

ORDINANCE NO. 4269

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA APPROVING CODE AMENDMENT (CODE 12324-2019) ADDING SECTION .5809-26 TO THE CITY OF POMONA ZONING ORDINANCE PERTAINING TO ACCESSORY DWELLING UNIT REGULATIONS, AMENDING SECTION .580 CONDITIONAL USE PERMITS, .5809-13 AND SECTION .560 OF THE 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”.

WHEREAS, Assembly Bill 2299 became effective on January 1, 2017 and renders 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 as of that date.

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 accessory dwelling units that fully complies with Assembly Bill 2299 and Assembly Bill 494;

WHEREAS, the City desires to preserve the city of Pomona's cultural, historical, and architectural heritage and resources as living parts of community life that benefit and enrich the lives of its present and future residents;

WHEREAS, the City of Pomona has duly initiated Code Amendment (CODE 12324-2019);

WHEREAS, the Planning Commission of the City of Pomona, after giving notices thereof as required by law, held a public hearings on August 14, 2019 concerning Code Amendment (CODE 12324-2019) and carefully considered all pertinent testimony and the staff report offered in the case as present;

WHEREAS, on August 14, 2019, the Planning Commission of the City of Pomona recommend to the City Council the approval of Code Amendment (Code 12324-2019) with a 4-2-0-1 vote;

WHEREAS, the City Council of the City of Pomona, at its regularly scheduled public meeting on September 9, 2019 approved the introduction and first reading of an Ordinance for Code Amendment (CODE 12324-2019);

WHEREAS, the City Council of the City of Pomona has, after giving notice thereof as required by law, held a public hearing on September 9, 2019, concerning the requested Code Amendment (CODE 12324-2019); 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 hereby finds that the foregoing recitals are true and correct and are incorporated herein as substantive findings of this Ordinance.

SECTION 2. The City Council finds and determines that this ordinance is statutorily exempt from the provisions of CEQA per State CEQA Guidelines Section 15282(h) which establishes a statutory exemption for the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code; and

SECTION 3. 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,

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safety, and welfare and is, as a matter of law, consistent with the Pomona General Plan pursuant to Government Code Section 65852.2(a)(1)(c).

SECTION 4. The City Council of the City of Pomona hereby approves Code Amendment (CODE 12324-2019) adding Section .5809-26 ACCESSORY DWELLING UNITS of the City of Pomona Zoning Ordinance with the underlined language as follows:

Section .5809-26 – ACCESSORY DWELLING UNITS.

- A. Purpose and Intent. The purpose of this section is to regulate the establishment of Accessory Dwelling Units in accordance with Government Code Section 65852.2; 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; to preserve the city of Pomona's cultural, historical, and architectural heritage; and to implement and promote the goals and policies of the Pomona General Plan.
- B. Definitions. For the purpose of this section, the following terms shall have the following meanings:
 - 1. Accessory Dwelling Unit. An 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 (1) 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. An Attached Accessory Dwelling Unit may be located, in part, within the existing floor area of 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. A Detached Accessory Dwelling Unit may be attached to an Accessory Structure (e.g. garage).
 - 4. Accessory Dwelling Unit, Interior. An Interior Accessory Dwelling Unit means an Accessory Dwelling Unit that is located entirely within the

existing space of a legally established Primary Dwelling Unit or Accessory Structure.

5. Accessory Structure. Accessory Structure means a legally established structure that is accessory to and incidental to that of the Primary Dwelling Unit and that is located on the same lot.
6. 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.
7. Historic Properties. Historic Properties mean those structures and properties listed on the National Register of Historic Places, California Register of Historic Places, Pomona Register of Historic Properties, or any property in a designated historic district.
8. 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.
9. Owner. Owner means the property owner on the latest equalized property tax assessment roll. If the Owner is not a natural person or group of natural persons (e.g. the Owner is a trust or corporation), then the Owner(s) shall designate a natural person for the purpose of satisfying the owner occupancy requirements set forth in Subsection (F)(23). The Owner(s) designated natural person(s) shall reside on site, shall have authority to bind the owner in all matters related to the site, and shall not pay rent or other compensation, nor provide services to the owner.
10. Owner-occupied. Owner-occupied means that an Owner currently resides on the property in either the Primary Dwelling Unit or the Accessory Dwelling Unit.
11. 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.
12. Primary Dwelling Unit. Primary Dwelling Unit means any legally established, single-unit dwelling, existing or proposed, located on the same lot as an Accessory Dwelling Unit.

