

RESOLUTION NO. PC-2020-20

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FULLERTON, CALIFORNIA, RECOMMENDING THAT THE FULLERTON CITY COUNCIL AMEND MUNICIPAL CODE CHAPTER 15.17 TO UPDATE THE ZONING ORDINANCE PROVISIONS PERTAINING TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS IN SINGLE AND MULTIPLE FAMILY ZONES AND ASSOCIATED DEFINITIONS IN 15.04 IN ACCORDANCE WITH RECENT LEGISLATION AMENDING THE CALIFORNIA GOVERNMENT CODE SECTIONS 65852.2 AND 65852.22

LRP-2019-0083

APPLICANT: CITY OF FULLERTON

RECITALS:

WHEREAS, a Resolution of Intention was adopted by the Planning Commission of the City of Fullerton, California on December 11, 2019 to consider amendments to Fullerton Municipal Code Chapter 15.17 to update current standards for Accessory Dwelling Units to be consistent with new State law provisions; and

WHEREAS, the California State legislature adopted more than eighteen housing bills in 2019 to deal with the housing crisis; and

WHEREAS, one way to combat this problem is through the construction of accessory dwelling units (also known as second units, in-law units, and granny flats); and

WHEREAS, in order to encourage the construction of accessory dwelling units and junior accessory dwelling units, the State Legislature has again amended Government Code section 65852.2 and section 65852.22; and

WHEREAS the Planning Commission of the City of Fullerton, California has held a duly noticed public hearing in compliance with FMC 15.72.040 as required by law for LRP- 2019-0083 on said matter; and

WHEREAS, the ordinance amendment is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15282(h) which establishes a specific exemption for ordinances regarding second units in single-family or multifamily residential zones to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code; and

WHEREAS, the Planning Commission of the City of Fullerton, California recommends an amendment to Fullerton Municipal Code Chapters 15.17 and 15.04 to update the City's Zoning Ordinance to comply with current State law provisions for accessory dwelling units.

RESOLUTION

NOW THEREFORE, BE IT FOUND AND DETERMINED AND RESOLVED by the Planning Commission of the City of Fullerton, California as follows:

1. In all respects as set forth in the Recitals of the Resolution.

2. The Planning Commission finds as follows:

Finding: That the proposed Zoning Ordinance Amendment is consistent with the objectives of the Zoning Ordinance and General Plan.

Fact: The amendment is authorized by FMC Chapter 15.72. The Planning Commission adopted a Resolution of Intention on December 11, 2019, to update the Municipal Code to comply with new State laws pertaining to accessory dwelling units.

Fact: The amendment supports the following Overarching Policy of the General Plan: Overarching Policy OAP1: Comply with State and Federal Laws and regulations while maintaining local control in decision making.

Fact: The amendment supports the following Fullerton Plan policy:

Policy Action 3.4: Facilitate Infill Development – including encouragement of housing affordable to very-low, low- and moderate income households through a menu of regulatory incentives.

Finding: That the proposed Zoning Ordinance promotes the public health, safety and welfare of the community.

Fact: The amendment provides incentives for creation of new housing units to address existing demand for housing, including rental housing for lower income households.

Fact: The amendment provides for new infill housing in the form of accessory dwelling units and junior accessory dwelling units within existing neighborhoods, which can result in the reduction of urban sprawl and the environmental effects of long distance commuting, by providing opportunities for new housing in closer proximity to job centers.

THEREFORE, the Planning Commission of the City of Fullerton does hereby recommend APPROVAL of said modifications to Fullerton Municipal Code Chapter 15.17 and 15.04 as follows:

**SECTION 15.17.100 SHALL BE DELETED IN ITS ENTIRETY AND REPLACED WITH THE FOLLOWING:**

**15.17.100. Accessory and junior accessory dwelling units.**

A. Intent:

It is the intent of the City to permit accessory dwelling units (ADU) and junior accessory dwelling units (JADU), in conformance with California state law, on lots in residential zones, when subject to development standards that will ensure the unit contributes to a suitable living environment for people of all ages and economic levels, while preserving the integrity and character of the residential neighborhood in which it is located.

B. Applicability and effect:

An accessory dwelling unit and/or junior accessory dwelling unit which conforms to the requirements of this section 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 consistent with the existing General Plan and zoning designations for the property.

C. Standards and limitations:

Units meeting all of the following criteria shall be reviewed ministerially, subject to the issuance of a building permit and shall demonstrate compliance with all of the standards and limitations set forth in this section, to the satisfaction of the Community and Economic Development Director.

