an ADU that does not qualify as a fully contained ADU and that is located at least partially within a newly constructed expansion of, or addition to, an existing primary unit.

"Detached ADU" means an ADU that does not qualify as a fully contained ADU and that is located at least partially within new construction that is part of a physical structure which is detached from the existing primary unit. More specifically, a detached ADU is located within a newly and legally constructed separate accessory building, or a newly constructed expansion of, or addition to, a pre-existing legally constructed separate accessory building.

"Primary unit" or "primary residence" means a single-family or multifamily residential dwelling unit that either exists on or is proposed for a lot zoned for any residential or

mixed-use zone, either through a permitted use or a conditional use, and is constructed prior to or concurrently to the ADU or JADU.

"Fully Contained ADU" means an ADU which is established entirely within the pre-existing building envelope of either (i) an existing primary unit, a multifamily building, or (ii) any other pre-existing, legally constructed building located upon any lot containing an existing primary unit.

"Interior living area" means the gross interior horizontal area of a dwelling unit including but not limited to all rooms, hallways, closets, bathrooms and storage areas and specifically including the depth of all walls that divide any interior spaces but excluding the depth of all exterior walls and excluding an enclosed garage.

"Junior Accessory Dwelling Unit," or "JADU," means a residential dwelling unit that provides independent and permanent living facilities for one or more persons (including provisions for living, sleeping, and eating), is no more than 500 square feet in size, and is contained entirely within the building envelope of an existing or proposed primary unit. A junior accessory dwelling unit shall include either separate sanitation facilities, or sanitation facilities shared with the existing primary unit. A JADU requires the owner to reside on the remaining portion of the primary residence.

"Multifamily building" for purposes of this Chapter 8.124 means a structure with two or more attached dwelling units on one lot.

"Outdoor living areas" means an area on the exterior of an ADU that is designed for human use or habitation including but not limited to a patio, deck, balcony or yard that can accommodate appurtenances including but not limited to a barbecue pit, an outdoor dining table, a hammock, a lounge chair, a bench or a spa.

"Passageway" means a pathway that is unobstructed clear to the sky and extends from the street to one entrance of an ADU.

"Streamlined ADU" or "JADU" means an ADU or "JADU" applied for under Article 2 below.

#### 8.124.030. - Subdivision.

The primary unit and an ADU or JADU, as applicable, may not be sold separately from each other and no subdivision of land or air rights is authorized by this chapter.

#### 8.124.040. - Permit required.

No person shall develop, construct, cause to be rented, or occupy an ADU or JADU on any lot within the town unless a permit is obtained pursuant to the procedures and standards set forth in this chapter.

#### 8.124.050. Density and use.

To the extent required by state law, an ADU or JADU built in conformance with this chapter does not count towards the allowed density for the lot upon which the ADU or JADU is located and is a residential use that is consistent with the General Plan and Zoning Ordinance.



#### 8.124.060. - ADUs Authorized as Part of New Construction.

Notwithstanding any other provision of this chapter, the Town may authorize the construction of fully contained, and attached and detached ADUs as an accessory use to a single-family dwelling in conjunction with the approval of, or an amendment to, any of the following:

- A. Design review approval of a new single-family dwelling.
- B. A residential subdivision pursuant to the Moraga Subdivision Ordinance and Subdivision Map Act;
- C. A Planned Development pursuant to Chapter 8.48; and
- D. A Conditional Use Permit, including but not limited to a Conditional Use Permit for a single-family dwelling or dwellings within the MOSO Open Space District, provided that an application for a Conditional Use Permit, or the amendment thereof, to permit the establishment of an ADU shall be processed as set forth in Section 8.124.180.

#### 8.124.070 – Impact Fees.

All ADUs shall be subject to any applicable impact fees adopted by the Town, except as provided below.

- (a) No impact fee is required for an ADU that is less than 750 square feet in floor area.
- (b) Any impact fee that is required for an ADU that is 750 square feet or larger in floor area must be charged proportionately in relation to the square footage of the primary unit. (E.g., the floor area of ADU divided by the floor area of the primary unit, multiplied by the fee amount charged for a new dwelling.)

For purposes of this section, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of California Government Code Section 66000, except that it also includes fees specified in California Government Code Section 66477.

#### 8.124.080. – General requirements.

The following general requirements apply to all ADUs and JADUs.

- A. The ADU is not required to provide fire sprinklers if they are not required for the existing primary unit.
- B. No passageway shall be required in conjunction with construction of an ADU unless mandated by the Americans with Disabilities Act or other state or federal safety code standard.
- C. If the ADU or JADU will connect to an onsite water-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 ten years.

- D. Prior to issuance of a building permit for an ADU or JADU, a deed restriction shall be recorded against the title of the property as required in Article 5 of this title.
- E. When an ADU is approved with concurrently with a proposed primary unit, final occupancy of the ADU shall not be issued before final occupancy of the primary unit.

#### 8.124.090. Exemption for Hillside Development Permit.

ADUs qualifying for ministerial approval under Articles 2 and 3 of this Chapter that are proposed on any hillside lot or area are exempt from the hillside development permit requirements described in Chapter 8.136. Non-ministerial ADUs allowed under Article 4 of this Chapter, grading in addition to that necessary for excavation of the footprint of the ADU, or other attached or detached buildings or structures proposed as part of an ADU are not exempt from the hillside development permit process when applicable.

#### Article 2. - Ministerial review for Streamlined ADUs and JADUs.

##### 8.124.100. - Procedures.

- A. This article shall provide for and govern the ministerial review for Streamlined ADUs and JADUs as set forth in Section 8.124.110 below.
- B. Building permit applications for Streamlined ADUs and JADUs that meet the requirements in Section 8.124.110 shall be approved ministerially by the planning director without discretionary review, further design review, or public hearing, pursuant to the procedures of this Article.
- C. Procedure for Review.
  - (1) Within sixty (60) days after receiving an application, the Planning Director shall approve a building permit application for an ADU or JADU if the requirements of Section 8.124.110 have been satisfied.
  - (2) The planning director shall deny an application for a Streamlined ADU if the requirements of Section 8.124.110 have not been satisfied.
- D. Right to Appeal. The applicant may appeal the decision of the planning director in accordance with the provisions of Moraga Municipal Code Chapter 8.12, Article 4. The appeal shall be limited to a consideration of whether the objective criteria in Sections 8.124.110 have been met.

##### 8.124.110.-Development Standards for Streamlined ADUs and JADUs

Pursuant to California Government Code Section 65852.2(e), the Town shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of following types of ADUs and JADUs ("Streamlined ADUs and JADUs") that comply with the general requirements of Section 8.124.080 and the applicable standards described in subsections A through D.

A. Fully contained ADU.

- 1) One fully contained ADU may be established entirely within the pre-existing building envelope of an existing primary unit or another pre-existing, legally constructed accessory building located on any lot, if it complies with the following standards:

- (a) The fully contained ADU shall have an exterior access independent from that of the existing primary unit. An addition of up to 150 square feet is permitted if the expansion is limited to accommodating ingress and egress. For any fully contained ADU located on a second floor, any stairway, whether enclosed or open, needed to access that second floor ADU must be established entirely within the pre-existing building envelope of the existing primary unit or pre-existing, legally constructed, building within which the ADU is contained, or may be enclosed within an addition that does not exceed 150 square feet.

- (b) A pre-existing legally constructed accessory building may be fully or partially converted into a fully contained ADU provided side and rear setbacks and building separations are sufficient for fire safety. However, no setback shall be required for a pre-existing legally constructed garage that is converted (or partially converted) to a fully contained ADU.

- 2) Multiple ADUs within portions of existing multifamily dwelling buildings that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each fully contained converted ADU complies with state building standards for dwellings. At least one fully contained converted ADU is allowed within an existing multifamily building or mixed-use building with existing dwelling units, and multiple fully contained converted ADUs shall be permitted up to 25 percent of the number of existing multifamily dwelling units.

B. A JADU complying with the following standards:

- 1) One JADU is allowed on a lot containing an existing single-family dwelling.
- 2) The owner of a parcel proposed for a JADU shall occupy as a principal residence either the existing primary unit or the JADU.
- 3) As set forth in Section 8.124.210, neither the JADU nor the primary unit shall be sold independently of each other.
- 4) As set forth in Section 8.124.210, neither the JADU nor the primary unit shall be rented for periods of less than thirty (30) consecutive days.
- 5) A JADU shall have an exterior entry separate from the primary unit to serve the JADU, and an interior entry to the main living area of the existing primary unit.
- 6) The interior living area of a JADU shall not be larger than 500 square feet in size.

- 7) The JADU shall include an efficiency kitchen, requiring and limited to the following components:
    - (a) A cooking facility with appliance(s); and
    - (b) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.
  - 8) No additional parking is required beyond that required for the primary unit.
- C. One detached ADU, new construction with a proposed or existing single-family dwelling that complies with the following standards:
- 1) The lot on which the ADU is located does not contain another ADU, but may contain a JADU permitted pursuant to Section 8.124.110.B
  - 2) Front and secondary front yard setbacks consistent with the applicable zoning district to the extent such setbacks do not preclude development of an ADU.
  - 3) The side and rear setbacks are at least four (4) feet.
  - 4) The total interior floor area is not more than 800 square feet.
  - 5) The height is 16 feet or less.
- D. No more than two ADUs on a lot that has an existing multifamily building with the following standards:
- 1) Front and secondary front yard setbacks consistent with the applicable zoning district to the extent such setbacks do not preclude development of an ADU.
  - 2) The side and rear setbacks are at least four (4) feet.
  - 3) The height 16 feet or less.
  - 4) The ADUs are detached from the multifamily building.

### Article 3 – Ministerial review for standard ADUs

#### 8.124.120. - Procedures.

- A. This article shall provide for and govern the ministerial review of certain applications for ADUs on lots with a primary unit in single-family residential districts, planned development districts that allow single-family residential development, study districts, or MOSO or non-MOSO open space districts.
- B. Ministerial Review. Applications for the following types of ADUs shall be approved ministerially by the planning director without discretionary review, further design review, or public hearing, pursuant to the procedures of this Article:

- (1) No more than one attached or detached ADU per lot that meets the general standards in Section 8.124.080, development standards in Section 8.124.130 and the design standards in Section 8.124.0140.
- C. The applicant shall be required to obtain a building permit prior to the construction any ADU and shall also meet the requirements set forth in Article 5 of this chapter.
- D. Procedure for Review.
  - 1) Within sixty (60) days after receiving an application, the Planning Director shall approve an application through a ministerial review process and issue an ADU permit if the requirements of Sections 8.124.080, 8.124.130 and 8.124.140, as applicable, have been satisfied for an ADU.
  - 2) Unless an administrative adjustment is granted pursuant to Section 8.124.170 which excuses noncompliance which would otherwise require denial of the application, the planning director shall deny an application for an ADU if the requirements of Sections 8.124.080, 8.124.130 and 8.124.140, as applicable, have not been satisfied.
- F. Right to Appeal. The applicant may appeal the decision of the planning director in accordance with the provisions of Moraga Municipal Code Chapter 8.12, Article 4. The appeal shall be limited to a consideration of whether the objective criteria in Sections 8.124.080, 8.124.130 and 8.124.140 for a standard attached or detached ADU have been met.
- G. Notwithstanding the procedures in Sections 8.124.100(A)-(F) above, an applicant for an attached or detached ADU that does not meet both the development standards of Sections 8.124.130 and the design standards of Section 8.124.140, may seek discretionary approval of an ADU in accordance with the alternative procedures set forth in Article 4 of this Chapter.

#### 8.124.130 - Development standards for standard attached and detached ADUs

The following section applies to attached or detached ADUs that do not qualify as a Streamlined ADU. An attached or detached ADU may be established upon any lot containing an existing or proposed primary unit in in any single-family residentially zoned district, planned development districts that allow single-family residential development, study districts, or MOSO or non-MOSO open space districts, if it complies with the following standards, as well as the general standards set forth in Section 8.124.080 and design standards set forth in Section 8.124.140:

- A Except as set forth in Section 8.124.130(C), a portion of an existing primary unit or a pre-existing legally constructed accessory building (or portion thereof) may be incorporated into an attached or detached ADU only if the side and rear setbacks and building separations are sufficient for fire safety.
- B Except as set forth in Section 8.124.130(C), any expansion of or addition to either an existing primary unit or a pre-existing legally constructed accessory building to accommodate an attached ADU or detached ADU shall meet all development standards of the zoning district in which it is located.
- C Notwithstanding any other standard set forth in this Section 8.124.130:

- 1) No setback shall be required for an existing legally constructed garage that is fully or partially incorporated into an attached or detached ADU.
  - 2) A second-floor setback of no more than five feet from the side and rear lot lines shall be required for an ADU that is constructed over a legally constructed garage.
- D. A detached ADU shall comply with the setback requirements of the zoning district in which the detached ADU is to be located.
- E. A detached ADU shall be located at least as close to the existing primary unit as it is to any adjacent property line to the extent possible, and subject to the other requirements of this Section 8.124.130.
- F. The maximum aggregate building height for a detached ADU, or for an addition constructed to wholly or partially accommodate an attached ADU, shall not exceed the height of the existing primary unit or nineteen (19) feet in height as measured between the highest point of the building including the roof and the lowest point of the building at natural grade, whichever is less. A skirt wall (if any) shall be included in the maximum height measurement.
- G. The area within the construction footprint of the attached or detached ADU, including the area required for the unit, associated grading, and outdoor living space, shall not have an average predevelopment slope greater than twenty (20) percent.
- H. The cumulative volume of cut and/or fill for construction of the attached or detached ADU, exclusive of areas for building foundations and footings, shall not exceed 200 cubic yards.
- I. The interior living area of an attached or detached ADU shall be at least one hundred fifty (150) square feet and not more than eight hundred fifty (850) square feet for an ADU with one bedroom or less and up to one thousand (1,000) square feet that is more than one bedroom. The square footage of an attached ADU shall not exceed fifty (50) percent of the pre-existing interior living area of the existing primary unit, calculated before the addition of the attached ADU. For example, if the pre-existing interior living area of the existing primary unit is one thousand two hundred (1200) square feet, the square footage of the attached ADU shall not exceed six hundred (600) square feet. If the existing gross floor area of the lot exceeds the maximum permitted in the Town of Moraga Design Guidelines, Appendix D, Maximum Floor Area Table prior to establishment of an ADU, or if the development of the ADU will result in the total gross floor area exceeding the maximum permitted in the Maximum Floor Area Table, the ADU may have an interior floor area of no more than 800 square feet.
- J. The attached or detached ADU shall have an external access separate from the existing primary unit, and an attached ADU may also have internal access to the existing primary unit.
- K. No attached or detached accessory dwelling unit shall be located within the drip line of any native, orchard or historic tree as defined by Moraga Municipal Code Section 12.12.020.

