

ORDINANCE NO. 24-

Ordinance Of The City Council Of The City Of Emeryville Amending Article 14 Of Chapter 5 Of Title 9 (Planning Regulations) Regarding Accessory Dwelling Units And Junior Accessory Dwelling Units (CEQA Status: Exempt Pursuant To Public Resources Code Section 21080.17, Which Provides That CEQA Does Not Apply To The Adoption Of An Ordinance To Implement The Provisions Of Article 2 [Commencing With Section 66314] Of Chapter 13 Of Division 1 Of Title 7 Of The California Government Code Pertaining To Accessory Dwelling Units)

WHEREAS, on December 15, 2020, the City Council adopted Ordinance No. 20-027 to amend Article 14 of Chapter 5 and related provisions of Title 9, Planning Regulations, and to amend Section 8-1.05 of the Building Regulations, to make state-mandated changes related to Accessory Dwelling Units and Junior Accessory Dwelling Units; and

WHEREAS, on February 1, 2021, the City submitted the adopted Ordinance No. 20-027 to the State Department of Housing and Community Development for their review in compliance with Government Code §§66326(a) (formerly located in Government Code §65852.2(h)); and

WHEREAS, on January 22, 2024, the City received a letter from the State Department of Housing and Community Development State finding that Ordinance No. 20-027 does not comply Chapter 13 of Division 1 of Title 7 of the Government Code (formerly located in Government Code §65852.2) and directing the City to amend the Ordinance to comply with State law; and

WHEREAS, Article 14, “Accessory Dwelling Units”, of Chapter 5, “Citywide Use and Development Regulations”, of Title 9, “Planning Regulations”, of the Emeryville Municipal Code regulates Accessory Dwelling Units and Junior Accessory Dwelling Units within the City; and

WHEREAS, the City must update its Planning Regulations as it relates to Accessory Dwelling Units and Junior Accessory Dwelling Units to make them consistent with current State law; and

WHEREAS, on June 27, 2024, the Emeryville Planning Commission held a duly and properly noticed public hearing on the proposed ordinance updates and then voted unanimously to recommend that the City Council adopt the proposed ordinance; and

WHEREAS, on July 16, 2024, the Emeryville City Council held a duly and properly noticed public hearing on the proposed ordinance; and

WHEREAS, the City Council has reviewed and considered the staff report and attachments thereto, all public comments, and the proposed amendments to Title 9 of the Emeryville Municipal Code, as set forth below, and the applicable provisions of the Emeryville Municipal Code;

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

SECTION ONE. PURPOSE AND INTENT.

The purpose and intent of this ordinance is to amend Article 14 of Chapter 5 and related provisions of Title 9, Planning Regulations to make state-mandated changes related to Accessory Dwelling Units and Junior Accessory Dwelling Units.

SECTION TWO. REQUIRED FINDINGS FOR ADOPTING ORDINANCE.

The City Council makes the following findings, pursuant to Section 9-7.1305 of the Emeryville Municipal Code:

(a) The proposed amendment is consistent with the General Plan.

The proposed amendment is consistent with General Plan goal LU-G-4 “A mix of housing types” and the following Housing Element Goals and Policies:

Goal H-1 New housing development: Facilitate the construction of a wide variety of housing types, for various income levels, in a manner that promotes environmental responsibility and long-term sustainability.

Goal H-5 Address constraints: Reduce or remove governmental and nongovernmental constraints to the development, improvement, and maintenance of housing, where feasible

Policy H-5-2 Monitor State and federal housing-related legislation, and update City plans, ordinances, and processes as appropriate to remove or reduce governmental constraints.

The proposed amendments will bring the City’s Accessory Dwelling Unit regulations into compliance with current State law and will continue to support development of Accessory Dwelling Units and Junior Accessory Dwelling Units in Emeryville.

(b) The proposed amendment is necessary for public health, safety and welfare or will be of benefit to the public.

The proposed amendments are necessary for the public health, safety and welfare of the public because they facilitate and expedite development of a type of housing where the infrastructure to support such housing already exists, and more housing units are needed as quickly as possible to mitigate the declared state and local housing crisis.

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(c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

The proposed amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) under Public Resources Code Section 21080.17, which provides that CEQA does not apply to the adoption of an ordinance to implement the provisions of Article 2 (commencing with §66314) of Chapter 13 of Division 1 of Title 7 of the Government Code pertaining to Accessory Dwelling Units.

(d) For a change to the Zoning Maps, that the subject property is suitable for the uses permitted in the proposed zone in terms of access, size of parcel, relationship to similar or related uses, and other relevant considerations, and that the proposed change of zoning district is not detrimental to the use of adjacent properties.

No changes to the Zoning Map in Figure 3.103(a) or the Zoning Overlay Map in Figure 9-3.103(b) of the Planning Regulations are proposed.

SECTION THREE. AMENDING TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE.

Title 9 of the Emeryville Municipal Code is hereby amended to read as follows, with deletions shown in ~~strikeout~~ and additions shown in double underline:

Amendments to Article 14 of Chapter 5 of Title 9:

Article 14. Accessory Dwelling Units and Junior Accessory Dwelling Units

9-5.1401 Purpose.

