

BEFORE THE CITY COUNCIL OF THE CITY OF ORINDA

In the Matter of:

Ordinance 20-02

An Ordinance Updating City's Rules
Regarding Accessory Dwelling Units

The City Council of the City of Orinda DOES ORDAIN as follows:

SECTION 1.

The City Council of the City of Orinda intends, by adopting this ordinance, to amend § 17.3.4 (Accessory Dwelling Units (ADUs)), within Title 17, Zoning, of the Orinda Municipal Code (OMC) and to make related amendments to § 17.2.3 (Definitions). These amendments are intended to bring Orinda's regulation of accessory dwelling units into conformance with state law (Government Code sections 65852.2 and 65852.22) and to address potential impacts to neighborhood privacy, the enjoyment of private property, aesthetics and visual resources, and compatibility of accessory dwelling units with residential neighborhoods.

SECTION 2.

The following portions of the Municipal Code are amended as specified below and in Attachment A. **Attachment A** shows additions with double-underlined text and deletions with ~~strike-out text~~.

Municipal Code Provision	Action
§17.2.3	Amendments as shown in Attachment A .
§17.3.4	Amendments as shown in Attachment A .

SECTION 3.

- A. The purpose of this ordinance is to bring the OMC into conformity with state law on ADUs, including **Senate Bill 13** and **Assembly Bills 881** and **68** (2019), which amended **Government Code § 65852.2**.
- B. ADUs provide a community benefit by expanding the number and type of residential facilities available and assist ADU owners by providing additional affordable space for housing friends/family and/or revenue that may be used for maintenance, upgrades and other costs.
- C. If not regulated, ADUs can create nuisances such as overcrowding, illegal vehicle parking, traffic-flow disruptions, and risks to public safety. The restrictions of this ordinance are necessary to prevent a burden on City services and potential adverse impacts on residential neighborhoods posed by ADUs.

- D. This Ordinance makes permanent the provisions of the urgency ordinance 19-11, adopted in 2019, regarding regulations for accessory dwelling units. Urgency Ordinance 19-11 is repealed as of the effective date of this Ordinance.
- E. If not regulated, accessory dwelling units can create nuisances including noise, light and air disruption, and privacy concerns. The restrictions of this ordinance are necessary to prevent potential adverse impacts on residential neighborhoods posed by unregulated accessory dwelling units.

SECTION 4.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION 5.

This ordinance is consistent with the Orinda General Plan.

SECTION 6.

The City Council finds that this ordinance is exempt from the California Environmental Quality Act under Public Resources Code section 21080.17, as it implements the provisions of Government Code section 65852.2.

SECTION 7.

This ordinance becomes effective **thirty (30) days** after adoption. On that date, Urgency Ordinance 19-11 is repealed.

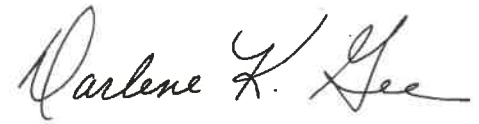
SECTION 8.

The City Clerk shall either (a) have this ordinance published once within fifteen (15) days after adoption in a newspaper of general circulation, or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

SECTION 9.


Following a duly-noticed public hearing, the foregoing ordinance was introduced at a regular meeting of the City Council of the City of Orinda held on May 5, 2020 and was adopted and ordered published at a regular meeting held on May 19, 2020 by the following vote:

AYES: COUNCILMEMBERS: Fay, Gee, Kosla, Miller, Worth
NOES: COUNCILMEMBERS: None
RECUSED: COUNCILMEMBERS: None



Darlene Gee, Mayor

ATTEST:



Sheri Marie Smith, City Clerk

17.3.4 – Accessory Dwelling Units (ADUs).

A. Purpose. The purpose of this section is to comply with state law regarding accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) [California Government Code Sections 65852.2 and 65852.22].

B. Limited Review (Ministerial).

~~1. Category One ADU – No New Floor Area. Any ADU that is wholly contained within the existing space of a single-family dwelling or accessory structure shall meet the following development standards and use restrictions:~~

~~a. The unit is located in an RVL-E, RVL, RL-40, RL-20, RL-15, RL-12, RL-10, RL-6, or PD zoning district.~~

~~b. Only one (1) ADU is permitted per lot.~~

~~c. The ADU has exterior access independent from the existing residence.~~

~~d. The existing single-family dwelling or accessory structure has side and rear setbacks sufficient for fire safety. If the existing residence or structure complies with the City's setback requirements as described in Chapter 17.4, it shall automatically meet this standard. No setback shall be required for an existing garage that is converted to an ADU.~~

~~e. The ADU complies with applicable building codes and health and safety regulations; however, the ADU is not required to provide fire sprinklers if fire sprinklers are not required for the single-family dwelling.~~

