

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA APPROVING CODE AMENDMENT (CODE 0000-2019) ADDING SECTION .5809-26 TO THE CITY OF POMONA ZONING ORDINANCE PERTAINING TO ACCESSORY DWELLING UNIT REGULATIONS, DELETING “SECOND UNIT HOUSING” FROM SECTION .062 OF THE CITY OF POMONA ZONING ORDINANCE, AND DELETING SECTION .503-H(C)(4) FROM THE CITY OF POMONA ZONING ORDINANCE.

WHEREAS, to address California’s shortage of housing supply, the California Legislature approved, and the Governor signed into law, Assembly Bill 2299 (Bloom, Chapter 735, Stats. 2016), Senate Bill 1069 (Wieckowski, Chapter 720, Stats. 2016) and Assembly Bill 2406 (Thurmond, Chapter 755, Stats. 2016).

WHEREAS, Assembly Bill 2299 and Senate Bill 1069 are double jointing bills, which among other things, amend California Government Code Section 65852.2. These statutes impose new limitations on local authority to regulate second units, which are now referred to as “accessory dwelling units” (“ADU”).

WHEREAS, Assembly Bill 2299 became effective on January 1, 2017 and will render all non-compliant local ordinances null and void on that date unless and until an agency adopts an ordinance that complies with Government Code Section 65852.2.

WHEREAS, Assembly Bill 494 and Senate Bill 229 are double jointing bills, which among other things, further clarifies language contained within California Government Code Section 65852.2.

WHEREAS, Assembly Bill 494 became effective on January 1, 2018.

WHEREAS, the City desires to create a local regulatory scheme for the construction of ADU’s that fully complies with Assembly Bill 2299 and Assembly Bill 494;

WHEREAS, the City of Pomona has duly initiated Code Amendment (CODE 0000-2019);

WHEREAS, the Planning Commission of the City of Pomona, after giving notices thereof as required by law, held a public hearings on DATE concerning Code Amendment (CODE 0000-2016) and carefully considered all pertinent testimony and the staff report offered in the case as present;

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WHEREAS, on DATE, the Planning Commission of the City of Pomona recommend to the City Council the approval of Code Amendment (Code 0000-2019) with a 0-0-0-0 vote;

WHEREAS, the City Council of the City of Pomona, at its regularly scheduled public meeting on DATE approved the introduction and first reading of an Ordinance for Code Amendment (CODE 0000-2019);

WHEREAS, the City Council of the City of Pomona has, after giving notice thereof as required by law, held a public hearing on DATE, concerning the requested Code Amendment (CODE 0000-2019); and

WHEREAS, the City Council has carefully considered all pertinent testimony and the staff report offered in the case as presented at the public hearing.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pomona as follows:

SECTION 1. The City Council find that the project is exempt per Section 15061 (b)(3) of the Guidelines for Implementation of the California Environmental Quality Act (CEQA). Section 15061(b) (3) exempts projects where it can be seen with certainty that the activity does not have the potential to cause a significant direct effect on the environment. The adoption of Code Amendment (CODE 0000-2019) to create a local regulatory scheme for the construction of ADU's does not, in itself, have the potential to cause a significant direct effect on the environment.

SECTION 2. Based on consideration of the whole record before it, including but not limited to, the staff report, public testimony received at the public hearing on this matter, and evidence made part of the public record, the City Council hereby finds that the proposed Code Amendment is in the public interest and in the interest of the furtherance of the public health, safety, and welfare and is consistent with the goals, objectives, policies, and programs of the Pomona General Plan.

SECTION 3. The City Council of the City of Pomona hereby approves Code Amendment (CODE 0000-2019) adding Section .5809-26 ACCESSORY DWELLING UNITS of the City of Pomona Zoning Ordinance with the underlined language as follows:

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Section .5809-26 – ACCESSORY DWELLING UNITS.

