

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An Urgency Ordinance of the City Council of the City of) Ordinance No. 676
Lafayette Amending and Restating Article 3)
("Accessory Dwelling Units") of Chapter 6-5)
("General Provisions") of the Lafayette Municipal Code,)
Title 6, Part 2, Relating to Accessory Dwelling Units and)
Junior Accessory Dwelling Units and Determining)
the Ordinance to be Exempt from CEQA)

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, planning and zoning law authorizes cities to act by ordinance to provide for the creation and regulation of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"); and

WHEREAS, in 2019, the California Legislature approved, and the Governor signed into law a number of bills ("New ADU Laws") that, among other things, amended Government Code sections 65852.2 and 65852.22 to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, the New ADU Laws took effect January 1, 2020, and if the City's ADU ordinance does not comply with the New ADU Laws, the City's ordinance becomes null and void on that date as a matter of law; and

WHEREAS, the City desires to amend its local regulatory scheme for the construction of ADUs and JADUs to comply with the amended provisions of Government Code sections 65852.2 and 65852.22; and

WHEREAS, there is a current and immediate threat to the public health, safety, or welfare based on the passage of the New ADU Laws because if the City's ordinance does not comply with Government Code sections 65852.2 and 65852.22 (as amended) as of January 1, 2020 and the City's ordinance regulating ADUs and JADUs becomes null and void, the City would thereafter be limited to applying the few default standards that are provided in Government Code sections 65852.2 and 65852.22 for the approval of ADUs and JADUs; and

WHEREAS, the approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, 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 ordinance to be effective immediately upon adoption by a four-fifths vote of the City Council; and

WHEREAS, to protect the public safety, health, and welfare, the City Council may adopt this ordinance as an urgency measure in accordance with Government Code section 36937, subdivision (b).

NOW, THEREFORE, the City Council of the City of Lafayette does ordain as follows:

Section 1. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. Under California Public Resources Code section 21080.17, the California Environmental Quality Act ("CEQA") does not apply to the adoption of an ordinance by a city or county implementing the provisions of section 65852.2 of the Government Code, which is California's ADU law and which also regulates JADUs, as defined by section 65852.22. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State's ADU law.

In addition to being statutorily exempt from CEQA, the proposed ordinance is also categorically exempt from CEQA under the Class 3 exemption set forth in State CEQA Guidelines section 15303. The Class 3 exemption categorically exempts from CEQA, among other things, the construction and location of new, small structures and the conversion of existing small structures from one use to another. Section 15303 specifically lists the construction of appurtenant accessory structures and garages as examples of activity that expressly falls within this exemption. Here, the ordinance is categorically exempt under the Class 3 exemption because the ordinance regulates the conversion of existing structures into, and the new construction of, ADUs and JADUs, which are, by definition, structures that are accessory to a primary dwelling on the lot. Moreover, the City Council finds that none of the "exceptions" to the use of the Class 3 exemption, set forth in State CEQA Guidelines section 15300.2, apply because these accessory structures will necessarily be built on a lot already developed with a primary dwelling.

Section 3. Article 3 ("Accessory Dwelling Units") of the Lafayette Municipal Code, Title 6 ("Planning and Land Use"), Part 2 ("General Regulations"), Chapter 6-5 ("General Provisions") is hereby amended and restated as provided in Exhibit "A", attached hereto and incorporated herein by reference.

Section 4. This ordinance takes effect immediately upon its adoption.

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

Section 6. The City Clerk shall submit a copy of this ordinance to the Department of Housing and Community Development within 60 days after adoption.

Section 7. If any provision of this ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this resolution irrespective of the invalidity of any portion thereof.

Section 8. The location and custodian of the documents and any other material which constitute the record of proceedings upon which the City Council based its decision is as follows: City Clerk, City of Lafayette, 3675 Mt. Diablo Blvd #210, Lafayette, CA 94549.