~~f. The single-family dwelling or accessory structure was constructed in compliance with all then-applicable City requirements or was in existence on January 1, 2017.~~

Streamlined ADUs. Pursuant to California Government Code Section 65852.2(e), the City shall approve the following streamlined ADUs if the specified development standards and use restrictions are met:

1. All Streamlined ADUs and JADUs.

a. The unit is located in an RVL-E, RVL, RL-40, RL-20, RL-15, RL-12, RL-10, RL-6, PD, or RM zoning district.

b. The unit complies with applicable building codes and health and safety regulations; however, the unit is not required to provide fire sprinklers if fire sprinklers are not required for the primary dwelling.

c. The unit may be rented in full or in part for the purpose of overnight lodging for terms of thirty (30) or more consecutive days, but it shall not be rented for overnight lodging for shorter terms, notwithstanding anything to the contrary in the City's short-term rental regulations (see section 17.3.12). Neither the primary dwelling nor the ADU or JADU shall be sold or otherwise conveyed separately from the other unit, except pursuant to California Government Code Section 65852.26

d. If the unit is connected to an onsite water system, a percolation test has been completed within the last five (5) years, or if the percolation test has been recertified, within the last ten (10) years.

2. Within Existing Space (Single-Family) – ADUs and JADUs.

a. The lot on which the ADU or JADU is located contains an existing or proposed single-family dwelling.

b. Only one (1) ADU or JADU is permitted per lot unless one (1) JADU is permitted pursuant to this Subsection (B)(2) and one (1) ADU is permitted pursuant to Subsection (B)(3).

c. The ADU or JADU has exterior access independent from the existing residence.

d. The existing single-family dwelling or accessory structure has side and rear setbacks sufficient for fire and safety. If the existing residence or structure complies with the City's setback requirements as described in Chapter 17.4, it shall automatically meet this standard.

e. If an ADU is proposed, it is within the proposed space of a single-family dwelling, the existing space of a single-family dwelling or accessory structure, or requires an addition of no more than 150 square feet to an existing accessory structure to accommodate ingress and egress.

f. If a JADU is proposed, it complies with the requirements of California Government Code Section 65852.22.

3. Detached, New Construction (Single-Family) – ADUs

a. The lot on which the ADU is located contains an existing or proposed single-family dwelling.

b. The lot on which the ADU is located does not contain another ADU, but may contain a JADU permitted pursuant to Subsection (B)(2).

c. The ADU is detached from the single-family dwelling.

d. The ADU is new construction.

e. The ADU is located at least four (4) feet from the side and rear lot lines, is no greater than eight-hundred (800) adjusted square feet in floor area, and has a height of no more than sixteen (16) feet.

4. Within Existing Space (Multifamily) – ADUs

a. The lot on which the ADU is located contains an existing multifamily dwelling.

b. The ADU is located within a portion of the multifamily dwelling structure that is not used as livable space.

c. The total number of ADUs within the dwelling structure does not exceed twenty-five (25) percent of the existing number of primary dwelling units within the structure, provided that all multifamily dwelling structures shall be permitted at least one (1) ADU pursuant to this Subsection if the other standards are met.

5. Detached, New Construction (Multifamily) – ADUs

a. The lot on which the ADU is located contains an existing multifamily dwelling.

b. The ADU is detached from the multifamily dwelling.

c. The ADU is located at least four (4) feet from the side and rear lot lines and has a height of no more than sixteen (16) feet.

d. No more than two (2) ADUs shall be permitted per lot pursuant to this Subsection.

~~C. 2. Category Two ADU – New Floor Area. Any ADU that involves the addition of square footage to an existing single-family dwelling or accessory structure or is proposed in conjunction with a new single-family dwelling~~ All Other ADUs. Any ADU that does not meet the standards for streamlined ADUs in Subsection (B) shall meet the following development standards and use restrictions:

1. a. The ADU is located in an RVL-E, RVL, RL-40, RL-20, RL-15, RL-12, RL-10, RL-6, PD, or RM zoning district.

2. b. The lot on which the ADU is located contains an existing or proposed single-family primary dwelling.

3. e. The lot on which the ADU is located does not contain another ADU or JADU.

