

**ORDINANCE NO. 20-\_\_\_\_**

**Ordinance Of The City Council Of The City Of Emeryville Amending The Planning Regulations In Title 9 And The Building Regulations In Title 8 Of The Emeryville Municipal Code Regarding Accessory Dwelling Units And Junior Accessory Dwelling Units (CEQA Status: Exempt Pursuant To Public Resources Code Section 21080.17)**

**WHEREAS**, on October 30, 2018, the City Council adopted Resolution No. 18-156, declaring a shelter crisis, due to the lack of affordable housing in the City; and

**WHEREAS**, the State finds and declares that California is “experiencing a housing supply crisis, with housing demand far outstripping supply” (Senate Bill 330, § 2(a)(1); Gov. Code § 65852.150); and

**WHEREAS**, in 2019, the State enacted Senate Bill (SB)13, Assembly Bill (AB) 68, AB 881, AB 670, AB 587, and AB 671 to encourage development of accessory dwelling units, which are a valuable form of housing and provide additional rental housing stock at a lower cost; 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 within the City; and

**WHEREAS**, the City desires to update its Planning Regulations and its Building Regulations as they relate to accessory dwelling units and junior accessory dwelling units to make the regulations consistent with current state law; and

**WHEREAS**, on February 27, 2020, 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 April 7, 2020, the Emeryville City Council held a duly and properly noticed public hearing on the proposed ordinance and continued the item to a future date; and

**WHEREAS**, in September 2020, the California Department of Housing and Community Development (HCD) issued an Accessory Dwelling Unit Handbook clarifying the requirements of State law for accessory dwelling units; and

**WHEREAS**, this revised ordinance incorporates guidance from HCD’s handbook; and

**WHEREAS**, on December 1, 2020, the City Council held a duly and properly noticed public hearing on the proposed revised ordinance; and

**WHEREAS**, the City Council has reviewed and considered the staff report and attachments thereto, all public comments, and the proposed amendments to Titles 8 and 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 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.

**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 amendments 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 they encourage development of a housing type that generally accommodates smaller household sizes and lower incomes, which is necessary to mitigate the housing crisis at both a local and state level.**

(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 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.**

(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 Government Code Section 65852.2 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 TITLES 8 AND 9 OF THE EMERYVILLE MUNICIPAL CODE.**

Titles 8 and 9 of the Emeryville Municipal Code are hereby amended 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. ~~Accessory~~ 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 ~~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 an one 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.

##### **9-5.1403 Approval Procedure.**

A proposal for an one 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. If the Director determines that the proposal conforms to the requirements of this Article, a zoning compliance approval shall be issued within ~~one hundred twenty (120)~~ 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 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.

#### **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 800 square feet, height of up to 16 feet, side setbacks of no less than three feet, and rear setbacks of no less than four feet.

#### **9-5.14045 Where Allowed.**

- (a) Districts. 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) Other Uses. Accessory Dwelling Units and Junior Accessory Dwelling Units are permitted only on lots containing an existing or proposed 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).) 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 principal single-unit residential use; provided, that no other principal use exists, or will exist, on the same lot.

#### **9-5.14056 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.

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

(a) On a lot with one existing or proposed Single Unit, up to one Accessory Dwelling Unit and one Junior Accessory Dwelling Unit are allowed, as follows:

- (1) within the existing or proposed Single Unit structure, one Accessory Dwelling Unit or one Junior Accessory Dwelling Unit is allowed if the Accessory Dwelling Unit or Junior Accessory Dwelling Unit has exterior access separate from the principal Single Unit and side and rear setbacks adequate for fire safety.

(2) detached from, or attached to but not within, the existing or proposed Single Unit, one Accessory Dwelling Unit is allowed, and may be combined with a Junior Accessory Dwelling Unit.

(b) On a lot with more than one existing dwelling unit,

(1) within portions of existing Two 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 Accessory Dwelling Unit or 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 Accessory Dwelling Units are allowed.

**9-5.14068 Size of Accessory Dwelling Unit.**

(a) Floor Area. An Accessory Dwelling Unit may not have a floor area less than 150 square feet nor greater floor area than the largest principal Single Unit with which it is associated or 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 150 square feet for ingress and egress. In addition, the floor area of the 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 one thousand (1,000) square feet, the Accessory Dwelling Unit shall not exceed five hundred (500) square feet.

b. If the principal single unit is at least one thousand (1,000) square feet but less than two thousand four hundred (2,400) square feet, the Accessory Dwelling Unit shall not exceed fifty percent (50%) of the floor area of the principal single unit.

c. If the principal single unit is two thousand four hundred (2,400) square feet or more, the Accessory Dwelling Unit shall not exceed

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

**9-5.14079 Parking.**

(a) Parking for Principle Single Existing Residential Unit(s). 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. 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, the

~~replacement parking for the primary single unit must meet the standards in Sections 9-4.406(b)(2) and (3) regarding location of parking, unless there is no other feasible way to provide that required parking~~ 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 ~~principal Single Unit~~ existing residential unit(s) and Accessory Dwelling Unit(s) may be in tandem and may be provided in required setbacks.

