

ORDINANCE NO. 3729
AN URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF
MARIN AMENDING TITLE 22 OF THE MARIN COUNTY CODE RELATING TO ACCESSORY
DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS

SECTION I: FINDINGS

1. **WHEREAS**, this Urgency Ordinance includes a set of amendments to the Marin County Development Code, which establishes zoning and subdivision regulations in the unincorporated areas of Marin County. The urgency ordinance amends the provisions related to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling units (JADUs). The proposed Urgency Ordinance amendments to amend existing County Code are listed below by Section and are attached hereto as Exhibit A and are hereby incorporated by reference. All amendments listed are in Marin County Code Title 22.

Article II - Sections:

- 1) 06.050 (Exemptions from Land Use Permit Requirements)
- 2) 08.030 Table 2-1 (Allowed Uses and Permit Requirements for Agricultural and Resource Related Districts)
- 3) 10.030 Tables 2-3 and 2-4 (Residential District Land Uses and Permit Requirements)
- 4) 12.030 Tables 2-6 and 2-7 (Commercial/Mixed Use District Land Uses and Permit Requirements)

Article III – Section:

- 5) 32.120 (Residential Accessory Dwelling Units)

Article IV – Sections:

- 6) 52.020 (Applicability)
- 7) 54.040 (Exemptions)
- 8) 54.045 (Waivers)
- 9) 56.040 (Exemptions)
- 10) 56.050 (Decision and Findings for Accessory Dwelling Units)

2. **WHEREAS**, on October 9, 2019, Governor Newsom signed into law three bills approved by the California Legislature only September 13, 2019, which are intended to increase the State's supply of affordable housing by facilitating the construction of ADUs and JADUs (California Assembly Bill 68, California Assembly Bill 881, and California Senate Bill 13). The new state law is codified primarily in California Government Code Sections 65852.2 and 65852.22 and became effective January 1, 2020; and

3. **WHEREAS**, California Government Code Section 65852.2(a)(4), as amended, provides that any existing local ADU ordinance failing to meet the requirements of the new state law shall be null and void unless and until the local agency adopts a new ordinance complying with California Government Code Section 65852.2. In the absence of a valid local ordinance, the new state law instead provides a set of default standards governing local agencies' regulation and approval of ADUs and JADUs without local regulation; and

4. **WHEREAS**, pursuant to Government Code Section 65858, to protect the public safety, health and welfare, the County Board of Supervisors may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and
5. **WHEREAS**, the local standards for ADUs and JADUs will facilitate the development of these units in the County and are necessary for maintaining orderly growth and development patterns; and
6. **WHEREAS**, an urgency ordinance that is effective immediately is necessary to avoid an immediate threat to public peace, health, and safety as a failure to adopt this urgency ordinance could result in nullification of local values expressed in the County's regulations and result in development inconsistent with orderly growth and development patterns; and
7. **WHEREAS**, this Urgency Ordinance is consistent with and implements State law establishing a framework, process and permitting procedures governing ADUs and JADUs; and,
8. **WHEREAS**, the facts outlined in the recitals in this Urgency Ordinance are true and correct and incorporated by reference. The recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for actions taken in this Urgency Ordinance; and
9. **WHEREAS**, pursuant to Government Code Section 65858, this urgency ordinance shall be effective for forty-five days, and may be extended by further Board action following public notice and hearing for an additional ten months and fifteen days, and subsequently extend the ordinance for one year by a fourth-fifth (4/5) vote of the Board; and,
10. **WHEREAS**, on January 28, 2020, the Board of Supervisors held a duly noticed public hearing on the amendments, reviewed and considered the staff report, other written reports, public testimony and other information contained on the record; and
11. **NOW, THEREFORE, BE IT RESOLVED** that the Marin County Board of Supervisors hereby adopts Urgency Ordinance No. 3729.

SECTION II: EFFECTIVE DATE AND PUBLICATION

This Urgency Ordinance is enacted pursuant to the authority conferred upon the Board of Supervisors by Government Code Sections 25123(d) and 25131 and shall be in full force and effect upon its adoption by a four-fifths vote of the Board and shall be published once before the expiration of fifteen days after its passage, with the names of the Supervisors voting for and against the same, in the *Marin Independent Journal*, a newspaper of general circulation published in the County of Marin.

