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ORDINANCE NO. 2020-04

**AN ORDINANCE OF THE ALBANY CITY COUNCIL
REPEALING AND REPLACING SECTION 20.20.080
“SECONDARY RESIDENTIAL UNITS” OF THE ALBANY
MUNICIPAL CODE**

WHEREAS, Chapter 20 “Planning & Zoning” was comprehensively updated and adopted in 2004; and

WHEREAS, Ordinance 2014-05 was adopted on July 21, 2014 by the Albany City Council and amended Section 20.20.080 Accessory Dwelling Units, formally called Secondary Residential Units, of the Albany Municipal Code to facilitate the creation of new units; and

WHEREAS, in 2016 the Albany 2035 General Plan was adopted by the City of Albany City Council and includes “Policy LU-2.5 Second Units”, which encourages the development of accessory dwelling units to meet a substantial portion of Albany’s affordable housing needs and to seek creative solutions to parking, design, and access issues so that accessory dwelling units are accommodated with minimal impacts on neighborhood character and adjacent properties; and

WHEREAS, in 2019, the California Legislature approved, and the Governor signed into law a number of bills that, among other things, amended Government Code section 65852.2 and 65852.22 to impose new limits on local authority to regulate accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”); and

WHEREAS, the new ADU and JADU laws became effective on January 1, 2020; and

1 **WHEREAS**, as of January 1, 2020, Government Code section 65852.2 supersedes
2 non-compliant local Accessory Dwelling Unit ordinances and requires jurisdictions to
3 prepare a new ordinance consistent with the updated State regulations; and
4

5 **WHEREAS**, the State Department of Housing & Community Development will
6 review all new local Accessory Dwelling Unit ordinances and may submit written findings
7 to the local agency as to whether the ordinance complies with Government Code section
8 65852.2; and
9

10 **WHEREAS**, the Planning & Zoning Commission adopted Resolution 2019-12 on
11 December 11, 2019, a Resolution of Intention to amend accessory dwelling unit
12 regulations; and
13

14 **WHEREAS**, a public hearing notice was published in the West County Times and
15 posted in three public places pursuant to California Government Code Section 65090 on
16 February 28, 2020 for the public hearing held on March 11, 2020; and
17

18 **WHEREAS**, the Planning & Zoning Commission held a public hearing on March
19 11, 2020 to discuss proposed amendments to the City's zoning regulations governing
20 accessory dwelling units; and
21

22 **WHEREAS**, the Planning & Zoning Commission continued the proposed
23 amendments to accessory dwelling unit regulations to a date certain of March 25, 2020;
24 and
25

26 **WHEREAS**, the March 25, 2020 Planning & Zoning Commission Hearing was
27 cancelled; and
28

1 **WHEREAS**, a public hearing notice was published in the West County Times and
2 posted in three public places pursuant to California Government Code Section 65090 on
3 April 17, 2020 for the virtual Planning & Zoning public hearing held on April 29, 2020;
4 and

5
6 **WHEREAS**, the Planning & Zoning Commission held a virtual public hearing on
7 April 29, 2020 to discuss and approve the proposed amendments to accessory dwelling
8 units; and

9
10 **WHEREAS**, a public hearing notice was published in the West County Times and
11 posted in three public places pursuant to California Government Code Section 65090 on
12 May 8, 2020 for the virtual City Council public hearing held on May 18, 2020; and

13
14 **WHEREAS**, the Albany City Council held a public hearing to discuss the proposed
15 amendments on May 18, 2020; and

16
17 **WHEREAS**, the Albany City Council held a public hearing and considered all
18 public comments received, the presentation by City staff, the staff report and all other
19 pertinent documents regarding the proposed Ordinance.