- A. Purpose and Intent. The purpose of this section is to regulate the establishment of accessory dwelling units, where they are permitted, in accordance with Government Code Section 65852.2 as well as to provide affordable housing to meet the needs of the citizens of Pomona, to ensure that the development of accessory dwelling units is compatible with existing development, and to implement and promote the goals and policies of the general plan.
- B. Definitions. For the purpose of this section, the following terms shall have the following meanings:
1. Accessory dwelling unit. As defined in Section 65852.2 of the Government Code: Accessory dwelling unit means a residential dwelling unit that is detached from, attached to, or located within the living area of an existing or proposed primary dwelling unit, and that provides independent living facilities for one or more persons. An accessory dwelling unit also includes an efficiency unit, as defined in California Health and Safety Code section 17958.1, and a manufactured home, as defined in section 18007. “Independent living facilities” means permanent provisions for living, sleeping, eating, cooking, and sanitation.
 2. Accessory dwelling unit, attached. An attached accessory dwelling unit means an accessory dwelling unit that is newly constructed and attached to the primary dwelling unit.
 3. Accessory dwelling unit, detached. A detached accessory dwelling unit means an accessory dwelling unit that is newly constructed and not attached to the primary dwelling unit, but it may be attached to an accessory structure (e.g. garage).
 4. Accessory structure. Accessory structure means a structure that is accessory to and incidental to that of the primary dwelling unit and that is located on the same lot.
 5. Cooking facility. A cooking facility means an area containing a refrigeration appliance, a kitchen sink and cooking appliance, each having a clear working space of not less than 30 inches. “Cooking appliance” includes any appliance capable of cooking food, including a range, stove, oven, microwave, or hot plate, but not including a toaster or electric kettle.
 6. Historic properties. Historic properties shall mean those structures and/or properties listed on the National Register of Historic Places, California Register of

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Historic Places, Pomona Register of Historic Properties, or any property in a designated historic district.

7. Living area. 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 as defined in Section 65852.2 of the Government Code.
8. Owner-occupied. Owner-occupied means that a property owner currently resides on the property in either the primary dwelling unit or the accessory dwelling unit.
9. Passageway. Passageway means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit as defined in Section 65852.2 of the Government Code.
10. Primary dwelling unit. Primary dwelling unit means any legally established, single-family dwelling, existing or proposed, located on the same lot as an accessory dwelling unit.
11. Tandem Parking. Tandem parking shall mean that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

C. Permit Procedure.

1. The Development Service Director shall review and approve a permit for an accessory dwelling unit that complies with the requirements of this section.
2. An accessory dwelling unit that is in compliance with the standards of this section shall only require ministerial approval. No discretionary approval may be required.
3. The Development Service Director will approve or disapprove a permit for an accessory dwelling unit within 120 days after receiving the complete application.
4. Except as otherwise provided in this chapter, the construction of an accessory dwelling unit is subject to any applicable fees adopted under the requirements of California Government Code, Title 7, Division 1, Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

- D. Zoning. An accessory dwelling unit is permitted in any zoning district, overlay district, or specific plan that allows single-family residential use, including but not limited to the following districts:

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1. "R-1-6,000" Single Family Residential District;
2. "R-1-7,200" Single Family Residential District;
3. "R-1-7,500" Single Family Residential District;
4. "R-1-10,000" Single Family Residential District;
5. "R-1-20,000" Single Family Residential District;
6. "R-1-E" Single family, Residential Overlay;
7. "PD" Planned Development Overlay District
8. "R-2" Low Density Multiple-family Zone;
9. "R-3" Medium Density Multiple-family Zone;
10. "R-4" High density multiple-family residential zone;
11. "PRD" Planned Residential Development District;
12. "A-P" Administrative and Professional Office District.

E. Development Standards.

1. Single-family dwelling requirement.
 - a. There shall be a primary dwelling unit located on the same lot as an accessory dwelling unit.
 - b. Where a primary dwelling unit does not exist on a lot but is proposed, an accessory dwelling unit may be constructed concurrently with the construction of the primary dwelling unit.
2. Number of units allowed. Only one accessory dwelling unit may be allowed on the same lot as a primary dwelling unit.
3. Number of bedrooms. The total number of bedrooms for an accessory dwelling unit may not exceed two.
4. Unit size.

