

## **ORDINANCE 2270**

### **ORDINANCE OF THE TOWN OF LOS GATOS AMENDING CHAPTER 29 (ZONING REGULATIONS) OF THE TOWN CODE REGARDING ACCESSORY DWELLING UNITS**

**WHEREAS,** In 2016, Senate Bill 1069 and Assembly Bill 2299 amended Government Code Section 65852.2 regarding accessory dwelling unit regulations; and in 2017, Senate Bill 229 and Assembly Bill 494 further amended Government Code 65852.2, regarding certain provisions for accessory dwelling units; to address the current housing crisis and increase affordable housing opportunities by allowing more flexibility in land use regulations; and

**WHEREAS,** The Town of Los Gatos 2015-2023 Housing Element Enhanced Second Unit Program identified, amending the Town Code to allow new second units to be affordable to lower income households on nonconforming residential lots and in the Hillside Residential Zone (Action HOU-1.2), as a strategy to accommodate the Town's Regional Housing Needs Allocation (RHNA); and

**WHEREAS,** the Town Council wishes to amend the Town Code, to comply with State law and to address Action HOU-1.2 of the Town of Los Gatos 2015-2023 Housing Element; and

**WHEREAS,** On September 27, 2017, the Planning Commission reviewed and commented on the proposed amendments regarding accessory dwelling units, and continued the matter to November 8, 2017 for further consideration; and

**WHEREAS,** on November 8, 2017, the Planning Commission forwarded a recommendation to the Town Council for approval of the proposed amendments with modifications; and

**WHEREAS,** this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on December 5, 2017; and

**WHEREAS,** on December 5, 2017, the Town Council reviewed and commented on the proposed amendments regarding accessory dwelling units, and continued the matter to January 16, 2018 for further consideration; and

**WHEREAS**, this came before the Town Council for public hearing on January 16, 2018, and the Town Council voted to introduce an Ordinance with specific changes identified and agreed upon by a majority of the Council.

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:

SECTION I

Town Code Chapter 29 is hereby amended to read as follows:

AMENDED DEFINITIONS:

**ARTICLE I. DIVISION 1. Sec. 29.10.020. Definitions.**

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*Accessory dwelling unit* means a detached or attached dwelling unit. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation and is generally smaller and located on the same parcel as the primary dwelling unit. An accessory dwelling unit also includes efficiency units and manufactured homes.

- (1) A detached accessory dwelling unit is physically separate from the primary dwelling unit.
- (2) An attached accessory dwelling unit is physically attached to the primary dwelling unit.

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*Primary dwelling unit* means a single-family or two-family dwelling unit located on a lot with no other dwellings on the lot except for accessory dwelling units, whether attached or detached. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation located on the same parcel as the primary dwelling unit.

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AMENDED SECTIONS:

**ARTICLE I. DIVISION 4. Sec. 29.10.150. Number of off-street spaces required.**

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(c) *Outside downtown parking requirements.* The number of off-street parking spaces required for areas outside the downtown is set in this subsection. When a use is not listed in this subsection, the Planning Director shall determine the parking requirements by analogy to the requirements for the listed uses. In addition to other parking requirements, one visitor parking space for each residential unit other than a detached single-family or two-family dwelling shall be required, unless the Planning Commission makes a finding that more or less visitor parking is necessary due to the size or type of housing unit(s).

- (1) *Single-family, residential condominiums and two-family dwellings.* Two (2) parking spaces for each living unit.
- (2) *Accessory dwelling units.* One parking space per unit or bedroom, whichever is less, shall be provided in addition to the required minimum number of parking spaces for the primary dwelling unit. These spaces may be provided in a front setback on a driveway (provided that it is feasible based on specific site or fire and life safety conditions) or through tandem parking.

When a garage is demolished in conjunction with the construction of an accessory dwelling unit, or converted to an accessory dwelling unit, any lost off-street parking spaces required for the primary residence may be located in any configuration on the same lot as the accessory dwelling unit, including as tandem spaces, or by the use of mechanical automobile parking lifts.

- a. Exceptions. No parking spaces shall be required if the accessory dwelling unit meets any of the following criteria:
  1. The accessory dwelling unit is located within one-half mile of a public transit stop.  
The accessory dwelling unit is located within an architecturally and historically significant historic district.
  3. The accessory dwelling unit is within the existing space of a primary residence or an existing accessory structure.
  4. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
  5. When there is a car share vehicle (as defined by the California Vehicle Code) located within one block of the accessory dwelling unit.
  6. When the Director finds that the lot does not have adequate area to provide parking.

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## **ARTICLE I. DIVISION 7. ACCESSORY DWELLING UNITS.**

### **Sec. 29.10.305. Intent and authority.**

This division is adopted to comply with amendments to State Law §65852.2 which mandates that applications for accessory dwelling units be considered ministerially without a public hearing; and sets Town standards for the development of accessory dwelling units in order to increase the supply of affordable housing in a manner that is compatible with existing neighborhoods.

