

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An Urgency Ordinance of the City Council of the City)
Of Lafayette Amending Title 6, Part 2, Chapter 6-5,)
Article 3 of the Lafayette Municipal Code Relating) Ordinance No. 655
To Accessory Dwelling Units (Formerly "Second Units"))
and Determining the Ordinance to be Statutorily)
Exempt from Environmental Review)

WHEREAS, the City of Lafayette, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, the Planning and Zoning Law authorizes cities to provide by ordinance for the creation of second units; and

WHEREAS, to address California's shortage of housing supply, the California Legislature approved, and the Governor signed into law, Assembly Bill 2299 (Bloom, Chapter 735, Stats. 2016) and Senate Bill 1069 (Wieckowski, Chapter 720, Stats. 2016); and

WHEREAS, Assembly Bill 2299 and Senate Bill 1069 (collectively, "AB 2299") are double jointing bills, which among other things, amend California Government Code Section 65852.2. This statute imposes new limitations on local authority to regulate second units, which are now referred to as "accessory dwelling units" ("ADU"); and

WHEREAS, Assembly Bill 2299 will become effective on January 1, 2017 and will render all non-compliant local ordinances null and void on that date unless and until an agency adopts an ordinance that complies with Government Code Section 65852.2; and

WHEREAS, the City desires to amend its local regulatory scheme for the construction of accessory dwelling units that complies with Assembly Bill 2299.

THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES ORDAIN AS FOLLOWS:

Section 1. Incorporation of Recitals. The City Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

Section 2. Amendment to Lafayette Municipal Code, Title 6, Part 2, Chapter 6-5, Article 3. Lafayette Municipal Code, Title 6, Part 2, Chapter 6-5, Article 3 ("Second Units") is hereby amended and restated as provided in Exhibit "A," attached hereto and incorporated herein by this reference.

Section 3. Amendment to Lafayette Municipal Code, Title 6, Part 2, Chapter 6-3, Section 6-302. Lafayette Municipal Code, Title 6, Part 2, Chapter 6-3, Section 6-302 ("Accessory building") is hereby amended and restated to read as follows: "*Accessory building*" means a subordinate building of 120 sq. ft. or less, the use of which is incidental to that of a main building on the same lot.

Section 4. Urgency Findings. The City adopts this ordinance as an urgency measure pursuant to Government Code Section 36937(b) to protect the public safety, health, and welfare. There is a current

and immediate threat to the public health, safety, or welfare based on the passage of AB 2299. If the City's second unit ordinance fails comply with Government Code Section 65852.2, then as of January 1, 2017, the City's second unit ordinance will be null and void and the City would be limited to applying the standards established in AB 2299 for the approval of accessory dwelling units. Approval of accessory dwelling unit permits or other applicable entitlements based solely on the standards contained in AB 2299 and without local regulations regarding height, setback, lot coverage, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety. These threats to public safety, health and welfare justify adoption of this ordinance as an urgency measure to be effective immediately upon adoption by a four-fifths vote of the City Council.

Section 5. CEQA. The City Council finds the adoption of this ordinance to be statutorily exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 21080.17 of the Public Resources Code because it is an ordinance regarding second units in a single-family or multifamily residential zone to implement the provisions of Government Code Section 65852.2.

Section 6. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 7. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

Section 8. Filing. The City Clerk shall submit a copy of this ordinance to the Department of Housing and Community Development within 60 days after adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Lafayette at a special meeting of the City Council held on the 20th day of December, 2016 by the following vote:

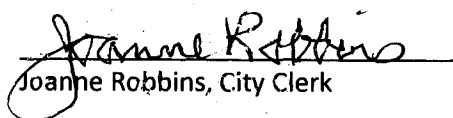
AYES: M. Anderson, Tatzin, Burks, Mitchell, and Samson

NOES: None

ABSTAIN: None

ABSENT: None

ATTEST:


Joanne Robbins, City Clerk

APPROVED:


Mike Anderson, Mayor

Exhibit "A"

Accessory Dwelling Units

- 6-560 Purpose and findings.
- 6-561 Definitions.
- 6-562 General provisions.
- 6-563 Development standards.
- 6-564 Permit required.
- 6-565 Permit process.
- 6-566 Variances.
- 6-567 Appeals.
- 6-568 Deed restrictions.
- 6-569 Effect of conforming accessory dwelling unit.

6-560 Purpose and findings.