- L. In addition to parking required for the existing primary unit, one off-street parking space measuring at least nine feet by nineteen (19) feet and not more than seventeen (17) feet by nineteen (19) feet, which may be open or covered, shall be provided for an attached or detached ADU, subject to the following requirements:
- 1) The parking space for the attached or detached ADU shall be located adjacent to the parking spaces for the existing primary unit, and shall not be accessed by means of a driveway separate from that which accesses required parking spaces for the primary residence, unless such access is specifically authorized by the Moraga Municipal Code. The size of the existing driveway curb cut shall not be increased, and no new driveway curb cut shall be created. The guest parking spaces required by Moraga Municipal Code Section 8.76.100(C) and (D) are not required for an accessory dwelling unit.
  - 2) The required parking space shall be surfaced with a permeable material that is approved by the planning director, except that a pre-existing non-permeable driveway, paved parking area or new or existing covered parking space may be used. The required parking space may be located within required setback areas if it is uncovered. When required parking for the attached or detached ADU, other than tandem parking within an existing driveway, is located within a setback area, the planning director may require the parking be screened from off-site views with vegetation not less than thirty-six (36) inches in height above the parking surface.
  - 3) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of a fully contained, attached or detached ADU or converted to an attached or detached ADU, no replacement parking shall be required for the converted ADU.
  - 4) Notwithstanding any other provisions of this Subsection 8.124.130(L), attached or detached ADUs are exempt from off-street parking space in any of the following circumstances:
    - (a) The attached or detached ADU is located within one-half mile walking distance of a public transit stop.
    - (b) The attached or detached ADU is located within an architecturally and historically significant historic district.
    - (c) When on-street parking permits are required but not offered to the occupant of the attached or detached ADU.
    - (d) When there is a car share vehicle storage space, at which car shares may be picked up and dropped off, located within one block of the attached or detached ADU.
    - (e) Nothing in this section 8.124.130(L) shall be construed as requiring parking to be provided for a streamlined ADU.

8.124.140. – Design standards for standard attached and detached ADUs

This section sets forth design standards that must be met for the establishment of attached and detached ADUs in addition to the requirement to comply with the general standards set forth in section 8.124.080 and the development standards set forth in Sections 8.124.130. An attached or detached ADU must meet the following design standards:

- A. Exterior colors, materials, architectural and landscape designs of the attached or detached ADU and its appurtenances (e.g. mailboxes) shall be compatible with those of the primary unit.
- B. All exterior lighting shall be directed downward and/or inward toward the property.
- C. Any new retaining walls necessary for the construction of the attached or detached ADU shall be no higher than three feet. If a fence is located within two feet of a retaining wall the combined retaining wall and fence height shall not exceed six feet. There shall be no more than two new retaining walls located within thirty (30) feet of one another in conjunction with the construction of the attached or detached ADU.
- D. Any blank exterior wall proposed as part of the construction of the attached or detached ADU that is without windows and is more than fifteen (15) feet long or one hundred eighty (180) square feet in area, whichever is less, shall have landscaping installed and maintained along the wall which reaches a minimum height of four feet within three years.
- E. Windows on any exterior wall proposed as part of the construction of the attached or detached ADU located within thirty (30) feet of a neighboring residence, where the windows would have sight lines to the neighboring residence, shall have a minimum sill height not less than five feet, six inches above the interior finished floor height. This requirement may be waived by the Planning Director for a window required for egress under the California Building Code.
- F. The aggregate area of new deck(s), balcony(ies) or porch(es) for the attached or detached ADU shall not exceed one hundred and twenty (120) square feet, and no such feature shall have a depth greater than eight feet. No deck, porch or balcony shall have a height more than twenty-four (24) inches above existing grade, measured to the top of the finished floor or deck surface.
- G. Stairways constructed to access an attached or detached ADU with an upper landing floor height of more than six feet from natural grade shall be enclosed, except where all parts of the stairway are located more than thirty (30) feet from a property line or would not be visible from an adjacent property or public street.
- H. The skirt height associated with the construction of the attached or detached ADU shall not exceed four feet.
- I. There shall be a minimum of six feet near-level clearance area from any top or bottom of a slope associated with the construction of the attached or detached ADU. The post-development slope of the near-level clearance area shall not exceed five percent. This requirement is also applicable to split-level lots, with the exception of the primary pad split.



- J. Each attached or detached ADU shall have a designated location for the permanent storage of trash and recycling containers.

Article 4. - Procedures and Standards for Review of Accessory Dwelling Units not Qualifying for Ministerial Review

8.124.150. - Purpose.

The purpose of this article is to provide procedures and standards for the review and approval of ADUs that do not meet one or more of the development and/or design standards set forth in Sections 8.124.130 and 8.124.140, respectively. The intent of these procedures is to reasonably allow such units to be established, subject to administrative adjustment or discretionary review, even when they would not qualify for ministerial review and approval pursuant to the requirements of state law, thereby increasing the opportunities for ADUs to be developed in the town.

8.124.160. - Applicability.

This article is only applicable to provide alternative processes to the statutory requirements for ministerial review, and to thereby provide for minor administrative adjustments and a system of discretionary review in a manner designed to increase opportunities for ADUs to be developed in the town beyond that which is required by state law. In no event shall this article be interpreted to expand or otherwise amend the requirements for ministerial review set forth in Article 3.

8.124.170. - Administrative Adjustment.

- A. Allowable Adjustments. The planning director may approve a minor adjustment to the development or design standards applicable to an application for an attached or detached standard ADU governed by Article 3, to the extent identified in Table 8.124-1. Only a maximum of two of the allowable adjustments may be granted for such an ADU per parcel. A request for more than two adjustments or that exceeds the adjustment limitations identified in Table 8.124-1 may not be reviewed under Article 3, governing ministerial review, and this Section 8.124.170 and shall require an application for a conditional use permit in accordance with Section 8.124.180.

**Table 8.124-1: Allowable Adjustments**

Type of Adjustment Allowed	Maximum Adjustment
1. Height. An increase in the maximum aggregate building height.	10 percent, or two feet, whichever is greater, provided that such height does not exceed that of the existing primary unit
2. Setbacks. A decrease of the required front, side or rear	10 percent, provided that a minimum setback of 10 feet is maintained in all instances.

setback.	
3. Parking Space Dimensions. A decrease in the minimum dimensions of a required parking space.	Reduction to not less than 8 feet by 18 feet
4. New deck(s), balcony(ies) or porches: Increase in aggregate area.	25 percent increase
5. The nature of the material used for the parking spaces required under Section 8.124.060(B)(13)(b)	A non-permeable surface may be allowed if the applicant presents site-specific civil and geotechnical evidence, satisfactory to the Planning Director and Town Engineer, that the use of a permeable material for the required parking space on the lot would be inappropriate.

- B. Application. An application for an administrative adjustment shall be made to the Planning Department pursuant to the procedures set forth in Chapter 8.12.
- C. Findings and Decision. The Planning Director shall, after notice and hearing in accordance with the procedures set forth in Government Code Section 65905, approve, approve with conditions or deny an adjustment application. The Director may approve an adjustment application, with or without conditions, only after the following findings are made:
- 1) The adjustment would allow for an ADU of superior design, livability or quality than could be constructed without the adjustment.
  - 2) The ADU will not adversely affect the privacy, light, air or views of neighboring properties.
  - 3) The adjustment will not be detrimental to the public health, safety and welfare.
  - 4) The ADU complies with the other applicable standards set forth in Sections 8.124.130 and 8.124.140.
- D. Appeal. The decision of the Planning Director may be appealed, in accordance with the procedures set forth in Chapter 8.12.
- 8.124.180. - Conditional Use Permit Procedures.

A proposed attached or detached ADU that an applicant seeks to establish that does not comply with the development standards set forth in Section 8.124.130 may be allowed subject to a Conditional Use Permit. The applicant shall be required to obtain a

building permit prior to the construction of any attached or detached ADU for which a Conditional Use Permit is required, and shall also meet the requirements set forth in Article 5 of this chapter. Design review for such attached or detached ADUs may also be required pursuant to Section 8.124.190. An application for a Conditional Use Permit (CUP) for an ADU subject to this Article 4 shall be processed in accordance with Chapter 8.12 of the Moraga Municipal Code, except as expressly set forth in this Section 8.124.180 and Section 8.124.190. In addition to the required findings set forth in Section 8.12.120, the following supplemental findings shall also be made prior to the issuance of a CUP for an attached or detached ADU:

- A. There shall be no more than one ADU or JADU per lot.
- B. The area within the development footprint of the proposed ADU, including the area required for the unit, associated grading, and outdoor living space, will not have an average predevelopment slope greater than twenty percent (20%).
- C. The interior living area of the proposed ADU, whether attached or detached, will be at least one hundred fifty (150) square feet and not more than eight hundred (800) square feet.
- D. The square footage of an attached ADU shall not exceed fifty percent (50%) of the pre-existing interior living area of the existing primary unit, calculated before the addition of the attached ADU, subject to the authority of the reviewing body to apply a more restrictive standard where it is deemed appropriate to do so.
- E. The ADU will comply with all of the required setbacks of the applicable zoning district.
- F. The owner of the property upon which the ADU is located will occupy either the existing primary unit or the ADU, unless the applicant establishes by substantial evidence to the satisfaction of the Planning Director that strict application of the requirement on a temporary basis would constitute a hardship warranting an exemption to this requirement.
- G. At least one dedicated off-street parking space for the ADU, which may be covered, uncovered, or provided as tandem parking, will be provided, except that no off-street parking space is required when one of the circumstances described in Section 8.124.130(L)(4) would apply,
- H. The ADU complies to the extent practicable with the standards set forth in Sections 8.124.130 and 8.124.140.
- I. Provisions have been made for a deed restriction as provided in Article 5 of this Chapter to be recorded against the property.

#### 8.124.190. - Design Review Procedures.

An attached or detached ADU that does not comply with the design standards set forth in Section 8.124.140 shall be reviewed pursuant to the procedures, and approved or denied pursuant to the standards, set forth in Moraga Municipal Code Chapter 8.72, the Planning Commission shall be the review body for design review approval following the procedure for review specified in Section 8.72.030(D) or Section 8.72.090, as applicable.

## Article 5: - Deed Restriction

### 8.124.200. - Applicability.

The requirements of this Article 4 shall apply to the following:

- A. Streamlined ADUs and JADUs approved under Article 2;
- B. A detached or attached ADU approved under Article 3;
- C. An ADU approved under Article 4.

### 8.124.210. - Requirements.

Prior to the issuance of a building permit for any ADU or JADU, the property owner shall record in the office of the Contra Costa County Recorder a deed restriction setting forth the following requirements, in a form satisfactory to the Planning Director and the Town Attorney:

- A. The primary unit and the ADU or JADU, as applicable, established on the same lot may not be sold independently of each other, and the lot may not be subdivided so as to create separate legal lots for the existing primary unit and the ADU or JADU.
- B. An owner of a lot upon which the ADU or JADU is located, that is accessory to a single-family residence, may be subject to the owner occupancy requirements as set forth below. a principal residence either the primary unit or the ADU or JADU, unless the applicant establishes by substantial evidence to the satisfaction of the Planning Director that strict application of the requirement on a temporary basis would constitute a hardship warranting an exemption to this requirement.
  - 1) All ADUs approved before January 1, 2020 are subject to the owner-occupancy requirements or restrictions that were in place when the ADU was approved.
  - 2) An ADU that is approved after that date but before January 1, 2025, is not subject to any owner-occupancy requirement.
  - 3) All ADUs that are approved on or after January 1, 2025 are subject to an owner-occupancy requirement under Section 8.124.210(B). A natural person with legal or equitable title to the property must reside on the property as the person's legal domicile and permanent residence.
  - 4) All JADUs are subject to an owner-occupancy requirement under Section 8.124.210(B). A natural person with legal or equitable title to the property must reside on the property, in either the primary residence or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement of this paragraph does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.

- C. No ADU or JADU, as applicable, or primary unit on a lot that contains an ADU or JADU shall be rented to the same party for fewer than 30 consecutive days at a time.
- D. The restrictions described in this Section 8.124.210 shall be binding upon any successor in ownership of the property and lack of compliance may result in legal action against the property owner.
- E. The Town shall have the right at any time to request and have the owner provide such information deemed necessary by the Town to confirm compliance with these restrictions.

# **ATTACHMENT C**

MCC Existing and Proposed Redline

## Notes:

- The changes to ADU definitions that will be codified within Section 8.124.020 are shown as compared to definitions that were located within that section prior to the Moraga Center Specific Plan Implementation Project zoning updates that were adopted by the Town Council on November 10, 2020.
- The redlines show changes comparing the current ADU code language to the draft code language in Attachment A
- The redlines with highlights show changes that were made after the Planning Commission recommendation to reflect changes directed by the Department of Housing and Community Development during their review and some additional revisions proposed by staff to further clean up the ordinance and make the ordinance more consistent with supporting State goals supporting construction of ADUs.

**Section 8.04.020 – Definitions.** The following definitions are hereby amended in Section 8.04.020, Definitions, of Title 8, Planning and Zoning:

"Yard, exterior side." "Exterior side yard" means the area of a corner lot fronting on a public or private street that extends from the front yard to the rear yard between the exterior side lot line and the nearest wall of a building on the lot, and for purposes of the minimum exterior side yard setback requirement, it is measured perpendicular from the exterior side lot line to the nearest point on the nearest wall of a building on the lot. An exterior side yard may also be referred to as a "secondary front yard."

**Section 8.04.020 – Definitions.** The following definitions are hereby added in Section 8.04.020, Definitions, of Title 8, Planning and Zoning:

"Yard, secondary front." See the definition of "exterior side yard."

**Chapter 8.124 – Accessory Dwelling Units:** Moraga Municipal Code Section 8.124 – Accessory Dwelling Units, of the Moraga Municipal Code Title 8, Planning and Zoning is repealed and replaced with the following:

## **Article 1. - General Provisions**

### **8.124.010. - Purpose.**

This chapter provides for the creation of accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in the town as required by state law, and in accordance with the town's general plan housing element Town's General Plan and Housing Element as a means to provide a variety of housing types to meet the town's projected housing needs. This chapter provides for the ministerial approval of accessory dwelling units and junior accessory dwelling units in certain zoning districts on lots with existing single-family dwellings

~~provided certain criteria are met and areas zoned to allow residential uses. The Town encourages ministerial review of ADUs and JADUs when possible. This ordinance also provides~~ procedures and standards for review of accessory dwelling units that do not meet the ministerial requirements. ~~Controlled construction of accessory dwelling units will promote a stable heterogeneous community with a balanced social and economic mix. are set forth herein that are intended to increase opportunities for ADUs to be developed within the Town~~

#### 8.124.020. - Definitions.

"Accessory dwelling unit," or "ADU," means a residential dwelling unit attached ~~to~~ or detached from ~~an existing~~ primary unit, or entirely enclosed within an existing building, which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel where ~~the~~an existing or proposed primary unit is situated. An accessory dwelling unit also includes the following:

- A. An efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code.
- B. A manufactured home, as defined in Section 18007 of the California Health and Safety Code.

"Adjacent to the parking spaces for the ~~existing~~ primary unit" means within fifteen (15) feet of the nearest edge of the parking structure (garage or carport) including any storage areas within the parking structure; or within fifteen (15) feet of a legal, uncovered parking space for the ~~existing~~ primary unit.

"Attached ADU" means an ADU that does not qualify as a fully contained ADU and that is located at least partially within a newly constructed expansion of, or addition to, an existing primary unit.

"Detached ADU" means an ADU that does not qualify as a fully contained ADU and that is located at least partially within new construction that is part of a physical structure which is detached from the ~~existing~~ primary unit. More specifically, a detached ADU is located within a newly and legally constructed separate accessory building, or a newly constructed expansion of, or addition to, a pre-existing legally constructed separate accessory building.

~~"Existing primary unit" means an existing single-family residence with a valid certificate of occupancy. "Primary unit" or "primary residence" means a single-family or multifamily residential dwelling unit that either exists on or is proposed for a lot zoned for any residential or mixed-use zone, either through a permitted use or a conditional use, and is constructed prior to or concurrently to the ADU or JADU.~~

"Fully Contained ADU" means an ADU which is established entirely within the pre-existing building envelope of either (i) ~~an existing~~ primary unit, a multifamily building, or (ii) any other pre-existing, legally constructed building located upon any lot containing ~~an existing~~ primary unit.

