



**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: December 18, 2023
Reviewed by: NA

SUBJECT: Amendments to the Zoning Ordinance to Update Accessory Dwelling Unit Regulations – First Reading

REPORT BY: Leslie Mendez, Planning Manager
Jeff Bond, Community Development Director

SUMMARY

The action before the City Council is to adopt an ordinance amending regulations for Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADUs) in Chapter 20 of the Albany Municipal Code “Planning and Zoning” in response to changes in State law, including AB 345, AB 976, AB 1033, AB 2221, AB 3182, and SB 897.

PLANNING & ZONING COMMISSION and STAFF RECOMMENDATION

That the Council introduce and waive the first reading of Ordinance No. 2023-07, repealing and replacing Section 20.20.080 “Accessory Dwelling Units” of the Albany Municipal Code and amending Sections 20.08, 20.12, 20.16, 20.24, 20.28, 20.40, 20.56, and 20.100 of the Zoning Ordinance to update Accessory Dwelling Unit Regulations.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Consideration of the ordinance is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resource Code 21080.17 and CEQA Guidelines Section 15282(h), which provide that CEQA does not apply to the adoption of an ordinance implementing the provisions of Section 65852.1 (Accessory Dwelling Units) or Section 65852.2 (Junior Accessory Dwelling Units) of the California State Government Code.

BACKGROUND

Summary of Statewide Updates to ADU Laws and Guidelines

The City last updated the [ADU Zoning Code regulations](#) (AMC § 20.20.080) in the spring of 2020. Since then, there have been annual legislative changes and updates to the California Department of Housing and Community Development (HCD) [ADU guidelines](#) which have not

been incorporated in the current Ordinance. Changes to state law and guidelines since adoption of the City’s ordinance are summarized in Table 1 below.

Table 1: Changes to State ADU Law & HCD Interpretations 2020-2023

Statute /Year	Topic	Subtopic	Requirement
<u>SB 897</u> (2022)	Development Standards	Height	For detached ADUs located on a lot that is within one-half of one mile of walking distance major transit stop, a minimum height limit of 18 feet, plus an additional two feet must be permitted to allow for a roof pitch consistent with the existing dwelling unit.
<u>SB 897</u> (2022)	Development Standards	Height	On properties with existing or proposed multi-story multifamily dwellings, a minimum height limit of 18 feet for detached ADUs must be allowed regardless of proximity to transit.
<u>SB 897</u> (2022)	Development Standards	Height	ADUs attached to the primary dwelling are allowed to be up to two stories with a 25-foot maximum height.
<u>AB 2221</u> (2022)	Development Standards	Setback	Front setbacks may not be imposed if it precludes the construction of an ADU that is no greater than 800 square feet.
<u>SB 897</u> (2022)	Eligibility	JADUs	JADUs that share a bathroom with the primary dwelling must have an internal entrance into the primary dwelling in addition to a separate main entrance.
<u>HCD Guidelines</u> (July 2022)	Number of units	Single-Family Properties	Lots developed with single-family structures may have one converted ADU; one detached, new construction ADU; and one JADU.
<u>HCD Guidelines</u> (July 2022)	Number of units	Multi-Family Properties	Lots developed with multi-family structures may have two detached ADUs, and a minimum of one and up to 25% of existing units ADUs in conversion of non-habitable, residential space; or they may have one attached, detached, or conversion ADU.
<u>AB 3182</u> (2020)	Number of units	Single-Family Properties	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.

Statute /Year	Topic	Subtopic	Requirement
<u>SB 897</u> (2022)	Process & Procedures	Design Review	Only objective standards can be used in ADU review.
<u>AB 2221</u> (2022)	Process & Procedures	Timeline	Local agencies are required to either approve or deny an application to create or serve an ADU or JADU within 60 days from the date the permitting agency receives a completed application
<u>AB 3182</u> (2020)	Process & Procedures	Timeline	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
<u>SB 897</u> (2022)	Process & Procedures	Building Permit Review	Local agencies must review and issue a demolition permit for a detached garage and the proposed ADU at the same time; construction of an ADU does not trigger a requirement for fire sprinklers in the primary dwelling; and, barring certain exceptions, construction of an ADU cannot have a Group R Occupancy Change.
<u>AB 3182</u> (2020)	Process & Procedures	Renting	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.
<u>AB 1033</u> (2023)	Process & Procedures	Ownership	Allows local agencies to adopt a local ordinance to allow the separate conveyance of the primary dwelling unit and ADU as condominiums.
<u>AB 976</u> (2023)	Process & Procedures	Ownership	Eliminates the sunset provision of AB 881 (2019) and makes permanent owner occupancy requirements for properties with ADUs.
<u>AB 345</u> (2021)	Process & Procedures	Ownership	Local agencies are required to allow ADUs to be sold or conveyed separately from the primary residence when certain requirements are met, including: ADU or primary dwelling unit was built or developed by a qualified non-profit, ADU is sold to a qualified low-income buyer, property held in a recorded TIC agreement.

Statute /Year	Topic	Subtopic	Requirement
AB 1332 (2023)	ADU Incentives	Pre-Approved Plans	Local jurisdictions will be required, by January 1, 2025, to develop a program for the preapproval of accessory dwelling unit plans.

Planning and Zoning Commission Feedback and Action

On [July 12th, 2023](#), a [study session](#) was held before the Planning and Zoning Commission detailing changes in state law, local ADU development trends, and key areas of discretion within the Ordinance update. The Planning Commission provided the following feedback:

- The height limit for new, detached ADUs should be consistent citywide, regardless of proximity to transit. Most commissioners preferred to limit height to 20 feet, but 25 feet was also discussed.
- Most commissioners advocated adopting the mandated 25-foot height limit for new, attached ADUs, however, a few commissioners voiced a preference for attached ADUs to follow underlying zoning district height regulations.
- Most commissioners preferred to increase rear and side setbacks for new ADUs to either 3 or 4 feet, while a few would prefer to retain the option for the 0 to 6-inch setback standard in place.
- Commissioners requested staff explore a range of objective design standards to be applied to ADUs.

Staff incorporated the feedback into the draft ordinance that was presented before the Commission at the [September 27, 2023 meeting](#). The Commission voted 4-0-0-1 to adopt a resolution amending the Zoning Ordinance per staff recommendation.

Based on counsel received from the City Attorney after the Planning Commission recommendation, staff removed the objective standards in order to comply with State law.

PUBLIC COMMENT

As of the publishing of this report, the City has received no public comment on this topic over the past several months.

DISCUSSION

ADU production is a key component of the City’s strategy for meeting its future housing needs. As identified in the City’s [2016 General Plan Land Use Element](#) and as outlined in the City’s recently adopted [2023-2031 Housing Element](#) policies, Albany is committed to facilitating the development of ADUs:

Policy LU-2.5: Second Units. Encourage development of secondary dwelling units and recognize their potential to meet a substantial portion of Albany’s affordable housing needs. Seek creative solutions to parking, design, and access issues so that second units are accommodated with minimal impacts on neighborhood character and adjacent properties.

Policy HE-1.6 “Missing Middle” Housing. Support opportunities for “missing middle” housing, such as duplexes, triplexes, and accessory dwelling units, in lower density neighborhoods, particularly on larger lots where such housing fits the existing neighborhood context.

Policy HE-1.8 Accessory Dwelling Units (ADUs). Encourage development of ADUs and Junior ADUs in all Albany neighborhoods.

Policy HE-1.13 Access to Opportunity. Promote access to housing opportunities in all Albany neighborhoods, including single family neighborhoods where certain segments of the population were historically excluded. All Albany residents should have access to great parks, excellent schools, safe streets, and other resources that contribute to the quality of life in the city.

Consistent with this commitment, the purposes of updating the ADU Ordinance are to:

1. Bring the City’s ADU Ordinance into compliance with state law;
2. Correct for life safety issues; and
3. Further facilitate the development of ADUs through:
 - a. Local exceptions and relaxations to specific development standards,
 - b. Efficiencies in streamlined processing, and
 - c. Simplification of regulations, making them concise and easier to understand.

Key Changes to ADU Ordinance

Table 1 above details non-discretionary updates to the ADU Ordinance required by California state law. In addition to required changes, the draft Ordinance includes certain amendments to address and mitigate common issues experienced through implementation of the City’s current Ordinance. These are Albany specific and are primarily related to the City’s fabric of primarily built out lots of substandard size. The following outlines key discretionary changes that have been incorporated into the Ordinance to ensure the City is facilitating safe construction of ADUs. Unless otherwise noted, ordinance citations are for the updated Ordinance sections found in Attachments 2 & 3.

