

## ORDINANCE NO. 1170

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS BANOS AMENDING AND RESTATING ARTICLE 30 CHAPTER 3 OF TITLE 9 OF THE LOS BANOS MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS

WHEREAS, the State legislature has found and declared that, among other things, allowing accessory dwelling units in single-family and multifamily zones provides additional rental housing and are an essential component in addressing housing needs in California; and

WHEREAS, the City of Los Banos ("City") seeks to ensure that the City's zoning laws are consistent with the goals, policies and standards set forth in the City's General Plan, federal law, and state law as it relates to the regulation and approval of second dwelling units within the City; and

WHEREAS, on September 27, 2016, Governor Brown approved California Assembly Bill 2299 ("AB 2299") and California Senate Bill 1069 ("SB 1069"), which change the manner in which second dwelling units (now called "accessory dwelling units") must be regulated and processed by local agencies; and

WHEREAS, effective January 1, 2017, AB 2299 and SB 1069, codified at Gov. Code §§ 65852.2, 65582.1, 65583.1, 65589.4, 65852.150, and 66412.2, adopt new requirements for local agencies' regulation of accessory dwelling units and approval of applications for accessory dwelling units; and

WHEREAS, AB 2299 and SB 1069 further provide that in the event a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of the new legislation, any conflicting provisions shall be null and void upon January 1, 2017, unless and until the agency adopts an ordinance that complies with AB 2299 and SB 1069; and

WHEREAS, the proposed amendments to the Los Banos Municipal Code are intended to ensure the City's procedural and substantive requirements for accessory dwelling units are consistent with the above-described recent changes to State law; and

WHEREAS, the Los Banos 2030 General Plan, and 2014-2023 Housing Element updates included policies and programs to support and create affordable housing, a diverse range of housing types; and

WHEREAS, the subject Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2), 15060(c)(3) and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378, and the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, the Planning Commission held a public hearing on February 27, 2019 and recommended approval of the proposed Ordinance with findings of General Plan consistency, and

WHEREAS, the City Council conducted a duly noticed public hearing on the on March 20, 2019 and April 3, 2019 at which time all individuals desiring to comment on the proposed amendments were heard; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LOS BANOS DOES ORDAIN AS FOLLOWS:

Section 1: Article 30 of Chapter 3 of Title 9 of the Los Banos Municipal Code shall be amended and restated in its entirety to read as follows:

TITLE 9 PLANNING AND ZONING  
CHAPTER 3 ZONING  
ARTICLE 30. ACCESSORY DWELLING UNITS

**Sec. 9-3.3001 Purpose and Intent.**

The California Legislature has declared that accessory dwelling units are a valuable and essential component of California's housing supply. The purpose of this Article is: to incorporate Section 65852.2 of the California Government Code requirements regarding accessory dwelling units into the City's regulations and design standards; to ensure that accessory dwelling units located in residential districts in a manner which protects the integrity of the residential district and do not adversely impact either adjacent residential parcels or the surrounding neighborhood; while providing for needed housing opportunities.

**Sec. 9-3.3002 Definitions.**

For the purposes of this Article, unless otherwise apparent from the context, certain words and phrases used in this Article are defined as follows:

(a) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following as required by Government Code Section 65852.2:

(1) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities.

(2) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(b) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(c) "Living area" means the interior habitable area of a dwelling unit, including basements and attics but not including a garage or an accessory building.

(d) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(e) "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.

**Sec. 9-3.3003 Permitted Use.**

(a) One accessory dwelling unit is permitted on any residentially zoned lot where there is an existing or proposed single-family dwelling on site, subject to the standards of this Article.

(b) An accessory dwelling unit is not permitted if there is more than one single-family dwelling, a duplex, or multi-family dwelling on the lot. An accessory dwelling unit may be attached or detached from the primary dwelling and may be created by the

conversion of a portion of, or an addition to, the primary dwelling, accessory structure, or by the construction of a new structure.

**Sec. 9-3.3004 Ministerial Zoning Clearance Certificate Requirement.**

(a) Accessory Dwelling Unit Zoning Clearance Certificate Required. An approved accessory dwelling unit zoning clearance certificate shall be obtained prior to the issuance of a building permit for the construction, conversion and/or development of an accessory dwelling unit. Pursuant to California Government Code Section 65852.2, the accessory unit zoning clearance certificate shall be considered ministerial without any discretionary review or a hearing. Accessory dwelling units are exempt from the California Environmental Quality Act.

(b) Application.

(1) Applications for an accessory dwelling unit zoning clearance certificate shall be filed with the community and economic development director on forms provided by the community and economic development department.

(2) An application for an accessory dwelling unit zoning clearance certificate shall be accompanied by a fee established by resolution of the city council to cover the cost of handling the application as prescribed in this subsection.

(3) Once an application is deemed complete the application must be approved or denied within one hundred and twenty (120) days.

(4) An accessory dwelling unit zoning clearance certificate shall only be issued with finding that the plan for the accessory dwelling unit complies with all requirements of the zoning regulations contained in this Article.