**Sec. 29.10.310. Definitions.**

*Efficiency unit.* As defined by Section 17958.1 of the Health and Safety Code.

*Manufactured home.* As defined by Section 18007 of the Health and Safety Code.

*Nonconforming accessory dwelling units.* A nonconforming accessory dwelling unit is an accessory dwelling unit that exists under the following circumstances:

- (1) A unit which was created or converted lawfully but which due to a zone change or an amendment to the zoning ordinance, has become nonconforming.
- (2) A unit which was created lawfully while within the County, but which upon annexation to the Town, became nonconforming.

*New accessory dwelling unit.* A new accessory dwelling unit is an attached (with either an interior or exterior entrance) or a detached unit, created after December 31, 1987, which includes permanent provisions for living, sleeping, eating, cooking, and sanitation, and is generally smaller and located on the same parcel as the dwelling unit. An accessory dwelling unit also includes efficiency units and manufactured homes.

**Sec. 29.10.305 -Reserved.****Sec. 29.10.320. New accessory dwelling units.**

(a) *Incentive program.* Any accessory dwelling unit developed under an Incentive Program which may be established by Resolution of the Town Council shall be made affordable to eligible applicants pursuant to the requirements of the Incentive Program. A deed restriction shall be recorded specifying that the accessory dwelling unit shall be offered at a reduced rent that is affordable to a lower income renter (less than 80 percent AMI) provided that the unit is occupied by someone other than a member of the household occupying the primary unit.

(b) *Design and development standards.*

- (1) *Number.* Only one (1) accessory dwelling unit may be permitted on a lot. No additional accessory dwelling unit is allowed upon a lot with an existing accessory dwelling unit.
- (2) *Permitted zones.* Accessory dwelling units are allowed on lots in the R-1, R-D, R-M, R-1D, HR, and RC zones.
- (3) *Setbacks.* Attached accessory dwelling units shall comply with the setbacks of the zone for a primary dwelling unit.

No detached accessory dwelling unit may be placed in front of the primary dwelling unit in the R-1, R-D, R-M, and R-1D zones.

Detached accessory dwelling units shall comply with the following minimum setbacks:

- a. Front and side setbacks abutting a street of the zone for a primary dwelling unit.
- b. Rear and side setbacks of five (5) feet in the R-1, R-D, R-M, and R-1D zones.
- c. Setbacks from any other structure located on the same lot of five (5) feet.

- d. Setbacks for a primary dwelling unit, and located within the Least Restrictive Development Area (LRDA), in the HR and RC zones.

An accessory dwelling unit with existing side and rear setbacks sufficient for fire safety shall be permitted if the accessory dwelling unit is contained within the existing space of a primary dwelling unit or accessory structure.

- (4) *Height.* Accessory dwelling units shall not exceed one (1) story in height, and shall not exceed fifteen (15) feet in height, unless the accessory dwelling unit is contained within the existing two-story space of a primary dwelling unit or accessory structure; added to an existing two-story primary dwelling unit; or added above an existing one-story accessory structure on a property with an existing two-story primary dwelling unit in the R-1, R-D, R-M, and R-1D zones.
- (5) *Maximum unit size and maximum number of bedrooms.* The maximum floor area of an accessory dwelling unit is 1,200 square feet. The maximum number of bedrooms is two (2).

Detached accessory dwelling units exceeding a combined square footage of 450 square feet in the R-1, R-D, R-M and R-1D zones shall not be subject to the Administrative Procedure for Minor Residential Projects. Detached accessory dwelling units exceeding a combined square footage of 600 or 1,000 square feet in the HR and RC zones shall not be subject to Development Review Committee or Planning Commission approval.

- (6) *Floor area ratio (FAR) standards.* All accessory dwelling units (attached or detached) are allowed a ten (10) percent increase in the floor area ratio standards for all structures, excluding garages.
- (7) *Lot coverage.* Accessory dwelling units must comply with lot coverage maximums for the zone except with regard to the addition of a single efficiency unit.
- (8) *Parking.* In addition to parking otherwise required for units as set forth in section 29.10.150 of the Town Code, the number of off-street parking spaces required by this chapter for the primary dwelling unit shall be provided prior to the issuance of a building permit or final inspection, for a new accessory dwelling unit. When a garage is demolished in conjunction with the construction of an accessory dwelling unit, or converted to an accessory dwelling unit, any lost off-street parking spaces required for the primary dwelling unit may be located in any configuration on the same lot as the accessory dwelling unit, including as tandem spaces, or by the use of mechanical automobile parking lifts.

- a. *Exceptions.* No parking spaces shall be required if the accessory dwelling unit meets any of the following criteria:

- 1. The accessory dwelling unit is located within one-half mile of a public transit stop.