SECTION III: VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on this 28th day of January 2020 by the following vote:

AYES: SUPERVISORS Dennis Rodoni, Judy Arnold, Damon Connolly, Kathrin Sears
Katie Rice

NOES: NONE

ABSENT: NONE



PRESIDENT, BOARD OF SUPERVISORS

ATTEST:



CLERK

22.06.050 – Exemptions from Land Use Permit Requirements

The following activities, uses of land, and other improvements, are permitted in all zoning districts and do not require a land use permit; however, other permits may be required in compliance with Subsection G., below.

- A. **Sitework.** The installation of irrigation lines, decks, platforms, on-site paths, driveways, and other improvements that do not increase lot coverage, and are not over 18 inches above grade. Improvements that are necessary to meet accessibility requirements, regardless of whether they are subject to building or grading permits, are also exempt in all zoning districts.
- B. **Governmental activities.** Official activities and development of the County, the Marin Emergency Radio Authority, the State or an agency of the State, or the Federal Government on land owned or leased by a governmental agency are exempt from discretionary permits except Coastal Permits.
- C. **Interior remodeling.** Interior alterations that do not:
 - 1. Result in an increase in the gross floor area within the structure;
 - 2. Change the permitted use; and
 - 3. Change the exterior appearance of the structure.
- D. **Repairs and maintenance.** Ordinary repairs and maintenance of an existing improvement, provided that the repairs and maintenance work do not:
 - 1. Result in any change of the approved land use of the site or improvement; and
 - 2. Expand or enlarge the improvement.
- E. **Play structures.** Typical play structures and play equipment that are not required to have building or grading permits by Title 19 or Title 23 of the County Code and do not exceed 15 feet in height.
- F. **Accessory Dwelling Units and Junior Accessory Dwelling Units.** A building permit application within a residential or mixed-use zoning district to create any of the following:
 - 1. One Accessory Dwelling Unit or Junior Accessory Dwelling Unit per lot with a proposed or existing single family dwelling that is consistent with the requirements listed below.
 - a. The Accessory Dwelling Unit or Junior Accessory Dwelling Unit is within the proposed space of a single family dwelling or existing space of a single family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions of the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.
 - b. The unit has exterior access from the proposed or existing single family dwelling.
 - c. The side and rear setbacks are sufficient for fire and safety.

- d. The Junior Accessory Dwelling Unit complies with all the standards listed in Section 22.32.120.C.2.
2. One detached, new construction, Accessory Dwelling Unit that maintains minimum four-foot side and rear yard setbacks for a lot with a proposed or existing single family dwelling. The Accessory Dwelling Unit may be combined with a Junior Accessory Dwelling Unit. The Accessory Dwelling Unit shall not exceed a floor area of 800 square feet or a height of 16 feet above grade.
 3. Multiple Accessory Dwelling Units within the portions of existing multi-family dwelling structures that are not used as livable space, including storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with State building standards for dwellings. At least one Accessory Dwelling Unit is allowed within a multi-family dwelling; Accessory Dwelling Units are allowed for up to 25 percent of the existing multi-family dwelling units.
 4. Not more than two Accessory Dwelling Units that are located on a lot that has an existing multi-family dwelling, but are detached from that multi-family dwelling and are subject to a height of 16 feet above grade and have minimum four-foot side and rear yard setbacks.
 5. An Accessory Dwelling Unit created or legalized pursuant to this subsection F shall not be rented for a term of 30 days or less.

The agency shall not impose as a requirement for projects that are exempt under this section that a legal nonconforming zoning condition be corrected.

G. Utilities. Public utility facilities shall be exempt from land use permit requirements of this Development Code only to the extent provided by Government Code Section 53091, and the California Public Utilities Code.

H. Other permits may still be required. A permitted land use that is exempt from a land use permit or has been granted a land use permit may still be required to obtain Building Permits or other permits before the use is constructed or otherwise established and put into operation. Nothing in this Article shall eliminate the need to obtain any other permits or approvals required by:

1. Other provisions of this Development Code, including any subdivision approval required by Article VI (Subdivisions);
2. Other provisions of the County Code, including but not limited to Building Permits, Grading Permits, or other construction permits if they are required by Title 19, or a business license if required by Title 5; or
3. Any other permit required by a regional, State or Federal agency.
4. All necessary permits shall be obtained before starting work or establishing new uses.

