

ORDINANCE NO. 19-1096U

AN URGENCY ORDINANCE OF THE CITY OF WEST HOLLYWOOD, APPROVING A ZONE TEXT AMENDMENT TO MODIFY REQUIREMENTS FOR ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS IN COMPLIANCE WITH RECENT CHANGES TO STATE LAW; AND DECLARING THE URGENCY THEREOF.

THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Due to recent State legislation, staff has initiated this text amendment to replace Municipal Code regulations for Accessory Dwelling Units and Junior Accessory Dwelling Units, in conformance with recent changes state law. Pursuant to Government Code section 65852.2(a)(1), a local ordinance providing for the creation of accessory dwelling units in single-family and multifamily zones must comply with the new provisions of Government Code section 65852.2 by January 1, 2020, otherwise the local ordinance is null and void. The City's current provisions regulating accessory dwelling units must be amended in order to conform to the current state law.

SECTION 2. A public hearing was duly noticed for the City Council meeting of December 16, 2019 by publication in the Beverly Press newspaper, the West Hollywood Independent Newspaper, and the City website and by announcement on City Channel 6 starting December 5, 2019.

SECTION 3. The proposed zone text amendments are both categorically and statutorily exempt from CEQA. 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 and which are limited in size. Moreover, the Planning Commission 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 Planning Commission finds that the ordinance will not (1) 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) result in a potentially significant cumulative impact, in that these units will be subordinate to residences already constructed, do not require parking, and are minimal in numbers, (for example, only 15 units were approved thus far in 2019); (3) result in a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances, as the City of West Hollywood is built out and these units will not create unusual circumstances; (4) 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 in that the City does not contain protected scenic resources, and ADUs adjacent or within historic buildings will be required to meet Secretary of Interior Standards; (5) be located on a hazardous waste site included on any list compiled pursuant to § 65962.5 of the Government Code, in that any hazardous waste is required to be mitigated prior to any construction; nor (6) result in a substantial adverse change in the significance of a historical resource, in that the regulation will require ADUs to meet required Secretary of the Interior Standards for Historic Structures.

SECTION 4. The Planning Commission of the City of West Hollywood reviewed the proposed amendments at a public hearing held on November 21, 2019 and recommended that City Council adopt the proposed amendments with three revisions to the ordinance. Those revisions have been included in the current ordinance language.

SECTION 5. The City Council hereby finds that Zone Text Amendment (ZTA) 2019-0005 is consistent with the Goals and Policies of the General Plan. Specifically, an ordinance to enhance the ability to construct ADUs meets Goal H-3: Encourage a diverse housing stock to address the needs of all

socioeconomic segments of the community, by providing housing that can be more affordable and addresses needs of smaller households typically with lower income. The ZTA meets General Plan Goal H-4: Provide for adequate opportunities for new construction of housing, by reducing the amount of time needed to review and approve requests for ADUs. Finally, the ZTA is consistent with Goal H-5: Provide for a government environment that facilitates housing development and preservation, as the ZTA specifically creates a stronger environment for development of ADUs.

SECTION 6. Urgency Finding. The City Council finds and declares that the immediate preservation of the public peace, health, and safety requires that this ordinance be enacted as an urgency measure pursuant to Government Code section 36937(b). The adoption of AB 881 is effective on January 1, 2020, and if the City does not adopt standards in compliance with AB 881, the City's ADU regulation will be null and void. For these reasons, and the reasons set forth in Section 1, the Council finds that it is necessary to adopt this ordinance as an urgency measure.

SECTION 7. Severability. Should any provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Ordinance as a whole or any remaining provisions hereof. The City Council of the City of West Hollywood hereby declares that it would have adopted this Ordinance despite any partial invalidity of its provisions.

SECTION 8. Effective Date. Pursuant to Government Code section 36937(b), this ordinance shall take effect immediately upon its adoption by four-fifths of the City Council.

