

City of Sonoma

ORDINANCE # 07-2019

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SONOMA MODIFYING MUNICIPAL CODE TITLE 19 "INTEGRATED DEVELOPMENT REGULATIONS AND GUIDELINES" TO REVISE REGULATIONS RELATED TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS INCLUDING: CHAPTER 19.10 "ZONES AND ALLOWABLE USES" AND SECTION 19.50.090 "ACCESSORY DWELLING UNITS"**

WHEREAS, the California Legislature has declared that there is a severe shortage of affordable housing and has changed laws to expedite the local residential development process; and

WHEREAS, California Governor Gavin Newsom signed five bills into law (SB 13, AB 68, AB 881, AB 587 and AB 670) in fall of 2019 that amend California Government Code Sections 65852.2 and 65852.22, requiring the City to modify local regulations to further facilitate development of Accessory Dwelling Units ("ADU") and Junior Accessory Dwelling Units ("JADU"); and

WHEREAS, new ADU and JADU State law (Government Code sections 65852.2. and 65852.22) take effect January 1, 2020; and

WHEREAS, the City desires to amend its local regulatory scheme for the approval and construction of ADUs and JADUs to comply with State law; and

WHEREAS, failure of the City to amend its local regulatory scheme to comply with State law (as of January 1, 2020) renders the City's ordinance regulating ADUs null and void, thereby limiting the City to the application of the few default standards provided in Government Code sections 65852.2 and 65852.22 for the approval of ADUs and JADUs. Specifically, Government Code section 65852.2(a)(4) provides:

An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section;

and;

WHEREAS, the approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, and architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety; and

WHEREAS, California Government Code Section 36937 authorizes a city to adopt an interim urgency measure by a four-fifths vote where necessary for the immediate preservation of the public health, safety, or welfare; and

WHEREAS, from the date that the Governor signed said bills in October 2019 amending Government Code sections 65852.2 and 65852.22 until the date that they become effective, namely, January 1, 2020, is obviously too little time for the City to undertake the necessary steps to process development code amendments (by ordinances) through the planning commission and then the City Council, including providing the required 20 days advance notice of hearings before the planning commission and the City Council, subjecting the ordinances to two Council meetings, reviews and actions and waiting the necessary 30 days for an ordinance to become effective. The compression of time resulting from the manner in which these bills were passed is patently unreasonable and places the City in the untenable position of starting 2020 without the desired and necessary ADU and JADU ordinances in place; and

WHEREAS, in the event no City-adopted regulatory scheme is in effect as of January 1, 2020, that is consistent with said amended Government Code sections 65852.2 and 65852.22, the City will be forced to forego local control over the approval and construction of ADUs and JADUs for an indefinite period of time and, instead, during that hiatus, be constrained to apply the default provisions set forth in Government Code sections 65852.2 and 65852.22, which said default provisions do not have as their purpose the protection or preservation of the character of existing neighborhoods, and will cause inadequately controlled proliferation of housing units, increase densities in areas not planned for such, exacerbate parking problems, adversely affect the privacy of residents in the City and potentially create fire safety issues, among other undesirable things; and

WHEREAS, the effects of the under-regulated proliferation of ADUs and JADUs mandated by the default provisions of Government Code sections 65852.2 and 65852.22 coupled with the inability of the City to amend its existing ADU ordinance to bring it into harmony with Government Code sections 65852.2 and 65852.22 by January 1, 2020 creates an immediate threat to the public health, safety and welfare for the reasons stated above:

WHEREAS, the City Council finds that the provisions of this Ordinance are consistent with the goals and policies of the City's General Plan and other adopted ordinances and regulations of the City; and

WHEREAS, the proposed amendments to the Sonoma Municipal Code memorialized herein are consistent with State Law, including the provisions set forth in Government Code Section 65852.2 and Section 65852.22:

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

**SECTION 1. MUNICIPAL CODE AMENDMENTS**

The Sonoma Municipal Code is hereby amended as follows:

1. Tables 2-2, 2-3 and 2-4 of Chapter 19.10 “Zones and Allowable Uses” are amended to include the following modification and uses as shown below in underlined format:

Table 2-2 Commercial Uses and Permit Requirements			
Allowed Uses and Permit Requirements for Commercial Zoning Districts (1)	Permit Required by District (2)		
Land Use	C	CG	Specific Use Regulations
<i>RESIDENTIAL USES (4 3)</i>			
<u>Accessory Dwelling Units</u>	<u>P</u>	<u>P</u>	<u>SMC 19.50.90</u>

Table 2-3 Mixed Uses and Permit Requirements			
Allowed Uses and Permit Requirements for Commercial Zoning Districts (1)	Permit Required by District (2)		
Land Use	MX		Specific Use Regulations
<i>RESIDENTIAL USES (4)</i>			
<u>Accessory Dwelling Units</u>	<u>P</u>		<u>SMC 19.50.90</u>
<u>Accessory Dwelling Units, Junior</u>	<u>P</u>		<u>SMC 19.50.90</u>

Table 2-4 Special Purpose Uses and Permit Requirements							
Allowed Uses and Permit Requirements for Special Purpose Zoning Districts	Permit Required by District				Specific Regulations	Use	
Land Use (1)	A	Pk	P	W			
<i>RESIDENTIAL USES (4)</i>							
<u>Accessory Dwelling Units</u>	<u>P</u>	-	-	-	<u>SMC 19.50.90</u>		
<u>Accessory Dwelling Units, Junior</u>	<u>P</u>	-	-	-	<u>SMC 19.50.90</u>		

2. Section 19.50.090 "Accessory Dwelling Units" is amended in its entirety to read as follows:

Section 19.50.090 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.7 below. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code section 17980.12.
- C. Definitions. As used in this section, terms are defined as follows. Where there is a conflict between these definitions and those found elsewhere in this code, these definitions shall prevail for section 19.50.090. :
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 structure 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 a cooking facility with appliances, a limited food preparation counter, and storage cabinets. The entire kitchen shall not exceed six lineal feet, except that if existing counter space is being converted to efficiency kitchen use, then the counter space shall not exceed eight lineal feet.
  5. "Junior accessory dwelling unit" or "JADU" means a residential unit that
    - a. is a minimum of 150 square feet and no more than 500 square feet in size,

- b. is contained entirely within an existing or proposed single-family structure,
  - c. includes a separate entrance from the main entrance to the existing or proposed single-family structure,
  - d. includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure, and
  - e. includes an efficiency kitchen, as defined in subsection C.4 above.
6. "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.
7. "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.
8. "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
9. "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.
10. "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.

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: Only 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 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.
    - (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 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 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 Planning and Community Services Director 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 City must act on an ADU permit application or building permit application to create an ADU or JADU within 60 days from the date that the City 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) In the case of a JADU and the application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the City may delay acting on the permit application for the JADU until the City acts on the permit application to create the new single-family dwelling, but the application to create the JADU will still be considered ministerially without discretionary review or a hearing.

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. Fire Sprinklers. Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.
3. Rental Term. No ADU or JADU may be rented for a term that is shorter than 30 days.
4. 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).
5. 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.
6. 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. 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.
7. 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 Planning and Community Services Director. 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 shall be restricted to the floor area granted at the time of building permit. Any owner wishing to incorporate the floor area of the ADU or JADU back into the primary dwelling unit must request termination of the ADU or JADU use under this section, satisfying all zoning and development standards such as setbacks, floor area and lot coverage.
  - c. Owner-occupancy is required for parcels with a JADU, consistent with subsection 6.b above.
  - d. The deed restriction runs with the land and may be enforced against future property owners.

