

URGENCY ORDINANCE NO. 4324

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA AMENDING SECTIONS .5809-26 OF THE CITY OF POMONA ZONING ORDINANCE PERTAINING TO ACCESSORY DWELLING UNIT AND JUNIOR ACCESSORY DWELLING UNIT REGULATIONS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA

WHEREAS, the City of Pomona, California (“City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, state law authorizes cities to act by ordinance to provide for the creation and regulation of accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”); and

WHEREAS, in recent years, the California Legislature has approved, and the Governor has signed into law, a number of bills that, among other things, amended Government Code sections 65852.2 and 65852.22 to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, in 2022, the California Legislature approved, and the Governor signed into law, a new bill (SB 897) that further amends Government Code sections 65852.2 and 65852.22; and

WHEREAS, SB 897 takes effect January 1, 2023, and if the City’s ADU ordinance does not comply with the requirements imposed by SB 897 by that date, the City’s entire existing ADU ordinance becomes null and void as a matter of law; and

WHEREAS, the City desires to amend its local regulatory scheme for the construction of ADUs and JADUs to comply with the amended provisions of Government Code sections 65852.2 and 65852.22; and

WHEREAS, the City of Pomona has duly initiated Code Amendment (CODE 19882-2022);

WHEREAS, there is a current and immediate threat to the public health, safety, or welfare based on the passage of SB 897 because if the City’s ordinance does not comply with the amended laws as of January 1, 2023, and the City’s ADU ordinance becomes null and void, the City would thereafter be limited to applying the few default standards that are provided in Government Code sections 65852.2 and 65852.22 for the approval of ADUs and JADUs; and

WHEREAS, the approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, landscape, and architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety. These threats to public safety, health, and welfare justify adoption of this ordinance as an urgency ordinance to be

effective immediately upon adoption by a five-sevenths vote of the City Council (City of Pomona Charter, § 510(c)); and

WHEREAS, to protect the public safety, health, and welfare, the City Council may adopt this ordinance as an urgency measure in accordance with section 510(c) of the Pomona City Charter and Government Code section 36937(b)).

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. Under California Public Resources Code section 21080.17, the California Environmental Quality Act (“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.

SECTION 3. 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. Section .5809-26 of the City of Pomona Zoning Ordinance is hereby amended and restated to read in its entirety as provided in Exhibit A, attached hereto and incorporated herein by reference.

SECTION 5. This ordinance takes effect immediately upon its adoption.

SECTION 6. The City Clerk shall either: (a) have this ordinance published in a newspaper of general circulation within 15 days after its adoption or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five days before its adoption and again within 15 days after its adoption.

SECTION 7. The City Clerk shall submit a copy of this ordinance to the Department of Housing and Community Development within 60 days after adoption.

SECTION 8. If any provision of this ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or

applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are severable. The City Council declares that it would have adopted this ordinance irrespective of the invalidity of any portion thereof.

PASSED, APPROVED AND ADOPTED this 19th day of December, 2022.

CITY OF POMONA:

Tim Sandoval
Mayor

APPROVED AS TO FORM:

Sonia Carvalho
City Attorney

ATTEST:

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 December 19, 2022 and was adopted at second reading at a regular meeting of the City Council of the City of Pomona held on December 19, 2022, by the following vote

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

Rosalia A. Butler, MMC
City Clerk

Exhibit A

Section .5809-26 – Accessory Dwelling Units.