(c) Existing Accessory Dwelling Units. This Article shall in no way validate an illegal accessory dwelling unit. An application for an accessory dwelling unit zoning clearance certificate may be made pursuant to the provisions of this Article to convert an illegal accessory dwelling unit into a lawful accessory dwelling unit, or to allow for the replacement, alteration or expansion of an existing nonconforming accessory dwelling unit. The conversion of an illegal accessory dwelling unit into a lawful accessory dwelling unit, or the replacement, alteration or expansion of an existing nonconforming accessory dwelling unit shall be subject to the requirements of this Article.

**Sec. 9-3.3005 Accessory Dwelling Unit Development Standards.**

This Section provides standards for the establishment of accessory dwelling units, permitted as set forth under State Law AB 1866 (Chapter 1062, Statutes of 2002) Sections 65852.150 and 65852.2 of the Government Code.

(a) Development Standards. Accessory dwelling units shall comply with the following standards:

(1) Number of Units Allowed. Only one accessory dwelling unit or, junior accessory dwelling unit, may be located on any residentially zoned lot that permits a single-family dwelling except as otherwise regulated or restricted by an adopted Master Plan or Development Plan.

(2) Owner Occupancy: The owner of a parcel proposed for an accessory dwelling unit shall occupy as a principal residence either the primary dwelling or the accessory dwelling.

(3) Sale Prohibited: An accessory dwelling unit shall not be sold independently of the primary dwelling on the parcel.

(4) Short Term Rental. Accessory dwelling units shall not be rented or leased for less than 30-consecutive days.

(5) Deed Restriction: A deed restriction shall be completed and recorded, in compliance with Section (b) below.

(6) Site Requirements. A minimum parcel size shall not be required, but all applicable residential zoning district requirements regarding setbacks, coverage, and floor area ratio shall be met.

(7) Minimum size. The minimum living area of an attached accessory dwelling unit shall be 150 square feet. The minimum living area for a detached accessory dwelling unit shall be 400 square feet.

(8) Maximum size. Attached accessory dwelling units shall not exceed fifty percent (50%) of the existing dwelling unit living area of the primary dwelling, or 1,200 square feet, whichever is less. Detached accessory dwelling units shall not exceed a total floor area of 1,200 square feet. The limitations set forth above notwithstanding, an Efficiency Unit shall be allowed regardless of the size of the primary dwelling unit.

(9) Building Codes. The accessory dwelling unit shall comply with all applicable building, health, and fire Codes.

(10) Zoning Regulations. The accessory dwelling unit shall comply with all applicable zoning regulations (including, but not limited to, required setbacks, parking, coverage, and height limits).

(11) Vehicle Access. The accessory dwelling unit shall be served by the same driveway access to the street as the primary dwelling unit.

(12) Common Entrance. If the accessory dwelling unit is attached to the primary dwelling unit, both the accessory dwelling unit and the primary dwelling unit must be served by either a common entrance or a separate entrance to the accessory dwelling unit and must be located on the side or at the rear of the primary dwelling unit. There shall be no exterior stairway to the second floor of a primary dwelling unit from the front of the primary dwelling unit.

(13) Limitations on Number of Bedrooms. An accessory dwelling unit may not have more than two (2) bedrooms.

(14) Design Compatibility. The accessory dwelling unit shall be similar or compatible in character to the primary dwelling unit on the site in terms of architectural design and landscaping and shall be compatible with the neighborhood and shall incorporate the same colors and materials as the primary residence.

(15) Foundation. A permanent foundation shall be required for all accessory dwelling units.

(16) Manufactured Homes. A manufactured home may be used as an accessory dwelling unit provided it meets the standards for new detached accessory dwelling units in this section, including the yard, setback, height and architectural requirements. The manufactured home shall be constructed on a permanent foundation. Other types of portable or temporary housing, such as mobile homes, recreational vehicles, or tents may not be used as accessory dwelling units.

(17) Fire Sprinklers. Accessory dwelling units shall not be required to be equipped with fire sprinklers unless fire sprinkler installation is required for the primary dwelling

(18) Building height. Detached accessory dwelling units shall not exceed one story and a height of 15 feet, unless the accessory dwelling unit is constructed above a garage, in which case the structure shall comply with the height limits of the underlying zoning district.

(b) Deed Restriction: Prior to obtaining a building permit for an accessory dwelling unit, a deed restriction, approved by the City Attorney, shall be recorded with

the County Recorder's office, which shall include the pertinent restrictions and limitations of an accessory dwelling unit identified in this Section. Said deed restriction shall run with the land, and shall be binding upon any future owners, heirs, or assigns. A copy of the recorded deed restriction shall be filed with the City stating that:

(1) The accessory dwelling unit shall not be sold separately from the primary dwelling unit;

(2) The accessory dwelling unit is restricted to the maximum size allowed per the development standards;

(3) The accessory dwelling unit shall be considered legal only so long as either the primary residence, or the accessory dwelling unit, is occupied by the owner of record of the property.

(4) The restrictions shall be binding upon any successor in ownership of the property and lack of compliance with this provision may result in legal action against the property owner, including revocation of any right to maintain an accessory dwelling unit on the property.