- (a) Purpose. The purpose of this article is to comply with California State law regarding the development of accessory dwelling units and to implement the goal and policy of the housing chapter of the Lafayette General Plan regarding accessory dwelling units. It is also the purpose of this article to preserve the character and property values of existing neighborhoods.
- (b) Findings. The city council finds that:
 - (1) The single most important goal of the city's housing program is to achieve safe, decent housing for all residents of Lafayette. It is a specific goal of the housing chapter of the General Plan to facilitate and encourage the development of diverse housing types and additional affordable housing units to accommodate a diversity of Lafayette citizens in terms of age and socio-economic background and to meet the regional housing needs. It is a policy to achieve this goal to continue to facilitate the construction of accessory dwelling units.
 - (2) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock, and these units are an essential component of housing supply in California.
 - (3) It is also a goal of the city to protect the scenic value of its hillsides. The city has found through its General Plan that adequate housing to meet the needs of the community can be provided while still protecting its scenic resources.

(Ord. 540 § 2 (part), 2003)

6-561 Definitions.

In this chapter, unless the context otherwise requires:

- (a) "Attached unit" means an accessory dwelling unit connected to the primary unit by common wall construction and under the same existing or new roof structure, and may include the conversion on an attached garage .
- (b) "Height" means the vertical distance between the average of the highest and lowest grade at the lowest foundation wall (measured at existing grade or finished grade, whichever is lower) and the highest point of the structure. An appurtenance attached to an accessory dwelling unit, which is listed in Section 6-513, is excepted from the height limit.
- (c) "Hillside overlay district" means the zoning overlay district described in Chapter 6-20, article 3.
- (d) "Living area" means the interior habitable area of a dwelling unit including basements and attics

but does not include a garage or any accessory structure.

- (e) "Owner" means the person, persons, trust, partnership or other form of property ownership that is shown on the latest County Assessor's rolls or the legally authorized agent of the owner.
 - (f) "Primary unit" means a single-family or multi-family detached residential dwelling unit that either exists on or is proposed for a lot zoned for single-family or multi-family residential uses.
 - (g) "Protected tree" means a tree listed in subsection 6-1702(q).
 - (h) "Accessory dwelling unit" or "ADU" means an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking and sanitation on the same parcel as the primary unit is situated. An accessory dwelling unit also includes:
 - (1) An efficiency unit, as defined in Health and Safety Code Section 17958.1.
 - (2) A manufactured home, as defined in Health and Safety Code Section 18007.
 - (i) "Zoning administrator" means the city's planning and building services manager or designee.
- (Ord. 540 § 2 (part), 2003; Ord. 300 § 1 (part), 1984)

6-562 General provisions.

The following provisions shall apply to an accessory dwelling unit (ADU):

- (a) One ADU may be located on a lot that is zoned for single-family or multi-family residential uses with an existing primary unit.
- (b) An ADU shall be:
 - (1) A conversion of existing living area within the primary unit;
 - (2) An attached unit;
 - (3) A conversion of an existing garage;
 - (4) A conversion of an existing legally constructed accessory building ;or
 - (5) A unit detached from the primary unit and located on the same lot as the primary unit.
- (c) An ADU must comply with all provisions of the underlying zoning district, except as modified by this article.
- (d) The owner shall occupy either the primary unit or ADU as their primary residence. An owner may be absent from the primary or ADU for up to 12 consecutive months for health, family, employment or military reasons. The zoning administrator may grant two 12-month extensions at the request of the owner for such reasons.
- (e) An ADU is not intended for sale separate from the primary residence and may be rented. An ADU may not be rented for less than 30 days.
- (f) An ADU shall not be allowed where streets, public utilities and other public services are inadequate to serve the unit.
- (g) An ADU shall comply with all current building, health and safety codes that apply to detached dwellings, as appropriate. An accessory dwelling unit is required to have fire sprinklers, only if the primary residence is also required to have fire sprinklers unless otherwise mandated by applicable building and fire codes.
- (h) Reserved.
- (i) An ADU within the hillside overlay district shall not be subject to the provisions of chapter 6-20 except:
 - (1) For the development standard in subsection 6-563(m); and
 - (2) It shall not be allowed in a restricted ridgeline area pursuant to the development restrictions in Sections 6-2023 and 6-2024.

- (j) ADUs that were approved prior to the effective date of this article, but do not conform to this article, may continue to operate as a legal nonconforming use. ADU that were constructed without approval prior to the effective date of this article are considered unauthorized until the zoning administrator determines they are in compliance with all provisions of this article.
(Ord. 540 § 2 (part), 2003; Ord. 300 § 1 (part), 1984)

6-563 Development standards.

An accessory dwelling unit shall comply with all of the following development standards.

