

## **ORDINANCE NO. 4307**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, APPROVING CODE AMENDMENT (CODE 14672-2020) AMENDING SECTION .5809-26 (ACCESSORY DWELLING UNITS) OF THE CITY OF POMONA ZONING ORDINANCE PERTAINING TO ACCESSORY DWELLING UNIT AND JUNIOR ACCESSORY DWELLING UNIT REGULATIONS**

**WHEREAS**, in 2019, the California Legislature approved, and the Governor signed into law a number of bills (“2019 ADU Laws”) that, among other things, amended Government Code section 65852.2 and 65852.22 to impose new limits on local authority to regulate Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs); and

**WHEREAS**, the City adopted Ordinance No. 4278 and Ordinance No. 4281, respectively, in order to ensure the City’s ADU regulations were fully compliant with the State’s 2019 ADU Laws; and

**WHEREAS**, in September of 2020, the California Legislature approved, and the Governor signed into law, Assembly Bill 3182 (“AB 3182”); and

**WHEREAS**, among other things, AB 3182 clarifies that if a City does not act on a complete ADU application within 60 days (subject to limited exceptions), the application is deemed approved; and

**WHEREAS**, consistent with the 2019 ADU Laws, the City currently allows construction of one ADU or JADU (with only a building permit) when the ADU or JADU is on a lot with a proposed or existing single-family dwelling and located within the space of a single-family dwelling or within the space of an existing accessory structure. Following AB 3182, the City must now allow (with only a building permit) construction of both an ADU and JADU in such circumstances; and

**WHEREAS**, in December of 2020, the California Department of Housing and Community Development (“HCD”) released , an update to its publication titled “Accessory Dwelling Unit Handbook (‘Handbook’).” The updated publication provides a summary of the state regulations as well additional policy interpretations not identified in the 2019 ADU Laws; and

**WHEREAS**, in light of AB 3182 and based on the policy interpretations provided in the Handbook, City staff has determined it necessary to update the City’s existing ADU regulations accordingly to maintain compliance with State law;

**WHEREAS**, the City desires to maintain full compliance with State law; and

**WHEREAS**, the 2019 ADU Laws do not provide standards specific to ADUs located in hillside areas; and

**WHEREAS**, the City's existing ADU regulations do not provide standards specific to ADUs located in hillside areas; and

**WHEREAS**, due to topography in hillside areas, certain existing ADU regulations may impose negative impacts to the public health, safety, and welfare properties located in hillside areas; and

**WHEREAS**, the City desires to limit the impact of certain ADU regulations in hillside areas; and

**WHEREAS**, in addition to the foregoing, this ordinance includes other minor staff-initiated amendments that will add clarity to the City's ADU regulations for the benefit of staff and the general public; and

**WHEREAS**, the City of Pomona has duly initiated Code Amendment (CODE 14672-2020);

**WHEREAS**, the Planning Commission of the City of Pomona, after giving notices thereof as required by law, held a public hearing on June 23, 2021 concerning Code Amendment (CODE 14672-2020) and carefully considered all pertinent testimony and the staff report offered in the case as present;

**WHEREAS**, on June 23, 2021, the Planning Commission of the City of Pomona recommend to the City Council the approval of Code Amendment (Code 14672-2020) with a 7-0-0-0 vote;

**WHEREAS**, the City Council of the City of Pomona has, after giving notice thereof as required by law, held a public hearing on July 19, 2021, concerning the requested Code Amendment (CODE 14672-2020);

**WHEREAS**, the City Council of the City of Pomona, at its regularly scheduled public meeting on July 19, 2021 approved the introduction and first reading of an Ordinance for Code Amendment (CODE 14672-2020) with a 7-0-0-0 vote; and

**WHEREAS**, the City Council has carefully considered all pertinent testimony and the staff report offered in the case as presented at the public hearing.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Pomona as follows:

**SECTION 1.** The City Council hereby finds that the foregoing recitals are true and correct and are incorporated herein as substantive findings of this Ordinance.