This article establishes regulations for accessory dwelling units and junior accessory dwelling units. These dwelling units provide a valuable housing resource and help to achieve the goals, objectives, and policies of the Housing Element of the General Plan to promote a range of affordability levels. The purpose of these regulations is to encourage the establishment of accessory dwelling units and junior accessory dwelling units as accessory uses in conjunction with principal residential uses, and to provide for their ministerial approval in conformance with State law.

9-5.1402 Applicability.

The provisions of this article apply to any proposal to establish one (1) or more accessory dwelling unit(s) or junior accessory dwelling unit(s), as defined in Section 9-2.702(b), as an accessory use in conjunction with a principal residential use. Should any provisions of these regulations be determined inconsistent with State law requirements for accessory dwelling units, State law shall prevail.

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9-5.1403 Approval Procedure.

A proposal for one (1) or more accessory dwelling unit(s), junior accessory dwelling unit(s) or both shall be reviewed by the Director, in consultation with the Chief Building Official and Fire Marshal, for conformance with the provisions of this article pursuant to the zoning compliance review procedures in Article 3 of Chapter 7 of this title. If the Director determines that the proposal conforms to the requirements of this article, a zoning compliance approval shall be issued within sixty (60) days after receipt of a complete application, unless it is concurrent with an application for a new principal residential use, in which case a zoning compliance approval shall be issued within sixty (60) days after approval of the new principal residential use. If the Director determines that the proposal does not conform to the requirements of this article, a zoning compliance approval shall not be issued, and the applicant shall be advised as to how the proposal could be brought into compliance. The Director's determination of compliance or noncompliance is final, and may not be appealed to the Planning Commission pursuant to Article 14 of Chapter 7 of this title.

9-5.1404 Minimum Allowable Accessory Dwelling Unit

Nothing in this article shall be construed to prohibit an accessory dwelling unit with an area of up to eight hundred (800) square feet, ~~height of up to sixteen feet (16')~~, side setbacks of no less than three feet (3'), and rear setbacks of no less than four feet (4').

9-5.1405 Where Allowed.

- (a) ~~Districts~~ Accessory Dwelling Units. Accessory dwelling units ~~and junior accessory dwelling units~~ are permitted only in the Residential zones, and in the MUR Mixed Use with Residential and MURS Mixed Use with Residential South zones.
- (b) Junior Accessory Dwelling Units. Junior accessory dwelling units are permitted only in the RM Medium Density zone and as accessory to a Single Unit principal use.
- ~~(b)~~(c) Other Uses. Accessory dwelling units and junior accessory dwelling units are permitted only on lots containing an existing or proposed residential use. Accessory dwelling units and junior accessory dwelling units are permitted on such lots even if the existing lots and/or structures do not comply with the site development regulations in Chapter 4 of this title, and even if the lots are smaller than the minimum lot size for the zone. An accessory dwelling unit, a junior accessory dwelling unit, or both may be established in conjunction with the establishment of a new residential use.

9-5.1406 Building Intensity and Residential Density.

Accessory dwelling units and junior accessory dwelling units are exempt from the building intensity (floor area ratio or FAR) and residential density regulations in Article 2 of Chapter 4 of this title.

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9-5.1407 Number of Accessory Dwelling Units and Junior Accessory Dwelling Units.

- (a) On a lot with one (1) existing or proposed single unit, ~~up to one (1) accessory dwelling unit and one (1) junior accessory dwelling unit are allowed, as follows:~~
- (1) Within the existing or proposed single unit structure, one (1) accessory dwelling unit ~~or and one (1) junior accessory dwelling unit is are allowed if the accessory dwelling unit ~~or and junior accessory dwelling unit meet the conditions of Section 9-5.1405, has have exterior access separate from the principal single unit, and have side and rear setbacks adequate for fire safety; and~~~~
 - (2) Detached from, or attached to but not within, the existing or proposed single unit, one (1) accessory dwelling unit is allowed, and may be combined with a junior accessory dwelling unit.
- (b) On a lot with more than one (1) existing dwelling unit:
- (1) Within portions of existing two (2) unit or multi-unit structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements and garages, one (1) accessory dwelling unit or twenty-five percent (25%) as many units as exist on the site, whichever is more, is/are allowed; and
 - (2) Detached from, or attached to but not within, existing structures, two (2) accessory dwelling units are allowed.

9-5.1408 Size of Accessory Dwelling Unit.

~~An accessory dwelling unit may not have a floor area less than one hundred fifty (150) square feet nor greater than the largest principal unit with which it is associated or one thousand two hundred (1,200) square feet, whichever is greater. If an accessory dwelling unit is created inside an existing accessory structure, the structure may be expanded by up to one hundred fifty (150) square feet for ingress and egress.~~

- (a) On a lot with one (1) existing or proposed single unit:
- (1) Within the existing or proposed single unit structure or an existing accessory structure, accessory dwelling units are not subject to a maximum area requirement. The structure may be expanded by up to one hundred fifty (150) square feet for ingress and egress.
 - (2) Detached from, or attached to but not within, the existing or proposed single unit, an accessory dwelling unit may not have a floor area less than one hundred fifty (150) square feet nor greater than the largest principal

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unit with which it is associate or one thousand two hundred (1,200) square feet, whichever is greater.