- A. Purpose and Intent. The purpose of this section is to regulate the establishment of Accessory Dwelling Units in accordance with Government Code Section 65852.2 and 65852.22; to provide affordable housing to meet the needs of the citizens of Pomona; to ensure that the development of ADUs is compatible with existing development; to preserve the City of Pomona's cultural, historical, and architectural heritage; and to implement and promote the goals and policies of the Pomona General Plan.
- B. Effect of Conforming. An ADU or JADU that conforms to the standards in this section will not be:
1. Deemed to be inconsistent with the City's general plan and zoning designation for the lot on which the ADU or JADU is located.
 2. Deemed to exceed the allowable density for the lot on which the ADU or JADU is located.
 3. Considered in the application of any local ordinance, policy, or program to limit residential growth.
 4. Required to correct a nonconforming zoning condition, as defined in subsection (C)(10) below. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code section 17980.12.
- 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

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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, multiunit 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. 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.
7. Efficiency Kitchen. Efficiency kitchen means a kitchen that includes all of the following:
 - a. A cooking facility with appliances.
 - b. A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the JADU.
8. Junior Accessory Dwelling Unit. Junior Accessory Dwelling Unit or JADU means a residential unit that satisfies all of the following:
 - a. It is no more than 500 square feet in size.
 - b. It is contained entirely within an existing or proposed single-family structure. An enclosed use within the residence, such as an attached garage, is considered to be a part of and contained within the single-family structure.
 - c. It includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure.
 - d. If the unit does not include its own separate bathroom, then it contains an interior entrance to the main living area of the existing or proposed single-family structure in addition to an exterior entrance that is separate from the main entrance to the primary dwelling.

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- e. It includes an efficiency kitchen, as defined in subsection (C)(7) above.
 9. Multifamily dwelling. Multifamily dwelling means any structure with two or more attached primary dwelling units (e.g., apartments, attached townhomes, row houses).
 10. Nonconforming Zoning Condition. Nonconforming Zoning Condition means a physical improvement on a property that does not conform with current zoning standards.
 11. 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.
 12. 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.
 13. Proposed Dwelling. Proposed Dwelling means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
 14. 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.
 15. 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.
- D. Ministerial Approvals. The following approvals apply to ADUs and JADUs under this section.
1. Type 1 – Building Permit Only. If an ADU or JADU complies with each of the general requirements in subsection (E) "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 (in the

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case of an ADU only) 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. In the case of a JADU, it shall comply with the requirements of Government Code Section 65852.22.
- 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 does not exceed the applicable height limit in subsection (E)(2) below.
- 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.
- d. Limited Detached ADU on Multi-unit Lot. No more than two Detached ADUs on a lot that has an existing or proposed multi-unit dwelling if each Detached ADU satisfies the following limitations:

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- i. The side- and rear-yard setbacks are at least four feet. If the existing multifamily dwelling has a rear or side yard setback of less than four feet, the City will not require any modification to the multifamily dwelling as a condition of approving the ADU.
 - ii. The peak height above grade does not exceed the applicable height limit in subsection (E)(2) below.
2. Type 2 - Building Permit Only. Except as allowed under subsection (D)(1) "Type 1 Building Permit Only" above, no ADU may be created without a building permit in compliance with the standards set forth in subsections (E) "General ADU and JADU Requirements " and (F) "Specific ADU Requirements " below.
3. Process and Timing.
 - a. An application to create an ADU or JADU under this section will be considered and approved ministerially, without discretionary review or a hearing.
 - b. The City must approve or deny 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 approve or deny 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. When the application to create an ADU or JADU is submitted with a permit application to create a new single-family or multi-family dwelling on the lot, the City may delay acting on the permit application for the ADU or JADU until the City approves or denies the permit application to create the new single-family or multi-family dwelling, but the application to create the ADU or JADU will still be considered ministerially without discretionary review or a hearing.
 - c. If the City denies an application for an ADU or JADU, the City must provide the applicant with a full set of written comments that include, among other things, a list of all the defective or deficient items and a description of how the application may be remedied by the applicant. Notice of the denial and corresponding comments must be provided to the applicant within the 60-day time period established by subsection (D)(3)(b) above.

