

ORDINANCE NO. 3704-C.S.

AN ORDINANCE AMENDING TITLE 10 OF MODESTO MUNICIPAL CODE TO AMEND SECTIONS 10-2.102, 10-2.109, 10-2.191, 10-3.101, 10-3.201, 10-3.217, 10-4.102, 10-4.107, 10-4.108, AND 10-4.110 AND TO ADD SECTIONS 10-4.114 AND 10-4.115 REGARDING ACCESSORY DWELLING UNITS, ACCESSORY BUILDINGS, AND SECOND STORY UNITS

WHEREAS, the State of California determined that in the last decade housing production did not keep pace with demand resulting in the lack of housing and in particular lack of affordable housing; and

WHEREAS, in 2017 changes to state law made it easier to provide and develop accessory dwelling units that will contribute to the affordable housing supply; and

WHEREAS, this code amendment will bring the City of Modesto's Zoning Regulations consistent with state law regarding accessory dwelling units; and

WHEREAS, the proposed code amendment also proposes some change to regulations on accessory buildings and second story dwelling units; and

WHEREAS, On April 3, 2019, this code amendment was presented to the City Council Economic and Development Committee and was forwarded to the Planning Commission for recommendation to the City Council; and

WHEREAS, a public hearing was held by the Planning Commission on June 3, 2019, in the Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the proposed code amendment that addresses regulations for accessory dwelling units, accessory buildings and second story units is exempt from CEQA pursuant to

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CEQA Guidelines Section 15303 of the State CEQA Guidelines that exempts construction of small structures.

WHEREAS, after a public hearing held on June 3, 2019, it was found and determined by the Planning Commission that the requested code amendment will not be detrimental to the public health, safety or welfare because providing more housing and especially affordable housing will benefit the community, the requested code amendment will result in an orderly planned use of land because the provision on the size of accessory dwelling unit and limit of one accessory dwelling unit in the single family zone will maintain the single family character, and the requested code amendment is in accordance with the community objectives as set forth in the Modesto Urban Area General Plan and any applicable specific plans(s) because the proposed code amendment will reduce standards for the development of accessory dwelling units and will help provide more affordable housing consistent with the goals of the Housing Element, and

WHEREAS, by Resolution No. 2, adopted on June 3, 2019, the Planning Commission recommended to the Council that the proposed amendment to Sections 10-2.102, 10-2.109, 10-2.191, 10-3.101, 10-3.201, 10-3.217, 10-4.102, 10-4.107, 10-4.108, and 10-4.110 and addition of Sections 10-4.114 and 10-4.115 of the Modesto Municipal Code, be approved, and

WHEREAS, this Code amendment was set for a public hearing on August 7, 2019, before the City Council, at which date and time said duly noticed public hearing of the Council was held for the purpose of receiving public comment on the proposed amendment to Sections 10-2.102, 10-2.109, 10-2.191, 10-3.101, 10-3.201, 10-3.217, 10-4.102, 10-4.107, 10-4.108, and 10-4.110 and addition of Sections 10-4.114 and 10-4.115 of the Modesto Municipal Code, and

WHEREAS, evidence, both written and oral, was duly presented and considered by the

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City Council at the aforesaid public hearing; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

WHEREAS, after a public hearing held on August 7, 2019, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines as follows:

1. The requested change will not be detrimental to the public health, safety or welfare because providing more housing and especially affordable housing will benefit the community
2. The requested change will result in an orderly planned use of land because the provision on the size of accessory dwelling unit and limit of one accessory dwelling unit in the single family zone will maintain the single family character
3. The requested change is in accordance with the community's objectives as set forth in the General Plan and any applicable specific plan(s) because the proposed code amendment will reduce standards for the development of accessory dwelling units and will help provide more affordable housing consistent with the goals of the Housing Element

NOW, THEREFORE, the Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Title 10 of the Modesto Municipal Code, Chapter 2, "Definitions," Article 2, "Definitions," Sections 10-2.102, 10-2.109, and 10-2.191 are hereby amended to be read as follows:

10-2.102 Accessory Building, Structure, and Use

A building, structure, or use that is subordinate to, and the use of which is incidental to, that of the main building, structure or use on the same lot. An accessory building or structure is detached from the main building on the lot. Examples of an accessory building or structure include but are not limited to: work shop, storage shed, garage, carport, shade structure, gazebo, freestanding sign, and antenna. The description of an accessory use is provided in Section 10-3.201.