Life Safety/Conflict Resolution Amendments

The objective of the following amendments is to ensure construction of ADUs that prioritize the safety of ADU residents, neighboring homes, and properties.

Side and Rear Setbacks

The State requires a maximum 4-foot rear and side yard setback to apply to newly constructed ADUs. Due to Albany’s small lot composition, the City’s Ordinance currently allows new detached ADUs to be constructed at the rear or side property line (i.e., no setback). The zero setback, however, has proven to be a source of concern for the Fire Department for reasons of life safety. State law has removed the ability of a local jurisdiction to require fire sprinklers in a new ADU unless the primary residence already has fire sprinklers. The installation of fire sprinklers is recognized as the most effective measure to prevent the rapid spread of fire,

protecting property, and giving occupants time to escape. Elimination of the 0-foot setback, therefore, allows first responders the rapid access required to all sides of the ADU during emergencies, which otherwise may be blocked by fencing, landscaping, or accessory structures on neighboring properties.

Experience learned during implementation of the current ordinance is that the one area of greatest conflict between neighbors related to ADUs, is the property line disputes and subsequent ill-will that has arisen from construction within inches of property lines.

To ensure rapid access in case of emergency with the added benefit of averting potential property line disputes between neighbors, the option for a 0 to 6-inch setback is eliminated thereby requiring a minimum 3-foot side and rear yard setback for newly constructed attached and detached ADUs (Tables E and F). For reference, all peer jurisdictions reviewed (Berkeley, Oakland, San Francisco, Hayward, Piedmont, El Cerrito, and San Rafael) require a minimum 4-foot setback. Given most lots in Albany are less than 5,000 square feet, three feet allows for additional flexibility while still adhering to the minimum setback for emergency access requested by the Fire Department.

Local Exceptions to Development Standards

The objective of the following amendments is to recognize the City's small lot composition and otherwise provide exceptions and relaxations to certain development standards over and above those required by the State to facilitate development of ADUs throughout the City.

Maximum Size Attached ADUs

State law has conflicting requirements for size limits for attached ADUs when applied to jurisdictions like Albany that have been developed with small homes on small lots. The State requires both that the total floor area of an attached ADU not exceed 50 percent of the existing size of the primary dwelling *and* requires that the City not impose a maximum square footage less than 850 feet. These minimum and maximum size requirements create a contradiction for homes under 1,700 sq. ft. in size, which is many if not most of the homes in Albany. To facilitate development of functional ADUs for a range of households, the Ordinance eliminates any size limitation based on a proportion of the size of the existing or proposed primary dwelling.

Maximum Height – Attached ADUs

Consistent with state law, for new, attached ADUs, the Ordinance has been revised to permit a maximum height of 25 feet. The maximum height in most residential districts, however, is 28 feet. In order accommodate construction efficiencies as well as aesthetic compatibility, the Ordinance includes an exception to allow attached additions to be constructed up to 28 feet to match the height *and* pitch of the roofline of an existing or proposed primary residential structure (Table E footnote 4 and Table F footnote 2).

Maximum Height – Detached ADUs

State law has set varying minimum height requirements for detached ADUs depending on circumstances. There is a 16-foot height limit on lots that are farther than one-half mile walking distance to a major transit stop. On lots within one-half mile, the minimum height limit is 18

feet, plus an additional two feet to allow for a roof pitch consistent with the existing dwelling unit. And for lots with an existing or proposed multi-story, two- or multi-family dwelling, there is an 18-foot height limit regardless of proximity to transit, but no 2-foot additional allowance to match existing roof pitch.

To simplify both the conveyance of ADU regulations to the public as well for ease of implementation, combined with feedback from the Commission to permit sufficient height to allow for quality, two-story ADUs to be developed, the Ordinance includes a 20-foot maximum height limit for all detached ADUs across the board citywide (Tables E and F).

Lot Coverage and Floor Area Ratio (FAR) Exceptions

State law prevents a local jurisdiction from imposing certain development standards, including maximum lot coverage and FAR limits, if it precludes the construction of an ADU up to 800 square feet in size. Particularly due to the predominance of small lots within the City, staff has found an implementation inequity in ultimate build out of a lot that has resulted based on phasing/timing of development. Specifically, if there are two equal size lots and one lot has a primary dwelling that has maximized all development potential, the property owner may still construct a new ADU up to 800 square feet in size. Conversely, if the other lot has a smaller dwelling unit and has chosen to construct an 800-square-foot ADU first, then subsequently come back to construct an addition to match their neighbor's house, they will be prohibited as the project would then exceed lot coverage and FAR limits.

To address this phasing inequity, the ordinance includes amendments that exclude the square footage of detached and attached ADUs up to 800 square feet in size from lot coverage and FAR calculations (§20.08.020 and §20.24.050.B.1.c)

Processing Efficiency Amendments

The objective of the following proposed changes to the ADU Ordinance is to simplify the processing of all ADUs within the City.

Elimination of Two-Tiered Processing

The City's current Ordinance has a two-tiered system for processing ADU submittals. Certain ADUs may be permitted upon submittal of a building permit only (those listed in current AMC §20.20.080.D.1), while others (those listed in current AMC §20.20.080.D.2), though ministerial without discretionary review or hearing, require application of an ADU Permit along with submittal of a \$1,245 processing fee. ADU permits require staff to process a Notice of Action with accompanying conditions of approval. As all proposed ADUs must comply with objective development standards, staff have found the ADU Permit process to be time consuming, costly to the applicant, and superfluous. Therefore, the Ordinance no longer includes the requirement that certain ADUs be subject to approval of a separate, ministerial ADU permit prior to submittal of a building permit.

Ordinance Update and Simplification Amendments

The objectives of the proposed changes to the ADU Ordinance are to update certain language and terminology as well as to simplify the regulations, making them concise and easier to understand.

Purposes

The first purpose has been expanded to not only address the contribution of ADUs to the housing stock but also as a means to promote access to housing opportunities citywide, including single-family neighborhoods.

The third stated purpose of the existing Ordinance is to, “Protect neighborhoods from potentially detrimental effects of unpermitted accessory dwelling units.” This has been deleted as it does not resonate with the changes in state law and the City’s dedication to facilitating the development of ADUs. Additionally, it is not clear how the ADU Ordinance protected against unpermitted development.

A new purpose has been added, previously located in a subsection entitled “Effect of Conforming,” to clarify that ADUs and JADUs that conform to the requirements of the ADU Ordinance do not exceed the allowable density for the lot on which they are located and they are a residential use that is consistent with the existing general plan and zoning designation for the lot.

Definitions

Words and Terms that are defined in the ADU Ordinance (§20.20.080 Accessory Dwelling Units) and are used elsewhere in Chapter 20 Planning and Zoning of the Municipal Code have been cross-referenced in the Definitions Section (§20.08) of the Code. Words and Terms that were defined but did not appear anywhere in the Code have been deleted (§20.20.080.B).

Development Standards Tables

For ease of use and comprehension, development standards are no longer relayed in sentences but in table format (Tables E and F).

Consistent Terminology

This Ordinance contains Chapter wide amendments to replace the any reference to “secondary residential unit” with “accessory dwelling unit” to be consistent with terminology throughout the Code and with State law.

ENVIRONMENTAL CLEARANCE

Consideration of the ordinance is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resource Code 21080.17 and CEQA Guidelines Section 15282(h), which provide that CEQA does not apply to the adoption of an ordinance implementing the provisions of Section 65852.1 (Accessory Dwelling Units) or Section 65852.2 (Junior Accessory Dwelling Units) of the California State Government Code.

SUSTAINABILITY CONSIDERATIONS

Encouraging density through infill development is an approach (1.1.8) identified in the Albany Climate Action and Adaptation Plan toward minimizing vehicle miles travelled.

SOCIAL EQUITY AND INCLUSIVITY CONSIDERATIONS

ADUs have become an increasingly popular strategy for expanding the supply of housing in California, particularly of lower cost units in single-family neighborhoods that may not otherwise welcome new development. By facilitating the development of ADUs, more affordable infill housing options become available throughout the City. ADUs also provide flexible options for various household arrangements including expanded familial or communal living. In addition, by renting out a unit, ADU development provides opportunities for homeowners to remain and potentially age in place by receiving additional income by sharing their property.

