

ORDINANCE NO. 2019–XX

AN URGENCY ORDINANCE OF THE CITY OF EL CERRITO AMENDING TITLE 19 OF THE EL CERRITO MUNICIPAL TO AMEND SECTION 19.20.190, 19.46.030, 19.47 and 19.24.040 REGARDING ACCESSORY DWELLING UNITS AND TO ADD SECTION 19.20.195 REGARDING JUNIOR ACCESSORY DWELLING UNITS

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, and general welfare, of their citizens; and

WHEREAS, a severe housing crisis exists in the State of California; and

WHEREAS, accessory dwelling units (ADUs) are an effective way to increase housing options without changing neighborhood character; they can provide affordable housing for renters, a source of income for homeowners, and a housing resource for extended families, seniors, college students, and others; they represent a form of infill development that can be relatively affordable to construct and/or rent and offer innovative housing choices within existing neighborhoods; and

WHEREAS, Senate Bill (SB) 1069 and Assembly Bill (AB) 2299 became effective on January 1, 2017, adding sections 65852.1 and 65852.2 to the Government Code and modifying the requirements for second units or ADUs related to unit size, parking, and fees; and

WHEREAS, on June 6, 2017, the El Cerrito City Council adopted Resolution 2017-04 amending various section of the El Cerrito Municipal Code related to ADUs in order to comply with SB 1069 and AB 2299; and

WHEREAS, the 2017 amendments resulted in an increase in ADU applications, as the number of applications went from four in 2015, four in 2016 and one in 2017, to eighteen in 2018 and twenty-two in 2019 (thus far); and

WHEREAS, on October 9, 2019, Governor Newsom signed into law a series of bills intended to further increase the state's supply of affordable housing by facilitating the construction of ADUs (AB 68, AB 587, AB 670, AB 671, AB 881 and SB 13) (the "new ADU laws"); and

WHEREAS, effective January 1, 2020, California Government Code Section 65852.2(a)(4), as amended, provides that any existing local ADU ordinance failing to meet the requirements of the new ADU laws shall be null and void unless and until the local agency adopts a new ordinance complying with the new ADU laws; and

WHEREAS, in the absence of a valid local ordinance, the new ADU laws instead provide a set of default standards governing local agencies' regulation and approval of ADUs; and

WHEREAS, the new ADU laws are expected to trigger an increase in the number of inquiries related to the permitting of ADUs and the number of applications for ADU permits; and

WHEREAS, the City's current ordinance does not fully comply with the new ADU laws and would thus become void on January 1, 2020, and as a result, the City would be required to approve ADUs meeting the state's minimal default standards, which would create a conflicting regulatory environment and substantially reduce the City's ability to maintain the livable neighborhoods goals and policies of the General Plan, the San Pablo Avenue Specific Plan, and existing development standards; and

WHEREAS, to ensure that the City's current ordinance does not become null and void on January 1, 2020, the City Council desires to adopt an urgency interim ordinance to regulate ADU uses in the City in a manner that mitigates potential negative impacts, preserves public health and safety, protects the environment, and implements the City's policies and standards including the General Plan and the San Pablo Avenue Specific Plan; and

WHEREAS, notice of a public hearing was duly published on December 7, 2019 and the City Council held a duly noticed hearing on December 17, 2019; and

WHEREAS, California Government Code Section 65858 authorizes a city to adopt an interim urgency measure by a four-fifths (4/5ths) vote where necessary to protect the public health, safety, and welfare without following the procedures otherwise required prior to adoption of a zoning ordinance; and

WHEREAS, any interim urgency measure adopted pursuant to Government Code Section 65858 shall be of no further force and effect forty-five (45) days from its date of adoption unless extended by the City Council.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. **Incorporation of Recitals.** The City Council finds that the above Recitals are true and correct and are incorporated herein by reference.

