



Item No. 16 Town of Atherton

CITY COUNCIL STAFF REPORT – PUBLIC HEARING

TO: HONORABLE MAYOR AND CITY COUNCIL

THROUGH: GEORGE RODERICKS, CITY MANAGER

FROM: STEPHANIE B. DAVIS, AICP PRINCIPAL PLANNER

DATE: SEPTEMBER 16, 2020

SUBJECT: INTRODUCTION OF MUNICIPAL CODE ORDINANCE AMENDMENTS TO ATHERTON MUNICIPAL CODE CHAPTERS 17.52 ACCESSORY DWELLING UNITS AND CHAPTER 17.60 DEFINITIONS

RECOMMENDATION

Introduce Municipal Code Ordinance amendments to Chapter 17.52 “Accessory Dwelling Units” and Chapter 17.60 “Definitions” of the Atherton Municipal Code.

BACKGROUND

In October 2019 the Governor signed into law a number of bills that amended Government Code sections 65852.2 and 65852.22 which impose new limits on a local authority to regulate Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) in order to further ease local restrictions. These State laws restrict what cities may require when new ADUs are considered with the intent of further reducing barriers and streamlining approvals to accommodate the development of ADUs.

These new ADU laws took effect January 1, 2020. Per this new legislation, if a jurisdiction’s ADU ordinance does not comply with the new ADU laws, that ordinance becomes null and void as a matter of law. Cities are more accountable now to the California Department of Housing Community Development (HCD) for confirming their local ordinances to the state ADU law, and HCD may refer a violation to the Attorney General.

Key areas of change as mandated by the state legislation relative to the Town’s existing ADU Ordinance are as follows:

1. All properties that allow single family residential uses shall be allowed both one ADU and one JADU, which is discussed further in the ANALYSIS section below.
2. All properties that allow single family residential uses shall be allowed one ADU up to 800 square feet in size, regardless of floor area ratio.

3. Detached ADUs may be constructed up to a sixteen (16) foot height maximum.
4. Required setbacks are reduced to four (4) feet from side and rear property lines.
5. Replacement parking may not be required if an existing garage is converted to an ADU.
6. Owner occupancy requirements may not be imposed for five years (until 2025).
7. Sixty (60) day permitting processing.
8. State law now requires HCD to approve all newly adopted ADU ordinances.

See Attachment 4, 21 Elements ADU New Laws Summary for more discussion on the key legislative changes.

On August 26, 2020 the Planning Commission considered amendments to Chapter 17.52 “Accessory Dwelling Units” and Chapter 17.60 “Definitions” and voted 3-1 to recommend that the City Council reject the amendments. The Commission vote was expressed not with opposition of the proposed Ordinance amendments presented by staff, but to convey the Commission’s position that they are opposed to this type of mandate by the State.

ANALYSIS

State Mandated Amendments

Attachment 1 and 2, include amendments to the Town’s ADU Ordinance to provide compliance with the more permissive state regulations. Prior to finalizing the draft amended Ordinance, staff met directly with the HCD staff who provided preliminary comments on a first-round draft Ordinance. Overall comments received from HCD were relatively minor in nature, and staff was not informed of any significant areas of non-compliance or omissions with the legislative direction. Staff continued to work with the City Attorney’s office on further refinements based on HCD comments and finalized a draft Ordinance. Attachments 1 and 2 reflect such comments and direction by both the HCD and City Attorney’s office.

A comparative summary of the Town’s existing ADU Ordinance and proposed changes in order to implement state law is presented in the table below.

SUMMARY OF ADU AMENDMENTS		
Development Standard	Existing Regulation	Proposed Amendment
Maximum Number	1 ADU / lot	1 ADU and 1 JADU/lot
Location	Attached to Main Residence or Detached, but on same lot	No Change
Height	Attached = Same as Main Residence Detached = 15’ max with 11’ sidewall	Attached = Same as Main Residence Detached = 16’ max with 11’ sidewall
Setbacks – Front	Attached = Same as Main Residence	Attached = No Change

