

## ORDINANCE NO. 17-012

### **Ordinance Of The City Council Of The City Of Emeryville Amending The Planning Regulations In Title 9 Of The Emeryville Municipal Code Regarding Accessory Dwelling Units**

**WHEREAS**, Article 14, “Secondary Residential Units”, of Chapter 5, “Citywide Use and Development Regulations”, of Title 9, “Planning Regulations”, of the Emeryville Municipal Code includes provisions mandated by the State in the past; and

**WHEREAS**, in 2016, the California legislature passed and Governor Brown signed SB1069 and AB2299 to encourage development of accessory dwelling units; and

**WHEREAS**, local jurisdictions were required to adopt the amendments by January 1, 2017, or enforce the State law starting on that date; and

**WHEREAS**, the City desires to update its Secondary Residential Unit regulations and rename them the Accessory Dwelling Unit regulations to make them consistent with current state law; and

**WHEREAS**, the City desires to clarify that the Courts section of the Planning Regulations only applies to Multi-unit Residential projects with 10 units or more; and

**WHEREAS**, on March 23, 2017, the Emeryville Planning Commission held a duly and properly noticed public hearing on the proposed ordinance and then voted unanimously to recommend that the City Council adopt it; and

**WHEREAS**, on May 2, 2017, the Emeryville City Council held a duly and properly noticed public hearing on the proposed ordinance, continued the item, and directed staff to investigate the effect of the ordinance on lot coverage in the affected neighborhoods; and

**WHEREAS**, on September 19, 2017, the Emeryville City Council held a duly and properly noticed public hearing on the proposed ordinance and adopted the first reading of said 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;

**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 the Planning Regulations in Title 9 of the Emeryville Municipal Code to make state-mandated changes related to Accessory Dwelling Units, formerly known as Secondary Residential Units, and to clarify that the Court requirement only applies to Multi-unit Residential uses with ten units or more.

## **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 helps to implement General Plan goal LU-G-4, “A mix of housing types” and Housing Element Goal H-4 “Provide a wide variety of housing types appropriate for households at all socioeconomic levels and with a variety of lifestyles and preferences”, because it encourages development of a housing type that generally accommodates smaller household sizes and lower incomes.**

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

**The proposed amendment will be of benefit to the public because it will help to allow a diverse range of households to live in Emeryville.**

(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 the “general rule” at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment.**

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

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

## Amendments to Article 14 of Chapter 5:

### ARTICLE 14. ~~SECONDARY RESIDENTIAL UNITS~~ ACCESSORY DWELLING UNITS

#### 9-5.1401 Purpose.

This Article establishes regulations for ~~Secondary Residential Units~~ Accessory Dwelling Units. ~~Secondary Residential Units~~ Accessory 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 ~~Secondary Residential Units~~ Accessory Dwelling Units as accessory uses in conjunction with principal Single Unit 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 a ~~Secondary Residential Unit~~ an Accessory Dwelling Unit, as defined in Section 9-2.702(b), as an accessory use in conjunction with a principal Single Unit residential use.

#### 9-5.1403 Approval Procedure.

A proposal for a ~~Secondary Residential Unit~~ an Accessory Dwelling Unit 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. If the Director determines that the proposal conforms to the requirements of this Article, a zoning compliance approval shall be issued within 120 days after receipt of a complete application. 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 non-compliance may be appealed to the Planning Commission pursuant to Article 14 of Chapter 7.

#### 9-5.1404 Where Allowed.

- (a) **Districts.** ~~Secondary Residential Units~~ 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) **Other Uses.** ~~Secondary Residential Units~~ Accessory Dwelling Units are permitted only on lots containing a legal, conforming Single Unit Residential use and no other principal use. (A Single Unit residential use outside the RM Medium Density Residential zone may be deemed conforming pursuant to Section 9-5.1003(b).) ~~A Secondary Residential Unit~~ An Accessory Dwelling Unit may be

established in conjunction with the establishment of a new principal Single Unit residential use provided that no other principal use exists, or will exist, on the same lot.

#### 9-5.1405 Building Intensity and Residential Density

~~Secondary Residential Units~~ Accessory Dwelling Units are exempt from the building intensity (floor area ratio or FAR) and residential density regulations in Article 2 of Chapter 4.

#### 9-5.1406 Size of Unit.

(a) **Floor Area.** ~~A Secondary Residential Unit~~ An Accessory Dwelling Unit may not have a greater floor area than the principal Single Unit with which it is associated. In addition, the floor area of the ~~Secondary Residential Unit~~ Accessory Dwelling Unit shall be limited as follows:

(1) If the Accessory Dwelling Unit is attached to the principal Single Unit, the floor area shall be limited as follows:

a. If the principal Single Unit is less than 1,000 square feet, the ~~Secondary Residential Unit~~ Accessory Dwelling Unit shall not exceed 500 square feet.

