

**ORDINANCE NO. 3641 C.S.**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY**

**AMENDING CHAPTER 38 OF THE CITY OF MONTEREY CODE RELATED TO ACCESSORY DWELLING UNITS**

WHEREAS, California is experiencing a housing crisis, with housing demands outstripping supply. The California State Legislature brought forward several bills in 2019 relating to the planning and permitting of Accessory Dwelling Units (ADUs) to address the housing supply crisis. In October 2019, the Governor signed into law Assembly Bill (AB) 68, AB 881, and Senate Bill (SB) 13. Additionally, AB 68 amended standards for Junior ADUs (JADUs) and SB 13 made additions to the State Health and Safety Code (added new Section 17980.12). The new laws took effect on January 1, 2020;

WHEREAS, Government Code sections 65852.2 and 65852.22 requires cities to adopt ADU zoning regulations consistent with the new state law. In the absence of a valid local ordinance, the new state law provides a set of default standards governing local agencies' regulation and approval of ADUs;

WHEREAS, since Government Code sections 65852.2 and 65852.22 were adopted as part of a greater effort to address the housing crisis, ADUs and JADUs must be rented for periods longer than thirty days;

WHEREAS, on October 20, 2020, the City Council adopted Urgency Ordinance No. 3606, to prevent Accessory Dwelling Units over 16 feet in height until the Planning Commission had an opportunity to provide policy recommendations. Urgency Ordinance No. 3606 also repealed the City's ADU regulations, which were almost entirely inconsistent with state law. The City Code's inconsistency with state law was causing confusion among applicants, which had the potential to defeat the intent of the new legislation which is to encourage additional and expedient construction of new housing. Repeal of the City's ADU ordinance and incorporation of the state standards was to provide clarity to applicants and facilitate permit processing until this ordinance could be adopted;

WHEREAS, Ordinance No. 3626, was extended with the adoption of Ordinance No. 3633 until October 19, 2021;

WHEREAS, changes to Accessory Dwelling Unit laws effective January 1, 2021 further reduce barriers, better streamline approval processes and expand the capacity to accommodate the development of Accessory Dwelling Units and Junior Accessory Dwelling Units;

WHEREAS, adopting an ordinance consistent with Sections 65852.2 and 65852.22 will ensure that the character of the City is preserved to the maximum extent possible and that the City's regulations regarding Accessory Dwelling Units and interior Accessory Dwelling Units will continue to promote the health, safety, and welfare of the community;

WHEREAS, the Airport Land Use Plan prohibits residential uses in airport safety zones, and the development of Accessory Dwelling Units in that zone is similarly prohibited;

WHEREAS, on August 24, 2021 and September 14, 2021, the Planning Commission held a duly noticed public hearing, took public testimony, and recommended that the City Council adopt the ordinance amendments;

WHEREAS, the City Council held a duly noticed public hearing on October 19, 2021 took public testimony, and considered the ordinance amendments; and,

WHEREAS, the City of Monterey City Council has determined that the adoption of those provisions required to conform to Government Code Section 65852.2 is statutorily exempt from the California Environmental Quality Act (CEQA) as provided by Public Resources Code Section 21080.17 and by CEQA Guidelines Article 18, Section 15282.h, because it is the adoption of an ordinance by a city to implement the provisions of Section 65852.2 of the Government Code; and that the adoption of those provisions required to conform to Government Code Section 65852.22 is exempt under the common sense exemption, CEQA Guidelines Section 15061(b)(3), in that it can be seen with certainty that there is no possibility that the adoption of provisions implementing Section 65852.22 may have a significant effect on the environment, in that state law (Government Code Section 65852.22(g)) provides that the provisions of Section 65852.22 will be applicable in the City regardless of whether the City adopts the ordinance.