**TABLE 2-1 – ALLOWED USES AND PERMIT REQUIREMENTS FOR
AGRICULTURAL AND RESOURCE-RELATED DISTRICTS (Continued)**

LAND USE (See Article VIII for Definitions)	PERMIT REQUIREMENT BY DISTRICT			See Requirements and Standards in Section:
	A2 Agriculture Limited	A3 to A60 Agriculture and Conservation	ARP Agriculture Residential Planned	

RESIDENTIAL USES

Affordable housing	P	U	P	Chapter 22.22
Agricultural worker housing	P	P	P	22.32.023
Group homes, 6 or fewer residents	P	P	P	
Group homes, 7 or more residents	U	U	U	
Guest house	P	P	P	
Home occupations	P	P	P	22.32.100 22.32.115
Private residential recreational facilities	U	U	U	
Religious residential retreats	U	U	U	
Residential accessory dwelling unit Accessory Dwelling Units, Junior	P	P	P	<u>22.06.050(F)</u> <u>22.32.120</u>
Residential accessory dwelling unit Accessory Dwelling Units	P	P	P	<u>22.06.050(G)</u> <u>22.32.120</u>
Residential accessory uses and structures	P	P	P	22.32.130
Residential care facilities	P	P	P	
Room rentals	P	P	P	
Single-family dwellings (attached or detached)	P	P	P	22.08.040.D
Tennis and other recreational uses	P	P	P	22.32.130

“P” means principally permitted

“U” means conditionally permitted subject to Use Permit approval

“—” means prohibited

See Section 22.08.040 (Agricultural District Development Standards) for applicable standards.

**TABLE 2-3 – ALLOWED USES AND PERMIT REQUIREMENTS
FOR SINGLE-FAMILY RESIDENTIAL DISTRICTS (Continued)**

LAND USE (See Article VIII for Definitions)	PERMIT REQUIREMENT BY DISTRICT					See Requirements and Standards in Section:
	RA Residential Agriculture	RR Residential Restricted	RE Residential Estate	R1 Residential Single Family	RSP Residential Single Family Planned	

RESIDENTIAL USES

Affordable housing	P	P	P	P	P	Chapter 22.22
Group homes, 6 or fewer residents	P	P	P	P	P	
Group homes, 7 or more residents	U	U	U	U	U	
Guest house	P	P	P	P	P	
Home occupations	P	P	P	P	P	22.32.100
Organizational houses	U	U	U	U	U	
Residential Accessory Dwelling Units, Junior	P	P	P	P	P	22.06.050(F) 22.32.120
Residential Accessory Dwelling Units	P	P	P	P	P	22.06.050(GF) 22.32.120
Residential accessory uses and structures	P	P	P	P	P	22.32.130
Residential care facilities	P	P	P	P	P	
Room rentals	P	P	P	P	P	
Single-family dwellings	P	P	P	P	P	
Tennis and other recreational uses	P	P	P	P	P	22.32.130

RETAIL TRADE USES

Sale of agricultural products produced on-site	U	—	—	—	—	
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SERVICE USES

Cemeteries, columbariums, and mortuaries	U	U	U	U	U	
Commercial solar facilities	U	U	U	U	U	
Medical services – Hospitals, Clinics and Laboratories, Extended care	U	U	U	U	U	
Offices, temporary real estate	U	U	U	U	U	
Public utility or safety facilities	U	U	U	U	U	

TRANSPORTATION AND COMMUNICATIONS USES

Pipelines and utility lines	U	U	U	U	U	
Telecommunications facilities	U/P	U/P	U/P	U/P	U/P	22.32.165

“P” means principally permitted

“U” means conditionally permitted subject to Use Permit approval

“—” means prohibited

See Section 22.10.040 (Residential District Development Standards) for applicable standards.

**TABLE 2-4 – ALLOWED USES AND PERMIT REQUIREMENTS
FOR MULTI-FAMILY RESIDENTIAL DISTRICTS (Continued)**

LAND USE (See Article VIII for Definitions)	PERMIT REQUIREMENT BY DISTRICT				See Requirements and Standards in Section:
	R2 Residential Two Family	RMP Residential Multiple Planned	RX Residential Mobile Home Park	RF Floating Home Marina	

RESIDENTIAL USES

Affordable housing	P	P	P	P	Chapter 22.22
Floating home marinas	—	—	—	P	22.32.070
Floating homes	—	—	—	P	22.32.075
Group homes, 6 or fewer residents	P	P	P	P	
Group homes, 7 or more residents	U	U	U	U	
Guest house	P	P	—	—	
Home occupations	P	P	P	P	22.32.100
Mobile home parks	U	U	P	—	22.32.110
Mobile homes	—	—	P	—	22.32.110
Multi-family dwellings	—	P	—	—	
Organizational houses	U	U	—	—	
Residential Accessory Dwelling Units, Junior	P	P	P	P	<u>22.06.050(F)</u> <u>22.32.120</u>
Residential Accessory Dwelling Units	P	P	P	P	<u>22.06.050(G)</u> <u>22.32.120</u>
Residential accessory uses and structures	P	U	P	P	22.32.130
Residential care facilities	P	P	P	P	
Room rentals	P	P	P	P	
Single-family dwellings	P	P	—	P	
Single Room Occupancy (SRO)	—	P	—	—	22.32.085
Tennis and other recreational uses	P	P	P	P	22.32.130
Two-family dwellings	P	P	—	—	

“P” means principally permitted

“U” means conditionally permitted subject to Use Permit approval

“—” means prohibited

See Section 22.10.040 (Residential District Development Standards) for applicable standards.