"Interior living area" means the gross interior horizontal area of a dwelling unit including but not limited to all rooms, hallways, closets, bathrooms and storage areas and



specifically including the depth of all walls that divide any interior spaces but excluding the depth of all exterior walls and excluding an enclosed garage.

"Junior ~~accessory dwelling unit~~ Accessory Dwelling Unit," or "JADU," means a residential dwelling unit that provides independent and permanent living facilities for one or more persons (including provisions for living, sleeping, and eating), is no more than 500 square feet in size, and is contained entirely within the ~~pre-existing~~ building envelope of an existing or proposed primary unit. A junior accessory dwelling unit shall include either separate sanitation facilities, or sanitation facilities shared with the ~~existing primary unit~~ primary unit. The property owner shall reside onsite in either the primary residence, an ADU, or the JADU

"Multifamily building" for purposes of this Chapter 8.124 means a structure with two or more attached dwelling units on one lot.

"Outdoor living areas" means an area on the exterior of an ADU that is designed for human use or habitation including but not limited to a patio, deck, balcony or yard that can accommodate appurtenances including but not limited to a barbecue pit, an outdoor dining table, a hammock, a lounge chair, a bench or a spa.

"Passageway" means a pathway that is unobstructed clear to the sky and extends from the street to one entrance of an ADU.

"Streamlined ADU" or "JADU" means an ADU or "JADU" applied for under Article 2 below.

8.124.030. - Subdivision.

The ~~existing~~ primary unit and an ADU or JADU, as applicable, may not be sold separately from each other and no subdivision of land or air rights is authorized by this chapter.

8.124.040. - Permit required.

No person shall develop, construct, cause to be rented, or occupy an ADU or JADU on any lot within the town unless ~~an accessory dwelling unit~~ a permit is obtained pursuant to the procedures and standards set forth in this chapter.

8.124.050. Density and use.

To the extent required by state law, an ADU or JADU built in conformance with this chapter does not count towards the allowed density for the lot upon which the ADU or JADU is located and is a residential use that is consistent with the General Plan and Zoning Ordinance.

8.124.060. - ADUs Authorized as Part of New Construction.

Notwithstanding any other provision of this chapter, the Town may authorize the construction of fully contained, and attached and detached ADUs as an accessory use to

a single-family dwelling in conjunction with the approval of, or an amendment to, any of the following:

- A. Design review approval of a new single-family dwelling.
- B. A residential subdivision pursuant to the Moraga Subdivision Ordinance and Subdivision Map Act;
- C. A Planned Development pursuant to Chapter 8.48; and
- D. A Conditional Use Permit, including but not limited to a Conditional Use Permit for a single-family dwelling or dwellings within the MOSO Open Space District, provided that an application for a Conditional Use Permit, or the amendment thereof, to permit the establishment of an ADU shall be processed as set forth in Section 8.124.180.

#### 8.124.070 – Impact Fees.

All ADUs shall be subject to any applicable impact fees adopted by the Town, except as provided below.

- (a) No impact fee is required for an ADU that is less than 750 square feet in floor area.
- (b) Any impact fee that is required for an ADU that is 750 square feet or larger in floor area must be charged proportionately in relation to the square footage of the primary unit. (E.g., the floor area of ADU divided by the floor area of the primary unit, multiplied by the fee amount charged for a new dwelling.)

For purposes of this section, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of California Government Code Section 66000, except that it also includes fees specified in California Government Code Section 66477.

#### 8.124.080. – General requirements.

The following general requirements apply to all ADUs and JADUs.

- A. The ADU is not required to provide fire sprinklers if they are not required for the primary unit.
- B. No passageway shall be required in conjunction with construction of an ADU unless mandated by the Americans with Disabilities Act or other state or federal safety code standard.
- C. If the ADU or JADU will connect to an onsite water-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 ten years.
- D. Prior to issuance of a building permit for an ADU or JADU, a deed restriction shall be recorded against the title of the property as required in Article 5 of this title.

E. When an ADU is approved concurrently with a proposed primary unit, final occupancy of the ADU shall not be issued before final occupancy of the primary unit.

#### 8.124.090. Exemption for Hillside Development Permit.

ADUs qualifying for ministerial approval under Articles 2 and 3 of this Chapter that are proposed on any hillside lot or area are exempt from the hillside development permit requirements described in Chapter 8.136. Non-ministerial ADUs allowed under Article 4 of this Chapter, grading in addition to that necessary for excavation of the footprint of the ADU, or other attached or detached buildings or structures proposed as part of an ADU are not exempt from the hillside development permit process when applicable.

Article 2. - Ministerial review of certain applications for ADUs and JADUs on lots with an existing primary unit in single family or multifamily residential districts for Streamlined ADUs and JADUs.

#### 8.124.100. ~~8.124.050.~~ Procedures.

A. This article shall provide for and govern the ministerial review ~~of certain applications for ADUs and JADUs on lots with an existing primary unit in the 1-DUA, 2-DUA, 3-DUA, and 6-DUA districts, planned development districts of equivalent residential density to the foregoing residential districts, study district, or MOSO or non-MOSO open space district~~ for Streamlined ADUs and JADUs as set forth in Section 8.124.110 below.

~~B. Building permit applications for Streamlined ADUs and JADUs that meet the requirements in Section 8.124.110~~ Ministerial Review. Applications for the following types of dwelling units shall be approved ministerially by the planning director without discretionary review, further design review, or public hearing, pursuant to the procedures of this Article:-

#### C. Procedure for Review.

(1) Within sixty (60) days after receiving an application, the Planning Director shall approve a building permit application for an ADU or JADU if the requirements of Section 8.124.110 have been satisfied.

(2) The planning director shall deny an application for a Streamlined ADU if the requirements of Section 8.124.110 have not been satisfied.

D. —A Right to Appeal. The applicant may appeal the decision of the planning director in accordance with the provisions of Moraga Municipal Code Chapter 8.12, Article 4. The appeal shall be limited to a consideration of whether the objective criteria in Sections 8.124.110 have been met.

#### 8.124.110.-Development Standards for Streamlined ADUs and JADUs

Pursuant to California Government Code Section 65852.2(e), the Town shall ministerially approve an application for a building permit within a residential or mixed-use

zone to create any of following types of ADUs and JADUs (“Streamlined ADUs and JADUs”) that comply with the general requirements of Section 8.124.080 and the applicable standards described in subsections A through D.

A. Fully contained ADU.

1) One fully contained ADU ~~that meets the~~ may be established entirely within the ~~pre-existing~~ building envelope of the ~~an-existing~~ primary unit or another pre-existing, legally constructed accessory building located on any lot, if it complies with the following standards:

(a) The fully contained ADU shall have an exterior access independent from that of the ~~existing~~ primary unit. An addition of up to 150 square feet is permitted if the expansion is limited to accommodating ingress and egress. For any fully contained ADU located on a second floor, any stairway, whether enclosed or open, needed to access that second floor ADU must be established entirely within the pre-existing building envelope of the primary unit or pre-existing, legally constructed, building within which the ADU is contained, or may be enclosed within an addition that does not exceed 150 square feet.

(b) A pre-existing legally constructed accessory building may be fully or partially converted into a fully contained ADU ~~provided side and rear setbacks and building separations are sufficient for fire safety. However,~~ and no setback shall be required for a pre-existing legally constructed accessory building ~~garage~~ that is converted (or partially converted) to a fully contained ADU.

2) Multiple ADUs within portions of existing multifamily dwelling buildings that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each fully contained converted ADU complies with state building standards for dwellings. At least one fully contained converted ADU is allowed within an existing multifamily building or mixed-use building with existing dwelling units, and multiple fully contained converted ADUs shall be permitted up to 25 percent of the number of existing multifamily dwelling units.

B. A JADU complying with the following standards:

- 1) One JADU is allowed on a lot containing an existing single-family dwelling.
- 2) The owner of a parcel proposed for a JADU shall occupy as a principal residence either the ~~existing~~ primary unit or the JADU.
- 3) As set forth in Section 8.124.210, neither the JADU nor the primary unit shall be sold independently of each other.
- 4) As set forth in Section 8.124.210, neither the JADU nor the primary unit shall be rented for periods of less than thirty (30) consecutive days.
- 5) A JADU shall have an exterior entry separate from the primary unit to serve the JADU, and must have interior access if the JADU shares sanitary

facilities with the primary unit. ~~an interior entry to the main living area of the existing primary unit.~~

- 6) The interior living area of a JADU shall not be larger than 500 square feet in size.
- 7) The JADU shall include an efficiency kitchen, requiring and limited to the following components:
  - (a) A cooking facility with appliance(s); and
  - (b) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.
- 8) No additional parking is required beyond that required for the primary unit.

C. One detached ADU, new construction with a proposed or existing single-family dwelling that complies with the following standards:

- 1) The lot on which the ADU is located does not contain another ADU, but may contain a JADU permitted pursuant to Section 8.124.110.B
- 2) Front ~~and secondary front~~ yard setbacks consistent with the applicable zoning district to the extent such setbacks do not preclude development standards in Sections 8.124.060(A) and (C); of an ADU.
- 3) The side and rear setbacks are at least four (4) feet.
- 4) The total interior floor area is not more than 800 square feet.
- 5) The height is 16 feet or less.

D. No more than two ADUs on a lot that has an existing multifamily building with the following standards:

- 1) Front ~~and secondary front~~ yard setbacks consistent with the applicable zoning district to the extent such setbacks do not preclude development of an ADU.
- 2) The side and rear setbacks are at least four (4) feet.
- 3) The height 16 feet or less.
- 4) The ADUs are detached from the multifamily building.

### Article 3 – Ministerial review for standard ADUs

#### 8.124.120. - Procedures.

A. This article shall provide for and govern the ministerial review of certain applications for ADUs on lots with a primary unit in single-family residential districts, planned development districts that allow single-family residential development, study districts, or MOSO or non-MOSO open space districts.

B. Ministerial Review. (2) ~~An~~ Applications for the following types of ADUs shall be approved ministerially by the planning director without discretionary review, further design review, or public hearing, pursuant to the procedures of this Article:

(1) ~~No more than one~~ attached or detached ADU per lot that meets ~~both the development standards in Sections 8.124.060(B) and (C) and the design standards in Section 8.124.070; and~~

(3) ~~A JADU that meets the the general~~ standards in Section 8.124.080, development standards in Section 8.124.130 and the design standards in Section 8.124.0140.

C. The applicant shall be required to obtain a building permit prior to the construction ~~of or conversion to any ADU or JADU,~~ and shall also meet the requirements set forth in Article 45 of this chapter.

~~D. Procedure for Review.~~

(D. Procedure for Review.

1) Within ~~one hundred and twenty (120)~~sixty (60) days after receiving an application, the ~~planning director~~Planning Director shall approve an application ~~without discretionary~~through a ministerial review or a public hearing process and issue an ~~accessory dwelling unit ADU permit in a single-family or multifamily residential zone~~ if the requirements of Sections 8.124.~~060 and 080~~080, 8.124.~~070~~130 and 8.124.140, as applicable, have been satisfied for an ADU ~~or if all of the requirements of Section 8.124.080 have been satisfied for a JADU.~~

(2) Unless an administrative adjustment is granted pursuant to Section 8.124.~~110~~170 which excuses noncompliance which would otherwise require denial of the application, the planning director shall deny an application for an ADU ~~in a single-family or multifamily residential zone~~ if the requirements of Sections 8.124.~~060~~080, 8.124.130 and 8.124.~~070~~140, as applicable, have not been satisfied ~~or, for a JADU, the requirements of Section 8.124.080 have not been satisfied.~~

~~E. Courtesy notice. Upon approval of the accessory dwelling unit permit, the planning director shall mail a courtesy notice to all owners of abutting properties, notifying them of the approval.~~

F. Right to Appeal. The applicant may appeal the decision of the planning director in accordance with the provisions of Moraga Municipal Code Chapter 8.12, Article 4. The appeal shall be limited to a consideration of whether the objective criteria in Sections 8.124.~~060~~080, 8.124.130 and 8.124.~~070~~ for an ADU, or Section 8.124.080140 for a JADU, standard attached or detached ADU have been met.

G. Notwithstanding the procedures in Sections 8.124.~~050~~100(A)-(F) above, an applicant for an attached or detached ADU that does not meet both the development standards of Sections 8.124.~~060(B) and (C)~~130 and the design standards of Section 8.124.~~070~~140, may seek discretionary approval of an ADU in accordance with the alternative procedures set forth in Article 3, below4 of this Chapter.

8.124.~~060~~130 - Development standards- for standard attached and detached ADUs



~~This~~ The following section ~~sets forth development standards for the establishment of fully contained ADUs and applies to~~ attached or detached ADUs.

~~A. Fully Contained that do not qualify as a Streamlined ADU. A fully contained~~ An attached or detached ADU may be established entirely within the pre-existing building envelope of an existing primary unit or another pre-existing, legally constructed accessory building located on ~~upon~~ any lot containing an existing or proposed primary unit in ~~the 1-DUA, 2-DUA, 3-DUA, and 6-DUA districts, in any single-family residentially zoned district, planned development districts of equivalent that allow single-family residential density to the foregoing residential districts, development, study district~~ districts, or MOSO or non-MOSO open space ~~district, if it complies with the following standards:~~

~~(1) The fully contained ADU shall have an exterior access independent from that of the existing primary unit. For any fully contained ADU located on a second floor, any stairway, whether enclosed or open, needed to access that second floor ADU must be established entirely within the pre-existing building envelope of the existing primary unit or pre-existing, legally constructed, building within which the ADU is contained.~~

~~(2) A pre-existing legally constructed accessory building may be fully or partially converted into a fully contained ADU provided side and rear setbacks and building separations are sufficient for fire safety. However, no setback shall be required for a pre-existing legally constructed garage that is converted (or partially converted) to a fully contained ADU.~~

~~B. Attached or Detached ADUs. An attached or detached ADU may be established upon any lot containing an existing primary unit in the 1-DUA, 2-DUA, or 3-DUA districts, or planned development districts of equivalent residential density to the foregoing residential districts, or a study district, districts, if it complies with the following standards, as well as the general standards set forth in Section 8.124.080 and design standards set forth in Section 8.124.070~~ 140:

~~(1)~~ A Except as set forth in Section 8.124. ~~060(B)~~ (3130(C)), a portion of an existing primary unit or a pre-existing legally constructed accessory building (or portion thereof) may be incorporated into an attached or detached ADU only if the side and rear setbacks and building separations are sufficient for fire safety.

~~(2)~~ B Except as set forth in Section 8.124. ~~060(B)~~ (3130(C)), any expansion of or addition to either an existing primary unit or a pre-existing legally constructed accessory building to accommodate an attached ADU or detached ADU ~~(and all associated outdoor living areas and accessory structures)~~ shall meet ~~the setback requirements~~ all development standards of the zoning district in which it is located.

~~(3)~~ C Notwithstanding any other standard set forth in this Section 8.124. ~~060(B)~~ 130:

~~(a)~~ 1 No setback shall be required for an existing legally constructed garage that is fully or partially incorporated into an attached or detached ADU.

~~(b)~~ 2 A second-floor setback of no more than five feet from the side and rear lot lines shall be required for an ADU that is constructed over a legally constructed garage.

~~(4)~~ AD. An attached or detached ADU (and all associated outdoor living areas and accessory structures) shall comply with the have side and rear setbacks of at least four (4) feet. Front yard setback requirements of the zoning district in which the attached or detached ADU is to be located, or, in the case of a planned development district, with the setbacks established for that planned development.