PASSED, APPROVED AND ADOPTED by the City Council of the Lafayette, California, at a regular meeting of the City Council held on the 27th day of January, 2020 by the following vote:

AYES: Anderson, Candell, Bliss and Gerringner


NOES: Burks

ABSENT: None

ABSTAIN: None

ATTEST:

APPROVED:


Joanne Robbins, City Clerk

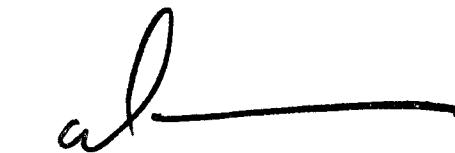

Mike Anderson, Mayor

EXHIBIT A

Amendments to Municipal Code

Section 6-560 Accessory Dwelling Units

- (a) **Purpose.** The purpose of this section is to allow and regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in 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 subsection (c)(8) below.
- (c) **Definitions.** As used in this section, terms are defined as follows:
- (1) "Accessory dwelling unit" or "ADU" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An accessory dwelling unit also includes the following:
 - (A) An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code; and
 - (B) A manufactured home, as defined by Section 18007 of the California Health and Safety Code.
 - (2) "Accessory structure" means a building, as defined by LMC 6-312, that is accessory and incidental to a dwelling located on the same lot.
 - (3) "Complete independent living facilities" means permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.
 - (4) "Efficiency kitchen" means a kitchen that includes all of the following:
 - (A) A cooking facility with appliances.
 - (B) A food preparation counter or counters that total at least 15 square feet in area.
 - (C) Food storage cabinets that total at least 30 square feet of shelf space.

- (5) "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 LMC Section 6-513, is excepted from the height limit.
- (6) "Junior accessory dwelling unit" or "JADU" means a residential unit that meets all of the following criteria:
 - (A) is no more than 500 square feet in size,
 - (B) is contained entirely within an existing or proposed single-family structure,
 - (C) includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure, and
 - (D) includes an efficiency kitchen, as defined in subsection (c)(4) above.
- (7) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
- (8) "Nonconforming zoning condition" means an existing physical improvement on a property that does not conform with current zoning standards.
- (9) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.
- (10) "Primary unit" or "primary residence" means a single-family or multi-family detached residential dwelling unit that either exists on or is proposed for a lot zoned for single-family or multi-family residential use.
- (11) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
- (12) "Protected tree" means a tree meeting one or more of the following standards:
 - (A) Developed Property. Located on a developed property, that has a trunk diameter of 12 inches or more, and that is one of the following species: Coast live oak (*Quercus agrifolia*); Canyon oak (*Quercus chrysolepis*); Blue oak (*Quercus douglasii*); White oak (*Quercus garryana*); Black oak (*Quercus kelloggii*); Valley oak (*Quercus lobata*); Interior live oak (*Quercus wislizenii*); California bay (*Umbellularia californica*); California buckeye (*Aesculus californica*); Madrone (*Arbutus menziesii*);
 - (B) Approved Development Application. Of any size or species and designated to be protected and preserved as part of an approved development application;
 - (C) Riparian Tree. Is a native riparian tree with a trunk diameter of six-inches or more or one component trunk of a multi-trunked tree with a diameter of four-

inches or more and that is one of the following species: Bigleaf maple (*Acer macrophyllum*); Boxelder (*Acer negundo*); White alder (*Alnus rhombifolia*); Black walnut (*Juglans hindsii*); Cottonwood (*Populus fremontii*); Red willow (*Salix laevigata*); Arroyo willow (*Salix lasiolepis*); Coast live oak (*Quercus agrifolia*); Valley oak (*Quercus lobata*); California bay (*Umbellularia californica*); California buckeye (*Aesculus californica*); Blue Elderberry (*Sambucus Mexicana, aerulea, or glauca*).

