

**ORDINANCE NO. 1229**

**AN ORDINANCE OF THE CITY OF HOLLISTER AMENDING THE ZONING ORDINANCE TO REPEAL SECTION 17.22.040, ACCESSORY DWELLING UNITS, AND REPLACE WITH A NEW CHAPTER, CHAPTER 17.32, ACCESSORY DWELLING UNITS**

**WHEREAS**, the City occasionally initiates an amendment to the Zoning Ordinance in order to codify requirements pursuant to State Law; and

**WHEREAS**, following an amendment to Section 17.22.040, Accessory Dwelling Units in 2019, the Governor signed several Bills into law which limits how cities can regulate and review Accessory Dwelling Units; and

**WHEREAS**, State Law allows a local agency to adopt an Ordinance to implement the provisions of Government Code 65852.2 and 65852.22; and

**WHEREAS**, on August 4, 2022, the Planning Commission held a noticed Study Session to discuss necessary changes to the City's Accessory Dwelling Unit Ordinance; and

**WHEREAS**, the City desires to repeal the existing 17.22.040, Accessory Dwelling Units, which is inconsistent with State Law and replace with Chapter 17.32, Accessory Dwelling Units; and

**WHEREAS**, on January 26, 2023, the Planning Commission held a duly noticed public hearing on the proposed amendments to the Zoning Ordinance during which all interested persons were heard and adopted Planning Commission Resolution No. 2023-1 recommending City Council adoption of the proposed Zoning Ordinance Amendments; and

**WHEREAS**, a Staff Report was submitted to the City Council of the City of Hollister recommending approval of the proposed Zoning Ordinance Amendment; and

**WHEREAS**, the City Council held a public hearing on the proposed Zoning Ordinance Amendment on February 21, 2023, at which time all interested parties had the opportunity to be heard; and

**WHEREAS**, proper notice of said heading was given as required by law; and

**WHEREAS**, the City Council did hear and consider all said reports, recommendations and testimony herein and used its independent judgement to evaluate the proposed amendments; and

**WHEREAS**, the City desires to repeal the existing 17.22.040, Accessory Dwelling Units, which is inconsistent with State Law and replace with Chapter 17.32, Accessory Dwelling Units; and

**WHEREAS**, any illegal conversions of a permitted conversion of space (pursuant to Section 17.16.020(B)(3) of the Zoning Ordinance) to an Accessory Dwelling Unit or Junior Accessory Dwelling Unit will be counted as an Accessory Dwelling Unit or Junior Accessory Dwelling Unit if the Unit meets the definitions included in 17.32.020 of the Zoning Ordinance when reviewing any requests for an additional Accessory Dwelling Unit or Junior Accessory Dwelling Unit; and

**WHEREAS**, the City Council of the City of Hollister hereby makes the following findings related to the Zoning Ordinance Amendments as required by Section 17.02.120.D of the Municipal Code:

1. The proposed amendment is consistent with the General Plan because: the repeal of Section 17.22.040, Accessory Dwelling Units, and the replacement with Chapter 17.32, Accessory Dwelling Units will codify the requirements of Government Code 658512.2 and 65852.22 into the Zoning Ordinance.
2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare because: the proposed Zoning Ordinance Amendment will provide clear language on the requirements for Accessory Dwelling Units and Junior Accessory Dwelling Units, a list of development standards, submittal requirements, review procedures, and will include objective design standards.
3. The public necessity, general community welfare, and good zoning practice shall be served and furthered; and that the proposed amendments are in general conformance with the principles, policies and land use designations in the General Plan and any adopted area or specific plan because: by repealing Section 17.22.040 and replacing with a new Chapter, Chapter 17.32, Accessory Dwelling Units, the City will provide a clear, easy to use method for determining the requirements to gain approval of these structures within the City.