**1. Accessory Dwelling Units – Existing Building or Structure.**

a. Applicability. The provisions of 15.17.100.C.1 apply to ADUs constructed (1) within the existing space of a dwelling or structure, including a garage, (2) as an added story on top of an existing dwelling or structure, or (3) in the same location and to the same dimensions as an existing structure.

b. Number of ADUs.

i. Properties with an R-1/R-1P zone classification shall be limited to no more than one (1) ADU.

ii. Properties with an O-P zone classification currently developed with a building originally constructed as a single-family residence (regardless of current use) shall be limited to no more than one (1) ADU, subject to the following.

1. An ADU shall be allowed within the portions of the single-family residence structure that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, provided that each unit complies with state building standards for dwellings.

iii. Properties with an R-2, R-2P, R-G, R-3R, R-3P, R-3, R-4, R-5, C-3 and SPD zone classification containing fewer than 8 units shall be limited to no more than one (1) ADU, subject to the following.

1. An ADU shall be allowed within the portions of an existing multi-family dwelling structure that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages,

provided that each unit complies with state building standards for dwellings.

- iv. Properties with an R-2, R-2P, R-G, R-3R, R-3P, R-3, R-4, R-5, C-3 and SPD zone classification containing eight or more units shall be limited to no more than the number of ADUs which equates to 25 percent of the total existing units, subject to the following.
  1. An ADU shall be allowed within the portions of an existing multi-family dwelling structure that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, provided that each unit complies with state building standards for dwellings.
  2. All calculations resulting in fractional units shall be rounded down to the nearest whole number.
- c. Number of bedrooms. An ADU shall contain no more than two (2) bedrooms as defined in Section 15.04.040.
- d. Size.
  - i. When an ADU is constructed solely through the conversion of an existing building or structure or in the same location and to the same dimensions as an existing structure, it shall be limited in size to the existing square footage of the building or structure converted or replaced, except that the existing building or structure may be expanded up to 150 sq. ft. for the purposes of ingress and egress to the ADU only.
  - ii. When an ADU is constructed above an existing building or structure, it shall be limited in size to the footprint of the existing building or structure on which it sits, except that either the existing building or structure or ADU may be expanded up to 150 sq. ft. for the purposes of ingress and egress to the ADU only.
- e. Access. An ADU shall have independent access from the outdoors, separate from exterior access to the primary dwelling unit; however interior access between the ADU and primary dwelling unit may also be provided.
- f. Setbacks.
  - i. When an ADU is constructed solely through the conversion of an existing building or structure or in the same location and to the same

dimensions as an existing structure, no additional building setback is required, subject to compliance with fire safety requirements.

- ii. When an ADU is constructed above an existing building or structure, no additional building setback is required, subject to compliance with fire safety requirements.
- iii. When an existing building or structure is expanded pursuant to Section 15.17.100.C.1.d, a minimum four (4) foot side and rear setback shall be required, subject to compliance with fire safety requirements. The expansion shall comply with the front setback requirements of the zone classification.

g. Height.

- i. When an ADU is constructed solely through the conversion of an existing building or structure or in the same location and to the same dimensions as an existing structure, no height standards apply.
- ii. When an ADU is constructed above an existing building or structure, the maximum height requirements of the zone classification shall be in effect.

h. Open space. Not applicable.

i. Lot coverage. Not applicable.

j. Parking.

- i. No parking is required for the ADU.
- ii. When an ADU is constructed from the conversion of an existing garage, carport or other covered parking structure, no replacement parking is required for the primary dwelling unit.

k. Architectural compatibility. Not applicable.

l. Development impact fees. An ADU shall not be considered a new residential unit for purposes of calculating impact fees such as park dwelling or traffic.

m. Utilities. An ADU shall not be considered a new residential unit for purposes of calculating connection fees or capacity charges for utilities. No new or separate utility connection between the ADU and the utility shall be required.

- n. Fire sprinklers. Fire sprinklers shall not be required for an ADU unless they are also required for the primary dwelling unit.
- o. Subdivision. No subdivision of any kind, including condominiums or cooperatives, shall be permitted between the ADU and the primary dwelling unit, except as provided below.
  - i. The ADU may be sold or conveyed separately from the primary residence to a qualified buyer when the property was developed by a qualified nonprofit corporation, pursuant to Government Code 65852.26.
- p. Occupancy. The ADU shall not be rented out for less than 31 consecutive calendar days.
- q. Legalizing. An existing non-conforming or unpermitted dwelling unit may be legalized as an ADU in accordance with Table 15.17.020.A if it meets or can be improved to meet all requirements of Section 15.17.100.C.1, subject to allowances pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code relating to enforcing building code standards. Nothing in this subsection shall be construed as a requirement for the correction of nonconforming zoning conditions as a condition of approval for an ADU.