10-2.109 Building

A structure having a roof usually supported by walls and attached to a foundation is used or intended to be used for supporting or sheltering any use or occupancy. Storage shed, garage, carport, shade structure, and gazebo are included in this definition.

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10-2.191 Structure

That which is built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner attached to the ground in a permanent nature. For the purposes of this Title, the term structure includes building, freestanding sign, antenna, a deck 30 inches or higher but does not include walls or fences seven (7) feet or less in height shall not be considered a structure for the purposes of this Title.

SECTION 2. AMENDMENT OF CODE. Title 10 of the Modesto Municipal Code, Chapter 3, “Land Use Regulations,” Article 1, “Permitted and Conditional Land Uses,” Section 10-3.101, Table 3.1-1 “Permitted and Conditional Land Uses,” Residential Section, is hereby amended to be read as follows:

Table 3.1-1 Permitted and Conditional Land Uses											
Land Use	Zoning Districts										Notes
	R-1	R-2	R-3	P-O	C-1	C-2	C-3	C-M	M-1	M-2	
RESIDENTIAL											
Accessory Uses											
Animals and Fowl	P	P	P	-	-	-	-	-	-	-	See Section 10-3.202
Garage Sales	P	P	P	-	-	-	-	-	-	-	See Section 10-3.206
Home Business	P	P	P	-	-	-	-	-	-	-	See Section 10-3.207
Personal Cannabis Cultivation	P	P	P	P	P	P	P	P	P	P	See Section 10.3.601 et. Seq.
Dwellings											
Accessory Buildings	P	P	P	P	P	P	P	P	P	P	See Section 10-4.114
Accessory Dwelling Unit	P	P	P	-	-	-	-	-	-	-	See Section 10-4.115
Single Family Dwelling	P	P	P	-	-	-	-	-	-	-	In R-1, 1 unit per lot
Second Dwelling in the R-1 Zone	P	-	-	-	-	-	-	-	-	-	See Section 10-3.217
Manufactured Homes	P	P	P	-	-	-	-	-	-	-	See Section 10-3.209
Multiple Family	-	P	P	C	C	C	C	-	-	-	See Section 10-9.1002 b 3 & 10-9.1002 b 5
Mobile Home Parks	-	-	-	-	-	-	-	-	-	-	See Section 10-7.103 b 2
Other Residential Uses within Dwellings											
Lodging and Boarding (3 or fewer persons, 1 dwelling)	P	P	P	-	-	-	-	-	-	-	See Section 10-3.208
Lodging and Boarding (4 or more persons, 1 dwelling)	C	C	P	-	-	-	-	-	-	-	See Section 10-3.208
Lodging and Boarding (3 or fewer persons, 2 dwellings on a lot)	-	P	P	C	C	C	C	-	-	-	See Section 10-3.208
Lodging and Boarding (4 or more persons, 2 dwellings on a lot)	-	C	P	C	C	C	C	-	-	-	See Section 10-3.208

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SECTION 3. AMENDMENT OF CODE. Title 10 of the Modesto Municipal Code, Chapter 3, "Land Use Regulations," Article 1, "Permitted and Conditional Land Uses," Sections 10-3.201 and 10-3.217 are hereby amended to be read as follows:

10- 3.201 Accessory Uses and Buildings.

- (a) Accessory uses and buildings customarily incidental to permitted and conditional uses are permitted.
- (1) Examples of accessory uses in non-residential uses include: pharmacies, gift shops, and cafes within hospitals and clinics; convenience stores and food service establishments within hotel and office complexes; bank tellers and automated teller machines within grocery stores; a caretaker residence within mini-storage facility; barber and beauty shops within residential care facilities; and, accessory commercial uses for a residential development approved in a commercial zone.
 - (2) Examples of accessory uses in residential uses include: accessory dwelling unit, home business and day care within a residence.
 - (3) Accessory buildings are detached from the main building. Examples of residential accessory buildings include accessory dwelling units, storage sheds, carports, and garages.
 - (i) In the R-1 zone or a residential zone where the lot contains only a single family dwelling, an accessory dwelling unit is allowed in accordance to Section 10-4.115.
 - (ii) In the R-1 zone or a residential zone where the lot contains only a single family dwelling, an accessory building is allowed in accordance to Section 10-4.114.
 - (4) The use of shipping containers as defined is not permitted in the R-1, R-2, and R-3 zones.
- (b) For the C-1, C-2, C-3, and C-M Zones, incidental manufacturing, processing, packaging or storing of materials at wholesale is permitted subject to these conditions:
- (1) Not more than twenty-five (25) percent of the gross building area and twenty-five (25) percent of the remaining lot area may be used for these purposes.
 - (2) All manufacturing, processing, packaging or storing of materials shall be in the same line of merchandise as the retail business on the premises and shall only be for the purpose of retail sale on the premises or other commercial premises operated by the same retail business.