CITY COUNCIL STRATEGIC PLAN INITIATIVES

These amendments support the following Strategic Plan initiative:

- GOAL 2: Promote Housing Availability & Quality
 - OBJECTIVE: Identify ways to incentivize more housing development including zoning and other code updates

FINANCIAL CONSIDERATIONS

None.

NEXT STEPS

Upon first reading of the Ordinance, the Ordinance will return to City Council at the next scheduled meeting for a second reading and adoption. As required by State ADU Law, staff will submit the adopted ordinance to HCD within 60 days after adoption for review and comment. It is possible that HCD may request the City to amend the ordinance based on their review (HCD requires cities to adopt an ordinance before they will review for compliance).

Attachments

1. Ordinance No. 2023-07
2. Exhibit A to Ordinance No. 2023-07 – Zoning Ordinance Amendments
3. Clean ADU Ordinance (A.M.C. Chapter 20 Subsection 20.20.080 et. al.)

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ORDINANCE NO. 2022-07

**AN ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING
CHAPTER XX OF THE ALBANY MUNICIPAL CODE “PLANNING AND ZONING”,
REPEALING AND REPLACING SECTION 20.20.080 “ACCESSORY DWELLING
UNITS” AND AMENDING SECTIONS 20.08, 20.12, 20.16, 20.24, 20.28, 20.40, 20.56,
AND 20.100 TO UPDATE ACCESSORY DWELLING UNIT REGULATIONS**

WHEREAS, ADUs have become an increasingly popular strategy for expanding the supply of housing in California, particularly of lower cost units in single-family neighborhoods throughout the City;

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 2023, the Albany City Council adopted the 2023-2032 Housing Element, which included:

- Policy 1.6 “Missing Middle” Housing. Support opportunities for “missing middle” housing, such as duplexes, triplexes, and accessory dwelling units, in lower density neighborhoods, particularly on larger lots where such housing fits the existing neighborhood context;

- Policy 1.8 Accessory Dwelling Units (ADUs). Encourage development of ADUs and Junior ADUs in all Albany neighborhoods;

- Policy 1.13 Access to Opportunity. Promote access to housing opportunities in all Albany neighborhoods, including single family neighborhoods where certain segments of the

1 population were historically excluded. All Albany residents should have access to great parks,
2 excellent schools, safe streets, and other resources that contribute to the quality of life in the city;
3

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

6 **WHEREAS**, Ordinance 2014-05 was adopted on July 21, 2014, by the Albany City
7 Council and amended Section 20.20.080 Accessory Dwelling Units, formally called Secondary
8 Residential Units, of the Albany Municipal Code to facilitate the creation of new units; and
9

10 **WHEREAS**, on May 18, 2020, in response to a series of changes in state laws,
11 Ordinance 2020-04 was adopted by the Albany City Council, repealing the existing Albany
12 Municipal Code Section 20.20.080, and adopting a new Section 20.20.080 Accessory Dwelling
13 Units; and
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15 **WHEREAS**, since 2020, the California Legislature has approved, and the Governor had
16 signed into law numerous additional changes to state laws that regulate the development of
17 accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”); and
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19 **WHEREAS**, the 2023-2025 City Council Strategic Plan includes GOAL 2: “Promote
20 Housing Availability & Quality” with the stated objective to “Identify ways to incentivize more
21 housing development including zoning and other code updates;” and

22 **WHEREAS**, on July 12th, 2023, a study session was held before the Planning and
23 Zoning Commission detailing changes in state law, local ADU development trends, and key
24 areas of discretion within the Ordinance update; and
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1 **WHEREAS**, staff incorporated the feedback into the draft ordinance that was presented
2 before the Commission at the September 27, 2023, meeting. The Commission voted 4-0-0-1 to
3 adopt a resolution amending the Zoning Ordinance; and
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5 **WHEREAS**, consideration of the ordinance is statutorily exempt from the provisions of
6 the California Environmental Quality Act (CEQA) pursuant to Public Resource Code 21080.17
7 and CEQA Guidelines Section 15282(h), which provide that CEQA does not apply to the
8 adoption of an ordinance implementing the provisions of Section 65852.1 (Accessory Dwelling
9 Units) or Section 65852.2 (Junior Accessory Dwelling Units) of the California State Government
10 Code; and
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13 **WHEREAS**, the State Department of Housing & Community Development will review
14 the Accessory Dwelling Unit ordinance and may submit written findings to the City as to
15 whether the ordinance complies with Government Code section 65852.2; and
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17 **WHEREAS**, a public hearing notice was posted in three public places pursuant to
18 California Government Code Section on December 8, 2023; and
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20 **WHEREAS**, the Albany City Council held a public hearing to discuss the proposed
21 amendments on December 18, 2023; and
22

23 **WHEREAS**, the Albany City Council held a public hearing and considered all public
24 comments received, the presentation by City staff, the staff report, and all other pertinent
25 documents regarding the proposed request;
26

27 **NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS AS**
28 **FOLLOWS:**

1 **SECTION 1: CHAPTER 20 OF THE ALBANY MUNICIPAL CODE, SECTION**
2 **20.08.020 TITLED “DEFINITIONS” IS HEREBY AMENDED AS SPECIFIED IN**
3
4 **EXHIBIT A:**

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6 **SECTION 2: CHAPTER 20 OF THE ALBANY MUNICIPAL CODE, SECTION**
7 **20.20.080 TITLED “ACCESSORY DWELLING UNITS” IS HEREBY AMENDED AS**
8 **SPECIFIED IN EXHIBIT A:**

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12 **SECTION 3: CHAPTER 20 OF THE ALBANY MUNICIPAL CODE, SECTION**
13 **20.24.050 TITLED “FLOOR-AREA RATIOS” IS HEREBY AMENDED AS SPECIFIED**
14 **IN EXHIBIT A:**

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17 **SECTION 4: CHAPTER 20 OF THE ALBANY MUNICIPAL CODE, SECTION**
18 **20.12.050 TITLED “RESIDENTIAL DISTRICTS” IS HEREBY AMENDED AS**
19 **SPECIFIED IN EXHIBIT A:**

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21 **SECTION 5: CHAPTER 20 OF THE ALBANY MUNICIPAL CODE, SECTION**
22 **20.16.020 TITLED “RESIDENTIAL USE CLASSIFICATIONS” IS HEREBY AMENDED**
23 **AS SPECIFIED IN EXHIBIT A:**

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25 **SECTION 6: CHAPTER 20 OF THE ALBANY MUNICIPAL CODE, SECTION**
26 **20.28.050 TITLED “PARKING AREA STANDARDS” IS HEREBY AMENDED AS**
27 **SPECIFIED IN EXHIBIT A:**
28

1 **SECTION 7: CHAPTER 20 OF THE ALBANY MUNICIPAL CODE, SECTION**
2 **20.40.030 TITLED “INCLUSIONARY HOUSING” IS HEREBY AMENDED AS**
3
4 **SPECIFIED IN EXHIBIT A:**

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6 **SECTION 8: CHAPTER 20 OF THE ALBANY MUNICIPAL CODE, SECTION**
7 **20.56.030 TITLED “DEFINITIONS” IS HEREBY AMENDED AS SPECIFIED IN**
8 **EXHIBIT A:**

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12 **SECTION 9: PUBLICATION AND EFFECTIVE DATE.**

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

15
16 **PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting on
17 the __ day of _____ 2023, by the following vote:

18 AYES:

19 NOES:

20 ABSENT:

21 ABSTAIN:

22
23
24 _____
25 AARON TIEDEMANN, MAYOR

26 ATTACHMENT:

27 EXHIBIT A – Zoning Ordinance Amendments
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EXHIBIT A

§ 20.08.020 Definitions (A-Z). (Only including Definitions added or amended)

ACCESSORY DWELLING UNIT or ADU (see also subsection 20.20.080.B) — Means an attached or a detached residential dwelling unit that provides complete independent living facilities—provisions for living, sleeping, eating, cooking, and sanitation/bathroom facilities—for one or more persons and is located on a lot with a proposed or existing primary dwelling. An accessory dwelling unit also includes the following:

1. An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code; and
2. A manufactured home, as defined by Section 18007 of the California Health and Safety Code.

COVERAGE, LOT — Means the land area covered by all the structures on a site, including all projections, except portions of uncovered decks, porches, landings, balconies, or stairways that are less than six (6) feet above grade and are not enclosed by walls on more than two (2) sides; eaves; trellises or other structures that do not have solid roofs. Coverage of attached and detached, including converted detached ADUs with a maximum size of 800 square feet may be excluded from said calculation.