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- d. Demolition of Detached Garages. In instances where a detached garage is to be demolished and replaced by an ADU, the application for the demolition of the garage shall be reviewed with the application for the ADU and the permit for the garage demolition and ADU shall be issued at the same time.
- E. General ADU and JADU Requirements. The following requirements apply to all ADUs and JADUs that are approved under subsections (D)(1) “Type 1 – Building Permit Only” or (D)(2) “Type 2 – Building Permit Only” above:
1. Zoning.
 - a. An ADU or JADU subject only to a building permit under subsection (D)(1) “Type 1 – Building Permit Only” above may be created on a lot in a residential or mixed-use zone.
 - b. An ADU or JADU subject to a building permit under subsection (D)(2) “Type 2 – Building Permit Only” above may be created on a lot that is zoned to allow single unit dwelling residential use or multi-unit dwelling residential use.
 2. Height.
 - a. Except as otherwise provided by subsections (E)(2)(b) and (E)(2)(c) below, a detached ADU created on a lot with an existing or proposed single family or multifamily dwelling unit may not exceed 16 feet in height.
 - b. A detached ADU may be up to 18 feet in height if it is created on a lot with an existing or proposed single family or multifamily dwelling unit that is located within one-half mile walking distance of a major transit stop or a high quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code, and the ADU may be up to two additional feet in height (for a maximum of 20 feet) if necessary to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.
 - c. A detached ADU created on a lot with an existing or proposed multifamily dwelling that has more than one story above grade may not exceed 18 feet in height.
 - d. An ADU that is attached to the primary dwelling may not exceed 25 feet in height or the height limitation imposed by the underlying zone that

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applies to the primary dwelling, whichever is lower. Notwithstanding the foregoing, ADUs subject to this subsection (E)(2)(d) may not exceed two stories.

- e. For purposes of this subsection (E)(2), height is the vertical distance measured from the adjoining curb level to the highest point of the structure, exclusive of chimneys and ventilators.

3. Fire Sprinklers.

- a. Fire sprinklers are only 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.
- b. The construction of an ADU shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling or existing multi-unit dwelling.

4. Rental Term. No ADU or JADU may be rented for a term that is shorter than 30 days. This prohibition applies regardless of when the ADU or JADU was created.

5. No Separate Conveyance. Except as otherwise provided in Government Code Section 65852.26, an ADU or JADU may be rented, but no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-unit lot) or from the lot and all of the dwellings (in the case of a multi-unit lot).

6. Septic System. If the ADU or JADU will connect to an onsite water-treatment system, the Owner must include with the application a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.

7. Owner-occupancy.

- a. An ADU that is created after January 1, 2020 but before January 1, 2025, is not subject to any Owner-occupancy requirement.
- b. Unless applicable law requires otherwise, all ADUs that are created on or after January 1, 2025 are subject to an Owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property as the person's legal domicile and permanent residence.

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- c. As requires by state law, all JADUs are subject to an Owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement of this paragraph does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.
8. Deed restrictions. Prior to the issuance of a certificate of occupancy for an ADU or JADU, a deed restriction must be recorded against the title of the property in the County Recorder's office and a copy filed with the Director. The deed restriction must run with the land and bind all future owners. A deed restriction or similar instrument that runs with the land, shall be recorded against the property and shall include the following:
 - a. Except as otherwise provided in Government Code Section 65852.26, the ADU or JADU may not be sold separately from the primary dwelling.
 - b. The ADU or JADU is restricted to the approved size and to other attributes allowed by this section.
 - c. The deed restriction runs with the land and may be enforced against future property owners.
 - d. The deed restriction may be removed if the owner eliminates the ADU or JADU, as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request of the Director, providing evidence that the ADU or JADU has in fact been eliminated. The Director may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated. Appeal may be taken from the Director's determination consistent with other provisions of this Code. If the ADU or JADU is not entirely physically removed, but is only eliminated by virtue of having a necessary component of an ADU or JADU removed, the remaining structure and improvements must otherwise comply with applicable provisions of this Code.
 - e. The deed restriction is enforceable by the director or his or her designee for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining the use of the ADU or JADU in violation of the recorded restrictions or abatement of the illegal unit.