- e. The deed restriction is enforceable by the Planning and Community Services Director 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.
1. Maximum Size.
    - a. The maximum size of a detached or attached ADU subject to this subsection F is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two bedrooms. 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. A detached ADU exceeding 650 square feet in floor area that is created on a lot with an existing single-family dwelling is further limited to 50 percent of the floor area of the existing single-family dwelling.
    - d. Application of other development standards in this subsection F, such as FAR or lot coverage, might further limit the size of the ADU, but no application of FAR lot coverage, or open-space requirements may require the ADU to be less than 800 square feet.
  2. Floor Area Ratio (FAR) and Lot Coverage. An ADU shall conform to all lot coverage and floor area ratio regulations applicable to the zoning district in which the property is located, subject to subsection F.1.d above.
  3. Setbacks.
    - a. No setback is required for an existing living area or accessory structure or 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.
    - b. A setback of four feet from the side and rear lot lines is required for detached and attached ADUs.
    - c. Front setbacks shall comply with those established in the zoning district where the parcel is located. Detached accessory dwelling units shall comply with front setback restrictions for accessory structures while attached accessory dwelling units shall comply with front setback restrictions for primary structures.
  4. Height.
    - a. A single-story attached or detached ADU may not exceed 16 feet in height above grade, measured to the peak of the structure.



- b. A second story or two-story attached ADU may not exceed the height of the primary dwelling.
- 5. Location. A detached ADU shall be separated from the main dwelling unit a minimum of 10 feet.
- 6. 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.10 above.
  - b. Exceptions. No parking under subsection F.6.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.9 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 City-approved 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 off-street parking spaces are not required to be replaced.
- 7. Architectural and Building Form Requirements.
  - a. An ADU shall include a kitchen for cooking and eating and other permanent provisions for living and sleeping, including a closet or other reasonable storage.
  - b. An ADU shall be similar in materials, color, style, and form of the primary residence. Architectural details, including, but not limited to, windows, roof pitch, and trim shall be similar to the main building on the property.
  - c. Lighting shall be shielded or directed so that it does not glare off-site or illuminate the primary residence or adjacent property.
  - d. Windows shall be located to avoid line of sight to windows of adjacent properties. Obscured glass and other techniques may be used to avoid line of sight.
  - e. An ADU shall have a separate exterior access. The exterior access shall be a standard exterior door and shall be located in a manner that will preserve, to the greatest extent feasible, the privacy of the primary residence, other accessory structures, and any adjoining residences.

- f. A permanent foundation shall be required for all ADUs.

G. Fees.

1. Impact Fees.

- a. No impact fee is required for an ADU that is less than 750 square feet in size.
- b. 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 (e.g., the floor area of the primary dwelling, divided by the floor area of the ADU, times the typical fee amount charged for a new dwelling). "Impact fee" here does not include any connection fee or capacity charge for water or sewer service.

2. Utility Fees.

- a. Converted ADUs and JADUs on a single-family lot, created under subsection D.1.a above, are not required to have a new or separate utility connection directly between the ADU or JADU and the utility. Nor is a connection fee or capacity charge required unless the ADU or JADU is constructed with a new single-family home.
- b. All ADUs and JADUs not covered by subsection G.2.a above require a new, separate utility connection directly between the ADU or JADU and the utility. The connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU or JADU, based on either the floor area or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system. The fee or charge may not exceed the reasonable cost of providing this service.

- 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.2 of this section may be allowed by the City with a use permit, in accordance with the other provisions of this title.

I. Termination of Permit and Use for ADUs and JADUs.

- a. No building permit shall be issued to remove permanent features of an ADU, including the provisions for eating, cooking and sanitation, and separate exterior entrance until written approval to terminate the use of living space as an ADU or JADU is granted by the Planning and Community Services Director or his or her designee.
- b. At its discretion, the Planning and Community Services Director may grant an owner's written request to terminate an ADU or JADU and deed restriction. The Planning and Community Services Director shall consider the length of time such permit has been in force, the conditions of approval, the exceptions granted for the ADU or JADU, and the impact on the City's affordable housing supply.
- c. As a condition of termination, the Planning and Community Services Director shall require the owner to make modifications to the property to comply with: 1) current building code requirements and 2) current development standards in effect at the time the request is made to terminate use, including but not limited to, setbacks, height, parking and floor area. The owner shall apply for a

building permit to make such modifications as required by the City's building and fire codes.

