

CITY OF BELVEDERE

ORDINANCE NO. 2023-02

**A REGULAR ORDINANCE OF THE CITY OF BELVEDERE AMENDING ZONING
CODE CHAPTER 19.79 “ACCESSORY DWELLING UNITS AND JUNIOR
ACCESSORY DWELLING UNITS” IN CONFORMANCE WITH STATE LAW**

WHEREAS, the State of California has adopted a series of laws encouraging the development of Accessory Dwelling Units (“ADUs”) and Junior Accessory Dwelling Units (“JADUs”), and reducing local control over these projects (Government Code sections 65852.2 and 65852.22, collectively, the “ADU Statutes”); and

WHEREAS, to comply with and implement the ADU Statutes, on October 11, 2021, the City Council adopted Ordinance No. 2021-03 as an urgency ordinance to take effect immediately and passed a first reading of said ordinance as a permanent regular ordinance (“2021 ADU Ordinance”); and

WHEREAS, on November 8, 2021, the City Council adopted the 2021 ADU ordinance as Ordinance No. 2021-04, a regular ordinance; and

WHEREAS, on September 28, 2022, the State adopted Assembly Bill 2221 and Senate Bill 897, which amended the ADU Statutes, effective January 1, 2023; and

WHEREAS, if a local jurisdiction does not have a compliant ADU/JADU ordinance, it must apply the State default standards per Government Code sections 65852.2 and 65852.22; and

WHEREAS, the City desires to amend its Municipal Code as set forth herein to comply with and implement the ADU Statutes as amended by Assembly Bill 2221 and Senate Bill 897 (the “Ordinance Amendments”); and

WHEREAS, the Ordinance Amendments protect and promote the public health, safety, and welfare of residents by providing additional housing opportunities while allowing the City to preserve neighborhood character by imposing objective standards; and

WHEREAS, the Ordinance Amendments comply with Government Code sections 65852.2 and 65852.22; and

WHEREAS, on January 17, 2023, the Belvedere Planning Commission conducted a duly noticed public hearing on the Ordinance Amendments, introduced said ordinance, and considered all oral and written comments submitted to the Commission before voting to adopt a resolution recommending that the City Council adopt the ordinance by a vote of **5 Ayes, 0 Noes, 2 Absent**; and

WHEREAS, on February 1, 2023, notice of the City Council public hearing was published in The Ark in compliance with California Government Code Section 65090; and

WHEREAS, on February 8, 2023, notice of the Belvedere City Council public hearing on the Ordinance Amendments was posted at City Hall, and was posted to the City’s website; and

WHEREAS, on February 13, 2023, the City Council of the City of Belvedere conducted a public hearing on the Ordinance Amendments, introduced said ordinance, and considered all oral and written comments submitted to the City before voting to pass a first reading of the ordinance by a vote of **4 Ayes, 0 Noes, 1 Absent** ; and

WHEREAS, on March 13, 2023, the City Council held a duly noticed public hearing and adopted the Ordinance Amendments by a vote of **4 Ayes, 0 Noes, 1 Absent** ; and

WHEREAS, the Ordinance Amendments are exempt from the California Environmental Quality Act (“CEQA”) pursuant to Public Resources Code section 21080.17 and 14 Cal Code Regs §15282(h), which exempt the local adoption of ordinances regarding second units in single or multifamily residential zones, and 14 Cal Code Regs 15301 involving the minor alteration of existing residences involving negligible or no expansion of use beyond that already in existence; and

WHEREAS, the Ordinance Amendments are in the public interest and are consistent with the City of Belvedere’s General Plan Housing Element, which encourages the development of ADUs and JADUs; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BELVEDERE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings. The Ordinance Amendments further the public health, safety, and welfare and the above recitals are true and correct and are incorporated as findings herein.

