



AGENDA
CITY OF GUSTINE
PLANNING COMMISSION
COUNCIL CHAMBERS, CITY HALL
352 5th STREET GUSTINE, CALIFORNIA
JANUARY 22, 2020 – 6:00 P.M.

CALL TO ORDER - PLEDGE OF ALLEGIANCE

ROLL CALL

Commission Members: Gomes, vacant, Bruck, Vice-Chairperson Marsigli,
Chairperson Gandy & Ex-Officio Alexander

PRESENTATIONS

ORAL COMMUNICATIONS

At this time, any person may comment on an item, which is not on the agenda. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD. Members of the public, who have questions regarding a specific agenda item, may comment on that item before consideration of that item by the Planning Commission, when recognized to do so by the Chairman.

CONSENT CALENDAR

- 1. Minutes, Planning Commission Special Meeting of December 11, 2019**
 - 1. Recommendation: Review and approve.*

ADMINISTRATIVE AGENDA

- 2. PUBLIC HEARING – Consider Resolution Recommending Approval of an Urgency and Non-Urgency Ordinance Amending the Gustine Municipal Code Relating to Accessory and Junior Accessory Dwelling Units**
 - 1. Receive Staff Report*
 - 2. Open the public hearing*
 - 3. Receive public comment*
 - 4. Close the public hearing*
 - 5. Consider a motion to approve the resolution recommending that the City Council both adopt an Urgency Ordinance and a Non-Urgency Ordinance amending the Gustine Municipal Code Relating to Accessory and Junior Accessory Dwelling Units*

ADJOURNMENT

Note:

- 1. In compliance with the Americans with Disabilities Act, a disabled person requesting a disability-related modification or accommodation to participate in this meeting, must contact City Hall at (209) 854-6471 or (209) 854-2127 (fax). Requests must be made as early as possible, preferably one-full business day before the start of the meeting.*
- 2. Any document provided to a majority of the Planning Commission regarding any open session item on this agenda is available for public inspection during normal business hours at the front counter of City Hall located at 352 5th Street, Gustine, CA. Documents or*

writings received after the general distribution of the agenda are also available for inspection.

CERTIFICATION

I, Melanie Correa, Deputy City Clerk, do hereby declare under penalty of perjury that the foregoing agenda was posted on the outdoor bulletin board at the Gustine City Hall, 352 5th Street, Gustine CA and made available for public review on this 15th day of January, 2020, at or before 5:00 p.m.



Melanie Correa

**MINUTES OF GUSTINE
PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 24, 2019**

CALL TO ORDER - PLEDGE OF ALLEGIANCE

Chairperson Gandy called the meeting to order at 6:00 P.M. and conducted the pledge of allegiance.

ROLL CALL

Commission Members: Gomes, Bruck, Marsigli, Gandy, Ex-Officio Alexander

Staff Present: City Manager Doug Dunford

PRESENTATIONS

PUBLIC COMMENT

There was no public comment.

CONSENT CALENDAR

- 1. Minutes, Planning Commission Special Meeting of August 14, 2019**
 - 1. Recommendation: Review and approve.*
- 2. Minutes, Planning Commission Special Meeting of October 24, 2019**
 - 1. Recommendation: Review and approve.*

Chairperson Gandy introduced the consent calendar. There was no public comment. Vice Chairperson Marsigli made a motion to approve the consent calendar. The motion was seconded by Commissioner Gomes and carried 4-0 with Commissioner Vierra absent.

ADMINISTRATIVE AGENDA

**3. PUBLIC HEARING – Consider Resolution Approving Lot Divide;
APN: 063-180-023**

- 1. Receive Staff Report*
- 2. Open the public hearing for lot divide*
- 3. Receive public comment*
- 4. Close the public hearing*
- 5. Consider a motion to approve the resolution approving the lot divide of APN: 063-180-023*

City Manager Dunford presented the staff report. Chairperson Gandy opened the public hearing at 6:06 P.M. Mr. Rasmussen, the applicant, explained his wants to split the parcel. Max Garcia, GDR Engineering, explained that this split would be necessary to continue in the process to develop the land as originally intended. The public hearing was closed at 6:08 P.M. There was some discussion from the Commission. Commissioner Gomes made a motion to approve the resolution. The motion was seconded by Commissioner Bruck and carried 4-0 with Commissioner Vierra absent.

There was some discussion from the Commission relating to upcoming meetings and agenda items.

ADJOURNMENT

Chairperson Gandy adjourned the meeting at 6:14 P.M.



PLANNING COMMISSION AGENDA ITEM

JANUARY 22, 2020

PREPARED BY: Doug Dunford, City Manager
Josh Nelson, City Attorney

SUBJECT: Consider a Resolution Recommending that the City Council Adopt Both (A) An Urgency Ordinance and (B) A Non-Urgency Ordinance Amending Section 4-44-140 of the Gustine Municipal Code Relating to Accessory Dwelling Units and Junior Accessory Dwelling Units and Determining the Ordinance to be Exempt from CEQA

BACKGROUND/DISCUSSION

In 2019, the California Legislature approved, and the Governor signed into law a number of bills ("New ADU Laws") that, among other things, amended Government Code section 65852.2 and 65852.22 to impose new limits on local authority to regulate ADUs and JADUs. The New ADU Laws take effect January 1, 2020, and if the City's ADU ordinance does not comply with the New ADU Laws, the City's ordinance becomes null and void on that date as a matter of law.

The proposed ordinance amends Chapter 4-44-140 of the Gustine Municipal Code to impose new limits on local authority to regulate Accessory Dwelling Units and Junior Accessory Dwelling Units in compliance with the provisions of Government Code sections 65852.2 and 65852.22 as amended by recently approved legislation that will take effect on January 1, 2020.

