

ORDINANCE NO. NS-232

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTE SERENO AMENDING SECTION 10.06.140 (ACCESSORY DWELLING UNITS) AND 10.06.150 (ACCESSORY DWELLING UNIT AMNESTY PROGRAM)

WHEREAS, Governor Newsom signed Senate Bill 897 and Assembly Bill 2221 into law, amending Government Code section 65852.2 to make it easier for property owners to create accessory dwelling units in proposed or existing single family and multifamily homes; and

WHEREAS, AB 345 requires local jurisdictions to authorize the separate sale of accessory dwelling units meeting specified requirements in Government Code Section 65852.26, for benefit of a qualified low or moderate income buyer or nonprofit corporation; and

WHEREAS, the City Council of the City Monte Sereno desires to amend the regulations for accessory dwelling units in the Monte Sereno Municipal Code to be consistent with the new state laws.

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

SECTION 1. Amendment of Section 10.06.140. Section 10.06.140 of the Monte Sereno Municipal Code is amended to read in entirety as follows:

10.06.140 Accessory dwelling units; junior accessory dwelling units; standards and requirements.

Notwithstanding any other provision of this code, an accessory dwelling unit or junior accessory dwelling unit shall not be constructed without prior submission of an application to the Building Official and approval of a permit. The Building Official shall, with the Planning Director, review each application ministerially for compliance with the standards in this Section without public hearing. The decision of the Building Official shall be final, and notwithstanding any other provisions of this code, shall not be subject to further appeal or review to the City Council. The following standards and requirements shall apply to all accessory dwelling units and junior accessory dwelling units, and in the event of conflict with any provision of this code, the below standards shall be deemed to apply:

A. *Accessory Dwelling Unit Standards:*

1. Accessory dwelling units shall be permitted on all residential lots in accordance with the requirements of this Section.
2. The accessory dwelling unit shall be either attached to the existing primary dwelling or located within the living area of the existing dwelling, or attached to an existing accessory structure, or detached from the existing primary dwelling and located on the same lot as the existing primary dwelling. However, separate sale

or conveyance of an accessory dwelling unit shall be permitted where required under Government Code section 65852.26.

3. Size. Accessory dwelling units are limited to the following sizes:

Zoning District	Size Limitation
R-1-8	850 sq. ft. or 1,000 square feet for an accessory dwelling unit that provides more than one bedroom, with or without parking.
R-1-20	850 sq. ft. or 1,000 square feet for an accessory dwelling unit that provides more than one bedroom, with or without parking.
R-1-44	1,200 square feet for an accessory dwelling unit that provides more than one bedroom, with or without parking.
RM-Multi-Family Residential District	850 sq. ft. or 1,000 square feet for an accessory dwelling unit that provides more than one bedroom, with or without parking.
P	850 sq. ft. or 1,000 square feet for an accessory dwelling unit that provides more than one bedroom, with or without parking.
PD	850 sq. ft. or 1,000 square feet for an accessory dwelling unit that provides more than one bedroom, with or without parking.

The floor area of an attached accessory dwelling unit shall not exceed fifty percent (50%) of the existing living area of an existing primary dwelling up to a maximum of 850 square feet, unless the accessory dwelling unit will include more than one (1) bedroom. However, where a restriction to fifty percent (50%) of existing living area would result in a maximum size of less than eight hundred (800) square feet, an attached accessory dwelling unit of no more than eight hundred (800) square feet shall be permitted, subject to the zoning regulations and development standards in this section.

4. Parking. At least one (1) parking space shall be provided for each accessory dwelling unit in addition to the minimum number of parking spaces required for the primary dwelling. No additional driveways shall be permitted, except for corner lots. Parking may be provided in setback areas or in a tandem configuration on an existing driveway, unless the Director determines that that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

Should a garage, carport or covered parking structure be demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the off-street parking spaces shall not be required to be replaced.