Section 2. **Amendment of the El Cerrito Municipal Code.** Section 19.46.030(A) of the El Cerrito Municipal Code is amended to read in full as follows:

Section 19.46.030 Residential Use Classifications

A. Residential Housing Types

1. ***Single Family Dwelling.*** One dwelling unit, attached or detached, located on a single lot. This use includes manufactured housing but not mobile homes

2. **Accessory Dwelling Unit.** An Attached, Detached, or Interior 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 dwelling, and/or as otherwise defined in California Government Code Section 65852.2, as amended from time to time.
 - (a) **Attached Accessory Dwelling Unit or Attached ADU.** An Accessory Dwelling Unit that is constructed as a physical expansion (i.e. addition) of a proposed or existing primary dwelling and shares a common wall with the primary dwelling .
 - (b) **Detached Accessory Dwelling Unit or Detached ADU.** An Accessory Dwelling Unit that is constructed as a separate structure and fully detached from a proposed or existing primary dwelling.
 - (c) **Interior Accessory Dwelling Unit or Interior ADU.** An Accessory Dwelling Unit located within an existing structure. An existing structure means an existing permitted or otherwise legal dwelling unit, including all fully enclosed areas such as a partial basement, an attached garage, or an accessory structure that can be made safety habitable under building codes.
2. **Junior Accessory Dwelling Unit or JADU.** A unit that is no more than 500 square feet in size and contained entirely within a single family residence, and may include separate sanitation facilities or share sanitation facilities with the existing structure, or as otherwise defined in California Government Code Section 65852.22, as amended from time to time.
3. **Duplex - Two-Family Dwelling.** A single building that contains two primary dwelling units, or a single lot with two freestanding buildings, each of which is designed for occupancy by one household.
4. **Multiple Family Residential.** Three or more dwelling units on a single lot. Types of multiple-family dwellings include: townhouses, garden apartments, and other apartment buildings.

Section 3. Amendment of the El Cerrito Municipal Code. The terms Efficiency Unit, Living Area, and Passageway and their corresponding definitions shall be added to Sections 19.47.010 and 19.47.020 of the El Cerrito Municipal Code as follows:

Section 19.47.010 List of Terms

Efficiency Unit

Living Area

Passageway

Section 19.47.020 Definitions

Efficiency Unit. Shall have the same meaning as defined in Section 17958.1 of the Health and Safety Code, as amended from time to time.

Living Area. Shall have the same meaning as defined in California Government Code Section 65852.2, as amended from time to time.

Passageway. Shall have the same meaning as defined in California Government Code Section 65852.2, as amended from time to time.

Section 4. Amendment of the El Cerrito Municipal Code. Section 19.20.190 of the El Cerrito Municipal Code is amended to read in full as follows:

Section 19.20.190 Accessory Dwelling Units

- A. Purpose. The following regulations are intended to comply with Government Code Sections 65852.150 and 65852.2 (or as otherwise amended), and implement the General Plan by allowing Accessory Dwelling Units subject to the standards and requirements herein.
- B. Applicability. An Accessory Dwelling Unit Permit shall be required for all Accessory Dwelling Units, subject to the following exceptions:
 - 1. ADUs on Single-Family Dwelling Lots. The following Accessory Dwelling Units shall be allowed on a parcel with a proposed or existing single family dwelling, consistent with state law:
 - (a) One Interior ADU or Junior ADU subject to the following standards:

- (i) The Interior ADU or JADU shall have exterior access.
 - (ii) The Interior ADU or JADU shall have side and rear setbacks sufficient for fire safety as determined by the Fire Marshal.
 - (iii) A Junior ADU shall be consistent with Section 19.20.195.
 - (iv) The Interior ADU or JADU shall not be rented for a term less than 30 days.
- (b) One Detached ADU subject to the following standards:
- (i) The Detached ADU shall not exceed 800 square feet in size.
 - (ii) The side and rear setbacks of the Detached ADU shall be a minimum of four feet.
 - (iii) The height of the Detached ADU shall not exceed 16 feet.
 - (iv) The Detached ADU shall not be rented for a term less than 30 days.
2. ADUs on Multifamily Dwelling and Duplex Lots. The following Accessory Dwelling Units shall be allowed on a parcel with an existing multifamily dwelling or a duplex, consistent with state law.
- (a) At least one ADU within the portion of an existing multifamily dwelling structure or a duplex not used as livable space subject to the following standards:
- (i) The number of ADUs allowed on a lot shall not exceed twenty-five percent of the existing multifamily dwellings on a lot.
 - (ii) The space includes, but is not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.
 - (iii) The ADU shall not be rented for a term less than 30 days.
- (b) Two Detached ADUs subject to the following standards:
- (i) The height of the Detached ADU shall not exceed 16 feet.
 - (ii) The side and rear setbacks of the Detached ADU shall be a minimum of four feet.