**WHEREAS**, the City Council of the City of Hollister hereby makes the following finding regarding the California Environmental Quality Act:

1. The California Environmental Quality Act (CEQA) together with State Guidelines, require that certain projects be reviewed for environmental impacts. The City Council hereby finds that the proposed Zoning Ordinance amendments are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines because the proposed amendments will not result in any direct physical change to

the City and any future residential projects will be subject to the requirements of CEQA and therefore the proposed amendments are not a project under CEQA and are exempt from further review (CEQA Guidelines, Section 15378).

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Hollister does hereby ordain as follows:

**SECTION 1:** The Hollister Municipal Code is hereby amended to repeal Section 17.22.040, Accessory Dwelling Units and replace with Chapter 17.32, Accessory Dwelling Units to read as follows:

### **Chapter 17.32 - Accessory Dwelling Units**

#### **17.32.010 Purpose.**

The purpose of this Chapter is to establish development standards for the construction of Accessory Dwelling Units and Junior Accessory Dwelling Units in residential or mixed-use (single-family and multi-family) zoning districts consistent with Government Code Sections 65852.2 and 65852.22.

#### **17.32.020 Definitions**

- A. *Accessory Dwelling Unit (ADU)* shall have the same meaning as defined under Section 65852.2(j) of the Government Code and shall mean an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling. An ADU also includes an efficiency unit and a manufactured home, provided it is built on a permanent foundation. An ADU may be located within an existing attached or detached garage, shed, barn or any other accessory structure. An ADU may add up to 150 square feet beyond the physical dimensions of the existing accessory structure to provide for ingress and egress (including, but not limited to entryways, stairwells, and hallways).
- B. *Efficiency kitchen* shall mean an area with cooking appliances, food preparation counter(s) and storage cabinets that are of a reasonable size in relation to the size of the junior accessory dwelling unit.
- C. *Efficiency Unit* shall mean a dwelling unit construction in accordance with Health and Safety Code Section 17958.1 or the California Building Code Section 1208.4.
- D. *Junior Accessory Dwelling Unit (JADU)* shall mean a unit that is no more than 500 square feet in size and is contained entirely within a single-family residence, including within an attached garage, and does not result in an addition to the

structure for ingress or egress which is more than 150 square feet in size. A JADU may include separate sanitation facilities or may share sanitation facilities with the single-family dwelling.

- E. *Multi-family* for the purposes of this Chapter shall mean a property with two (2) or more attached dwelling units on a single lot. Multiple detached dwelling units are not considered a multi-family property.
- F. *Primary dwelling unit* shall mean a residential dwelling, other than an ADU or JADU, with provisions for living, sleeping, eating, a kitchen for cooking, and sanitation facilities.
- G. *Single-family unit* for the purposes of this Chapter shall mean a property with one (1) detached residential dwelling unit.
- H. *Tandem parking* shall mean two or more automobiles parked on a driveway or on any other location on a lot, lined up behind one another.

#### **17.32.030 Accessory Dwelling Units (ADU)**

An Accessory Dwelling Unit (attached or detached) shall comply with the following regulations:

- A. *Location.* An ADU may be located on any property where a residential dwelling is permitted by right or conditionally permitted and where the proposed accessory dwelling unit will be an accessory to the primary dwelling unit.
- B. *Maximum Number of Units and Density.*
  - 1. For lots with a single-family residence, there shall be a maximum of one (1) attached ADU or one (1) detached ADU unit which may be combined with a Junior Accessory Dwelling Unit that is consistent with Section 17.32.040. An ADU may be located within a detached garage.
  - 2. For lots with a two-unit residential development, approved under Chapter 17.26, Two-unit Residential Developments and Urban Lot Splits, an ADU or JADU may not be constructed if two (2) primary dwelling units exist on the site.
  - 3. Accessory Dwelling Units that conform to this chapter shall be exempted from the calculation of the maximum allowable density for the lot on which it is located.
  - 4. Accessory Dwelling Units on a multi-family property are subject to the following:

- a. A minimum of one (1) ADU will be allowed within the non-livable portions of the existing multi-family structure, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, and garages. The maximum number of ADUs shall not exceed 25% of the number of existing legally established dwelling units within the existing multifamily structure; and/or
  - b. A maximum of two (2) ADUs that are detached from the multi-family structure.
- C. *Unit Size.* The total floor area of an attached or detached ADU shall not exceed 1,000 square feet for an ADU with more than one bedroom or 850 square feet for a single bedroom. However, in no case shall an attached ADU exceed 50% of the total square footage of the existing principal residence. An exception to the 50% maximum shall be waived in order to allow a minimum 800 square foot and a maximum 1,000 square foot ADU.
- D. *Minimum Unit Size.* An ADU shall be a minimum of 150 square feet or the size necessary to accommodate an efficiency unit as defined by Health and Safety Code Sections 17958.1 whichever is greater.
- E. *Setbacks.*
1. *Front Yard.* The minimum front yard setback shall conform to the requirements of the Zoning District which governs the property, except where necessary to allow a minimum 800 square foot ADU with side and rear yard setbacks as defined below.
  2. *Side Yard.* The minimum side yard setback shall be four feet.
  3. *Rear Yard.* The minimum rear yard setback shall be four feet.
  4. *Existing Structure.* The setback for an existing, legal nonconforming shall be allowed to continue on the site. Any addition to the existing structure shall be allowed to use the same setbacks that were previously approved.
  5. *Setbacks Between Structures.* A detached accessory structure shall be setback six (6) feet from the primary dwelling unit and all new structures shall be set back a minimum of five (5) feet from the eaves of an inhabited structure (measured from eave to eave) and a minimum of 3 feet to an uninhabitable structure.
  6. *Planned Unit Development.* Where a Planned Unit Development allows a smaller setback for side or rear yards than the setbacks under this Chapter, the new ADU shall comply with those Planned Unit Development setbacks.

7. **Second Story ADU.** For an ADU located on a second story, the second story shall be set back five (5) feet from the main wall of the existing primary dwelling unit.
- F. **Lot Coverage.** The principal residence and ADU combined shall meet the requirements for lot coverage or floor area ratio of the Zoning District in which the property is located. The maximum lot coverage or floor area ratio required by the Zoning Ordinance shall be waived in the amounts necessary to accommodate an ADU with a gross floor area of up to 800 square feet with the minimum required side and rear yard setbacks.
- G. **Historic District or Property.** If the proposed ADU is located on a lot that is located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to an Ordinance by the City of Hollister or San Benito County, the proposed ADU shall comply with the following:
  1. A newly constructed ADU (attached or detached) shall not be visible from the public right-of-way; or
  2. The ADU shall be entirely contained within the existing dwelling unit (excluding any porch or other architectural detail or feature on the property) or within a detached structure on the property.
- H. **Height.** A detached ADU shall not exceed 16 feet in height on a single-family property or 18 feet in height for an ADU on a multi-family property. The maximum height for an attached ADU shall conform to the height requirements of the zoning district where the lot is located.
- I. **Required Parking.** The following parking requirements apply to ADUs and JADUs.
  1. An ADU shall be provided with one (1) off-street parking space per unit (if the ADU is a studio, then no space is required) in addition to parking required for the principal residence in accordance with Table 17.18-1, Off-Street Parking and Bicycle Spaces Required by Land Use Type.
  2. If a space is required, the space may be compact, may be uncovered, and may be in a tandem space with the required parking of the principal dwelling unit (either covered or uncovered).
  3. Off-street parking for an ADU or JADU is not required in any of the following instances:
    - a. When the ADU is created through the conversion of a garage, carport, or covered parking structure.