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- a. The total floor area of an attached accessory dwelling unit may not exceed 50 percent of the floor area of the primary dwelling unit. In no case may an attached accessory dwelling unit exceed 1,200 square feet in total area.
 - b. The total floor area of a detached accessory dwelling unit may not exceed 1,200 square feet.
5. Lot coverage. Attached or detached accessory dwelling units may exceed the maximum lot coverage restrictions of the underlying zone by no more than ten percent. Lot coverage due to an accessory dwelling unit is included in the lot coverage as applied to other structures. All other structures must comply with the established maximum lot coverage restrictions of the underlying zone.
6. Building height. An accessory dwelling unit shall comply with the building height restrictions of the underlying zone. However, in no case shall an accessory dwelling unit be taller than the primary dwelling unit.
7. Minimum distance between buildings.
 - a. The distance between an accessory dwelling unit and the primary dwelling unit shall be at least ten feet.
 - b. The distance between an accessory dwelling unit and an accessory structure shall be at least six feet.
8. Yards.
 - a. Front Yard. Accessory dwelling units shall have a minimum front yard of twenty-five feet.
 - b. Side Yard. Accessory dwelling units shall have a minimum side yard of three feet.
 - c. Side Yard for Corner and Reverse Corner Lots. When an accessory dwelling unit is located on a corner lot or a reverse corner lot, a minimum side yard of ten feet shall be provided when the side yard abuts a street.
 - d. Rear Yard. Detached accessory dwelling units shall have a minimum rear yard of three feet. Attached accessory dwelling units shall have a minimum rear yard of twenty five feet.
 - e. Legally established garages and accessory structures. An existing, legally established garage or accessory structure that is nonconforming as to

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setback may be converted to converted, in whole or in part, to an accessory dwelling unit without losing its legal-nonconforming status.

- f. For an accessory dwelling unit that is located entirely within the existing and legally created space of the primary dwelling, the side and rear yards shall meet the minimum requirements for fire safety.
9. Landscaping. A minimum of 20 percent of the entire parcel shall be landscaped with plant materials.
10. Parking.
- a. No parking is required for any accessory dwelling unit. However, in the case where a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit those parking spaces must be replaced at a 1:1 ratio.
 - b. The property owner may locate the replacement spaces located in any configuration on lot, including but not limited to, as covered spaces, open spaces, tandem parking, or by the use of a mechanical automobile parking lift.
11. Architecture. To ensure that the architectural style of the accessory dwelling unit is consistent with the architecture of the primary dwelling unit the following elements of the accessory dwelling unit must be the same in appearance as those of the primary dwelling:
- a. Architectural style (e.g. Craftsman, Victorian, Modern, etc.)
 - b. Architectural detailing (e.g. exposed rafters, knee braces, decorative tile, etc.).
 - c. Construction materials, finishes and colors,
 - d. Door trim and style,
 - e. Window trim and style (i.e., grid pattern, frame thickness, opening direction, etc.), and
 - f. Roof pitch, roof type and roof material.

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12. Manufactured or prefabricated structures. Nothing in this section prohibits the installation of manufactured or prefabricated structures that comply with paragraph 11 above.
13. Exterior Access. All accessory dwelling units must provide independent access to the exterior of the unit.
14. Passageways. No passageway is required in conjunction with the construction of an accessory dwelling unit.
15. Fire sprinklers. An accessory dwelling unit is not required to have fire sprinklers if fire sprinklers are not required for the primary dwelling unit.
16. Utility connections. Accessory dwelling units are not required to install a new or separate utility connection directly between the accessory dwelling unit and the utility. The City does not require payment of a related connection fee or capacity charge for an accessory dwelling unit.
17. Building codes. Local building code requirements apply to accessory dwelling units.
18. Certificate of Occupancy.
 - a. In no case shall an accessory dwelling unit be issued a certificate of occupancy prior to the issuance of a certificate of occupancy for the primary dwelling unit.
 - b. A certificate of occupancy may be issued concurrently for both the primary dwelling unit and the accessory dwelling unit.
19. Private sewage disposal. Prior approval by the local health officer is required for a private sewage disposal system if one is to be used for the accessory dwelling unit.
20. Rent and Sale.
 - a. An accessory dwelling unit may be rented separately from the primary dwelling unit.
 - b. An accessory dwelling unit may not be sold or otherwise conveyed separately from the primary dwelling unit.

