

ORDINANCE NO. 23-011

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF PACIFIC GROVE AMENDING CHAPTER
23.80 OF THE PACIFIC GROVE MUNICIPAL CODE
REGARDING ACCESSORY DWELLING UNITS**

FACTS

1. The City has regulated ADUs since 1983 as set forth in Pacific Grove Municipal Code (PGMC) Chapter 23.80.
2. Senate Bill 897 (SB 897) and Assembly Bill 2221 (AB 2221), amending the statewide regulatory framework for Accessory Dwelling Units (ADU) took effect on January 1, 2023.
3. The City has determined that it is appropriate to amend Chapter 23.80 of Title 23 “Zoning” to protect the health, safety, and welfare of the public, and will ensure alignment with the State’s Accessory Dwelling Unit regulations.
4. Notice of the public hearing was published on July 6, 2023.
5. This Ordinance amends PGMC Section 23.80, entitled "Accessory Dwelling Units” to comply with State law and to provide a more streamlined process for the development of ADUs and JADUs and to provide additional affordable housing opportunities.
6. In the enactment of this Ordinance, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq.
7. Amendment of PGMC Section 23.80 pertaining to ADUs is statutorily exempt from review under the California Environmental Quality Act (CEQA) per Section 15282(h) of the CEQA Guidelines as it implements Government Code Sections 65852.1 and 65852.2 as set forth in Section 21080.17 of the Public Resources Code.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing Facts are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION 2. Pacific Grove Municipal Code Chapter 23.80 shall be amended by deletion of all text shown in ~~strikeout text~~ and the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

**Chapter 23.80
ACCESSORY DWELLING UNITS**

- 23.80.010 Purpose and intent.
- 23.80.020 Effect of nonconforming.
- 23.80.030 Definitions.
- 23.80.040 Approvals.

- 23.80.050 General ADU and JADU requirements.
- 23.80.060 Specific ADU and JADU requirements.
- 23.80.070 Fees and charges.
- 23.80.080 Nonconforming ADUs and discretionary approval.

23.80.010 Purpose and intent.

The purpose of this chapter 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, as may be amended.

23.80.020 Effect of nonconforming.

An ADU or JADU that conforms to the standards in this chapter will not be:

- (a) Deemed to be inconsistent with the city’s general plan and zoning designation for the lot on which the ADU or JADU is located.
- (b) Deemed to exceed the allowable density for the lot on which the ADU or JADU is located.
- (c) Considered in the application of any local ordinance, policy, or program to limit residential growth.
- (d) Required to correct a nonconforming zoning condition, as defined in PGMC 23.80.030. This does not prevent the city from enforcing compliance with applicable building standards in accordance with Health and Safety Code Section 17980.12.

23.80.030 Definitions.

As used in this chapter, terms are defined as follows:

- (a) “Accessory Dwelling Unit” or “ADU” means an attached or a detached residential dwelling unit that provides complete independent living facilities ~~and permanent provisions for living, sleeping, eating, cooking, sanitation, and connection to utilities~~ for one or more persons and is located on a lot with a proposed or existing primary residence or multi-family residences and may include the following:
 - (1) Detached: the unit is separated from the primary structure or structures.
 - (2) Attached: the unit is attached to the primary structure.
 - (3) Converted Existing Space: space (e.g., bedroom, attached garage, storage area, or an accessory structure) on the lot of primary residence(s) that is converted into an independent living unit.
 - (4) Junior Accessory Dwelling Unit (JADU): A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence.
 - (5) Manufactured Home, *as defined in Section 18007 of the Health and Safety Code.*

- (6) Efficiency Unit.
- (b) “Accessory structure” means a building or structure that is incidental to that of the main building on the same lot.
- (c) **“Attached” means a building which has at least part of a wall in common with another building, or which is connected to another building by a roof.**
- (d) “Complete independent living facilities” means permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.
- (e) “Efficiency Unit” means a unit ~~that includes each of the following:~~ **as defined in Health & Safety Code section 17958.1, as may be amended.**
- ~~(1) Compliance with Section 17958.1 Health & Safety Code, as may be amended.~~
- ~~(2) A food preparation counter or counters that are adequate for the unit. and~~
- ~~(3) Food storage cabinets that are adequate for the unit.~~
- (f) “Junior accessory dwelling unit” or “JADU” means a residential unit that:
- (1) Is no more than 500 square feet in size.
- (2) Is contained entirely within an existing or proposed single-family structure.
- (3) Includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure. ~~and~~
- (4) Includes an efficiency unit, as defined in this chapter.
- (g) “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.
- (h) “Manufactured Home” means a unit as defined by Section 18007 of the California Health and Safety Code, as may be amended.
- (i) “Ministerial approval” means approval related to a building permit that does not require discretionary action or a hearing.
- (j) “Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.
- (k) **“Objective standards” means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the**

development applicant or proponent and the public official prior to submittal.

