

**CITY OF BENICIA**

**ORDINANCE NO. 20- 1**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING BENICIA MUNICIPAL CODE CHAPTER 17.16 (USE CLASSIFICATIONS), CHAPTER 17.70 (GENERAL REGULATIONS) AND CHAPTER 17.108 (DESIGN REVIEW) OF TITLE 17 (ZONING), ALL PERTAINING TO THE REGULATION OF ACCESSORY DWELLING UNITS, AND FINDING ADOPTION OF THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**WHEREAS**, the California State Legislature finds that Accessory Dwelling Units (ADUs) are an essential component of California's housing supply that provide additional rental stock and housing for family members, students, the elderly, in-home health care providers, people with disabilities and others at below market prices within existing neighborhoods; and

**WHEREAS**, new legislation for ADUs took effect on January 1, 2020 that necessitates revisions to the Benicia Municipal Code for consistency with State housing law; and

**WHEREAS**, Benicia Housing Element Policy 1.04 states that the City will review and revise regulatory standards necessary to comply with State Housing law; and

**WHEREAS**, the Historic Preservation Review Commission conducted a duly noticed public hearing on December 19, 2019, and recommended approval of the ordinance amending Title 17 (Zoning) pertaining to accessory dwelling units to the City Council; and

**WHEREAS**, the Planning Commission conducted a duly noticed public hearing on January 9, 2020, and recommended approval of the ordinance amending Title 17 (Zoning) pertaining to accessory dwelling units to the City Council; and

**WHEREAS**, the City Council of the City of Benicia held a duly noticed public hearing on the proposed amendments and introduced Ordinance No. 20-1 on January 21, 2020.

**NOW, THEREFORE**, the City Council of the City of Benicia does hereby ordain as follows:

**Section 1.** Section 17.16.080 (Accessory use classifications) of Chapter 17.16 (Use Classifications) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows:

A. Accessory Uses and Structures. Uses and structures that are incidental to the principal permitted or conditionally permitted use or structure on a site and are customarily found on the same site. This classification includes accessory dwelling units, home occupations, and construction trailers.

1. Accessory Dwelling Unit. 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 or multifamily dwelling is or will be situated. An accessory dwelling unit also includes an efficiency unit and a manufactured home, as defined in Section 18007 of the Health and Safety Code.

a. Attached Accessory Dwelling Unit. An accessory dwelling unit that shares at least one common wall with the primary dwelling and is not fully contained within the existing space of the primary dwelling or an accessory structure.

b. Detached Accessory Dwelling Unit. An accessory dwelling unit that does not share a common wall with the primary dwelling and is not fully contained within the existing space of an accessory structure.

c. Internal Accessory Dwelling Unit. An accessory dwelling unit that is fully contained within the existing space of the primary dwelling or an accessory structure.

d. Junior Accessory Dwelling Unit. 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.

2. Donation and Collection Bin. An unstaffed drop-off box, receptacle or other similar container used to accept donated clothing or other salvageable personal property, including but not limited to books, shoes, canned goods, and small household items to be used by a nonprofit or for-profit operator for distribution, resale, or recycling. (Ord. 19-04 § 1; Ord. 19-02 § 2).

**Section 2.** Section 17.70.060 (Accessory dwelling units) of Chapter 17.70 (General Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is hereby repealed and replaced to read as follows:

**17.70.060 Accessory dwelling units.**

A. Purpose. This section is intended to achieve the goals of the city's housing element and of the California Government Code by permitting accessory dwelling units, thereby increasing housing opportunities for the community through use of existing housing resources and infrastructure.

B. Where Allowed. An accessory dwelling unit is permitted:

a. In any district where single-family or multifamily dwellings are a permitted use; and

b. On any lot with an existing or proposed single-family or multifamily dwelling.