- (D) Undeveloped Property. Of any species with a diameter of six inches or more and located on an undeveloped property;
 - (E) Replacement Tree. Is a replacement tree planted as restitution for a violation of chapter 6-17;
 - (F) Restricted Ridgeline Area. Is a native tree of any size or species within a restricted ridgeline area;
 - (G) Street tree. Is a tree of any size or species and is located within a public right-of-way or a private access easement; or
 - (H) Downtown tree. Is a tree of any size or species within a commercial zoning district.
- (13) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
- (14) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
- (15) "Zoning administrator" means the city's planning and building director or designee.
- (d) **Approvals.** The following approvals apply to ADUs and JADUs under this section:
- (1) **Building-permit Only.** If an ADU or JADU complies with each of the general requirements in subsection (e) below, it is allowed with only a building permit in the following scenarios:
 - (A) **Converted on Single-family Lot:** One ADU or JADU on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:
 - (i) Is either: within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or within the existing space of an existing accessory structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress;
 - (ii) Has exterior access that is independent of that for the single-family dwelling; and

- (iii) Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes.
 - (B) **Limited Detached on Single-family Lot:** One detached, new-construction ADU on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot under subsection (d)(1)(A) above), if the detached ADU satisfies all of the following limitations:
 - (i) The side- and rear-yard setbacks are at least four-feet.
 - (ii) The total floor area is 800 square feet or smaller.
 - (iii) The peak height above grade is 16 feet or less.
 - (C) **Converted on Multifamily Lot:** Multiple ADUs within portions of existing multifamily dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each converted ADU complies with state building standards for dwellings. At least one converted ADU is allowed within an existing multifamily dwelling, and up to 25 percent of the existing multifamily dwelling units may each have a converted ADU under this paragraph.
 - (D) **Limited Detached on Multifamily Lot:** No more than two detached ADUs on a lot that has an existing multifamily dwelling if each detached ADU satisfies all of the following limitations:
 - (i) The side- and rear-yard setbacks are at least four-feet.
 - (ii) The total floor area is 800 square feet or smaller.
- (2) **ADU Permit.**
- (A) Except as allowed under subsection (1) above, no ADU may be created without a building permit and an ADU permit in compliance with the standards set forth in subsections (e) and (f) below.
 - (B) The City may charge a fee to reimburse it for costs incurred in processing ADU permits, including the costs of adopting or amending the City's ADU ordinance. The ADU-permit processing fee is determined by the zoning administrator and approved by the City Council by resolution.
- (3) **Process and Timing.**
- (A) An ADU permit is considered and approved ministerially, without discretionary review or a hearing.
 - (B) The zoning administrator must act on an application to create an ADU or JADU within 60 days from the date that the zoning administrator receives a completed application, unless either:

- (i) The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or
 - (ii) The application to create a ADU or JADU is submitted with a permit application to create a new single-family dwelling on the lot, the zoning administrator may delay acting on the permit application for the ADU or JADU until the City acts on the permit application to create the new single-family dwelling, but the application to create the ADU or JADU will still be considered ministerially without discretionary review or a hearing.
 - (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.
- (e) **General ADU and JADU Requirements.** The following requirements apply to all ADUs and JADUs that are approved under subsections (d)(1) or (d)(2) above:
- (1) **Zoning.**
 - (A) An ADU or JADU subject only to a building permit under subsection (d)(1) above may be created on a lot in a residential or mixed-use zone.
 - (B) An ADU or JADU subject to an ADU permit under subsection (d)(2) above may be created on a lot that is zoned to allow single-family dwelling residential use or multifamily dwelling residential use.
 - (2) **Number.** Except as provided under subsection (d)(1) above, only one ADU or JADU per lot.
 - (3) **Fire Sprinklers.** Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.
 - (4) **Rental Term.** An ADU or JADU may not be rented for a term that is shorter than 30 days.
 - (5) **No Separate Conveyance.** An ADU or JADU may be rented, but no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multifamily lot).
 - (6) **Septic System.** If the ADU or JADU will connect to an onsite water-treatment system, the owner must include with the application a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.
 - (7) **Owner Occupancy.**
 - (A) All ADUs created before January 1, 2020 are subject to the owner-occupancy requirement that was in place when the ADU was created.