	Detached = 120' from the front property line, or 30' behind the front line of the main residence, whichever is less.	Detached = No Change
Setbacks – Side & Rear	Attached = Same as Main Residence, but allowed to encroach up to 20%. Detached = In the main building area, but allowed to encroach up to 20%.	Attached = Same as existing regulation but can be reduced to the extent necessary to accommodate at least an 800SF ADU *Detached = Can be 4' without applying additional floor area exemptions, however a minimum of 10' if additional floor area exemption requested. (<i>*see Additional Floor Area Exemption” discussion below.</i>)
Replacement Unit – All setbacks and area.	An existing, legally non-conforming attached or detached building cannot be completely demolished and rebuilt in same legally nonconforming location. Must be rebuilt to comply with current Code requirements.	An existing, legally non-conforming attached or detached building can be demolished and rebuilt in the same location at the same dimensions.
Floor Area Maximum	Maximum size is 1,200 square feet.	No change.
Floor Area Exemption	1,200 square feet maximum; exemption cannot exceed 10% of the allowed floor area.	800 square feet by right. *Up to 1,200 square feet with voluntary, increased setbacks. (<i>*see Additional Floor Area Exemption” discussion below.</i>)
Parking	One parking space per bedroom unless: (a) the unit is located within one-half mile of public transit, or (b) the unit is part of the existing primary residence or an existing accessory structure.	One parking space per ADU unless: Same as (a) and (b) of existing regulations and: (c) On-street parking permits are required but not offered to the occupant of the ADU or JADU. (d) A car share vehicle is located within one block of the ADU or JADU.

Owner Occupancy	Requires the primary residence, ADU, JADU, or any combination thereof to] be occupied by the property owner of the property.	Continues to require property owner occupancy but gives, however gives a 5-year timing extension; any ADU or JADU permitted between January 1, 2020 and January 1, 2025 shall not be subject to any owner occupancy requirements.
Process Timing	120 days from application submittal.	60 days to approve a complete application.

Staff Proposed Amendments

In addition to the amendments as required by state legislation to Chapter 17.52 “Accessory Dwelling Units”, staff is recommending the following, additional amendments for consistency with General Plan land use policies, clarity, and internal Zoning Ordinance consistency. These amendments are also included within Attachments 1 and 2.

- *Additional Floor Area Exemption.* State regulations allow the first 800 square feet of any type of ADU (either detached or attached) to be exempt from the site’s overall floor area maximum, while the existing ADU Ordinance allows up to 1,200 square feet of an ADU to be exempt. As noted above, state regulations now also allow the construction of either a new attached or detached ADU to be constructed only four feet from a side or rear property line. This is a significant setback reduction from existing Town regulations which currently requires new ADU’s to be located in the main buildable area (i.e. meet the side and rear setbacks of the main residence) with the ability to encroach into such setbacks up to 20%. This is also a notable setback reduction from the Town’s existing setback regulations for other detached accessory buildings such as guest houses, pool houses, etc. which require a minimum 10-foot side and rear setback. Although a guest and/or pool house can have the exact same floor plan layout as an ADU (i.e. separate living, cooking and bathing areas), the pertinent difference between the two is the limitation on a pool/guest house to not be habituated for more than 30 days. While staff noted to HCD staff concern with this setback reduction in terms of the existing Town fabric and layout, ability for landscape screening, views, and privacy, it was determined that requiring any greater than a 4-foot setback would be deemed noncompliant with the state mandates.

Thus, in the attempt at continuing to allow additional floor area of an ADU to be exempt beyond the first 800 square feet given as “free” square footage by the state, combined with an approach to incentivize and encourage the construction of new ADU’s to meet the current Town setback requirements for detached accessory buildings (most specifically, a minimum 10 foot side and rear setback) to help mitigate the potential, identified staff concerns noted above, staff is proposing that any new detached ADU which voluntarily choses to meet the minimum setback standards of 10 feet for a side and rear property line for a detached accessory building or attached ADU to be located in the main building area (with ability to encroach up to 20%), be allowed additional floor area exemption beyond the state mandated exemption of 800 square feet, up to 1,200 square feet.

An example scenario would be if a new 1,200 square foot detached ADU is proposed to be located a minimum of 10 feet from a side and rear property line, it would gain the ability to exempt an additional 400 square feet from counting towards the site's overall maximum allowed floor area threshold.

- *Heritage Tree Protection.* Reference to the requirement in meeting Heritage Tree regulations is proposed to be added. If Heritage Tree regulations, such as a minimum Tree Protection Zone (TPZ) distance requires a greater setback then otherwise may be allowed per new ADU setback mandates by the state, the TPZ setbacks would be applied. Staff vetted this determination in preliminary review with the state HCD.
- *Definitions.* Definitions of both an ADU and a JADU are also amended for internal consistency within Chapter 17.60 "Definitions". A JADU is the conversion of an existing bedroom in a single-family home to include a wet-bar kitchen and an exterior entrance. The intent of these changes is to allow use of such space as a private, additional residence within an existing home.