13. Tandem Parking. 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 as defined in Section 65852.2 of the Government Code.

C. Applicability.

1. New Accessory Dwelling Units. Compliance with the requirements of this section applies to any construction, establishment, alteration, enlargement, or modification of an Accessory Dwelling.
2. Legal Nonconforming Accessory Dwelling Units. All Accessory Dwelling Units which that were legal at the time of their creation but that do not conform to this section are deemed nonconforming. An application may be made pursuant to this section to alter, enlarge, or modify a Legal Nonconforming Accessory Dwelling Unit subject to the same standards and requirements as for a newly proposed Accessory Dwelling Unit.
3. Existing Illegal Accessory Dwelling Units. The provisions of this section shall in no way validate any existing illegal Accessory Dwelling Unit. An application may be made pursuant to this section to convert an illegal Accessory Dwelling Unit to a legal conforming Accessory Dwelling Unit, and shall be subject to the same standards and requirements as for a newly proposed Accessory Dwelling Unit.

D. Ministerial ADU Permit Procedure.

1. The Development Services Director or designee 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.
3. Discretionary Review
 - a. Minor Deviation Variance. The Development Services Director or designee may consider a request to deviate from the following standards for Accessory Dwelling Units subject to the requirements of Section .560-J Minor Deviation Variances: Lot coverage, Minimum distance between buildings, and Yards.

- b. Conditional Use Permit. An Accessory Dwelling Unit that deviates from the following standards in this section may be approved through a Conditional Use Permit under Section .580: number of rooms (F)(3), unit size (F)(4), location restriction (F)(8), roof eaves (F)(10), architecture (F)(13), and owner occupancy (F)(23).
 - c. If a Conditional Use Permit is required under (D.3.a above, then any additional deviation that requires a Minor Deviation Variance under (D.3.a above may be approved through the Conditional Use Permit.
- 4. The Development Services Director or designee will approve or disapprove a permit for an Accessory Dwelling Unit within one hundred twenty (120) days after receiving the complete application.
- 5. Except as otherwise provided in this section, 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).
- E. Zoning. An Accessory Dwelling Unit is permitted in any zoning district, overlay district, or specific plan that allows single-unit residential use, including but not limited to the following districts:
 - 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. “R-MHD” Residential-Manufactured Housing Development Zone
12. “PRD” Planned Residential Development District;
13. “A-P” Administrative and Professional Office District.
14. “S” Supplemental Use Overlay District
15. Small Lot Residential Zone

F. Standards.

1. Primary Dwelling Unit 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.
 - c. An Accessory Dwelling Unit is not permitted on residential lots already containing two or more dwelling units.
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 Rooms.
 - a. For Accessory Dwelling Units less than 800 square feet in area.
 - i. The total number of Rooms, as defined in Section .062, permitted in an Accessory Dwelling Unit may not exceed four (4).
 - b. For Accessory Dwelling Units 800 square feet in area or greater.
 - i. The total number of Rooms, as defined in Section .062, permitted in an Accessory Dwelling Unit may not exceed six (6).
4. Unit size.
 - a. For lots less than 7,200 square feet in area.

- i. The total floor area of an Attached Accessory Dwelling Unit may not exceed fifty (50%) percent of the total Living Area of the Primary Dwelling Unit or eight hundred (800) square feet, whichever is less.
 - ii. The total floor area of a Detached Accessory Dwelling Unit may not exceed eight hundred (800) square feet.
 - iii. In no case shall the total floor area of an Accessory Dwelling Unit be smaller than 220 square feet in accordance with California Building Code section 1208.4.
 - b. For lots 7,200 square feet in area or greater.
 - i. The total floor area of an Attached Accessory Dwelling Unit may not exceed fifty (50%) percent of the total Living Area of the Primary Dwelling Unit. In no case may an Attached Accessory Dwelling Unit exceed one thousand two hundred (1,200) square feet in total floor area.
 - ii. The total floor area of a Detached Accessory Dwelling Unit may not exceed one thousand two hundred (1,200) square feet in total floor area.
 - iii. In no case shall the total floor area of an Accessory Dwelling Unit be smaller than 220 square feet in accordance with California Building Code section 1208.4.
5. Coverage. The maximum coverage of the lot by all structures shall be thirty-five (35) percent. Any patio with roof, open slats or other covering shall constitute lot coverage but not square footage.
6. Building height. No Accessory Dwelling Unit shall have a height greater than two (2) stories or thirty-five (35) feet. 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 (10) feet.
 - b. The distance between an Accessory Dwelling Unit and an Accessory Structure shall be at least six (6) feet.