(5) ~~A detached ADU shall be located at least as close to apply.~~

E. The distance of the existing detached ADU from the primary unit as it is to shall be less than the distance of the detached ADU from any residence on an adjacent property line, to the extent possible, and subject to the other requirements of this Section 8.124.060(B).

(6) ~~F.~~ F. The maximum aggregate building height for a detached ADU, or for an addition constructed to wholly or partially accommodate an attached ADU, shall not exceed ~~the height of the existing primary unit or~~ nineteen (19) feet in height as measured between the highest point of the building including the roof and the lowest point of the building at natural grade, whichever is less. A skirt wall (if any) shall be included in the maximum height measurement.

(7) ~~G.~~ G. The area within the construction footprint of the attached or detached ADU, including the area required for the unit, associated grading, and outdoor living space, shall not have an average predevelopment slope greater than twenty (20) percent.

(8) ~~H.~~ H. The cumulative volume of cut and/or fill for construction of the attached or detached ADU, exclusive of areas for building foundations and footings, shall not exceed 200 cubic yards.

(9) ~~L.~~ L. The interior living area of an attached or detached ADU shall be at least one hundred fifty (150) square feet and not more than eight hundred ~~(800) square feet.~~ fifty (850) square feet for an ADU with one bedroom or less and up to one thousand (1,000) square feet that is more than one bedroom. The square footage of an attached ADU shall not exceed fifty (50) percent of the pre-existing interior living area of the ~~existing~~ primary unit, calculated before the addition of the attached ADU. ~~For example, if the pre-existing interior living area of the existing primary unit is one thousand two hundred (1200) square feet, the square footage of the attached ADU shall not exceed six hundred (600) square feet.~~ If the existing gross floor area of the lot exceeds the maximum permitted in the Town of Moraga Design Guidelines, Appendix D, Maximum Floor Area Table prior to establishment of an ~~accessory dwelling unit~~ ADU, or if the development of the ~~accessory dwelling unit~~ ADU will result in the total gross floor area exceeding the maximum permitted in the Maximum Floor Area Table, ~~up to an additional two hundred (200) square feet of new floor area over and above the maximum is permitted for the accessory dwelling unit. This exceedance shall be permitted only to the extent necessary to accommodate the development of the accessory dwelling unit.~~ the ADU may have an interior floor area of no more than 800 square feet.

(10) ~~No passageway shall be required in conjunction with construction of an attached or detached ADU unless mandated by the Americans with Disabilities Act or other state or federal safety code standard.~~

(11) ~~J.~~ J. The attached or detached ADU shall have an external access separate from the ~~existing~~ primary unit, and an attached ADU may also have internal access to the ~~existing~~ primary unit.

(12) ~~K.~~ K. No attached or detached accessory dwelling unit shall be located within the drip line of any native, orchard or historic tree as defined by Moraga Municipal Code Section 12.12.020.



(13) L. In addition to parking required for the ~~existing~~ primary unit, one off-street parking space measuring at least nine feet by nineteen (19) feet and not more than seventeen (17) feet by nineteen (19) feet, which may be open or covered, shall be provided for an attached or detached ADU, subject to the following requirements:

(a) ~~1)~~ 1) The parking space for the attached or detached ADU shall be located adjacent to the parking spaces for the ~~existing~~ primary unit, and shall not be accessed by means of a driveway separate from that which accesses required parking spaces for the primary residence, unless such access is specifically authorized by the Moraga Municipal Code. The size of the existing driveway curb cut shall not be increased, and no new driveway curb cut shall be created. The guest parking spaces required by Moraga Municipal Code Section 8.76.100(C) and (D) are not required for an accessory dwelling unit.

(b) ~~2)~~ 2) The required parking space shall be surfaced with a permeable material that is approved by the planning director, except that a pre-existing non-permeable driveway, paved parking area or new or existing covered parking space may be used. ~~The required parking space shall be located outside of the required setback areas. However, if the planning director determines that locating an uncovered parking space outside of the required setback areas is not feasible based on site specific constraints or based on the other parameters specified in State law, such parking space may be located within a setback area approved by the planning director and/or provided as tandem parking on an existing driveway. The required parking space may be located within required setback areas if it is uncovered.~~ When required parking for the attached or detached ADU, other than tandem parking within an existing driveway, is located within a setback area, the planning director may require the parking be screened from off-site views with vegetation not less than thirty-six (36) inches in height above the parking surface.

(c) ~~3)~~ 3) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of a fully contained, attached or detached ADU or converted to an attached or detached ADU, ~~those parking spaces demolished as a result of the construction shall be replaced prior to the issuance of a certificate of occupancy for the attached or detached ADU. The~~ no replacement parking spaces may be located in any configuration on the same lot as the attached or detached ADU, including, but not limited to, covered spaces, uncovered spaces, tandem spaces or by use of mechanical automobile parking lifts. Replacement covered parking shall meet the setback requirements of the zoning district. Replacement uncovered parking shall be a permeable surface and may be located within a shall be required setback; the planning director may require the parking be screened from off-site views with vegetation not less than thirty-six (36) inches in height above the parking surface. for the converted ADU.

(d) ~~4)~~ 4) Notwithstanding any other provisions of this Subsection 8.124.060(B)(13) 130(L), attached or detached ADUs ~~shall not be required to provide an off~~ are exempt from off-street parking space in any of the following circumstances:

(~~ia~~) The attached or detached ADU is located within one-half mile walking distance of a public transit stop.

(~~ib~~) The attached or detached ADU is located within an architecturally and historically significant historic district.

(~~ic~~) When on-street parking permits are required but not offered to the occupant of the attached or detached ADU.

(~~id~~) When there is a car share vehicle storage space, at which car shares may be picked up and dropped off, located within one block of the attached or detached ADU.

(~~ie~~) Nothing in this section 8.124.~~060(B)(13)(d)~~130(L) shall be construed as requiring parking to be provided for a ~~fully contained~~streamlined ADU.

~~C. All fully contained ADUs and~~

8.124.140. – Design standards for standard attached and detached ADUs ~~shall also comply with the following development standards:~~

~~(1) Only one ADU or JADU is permitted per lot.~~

~~(2) The ADU is not required to provide fire sprinklers if they are not required for the existing primary unit.~~

~~(3) The ADU shall be located within 150 feet of (i) a point accessible by a Moraga-Orinda Fire District emergency vehicle, and (ii) an emergency services access path that complies with the applicable state and federal safety code standards; or an alternative means of fire protection shall be provided subject to approval of the Moraga-Orinda Fire District.~~

8.124.070. – Design Standards.

This section sets forth design standards that must be met for the establishment of attached and detached ADUs in addition to the requirement to comply with the general standards set forth in section 8.124.080 and the development standards set forth in Sections 8.124.~~060(B) and (C).~~130. An attached or detached ADU must meet the following design standards:

- A. Exterior colors, materials, architectural and landscape designs of the attached or detached ADU and its appurtenances (e.g. mailboxes) shall be compatible with those of the ~~existing~~ primary unit.
- B. All exterior lighting shall be directed downward and/or inward toward the property.
- C. Any new retaining walls necessary for the construction of the attached or detached ADU shall be no higher than three feet. If a fence is located within two feet of a retaining wall the combined retaining wall and fence height shall not exceed six feet. There shall be no more than two new retaining walls located within thirty (30) feet of one another in conjunction with the construction of the attached or detached ADU.
- D. Any blank exterior wall proposed as part of the construction of the attached or detached ADU that is without windows and is more than fifteen (15) feet long or one hundred eighty (180) square feet in area, whichever is less, shall have

landscaping installed and maintained along the wall which reaches a minimum height of four feet within three years.

- E. Windows on any exterior wall proposed as part of the construction of the attached or detached ADU located within thirty (30) feet of a neighboring residence, where the windows would have sight lines to the neighboring residence, shall have a minimum sill height not less than five feet, six inches above the interior finished floor height. This requirement may be waived by the Planning Director for a window required for egress under the California Building Code.
- F. The aggregate area of new deck(s), balcony(ies) or porch(es) for the attached or detached ADU shall not exceed one hundred and twenty (120) square feet, and no such feature shall have a depth greater than eight feet. No deck, porch or balcony shall have a height more than twenty-four (24) inches above existing grade, measured to the top of the finished floor or deck surface.
- G. Stairways constructed to access an attached or detached ADU with an upper landing floor height of more than six feet from natural grade shall be enclosed, except where all parts of the stairway are located more than thirty (30) feet from a property line or would not be visible from an adjacent property or public street.
- H. — The skirt height associated with the construction of the attached or detached ADU shall not exceed four feet.
- ~~I. All landscaping associated with the attached or detached ADU shall be irrigated and maintained for a minimum of one year.~~
- ~~J. I.~~ There shall be a minimum of six feet near-—level clearance area from any top or bottom of a slope associated with the construction of the attached or detached ADU. The post-development slope of the near-—level clearance area shall not exceed five percent. This requirement is also applicable to split-—level lots, with the exception of the primary pad split.
- ~~K. Each attached or detached ADU shall have a designated location for the permanent storage of trash and recycling containers.~~

#### ~~8.124.080. Junior Accessory Dwelling Units~~

~~This section provides standards for the establishment of junior accessory dwelling units (JADUs), as an alternative to a fully contained ADU. A JADU may not be located on a lot that already contains any type of ADU. A JADU will typically be smaller than an ADU and must be constructed within the pre-existing building envelope of an existing primary unit. The JADU shall comply with the following standards:~~

- ~~A. One JADU is allowed on a lot containing an existing primary unit and located in the 1-DUA, 2-DUA, 3-DUA, 6-DUA districts; planned development districts of equivalent residential density to the foregoing residential districts, study district; or MOSO or non-MOSO open space district.~~
- ~~B. The owner of a parcel proposed for a JADU shall occupy as a principal residence either the existing primary unit or the JADU.~~
- ~~C. As set forth in Section 8.124.160, neither the JADU nor the existing primary unit shall be sold independently of each other.~~

- ~~D. As set forth in Section 8.124.160, neither the JADU nor the existing primary unit shall be rented for periods of less than thirty (30) consecutive days.~~
- ~~E. A JADU shall be created entirely within the pre-existing building envelope of an existing primary unit, and shall include conversion of a pre-existing bedroom.~~
- ~~F. A JADU shall have an exterior entry separate from the existing primary unit to serve the JADU, and an interior entry to the main living area of the existing primary unit.~~
- ~~G. The interior living area of a JADU shall not be larger than 500 square feet in size.~~
- ~~H. The JADU shall include an efficiency kitchen, requiring and limited to the following components:~~
- ~~(1) A sink with a maximum waste line diameter of one and one-half (1.5) inches;~~
  - ~~(2) A cooking facility or appliance which does not require electrical service greater than one hundred and twenty (120) volts, or natural or propane gas; and~~
  - ~~(3) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.~~
- ~~I. No additional parking is required beyond that required at the time the existing primary unit was constructed.~~

Article 34. - Procedures and Standards for Review of Accessory Dwelling Units not Qualifying for Ministerial Review

8.124.~~090~~150. - Purpose.

The purpose of this article is to provide procedures and standards for the review and approval of ADUs that do not meet one or more of the development and/or design standards set forth in Sections 8.124.~~060~~130 and 8.124.~~070~~140, respectively. The intent of these procedures is to reasonably allow such units to be established, subject to administrative adjustment or discretionary review, even when they would not qualify for ministerial review and approval pursuant to the requirements of state law, thereby increasing the opportunities for ADUs to be developed in the town.

8.124.~~100~~160. - Applicability.

This article is only applicable to provide alternative processes to the statutory requirements for ministerial review, and to thereby provide for minor administrative adjustments and a system of discretionary review in a manner designed to increase opportunities for ADUs to be developed in the town beyond that which is required by state law. In no event shall this article be interpreted to expand or otherwise amend the requirements for ministerial review set forth in Article 2 above 3.

8.124.~~110~~170. - Administrative Adjustment.

- A. Allowable Adjustments. The planning director may approve a minor adjustment to the development or design standards applicable to an application for an attached or detached standard ADU governed by Article 2 above 3, to the extent identified in Table 8.124-1. Only a maximum of two of the allowable adjustments may be granted for such an ADU per parcel. A request for more than two adjustments or that exceeds the adjustment limitations identified in Table 8.124-1 may not be reviewed under

Article ~~23~~, governing ministerial review, and this Section 8.124.~~110~~<sup>170</sup> and shall require an application for a conditional use permit in accordance with Section 8.124.~~120~~<sup>180</sup>.

**Table 8.124-1: Allowable Adjustments**

Type of Adjustment Allowed	Maximum Adjustment
1. Height. An increase in the maximum aggregate building height.	10 percent, or two feet, whichever is greater, provided that such height does not exceed that of the <b>existing</b> primary unit.
<del>2. Setbacks. A decrease of the required front, side or rear setback.</del>	<del>10 percent, provided that a minimum setback of 10 feet is maintained in all instances.</del>
<del>3</del> <sup>2</sup> . Parking Space Dimensions. A decrease in the minimum dimensions of a required parking space.	Reduction to not less than 8 feet by 18 feet
<del>4</del> <sup>3</sup> . New deck(s), balcony(ies) or porches: Increase in aggregate area.	25 percent increase
<del>5</del> <sup>4</sup> . The nature of the material used for the parking spaces required under Section 8.124.060(B)(13)(b)	A non-permeable surface may be allowed if the applicant presents site-specific civil and geotechnical evidence, satisfactory to the Planning Director and Town Engineer, that the use of a permeable material for the required parking space on the lot would be inappropriate.

- B. ~~—~~ Application. An application for an administrative adjustment shall be made to the Planning Department pursuant to the procedures set forth in Chapter 8.12.
- C. Findings and Decision. The Planning Director shall, after notice and hearing in accordance with the procedures set forth in Government Code Section 65905, approve, approve with conditions or deny an adjustment application. The Director

may approve an adjustment application, with or without conditions, only after the following findings are made:

- (1) The adjustment would allow for an ADU of superior design, livability or quality than could be constructed without the adjustment.
- (2) The ADU will not adversely affect the privacy, light, air or views of neighboring properties.
- (3) The adjustment will not be detrimental to the public health, safety and welfare.
- (4) The ADU complies with the other applicable standards set forth in Sections 8.124.060130 and 8.124.070140.

D. Appeal. The decision of the Planning Director may be appealed, in accordance with the procedures set forth in Chapter 8.12.

#### 8.124.120180. - Conditional Use Permit Procedures.

A proposed attached or detached ADU that an applicant seeks to establish ~~within a MOSO or non-MOSO Open Space District, or~~ that does not comply with the development standards set forth in Section 8.124.060(B)130 may be allowed subject to a Conditional Use Permit. The applicant shall be required to obtain a building permit prior to the construction of any attached or detached ADU for which a Conditional Use Permit is required, and shall also meet the requirements set forth in Article 45 of this chapter. Design review for such attached or detached ADUs may also be required pursuant to Section 8.124.130190. An application for a Conditional Use Permit (CUP) for an ADU subject to this Article 34 shall be processed in accordance with Chapter 8.12 of the Moraga Municipal Code, except as expressly set forth in this Section 8.124.120180 and Section 8.124.130190. In addition to the required findings set forth in Section 8.12.120, the following supplemental findings shall also be made prior to the issuance of a CUP for an attached or detached ADU:

- A. There shall be no more than one ADU or JADU per lot.
- B. The area within the development footprint of the proposed ADU, including the area required for the unit, associated grading, and outdoor living space, will not have an average predevelopment slope greater than twenty percent (20%).
- C. The interior living area of the proposed ADU, whether an attached or detached, will ADU shall be at least one hundred fifty (150) square feet and not more than eight hundred (800)fifty (850) square feet. for an ADU with one bedroom or less and up to one thousand (1,000) square feet that is more than one bedroom.
- D. — The square footage of an attached ADU shall not exceed fifty percent (50%) of the pre-existing interior living area of the existing primary unit, calculated before the addition of the attached ADU, subject to the authority of the reviewing body to apply a more restrictive standard where it is deemed appropriate to do so.
- E. The ADU will comply with all of the required setbacks of the applicable zoning district.