- (B) An ADU that is created after that date but before January 1, 2025, is not subject to any owner-occupancy requirement.
 - (C) All ADUs that are created on or after January 1, 2025 are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property as the person's legal domicile and permanent residence.
 - (D) All JADUs are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement of this paragraph does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.
 - (E) Any owner-occupancy requirement in subsections (C) or (D) above may be excused for up to twelve (12) consecutive months for health, family, employment or military reasons. The zoning administrator may grant two (2) twelve-month extensions at the request of the owner for such reasons.
- (8) **Deed Restriction.** Prior to issuance of a building permit for an ADU or JADU, a deed restriction must be recorded against the title of the property in the County Recorder's office and a copy filed with the zoning administrator. The deed restriction must run with the land and bind all future owners. The form of the deed restriction will be provided by the City and must provide that:
- (A) The ADU or JADU may not be sold separately from the primary dwelling.
 - (B) The ADU or JADU is restricted to the approved size and to other attributes allowed by this section.
 - (C) The deed restriction runs with the land and may be enforced against future property owners.
 - (D) The deed restriction may be removed if the owner eliminates the ADU or JADU, as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request of the zoning administrator, providing evidence that the ADU or JADU has in fact been eliminated. The zoning administrator may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated. Appeal may be taken from the zoning administrator's determination consistent with other provisions of this Code. If the ADU or JADU is not entirely physically removed, but is only eliminated by virtue of having a necessary component of an ADU or JADU removed, the remaining structure and improvements must otherwise comply with applicable provisions of this Code.
 - (E) The deed restriction is enforceable by the zoning administrator or his or her designee for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner,

and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining the use of the ADU or JADU in violation of the recorded restrictions or abatement of the illegal unit.

(f) **Specific ADU Requirements.** The following requirements apply only to ADUs that require an ADU permit under subsection (d)(2) above. Except as provided by state law, the following standards have been in effect as of January 1, 2018.

(1) **Maximum Size.**

- (A) The maximum size of a detached or attached ADU subject to this subsection (f) is 1,200 square feet. No more than two bedrooms are allowed.
- (B) An attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of the existing primary dwelling.
- (C) Application of other development standards in this subsection (f), might further limit the size of the ADU, but no application of any requirements under subsection (f) may require the ADU to be less than 800 square feet, less than 16 feet in height with four-foot side and rear yard setbacks.

(2) **Setbacks.**

- (A) A setback of no more than four feet from the side and rear lot lines shall be required; except no setback shall be required for an existing living area or an existing accessory structure or an accessory structure constructed in the same location and to the same dimensions as an existing structure that is converted to an ADU or to a portion of an ADU,
- (B) Except as provided in subsection (f)(2)(A) above, front yard setbacks shall be as follows:
 - (i) R-6, R-10, R-12, R-15, D-1, M-R-A, M-R-B, M-R-O districts: at least 20 feet; on corner lots the principal frontage shall have a setback of at least 20 feet and the other setback shall be at least 4 feet.
 - (ii) R-20, R-40, R-65 districts: at least 25 feet; on corner lots the principal frontage shall have a setback of at least 25 feet and the other setback shall be at least 4 feet.
 - (iii) R-100 district: at least 30 feet; on corner lots, the principal frontage shall have a setback of at least 30 feet and the other setback shall be at least 4 feet.
 - (iv) L-R-5 and L-R-10 districts: a minimum of 50 feet.

