



## CITY COUNCIL OF THE CITY OF ATWATER

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### ORDINANCE NO. CS 1052

#### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER REPEALING AND REPLACING CHAPTER 17.28 OF THE ATWATER MUNICIPAL CODE REGARDING ACCESSORY AND JUNIOR ACCESSORY DWELLING UNITS, AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA**

**WHEREAS**, the City of Atwater, California ("City") is a municipal corporation, duly organized under the constitution and the laws of the State of California; and

**WHEREAS**, the Planning and Zoning Law authorizes local agencies to act by ordinance to provide for the creation and regulation of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"); and

**WHEREAS**, in recent years, the California Legislature has approved, and the Governor has signed into law, a number of bills that, among other things, amended Government Code sections 65852.2 and 65852.22 to impose new limits on local authority to regulate ADUs and JADUs; and

**WHEREAS**, in September of 2020, the California Legislature approved, and the Governor signed into law, Assembly Bill 3182 ("AB 3182"); and

**WHEREAS**, in 2022, the California Legislature approved, and the Governor signed into law, a new bill (SB 897) that further amends Government Code sections 65852.2 and 65852.22; and

**WHEREAS**, SB 897 takes effect January 1, 2023, and if the City's ADU ordinance does not comply with the requirements imposed by SB 897 by that date, the City's entire existing ADU ordinance becomes null and void as a matter of law; and

**WHEREAS**, the approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety; and

**WHEREAS**, the City Council has reviewed and considered the public testimony and agenda reports prepared in connection with this ordinance, including the policy considerations discussed therein, and the consideration and recommendation by the City's Planning Commission; and

**WHEREAS**, in accordance with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) ("CEQA") and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.), the City has determined that the revisions to the [City] Municipal Code are exempt from environmental review; and

**WHEREAS**, the City desires to update the Atwater Municipal Code ("AMC") for the construction of ADUs and JADUs to comply with the amended provisions of Government Code sections 65852.2 and 65852.22; and

**WHEREAS**, in light of the foregoing, this Ordinance amends the AMC by: (1) repealing the City's existing second unit regulations set forth in Chapter 17.28 (Second Units in a Single-Family and Agricultural Zones) and (2) replacing it with a new Chapter 17.28 entitled "Accessory Dwelling Units;" and

**WHEREAS**, on September 7, 2022, the City gave public notice of a Planning Commission public hearing to be held to consider this Ordinance by advertisement in a newspaper of general circulation; and

**WHEREAS**, on September 21, 2022, the Planning Commission held a duly- noticed public hearing to consider the staff report, recommendations by staff, and public testimony concerning this Ordinance. Following the public hearing, the Planning Commission voted to forward the Ordinance to the City Council with a recommendation in favor of its adoption; and

**WHEREAS**, on November 23, 2022, the City gave public notice of a City Council public hearing to be held to consider this Ordinance by advertisement in a newspaper of general circulation; and

**WHEREAS**, on December 12, 2022, the City Council held a duly noticed public hearing to consider the Ordinance, including: (1) the public testimony and agenda reports prepared in connection with the Ordinance, (2) the policy considerations discussed therein, and (3) the consideration and recommendation by the City's Planning Commission; and

**WHEREAS**, all legal prerequisites to the adoption of the Ordinance have occurred.

**NOW, THEREFORE**, the City Council of the City of Atwater does hereby ordain as follows:

**SECTION 1. Recitals.** The recitals above are each incorporated by reference and adopted as findings by the City Council.

**SECTION 2. 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.

**SECTION 3. General Plan.** This Ordinance is, as a matter of law, consistent with the City's General Plan pursuant to Government Code Section 65852.2(a)(1)(C).

**SECTION 4. Repeal.** Chapter 17.28 (Second Units in a Single-Family and Agricultural Zones) of the Atwater Municipal Code is hereby repealed in its entirety and is of no further force or effect.

**SECTION 5. Replace.** Chapter 17.28 (Accessory Dwelling Units) is hereby added to the Atwater Municipal Code and shall read in its entirety as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

**SECTION 6. Publication; Effective Date.** Within 15 days from and after adoption, this Ordinance, or a summary thereof, shall be published once in a newspaper of general circulation printed and published in Merced County and circulated in Atwater, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced 30 days after its adoption.