SECTION 9. Section 19.06.050 of Chapter 19.06 of Title 19, West Hollywood Municipal Code, is hereby amended to read as follows:

19.06.050 Residential Density in R1 and R2 Zones.

TABLE 2-4: MAXIMUM DENSITY IN R1 AND R2 ZONES

Zoning Map Symbol	Maximum Number of Dwelling Units Allowed ¹
R1-A	1 unit per lot, and accessory dwelling units and junior accessory dwelling units where allowed by Section 19.36.310. No more than 1 junior accessory dwelling unit per residential lot with an existing single-family dwelling (see Section 19.36.310).
R1-B	2 units per lot of less than 8,499 sq. ft.; 3 units per lot between 8,500 and 11,999 sq. ft.; plus 1 additional unit per lot, for each 3,500 sq. ft. or fraction thereof in excess of 11,999 sq. ft. Accessory dwelling units are allowed by Section 19.36.310. No more than 1 junior accessory dwelling unit per single-family dwelling (see Section 19.36.310).
R1-C	1 unit per lot and accessory dwelling units and junior accessory dwelling units where allowed by Section 19.36.310. No more than 1 junior accessory dwelling unit per single-family dwelling (see Section 19.36.310).
R2	2 units per lot of less than 4,000 sq. ft.; 3 units per lot between 4,000 sq. ft. and 7,999 sq. ft.; 4 units per lot between 8,000 sq. ft. and 9,999 sq. ft.; plus 1 additional unit per lot, for each 2,000 sq. ft. or fraction thereof in excess of 9,999 sq. ft. Accessory dwelling units are allowed by Section 19.36.310. No more than 1 junior accessory dwelling unit per single-family dwelling (see Section 19.36.310).

SECTION 10. Table 2-5 of Section 19.10.030 of Chapter 19.10 of Title 19, West Hollywood Municipal Code, is hereby amended to add the following rows to the table, inserted alphabetically:

TABLE 2-5: ALLOWED USES AND PERMIT REQUIREMENTS FOR COMMERCIAL AND PUBLIC ZONING DISTRICTS

P	Use Permitted ¹	CUP	Conditional Use Permit Required
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MCUP	Minor Conditional Use Permit Required	PCR	Project Conformity Review
RI	Rehabilitation Incentives	—	Use Not Allowed

[Explanatory Notes Follow at the End of the Table]

LAND USE ²	PERMIT REQUIRED BY ZONE						Specific Use Regulations
	CN	CC/SSP	CA	CR	PDCSP	PF ³	
Accessory dwelling units	P ^{1, 14}	P ^{1, 14}	P ^{1, 14}	P ^{1, 14}	—	—	19.36.310
Junior Accessory dwelling units	P ^{1, 14}	P ^{1, 14}	P ^{1, 14}	P ^{1, 14}	—	—	19.36.310

Notes:

(1) Zone clearance or development permit may be required; see Chapters 19.42 and 19.48 or regulated by another chapter of the municipal code as referenced.

(14) As part of a mixed-use development only.

SECTION 11. Subsection 19.42.040C of Chapter 19.42 of Title 19, West Hollywood Municipal Code, is hereby amended to read as follows:

- C. Deed restriction. Unless otherwise authorized by Subsection 19.36.310(D)4 of this code, prior to issuance of a certificate of occupancy for an accessory dwelling unit or junior accessory dwelling unit, a deed restriction shall be recorded with the County Recorder's Office in a form acceptable to the City Attorney and shall include a prohibition on the sale of the accessory dwelling unit or junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

SECTION 12. Subsection 19.36.300(A) of Section 19.36.300 of Chapter 19.36 of Title 19, West Hollywood Municipal Code, is hereby amended to read as follows:

19.36.300 Residential Uses – Residential Accessory Uses and Structures.

- A. General Requirements for Accessory Structures Other than Garages in Rear Yards, Accessory Dwelling Units, and Junior Accessory Dwelling Units. Accessory structures may be located within a required rear setback in compliance with the following standards.
1. Limitation on Use. The structures may accommodate any use normally allowed by the applicable zoning district, except any type of detached living or sleeping quarters.
 2. Location.
 - a. Setbacks. An accessory structure on a parcel that is 50 feet or more in width shall not be placed closer than five feet to any property line. An accessory structure may be located up to the property line on a parcel less than 50 feet in width or 100 feet in depth that is developed with a single-family dwelling or duplex, except where the accessory structure would abut another building on an adjacent parcel. In these cases, the accessory structure shall be located a minimum of three feet from the property line.
 - b. Exceptions. The following structures are exempt from the accessory structure setback requirements provided by subsection (A)(2)(a), above.
 - (1) Planters. Planter boxes and masonry planters with a maximum height of 42 inches are allowed within all required setbacks.
 - (2) Play Equipment, Pet Shelters. Children's play equipment, movable dog houses, and similar structures may be placed within a required rear setback without limitation on location.
 - (3) Trash Enclosures. Trash enclosures may be placed within a required rear setback without limitation on location.
 - c. Distance Between Buildings. Buildings on a site shall comply with the separation requirements of Section 19.20.040.
 - d. Accessory Structures Attached to Garages. Accessory structures allowed within the rear yard may be attached to a garage located on a side or rear property line, provided that the non-garage uses comply with the setbacks required by this section.
 3. Site Coverage. Roofed accessory structures shall not occupy more than 50 percent of the required rear setback, provided that the Planning and Development Services Director may approve additional coverage where a replacement open area equivalent