No parking shall be required for any accessory dwelling unit that meets any of the following criteria:

- a. The accessory dwelling unit is located within one-half mile of public transit; or
 - b. The accessory dwelling unit is located within an architecturally and historically significant historic district; or
 - c. The accessory dwelling unit is part of the existing primary residence or an existing accessory structure; or
 - d. When onstreet parking permits are required but not offered to the occupant of the accessory dwelling unit.
 - e. When there is a car share vehicle located within one (1) block of the accessory dwelling unit.
 - f. Where an application for construction of an accessory dwelling unit is submitted with an application to construct a new single family dwelling or multi-family dwelling on the same lot, and the accessory dwelling unit satisfies any of the other criteria listed in this paragraph.
5. Access. An accessory dwelling unit which is attached to or within the primary residence on the lot shall not have any direct access to the primary residence but shall have a separate exterior entry which shall not be located on the same side of the primary residence as the principal exterior entry to the primary residence. The entry to any accessory dwelling unit shall be so configured and located that only one (1) main entrance to any property is visible from the adjacent street or road.
6. Locations Permitted. The accessory dwelling unit shall be allowed only on a lot or parcel which is connected to sanitary sewers and has access to a street conforming to City of Monte Sereno street standards.
7. Coverage Limits and Exceptions. The accessory dwelling unit shall comply with the structural and impervious coverage limits of the applicable zoning district. Notwithstanding any provision in this code, should the construction of an accessory dwelling unit cause the lot to exceed the allowed structural or impervious coverages permitted under the applicable zoning district, an eight hundred (800) square foot accessory dwelling unit shall be permitted.
8. Height limits.
 - a. The height limit for a detached accessory dwelling unit shall be a maximum of sixteen (16) feet, except that a detached accessory dwelling unit located with one half a mile walking distance of a major transit stop or high quality transit corridor, as defined in Section 21155 of the Public Resources Code, can have a height limit of eighteen (18) feet plus an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit.
 - b. The height limit for an accessory dwelling unit attached to the main house shall comply with the height limits of the zoning district, except that the accessory dwelling portion may be no more than twenty-five feet in height in any front, side, or rear setback applicable to the main house set forth in Chapter 10.05.
 - c. The height limit for an accessory dwelling unit on a lot with an existing or proposed multi-family, multi-story building shall be eighteen (18) feet.
9. Setbacks.

- a. An accessory dwelling unit shall comply with the front setback required for an accessory structure in the residential zoning district within which it is located, unless the accessory dwelling unit is not more than 800 square feet and there is no alternative location on the lot that would allow for an 800 square foot accessory dwelling unit with four foot side and rear setbacks to be constructed.
 - b. An accessory dwelling unit shall have no less than a four-foot side and four-foot rear yard setback.
 - c. No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit.
 - d. Notwithstanding any other provision of the code, a setback of no more than four (4) feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
10. Design. Accessory dwelling units shall comply with the following design standards:
 - a. The dwelling unit shall use a minimum of two exterior materials that match those of the main house. These exterior materials include, but are not limited to, roofing, siding, and windows.
 - b. The roof pitches used on the dwelling unit shall match those on the main house.
 - c. Accessory dwelling units shall also comply with any applicable objective design standards adopted in the City's design guidelines.
11. No certificate of occupancy for an accessory dwelling unit shall be issued before a certificate of occupancy has been issued for the primary dwelling.
12. Utility Connections. For an accessory dwelling unit constructed within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and that involves an expansion of not more than one hundred fifty (150) square feet beyond the same physical dimensions as the existing accessory structure, the accessory dwelling unit shall not be required to install a new or separate utility connection directly between the accessory dwelling unit and the utility unless the accessory dwelling unit shall be constructed concurrently with a new single-family dwelling.
13. Fire Sprinklers. Accessory dwelling units shall not be required to have fire sprinklers if they are not required for the primary residence. Fire sprinklers shall be considered "required for the primary dwelling unit" in any of the following circumstances:
 - a. When fire sprinklers are currently installed in the primary dwelling unit;
 - b. When fire sprinklers will be installed in a new primary dwelling unit constructed concurrently with an accessory dwelling unit; or

- c. When fire sprinklers will be installed in an existing primary dwelling unit as the result of an addition to the primary dwelling unit, except for an addition solely for the purpose of constructing an accessory dwelling unit, which addition triggers any requirement for retroactive installation of fire sprinklers in the primary dwelling unit.

The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in any existing dwelling.

14. No minimum lot area or lot size. Notwithstanding anything in this code, no minimum lot area or lot size shall be required or imposed for approval of a permit for an accessory dwelling unit.