- (iii) The Detached ADU(s) shall not be rented for a term less than 30 days.

C. Where Allowed

- 1. Accessory Dwelling Units may be established on any lot in a RS, RD or RM zoning district, as identified in Chapter 19.06, or any lot in the TOHIMU or TOMIMU district as identified in San Pablo Avenue Specific Plan, incorporated by reference in Section 19.15.020.

D. General Requirements. Accessory Dwelling Units shall conform to the following:

- 1. Architectural Compatibility. The architectural design, exterior materials and colors, roof pitch and style, type of windows, and trim details of an Accessory Dwelling Unit shall be substantially the same as, and visually harmonious and or compatible with the primary dwelling, as determined by the Zoning Administrator.
- 2. Windows. All Accessory Dwelling Unit windows facing a side yard or rear yard of an adjacent property and located less than 5 feet from the shared property line shall be clerestory (minimum of 6.5 feet above the finished floor height).
- 3. Parking. No parking spaces shall be required. 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 off-street parking spaces shall not be required.
- 4. Building Code Compliance. Notwithstanding any other provision of this section, Accessory Dwelling Units shall be developed in compliance with Title 16, Buildings and Construction, of the El Cerrito Municipal Code.
- 5. Owner Occupancy. A legal owner of the property shall occupy either the primary dwelling or the Accessory Dwelling Unit, as the owner's primary residence, except that owner occupancy shall not be required for any Accessory Dwelling Unit permitted between January 1, 2020 and December 31, 2024, in accordance with Government Code section 65852.2(a)(6) or as otherwise amended.

6. Sale Prohibited. An Accessory Dwelling Unit may be rented, but shall not be sold or otherwise conveyed separately from the primary dwelling.
7. Deed Restriction. Before obtaining a building permit for an Accessory Dwelling Unit, the owner of the lot or parcel shall file with the County Recorder a declaration or agreement of restrictions that has been approved by the City Attorney as to its form and content, containing a reference to the deed under which the property was acquired by the owner and stating that:
 - (a) The Accessory Dwelling Unit shall not be sold separately.
 - (b) Accessory Dwelling Unit shall be considered legal only as long as either the Primary Dwelling or the Accessory Dwelling Unit is occupied by an owner of record of the property.
 - (i) This section shall only be required in accordance with Government Code section 65852.2(a)(6).
 - (c) An Accessory Dwelling Unit shall be maintained as a separate living unit and shall not be converted as an addition to a primary dwelling unit.
 - (d) The restrictions shall be binding upon any successor in ownership of the property and lack of compliance may result in legal action against the property owner.

E. Development Standards

1. Setbacks.
 - (a) Detached ADUs and Attached ADUs. Side and rear setbacks shall be no less than 4 feet. Detached and Attached ADUs shall comply with the front setback requirements applicable to the primary dwelling unit(s) in the zoning district where the respective ADU is proposed, and with the Lot Location requirements below.
 - (b) Interior ADUs. No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted or partially converted to an Accessory Dwelling Unit.

2. Floor Area.

- (a) Accessory Dwelling Units shall be subject to the following maximum floor area:

Studio or One Bedroom	850 square feet
More than One Bedroom	1000 square feet

- (b) An Accessory Dwelling Unit must have a floor area of at least 150 square feet and shall not preclude an Efficiency Unit.
- (c) Attached ADU. The total floor area of an Attached ADU shall not exceed 50% of the existing primary dwelling unit(s). In the event of a conflict between this subsection and the maximum floor areas in subsection (a), the Attached ADU shall be subject to the lower square footage requirement.