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21 **NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS AS**
22 **FOLLOWS:**
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SECTION 1.

| TABLE 1. 20.12.040 PERMITTED LAND USES BY DISTRICT | | | | | | | | | | |
|---|------|----------|----------|----------|------|----------------------|----------------------|--------|----|------------------|
| Land Use¹ | R-1 | R-2 | R-3 | R-4 | RHD | SC | SPC | CMX | PF | WF ¹¹ |
| Residential | | | | | | | | | | |
| Single Family Dwelling | P | P | P | - | P | P ² | P ³ | - | - | - |
| Two-Family Dwellings | - | P | P | - | UP | P ² | P ³ | - | - | - |
| Multi-Family Dwellings | - | P | P | UP | UP | P ² | P ³ | - | - | - |
| Live/Work Space | - | - | - | - | - | P ² | UP | UP-M** | - | - |
| Rooming or Boarding House | - | - | P | - | - | - | - | - | - | - |
| Bed and Breakfast | UP | UP | UP | - | UP | - | - | - | - | - |
| Care Facility, Residential | | | | | | | | | | |
| a) Small | P | P | P | P | P | P | P | - | - | - |
| b) Large | UP | UP | UP | UP | UP | UP ⁴ | UP ⁴ | - | - | - |
| Day Care Home, Residential | | | | | | | | | | |
| a) Small family | P | P | P | P | P | - | - | - | - | - |
| b) Large family ¹⁹ | UP-M | UP-M | UP-M | UP-M | UP-M | - | - | - | - | - |
| Secondary Residential Accessory Dwelling Unit | P | <u>P</u> | <u>P</u> | <u>P</u> | P | <u>P²</u> | <u>P³</u> | - | - | - |

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SECTION 2.**20.16.020 Residential Use Classifications.**

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6 1. **Single-Family Dwelling.** A freestanding structure arranged,
 7 designed, and intended to be occupied as not more than one (1) living primary

1 residence. An Accessory Dwelling ~~Secondary Residential~~ Unit may also be located
2 in or associated with a Single-Family Dwelling and may be attached or detached.
3

4 8. ~~Secondary Residential Unit~~ A secondary residential unit is
5 residential unit with a separate entrance from the primary structure with complete
6 independent dwelling facilities for one or more persons. Units may be detached,
7 attached, or repurposed within the primary residence (space is converted into an
8 independent dwelling unit). A ~~Secondary Residential Unit~~ shall be the equivalent
9 of an accessory dwelling unit pursuant to (See CA Government Code Section
10 65852.2).

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

- 16 a. An efficiency unit, as defined by Section 17958.1 of the California
17 Health and Safety Code; and
18 b. A manufactured home, as defined by Section 18007 of the
19 California Health and Safety Code.

20
21 **SECTION 3.**
22

23 **20.24.040 Hillside Residential Regulations**
24

25 5. Accessory Buildings. Detached accessory buildings are permitted
26 subject to approval of a design review application by the Planning and Zoning
27 Commission, except for residential secondary units which are subject to subsection
28 20.100.020, ~~Zoning Clearances~~ accessory dwelling units which are regulated by
29 subsection 20.20.080.
30

31 **SECTION 4.**

32 **20.24.130 Accessory Buildings.**

33 D. ~~Secondary Residential Units.~~ Accessory Dwelling Units. ~~Secondary Residential~~
34 Accessory Dwelling Units are regulated by subsection 20.20.080 as a use of land.
35 Regulations of this subsection for Accessory Buildings do not apply to ~~Secondary~~
36 ~~Residential~~ Accessory Dwelling Units.
37

38 **SECTION 5.**

39 **20.28.030 Parking Space Requirements.**
40

1 Off-street parking spaces shall be provided according to the following schedule,
2 unless reductions or exceptions are made according to subsection 20.28.040 below.