4. d. The ADU meets all other applicable requirements of this code that do not involve discretionary review including, but not limited to, building height, setback, water channel setback, tree removal, ridgeline and environmental preservation overlay, payment of applicable fees, and building code requirements; however:

a. i. Passageways. To the extent required by California Government Code Section 65852.2, no passageway is required in conjunction with the construction of an ADU.

ii. If the proposed ADU is an addition to an existing private garage:

A. No setback shall be required for any portion of the existing garage that is converted to the ADU; and

B. Standard setbacks shall apply to the new floor area, unless the ADU is constructed above the existing private garage, in which case the side and rear setbacks for the ADU shall not be less than five (5) feet.

b. Setbacks.

i. No setback is required for an ADU located within existing living area or an existing accessory structure, or an ADU that replaces an existing structure and is located in the same location and to the same dimensions as the structure being replaced.

ii. For all other ADUs, the required setback from side and rear lot lines shall be no more than four (4) feet.

c. Building Heights.

i. Attached ADUs. In the area between the setbacks applicable to the primary dwelling and the setbacks applicable to the ADU, the ADU shall be limited to sixteen (16) feet in height. Otherwise, the height limits applicable to the primary dwelling apply.

ii. Detached ADUs. All detached ADUs, except those located wholly or partially above a private garage, shall be limited to sixteen (16) feet in height. Detached ADUs located wholly or partially above a private garage shall be limited to sixteen (16) feet in height in the area between the setbacks applicable to the primary dwelling and

the setbacks applicable to the ADU and otherwise limited by the height limits applicable to the primary dwelling.

d. ~~iii.~~ Fire Sprinklers. The ADU is not required to provide fire sprinklers if fire sprinklers are not required for the ~~single-family~~ primary dwelling.

e. Parking.

i. One (1) all-weather surface, off-street parking space measuring at least nine (9) feet by nineteen (19) feet shall be provided for the ADU.

ii. The required parking space may be located as a tandem space in an existing driveway or in the required setbacks. "Tandem parking" means that two (2) or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

iii. The above parking requirements shall not apply:

A. To an ADU that is located within one-half (0.5) mile walking distance of public transit, defined as an existing BART or public bus stop;

B. To an ADU that is located within an architecturally and historically significant historic district;

C. To an ADU that is part of a proposed or existing primary dwelling unit or accessory structure;

D. When on-street parking permits are required but not offered to the occupant of the ADU; or

E. To an ADU that is located within one (1) block of the designated pick-up or drop-off location of a car-share vehicle, where such vehicle is owned by a car-sharing company.

f. Skirt walls. Any skirt wall developed in conjunction with an ADU shall be less than six (6) feet in height.

5. e. The ADU may be rented, but it shall not be sold or otherwise conveyed separate from the ~~single-family~~ primary dwelling except pursuant to California Government Code Section 65852.26.

~~f. The ADU is either attached to (including partially within) or detached from the proposed or existing single-family dwelling and located on the same lot as the proposed or existing single-family dwelling.~~

6. g. Maximum size. The floor area limits in Section 17.6.2 of the Orinda Municipal Code shall not apply. An ADU shall meet all of the following requirements:

a. Pursuant to California Government Code Section 65852.2(c), the floor area shall not exceed eight hundred and fifty (850) adjusted square feet (studio or one bedroom) or one thousand (1,000) adjusted square feet (more than one bedroom); and

b. Compliance with any other maximum size requirements contained in any applicable development agreement or other similar, lot-specific restriction on maximum size, provided that such requirements shall not be used to reduce the ADU below eight hundred (800) adjusted square feet.

~~i. An attached ADU shall meet all of the following requirements:~~

~~A. The floor area shall not exceed fifty (50) percent of the existing or proposed single-family dwelling living area, with a maximum floor area of one thousand two hundred (1,200) adjusted square feet; and~~

~~B. Compliance with the floor area requirements in Section 17.6.2 and any other applicable maximum size requirements (e.g., requirements in any applicable development agreement).~~

~~ii. A detached ADU shall meet all of the following requirements:~~

~~A. The floor area shall not exceed one thousand two hundred (1,200) adjusted square feet; and~~

~~B. Compliance with the floor area requirements in Section 17.6.2 and any other applicable maximum size requirements (e.g., requirements in any applicable development agreement).~~

c. iii. For determining compliance with this Subsection, floor area shall be calculated pursuant to Section 17.6.3 and Section 17.6.4 of the Orinda Municipal Code.

~~h. Parking.~~

~~i. One (1) all-weather surface, off-street parking space measuring at least nine (9) feet by nineteen (19) feet shall be provided for the ADU.~~

~~ii. The required parking space may be located as a tandem space in an existing driveway or in the required setbacks. "Tandem parking" means that two (2) or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.~~

~~iii. The above parking requirements shall not apply:~~

~~A. To an ADU that is located within one-half (0.5) mile of public transit, defined as an existing BART or public bus stop;~~

~~B. To an ADU that is located within an architecturally and historically significant historic district;~~

~~C. When on-street parking permits are required but not offered to the occupant of the ADU; or~~

~~D. To an ADU that is located within one (1) block of the designated pick-up or drop-off location of a car-share vehicle, where such vehicle is owned by a car-sharing company.~~