~~(2)~~ b. If the principal Single Unit is at least 1,000 square feet but less than ~~1,800~~ 2,400 square feet, the ~~Secondary Residential Unit~~ Accessory Dwelling Unit shall not exceed 50% of the floor area of the principal Single Unit.

~~(3)~~ c. If the principal Single Unit is ~~1,800~~ 2,400 square feet or more, the ~~Secondary Residential Unit~~ Accessory Dwelling Unit shall not exceed ~~900~~ 1,200 square feet.

(2) If the Accessory Dwelling Unit is detached from the principal Single Unit, the floor area shall not be less than 300 square feet and shall not exceed 1,200 square feet.

(b) **Bedrooms.** The ~~Secondary Residential Unit~~ Accessory Dwelling Unit may not have more bedrooms than the principal Single Unit with which it is associated.

#### 9-5.1407 Parking.

(a) **Parking for Principal Single Unit.** ~~A Secondary Residential Unit~~ An Accessory Dwelling Unit may only be established if off-street parking is provided for the principal Single Unit as required by Article 4 of Chapter 4. If a garage is converted to an Accessory Dwelling Unit, the replacement parking for the primary Single Unit must meet

the standards in Section 9-4.406(b)(2) and (3) regarding location of parking, unless there is no other feasible way to provide that required parking.

Parking shall be provided for the Secondary Residential Unit as follows:-

- (a) ~~If the Secondary Residential Unit contains no bedrooms or one bedroom, no parking spaces are required.~~
- (b) ~~If the Secondary Residential Unit contains two or more bedrooms, one parking space is required.~~

(b) **Parking for Accessory Dwelling Unit.** Parking is not required for the Accessory Dwelling Unit. If provided, parking for the Secondary Residential Unit 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 principal Single Unit and Secondary Residential Unit Accessory Dwelling Unit may be in tandem.

#### **9-5.1408 Dimensional Requirements.**

- (a) **Lot.** The lot on which a ~~Secondary Residential Unit~~ an Accessory Dwelling Unit is to be located must comply with the minimum lot size and width requirements of Section 9-4.701.
- (b) **Setback.** A ~~Secondary Residential Unit~~ An Accessory Dwelling Unit shall be subject to the same setback requirements as the principal Single Unit, as set forth in Section 9-4.301, except that the minimum rear setback shall be five feet, and no setback is required for conversion of a garage to an Accessory Dwelling Unit.
- (c) **Height.** The maximum height limit of a ~~Secondary Residential Unit~~ an Accessory Dwelling Unit shall be 30 feet, except that it shall step down at an angle from a maximum height of 30 feet at 15 feet from the rear lot line to a maximum height of 15 feet at five feet from the rear lot line.
- (d) **Separation.** A ~~Secondary Residential Unit~~ An Accessory Dwelling Unit may be either attached to or detached from the principal Single Unit with which it is associated. If detached, the ~~Secondary Residential Unit~~ Accessory Dwelling Unit shall be separated from the principal Single Unit by no less than six feet.
- (e) **Useable Open Space.** For lots with an Accessory Dwelling Unit attached to or detached from the primary Single Unit (adding to the building footprint on the lot), a common open space accessible to both the primary Single Unit and the Accessory Dwelling Unit must be provided. It shall be at least 200 square feet in area, with a minimum dimension of 10 feet. It shall be 75% open to the sky (not covered by building elements such as eaves, porches, or balconies), and at least

25% planted. It may also include such surfaces as patio paving, sport courts, and decking.

#### **9-5.1409 Design**

Any proposal for a ~~Secondary Residential Unit~~ an Accessory Dwelling Unit shall be subject to the applicable provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to the area of the city in which the proposed ~~Secondary Residential Unit~~ Accessory Dwelling Unit is to be located, and to any other applicable design guidelines. A ~~Secondary Residential Unit~~ An Accessory Dwelling Unit shall be compatible with the principal Single Unit with which it is associated in terms of form, materials, style, and other relevant design factors. 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.

#### **9-5.1410 Other Requirements.**

- (a) **Owner Occupancy Required.** The owner of the property must occupy either the principal Single Unit or the ~~Secondary Residential Unit~~ Accessory Dwelling Unit.
- (b) **One ~~Secondary Residential Unit~~ Accessory Dwelling Unit Per Lot.** No more than one ~~Secondary Residential Unit~~ Accessory Dwelling Unit is permitted on a lot.
- (c) **Units May Not Be Sold Separately.** A ~~Secondary Residential Unit~~ An Accessory Dwelling Unit and its associated principal Single Unit may not be sold separately either by conversion to condominiums, division of the lot on which they are located, or by other means.
- (d) **Sewer Lateral.** A proposal to establish a ~~Secondary Residential Unit~~ 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.
- (e) **Other Code Requirements.** A ~~Secondary Residential Unit~~ 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.