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9. Building & Safety.

- a. Must comply with building code. Subject to subsection (E)(9)(b) below, all ADUs and JADUs must comply with all local building code requirements.
- b. No change of occupancy. Construction of an ADU does not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code, unless the building official or Code Enforcement Division officer makes a written finding based on substantial evidence in the record that the construction of the ADU could have a specific, adverse impact on public health and safety. Nothing in this subsection (E)(9)(b) prevents the City from changing the occupancy code of a space that was uninhabitable space or that was only permitted for nonresidential use and was subsequently converted for residential use in accordance with this section.

F. Specific ADU Requirements. The following requirements apply only to ADUs that require a building permit under subsection (D)(2) “Type 2 – Building Permit Only” above.

1. Primary Dwelling Unit requirement.

- a. There shall be a Primary Dwelling Unit located on the same lot as an ADU.
- b. Where a Primary Dwelling Unit does not exist on a lot but is proposed, an ADU may be constructed concurrently with the construction of the Primary Dwelling Unit.

2. Unit size.

- a. For lots less than 7,200 square feet in area.
 - i. The maximum size of a detached or attached ADU may not exceed 850 square feet for a studio or one bedroom unit or 1,000 square feet for a unit with two or more bedrooms.
- b. For lots 7,200 square feet in area or greater.
 - i. The maximum size of a detached or attached ADU may not exceed 1,200 square feet.

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- c. Application of other development standards in this subsection (G) "Specific ADU Requirements", such as lot coverage, might further limit the size of the ADU, but no application of front yard, lot coverage, or open-space requirements may require the ADU to be less than eight hundred (800) square feet.
3. Coverage. The maximum coverage of the lot by all structures shall be thirty-five (35) percent, subject to subsection (F)(2)(c) above. Any patio with roof, open slats or other covering shall constitute lot coverage but not square footage.
4. Minimum distance between buildings.
 - a. The distance between an ADU and the Primary Dwelling Unit shall be at least ten (10) feet.
 - b. The distance between an ADU and an Accessory Structure shall be at least six (6) feet.
5. Location restriction. Detached ADUs shall not be located between the proposed or existing Primary Dwelling Unit and the street adjoining the front yard, except where the Primary Dwelling Unit is on a through lot, and subject to subsection (F)(2)(c) above.
6. Yards.
 - a. Front Yard. ADUs shall have a minimum front yard of twenty-five (25) feet, subject to subsection (F)(2)(c) above.
 - b. Side Yard. ADUs shall have a minimum side yard of four (4) feet.
 - c. Rear Yard. ADUs shall have a minimum rear yard of four (4) feet.
 - d. No yard shall be required for:
 - i. An existing living area.
 - ii. An existing accessory structure.
 - iii. A structure constructed in the same location and to the same dimensions as an existing structure that is converted to an ADU or to a portion of an ADU.

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7. Roof eaves. Roof eaves of an ADU may project into the required side yard for a distance not to exceed one (1) foot, and the eaves shall not be closer than two (2) feet from the side property line.
8. Landscaping. A minimum of twenty (20%) percent of the entire parcel shall be landscaped with plant materials, including some combination of trees, shrubs, groundcover, and turf.
9. 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 (9-1/2) 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
10. Architecture.
 - a. The materials and colors of the exterior, including but not limited to walls, roof, window trim, doors, foundation, exposed rafters, knee braces, and decorative tile, must match the appearance and architectural design of those of the primary dwelling. Additionally, the roof pitch must be a minimum of a three (3) inch rise for every horizontal twelve (12) inch run.
11. Manufactured or prefabricated structures. Nothing in this section prohibits the installation of manufactured or prefabricated structures that comply with Subsection (F)(10) "Architecture" above.
12. Exterior access. All ADUs must provide independent access to the exterior of the unit.

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13. Passageways. No Passageway is required in conjunction with the construction of an ADU.