8. Location restriction. Detached Accessory Dwelling Units shall not be located between the proposed or existing Primary Dwelling Unit and the street adjoining the front yard, except where the Primary Dwelling Unit is on a through lot.
9. Yards.
 - a. Front Yard. Accessory Dwelling Units shall have a minimum front yard of twenty-five (25) feet.
 - b. Side Yard. Accessory Dwelling Units shall have a minimum side yard of five (5) feet.
 - c. Side Yard for Corner and Reversed Corner Lots. When an Accessory Dwelling Unit is located on a corner lot or a reversed corner lot, a minimum side yard of ten (10) 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 five (5) feet. Attached Accessory Dwelling Units shall have a minimum rear yard of twenty-five (25) feet.
 - e. Non-conforming structures. A legally established Primary Dwelling Unit or Accessory Structure that is non-conforming as to yards, may be converted to, converted, in whole or in part, to an Accessory Dwelling Unit and maintain its legal-nonconforming status.
10. Roof eaves. Roof eaves of an Accessory Dwelling Unit may project into the required side yard for a distance not to exceed one (1) foot, and the eaves shall not be closer than two (2) feet from the side property line.
11. Landscaping. A minimum of twenty (20%) percent of the entire parcel shall be landscaped with plant materials, including some combination of trees, shrubs, groundcover, and turf. In addition, Accessory Dwelling Units shall comply with all applicable landscaping requirements of Section .503-J.
12. 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, in whole or in part, to an Accessory Dwelling Unit those parking spaces must be replaced at a 1:1 ratio.

- b. The Owner may locate the replacement spaces located in any configuration on the same lot as the Accessory Dwelling Unit, including but not limited to, as covered spaces (e.g. carport), open spaces, Tandem Parking, or by the use of a mechanical automobile parking lift.
- c. Parking spaces shall be located on an approved surface only.
- d. Open parking spaces shall have a minimum dimension of nine and one-half (9^{1/2}) feet by eighteen (18) feet.
- e. Covered parking spaces (carports and garages) shall have a minimum dimension of ten (10) feet by twenty (20) feet.

13. 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. However, the roof pitch must be a minimum of a three (3) inch rise for every horizontal twelve (12) inch run.

14. Manufactured or prefabricated structures. Nothing in this section prohibits the installation of manufactured or prefabricated structures that comply with Subsection (F)(13) above.

15. Exterior access. All Accessory Dwelling Units must provide independent access to the exterior of the unit.
16. Passageways. No Passageway is required in conjunction with the construction of an Accessory Dwelling Unit.
17. 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.
18. Building codes. Local building code requirements apply to Accessory Dwelling Units.
19. 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.
20. 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.
21. 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.
22. Rental period. An Accessory Dwelling Unit may not be rented for a period of fewer than thirty (30) days.
23. 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.

- a. Exception. The Development Services Director or designee may grant an exception for a period not to exceed twenty-four (24) months at the Owner's request. Only one such exemption shall be granted within a five (5) year time period.
 - b. If the Owner(s) of the subject property does not return to reside at the property, or if the subject property's ownership does not change prior to the end of the exception term, the Accessory Dwelling Unit permit shall be revoked in accordance with Subsection (G).
24. 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 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 thirty (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 removal of the kitchen facilities).
 - g. The deed restrictions shall be enforced by the Development Services Director or designee for the benefit of the City of Pomona. Failure of the Owner to comply with the deed restrictions may result in legal action against the 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.