Because the State's requirements are far more permissive than what the Town would likely support, as mentioned staff approached the HCD early in the process to devise an Ordinance that would meet State requirements for approval but also attempt to address local conditions. In summary, staff finds that the amended Ordinance as drafted, represents the best compromise alternative that the State will approve.

POLICY FOCUS

To respond to the current state housing crisis, the State Legislature passed a series of bills designed to encourage the production of both ADUs and JADUs. Cities are expected to update their local ordinances to comply with the state legislation. If the Town fails to conform its local ordinance, applicants would be permitted to develop under the state legislation. Failure to adopt an ordinance that the HCD supports by their approval or maintaining an ordinance that is not compliant with State law means that the Town's ordinance would be considered null and void by any developer. No State action would be required to invalidate the Town's ordinance. Failure to adopt an ordinance that the HCD will approve (required by State law), results in making the Town's non-compliant ordinance null and void. A null and void ordinance allows development to occur under the State's more permissive guidelines without regard for local zoning law.

Since the Town currently has several ADU applications pending, adopting the local updates will allow the Town to process applications with more clarity and compliance. The attached Ordinance is drafted to comply with the minimum, more permissive state regulations. Additionally, adoption of amendments to the ADU Ordinance to incorporate the more permissive state requirements, may further promote the development of ADUs in Town, which may in turn assist the Town fulfilling its Regional Housing Needs Allocations (RHNA) requirements which will be assigned by the state during the next upcoming, required Housing Element cycle.

FISCAL IMPACT

The cost associated with the preparation of the draft Ordinance amendments are included within the annual Planning Department budget. The cost to implement the Ordinance will be paid for the applicants of related development projects.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Notice was published in the Almanac on September 4, 2020. Information about the project is also disseminated via the Town’s electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town’s electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item X has or _____ has not been before a Town Committee or Commission.

- Audit/Finance Committee (meets every other month)
- Bicycle/Pedestrian Committee (meets as needed)
- Civic Center Advisory Committee (meets as needed)
- Environmental Programs Committee (meets every other month)
- Park and Recreation Committee (meets each month)
- Planning Commission (meets each month) - August 26, 2020
- Rail Committee (meets every other month)
- Transportation Committee (meets every other month)
- Tree Committee (meets each month)

ATTACHMENT

1. Draft Ordinance Amendments, Chapter 17.52 “Accessory Dwelling Units” – tracked changes.
2. Draft Ordinance Amendments, Chapter 17.52 “Accessory Dwelling Units” – clean.
3. Draft Ordinance Amendments, Chapter 17.60 “Definitions” – tracked changes.
4. 21 Elements ADU New Laws Summary

Formatted: Right: 0.25"

ATTACHMENT 1

Formatted: Font: (Default) Arial, 14 pt, Bold

Formatted: Right

**Chapter 17.52
ACCESSORY DWELLING UNITS**

Sections:

17.52.010 Purpose.

17.52.020 Allowed Use Provisions.

17.52.030 Definitions.

17.52.040 Development Standards and General Requirements.

~~17.52.050 Conversion to an Accessory Dwelling Unit From Existing Space.~~

17.52.0560 Application Review.

17.52.010 Purpose.

The purpose of this chapter is to regulate accessory dwelling units in residential zoning districts and on residential property consistent with state law (California Government Code Sections 65852.1 through 65852.2). Implementation of this chapter is intended to provide for additional housing opportunities by increasing the number of units available within existing neighborhoods while maintaining the primarily single-family residential character of the area.

17.52.020 Allowed Use Provisions.

Accessory dwelling units and junior accessory dwelling units shall be allowed in all areas zoned to allow single family residential zoning districts in compliance with the development standards set forth in section 17.52.040 (Development Standards and General Requirements) of this Chapter.

17.52.030 Definitions.

A. "Accessory dwelling unit" or "ADU" means a building or portion of a building designed for use and occupancy by people living independently of the occupants of the main residence building and containing separate kitchen, bath, sleeping, or living facilities. The term "attached accessory dwelling unit" means an accessory dwelling unit that is structurally attached to the main residence but which has independent, direct access from the exterior. The term "detached accessory dwelling unit" means an accessory dwelling unit that is not structurally attached to the main residence.

B. "Junior Accessory dwelling unit" or "JADU" 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 shall include an efficiency kitchen, which shall include all of the following a cooking facility with appliances and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.

