

ORDINANCE NO. 2020-03

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GILROY
AMENDING CHAPTER 30 OF THE GILROY CITY CODE BY
REPEALING AND REPLACING ARTICLE 54 ENTITLED
“ACCESSORY DWELLING UNITS” IN ITS ENTIRETY AND
ADOPTING NEW STANDARDS IN COMPLIANCE WITH STATE LAW**

WHEREAS, Zoning Text Amendments of the Gilroy City Code Chapter 30 (Zoning Ordinance) are proposed to make revisions to the accessory dwelling unit standards and comply with state law, specifically Government Code Sections 65852.2 and 65852.22, which became effective on January 1, 2020; and

WHEREAS, the Planning Commission held a duly noticed public hearing on May 14, 2020, in accordance with the City of Gilroy Zoning Ordinance Article LII, at which time the Planning Commission received and considered the Zoning Code amendments and staff report pertaining to Zoning Amendment file Z 20-01, took and considered the written and oral public testimony related to Zoning Amendment Z 20-01 and thereafter recommended that the City Council approve said amendments; and

WHEREAS, the City Council held a duly noticed public hearing on June 15, 2020, at which time the City Council received and considered Zoning Amendment file number Z 20-01, took and considered written and oral public testimony, the staff report, and all other documentation related to application Z 20-01; and

WHEREAS, the City has determined that the review and approval of the provisions contained in the Zoning Amendment file number Z 20-01 is exempt from environmental review under the California Environmental Quality Act (“CEQA”) pursuant to Section 15282(h) of the CEQA Guidelines, which provides that CEQA does not apply to adoption of an Accessory Dwelling Unit ordinance proposed to implement the provisions of Section’s 65852.2 and 65852.22 of the Government Code, as set forth in Section 21080.17 of the Public Resources Code; and

WHEREAS, in accordance with City of Gilroy Zoning Code Section’s 30.52.40 and 30.52.60, the Planning Commission has recommended, and the City Council finds, that the proposed Zoning Ordinance Amendment implements the general plan, specifically its residential and mixed use land use designations and Housing Element, and is in conformance with state law, given that the Ordinance provides for construction of accessory dwelling units and junior accessory dwelling units within the City as required by state law (Government Code Sections 65852.2 and 65852.22); and

WHEREAS, the location and custodian of the documents or other materials that constitute the record of proceedings upon which Z 20-01 approval is based is the office of the City Clerk.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GILROY DOES
HEREBY ORDAIN AS FOLLOWS:**

SECTION I

Gilroy City Code, Chapter 30, Zoning, Article LIV. Accessory Dwelling Units, inclusive of Sections 30.54.10 through 30.54.40, are hereby repealed in their entirety and replaced with the following new sections 30.54.10 through 30.54.60, which shall read as follows:

Section 30.54.10 Purpose and Intent.

The intent of this article is to provide for accessory dwelling units and junior accessory dwelling units on lots zoned to allow single-family, duplex and multifamily dwelling residential use and that include a proposed or existing primary residential dwelling. Accessory dwelling units contribute needed housing to the City of Gilroy's housing stock and enhance housing opportunities. An accessory dwelling unit is considered a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit is not included in calculation of residential density for the purposes of determining general plan conformance.

30.54.20 General Requirements.

Notwithstanding any local ordinance regulating the issuance of variances or special use permits, or regulations adopted herein to the contrary, an application for a building permit to construct an accessory dwelling unit or junior accessory dwelling unit shall be approved or denied ministerially without discretionary review or hearing within sixty (60) days from the date the city receives a completed application if there is an existing single-family or multifamily dwelling on the lot. The following requirements apply to all accessory dwelling units:

- (a) An accessory dwelling unit shall not be rented for periods less than thirty (30) days. Short term rentals are prohibited.
- (b) An accessory dwelling unit shall not be sold separately from the primary residential structure.
- (c) Prior to the issuance of a building permit for an accessory dwelling unit and/or a junior accessory dwelling unit the owner must record a deed restriction stating that any accessory dwelling unit on the property may not be rented for periods less than thirty (30) days and that any accessory dwelling unit may not be transferred or sold separate from the primary residential structure. In addition, the deed restriction for a junior accessory dwelling unit shall include an owner-occupancy requirement in compliance with this article. However, there shall be no owner occupancy requirement imposed on an accessory dwelling unit that is permitted on or after January 1, 2020.
- (d) The installation of fire sprinklers shall not be required for an accessory dwelling unit if sprinklers are not otherwise required for the primary residence.
- (e) Accessory dwelling units are subject to the design standards and other zoning requirements of the zoning district in which the existing primary dwelling is located and must be built in

accordance with the building code set forth in Chapter 6, except for those design, zoning, and building standards inconsistent with state requirements under California Government Code Section 65852.2.

- (f) An accessory dwelling unit is not subject to residential accessory structure regulations.
- (g) An accessory dwelling unit will not be subject to any charges and fees other than building permit fees generally applicable to residential construction in the zone in which the property is located, except as otherwise provided herein.
- (h) Any connection fees and capacity charges that may be required must be assessed in compliance with the provisions of State Government Code Section 65852.2 and 65852.22.
- (i) The accessory dwelling unit must contain water, sewer and gas and/or electric utility connections that are in working condition upon its occupancy. The accessory dwelling unit may be serviced by the primary residence or may have separate utility meters. The accessory dwelling unit will not be considered a new residential use for the purpose of calculating connection fees or capacity charges for these utilities.
- (j) Subject to Government Code section 65852.2(f)(4), an accessory dwelling unit must have an independent electrical sub-panel, water heating and space heating equipment within the unit or be readily accessible to the occupant on the exterior of the unit.
- (k) Ministerial approval of a permit for creation of an accessory dwelling unit shall not be conditioned on the correction of pre-existing nonconforming zoning conditions.
- (l) A certificate of occupancy for any accessory dwelling unit shall not be issued before the local agency issues a certificate of occupancy for the primary dwelling.
- (m) If the applicant requests a delay in processing the 60-day time period shall be tolled for the period of the delay.

30.54.30 Single-Family Residential Accessory Dwelling Unit Standards.

Notwithstanding any other provisions of this Article, or of this chapter to the contrary, one (1) residential accessory dwelling unit shall be a permitted as a single-family residential use that complies with the following:

- (a) Zoning. An accessory dwelling unit shall be allowed on any residential parcel in any zoning district that permits residential or mixed use development and which contains an existing or proposed primary single-family residential use.
- (b) Number. Only one (1) detached accessory dwelling unit may be permitted on a parcel that contains not more than one existing or proposed single-family residence.
- (c) Primary Dwelling Relationship. An accessory dwelling unit may be within, attached to, or detached from, the proposed or existing primary dwelling, provided that a single-family

residential accessory dwelling unit contained within or attached to an existing primary dwelling unit shall have independent exterior access from the existing residence.

(d) Size.

(1) A detached accessory dwelling unit shall not exceed a maximum size of one thousand (1,000) square feet in floor area.

(2) An attached accessory dwelling unit, including internal conversions of existing primary living space, shall be permitted not exceed fifty (50) percent of the existing primary dwelling gross floor area, garage area excluded. Notwithstanding this requirement, an eight hundred (800) square foot accessory dwelling unit shall be allowed.

(e) Height.

(1) The maximum height for an accessory dwelling unit shall be one-story and sixteen (16) feet.

(2) The maximum height for a structure composed of a detached garage and an accessory dwelling unit that is proposed to be constructed above a detached garage shall be twenty-four (24) feet.

(f) Setbacks. An accessory dwelling unit is subject to the design criteria and zoning requirements of the district in which the existing single-family dwelling is located and as follows:

(1) An accessory dwelling unit must not encroach upon the required front yard area.

(2) A setback of four (4) feet from the side and rear lot lines shall be required for a newly constructed accessory dwelling unit, that is not constructed in the same location and to the same dimensions as an existing structure.

(3) No additional zoning setback is required for conversion of an existing permitted accessory structure, living area, or garage space, or conversion of a structure that is constructed in the same location and to the same dimensions as the existing structure.