3. Height.

- (a) The maximum height of a Detached ADU shall be 16 feet.
- (b) The maximum height of an Attached ADU shall comply with daylight plane, building height, and any other provisions relevant to building height applicable to the primary dwelling unit in the zoning district where the Accessory Dwelling Unit is proposed.

4. Entries/Access. An Accessory Dwelling Unit shall have exterior access that is independent from that of the primary dwelling unit. No specific path or passageway shall be required in conjunction with the construction of an ADU, but the unit must meet the requirements of Title 16, Buildings and Construction, of the El Cerrito Municipal Code.

- (a) Attached ADUs. The exterior access to an Attached ADU shall be located at least 10 feet behind the exterior access to the primary unit, or shall be located on the side or rear of the dwelling.

5. Lot Location.

- (a) Detached ADUs - Interior Lots. A Detached ADU shall be located behind the primary dwelling(s) in relation to the front lot line. For the

purpose of this regulation, "behind" shall mean that at least one of the following criteria is met:

- (i) All portions of the ADU are located behind all portions of the primary unit(s).
- (ii) The ADU is located partially behind the primary dwelling unit(s), and the front façade of the ADU is at least 20 feet farther from the front lot line than is the front facade of the primary unit(s).
- (iii) The ADU is located entirely in the rear half of the lot.

(b) Detached ADUs - Corner Lots. On corner lots, the Interior Lot standard of Subsection (a) above shall be met on the front of the property. In addition, a Detached ADU shall not be located closer than the primary dwelling unit(s) to the street-facing side lot line.

(c) Attached Units. If an Attached ADU is created through an addition to an existing single-family dwelling at the second or higher story of the dwelling, such ADU shall be located in the rear half of the structure.

6. Exceptions. Exceptions to the above standards shall require an Administrative Use Permit, according to the procedures of Chapter 19.34, Use Permits. In addition to the findings for approval of Section 19.34.040, the decision-making authority shall only grant approval if it finds the Accessory Dwelling Unit is compatible with, and preserves, the applicable residential character of the primary dwelling and the surrounding neighborhood. Additionally:

- (a) The hearing shall be publicly noticed not less than twenty-one days in the local newspaper and to all property owners located within a three hundred-foot radius.
- (b) Any decision of the Zoning Administrator may be appealed directly to the Planning Commission.

7. Limitations. Notwithstanding any local development standards pertaining to unit size, lot size, lot coverage, floor area ratio, and/or open space; an

Accessory Dwelling Unit that is no more than 800 square feet with minimum four-foot side and rear yard setbacks, and a maximum height of 16 feet, shall be allowed provided the unit will be constructed in compliance with all other local development standards.

Section 5. Amendment of the El Cerrito Municipal Code. Section 19.20.195 of the El Cerrito Municipal Code is added to read in full as follows:

Section 19.20.195 Junior Accessory Dwelling Units

- A. Applicability. This section applies to Junior Accessory Dwelling Units. Junior Accessory Dwelling Units in compliance with this section shall be allowed pursuant to Section 19.20.190(B)(1)(a).
- B. Where Allowed. Junior Accessory Dwelling Units may be established on any lot in a RS zoning district, as identified in Chapter 19.06, with a proposed or existing primary single-family dwelling. Only one Junior Accessory Dwelling Unit is permitted per lot.
- C. General Requirements. Junior Accessory Dwelling Units shall conform to the following:
 - 1. Parking. No parking spaces shall be required. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of a Junior Accessory Dwelling Unit or converted to a Junior Accessory Dwelling Unit, replacement off-street parking spaces shall not be required.
 - 2. Short-term Rentals. Junior Accessory Dwelling Units may not be rented for less than 30 days.
 - 3. Building Code Compliance. Notwithstanding any other provision of this section, Junior Accessory Dwelling Units shall be developed in compliance with Title 16, Buildings and Construction, of the El Cerrito Municipal Code.
 - 4. Owner Occupancy. A legal owner of the property shall occupy either the primary dwelling or the Junior Accessory Dwelling Unit, as the owner's primary residence. Prior to the issuance of a building permit for a Junior

Accessory Dwelling Unit, the applicant shall record notice of this requirement as a deed restriction.