- (l) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.
- (m) **"Permitting agency" means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.**
- (n) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
- (o) "Public transit" means a ~~fixed route (bus stop or other transit stop)~~ **location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of** transportation that charges set fees **fares, runs on fixed routes, and is are** available to the public.
- (p) "Tandem parking" means two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

23.80.040 Approvals

The following approvals apply to ADUs and JADUs under this section:

- (a) Ministerial Approval. An ADU or JADU which complies with each of the general requirements in PGMC 23.80.050 is allowed with a building permit and shall not require discretionary planning approval. The ADU/JADU project shall be reviewed in a ministerial and administrative manner, limited to only considering the project's compliance with the applicable objective standards.
 - (1) One ADU and one JADU on a lot with a proposed or existing single-family dwelling.
 - (2) Converted on a Single-family Lot:
 - (A) Created within the existing space of an accessory structure.
 - (B) ~~Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building codes.~~ **No setback shall be required to convert existing living area or an existing structure into an ADU that is constructed in the same location and to the same dimensions as an existing structure, and a setback of no more than three feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or existing living area.**
 - (C) An ADU created within an existing accessory structure may expand an additional 150 sq. ft. if expansion is limited to accommodating ingress

and egress only.

(3) Attached ADU on Single-Family Lot:

- (A) Shall not exceed 50% of the square footage of proposed or existing building, or 1,000 sq. ft., whichever is greater.
- (B) ~~Setbacks same as (2)(B) above.~~ **Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building codes.**
- (C) **May be located at the front of the lot or in the front setback if sufficient area for an ADU up to 800 square feet does not exist at the rear or side of the primary dwelling unit.**
- (D) **The height limitation as provided in PGMC 23.80.060**

(4) Detached on Single-Family Lot.

- (A) The side and rear yard setbacks are at least **no less than** three feet.
- (B) **May be located at the front of the lot or in the front setback if sufficient area for an ADU up to 800 square feet does not exist at the rear or side of the primary dwelling unit.**
- (C) The total maximum floor area is up to 1,200 square feet. ~~And~~
- (D) The ~~peak height above grade is 16 feet or less.~~ **height limitation as provided in PGMC 23.80.060.**

(5) Converted on Multifamily Lot. Multiple ADUs within portions of existing multifamily dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, **can be converted** if each converted ADU complies with state building standards for dwellings. At least one converted ADU is allowed within an existing multifamily dwelling, ~~or~~ up to 25 percent of the **total number of** existing multifamily dwelling units, may each have a **be** converted **to an** ADU under this subsection.

(6) Detached on Multi-family Lot. No more than two detached ADUs on a lot that has an existing **or proposed** multifamily dwelling if each detached ADU satisfies the following limitations:

- (A) The side and rear yard setbacks are at least **no less than** three feet. (~~corner and exterior setbacks for the zoning district apply~~); and
- (B) **If the existing multifamily dwelling has a rear or side setback of less than three feet, the city shall not require any modification of the existing multifamily dwelling as a condition of approving the**

application to construct an ADU.

(C) **May be located at the front of the lot or in the front setback if sufficient area for an ADU up to 800 square feet does not exist at the rear or side of the primary dwelling unit.**

(D) **The height limitation as provided in PGMC 23.80.060**

(E) The total floor area is ~~800~~ **1,200** square feet or smaller.

(7) Junior Accessory Dwelling Unit (JADU):

(A) Constructed entirely within an existing or proposed single-family structure.

(B) Includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure.

(C) ~~Includes~~ **May be** an efficiency unit as defined in this chapter.

(D) **JADUs shall comply with all applicable requirements in Government Code section 65852.22.**

(b) Process and Timing.

(1) An ADU or JADU permit is considered and approved ministerially, without discretionary review or a hearing, ~~if it meets the minimum standards above.~~

(2) The City must act on an application to create an ADU or JADU within 60 days from the date that the City receives a completed application, unless either:

(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 JADU 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 be considered ministerially without discretionary review or a hearing.

(3) **If an application for an ADU or a JADU is denied, the City shall, within the time period previously described, return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.**

(4) A demolition permit for a detached garage that is to be replaced with an ADU must be reviewed with the application for the ADU and issued at the same time.

(5) The applicant shall not be otherwise required, to provide written notice or post a placard for the demolition of a detached garage that is to be replaced with an ADU, unless the property is located within an architecturally and historically significant historic district.

23.80.050 General ADU and JADU Requirements

The following requirements apply to all ADUs and JADUs that are approved under PGMC 23.80.040(a):

- (a) Zoning. An ADU or JADU subject only to a building permit under PGMC 23.80.040(a) may be created on a lot in any zone that allows residential uses.
- (b) Fire Sprinklers. Fire sprinklers are required in an ADU if sprinklers are required in the primary residence. **The construction of the ADU shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.**
- (c) Rental Term. An ADU or JADU may be rented under the following conditions:
 - (1) No ADU or JADU may be rented for a term less than 30 days, and
 - (2) JADU – owner must reside in either the primary residence or the JADU per Government Code 65852.22, Subd. (a)(2), as may be amended.
- (d) No Separate Conveyance. 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) unless allowed by Gov. Code, § 65852.26 (Qualified nonprofit corporation conveyance).
- (e) Septic System. If the ADU or JADU will connect to an on-site **wastewater**-treatment system, the owner must include with the application a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.
- (f) Each ADU ~~or JADU~~ shall have a separate address from the single or multi-family dwelling on the property.
- (g) Each ADU or JADU shall have a separate exterior access independent of the existing or proposed single or multi-family dwelling.