The proposed ordinance amends the City's local regulatory scheme for the construction of ADUs and JADUs to comply with the amended provisions of Government Code sections 65852.2 and 65852.22.

Failure to comply with Government Code sections 65852.2 and 65852.22 (as amended) as of January 1, 2020 renders the City's ordinance regulating ADUs and JADUs null and void, thereby limiting the City to the application of the few default standards provided in Government Code sections 65852.2 and 65852.22 for the approval of ADUs and JADUs. The approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety.

The attached resolution and the draft ordinances (Attachments A and B to the

resolution) include changes to the Gustine Municipal Code 4-44-140 substantially in the form attached.

The ADU code amendments are proposed for adoption by both urgency ordinance, in accordance with Government Code section 36937, subdivision (b), and, in parallel, by non-urgency ordinance.

ENVIRONMENTAL REVIEW:

Under California Public Resources Code section 21080.17, the California Environmental Quality Act ("CEQA") does not apply to the adoption of an ordinance by a city or county implementing the provisions of section 65852.2 of the Government Code, which is California's ADU law and which also regulates JADUs, as defined by section 65852.22. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State's ADU law.

In addition to being statutorily exempt from CEQA, the proposed ordinance is also categorically exempt from CEQA under the Class 3 exemption set forth in State CEQA Guidelines section 15303. The Class 3 exemption categorically exempts from CEQA, among other things, the construction and location of new, small structures and the conversion of existing small structures from one use to another. Section 15303 specifically lists the construction of appurtenant accessory structures and garages as examples of activity that expressly falls within this exemption. Here, the ordinance is categorically exempt under the Class 3 exemption because the ordinance regulates the conversion of existing structures into, and the new construction of, ADUs and JADUs, which are, by definition, structures that are accessory to a primary dwelling on the lot. Moreover, the City Council finds that none of the "exceptions" to the use of the Class 3 exemption, set forth in State CEQA Guidelines section 15300.2, apply here. Specifically, the City Council finds that the ordinance will:

- (1) Not result in the construction of ADUs or JADUs within a particularly sensitive environment because these accessory structures will necessarily be built on a lot already developed with a primary dwelling;
- (2) Not result in a potentially significant cumulative impact [staff to fill in facts supporting this finding];
- (3) Not result in a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances;
- (4) Not result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway, nothing in the downtown area would be authorized for ADU and JADU structures or no residential property located adjacent to a state scenic highway;
- (5) Not be located on a hazardous waste site included on any list compiled pursuant to § 65962.5 of the Government Code; or
- (6) Not result in a substantial adverse change in the significance of a historical resource, e.g., historical resources are subject to separate permitting system.

In accordance with the requirements of Government Code section 65090, this item has been noticed in a newspaper of general circulation as of January 9, 2020.

FISCAL IMPACT

None

RECOMMENDATION

Staff recommends that the City Council consider and adopt the following:

A. Adopt an urgency ordinance of the City Council of the City of Gustine amending Section 4-44-140 of the Gustine Municipal Code relating to Accessory Dwelling Units and Junior Accessory Dwelling Units and determining the ordinance to be exempt from CEQA; and

B. Adopt a Resolution Entitled:

A resolution of the Planning Commission of the City of Gustine, California, recommending that the City Council adopt both (a) an urgency ordinance and (B) a non-urgency ordinance amending Section 4-44-140 of the Gustine Municipal Code relating to Accessory Dwelling Units and Junior Dwelling Units and determining the ordinance to be exempt from CEQA

EXHIBIT(S)

- A) Draft PC Resolution
- B) Draft Urgency Ordinance
- C) Draft (Non-urgency) Ordinance

RESOLUTION NO. 2020-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GUSTINE, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL ADOPT BOTH (A) AN URGENCY ORDINANCE AND (B) A NON-URGENCY ORDINANCE AMENDING SECTION 4-44-140 OF THE GUSTINE MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA

WHEREAS, the Planning and Zoning Law authorizes cities to act by ordinance to provide for the creation and regulation of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"); and

WHEREAS, in 2019, the California Legislature approved, and the Governor signed into law a number of bills ("New ADU Laws") that, among other things, amended Government Code section 65852.2 and 65852.22 to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, the New ADU Laws take effect January 1, 2020, and if the City's ADU ordinance does not comply with the New ADU Laws, the City's ordinance becomes null and void on that date as a matter of law; and

WHEREAS, the City desires to amend its local regulatory scheme for the construction of ADUs and JADUs to comply with the amended provisions of Government Code sections 65852.2 and 65852.22; and

WHEREAS, failure to comply with Government Code sections 65852.2 and 65852.22 (as amended) as of January 1, 2020 renders the City's ordinance regulating ADUs and JADUs null and void, thereby limiting the City to the application of the few default standards provided in Government Code sections 65852.2 and 65852.22 for the approval of ADUs and JADUs; and

WHEREAS, the approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety.

WHEREAS, staff and the City Attorney prepared the proposed ordinance, including the proposed language and terminology, and any additional information and documents deemed necessary for the Planning Commission to take action; and

WHEREAS, on January 9, 2020 the City gave public notice of the public hearing for the proposed ordinance by publishing in a newspaper of general circulation of a Planning Commission public hearing at which the ordinance would be considered; and

WHEREAS, on January 22, 2020, the Planning Commission held a duly-noticed public hearing and considered the staff report, recommendations by staff, and public testimony concerning the proposed ordinance.