- (a) Maximum Unit Size. The living area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area of the primary unit or 1,200 square feet, whichever is less. . The total living area of a detached accessory dwelling unit shall not exceed 1,200 square feet.
- (b) (c) Minimum Unit Size. The living area of an accessory dwelling unit shall be at least 150 square feet of floor area.
- (d) Height in Single Family Zoning Districts. The height of an accessory dwelling unit shall not exceed 17 feet in height or the maximum height of the primary unit, whichever is less.
- (e) Height in Other Zoning Districts. The height of an accessory dwelling unit shall not exceed the height of the primary unit or the maximum height of the zoning district in which the primary unit is located, whichever is less.
- (f) Setback. The setback of an accessory dwelling unit shall be the same as required in the zoning district in which the primary unit is located.
- (g) Side Yards and Rear Yard. The side yards and rear yard of an accessory dwelling unit shall be the same as required in the zoning district in which the primary unit is located, .
- (h) Bedrooms. An accessory dwelling unit shall have no more than two bedrooms.
- (i) Exterior Design. The exterior design of an accessory dwelling unit shall substantially incorporate the same exterior design of the primary unit in terms of architectural style, architectural features, building materials and colors.
- (j) Passageway. No passageway shall be required in conjunction with the construction of an accessory dwelling unit. "Passageway" is defined as a pathway that is unobstructed clear to the sky and extends from to street to one entrance of the accessory dwelling unit. If a passageway or entrance is provided for the accessory dwelling unit, it shall not be located on the same side as the entrance to the primary unit. If an accessory dwelling unit is accessed by an outside stairway, the stairway shall not be on the same side as the entrance to the primary unit.
- (k) Off-Street Parking. A parking space shall be at least 10 feet by 20 feet, and may be open or covered.
 - (1) Except as provided in subparagraph (2):
 - (i) Accessory dwelling units must meet the following parking standards:
 - (I) For accessory dwelling units with no separate bedrooms, one off-street parking space shall be provided per unit.
 - (II) For accessory dwelling units with at least one separate bedroom, one off-street parking space shall be provided per bedroom.

- (ii) If parking is required:
 - (I) The required parking spaces may be located on setback areas approved by the zoning administrator or tandem parking on an existing driveway, unless specific findings are made under subparagraph (II).
 - (II) Parking arrangements in subparagraph (I) may be prohibited if the zoning administrator makes specific findings that such parking arrangements are not feasible based upon specific site or regional topographical or fire or life safety conditions, or that such arrangements are not permitted anywhere in the jurisdiction.
 - (III) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, tandem spaces, or by the use of mechanical automobile parking lifts.
- (2) Parking standards shall not be imposed on an accessory dwelling unit in any of the following circumstances:
 - (i) The accessory dwelling unit is located within one-half mile of public transit.
 - (ii) The accessory dwelling unit is located within an architecturally and historically significant historic district.
 - (iii) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.
 - (iv) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
 - (v) When there is a car share vehicle located within one block of the accessory dwelling unit.
- (l) Location. A detached second unit shall be at least as close to the primary residence as it is to a neighboring primary unit or accessory dwelling unit on an adjacent property.
- (m) Emergency Access. The subject property shall be accessible by emergency vehicles. Road access to the parcel shall be adequate. Consideration of adequate road access shall include road width, especially for passing purposes, sight distance and existing and potential traffic volume. The off-street parking for a second unit shall be accessed by the primary unit's existing curb cut(s).
- (n) Reserved
- (o) Protected Tree. An accessory dwelling unit proposed for a property with a protected tree shall comply with the provisions of Chapter 6-17, as necessary.

(p) **Garage Conversion.** When a primary unit's existing garage is proposed for conversion to an accessory dwelling unit, the zoning administrator shall determine first if the required parking for the primary unit is satisfied elsewhere on the subject property. If not, an application for the development of the primary unit's required parking shall be considered prior to making a determination on the accessory dwelling unit application. The replacement parking can be in any configuration on the subject property. No setback is required for a converted garage. There shall be a maximum of 5' on the side and rear setbacks for a new ADU over an existing garage.

(Ord. 543 § 2, 2004; Ord. 540 § 2 (part), 2003)

6-564 Permit required.