- F. The owner of the property upon which the ADU is located will occupy either the ~~existing~~ primary unit or the ADU, unless the applicant establishes by substantial evidence to the satisfaction of the Planning Director that strict application of the requirement on a temporary basis would constitute a hardship warranting an exemption to this requirement.
- G. At least one dedicated off-street parking space for the ADU, which may be covered, uncovered, or provided as tandem parking, will be provided, except that no off-street parking space is required when one of the circumstances described in Section 8.124.~~060(B)(13)(d130(L)(4))~~ would apply,
- H. The ADU complies to the extent practicable with the standards set forth in Sections 8.124.~~060130~~ and 8.124.~~070140~~.
- I. Provisions have been made for a deed restriction as provided in Section 8.124.160Article 5 of this Chapter to be recorded against the property.

#### 8.124.~~130190~~. - Design Review Procedures.

An attached or detached ADU that does not ~~with~~ comply with the design standards set forth in Section 8.124.~~070140~~ shall be reviewed pursuant to the procedures, and approved or denied pursuant to the standards, set forth in Moraga Municipal Code Chapter 8.72, ~~except that where the project also requires a Conditional Use Permit, the Planning Commission shall be the review body for design review approval. In such case the Planning Commission's action shall follow a recommendation from the reviewing authority (either the Design Review Administrator or the Design Review Board) following the procedure for review~~ specified in Section 8.72.030(D) or Section 8.72.090, as applicable.

#### ~~8.124.140. - ADUs Authorized as Part of New Construction.~~

~~Notwithstanding any other provision of this chapter, the Town may authorize the construction of fully contained, and attached and detached ADUs as an accessory use to a single family dwelling in any zoning district, in conjunction with the approval of, or an amendment to, any of the following:~~

- ~~A. Approval of a new single family dwelling;~~
- ~~B. A residential subdivision pursuant to the Moraga Subdivision Ordinance and Subdivision Map Act;~~
- ~~C. A Planned Development pursuant to Chapter 8.48; and~~
- ~~D. A Conditional Use Permit, including but not limited to a Conditional Use Permit for a single family residential dwelling or dwellings within the MOSO Open Space District, provided that an application for a Conditional Use Permit, or the amendment thereof, to permit the establishment of ADU shall be processed as set forth in Section 8.124.120 above.~~

#### Article ~~45~~: - Deed Restriction

8.124.150200. - Applicability.

The requirements of this Article 4 shall apply to the following:

- A. ~~—A fully contained ADU~~ Streamlined ADUs and JADUs approved under Article 2;
- B. A detached or attached ADU approved under Article 23;
- C. ~~—A JADU approved under Article 2; and~~
- ~~D.~~ An ADU approved under Article 34.

8.124.160210. - Requirements.

Prior to the issuance of a building permit for any ADU or JADU ~~described in Section 8.124.150~~, the property owner shall record in the office of the Contra Costa County Recorder a deed restriction setting forth the following requirements, in a form satisfactory to the Planning Director and the Town Attorney:

- A. The primary unit and the ADU or JADU, as applicable, established on the same lot may not be sold independently of each other, and the lot may not be subdivided so as to create separate legal lots for the ~~existing~~ primary unit and the ADU or JADU.
- B. An owner of a lot upon which the ADU or JADU is located ~~shall occupy, that is~~ accessory to a single-family residence, may be subject to the owner occupancy requirements as set forth below. a principal residence either the ~~existing~~ primary unit or the ADU or JADU, unless the applicant establishes by substantial evidence to the satisfaction of the Planning Director that strict application of the requirement on a temporary basis would constitute a hardship warranting an exemption to this requirement. ~~The ADU or JADU shall be considered legal only so long as either the existing primary unit or the ADU or JADU, as applicable, approved pursuant to this chapter is occupied by an owner of record, or the owner has received an approved hardship exemption.~~

1) All ADUs approved before January 1, 2020 are subject to the owner-occupancy requirements or restrictions that were in place when the ADU was approved.

2) An ADU that is approved after that date but before January 1, 2025, is not subject to any owner-occupancy requirement.

3) All ADUs that are approved on or after January 1, 2025 are subject to an owner-occupancy requirement under Section 8.124.210(B). A natural person with legal or equitable title to the property must reside on the property as the person's legal domicile and permanent residence.

4) All JADUs are subject to an owner-occupancy requirement under Section 8.124.210(B). A natural person with legal or equitable title to the property must reside on the property, in either the primary residence or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement of this



paragraph does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.

- C. No ADU or JADU, as applicable, or ~~existing~~ primary unit on a lot that contains an ADU or JADU shall be rented to the same party for fewer than 30 consecutive days at a time.
- D. The restrictions described in this Section 8.124.160210 shall be binding upon any successor in ownership of the property and lack of compliance may result in legal action against the property owner.
- E. The Town shall have the right at any time to request and have the owner provide such information deemed necessary by the Town to confirm compliance with these restrictions.

# **ATTACHMENT D**

State ADU Handbook (Updated December 2020 - Includes the new government code sections regulating ADUs and JADUs)



California Department of Housing and  
Community Development

# Accessory Dwelling Unit Handbook



Where foundations begin

*Updated December 2020*

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# Understanding Accessory Dwelling Units (ADUs) and Their Importance



California's housing production is not keeping pace with demand. In the last decade, less than half of the homes needed to keep up with the population growth were built. Additionally, new homes are often constructed away from job-rich areas. This lack of housing that meets people's needs is impacting affordability and causing average housing costs, particularly for renters in California, to rise significantly. As affordable housing becomes less accessible, people drive longer distances between housing they can afford and their workplace or pack themselves into smaller shared spaces, both of which reduce quality of life and produce negative environmental impacts.

\*\*\*\*\*

Beyond traditional construction, widening the range of housing types can increase the housing supply and help more low-income Californians thrive. Examples of some of these housing types are Accessory Dwelling Units (ADUs - also referred to as second units, in-law units, casitas, or granny flats) and Junior Accessory Dwelling Units (JADUs).

## **What is an ADU?**

An ADU is an accessory dwelling unit with complete independent living facilities for one or more persons and has a few variations:

- Detached: The unit is separated from the primary structure.
- Attached: The unit is attached to the primary structure.
- Converted Existing Space: Space (e.g., master bedroom, attached garage, storage area, or similar use, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.
- Junior Accessory Dwelling Unit (JADU): A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence.

ADUs tend to be significantly less expensive to build and offer benefits that address common development barriers such as affordability and environmental quality. Because ADUs must be built on lots with existing or proposed housing, they do not require paying for new land, dedicated parking or other costly infrastructure required to build a new single-family home. Because they are contained inside existing single-family homes, JADUs require relatively

modest renovations and are much more affordable to complete. ADUs are often built with cost-effective one or two-story wood frames, which are also cheaper than other new homes. Additionally, prefabricated ADUs can be directly purchased and save much of the time and money that comes with new construction. ADUs can provide as much living space as apartments and condominiums and work well for couples, small families, friends, young people, and seniors.

Much of California's housing crisis comes from job-rich, high-opportunity areas where the total housing stock is insufficient to meet demand and exclusionary practices have limited housing choice and inclusion. Professionals and students often prefer living closer to jobs and amenities rather than spending hours commuting. Parents often want better access to schools and do not necessarily require single-family homes to meet their needs. There is a shortage of affordable units, and the units that are available can be out of reach for many people. To address our state's needs, homeowners can construct an ADU on their lot or convert an underutilized part of their home into a JADU. This flexibility benefits both renters and homeowners who can receive extra monthly rent income.

ADUs also give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care, thus helping extended families stay together while maintaining privacy. The space can be used for a variety of reasons, including adult children who can pay off debt and save up for living on their own.

New policies are making ADUs even more affordable to build, in part by limiting the development impact fees and relaxing zoning requirements. A 2019 study from the Turner Center on Housing Innovation noted that one unit of affordable housing in the Bay Area costs about \$450,000. ADUs and JADUs can often be built at a fraction of that price and homeowners may use their existing lot to create additional housing, without being required to provide additional infrastructure. Often the rent generated from the ADU can pay for the entire project in a matter of years.

ADUs and JADUs are a flexible form of housing that can help Californians more easily access job-rich, high-opportunity areas. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education, and services for many Californians.



# Summary of Recent Changes to Accessory Dwelling Unit Laws



In Government Code Section 65852.150, the California Legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in zones that allow single-family and multifamily uses provides additional rental housing, and is an essential component in addressing California's housing needs. Over the years, ADU law has been revised to improve its effectiveness at creating more housing units. Changes to ADU laws effective January 1, 2021, further reduce barriers, better streamline approval processes, and expand capacity to accommodate the development of ADUs and junior accessory dwelling units (JADUs).

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing

options for family members, friends, students, the elderly, in-home health care providers, people with disabilities, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the California Department of Housing and Community Development (HCD) has prepared this guidance to assist local governments, homeowners, architects, and the general public in encouraging the development of ADUs. The following is a summary of recent legislation that amended ADU law: AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019). Please see Attachment 1 for the complete statutory changes for AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019).

## AB 3182 (Ting)

Chapter 198, Statutes of 2020 (Assembly Bill 3182) builds upon recent changes to ADU law (Gov. Code, § 65852.2 and Civil Code Sections 4740 and 4741) to further address barriers to the development and use of ADUs and JADUs.

This recent legislation, among other changes, addresses the following:

- States that an application for the creation of an ADU or JADU shall be *deemed approved* (not just subject to ministerial approval) if the local agency has not acted on the completed application within 60 days.
- Requires ministerial approval of an application for a building permit within a residential or mixed-use zone to create one ADU *and* one JADU per lot (not one or the other), within the proposed or existing single-family dwelling, if certain conditions are met.
- Provides for the rental or leasing of a separate interest ADU or JADU in a common interest development, notwithstanding governing documents that otherwise appear to prohibit renting or leasing of a unit, *and* without regard to the date of the governing documents.

- Provides for not less than 25 percent of the separate interest units within a common interest development be allowed as rental or leasable units.

## **AB 68 (Ting), AB 881 (Bloom), and SB 13 (Wieckowski)**

Chapter 653, Statutes of 2019 (Senate Bill 13, Section 3), Chapter 655, Statutes of 2019 (Assembly Bill 68, Section 2) and Chapter 659 (Assembly Bill 881, Section 1.5 and 2.5) build upon recent changes to ADU and JADU law (Gov. Code § 65852.2, 65852.22) and further address barriers to the development of ADUs and JADUs.

This legislation, among other changes, addresses the following:

- Prohibits local agencies from including in development standards for ADUs requirements on minimum lot size (Gov. Code, § 65852.2, subd. (a)(1)(B)(i)).
- Clarifies areas designated by local agencies for ADUs may be based on the adequacy of water and sewer services as well as impacts on traffic flow and public safety (Gov. Code, § 65852.2, subd. (a)(1)(A)).
- Eliminates all owner-occupancy requirements by local agencies for ADUs approved between January 1, 2020, and January 1, 2025 (Gov. Code, § 65852.2, subd. (a)(6)).
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom and requires approval of a permit to build an ADU of up to 800 square feet (Gov. Code, § 65852.2, subds. (c)(2)(B) & (C)).
- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement of offstreet parking spaces cannot be required by the local agency (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi)).
- Reduces the maximum ADU and JADU application review time from 120 days to 60 days (Gov. Code, § 65852.2, subd. (a)(3) and (b)).
- Clarifies that “public transit” includes various means of transportation that charge set fees, run on fixed routes and are available to the public (Gov. Code, § 65852.2, subd. (j)(10)).
- Establishes impact fee exemptions and limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees (Gov. Code § 65852.2, subd. (f)(3)); ADUs that are 750 square feet or larger may be charged impact fees but only such fees that are proportional in size (by square foot) to those for the primary dwelling unit (Gov. Code, § 65852.2, subd. (f)(3)).
- Defines an “accessory structure” to mean a structure that is accessory or incidental to a dwelling on the same lot as the ADU (Gov. Code, § 65852.2, subd. (j)(2)).
- Authorizes HCD to notify the local agency if HCD finds that their ADU ordinance is not in compliance with state law (Gov. Code, § 65852.2, subd. (h)(2)).
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy Regional Housing Needs Allocation (RHNA) housing needs (Gov. Code, §§ 65583.1, subd. (a), and 65852.2, subd. (m)).
- Permits JADUs even where a local agency has not adopted an ordinance expressly authorizing them (Gov. Code, § 65852.2, subds. (a)(3), (b), and (e)).



- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the single-family residence (Gov. Code § 65852.22, subd. (a)(4); former Gov. Code § 65852.22, subd. (a)(5)).
- Requires, upon application and approval, a local agency to delay enforcement against a qualifying substandard ADU for five (5) years to allow the owner to correct the violation, so long as the violation is not a health and safety issue, as determined by the enforcement agency (Gov. Code, § 65852.2, subd. (n); Health & Safety Code, § 17980.12).

### **AB 587 (Friedman), AB 670 (Friedman), and AB 671 (Friedman)**

In addition to the legislation listed above, AB 587 (Chapter 657, Statutes of 2019), AB 670 (Chapter 178, Statutes of 2019), and AB 671 (Chapter 658, Statutes of 2019) also have an impact on state ADU law, particularly through Health and Safety Code Section 17980.12. These pieces of legislation, among other changes, address the following:

- AB 587 creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separately from the primary dwelling by allowing deed-restricted sales to occur if the local agency adopts an ordinance. To qualify, the primary dwelling and the ADU are to be built by a qualified nonprofit corporation whose mission is to provide units to low-income households (Gov. Code, § 65852.26).
- AB 670 provides that covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable (Civ. Code, § 4751).
- AB 671 requires local agencies' housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs (Gov. Code, § 65583; Health & Safety Code, § 50504.5).

# Frequently Asked Questions: Accessory Dwelling Units<sup>1</sup>

## 1. Legislative Intent

### a. Should a local ordinance encourage the development of accessory dwelling units?

Yes. Pursuant to Government Code Section 65852.150, the California Legislature found and declared that, among other things, California is facing a severe housing crisis and ADUs are a valuable form of housing that meets the needs of family members, students, the elderly, in-home health care providers, people with disabilities and others. Therefore, ADUs are an essential component of California's housing supply.

ADU law and recent changes intend to address barriers, streamline approval,

## Government Code 65852.150:

*(a) The Legislature finds and declares all of the following:*

*(1) Accessory dwelling units are a valuable form of housing in California.*

*(2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.*

*(3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.*

*(4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.*

*(5) California faces a severe housing crisis.*

*(6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.*

*(7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.*

*(8) Accessory dwelling units are, therefore, an essential component of California's housing supply.*

*(b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.*

<sup>1</sup> Note: Unless otherwise noted, the Government Code section referenced is 65852.2.

and expand potential capacity for ADUs, recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment, and implementation of local ADU ordinances must be carried out consistent with Government Code, Section 65852.150 and must not unduly constrain the creation of ADUs. Local governments adopting ADU ordinances should carefully weigh the adoption of zoning, development standards, and other provisions for impacts on the development of ADUs.

In addition, ADU law is the statutory minimum requirement. Local governments may elect to go beyond this statutory minimum and further the creation of ADUs. Many local governments have embraced the importance of ADUs as an important part of their overall housing policies and have pursued innovative strategies. (Gov. Code, § 65852.2, subd. (g)).