The accessory dwelling unit is located within an architecturally and historically significant historic district.

3. The accessory dwelling unit is within the existing space of a primary dwelling unit or an existing accessory structure.
  4. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
  5. When there is a car share vehicle (as defined by the California Vehicle Code) located within one block of the accessory dwelling unit.
  6. When the Director finds that the lot does not have adequate area to provide parking.
- (9) *Design, form, materials, and color.* The design, form, roof pitch, materials, and color of a new accessory dwelling unit shall be compatible with the primary dwelling unit and the neighborhood. Entrances serving the accessory dwelling unit shall not be constructed on any elevation facing a public street. Accessory dwelling units shall retain the single-family appearance of the property.
- (10) *Town codes and ordinances.* All accessory dwelling units shall comply with all the provisions of this chapter and other applicable Town codes.
- (11) *Building codes.* The accessory dwelling unit shall comply with applicable building, health and fire codes. The accessory dwelling unit shall not be required to provide fire sprinklers if they are not required for the primary dwelling unit.
- (12) *Denial.* An application may be denied if it does not meet the design and development standards. An application may also be denied if the following findings are made:
- a. Adverse impacts on health, safety, and/or welfare of the public.
- (13) *Conversion of existing floor area.* An accessory dwelling unit shall be permitted if the accessory dwelling unit is contained within the existing space of a primary dwelling unit or accessory structure. The following provisions shall apply:
- a. The accessory dwelling unit shall be located within a zone for a single-family use.
  - b. The accessory dwelling unit shall have separate entrance from the primary dwelling unit.
  - c. The accessory dwelling unit shall have existing side and rear setbacks sufficient for fire safety.
  - d. No parking spaces shall be required for the accessory dwelling unit.
- (14) *Rentals longer than 30 days.* Rentals for durations of less than thirty days, including short-term rentals (as defined by the California Government Code), are prohibited.
- (15) *Maximum number of dogs, cats, or litters.* All accessory dwelling units shall comply with Section 4.40.010 of the Town code.

**Sec. 29.10.325. Nonconforming units.**

(a) *Permits.* The owner of a nonconforming accessory dwelling unit must obtain an accessory dwelling unit permit. Any application received after December 31, 1987, shall be subject to an application fee and may be subject to a civil penalty pursuant to Section 29.20.960(4).

Where an application has been submitted for a nonconforming accessory dwelling unit permit and Town records do not establish its nonconforming status, the property owner will have sixty (60) days from the date the Town provides notice of its findings to submit any facts and evidence to support a claim that the unit is nonconforming as defined in this Article.

If at the end of sixty (60) days evidence has not been submitted by the property owner to establish the accessory dwelling unit is nonconforming to the satisfaction of the Community Development Director, the unit shall be determined to be an existing unlawful accessory dwelling unit pursuant to section 29.10.315 and subject to its regulations.

(b) Units existing at time of annexation. Upon annexation a lawful accessory dwelling unit shall become nonconforming and the owner must either apply for an accessory dwelling unit permit within one (1) year of the date of annexation, or the unit shall be determined to be an unlawful accessory dwelling unit pursuant to section 29.10.315.

(c) Number. A maximum of two (2) nonconforming accessory dwelling units are allowed on a single lot. All other accessory dwelling units on the property must be abated.

(d) Housing code. Nonconforming accessory dwelling units shall comply with the Town's housing code as follows:

- (1) Any nonconforming accessory dwelling unit receiving an accessory dwelling unit permit pursuant to subsection (b) shall be required to comply with the Town housing code.
- (2) Any nonconforming accessory dwelling unit receiving an accessory dwelling unit permit pursuant to subsection (c) shall be required to comply with the Town housing code and all improvements shall be completed within one (1) year from the date of application.
- (3) Where a timely application under subsection (b) or subsection (c) has been filed, and approved, an extension from the compliance date of up to six (6) months may be granted by the Community Development Department for good cause shown. Any extension request for longer than six (6) months may be granted by the Planning Commission upon finding that a hardship exists.
- (4) Remodeling and reconstruction: Remodeling and reconstruction of nonconforming accessory dwelling units shall be as follows:
  - a. Where a timely application under subsection (a) or subsection (b) has been filed and approved, an accessory dwelling unit may be remodeled providing the

building height and floor area do not exceed that which is allowed for a new accessory dwelling unit.

- b. Community Development Director approval is required for the remodeling or reconstruction of an accessory dwelling unit in the case of destruction. The proposed construction shall be designed so as to architecturally harmonize with the surrounding structures so long as the construction does not increase the height or size of the unit. The factors to be considered when reviewing the design of such proposed construction include:
  1. Building height.  
Building materials and compatibility.
  3. Colors and materials.
  4. Setback conformity.
  5. Floor area ratio.