## C. Permitting Process.

### 1. When Consistent with Standards.

- a. An accessory dwelling unit that complies with all standards in this section shall be approved ministerially upon issuance of a building permit. No other permit, discretionary review, or public hearing is required.
- b. If an existing single-family or multifamily dwelling exists on the lot upon which an accessory dwelling unit is proposed, the City shall act on an application to create an accessory dwelling unit within 60 days from the date the City receives a completed application. If the applicant requests a delay in writing, the 60-day time period shall be tolled for the period of the delay.
- c. The City has acted on the application if it:
  - (1) Approves or denies the building permit for the accessory dwelling unit;
  - (2) Informs the applicant in writing that changes to the proposed project are necessary to comply with this section or any applicable regulation; or
  - (3) Determines that the accessory dwelling unit does not qualify for ministerial approval.

### 2. When Deviating from Standards.

- a. A proposed accessory unit that deviates from the standards in subsection J (Objective Design Standards) of this section shall be reviewed and may be approved or denied subject to the design review procedures in Chapter 17.108 (Design Review).
- b. A proposed accessory dwelling unit that deviates from standards in subsection I (Development Standards) or any other applicable physical standard of this section shall be reviewed and may be approved or denied subject to the variance procedures in Chapter 17.104 (Use Permits and Variances).

### 3. When Dependent on Separate Construction. When a proposed attached or detached accessory dwelling unit is dependent on the construction of a new building or new portion of a building that is not a part of the accessory dwelling unit (“separate construction”), the City shall either:

- a. Accept and begin processing the accessory dwelling unit application only after acting on an application for the proposed separate construction; or
- b. Upon written request from the applicant, review and act on the accessory dwelling unit together with the separate construction as part of a single application. In this case,

the accessory dwelling unit is subject to the same review procedures and requirements as the separate construction.

D. Junior Accessory Dwelling Units.

1. General. Junior accessory dwelling units shall comply with all standards in this section unless otherwise indicated.
2. Sanitation Facilities. A junior accessory dwelling unit may include sanitation facilities, or may share sanitation facilities with the existing structure.
3. Kitchen. A junior accessory dwelling unit must include, at a minimum:
  - a. A cooking facility with appliances; and
  - b. At least three linear feet of food preparation counter space and three linear feet of cabinet space.

E. Maximum Number per Lot. Not more than one accessory dwelling unit is allowed per lot except as allowed by subsections G.2 (Detached Accessory Dwelling Units), G.3 (Non-livable multifamily space) and G.4 (Detached Accessory Dwelling Units on Multifamily Lots) of this section.

F. Accessory Use. An accessory dwelling unit that conforms to this section:

1. Is considered an accessory use or accessory structure;
2. Is not considered to exceed the allowable density for the lot upon which it is located; and
3. Is considered a residential use consistent with the general plan and zoning designation for the lot.

G. Units Subject to Limited Standards. The city shall ministerially approve an application for a building permit within a residential or mixed-use district to create the following types of accessory dwelling units. For each type of accessory dwelling unit, the city shall require compliance only with the development standards in this subsection. Standards in subsections I (Development Standards) and J (Objective Design Standards) do not apply to these types of accessory dwelling units.

1. Internal Accessory Dwelling Units. One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:
  - a. The accessory dwelling unit or junior accessory dwelling unit, as such use is classified in section 17.16.080, is within the proposed space of a single-family dwelling

or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

b. The space has exterior access from the proposed or existing single-family dwelling.

c. The side and rear setbacks are sufficient for fire and safety.

d. The junior accessory dwelling unit complies with the requirements of Government Code Section 65852.22.

2. Detached Accessory Dwelling Units. One detached, new construction, accessory dwelling unit for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subsection G.1 (Internal Accessory Dwelling Units). The accessory dwelling unit must comply with the following:

a. Maximum floor area: 800 square feet.

b. Maximum height: 16 feet.

c. Minimum rear and side setbacks: four feet.

3. Non-Livable Multifamily Space. Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, subject to the following:

a. At least one accessory dwelling unit is allowed within an existing multifamily dwelling up to maximum of 25 percent of the existing multifamily dwelling units; and

b. Each accessory dwelling unit shall comply with building code standards for dwellings.

4. Detached Accessory Dwelling Units on Multifamily Lots. Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling, are subject to the following:

a. Maximum height: 16 feet

b. Minimum rear and side setbacks: four feet.