## **2. Zoning, Development and Other Standards**

### **A) Zoning and Development Standards**

- **Are ADUs allowed jurisdiction wide?**

No. ADUs proposed pursuant to subdivision (e) must be considered in any residential or mixed-use zone. For other ADUs, local governments may, by ordinance, designate areas in zones where residential uses are permitted that will also permit ADUs. However, any limits on where ADUs are permitted may only be based on the adequacy of water and sewer service, and the impacts on traffic flow and public safety. Further, local governments may not preclude the creation of ADUs altogether, and any limitation should be accompanied by detailed findings of fact explaining why ADU limitations are required and consistent with these factors.

Examples of public safety include severe fire hazard areas and inadequate water and sewer service and includes cease and desist orders. Impacts on traffic flow should consider factors like lesser car ownership rates for ADUs and the potential for ADUs to be proposed pursuant to Government Code section 65852.2, subdivision (e). Finally, local governments may develop alternative procedures, standards, or special conditions with mitigations for allowing ADUs in areas with potential health and safety concerns. (Gov. Code, § 65852.2, subd. (e))

Residential or mixed-use zone should be construed broadly to mean any zone where residential uses are permitted by-right or by conditional use.

- **Can a local government apply design and development standards?**

Yes. A local government may apply development and design standards 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 Historic Resources. However, these standards shall be sufficiently objective to allow ministerial review of an ADU. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i))

ADUs created under subdivision (e) of Government Code 65852.2 shall not be subject to design and development standards except for those that are noted in the subdivision.

What does objective mean?

“objective zoning standards” and “objective design review standards” mean 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. Gov Code § 65913.4, subd. (a)(5)

ADUs that do not meet objective and ministerial development and design standards may still be permitted through an ancillary discretionary process if the applicant chooses to do so. Some jurisdictions with compliant ADU ordinances apply additional processes to further the creation of ADUs that do not otherwise comply with the minimum standards necessary for ministerial review. Importantly, these processes are intended to provide additional opportunities to create ADUs that would not otherwise be permitted, and a discretionary process may not be used to review ADUs that are fully compliant with ADU law. Examples of these processes include areas where additional health and safety concerns must be considered, such as fire risk.

- **Can ADUs exceed general plan and zoning densities?**

Yes. An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning that does not count toward the allowable density. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Further, local governments could elect to allow more than one ADU on a lot, and ADUs are automatically a residential use deemed consistent with the general plan and zoning. (Gov. Code, § 65852.2, subd. (a)(1)(C).)

- **Are ADUs permitted ministerially?**

Yes. ADUs must be considered, approved, and permitted ministerially, without discretionary action. Development and other decision-making standards must be sufficiently objective to allow for ministerial review. Examples include numeric and fixed standards such as heights or setbacks, or design standards such as colors or materials. Subjective standards require judgement and can be interpreted in multiple ways such as privacy, compatibility with neighboring properties or promoting harmony and balance in the community; subjective standards shall not be imposed for ADU development. Further, ADUs must not be subject to a hearing or any ordinance regulating the issuance of variances or special use permits and must be considered ministerially. (Gov. Code, § 65852.2, subd. (a)(3).)

- **Can I create an ADU if I have multiple detached dwellings on a lot?**

Yes. A lot where there are currently multiple detached single-family dwellings is eligible for creation of one ADU per lot by converting space within the proposed or existing space of a single-family dwelling or existing structure or a new construction detached ADU subject to certain development standards.

- **Can I build an ADU in a historic district, or if the primary residence is subject to historic preservation?**

Yes. ADUs are allowed within a historic district, and on lots where the primary residence is subject to historic preservation. State ADU law allows for a local agency to impose standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards do not apply to ADUs proposed pursuant to Government Code section 65852.2, subdivision (e).

As with non-historic resources, a jurisdiction may impose objective and ministerial standards that are sufficiently objective to be reviewed ministerially and do not unduly burden the creation of ADUs. Jurisdictions are encouraged to incorporate these standards into their ordinance and submit these standards along with their ordinance to HCD. (Gov. Code, § 65852.2, subds. (a)(1)(B)(i) & (a)(5).)

## **B) Size Requirements**

- **Is there a minimum lot size requirement?**

No. While local governments may impose standards on ADUs, these standards shall not include minimum lot size requirements. Further, lot coverage requirements cannot preclude the creation of a statewide exemption ADU (800 square feet ADU with a height limitation of 16 feet and 4 feet side and rear yard setbacks). If lot coverage requirements do not allow such an ADU, an automatic exception or waiver should be given to appropriate development standards such as lot coverage, floor area or open space requirements. Local governments may continue to enforce building and health and safety standards and may consider design, landscape, and other standards to facilitate compatibility.

What is a statewide exemption ADU?

A statewide exemption ADU is an ADU of up to 800 square feet, 16 feet in height, as potentially limited by a local agency, and with 4 feet side and rear yard setbacks. ADU law requires that no lot coverage, floor area ratio, open space, or minimum lot size will preclude the construction of a statewide exemption ADU. Further, ADU law allows the construction of a detached new construction statewide exemption ADU to be combined on the same lot with a JADU in a single-family residential zone. In addition, ADUs are allowed in any residential or mixed uses regardless of zoning and development standards imposed in an ordinance. See more discussion below.

- **Can minimum and maximum unit sizes be established for ADUs?**

Yes. A local government may, by ordinance, establish minimum and maximum unit size requirements for both attached and detached ADUs. However, maximum unit size requirements must be at least 850 square feet and 1,000 square feet for ADUs with more than one bedroom. For local agencies without an ordinance, maximum unit sizes are 1,200 square feet for a new detached ADU and up to 50 percent of the floor area of the existing primary dwelling for an attached ADU (at least 800 square feet). Finally, the local agency must not establish by ordinance a minimum square footage requirement that prohibits an efficiency unit, as defined in Health and Safety Code section 17958.1.

The conversion of an existing accessory structure or a portion of the existing primary residence to an ADU is not subject to size requirements. For example, an existing 3,000 square foot barn converted to an ADU would not be subject to the size requirements, regardless if a local government has an adopted ordinance. Should an applicant want to expand an accessory structure to create an ADU beyond 150 square feet, this ADU would be subject to the size maximums outlined in state ADU law, or the local agency's adopted ordinance.

- **Can a percentage of the primary dwelling be used for a maximum unit size?**

Yes. Local agencies may utilize a percentage (e.g., 50 percent) of the primary dwelling as a maximum unit size for attached or detached ADUs but only if it does not restrict an ADU's size to less than the standard of at least 850 square feet (or at least 1000 square feet for ADUs with more than one bedroom). Local agencies must not, by ordinance, establish any other minimum or maximum unit sizes, including based on

a percentage of the primary dwelling, that precludes a statewide exemption ADU. Local agencies utilizing percentages of the primary dwelling as maximum unit sizes could consider multi-pronged standards to help navigate these requirements (e.g., shall not exceed 50 percent of the dwelling or 1,000 square feet, whichever is greater).

- **Can maximum unit sizes exceed 1,200 square feet for ADUs?**

Yes. Maximum unit sizes, by ordinance, can exceed 1,200 square feet for ADUs. ADU law does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs (Gov. Code, § 65852.2, subd. (g)).

Larger unit sizes can be appropriate in a rural context or jurisdictions with larger lot sizes and is an important approach to creating a full spectrum of ADU housing choices.

## **C) Parking Requirements**

- **Can parking requirements exceed one space per unit or bedroom?**

No. Parking requirements for ADUs shall not exceed one parking space per unit or bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. Guest parking spaces shall not be required for ADUs under any circumstances.

What is Tandem Parking?

Tandem parking means two or more automobiles that are parked on a driveway or in any other location on a lot, lined up behind one another. (Gov. Code, § 65852.2, subs. (a)(1)(D)(x)(I) and (j)(11).)

Local agencies may choose to eliminate or reduce parking requirements for ADUs such as requiring zero or half a parking space per each ADU.

- **Is flexibility for siting parking required?**

Yes. Local agencies should consider flexibility when siting parking for ADUs. Offstreet parking spaces for the ADU shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made. Specific findings must be based on specific site or regional topographical or fire and life safety conditions.

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, or converted to an ADU, the local agency shall not require that those offstreet parking spaces for the primary unit be replaced. (Gov. Code, § 65852.2, subd. (a)(D)(xi).)

- **Can ADUs be exempt from parking?**

Yes. A local agency shall not impose ADU parking standards for any of the following, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10).

(1) Accessory dwelling unit is located within one-half mile walking distance of public transit.

- (2) Accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) Accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

*Note: For the purposes of state ADU law, a jurisdiction may use the designated areas where a car share vehicle may be accessed. Public transit is any location where an individual may access buses, trains, subways and other forms of transportation that charge set fares, run on fixed routes and are available to the general public. Walking distance is defined as the pedestrian shed to reach public transit. Additional parking requirements to avoid impacts to public access may be required in the coastal zone.*

## D) Setbacks

- **Can setbacks be required for ADUs?**

Yes. A local agency may impose development standards, such as setbacks, for the creation of ADUs. Setbacks may include front, corner, street, and alley setbacks. Additional setback requirements may be required in the coastal zone if required by a local coastal program. Setbacks may also account for utility easements or recorded setbacks. However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to subdivision (e). Further, a setback of no more than four feet from the side and rear lot lines shall be required for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).)

A local agency may also allow the expansion of a detached structure being converted into an ADU when the existing structure does not have four-foot rear and side setbacks. A local agency may also allow the expansion area of a detached structure being converted into an ADU to have no setbacks, or setbacks of less than four feet, if the existing structure has no setbacks, or has setbacks of less than four feet. A local agency shall not require setbacks of more than four feet for the expanded area of a detached structure being converted into an ADU.

A local agency may still apply front yard setbacks for ADUs, but front yard setbacks cannot preclude a statewide exemption ADU and must not unduly constrain the creation of all types of ADUs. (Gov. Code, § 65852.2, subd. (c).)

## E) Height Requirements

- **Is there a limit on the height of an ADU or number of stories?**

Not in state ADU law, but local agencies may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).)

## F) Bedrooms

- **Is there a limit on the number of bedrooms?**



State ADU law does not allow for the limitation on the number of bedrooms of an ADU. A limit on the number of bedrooms could be construed as a discriminatory practice towards protected classes, such as familial status, and would be considered a constraint on the development of ADUs.

## **G) Impact Fees**

- **Can impact fees be charged for an ADU less than 750 square feet?**

No. An ADU is exempt from incurring impact fees from local agencies, special districts, and water corporations if less than 750 square feet. Should an ADU be 750 square feet or larger, impact fees shall be charged proportionately in relation to the square footage of the ADU to the square footage of the primary dwelling unit.

What is “Proportionately”?

“Proportionately” is some amount that corresponds to a total amount, in this case, an impact fee for a single-family dwelling. For example, a 2,000 square foot primary dwelling with a proposed 1,000 square foot ADU could result in 50 percent of the impact fee that would be charged for a new primary dwelling on the same site. In all cases, the impact fee for the ADU must be less than the primary dwelling. Otherwise, the fee is not calculated proportionately. When utilizing proportions, careful consideration should be given to the impacts on costs, feasibility, and ultimately, the creation of ADUs. In the case of the example above, anything greater than 50 percent of the primary dwelling could be considered a constraint on the development of ADUs.

For purposes of calculating the fees for an ADU on a lot with a multifamily dwelling, the proportionality shall be based on the average square footage of the units within that multifamily dwelling structure. For ADUs converting existing space with a 150 square foot expansion, a total ADU square footage over 750 square feet could trigger the proportionate fee requirement. (Gov. Code, § 65852.2, subd. (f)(3)(A).)

- **Can local agencies, special districts or water corporations waive impact fees?**

Yes. Agencies can waive impact and any other fees for ADUs. Also, local agencies may also use fee deferrals for applicants.

- **Can school districts charge impact fees?**

Yes. School districts are authorized but do not have to levy impact fees for ADUs greater than 500 square feet pursuant to Section 17620 of the Education Code. ADUs less than 500 square feet are not subject to school impact fees. Local agencies are encouraged to coordinate with school districts to carefully weigh the importance of promoting ADUs, ensuring appropriate nexus studies and appropriate fees to facilitate construction or reconstruction of adequate school facilities.

- **What types of fees are considered impact fees?**

Impact fees charged for the construction of ADUs must be determined in accordance with the Mitigation Fee Act and generally include any monetary exaction that is charged by a local agency in connection with the approval of an ADU, including impact fees, for the purpose of defraying all or a portion of the cost of public facilities relating to the ADU. A local agency, special district or water corporation shall not consider ADUs as a new residential use for the purposes of calculating connection fees or capacity charges for



utilities, including water and sewer services. However, these provisions do not apply to ADUs that are constructed concurrently with a new single-family home. (Gov. Code, §§ 65852.2, subd. (f), and 66000)

- **Can I still be charged water and sewer connection fees?**

ADUs converted from existing space and JADUs 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, unless constructed with a new single-family dwelling. The connection fee or capacity charge shall be proportionate to the burden of the proposed ADU, based on its square footage or plumbing fixtures as compared to the primary dwelling. State ADU law does not cover monthly charge fees. (Gov. Code, § 65852.2, subd. (f)(2)(A).)

## **H) Conversion of Existing Space in Single Family, Accessory and Multifamily Structures and Other Statewide Permissible ADUs (Subdivision (e))**

- **Are local agencies required to comply with subdivision (e)?**

Yes. All local agencies must comply with subdivision (e). This subdivision requires the ministerial approval of ADUs within a residential or mixed-use zone. The subdivision creates four categories of ADUs that should not be subject to other specified areas of ADU law, most notably zoning and development standards. For example, ADUs under this subdivision should not have to comply with lot coverage, setbacks, heights, and unit sizes. However, ADUs under this subdivision must meet the building code and health and safety requirements. The four categories of ADUs under subdivision (e) are:

- b. One ADU and one JADU are permitted per lot within the existing or proposed space of a single-family dwelling, or a JADU within the walls of the single family residence, or an ADU within an existing accessory structure, that meets specified requirements such as exterior access and setbacks for fire and safety.**
- c. One detached new construction ADU that does not exceed four-foot side and rear yard setbacks. This ADU may be combined on the same lot with a JADU and may be required to meet a maximum unit size requirement of 800 square feet and a height limitation of 16 feet.**
- d. Multiple ADUs within the portions of multifamily structures that are not used as livable space. Local agencies must allow at least one of these types of ADUs and up to 25 percent of the existing multifamily structures.**
- e. Up to two detached ADUs on a lot that has existing multifamily dwellings that are subject to height limits of 16 feet and 4-foot rear and side yard setbacks.**

The above four categories are not required to be combined. For example, local governments are not required to allow (a) and (b) together or (c) and (d) together. However, local agencies may elect to allow these ADU types together.

Local agencies shall allow at least one ADU to be created within the non-livable space within multifamily dwelling structures, or up to 25 percent of the existing multifamily dwelling units within a structure and may also allow not more than two ADUs on the lot detached from the multifamily dwelling structure. New detached units are subject to height limits of 16 feet and shall not be required to have side and rear setbacks of more than four feet.

The most common ADU that can be created under subdivision (e) is a conversion of proposed or existing space of a single-family dwelling or accessory structure into an ADU, without any prescribed size limitations, height, setback, lot coverage, architectural review, landscape, or other development standards. This would enable the conversion of an accessory structure, such as a 2,000 square foot garage, to an ADU without any additional requirements other than compliance with building standards for dwellings. These types of ADUs are also eligible for a 150 square foot expansion (see discussion below).