### **Sec 9-3.3006 Accessory Dwelling Units Within Existing Single-Family Residences**

(a) Notwithstanding any other provisions of this Article to the contrary, an application for a building permit to create an accessory dwelling unit will be ministerially approved within 120 days after the City receives the application if the proposed accessory dwelling unit meets all of the following conditions:

(1) The unit is contained within the existing space of a single-family residence or accessory structure;

(2) The unit has independent exterior access from the existing residence;

(3) The side and rear setbacks of the unit are sufficient for fire safety;

(4) The unit complies with applicable building and safety codes; or

(5) No other accessory dwelling units have been approved on the lot.

(b) An accessory dwelling unit meeting the criteria of this Section will not be subject to any additional parking or other development standards.

### **Sec 9-3.3007 Accessory Dwelling Unit Parking.**

(a) In addition to the required off-street parking spaces for the primary dwelling unit, one (1) off-street parking space is required for the accessory dwelling unit. The additional parking space must comply with parking space dimensions per the applicable provisions of the Los Banos Municipal Code. The additional parking space may be covered or uncovered, and may be provided as tandem parking on a driveway that otherwise complies with the setback and paving requirements set forth in the applicable provisions of the Los Banos Municipal Code.

(b) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the replacement spaces required for the primary dwelling unit and accessory dwelling unit may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts, that otherwise complies with the setback and paving requirements set forth in the applicable provisions of the Los Banos Municipal Code.

(c) Notwithstanding the foregoing requirements additional off-street parking spaces for an accessory dwelling unit shall not be required in any of the following instances:



(ii) A cooking facility with appliance which do not require electrical service greater than one-hundred-and-twenty (120) volts or natural or propane gas (no gas or 220V circuits are allowed), and

(iii) A food preparation counter and storage cabinets that are reasonable to size of the unit.

(11) Shared Bath: The junior accessory dwelling unit may share a bath with the primary dwelling unit or have its own bath.

(12) Parking: No additional parking is required beyond that required when the existing primary dwelling was constructed.

(b) Deed Restriction: Prior to obtaining a building permit for a junior accessory dwelling unit, a deed restriction, approved by the City Attorney, shall be recorded with the County Recorder's office, which shall include the pertinent restrictions and limitations of a junior accessory dwelling unit identified in this Section. Said deed restriction shall run with the land, and shall be binding upon any future owners, heirs, or assigns. A copy of the recorded deed restriction shall be filed with the City stating that:

(1) The junior accessory dwelling unit shall not be sold separately from the primary dwelling unit;

(2) The junior accessory dwelling unit is restricted to the maximum size allowed per the development standards;

(3) The junior accessory dwelling unit shall be considered legal only so long as either the primary residence, or the accessory dwelling unit, is occupied by the owner of record of the property.

(4) The restrictions shall be binding upon any successor in ownership of the property and lack of compliance with this provision may result in legal action against the property owner, including revocation of any right to maintain a junior accessory dwelling unit on the property.

(e) No Fire Sprinklers and Fire Attenuation: the City shall not require fire sprinkler or fire attenuation specifications for the development of a junior accessory dwelling unit. An inspection fee to confirm that the dwelling unit complies with development standard may be assessed.

**Sec. 9-3.3009 Utilities, Connection Fees, Impact Fees.**

(a) An accessory dwelling unit that is contained within the existing space of a single family residence or accessory structure shall not be considered a new residential use for purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service, or impact fees. No new or separate utility connection between the accessory dwelling unit and the utility shall be required.

(b) All other accessory dwelling units other than those mentioned in subsection (a) above, may require a new or separate utility connection between the accessory dwelling unit and the utility. Any connection fee or capacity charge shall be proportionate to the burden placed on the water and sewer systems due to unit size or number of plumbing fixtures. All applicable public service and impact fees shall be paid prior to occupancy in accordance with Government Code section 66000 et seq. and section 66012 et seq., as the same may be amended.

(c) All utility installations on the lot shall be underground.

(d) No accessory dwelling unit shall be allowed if the Building Official determines that there is not adequate water or sewer service to the property.

**Sec. 9-3.3010. Appeal.**

The decision of the Community and Economic Development Director or designee may be appealed as provided by the appeal procedure provided in Part 6 of Article 23 of this Chapter.

Section 2. To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent or conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

Section 3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

Section 4. The proposed amendments to the Los Banos Municipal Code do not propose any changes to City policies or regulations that would result in a direct or indirect physical environmental impact; therefore it has been determined that this ordinance amendment is covered by the general rule that the California Environmental Quality Act applies only to projects which have the potential for causing a significant effect on the environment pursuant to CEQA guidelines section 15601(b)(3) and is not subject to environmental review.

Section 5. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member Johnson-Santos and seconded by Council Member Jones on the 20th day of March, 2019.

Passed on the 3rd day of April 2019 by the following vote:

AYES:	Council Members Faria, Johnson-Santos, Jones, Lewis, Mayor Villalta
NOES:	None
ABSENT:	None

ATTEST:

  
Lucille L. Mallonee, City Clerk

APPROVED:

  
Michael Villalta, Mayor