25. Interior Accessory Dwelling Units. Interior Accessory Dwelling Units shall be allowed in all zones permitting single-unit residential use if the following criteria are met:

- a. Only one (1) Accessory Dwelling Unit will exist on the lot.
- b. Independent access to the exterior of the Accessory Dwelling Unit is provided.
- c. The minimum side and rear yard requirements are sufficient for fire safety.
- d. The Accessory Dwelling Unit does not exceed the maximum permitted unit size.
- e. If the Interior Accessory Dwelling Unit meets the above criteria:
 - i. The installation of fire sprinklers shall not be required if they are not required for the Primary Dwelling Unit.
 - ii. The installation of a new or separate utility connection directly between the Accessory Dwelling Unit and the utility or the imposition of a related connection fee or capacity charge shall not be required.
 - iii. A deed restriction or similar instrument shall be recorded against the property in accordance with Subsection (F)(24).

26. Historic Properties.

- a. Interior Accessory Dwelling Units.
 - i. Shall be permitted on Historic Properties in accordance with the ministerial standards set forth in subsections (F)(25) above and (F)(26)(a)(ii) below.
 - ii. To ensure that the architectural style of the Accessory Dwelling Unit is consistent with the historically significant architecture of the existing structure the following elements

of the Accessory Dwelling Unit must be the same in appearance as those of the existing structure:

1. Architectural style (e.g. Craftsman, Victorian, Modern, etc.),
 2. Architectural detailing (e.g. exposed rafters, knee braces, decorative tile, etc.),
 3. Construction materials, finishes, and colors,
 4. Door trim and style, and
 5. Window trim and style (i.e., grid pattern, frame thickness, opening direction, etc.).
- b. For the purposes of applying ministerial standards in accordance with Government Code Section 65852.2, no Attached Accessory Dwelling Unit, Detached Accessory Dwelling Unit, or external modifications to existing structures except for those in subsection (F)(26)(a)(ii) above are permitted on Historic Properties.

G. Revocation of Permit.

1. Revocation by Director. The Development Services Director or designee shall have the authority to revoke a permit for an Accessory Dwelling Unit if one or more of the requirements of this section are no longer met.
2. Request for Hearing. Within twenty (20) days of the deposit of the notice of the decision to revoke the Accessory Dwelling Unit permit in the United States mail, the Owner may request a hearing before the Planning Commission. If the City receives a timely request for a hearing in accordance with this section, the decision to revoke shall be stayed until the hearing is concluded and the Planning Commission has made its determination. If the City does not receive a request for a hearing within twenty (20) days, the revocation of the permit for an accessory dwelling unit shall be final.
3. Appeal of Planning Commission Decision. The appeal shall be considered by the Planning Commission as a consent item. The decision of the Planning Commission shall be final unless a notice of appeal is filed pursuant to Section .580(F)(1).
4. If a permit for an Accessory Dwelling Unit is revoked, the Owner shall, within sixty (60) days, remove the kitchen facilities from the Accessory Dwelling Unit.

H. Effect of Conforming Accessory Dwelling Unit. A legally established Accessory Dwelling Unit that conforms to this section 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.
3. Not exceed the allowable density for the lot upon which it is located and is deemed to be an accessory residential use that is consistent with the existing general plan land use and zoning district designations for the lot.

SECTION 5. The City Council of the City of Pomona hereby approves Code Amendment (CODE 12324-2019) amending the City of Pomona Zoning Ordinance Section .5809-13(F)(3)(b) adding the underlined language as follows:

Section .5809-13 – Historic preservation

b. Major projects shall include changes which significantly alter the following: height, proportions, the relationship of the building mass and space, roof shape, scale or distinctive facades of the structure. Examples of major projects shall include, but not be limited to room additions, adding dormers, expanding a garage, adding a porch, removing distinctive shutters or part or all of a structure. This category also includes demolition and/or replacement of primary use buildings or structures, and construction/installation of new buildings, structures, Attached and Detached Accessory Dwelling Units as well as Interior Accessory Dwelling Units that do not comply with the ministerial standards of Section 5809-26 but are in compliance with subsection L, new public sidewalks, new public streetscape improvements, new street lamps, new public buildings and structures, and development of new public spaces within an historic district. Additional examples shall be established at a later time by the commission. Applications for major projects shall include the following submittal:

SECTION 6. The City Council of the City of Pomona hereby approves Code Amendment (CODE 12324-2019) adding Section .5809-13(L) to The City of Pomona Zoning Ordinance per the underlined language as follows:

- L. Accessory Dwelling Units on Historic Properties. The purpose of this subsection is to regulate the establishment of Accessory Dwelling Units that do not comply with the ministerial standards in Government Code Section 65852.2 as implemented by

Section .5809-26; 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; to preserve the city of Pomona's cultural, historical, and architectural heritage; and to implement and promote the goals and policies of the Pomona General Plan.