SECTION 2. Amendment. Belvedere Municipal Code Chapter 19.79 “Accessory Dwelling Units and Junior Accessory Dwelling Units” is hereby amended, as shown in strike-out (deleted) and underline (added text), as follows:

19.79.010 Purpose. The purpose of this Chapter is to provide for the creation of Accessory Dwelling Units and Junior Accessory Dwelling Units in a manner consistent with the requirements set forth in California Government Code sections 65852.2 and 65852.22. The purpose of Accessory Dwelling Units and Junior Accessory Dwelling Units is to expand the opportunity for small, lower cost housing in the City of Belvedere, while preserving the residential character of its neighborhoods.

19.79.020 Definitions. For purposes of this Chapter, the following definitions apply:

A. “Accessory Dwelling Unit” as defined in California Government Code section 65852.2, means an attached or detached residential dwelling unit that provides independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. Pursuant to State law, an Accessory Dwelling Unit also includes the following:

1. An Efficiency Unit as defined in California Health and Safety Code

section

17958.1;

and

2. A manufactured home as defined in California Health and Safety Code section 18007.

B. "Efficiency Kitchen" as defined in California Government Code section 65852.22, means a cooking facility with appliances, and a food preparation counter or counters that are of reasonable size in relation to the size of the unit.

C. "Junior Accessory Dwelling Unit" as defined in California Government Code section 65852.22, means a unit located entirely within an existing or proposed single-family residence that is no more than 500 square feet, includes an Efficiency Kitchen, and includes either its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family residence.

D. "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or an accessory structure.

E. "Multifamily dwelling" means a structure with two or more attached dwellings on a single lot. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings.

F. "Passageway" as defined in Government Code section 65852.2, means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of an Accessory Dwelling Unit.

G. "Public Transit Stop" as defined in Government Code section 65852.2, means a designated bus stop, train stop, ferry terminal, or other public transit station that operates fixed routes and is available to the public.

H. "Tandem parking" as defined in Government Code section 65852.2, means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

19.79.030 Permit Application and Procedures.

A. Permit Required. An Accessory Dwelling Unit and/or Junior Accessory Dwelling Unit is allowed on any parcel in a single-family residential or multifamily residential zoning district with a primary unit. Unless exempt pursuant to Section 19.79.080, an Accessory Dwelling Unit and Junior Accessory Dwelling Unit must receive a permit under this Chapter.

B. Application and Review Authority. An application for an Accessory Dwelling Unit or Junior Accessory Dwelling Unit shall be made by the property owner and filed with the Planning Department on a form prescribed by the Director of Planning and Building, containing such information as reasonably requested by the Director of Planning and Building, and accompanied by the appropriate fee. In addition to an

Accessory Dwelling Unit Permit, the applicant shall be required to obtain a building permit if repair, rehabilitation, or other work would otherwise require a building permit.

C. Ministerial Review. For applications that satisfy the requirements of this Chapter, the Director of Planning and Building or her/his designee, shall issue an Accessory Dwelling Unit Permit as a ministerial permit, without discretionary review, public hearing, or Design Review. The decision shall be final, and state in writing the reasons for approval or denial.

D. Review Timing. The City shall act upon an application to create an Accessory Dwelling Unit or Junior Accessory Dwelling Unit within 60 days from receiving a complete application. If the City does not act within 60 days, the application shall be deemed approved. If the application is submitted with an application to create a new single-family dwelling, the City may delay acting on the application for the Accessory Dwelling Unit or the Junior Accessory Dwelling Unit until the City acts on the underlying permit application to create the new single-family dwelling. The portion of the application for the Accessory Dwelling Unit or Junior Accessory Dwelling Unit shall be considered without discretionary review, including Design Review, or public hearing. If the City receives a demolition permit for a detached garage that is to be replaced with an Accessory Dwelling Unit, the City shall review and issue the demolition permit for the detached garage at the same time that the City reviews and issues the permit for the Accessory Dwelling Unit.