## **2. Accessory Dwelling Units – New Construction.**

- a. Applicability. The provisions of 15.17.100.C.2 apply to ADUs (1) attached to an existing or proposed dwelling, (2) detached from an existing or proposed dwelling whether or not the ADU is freestanding or attached to a detached accessory structure, or (3) for any construction not covered by 15.17.100.C.1 and 15.17.100.C.3, including but not limited to, the expansion of an the existing building or structure by more than 150 sq. ft.
- b. Number of ADUs.
  - i. Properties with an R-1/R-1P zone classification shall be limited to no more than one (1) ADU, subject to the following. The provision of a detached ADU does not preclude a property from having a JADU.
    - 1. Construction of an ADU shall be permitted on a property only if it has an existing or proposed primary dwelling unit.

2. When an ADU and primary dwelling unit are built concurrently, occupancy must be first, or at a minimum concurrently, approved for the primary dwelling unit.
  - ii. Properties with an O-P zone classification currently developed with a building originally constructed as a single-family residence (regardless of current use) shall be limited to no more than one (1) ADU.
  - iii. Properties with an R-2, R-2P, R-G, R-3R, R-3P, R-3, R-4, R-5, C-3 and SPD zone classification shall be limited to no more than two (2) detached ADUs, subject to the following.
    1. Construction of an ADU shall be permitted on a property only if it has an existing or proposed primary dwelling unit.
    2. When an ADU and primary dwelling unit are built concurrently, occupancy must be first, or at a minimum concurrently, approved for the primary dwelling unit.
- c. Number of bedrooms. An ADU shall contain no more than two (2) bedrooms as defined in Section 15.04.040.
- d. Size.
  - i. When an ADU is attached to the primary dwelling unit and complies with the development standards as specified below, the maximum floor area shall be the greater of 50% of the floor area of the primary dwelling unit or 1,000 sq. ft., not to exceed 1,200 sq. ft. and shall be no less than 150 sq. ft.
  - ii. When an ADU is detached from the primary dwelling unit and complies with the development standards as specified below, the floor area shall not exceed 1,200 sq. ft. and shall be no less than 150 sq. ft.
  - iii. When an ADU is attached or detached and the application of the development standards related to open space and lot coverage prohibit an ADU of at least 800 sq. ft., these standards shall be waived to allow construction of an ADU of up to 800 sq. ft.
- e. Access. An ADU shall have independent access from the outdoors, separate from exterior access to the primary dwelling unit; however interior access between an attached ADU and primary dwelling unit may also be provided.

f. Setbacks.

- i. When an ADU is attached to the primary dwelling unit, a minimum four (4) foot side and rear setback shall be required, subject to compliance with fire safety requirements. The new construction shall comply with the front setback requirements of the zone classification.
- ii. When an ADU is detached from the primary dwelling unit, a minimum four (4) foot side and rear setback shall be required, subject to compliance with fire safety requirements. The new construction shall comply with the front setback requirements of the zone classification.
- iii. When an attached or detached ADU is constructed pursuant to 15.17.100.C.2.d.iii, a minimum four (4) foot side and rear setback shall be required, subject to compliance with fire safety requirements. The new construction shall comply with the front setback requirements of the zone classification.

g. Height.

- i. When an ADU is attached to or detached from the primary dwelling unit, the maximum height requirements of the zone classification shall be in effect, including 15.17.050.C.2 which limits the building area of a second story in the R-1/R-1P zone classifications to 70% of the building area contained on the first story.
  - ii. When an attached or detached ADU is constructed pursuant to 15.17.100.C.2.d.iii, the maximum height shall be one-story.
- h. Open space. When an ADU is attached to or detached from the primary dwelling unit, the property shall continue to meet the open space requirements for the primary dwelling. For purposes of determining the amount of required open space, the bedrooms of the ADU are excluded.
- i. Lot coverage. When an ADU is attached to or detached from the primary dwelling unit, the property shall continue to meet the lot coverage requirements for the primary dwelling. For purposes of determining the amount of required lot coverage, the area of the ADU is excluded.
- j. Parking. The parking for the ADU shall be in addition to the parking requirement for the primary dwelling unit subject to the following provisions.