**TABLE 2-6 – ALLOWED USES AND PERMIT REQUIREMENTS
FOR COMMERCIAL/MIXED USE DISTRICTS (Continued)**

LAND USE (See Article VIII for Definitions)	PERMIT REQUIREMENT BY DISTRICT				See Requirements and Standards in Section:
	VCR Village Commercial Residential	RMPC Residential Commercial Multiple Planned	C1 (5) Retail Business	CP (5) Planned Commercial	

RESIDENTIAL USES

Affordable Housing	P	P	P	P	22.22.24
Group homes, 6 or fewer residents	P	P	—	—	
Group homes, 7 or more residents	U	U	—	—	
Guest houses	P	P	—	—	
Home occupations	P	P	P	P	22.32.100
Multi-family dwellings	U	P	P (4)	P (4)	22.32.150
Organizational houses	U	U	U	—	
Residential accessory dwelling unit <u>Accessory Dwelling Units</u>	P	P	P	P	22.32.120
Residential accessory uses and structures	P	P	P	—	22.32.130
Residential care facilities	P	P	—	P	
Room rentals	P	P	P	P	
Single-family dwellings	P	P	P (3, 4)	P (4)	22.32.150
Single Room Occupancy (SRO)	—	P	—	—	22.32.085
Tennis and other recreational uses	U	P	U	U	22.32.130
Two-family dwellings	U	P	P (3, 4)	—	22.32.150

Notes:

- Dwellings allowed above the first floor only. First floor shall be reserved for non-residential use.
- Dwellings, except for affordable housing, shall be accessory to the primary commercial use. See 22.32.150 (Residential Uses in Commercial/Mixed Use Areas).
- Non-residential development may trigger residential requirements in the C1, CP, AP, and H1 zoning districts pursuant to ~~section~~ Section 22.32.150 – Residential Requirements in Commercial/Mixed Use Districts.

“P” means principally permitted

“U” means conditionally permitted subject to Use Permit approval

“—” means prohibited

See Section 22.12.040 (Commercial/Mixed Use and Industrial District Development Standards) for applicable standards.

**TABLE 2-7 – ALLOWED USES AND PERMIT REQUIREMENTS
FOR COMMERCIAL/MIXED USE AND INDUSTRIAL DISTRICTS (Continued)**

LAND USE (See Article VIII for Definitions)	PERMIT REQUIREMENT BY DISTRICT					See Requirements and Standards in Section:
	AP (5) Admin and Professional	OP Planned Office	H1 (5) Limited Roadside Business	RCR Resort and Commercial Recreation	IP Industrial Planned	
RESIDENTIAL USES						
Affordable Housing	P	P	P	P	U	Chapter 22.22
Group homes, 6 or fewer residents	—	P	U	—	—	
Group homes, 7 or more residents	—	U	U	—	—	
Guest houses	—	P	P	—	—	
Home occupations	P	P	P	—	—	22.32.100
Multi-family dwellings	P(4)	P	P(4)	U	—	
Organizational houses	—	U	U	U	—	
Residential accessory dwelling unit <u>Accessory Dwelling Units</u>	P	P	P	P	—	22.32.120
Residential accessory uses and structures	P	P	P	—	—	22.32.130
Residential care facilities	—	P	U	—	—	
Room rentals	P	P	P	—	—	
Single-family dwellings	P(4)	P	P(4)	U	—	
Single Room Occupancy (SRO)	P	P	P	—	—	22.32.085
Tennis and other recreational uses	—	U	U	—	—	22.32.130
Two-family dwellings	P(4)	P	P(4)	U	—	

Notes:

- Dwellings, except for affordable housing, shall be accessory to the primary commercial use. See 22.32.150 (Residential Uses in Commercial/Mixed Use Areas).
- Non-residential development may trigger residential requirements in the C1, CP, AP, and H1 zoning districts pursuant to ~~section~~ Section 22.32.150 – Residential Requirements in Commercial/Mixed Use Districts.