(g) Parking. One (1) additional parking space shall be required for a newly constructed accessory dwelling unit, which may be located within the front setback, in tandem and in an existing driveway that provides at least 18 feet of clearance from the back of sidewalk. Parking in setback areas or tandem parking may be denied if found to be infeasible due to specific site or life safety conditions. Notwithstanding the above, a parking stall will not be required for an accessory dwelling unit that meets any of the following criteria:

(1) The accessory dwelling unit is created as a result of the conversion of existing area of the single-family residence or existing permitted single-family residential accessory structure.

(2) An existing single-family residential garage, carport or parking structure is converted or demolished to accommodate an accessory dwelling unit in the same location.

(3) The accessory dwelling unit is within one-half (1/2) mile walking distance of a public transit station, such as a bus stop or train station.

(4) The property is within an architecturally and historically significant historic district.

(5) On-street parking permits are required in the area but not offered to the occupant of the residential accessory dwelling unit.

(6) A car share vehicle is located within one (1) block of the accessory dwelling unit.

(h) Design Standards. Architectural review of an attached or detached accessory dwelling unit will be limited to the following:

(1) The design of the single-family residential accessory dwelling unit must be compatible with the existing primary dwelling. This may be achieved through use of the same architectural details including, but not limited to, window styles, roof slopes, exterior materials, and colors. Architectural review shall not unreasonably restrict construction of the accessory dwelling unit.

(2) An accessory dwelling unit located within a historic site or neighborhood combining district will be subject to ministerial review for compliance with the design review criteria set forth in section 30.27.40 and must be consistent with the Secretary of Interior's Standards for the Treatment of Historic Properties.

(3) Outside stairways serving a second story accessory dwelling unit shall not be constructed on any building elevation facing a public street.

(4) No passageway will be required in conjunction with the construction of an accessory dwelling unit.

(5) An accessory dwelling unit must be built in accordance with the building code set forth in Chapter 6, except that any design, zoning, and building standards inconsistent with state requirements under California Government Code Section 65852.2 shall not apply.

(i) Streamlined Accessory Dwelling Units. Notwithstanding the above restrictions of this section 30.54.30, a building permit application shall be ministerially approved for an attached or detached single-family accessory dwelling unit that is proposed on a lot with a proposed or existing family dwelling if the accessory dwelling unit complies with all of the following minimum standards:

(1) The front yard setback requirement is provided for new construction;

(2) A setback of at least four (4) feet is provided from side and rear lot lines;

(3) No greater than eight hundred (800) square feet of floor area is proposed; and

(4) No greater than sixteen (16) feet of height is proposed.

30.54.40 Junior accessory dwelling unit standards.

Notwithstanding any other provisions in this Article or of this chapter to the contrary, a junior accessory dwelling unit shall be permitted within a single-family residential unit in compliance with the following standards:

- (a) Owner-occupancy of the property shall be required. The owner must reside in the primary single-family residence, junior accessory dwelling unit or separate residential accessory dwelling unit constructed on the property in compliance with this Article.
- (b) One (1) junior accessory dwelling unit may be permitted per residential lot zoned for a single-family residential use, provided that the lot has not more than one (1) existing or proposed single-family residence, and not more than one (1) attached or detached, residential accessory dwelling unit if constructed in compliance with all applicable limitations of section 30.54.30.
- (c) The unit must be constructed within the existing walls of an existing or proposed single-family dwelling.
- (d) The square footage of the unit shall be at least the minimum size required for an efficiency unit, up to a maximum size of five hundred (500) square feet in floor area.
- (e) A separate entrance from the unit to the exterior of the residence shall be provided. Internal connection may also be permitted.
- (f) An efficiency kitchen must be provided in the unit which shall include all of the following:
 - (1) A cooking facility with appliances, which may be countertop appliances.
 - (2) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.
- (g) The unit may include separate bathroom facilities or may share bathroom facilities contained within the primary residence.
- (h) No separate utility connection, connection fee or capacity charge, or parking space shall be required for a junior accessory dwelling unit.