3
4 **A. Residential Uses.**
5

| Land Use | Parking Requirement |
|---|---|
| Secondary Residential <u>Accessory Dwelling</u> Unit | <u>No off-street parking required.</u> One (1) off-street parking space or where proposed within ½ mile of a transit stop parking requirements may be waived (CA Govt. Code 65852.2 (d) (1)) |

6
7 **SECTION 6.**

8 **SECTION 20.20.080**
9 **ACCESSORY DWELLING UNITS**

10
11 **20.20.080 Accessory Dwelling Units**

12
13 **A. Purpose. The Accessory Dwelling Unit Ordinance is intended to:**

- 14 1. Foster and encourage the addition of small, more affordable housing units
15 to the City’s housing stock and to help address the State’s housing crisis;
16 2. Provide homeowners financial flexibility and the option to share their
17 homes;
18 3. Protect neighborhoods from potentially detrimental effects of unpermitted
19 secondary residential units; and
20 4. To allow and regulate accessory dwelling units (ADUs) and junior
21 accessory dwelling units (JADUs) in compliance with California
22 Government Code sections 65852.2 and 65852.22.

23
24 **B. Effect of Conforming. An ADU or JADU that conforms to the standards in this**
25 **section will not be:**

- 26 1. Deemed to be inconsistent with the city’s general plan and zoning
27 designation for the lot on which the ADU or JADU is located.

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- 2. Deemed to exceed the allowable density for the lot on which the ADU or JADU is located.
- 3. Considered in the application of any local ordinance, policy, or program to limit residential growth.
- 4. Required to correct a nonconforming zoning condition, as defined in subsection C.8 below. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code section 17980.12.

C. Definitions. As used in this section, terms are defined as follows:

- 1. “Accessory dwelling unit” or “ADU” means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An accessory dwelling unit also includes the following:
 - a. An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code; and
 - b. A manufactured home, as defined by Section 18007 of the California Health and Safety Code.
- 2. “Accessory structure” means a structure that is accessory and incidental to a dwelling located on the same lot. The term “accessory structure” shall be deemed to include an “accessory building” as defined in Section 20.08.020 of this Code.
- 3. “Complete independent living facilities” means permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.
- 4. “Efficiency kitchen” means a kitchen that includes each of the following:
 - a. A cooking facility with appliances.
 - b. A food preparation counter or counters that total at least 8 square feet in area.
 - c. Food storage cabinets that total at least 8 square feet of shelf space.
- 5. “Impact fee” has the same meaning as the term “fee” is defined in subdivision (b) of Section 66000 (Government Code), except that it also includes fees specified in Section 66477 (Government Code). “Impact fee” does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.
- 6. “Junior accessory dwelling unit” or “JADU” means a residential unit that

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- a. is no more than 500 square feet in size,
 - b. is contained entirely within an existing or proposed single-family primary unit
 - c. includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family primary unit, and
 - d. includes an efficiency kitchen, as defined in subsection (B)(4) above
7. “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.
8. “Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.
9. “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.
10. “Primary unit” or “primary residence” means a single-family or multi-family residential dwelling unit that either exits on or is proposed for a lot zoned for single-family or multi-family residential use.
11. “Proposed dwelling” means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
12. “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.
13. “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.
- D. Approvals.** The following approvals apply to ADUs and JADUs under this section:
- 1. **Building-permit Only.** If an ADU or JADU complies with each of the general requirements in subsection E below, it is allowed with only a building permit in the following scenarios:

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- a. Converted on Single-family Lot: Only one ADU or JADU on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:
 - i.) Is either: within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or within the existing space of an accessory structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress.
 - ii.) Has exterior access that is independent of that for the single-family dwelling.
 - iii.) Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes.

- b. Limited Detached on Single-family Lot: One detached, new-construction ADU on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot under subsection D.1.a above), if the detached ADU satisfies the following limitations:
 - i.) The side- and rear-yard setbacks are at least three (3) feet.
 - ii.) The total floor area is 800 square feet or smaller.
 - iii.) The height above grade is 16 feet or less.

- c. Converted on Multifamily Lot: Multiple ADUs within portions of existing multifamily dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each converted ADU complies with state building standards for dwellings. Multiple converted ADUs shall be permitted, up to 25 percent of the number of existing multifamily dwelling units.