ADUs created under subdivision (e) shall not be required to provide replacement or additional parking. Moreover, these units shall not, as a condition for ministerial approval, be required to correct any existing or created nonconformity. Subdivision (e) ADUs shall be required to be rented for terms longer than 30 days, and only require fire sprinklers if fire sprinklers are required for the primary residence. These ADUs shall not be counted as units when calculating density for the general plan and are not subject to owner-occupancy.

- **Can I convert my accessory structure into an ADU?**

Yes. The conversion of garages, sheds, barns, and other existing accessory structures, either attached or detached from the primary dwelling, into ADUs is permitted and promoted through the state ADU law. These conversions of accessory structures are not subject to any additional development standard, such as unit size, height, and lot coverage requirements, and shall be from existing space that can be made safe under building and safety codes. A local agency should not set limits on when the structure was created, and the structure must meet standards for health and safety. Finally, local governments may also consider the conversion of illegal existing space and could consider alternative building standards to facilitate the conversion of existing illegal space to minimum life and safety standards.

- **Can an ADU converting existing space be expanded?**

Yes. An ADU created within the existing or proposed space of a single-family dwelling or accessory structure can be expanded beyond the physical dimensions of the structure. In addition, an ADU created within an existing accessory structure may be expanded up to 150 square feet without application of local development standards, but this expansion shall be limited to accommodating ingress and egress. An example of where this expansion could be applicable is for the creation of a staircase to reach a second story ADU. These types of ADUs shall conform to setbacks sufficient for fire and safety.

A local agency may allow for an expansion beyond 150 square feet, though the ADU would have to comply with the size maximums as per state ADU law, or a local agency's adopted ordinance.

As a JADU is limited to being created within the walls of a primary residence, this expansion of up to 150 square feet does not pertain to JADUs.

## **I) Nonconforming Zoning Standards**

- **Does the creation of an ADU require the applicant to carry out public improvements?**

No physical improvements shall be required for the creation or conversion of an ADU. Any requirement to carry out public improvements is beyond what is required for the creation of an ADU, as per state law. For example, an applicant shall not be required to improve sidewalks, carry out street improvements, or access improvements to create an ADU. Additionally, as a condition for ministerial approval of an ADU, an applicant shall not be required to correct nonconforming zoning conditions. (Gov. Code, § 65852.2, subd. (e)(2).)

## **J) Renter and Owner-occupancy**

- **Are rental terms required?**

Yes. Local agencies may require that the property be used for rentals of terms longer than 30 days. ADUs permitted ministerially, under subdivision (e), shall be rented for terms longer than 30 days. (Gov. Code, § 65852.2, subds. (a)(6) & (e)(4).)

- **Are there any owner-occupancy requirements for ADUs?**

No. Prior to recent legislation, ADU laws allowed local agencies to elect whether the primary dwelling or ADU was required to be occupied by an owner. The updates to state ADU law removed the owner-occupancy allowance for newly created ADUs effective January 1, 2020. The new owner-occupancy exclusion is set to expire on December 31, 2024. Local agencies may not retroactively require owner occupancy for ADUs permitted between January 1, 2020, and December 31, 2024.

However, should a property have both an ADU and JADU, JADU law requires owner-occupancy of either the newly created JADU, or the single-family residence. Under this specific circumstance, a lot with an ADU would be subject to owner-occupancy requirements. (Gov. Code, § 65852.2, subd. (a)(2).)

## **K) Fire Sprinkler Requirements**

- **Are fire sprinklers required for ADUs?**

No. Installation of fire sprinklers may not be required in an ADU if sprinklers are not required for the primary residence. For example, a residence built decades ago would not have been required to have fire sprinklers installed under the applicable building code at the time. Therefore, an ADU created on this lot cannot be required to install fire sprinklers. However, if the same primary dwelling recently undergoes significant remodeling and is now required to have fire sprinklers, any ADU created after that remodel must likewise install fire sprinklers. (Gov. Code, § 65852.2, subds. (a)(1)(D)(xii) and (e)(3).)

Please note, for ADUs created on lots with multifamily residential structures, the entire residential structure shall serve as the “primary residence” for the purposes of this analysis. Therefore, if the multifamily structure is served by fire sprinklers, the ADU can be required to install fire sprinklers.

## **L) Solar Panel Requirements**

- **Are solar panels required for new construction ADUs?**

Yes, newly constructed ADUs are subject to the Energy Code requirement to provide solar panels if the unit(s) is a newly constructed, non-manufactured, detached ADU. Per the California Energy Commission (CEC), the panels can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed within existing space, or as an addition to existing homes, including detached additions where an existing detached building is converted from non-residential to residential space, are not subject to the Energy Code requirement to provide solar panels.

Please refer to the CEC on this matter. For more information, see the CEC's website [www.energy.ca.gov](http://www.energy.ca.gov). You may email your questions to: [title24@energy.ca.gov](mailto:title24@energy.ca.gov), or contact the Energy Standards Hotline at 800-772-3300. CEC memos can also be found on HCD's website at <https://www.hcd.ca.gov/policy-research/AccessoryDwellingUnits.shtml>.

### 3. Junior Accessory Dwelling Units (JADUs) – Government Code Section 65852.22

- **Are two JADUs allowed on a lot?**

No. A JADU may be created on a lot zoned for single-family residences with one primary dwelling. The JADU may be created within the walls of the proposed or existing single-family residence, including attached garages, as attached garages are considered within the walls of the existing single-family residence. Please note that JADUs created in the attached garage are not subject to the same parking protections as ADUs and could be required by the local agency to provide replacement parking.

JADUs are limited to one per residential lot with a single-family residence. Lots with multiple detached single-family dwellings are not eligible to have JADUs. (Gov. Code, § 65852.22, subd. (a)(1).)

- **Are JADUs allowed in detached accessory structures?**

No, JADUs are not allowed in accessory structures. The creation of a JADU must be within the single-family residence. As noted above, attached garages are eligible for JADU creation. The maximum size for a JADU is 500 square feet. (Gov. Code, § 65852.22, subs. (a)(1), (a)(4), and (h)(1).)

- **Are JADUs allowed to be increased up to 150 square feet when created within an existing structure?**

No. Only ADUs are allowed to add up to 150 square feet "beyond the physical dimensions of the existing accessory structure" to provide for ingress. (Gov. Code, § 65852.2, subd. (e)(1)(A)(i).)

This provision extends only to ADUs and excludes JADUs. A JADU is required to be created within the single-family residence.

- **Are there any owner-occupancy requirements for JADUs?**

Yes. There are owner-occupancy requirements for JADUs. The owner must reside in either the remaining portion of the primary residence, or in the newly created JADU. (Gov. Code, § 65852.22, subd. (a)(2).)

### 4. Manufactured Homes and ADUs

- **Are manufactured homes considered to be an ADU?**

Yes. An ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes a manufactured home (Health & Saf. Code, § 18007).

Health and Safety Code section 18007, subdivision (a): **“Manufactured home,”** for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. “Manufactured home” includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

## 5. ADUs and the Housing Element

- **Do ADUs and JADUs count toward a local agency’s Regional Housing Needs Allocation?**

Yes. Pursuant to Government Code section 65852.2 subdivision (m), and section 65583.1, ADUs and JADUs may be utilized towards the Regional Housing Need Allocation (RHNA) and Annual Progress Report (APR) pursuant to Government Code section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, an ADU, and a JADU with shared sanitation facilities, and any other unit that meets the census definition, and is reported to DOF as part of the DOF annual City and County Housing Unit Change Survey, can be credited toward the RHNA based on the appropriate income level. The housing element or APR must include a reasonable methodology to demonstrate the level of affordability. Local governments can track actual or anticipated affordability to assure ADUs and JADUs are counted towards the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit or other applications.

- **Is analysis required to count ADUs toward the RHNA in the housing element?**

Yes. To calculate ADUs in the housing element, local agencies must generally use a three-part approach: (1) development trends, (2) anticipated affordability and (3) resources and incentives. Development trends must consider ADUs permitted in the prior planning period and may also consider more recent trends. Anticipated affordability can use a variety of methods to estimate the affordability by income group. Common approaches include rent surveys of ADUs, using rent surveys and square footage assumptions and data available through the APR pursuant to Government Code section 65400. Resources and incentives include policies and programs to encourage ADUs, such as prototype plans, fee waivers, expedited procedures and affordability monitoring programs.

- **Are ADUs required to be addressed in the housing element?**

Yes. The housing element must include a description of zoning available to permit ADUs, including development standards and analysis of potential constraints on the development of ADUs. The element must include programs as appropriate to address identified constraints. In addition, housing elements must

include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs. (Gov. Code, § 65583 and Health & Saf. Code, § 50504.5.)

## 6. Homeowners Association

- **Can my local Homeowners Association (HOA) prohibit the construction of an ADU or JADU?**

No. Assembly Bill 670 (2019) and AB 3182 (2020) amended Section 4751, 4740, and 4741 of the Civil Code to preclude common interest developments from prohibiting or unreasonably restricting the construction or use, including the renting or leasing of, an ADU on a lot zoned for single-family residential use. Covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on such lots are void and unenforceable or may be liable for actual damages and payment of a civil penalty. Applicants who encounter issues with creating ADUs or JADUs within CC&Rs are encouraged to reach out to HCD for additional guidance.

## 7. Enforcement

- **Does HCD have enforcement authority over ADU ordinances?**

Yes. After adoption of the ordinance, HCD may review and submit written findings to the local agency as to whether the ordinance complies with state ADU law. If the local agency's ordinance does not comply, HCD must provide a reasonable time, no longer than 30 days, for the local agency to respond, and the local agency shall consider HCD's findings to amend the ordinance to become compliant. If a local agency does not make changes and implements an ordinance that is not compliant with state law, HCD may refer the matter to the Attorney General.

In addition, HCD may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify ADU law.

## 8. Other

- **Are ADU ordinances existing prior to new 2020 laws null and void?**

No. Ordinances existing prior to the new 2020 laws are only null and void to the extent that existing ADU ordinances conflict with state law. Subdivision (a)(4) of Government Code Section 65852.2 states an ordinance that fails to meet the requirements of subdivision (a) shall be null and void and shall apply the state standards (see Attachment 3) until a compliant ordinance is adopted. However, ordinances that substantially comply with ADU law may continue to enforce the existing ordinance to the extent it complies with state law. For example, local governments may continue the compliant provisions of an ordinance and apply the state standards where pertinent until the ordinance is amended or replaced to fully comply with ADU law. At the same time, ordinances that are fundamentally incapable of being enforced because key provisions are invalid -- meaning there is not a reasonable way to sever conflicting provisions and apply the remainder of an ordinance in a way that is consistent with state law -- would be fully null and void and must follow all state standards until a compliant ordinance is adopted.

- **Do local agencies have to adopt an ADU ordinance?**

No. Local governments may choose not to adopt an ADU ordinance. Should a local government choose to not adopt an ADU ordinance, any proposed ADU development would be only subject to standards set in state ADU law. If a local agency adopts an ADU ordinance, it may impose zoning, development, design, and other standards in compliance with state ADU law. (See Attachment 4 for a state standards checklist.)

- **Is a local government required to send an ADU ordinance to the California Department of Housing and Community Development (HCD)?**

Yes. A local government, upon adoption of an ADU ordinance, must submit a copy of the adopted ordinance to HCD within 60 days after adoption. After the adoption of an ordinance, the Department may review and submit written findings to the local agency as to whether the ordinance complies with this section. (Gov. Code, § 65852.2, subd. (h)(1).)

Local governments may also submit a draft ADU ordinance for preliminary review by HCD. This provides local agencies the opportunity to receive feedback on their ordinance and helps to ensure compliance with the new state ADU law.

- **Are charter cities and counties subject to the new ADU laws?**

Yes. ADU law applies to a local agency which is defined as a city, county, or city and county, whether general law or chartered. (Gov. Code, § 65852.2, subd. (j)(5)).

Further, pursuant to Chapter 659, Statutes of 2019 (AB 881), the Legislature found and declared ADU law as “...a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution” and concluded that ADU law applies to all cities, including charter cities.

- **Do the new ADU laws apply to jurisdictions located in the Coastal Zone?**

Yes. ADU laws apply to jurisdictions in the Coastal Zone, but do not necessarily alter or lessen the effect or application of Coastal Act resource protection policies. (Gov. Code, § 65852.22, subd. (l)).

Coastal localities should seek to harmonize the goals of protecting coastal resources and addressing housing needs of Californians. For example, where appropriate, localities should amend Local Coastal Programs for California Coastal Commission review to comply with the California Coastal Act and new ADU laws. For more information, see the [California Coastal Commission 2020 Memo](#) and reach out to the locality’s local Coastal Commission district office.

- **What is considered a multifamily dwelling?**

For the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of state ADU law.



# Resources





## **Attachment 1: Statutory Changes (Strikeout/Italics and Underline)**

### **GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2**

#### **Combined changes from (AB 3182 Accessory Dwelling Units)**

#### **and (AB 881, AB 68 and SB 13 Accessory Dwelling Units)**

(Changes noted in strikeout, underline/italics)

Effective January 1, 2021, Section 65852.2 of the Government Code is amended to read:

#### **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 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 Historic 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) 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.
- (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, as appropriate.
- (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.

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

(3) 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 act on the application to create an accessory dwelling unit or 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 or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create 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 acted upon 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.

(4) 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.

(5) 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.

(6) 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, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.

(7) 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.

(8) 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) 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 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 act on the application to create an accessory dwelling unit or 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 or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create 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 acted upon the completed application within 60 days, the application shall be deemed approved.

(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 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, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

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

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block 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 ~~or~~ **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 of 16 feet.

(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) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(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.

(4) 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.

(5) 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.

(6) 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 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 home.
- (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 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) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
  - (8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
  - (9) "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.
  - (10) "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) below, 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.
  - (o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.
- (Becomes operative on January 1, 2025)**

Section 65852.2 of the Government Code is amended to read (changes from January 1, 2021 statute noted in underline/italic):

**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 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 Historic 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) 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.
- (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, as appropriate.
- (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.

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

(3) 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 act on the application to create an accessory dwelling unit or 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 or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create 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 acted upon 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.

(4) 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.

(5) 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.

(6) (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, including any owner-occupant requirement, except that~~ imposed except that, subject to subparagraph (B), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.

(7) 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.

(8) 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) 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 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 act on the application to create an accessory dwelling unit or 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 or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create 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 acted upon the completed application within 60 days, the application shall be deemed approved.

(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 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, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

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

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block 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 ~~or~~ 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 of 16 feet.

(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) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(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.

(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 (6) of subdivision (a).

~~(4)~~ (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.

~~(5)~~ (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.

~~(6)~~ (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 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 ~~home-~~ 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 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) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

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

(9) "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.

(10) "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) below, 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.

(o) This section shall ~~remain in effect only until January 1, 2025, and as of that date is repealed.~~ *become operative on January 1, 2025.*

Effective January 1, 2021, Section 4740 of the Civil Code is amended to read (changes noted in strikeout, underline/italics) (AB 3182 (Ting)):

#### **4740.**

(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in that common interest development to a renter, lessee, or tenant unless that governing document, or amendment thereto, was effective prior to the date the owner acquired title to ~~his or~~ *her* ~~their~~ separate interest.

~~(b) Notwithstanding the provisions of this section, an owner of a separate interest in a common interest development may expressly consent to be subject to a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant.~~

~~(c)~~ *(b)* For purposes of this section, the right to rent or lease the separate interest of an owner shall not be deemed to have terminated if the transfer by the owner of all or part of the separate interest meets at least one of the following conditions:

(1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation Code, the transfer is exempt, for purposes of reassessment by the county tax assessor.