- i. One parking space is required for each ADU, except as provided in iii, below.
- ii. The parking for the ADU may be located in any configuration on the property, including but not limited to, covered spaces, uncovered spaces or tandem spaces, subject to the following.
  - 1. The parking space shall have access to a public street or alley from an improved driveway, constructed pursuant to 15.56.130.A for materials and 15.17.085.B or 15.17.085.C, as applicable, for dimensions.
  - 2. The parking space shall have minimum dimensions of nine feet in width and 19 feet in length.
  - 3. The parking space may be located in the front setback of the zone classification.
- iii. No additional parking for the ADU is required under any of the following circumstances.
  - 1. The property is located within a one-half mile walking route of public transit.
  - 2. On-street parking permits are required but not offered to the occupant of the ADU.
  - 3. There is a car share vehicle located within one block of the ADU.
  - 4. The property has a zone classification which includes designation as preservation "P" zone or is individually listed on the City's local register of historic resources and the Director of Community and Economic Development determines that the provision of parking for the ADU is detrimental to the primary dwelling and/or contrary to the City's goal and policies with respect to Historic Preservation identified in The Fullerton (General) Plan.
- k. Architectural compatibility. When visible from the public right-of-way (including from a public alley), the architectural design of an attached or detached ADU shall be visually compatible with the primary dwelling unit and with the neighborhood character.

- l. Development impact fees. An ADU shall not be considered a new residential unit for purposes of calculating impact fees such as park dwelling or traffic.
  - m. Utilities. An ADU shall be considered a new residential unit for purposes of calculating connection fees or capacity charges for utilities when a separate connection is requested or required.
  - n. Fire sprinklers. Fire sprinklers shall not be required for an ADU unless they are also required for the primary dwelling unit.
  - o. Subdivision. No subdivision of any kind, including condominiums or cooperatives, shall be permitted between the ADU and the primary dwelling unit, except as provided below.
    - i. The ADU may be sold or conveyed separately from the primary residence to a qualified buyer when the property was developed by a qualified nonprofit corporation, pursuant to Government Code 65852.26.
  - p. Occupancy. The ADU shall not be rented out for less than 31 consecutive calendar days.
  - q. Legalizing. An existing non-conforming or unpermitted habitable building, structure or dwelling unit may be legalized as an ADU in accordance with Table 15.17.020.A if it meets or can be improved to meet all requirements of Section 15.17.100.C.2, subject to allowances pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code relating to enforcing building code standards. Nothing in this subsection shall be construed as a requirement for the correction of nonconforming zoning conditions as a condition for approval for an ADU.
3. Junior Accessory Dwelling Units
- a. Applicability. The provisions of 15.17.100.C.3 apply to JADUs constructed within the walls of an existing or proposed single-family residence, excluding any attached or detached garage.
  - b. Number of JADUs.
    - i. Properties with an R-1/R-1P zone classification shall be limited to no more than one (1) JADU, subject to the following.

1. The property may not have an existing or proposed ADU, unless the ADU is detached from the single-family residence.
  2. The JADU shall include a kitchen with a cooking facility with appliances, a food preparation counter and storage cabinets that are a reasonable size in relation to the size of the JADU.
  3. When a JADU and primary dwelling are built concurrently, occupancy must be first, or at a minimum concurrently, approved for the primary dwelling.
- ii. Properties with an O-P zone classification currently developed with a building originally constructed as a single-family residence (regardless of current use) shall be limited to no more than one (1) JADU, subject to the following.
1. The property may not have an existing or proposed ADU.
  2. The JADU shall include a kitchen with a cooking facility with appliances, a food preparation counter and storage cabinets that are a reasonable size in relation to the size of the JADU.
- iii. Properties with an R-2, R-2P, R-G, R-3R, R-3P, R-3, R-4, R-5, C-3 and SPD zone classification that are currently developed with an existing single-family residence shall be limited to no more than one (1) JADU, subject to the following. Construction of a JADU is not permitted on a property with an existing multi-family residence.
1. The property may not have an existing or proposed ADU, unless the ADU is detached from the single-family residence.
  2. The JADU shall include a kitchen with a cooking facility with appliances, a food preparation counter and storage cabinets that are a reasonable size in relation to the size of the JADU.
  3. When a JADU and primary dwelling are built concurrently, occupancy must be first, or at a minimum concurrently, approved for the primary dwelling.
- c. Number of bedrooms. A JADU shall contain no more than one (1) bedroom as defined in Section 15.04.040, however, a separate room normally used for sleeping purposes is not required so long as the JADU includes permanent provisions for sleeping.