E. Denial of Application.

1. If the City denies an application to create an Accessory Dwelling Unit or Junior Accessory Dwelling Unit, the City shall within 60 days return in writing a full set of comments to the applicant with a list of defective or deficient items and a description of how the applicant can remedy the defective or deficient items.

2. The City shall not deny an application for an Accessory Dwelling Unit that was previously unpermitted, but constructed before January 1, 2018 on the basis that (a) the Accessory Dwelling Unit is in violation of the building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code or (b) the Accessory Dwelling Unit does not comply with Government Code Section 65852.2 or this Ordinance.

19.79.040 General Requirements for Accessory Dwelling Units and Junior Accessory Dwelling Units. Unless otherwise provided in this Chapter, Accessory Dwelling Units and Junior Accessory Dwelling Units are subject to the following requirements:

A. Zoning Conformance. Accessory Dwelling Units and Junior Accessory Dwelling Units shall comply with the provisions in this Chapter as well as the underlying zoning district. In instances where there is a conflict, this Chapter shall govern.

B. Location of Unit. An Accessory Dwelling Unit may either be attached to, or located within, a proposed or existing primary dwelling or accessory structure,

including a garage or storage area; or detached from a proposed or existing primary dwelling unit located on the same lot.

C. Number of Units. One Accessory Dwelling Unit and one Junior Accessory Dwelling Unit are permitted per residentially zoned lot that contains an existing or proposed single-family dwelling.

D. Owner Occupancy. Owner occupancy is not required for an Accessory Dwelling Unit. Owner occupancy is required for a Junior Accessory Dwelling Unit. The owner may reside in the primary dwelling or the Junior Accessory Dwelling Unit.

E. Building Codes. Accessory Dwelling Units and Junior Accessory Dwelling Units shall comply with all applicable building, fire, and health and safety codes, provided that the construction of an Accessory Dwelling Unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

F. No Sale. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit may not be sold separately from the existing dwelling unit.

G. Adequate Services. Proof of the proposed method of water supply and sewage disposal must be provided and confirmed by letters of service availability from the appropriate utility service providers for the lot. The property must have existing or future legal access.

H. Fees. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit shall not be considered a separate or new dwelling unit for purposes of collecting impact fees, or the provision of water, sewer, and power unless the unit was constructed concurrently with a new single-family dwelling.

I. No Short Term Rental. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit shall not be rented for less than 30 consecutive days.

19.79.050. Accessory Dwelling Unit Development Standards. Accessory Dwelling Units are subject to the following requirements unless exempted from an Accessory Dwelling Unit Permit pursuant to this Chapter:

A. Setbacks and other Zoning Regulations.

1. No setbacks shall be required for the following:

i. An existing living area that is converted to an Accessory Dwelling Unit or portion of an Accessory Dwelling Unit;

ii. An accessory structure that is converted to an Accessory Dwelling Unit or portion of an Accessory Dwelling Unit; or

iii. A structure constructed in the same location and to the same dimensions as an existing structure, that is converted to an Accessory Dwelling Unit or to a portion of an Accessory Dwelling Unit.

2. A minimum side and rear yard setback of 4 feet shall be required for an Accessory Dwelling Unit that is not constructed in the same location and to the same dimensions as an existing structure, including a garage or accessory structure.

3. Front yard setback requirements of the underlying zoning district apply for a newly constructed attached or detached Accessory Dwelling Unit, provided that front yard setback requirements shall not apply if they do not permit an at least 800 square foot Accessory Dwelling Unit with four-foot side and rear yard setbacks.

4. Notwithstanding any provision in this Chapter, side and rear yard setbacks must be sufficient for fire safety as determined by the Building Department and/or the Fire District.

5. Lot coverage and floor area ratio requirements of the underlying zoning district apply for a newly constructed attached or detached Accessory Dwelling Unit. Notwithstanding this Section, an attached or detached Accessory Dwelling Unit must be allowed a floor area of at least 800 square feet, 16 feet in height, with minimum 4-foot side and rear yard setbacks.