Formatted: Font: (Default) Times New Roman

ATTACHMENT 1

Formatted: Right: 0.25"

Formatted: Font: (Default) Arial, 14 pt, Bold

Formatted: Right

17.52.040 Development Standards and General Requirements.

~~Unless otherwise stated in Section 17.52.050 of this Ordinance, ADUs and JADUs are permitted provided the following standards and requirements are incorporated. An accessory dwelling unit is permitted provided the following standards and requirements are incorporated:~~

A. Maximum Number. Only one ~~accessory dwelling unit~~ADU and one JADU shall be allowed on each lot or parcel ~~with a zoning designation of single-family residential.~~

B. Location. The ADU shall be attached to the existing main residence or located within the habitable area of the existing main residence or detached from the main residence and located on the same lot as the main residence.

C. Heritage Tree, Setbacks, Height, Other Development Requirements.

1. Heritage Trees. In all instances, the location of any newly constructed ADU or JADU shall meet the minimum requirements in accordance with Chapter 8.10 Removal of and Damage to Heritage Trees for any existing heritage trees.

2. Height. The maximum height of an attached ADU shall meet the height requirements for the main residence of the zone in which the unit is to be located. The maximum height of a detached ADU shall be one-story and shall not exceed a maximum overall height of sixteen (16) feet and maximum sidewall height of eleven (11) feet.

3. Setbacks and other Development Standards. Except as specified below, all ADUs and JADUs shall comply with the setback requirements of the zone in which a unit is to be located.

i. ~~Each newly constructed~~ Attached or detached accessory dwelling unitADUs shall be located in the main building area. ~~In addition, a newly constructed accessory dwelling unit and~~ may encroach into the side and rear yard setbacks by not more than twenty percent (20%) of the required setback, ~~however such setbacks may be reduced to the extent necessary to accommodate at least an eight hundred (800) square foot ADU.~~

ii. ~~Newly constructed, D~~etached accessory dwelling units shall be subject to the setback and meet all other applicable development standards as set forth in Chapter 17.40 Accessory Buildings and Structures of the Atherton Municipal

Formatted: Font color: Text 1

Formatted: Font: (Default) Times New Roman

Formatted: Right: 0.25"

ATTACHMENT 1

Formatted: Font: (Default) Arial, 14 pt, Bold

Formatted: Right

Code). Detached ADU's which meet the minimum side and rear setbacks of Chapter 17.40 Accessory Buildings and Structures may apply additional exemptions from floor area limitations as noted in Section 17.52.040 (C)(5) of this Chapter, however;

a. Such rear and side setbacks may be reduced to four (4) feet without applying the additional exemptions from floor area limitations as noted in Section 17.52.040 (C)(5) of this Chapter.

iii. No setback requirement shall apply to any ADU or JADU constructed in an existing living area, a converted existing accessory structure or building, or for a new ADU or JADU constructed in the same location and built to the same dimensions as an existing structure.

4. Floor Area.

i. No ADU or JADU may be smaller than the size required to allow an efficiency unit pursuant to Health and Safety Code Section 17958.1.

ii. The maximum size of a detached or attached ADU shall not exceed twelve hundred (1,200) square feet.

iii. The increased floor area of an attached ADU shall not exceed fifty percent of the existing floor area of the main residence, unless necessary to accommodate at least an eight hundred (800) square foot ADU.

iv. No floor area limitation shall be required for any conversion of an existing legal non-conforming building to an ADU.

5. Exemption from Maximum Floor Area Limitations.

i. The first eight hundred (800) square feet of floor area of each newly constructed ADU or JADU shall be excluded from maximum floor area calculations.

ii. Additional floor area for newly constructed ADUs or JADUs may be excluded from maximum floor area calculations where staff determines the following conditions are met:

a. Newly constructed detached ADUs which meet and/or exceed the minimum side and rear setbacks of Chapter 17.40 Accessory Buildings and Structures will be allowed additional floor area exemptions in addition to the first eight hundred (800) square feet of floor area up to a total of twelve hundred (1,200) square feet.

Formatted: Font: (Default) Times New Roman

Formatted: Right: 0.25"

ATTACHMENT 1

Formatted: Font: (Default) Arial, 14 pt, Bold

Formatted: Right

~~a-b. Newly constructed attached ADUs which are located in the main buildable area and encroach into the side and rear yard setbacks by not more than twenty percent (20%) of the required setback shall be allowed additional floor area exemptions in addition to the first eight hundred (800) square feet of floor area up to a total of twelve hundred (1,200) square feet.~~

D. Existing Garage. No setback shall be required for an existing, legal attached or detached garage ~~and/or other existing structure~~ that is converted to an ADU or JADU. ~~accessory dwelling unit. A setback of five feet is required from the side and rear lot lines for an accessory dwelling unit that is constructed above a garage.~~

E. Passageway. No passageway, as defined in California Government Code Section 65852.2, shall be required in conjunction with the construction of an ~~accessory dwelling unit~~ADU or JADU.