NOW THEREFORE, the Monterey City Council does ordain as follows:

SECTION 1. Monterey City Code, Chapter 38, Section 11- definition of 'Accessory Dwelling Unit' is hereby repealed and re-enacted to read as follows:

Accessory Dwelling Unit: An attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, which is located on the same parcel as a proposed or existing single-family dwelling or existing multifamily dwelling. An Accessory Dwelling Unit may consist of an efficiency unit, as defined in Section 17958.1 of the Health and Safety Code; or a manufactured home, as defined in Section 18007 of the Health and Safety Code.

SECTION 2. Monterey City Code, Chapter 38, Section 11- definition of 'Accessory Dwelling Unit, Interior' is hereby repealed.

SECTION 3. Monterey City Code, Chapter 38, Section 11- definition of 'Accessory Dwelling Unit, Other' is hereby repealed.

SECTION 4. Monterey City Code, Chapter 38, Section 11 – definition of Accessory Use or Structure is hereby amended as follows:

Accessory Use or Structure: A use or structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building. An Accessory Use or Structure does not include an Accessory Dwelling Unit or a Junior Accessory Dwelling Unit.

SECTION 5. Monterey City Code, Chapter 38, Section 11 is hereby amended to include the definition of Guest House' to read as follows:

Guest House: Permanently constructed living quarter without kitchen or cooking facilities, which is clearly subordinate and incidental to the main building on the same lot. Guesthouses shall not be separately rented, let or leased (by direct or indirect compensation). Guest House does not include an Accessory Dwelling Unit or a Junior Accessory Dwelling Unit.

SECTION 6. Monterey City Code, Chapter 38, Section 11 is hereby amended to include the definition of 'Junior Accessory Dwelling Unit' to read as follows:

Junior Accessory Dwelling Unit: A residential dwelling unit that is no more than 500 square feet in size, includes an efficiency kitchen consistent with building code standards, is contained entirely within the walls of an existing or proposed single-family dwelling, including attached garages, and either includes separate sanitation facilities or shares sanitation facilities with the existing residence.

SECTION 7. Monterey City Code, Chapter 38, Section 22 R-E District Land Use Regulations Table is hereby amended to add:

<b>Additional Regulations</b>		
Accessory Dwelling Units	P	See Section 38-112-6
Junior Accessory Dwelling Units	P	See Section 38-112-6

SECTION 8. Monterey City Code, Chapter 38, Section 23 R-1 District Land Use Regulations Table is hereby amended to add:

<b>Additional Regulations</b>		
Accessory Dwelling Units	P	See Section 38-112-6
Junior Accessory Dwelling Units	P	See Section 38-112-6

SECTION 9. Monterey City Code, Chapter 38, Section 24 R-2 District Land Use Regulations Table is hereby amended to add:

<b>Additional Regulations</b>		
<u>Accessory Dwelling Units</u>	<u>P</u>	<u>See Section 38-112-6</u>
<u>Junior Accessory Dwelling Units</u>	<u>P</u>	<u>See Section 38-112-6</u>

SECTION 10. Monterey City Code, Chapter 38, Section 25 R-3 District Land Use Regulations Table is hereby amended to add:

<b>Additional Regulations</b>		
Accessory Dwelling Units	P	See Section 38-112-6
Junior Accessory Dwelling Units	P	See Section 38-112-6

SECTION 11. Monterey City Code, Chapter 38, Section 28 C-1 Neighborhood Commercial District Land Use Regulations Table is hereby amended to read as follows:

**C-1 NEIGHBORHOOD COMMERCIAL DISTRICT LAND USE REGULATIONS**

		Additional Regulations
Accessory Dwelling Units	P	See Section 38-112-6
Junior Accessory Dwelling Units	P	See Section 38-112-6

SECTION 12. Monterey City Code, Chapter 38, Section 29 C-2 Community Commercial District Land Use Regulations Table is hereby amended to add:

		Additional Regulations
Accessory Dwelling Units	P	See Section 38-112-6

SECTION 13. Monterey City Code, Chapter 38, Section 30 C-3 District Land Use Regulations Table is hereby amended to add:

		Additional Regulations
Accessory Dwelling Units	P	See Section 38-112-6

SECTION 14. Monterey City Code, Chapter 38, Section 31CO District Land Use Regulations Table is hereby amended to add:

	Additional Regulations
Accessory Dwelling Units	P See Section 38- 112-6

SECTION 15. Monterey City Code, Chapter 38, Section 32 CR Cannery Row District Land Use Regulations Table is hereby amended to add:

	Additional Regulations
Accessory Dwelling Units	P See Section 38- 112-6

SECTION 16. Monterey City Code, Chapter 38, Section 52 is hereby repealed and reenacted to read as follows:

No use other than an existing use shall be permitted in a PC district, except in accord with a valid PC Plan or Specific Plan. Accessory Dwelling Units in accord with Section 38-112-6 may also be allowed in a PC zone where single-family or multi-family dwellings are permitted, and Junior Accessory Dwelling Units may be permitted in a PC zone where single-family dwellings are permitted. Any permitted or conditional use authorized by this chapter may be included in an approved PC Plan or an adopted Specific Plan, consistent with the General Plan land use designation(s) for land within the PC district.

SECTION 17. Monterey City Code, Chapter 38, Section 62 is hereby repealed and reenacted to read as follows:

In the AP Overlay District, any use listed as a principal permitted use in the CO Office and Professional District may be allowed with a Use Permit. Additionally, a combination of office and residential uses may be allowed with a Use Permit. Accessory Dwelling Units in accord with Section 38-112-6 may also be allowed in an AP Overlay District where single-family or multi-family dwellings are permitted, and Junior Accessory Dwelling Units may be permitted in an AP Overlay District where single-family dwellings are permitted.

SECTION 18. Monterey City Code, Chapter 38, Section 80 is hereby repealed and reenacted to read as follows:

No use other than an existing use shall be permitted in an SC Planned Commercial Overlay District, except in accord with a valid SC plan. Any permitted or conditional use authorized by this chapter may be included in an approved SC plan consistent with the General Plan Land Use Designation(s) for land within the SC district. Accessory Dwelling Units and Junior Accessory Dwelling Units in accord with Section 38-112-6 may also be allowed in an SC zone where single-family or multi-family dwellings are permitted. When the SC plan includes use or design features which require a Use Permit or variance in accord with other sections of this chapter, approval of the SC plan shall include approval of the required Use Permit or variance, and no further action shall be required.

SECTION 19. Monterey City Code, Chapter 38, Section 99.6 is hereby repealed and reenacted to read as follows:

The maximum density for this overlay district shall be 30 dwelling units per acre. No more than 405 units may be constructed in the Multifamily Residential Overlay District on Garden Road. Accessory Dwelling Units in accord with Section 38-112-6 may also be allowed in the Multifamily Residential Overlay District.

SECTION 20. Monterey City Code, Chapter 38, Section 112-6 Accessory Dwelling Units and Junior Accessory Dwelling Units is hereby added to read as follows:

*112-6. Accessory Dwelling Units and Junior Accessory Dwelling Units.*

1. General Requirements. All Accessory Dwelling Units shall conform with the following:
  - a. The parcel must be zoned to allow single-family or multi-family use.
  - b. The parcel may contain the following number of Accessory Dwelling Units:
    - i. *Single-family building.* One Accessory Dwelling Unit may be developed per lot.
      1. A new construction Accessory Dwelling Unit may be developed as attached to or detached from the single-family dwelling.
      2. An Accessory Dwelling Unit within the walls of a proposed or existing single-family dwelling or within an existing accessory structure may be developed if the unit has exterior access separate from the proposed or existing single-family dwelling; the side and rear setbacks are sufficient for fire and safety; and an expansion of the accessory structure for ingress and egress is not more than 150 square feet.
      3. Both one Accessory Dwelling Unit and one Junior Accessory Dwelling Unit may be developed on the same parcel with a proposed or existing single-family dwelling if the Accessory Dwelling Unit is developed as either of the following:
        - a. A new construction, detached Accessory Dwelling Unit up to 800 square feet in size, up to 16 feet in height, and with minimum four-foot side and rear setbacks; or
        - b. The Accessory Dwelling Unit meets the standards of subsection (b)(i)(2) above.