- d. Limited Detached on Multifamily Lot: No more than two detached ADUs on a lot that has an existing multifamily dwelling if each detached ADU satisfies the following limitations:
 - i.) The side- and rear-yard setbacks are at least three (3) feet.
 - ii.) The height above grade is 16 feet or less.

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2. ADU Permit.

- a. Except as allowed under subsection 1 above, no ADU or JADU may be created without a building permit and an ADU permit in compliance with the standards set forth in subsections E and F below.
- b. The City may charge a fee to reimburse it for costs incurred in processing ADU permits, including the costs of adopting or amending the City’s ADU ordinance. The ADU-permit processing fee is determined by the Community Development Director and approved by the City Council by resolution.

3. Process and Timing.

- a. An ADU permit is considered and approved ministerially by Community Development Staff, without discretionary review or a hearing.
- b. The City shall act on an application to create an ADU or JADU within 60 days from the date that the City receives an application, unless:
 - i.) The submittal documentation required for compliance review is determined to be incomplete by Community Development Staff.
 - ii.) The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or
 - iii.) The application to create an ADU or JADU is submitted with a permit application to create a new single-family primary unit on the lot, the City may delay acting on the permit application for the ADU or JADU until the City acts on the permit application to create the new single-family dwelling, but the application to create the ADU or JADU will still be considered ministerially without discretionary review or a hearing.

E. General ADU and JADU Requirements. The following requirements apply to all ADUs and JADUs that are approved under subsections D.1 or D.2 above:

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1. **Zoning.** An ADU or JADU may be created on a lot in a single-family residential, mixed-use residential, or multifamily residential zone. See also, Table 1, subsection 20.12.040.
2. **Quantity.** Except as provided under subsection D.1 above, no more than one (1) ADU or one (1) JADU shall be allowed per lot.
3. **Fire Sprinklers.** Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.
4. **Rental Term.** No ADU or JADU may be rented for a term that is shorter than 30 days.
5. **No Separate Conveyance.** An ADU or JADU may be rented for 30 days or greater, but no ADU or JADU may be sold or otherwise conveyed separately from the primary unit.
6. **Septic System.** 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 10 years.
7. **Address and Mailbox.** An ADU or JADU shall obtain a separate address from the primary unit and provide a separate mailbox from the primary unit.
8. **Owner Occupancy.**
 - a. All ADUs are exempt from any owner-occupancy requirements.
 - b. All JADUs are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary unit 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.
9. **Deed Restriction.** Prior to issuance of a building permit for an ADU or JADU, a deed restriction must be recorded against the title of the property in the Alameda County Recorder’s office and a copy filed with the Community Development Director. The deed restriction must run with the land and bind all future owners. The form of the deed restriction will be provided by the City and must provide that:

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- a. The ADU or JADU may not be sold separately from the primary unit.
- b. The ADU or JADU is restricted to the approved size and to other attributes allowed by this section.
- c. No ADU or JADU may be rented for a term that is shorter than 30 days.
- d. The deed restriction runs with the land and may be enforced against future property owners.
- e. The deed restriction may be removed if the owner eliminates the ADU or JADU, as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request of the Community Development Director, providing evidence that the ADU or JADU has in fact been eliminated. The Community Development Director may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated. Appeal may be taken from the Community Development Director’s determination consistent with other provisions of this Code. If the ADU or JADU is not entirely physically removed but is only eliminated by virtue of having a necessary component of an ADU or JADU removed, the remaining structure and improvements must otherwise comply with applicable provisions of this Code.
- f. The deed restriction is enforceable by the Community Development Director or the Community Development Director’s designee for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining the use of the ADU or JADU in violation of the recorded restrictions or abatement of the illegal unit.

10. Impact Fees.

- a. No impact fee is required for an ADU that is less than 750 square feet in size.

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

6 **11. Utility Connection and Fees.**

- 7 a. Utility service for sewer, water, electricity shall be provided to the
8 ADU or JADU. ADUs and JADUs are not required to have a new
9 or separate utility connection directly between the ADU or JADU
10 and the utility. Nor is a connection fee or capacity charge required
11 unless the ADU or JADU is constructed with a new single-family
12 home.