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- (c) Legal nonconforming uses are allowed permitted accessory uses. For example, a legal nonconforming grocery store in a residential zone may include a bank teller, and a dwelling unit in a commercial zone may operate a home business or day care home.

10-3.217 Second Dwelling in the R-1 Zone.

- (a) Two (2) single-family dwellings or a duplex on any corner lot are allowed, provided that the driveway serving the off-street parking for one (1) dwelling unit shall have access to one (1) street and the driveway serving the off-street parking for the other dwelling unit shall have access to another street. If the lot has access to an alley, one (1) or both driveways may access to the alley.
- (b) An accessory dwelling unit is allowed on any interior lot in the R-1 Zone or any residential zone where the lot contains only an existing single family dwelling in accordance to Section 10-4.115.

Table 4.1-1 Residential Development Standards						
Development Standards		Zoning Districts			Notes	
		R-1	R-2	R-3		
SETBACK REQUIREMENTS						
Front and Street-Side (corner lot) (minimum in feet)				See Section 10-4.106		
Buildings (except garage, carport, parking space)		15	15	15		
Garage, Carport, Parking Space (Side facing/front facing)		15/2 0	15/2 0	15/2 0		
Side, (interior) (minimum in feet)				See Section 10-4.107		
Buildings, Main - One Story Portion		5	5	5		
Portion	- Two Story	Adjacent to R-1 ⁽¹⁾	10	15	15	See Sections 10-4.107 (a) and 10-4.110 for 2 nd story dwellings
		Not Adjacent to R-1 ⁽¹⁾	10	10	10	
Portion	- Three Story	Adjacent to R-1 ⁽¹⁾	-	-	20	
		Not Adjacent to R-1 ⁽¹⁾	-	-	10	
Accessory Building, Garage, Carport, Parking Space - One Story		5	5	5	See Section 10-4.114	
- Two Stories		-	5	5		

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Accessory Dwelling Unit					See Section 10-4.115	
Rear (minimum in feet)						
Buildings, Main - One Story Portion			10	10	10	See Section 10-4.108 (a)
- Two Story Portion			15	15	15	
Portion	- Three Story	Adjacent to R-1 ⁽¹⁾	-	-	20	
		Not Adjacent to R-1	-	-	15	
Accessory Building, Garage, Carport, Parking Space - One Story			5	5	5	See Section 10-4.108 (b) and 10-4.114
- Two Stories			-	5	5	
⁽¹⁾ Adjacent to R-1 zone includes property zoned R-1 in the City including P-D zones (with R-1 density) and property zoned A-2, R-A, and R-1 in the County.						

SECTION 4. AMENDMENT OF CODE. Title 10 of the Modesto Municipal Code, Chapter 4, “Development Standards,” Article 1, “Residential Zones (R-1, R-1, R-3),” Section 10-4.102, Table 4.1-1 “Residential Development Standards,” Setback Requirements, are hereby amended to be read as follows:

SECTION 5. AMENDMENT OF CODE. Title 10 of the Modesto Municipal Code, Chapter 4, “Development Standards,” Article 1, “Residential Zones (R-1, R-1, R-3),” Sections 10-4.107, 10-4.108, and 10-4.110, are hereby amended to be read as follows:

10-4.107 Side Setback.