“P” means principally permitted

“U” means conditionally permitted subject to Use Permit approval

“—” means prohibited

See Section 22.12.040 (Commercial/Mixed Use and Industrial District Development Standards) for applicable standards.

22.32.115 – Non-Agricultural Uses in Agricultural Zoning Districts

This Section applies only in those instances where Table 2-1 expressly refers to this Section. The purpose of applying the following standards is to determine whether a specific non-agricultural land use is accessory and incidental to the primary use of land for agricultural production. The intent of these provisions is to ensure that non-agricultural uses do not become the primary use of agricultural land to the detriment of agricultural production.

A. Permitted use, zoning districts. Non-agricultural uses may be allowed as a principally permitted land use in the following zoning districts: A2, A3 to A60, ARP, C-ARP, C-APZ, O-A, and C-OA, and as allowed by Articles II (Zoning Districts and Allowable Land Uses) and V (Coastal Zone Development and Resource Management Standards) subject to the requirements of this section. This Section does not apply to ARP-1 to ARP-5 zoning districts.

B. Limitations on use:

1. **Accessory Use.** In the aggregate, identified non-agricultural uses shall be accessory and incidental to the primary use of the property for agricultural production. The following factors shall be considered in determining whether a property is used primarily for agricultural production:
 - a. The primary use of the property is consistent with the definition of agriculture; and
 - b. The agricultural products produced on site are sold commercially.
2. **Referrals.** In determining whether a non-agricultural use is accessory and incidental to the primary use of the property for agricultural production, the review authority may refer such a question to such individuals or groups with agricultural expertise as appropriate for a recommendation prior to making a determination. When determining whether a property is primarily used for agricultural production, the review authority may consider the following:
 - a. Whether the areal extent of land dedicated to agriculture is sufficient to support agricultural production; and
 - b. Whether the agricultural producer can demonstrate that agricultural products are sold commercially; and
 - c. Whether the agricultural land is used at a level of intensity that is, and the income derived therefrom is, consistent with similar agricultural activities in the County and in the State.

22.32.120 – Residential Accessory Dwelling Units

A. Purpose. This Section is intended to accomplish the following:

1. Meet the County's projected housing needs and provide diverse housing opportunities;
2. Provide needed income for homeowners;
3. Provide ~~aeccessory dwelling unit~~ Accessory Dwelling Units which are safe and built to

- code;
4. Provide ~~accessory dwelling unit~~ Accessory Dwelling Units which are compatible with the neighborhood and the environment; and
 5. Comply with provisions of State law, including those contained in Section 65852.2 and Section 65852.22 of the California Government Code.

B. Applicability. The provisions of this Section shall apply to residential ~~accessory dwelling unit~~ Accessory Dwelling Units and ~~junior accessory dwelling unit~~ Junior Accessory Dwelling Units.

C. ~~Exemptions.~~

- ~~1. Within a single family residential zone, an application for a building permit to create one accessory dwelling unit per single family residential lot is exempt from the standards of this section if the following applies: (1) the unit is entirely contained within a legal single family residence that was in existence as of January 1, 2017 or a legal residential accessory structure that was in existence as of January 1, 2017; (2) the unit has independent exterior access from the existing residence, and; (3) the side and rear setbacks are sufficient for fire safety. This exemption does not apply if a property owner is developing a new residence on a property and seeking to convert the existing residence on that property to an Accessory Dwelling Unit.~~

C. ~~Junior accessory dwelling unit~~ Accessory Dwelling Unit standards, is exempt. Consistent with section 22.06.050.F, ~~a~~ A property owner may voluntarily have a living space recognized as a ~~j~~ Junior accessory dwelling unit Accessory Dwelling Unit if it is within a single-family residential zoning district and ~~meets all of the following eligibility criteria:~~

- ~~A. 1. The unit shall be no more than 500 square feet in floor area, size and contained entirely within a single family structure. The unit must be within the proposed space of a single family dwelling or existing space of a single family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions of the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.~~
- ~~B. 2. The unit shall have a wetbar, but shall not have a kitchen.~~
- ~~C. 3. The unit shall have a separate entrance from the main entrance to the building, with an interior entry to the main living area. The unit may include a second interior doorway for sound attenuation.~~
- ~~D. 4. T~~ There shall be only one unit shall be the only junior accessory dwelling unit Junior Accessory Dwelling Unit per primary residence on the property.
- ~~E. T~~ 5. The property shall be owner occupied, except that owner occupancy is not required if the owner is a government agency, land trust, or housing organization.
- ~~F. T~~ 6. The property owner has recorded a deed restriction, which shall run with the land, that stipulates the following:

- Aa. A prohibition on the sale of the unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.
- Ab. A restriction on the size and attributes of the unit that shall conform the to section.