H. General Standards. Except as provided in subsection G (Units Subject to Limited Standards) of this section, an accessory dwelling unit shall comply with the following general standards:

1. Rental.

a. An accessory dwelling unit may be rented but shall not be sold or otherwise conveyed separately from the primary dwelling.

b. The rented unit shall not be leased for any period less than 30 days.

2. Primary and Accessory Designations. An existing primary dwelling unit may be designated as an accessory dwelling unit if:

a. The existing dwelling to be designated as an accessory dwelling unit complies with all standards in this section; and

b. The new primary dwelling unit is built in compliance with applicable standards and requirements of this title that apply to primary dwellings.

3. Nonconforming Uses and Structures. In conformance with BMC 17.98.020 and 17.98.030, the City shall not require, as a condition for approval of a permit application, the correction of nonconforming zoning conditions.

I. Development Standards. Except as provided in subsection G (Units Subject to Limited Standards) of this section, an accessory dwelling unit shall comply with the following development standards.

1. Floor Area. The floor area of an accessory dwelling unit shall not exceed the maximums shown in Table 1.

**Table 1: Maximum Floor Area**

| <b>ADU Type</b>       | <b>Maximum ADU Floor Area</b>  |
|-----------------------|--|
| Attached              |  |
| One bedroom or less   | 50 percent of the existing primary dwelling or 850 sq. ft., whichever is greater   |
| More than one bedroom | 50 percent of the existing primary dwelling or 1,000 sq. ft., whichever is greater |
| Detached              | 1,200 sq. ft.  |
| Internal              | 50 percent of the existing primary dwelling  |
| Junior                | 500 sq. ft.  |

2. Bulk Standards.

- a. An accessory dwelling unit shall conform to the applicable floor area ratio and site landscaping standards of the district in which it is located, except when otherwise allowed by subsection J.4 (Guaranteed Allowance) of this section.
- b. An accessory dwelling unit is exempt from maximum lot coverage standards.

3. Guaranteed Allowance. Maximum floor area, floor area ratio, and open space standards shall not prohibit an accessory dwelling unit with at least an 800 square feet of floor area, a height of at least 16 feet, and four-foot side and rear yard setbacks, provided the accessory dwelling unit complies with all other applicable standards.

4. Property Line Setbacks.

- a. All Accessory Dwelling Units. An accessory dwelling unit shall be setback from property lines as required by Table 2.
- b. Detached Accessory Dwelling Units.

(1) A detached accessory dwelling unit shall not occupy a required court or front yard, nor project beyond the front building line of the principal structure on the site. In an H historic overlay district, the detached accessory dwelling unit shall not project beyond the primary contributing façade, defined as the building face of a designated landmark or contributing building which is parallel to a street or former right-of-way and provides a front entrance leading to a foyer or lobby.

(2) A ground-floor deck, balcony or platform attached to or associated with a detached accessory dwelling unit shall be located at least four feet from a rear or side property line. See subsection J.1 (Second story Decks and Balconies) of this section for second-story deck and balcony setback standards.

**Table 2: Minimum Property Line Setbacks**

| Property Line | ADU Type                        |          |               |        |
|---------------|---------------------------------|----------|---------------|--------|
|               | Attached                        | Detached | Internal      | Junior |
| Front         | Same as primary dwelling<br>[1] |          | None required |        |
| Side          | 4 ft.                           | 4 ft.    |               |        |
| Rear          | 4 ft.                           | 4 ft.    |               |        |

Note:

[1] For detached accessory dwelling units, see also 17.70.060.I.4.b (Detached Accessory Dwelling Units). For detached accessory structures in an H historic overlay district, see also 17.70.060.J.6 (Historic District Standards).

5. Building Separation. A minimum five-foot distance shall be maintained between a detached accessory dwelling unit the primary building on the site. A detached accessory structure shall be set back from other structures on the site as required by the building code.

6. Converting and Replacing Existing Structures.

a. An internal ADU may be constructed regardless of whether it conforms to the current zoning requirement for building separation or setbacks.

b. If an internal ADU is proposed to be constructed within an existing accessory structure, the city shall ministerially permit an expansion of the existing accessory structure by up to 150 square feet for the purpose of accommodating ingress and egress.

c. If an existing structure is demolished and replaced with an accessory dwelling unit, an accessory dwelling unit may be constructed in the same location and to the same dimensions as the demolished structure.