B. *Junior Accessory Dwelling Unit Standards.* The following provisions shall apply to junior accessory dwelling units:

1. A junior accessory dwelling unit shall not be considered a separate or a new dwelling unit for purposes of applying building or fire codes. Installation of fire sprinklers in a junior accessory dwelling unit of any type shall be required only if they are required for the primary dwelling unit. Fire sprinklers shall be considered "required for the primary dwelling unit" under the circumstances as specified in Subsection A.13 of this Section.
2. Floor Area. The minimum floor area for a junior accessory dwelling unit shall be one hundred fifty (150) square feet. The maximum floor area for a junior accessory dwelling unit shall not exceed five hundred (500) square feet. If the sanitation facility (i.e., bathroom) is shared with the remainder of the single-family dwelling, it shall not be included in the square footage calculation for the junior accessory dwelling unit.
3. Setbacks. Setbacks for a junior accessory dwelling unit constructed with a new single-family dwelling shall be that of the underlying zoning district. No setback shall be required for a junior accessory dwelling unit contained within the existing space of a single-family dwelling or accessory structure. However, as permitted in this section, an expansion to an accessory structure of up to one hundred fifty (150) square feet to accommodate ingress and egress may be constructed only if the following setbacks are maintained:
 - a. A front setback accordance with the applicable zoning district.
 - b. A minimum side yard setback of four feet.
 - c. A minimum rear yard setback of four feet.
4. No parking shall be required for a junior accessory dwelling unit.
5. Coverage Limits. No structural or impervious coverage requirement shall apply to a junior accessory dwelling unit.
6. Height. No height restriction shall apply to a junior accessory dwelling unit; however, the primary structure shall comply with any height restrictions for the zoning district.

7. Utilities. A junior accessory dwelling unit shall not be required to install a new or separate utility connection directly between the junior accessory dwelling unit and the utility.
8. A junior accessory dwelling unit may be constructed on a site that does not meet the minimum lot or parcel size requirements or minimum dimensional requirements of the underlying zoning district, provided that it is constructed in compliance with all building standards and other standards of this division. Notwithstanding anything in this code, no minimum lot area or lot size shall be required or imposed for approval of a permit for a junior accessory dwelling unit.
9. An expansion to an accessory structure of up to one hundred fifty (150) square feet to accommodate ingress and egress for a proposed junior accessory dwelling unit must meet applicable design criteria in Subsection A.10 of this Section.
10. A junior accessory dwelling unit shall include an efficiency kitchen, including a cooking facility with appliances and a food preparation counter and storage cabinets.

C. Owner occupancy and use restrictions.

1. Accessory dwelling units shall not be subject to an owner occupancy restriction. For accessory dwelling units permitted prior to January 1, 2020, the City Planner is authorized to record such documents as may be required to remove any existing deed restrictions requiring owner occupancy, upon application by the current property owner and payment of any application fee as may be established by resolution of the City Council.
2. For junior accessory dwelling units, owner-occupancy is required unless the owner is a governmental agency, land trust, or housing organization. The owner may reside in either the remaining portion of the primary structure or the newly created junior accessory dwelling unit.
3. The following restrictions shall apply to junior accessory dwelling units unless the owner is a government agency, land trust, or housing organization:
 - a. The property owner shall record a deed restriction with the County Recorder Office and file a copy of the recorded deed restriction with the City. The deed restriction shall prohibit the sale or other conveyance of the junior accessory dwelling unit separate from the single-family dwelling; specify that the deed restriction runs with the land and is therefore enforceable against future property owners; and restrict the size and features of the junior accessory dwelling unit in accordance with this Section.
 - b. The site's owner may at any time offer for rent either the single-family dwelling unit or the junior accessory dwelling unit. The site's owner shall be required to reside in the single-family dwelling unit as its primary residence at any time while the junior accessory dwelling unit is occupied by a tenant.
 - c. A site's owner shall not allow occupancy of a junior accessory dwelling unit by a tenant for any reason, with or without payment of rent, unless the site owner maintains occupancy of the primary dwelling unit as its primary residence.