to the additional coverage over 50 percent is substituted elsewhere on the site, provided that:

- a. The Planning and Development Services Director determines that the usability and location of the substitute area is equally satisfactory; and
 - b. The substitute area does not exceed a slope of 10 percent, and has no dimension less than 15 feet. The dimensions may include required side setback areas, but the required setback shall not be included when computing equivalent replacement area.
4. Height Limit. Accessory structures shall not exceed a height of 16 feet and one story.

SECTION 13. Section 19.36.310 of Chapter 19.36 of Title 19, West Hollywood Municipal Code, is hereby amended to read as follows:

19.36.310 Residential Uses – Accessory, and Junior 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. Accessory dwelling units and junior accessory dwelling units are defined in Section 19.90.020.
- B. Effect of Conforming. An ADU or JADU that conforms to the standards in this section will be:
 1. Deemed to be consistent with the city's general plan and zoning designation for the lot on which the ADU or JADU is located.
 2. Deemed to meet the allowable density for the lot on which the ADU or JADU is located.
 3. Not contemplated in the application of any local ordinance, policy, or program to limit residential growth.
 4. Permitted in accordance with the terms of this section and will not be required to correct a nonconforming zoning condition as a condition of approval. This provision does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code section 17980.12.
- C. Permitting Process
 1. Building Permit Only. If an ADU or JADU complies with each of the general requirements in subsection D below, it does not require a zone clearance, and is allowed to be constructed with only a building permit in the following scenarios:
 - (a) Conversion of Existing or Proposed Single Family Residence Floor Area to an ADU or JADU. Only one ADU or JADU may be permitted on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:
 - (i) Is either: within the proposed footprint of a proposed single-family dwelling; within the existing footprint of an existing single-family dwelling; or within the existing footprint of an existing accessory structure. In any of the above cases, the ADU may expand the footprint up to 150 square feet only to accommodate ingress and egress;
 - (ii) Has exterior access that is independent of that for the single-family dwelling; and
 - (iii) Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes.
 - (b) Newly constructed detached ADU or JADU 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 C1(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; and
 - (iii) The peak height above grade is 16 feet or less.
 - (c) Conversion of existing multifamily building footprint to ADUs or JADUs: One or more 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. Up to 25 percent of the existing multifamily dwelling units in each building, or one unit, whichever is greater, may have a converted ADU under this paragraph.

- (d) Detached ADUs 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 and
 - (ii) The total floor area is 800 square feet or smaller.
- 2. Zone Clearance Required and Approval Timeframe. Except as allowed under subsection 19.36.310.C(1), all ADUs must apply for and receive approval of a zone clearance, as detailed in Chapter 19.42, and a building permit. Within 60 days of receipt of a completed application for a zone clearance and building permit to create an ADU or JADU, the Planning and Development Services Director must approve an application to create an ADU or JADU that meets the requirements in Subsection D below, unless either:
 - (a) the applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or
 - (b) 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 ministerial without discretionary review or a hearing.
- 2. Nonconforming ADUs and Discretionary Approval. Any proposed ADU or JADU that does not conform to the objective standards set forth in subsection D below may be allowed by the City with the approval of a development permit, in accordance with Chapter 19.48 of this code.