6. If an existing multifamily dwelling has a rear or side setback of less than four feet, no modification of the multifamily dwelling shall be required as a condition of approving the construction of an Accessory Dwelling Unit.

B. Maximum and Minimum Unit Size.

1. The maximum floor area square footage for a studio or one bedroom Accessory Dwelling Unit is 850 square feet, and 1,000 square feet if the Accessory Dwelling Unit contains more than one bedroom.

2. The total floor area of an attached or detached Accessory Dwelling Unit shall not exceed 50% of the existing or proposed primary dwelling. Notwithstanding this provision, an attached or detached Accessory Dwelling Unit must be allowed at least 800 square feet of floor area.

3. The minimum floor area for an Accessory Dwelling Unit is 150 square feet, which is the minimum square footage required for an Efficiency Unit as defined in California Government Code section 17958.1 as may be amended from time to time.

C. Height. ~~A detached or attached Accessory Dwelling unit shall not exceed 16 feet in height.~~

1. A detached Accessory Dwelling Unit on a lot with an existing or proposed single family or multifamily dwelling unit shall not exceed 16 feet in height except as provided in the following subparagraphs.

2. A detached Accessory Dwelling Unit on a lot with an existing or proposed single family or multifamily dwelling unit shall not exceed 18 feet in height, if the dwelling unit is within one-half mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in California Public Resources Code Section 21155. The City shall also allow an additional two feet in height to accommodate a roof pitch on the Accessory Dwelling Unit that aligns with the roof pitch of the primary dwelling unit.

3. A detached Accessory Dwelling Unit on a lot with an existing or proposed multifamily, multistory dwelling unit shall not exceed 18 feet in height.

4. An attached Accessory Dwelling Unit shall not exceed 25 feet in height, or the height limit that applies to the primary dwelling, whichever is lower.

D. Lot Coverage and Floor Area Ratio. The Accessory Dwelling Unit shall comply with the lot coverage and floor area ratio requirements of the underlying zoning district unless otherwise required by this Chapter or State law. Lot coverage or floor area ratio limits do not apply for either an attached or detached Accessory Dwelling Unit that does not permit at least an 800 square foot Accessory Dwelling Unit, ~~that is up to 16 feet in height,~~ with minimum 4 foot side and rear yard setbacks. For the purposes of determining maximum lot coverage and floor area ratio requirements, residential second unit square footage shall be calculated as part of the primary living unit.

E. Lot Size. There shall be no minimum lot size required for an Accessory Dwelling Unit or Junior Accessory Dwelling Unit.

F. An Accessory Dwelling Unit shall include a separate kitchen, bathroom, and access from the primary dwelling unit. It may contain an interior connection to the primary dwelling unit.

G. Pursuant to State law, an Accessory Dwelling Unit that conforms to this Chapter shall be deemed to be an accessory use or an accessory building, shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the General Plan and zoning district.

H. Accessory Dwelling Units are not required to have fire sprinklers or other fire safety requirements if not required in the primary residence.

I. No Passageway shall be required in conjunction with the construction of an Accessory Dwelling Unit.

J. The correction of underlying nonconforming zoning conditions are not required as a condition of approval.

19.79.060 Parking Requirements.

A. One parking space is required per Accessory Dwelling Unit unless otherwise provided for in this Chapter.

B. Parking spaces may be located on a contiguous lot if that lot is owned by the record owner of the Accessory Dwelling Unit, however, in such case a parking easement or other deed restriction in a form acceptable to the City Attorney, shall be recorded prior to issuance of a building permit.

C. Parking may be provided through tandem parking on an existing driveway.

D. Off street parking shall be permitted in setback areas in locations determined by the Director of Planning and Building, unless specific findings are made that parking in setback areas is not feasible based on specific site, regional, topographical, or fire and life safety conditions, which conditions shall include but are not limited to circumstances where parking would impede reasonable emergency and fire access.