**SECTION 7. Severability.** If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed, and the balance of the Ordinance be enforced.

**SECTION 8. Record of Proceedings.** The custodian of records for this Ordinance is City Clerk and the records comprising the administrative record for this Ordinance are located at Atwater City Hall, 750 Bellevue Road, Atwater, CA 95301.

**SECTION 9. Submittal to HCD.** The City Clerk shall submit a copy of this Ordinance to the Department of Housing and Community Development within 60 days after adoption.

**PASSED AND ADOPTED** by the City Council of the City of Atwater on the 9<sup>th</sup> day of January 2023, by the following vote:

<b>INTRODUCED:</b>	<b>December 12, 2022</b>
<b>ADOPTED:</b>	<b>January 9, 2023</b>
<b>AYES:</b>	<b>Cale, Ambriz, Raymond, Button, Nelson</b>
<b>NOES:</b>	<b>None</b>
<b>ABSENT:</b>	<b>None</b>

**APPROVED:**

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**MIKE NELSON, MAYOR**

**ATTEST:**

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**KORY J. BILLINGS, CITY CLERK**

**EXHIBIT "A"****Chapter 17.28 – Accessory Dwelling Units****Section 17.28.010 - 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.
- B. **Effect of Conforming.** An ADU or JADU that conforms to the standards in this section will not be:
1. Deemed to be inconsistent with the city's general plan and zoning designation for the lot on which the ADU or JADU is located.
  2. Deemed to exceed the allowable density for the lot on which the ADU or JADU is located.
  3. Considered in the application of any local ordinance, policy, or program to limit residential growth.
  4. Required to correct a nonconforming zoning condition, as defined in subsection C.7 below. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code section 17980.12.
- C. **Definitions.** As used in this section, terms are defined as follows:
1. "Accessory dwelling unit" or "ADU" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An accessory dwelling unit also includes the following:
    - a. An efficiency unit, as defined by section 17958.1 of the California Health and Safety Code; and
    - b. A manufactured home, as defined by section 18007 of the California Health and Safety Code.
  2. "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
  3. "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.

4. “Director” means the Community Development Director for the City of Atwater.
5. “Efficiency kitchen” means a kitchen that includes each of the following:
  - a. A cooking facility with appliances.
  - b. A food preparation counter or counters that total at least 15 square feet in area.
  - c. Food storage cabinets that total at least 30 square feet of shelf space.
6. “Junior accessory dwelling unit” or “JADU” means a residential unit that satisfies all of the following:
  - a. It is no more than 500 square feet in size.
  - b. It is contained entirely within an existing or proposed single-family structure. An enclosed use within the residence, such as an attached garage, is considered to be a part of and contained within the single-family structure.
  - c. It includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure.
  - d. If the unit does not include its own separate bathroom, then it contains an interior entrance to the main living area of the existing or proposed single-family structure in addition to an exterior entrance that is separate from the main entrance to the primary dwelling.
  - e. includes an efficiency kitchen, as defined in subsection C.4 above.
7. “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.
8. “Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.
9. “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.
10. “Proposed dwelling” means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
11. “Public transit” means a 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 charge set fares, run on fixed routes, and are available to the public.

12. "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.

D. **Approvals.** The following approvals apply to ADUs and JADUs under this section:

1. **Building-permit Only.** If an ADU or JADU complies with each of the general requirements in subsection E. (General ADU and JADU Requirements) below, it is allowed with only a building permit in the following scenarios:

- a. **Converted on Single-family Lot:** One ADU as described in this subsection D.1.a and one JADU on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:
- (i) Is either: within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or (in the case of an ADU only) within the existing space of an accessory structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress; and
  - (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.
  - (iv) The JADU complies with the requirements of Government Code Section 65852.22.
- b. **Limited Detached 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 D.1.a above), if the detached ADU satisfies each of 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.
  - (iii) The peak height above grade does not exceed the applicable height limit in subsection E.2. below.
- c. **Converted on Multifamily Lot:** 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. Under this subsection D.1.c, at least one converted ADU is allowed within an existing multifamily dwelling, up to a quantity equal to 25 percent of the existing multifamily dwelling units.