1. Definitions. For the purpose of this section, the definitions set forth in Section .5809-26(B) apply.
2. Applicability.
 - a. New Accessory Dwelling Units. Compliance with the requirements of this section applies to any construction, establishment, alteration, enlargement, or modification of an Accessory Dwelling that does not comply with the ministerial standards set forth in Section .5809-26.
 - b. Legal Nonconforming Accessory Dwelling Units. All Accessory Dwelling Units that were legal at the time of their creation but that do not conform to the ministerial standards set forth in Section .5809-26 and that have not been approved through the process set forth in this Section .5809-13(L) are deemed nonconforming and shall be subject to the provisions of Section .550. - Nonconforming buildings and uses.
 - c. Existing Illegal Accessory Dwelling Units. The provisions of this section shall in no way validate any existing illegal Accessory Dwelling Unit. An application may be made pursuant to this section to convert an illegal Accessory Dwelling Unit to a legal conforming Accessory Dwelling Unit, and shall be subject to the same standards and requirements as for a newly proposed Accessory Dwelling Unit.
3. Zoning. An Accessory Dwelling Unit is permitted with a Major Certificate of Appropriateness under this Section .5809-13 in any zoning district, overlay district, or specific plan that allows single-unit residential use, including but not limited to the following districts:
 - a. "R-1-6,000" Single Family Residential District;
 - b. "R-1-7,200" Single Family Residential District;
 - c. "R-1-7,500" Single Family Residential District;

- d. “R-1-10,000” Single Family Residential District;
 - e. “R-1-20,000” Single Family Residential District;
 - f. “R-1-E” Single Family, Residential Overlay;
 - g. “PD” Planned Development Overlay District
 - h. “R-2” Low Density Multiple-family Zone;
 - i. “R-3” Medium Density Multiple-family Zone;
 - j. “R-4” High Density Multiple-family Residential Zone;
 - k. “R-MHD” Residential-Manufactured Housing Development Zone
 - l. “PRD” Planned Residential Development District;
 - m. “A-P” Administrative and Professional Office District.
 - n. “S” Supplemental Use Overlay District
 - o. Small Lot Residential Zone
4. Standards. The following standards limit the scope of a Major Certificate of Appropriateness for an Accessory Dwelling Unit that does not comply with the ministerial standards set forth in Section .5809-26:
- a. Primary Dwelling Unit requirement.
 - i. There shall be a Primary Dwelling Unit located on the same lot as an Accessory Dwelling Unit.
 - ii. 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.
 - iii. An Accessory Dwelling Unit is not permitted on residential lots already containing two or more dwelling units.
 - b. Number of units allowed. Only one Accessory Dwelling Unit may be allowed on the same lot as a Primary Dwelling Unit.
 - c. Number of Rooms.

- i. For Accessory Dwelling Units less than 800 square feet in area.
 - 1. The total number of Rooms, as defined in Section .062, permitted in an Accessory Dwelling Unit may not exceed four (4).
 - ii. For Accessory Dwelling Units 800 square feet in area or greater.
 - 1. The total number of Rooms, as defined in Section .062, permitted in an Accessory Dwelling Unit may not exceed six (6).
- d. Unit size.
- i. For lots less than 7,200 square feet in area.
 - 1. The total floor area of an Attached Accessory Dwelling Unit may not exceed fifty (50%) percent of the total Living Area of the Primary Dwelling Unit or eight hundred (800) square feet, whichever is less.
 - 2. The total floor area of a Detached Accessory Dwelling Unit may not exceed eight hundred (800) square feet.
 - 3. In no case shall the total floor area of an Accessory Dwelling Unit be smaller than 220 square feet in accordance with California Building Code section 1208.4.
 - ii. For lots 7,200 square feet in area or greater.
 - 1. The total floor area of an Attached Accessory Dwelling Unit may not exceed fifty (50%) percent of the total Living Area of the Primary Dwelling Unit. In no case may an Attached Accessory Dwelling Unit exceed one thousand two hundred (1,200) square feet in total floor area.