**SECTION 2.** The City Council, exercising independent judgment, finds and determines that this ordinance is statutorily exempt from the provisions of the California Environmental Quality Act (“CEQA”). Under California Public Resources Code section 21080.17, CEQA does not apply to the adoption of an ordinance by a city or county implementing the provisions of section 65852.2 of the Government Code, which is California’s ADU law (and which also regulates JADUs, as defined by section 65852.22). Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State’s ADU law. In addition to being statutorily exempt from CEQA, the proposed ordinance is also categorically exempt from CEQA under the Class 3 exemption set forth in State CEQA Guidelines section 15303. The Class 3 exemption categorically exempts from CEQA, among other things, the construction and location of new, small structures and the conversion of existing small structures from one use to another. Section 15303 specifically lists the construction of appurtenant accessory structures and garages as examples of activity that expressly falls within this exemption. Here, the ordinance is categorically exempt under the Class 3 exemption because the ordinance regulates the conversion of existing structures into, and the new construction of, ADUs and JADUs, which are, by definition, structures that are accessory to a primary dwelling on the lot. Moreover, the City Council finds that none of the “exceptions” to the use of the Class 3 exemption, set forth in State CEQA Guidelines section 15300.2, apply here. Specifically, the City Council finds that the ordinance will:

1. Location. Not result in the construction of ADUs or JADUs within a particularly sensitive environment because these accessory structures will necessarily be built on a lot already developed with a primary dwelling.
2. Cumulative Impact. Not result in a potentially significant cumulative impact. Properties would generally be limited to one ADU and one JADU per lot. Based on historical ADU development, it is not foreseeable that the proposed ordinance would result in a succession of projects of the same type and in the same place. The ordinance will restrict ADUs to areas zoned and designated for such development, and places further restrictions on the allowable size and scale to ensure that any ADU is consistent with surrounding development.
3. Significant Effect. Not result in a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. As indicated in the

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City's General Plan, the City is nearly built out, with only 4% still designated as vacant and largely urbanized. The ordinance will restrict ADUs and JADUs to areas zoned to permit single-unit and multi-unit residential development that are not located within sensitive resource areas. Because of this ADUs and JADUs will be constructed in areas that are generally fully developed and intended for residential development which is not unusual. The City's standards are intended to offer significant protections against out-of-scale new development. As such, the effect of the proposed provisions would be to provide further environmental protections and would not have a significant effect on the environment.

4. Scenic Highway. Not result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway because there are no designated state scenic highways located within the City of Pomona according to the City's General Plan.
5. Hazardous Waste Site. Not be located on a hazardous waste site included on any list compiled pursuant to § 65962.5 of the Government Code as the ordinance requires that the site already contain a single-family residence or would allow a new single-family residence to be constructed simultaneously and this condition would have been verified upon construction of the home.
6. Historic Resources. Not result in a substantial adverse change in the significance of a historical resource as any ADU will need to either comply with standards that protect historic properties or be further subject to historic review and approval by the City of Pomona Historic Preservation Committee.; and

**SECTION 3.** Based on consideration of the whole record before it, including but not limited to, the staff report, public testimony received at the public hearing on this matter, and evidence made part of the public record, the City Council hereby finds that the proposed Code Amendment is in the public interest and in the interest of the furtherance of the public health, safety, and welfare and is, as a matter of law, consistent with the Pomona General Plan pursuant to Government Code Section 65852.2(a)(1)(C).

**SECTION 4.** The City Council of the City of Pomona hereby approves Code Amendment (CODE 14672-2020) amending Section .5809-26(C) of the City of Pomona Zoning Ordinance per the new underlined language as follows:

- C. Definitions. For the purpose of this section, the following terms shall have the following meanings:

1. Accessory Dwelling Unit. An Accessory Dwelling Unit or ADU means an attached or a detached residential dwelling unit that provides complete independent living facilities (permanent provisions for living, sleeping, eating, cooking, and sanitation) for one or more persons and is located on a lot with a proposed or existing primary residence. An ADU also includes the following:
  - a. An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code; and
  - b. A manufactured home, as defined by Section 18007 of the California Health and Safety Code.
2. Accessory Dwelling Unit, Attached. An Attached ADU means an ADU that is newly constructed and attached to the Primary Dwelling Unit. An Attached ADU may be located, in part, within the existing floor area of the Primary Dwelling Unit.
3. Accessory Dwelling Unit, Detached. A Detached ADU means an ADU that is newly constructed and not attached to the Primary Dwelling Unit or multi-unit dwelling. A Detached ADU may be attached to an Accessory Structure (e.g. garage).
4. Accessory Dwelling Unit, Interior. An Interior ADU means an ADU that is located entirely within the existing space of a Primary Dwelling Unit, multi-unit dwelling, or Accessory Structure.
5. Accessory Structure. Accessory Structure means a structure that is accessory to and incidental to that of the Primary Dwelling Unit and that is located on the same lot.
6. Bedroom. An unsubdivided portion of the interior of a dwelling unit, at least seventy square feet in area. A bedroom shall be provided with a separate closet.
7. Cooking Facility. A Cooking Facility means an area containing a refrigeration appliance, a kitchen sink and cooking appliance, each having a clear working space of not less than 30 inches. "Cooking appliance" includes any appliance capable of cooking food, including a range, stove, oven, microwave, or hot plate, but not including a toaster or electric kettle.