D. General ADU and JADU Requirements.

- 1. Allowable Zoning Districts. An ADU or JADU subject only to a building permit under subsection 1 above is permitted in any residential zone or commercial zone that allows residential units.
- 2. Size: The minimum size of an ADU or JADU is 220 square feet. The total area of floor space for a detached accessory dwelling unit shall not exceed 1,200 square feet. An attached accessory dwelling unit is limited to 50 percent of the floor area of the existing attached primary dwelling. The maximum size of a detached or attached ADU is 850 square feet for a studio or one-bedroom unit and 1,200 square feet for a unit with two bedrooms. No more than two bedrooms are allowed in any ADU. No application of FAR, lot coverage, or open-space requirements may require the ADU to be less than 800 square feet. JADUs cannot exceed 500 square feet.
- 3. Fire Sprinklers. Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.
- 4. Rental Term. ADUs and JADUs shall be subject to any restrictions on lease terms that apply to all residential dwelling units in the City.
- 5. 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).
- 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 January 1, 2020 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, no matter when created, 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.
- 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 Planning and Development Services Director. The deed restriction shall 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 associated with the ADU or JADU.
 - 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 Planning and Development Services Director, providing evidence that the ADU or JADU has in fact been eliminated. Any building permits required in the removal must be approved prior to the Director's determination. 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 Planning and Development Services 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 Planning and Development Services 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.
8. Specific Junior Accessory Dwelling Units Requirements. Junior accessory dwelling units shall comply with the following requirements:
- a. Be constructed within the walls of an existing or proposed single-family dwelling;
 - b. Include a separate entrance from the main entrance to the structure, with an interior entry to the main living area; and
 - c. Include an efficiency kitchen, which shall include a cooking facility with appliances, a food preparation counter or counters that total at least 8 square feet in area and food storage cabinets that total at least 16 square feet of shelf space.
9. Development Standard: All ADUs shall contain separate kitchen and bathroom facilities accessible only to the tenants of that ADU.
10. Setbacks: The side and rear setback for ADUs and JADUs is 4 feet.

E. Specific Accessory Dwelling Unit Requirements. The following requirements apply only to ADUs that require a zone clearance under subsection C2 0 above, in addition to requirements in Subsection D above.

1. Setbacks: The minimum setback for ADUs and JADUs shall be 4 feet, unless otherwise authorized by the Zoning Ordinance.
2. Floor Area Ratio (FAR). Where a maximum FAR is applicable, no ADU subject to this subsection E may cause the total FAR of the lot to exceed allowable floor area ratio, except where necessary to construct up to 800 square feet for an ADU.
3. 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 detached ADU may not exceed one story.
4. Parking.
 - a. No off-street parking is required for ADUs.
 - b. 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 off-street parking spaces are not required to be replaced.
5. Historic Properties. Based on state law, ADUs shall be approved ministerially. Therefore, the applicable provisions of Chapter 19.58, Cultural Heritage Preservation do not apply. However,

ADUs located on a property that is listed on the California Register of Historic Resources shall meet all Secretary of the Interior Standards, as applicable.

- 6. Fees.
 - a. Impact Fees. No impact fee, as authorized by Chapter 19.64 of this Code, is required for an ADU or JADU.
 - b. Utility Fees.
 - i. Converted ADUs and JADUs on a single-family lot, created under subsection C1(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.
 - ii. All ADUs and JADUs not covered by subsection 6.i 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.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of West Hollywood at a regular meeting held this 16th day of December, 2019 by the following vote:

AYES: Councilmember: Duran, Heilman, Meister, Mayor Pro Tempore Horvath, and Mayor D'Amico.
 NOES: Councilmember: None.
 ABSENT: Councilmember: None.
 ABSTAIN: Councilmember: None.

/s/ John D'Amico

JOHN D'AMICO, MAYOR

ATTEST:
/s/ Yvonne Quarker

YVONNE QUARKER, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF WEST HOLLYWOOD)

I, YVONNE QUARKER, City Clerk of the City of West Hollywood, do hereby certify that the foregoing Ordinance No. 19-1096U was duly passed, approved, and adopted by the City Council of the City of West Hollywood at a regular meeting held on the 16th day of December, 2019.

I further certify that this ordinance was posted in three public places as provided for in Resolution No. 5, adopted the 29th day of November, 1984.

WITNESS MY HAND AND OFFICIAL SEAL THIS 17th DAY OF DECEMBER, 2019.

/s/ Yvonne Quarker

YVONNE QUARKER, CITY CLERK

AFFIDAVIT OF POSTING

State of California)
County of Los Angeles)
City of West Hollywood)

I declare under penalty of perjury that I am employed by the City of West Hollywood in the Office of the City Clerk and that I posted this agenda on:

Date: December 18, 2019
Signature: Alyssa Potlacher