~~F. Maximum Square Footage. The size of each such accessory dwelling unit shall not exceed one thousand two hundred square feet.~~

~~G. Floor Area. The increased floor area of an attached accessory dwelling unit shall not exceed fifty percent of the existing living area of the main residence, with a maximum increase in floor area of one thousand two hundred square feet.~~

~~F.H. Owner Occupancy. Either the main primary residence, ADU or the accessory dwelling unit, JADU, or both any combination thereof, shall be occupied by the owner of the property. Notwithstanding the foregoing, any ADU or JADU permitted between January 1, 2020 and January 1, 2025 shall not be subject to any owner occupancy requirements.~~

~~G.I. ADU Rental Only. An ADU or JADU The accessory dwelling unit shall not be sold separate from the main residence and may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence. Rentals of any ADU or JADU must be for terms of longer than thirty days or longer.~~

H.J. Parking Requirement.

1. Unless subject to one of the exceptions immediately below, each ~~accessory dwelling unit~~ADU or JADU shall have assigned to it one parking space ~~per ADU for each bedroom in the accessory dwelling unit~~. Parking shall be accessible from a public street and screened from view of the public street. These spaces may be provided as tandem parking on an existing driveway.

2. No additional parking required. No additional parking shall be required if one of the following conditions applies to the ADU or JADU~~where~~:

Formatted: Font: (Default) Times New Roman

5

Formatted: Right: 0.25"

ATTACHMENT 1

Formatted: Font: (Default) Arial, 14 pt, Bold

Formatted: Right

~~i. ADU or JADU (a) the unit~~ is located within one-half mile of public transit.

~~ii. ADU or JADU or (b) the unit~~ is part of a proposed or the existing primary residence or an existing accessory structure.

~~iii. On-street parking permits are required but not offered to the occupant of the ADU or JADU.~~

~~iv. A car share vehicle is located within one block of the ADU or JADU.~~

~~K. Exemption from Floor Area Limitations. The first one thousand two hundred square feet of floor area of each newly constructed accessory dwelling unit shall be excluded from maximum floor area calculations; provided, that the floor area exclusion shall not to exceed ten percent of the allowed floor area for the lot.~~

~~L. Separation Requirement. A separation of at least eight feet shall be maintained between any detached accessory dwelling unit ADU and the proposed or existing its main primary residence structure.~~

~~M. Entrance Requirements. Any new accessory dwelling unit ADU or JADU that is incorporated into a proposed or existing main primary residence shall have a separate entrance facing the side or rear yard. Any new detached ADU or JADU shall have a separate entrance facing towards the interior of the lot.~~

~~N. Compliance with Applicable Requirements. ADUs and JADUs The accessory dwelling unit shall meet all applicable zoning and fire regulations and shall comply with local building codes. Fire sprinklers shall not be required for the accessory dwelling unit if they are not required for the primary residence.~~

~~O. Lighting Restrictions. Any lighting associated with the accessory dwelling unit an ADU or JADU shall be shielded or downlit and shall not shine onto adjoining properties.~~

~~P. Landscape Screening. Landscape screening for an ADU or JADU shall be provided in compliance with the provisions of chapter 17.50 (Landscape Screening).~~

Formatted: Font color: Text 1

Field Code Changed

~~Q. Density. The accessory dwelling unit Any ADU or JADU does not count towards may not exceed the allowable density for the lot upon which it is located.~~

~~R. Consistency with General Plan. The accessory dwelling unit shall be consistent with the existing general plan and zoning land use designation for the lot.~~

Formatted: Font: (Default) Times New Roman

~~17.52.050 Conversion to an Accessory Dwelling Unit From Existing Space.~~

ATTACHMENT 1

~~An application for a building permit to create within a single-family zone one accessory dwelling unit per single-family lot shall be ministerially approved if the unit is contained within the existing space of a legal single-family residence or detached accessory building or structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the main residence. (Ord. 624 § 1 (part), 2017)~~

17.52.0560 Application Review.

A completed application for an ADU or JADU that complies with the provisions of this chapter shall be considered ministerial, without discretionary review or a hearing, within ~~sixty one hundred twenty~~ days after receiving ~~a complete~~the application ~~unless either:~~