**Sec. 29.10.330. Elimination and/or demolition of existing accessory dwelling units.**

In order to eliminate and/or demolish, without replacement, an approved accessory dwelling unit, the Development Review Committee shall make the finding that the proposed elimination and/or demolition, (without replacement), is consistent with the Town's Housing Element of the General Plan. In order to eliminate and/or demolish an existing accessory dwelling unit, the Development Review Committee must make the demolition findings pursuant to section 29.10.09030.

**Sec. 29.10.335. Expansion of existing or nonconforming accessory dwelling units.**

For the purposes of this section only, expansion of an accessory dwelling unit is defined as increasing the number of bedrooms or adding floor area in excess of thirty (30) square feet. Requests for expansion of any nonconforming accessory dwelling unit shall be subject to the same requirements as a new accessory dwelling unit.

**Secs. 29.10.340—29.10.400. - Reserved.**

**ARTICLE II. DIVISION 7. Sec. 29.20.745. Development Review Committee.**

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- (20) Determines applications for demolition, conversion, and removal of accessory dwelling units.

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**ARTICLE II. DIVISION 7. Sec. 29.20.750. Planning Commission.**

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(22) Forwards a recommendation to the Town Council concerning mobile home park conversion permit applications.

(23) Determines requests for reasonable accommodation when action is not required of the Council, Development Review Committee, or the Planning Director

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**ARTICLE IV. DIVISION 1. Sec. 29.40.015. Accessory buildings.**

In residential zones (defined by section 29.40.010), accessory structures (excluding horse barns and shelters), located on the same site with a permitted use, including private garages and carports, studios for private use, garden structures, greenhouses, hobby shops, recreation rooms and free-standing patio covers are allowed if such accessory structures:

- A. (1) Are not over fifteen (15) feet high and are no more than one (1) story. Lofts which do not have sufficient headroom for occupancy are permitted for storage use only.
- (2) Are not in a required front or side yard.
- (3) Are at least five (5) feet from any other structure located on the same lot.
- (4) Are at least five (5) feet from any property line, except in the R-M zone where no setback is required by this subsection (4).
- (5) Do not occupy more than fifteen (15) percent of the lot, to be calculated exclusive of the required building setbacks. Any accessory structures exceeding a combined square footage of four hundred fifty (450) square feet shall be subject to the Administrative Procedure for Minor Residential Projects.
- (6) When located on a reversed corner lot, do not project beyond the front yard line required on the lot in the rear of such lot.
- (7) Breezeways may be used to provide shelter between buildings.

Accessory structures may have plumbing installed providing the fixtures may be served by a two-inch diameter building drain. Building drains in excess of two (2) inches may be approved by the Planning Director upon good cause shown.

B. *Exceptions.*

- (1) In the R-1 zones, required side and rear yards for accessory structures other than detached accessory dwelling units, may be reduced to no less than three (3) feet from a property line, if an application is approved through the Administrative Procedure for Minor Residential Projects. A reduction in setbacks will not be allowed in the side yard abutting a street.

Criteria to be considered when reviewing accessory structures within reduced setbacks shall include the number and size of structures already within a reduced setback area,

visibility, compatibility with other structures in the neighborhood, historic preservation considerations, privacy and compatibility of historic nature of neighborhoods.

- (2) One (1) accessory structure less than one hundred twenty (120) square feet, is allowed in the required side or rear setbacks without any zoning approvals. Any accessory structure in excess of one will be subject to the requirements set forth in this section.
- (3) In the R-1 zones, required side yard setbacks may be reduced to five (5) feet for detached garages less than four hundred fifty (450) square feet without obtaining approval through the Administrative Procedure for Minor Residential Projects (section 29.20.480).
- (4) Section 29.40.015 does not apply to a detached accessory dwelling unit. A detached accessory dwelling unit shall be subject to the provisions of Division 7 of Article 1 of this chapter.

## SECTION II

With respect to compliance with the California Environmental Quality Act (CEQA), the Town Council finds as follows:

A. This ordinance is not subject to review under CEQA pursuant to sections and 15061(b)(3), in that it can be seen with certainty that there is no possibility that the proposed amendment to the Town Code would have significant impact on the environment; and

B. The proposed Town Code amendments are consistent with the General Plan and its Elements.

## SECTION III

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This Town Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed, and the balance of the ordinance be enforced.

#### SECTION IV

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

#### SECTION V

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on January 16, 2018, and adopted by the following vote as an ordinance of the Town of Los Gatos at a meeting of the Town Council of the Town of Los Gatos on February 6, 2018 and becomes effective 30 days after it is adopted.

In Lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

#### COUNCIL MEMBERS:

AYES: Marcia Jensen, Steve Leonardis, Marico Sayoc, Barbara Spector, Mayor Rob Rennie

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_