- (a) In the R-1 zone, a minimum ten (10) foot setback shall be required for two-story portions of a new dwelling or second-story additions to an existing dwelling where located adjacent to an existing single-story dwelling, and subject to development plan review pursuant to Section 10- 4.110. The ten (10) foot setback does not apply where the subject lot and adjacent lot were created by a final map within the past ten years. The required ten (10) foot setback may be reduced to a minimum of five (5) feet if it can be demonstrated that the additional setback is infeasible due to physical constraints and that the reduced setback is consistent with the Neighborhood Compatibility Guidelines as determined by the Director.
- (b) Use of a side yard by an adjacent property owner is not permissible without consent of the affected property owner, except as specified for that particular subdivision named Walnut Tree Estates, located at Walnut Tree Drive and Merle Avenue, the final map for which was filed on May 20, 1981, in Volume 29 of Maps, Page 90, Stanislaus County Records, the special provisions for permanent use of the side yard which were specified in Ordinance No.2286-C.S. approved on September 4, 1984.

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10-4.108 Rear Setback.

- (a) The minimum rear setback shall be fifteen (15) foot for any building that backs up to a Major Collector, Arterial Street or Expressway.
- (b) The minimum rear setback shall be five (5) feet for any garage, carport, or parking space with access off an alley. The garage or carport may be detached or attached.
- (c) The minimum rear setback for patios covers opened on three sides shall be five (5) feet, except where the lot backs up to a Major Collector, Arterial Street or Expressway, where the setback shall be ten (10) feet.

10-4.110 New Two-Story Dwellings and Accessory Buildings, and Second-Story Additions.

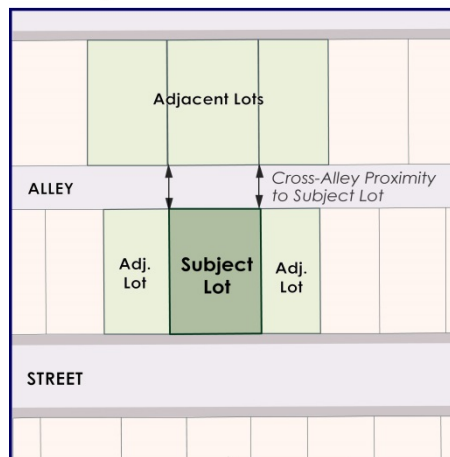
The following regulations apply to lots located in the R-1 zone and to lots in R-2 and R-3 zones adjacent to the R-1 zone:

- (a) All new two-story dwellings and accessory buildings, and all second-story additions to an existing dwelling, balcony, or accessory building, including exterior alterations (such as a new window) to second-story portions of an existing dwelling or accessory building, shall be subject to development plan review by the Director pursuant to Chapter 9, Article 10, for compliance with the Neighborhood Compatibility Guidelines as adopted and amended from time to time by City Council. A proposed project shall be subject to second-story development plan review if the proposed project has any of the following characteristics, as determined by the Director:
 - (1) The height above grade to top plate line is at any point equivalent to two-stories or sixteen (16) feet or more.
 - (2) Windows or balconies are provided at a height from which views of a neighboring rear yard and actively used side yard areas are readily visible.
- (b) Notwithstanding Section 10-4.110(a), above, projects that meet the following criteria are exempt from second-story development plan review.
 - (1) The subject lot and adjacent residential lots were created by (a) final subdivision map(s) recorded within the past ten years. The term “adjacent residential lot” in this subsection means each lot zoned or used residentially that share a common property line or is separated by an alley including those which touch only at a corner. See Figure 4.1-3. This may include additional lots if deemed appropriate by the Director.

- (2) The proposed second story addition, two-story dwelling, or accessory building will have minimal impact on the privacy and use of neighboring rear yard areas and building massing is consistent with the neighboring dwellings, as determined by the Director.
- (3) At least 50 percent of the adjacent lots (see Figure 4.1-4) are occupied by two-story houses.
- (c) In the R-2 and R-3 zones, any development of multiple family dwellings adjacent to property zoned R-1 that exceeds one (1) story shall be subject to development plan review by the Director in accordance with Section 10-4.110 (a), except as specifically excepted therein.

Figure 4.1-3

Adjacent Residential Lots



SECTION 6. ADDITION OF CODE. Title 10 of the Modesto Municipal Code, Chapter 4, “Development Standards,” Article 1, “Residential Zones (R-1, R-1, R-3),” Sections 10-4.114 and 10-4.115, are hereby added to be read as follows:

10-4.114 Accessory Buildings.