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21. Rental period. An accessory dwelling unit may not be rented for a period of fewer than 30 days.
22. Owner occupancy. Either the primary dwelling unit or the accessory dwelling unit must be owner-occupied at all times. If the property ceases to be owner occupied, the accessory dwelling unit may not be used as a dwelling.
23. Deed restrictions. Prior to the issuance of a certificate of occupancy for an accessory dwelling unit, a deed restriction or similar instrument, that runs with the land, shall be recorded against the property and shall include the following:
 - a. An acknowledgment that the accessory dwelling unit requires the current property owner to reside in either the primary dwelling unit or in the accessory dwelling unit at all times.
 - b. A declaration prohibiting the sale of the accessory dwelling unit separate from the sale of the primary dwelling unit.
 - c. A declaration that the accessory dwelling unit shall not be rented for a period of fewer than 30 days.
 - d. A declaration restricting the size and attributes of the accessory dwelling unit to that which conforms to this section.
 - e. A declaration that all of the above deed restrictions may be enforced against future purchasers.
 - f. The deed restrictions may be removed if the owner eliminates the accessory dwelling unit (as evidenced by e.g. removal of the kitchen facilities, etc.).
 - g. The deed restrictions shall be enforced by the Director of Development Services or his or her designee for the benefit of the City of Pomona. Failure of the property owner to comply with the deed restrictions may result in legal action against the property owner and the City shall be authorized obtain any remedy available to it at law or equity, including but not limited to obtaining an injunction enjoining use of the accessory dwelling unit in violation of the recorded restrictions or abatement of the illegal unit.
24. Density. A legally established accessory dwelling unit does not exceed the allowable density for the lot upon which it is located and is deemed to be an

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accessory residential use that is consistent with the existing general plan land use and zoning district designations for the lot.

25. Historic Properties. Historic properties shall comply with the following standards:

- a. An attached or detached accessory dwelling may be allowed on a Historic Property if it is not visible from the public right-of-way.
- b. A legally established accessory structure located on a Historic Property may be converted, in whole or in part, to an accessory dwelling unit.
- c. All other development standards for accessory dwelling units shall apply to accessory dwelling units located on a Historic Property.

F. Effect of Conforming Accessory Dwelling Unit. An accessory dwelling unit that conforms to this chapter shall:

1. Not be considered in the application of any ordinance, policy, or program to limit residential growth; and
2. Not be considered a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service.

SECTION 4. The City of Pomona Zoning Ordinance Section .062 – Specific Definitions is amended to delete the following definition with the ~~stricken~~ language as follows:

Section 0.62 – Specific Definitions

~~Second Unit Housing. "Second unit housing" means a separate living quarters containing a maximum of one kitchen and one bedroom. Such a unit may be attached or detached on a single lot containing a legal single family residence as the primary use. Second unit housing shall be subject to restrictions and limitations as follows:~~

- ~~A. Second units are allowed in all residential zones on single lots developed with a legal single family use, except PD overlay zones.~~
- ~~B. Not more than one second unit shall be created on any lot.~~
- ~~C. A second unit must comply with all R-1-10,000 standards of development except as modified in this section.~~
- ~~D. The minimum area for a lot on which a second unit may be permitted shall be 20% greater than the required lot area in each residential zone.~~
- ~~E. The second unit shall be located within the rear half of the lot and not cover more than 30% of the rear half of the lot.~~