NOW THEREFORE, THE PLANNING COMMISSION OF THE CITY OF GUSTINE DOES RESOLVE, DETERMINE, FIND AND ORDER AS FOLLOWS:

Section 1. Under California Public Resources Code section 21080.17, the California Environmental Quality Act ("CEQA") does not apply to the adoption of an ordinance by a city or county implementing the provisions of section 65852.2 of the Government Code, which is California's ADU law and which also regulates JADUs, as defined by section 65852.22. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State's ADU law.

In addition to being statutorily exempt from CEQA, the proposed ordinance is also categorically exempt from CEQA under the Class 3 exemption set forth in State CEQA Guidelines section 15303. The Class 3 exemption categorically exempts from CEQA, among other things, the construction and location of new, small structures and the conversion of existing small structures from one use to another. Section 15303 specifically lists the construction of appurtenant accessory structures and garages as examples of activity that expressly falls within this exemption. Here, the ordinance is categorically exempt under the Class 3 exemption because the ordinance regulates the conversion of existing structures into, and the new construction of, ADUs and JADUs, which are, by definition, structures that are accessory to a primary dwelling on the lot. Moreover, the City Council finds that none of the "exceptions" to the use of the Class 3 exemption, set forth in State CEQA Guidelines section 15300.2, apply here. Specifically, the City Council finds that the ordinance will:

- (1) Not result in the construction of ADUs or JADUs within a particularly sensitive environment because these accessory structures will necessarily be built on a lot already developed with a primary dwelling;
- (2) Not result in a potentially significant cumulative impact;
- (3) Not result in a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances;

-
- (4) Not result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway;
 - (5) Not be located on a hazardous waste site included on any list compiled pursuant to § 65962.5 of the Government Code; or
 - (6) Not result in a substantial adverse change in the significance of a historical resource - e.g., historical resources are subject to separate permitting system.

Section 2. Based on the entire record before the Planning Commission, and all written and oral evidence presented, the Planning Commission hereby finds that the proposed ordinance is consistent with the City's adopted General Plan as the purpose of the proposed ordinance is to comply with the amended provisions of Government Code sections 65852.2 and 65852.22. The proposed ordinance does not otherwise conflict with any of the General Plan's goals or policies.

Section 3. The Planning Commission hereby recommends that the City Council adopt the attached proposed urgency ordinance (Attachment A) entitled: AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUSTINE AMENDING SECTION 4-44-140 OF THE CITY OF GUSTINE MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA

Section 4. The proposed ordinance entitled: AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUSTINE AMENDING SECTION 4-44-140 OF THE CITY OF GUSTINE MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA is on file and has been available for public review for at least ten days prior to the date of this Resolution, in the City Clerk's Department, at the Gustine City Hall, 352 Fifth Street, Gustine, California 95322.

Section 5. The Planning Commission hereby recommends that the City Council adopt the attached proposed ordinance (Attachment B) entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUSTINE AMENDING SECTION 4-44-140 OF THE CITY OF GUSTINE MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA

Section 6. The proposed ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUSTINE AMENDING SECTION 4-44-140 OF THE CITY OF GUSTINE MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA is on file and has been available for public review for at least

ten days prior to the date of this Resolution, in the City Clerk's Department, at the Gustine City Hall, 352 Fifth Street, Gustine, California 95322.

APPROVED this __ day of ___, 2020, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINED:

Mike Gandy
CHAIR
GUSTINE PLANNING COMMISSION

DATE

ATTEST:

Melanie Correa
City Clerk

DATE

URGENCY ORDINANCE NO. _____

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF GUSTINE AMENDING SECTION 4-44-140 OF THE
CITY OF GUSTINE MUNICIPAL CODE RELATING TO
ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY
DWELLING UNITS AND DETERMINING THE ORDINANCE TO
BE EXEMPT FROM CEQA**

WHEREAS, the City of Gustine, California ("City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, the Planning and Zoning Law authorizes cities to act by ordinance to provide for the creation and regulation of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"); and

WHEREAS, in 2019, the California Legislature approved, and the Governor signed into law a number of bills ("New ADU Laws") that, among other things, amended Government Code section 65852.2 and 65852.22 to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, the New ADU Laws take effect January 1, 2020, and if the City's ADU ordinance does not comply with the New ADU Laws, the City's ordinance becomes null and void on that date as a matter of law; and

WHEREAS, the City desires to amend its local regulatory scheme for the construction of ADUs and JADUs to comply with the amended provisions of Government Code sections 65852.2 and 65852.22; and

WHEREAS, there is a current and immediate threat to the public health, safety, or welfare based on the passage the New ADU Laws because if the City's ordinance does not comply with Government Code sections 65852.2 and 65852.22 (as amended) as of January 1, 2020 and the City's ordinance regulating ADUs and JADUs becomes null and void, the City would thereafter be limited to applying the few default standards that are provided in Government Code sections 65852.2 and 65852.22 for the approval of ADUs and JADUs; and

WHEREAS, the approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety. These threats to public safety, health, and welfare justify adoption of this ordinance as an urgency ordinance to be

effective immediately upon adoption by a four-fifths vote of the City Council;
and

WHEREAS, to protect the public safety, health, and welfare, the City Council may adopt this ordinance as an urgency measure in accordance with Government Code section 36937, subdivision (b), after consideration and recommendation by the City's Planning Commission.

NOW, THEREFORE, the City Council of the City of Gustine does ordain as follows:

Section 1. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. Under California Public Resources Code section 21080.17, the California Environmental Quality Act ("CEQA") does not apply to the adoption of an ordinance by a city or county implementing the provisions of section 65852.2 of the Government Code, which is California's ADU law and which also regulates JADUs, as defined by section 65852.22. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State's ADU law.