- d. **Limited Detached on Multifamily Lot:** No more than two detached ADUs on a lot that has an existing or proposed multifamily dwelling if each detached ADU satisfies both of the following limitations:
  - (i) The side- and rear-yard setbacks are at least four feet. If the existing multifamily dwelling has a rear or side yard setback of less than four feet, the city will not require any modification to the multifamily dwelling as a condition of approving the ADU.
  - (ii) The peak height above grade does not exceed the applicable height limit provided in subsection E.2. below.

2. **ADU Permit.**

- a. Except as allowed under subsection D.1 above, no ADU may be created without a building permit and an ADU permit in compliance with the standards set forth in subsections E. (General ADU and JADU Requirements) and F. (Specific ADU Requirements) below.
- b. The City may charge a fee to reimburse it for costs incurred in processing ADU permits, including the costs of adopting or amending the City's ADU ordinance. The ADU permit processing fee is set by resolution of the City Council.

3. **Process and Timing.**

- a. A permit application to create an ADU or JADU is considered and approved ministerially, without discretionary review or a hearing.
- b. The City must approve or deny an application to create an ADU or JADU within 60 days from the date that the City receives a completed application. If the City has not approved or denied the completed application within 60 days, the application is deemed approved unless either:
  - (i) The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or
  - (ii) When an application to create an ADU or JADU is submitted



with a permit application to create a new single-family or multifamily dwelling on the lot, the city may delay acting on the permit application for the ADU or JADU until the city acts on the permit application to create the new single-family or multifamily dwelling, but the application to create the ADU or JADU will still be considered ministerially without discretionary review or a hearing.

- c. If the City denies an application to create an ADU or JADU, the City must provide the applicant with comments that include, among other things, a list of all the defective or deficient items and a description of how the application may be remedied by the applicant. Notice of the denial and corresponding comments must be provided to the applicant within the 60-day time period established by subsection D.3.b., above.
- d. A demolition permit for a detached garage that is to be replaced with an ADU is reviewed with the application for the ADU and issued at the same time.

E. **General ADU and JADU Requirements.** The following requirements apply to all ADUs and JADUs that are approved under subsections D.1 or D.2 above:

1. **Zoning.**

- a. An ADU or JADU subject only to a building permit under subsection D.1 above may be created on a lot in a residential or mixed-use zone.
- b. An ADU or JADU subject to an ADU permit under subsection D.2 above may be created on a lot that is zoned to allow single-family dwelling residential use or multifamily dwelling residential use.

2. **Height.**

- a. Except as otherwise provided by subsections E.2.b. and E.2.c., below, a detached ADU created on a lot with an existing or proposed single family or multifamily dwelling unit may not exceed 16 feet in height.
- b. A detached ADU may be up to 18 feet in height if it is created on a lot with an existing or proposed single family or multifamily dwelling unit that is located within one-half mile walking distance of a major transit stop or a high quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code, and the ADU may be up to two additional feet in height (for a maximum of 20 feet) if necessary to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.

- c. A detached ADU created on a lot with an existing or proposed multifamily dwelling that has more than one story above grade may not exceed 18 feet in height.
  - d. An ADU that is attached to the primary dwelling may not exceed 25 feet in height or the height limitation imposed by the underlying zone that applies to the primary dwelling, whichever is lower. Notwithstanding the foregoing, ADUs subject to this subsection E.2.d. may not exceed two stories.
  - e. For purposes of this subsection E.2., height is measured above existing legal grade to the peak of the structure.
- 3. **Fire Sprinklers.**
  - a. Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.
  - b. The construction of an ADU does not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.
- 4. **Rental Term.** No ADU or JADU may be rented for a term that is shorter than 30 days. This prohibition applies regardless of when the ADU or JADU was created.
- 5. **No Separate Conveyance.** An ADU or JADU may be rented, but except as otherwise provided in Government Code Section 65852.26, 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. **Septic System.** If the ADU or JADU will connect to an onsite 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.
- 7. **Owner Occupancy.**
  - a. An ADU that is permitted after January 1, 2020, but before January 1, 2025, is not subject to any owner-occupancy requirement.
  - b. Unless applicable law requires otherwise, all ADUs that are permitted 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.
  - c. As required by state law, all JADUs 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. However, the owner-occupancy requirement in this subsection E.7.c. does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.