7. Height.

a. Historic Districts. The height of an accessory dwelling unit in an H historic overlay district shall not exceed the maximums shown in Table 3.

**Table 3: Maximum Height in Historic Districts**

| ADU Type                        | Maximum ADU Height [1]                |
|---------------------------------|---------------------------------------|
| Attached                        | Same as required for primary dwelling |
| Detached                        |                                       |
| Exterior building wall [2]      | 14 ft.                                |
| Roof peak (based on roof pitch) |                                       |
| Below 4:12                      | 16 ft.                                |
| 4:12 to less than 6:12          | 18 ft.                                |
| 6:12 or greater                 | 20 ft.                                |
| Internal                        | Not applicable                        |
| Junior                          | Not applicable                        |

Note:

[1] For detached accessory structures in an H historic overlay district, see also 17.70.060.K.6 (Historic District Standards).

[2] Measured to the top plate.

b. Outside Historic Districts. The roof peak of a detached accessory dwelling unit outside of an H historic overlay district shall not exceed the maximums shown in Table 4. The maximum allowed height for attached accessory dwelling units is the same as required for the primary dwelling. Height standards do not apply to internal and junior accessory dwelling units.

**Table 4: Detached Accessory Dwelling Unit Maximum Height Outside Historic Districts**

| Maximum Roof Peak Height Based on Roof Pitch | Exterior Building Wall Distance from Rear or Side Property Line |                          |               |
|--|---|--------------------------|---------------|
|  | 4 ft. to less than 5 ft.  | 5 ft. to less than 7 ft. | 7 ft. or more |
| Below 4:12                                   | 16 ft.  | 18 ft.                   | 20 ft.        |
| 4:12 to less than 6:12                       | 18 ft.  | 20 ft.                   | 22 ft.        |
| 6:12 or greater                              | 20 ft.  | 22 ft.                   | 24 ft.        |

8. Foundation. An accessory dwelling unit shall be constructed on a permanent foundation.

J. Objective Design Standards. Except as provided in subsection G (Units Subject to Limited Standards) of this section, an accessory dwelling unit shall comply with the following design standards.

1. Second Story Decks and Balconies. Second story decks and balconies shall be set back a minimum of 10 feet from a side or rear property line adjoining a lot occupied by a single-family or two-family dwelling.

2. Outdoor stairs. Outdoor stairs providing access to a second story accessory dwelling unit shall adjoin an exterior wall that faces the interior of the lot, rather than an exterior wall nearest a side or rear property line.

3. Dormers. The side wall of a dormer shall be set back a minimum of two feet from the parallel side wall below. The cumulative width of a dormer or dormers on any side of an accessory dwelling unit shall not occupy more than 66 percent of the building face below.

4. Gables. If a gable roof or turned gable roof is present, the gable ridge shall be oriented in a direction parallel to the side property line in order to minimize shadow effects on the adjoining lot.

5. Roof Pitch. The roof pitch for an accessory dwelling unit shall be 4:12 or greater. However, if the primary residence has a roof pitch shallower than 4:12, a similar pitch may be employed on the accessory dwelling.

6. Historic District Standards. In an H historic overlay district, an accessory dwelling unit shall conform to the following additional requirements:

- a. Except as provided in subsection I.6 of this section, a detached accessory dwelling unit shall be set back from the primary contributing façade and/or front property line such that the entirety of the accessory dwelling unit is behind the rear wall of the principal structure on the lot.
- b. The elevation of the highest point of a detached accessory dwelling shall not exceed the elevation of the highest point of the primary dwelling, except that in all cases a detached accessory dwelling unit at least 16 feet in height is allowed.
- c. An attached accessory dwelling unit shall not result in a rooftop addition or any alteration to the existing roofline of a designated historic contributing or landmark structure.
- d. An accessory dwelling unit shall not result in any increase in building height for a designated historic contributing or landmark structure, except that in all cases an attached accessory dwelling unit at least 16 feet in height is allowed.
- e. An accessory dwelling unit shall not result in any exterior alteration to the primary contributing façade nor the existing wall or façade of a designated historic contributing or landmark structure where such wall or façade is parallel to a public street.
- f. A building addition to a designated historic contributing or landmark structure to accommodate an attached accessory dwelling unit shall be inset or separated by a connector that is offset at least 18 inches from the parallel side or rear building wall to distinguish it from the primary dwelling. Such building addition shall not extend beyond the side wall of the primary dwelling.
- g. For an attached accessory dwelling unit, the exterior building and trim materials shall be wood or smooth fiber cement siding or shingles. However, if Portland cement plaster (stucco) is the predominant finish for the primary residence, then stucco may also be applied to the accessory dwelling. Synthetic stucco (e.g., EIFS or DryVit) and faux wood grains are prohibited.
- h. For a detached accessory dwelling unit, the following exterior building materials are prohibited: pressed board, vinyl, synthetic stucco and any composite or fiber cement material with a faux wood grain.
- i. The exterior walls of an accessory dwelling shall utilize the same base and trim colors as the primary residence.
- j. The roof shall utilize the same material and color as the primary residence and shall match the primary residence in overall appearance.

k. Windows shall be taller than they are wide or shall match the proportions of the primary dwelling's windows. Windows in bathrooms, basements and crawl spaces, kitchens and laundry rooms may be horizontally oriented.

l. Window pane divisions shall be true or simulated divided lites (i.e., individual panes set within muntins or muntins applied to both the interior and exterior of the glass).

m. Window frames shall be painted or factory-finished. No metallic finishes such as silver or bronze anodized aluminum are permitted.

n. For designated contributing and landmark structures, vinyl windows are not permitted on an attached ADU.

#### K. Parking.

1. No additional off-street parking stalls shall be required for an accessory dwelling unit.

2. 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, replacement parking stalls are not required for the demolished parking structure.

L. Recordation of Deed Restriction. An executed deed restriction, on a form provided by the city, shall be submitted to the city prior to issuance of a building permit and shall be recorded prior to final occupancy. The deed restriction shall stipulate all of the following:

1. That the rented unit shall not be rented for any period less than 30 days at a time; and

2. That the accessory dwelling shall not be sold separately from the primary dwelling.

3. For junior accessory dwelling units, restrictions on size and attributes in conformance with this section.

**Section 3.** Subsection C (Exceptions to Criteria) of Section 17.108.060 (Review responsibilities) of Chapter 17.108 (Design Review) of Title 17 (Zoning) of the Benicia Municipal Code is hereby amended to read as follows:

C. Exceptions to Criteria. The community development director may authorize minor deviations from the zoning standards specified herein: timing of construction for an accessory structure, projection of detached garage in the RS district, separation between buildings per BMC 17.70.050; and modifications in vehicle space size requirements per BMC 17.74.100.

**Section 4.** **Severability.** If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

**Section 5. Compliance with CEQA.** The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15282(b) that exempts the adoption of an ordinance regarding second units in a single family or multifamily residential zone to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code. The additional clean-up amendments are exempt pursuant to Section 15061(b), the “General Rule”, which states that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the project would have a significant effect on the environment. The proposed clean-up amendments merely clarify and align existing Code and would not alter the physical environment in any manner that would result in a significant effect on the environment. The City Clerk shall file a Notice of Exemption with the County.

**Section 5. Publication.** The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Benicia, California and cause the same to be published in accordance with State law.

**Section 6. Effective Date.** This Ordinance shall be in full force and effective thirty (30) days after its adoption and shall be published and posted as required by law.

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On motion of Council Member **Largaespada**, seconded by Council Member **Strawbridge**, the foregoing ordinance was introduced at a regular meeting of the City Council on the 21<sup>st</sup> day of January, 2020, and adopted at a regular meeting of the Council held on the 4<sup>th</sup> day of February, 2020, by the following vote:

Ayes: **Council Members Campbell, Largaespada, Strawbridge, Young, and Mayor Patterson**

Noes: **None**

Absent: **None**



Elizabeth Patterson, Mayor

Attest:



Lisa Wolfe, City Clerk

2-11-2020  
Date