- (a) An accessory dwelling unit permit is required for the approval of an accessory dwelling unit. An application that meets the general provisions in Section 6-562 and development standards in Section 6-563 shall be approved ministerially by the zoning administrator without discretionary review or public hearing.
- (b) An accessory dwelling unit is exempt from the permit requirements of subparagraph (a) if the unit meets all the requirements of subparagraph (b)(1):
 - (1) The accessory dwelling unit:
 - i. Is one accessory dwelling unit per single-family lot located within a single-family residential zone;
 - ii. Is contained within the existing living area space of a single-family residence or accessory structure;
 - iii. Has independent exterior access from the existing residence; and
 - iv. The side and rear setbacks are sufficient for fire safety.
 - (2) If subparagraphs requirements of subparagraph (b)(1) are met, then the applicant:
 - i. Is required to install fire sprinklers in the accessory dwelling unit if the primary residence is also required to have fire sprinklers;
 - ii. Is not required to install a new or separate utility connection directly between the accessory dwelling unit and the utility, or to be charged a related connection fee or capacity charge.
 - iii. Shall record a deed restriction as provided in Section 6-568 and obtain any necessary building permits as required by Title 3 of the Lafayette Municipal Code.

(Ord. 540 § 2 (part), 2003)

6-565 Permit process.

- (a) **Application.** An application for an accessory dwelling unit shall be filed with the zoning administrator on a form approved by the city together with a fee fixed by resolution of the city council. The application shall include a site plan, grading and drainage plan, floor plans, elevations, cross sections, floor and lot area calculations, and color and materials. The zoning administrator may require additional information to determine an accessory dwelling unit's conformance with the general provisions in Section 6-562 and development standards in Section 6-563. If a protected tree permit is requested pursuant to Chapter 6-17, the application for the accessory dwelling unit shall be considered concurrently with the protected tree application.
- (b) **Determination.** Within 120 days of deeming an application complete, the zoning administrator shall approve or deny the application. An application shall be approved if the accessory dwelling unit meets the general provisions in Section 6-562 and development standards in Section 6-563.

- (c) Expiration of Permit. If the applicant does not begin the work authorized by the permit within 12 months from the date of issuance or such other expiration date stated in the permit, the permit shall expire.

(Ord. 540 § 2 (part), 2003)

6-566 Variances.

Excluding accessory dwelling units specified in Section 6-564(b)(1), in the event an accessory dwelling unit application does not comply with subsections 6-563(d), (e), (f), (g), (k) and (l) relating to the development standards, an application for a variance to a measurable standard for building height, setback, side yards, rear yard, number of parking spaces or number of curb cuts may be filed with the zoning administrator. The zoning administrator shall consider the variance application in accordance with Section 6-214 and in accordance with the city's procedures for variance applications prior to making a determination on the accessory dwelling unit application.

(Ord. 540 § 2 (part), 2003; Ord. 408 § 1 1993; Ord. 300 § 1 (part), 1984)

6-567 Appeals.

A person desiring to appeal the determination of the zoning administrator regarding the approval or denial of an accessory dwelling unit application shall file a notice of appeal with the city clerk within 14 days after the date of determination. The Planning Commission will consider the appeal within 30 days after the notice is filed. The Planning Commission shall limit its consideration of the appeal to whether the ADU meets the general provisions in Section 6-562 and development standards in Section 6-563. A person desiring to appeal the determination regarding the approval or denial of a variance application or protected tree application shall comply with the provisions of Chapter 6-2, Article 3 (Decisions and Appeal).

(Ord. 540 § 2 (part), 2003)

6-568 Deed restriction.

Prior to the issuance of a building permit for an accessory dwelling unit, the property owner shall provide written proof to the zoning administrator that a covenant setting forth the following requirements, in a form satisfactory to the zoning administrator and the city attorney, has been recorded in the office of the Contra Costa Recorder:

- (a) The accessory dwelling unit shall not be sold separately.
- (b) The accessory dwelling unit shall be considered legal only so long as either the primary unit or the second unit is occupied by the owner of record of the property pursuant to subsection 6-562 (d).
- (c) An accessory dwelling unit cannot be rented for fewer than 30 days at a time.
- (d) The restrictions shall be binding upon any successor in ownership of the property and lack of compliance may result in legal action against the property owner.

(Ord. 540 § 2 (part), 2003)

6-569 Effect of conforming accessory dwelling unit.

An accessory dwelling unit that conforms to this article shall:

- (a) Be deemed an accessory use or an accessory building and not be considered to exceed the allowable density for the lot upon which it is located;
- (b) Be deemed a residential use that is consistent with the general plan and the zoning designations for the lot; and
- (c) Not be considered in the application of any ordinance, policy, or program to limit residential growth.