(2) Pursuant to subdivision (b) of, solely with respect to probate transfers, or subdivision (e), (f), or (g) of, Section 1102.2, the transfer is exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement, as set forth in Section 1102.6.

~~(d)~~ *(c)* Prior to renting or leasing ~~his or her~~ *their* separate interest as provided by this section, an owner shall provide the association verification of the date the owner acquired title to the separate interest and the name and contact information of the prospective tenant or lessee or the prospective tenant's or lessee's representative.

~~(e)~~ *(d)* Nothing in this section shall be deemed to revise, alter, or otherwise affect the voting process by which a common interest development adopts or amends its governing documents.

~~(f) This section shall apply only to a provision in a governing document or a provision in an amendment to a governing document that becomes effective on or after January 1, 2012.~~

Effective January 1, 2021 of the *Section 4741 is added to the Civil Code, to read (AB 3182 (Ting)):*

#### **4741.**

*(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development to a renter, lessee, or tenant.*

*(b) A common interest development shall not adopt or enforce a provision in a governing document or amendment to a governing document that restricts the rental or lease of separate interests within a common interest to less than 25 percent of the separate interests. Nothing in this subdivision prohibits a common interest development from adopting or enforcing a provision authorizing a higher percentage of separate interests to be rented or leased.*

*(c) This section does not prohibit a common interest development from adopting and enforcing a provision in a*

governing document that prohibits transient or short-term rental of a separate property interest for a period of 30 days or less.

(d) For purposes of this section, an accessory dwelling unit or junior accessory dwelling unit shall not be construed as a separate interest.

(e) For purposes of this section, a separate interest shall not be counted as occupied by a renter if the separate interest, or the accessory dwelling unit or junior accessory dwelling unit of the separate interest, is occupied by the owner.

(f) A common interest development shall comply with the prohibition on rental restrictions specified in this section on and after January 1, 2021, regardless of whether the common interest development has revised their governing documents to comply with this section. However, a common interest development shall amend their governing documents to conform to the requirements of this section no later than December 31, 2021.

(g) A common interest development that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(h) In accordance with Section 4740, this section does not change the right of an owner of a separate interest who acquired title to their separate interest before the effective date of this section to rent or lease their property.

Effective January 1, 2020, Section 65852.22 of the Government Code ~~is~~ was amended to read (AB 68 (Ting)):  
**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 proposed or existing single-family residence.

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

(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) 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 act on the application to create 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 a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create 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.

(d) 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.

(e) 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.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or 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.

(g) 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.

(h) 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.

Effective January 1, 2020 Section 17980.12 is was added to the Health and Safety Code, immediately following Section 17980.11, to read (SB 13 (Wieckowski)):

**17980.12.**

(a) (1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:

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

(B) 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.

(2) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.

(3) The enforcement agency shall grant an application described in paragraph (2) if the enforcement determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.

(4) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).

(b) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2.

(c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

**GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2**  
**AB 587 Accessory Dwelling Units**

Effective January 1, 2020 Section 65852.26 ~~is~~ was added to the Government Code, immediately following Section 65852.25, to read (AB 587 (Friedman)):

**65852.26.**

(a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency may, by ordinance, allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

- (1) The property was built or developed by a qualified nonprofit corporation.
- (2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.
- (3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:
  - (A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.
  - (B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property.
  - (C) A requirement that the qualified buyer occupy the property as the buyer's principal residence.
  - (D) Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
- (4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.
- (5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.
- (b) For purposes of this section, the following definitions apply:
  - (1) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.
  - (2) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

**CIVIL CODE: DIVISION 4, PART 5, CHAPTER 5, ARTICLE 1**  
**AB 670 Accessory Dwelling Units**

Effective January 1, 2020, Section 4751 ~~is~~ was added to the Civil Code, to read (AB 670 (Friedman)):

**4751.**

- (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code, is void and unenforceable.
- (b) This section does not apply to provisions that impose reasonable restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, "reasonable restrictions" means restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability

to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with the provisions of Section 65852.2 or 65852.22 of the Government Code.

**GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 3, ARTICLE 10.6**

**AB 671 Accessory Dwelling Units**

Effective January 1, 2020, Section 65583(c)(7) of the Government Code ~~is~~ was added to read (sections of housing element law omitted for conciseness) (AB 671 (Friedman)):

**65583(c)(7).**

Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "accessory dwelling units" has the same meaning as "accessory dwelling unit" as defined in paragraph (4) of subdivision (i) of Section 65852.2.

Effective January 1, 2020, Section 50504.5 ~~is~~ was added to the Health and Safety Code, to read (AB 671 (Friedman)):

**50504.5.**

(a) The department shall develop by December 31, 2020, a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning, construction, and operation of an accessory dwelling unit with affordable rent, as defined in Section 50053, for very low, low-, and moderate-income households.

(b) The list shall be posted on the department's internet website by December 31, 2020.

(c) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in paragraph (4) of subdivision (i) of Section 65852.2 of the Government Code.



## Attachment 2: State Standards Checklist

YES/NO	STATE STANDARD*	GOVERNMENT CODE SECTION
	Unit is not intended for sale separate from the primary residence and may be rented.	65852.2(a)(1)(D)(i)
	Lot is zoned for single-family or multifamily use and contains a proposed, or existing, dwelling.	65852.2(a)(1)(D)(ii)
	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 dwelling and located on the same lot as the proposed or existing primary dwelling.	65852.2(a)(1)(D)(iii)
	Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing primary dwelling but shall be allowed to be at least 800/850/1000 square feet.	65852.2(a)(1)(D)(iv), (c)(2)(B) & C
	Total area of floor area for a detached accessory dwelling unit does not exceed 1,200 square feet.	65852.2(a)(1)(D)(v)
	Passageways are not required in conjunction with the construction of an accessory dwelling unit.	65852.2(a)(1)(D)(vi)
	Setbacks are not 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.	65852.2(a)(1)(D)(vii)
	Local building code requirements that apply to detached dwellings are met, as appropriate.	65852.2(a)(1)(D)(viii)
	Local health officer approval where a private sewage disposal system is being used, if required.	65852.2(a)(1)(D)(ix)
	Parking requirements do not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on an existing driveway.	65852.2(a)(1)(D)(x)(I)

## Attachment 3: Bibliography

### [ACCESSORY DWELLING UNITS: CASE STUDY](#) (26 pp.)

By the United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

### [THE MACRO VIEW ON MICRO UNITS](#) (46 pp.)

By Bill Whitlow, et al. – Urban Land Institute (2014)  
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

### [SECONDARY UNITS AND URBAN INFILL: A Literature Review](#) (12 pp.)

By Jake Wegmann and Alison Nemirow (2011)  
UC Berkeley: IURD  
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

### [RETHINKING PRIVATE ACCESSORY DWELLINGS](#) (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)  
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

One of the large impacts of single-use, single-family detached zoning has been to severely shrink the supply of accessory dwellings, which often were created in or near primary houses. Detached single-family dwelling zones—the largest housing zoning category—typically preclude more than one dwelling per lot except under stringent regulation, and then only in some jurisdictions. Bureaucratically termed “accessory dwelling units” that are allowed by some jurisdictions may encompass market-derived names such as granny flats, granny cottages, mother-in-law suites, secondary suites, backyard cottages, casitas, carriage flats, sidekick houses, basement apartments, attic apartments, laneway houses, multigenerational homes, or home-within-a-home.



## [Regulating ADUs in California: Local Approaches & Outcomes](#) (44 pp.)

By Deidra Pfeiffer  
Turner Center for Housing and Innovation, UC Berkeley

Accessory dwelling units (ADU) are often mentioned as a key strategy in solving the nation's housing problems, including housing affordability and challenges associated with aging in place. However, we know little about whether formal ADU practices—such as adopting an ordinance, establishing regulations, and permitting—contribute to these goals. This research helps to fill this gap by using data from the Turner California Residential Land Use Survey and the U.S. Census Bureau to understand the types of communities engaging in different kinds of formal ADU practices in California, and whether localities with adopted ordinances and less restrictive regulations have more frequent applications to build ADUs and increasing housing affordability and aging in place. Findings suggest that three distinct approaches to ADUs are occurring in California: 1) a more restrictive approach in disadvantaged communities of color, 2) a moderately restrictive approach in highly advantaged, predominately White and Asian communities, and 3) a less restrictive approach in diverse and moderately advantaged communities. Communities with adopted ordinances and less restrictive regulations receive more frequent applications to build ADUs but have not yet experienced greater improvements in housing affordability and aging in place. Overall, these findings imply that 1) context-specific technical support and advocacy may be needed to help align formal ADU practices with statewide goals, and 2) ADUs should be treated as one tool among many to manage local housing problems.

## [ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes](#) (8 p.)

By David Garcia (2017)  
Turner Center for Housing and Innovation, UC Berkeley

As California's housing crisis deepens, innovative strategies for creating new housing units for all income levels are needed. One such strategy is building Accessory Dwelling Units (ADUs) by private homeowners. While large scale construction of new market rate and affordable homes is needed to alleviate demand-driven rent increases and displacement pressures, ADUs present a unique opportunity for individual homeowners to create more housing as well. In particular, ADUs can increase the supply of housing in areas where there are fewer opportunities for larger-scale developments, such as neighborhoods that are predominantly zoned for and occupied by single-family homes.

In two of California's major metropolitan areas -- Los Angeles and San Francisco -- well over three quarters of the total land area is comprised of neighborhoods where single-family homes make up at least 60 percent of the community's housing stock. Across the state, single-family detached units make up 56.4 percent of the overall housing stock. Given their prevalence in the state's residential land use patterns, increasing the number of single-family homes that have an ADU could contribute meaningfully to California's housing shortage.

## [Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle and Vancouver](#) (29 pp.)

By Karen Chapple et al (2017)  
Turner Center for Housing and Innovation, UC Berkeley

Despite government attempts to reduce barriers, a widespread surge of ADU construction has not materialized. The ADU market remains stalled. To find out why, this study looks at three cities in the Pacific Northwest of the United States and Canada that have seen a spike in construction in recent years: Portland, Seattle, and Vancouver. Each city has adopted a set of zoning reforms, sometimes in combination with financial incentives and outreach programs, to spur ADU construction. Due to these changes, as well as the acceleration of the housing crisis in each city, ADUs have begun blossoming.

[Accessory Dwelling Units as Low-Income Housing: California's Faustian Bargain](#) (37 pp.)

By Darrel Ramsey-Musolf (2018)

University of Massachusetts Amherst, ScholarWorks@UMass Amherst

In 2003, California allowed cities to count accessory dwelling units (ADU) towards low-income housing needs. Unless a city's zoning code regulates the ADU's maximum rent, occupancy income, and/or effective period, then the city may be unable to enforce low-income occupancy. After examining a stratified random sample of 57 low-, moderate-, and high-income cities, the high-income cities must proportionately accommodate more low-income needs than low-income cities. By contrast, low-income cities must quantitatively accommodate three times the low-income needs of high-income cities. The sample counted 750 potential ADUs as low-income housing. Even though 759 were constructed, no units were identified as available low-income housing. In addition, none of the cities' zoning codes enforced low-income occupancy. Inferential tests determined that cities with colleges and high incomes were more probable to count ADUs towards overall and low-income housing needs. Furthermore, a city's count of potential ADUs and cities with high proportions of renters maintained positive associations with ADU production, whereas a city's density and prior compliance with state housing laws maintained negative associations. In summary, ADUs did increase local housing inventory and potential ADUs were positively associated with ADU production, but ADUs as low-income housing remained a paper calculation.

# **ATTACHMENT E**

Written Correspondence Received



December 7, 2020

**VIA EMAIL**

Planning Commission  
Town of Moraga  
329 Rheem Boulevard  
Moraga, CA 94556  
Email: [planning@moraga.ca.us](mailto:planning@moraga.ca.us)

RE: December 7, 2020 Planning Commission Meeting, Item D

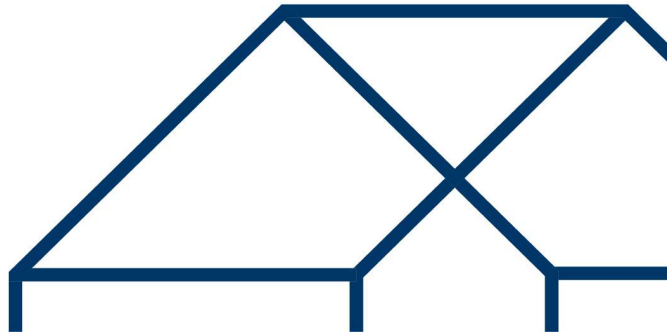
To the Planning Commission:

Californians for Homeownership is a 501(c)(3) non-profit organization devoted to using legal tools to address California's housing crisis. I am writing as part of our work monitoring local compliance with California's laws regarding accessory dwelling units (ADUs).

At your December 7 meeting, you will consider an ordinance intended to address recent changes to state ADU law. If the Town adopts a compliant ADU ordinance, it will be able to apply certain local controls to ADU development. The Town's draft ordinance is generally good, but we have a few concerns:

- The draft ordinance properly provides the streamlined approvals applicable to the categories of ADUs listed in Government Code Section 65852.2(e)(1). As the Town recognizes, ADUs covered by Government Code Section 65852.2(e)(1) must be approved without applying any local development standards other than those specifically enumerated in Section 65852.2(e). See HCD Guidelines, attached to the staff report as Attachment C, p. 8 ("ADUs created under subdivision (e) of Government Code 65852.2 shall not be subject to design and development standards except for those that are noted in the subdivision."). Unfortunately, the Town has improperly sought to apply its local setback standards to detached ADUs permitted under subdivisions (e)(1)(B) and (e)(1)(D). Local standards simply do not apply to subdivision (e)(1) ADUs, whether or not necessary to enable the development of an ADU; the applicant, not the Town, chooses where to build the streamlined ADU. HCD Guidelines, p. 12 ("However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to subdivision (e).") (emphasis added).

- The draft ordinance improperly limits subdivision (e)(1)(A) ADUs to existing structures. These must also be allowed "within the proposed space of a single-family dwelling." Gov. Code § 65852.2(e)(1)(A) (emphasis added).



- The draft JADU provision in proposed Municipal Code Section 8.124.110(B)(5) includes a requirement for maintaining interior access to the main home, which derives from the prior version of Government Code Section 65852.22. This requirement has been eliminated from state law and must be removed.

- The draft ordinance improperly requires standard ADUs to comply with generally applicable setbacks, and includes an overly limited version of the setback exception for existing structures, which the Town is improperly proposing to limit to existing garages. For new construction, side and rear setbacks are limited to four feet, and for rebuilds, conversions, and partial rebuilds/conversions of all existing structures, no setback may be required. Gov. Code § 65852.2(a)(1)(D)(vii).

- The draft ordinance includes an overly limited version of the exception for an 800 square foot ADU required by Government Code Section 65852.2(c)(2)(C). The Town must relax all square footage, positional, and other limitations where needed to allow an 800 square foot ADU.

We hope this information is helpful to you as you work to develop the Town's ADU ordinance. We would like to be part of that process. To that end, we request that the Town include us on the notice list for all future public meetings regarding the Town's ADU policies, and we request that this letter be included in the correspondence file for those meetings.

Sincerely,



Matthew Gelfand

cc: Town of Moraga  
Brian Horn, Associate Planner (by email to [bhorn@moraga.ca.us](mailto:bhorn@moraga.ca.us))

California Department of Housing and Community Development  
Greg Nickless, Housing Policy Analyst (by email to [greg.nickless@hcd.ca.gov](mailto:greg.nickless@hcd.ca.gov))