E. No replacement parking for the primary dwelling unit shall be required if the Accessory Dwelling Unit was created by the demolition or conversion of a garage, carport, or covered parking structure to an Accessory Dwelling Unit.

F. Parking Exemptions. An Accessory Dwelling Unit shall be exempt from the parking requirement of this Section if the unit is:

1. Located within one-half mile walking distance of a Public Transit Stop;
2. Located within an historic district, as may be designated by the City Council from time to time;
3. Located within one block of a car share vehicle pick up or drop off location as defined in the California Vehicle Code;
4. The Accessory Dwelling Unit is built within a legally existing primary residence or legally existing accessory structure;
5. Attached or detached Accessory Dwelling Unit that is no more than 800 square feet in floor area, no more than 16 feet in height, with minimum 4 foot side and rear yard setbacks; ~~or~~

6. In an area where on-street parking permits are required but not offered to the occupant of the Accessory Dwelling Unit; or

7. Is the subject of a permit application for an Accessory Dwelling Unit submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same parcel, provided that the Accessory Dwelling Unit or parcel satisfies any of the other criteria set for in this subsection F.

19.79.070 Accessory Dwelling Unit Architectural Standards. Accessory Dwelling Units are subject to the following objective standards unless exempted from an Accessory Dwelling Unit Permit pursuant to this Chapter:

A. Newly constructed Accessory Dwelling Units shall be of the same color, and building material as the primary dwelling unit.

B. Any new window that faces an adjoining residential property shall be either made of opaque glass and/or have a sill height above eye level. Any new door that faces an adjoining residential property shall either not include windows, or all windows must be made of opaque glass.

C. All exterior lighting shall be low wattage, shielded, and directed downward.

D. Where visible from offsite locations, skylights shall not have white or light opaque colored exterior lenses.

E. An Accessory Dwelling Unit that includes exterior alterations or additions to a property that is listed in the California Register of Historic Places or on a local historical register shall not be approved if it may cause an adverse impact to the historical significance of the property.

19.79.080 Exemptions from Permit.

A. An Accessory Dwelling Unit Permit shall not be required in the following instances for projects located within a residential or mixed-use zone. Such projects will be ministerially approved upon valid application of a building permit. Projects exempt under this Section remain subject to other applicable construction-related permit requirements such as grading permits.

1. The Accessory Dwelling Unit and/or Junior Accessory Dwelling Unit is:

a. Within the proposed space of a single-family dwelling, or the existing space of a single-family dwelling or accessory structure.

b. Has exterior access from the proposed or existing single-family dwelling; and

- c. Has side and rear yard setbacks sufficient for fire safety.
- d. One Accessory Dwelling Unit and one Junior Accessory Dwelling Unit per lot are allowed under this exemption.
- e. An Accessory Dwelling Unit within the existing space of an accessory structure may be expanded an additional 150 square feet if necessary to accommodate ingress and egress. This subsection does not apply to a Junior Accessory Dwelling Unit.

2. One newly constructed detached Accessory Dwelling Unit that is up to 800 square feet of floor area, up to 16 feet in height, with minimum 4 foot side and rear yard setbacks on a lot with a proposed or existing single-family dwelling. The Accessory Dwelling Unit may be combined with a Junior Accessory Dwelling Unit located on the same lot.

3. The Junior Accessory Dwelling Unit complies with the requirements of California Government Code section 65852.22 as may be amended from time to time.

4. Accessory Dwelling Units within the 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 unit complies with State building standards for dwellings. Accessory Dwelling Units in existing multifamily structures shall be limited to one unit or 25% of the existing multifamily dwelling units.

5. Not more than two Accessory Dwelling Units located on a lot that has an existing multifamily dwelling and are detached from that existing multifamily dwelling, subject to a height limit of 16 feet and minimum 4 foot side and rear yard setbacks.