23.80.060 Specific ADU and JADU requirements.

(a) Size.

- (1) The total maximum floor area *for a detached ADU* may be up to 1,200 square feet. **The total floor area of an attached ADU shall not exceed 50 percent of the existing primary dwelling or 1,000 sq. ft., whichever is greater.**
- (2) The minimum size is 150 square feet to include efficiency unit.
- (3) A JADU shall not exceed 500 square feet.

(b) Height.

- (1) A single-story, attached or detached ADU may not exceed 16 feet in height above grade, measured to the peak of the structure.
- (2) A second story or two-story attached ADU addition may be permitted subject to an architectural permit and may not exceed the height of the zoning district.

(1) A detached ADU on a lot within one-half mile walking distance of a major transit stop or high-quality transit corridor may be up to 18 feet in height, with an allowance of an additional two feet to accommodate a roof pitch aligned with the primary dwelling.

(2) A detached ADU on a lot with an existing or proposed single-family, multi-family, or multi-story dwelling may be up to 18 feet in height.

(3) An attached ADU may be up to 25 feet in height or two stories, whichever is less.

(c) Passageway. No passageway, as defined in PGMC 23.80.030, is required for an ADU.

(d) Parking.

- (1) Generally. Off-street parking is not required for an ADU located within one-half mile walking distance of public transit. If a property is not within one-half mile walking distance to a transit stop, one off-street parking space shall be provided and may be located in setback areas or as tandem parking, as defined in PGMC 23.80.030.
- (2) ~~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.
- (3) No off-street parking is required for a JADU.

(e) ~~Architectural Requirements.~~

- ~~(1) Where the development of an ADU includes exterior alterations, additions, or construction of new structure, the ADU may, where feasible, incorporate the same or similar architectural features, building materials, including window style and materials, and roof slopes as the main dwelling unit or dwellings located on the subject property.~~
- ~~(f) Historical Protections. Historic review shall be required for properties listed on the California Register of Historic Resources.~~
- ~~(g) Tree Removal and Pruning. Tree permits for the removal and/or pruning of permit trees shall be required per PGMC Title 12, but shall in no way prohibit the development of a minimum 1,200 sq. ft. an ADU.~~
 - ~~(1) Applicants are encouraged to locate and design ADU and/or JADU additions so that the retention of native trees (Gowen cypress, Coast live oak, Monterey cypress, Shore pine, Torrey pine, and Monterey pine) can be accommodated whenever possible.~~
 - ~~(2) All trees in or within 100 yards of designated Monarch sanctuaries. (Pruning and removal of trees within the Monarch sanctuaries is prohibited between October 1 and May 1).~~
 - ~~(3) A Coastal Development Permit (CDP) may be required for tree removal in the Coastal zone.~~

23.80.070 Fees and charges.

- (a) Impact Fees.
 - (1) No impact fee is required for an ADU or JADU that is less than 750 square feet in size.
 - (2) Any impact fee that is required for an ADU that is 750 square feet or larger in size must be charged proportionately in relation to the square footage of the primary dwelling unit (e.g., the floor area of the primary dwelling, divided by the floor area of the ADU, times the typical fee amount charged for a new dwelling). “Impact fee” here does not include any connection fee or capacity charge for water or sewer service.
- (b) Utility Fees.
 - (1) Converted ADUs and JADUs on a single-family lot, created under PGMC 23.80.040(a)(1), are not required to have a new or separate utility connection directly between the ADU or JADU and the utility.
 - (2) ~~Not is a~~ A connection fee or capacity charge is not required unless the ADU or JADU is constructed with a new single-family ~~home~~ dwelling.

23.80.080 Nonconforming ADUs and discretionary approval.

Any proposed ADU or JADU that does not conform to the objective standards set forth in this chapter may be allowed by the city with a use permit, in accordance with the other provisions of this title.

The local agency shall not deny an application for a permit to create an ADU due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the ADU.

SECTION 3. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement this Ordinance.

SECTION 4. Severability. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. In accord with Article 15 of the City Charter, this ordinance shall become effective on the thirtieth (30th) day following passage and adoption hereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS ___ day of _____, 2023, by the following vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Amelio, Beck, Coletti, McDonnell, Poduri.
NOES: None.
ABSENT: None.

APPROVED

DocuSigned by:
Bill Peake
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BILL PEAKE, Mayor

ATTEST: **8/18/2023**
DATED: _____

DocuSigned by:
Sandra Kandell
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SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DocuSigned by:
Brian A. Pierik

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BRIAN A. PIERIK, City Attorney