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ORDINANCE NO. 2023-07

**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; 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 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 and

5 **WHEREAS**, Chapter 20 “Planning & Zoning” was comprehensively updated and
6 adopted in 2004; and
7

8 **WHEREAS**, Ordinance No. 2014-05 was adopted on July 21, 2014, by the Albany City
9 Council and amended Section 20.20.080 Accessory Dwelling Units, formally called Secondary
10 Residential Units, of the Albany Municipal Code to facilitate the creation of new units; and
11

12 **WHEREAS**, on May 18, 2020, in response to a series of changes in state laws,
13 Ordinance No. 2020-04 was adopted by the Albany City Council, repealing the existing Albany
14 Municipal Code Section 20.20.080, and adopting a new Section 20.20.080 Accessory Dwelling
15 Units; and

16 **WHEREAS**, since 2020, the California Legislature has approved, and the Governor had
17 signed into law numerous additional changes to state laws that regulate the development of
18 accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”); and
19

20 **WHEREAS**, the 2023-2025 City Council Strategic Plan includes GOAL 2: “Promote
21 Housing Availability & Quality” with the stated objective to “Identify ways to incentivize more
22 housing development including zoning and other code updates;” and

23 **WHEREAS**, on July 12th, 2023, a study session was held before the Planning and
24 Zoning Commission detailing changes in state law, local ADU development trends, and key
25 areas of discretion within the Ordinance update; and
26
27
28

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
4

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
11

12 **WHEREAS**, the State Department of Housing & Community Development will review
13 the Accessory Dwelling Unit ordinance and may submit written findings to the City as to
14 whether the ordinance complies with Government Code section 65852.2; and
15

16 **WHEREAS**, a public hearing notice was posted in three public places pursuant to
17 California Government Code Section on December 8, 2023; and
18

19 **WHEREAS**, the Albany City Council held a public hearing to discuss the proposed
20 amendments on December 18, 2023; and
21

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

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

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:**

5
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:**

9
10
11
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:**

15
16
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:**

20
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:**

24
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:**

5
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:**

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

11
12 This ordinance shall be posted at three public places within the City of Albany and shall
13 become effective thirty days after the date of its posting.
14

15
16 **PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting on
17 the 16th day of January 2024, by the following vote:

18 AYES: Council Members Hansen-Romero, Jordan, López, Tiedemann, and Mayor Miki

19 NOES: none

20 ABSENT: none

21 ABSTAIN: none

22
23
24
25

JOHN MIKI, MAYOR

26 **ATTACHMENT:**
27 EXHIBIT A – Zoning Ordinance Amendments
28

EXHIBIT A

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

[Ord. No. 04-09; Ord. No. 05-06; Ord. No. 07-01 § 1; Ord. No. 09-03 § 2; Ord. No. 09-011 § 1; Ord. No. 2015-03 § 2; Ord. No. 2017-07 § 1; amended 9-6-2022 by Ord. No. 2022-03]

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 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 with the single-family primary dwelling; if the unit does not include its own separate bathroom, then it contains an interior entrance to the main living area of the single-family 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 units~~ Dwelling units, or an addition to the gross floor area of a residential structure or an accessory structure.

§ 20.12.050 Residential Districts.
[Ord. No. 04-09; Ord. No. 2014-05 § 3]

- 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 units~~ **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. ~~Secondary residential units~~ **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. ~~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.

[Ord. No. 04-09; Ord. No. 2014-02 § 2; Ord. No. 2014-05 § 4; Ord. No. 2014-11 § 2; Ord. No. 2017-06 § 1]

- 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.

§ 20.20.080 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

~~Has the same meaning as the term "fee" as 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.~~

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 **e**ntirely within an **e**xisting or **p**roposed **a** single-family primary **u**nit **d**welling, **i**ncluding an attached garage;
- 3.3. — **I**ncludes **H**as its own or **s**hares **s**eparate sanitation/**b**athroom facilities or shares sanitation facilities with the **e**xisting or **p**roposed single-family primary **u**nit **d**welling; **i**f the unit does not include its own separate bathroom, then it contains an **i**nterior entrance to the main living area of the single-family dwelling; and
- 4.4. — Includes, **a**t a **m**inimum, an efficiency kitchen, **w**hich contains a **c**ooking **f**acility with appliances, a **f**ood preparation counter or counters, and **s**torage 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 exits 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. 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% 40% in RHD District</u>		<u>N/A</u>	<u>N/A</u>
<u>Maximum FAR⁽¹⁾</u>		<u>0.55 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>(3)</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 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>Attached ADU</u>	<u>Detached ADU</u>	<u>Converted ADU</u>	<u>JADU</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>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⁾ (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>Attached ADU</u>	<u>Detached ADU</u>	<u>Converted ADU</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 provided the additional height complies with the daylight plane requirement where applicable.

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.

§ 20.24.050 Floor-Area Ratios.

[Ord. No. 04-09; Ord. No. 09-011 § 10; Ord. No. 2017-05 § 1]

- 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.~~ 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.

§ 20.28.050 Parking Area Standards.

[Ord. No. 04-09; Ord. No. 09-011 § 20; Ord. No. 2014-05 § 9; Ord. No. 2017-06 § 2]

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.

[Ord. No. 05-06]

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).

[Ord. No. 89-004, § III; Ord. No. 91-06; Ord. No. 04-09]

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.

[Ord. No. 04-09; Ord. No. 2017-05; amended 9-6-2022 by Ord. No. 2022-03]

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	New construction or additions of 400 square

Table 11. Authority for Design Review (20.100.050)

Use	Review by Community Development Director	Review by Planning and Zoning Commission
	<p>square feet, except second story additions.</p> <p>Accessory structures greater than 120 square feet and less than 400 square feet.</p> <p>All secondary residential units.</p> <p>Decks which measure 36 inches or more above grade.</p>	<p>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>



City of Albany

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ORDINANCE NO. 2023-07

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

The 16th day of January, 2024, by the following votes:

AYES: Council Members Hansen-Romero, Jordan, López, Tiedemann, Mayor

Miki

NOES: none

ABSENT: none

ABSTAINED: none

RECUSED: none

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

17th day of January, 2024.

Anne Hsu
CITY CLERK