19.79.090 Junior Accessory Dwelling Unit Development Standards. Unless otherwise provided for in this Chapter, Junior Accessory Dwelling Units are subject to the following requirements:

A. **Location.** A Junior Accessory Dwelling Unit shall be located within an existing or proposed single-family residence. Any enclosed uses within the residence, such as attached garages, shall be considered a part of an existing or proposed single-family residence. One Junior Accessory Dwelling Unit is allowed per lot.

B. **Unit Size.** No Junior Accessory Dwelling Unit shall be less than 150 square feet or more than 500 square feet in size. The square footage of any shared sanitation facilities with the primary dwelling unit shall not be included in the square footage calculation.

C. Access. The Junior Accessory Dwelling Unit shall have a separate exterior entrance from the primary dwelling unit.

D. Sanitation and Kitchen Facilities. A Junior Accessory Dwelling Unit may include separate sanitation facilities, or it may share such facilities with the primary dwelling unit. If the Junior Accessory Dwelling Unit shares sanitation facilities with the primary dwelling unit, the Junior Accessory Dwelling Unit shall include an interior entry to the main living area. The Junior Accessory Dwelling Unit shall include an Efficiency Kitchen.

E. No parking is required for a Junior Accessory Dwelling Unit.

F. Replacement parking for the primary dwelling unit shall be required if a Junior Accessory Dwelling Unit is created by the demolition or conversion of a garage, carport, or covered parking structure to a Junior Accessory Dwelling Unit.

19.79.100 Deed Restrictions.

A. Before obtaining a building permit for an Accessory Dwelling Unit or a Junior Accessory Dwelling Unit, the property owner shall file a deed restriction with the Marin County Recorder requiring that:

1. The Accessory Dwelling Unit or Junior Accessory Dwelling Unit shall not be sold separately from the primary dwelling unit;

2. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit may be rented, but no short-term rentals of 30 days or less are allowed;

3. The restrictions applicable to the unit shall be binding upon any successor in ownership and may be enforced against future purchasers; and

4. The deed restrictions shall lapse automatically upon removal of the Accessory Dwelling Unit or Junior Accessory Dwelling Unit.

B. In any case where a building permit is not required for an Accessory Dwelling Unit or Junior Accessory Dwelling Unit, an executed declaration or agreement of restrictions as required herein shall be submitted to the City for recordation in a form acceptable to the City Attorney, along with applicable recordation fees, and prior approval of the Accessory Dwelling Unit or Junior Accessory Dwelling Unit.

19.79.110 Exceptions. An applicant may request exceptions to the requirements in this Chapter by applying for a Conditional Use Permit pursuant to Belvedere Municipal Code Chapter 19.80. Any exceptions approved pursuant to a Conditional Use Permit must

also comply with all Design Review standards. Any detached Accessory Dwelling Unit approved by a Conditional Use Permit shall not exceed 1,200 square feet.

19.79.120 Violations and Enforcement. It shall be unlawful for any person to construct or maintain an Accessory Dwelling Unit or Junior Accessory Dwelling Unit on property within the City without compliance with this Chapter. The maintenance, ownership, or use of any Accessory Dwelling Unit or Junior Accessory Dwelling Unit except as permitted in this Chapter shall constitute a nuisance, subject to abatement pursuant to the Municipal Code, or any other remedy allowed in the Municipal Code and State law. All remedies are cumulative.

SECTION 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 4. Effective Date, Regular Ordinance. This Ordinance shall take effect and be in force thirty (30) days after the date of its passage. Within fifteen (15) days following its passage, a summary of the Ordinance shall be published with the names of those City Council members voting for and against the Ordinance and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of the adopted Ordinance along with the names of the members voting for and against the Ordinance.

INTRODUCED AT A PUBLIC HEARING on February 13, 2023 and adopted at a regular meeting of the Belvedere City Council on March 13, 2023 by the following vote:

AYES: Cooper, Mark, Wilkinson, Lynch

NOES: None

ABSENT: Kemnitzer

ABSTAIN: None

APPROVED: _____

James Lynch, Mayor

ATTEST: _____

Beth Haener, Interim City Clerk