The following regulations provided in Table 4.1-2 apply to accessory buildings in the R-1 Zone or any residential zone where the lot contains only an existing single family dwelling (SFD):

Table 4.1-2 Accessory Buildings Development Standards				
Development Standards		Zoning Districts		Notes
		R-1 or Residential Zone with SFD		
FLOOR AREA REQUIREMENTS				
Accessory Building	Lot Size (in sq ft)	Maximum Floor Area (in sq ft)		Combined total if multiple buildings. Must comply with lot coverage. Lots 40,000 square feet or more may ask for an exception per Section 10-9.502.
	Less than 5,000	400	or 50% of main building,	
	5,000 to less than 10,000	600	whichever is less	
	10,000 to less than 20,000	800		
	20,000 or greater	1,000		
SETBACK REQUIREMENTS				
		120 sq ft or less	Greater than 120 sq ft	
Front (minimum in feet)		25	25	
Street Side (minimum in feet)		15	15	
Side and Rear (minimum in feet)	Existing	0	0	Existing setbacks allowed
	New	0	5	
HEIGHT REQUIREMENTS				
Accessory Building (maximum height in stories/feet)		1/16		Higher for garages and carports if deemed appropriate by Director

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10-4.115 Accessory Dwelling Units.

The following regulations provided below and in Table 4.1-3 apply to accessory dwelling units in the R-1 Zone or any residential zone where the lot contains only an existing single family dwelling (SFD). These regulations may be applicable to corner lots as an alternative to the regulations for an allowed duplex provided in Section 10-3.217.

- (1) The property owner shall live in one (1) of the units. Prior to final inspection of any such unit, owner shall record a notice of conditions specifying that owner shall occupy one (1) of the units at all times.
- (2) If there is an existing unit prior to plan approval, the unit must be brought into conformance with the Housing Code prior to occupancy of the accessory dwelling unit.
- (3) Maintaining a single-family dwelling appearance is encouraged through means such as:
 - (i) Attaching the second unit to the first on small or typical sized lots. On large or deep lots, detached units are acceptable.
 - (ii) Putting the second unit entrance to the side or rear of the building so it is not readily visible from the same street as the first unit’s entrance.
 - (iii) Locating parking so that all three (3) spaces are not readily visible from the same street. Alley access for both units is acceptable.
 - (iv) Employing construction materials and architectural styles which blend the units so they appear as a single residence if attached or a single residence and accessory building if detached.
- (4) The City Council may designate, from time to time, by resolution, areas within which accessory dwelling units will not be permitted due to infrastructure constraints relating to water and sanitary sewer.

Table 4.1-3 Accessory Dwelling Unit (ADU) Development Standards				
Development Standards		Zoning Districts		Notes
		R-1 or Residential Zone with SFD		
FLOOR AREA REQUIREMENTS				
ADU (maximum in sq ft)		750		Must comply with lot coverage.
SETBACK REQUIREMENTS				
Front (minimum in feet)		25		
Street Side (minimum in feet)		15		
Side and Rear (minimum in feet)				
Main Dwelling	Conversion within dwelling		-	Existing setbacks
	Expansion	Above garage	5	See Section 10-4.110, second-story review
		Other	-	See Table 4.1-1 for setbacks
Detached Building (Garage, Accessory Building)	Existing	Conversion	0	Existing setbacks allowed
		Expansion 1 st Story	5	No increase of nonconformity
		Expansion 2 nd Story	5	See Section 10-4.110, second-story review
	New		5	

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HEIGHT REQUIREMENTS		
ADU (maximum height in stories/feet)	2/25	
PARKING REQUIREMENTS		
ADU (minimum number parking space)	1 (unless within 0.5 mile of passenger rail station or bus stop)	May be tandem or in existing driveway May be within required setback if uncovered Replace lost parking of main unit may be tandem or in existing driveway

SECTION 8. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15303 of the State CEQA Guidelines that exempts construction of small structures.

SECTION 9. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 10. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of October, 2019, by Councilmember Madrigal, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: Ridenour

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APPROVED: _____
TED BRANDVOLD, Mayor

ATTEST:

By:
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:
ADAM U. LINDGREN, City Attorney

APPROVED AS TO DESCRIPTION:

By:
Community & Economic Development
Department, Planning Division

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FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 8th day of October, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call

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carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour,
Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: _____
MAYOR, TED BRANDVOLD

ATTEST: _____
STEPHANIE LOPEZ, City Clerk

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