FLOOR AREA RATIO — Means the proportion of building floor area per area of the parcel of land upon which the building rests. See subsection 20.24.050 for calculation information and qualifying exemptions.

JUNIOR ACCESSORY DWELLING UNIT or JADU (see also subsection 20.20.080.B) — Means an accessory dwelling unit that has the following attributes:

1. Maximum size of 500 square feet;
2. Contained entirely within a single-family primary dwelling, including an attached garage;
3. Has its own or shares sanitation/bathroom facilities the single-family primary dwelling; and
4. Includes, at a minimum, an efficiency kitchen, which contains a cooking facility with appliances, a food preparation counter or counters, and storage cabinets that are of reasonable size in relation to the size of the JADU.

RESIDENTIAL DEVELOPMENT — Means a project consisting of new construction of one (1) or more residential buildings, inclusive of condominiums, mobile homes, new and legalized ~~secondary~~ Accessory dwelling-Dwelling units Units, or an addition to the gross floor area of a residential structure or an accessory structure.

§ 20.20.080 Accessory Dwelling Units.

[Ord. No. 04-09; Ord. No. 2014-05 § 5; Ord. No. 2014-11 § 3; amended 6-1-2020 by Ord. No. 2020-04]

A. Purpose. The Accessory Dwelling Unit Ordinance (this subsection) is intended to:

1. Foster and encourage the addition of small, more affordable infill housing units citywide

~~to the City's housing stock and to help address the state's housing crisis~~ and promote access to housing opportunities in all Albany neighborhoods, including single-family neighborhoods;

2. Provide homeowners financial flexibility and the option to share their homes;
3. Provide that accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) that conform with this subsection do not exceed the allowable density for the lot on which the ADU or JADU is located and that they are a residential use that is consistent with the existing general plan and zoning designation for the lot~~Protect neighborhoods from potentially detrimental effects of unpermitted secondary residential units; and~~
4. Allow and regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in a manner that complies with, or is less restrictive than, the requirements of compliance with California Government Code Sections 65852.2 and 65852.22.

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

- ~~1. Deemed to be inconsistent with the City's general plan and zoning designation for the lot on which the ADU or JADU is located.~~
- ~~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 the definition of "nonconforming zoning condition" in Subsection C below. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code Section 17980.12.~~

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

ACCESSORY DWELLING UNIT or ADU — Means a

An attached or a detached residential dwelling unit that provides complete independent living facilities—provisions for living, sleeping, eating, cooking, and sanitation/bathroom facilities—for one or more persons and is located on a lot with a proposed or existing primary residence dwelling. An accessory dwelling unit also includes the following:

1. An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code; and
2. A manufactured home, as defined by Section 18007 of the California Health and Safety Code.

ADU, ATTACHED — Means an ADU that is newly constructed as an addition to (i.e. shares a wall with) a primary dwelling.

ADU, CONVERTED — Means an ADU created within the existing space of a primary dwelling or accessory structure.

1. A converted ADU created within an existing accessory structure may be expanded up to 150 square feet, without application of local development standards, to accommodate

ingress and egress only.

2. For properties with an existing two- or multi-family dwelling, converted ADUs must be within residential portions of the primary dwelling that are not used as livable space, such as storage rooms, basements, and garages. In mixed-use developments, conversion of commercial space is not permitted.

ADU, DETACHED — Means an ADU that is newly constructed as a separate structure and does not share any walls with the primary dwelling.

~~ACCESSORY STRUCTURE~~

~~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.~~

~~COMPLETE INDEPENDENT LIVING FACILITIES~~

~~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.~~

IMPACT FEE — Means

Has the same meaning as the term "fee" as defined in Subdivision (b) of Government Code Section 66000 (~~Government Code~~ Mitigation Fee Act), except that it also includes fees specified in Government Code Section 66477 (~~Government Code~~ Quimby Act). "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

JUNIOR ACCESSORY DWELLING UNIT or JADU — Means an accessory dwelling unit that has the following attributes

A residential unit that:

- ~~1. 1. —~~ Is no more than Maximum size of 500 square feet in size;
- ~~2. 2. —~~ Is entirely within an existing or proposed a single-family primary unit dwelling, including an attached garage;
- ~~3. 3. —~~ Includes Has its own or shares separate sanitation/bathroom facilities or shares sanitation facilities with the existing or proposed single-family primary unit dwelling; and
- ~~4. 4. —~~ Includes, at a minimum, an efficiency kitchen, which contains a cooking facility with appliances, a food preparation counter or counters, and storage cabinets that are of reasonable size in relation to the size of the JADU as defined in the definition of "efficiency kitchen" above.

~~LIVING AREA~~

~~The interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.~~

~~NONCONFORMING ZONING CONDITION~~

~~A physical improvement on a property that does not conform with current zoning standards.~~

~~PASSAGEWAY~~

~~A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.~~

~~PRIMARY UNIT or PRIMARY RESIDENCE~~

~~A single-family or multifamily residential dwelling unit that either exists on or is proposed for a lot zoned for single-family or multifamily residential use.~~

~~PROPOSED DWELLING~~

~~A dwelling that is the subject of a permit application and that meets the requirements for permitting.~~

~~PUBLIC TRANSIT~~

~~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.~~

~~TANDEM PARKING~~

~~That two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.~~

C. Eligibility.

1. ADUs may be created on any lot that is zoned to allow residential uses. To create an ADU under this subsection, the lot must include an existing or proposed dwelling unit.
2. JADUs may be created on any lot that is zoned for single-family residential use and that has only one existing or proposed single-family dwelling.

D. Quantity. The maximum number of ADUs and JADUs per lot is as follows:

1. Lot with one single-family dwelling:
 - a. One JADU and one attached, new detached, or converted ADU; or
 - b. One JADU, one new detached ADU with a maximum size of 800 square feet, and one converted ADU.
2. Lot with two or more single-family dwellings:
 - a. One new detached ADU with a maximum size of 800 square feet and one converted ADU.
 - b. JADUs are not permitted.
3. Lot with one or more two- or multi-family dwellings:
 - a. One detached, converted, or attached ADU; or
 - b. Two detached ADUs; and at least one converted ADU in each two- or multi-family dwelling and up to 25% of the number of existing dwelling units within the structure for additional converted ADUs. All fractional numbers shall be rounded to the nearest whole number.
 - c. JADUs are not permitted.

E. Development Standards – Single-Family Properties. All ADUs and JADUs on lots with one or more existing or proposed detached single-family dwellings must comply with the development standards provided in Table E below.

Table E. Development Standards for ADUs and JADUs on Single-Family Properties

		<u>Attached ADU</u>	<u>Detached ADU</u>	<u>Converted ADU</u>	<u>JADU</u>
<u>Maximum Size</u>		<u>850 sq. ft.</u> <u>1,000 sq. ft. if more than one bedroom</u>		<u>None</u>	<u>500 sq. ft.</u>
<u>Maximum Lot Coverage⁽¹⁾</u>		<u>50%</u> <u>40% in RHD District</u>		<u>N/A</u>	<u>N/A</u>
<u>Maximum FAR⁽¹⁾</u>		<u>0.55</u> <u>0.50 in RHD District</u>		<u>N/A</u>	<u>N/A</u>
<u>Minimum setbacks⁽²⁾</u>	<u>Front⁽¹⁾</u>	<u>15 ft.</u>		<u>N/A</u>	<u>N/A</u>
	<u>Side</u>	<u>3 ft.</u>		<u>(3)</u>	<u>N/A</u>
	<u>Rear</u>	<u>3 ft.</u>			<u>N/A</u>
<u>Building separation to any other structure on lot⁽¹⁾</u>		<u>6 ft.</u>		<u>N/A</u>	<u>N/A</u>
<u>Maximum Height</u>		<u>25 ft.⁽⁴⁾</u>	<u>20 ft.</u>	<u>N/A</u>	<u>N/A</u>
<u>Automobile Parking (spaces)</u>		<u>None</u>			

(1) These development standards cannot preclude construction of any ADU up to 800 square feet in size and do not apply to a detached ADU up to 800 square feet in size.

(2) No setback is required if an ADU is constructed in the same location and to the same dimensions as an existing, legally permitted structure.

(3) Side and rear setbacks must be sufficient for fire and safety.