2010502

LAFAYETTE, CITY OF
ATTN: ACCOUNTS PAYABLE
3675 MT. DIABLO BLVD., #210
LAFAYETTE, CA 94549-3793

PROOF OF PUBLICATION

In the matter of

Lafayette Sun

I am a citizen of the United States. I am over the age of eighteen years and I am not a party to or interested in the above entitled matter. I am the Legal Advertising Clerk of the printer and publisher of the Lafayette Sun, a newspaper published in the English language in the County of Contra Costa, State of California.

I declare that the Lafayette Sun is a newspaper of general circulation as defined by the laws of the State of California as determined by court decree dated March 4, 1939, Case Number 23392. Said decree states that the Lafayette Sun is adjudged to be a newspaper of general circulation for the County of Contra Costa and State of California. Said order has not been revoked.

I declare that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

12/30/2016

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Executed at Walnut Creek, California.

On this 10th day of January, 2017.

[Signature]

Signature

Legal No. 0005876888

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

Ordinance No. 655

An Urgency Ordinance of the City Council of the City of Lafayette Amending Title 6, Part 2, Chapter 6-5, Article 3 of the Lafayette Municipal Code Relating To Accessory Dwelling Units (Formerly "Second Units") and Determining the Ordinance to be Statutorily Exempt from Environmental Review

WHEREAS, the City of Lafayette, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and WHEREAS, the Planning and Zoning Law authorizes cities to provide by ordinance for the creation of second units; and WHEREAS, to address California's shortage of housing supply, the California Legislature approved, and the Governor signed into law, Assembly Bill 2299 (Bloom, Chapter 735, Stats. 2016) and Senate Bill 1069 (Wieckowski, Chapter 720, Stats. 2016); and WHEREAS, Assembly Bill 2299 and Senate Bill 1069 (collectively, "AB 2299") are double jointing bills, which among other things, amend California Government Code Section 65852.2. This statute imposes new limitations on local authority to regulate second units, which are now referred to as "accessory dwelling units" ("ADU"); and WHEREAS, Assembly Bill 2299 will become effective on January 1, 2017 and will render all non-compliant local ordinances null and void on that date unless and until an agency adopts an ordinance that complies with Government Code Section 65852.2; and WHEREAS, the City desires to amend its local regulatory scheme for the construction of accessory dwelling units that complies with Assembly Bill 2299.

THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES ORDAIN AS FOLLOWS:

Section 1. Incorporation of Recitals. The City Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

Section 2. Amendment to Lafayette Municipal Code, Title 6, Part 2, Chapter 6-5, Article 3. Lafayette Municipal Code, Title 6, Part 2, Chapter 6-5, Article 3 ("Second Units") is hereby amended and restated as provided in Exhibit "A," attached hereto and incorporated herein by this reference.

Section 3. Amendment to Lafayette Municipal Code, Title 6, Part 2, Chapter 6-3, Section 6-302. Lafayette Municipal Code, Title 6, Part 2, Chapter 6-3, Section 6-302 ("Accessory Building") is hereby amended and restated to read as follows: "Accessory building" means a subordinate building of 120 sq. ft. or less, the use of which is incidental to that of a main building on the same lot.

Section 4. Urgency findings. The City adopts this ordinance as an urgency measure pursuant to Government Code Section 36937(b) to protect the public safety, health, and welfare. There is a current and immediate threat to the public health, safety, or welfare based on the passage of AB 2299. If the City's second unit ordinance fails to comply with Government Code Section 65852.2, then as of January 1, 2017, the City's second unit ordinance will be null and void and the City would be limited to applying the standards established in AB 2299 for the approval of accessory dwelling units. Approval of accessory dwelling unit permits or other applicable entitlements based solely on the standards contained in AB 2299 and without local regulations regarding height, setback, lot coverage, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety. These threats to public safety, health and welfare justify adoption of this ordinance as an urgency measure to be effective immediately upon adoption by a four-fifths vote of the City Council.

Section 5. CEQA. The City Council finds the adoption of this ordinance to be statutorily exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 21060.17 of the Public Resources Code because it is an ordinance regarding second units in a single-family or multifamily residential zone to implement the provisions of Government Code Section 65852.2.