In addition to being statutorily exempt from CEQA, the proposed ordinance is also categorically exempt from CEQA under the Class 3 exemption set forth in State CEQA Guidelines section 15303. The Class 3 exemption categorically exempts from CEQA, among other things, the construction and location of new, small structures and the conversion of existing small structures from one use to another. Section 15303 specifically lists the construction of appurtenant accessory structures and garages as examples of activity that expressly falls within this exemption. Here, the ordinance is categorically exempt under the Class 3 exemption because the ordinance regulates the conversion of existing structures into, and the new construction of, ADUs and JADUs, which are, by definition, structures that are accessory to a primary dwelling on the lot. Moreover, the City Council finds that none of the "exceptions" to the use of the Class 3 exemption, set forth in State CEQA Guidelines section 15300.2, apply here. Specifically, the City Council finds that the ordinance will:

- (1) Not result in the construction of ADUs or JADUs within a particularly sensitive environment because these accessory structures will necessarily be built on a lot already developed with a primary dwelling;
- (2) Not result in a potentially significant cumulative impact;
- (3) Not result in a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances;

- (4) Not result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway;
- (5) Not be located on a hazardous waste site included on any list compiled pursuant to § 65962.5 of the Government Code; or
- (6) Not result in a substantial adverse change in the significance of a historical resource —e.g., historical resources are subject to separate permitting system.

Section 3. Section 4-44-140 of the Gustine Municipal Code is hereby amended and restated as provided in Exhibit "A", attached hereto and incorporated herein by reference.

Section 4. This ordinance takes effect immediately upon its adoption.

Section 5. The City Clerk shall either: (a) have this ordinance published in a newspaper of general circulation within 15 days after its adoption or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five days before its adoption and again within 15 days after its adoption.

Section 6. The City Clerk shall submit a copy of this ordinance to the Department of Housing and Community Development within 60 days after adoption.

Section 7. If any provision of this ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this resolution irrespective of the invalidity of any portion thereof.

(Continues on next page)

PASSED, APPROVED AND ADOPTED by the City Council of the Gustine, California, at a regular meeting of the City Council held on the ___ th day of _____, 2019 by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

Gustine

Patrick Nagy, Mayor

ATTEST:

Melanie Correa, City Clerk

EXHIBIT A

Amendments to Municipal Code

(follows this page)

Section 4-44-140 Accessory Dwelling Units

- (a) **Purpose.** The purpose of this section is to allow and regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in compliance with California Government Code sections 65852.2 and 65852.22.
- (b) **Effect of Conforming.** An ADU or JADU that conforms to the standards in this section will not be:
 - (1) Deemed to be inconsistent with the city's general plan and zoning designation for the lot on which the ADU or JADU is located.
 - (2) Deemed to exceed the allowable density for the lot on which the ADU or JADU is located.
 - (3) Considered in the application of any local ordinance, policy, or program to limit residential growth.
 - (4) Required to correct a nonconforming zoning condition, as defined in subsection (c)(7) below. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code section 17980.12.
- (c) **Definitions.** As used in this section, terms are defined as follows:
 - (1) "Accessory dwelling unit" or "ADU" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An accessory dwelling unit also includes the following:
 - (A) An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code; and
 - (B) A manufactured home, as defined by Section 18007 of the California Health and Safety Code.
 - (2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
 - (3) "Complete independent living facilities" means 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.
 - (4) "Efficiency kitchen" means a kitchen that includes each of the following:
 - (A) A cooking facility with appliances.

- (B) A food preparation counter or counters that total at least 15 square feet in area.
 - (C) Food storage cabinets that total at least 30 square feet of shelf space.
- (5) “Junior accessory dwelling unit” or “JADU” means a residential unit that
- (A) is no more than 500 square feet in size,
 - (B) is contained entirely within an existing or proposed single-family structure,
 - (C) includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure, and
 - (D) includes an efficiency kitchen, as defined in subsection (c)(4) above
- (6) “Living area” means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
- (7) “Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.
- (8) “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.
- (9) “Proposed dwelling” means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
- (10) “Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
- (11) “Tandem parking” means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
- (d) **Approvals.** The following approvals apply to ADUs and JADUs under this section:
- (1) **Building-permit Only.** If an ADU or JADU complies with each of the general requirements in subsection (e) below, it is allowed with only a building permit in the following scenarios:
 - (A) **Converted on Single-family Lot:** Only one ADU or JADU on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:
 - (i) Is either: within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or

within the existing space of an accessory structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress.

- (ii) Has exterior access that is independent of that for the single-family dwelling.
- (iii) Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes.

(B) **Limited Detached on Single-family Lot:** One detached, new-construction ADU on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot under subsection (d)(1)(A) above), if the detached ADU satisfies the following limitations:

- (i) The side- and rear-yard setbacks are at least four-feet.
- (ii) The total floor area is 800 square feet or smaller.
- (iii) The peak height above grade is 16 feet or less.

(C) **Converted on Multifamily Lot:** Multiple ADUs within 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, if each converted ADU complies with state building standards for dwellings. At least one converted ADU is allowed within an existing multifamily dwelling, and up to 25 percent of the existing multifamily dwelling units may each have a converted ADU under this paragraph.

(D) **Limited Detached on Multifamily Lot:** No more than two detached ADUs on a lot that has an existing multifamily dwelling if each detached ADU satisfies the following limitations:

- (i) The side- and rear-yard setbacks are at least four-feet.
- (ii) The total floor area is 800 square feet or smaller.