(4) An attached ADU may be up to 28 ft. in height to match the existing or proposed roofline (height and pitch) of the primary dwelling.

F. Development Standards – Two- and Multi-Family Properties. All ADUs on lots with a proposed or existing two- or multi-family dwelling must comply with the development standards provided in Table F below.

Table F. Development Standards for ADUs on Two- & Multi-Family Properties

	<u>Attached ADU</u>	<u>Detached ADU</u>	<u>Converted ADU</u>
<u>Minimum Lot Size</u>	<u>None</u>		

		<u>Attached ADU</u>	<u>Detached ADU</u>	<u>Converted ADU</u>
<u>Maximum Size</u>		<u>850 sq. ft.</u> <u>1,000 sq. ft. if more than one bedroom</u>	<u>None</u>	<u>None</u>
<u>Maximum Lot Coverage⁽¹⁾</u>		<u>50%</u> <u>70% for multi-family in R-3</u> <u>100% in SC & SPC</u>	<u>N/A</u>	<u>N/A</u>
<u>Maximum FAR⁽¹⁾</u>		<u>0.55</u> <u>1.5 for multi-family in R-3</u> <u>1.25 in SC</u> <u>4.0 in SPC</u>	<u>N/A</u>	<u>N/A</u>
<u>Minimum Open Space⁽¹⁾</u> <u>(only applies to multi-family units)</u>		<u>200 sq. ft.</u> <u>100 sq. ft. in SPC</u>	<u>N/A</u>	<u>N/A</u>
<u>Minimum setbacks</u>	<u>Front⁽¹⁾</u>	<u>15 ft.</u> <u>0 ft. on lots fronting San Pablo Avenue</u>	<u>N/A</u>	
	<u>Side</u>	<u>3 ft.</u>		<u>N/A</u>
	<u>Rear</u>	<u>3 ft.</u>		<u>N/A</u>
<u>Building separation to other structures on lot⁽¹⁾</u>	<u>accessory structure</u>	<u>6 ft.</u>	<u>N/A</u>	<u>N/A</u>
	<u>primary structure</u>	<u>10 ft.</u>		
<u>Maximum Height</u>		<u>25 ft.⁽²⁾</u>	<u>20 ft.</u>	<u>N/A</u>
<u>Automobile Parking (spaces)</u>		<u>None</u>		

⁽¹⁾ These development standards cannot preclude construction of an ADU up to 800 square feet in size.

⁽²⁾ An attached ADU may be up to 28 ft. in height to match the existing or proposed roofline (height and pitch) of the primary dwelling.

G. General Requirements. The following requirements apply to all ADUs and JADUs:

1. Rental Term. No ADU or JADU may be rented for a term that is shorter than 30 days.
2. Separate Conveyance. Except as provided in California Government Code Section 65852.26, an ADU or JADU may not be sold or otherwise conveyed separately from the primary dwelling.
3. Owner Occupancy.
 - a. All ADUs are exempt from any owner-occupancy requirements.
 - b. All JADUs are subject to an owner-occupancy requirement. If a property includes a JADU, the JADU, or the Single-Family Dwelling in which the JADU is located, shall be owner-occupied. The owner-occupancy requirement does not apply if the property is entirely owned by a government agency, land trust, or housing organization.
4. Separate Independent Entrance. All ADUs and JADUs are required to have a separate entrance from the main entrance to the existing or proposed primary dwelling unit(s).
5. Address and Mailbox. An ADU or JADU shall obtain a separate address and provide a separate mailbox.
6. Deed Restriction. Prior to final building permit inspection for an ADU or JADU, the property owner must file a deed restriction with the Alameda County Recorder which states that the ADU or JADU is to conform with the attributes required by this subsection.

H. Approvals.

1. If an application to create an ADU or JADU complies with the requirements of this subsection, it will be approved ministerially upon issuance of a building permit.
2. The City will approve or deny an application to create an ADU or JADU within 60 days from the date that the City receives a completed application. If the City has not approved or denied the completed application within 60 days, the application is deemed approved unless either:
 - a. The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or
 - b. When an application to create an ADU or JADU is submitted with a permit application to create a new single-family or multi-family dwelling 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 or multi-family dwelling, but the application to create the ADU or JADU will still be considered ministerially without discretionary review or a hearing.
3. If the City denies an application to create an ADU or JADU, the City will provide the applicant with comments that include, among other things, a list of all the defective or deficient items and a description of how the application may be remedied by the applicant. Notice of the denial and corresponding comments will be provided to the applicant within the 60-day time period established by subsection 2 above.

4. The City will not deny an ADU or JADU application due to a nonconforming zoning condition, building code violation, or unpermitted structure on the lot that does not present a threat to the public health and safety and that is not affected by the construction of the ADU or JADU.
5. The City may not deny a permit to legalize an existing, but unpermitted ADU that was constructed before January 1, 2018, unless one of the following exceptions is met:
 - a. The City makes a finding that correcting a violation is necessary to protect the health and safety of the public or of occupants of the structure.
 - b. The unpermitted ADU is deemed to be substandard in accordance with California Health and Safety Code Section 17920.3.
6. A demolition permit for a detached garage that is to be replaced with an ADU will be reviewed either with or before the application for the ADU and be issued no later than issuance of the ADU permit.

I. Building Code.

1. No change of occupancy. Construction of an ADU does not constitute a Group R occupancy change, as described in Section 310 of the California Building Code, unless the Community Development Director or his or her designee makes a written finding based on substantial evidence in the record that the construction of the ADU could have a specific, adverse impact on public health and safety. Nothing in this subsection prevents the City from changing the occupancy code of a space that was uninhabitable space or that was only permitted for nonresidential use and was subsequently converted for residential use in accordance with this subsection.
2. Fire Sprinklers. Fire sprinklers are required in an ADU if sprinklers are required in the primary dwelling. The construction of an ADU does not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

J. Impact Fees. The accessory dwelling unit shall be assessed all applicable building permit and development impact fees with the following stipulations:

1. Accessory dwelling units up to 750 square feet are exempt from impact fees.
- ~~1.~~ 2. Accessory dwelling units 750 square feet or greater are subject to impact fees that are proportional to the relationship of the accessory dwelling unit to the primary dwelling.

§ 20.24.050 Floor-Area Ratios.

B. Single-Family Residences. The following standards shall apply both to new construction on single-family lots, and to additions to existing single-family units. It is the intent of the City that all such construction be compatible with neighboring residential development. A ratio of the gross square footage of structures on a site to the land area of the site shall be employed by the Planning and Zoning Commission as a means of evaluating the bulk of any proposed residential building.

1. For purposes of this section, Floor Area Ratio (FAR) shall be calculated as the total gross square footage of the building divided by the total land area of the site. The calculation of

gross square footage shall include consideration of the following factors where applicable:

- a. Gross square footage shall include all covered space located on the site.
- b. Any covered parking area which is enclosed by two (2) or more walls, whether attached to or detached from the main dwelling structure, shall be included in the calculation of gross square footage, with the exception that one (1) such enclosed parking space, with a maximum interior area equal to the minimum requirement for a single enclosed parking space, as stated in subsection 20.28.50.A.1.a., may be excluded from said calculation.
- ~~c.~~ Attached and detached, including converted detached ADUs with a maximum size of eight hundred (800) square feet may be excluded from said calculation.
- ~~d.~~ Any covered area on or below the first or main floor, shall be considered a story and shall be calculated in the floor-area ratio if the average height of the perimeter is greater than five (5) feet, except a single parking area may be excluded as provided in Paragraph B.1.b above. Measurement of height shall be taken from existing grade conditions at the time the application is filed from the exterior to the top of existing finished floor of the first, main or story above. For the purposes of calculating Floor Area Ratio pursuant to this section, the average perimeter height shall not be altered to achieve a height less than five (5) feet.
- ~~e.~~ Decks, patios or other usable open areas shall be excluded from calculation of gross square footage, except where such element is enclosed on three (3) or more sides. (Two (2) walls and a solid roof shall be counted as three (3) sides.)
- ~~f.~~ The total exterior gross square footage of the footprint above and below the stairs shall be calculated for the purposes of FAR. Deductions shall be made for the actual stairwell footprint, up to a sixty (60) square foot maximum deduction from the overall FAR.
- ~~g.~~ Any attic space having a floor area of at least one hundred fifty (150) square feet with a ceiling height of seven (7) feet six (6) inches or more shall be calculated as gross square footage.