8. **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 Community Development Department. The deed restriction must 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. Except as otherwise provided in Government Code Section 65852.26, the ADU or JADU may not be sold separately from the primary dwelling.
  - 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 Director, providing evidence that the ADU or JADU has in fact been eliminated. 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 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 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.
9. **Income Reporting.** In order to facilitate the city's obligation to identify adequate sites for housing in accordance with Government Code sections 65583.1 and 65852.2, the following requirements must be satisfied:

- a. With the building-permit application, the applicant must provide the city with an estimate of the projected annualized rent that will be charged for the ADU or JADU.
- b. Within 90 days after each yearly anniversary of the issuance of the building permit, the owner must report the actual rent charged for the ADU or JADU during the prior year. If the city does not receive the report within the 90-day period, the owner is in violation of this Code, and the city may send the owner a notice of violation and allow the owner another 30 days to submit the report. If the owner fails to submit the report within the 30-day period, the city may enforce this provision in accordance with applicable law.

10. **Building & Safety.**

- a. **Must comply with building code.** Subject to subsection E.10.b., below, all ADUs and JADUs must comply with all local building code requirements.
- b. **No change of occupancy.** Construction of an ADU does not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code, unless the building official or Code Enforcement Division officer makes a written finding based on substantial evidence in the record that the construction of the ADU could have a specific, adverse impact on public health and safety. Nothing in this subsection E.10.b. prevents the city from changing the occupancy code of a space that was uninhabitable space or that was only permitted for nonresidential use and was subsequently converted for residential use in accordance with this section.

F. **Specific ADU Requirements.** The following requirements apply only to ADUs that require an ADU permit under subsection D.2 above.

1. **Maximum Size.**

- a. The maximum size of a detached or attached ADU subject to this subsection F. is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two or more bedrooms.
- b. An attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of the existing primary dwelling.
- c. Application of other development standards in this subsection F., such as FAR or lot coverage, might further limit the size of the ADU,

but no application of the percent-based size limit in subsection F.1.b above or of an FAR, front setback, lot coverage limit, or open-space requirement may require the ADU to be less than 800 square feet.

2. **Floor Area Ratio (FAR).** No ADU subject to this subsection F. may cause the total FAR of the lot to exceed 45 percent, subject to subsection (F)(1)(C) above.
3. **Setbacks.**
  - a. An ADU that is subject to this subsection F. must conform to a 25-foot front-yard setback, or 65 feet if the ADU abuts any of the major streets specified in Section 17.12.110 of this Code, subject to subsection F.1.c. above.
  - b. An ADU that is subject to this subsection F. must conform to 4-foot side- and rear-yard setbacks.
  - c. No setback is required for an ADU that is subject to this subsection F. if the ADU is constructed in the same location and to the same dimensions as an existing structure.
4. **Lot Coverage.** No ADU subject to this subsection F. may cause the total lot coverage of the lot to exceed 50 percent, subject to subsection F.1.c above.
5. **Minimum Open Space.** No ADU subject to this subsection F. may cause the total percentage of open space of the lot to fall below 50 percent, subject to subsection F.1.c above.
6. **Passageway.** No passageway, as defined by subsection C.9 above, is required for an ADU.
7. **Parking.**
  - a. Generally. One off-street parking space is required for each ADU. The parking space may be provided in setback areas or as tandem parking, as defined by subsection C.12 above.
  - b. Exceptions. No parking under subsection F.7.a is required in the following situations:
    - (i) The ADU is located within one-half mile walking distance of public transit, as defined in subsection C.11 above.
    - (ii) The ADU is located within an architecturally and historically

- significant historic district.
  - (iii) The ADU is part of the proposed or existing primary residence or an accessory structure under subsection D.1.a above.
  - (iv) When on-street parking permits are required but not offered to the occupant of the ADU.
  - (v) When there is an established car share vehicle stop located within one block of the ADU.
  - (vi) When the permit application to create an ADU is submitted with an application to create a new single-family or new multifamily dwelling on the same lot, provided that the ADU or the lot satisfies any other criteria listed in subsections F.7.b.(i) through (v), above.
- c. 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.