30.54.50 Multi-family and Duplex Residential accessory dwelling unit standards.

Notwithstanding any other provisions of this Article, or of this chapter to the contrary, accessory dwelling units within duplex or multi-family zoned and developed properties shall be permitted and comply with the following:

- (a) Portions of the existing duplex or multifamily dwelling structure(s) that are not used as livable space (including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages), may be converted for use as accessory dwelling units provided that total

number of units must not exceed twenty-five (25) percent of the existing multi-family dwelling units or one (1) unit, whichever is greater.

(b) An owner may also construct up to a maximum of two detached accessory dwelling units on a lot that has an existing permitted duplex or multifamily dwelling, subject to a height limit of sixteen (16) feet and four (4) foot rear yard and side setbacks.

(c) Each unit shall be limited in accordance with the maximum size parameters provided in Section 30.54.30(d).

30.54.60 Definitions.

As used in this article, the following terms mean:

“Accessory dwelling unit” means 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 food preparation area (which may include countertop appliances), and sanitation on the same parcel as the single-family or multi-family dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

“Attached accessory dwelling unit” means a residential dwelling unit that is created as a result of internal conversion, addition, or combination thereof made to the primary residential dwelling unit.

“Junior accessory dwelling unit” means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

“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.

“Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.

“Public transit” 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.

“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.

SECTION II

Gilroy City Code, Chapter 30, Zoning, Article II. Definitions Section 30.2.20
“Accessory dwelling unit” definition and the “Living area” definition are hereby repealed and replaced with new definitions which shall read as follows:

“ “Accessory dwelling unit” means 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 food preparation area (which may include countertop appliances), and sanitation on the same parcel as the single-family or multi-family dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.”

And,

“ “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.”

The definition of “Junior accessory dwelling unit” is added, as follows:

“ “Junior accessory dwelling unit” means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.”

SECTION III

Gilroy City Code, Chapter 30, Zoning, Article XI. Residential Land Use Tables, Section 30.11.10(c), sub-note 1, is hereby repealed and replaced to read as follows:

“¹ Accessory dwelling unit(s) and/or junior accessory dwelling units may be allowed subject to compliance with the regulations prescribed in Article LIV of this chapter.”

SECTION IV

If any section, subsection, subdivision, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise void or invalid by any court of competent jurisdiction, the validity of the remaining portion of this Ordinance shall not be affected thereby.

SECTION V

Pursuant to section 608 of the Charter of the City of Gilroy, this Ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

PASSED AND ADOPTED this 6th day of July, 2020 by the following roll call vote:

AYES: COUNCILMEMBERS: BLANKLEY, BRACCO, LEROE-MUÑOZ, MARQUES, TOVAR, TUCKER and VELASCO

NOES: COUNCILMEMBERS: NONE

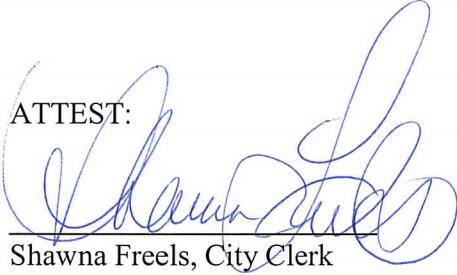
ABSENT: COUNCILMEMBERS: NONE

APPROVED:



Roland Velasco, Mayor

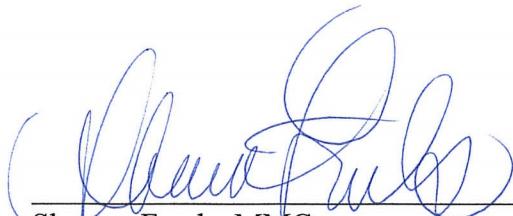
ATTEST:



Shawna Freels, City Clerk

I, SHAWNA FREELS, City Clerk of the City of Gilroy, do hereby certify that the attached Ordinance No. 2020-03 is an original ordinance, or true and correct copy of a City ordinance, duly adopted by the Council of the City of Gilroy at a special meeting of said Council held on the 6th day of July, 2020, 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 Gilroy this 8th day of July, 2020.



Shawna Freels, MMC
City Clerk of the City of Gilroy

(Seal)