#### **9-5.140810 Dimensional Requirements.**

- (a) Lot. The lot on which an Accessory Dwelling Unit or a Junior Accessory Dwelling Unit is to be located ~~must~~ 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, A~~An~~ Accessory Dwelling Unit shall be subject to the same setback requirements as the ~~principal Single Unit~~ existing residential structure(s), as set forth in Section 9-4.301, except that the minimum rear setback shall be ~~five feet (5')~~ four feet, and no setback is required ~~for conversion of~~ if a garage, carport, or other existing structure is converted to or replaced by an Accessory Dwelling Unit.
- (c) Height. The maximum height limit of 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 ~~fifteen feet (15')~~ 16 feet at ~~five feet (5')~~ four feet from the rear lot line.
- (d) Separation. An Accessory Dwelling Unit may be either attached to or detached from the principal ~~Single Unit~~ Unit with which it is associated. If detached, the Accessory Dwelling Unit shall be separated from the principal ~~Single Unit~~ Unit by no less than six feet.
- (e) Useable Open Space. For lots with an Accessory Dwelling Unit attached to or detached from the principal ~~Single Unit~~ Unit (adding to the building footprint on the lot), a common open space accessible to both the principal ~~Single Unit~~ Unit and the Accessory Dwelling Unit must be provided. It shall be at least 200 square feet in area, with a minimum dimension of ten 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.

#### **9-5.140911 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. ~~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.

**9-5.141012 Other Requirements.**

- ~~(a) Owner Occupancy Required. The owner of the property must occupy either the principal single unit or the Accessory Dwelling Unit.~~
- ~~(b) One (1) Accessory Dwelling Unit Per Lot. No more than one (1) Accessory Dwelling Unit is permitted on a lot.~~
- ~~(ea) Units May Not Be Sold Separately. An Accessory Dwelling Unit and its associated principal Single Unit residential structure may not be sold separately by conversion to condominiums, division of the lot on which they are located, or by other means.~~
- ~~(b) Short-term Rental Prohibited. Short-term Rentals are prohibited in Accessory Dwelling Units and Junior Accessory Dwelling Units, even if they are single detached units.~~
- ~~(dc) 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.~~
- ~~(ed) 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.~~

**Amendment to Section 9-5.2103 of Article 21 of Chapter 5 of Title 9:**

**9-5.2103 Where and How Permitted.**

Short-term rentals are permitted only in single-unit detached houses, and only as an accessory use. All other short-term rental of dwellings and parts of dwellings is prohibited. Short-term rentals are prohibited in any Accessory Dwelling Unit or Junior Accessory Dwelling Unit. This Article is not to be construed to prohibit weekly rentals in Group Residential uses. By issuing a short-term rental permit, the City is not conferring a vested right.

**Amendment to Section 9-4.702 of Article 7 of Chapter 4 of Title 9:**

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

- (a) RM Zone. In the RM Medium Density Residential zone, each dwelling unit, except an Accessory Dwelling Unit or a Junior Accessory Dwelling Unit, shall have a minimum floor area of not less than 500 square feet.
- (b) Other Zones. In all other zones, no minimum dwelling unit area is prescribed. All dwelling units shall comply with applicable Building Code requirements in Title 8.

**Amendment to Section 9-2.702(b) of Article 7 of Chapter 2 of Title 9:**

(b) **Accessory Dwelling Unit and Junior Accessory Dwelling Unit.**

(1) **Accessory Dwelling Unit.** An ~~single~~, attached or detached, residential dwelling unit located on a lot with an existing Single-Unit which provides complete independent living facilities for one or more persons. It includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the principal residential use. An Accessory Dwelling Unit can be an efficiency unit as defined in Section 17958.1 of the State Health and Safety Code, or a manufactured home as defined in Section 18007 of the State Health and Safety Code. This use type is distinguished from the Two-Unit use classification, which is not an accessory use. See also Article 14 of Chapter 5.

(2) **Junior Accessory Dwelling Unit.** A unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A Junior Accessory Dwelling Unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure. A Junior Accessory Dwelling Unit has a separate entrance and an efficiency kitchen, which includes appliances, a counter, and cabinets.

**Addition of Section 8-1.05 to Chapter 1 of Title 8 (Building Code):**

**8-1.05 Delayed Enforcement for Accessory Dwelling Units**

In conformance with the provisions of California Health and Safety Code Section 17980.12, upon request of the owner of an Accessory Dwelling Unit built before 2020, the Chief Building Official shall approve a five year delay in enforcement of Building Code provisions if the Chief Building Official determines that correction of the violation is not necessary to protect health and safety.



#### **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 the provisions of Government Code Section 65852.2 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 on Tuesday, December 1, 2020, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, December 15, 2020, by the following vote:

AYES:

☐ \_\_\_\_\_

NOES:

☐ \_\_\_\_\_

ABSTAIN:

☐ \_\_\_\_\_

ABSENT:

☐ \_\_\_\_\_

\_\_\_\_\_  
MAYOR

ATTEST:

APPROVED AS TO FORM:



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

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