- ~~A. The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay; or~~
- ~~B. If a permit application for an ADU or JADU is submitted along with a permit application to create a new primary residence, the Town may delay acting on the permit application for the ADU or JADU until the Town acts on the permit application to create the new primary residence. At such time the permit application for such ADU or JADU is considered, it will still be considered ministerially without discretionary review or a hearing, regardless of its having been submitted along with an application for a new primary residence.~~

6

Formatted: Right: 0.25"

Formatted: Font: (Default) Arial, 14 pt, Bold

Formatted: Right

Formatted: Font: (Default) Times New Roman

ATTACHMENT 2

Chapter 17.52 ACCESSORY DWELLING UNITS

Sections:

17.52.010 Purpose.

17.52.020 Allowed Use Provisions.

17.52.030 Definitions.

17.52.040 Development Standards and General Requirements.

17.52.050 Application Review.

17.52.010 Purpose.

The purpose of this chapter is to regulate accessory dwelling units in residential zoning districts and on residential property consistent with state law (California Government Code Sections 65852.1 through 65852.2). Implementation of this chapter is intended to provide for additional housing opportunities by increasing the number of units available within existing neighborhoods while maintaining the primarily single-family residential character of the area.

17.52.020 Allowed Use Provisions.

Accessory dwelling units and junior accessory dwelling units shall be allowed in all areas zoned to allow single family residential uses in compliance with the development standards set forth in section 17.52.040 (Development Standards and General Requirements) of this Chapter.

17.52.030 Definitions.

A. “Accessory dwelling unit” or “ADU” means a building or portion of a building designed for use and occupancy by people living independently of the occupants of the main residence building and containing separate kitchen, bath, sleeping, or living facilities. The term “attached accessory dwelling unit” means an accessory dwelling unit that is structurally attached to the main residence but which has independent, direct access from the exterior. The term “detached accessory dwelling unit” means an accessory dwelling unit that is not structurally attached to the main residence.

B. “Junior Accessory dwelling unit” or “JADU” 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 shall include an efficiency kitchen, which shall include all of the following a cooking facility with appliances and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.

ATTACHMENT 2

17.52.040 Development Standards and General Requirements.

Unless otherwise stated in Section 17.52.050 of this Ordinance, ADUs and JADUs are permitted provided the following standards and requirements are incorporated.

A. Maximum Number. Only one ADU and one JADU shall be allowed on each lot or parcel with a zoning designation of single-family residential.

B. Location. The ADU shall be attached to the existing main residence or located within the habitable area of the existing main residence or detached from the main residence and located on the same lot as the main residence.

C. Heritage Tree, Setbacks, Height, Other Development Requirements.

1. Heritage Trees. In all instances, the location of any newly constructed ADU or JADU shall meet the minimum requirements in accordance with Chapter 8.10 Removal of and Damage to Heritage Trees for any existing heritage trees.
2. Height. The maximum height of an attached ADU shall meet the height requirements for the main residence of the zone in which the unit is to be located. The maximum height of a detached ADU shall be one-story and shall not exceed a maximum overall height of sixteen (16) feet and maximum sidewall height of eleven (11) feet.
3. Setbacks and other Development Standards. Except as specified below, all ADUs and JADUs shall comply with the setback requirements of the zone in which a unit is to be located.
 - i. Attached ADUs shall be located in the main building area and may encroach into the side and rear yard setbacks by not more than twenty percent (20%) of the required setback, however such setbacks may be reduced to the extent necessary to accommodate at least an eight hundred (800) square foot ADU.
 - ii. Detached accessory dwelling units shall be subject to the setback and other development standards as set forth in Chapter 17.40 Accessory Buildings and Structures of the Atherton Municipal Code. Detached ADU's which meet the minimum side and rear setbacks of Chapter 17.40 Accessory Buildings and Structures may apply additional exemptions from floor area limitations as noted in Section 17.52.040 (C)(5) of this Chapter, however;

