

## **CHAPTER FIVE: PLANNING, ZONING, USE, AND DEVELOPMENT OF LAND AND IMPROVEMENTS**

### **Subchapter 5.19: Accessory Dwelling Units**

#### **5.19.010 Findings.**

The City Council of the Town of Colma hereby finds that:

A. The Town of Colma California (the "Town") is a municipal corporation, duly organized under the constitution and laws of the State of California.

B. The Planning and Zoning Law authorizes cities to provide by ordinance for the creation of accessory dwelling units.

C. 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).

D. Assembly Bill 2299 and Senate Bill 1069 are double jointing bills, which among other things, amend California Government Code Section 65852.2. These statutes impose new limitations on local authority to regulate second units, which are now referred to as "accessory dwelling units" ("ADU").

E. Assembly Bill 2299 became 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.

F. The Town desires to amend the local regulatory scheme for accessory dwelling units that fully complies with Assembly Bill 2299.

#### **5.19.020 Purpose.**

The purpose of this chapter is to provide reasonable regulations for the development of accessory dwelling units in certain areas and on lots developed or proposed to be developed with single-family residential dwellings. Such accessory dwelling units contribute needed housing to the community's housing stock and promote housing opportunities for the persons wishing to reside in the Town of Colma. In addition, the regulations in this ordinance are intended to promote the goals and policies of the City's General Plan and comply with requirements codified in the state Planning and Zoning Law related to accessory dwelling units in residential areas, including California Government Code section 65852.2.

#### **5.19.030 Definitions.**

"Accessory dwelling unit" means a residential dwelling unit that is detached from, attached to, or located within the living area of an existing primary dwelling unit, and that provides independent living facilities for one or more persons. An accessory dwelling unit also includes an efficiency unit, as defined in California Health and Safety Code section 17958.1, and a manufactured home, as defined in section 18007.

"Living area" is defined as the interior habitable area of a dwelling unit, including basements and attics, but not including a garage or any accessory structure.

#### **5.19.040 Effect of Conforming Accessory Dwelling Unit**

An accessory dwelling unit that conforms to this chapter 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;
- C. Not be considered in the application of any ordinance, policy, or program to limit residential growth; and
- D. Not be considered a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service.

#### **5.19.050 Locations Permitted.**

- A. Accessory dwelling units may be permitted in the "R" zone and on lots containing existing single-family residences in the "G" and "C" zones and subject to the standards in Section 5.19.070.
- B. Accessory dwelling units that meet the requirements of Section 5.19.070 (B) may be located in the "R" and "R-S" zones.

#### **5.19.060 Permit Procedures.**

- A. Permits.
  - 1. Except as provided in subparagraph (2), approved applications for an accessory dwelling unit will result in an accessory dwelling unit permit. The applicant shall also obtain a building permit as required by the building code and record a deed restriction as provided in Section 5.19.080.
  - 2. Exception. Accessory dwelling units that meet the requirements of Section 5.19.070(B) shall obtain a building permit as required by the building code and record a deed restriction as provided in Section 5.19.080.
- B. Application Processing.
  - 1. Applications for an accessory dwelling unit permit must be submitted to the City Planner on a form and with information and materials, as adopted by the City Planner.

2. The City Planner may collect a fee for processing the application, provided such fee is approved by resolution of the City Council.
- C. Review.
1. The City Planner will review and approve complete applications for an accessory dwelling unit permit that comply with the requirements of Sections 5.19.070 (Standards) and 5.19.080 (Deed Restrictions). The accessory dwelling unit permit application shall be considered ministerially without any discretionary review or a hearing.
  2. The City Planner will approve or disapprove of an application for an accessory dwelling unit permit within 120 days after receiving the complete application.
  3. Except as otherwise provided in this chapter, the construction of an accessory dwelling unit shall be subject to any applicable fees adopted pursuant to the requirements of California Government Code, Title 7, Division 1, Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

#### **5.19.070 Standards.**

- A. Except as provided in subparagraph (B), accessory dwelling units must meet the following standards:
1. Development on the Lot.
    - (a) A single-family dwelling must exist on the lot or be constructed in conjunction with the accessory dwelling unit.
    - (b) The accessory dwelling unit must be:
      - (i) Detached from the existing primary dwelling, but located on the same lot as the existing dwelling;
      - (ii) Attached to the existing dwelling; or
      - (iii) Located within the living area of the existing dwelling.
    - (c) Only one accessory dwelling unit shall be allowed per lot.
    - (d) The accessory dwelling unit is not intended for sale separate from the primary residence.
  2. Occupancy.
    - (a) The property owner must occupy either the primary dwelling or accessory dwelling unit.

- (b) The accessory dwelling unit may be rented, but shall only be rented for terms longer than 30 days.