~~i. Any skirt wall developed in conjunction with an ADU is less than six (6) feet in height.~~

~~D. 3. Within one hundred and twenty (120) sixty (60) days of receipt of a complete application, the Planning Director shall ministerially process for approval any application for a building permit for a Category One or Category Two an ADU or JADU that meets all the criteria in this Section.~~

~~E. C. Combination Proposals.~~

~~1. When an ADU is proposed in conjunction with—but it can be constructed independent of—another proposal for which City approval is required under this Code (e.g., new garage, new single-family residence, substantial addition to an existing residence), the following options apply:~~

~~a. The applicant may elect to have the City process the ADU separate from and concurrently with the other proposal(s). If the applicant makes this election, the streamlining described in this Section would apply to the ADU and the City's otherwise applicable regulations would apply to the~~

~~other proposal(s). Because ADUs are processed in a streamlined fashion by virtue of their construction on a lot with a primary residential unit, occupancy of a new ADU will be legal only if a primary residential unit is present on the same lot.~~

b. The applicant may elect to submit the ADU and other proposal(s) for combined review by the City. If the applicant makes this election, he or she voluntarily foregoes the regulations described in this Section and the City's otherwise applicable regulations apply.

2. When an ADU or JADU is proposed in conjunction with—and it cannot be constructed independent of—another proposal for which City approval is required under this Code (e.g., new garage, new single-family residence, substantial addition to an existing residence), the following options apply:

a. The applicant may elect to have the City process the ADU or JADU separate from the other proposal(s). If the applicant makes this election, the streamlining described in this Section would apply to the ADU or JADU proposal after the applicant obtains City approval for the other proposal(s) on which ADU or JADU construction depends. ~~Because ADUs are processed in a streamlined fashion by virtue of their construction on a lot with a primary residential unit, occupancy of a new ADU will be legal only if a primary residential unit is present on the same lot.~~

b. The applicant may elect to submit the ADU or JADU and other proposal(s) for combined review by the City. If the applicant makes this election, he or she voluntarily foregoes the regulations described in this regulation and the City's otherwise applicable regulations apply.

3. No certificate of occupancy will be issued for an ADU prior to issuance of a certificate of occupancy for the primary dwelling.

~~F. D. Non-Compliant Proposals. If the above requirements for a Category One or Category Two ADU, above, are not met, the proposed ADU cannot be approved under this Section. Notwithstanding the foregoing any other contrary provisions of this Code, applicants may seek a variance for an ADU in accordance with Chapter 17.33 but not an exception in accordance with Chapter 17.32 seek approval of the unit, addition, or renovation under the City's generally applicable standards and procedures.~~

G. E. Converted Parking. Notwithstanding any other provision of this code, when a private garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU, the spaces are not required to be replaced, as required by California Government Code Section 65852.2(a)(1)(D)(xi). When a private garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU, the spaces contained in such structures shall be replaced to the extent they are required to meet the numerical parking

~~requirements in Section 17.16.2. The replacement spaces may be located in any configuration on the same lot as the ADU, including, but not limited to, enclosed spaces, unenclosed spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. Compliance with this subsection may result in the loss of covered parking associated with a single-family dwelling, for which an exception shall not be required.~~

H. Fees. No impact fees, as defined in California Government Code Section 65852.2(f)(3)(B), shall be imposed on ADUs smaller than seven hundred and fifty (750) adjusted square feet. Impact fees for all other ADUs shall be charged proportionately in relation to the square footage of the primary dwelling unit.

I. F.-Existing Accessory Dwelling Unit. An existing ADU may be enlarged or modified only in accordance with the requirements of this Section.

J. Density. To the extent required by California Government Code Section 65852.2, an ADU or JADU built in conformance with this Section does not count toward the allowed density for the lot upon which the ADU or JADU is located.

K. General Plan and Zoning Designations. ADUs and JADUs are a residential uses that is/are consistent with the City's existing general plan and zoning designations for lots located in the RVL-E, RVL, RL-40, RL-20, RL-15, RL-12, RL-10, RL-6, PD, or RM zoning districts.

17.2.3 - Definitions

...

"Accessory dwelling unit" 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 on the same parcel as a single-family primary dwelling. It shall include permanent provisions for living, sleeping, eating, cooking (see definition of kitchen), and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

1. An efficiency unit, as defined in Health and Safety Code § 17958.1.
2. A manufactured home, as defined in Health and Safety Code § 18007.

This definition is intended to match that in California Government Code Section 65852.2(j)(1).

"Junior accessory dwelling unit" means a residential unit that is no more than five-hundred (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. This definition is intended to match that in California Government Code Section 65852.22(h)(1).