A copy of the recorded deed restriction must be provided to the agency.

D. Design Characteristics, Accessory Dwelling Unit Standards. A residential accessory dwelling unit Accessory Dwelling Unit shall be designed and constructed in conformance with the criteria listed below, unless it complies with the exemption criteria provided in Section 22.06.050.F:

1. An accessory dwelling unit Accessory Dwelling Unit shall be built as a permanent residence with a kitchen, as well as both a separate bathroom and separate entrance intended for the use of the occupants.
 2. An accessory dwelling unit Accessory Dwelling Unit shall conform to floor area ratio, and setback regulations applicable to the Zoning District in which the property is located.
 3. The maximum floor area of an accessory dwelling unit Accessory Dwelling Unit in a proposed primary residence or an existing or proposed detached accessory building shall not exceed 1,200 square feet. The maximum floor area of an accessory dwelling unit Accessory Dwelling Unit attached to an existing primary residence shall not exceed 50 percent of the existing residence's floor area.
- An Accessory Dwelling Unit exceeding 1,000 square feet shall contain at least two bedrooms.
2. No passageway shall be required in conjunction with the construction of an accessory dwelling unit Accessory Dwelling Unit.
 - 3.4.
 4. Requirements for utility hookups and fire sprinklers shall comply with California Government Code Section 65852.2.

- E. Parking criteria.** Accessory Dwelling Units are subject to the parking requirements of the Department of Public Works.
- F. Setbacks.** No setbacks shall be required to convert a legal building, or the in-kind reconstruction of a legal building, garage into an accessory dwelling unit Accessory Dwelling Unit. In addition, setbacks of no more than five feet in the rear and side yards shall be required for an accessory dwelling unit that is constructed above a garage.
- G. Building and Septic Code.** The accessory dwelling unit Accessory Dwelling Unit shall meet all applicable building and septic codes adopted by the County.
- H. Density.** Accessory dwelling units and junior accessory dwelling unit Junior Accessory Dwelling Units are accessory uses and do not count towards the allowable density for the lot upon which the accessory dwelling unit Accessory Dwelling Unit is located. The following standards apply:

- ~~1. Only one The accessory dwelling unit~~ Accessory Dwelling Unit and one ~~junior accessory dwelling unit~~ Junior Accessory Dwelling Unit shall be permitted on a lot containing a single-family residence.
 - ~~2. Only two detached accessory dwelling unit~~ Accessory Dwelling Units shall be permitted on lots containing existing multi-family dwellings.
 - ~~1-3. Within existing multi-family structures, the number of accessory dwelling unit~~ Accessory Dwelling Units shall not exceed 25 percent of the existing multifamily dwelling units on the lot, including detached ~~accessory dwelling unit~~ Accessory Dwelling Units, the only additional accessory dwelling unit on the lot. However, a property owner may have both one accessory dwelling unit and one junior accessory dwelling unit on a single lot. ~~Accessory dwelling units and junior accessory dwelling units are accessory uses and do not count towards the allowable density for the lot upon which the accessory dwelling unit is located.~~
- I. Limitation on sale.** An accessory dwelling unit Accessory Dwelling Unit may be rented but shall not be sold or otherwise conveyed separately from the single- or multi-family unit.
 - J. Accessory Dwelling Unit Permitting Procedure.** Applications for Accessory Dwelling Unit Permits shall be approved ministerially without discretionary review or public hearing, pursuant to the Accessory Dwelling Unit Permit requirements established in Chapter 22.56 (Accessory Dwelling Unit Permits).
 - K. Recordation of Residential Accessory Dwelling Unit Permits.** Any Residential Accessory Dwelling Unit Permit granted in compliance with this Section may be recorded in the County Recorder's Office as an informational document in reference to the title of the subject property.
 - L. Periodic report.** The Agency shall periodically prepare a report to the Commission and Board on the status of this Section. The report shall include information about the number, size, type, and rent, as available, of each ~~accessory dwelling unit~~ Accessory Dwelling Unit by neighborhood. The report shall provide a basis for an evaluation of the effectiveness of this Section.

22.32.130 – Residential Accessory Uses and Structures

When allowed in the zoning district applicable to a site, see Section 22.10.030 (Residential District Land Uses and Permit Requirements), specific residential accessory uses and structures are subject to the provisions of this Section. Residential accessory uses include any use customarily related to a residence, including swimming pools, workshops, studios, storage sheds, greenhouses, and garages.