#### **Amendment to Section 9-4.406(b):**

- (b) **Location of Parking Areas.** Except as otherwise allowed by Section 9-4.407, required parking spaces must be located on the same lot as the use to be served by the parking. Additionally, parking areas shall be located in accordance with the following standards:

- (1) No vehicle shall be required to cross a loading space or another parking space in order to gain access to a required parking space, except that tandem parking may be permitted pursuant to subsection (h) below.
- (2) Except as provided in subsection (3) below and in Section 9-5.1407(a), off-street parking shall not be located in required front yards or in required street side yards.
- (3) No off-street parking spaces shall be located between the front lot line and the front wall of a building or its projection across the lot, except upon the granting of a conditional use permit. To grant such a conditional use permit, the following findings must be made in addition to the findings required by Article 5 of Chapter 7:
  - a. That the parking spaces are required by this Article.
  - b. That there is no other feasible way to provide the required parking.
  - c. That all applicable provisions of the design standards in this Section have been met.
  - d. That the applicable landscaping and screening requirements of Article 5 of this Chapter have been met.
  - e. That the applicable provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to Parking and access, have been met.

**Amendments to other sections to change “Secondary Residential Unit” to “Accessory Dwelling Unit”:**

**9-2.205 Two Unit.**

Two dwelling units located on a single lot that may be either attached or detached. This use type is distinguished from a ~~Secondary Residential Unit~~ an Accessory Dwelling Unit, which is an accessory residential unit as defined by State law and Article 7 of this Chapter.

**9-2.702 Uses That Are Always Accessory Uses.**

...

(b) ~~Secondary Residential Unit~~ Accessory Dwelling Unit. A single, attached or detached, dwelling unit located on a lot with an existing Single-Unit. This use type is distinguished from the Two-Unit use classification, which is not an accessory use. See also Article 14 of Chapter 5.

**9-4.301 Setbacks.**

...

**Table 9-4.301(e): Features Allowed in Required Yards with Restrictions**

Feature	Distances that features may extend over setback line into required yard.			
	Front Setback	Street Side Setback	Interior Side Setback	Rear Setback
...				
(16) <del>Secondary Residential Units</del> <u>Accessory Dwelling Units</u> .	Not allowed.			Up to 5 feet from the rear lot line, and 3 feet from the side lot lines, subject to the dimensional requirements of Section 9-5.1408.

**9-4.702 Minimum Dwelling Unit Area.**

(a) **RM Zone.** In the RM Medium Density Residential zone, each dwelling unit, except a ~~Secondary Residential Unit~~ an Accessory Dwelling Unit, shall have a minimum floor area of not less than 500 square feet.

**9-6.104 Exceptions.**

These Subdivision Regulations shall not apply to:

...

The construction, financing or leasing of ~~secondary residential units~~ Accessory Dwelling Units, subject to the provisions of Article 14 of Chapter 5.

**9-7.105 Community Development ~~Director of Planning and Building~~.**

The Community Development ~~Director of Planning and Building~~ ("Director") is appointed by the City Manager pursuant to Article 5 of Chapter 7 of Title 2 of the Emeryville Municipal Code. The Director has the following powers and duties under these Planning Regulations, which he or she may delegate to staff of the ~~Planning and Building Department~~ Division who are supervised by and report to him or her. The Director may refer any administrative decision to the Planning Commission for consideration. In that case the Commission's decisions may be appealed to the City Council.



- (g) **Zoning Compliance.** Determine whether new or expanded uses or structures, including Home occupations and ~~Secondary Residential Units~~ Accessory Dwelling Units, comply with the applicable requirements of these Planning Regulations pursuant to the provisions of Article 3 of this Chapter.

**9-7.202 General Processing Requirements.**

...

**Table 9-7.202: Decision Making, Public Hearing and Notice Requirements**

Permit or Action Type	Reference	Decision Process			Public Hearing Required?	Type of Notice		Required Findings	Combined or Concurrent Processing
		Advisory	Decision	Appeal		Required	Optional		
Zoning Compliance including Home Occupations and <del>Secondary Residential Units</del> <u>Accessory Dwelling Units</u>	Chapter 7 Article 3	N/A	Director	PC <sup>2</sup>	No	None	N/A	None	N/A

**9-7.403 Exemptions**

The following exterior changes to a property shall be exempt from design review:

...

- (f) ~~Secondary Residential Units~~ Accessory Dwelling Units, the design of which shall be reviewed as part of the zoning compliance review, pursuant to Section 9-5.1409.

**Amendment to Courts section:**

**9-4.302 Courts.**

Courts shall be provided between facing exterior walls of Multi-Unit residential buildings with ten units or more on the same lot in accordance with the requirements of this Section. ...

**SECTION FOUR. CEQA DETERMINATION.**

This ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) under the “general rule” at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment.

**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 on Tuesday, September 19, 2017, and passed and adopted by the City Council at a regular meeting held on Tuesday, October 3, 2017 by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:



\_\_\_\_\_  
CITY ATTORNEY