(2) **ADU Permit.**

(A) Except as allowed under subsection (1) above, no ADU may be created without a building permit and an ADU permit in compliance with the standards set forth in subsections (e) and (f) below.

(B) The City may charge a fee to reimburse it for costs incurred in processing ADU permits, including the costs of adopting or amending the City's ADU ordinance. The ADU-permit processing fee is determined by the

director of community development and approved by the City Council by resolution.

(3) **Process and Timing.**

- (A) An ADU permit is considered and approved ministerially, without discretionary review or a hearing.
- (B) The City must act on an application to create an ADU or JADU within 60 days from the date that the City receives a completed application, unless either:
 - (i) The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or
 - (ii) In the case of a JADU and the application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the City may delay acting on the permit application for the JADU until the City acts on the permit application to create the new single-family dwelling, but the application to create the JADU will still be considered ministerially without discretionary review or a hearing.

(e) **General ADU and JADU Requirements.** The following requirements apply to all ADUs and JADUs that are approved under subsections (d)(1) or (d)(2) above:

(1) **Zoning.**

- (A) An ADU or JADU subject only to a building permit under subsection (d)(1) above may be created on a lot in a residential or mixed-use zone.
- (B) An ADU or JADU subject to an ADU permit under subsection (d)(2) above may be created on a lot that is zoned to allow single-family dwelling residential use or multifamily dwelling residential use.

(2) **Fire Sprinklers.** Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.

(3) **Rental Term.** No ADU or JADU may be rented for a term that is shorter than 30 days.

(4) **No Separate Conveyance.** An ADU or JADU may be rented, but no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multifamily lot).

(5) **Septic System.** If the ADU or JADU will connect to an onsite water-treatment system, the owner must include with the application a percolation test completed

within the last five years or, if the percolation test has been recertified, within the last 10 years.

(6) **Owner Occupancy.**

- (A) All ADUs created before January 1, 2020 are subject to the owner-occupancy requirement that was in place when the ADU was created.
- (B) An ADU that is created after that date but before January 1, 2025, is not subject to any owner-occupancy requirement.
- (C) All ADUs that are created on or after January 1, 2025 are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property as the person's legal domicile and permanent residence.
- (D) All JADUs are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement of this paragraph does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.

(7) **Deed Restriction.** Prior to issuance of a building permit for an ADU or JADU, a deed restriction must be recorded against the title of the property in the County Recorder's office and a copy filed with the Director. The deed restriction must run with the land and bind all future owners. The form of the deed restriction will be provided by the City and must provide that:

- (A) The ADU or JADU may not be sold separately from the primary dwelling.
- (B) The ADU or JADU is restricted to the approved size and to other attributes allowed by this section.
- (C) The deed restriction runs with the land and may be enforced against future property owners.
- (D) The deed restriction may be removed if the owner eliminates the ADU or JADU, as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request of the Director, providing evidence that the ADU or JADU has in fact been eliminated. The Director may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated. Appeal may be taken from the Director's determination consistent with other provisions of this Code. If the ADU or JADU is not entirely physically removed, but is only eliminated by virtue of having a necessary component of an ADU or JADU removed, the remaining structure and

improvements must otherwise comply with applicable provisions of this Code.

- (E) The deed restriction is enforceable by the Director or his or her designee for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining the use of the ADU or JADU in violation of the recorded restrictions or abatement of the illegal unit.

(f) **Specific ADU Requirements.** The following requirements apply only to ADUs that require an ADU permit under subsection (d)(2) above.

(1) **Maximum Size.**

- (A) The maximum size of a detached or attached ADU subject to this subsection (f) is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two bedrooms. No more than two bedrooms are allowed.
- (B) An attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of the existing primary dwelling.
- (C) Application of other development standards in this subsection (f), such as FAR or lot coverage, might further limit the size of the ADU, but no application of FAR, lot coverage, or open-space requirements may require the ADU to be less than 800 square feet.

(2) **Floor Area Ratio (FAR).** No ADU subject to this subsection (f) may cause the total FAR of the lot to exceed 45 percent, subject to subsection (f)(1)(C) above.

(3) **Lot Coverage.** No ADU subject to this subsection (f) may cause the total lot coverage of the lot to exceed 50 percent, subject to subsection (f)(1)(C) above.

(4) **Minimum Open Space.** No ADU subject to this subsection (f) may cause the total percentage of open space of the lot to fall below 50 percent, subject to subsection (f)(1)(C) above.

(5) **Height.**

- (A) A single-story attached or detached ADU may not exceed 16 feet in height above grade, measured to the peak of the structure.
- (B) A second story or two-story attached ADU may not exceed the height of the primary dwelling.

- (C) A detached ADU may not exceed one story.
- (6) **Passageway.** No passageway, as defined by subsection (c)(8) above, is required for an ADU.
- (7) **Parking.**
 - (A) Generally. One off-street parking space is required for each ADU. The parking space may be provided in setback areas or as tandem parking, as defined by subsection (c)(11) above.
 - (B) Exceptions. No parking under subsection (f)(7)(A) is required in the following situations:
 - (i) The ADU is located within one-half mile walking distance of public transit, as defined in subsection (c)(10) above.
 - (ii) The ADU is located within an architecturally and historically significant historic district.
 - (iii) The ADU is part of the proposed or existing primary residence or an accessory structure under subsection (d)(1)(A) above.
 - (iv) When on-street parking permits are required but not offered to the occupant of the ADU.
 - (v) When there is an established car share vehicle stop located within one block of the ADU.
 - (C) No Replacement. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, those offstreet parking spaces are not required to be replaced.
- (8) **Architectural Requirements.**
 - (A) [Insert strictly objective city-specific standards here. Contact BB&K if you need a sample.]
- (9) **Landscape Requirements.**
 - (A) [Insert strictly objective city-specific standards here. Contact BB&K if you need a sample.]
- (10) **Historical Protections.** The following requirements apply to ADUs on or within 600 feet of real property that is listed in the California Register of Historic Resources:
 - (A) [Insert strictly objective city-specific standards here. Contact BB&K if you need a sample.]