(a) Exception. This section shall not apply if the owner is a governmental agency, land trust, or housing organization.

5. Sale Prohibited. A Junior Accessory Dwelling Unit shall not be sold, transferred, or assigned separately from the primary dwelling.

6. Deed Restriction. Before obtaining a building permit for a Junior Accessory Dwelling Unit, the owner of the lot or parcel shall file with the County Recorder a declaration or agreement of restrictions that has been approved by the City Attorney as to its form and content, containing a reference to the deed under which the property was acquired by the owner and stating that:

(a) The Junior Accessory Dwelling Unit shall not be sold separately; and

(b) The Junior Accessory Dwelling Unit shall be considered legal only as long as either the Primary Dwelling or the Accessory Dwelling Unit is occupied by an owner of record of the property; and

(c) The restrictions shall be binding upon any successor in ownership of the property and lack of compliance may result in legal action against any property owner; and

(d) The Junior Accessory Dwelling Unit shall be restricted to the size and attributes in accordance with this section.

D. Development Standards

1. Location. A Junior Accessory Dwelling Unit shall be constructed entirely within the walls of the proposed or existing single-family residence.

2. Entries/Access. A Junior Accessory Dwelling Unit shall have exterior access that is independent from that of the primary dwelling unit. No specific path or passageway is required in conjunction with the construction of a JADU, but the unit must meet the requirements of Title 16, Buildings and Construction, of the El Cerrito Municipal Code.

3. Efficiency Kitchen. A Junior Accessory Dwelling Unit shall include an efficiency kitchen, which shall include all of the following:
 - (a) A cooking facility with appliances; and
 - (b) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the Junior Accessory Dwelling Unit.

Section 6. **Amendment of the El Cerrito Municipal Code.** The Required Off-Street Parking Spaces for Accessory Dwelling Unit in Table 19.24-A within Section 19.24.040 of the El Cerrito Municipal Code is amended as follows: No parking spaces are required for ADUs.

Section 7. **Urgency Findings.** The City Council finds and determines pursuant to California Government Code Section 65858 that adoption of this urgency ordinance is necessary for the immediate preservation of the public health, safety, and welfare, and to prohibit uses in conflict with zoning regulations pertaining to ADUs currently being considered by the City.

Section 8. **Compliance with the California Environmental Quality Act.** The proposed amendment is exempt from CEQA pursuant to CEQA Guidelines Section 15282(h), which states that the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code is statutorily exempt from the requirements of CEQA.

Section 9. **Severability.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 10. **Publication and Effective Date.** Within fifteen (15) days from and after adoption, this Ordinance or a summary thereof shall be published in accordance with California Government Code Section 36933.

Following adoption by at least a four-fifths vote of the City Council, this Ordinance shall take effect and be enforced immediately and shall remain in effect for forty-five (45) days from its date of adoption unless extended by the City Council as provided for in the Government Code.

THE FOREGOING ORDINANCE was introduced, adopted, and ordered published at a regular meeting of the City Council on December 17, 2019 and passed by the following vote:

AYES:	Councilmembers
NOES:	Councilmembers
ABSENT:	Councilmembers
ABSTAIN:	Councilmembers

APPROVED:

Gregory B. Lyman, Mayor

ATTEST:

Holly M. Charléty, City Clerk

ORDINANCE CERTIFICATION

I, Holly M. Charléty, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2019–XX of the City of El Cerrito; that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the 17 day of December, 2019; and that said Ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this XX day of December, 2019.

Holly M. Charléty, City Clerk