Section 6. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

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Section 8. Filing. The City Clerk shall submit a copy of this ordinance to the Department of Housing and Community Development within 60 days after adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Lafayette at a special meeting of the City Council held on the 20th day of December, 2016 by the following vote:

AYES: Anderson, Burks, Mitchell, Samson, Tatzin
NOES: None
ABSTAIN: None
ABSENT: None
ATTEST

/s/ Joanne Robbins, City Clerk

APPROVED:
/s/ Mike Anderson, Mayor

Exhibit "A"

Accessory Dwelling Units

- 6-560 Purpose and findings.
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6-560 Purpose and findings.
(a) Purpose. The purpose of this article is to comply with California State law regarding the development of accessory dwelling units and to implement the goal and policy of the housing chapter of the Lafayette General Plan regarding accessory dwelling units. It is also the purpose of this article to preserve the character and property values of existing neighborhoods.
(b) Findings. The city council finds that:
(1) The single most important goal of the city's housing program is to achieve safe, decent housing for all residents of Lafayette. It is a specific goal of the housing chapter of the General Plan to facilitate and encourage the development of diverse housing types and additional af-

residential housing units to accommodate a diversity of Lafayette citizens in terms of age and socio-economic background and to meet the regional housing needs. It is a policy to achieve this goal to continue to facilitate the construction of accessory dwelling units.

(2) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock, and those units are an essential component of housing supply in California.

(3) It is also a goal of the city to protect the scenic value of its hillsides. The city has found through its General Plan that adequate housing to meet the needs of the community can be provided while still protecting its scenic resources.

(Ord. 540 § 2 (part), 2003)

6-801. Definitions.

In this chapter, unless the context otherwise requires:

- (a) "Attached unit" means an accessory dwelling unit connected to the primary unit by common wall construction and under the same existing or new roof structure, and may include the conversion of an attached garage.
 - (b) "Height" means the vertical distance between the average of the highest and lowest grade at the lowest foundation wall (measured at existing grade or finished grade, whichever is lower) and the highest point of the structure. An upper terrace attached to an accessory dwelling unit, which is listed in Section 6-813, is excepted from the height limit.
 - (c) "Hillside overlay district" means the zoning overlay district described in Chapter 6-20, article 3.
 - (d) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.
 - (e) "Owner" means the person, persons, trust, partnership or other form of property ownership that is shown on the latest County Assessor's rolls or the legally authorized agent of the owner.
 - (f) "Primary unit" means a single-family or multi-family detached residential dwelling unit that either exists on or is proposed for a lot zoned for single-family or multi-family residential uses.
 - (g) "Protected tree" means a tree listed in subsection 6-1702(d).
 - (h) "Accessory dwelling unit" or "ADU" means an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking and sanitation on the same parcel as the primary unit is situated. An accessory dwelling unit also includes:
 - (1) An efficiency unit, as defined in Health and Safety Code Section 17936.1.
 - (2) A manufactured home, as defined in Health and Safety Code Section 18807.
 - (3) "Zoning administrator" means the city's planning and building services manager or designee.
- (Ord. 540 § 2 (part), 2003; Ord. 300 § 1 (part), 1984)

6-802. General provisions.

The following provisions shall apply to an accessory dwelling unit (ADU):

- (a) One ADU may be located on a lot that is zoned for single-family or multi-family residential uses with an existing primary unit.
 - (b) An ADU shall be:
 - (1) A conversion of existing living area within the primary unit;
 - (2) An attached unit;
 - (3) A conversion of an existing garage;
 - (4) A conversion of an existing legally constructed accessory building; or
 - (5) A unit detached from the primary unit and located on the same lot as the primary unit.
 - (c) An ADU must comply with all provisions of the underlying zoning district, except as modified by this article.
 - (d) The owner shall occupy either the primary unit or ADU as their primary residence. An owner may be absent from the primary or ADU for up to 12 consecutive months for health, family, employment or military reasons. The zoning administrator may grant two 12-month extensions at the request of the owner for such reasons.
 - (e) An ADU is not intended for sale separate from the primary residence and may be rented. An ADU may not be rented for less than 30 days.
 - (f) An ADU shall not be allowed where streets, public utilities and other public services are inadequate to serve the unit.
 - (g) An ADU shall comply with all current building, health and safety codes that apply to detached dwellings, as appropriate. An accessory dwelling unit is required to have fire sprinklers, only if the primary residence is also required to have fire sprinklers unless otherwise mandated by applicable building and fire codes.
 - (h) Reserved.
 - (i) An ADU within the hillside overlay district shall not be subject to the provisions of chapter 6-20 except:
 - (1) For the development standard in subsection 6-563(m); and
 - (2) It shall not be allowed in a restricted ridge area pursuant to the development restrictions in Sections 6-2023 and 6-2024.
 - (j) ADUs that were approved prior to the effective date of this article, but do not conform to this article, may continue to operate as a legal nonconforming use. ADU that were constructed without approval prior to the effective date of this article are considered unauthorized until the zoning administrator determines they are in compliance with all provisions of this article.
- (Ord. 540 § 2 (part), 2003; Ord. 300 § 1 (part), 1984)

6-803. Development standards.