(g) **Fees.**

(1) **Impact Fees.**

- (A) No impact fee is required for an ADU that is less than 750 square feet in size.
- (B) Any impact fee that is required for an ADU that is 750 square feet or larger in size must be charged proportionately in relation to the square footage of the primary dwelling unit. (E.g., the floor area of the primary dwelling, divided by the floor area of the ADU, times the typical fee amount charged for a new dwelling.) “Impact fee” here does not include any connection fee or capacity charge for water or sewer service.

(2) **Utility Fees.**

- (A) Converted ADUs and JADUs on a single-family lot, created under subsection (d)(1)(A) above, are not required to have a new or separate utility connection directly between the ADU or JADU and the utility. Nor is a connection fee or capacity charge required unless the ADO or JADU is constructed with a new single-family home.
- (B) All ADUs and JADUs not covered by subsection (g)(2)(A) above require a new, separate utility connection directly between the ADU or JADU and the utility. The connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU or JADU, based on either the floor area or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system. The fee or charge may not exceed the reasonable cost of providing this service.

- (h) **Nonconforming ADUs and Discretionary Approval.** Any proposed ADU or JADU that does not conform to the objective standards set forth in subsections (a) through (g)(2) of this section may be allowed by the City with a conditional use permit, in accordance with the other provisions of this title.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUSTINE AMENDING SECTION 4-44-140 OF THE CITY OF GUSTINE MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA

WHEREAS, the City of Gustine, California ("City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, the Planning and Zoning Law authorizes cities to act by ordinance to provide for the creation and regulation of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"); and

WHEREAS, in 2019, the California Legislature approved, and the Governor signed into law a number of bills ("New ADU Laws") that, among other things, amended Government Code section 65852.2 and 65852.22 to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, the New ADU Laws take effect January 1, 2020, and if the City's ADU ordinance does not comply with the New ADU Laws, the City's ordinance becomes null and void on that date as a matter of law; and

WHEREAS, the City desires to amend its local regulatory scheme for the construction of ADUs and JADUs to comply with the amended provisions of Government Code sections 65852.2 and 65852.22; and

WHEREAS, failure to comply with Government Code sections 65852.2 and 65852.22 (as amended) as of January 1, 2020 renders the City's ordinance regulating ADUs and JADUs null and void, thereby limiting the City to the application of the few default standards provided in Government Code sections 65852.2 and 65852.22 for the approval of ADUs and JADUs; and

WHEREAS, the approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety.

WHEREAS, the City Council has reviewed and considered the public testimony and agenda reports prepared in connection with this ordinance, including the policy considerations discussed therein, and the consideration and recommendation by the City's Planning Commission; and

WHEREAS, in accordance with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) ("CEQA") and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.), the City has determined that the revisions to the Gustine Municipal Code are exempt from environmental review.

NOW, THEREFORE, the City Council of the City of Gustine does ordain as follows:

Section 1. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. Under California Public Resources Code section 21080.17, the California Environmental Quality Act ("CEQA") does not apply to the adoption of an ordinance by a city or county implementing the provisions of section 65852.2 of the Government Code, which is California's ADU law and which also regulates JADUs, as defined by section 65852.22. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State's ADU law.

In addition to being statutorily exempt from CEQA, the proposed ordinance is also categorically exempt from CEQA under the Class 3 exemption set forth in State CEQA Guidelines section 15303. The Class 3 exemption categorically exempts from CEQA, among other things, the construction and location of new, small structures and the conversion of existing small structures from one use to another. Section 15303 specifically lists the construction of appurtenant accessory structures and garages as examples of activity that expressly falls within this exemption. Here, the ordinance is categorically exempt under the Class 3 exemption because the ordinance regulates the conversion of existing structures into, and the new construction of, ADUs and JADUs, which are, by definition, structures that are accessory to a primary dwelling on the lot. Moreover, the City Council finds that none of the "exceptions" to the use of the Class 3 exemption, set forth in State CEQA Guidelines section 15300.2, apply here. Specifically, the City Council finds that the ordinance will:

- (1) Not result in the construction of ADUs or JADUs within a particularly sensitive environment because these accessory structures will necessarily be built on a lot already developed with a primary dwelling;
- (2) Not result in a potentially significant cumulative impact;
- (3) Not result in a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances;

- (4) Not result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway;
- (5) Not be located on a hazardous waste site included on any list compiled pursuant to § 65962.5 of the Government Code; or
- (6) Not result in a substantial adverse change in the significance of a historical resource —e.g., historical resources are subject to separate permitting system.

Section 3. Section 4-44-140 of the Gustine Municipal Code is hereby amended and restated as provided in Exhibit "A", attached hereto and incorporated herein by reference.

Section 4. This ordinance shall take effect 30 days following its adoption.

Section 5. The City Clerk shall either: (a) have this ordinance published in a newspaper of general circulation within 15 days after its adoption or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five days before its adoption and again within 15 days after its adoption.

Section 6. The City Clerk shall submit a copy of this ordinance to the Department of Housing and Community Development within 60 days after adoption.

Section 7. The City Council hereby directs staff to prepare, execute and file with the Merced County Clerk a Notice of Exemption within five working days of first reading of this ordinance.