- ii. *Multi-family building.* A parcel may contain one of the following:
  - 1. One Accessory Dwelling Unit may be developed on a parcel with an existing multifamily building.
  - 2. On a parcel with an existing multifamily building:
    - a. Portions of the building that are not used as livable space may be converted into Accessory Dwelling Units. The number of Accessory Dwelling Units permitted is equivalent to up to 25 percent of the number of existing, legally permitted multi-family dwelling units, or one, whichever is greater; or
    - b. No more than two detached Accessory Dwelling Units. The Accessory Dwelling Units may be up to 16 feet in height and must have at least four-foot side and rear setbacks.
- c. At the time of application, the property owner shall acknowledge in writing that:
  - i. The Accessory Dwelling Unit may not be sold separately from the existing single-family or multifamily dwelling; and
  - ii. Neither the Accessory Dwelling Unit nor the Junior Accessory Dwelling Unit may be used for short-term residential rentals of less than 30 consecutive days.

Prior to issuance of a building permit for the Accessory Dwelling Unit, the owner shall record a covenant in a form approved by the City to notify future owners of the requirements of this subsection (1)(c).
- d. Exemptions. Notwithstanding the development and design standards of this section, Accessory Dwelling Units that meet the standards in subsection 112-6(1)(b)(i)(3) or (b)(ii)(2) are permitted.
- e. Fire sprinklers shall not be required in the Accessory Dwelling Unit unless fire sprinklers are required for the primary dwelling.
- f. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit conforming to the requirements of this section shall not be considered to exceed the allowable density for the parcel upon which the unit is located and shall be deemed to be a residential use consistent with the existing general plan and zoning designations for the parcel.
- g. An Accessory Dwelling Unit or Junior accessory dwelling shall not be permitted within the airport safety zone pursuant to the Airport Land Use Plan.





- i. Attached or Detached Accessory Dwelling Unit. The height above grade of an attached or detached Accessory Dwelling Unit shall not exceed 16 feet from the ground to the highest point on the roof.
- ii. Second Story Attached Accessory Dwelling Unit/Above Garage. If an Accessory Dwelling Unit exceeds the maximum permitted height set forth in subsection (d)(i) above, the applicant may apply for an exception through the discretionary architectural review process pursuant to Municipal Code Chapter 38, Article 25 if:
  - 1. The total height of the building, as defined in Section 38-11 (Height, Building), is 25 feet or less;
  - 2. The parcel is within the R-3 zone;
  - 3. The garage is at the ground level;
  - 4. No windows or openings are permitted for that portion of the building that is closer than 4 feet to a property line; and
  - 5. Any window parallel to an adjoining property line and closer than 10 feet shall be either:
    - a. Opaque and inoperable; or
    - b. Clerestory windows with a minimum height no less than 6 feet above floor level.
- e. Limits on lot coverage, floor area ratio, open space, and size must permit or shall be waived to allow an 800 square foot detached or attached Accessory Dwelling Unit 16 feet high with four-foot side and rear yards, if the proposed Accessory Dwelling Unit is in compliance with all other development standards, including but not limited to front yard setbacks.
- f. Access. An Accessory Dwelling Unit shall have a separate entrance from the single-family dwelling unit.
- g. Parking.
  - i. One additional parking space shall be provided per unit or per bedroom, whichever is less, which may be provided as tandem parking on an existing driveway, or in setback areas unless the Community Development Director makes specific findings that tandem parking and parking in setback areas is not feasible because of specific topographical conditions.
  - ii. No parking may extend into a public sidewalk or public right-of-way.