An accessory dwelling unit shall comply with all of the following development standards.

- (a) Maximum Unit Size. The living area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area of the primary unit or 1,200 square feet, whichever is less. The total living area of a detached accessory dwelling unit shall not exceed 1,200 square feet.
- (b) Minimum Unit Size. The living area of an accessory dwelling unit shall be at least 150 square feet of floor area.
- (c) Height in Single Family Zoning Districts. The height of an accessory dwelling unit shall not exceed 17 feet in height or the maximum height of the primary unit, whichever is less.
- (d) Height in Other Zoning Districts. The height of an accessory dwelling unit shall not exceed the height of the primary unit or the maximum height of the zoning district in which the primary unit is located, whichever is less.
- (e) Setback. The setback of an accessory dwelling unit shall be the same as required in the zoning district in which the primary unit is located.
- (f) Side Yards and Rear Yard. The side yards and rear yard of an accessory dwelling unit shall be the same as required in the zoning district in which the primary unit is located.
- (g) Bedrooms. An accessory dwelling unit shall have no more than two bedrooms.
- (h) Exterior Design. The exterior design of an accessory dwelling unit shall substantially incorporate the same exterior design of the primary unit in terms of architectural style, architectural features, building materials and colors.
- (i) Passageway. No passageway shall be required in conjunction with the construction of an accessory dwelling unit. "Passageway" is defined as a pathway that is unobstructed clear to the sky and extends from the street to one entrance of the accessory dwelling unit. If a passageway or entrance is provided for the accessory dwelling unit, it shall not be located on the same side as the entrance to the primary unit. If an accessory dwelling unit is accessed by an outside stairway, the stairway shall not be on the same side as the entrance to the primary unit.
- (j) Off-Street Parking. A parking space shall be at least 16 feet by 20 feet, and may be open or covered.
- (k) Except as provided in subparagraph (2):
 - (1) Accessory dwelling units must meet the following parking standards:
 - (i) For accessory dwelling units with no separate bedrooms, one off-street parking space shall be provided per unit.
 - (ii) For accessory dwelling units with at least one separate bedroom, one off-street parking space shall be provided per bedroom.
 - (iii) If parking is required:
 - (A) The required parking spaces may be located on setback areas approved by the zoning administrator or tandem parking on an existing driveway, unless specific findings are made under subparagraph (1).
 - (B) Parking arrangements in subparagraph (i) may be prohibited if the zoning administrator makes specific findings that such parking arrangements are not feasible based upon specific site or regional topographical or fire or life safety conditions, or that such arrangements are not permitted anywhere in the jurisdiction.
 - (C) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, tandem spaces, or by the use of mechanical automobile parking lifts.
 - (2) Parking standards shall not be imposed on an accessory dwelling unit in any of the following circumstances:

- (j) The accessory dwelling unit is located within one-half mile of public transit.
- (k) The accessory dwelling unit is located within an architecturally and historically significant historic district.
- (l) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.
- (m) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (n) When there is a car share vehicle located within one block of the accessory dwelling unit.
- (o) Location. A detached second unit shall be at least as close to the primary residence as it is to a neighboring primary unit or accessory dwelling unit on an adjacent property.
- (p) Emergency Access. The subject property shall be accessible by emergency vehicles. Road access to the parcel shall be adequate. Consideration of adequate road access shall include road width, especially for passing purposes, sight distance and existing and potential traffic volume. The off-street parking for a second unit shall be accessed by the primary unit's existing curb cut(s).
- (n) Reserved
- (o) Protected Tree. An accessory dwelling unit proposed for a property with a protected tree shall comply with the provisions of Chapter 6-17, as necessary.
- (p) Garage Conversion. When a primary unit's existing garage is proposed for conversion to an accessory dwelling unit, the zoning administrator shall determine first if the required parking for the primary unit is satisfied elsewhere on the subject property. If not, an application for the development of the primary unit's required parking shall be considered prior to making a determination on the accessory dwelling unit application. The replacement parking can be in any configuration on the subject property. No setback is required for a converted garage. There shall be a maximum of 5' on the side and rear setbacks for a new ADU over an existing garage.

(Ord. 543 § 2, 2004; Ord. 540 § 2 (part), 2003)

6-564. Permit required.