13 **F. Specific ADU Requirements.** The following requirements apply only to ADUs
14 that require an ADU permit under subsection D.2 above.

15 **1. Maximum Size.**

- 16 a. The maximum size of a detached or attached ADU subject to this
17 subsection F is 850 square feet for a studio or one-bedroom unit and
18 1,000 square feet for a unit with two bedrooms. No more than two
19 bedrooms are allowed.
- 20 b. Subject to subsection F.1.c below, an attached ADU that is created
21 on a lot with an existing primary unit is further limited to 50 percent
22 of the floor area of the existing primary unit.
- 23 c. Application of other development standards in this subsection F
24 might further limit the size of the ADU, but no application of size
25 requirements based on percentage of the proposed or existing
26 primary unit, FAR, lot coverage, or open-space requirements may
27 require the ADU to be less than 800 square feet that is at least 16
28 feet in height with three (3) foot side and rear yard setbacks.

29 **2. Setbacks.**

- 30 a. Front Yard Setback: The front yard setback shall be 15 feet, except
31 the R-4 district front yard setback shall be as specified in the use
32 permit for the primary unit.

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- b. Corner Yard Setback: For ADUs or JADUs located on corner lots only, the exterior street-facing property line setback shall be seven feet and six inches.
 - c. Side and Rear Setbacks: The side and rear setbacks shall be at least 3 feet for detached ADUs. Expansions to primary units, solely for the creation of attached ADUs, shall also be required to be setback at least 3 feet from side and rear property lines. Side and rear yard setbacks of 0-6 inches may be permitted for detached ADUs with the additional requirement that a foundation form certification prepared by a licensed surveyor, shall be submitted to the City for review and authorization prior to foundation pour.
3. **Floor Area Ratio (FAR).** No ADU subject to this subsection F may cause the total FAR of the lot to exceed 55 percent, subject to subsection F.1.c above.
4. **Lot Coverage.** No ADU subject to this subsection F may cause the total coverage of the lot to exceed 50 percent, subject to subsection F.1.c above.
5. **Height.**
- a. A single-story attached or detached ADU, with setbacks 3 feet or greater from side and rear property lines, may not exceed 16 feet in height above grade, measured to the peak of the structure.
 - b. A single-story detached ADU with side and rear setbacks of 0 – 6 inches, shall not exceed a wall height of 9 feet with a 45 degree daylight plane within 3 feet from the property line. Any portion of a detached ADU, at a location of 3 feet or more from side and rear property lines, shall be permitted to a maximum of 16 feet in height.
 - c. A second story or two-story attached ADU may not exceed the height of the primary unit.
 - d. A detached ADU may not exceed one story.
6. **Passageway.** No passageway, as defined by subsection C.9 above, is required for an ADU. However, plans shall indicate the path of travel to the entrance of the unit.
7. **Location on Site.** ADUs shall maintain a minimum of 6 feet from all structures on site if detached.

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8. Parking.

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

SECTION 7: PUBLICATION AND EFFECTIVE DATE.

This ordinance shall be posted at three public places within the City of Albany and shall become effective thirty days after the date of its posting.

PASSED AND ADOPTED by the City Council of the City of Albany at its meeting on the 1st day of June, 2020 by the following vote:

AYES: Council Members Barnes, Maass, McQuaid, Nason, and Mayor Pilch

NOES:

ABSENT:

ABSTAIN:



NICK PILCH, MAYOR



City of Albany

1000 San Pablo Avenue • Albany, California 94706
(510) 528-5710 • www.albanyca.org

ORDINANCE NO. 2020-04

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF

ALBANY, The 1st day of June, 2020, by the following votes:

AYES: Council Members Barnes, Maass, McQuaid, Nason and Mayor Pilch

NOES: none

ABSENT: none

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this

2nd day of June, 2020.

Anne Hsu
CITY CLERK