8. Crawl Space. Crawl Space means an underfloor space that is not a basement as defined in the 2019 California Residential Code. Any crawl space taller than thirty-six inches shall be included in the calculation of the total floor area for an ADU.
9. Floor Area. Floor Area, as defined in the 2019 California Building Code, means the floor area within the inside perimeter of the exterior walls of the building under consideration, exclusive of vent shafts and courts, without deduction for corridors, stairways, ramps, closets, the thickness of interior walls, columns or other features. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. The gross floor area shall not include shafts with no openings or interior courts.
10. Historic Properties. Historic Properties mean those structures and properties listed on the National Register of Historic Places, California Register of Historic Places, Pomona Register of Historic Properties, or any property in a designated historic district.
11. Junior Accessory Dwelling Unit. Junior Accessory Dwelling Unit or JADU, as defined in Section 65852.2 of the Government Code, means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A JADU may include separate sanitation facilities, or may share sanitation facilities with the existing structure.
12. Living Area. Living Area means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any Accessory Structure as defined in Section 65852.2 of the Government Code.
13. Nonconforming Zoning Condition. Nonconforming Zoning Condition means a physical improvement on a property that does not conform with current zoning standards.
14. Owner. Owner means the property owner on the latest equalized property tax assessment roll. If the Owner is not a natural person or group of natural persons (e.g. the Owner is a trust or corporation), then the Owner(s) shall designate a natural person for the purpose of satisfying the owner occupancy requirements set forth in Subsection (F)(6). The Owner(s) designated natural person(s) shall reside on site, shall have authority to bind the owner in all matters related to the site, and shall not pay rent or other compensation, nor provide services to the owner.

15. Owner-occupancy. Owner- occupancy means that an Owner currently resides on the property in either the Primary Dwelling Unit, ADU or JADU.
16. Passageway. Passageway means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU as defined in Section 65852.2 of the Government Code.
17. Primary Dwelling Unit. Primary Dwelling Unit means any legally established, single-unit dwelling, existing or proposed, located on the same lot as an ADU or JADU.
18. Proposed Dwelling. Proposed Dwelling means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
19. Public Transportation. Public Transportation means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
20. Tandem Parking. Tandem Parking means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another as defined in Section 65852.2 of the Government Code.

**SECTION 5.** The City Council of the City of Pomona hereby approves Code Amendment (CODE 14672-2020) amending Section .5809-26(D)(1) of the City of Pomona Zoning Ordinance per the new underlined language and deleted ~~stricken~~ language as follows:

1. Building-permit only. If an ADU or JADU complies with each of the general requirements in subsection (F) “General ADU and JADU Requirements” below, it is allowed with only a building permit in the following scenarios:
  - a. Interior ADU on Single-unit Lot. One Interior ADU as described in this subsection (D)(1)(a) and one JADU on a lot with a proposed or existing single-unit dwelling on it, where the ADU or JADU:
    - i. Is either within the space of a proposed Primary Dwelling Unit; within the existing space of a Primary Dwelling Unit; or within the existing space of an Accessory Structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress.

1. An existing Accessory Structure of any size may be converted to an Interior ADU.
  2. Any proposed expansions greater than the 150 additional square feet limited to accommodating ingress and egress are not permitted.
- ii. Has exterior access that is independent of that for the Primary Dwelling Unit.
  - iii. Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes.
  - iv. No other development standards other than those identified in this subsection (D) Ministerial Approvals, as applicable, and subsection (F) General ADU standards shall be required.
- b. Limited Detached ADU on Single-unit Lot. One detached, new-construction ADU on a lot with a proposed or existing Primary Dwelling Unit (in addition to any JADU that might otherwise be established on the lot under subsection (D)(1)(a) “Interior ADU on Single-unit Lot“ above), if the Detached ADU satisfies the following limitations:
- i. The side- and rear-yard setbacks are at least four (4) feet.
  - ii. The total floor area is eight-hundred (800) square feet or smaller.
  - iii. The peak height above grade is sixteen (16) feet or less.
  - iv. No other development standards other than those identified in this subsection (D) Ministerial Approvals, as applicable, and subsection (F) General ADU standards shall be required.
- c. Interior ADU on Multi-unit Lot. One or more ADUs within portions of existing multi-unit dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each Interior ADU complies with state building standards for dwellings. Under this subsection (D)(1)(c), At least one Interior ADU is allowed within



an existing multi-unit dwelling, up to a quantity equal to 25 percent of the existing multi-unit dwelling units.