- (a) An accessory dwelling unit permit is required for the approval of an accessory dwelling unit. An application that meets the general provisions in Section 6-562 and development standards in Section 6-563 shall be approved ministerially by the zoning administrator without discretionary review or public hearing.
- (b) An accessory dwelling unit is exempt from the permit requirements of subparagraph (a) if the unit meets all the requirements of subparagraph (b)(1):
 - (1) The accessory dwelling unit:
 - i. Is one accessory dwelling unit per single-family lot located within a single-family residential zone;
 - ii. Is contained within the existing living area space of a single-family residence or accessory structure;
 - iii. Has independent exterior access from the existing residence; and
 - iv. The side and rear setbacks are sufficient for fire safety.
 - (2) If subparagraph requirements of subparagraph (b)(1) are met, then the applicant:
 - i. Is required to install fire sprinklers in the accessory dwelling unit if the primary residence is also required to have fire sprinklers;
 - ii. Is not required to install a new or separate utility connection directly between the accessory dwelling unit and the utility, or to be charged a related connection fee or capacity charge.
 - iii. Shall record a deed restriction as provided in Section 6-568 and obtain any necessary building permits as required by Title 3 of the Lafayette Municipal Code.

(Ord. 540 § 3 (part), 2003)

6-565. Permit process.

- (a) Application. An application for an accessory dwelling unit shall be filed with the zoning administrator on a form approved by the city together with a fee fixed by resolution of the city council. The application shall include a site plan, grading and drainage plan, floor plans, elevations, cross sections, slope and lot area calculations, and color and materials. The zoning administrator may require additional information to determine an accessory dwelling unit's conformance with the general provisions in Section 6-562 and development standards in Section 6-563. If a protected tree permit is requested pursuant to Chapter 6-17, the application for the accessory dwelling unit shall be considered concurrently with the protected tree application.
- (b) Determination. Within 120 days of receiving an application complete, the zoning administrator shall approve or deny the application. An application shall be approved if the accessory dwelling unit meets the general provisions in Section 6-562 and development standards in Section 6-563.
- (c) Expiration of Permit. If the applicant does not begin the work authorized by the permit within 12 months from the date of issuance or such other expiration date stated in the permit, the permit shall expire.

(Ord. 540 § 3 (part), 2003)

6-566. Variances.

- Excluding accessory dwelling units specified in Section 6-564(b)(1), in the event an accessory dwelling unit application does not comply with subsections 6-563(d), (e), (f), (g), (k) and (l) relating to the development standards, an application for a variance to a measurable standard relating to the height, setback, side yards, rear yard, number of parking spaces or number of curb cuts may be filed with the zoning administrator. The zoning administrator shall consider the variance application in accordance with Section 6-214 and in accordance with the city's procedures for variance applications prior to making a determination on the accessory dwelling unit application.

(Ord. 540 § 2 (part), 2003; Ord. 406 § 1 1993; Ord. 300 § 1 (part), 1984)

6-567. Appeals.

- A person desiring to appeal the determination of the zoning administrator regarding the approval or denial of an accessory dwelling unit application shall file a notice of appeal with the city clerk within 14 days after the date of determination. The Planning Commission will consider the appeal within 30 days after the notice is filed. The Planning Commission shall limit its consideration of the appeal to whether the ADU meets the general provisions in Section 6-562 and development standards in Section 6-563. A person desiring to appeal the determination regarding the approval or denial of a variance application or protected tree application shall comply with the provisions of Chapter 6-2, Article 3 (Decisions and Appeals).

(Ord. 540 § 2 (part), 2003)

6-568. Deed restriction.

- Prior to the issuance of a building permit for an accessory dwelling unit, the property owner shall provide written proof to the zoning administrator that a covenant setting forth the following requirements, in a form satisfactory to the zoning administrator and the city attorney, has been recorded in the office of the Contra Costa Recorder:
 - (a) The accessory dwelling unit shall not be sold separately.
 - (b) The accessory dwelling unit shall be considered legal only so long as either the primary unit or the second unit is occupied by the owner of record of the property pursuant to subsection 6-562 (d).
 - (c) An accessory dwelling unit cannot be rented for fewer than 90 days at a time.
 - (d) The restrictions shall be binding upon any successor in ownership of the property and lack of compliance may result in legal action against the property owner.

(Ord. 540 § 2 (part), 2003)

6-569. Effect of conforming accessory dwelling unit.

- An accessory dwelling unit that conforms to this article shall:
 - (a) Be deemed an accessory use or an accessory building and not be considered to exceed the allowable density for the lot upon which it is located;
 - (b) Be deemed a residential use that is consistent with the general plan and the zoning designations for the lot; and
 - (c) Not be considered in the application of any ordinance, policy, or program to limit residential growth.

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