- A. General requirements.** All residential accessory uses and structures are subject to the following standards, except where more restrictive requirements are established by other provisions of this Section for specific uses.

 - 1. Relationship of accessory use to primary use.** Residential accessory uses and structures shall be incidental to the primary or conditionally permitted use. Accessory uses and structures shall not be allowed until a primary or conditionally permitted use or structure has been established on the site, except as provided for in section 22.20.120.
 - 2. Attached structures.** A residential accessory structure that is attached to a primary structure shall comply with all requirements of this Development Code applicable to the

22.54.040 – Exemptions

- A. Reconstruction of legal or legal non-conforming structures that were damaged or destroyed by a natural disaster is exempt from Variance requirements.
- B. No setbacks shall be required to convert a legal building, or the in-kind reconstruction of a legal building, into an Accessory Dwelling Unit. The conversion of garages to accessory dwelling units or construction of accessory dwelling units above garages that encroach into setbacks but otherwise meet the applicable development standards.

22.54.045 – Waivers

A Variance requirement shall be waived and the project shall instead be subject to Chapter 22.42 - Design Review, provided it meets one of the following criteria:

- A. The cubical contents of the structure may only be increased with minor dormers and bay windows that provide headroom or for projects that are addressed in this Waivers section.
- B. In situations where development is proposed within the footprint of a legal or legal non-conforming building, the floor area ratio may increase by an amount not to exceed 35 percent or 300 square feet, whichever is more restrictive, except that such area limitations do not apply to circumstances in flood zones that are addressed below in section 22.54.040.C.
- C. In situations where development is proposed within the footprint of a legal or legal non-conforming building, the floor area ratio may increase above 30 percent if the increase in floor area is due to a Federal or County requirement that an existing structure be raised above the base flood elevation. In this instance, the finished floor of the first level above the base flood elevation shall not be more than 18 inches above the base flood elevation. Floor area underneath the proposed additions does not qualify for this exemption.
- D. Existing legal non-conforming setbacks may be maintained if a structure is being raised to conform to a Federal or County requirement that an existing structure be raised above the base flood elevation. In this instance, the finished floor of the first level above the base flood elevation shall not be more than 18 inches above the base flood elevation. Development underneath the proposed additions does not qualify for this exemption.
- E. The height of a roof of an existing primary structure that encroaches into a required setback is being lowered by any height or is being raised by not more than three feet in height above the existing roof, or to a maximum of 30 feet above grade, whichever is more restrictive.
- F. Detached accessory structures, retaining walls, fences and screening walls, and primary agricultural structures that would otherwise need to meet height and setback requirements, may vary from those requirements.
- G. Primary residential buildings exceeding a height of 30 feet but not exceeding a height of 35 feet above grade in conventional districts.
- H. Roof decks above a lower level of a residence may encroach by as much as 10 feet into a front or rear yard setback, four feet beyond the standard projection allowed in Table 3-1 of section 22.20.090.

H.I. Any encroachment into mandatory setbacks of floor area used for an Accessory Dwelling Unit or Junior Accessory Dwelling Unit.

22.54.050 – Decision and Findings

The Review Authority shall issue a notice of decision in writing with the findings upon which the decision is based, in compliance with State law (Government Code Section 65906). The Review Authority may approve an application, with or without conditions, only if all of the following findings are made:

- A. There are special circumstances unique to the property (e.g., location, shape, size, surroundings, or topography), so that the strict application of this Development Code denies the property owner privileges enjoyed by other property owners in the vicinity and under identical zoning districts.
- B. Granting the Variance does not allow a use or activity which is not otherwise expressly authorized by the regulations governing the subject parcel.
- C. Granting the Variance does not result in special privileges inconsistent with the limitations upon other properties in the vicinity and zoning district in which the real property is located.
- D. Granting the Variance will not be detrimental to the public interest, health, safety, convenience, or welfare of the County, or injurious to the property or improvements in the vicinity and zoning district in which the real property is located.

CHAPTER 22.56 – RESIDENTIAL ACCESSORY DWELLING UNIT PERMITS

Sections:

- 22.56.010 – Purpose of Chapter
- 22.56.020 – Applicability
- 22.56.030 – Application Filing, Processing, and Review of Accessory Dwelling Units
- 22.56.040 – Exemptions
- 22.56.050 – Decision and Findings for Accessory Dwelling Units

22.56.010 – Purpose of Chapter

This Chapter establishes a procedure to allow ~~accessory dwelling unit~~ Accessory Dwelling Units and ~~junior accessory dwelling unit~~ Junior Accessory Dwelling Units.