3. Building and Construction.

- (a) An accessory dwelling unit shall include permanent provisions for living, sleeping, eating, cooking, and sanitation.
- (b) An accessory dwelling unit is required to have fire sprinklers, only if the primary residence is also required to have fire sprinklers.
- (c) An accessory dwelling unit must receive the approval by either the North San Mateo County Sanitation District or South San Francisco Sewer where a private sewage disposal system is being used.
- (d) An accessory dwelling unit shall meet the requirements of the building code, as adopted and amended by Chapter 5, Subchapter 4 of the Municipal Code, that apply to detached dwellings, as appropriate.
- (e) A separate utility connection shall be installed directly between the accessory dwelling unit and the utility. The connection shall be subject to a connection fee or capacity charge, or both, proportionate to the burden of the proposed unit, based on either its size or the number of its plumbing fixtures, upon the water or sewer system.
- (f) 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.

4. Parking.

- (a) Except as provided in subparagraph (b):
  - (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 City Planner 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 City Planner 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.
- (b) 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.

5. Height.

The accessory dwelling unit must meet the height standards of the applicable zoning district.

6. Setbacks.

- (a) Except as provided in subparagraphs (b) and (c), an accessory dwelling unit must meet the setback standards of the applicable zoning district.
- (b) No setback shall be required for a legally established existing garage that is converted to an accessory dwelling unit.
- (c) A minimum setback of five (5) feet shall be required from the side and rear lot lines for an accessory dwelling unit constructed above a legally established existing garage.

7. Unit Size.

- (a) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1200 square feet.
- (b) The total area of floor space for a detached accessory dwelling unit shall not exceed 1200 square feet.
- (c) The accessory dwelling unit shall contain no less than the 150 square feet area minimum required for an efficiency dwelling unit as defined in Section 17958.1 of the Health & Safety Code.

8. Landscape.

The accessory dwelling unit must meet the landscaping standards of the applicable zoning district. If new landscaping is installed, it should be the Water Efficient Landscape Ordinance standards in Chapter 5, Subchapter 11 of the Colma Municipal Code.

9. Architecture Review.

The design of the accessory dwelling unit shall relate to the design of the primary residence by use of the similar exterior wall materials, window types, door and window trims, roofing materials and roof pitch.

10. Impacts to Historic Places.

To prevent adverse impacts to any real property that is listed in or eligible for the California Register of Historic Places, accessory dwelling units should only be located within the footprint of the existing structure or be a separate detached accessory structure with minimal or no visibility from a public street.

B. An accessory dwelling unit is exempt from the requirements of subparagraph (A) if the unit meets all the requirements of subparagraph (B)(1):

- 1. The accessory dwelling unit:

- (a) Is one accessory dwelling unit per single-family lot located within a single-family residential zone;
  - (b) Is contained within the existing living area space of a single-family residence or accessory structure;
  - (c) Has independent exterior access from the existing residence; and
  - (d) The side and rear setbacks are sufficient for fire safety.
2. If the requirements of subparagraph (B)(1) are met, then the applicant:
- (a) Is required to install fire sprinklers in the accessory dwelling unit if the primary residence is also required to have fire sprinklers;
  - (b) 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.
  - (c) Shall record a deed restriction as provided in Section 5.19.080 and obtain a building permit as required by the building code as adopted and amended by Chapter 5, Subchapter 4 of the Municipal Code.
  - (d) Shall provide replacement off-street parking spaces to serve the primary residence if the proposed accessory dwelling unit would result in the conversion of an existing garage, carport or other covered parking structure. However, the applicant is not required to provide off-street parking to serve the accessory dwelling unit. The replacement parking spaces may be located in any configuration on the lot and may be provided as covered spaces, uncovered spaces or tandem spaces or by the use of mechanical automobile parking lifts.

**5.19.080 Deed Restriction.**

- A. Prior to issuance of a building permit for an accessory dwelling unit, a deed restriction shall be recorded against the title of the property in the County Recorder’s office and a copy filed with the Planning Department. Said deed restriction shall run with the land, and shall bind all future owners, heirs, successors, or assigns. The form of the deed restriction shall be provided by the City and shall provide that:
- 1. The accessory dwelling unit shall not be sold separately from the primary residence.
  - 2. The unit is restricted to the approved size and attributes of this chapter.
  - 3. The deed restrictions run with the land and may be enforced against future purchasers.

4. The deed restrictions may be removed if the owner eliminates the accessory dwelling unit as evidenced by the removal of the kitchen facilities and all utility connections and line extensions to support the unit.
5. The deed restrictions shall be enforced by the City Planner or his or her designee for the benefit of the Town of Colma. Failure of the property owner to comply with the deed restrictions may result in legal action against the property owner and the Town shall be authorized to obtain any remedy available to it at law or equity, including but not limited to obtaining an injunction enjoining use of the accessory dwelling unit in violation of the recorded restrictions or abatement of the illegal unit.