- D. *Short-term Rentals Prohibited.* No accessory dwelling unit or junior accessory dwelling unit shall be rented for a period of less than thirty (30) consecutive days.
- E. *Waiver of fees.* The planning fees associated with an accessory dwelling unit shall be waived in the event the owner agrees to rent the accessory dwelling unit for a period of no less than ten (10) years to people who qualify as low income or very low income households. Such agreement shall be evidenced by a deed restriction recorded against the property on which the accessory dwelling unit is located and shall be recorded prior to the issuance of a certificate of occupancy for the accessory dwelling unit. For purposes of this paragraph, "low-income household" means a household with an adjusted income which is not less than fifty (50%) nor more than eighty percent (80%) of median income. "Very-low-income household" means a household with less than fifty (50%) of median income.
- F. *Applicable Animal Regulations.* The number of animals which may be kept on each lot as specified in the zoning regulations for the residential zoning district within which the lot is situated, shall remain unchanged after construction of an accessory dwelling unit or junior accessory dwelling unit.
- G. *Enforcement.* Enforcement of notices to correct a violation of any provision of any building standard for any accessory dwelling unit shall comply with Section 17980.12 of the Health and Safety Code.
- H. *State Law Mandated Approval.* Notwithstanding anything in this code to the contrary, the Building Official shall ministerially approve permits required to create any of the following within a residential or mixed-use zone:
 - 1. One (1) accessory dwelling unit and one (1) junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:
 - 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 one hundred fifty (150) square feet beyond the same physical dimensions as 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 accessory dwelling unit has exterior access that is separate from the exterior entrance for 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 the standards for a junior accessory dwelling unit set forth above.
 - 2. One detached, new construction, accessory dwelling unit per lot, that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling, is subject to the following requirements:
 - a. A total floor area limitation of not more than eight hundred (800) square feet.
 - b. A height limitation of sixteen (16) feet, or 18 feet if within one-half mile walking distance of a major transit stop or high-quality transit corridor as defined in Section 21155 of the Public Resources Code, plus an additional

two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit.

The new construction detached accessory dwelling unit in this Subsection may include a junior accessory dwelling unit described in Subsection H.1 above.

3. On a lot that has an existing multi-family dwelling, not more than two (2) detached accessory dwelling units that are located, subject to a height limit of 18 feet and four-foot rear yard and side yard setbacks.
4. Conversion of portions of existing multi-family dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, into new accessory dwelling units, provided that each unit shall comply with state building standards for dwellings. The number of new accessory dwelling units authorized for conversion under this Subsection shall not exceed twenty-five percent (25%) of the existing dwelling units in the multi-family dwelling structure or one (1) new accessory dwelling unit, whichever is greater.

Existing multi-family dwellings with a side or rear yard setback of less than four feet shall not be required to be modified as part of a condition of approving an accessory dwelling unit.

- I. *Numerical limitations.* The total number of accessory dwelling units and junior accessory dwelling units per lot or parcel shall not exceed the total number of such units that that may be permitted under Subsection H.
- J. Pursuant to Government Code Section 65852.21(f), no accessory dwelling unit or junior accessory dwelling unit shall be permitted on any lot if (1) an urban lot split has been approved pursuant to chapter 13.06 on such lot; and (2) two residential units have been approved for construction on each lot of the urban lot split pursuant to section 10.05.080.

SECTION 2. Amendment of Section 10.06.150. Section 10.06.150 of the Monte Sereno Municipal Code is amended to read in entirety as follows:

10.06.150 - Accessory dwelling unit amnesty program.

Owners of unpermitted accessory dwelling units and junior accessory dwelling units which were constructed or otherwise in existence prior to December 31, 2020, may apply for a retroactive building permit in accordance with Health and Safety Code section 17958.12 without being subject to penalty for violation of this code.

In accordance with Government Code section 65852.23, no permit shall be denied for units constructed before January 1, 2018, for violations of building standards under Health and Safety Code 17960 et seq., or non-compliance with state or local accessory dwelling unit regulations, unless the correction of the violation is necessary to protect the health and safety of the public or the occupants of the structure.

SECTION 3. Environmental Review.

The City Council finds and determines that enactment of this Ordinance is statutorily exempt from the provisions of the California Environmental Quality Act ("CEQA"),

pursuant to California Public Resources Code Section 21080.17 as this action is to adopt an ordinance to implement the requirements of sections 65852.2 of the Government Code.

SECTION 4. Effective Date.

This ordinance shall be in full force and effective 30 days after its adoption.

SECTION 5. Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision of such Ordinance and shall not affect the validity of the remaining portions thereof.

SECTION 6. Certification.

The City Clerk shall cause this ordinance to be posted and/or published in the manner required by law.

This Ordinance was introduced at the meeting of the City Council on the 15th day of November 2022, and was adopted at a regular meeting of the City Council on the 20th day of December 2022, by the following vote:

AYES: CRAIG, ELLAHIE, TURNER, WOLSHEIMER AND MEKECHUK

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

DocuSigned by:

3CARD710B5C4ED
Bryan Mekechuk, Mayor

DocuSigned by:

486E81727D0A486
Attest
Gloisy Gonzalez-Langarica, City Clerk

Approved as to form:

DocuSigned by:

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Sergio Rudin, City Attorney