**8. Architectural Requirements.**

- a. The materials and colors of the exterior walls, roof, windows, and doors must match the appearance and architectural design of those of the primary dwelling.
- b. The roof slope must match that of the dominant roof slope of the primary dwelling. The dominant roof slope is the slope shared by the largest portion of the roof.
- c. The exterior lighting must be limited to down-lights or as otherwise required by the building or fire code.
- d. The ADU must have an independent exterior entrance, apart from that of the primary dwelling. The ADU entrance must be located on the side or rear building façade, not facing a public-right-of-way.
- e. The interior horizontal dimensions of an ADU must be at least 10 feet wide in every direction, with a minimum interior wall height of seven feet.
- f. Windows and doors of the ADU may not have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.

- g. All windows and doors in an ADU are less than 30 feet from a property line that is not a public right-of-way line must either be (for windows) clerestory with the bottom of the glass at least six feet above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.
  9. **Landscape Requirements.** Evergreen landscape screening must be planted and maintained between the ADU and adjacent parcels as follows:
    - a. At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall. Alternatively, at least one 24” box size plant shall be provided for every ten linear feet of exterior wall.
    - b. Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least 6 feet in height may be installed.
    - c. All landscaping must be drought tolerant.
    - d. All landscaping must be from the city’s approved plant list.
  10. **Historical Protections.** An ADU that is on or within 600 feet of real property that is listed in the California Register of Historic Resources must be located so as to not be visible from any public right-of-way.
- G. **Fees.** The following requirements apply to all ADUs and JADUs that are approved under subsections D.1 or D.2 above.
1. **Impact Fees.**
    - a. No impact fee is required for an ADU or JADU that is less than 750 square feet in size. For purposes of this subsection G.1, “impact fee” means a “fee” under the Mitigation Fee Act (Gov. Code § 66000(b)) and a fee under the Quimby Act (Gov. Code § 66477). “Impact fee” here does not include any connection fee or capacity charge for water or sewer service.
    - b. 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 ADU, divided by the floor area of the primary dwelling, times the typical fee amount charged for a new dwelling.)
  2. **Utility Fees.**
    - a. If an ADU or JADU is constructed with a new single-family home, a separate utility connection directly between the ADU or JADU and the utility and payment of the normal connection fee and capacity

charge for a new dwelling are required.

- b. Except as described in subsection G.2.a, converted ADUs and JADUs on a single-family lot that are created under subsection D.1.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.
- c. Except as described in subsection G.2.a, all ADUs and JADUs that are not covered by subsection G.2.b require a new, separate utility connection directly between the ADU or JADU and the utility.
  - (i) 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.
  - (ii) The portion of the fee or charge that is charged by the City may not exceed the reasonable cost of providing this service.

H. **Nonconforming Zoning Code Conditions, Building Code Violations, and Unpermitted Structures.**

- 1. **Generally.** The city will not deny an ADU or JADU application due to a nonconforming zoning condition, building code violation, or unpermitted structure on the lot that does not present a threat to the public health and safety and that is not affected by the construction of the ADU or JADU.
- 2. **Unpermitted ADUs constructed before 2018.**
  - a. **Permit to Legalize.** As required by state law, the city may not deny a permit to legalize an existing, but unpermitted ADU that was constructed before January 1, 2018, if denial is based on either of the following grounds:
    - (i) The ADU violates applicable building standards, or
    - (ii) The ADU does not comply with the state ADU law (Government Code section 65852.2) or this ADU ordinance (Chapter 17.28).
  - b. **Exceptions:**
    - (i) Notwithstanding subsection H.2.a., above, the City may deny a permit to legalize an existing but unpermitted ADU that



was constructed before January 1, 2018, if the City makes a finding that correcting a violation is necessary to protect the health and safety of the public or of occupants of the structure.

- (ii) Subsection H.2.a. above does not apply to a building that is deemed to be substandard in accordance with California Health and Safety Code section 17920.3.

- I. **Nonconforming ADUs and Discretionary Approval.** Any proposed ADU or JADU that does not conform to the objective standards set forth in subsections A. through G. of this section may be allowed by the City with a conditional use permit, in accordance with the other provisions of this title.