§ 20.12.050 Residential Districts.

- A. Specific Purposes of Individual Residential Districts. See Table 2A, subsection 20.24.020, for maximum densities permitted in each district.
 - 1. Residential Single Family District (R-1): The Residential Single Family District provides opportunities for low-density residential development characterized by single-family homes on individual lots. ~~Secondary residential~~ Accessory Dwelling units-Units are permitted subject to appropriate standards and review procedures. The district corresponds to the Low Density Residential designation in the General Plan Land Use Element.
 - 2. Residential Medium Density District (R-2): The Residential Medium Density District provides for residential living at moderate densities. ~~Secondary residential~~ Accessory Dwelling units-Units are permitted subject to appropriate standards and review procedures. The district corresponds to the Medium Density Residential designation in the General Plan Land Use Element.
 - 3. Residential High Density District (R-3): The Residential High Density District provides opportunities for high-density residential development characterized by a mix of housing

types, including townhouses, duplexes, apartments and condominiums, subject to appropriate standards. ~~Secondary residential units~~ **Accessory Dwelling Units** are permitted subject to appropriate standards and review procedures. The district corresponds to the High Density Residential designation in the General Plan Land Use Element, with the exception of those properties on the west side of Albany Hill that are within the Residential Towers District.

4. Residential Towers District (R-4): The Residential Towers District applies specifically to properties on the west side of Albany Hill and is characterized by high-density apartment or condominium buildings. The district represents a portion of the area designated as Residential Towers [pending amendment] by the General Plan Land Use Element.
5. Residential Hillside Development District (RHD): The Residential Hillside Development District establishes standards and requirements for appropriate hillside development on Albany Hill, consistent with the General Plan and Measure K (1994). ~~Secondary residential units~~ **Accessory Dwelling Units** are permitted subject to appropriate standards and review procedures. More specifically, the RHD district is intended:
 - a. To reduce the likelihood of earth movement, landslides and development on unstable terrain in order to protect the health and safety of the community.
 - b. To minimize grading (cut-and-fill) to a point consistent with the retention of the natural character of hillside areas and to prohibit, to the extent feasible, grading of flat pads or terracing of building sites in hillside areas.
 - c. To minimize the water run-off and soil erosion problems resulting from excessive grading which changes the historical runoff patterns to accommodate development needs.
 - d. To maximize safety and enjoyment while adopting development to, and taking advantage of, the best use of the existing natural terrain.
 - e. To establish development requirements that are consistent with the environmental constraints and visual importance of the Albany Hill area.
 - f. To preserve and enhance the beauty of the landscape by encouraging the maximum retention of natural topographic features such as drainage swales, slopes, ridgelines, vistas, trees and natural plant formations.
 - g. To preserve, enhance and promote the existing and future aesthetic appearance and environmental resources of the hillside area.

§ 20.16.020 Residential Use Classifications.

- F. ~~Secondary Residential~~ **Accessory Dwelling** Unit. ~~A separate dwelling unit that contains independent kitchen, sleeping and bathroom facilities which is located on a lot with a residential use, and which is clearly subordinate to the main dwelling. Two bedrooms may be allowed. A kitchen facility shall be defined as a room or a portion of a room, designed or used for the purpose of preparing meals, or containing the necessary appliances. (See subsection 20.20.080 for specific regulations applicable to this use.)~~ **See definition in subsection 20.20.080.C.**

§ 20.28.050 Parking Area Standards.

- B. Design Standards. Standards for off-street parking facilities areas shall include:
 - 3. Tandem Parking.
 - a. Except as specified in Paragraph b and c below, each parking space shall have unobstructed access from a street or from an aisle or drive connecting with a street without requiring moving another vehicle.
 - b. Required parking spaces for any dwelling unit, including ~~an secondary residential unit~~ Accessory Dwelling Unit, may be arranged in tandem.

§ 20.40.030 Inclusionary Housing.

E. Incentives. In the interest of promoting the creation of housing units that are affordable to lower-income households, the City may grant certain incentives for projects that exceed the minimum required number of inclusionary housing units, where it is demonstrated that the granting of such incentives is necessary to assure the economic feasibility of a project. Incentives shall not be applicable to ~~secondary residential units~~ Accessory Dwelling Units or single-family dwellings in R-1 Single-Family Residential districts. This paragraph shall not apply to projects for which a density bonus is proposed pursuant to Government Code Section 65915 and subsection 20.40.040 of this chapter, which provide separate regulations on incentives. In order to encourage the on-site inclusion of affordable units in housing development projects proposed under this subsection, the City, at its discretion, may grant incentives including but not limited to the types listed below. In granting any such incentive the City shall make findings that:

§ 20.56.030 Definitions (A-Z).

RESIDENTIAL DEVELOPMENT

Means a project consisting of new construction of one (1) or more residential buildings, including condominiums, mobile homes, new and legalized ~~secondary dwelling units~~ Accessory Dwelling Units, or an addition to the gross floor area of a residential structure or an accessory structure.

§ 20.100.050 Design Review.

Table 11. Authority for Design Review (20.100.050)		
Use	Review by Community Development Director	Review by Planning and Zoning Commission
Residential	Alterations or additions less than 400 square feet, except second story additions. Accessory structures greater than 120 square feet and less than 400 square	New construction or additions of 400 square feet or more. Accessory structures of 400 square feet or more. All second story additions.

Table 11. Authority for Design Review (20.100.050)

Use	Review by Community Development Director	Review by Planning and Zoning Commission
	feet. All secondary residential units. Decks which measure 36 inches or more above grade.	Any new construction or addition that significantly changes roof lines of an existing structure. All exceptions to district height limits. Applications referred by Community Development Director.

EXHIBIT A

§ 20.08.020 Definitions (A-Z). (Only including Definitions added or amended)

ACCESSORY DWELLING UNIT or ADU (see also subsection 20.20.080.B) — Means an attached or a detached residential dwelling unit that provides complete independent living facilities—provisions for living, sleeping, eating, cooking, and sanitation/bathroom facilities—for one or more persons and is located on a lot with a proposed or existing primary dwelling. An accessory dwelling unit also includes the following:

1. An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code; and
2. A manufactured home, as defined by Section 18007 of the California Health and Safety Code.

COVERAGE, LOT — Means the land area covered by all the structures on a site, including all projections, except portions of uncovered decks, porches, landings, balconies, or stairways that are less than six (6) feet above grade and are not enclosed by walls on more than two (2) sides; eaves; trellises or other structures that do not have solid roofs. Coverage of attached and detached, including converted detached ADUs with a maximum size of 800 square feet may be excluded from said calculation.

FLOOR AREA RATIO — Means the proportion of building floor area per area of the parcel of land upon which the building rests. See subsection 20.24.050 for calculation information and qualifying exemptions.

JUNIOR ACCESSORY DWELLING UNIT or JADU (see also subsection 20.20.080.B) — Means an accessory dwelling unit that has the following attributes:

1. Maximum size of 500 square feet;
2. Contained entirely within a single-family primary dwelling, including an attached garage;
3. Has its own or shares sanitation/bathroom facilities the single-family primary dwelling; and
4. Includes, at a minimum, an efficiency kitchen, which contains a cooking facility with appliances, a food preparation counter or counters, and storage cabinets that are of reasonable size in relation to the size of the JADU.

RESIDENTIAL DEVELOPMENT — Means a project consisting of new construction of one (1) or more residential buildings, inclusive of condominiums, mobile homes, new and legalized Accessory Dwelling Units, or an addition to the gross floor area of a residential structure or an accessory structure.

§ 20.20.080 Accessory Dwelling Units.

[Ord. No. 04-09; Ord. No. 2014-05 § 5; Ord. No. 2014-11 § 3; amended 6-1-2020 by Ord. No. 2020-04]

A. Purpose. The Accessory Dwelling Unit Ordinance (this subsection) is intended to:

1. Foster and encourage the addition of small, more affordable infill housing units citywide

to help address the state's housing crisis and promote access to housing opportunities in all Albany neighborhoods, including single-family neighborhoods;

2. Provide homeowners financial flexibility and the option to share their homes;
3. Provide that accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) that conform with this subsection do not exceed the allowable density for the lot on which the ADU or JADU is located and that they are a residential use that is consistent with the existing general plan and zoning designation for the lot; and
4. Allow and regulate ADUs and JADUs in a manner that complies with, or is less restrictive than, the requirements of California Government Code Sections 65852.2 and 65852.22.