14. Certificate of Occupancy.

- a. In no case shall an ADU be issued a certificate of occupancy prior to the issuance of a certificate of occupancy for the Primary Dwelling Unit.
- b. A certificate of occupancy may be issued concurrently for both the Primary Dwelling Unit and the ADU.

G. Fees.

1. Impact Fees.

- a. No impact fee is required for an ADU that is less than 750 square feet in area.
- b. Any impact fee that is required for an ADU that is 750 square feet or larger in area must be charged proportionately in relation to the square footage of the primary dwelling unit. (E.g., the floor area of the primary dwelling, divided by the floor area of the ADU, times the typical fee amount charged for a new dwelling.) "Impact fee" here does not include any connection fee or capacity charge for water or sewer service.

2. Utility Fees and Connections.

- a. If an ADU is constructed with a new single-family home, a separate utility connection directly between the ADU and the utility and payment of the normal connection fee and capacity charge for a new dwelling are required.
- b. Except as described in subsection (G)(2)(a), converted ADUs on a single-family lot that are created under subsection (D)(1)(a) above are not required to have a new or separate utility connection directly between the ADU and the utility. Nor is a connection fee or capacity charge required.
- c. Except as described in subsection (G)(2)(a), all ADUs that are not covered by subsection (G)(2)(b) require a new, separate utility connection directly between the ADU and the utility.
 - i. The connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU based on either the floor area or the number of drainage-fixture units values,

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as defined by the Uniform Plumbing Code, upon the water or sewer system.

- ii. The portion of the fee or charge that is charged by the City may not exceed the reasonable cost of providing this service.

H. Nonconforming Zoning Code Conditions, Building Code Violations, and Unpermitted Structures.

1. Generally. The City will not deny an ADU or JADU application due to a nonconforming zoning condition, building code violation, or unpermitted structure on the lot that does not present a threat to the public health and safety and that is not affected by the construction of the ADU or JADU.

2. Unpermitted ADUs constructed before 2018.

- a. Permit to Legalize. As required by state law, the City may not deny a permit to legalize an existing but unpermitted ADU that was constructed before January 1, 2018, if denial is based on either of the following grounds:

- i. The ADU violates applicable building standards, or

- ii. The ADU does not comply with the state ADU law (Government Code section 65852.2) or this ADU ordinance (Section .5809-26).

- b. Exceptions.

- i. Notwithstanding subsection (H)(2)(a) above, the City may deny a permit to legalize an existing but unpermitted ADU that was constructed before January 1, 2018, if the City makes a finding that correcting a violation is necessary to protect the health and safety of the public or of occupants of the structure.

- ii. Subsection (H)(2)(a) above does not apply to a building that is deemed to be substandard in accordance with California Health and Safety Code section 17920.3.

- I. Discretionary Review. The following provisions only apply to ADUs that do not qualify for ministerial approval under subsections (A) – (H) above:

1. Minor Deviation Variance. The Development Services Director or designee may consider a request to deviate from the following standards for ADUs subject to the requirements of Section .560-J Minor Deviation Variances: Coverage, Minimum distance between buildings, and Yards.

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2. Conditional Use Permit. An ADU that deviates from the following standards in subsection (F) "Specific ADU Requirements" may be approved through a Conditional Use Permit under section .580: unit size, location restriction, roof eaves, and architecture, subject to (I)(4) below.
3. If a Conditional Use Permit is required under (I)(2) above, then any additional deviation that would require a Minor Deviation Variance under (I)(1) above may be approved through the Conditional Use Permit.
4. Major Certificate of Appropriateness. Notwithstanding anything in paragraphs (1) through (3) above, a Major Certificate of Appropriateness is required for an ADU that is located on real property that is listed in the California Register of Historical Resources or real property designated as a local historic landmark or district and that does not comply with subsection (F)(10) above. Review under the Major Certificate of Appropriateness is limited to architecture. Any other deviation from the standards in subsections (A) through (H) must be reviewed under subsections (I)(1) through (I)(3) above.