ATTACHMENT 2

- a. Such rear and side setbacks may be reduced to four (4) feet without applying the additional exemptions from floor area limitations as noted in Section 17.52.040 (C)(5) of this Chapter.
 - iii. No setback requirement shall apply to any ADU or JADU constructed in an existing living area, a converted existing accessory structure or building, or for a new ADU or JADU constructed in the same location and built to the same dimensions as an existing structure.
4. Floor Area.
- i. No ADU or JADU may be smaller than the size required to allow an efficiency unit pursuant to Health and Safety Code Section 17958.1.
 - ii. The maximum size of a detached or attached ADU shall not exceed twelve hundred (1,200) square feet.
 - iii. The increased floor area of an attached ADU shall not exceed fifty percent of the existing floor area of the main residence, unless necessary to accommodate at least an eight hundred (800) square foot ADU.
 - iv. No floor area limitation shall be required for any conversion of an existing legal non-conforming building to an ADU.
5. Exemption from Maximum Floor Area Limitations.
- i. The first eight hundred (800) square feet of floor area of each newly constructed ADUs or JADUs shall be excluded from maximum floor area calculations.
 - ii. Additional floor area for newly constructed ADUs or JADUs may be excluded from maximum floor area calculations where staff determines the following conditions are met:
 - a. Newly constructed detached ADUs which meet and/or exceed the minimum side and rear setbacks of Chapter 17.40 Accessory Buildings and Structures will be allowed additional floor area exemptions in addition to the first eight hundred (800) square feet of floor area up to a total of twelve hundred (1,200) square feet.
 - b. Newly constructed attached ADUs which are located in the main buildable area and encroach into the side and rear yard setbacks by not more than twenty percent (20%) of the required setback shall be allowed additional floor area exemptions in addition to the first eight hundred (800) square feet of floor area up to a total of twelve hundred (1,200) square feet.

ATTACHMENT 2

D. Existing Garage. No setback shall be required for an existing, legal attached or detached garage and/or other existing structure that is converted to an ADU or JADU.

E. Passageway. No passageway, as defined in California Government Code Section 65852.2, shall be required in conjunction with the construction of an ADU or JADU.

F. Owner Occupancy. Either the primary residence, ADU, JADU, or any combination thereof, shall be occupied by the owner of the property. Notwithstanding the foregoing, any ADU or JADU permitted between January 1, 2020 and January 1, 2025 shall not be subject to any owner occupancy requirements.

G. ADU Rental. An ADU or JADU may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence. Rentals of any ADU or JADU must be for longer than thirty days.

H. Parking Requirement.

1. Unless subject to one of the exceptions immediately below, each ADU or JADU shall have assigned to it one parking space per ADU. Parking shall be accessible from a public street and screened from view of the public street. These spaces may be provided as tandem parking on an existing driveway.

2. No additional parking required. No additional parking shall be required if one of the following conditions applies to the ADU or JADU:

- i. ADU or JADU is located within one-half mile of public transit.
- ii. ADU or JADU is part of a proposed or existing primary residence or an existing accessory structure.
- iii. On-street parking permits are required but not offered to the occupant of the ADU or JADU.
- iv. A car share vehicle is located within one block of the ADU or JADU.

I. Separation Requirement. A separation of at least eight feet shall be maintained between any detached ADU and the proposed or existing primary residence.

J. Entrance Requirements. Any new ADU or JADU that is incorporated into a proposed or existing primary residence shall have a separate entrance facing the side or rear

ATTACHMENT 2

yard. Any new detached ADU or JADU shall have a separate entrance facing towards the interior of the lot.

K. Compliance with Applicable Requirements. ADUs and JADUs unit shall meet all applicable zoning and fire regulations and shall comply with local building codes. Fire sprinklers shall not be required for the accessory dwelling unit if they are not required for the primary residence.

L. Lighting Restrictions. Any lighting associated with an ADU or JADU shall be shielded or downlit and shall not shine onto adjoining properties.

M. Landscape Screening. Landscape screening for an ADU or JADU shall be provided in compliance with the provisions of chapter 17.50 (Landscape Screening).

N. Density. Any ADU or JADU does not count towards the allowable density for the lot upon which it is located.

17.52.050 Application Review.

A completed application for an ADU or JADU that complies with the provisions of this chapter shall be considered ministerial, without discretionary review or a hearing, within sixty days after receiving a complete application unless either:

- A. The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay; or
- B. If a permit application for an ADU or JADU is submitted along with a permit application to create a new primary residence, the Town may delay acting on the permit application for the ADU or JADU until the Town acts on the permit application to create the new primary residence. At such time the permit application for such ADU or JADU is considered, it will still be considered ministerially without discretionary review or a hearing, regardless of its having been submitted along with an application for a new primary residence.

ATTACHMENT 3

Chapter 17.60 DEFINITIONS

Sections:

[17.60.010 Purpose.](#)

[17.60.020 Definitions.](#)

17.60.010 Purpose.

The purpose of this chapter is to provide definitions of the terms and phrases used in this title that are technical or specialized in an effort to ensure consistency in the interpretation of the zoning code. For the purpose of this title, certain terms and words in the plural number include the singular and the singular includes the plural; the word “building” includes the word “structure,” and the word “shall” is mandatory and not directory.