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

ACCESSORY DWELLING UNIT or ADU — Means an attached or a detached residential dwelling unit that provides complete independent living facilities—provisions for living, sleeping, eating, cooking, and sanitation/bathroom facilities—for one or more persons and is located on a lot with a proposed or existing primary dwelling. An accessory dwelling unit also includes the following:

1. An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code; and
2. A manufactured home, as defined by Section 18007 of the California Health and Safety Code.

ADU, ATTACHED — Means an ADU that is newly constructed as an addition to (i.e. shares a wall with) a primary dwelling.

ADU, CONVERTED — Means an ADU created within the existing space of a primary dwelling or accessory structure.

1. A converted ADU created within an existing accessory structure may be expanded up to 150 square feet, without application of local development standards, to accommodate ingress and egress only.
2. For properties with an existing two- or multi-family dwelling, converted ADUs must be within residential portions of the primary dwelling that are not used as livable space, such as storage rooms, basements, and garages. In mixed-use developments, conversion of commercial space is not permitted.

ADU, DETACHED — Means an ADU that is newly constructed as a separate structure and does not share any walls with the primary dwelling.

IMPACT FEE — Means the same as the term "fee" as defined in Subdivision (b) of Government Code Section 66000 (Mitigation Fee Act), except that it also includes fees specified in Government Code Section 66477 (Quimby Act). "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

JUNIOR ACCESSORY DWELLING UNIT or JADU — Means an accessory dwelling unit that has the following attributes:

1. Maximum size of 500 square feet;

2. Contained entirely within a single-family primary dwelling, including an attached garage;
3. Has its own or shares sanitation/bathroom facilities the single-family primary dwelling; and
4. Includes, at a minimum, an efficiency kitchen, which contains a cooking facility with appliances, a food preparation counter or counters, and storage cabinets that are of reasonable size in relation to the size of the JADU.

C. Eligibility.

1. ADUs may be created on any lot that is zoned to allow residential uses. To create an ADU under this subsection, the lot must include an existing or proposed dwelling unit.
2. JADUs may be created on any lot that is zoned for single-family residential use and that has only one existing or proposed single-family dwelling.

D. Quantity. The maximum number of ADUs and JADUs per lot is as follows:

1. Lot with one single-family dwelling:
 - a. One JADU and one attached, new detached, or converted ADU; or
 - b. One JADU, one new detached ADU with a maximum size of 800 square feet, and one converted ADU.
2. Lot with two or more single-family dwellings:
 - a. One new detached ADU with a maximum size of 800 square feet and one converted ADU.
 - b. JADUs are not permitted.
3. Lot with one or more two- or multi-family dwellings:
 - a. One detached, converted, or attached ADU; or
 - b. Two detached ADUs; and at least one converted ADU in each two- or multi-family dwelling and up to 25% of the number of existing dwelling units within the structure for additional converted ADUs. All fractional numbers shall be rounded to the nearest whole number.
 - c. JADUs are not permitted.

E. Development Standards – Single-Family Properties. All ADUs and JADUs on lots with one or more existing or proposed detached single-family dwellings must comply with the development standards provided in Table E below.

Table E. Development Standards for ADUs and JADUs on Single-Family Properties

	Attached ADU	Detached ADU	Converted ADU	JADU
Maximum Size	850 sq. ft. 1,000 sq. ft. if more than one bedroom		None	500 sq. ft.

		Attached ADU	Detached ADU	Converted ADU	JADU
Maximum Lot Coverage ⁽¹⁾		50% 40% in RHD District		N/A	N/A
Maximum FAR ⁽¹⁾		0.55 0.50 in RHD District		N/A	N/A
Minimum setbacks ⁽²⁾	Front ⁽¹⁾	15 ft.		N/A	N/A
	Side	3 ft.		(3)	N/A
	Rear	3 ft.			N/A
Building separation to any other structure on lot ⁽¹⁾		6 ft.		N/A	N/A
Maximum Height		25 ft. ⁽⁴⁾	20 ft.	N/A	N/A
Automobile Parking (spaces)		None			

⁽¹⁾ These development standards cannot preclude construction of any ADU up to 800 square feet in size and do not apply to a detached ADU up to 800 square feet in size.

⁽²⁾ No setback is required if an ADU is constructed in the same location and to the same dimensions as an existing, legally permitted structure.

⁽³⁾ Side and rear setbacks must be sufficient for fire and safety.

⁽⁴⁾ An attached ADU may be up to 28 ft. in height to match the existing or proposed roofline (height and pitch) of the primary dwelling.

F. Development Standards – Two- and Multi-Family Properties. All ADUs on lots with a proposed or existing two- or multi-family dwelling must comply with the development standards provided in Table F below.

Table F. Development Standards for ADUs on Two- & Multi-Family Properties

	Attached ADU	Detached ADU	Converted ADU
Minimum Lot Size	None		
Maximum Size	850 sq. ft. 1,000 sq. ft. if more than one bedroom	None	None

		Attached ADU	Detached ADU	Converted ADU
Maximum Lot Coverage ⁽¹⁾		50% 70% for multi-family in R-3 100% in SC & SPC	N/A	N/A
Maximum FAR ⁽¹⁾		0.55 1.5 for multi-family in R-3 1.25 in SC 4.0 in SPC	N/A	N/A
Minimum Open Space ⁽¹⁾ (only applies to multi-family units)		200 sq. ft. 100 sq. ft. in SPC	N/A	N/A
Minimum setbacks	Front ⁽¹⁾	15 ft. 0 ft. on lots fronting San Pablo Avenue	N/A	
	Side	3 ft.		N/A
	Rear	3 ft.		N/A
Building separation to other structures on lot ⁽¹⁾	accessory structure	6 ft.	N/A	N/A
	primary structure	10 ft.		
Maximum Height		25 ft. ⁽²⁾	20 ft.	N/A
Automobile Parking (spaces)		None		

⁽¹⁾ These development standards cannot preclude construction of an ADU up to 800 square feet in size.

⁽²⁾ An attached ADU may be up to 28 ft. in height to match the existing or proposed roofline (height and pitch) of the primary dwelling.

G. General Requirements. The following requirements apply to all ADUs and JADUs:

1. **Rental Term.** No ADU or JADU may be rented for a term that is shorter than 30 days.
2. **Separate Conveyance.** Except as provided in California Government Code Section 65852.26, an ADU or JADU may not be sold or otherwise conveyed separately from the primary dwelling.
3. **Owner Occupancy.**

- a. All ADUs are exempt from any owner-occupancy requirements.
 - b. All JADUs are subject to an owner-occupancy requirement. If a property includes a JADU, the JADU, or the Single-Family Dwelling in which the JADU is located, shall be owner-occupied. The owner-occupancy requirement does not apply if the property is entirely owned by a government agency, land trust, or housing organization.
4. Separate Independent Entrance. All ADUs and JADUs are required to have a separate entrance from the main entrance to the existing or proposed primary dwelling unit(s).
5. Address and Mailbox. An ADU or JADU shall obtain a separate address and provide a separate mailbox.
6. Deed Restriction. Prior to final building permit inspection for an ADU or JADU, the property owner must file a deed restriction with the Alameda County Recorder which states that the ADU or JADU is to conform with the attributes required by this subsection.

H. Approvals.

1. If an application to create an ADU or JADU complies with the requirements of this subsection, it will be approved ministerially upon issuance of a building permit.
2. The City will approve or deny an application to create an ADU or JADU within 60 days from the date that the City receives a completed application. If the City has not approved or denied the completed application within 60 days, the application is deemed approved unless either:
 - a. The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or
 - b. When an application to create an ADU or JADU is submitted with a permit application to create a new single-family or multi-family dwelling 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 or multi-family dwelling, but the application to create the ADU or JADU will still be considered ministerially without discretionary review or a hearing.
3. If the City denies an application to create an ADU or JADU, the City will provide the applicant with comments that include, among other things, a list of all the defective or deficient items and a description of how the application may be remedied by the applicant. Notice of the denial and corresponding comments will be provided to the applicant within the 60-day time period established by subsection 2 above.
4. The City will not deny an ADU or JADU application due to a nonconforming zoning condition, building code violation, or unpermitted structure on the lot that does not present a threat to the public health and safety and that is not affected by the construction of the ADU or JADU.
5. The City may not deny a permit to legalize an existing, but unpermitted ADU that was constructed before January 1, 2018, unless one of the following exceptions is met:
 - a. The City makes a finding that correcting a violation is necessary to protect the health and safety of the public or of occupants of the structure.