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- ~~F. The gross floor area of a second unit shall be at least 400 square feet but not exceed 750 square feet.~~
- ~~G. The floor area of an attached second unit shall not exceed 30% of the living area in the existing single-family residence.~~
- ~~H. The second unit shall be one-story with a maximum height of 16 feet to top of roof and, for attached units, located on the first or ground floor level of an existing structure. The second unit shall be designed so as to eliminate the need to climb stairs.~~
- ~~I. One additional on-site parking space shall be provided in addition to the required two-car garage.~~
- ~~J. The exterior design and materials of the second unit shall have the same appearance as those of the existing dwelling in regards to the roof, building walls, doors, windows, horizontal/vertical expression, and architectural detail.~~
- ~~K. All new utility hook-ups shall be underground.~~
- ~~L. No home occupation permits shall be allowed for the second unit.~~
- ~~M. Second units shall not be sold independently of the primary dwelling unit on the lot and shall not be installed with a separate meter but shall share all gas, electric, and water bills.~~
- ~~N. A covenant, approved by the city attorney, shall be recorded with the county recorder's office; copies of said recorded covenant shall be filed with the Community Development Department. Said covenant shall indicate all pertinent restrictions and limitations on a second unit as included in this section, shall run with the land, and shall be binding upon any future owner, heirs, or assigns.~~
- ~~O. The owner/occupant of an existing single family dwelling located in a residential zone may apply for a second unit permit by submitting required materials to the Planning Division. The Planning Manager is authorized to approve or deny requests for second unit permits. If the proposed project meets all standards included herein, the request shall be approved and a permit issued. If all standards are not met, the request shall be denied. After the denial of a permit, the applicant may seek review by way of an administrative hearing in accordance with the following procedure:
 - ~~1. A written appeal petition and a nonrefundable appeal fee in an amount set by resolution of the City Council must be filed with the City Manager within ten (10) calendar days after the decision of the Planning Division, provided, however, that if the ten (10) days expires on a date that City Hall is not open for business, then the appeal period shall be extended to the next City business day. Failure to file a timely petition, together with the nonrefundable appeal fee, deprive the hearing officer of jurisdiction to hear the appeal. The appeal petition must indicate in what way the appellant contends the Planning Division's decision was incorrect or must provide extenuating circumstances that the appellant contends would justify reversal or modification of the Planning Manager's decision.~~
 - ~~2. The City Manager shall appoint a hearing officer to hear the application. The hearing officer shall set the matter for hearing within thirty (30) days of receipt of~~~~

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~~the petition, unless the applicant consents in writing to an extension. At least ten (10) calendar days prior to such hearing, written notice thereof shall be mailed to the applicant by first class U.S. mail with a proof of service attached.~~

- ~~3. All parties involved shall have the right to: (1) offer testimonial, documentary, and tangible evidence bearing on the issues; (2) be represented by counsel; and (3) confront and cross examine witnesses. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Any hearing under this section may be continued for a reasonable time for the convenience of a party or witness, provided the applicant consents in writing.~~
- ~~4. The hearing officer shall make a final determination supported by written findings, within five (5) City business days after the hearing pursuant to this section. No later than three (3) City business days of the hearing officer's decision, notice of the decision and a copy thereof shall be mailed by first class mail, postage prepaid, to the appellant.~~

~~The decision of the hearing officer shall be final and the applicant may seek judicial review of the hearing officer's decision in accordance with California Code of Civil Procedure Section 1094.5 et seq. or as otherwise permitted by law. The applicant shall be notified of the decision.~~

SECTION 5. The City of Pomona Zoning Ordinance is amended to delete Section .503-H(C)(4) with the ~~stricken~~ language as follows:

Section .503-H. OFF-STREET PARKING

C. Single-Family Residential Standards.

- ~~4. Second dwelling units shall provide one open or covered parking space per the development standards contained in this section. (Ord. No. 3804, § 2.)~~

SECTION 6. If any section, subsection, sentence clause or phrase or word of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Pomona hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence clause or phrase or word not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

SECTION 7. The City Clerk shall attest and certify to the passage and adoption of this Ordinance, and shall cause same to be posted as required by law, and this Ordinance shall take effect thirty (30) days after its final adoption.

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PASSED, APPROVED AND ADOPTED THIS ____ DAY OF ____, 2019

ATTEST:

CITY OF POMONA:

Rosalia A. Butler, City Clerk

Tim Sandoval, Mayor

APPROVED AS TO FORM:

Christi Hogan, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF POMONA)

I, ROSALIA A. BUTLER, CITY CLERK of the City of Pomona do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Pomona held on the ____ day of ____, 2019, and adopted on the ____ day of ____, 2019 by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

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Rosalia A. Butler, City Clerk

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