2. The total floor area of a Detached Accessory Dwelling Unit may not exceed one thousand two hundred (1,200) square feet in total floor area.
 3. In no case shall the total floor area of an Accessory Dwelling Unit be smaller than 220 square feet in accordance with California Building Code section 1208.4.
- e. Coverage. The maximum coverage of the lot by all structures shall be thirty-five (35) percent. Any patio with roof, open slats or other covering shall constitute lot coverage but not square footage.
 - f. Building height. No Accessory Dwelling Unit shall have a height greater than two (2) stories or thirty-five (35) feet. However, in no case shall an Accessory Dwelling Unit be taller than the Primary Dwelling Unit.
 - g. Minimum distance between buildings.
 - i. The distance between an Accessory Dwelling Unit and the Primary Dwelling Unit shall be at least ten (10) feet.
 - ii. The distance between an Accessory Dwelling Unit and an Accessory Structure shall be at least six (6) feet.
 - h. Location restriction. Detached Accessory Dwelling Units shall not be located between the proposed or existing Primary Dwelling Unit and the street adjoining the front yard, except where the Primary Dwelling Unit is on a through lot.
 - i. Yards.
 - i. Front Yard. Accessory Dwelling Units shall have a minimum front yard of twenty-five (25) feet.
 - ii. Side Yard. Accessory Dwelling Units shall have a minimum side yard of five (5) feet.
 - iii. Side Yard for Corner and Reversed Corner Lots. When an Accessory Dwelling Unit is located on a corner lot or a reversed corner lot, a minimum side yard of ten (10) feet shall be provided when the side yard abuts a street.

- iv. Rear Yard. Detached Accessory Dwelling Units shall have a minimum rear yard of five (5) feet. Attached Accessory Dwelling Units shall have a minimum rear yard of twenty-five (25) feet.
- v. Non-conforming structures. A legally established Primary Dwelling Unit or Accessory Structure that is non-conforming as to yards, may be converted to, converted, in whole or in part, to an Accessory Dwelling Unit and maintain its legal-nonconforming status.
- j. Roof eaves. Roof eaves of an Accessory Dwelling Unit may project into the required side yard for a distance not to exceed one (1) foot, and the eaves shall not be closer than two (2) feet from the side property line.
- k. Landscaping. A minimum of twenty (20%) percent of the entire parcel shall be landscaped with plant materials, including some combination of trees, shrubs, groundcover, and turf. In addition, Accessory Dwelling Units shall comply with all applicable landscaping requirements of Section .503-J.
- l. Parking.
 - i. 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, in whole or in part, to an Accessory Dwelling Unit those parking spaces must be replaced at a 1:1 ratio.
 - ii. The Owner may locate the replacement spaces located in any configuration on the same lot as the Accessory Dwelling Unit, including but not limited to, as covered spaces (e.g. carport), open spaces, Tandem Parking, or by the use of a mechanical automobile parking lift.
 - iii. Parking spaces shall be located on an approved surface only.
 - iv. Open parking spaces shall have a minimum dimension of nine and one-half (9^{1/2}) feet by eighteen (18) feet.

- v. Covered parking spaces (carports and garages) shall have a minimum dimension of ten (10) feet by twenty (20) feet.
- m. Exterior access. All Accessory Dwelling Units must provide independent access to the exterior of the unit.
- n. Passageways. No Passageway is required in conjunction with the construction of an Accessory Dwelling Unit.
- o. 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.
- p. Building codes. Local building code requirements apply to Accessory Dwelling Units.
- q. Certificate of Occupancy.
 - i. 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.
 - ii. A certificate of occupancy may be issued concurrently for both the Primary Dwelling Unit and the Accessory Dwelling Unit.
- r. 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.
- s. Rent and Sale.
 - i. An Accessory Dwelling Unit may be rented separately from the Primary Dwelling Unit.
 - ii. An Accessory Dwelling Unit may not be sold or otherwise conveyed separately from the Primary Dwelling Unit.
- t. Rental period. An Accessory Dwelling Unit may not be rented for a period of fewer than thirty (30) days.
- u. 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.