Section 8. If any provision of this ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this resolution irrespective of the invalidity of any portion thereof.

Section 9. The documents and materials that constitute the record of proceedings on which this Ordinance and the above findings have been based are located at 352 Fifth Street, Gustine, California 95322 City Hall, City Clerk's Office.

PASSED, APPROVED AND ADOPTED by the City Council of the Gustine, California, at a regular meeting of the City Council held on the ___ th day of _____, 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Gustine

Patrick Nagy, Mayor

ATTEST:

Melanie Correa, City Clerk

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

City Attorney

EXHIBIT A

Amendments to Municipal Code

(follows this page)

Section 4-44-140 Accessory Dwelling Units

- (a) **Purpose.** The purpose of this section is to allow and regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in compliance with California Government Code sections 65852.2 and 65852.22.
- (b) **Effect of Conforming.** An ADU or JADU that conforms to the standards in this section will not be:
 - (1) Deemed to be inconsistent with the city’s general plan and zoning designation for the lot on which the ADU or JADU is located.
 - (2) Deemed to exceed the allowable density for the lot on which the ADU or JADU is located.
 - (3) Considered in the application of any local ordinance, policy, or program to limit residential growth.
 - (4) Required to correct a nonconforming zoning condition, as defined in subsection (c)(7) below. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code section 17980.12.
- (c) **Definitions.** As used in this section, terms are defined as follows:
 - (1) “Accessory dwelling unit” or “ADU” means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An accessory dwelling unit also includes the following:
 - (A) An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code; and
 - (B) A manufactured home, as defined by Section 18007 of the California Health and Safety Code.
 - (2) “Accessory structure” means a structure that is accessory and incidental to a dwelling located on the same lot.
 - (3) “Complete independent living facilities” means 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.
 - (4) “Efficiency kitchen” means a kitchen that includes each of the following:
 - (A) A cooking facility with appliances.

- (B) A food preparation counter or counters that total at least 15 square feet in area.
 - (C) Food storage cabinets that total at least 30 square feet of shelf space.
- (5) “Junior accessory dwelling unit” or “JADU” means a residential unit that
- (A) is no more than 500 square feet in size,
 - (B) is contained entirely within an existing or proposed single-family structure,
 - (C) includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure, and
 - (D) includes an efficiency kitchen, as defined in subsection (c)(4) above
- (6) “Living area” means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
- (7) “Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.
- (8) “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.
- (9) “Proposed dwelling” means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
- (10) “Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
- (11) “Tandem parking” means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
- (d) **Approvals.** The following approvals apply to ADUs and JADUs under this section:
- (1) **Building-permit Only.** If an ADU or JADU complies with each of the general requirements in subsection (e) below, it is allowed with only a building permit in the following scenarios:
 - (A) **Converted on Single-family Lot:** Only one ADU or JADU on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:
 - (i) Is either: within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or

within the existing space of an accessory structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress.

- (ii) Has exterior access that is independent of that for the single-family dwelling.
- (iii) Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes.

(B) **Limited Detached on Single-family Lot:** One detached, new-construction ADU on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot under subsection (d)(1)(A) above), if the detached ADU satisfies the following limitations:

- (i) The side- and rear-yard setbacks are at least four-feet.
- (ii) The total floor area is 800 square feet or smaller.
- (iii) The peak height above grade is 16 feet or less.

(C) **Converted on Multifamily Lot:** Multiple ADUs within 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, if each converted ADU complies with state building standards for dwellings. At least one converted ADU is allowed within an existing multifamily dwelling, and up to 25 percent of the existing multifamily dwelling units may each have a converted ADU under this paragraph.

(D) **Limited Detached on Multifamily Lot:** No more than two detached ADUs on a lot that has an existing multifamily dwelling if each detached ADU satisfies the following limitations:

- (i) The side- and rear-yard setbacks are at least four-feet.
- (ii) The total floor area is 800 square feet or smaller.

(2) **ADU Permit.**

(A) Except as allowed under subsection (1) above, no ADU may be created without a building permit and an ADU permit in compliance with the standards set forth in subsections (e) and (f) below.

(B) The City may charge a fee to reimburse it for costs incurred in processing ADU permits, including the costs of adopting or amending the City's ADU ordinance. The ADU-permit processing fee is determined by the

director of community development and approved by the City Council by resolution.

(3) **Process and Timing.**

- (A) An ADU permit is considered and approved ministerially, without discretionary review or a hearing.
- (B) The City must act on an application to create an ADU or JADU within 60 days from the date that the City receives a completed application, unless either:
 - (i) The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or
 - (ii) In the case of a JADU and the application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the City may delay acting on the permit application for the JADU until the City acts on the permit application to create the new single-family dwelling, but the application to create the JADU will still be considered ministerially without discretionary review or a hearing.

(e) **General ADU and JADU Requirements.** The following requirements apply to all ADUs and JADUs that are approved under subsections (d)(1) or (d)(2) above:

(1) **Zoning.**

- (A) An ADU or JADU subject only to a building permit under subsection (d)(1) above may be created on a lot in a residential or mixed-use zone.
- (B) An ADU or JADU subject to an ADU permit under subsection (d)(2) above may be created on a lot that is zoned to allow single-family dwelling residential use or multifamily dwelling residential use.

(2) **Fire Sprinklers.** Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.

(3) **Rental Term.** No ADU or JADU may be rented for a term that is shorter than 30 days.

(4) **No Separate Conveyance.** An ADU or JADU may be rented, but no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multifamily lot).

(5) **Septic System.** If the ADU or JADU will connect to an onsite water-treatment system, the owner must include with the application a percolation test completed

within the last five years or, if the percolation test has been recertified, within the last 10 years.