- b. The ADU is located within an architecturally and historically significant historic district.
  - c. The ADU is within a new or existing primary dwelling unit or accessory structure.
  - d. When on-street parking permits are required but not offered to the occupant of the ADU.
  - e. The ADU is located within one-half mile walking distance of a public transit stop.
  - f. When there is a car share vehicle located within one block of the ADU.
- J. *Entrance.* An ADU shall require a separate entrance from the main entrance to the proposed or existing principal residence. An exterior stairway proposed to serve an ADU on a second story or higher shall not be visible from the front public right-of-way.
- K. *Maximum Front Setback Coverage.* No more than 50% of the front setback area may contain hardscape, excluding the allowed driveway for garages pursuant to Chapter 17.18, Pedestrian, Bicycle, Parking and Loading Standards. Driveway width shall be a maximum of 20 feet in width for a double-car garage and 30 feet for a three-car garage.
- L. *Public Utilities and Services.* Accessory Dwelling Units shall be served by public water and sewer and shall have access to an improved public street. A separate utility connection shall not be required for any ADUs which are the result of a conversion of existing space (plus an addition of up to 150 square feet as allowed by this Section) or within the proposed space of a single-family dwelling (new construction). All other ADUs will require a separate utility connection.
- M. *Design.* All attached and detached ADUs which are visible from the street shall have the same architectural style, detail, color, and building materials as the existing or proposed primary dwelling unit. For detached ADUs which are not visible from the street, the detached ADU shall have the same color and materials as the existing or proposed primary dwelling unit.
- I. *Mechanical Equipment.* All mechanical and utility equipment shall be screened from view from the street through a combination of wall or fencing and landscape plant materials sufficient to screen the height and width of the equipment.
- N. *Fire Sprinklers.* Fire Sprinklers in an ADU shall not be required if they were not required for the primary dwelling, in accordance with Government Code Section

65852.2. For an ADU in a multi-family structure, the entire residential structure shall serve as the "primary residence" for the purposes of this requirement. If the multi-family structure is served by fire sprinklers, the ADU shall be required to install fire sprinklers.

- O. *Occupancy.* Owner-occupancy shall not be required as a condition of permit approval for ADUs permitted between January 1, 2020 and January 1, 2025.
- P. *Ownership.* An ADU shall not be sold or otherwise conveyed separately from the residential dwelling(s).
- Q. *No Short-Term Rental.* Accessory Dwelling Units shall not be rented for terms of 30 days or less.

### **17.32.040 Junior Accessory Dwelling Units (JADU)**

A Junior Accessory Dwelling Unit(JADU) shall comply with the following regulations:

- A. *Location Permitted.* A JADU may be located on a property within a single-family residential zone with one primary dwelling unit located, or proposed to be built, on the property. For historic lots with a two-unit residential development, approved under Chapter 17.26, Two-unit Residential Developments and Urban Lot Splits, a JADU may not be constructed if two (2) primary dwelling units exist on the site.
- B. *Relationship to Principal Use.* The JADU shall be located entirely within the walls of a proposed or existing single-family residence, including an attached garage, except that up to 150 square feet may be constructed outside of the walls of the existing structure in order to provide ingress and egress into the unit.
- C. *Maximum Number of Units and Density.* There shall be a maximum of one (1) JADU per lot. A JADU may be in addition to a detached Accessory Dwelling Unit that is consistent with Section 17.32.030.
- D. *Unit Size.* The total floor area of a JADU shall not be more than 500 square feet, excluding any shared sanitation facility within the principal single-family residence.
- E. *Parking.* No off-street parking is required for a JADU.
- F. *Entrance.* A JADU shall require a separate exterior entrance from the main entrance of the proposed or existing single-family residence. An exterior stairway proposed to serve a JADU on a second story or higher shall not be visible from the front public right-of-way. If the JADU shares a bathroom with the existing dwelling, access from the inside of the unit to the main living area of the dwelling shall be provided.
- G. *Efficiency Kitchen.* A JADU shall include an efficiency kitchen.