(b) On a lot with more than one (1) existing dwelling unit, accessory dwelling units are not subject to a maximum area requirement.

9-5.1409 Parking.

- (a) Parking for Existing Residential Unit(s). Parking is not required for the existing residential unit(s) associated with an accessory dwelling unit. If a garage or carport is converted to or replaced by an accessory dwelling unit, no replacement parking is required.
- (b) Parking for Accessory Dwelling Unit. Parking is not required for the accessory dwelling unit. If provided, parking for the accessory dwelling unit shall comply with the design standards for parking lots and structures in Section 9-4.406, except that parking spaces for the existing residential unit(s) and accessory dwelling unit(s) may be in tandem and may be provided in required setbacks.

9-5.1410 Dimensional Requirements.

- (a) Lot. The lot on which an accessory dwelling unit or a junior accessory dwelling unit is to be located is not required to comply with the minimum lot size and width requirements of Section 9-4.701.
- (b) Setback. Except as provided in Section 9-5.1404, an accessory dwelling unit shall be subject to the same setback requirements as the existing residential structure(s), as set forth in Section 9-4.301, except that the minimum rear setback shall be four feet (4'), and no setback is required if a garage, carport, or other existing structure is converted to or replaced by an accessory dwelling unit.
- (c) Height. The maximum height limit shall be twenty feet (20') for a detached accessory dwelling unit and twenty-five feet (25') for an attached accessory dwelling unit of an accessory dwelling unit shall be thirty feet (30'), except that it shall ~~step down at an angle from a maximum height of thirty feet (30') at fifteen feet (15') from the rear lot line to a maximum height of sixteen feet (16') at four feet (4') from the rear lot line.~~
- (d) Separation. An accessory dwelling unit may be either attached to or detached from the principal unit with which it is associated. If detached, the accessory dwelling unit shall be separated from the principal unit by no less than six feet (6').
- (e) Usable Open Space. Except as provided in Section 9-5.1404, ~~For~~ lots with an accessory dwelling unit attached to or detached from the principal unit (adding to

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the building footprint on the lot), must provide a common open space accessible to both the principal unit and the accessory dwelling unit ~~must be provided~~. It shall be at least two hundred (200) square feet in area, with a minimum dimension of ten feet (10'). It shall be seventy-five percent (75%) open to the sky (not covered by building elements such as eaves, porches, or balconies), and at least twenty-five percent (25%) planted. It may also include such surfaces as patio paving, sport courts, and decking.

9-5.1411 Design.

Any proposal for an accessory dwelling unit shall be subject to the applicable objective provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to the area of the City in which the proposed accessory dwelling unit is to be located, and to any other applicable design guidelines. No formal design review approval shall be required, but the design shall be evaluated as part of the zoning compliance review for conformance to the requirements of this section.

9-5.1412 Other Requirements.

(a) Units May Not Be Sold Separately. An accessory dwelling unit and its associated residential structure may not be sold separately by conversion to condominiums, division of the lot on which they are located, or by other means, except as provided by Section 66341 of the California Government Code.

(b) Short-Term Rental Prohibited. Short-term rentals, as defined by Section 9-5.2101 of the Emeryville Municipal Code, are prohibited in accessory dwelling units and junior accessory dwelling units, even if they are single detached units.

(c) Sewer Lateral. A proposal to establish an accessory dwelling unit shall comply with the provisions of Chapter 8 of Title 7 concerning sewer laterals, including the inspection, replacement or upgrading of the sewer lateral if required.

(d) Other Code Requirements. An accessory dwelling unit shall comply with all other applicable provisions of the Emeryville Municipal Code and State and Federal law, including, but not limited to, building and fire code requirements. Fire sprinklers are only required for the accessory dwelling unit if they are required for the principal unit ~~or largest unit~~ on the site.

SECTION FOUR. CEQA DETERMINATION.

The proposed amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) under Public Resources Code Section 21080.17, which provides that CEQA does not apply to the adoption of an ordinance to implement

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the provisions of Government Code Article 2 (commencing with §66314) of Chapter 13 of Division 1 of Title 7 of the Government Code pertaining to Accessory Dwelling Units.

SECTION FIVE. SEVERABILITY.

The City Council hereby declares that every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any section, paragraph, clause or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.

SECTION SIX. CODIFICATION.

Section Three of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Two, Four, Five, Six, and Seven shall not be codified.

SECTION SEVEN. EFFECTIVE DATE AND POSTING.

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code Section 33693.

This Ordinance was **INTRODUCED AND FIRST READ** by the City Council of the City of Emeryville at a regular meeting held Tuesday, July 16, 2024, and **PASSED AND ADOPTED** by the City Council of the City of Emeryville at a regular meeting held Tuesday, September 3, 2024, by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

MAYOR

ATTEST: _____

APPROVED AS TO FORM:

DocuSigned by:
Christie Crowl

SPECIAL COUNSEL

CITY CLERK