- i. For the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multi-unit dwelling structure and multiple detached single-unit dwellings on the same lot are not considered multi-unit dwellings.
  - ii. No other development standards other than those identified in this subsection (D) Ministerial Approvals, as applicable, and subsection (F) General ADU standards shall be required.
- d. Limited Detached ADU on Multi-unit Lot. No more than two Detached ADUs on a lot that has an existing multi-unit dwelling if each Detached ADU satisfies the following limitations:
- i. The side- and rear-yard setbacks are at least four (4) feet.
  - ii. The peak height above grade is sixteen (16) feet or less.
  - iii. For the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multi-unit dwelling structure and multiple detached single-unit dwellings on the same lot are not considered multi-unit dwellings.
  - iv. No other development standards other than those identified in this subsection (D) Ministerial Approvals, as applicable, and subsection (F) General ADU standards shall be required.

**SECTION 6.** The City Council of the City of Pomona hereby approves Code Amendment (CODE 14672-2020) amending Section .5809-26(D)(3) of the City of Pomona Zoning Ordinance per the new underlined language and deleted ~~stricken~~ language as follows:

3. Process and Timing.

- a. An ADU permit is considered and approved ministerially, without discretionary review or a hearing.

b. The City must act on an application to create an ADU or JADU within 60 days from the date that the City receives a completed application. If the City does not act upon the completed application within 60 days, the application is deemed approved unless either:

i. The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or

ii. ~~In the case of a JADU and~~ When the application to create an ADU or JADU is submitted with a permit application to create a new single-family dwelling on the lot, the City may delay acting on the permit application for the ADU or JADU until the City acts on the permit application to create the new single-family dwelling, ~~But~~ the application to create the ADU or JADU will still be considered ministerially without discretionary review or a hearing.

**SECTION 7.** The City Council of the City of Pomona hereby approves Code Amendment (CODE 14672-2020) amending Section .5809-26(F)(2) of the City of Pomona Zoning Ordinance per the new underlined language as follows:

2. Fire Sprinklers. Fire sprinklers are required in an ADU if sprinklers are required in the primary residence. For purposes of this paragraph, in the case of multi-unit structures, the entire residential structure shall be considered the primary residence.

**SECTION 8.** The City Council of the City of Pomona hereby approves Code Amendment (CODE 14672-2020) amending Section .5809-26(G)(2) of the City of Pomona Zoning Ordinance per the new underlined language as follows:

2. Number of units allowed.
  - a. No more than one ADU may be allowed on the same lot as a Primary Dwelling Unit.
  - b. No more than one ADU may be permitted on lots with multiple detached single-unit dwellings.

- c. A structure with two or more attached dwellings on a single lot is considered a multi-unit dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multi-unit dwellings for the purposes of Section .5809-26 of the City of Pomona Zoning Ordinance.

**SECTION 9.** The City Council of the City of Pomona hereby approves Code Amendment (CODE 14672-2020) amending Section .5809-26(G)(4) of the City of Pomona Zoning Ordinance per the new underlined language and deleted ~~stricken~~ language as follows:

4. Unit size.

a. For lots less than 7,200 square feet in area.

- i. The total floor area of an Attached ADU may not ~~exceed fifty (50%) percent of the total living Area of the Primary Dwelling Unit, however, in no case shall an Attached ADU~~ exceed eight hundred fifty (850) square feet for a studio or one bedroom unit or one thousand (1,000) square feet for a unit with two or more bedrooms.
- ii. The total floor area of a Detached ADU with no more than one bedroom may not exceed eight hundred fifty (850) square feet.
- iii. The total floor area of a Detached ADU with two or more bedrooms may not exceed one thousand (1,000) square feet.
- iv. In no case shall the total floor area of an ADU be smaller than two hundred (220) square feet in accordance with California Building Code section 1208.4.

b. For lots 7,200 square feet in area or greater.