*H. Occupancy and Ownership.*

1. Owner-occupancy of the primary dwelling unit is required. The owner may reside in the remaining portion of the structure or the JADU.
2. A JADU shall not be sold or otherwise conveyed separately from the principal single-family residence.
3. A deed restriction, which shall run with the land, shall be filed with the building permit application and include the following:
  - a. Prohibition on the sale of the JADU separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.
  - b. A restriction on the size and attributes of the JADU that conforms with Government Code Section [65862.22](#).
  - c. No Short-Term Rental. JADUs shall not be rented for terms of 30 days or less. Ord. 17-20 (November 2020)

**17.32.050 Permit Application**

An application for an Administrative Permit Review for an Accessory Dwelling Unit and/or Junior Accessory Dwelling Unit shall be submitted to the Development Services Department. The application package shall include the following:

- A. *Application.* An applicant for an ADU or JADU shall submit an application on a form provided by the City, along with all information and materials prescribed by such form. No application shall be accepted unless it is completed as prescribed, all required materials are submitted, and the application fee is paid.
- B. *Preliminary Title Report.* A preliminary title report dated within 6 months of the application submittal date, including a digital copy of all referenced documents.
- C. *Utility and Service Information.* Provide information on available utility easements, services and connections.
- D. *Deed Restriction.* Prior to issuance of a Building Permit, the Applicant shall record a restrictive covenant in the form prescribed by the City, which shall run with the land and provide for the following, as applicable:
  1. A prohibition on non-residential use of any units, with the exception of Home Occupations approved by the City;

2. A prohibition against renting or leasing the units for a period of less than thirty (30) days;
  3. A prohibition on the sale of an ADU separate from the sale of the single-family residence; and
  4. A restriction on the size and attributes of the JADU that conforms with Government Code Section 65862.22.
- E. *Nonconforming Conditions.* The construction of an ADU or JADU shall not create any unpermitted construction or illegal nonconforming zoning conditions; however, an application shall not be denied due to the correction of preexisting nonconforming zoning conditions.

### **17.32.060 Review Procedures**

- A. For an ADU or JADU located on a lot with an existing residential dwelling(s), consistent with state law, the Director of Development Services will administratively consider and approve or disapprove a complete application for an Administrative Permit Review under this Chapter ministerially, without discretionary review or public hearing. The City shall process the application request pursuant to the timelines in Government Code Section 65862.22.
- B. If an application for an ADU or JADU is submitted with a permit application to create a new residence on a lot, the application for the ADU or JADU may not be acted upon until the permit application to create the new residence is approved.

**SECTION 2. Severability.** Should any provision, section, paragraph, sentence, or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, or word of this ordinance as hereby adopted shall remain in full force and effect.

**SECTION 3. Effective Date.** This ordinance shall take effect and be in force thirty (30) days from and after its final passage.

**SECTION 4. Publication.** Within fifteen (15) days after passage, the City Clerk shall cause this ordinance to be published on time in the *Free Lance*, a newspaper of general circulation.

**INTRODUCED** at a regular meeting of the City Council held on February 21, 2023.

**PASSED AND ADOPTED**, by the City Council of the City of Hollister at a regular meeting held this 6<sup>th</sup> day of March, 2023, by the following vote:

AYES: Council Members Perez, Resendiz, Morales, and Burms

NOES: None

ABSENT: None

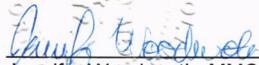
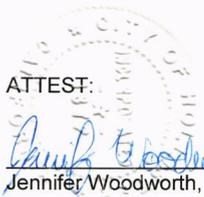
ABSTAINED: Mayor Casey



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Mia Casey, Mayor

ATTEST:



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Jennifer Woodworth, MMC, City Clerk

APPROVED AS TO FORM:

Lozano Smith Attorneys at Law



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Mary F. Lerner, City Attorney

I, JENNIFER WOODWORTH, MMC, City Clerk of the City of Hollister, do hereby certify that the attached Ordinance No. 1229 is an original Ordinance, or true and correct copy of a City Ordinance, duly adopted by the Council of the City of Hollister at a regular meeting of said Council held on the 6<sup>th</sup> day of March, 2023, at which meeting a quorum was present.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the City of Hollister this 6<sup>th</sup> day of March, 2023.



  
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Jennifer Woodworth, MMC  
City Clerk of the City of Hollister