22.56.020 – Applicability

The provisions of this Section shall apply to ~~accessory dwelling unit~~ Accessory Dwelling Units, including ~~junior accessory dwelling unit~~ Accessory Dwelling Units, in the unincorporated portions of the County. While ~~accessory dwelling unit~~ Accessory Dwelling Unit permits are required, a property owner may have a ~~junior accessory dwelling unit~~ Junior Accessory Dwelling Unit certified by the County on a purely voluntary basis provided it meets all the eligibility requirements, or forego such recognition at the owner's discretion.

22.56.030 – Application Filing, Processing, and Review of Accessory Dwelling Unit Permits

- A. **Filing.** Application for an Accessory Dwelling Unit Permit shall be submitted, filed, and processed in compliance with and in the manner described for ministerial planning permit applications in Chapter 22.40 (Application Filing and Processing, Fees).

Accessory Dwelling Unit Permit applications are available online and at the Agency's public service counter.

- B. **Project review procedure.** Each Accessory Dwelling Unit Permit application shall be analyzed by the Agency to ensure that the application is consistent with the purpose and intent of this Chapter, and the findings specified for ~~accessory dwelling unit~~ Accessory Dwelling Units. If a discretionary permit related to the ~~accessory dwelling unit~~ Accessory Dwelling Unit development is required, findings of consistency with the Countywide Plan and applicable community plan shall be made as part of the approval of the discretionary permit. Once a decision has been rendered on an ~~accessory dwelling unit~~ Accessory Dwelling Unit application, notice of that decision shall be referred to any special districts or County agencies that provide services to the subject property.

- C. **Action on Accessory Dwelling Unit Permit.** The Director shall act upon the Accessory Dwelling Unit Permit after any discretionary permits related to the development have been issued and any appeals related to those discretionary permits have been acted upon.

22.56.040 – Exemptions

- A. ~~Within a single family residential zone, a~~An application for a building permit to create or legalize one ~~an~~ ~~accessory~~ Accessory Dwelling Unit pursuant to Section 22.06.050.F. ~~per single family residential lot is exempt from Accessory Dwelling Unit requirements if the following applies: (1) the unit is entirely contained within a legal single family residence that was in existence as of January 1, 2017 or a legal residential accessory structure that was in existence as of January 1, 2017; (2) the unit has independent exterior access from the existing residence, and; (3) the side and rear setbacks are sufficient for fire safety. This exemption does not apply if a property owner is developing a new residence on a property and seeking to convert the existing residence on that property to an Accessory Dwelling Unit.~~
- B. ~~Junior accessory dwelling unit~~Accessory Dwelling Units are exempt from the requirements of this section and may be certified by the Director provided they meet all the eligibility criteria of section 22.32.120.

22.56.050 – Decision and Findings for Accessory Dwelling Units

The Director may only approve or conditionally approve an application for an Accessory Dwelling Unit Permit if all of the following findings are made:

- A. ~~In the Tamalpais Community Plan Area, the accessory dwelling unit would be located on the same lot on which the owner of record maintains a primary residence. A property owner of an accessory dwelling unit may request an exemption from the Tamalpais owner occupancy requirement for a period of two years for good cause such as temporary job transfer or settlement of an estate that involves the property. Public notice shall be given prior to a decision of exemption. The exemption may be extended for up to two years at a time subject to new public noticing for each exemption. Exemptions may be granted without a public hearing.~~
- BA. The ~~accessory dwelling unit~~Accessory Dwelling Unit meets all Design Characteristics and other standards listed in Section 22.32.120 of this Development Code.
- CB. If the lot is not served by a local sanitary district, adequate on-site sewage disposal will be available in compliance with County and State regulations.
- DC. If the lot is not served by a local water district, adequate well water supplies exist to serve the ~~accessory dwelling unit~~Accessory Dwelling Unit in compliance with County and State regulations.
- ED. The addition of an ~~accessory dwelling unit~~Accessory Dwelling Unit would incorporate materials, colors, and building forms that are compatible with the existing residence on the property.
- FE. An ~~accessory dwelling unit~~Accessory Dwelling Unit shall be located outside of the Stream Conservation Area and identified Wetland Conservation Areas except under the following circumstances: (1) the unit is created within an existing authorized primary or accessory structure through the alteration of existing floor area without increasing the cubical contents of the structure (with the exception of minor dormers, bay windows, and stairwells); and (2)