(6) **Owner Occupancy.**

- (A) All ADUs created before January 1, 2020 are subject to the owner-occupancy requirement that was in place when the ADU was created.
- (B) An ADU that is created after that date but before January 1, 2025, is not subject to any owner-occupancy requirement.
- (C) All ADUs that are created on or after January 1, 2025 are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property as the person's legal domicile and permanent residence.
- (D) All JADUs are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement of this paragraph does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.

(7) **Deed Restriction.** Prior to issuance of a building permit for an ADU or JADU, a deed restriction must be recorded against the title of the property in the County Recorder's office and a copy filed with the Director. The deed restriction must run with the land and bind all future owners. The form of the deed restriction will be provided by the City and must provide that:

- (A) The ADU or JADU may not be sold separately from the primary dwelling.
- (B) The ADU or JADU is restricted to the approved size and to other attributes allowed by this section.
- (C) The deed restriction runs with the land and may be enforced against future property owners.
- (D) The deed restriction may be removed if the owner eliminates the ADU or JADU, as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request of the Director, providing evidence that the ADU or JADU has in fact been eliminated. The Director may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated. Appeal may be taken from the Director's determination consistent with other provisions of this Code. If the ADU or JADU is not entirely physically removed, but is only eliminated by virtue of having a necessary component of an ADU or JADU removed, the remaining structure and

improvements must otherwise comply with applicable provisions of this Code.

- (E) The deed restriction is enforceable by the Director or his or her designee for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining the use of the ADU or JADU in violation of the recorded restrictions or abatement of the illegal unit.

(f) **Specific ADU Requirements.** The following requirements apply only to ADUs that require an ADU permit under subsection (d)(2) above.

(1) **Maximum Size.**

- (A) The maximum size of a detached or attached ADU subject to this subsection (f) is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two bedrooms. No more than two bedrooms are allowed.
- (B) An attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of the existing primary dwelling.
- (C) Application of other development standards in this subsection (f), such as FAR or lot coverage, might further limit the size of the ADU, but no application of FAR, lot coverage, or open-space requirements may require the ADU to be less than 800 square feet.

(2) **Floor Area Ratio (FAR).** No ADU subject to this subsection (f) may cause the total FAR of the lot to exceed 45 percent, subject to subsection (f)(1)(C) above.

(3) **Lot Coverage.** No ADU subject to this subsection (f) may cause the total lot coverage of the lot to exceed 50 percent, subject to subsection (f)(1)(C) above.

(4) **Minimum Open Space.** No ADU subject to this subsection (f) may cause the total percentage of open space of the lot to fall below 50 percent, subject to subsection (f)(1)(C) above.

(5) **Height.**

- (A) A single-story attached or detached ADU may not exceed 16 feet in height above grade, measured to the peak of the structure.
- (B) A second story or two-story attached ADU may not exceed the height of the primary dwelling.

- (C) A detached ADU may not exceed one story.
- (6) **Passageway.** No passageway, as defined by subsection (c)(8) above, is required for an ADU.
- (7) **Parking.**
 - (A) Generally. One off-street parking space is required for each ADU. The parking space may be provided in setback areas or as tandem parking, as defined by subsection (c)(11) above.
 - (B) Exceptions. No parking under subsection (f)(7)(A) is required in the following situations:
 - (i) The ADU is located within one-half mile walking distance of public transit, as defined in subsection (c)(10) above.
 - (ii) The ADU is located within an architecturally and historically significant historic district.
 - (iii) The ADU is part of the proposed or existing primary residence or an accessory structure under subsection (d)(1)(A) above.
 - (iv) When on-street parking permits are required but not offered to the occupant of the ADU.
 - (v) When there is an established car share vehicle stop located within one block of the ADU.
 - (C) No Replacement. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, those offstreet parking spaces are not required to be replaced.
- (8) **Architectural Requirements.**
 - (A) [Insert strictly objective city-specific standards here. Contact BB&K if you need a sample.]
- (9) **Landscape Requirements.**
 - (A) [Insert strictly objective city-specific standards here. Contact BB&K if you need a sample.]
- (10) **Historical Protections.** The following requirements apply to ADUs on or within 600 feet of real property that is listed in the California Register of Historic Resources:
 - (A) [Insert strictly objective city-specific standards here. Contact BB&K if you need a sample.]

(g) **Fees.**

(1) **Impact Fees.**

- (A) No impact fee is required for an ADU that is less than 750 square feet in size.
- (B) Any impact fee that is required for an ADU that is 750 square feet or larger in size must be charged proportionately in relation to the square footage of the primary dwelling unit. (E.g., the floor area of the primary dwelling, divided by the floor area of the ADU, times the typical fee amount charged for a new dwelling.) “Impact fee” here does not include any connection fee or capacity charge for water or sewer service.

(2) **Utility Fees.**

- (A) Converted ADUs and JADUs on a single-family lot, created under subsection (d)(1)(A) above, are not required to have a new or separate utility connection directly between the ADU or JADU and the utility. Nor is a connection fee or capacity charge required unless the ADO or JADU is constructed with a new single-family home.
- (B) All ADUs and JADUs not covered by subsection (g)(2)(A) above require a new, separate utility connection directly between the ADU or JADU and the utility. The connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU or JADU, based on either the floor area or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system. The fee or charge may not exceed the reasonable cost of providing this service.

- (h) **Nonconforming ADUs and Discretionary Approval.** Any proposed ADU or JADU that does not conform to the objective standards set forth in subsections (a) through (g)(2) of this section may be allowed by the City with a conditional use permit, in accordance with the other provisions of this title.