- iii. Notwithstanding this provision, no additional parking may be required for an Accessory Dwelling Unit that is:
  - 1. located within one-half mile walking distance of a public transit stop,
  - 2. located within one block of a car share vehicle pickup location,
  - 3. located entirely within a primary residence or within an existing accessory structure,
  - 4. located within an architecturally and historically significant historic district, or
  - 5. located on a parcel where on-street parking permits are required but not offered to the occupant of the Accessory Dwelling Unit.
- iv. If an existing garage, carport, or covered parking structure is demolished in conjunction with the construction of or replaced by an Accessory Dwelling Unit, the parking spaces need not be replaced.
- h. Historic Review. Attached or detached Accessory Dwelling Units on a parcel with an H-1 or H-2 designation shall:
  - i. be located behind the historic structure. If attached, the Accessory Dwelling Unit shall be located at the rear of the main historic structure. If detached, new construction, the Accessory Dwelling Unit shall be located 10 feet behind the rear of the main historic structure;
  - ii. not exceed 16 feet in height;
  - iii. notwithstanding the design standards below, not match the exterior finish of the historic building; and
  - iv. be designed so that any new exterior door for the Accessory Dwelling Unit will be located at the back of the structure such that the new exterior door is not facing the front yard.
- i. Water and Sewer. Accessory Dwelling Units shall not be permitted on a parcel where water or sewer services are inadequate. Water restrictions imposed by the State Water Resources Control Board's Cease and Desist Order demonstrate existing water sources are insufficient to meet any expansion of water demand and do not satisfy criteria for the adequacy of water and sewer services. Water credits or water entitlements may be available to offset additional demand for an Accessory Dwelling Unit. The adequacy of water is determined by the

Monterey Peninsula Water Management District (MPWMD). Verification of water credits from MPWMD is to be submitted at the time of building permit application.

3. Accessory Dwelling Unit Design Standards. Except as otherwise provided in this chapter, all Accessory Dwelling Units shall comply with the following design standards:
  - a. Colors and Materials. The Accessory Dwelling Unit shall be constructed with facade materials identical in color, and similar in texture and appearance to the primary dwelling, including but not limited to roofing, siding, and windows and doors; and
  - b. Roof Pitch. The Accessory Dwelling Unit shall match the roof pitch and roof form of the primary dwelling in order to blend with the architecture of the primary dwelling.
  - c. The Accessory Dwelling Unit shall conform to all applicable State and local building code requirements, including verification from the applicable water district (submitted with the application for a building permit) that sufficient on-site water credits are available for the Accessory Dwelling Unit. Fire sprinklers may not be required for the Accessory Dwelling Unit unless they are required for the primary dwelling.
4. Junior Accessory Dwelling Unit Development Standards. Junior Accessory Dwelling Units shall conform with the following:
  - a. A Junior Accessory Dwelling Unit shall not exceed 500 square feet in size and shall contain at least an efficiency kitchen, which includes cooking appliances, a food preparation counter, and storage cabinets that are of reasonable size in relation to the Junior Accessory Dwelling Unit.
  - b. A Junior Accessory Dwelling Unit shall have a separate entrance from the single-family dwelling.
  - c. The Junior Accessory Dwelling Unit may, but is not required to, include separate sanitation facilities. If separate sanitation facilities are not provided, the Junior Accessory Dwelling Unit shall share sanitation facilities with the single-family residence. If provided as part of the primary dwelling, the Junior Accessory Dwelling Unit shall have direct access to the primary dwelling so as to not need to go outside to access the bathroom
  - d. Unless the property is owned by a governmental agency, land trust, or housing organization, one of the dwellings on the parcel must be the bona fide principal residence of at least one legal owner of the parcel, as evidenced at the time of approval of the Junior Accessory Dwelling Unit by appropriate documents of title and residency.