17.60.020 Definitions.

~~“Second dwelling~~Accessory Dwelling Unit” or “ADU” means a building or portion of a building designed for use and occupancy by people living independently of the occupants of the main residence building and containing separate kitchen, bath, sleeping, or living facilities. The term “attached accessory dwelling unit” means an accessory dwelling unit that is structurally attached to the main residence but which has independent, direct access from the exterior. The term “detached accessory dwelling unit” means an accessory dwelling unit that is not structurally attached to the main residence.

“Junior Accessory dwelling unit” or “JADU” 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 shall include an efficiency kitchen, which shall include all of the following a cooking facility with appliances and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.

ADU New Laws Summary - DRAFT

January 23, 2020

On January 1, 2020, six new laws went into effect that define the maximum standards local jurisdictions can apply to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs)¹. Special rules apply to four types of ADUs/JADUS, listed under subsection (e) of AB 68:

1. conversions of existing space
2. new construction of a detached ADU up to 800 sq ft (one JADU also permitted)
3. multifamily with two detached ADUs
4. multifamily with one detached ADU and attached ADUs up to 25 percent of existing units (within existing non-livable space like garages or storage areas)

Overview of New Rules

Amnesty	<ul style="list-style-type: none"> • Owners can request delayed enforcement for five years if no safety issues, sunsets 2030
Impact Fees	<ul style="list-style-type: none"> • None under 750 sq ft • Proportional to primary unit over 750 sq ft
JADUs	<ul style="list-style-type: none"> • Must be allowed • Owner occupancy required • JADU can be in addition to new detached ADU up to 800 sq ft on the same single-family lot, with some limitations
Location	<ul style="list-style-type: none"> • Allowed in all residential and mixed-use zones with limited exceptions, such as traffic flow, water, sewer or public safety
Lot Size & Coverage	<ul style="list-style-type: none"> • Lot size can no longer be considered for approval • Lot coverage can still be considered if ADU is over 800 sf ft
Multifamily	<ul style="list-style-type: none"> • Two detached ADUs allowed (most likely new construction) • Convert up to 25 percent of non-living space to ADUs (example: a 4-unit building would be allowed 1 ADU)
Owner Occupancy	<ul style="list-style-type: none"> • Not required for ADUs built between 2020-2025; may be rented separately • JADUs must be owner occupied

¹ An Accessory Dwelling Unit is defined as a housing unit with kitchen facilities, sleeping space, and a separate entrance and address. A Junior Accessory Dwelling Unit is an Accessory Dwelling Unit under 500 sq ft, which must be a conversion of interior space in a house and can, but does not have to, share a bathroom with the existing house.



Parking	<ul style="list-style-type: none"> • No parking if ½ mile of transit, in historic district, or near car share; potentially one (far from transit, larger than studio) • No replacement parking for garage demolition/conversion • Tandem and in setbacks allowed
RHNA	<ul style="list-style-type: none"> • ADUs count for RHNA (generally, production assumptions should be based on recent trends, but can also be made if cities are taking actions to promote ADUs)
Setbacks & Height	<ul style="list-style-type: none"> • 4 ft side or rear setbacks for new construction • No setbacks required for conversions or rebuilds • Front setbacks allowed • 16 ft height
Short-Term Rentals	<ul style="list-style-type: none"> • May be prohibited for fewer than 30 days and required if ADU falls under subsection (e)
Size	<ul style="list-style-type: none"> • At least 850 sq ft for 1 bd and 1000 sq ft for 2 bd detached • 50 percent of main structure for attached (maybe 800 minimum) • As small as 150 sq ft
Timing & Approval	<ul style="list-style-type: none"> • 60 days from submittal of complete application • Ministerial approval process • Appeal permitted (review must be ministerial) • If in conjunction with single-family home, same timeline
Zoning	<ul style="list-style-type: none"> • Correction of nonconforming zoning not allowed as a condition of approval if ADU falls under subsection (e) • ADUs do not count for density

Local ordinances that do not conform to new laws will be declared null and void. Jurisdictions should update their ordinance as soon as possible.

Once adopted, jurisdictions will have 60 days to provide their new ordinance to HCD for review. While jurisdictions are in the process of updating their ADU ordinance, exempt from CEQA. Local ordinances are allowed to be more generous in permitting ADUs than state requirements but cannot be stricter.