- i. Exception. The Development Services Director or designee may grant an exception for a period not to exceed twenty-four (24) months at the Owner's request. Only one such exemption shall be granted within a five (5) year time period.
 - ii. If the Owner(s) of the subject property does not return to reside at the property, or if the subject property's ownership does not change prior to the end of the exception term, the Accessory Dwelling Unit permit shall be revoked in accordance with Subsection (G).
- v. 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:
- i. An acknowledgment that the Accessory Dwelling Unit requires the current Owner to reside in either the Primary Dwelling Unit or in the Accessory Dwelling Unit at all times.
 - ii. A declaration prohibiting the sale of the Accessory Dwelling Unit separate from the sale of the Primary Dwelling Unit.
 - iii. A declaration that the Accessory Dwelling Unit shall not be rented for a period of fewer than thirty (30) days.
 - iv. A declaration restricting the size and attributes of the Accessory Dwelling Unit to that which conforms to this section.
 - v. A declaration that all of the above deed restrictions may be enforced against future purchasers.
 - vi. The deed restrictions may be removed if the owner eliminates the Accessory Dwelling Unit (as evidenced by removal of the kitchen facilities).

vii. The deed restrictions shall be enforced by the Development Services Director or designee for the benefit of the City of Pomona. Failure of the Owner to comply with the deed restrictions may result in legal action against the 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.

w. Interior Accessory Dwelling Units.

i. Only one (1) Accessory Dwelling Unit will exist on the lot.

ii. Independent access to the exterior of the Accessory Dwelling Unit is provided.

iii. The minimum side and rear yard requirements are sufficient for fire safety.

iv. If the Interior Accessory Dwelling Unit meets the above criteria:

1. The installation of fire sprinklers shall not be required if they are not required for the Primary Dwelling Unit.

2. The installation of a new or separate utility connection directly between the Accessory Dwelling Unit and the utility or the imposition of a related connection fee or capacity charge shall not be required.

3. A deed restriction or similar instrument shall be recorded against the property in accordance with Subsection (4)(v).

5. Effect of Conforming Accessory Dwelling Unit. A legally established Accessory Dwelling Unit that conforms to this section shall:

- a. Not be considered in the application of any ordinance, policy, or program to limit residential growth; and
- b. Not be considered a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service.
- c. Not exceed the allowable density for the lot upon which it is located and is deemed to be an accessory residential use that is consistent with the existing general plan land use and zoning district designations for the lot.

SECTION 7. The City Council of the City of Pomona hereby approves Code Amendment (CODE 12324-2019) adding Section .560(J)(1)(m) of the City of Pomona Zoning Ordinance per the underlined language as follows:

Section .560 – Variances

m. For Minor Deviation Variances related to Accessory Dwelling Units:

- 1) Lot coverage. An increase of not more than ten (10) percent in the maximum allowable lot coverage.
- 2) Minimum distance between buildings. A decrease of not more than four (4) feet in the minimum distance between an Accessory Dwelling Unit and an Accessory Structure.
- 3) Side yard. A decrease of not more than two (2) feet in the minimum side yard requirement.
- 4) Rear yard. A decrease of not more than two (2) feet in the minimum rear yard requirement.

SECTION 8. The City Council of the City of Pomona hereby approves Code Amendment (CODE 12324-2019) amending Section .580 – Conditional Use Permits of the City of Pomona Zoning Ordinance adding the underlined language as follows:

J. The following uses shall be permitted in the zones indicated, provided that a conditional use permit shall first be obtained pursuant to the provisions of this chapter:

Subject to conditional use permit:

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	USE	ZONES IN WHICH ALLOWED
*	<u>Accessory Dwelling Units that are described by Section 5809-26(D)(3)(b).</u>	<u>Any zoning district, overlay district, or specific plan that allows Accessory Dwelling Units, as set forth in Section 5809-26(E).</u>

SECTION 9. The City Council of the City of Pomona hereby approves Code Amendment (CODE 12324-2019) deleting Section .062 – Second-Unit Housing of the City of Pomona Zoning Ordinance per 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.~~
- ~~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.~~

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- ~~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 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 10. The City Council of the City of Pomona hereby approves Code Amendment (CODE 12324-2019) deleting Section .503-H(C)(4) of the City of Pomona Zoning Ordinance per 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 11. 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 12. 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.

PASSED, APPROVED AND ADOPTED THIS 16TH DAY OF SEPTEMBER, 2019

ATTEST:

CITY OF POMONA:

Rosalia A. Butler, City Clerk

Tim Sandoval, Mayor

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APPROVED AS TO FORM:

Sonia Carvahlo, 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 9th day of September, 2019, and adopted on the 16th day of September, 2019 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Rosalia A. Butler, City Clerk