- e. Prior to issuance of a building permit for a Junior Accessory Dwelling Unit, the owner shall record a covenant in a form prescribed by the city attorney, which shall run with the land and provide for the following. A copy of the recorded covenant shall be filed with the Building Department prior to issuance of a building permit:
    - i. A prohibition on the sale of the Junior Accessory Dwelling Unit separate from the sale of the single-family residence;
    - ii. A restriction on the size and attributes of the Junior Accessory Dwelling Unit consistent with this section;
    - iii. A prohibition against renting the property for fewer than 30 consecutive calendar days; and
    - iv. A requirement that either the primary residence or the Junior Accessory Dwelling Unit be the owner's bona fide principal residence, unless the owner is a governmental agency, land trust, or housing organization.
  - f. Parking is not required for Junior Accessory Dwelling Units. However, if an existing attached garage is replaced by a Junior Accessory Dwelling Unit, each removed parking space must be replaced with an off-street parking space that does not extend into the public right of way. If the proposed replacement parking is uncovered parking located in the driveway, the dimensions of the off-street parking space should at least be 9 feet by 18 feet and the space may occupy any part of the driveway so long as it does not extend into the public right-of-way and is not located in the front yard setback.
  - g. Junior Accessory Dwelling Units shall not be permitted on a parcel where water or sewer services are inadequate. Water restrictions imposed by the State Water Resources Control Board's Cease and Desist Order demonstrate existing water sources are insufficient to meet any expansion of water demand and do not satisfy criteria for the adequacy of water and sewer services. Water credits or water entitlements may be available to offset additional demand for a Junior Accessory Dwelling Unit. The adequacy of water is determined by the Monterey Peninsula Water Management District (MPWMD). Verification of water credits from MPWMD is to be submitted at the time of building permit application.
5. Utilities and Impact Fees.
- a. Except as provided in subsection (d) below, an Accessory Dwelling Unit may be required to have a new or separate utility connection, including a separate sewer lateral, between the Accessory Dwelling Unit and the utility. A connection fee or capacity charge may be charged that is proportionate to the size in square feet of the Accessory Dwelling Unit or its drainage fixture unit (DFU) values. Separate electric and water submeters shall be required for the Accessory Dwelling Unit, except that

separate water meters shall be required for Accessory Dwelling Units if and when California American Water is allowed to connect new water meters.

- b. Junior Accessory Dwelling Units and Accessory Dwelling Units converted from the existing space of a single-family dwelling or accessory structure are exempt from any requirement to install a new or separate utility connection and to pay any associated connection or capacity fees or charges, unless the Accessory Dwelling Unit is constructed within a new single-family home.
- c. All utility extensions shall be placed underground.
- d. No impact fees may be imposed on an Accessory Dwelling Unit that is less than 750 square feet in size. For purposes of this section, "impact fees" include the fees specified in Section 66000 and 66477 of the Government Code, but do not include utility connection fees or capacity charges. For Accessory Dwelling Units that have a floor area of 750 square feet or more, impact fees shall be charged proportionately in relation to the square footage of the primary dwelling unit.

6. Process and Timing.

- a. Building-permit only. The City must act on an application to create an Accessory Dwelling Unit or Junior Accessory Dwelling Unit within 60 days from the date that the City receives a completed application, 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 Accessory Dwelling Unit or a Junior Accessory Dwelling Unit is submitted along with a permit application to create a new primary dwelling on the parcel the City may delay acting on the permit application until the City acts on the permit application to create the primary dwelling; or
  - iii. The applicant requests discretionary architectural review for an accessory dwelling unit more than 16 feet high, as provided in Section 112-6(2)(d)(ii) above.
- b. Mills Act. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit proposed on a property subject to a Mills Act Contract must comply with the provisions of the contract, including conformance to the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, the United States Secretary of the Interior's Standard for Rehabilitation, and the California Historical Building Code.

SECTION 21. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 22. Severability. If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have adopted the Ordinance and each section, sub-section, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases or portions to be declared invalid or unconstitutional.

SECTION 23. This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

SECTION 24. Publication. Pursuant to Charter section 4.4, this ordinance shall be published in the Monterey County Herald, a newspaper printed and published in the County of Monterey, at least three days before its adoption.

SECTION 25. The City Clerk shall send a copy of this Ordinance to the Department of Housing and Community Development within 60 days after adoption, as required by State law.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 2nd day of November, 2021, by the following vote:


AYES:	5	COUNCILMEMBERS:	Albert, Haffa, Smith, Williamson, Roberson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

DocuSigned by:  
  
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Mayor of said City

ATTEST:

DocuSigned by:  
  
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City Clerk thereof