- i. The total floor area of an Attached ADU may not exceed ~~fifty (50%) percent of the total Living Area of the Primary Dwelling Unit, however, in no case shall an Attached ADU~~ exceed one thousand two hundred (1,200) square feet ~~for a unit with two or more bedrooms.~~

- ii. The total floor area of an Attached ADU or Detached ADU may not exceed one thousand two hundred (1,200) square feet in total floor area.
- iii. In no case shall the total floor area of an ADU be smaller than two hundred (220) square feet in accordance with California Building Code section 1208.4.
- c. For lots of any size.
  - i. Any Interior ADU that does not comply with subsection (D)(1)(a) Interior ADU on Single-unit Lot, shall be subject to all applicable developments standards identified in subsection (G) Specific ADU Requirements, such as, Coverage, Yards, etc.
- d. Application of other development standards in this subsection (~~FG~~) “~~General ADU and JADU~~ Specific ADU Requirements”, such as lot coverage, might further limit the size of the ADU, but no application of lot coverage or open-space requirements may require the ADU to be less than eight hundred (800) square feet.

**SECTION 10.** The City Council of the City of Pomona hereby approves Code Amendment (CODE 14672-2020) amending Section .5809-26(G)(6) of the City of Pomona Zoning Ordinance per the new underlined language and deleted ~~stricken~~ language as follows:

- 6. Building height. ~~No ADU shall have a height greater than two (2) stories or thirty five (35) feet. However, in no case shall an ADU be taller than the Primary Dwelling Unit.~~
  - a. No ADU shall have a height greater than two (2) stories or thirty-five (35) feet. However, in no case shall an ADU be taller than the Primary Dwelling Unit.
  - b. In instances where any portion of an abutting lot, zoned for residential use, has a ten foot difference in elevation or greater from the lot proposing an ADU and portions of the ADU are within twenty-five (25) feet of any side or rear property line, the entire ADU shall be no taller than sixteen (16) feet.
  - c. In instances where an abutting lot, zoned for residential use, has a ten foot difference in elevation or greater from the lot proposing an

ADU and portions of the ADU are greater than twenty-five (25) feet from of any side or rear property line, the ADU shall be no taller than those heights permitted in subsection (a).

**SECTION 11.** The City Council of the City of Pomona hereby approves Code Amendment (CODE 14672-2020) amending Section .5809-26(G)(12) of the City of Pomona Zoning Ordinance per the new underlined language and deleted ~~stricken~~ as follows:

12. Parking.

- a. No parking is required for any ADU.
- b. If provided, parking spaces shall be located on an approved surface only.
- c. If provided, open parking spaces shall have a minimum dimension of nine and one-half (9<sup>1/2</sup>) feet by eighteen (18) feet.
- d. If provided, covered parking spaces (carports and garages) shall have a minimum dimension of ten (10) feet by twenty (20) feet.
- e. If provided, parking may be provided in yard areas or as Tandem Parking as defined in subsection (C) “Definitions”.
- f. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, those off-street parking spaces are not required to be replaced.

**SECTION 12.** The City Council of the City of Pomona hereby approves Code Amendment (CODE 14672-2020) amending Section .5809-26(H)(4) of the City of Pomona Zoning Ordinance per the new underlined language as follows:

- 4. Location. A JADU shall be constructed within the existing walls of the Primary Dwelling Unit, including any attached garage.

**SECTION 13.** The City Clerk shall attest and certify to the passage and adoption of this Ordinance, and shall cause same to be posted as required by law and this Ordinance shall take effect thirty (30) days after its final adoption.

**SECTION 14.** The City Clerk shall submit a copy of this ordinance to the Department of Housing and Community Development within 60 days after adoption.

**SECTION 15.** If any section, subsection, sentence clause or phrase or word of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Pomona hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence clause or phrase or word not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

**PASSED, APPROVED AND ADOPTED** this 2<sup>nd</sup> day of August, 2021.

**CITY OF POMONA:**

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Tim Sandoval  
Mayor

**APPROVED AS TO FORM:**

**ATTEST:**

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Sonia Carvalho  
City Attorney

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Rosalia A. Butler, MMC  
City Clerk

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
CITY OF POMONA

I, ROSALIA A. BUTLER, MMC, CITY CLERK of the City of Pomona do hereby certify that the foregoing Ordinance was introduced for first reading at a regular meeting of the City Council of the City of Pomona held on July 19, 2021 and was adopted at second reading at a regular meeting of the City Council of the City of Pomona held on August 2, 2021 by the following vote:

AYES: Garcia, Lustro, Nolte, Ontiveros-Cole, Preciado, Torres, Sandoval  
NOES: None  
ABSENT: None  
ABSTAIN: None

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Rosalia A. Butler, MMC  
City Clerk