- b. The unpermitted ADU is deemed to be substandard in accordance with California Health and Safety Code Section 17920.3.
6. A demolition permit for a detached garage that is to be replaced with an ADU will be reviewed either with or before the application for the ADU and be issued no later than issuance of the ADU permit.

I. Building Code.

1. No change of occupancy. Construction of an ADU does not constitute a Group R occupancy change, as described in Section 310 of the California Building Code, unless the Community Development Director or his or her designee makes a written finding based on substantial evidence in the record that the construction of the ADU could have a specific, adverse impact on public health and safety. Nothing in this subsection prevents the City from changing the occupancy code of a space that was uninhabitable space or that was only permitted for nonresidential use and was subsequently converted for residential use in accordance with this subsection.
2. Fire Sprinklers. Fire sprinklers are required in an ADU if sprinklers are required in the primary dwelling. The construction of an ADU does not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

J. Impact Fees. The accessory dwelling unit shall be assessed all applicable building permit and development impact fees with the following stipulations:

1. Accessory dwelling units up to 750 square feet are exempt from impact fees.
2. Accessory dwelling units 750 square feet or greater are subject to impact fees that are proportional to the relationship of the accessory dwelling unit to the primary dwelling.

§ 20.24.050 Floor-Area Ratios.

B. Single-Family Residences. The following standards shall apply both to new construction on single-family lots, and to additions to existing single-family units. It is the intent of the City that all such construction be compatible with neighboring residential development. A ratio of the gross square footage of structures on a site to the land area of the site shall be employed by the Planning and Zoning Commission as a means of evaluating the bulk of any proposed residential building.

1. For purposes of this section, Floor Area Ratio (FAR) shall be calculated as the total gross square footage of the building divided by the total land area of the site. The calculation of gross square footage shall include consideration of the following factors where applicable:
 - a. Gross square footage shall include all covered space located on the site.
 - b. Any covered parking area which is enclosed by two (2) or more walls, whether attached to or detached from the main dwelling structure, shall be included in the calculation of gross square footage, with the exception that one (1) such enclosed parking space, with a maximum interior area equal to the minimum requirement for a single enclosed parking space, as stated in subsection 20.28.50.A.1.a., may be excluded from said calculation.
 - c. Attached and detached, including converted detached ADUs with a maximum size of

eight hundred (800) square feet may be excluded from said calculation.

- d. Any covered area on or below the first or main floor, shall be considered a story and shall be calculated in the floor-area ratio if the average height of the perimeter is greater than five (5) feet, except a single parking area may be excluded as provided in Paragraph B.1.b above. Measurement of height shall be taken from existing grade conditions at the time the application is filed from the exterior to the top of existing finished floor of the first, main or story above. For the purposes of calculating Floor Area Ratio pursuant to this section, the average perimeter height shall not be altered to achieve a height less than five (5) feet.
- e. Decks, patios or other usable open areas shall be excluded from calculation of gross square footage, except where such element is enclosed on three (3) or more sides. (Two (2) walls and a solid roof shall be counted as three (3) sides.)
- f. The total exterior gross square footage of the footprint above and below the stairs shall be calculated for the purposes of FAR. Deductions shall be made for the actual stairwell footprint, up to a sixty (60) square foot maximum deduction from the overall FAR.
- g. Any attic space having a floor area of at least one hundred fifty (150) square feet with a ceiling height of seven (7) feet six (6) inches or more shall be calculated as gross square footage.

§ 20.12.050 Residential Districts.

- A. Specific Purposes of Individual Residential Districts. See Table 2A, subsection 20.24.020, for maximum densities permitted in each district.
 1. Residential Single Family District (R-1): The Residential Single Family District provides opportunities for low-density residential development characterized by single-family homes on individual lots. Accessory Dwelling Units are permitted subject to appropriate standards and review procedures. The district corresponds to the Low Density Residential designation in the General Plan Land Use Element.
 2. Residential Medium Density District (R-2): The Residential Medium Density District provides for residential living at moderate densities. Accessory Dwelling Units are permitted subject to appropriate standards and review procedures. The district corresponds to the Medium Density Residential designation in the General Plan Land Use Element.
 3. Residential High Density District (R-3): The Residential High Density District provides opportunities for high-density residential development characterized by a mix of housing types, including townhouses, duplexes, apartments and condominiums, subject to appropriate standards. Accessory Dwelling Units are permitted subject to appropriate standards and review procedures. The district corresponds to the High Density Residential designation in the General Plan Land Use Element, with the exception of those properties on the west side of Albany Hill that are within the Residential Towers District.
 4. Residential Towers District (R-4): The Residential Towers District applies specifically to properties on the west side of Albany Hill and is characterized by high-density apartment or condominium buildings. The district represents a portion of the area designated as Residential Towers [pending amendment] by the General Plan Land Use Element.

5. Residential Hillside Development District (RHD): The Residential Hillside Development District establishes standards and requirements for appropriate hillside development on Albany Hill, consistent with the General Plan and Measure K (1994). Accessory Dwelling Units are permitted subject to appropriate standards and review procedures. More specifically, the RHD district is intended:
 - a. To reduce the likelihood of earth movement, landslides and development on unstable terrain in order to protect the health and safety of the community.
 - b. To minimize grading (cut-and-fill) to a point consistent with the retention of the natural character of hillside areas and to prohibit, to the extent feasible, grading of flat pads or terracing of building sites in hillside areas.
 - c. To minimize the water run-off and soil erosion problems resulting from excessive grading which changes the historical runoff patterns to accommodate development needs.
 - d. To maximize safety and enjoyment while adopting development to, and taking advantage of, the best use of the existing natural terrain.
 - e. To establish development requirements that are consistent with the environmental constraints and visual importance of the Albany Hill area.
 - f. To preserve and enhance the beauty of the landscape by encouraging the maximum retention of natural topographic features such as drainage swales, slopes, ridgelines, vistas, trees and natural plant formations.
 - g. To preserve, enhance and promote the existing and future aesthetic appearance and environmental resources of the hillside area.

§ 20.16.020 Residential Use Classifications.

F. Accessory Dwelling Unit. See definition in subsection 20.20.080.C.

§ 20.28.050 Parking Area Standards.

- B. Design Standards. Standards for off-street parking facilities areas shall include:
 3. Tandem Parking.
 - a. Except as specified in Paragraph b and c below, each parking space shall have unobstructed access from a street or from an aisle or drive connecting with a street without requiring moving another vehicle.
 - b. Required parking spaces for any dwelling unit, including an Accessory Dwelling Unit, may be arranged in tandem.

§ 20.40.030 Inclusionary Housing.

E. Incentives. In the interest of promoting the creation of housing units that are affordable to lower-income households, the City may grant certain incentives for projects that exceed the minimum required number of inclusionary housing units, where it is demonstrated that the

granting of such incentives is necessary to assure the economic feasibility of a project. Incentives shall not be applicable to Accessory Dwelling Units or single-family dwellings in R-1 Single-Family Residential districts. This paragraph shall not apply to projects for which a density bonus is proposed pursuant to Government Code Section 65915 and subsection 20.40.040 of this chapter, which provide separate regulations on incentives. In order to encourage the on-site inclusion of affordable units in housing development projects proposed under this subsection, the City, at its discretion, may grant incentives including but not limited to the types listed below. In granting any such incentive the City shall make findings that:

§ 20.56.030 Definitions (A-Z).

RESIDENTIAL DEVELOPMENT

Means a project consisting of new construction of one (1) or more residential buildings, including condominiums, mobile homes, new and legalized Accessory Dwelling Units, or an addition to the gross floor area of a residential structure or an accessory structure.

§ 20.100.050 Design Review.

Table 11. Authority for Design Review (20.100.050)

Use	Review by Community Development Director	Review by Planning and Zoning Commission
Residential	<p>Alterations or additions less than 400 square feet, except second story additions.</p> <p>Accessory structures greater than 120 square feet and less than 400 square feet.</p> <p>Decks which measure 36 inches or more above grade.</p>	<p>New construction or additions of 400 square feet or more.</p> <p>Accessory structures of 400 square feet or more.</p> <p>All second story additions.</p> <p>Any new construction or addition that significantly changes roof lines of an existing structure.</p> <p>All exceptions to district height limits.</p> <p>Applications referred by Community Development Director.</p>