- (3) **Floor Area Ratio (FAR).** No ADU subject to this subsection (f) may cause the total FAR of the lot to exceed the following thresholds, as applicable, subject to subsection (f)(1)(C) above:
- (A) M-R-A district: .25 for lot sizes less than 10,000 square feet; .30 for lot sizes at least 10,000 square feet and less than 11,000 square feet; increasing .01 for every 1,000 square feet of lot size above 11,000 square feet (see section 6-826).
 - (B) M-R-O district: the maximum floor area shall be no greater than that allowed if the parcel were in the M-R-A zoning district, except that it need not be less than 0.50 times the area of the site.
- (4) **Lot Coverage.** No ADU subject to this subsection (f) may cause the total lot coverage of the lot to exceed the following thresholds, as applicable, subject to subsection (f)(1)(C) above:
- (A) D-1 district: 50 percent.
 - (B) M-R-A district: 35 percent.
 - (C) M-R-B district: 25 percent.
- (5) **Minimum Open Space.** No ADU subject to this subsection (f) may cause the total percentage of open space of the lot to fall below the following thresholds, as applicable, subject to subsection (f)(1)(C) above.
- (A) M-R-A district: 45 percent. 20 percent of the ground level of the lot shall be planted open space (maintained with growing plants) with a minimum dimension of 15 feet.
 - (B) M-R-B district: 50 percent. 30 percent of the ground level of the lot shall be planted open space (maintained with growing plants) with a minimum dimension of 15 feet.
 - (C) M-R-O district: 30 percent. 20 percent of the ground level of the lot shall be planted open space (maintained with growing plants) with a minimum dimension of 10 feet.
 - (D) M-R-T district: 50 percent.
- (6) **Height.**
- (A) Height in Single-Family Zoning Districts. The height of an ADU shall not exceed 17 feet in height or the maximum height of the primary unit, whichever is less.
 - (B) Height in Other Zoning Districts. The height of an ADU 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. Maximum heights for each zoning district are listed below:

D-1 district: 25 feet; one and one-half stories.

M-R-A district: On lots smaller than 30,000 square feet in area, 25 feet in height.
On lots not less than 30,000 square feet in area, 35 feet in height.

M-R-B district: 35 feet.

M-R-O district: 35 feet in height; three stories.

M-R-T district: 25 feet.

M-R-P district: 20 feet; one story in height.

- (7) **Passageway.** No passageway, as defined by subsection (c)(9) above, is required for an ADU.
- (8) **Parking.**
- (A) Generally. One off-street parking space is required for each ADU. The parking space may be provided in setback areas or as tandem parking, as defined by subsection (c)(14) above, unless the zoning administrator makes specific findings that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.
- (B) Exceptions. No parking under subsection (f)(8)(A) is required in the following situations:
- (i) The ADU is located within one-half mile walking distance of public transit, as defined in subsection (c)(13) above.
 - (ii) The ADU is located within an architecturally and historically significant historic district.
 - (iii) The ADU is part of the proposed or existing primary residence or an accessory structure under subsection (d)(1)(A) above.
 - (iv) When on-street parking permits are required but not offered to the occupant of the ADU.
 - (v) When there is an established car share vehicle stop located within one block of the ADU.
- (C) No Replacement. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, those offstreet parking spaces are not required to be replaced.
- (9) **Architectural Requirements.**

- (A) The exterior design, building materials, colors, window style, and exterior finishes shall be substantially the same as those on the existing or proposed primary unit.
- (B) If a passageway or entrance is provided for the accessory dwelling unit, such entrance 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.
- (C) The off-street parking for an ADU shall be accessed by the primary unit's existing curb cut(s).

(10) **Landscape Requirements.**

- (A) **Tree Protection.** For each protected tree, as defined in subsection (c)(13) above, removed to provide for the location of an ADU, one 15-gallon tree of the same genus and species shall be planted.

(g) **Impact Fees.**

- (1) No impact fee is required for an ADU that is less than 750 square feet in size.
- (2) Any impact fee that is required for an ADU that is 750 square feet or larger in size must be charged proportionately in relation to the square footage of the primary dwelling unit.

- (h) **Nonconforming ADUs and Discretionary Approval.** Any proposed ADU or JADU that does not conform to the objective standards set forth in subsections (a) through (g) of this section may be allowed by the City with a land use permit, in accordance with section 6-215 of this title.

Sections 6-561 to 6-568 – Reserved.