- b. Violations and Enforcement for ADUs and JADUs.
  - a. It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this section. An ADU or JADU will be found in violation of this section when the dwelling unit has been created without the required City approvals, or does not comply with standards and deed restrictions established in this section. Violations are subject to the enforcement penalties and procedures of Chapter 1.28 of this Code.
  - b. In addition to the enforcement penalties and procedures included in Chapter 1.28 of this Code, the City may pursue any remedies provided by law against the owner of an ADU or JADU found to be in violation of this Chapter, or an ADU or JADU not maintained in conformance with this Chapter including:
    - i. Revocation of the ADU or JADU permit;
    - ii. Where an ADU or JADU has been improperly terminated and is being used as habitable space for the primary dwelling, removal of the floor area serving as habitable space may be required; and
    - iii. In any civil enforcement action, the City is entitled to recover attorneys' fees and costs from an Owner who is determined to have an illegal ADU or JADU, or is in violation of this ordinance.

## **SECTION 2. TERM OF ORDINANCE**

This Ordinance shall become effective upon its adoption. All new ADU and JADU applications submitted after this Ordinance becomes effective and all ADU and JADU applications submitted before this Ordinance becomes effective but at the time of its adoption said applications are deemed incomplete will be subject to the regulations and requirements contained in this Ordinance. This Ordinance shall remain in effect until a permanent ordinance addressing the same subject matter is adopted and becomes effective, provided that that permanent ordinance expressly repeals this Ordinance.

## **SECTION 3. URGENCY FINDING**

The City Council incorporates the above recitals and findings as though fully set forth herein.

## **SECTION 4. CEQA**

The City Council finds and determines that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment. The Ordinance is intended to modify existing local regulatory requirements to be consistent with State and local laws. As such, the amendments are exempt for the California Environmental Quality Act (CEQA) under statutory exemption 15282(h) since the proposed ordinance implements the provisions of Government Code Section 65852.2.

## **SECTION 5. SEVERABILITY**

If any section, subsection, sentence, clause, phrase, or word of this Ordinance is, for any reason, deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or preempted by legislative enactment, such decision or legislation shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Sonoma hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or word thereof,

regardless of the fact that any one or more sections, subsections, clauses, phrases, or word might subsequently be declared invalid or unconstitutional.

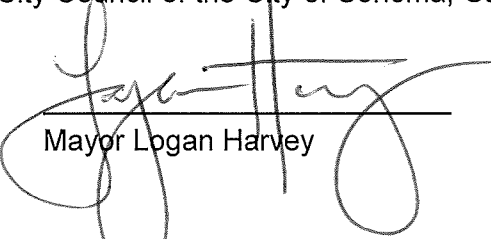
**SECTION 6. NOTICE**

The City clerk shall certify to the passage and adoption of this ordinance and shall cause this Ordinance to be posted and/or published in accordance with Section 36933 of the Government Code.

**SECTION 7. EFFECTIVE DATE**

This Ordinance shall be in full force and effect immediately upon its adoption on December 16, 2019.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Sonoma, California, this 16th day of December 2019.



Mayor Logan Harvey

ATTEST:



Rebekah Barr, City Clerk

State of California )  
County of Sonoma )  
City of Sonoma )

I, Rebekah Barr, City Clerk of the City of Sonoma, do hereby certify that the foregoing Ordinance was adopted on December 16, 2019 by the following vote:

AYES: *Agrimonti, Harrington, Hundley, Harvey*  
NOES: *Cook*  
ABSENT: *None*  
ABSTAIN: *None*



Rebekah Barr, MMC  
City Clerk