- d. Size.
  - i. A JADU shall be limited in size to 500 sq. ft.
- e. Access.
  - i. A JADU shall have independent access from the outdoors, separate from exterior access to the primary dwelling unit; however interior access between the JADU and primary dwelling unit may also be provided, except as required, below.
  - ii. If the JADU does not have separate sanitation facilities, interior access between the JADU and the primary dwelling unit shall be provided.
- f. Setbacks. Not applicable.
- g. Height. Not applicable.
- h. Open space. Not applicable.
- i. Lot coverage. Not applicable.
- j. Parking.
  - i. No parking is required for the JADU.
- k. Architectural compatibility. Not applicable.
- l. Development impact fees. A JADU shall not be considered a new residential unit for purposes of calculating impact fees such as park dwelling or traffic.
- m. Utilities.
  - i. A JADU shall not be considered a new residential unit for purposes of calculating connection fees or capacity charges for utilities. No new or separate utility connection between the JADU and the utility shall be required.
  - ii. The JADU may, but is not required to include separate sanitation facilities. If separate sanitation facilities are not provided, the JADU shall have access, as required above.
- n. Fire sprinklers. Fire sprinklers shall not be required for a JADU unless they are also required for the primary dwelling unit.

- o. Subdivision. No subdivision of any kind, including condominiums or cooperatives, shall be permitted between the JADU and the primary dwelling unit, subject to the following except as provided below.
  - i. A deed restriction, which shall run with the land, shall be recorded with the Orange County Recorder with a copy of the recorded document provided to the Fullerton Community and Economic Development Department and include both of the following.
    - 1. A prohibition on the sale of the JADU separate from the primary dwelling unit.
    - 2. A description of the size and attributes of the JADU, documenting conformance to applicable development standards at the time of permit issuance.
  - ii. The JADU may be sold or conveyed separately from the primary residence to a qualified buyer when the property was developed by a qualified nonprofit corporation, pursuant to Government Code 65852.26.
- p. Occupancy. The owner of the property shall reside in either the primary dwelling unit or the JADU. Owner-occupancy shall not be required when the owner is a governmental agency, land trust, or housing organization. If the JADU is rented, it shall not be rented out for less than 31 consecutive calendar days.
- q. Legalizing. An existing non-conforming or unpermitted dwelling unit may be legalized as an JADU in accordance with Table 15.17.020.A if it meets or can be improved to meet all requirements of Section 15.17.100.C.3, subject to allowances pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code relating to enforcing building code standards. Nothing in this subsection shall be construed as a requirement for the correction of nonconforming zoning conditions as a condition for approval for a JADU.

D. Clarifications and Interpretations. If ambiguity arises concerning the application of 15.17.100, it shall be the duty of the Director of Community and Economic Development to provide an interpretation in furtherance of California state law for the provision of housing.

**THE FOLLOWING DEFINITIONS SHALL BE DELETED IN THEIR ENTIRETY FROM SECTION 15.04.040:**

~~**DWELLING UNIT, ACCESSORY** means an attached or detached residential dwelling unit which provides complete independent living accommodations and facilities for one or more persons, which includes permanent provisions for living, sleeping, eating, cooking, and sanitation, on the same parcel as a legally established single-family dwelling. It shall have the same meaning as "Accessory Dwelling Unit" as that term is defined in California Government Code Section 65852.2(i)(4), as it may be amended from time to time.~~

~~**DWELLING UNIT, ATTACHED ACCESSORY** means an accessory dwelling unit that is constructed as an addition to the primary residence or an existing accessory building on the property.~~

~~**DWELLING UNIT, DETACHED ACCESSORY** means an accessory dwelling unit that is constructed as a separate structure on the property not attached to either the primary residence or an existing accessory building.~~

~~**DWELLING UNIT, JUNIOR ACCESSORY** means an accessory dwelling unit no more than 500 sq. ft. in size, created from existing space within a single family residence, and which has an entrance to the outside and to the primary residence. It must have cooking facilities, but is not required to have a private bathroom.~~

ADOPTED BY THE FULLERTON PLANNING COMMISSION ON FEBRUARY 19, 2020.

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Wayne Carvalho, Chair