ORDINANCE NO. 3664 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

AMENDING MONTEREY CITY CODE SECTION 38-112.6 "ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS" AND AMENDING SECTION 38-11 "DEFINITIONS"

WHEREAS, California is experiencing a housing crisis, with housing demand outstripping supply. Since 2016, the California State Legislature has brought forward several bills (Government Code sections 65852.2 and 65852.22) relating to the planning and permitting of Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) to address the housing supply crisis. Over the years, State ADU and JADU law has been revised to improve its effectiveness at creating more housing units;

WHEREAS, on September 27, 2016, the Governor signed into law SB 1069 and AB 2299, the first bills requiring local jurisdictions to amend their zoning ordinances to allow ADUs consistent with this new State law, which took effect on January 1, 2017;

WHEREAS, on January 17, 2017, the City Council adopted Ordinance No. 3560 to amend its Zoning Ordinance to designate areas where ADUs may be located and place other restrictions, consistent with State law;

WHEREAS, on October 9, 2019, the Governor signed into law AB 68, AB 881, and SB 13 to further streamline ADUs and relax development standards, which took effect on January 1, 2020.

WHEREAS, on October 20, 2020, the City Council adopted Urgency Ordinance No. 3626 to prevent ADUs over 16 feet in height until the Planning Commission had an opportunity to provide policy recommendations. Ordinance No. 3626 also repealed the City's ADU regulations, which were almost entirely inconsistent with the State law that took effect on January 1, 2020. On December 1, 2020, the City Council adopted Ordinance No. 3633, which extended Ordinance No. 3626 until October 19, 2021;

WHEREAS, on November 2, 2021, the City Council adopted Ordinance No. 3641 to amend the City Code to include ADU zoning regulations to further reduce barriers, better streamline approval processes, and expand the capacity to accommodate the development of ADUs and JADUs, consistent with State law;

WHEREAS, on May 3, 2022, the City Council adopted Ordinance No. 3650 to amend the City Code to be more flexible than State law by waiving lot coverage, floor area ratio, open space, and size regulations to allow a second story ADU above a garage or carport up to 25 feet in height and to allow such ADU to have roof pitch and form that is different than the associated single-family dwelling or multifamily dwelling, subject to architectural review;

WHEREAS, on September 28, 2022, the Governor signed into law AB 2221 and SB 897 to increase the allowed height of attached and detached ADUs and waive front yard setback limits if they prevent construction of certain ADUs, which took effect on January 1, 2023;

WHEREAS, Government Code sections 65852.2 and 65852.22 require 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 and JADUs;

WHEREAS, 2015-2023 Housing Element Goal b is to broaden the choice of rental housing types available to residents of Monterey in all price ranges and for all family sizes while maintaining neighborhood compatibility and, where possible, using second units to encourage owner opportunities;

WHEREAS, the amendments are consistent with the purposes of the General Plan, the purposes of the Municipal Code, and other applicable City ordinances;

WHEREAS, on December 13, 2022, 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 May 2, 2023, took public testimony, and considered the ordinance amendments; and

WHEREAS, the City of Monterey has determined that the adoption of an ordinance approving Zoning Ordinance amendments related to accessory dwelling units implements the provisions of Government Code sections 65852.1 and 65852.2 and is therefore statutorily exempt from CEQA pursuant to Public Resources Code Section 21080.17.

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

SECTION 1. The above recitals are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

SECTION 2. Monterey City Code Section 38-11 "Definitions" "Accessory Dwelling Unit" is hereby amended 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 multifamily dwelling. An attached accessory dwelling unit is physically attached to the single-family dwelling or multifamily dwelling, including attached garages. A detached accessory dwelling unit is physically separated from the single-family dwelling or 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 3. Monterey City Code Section 38-112.6 is hereby replaced in its entirety as follows:

1. *General Requirements.* All accessory dwelling units shall conform with the following:

   a. The parcel must be zoned to allow single-family or multifamily use.

   b. The parcel may contain the following number of accessory dwelling units:

i. *Single-Family Dwelling.* A parcel with an existing or proposed single-family dwelling may contain one of the following:

(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, including detached garages, 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 the allowed height in subsection (2)(d) of this section, and with minimum four-foot side and rear setbacks; or

b. The accessory dwelling unit meets the standards of subsection (1)(b)(i)(2) of this section.

ii. *Multifamily Dwelling.* A parcel with a multifamily dwelling may contain one of the following:

(1) A parcel with a proposed or existing multifamily dwelling may construct one of the following:

a. One attached accessory dwelling unit meeting the standards of subsection (2); or

b. Up to two detached accessory dwelling units if the accessory dwelling unit does not exceed the allowed height in subsection (2)(d) of this section, and has at least four-foot side and rear setbacks.

(2) A parcel with an existing multifamily dwelling may contain accessory dwelling units converted from portions of the building that are not used as livable space. The number of accessory dwelling units permitted is equivalent to up to 25 percent of the number of existing, legally permitted multifamily dwelling units, or one, whichever is greater.

c. Prior to issuance of a building permit for an accessory dwelling unit, the property owner shall record a covenant in a form prescribed by the city attorney, which shall run with the land and provide for the following:

i. The accessory dwelling unit(s) may not be sold separately from the existing or proposed single-family dwelling or multifamily dwelling; and

ii. Neither the accessory dwelling unit(s) nor the junior accessory dwelling unit may be used for short-term residential rentals of less than 30 consecutive days.

A copy of the recorded covenant shall be filed with the Building Division prior to issuance of a building permit.

d. Prior to issuance of a building permit for an accessory dwelling unit on those certain parcels identified as Monterey County Assessors Parcels: 013-231-027-000, 013-231-017-000, 013-231-018-000 and 013-231-028-000, the property owner shall provide the City with an avigation easement granted to the Monterey Regional Airport District or evidence that the parcel is no longer within the Monterey Regional Airport Land use Compatibility Plan 65-, 70-, and 75 Community Noise Equivalent Level boundaries.

e. *Exemptions.*

i. Notwithstanding the development and design standards of this section, accessory dwelling units that meet the standards in subsection (1)(b)(i)(2), (1)(b)(i)(3)(a), (1)(b)(ii)(1)(b), or (1)(b)(ii)(2) of this section are permitted.

ii. Notwithstanding subsection (1)(c), a single-family dwelling and accessory dwelling unit that were developed by a qualified nonprofit, as that term is defined in and pursuant to Government Code section 65852.26, may be conveyed pursuant to a tenancy in common agreement that allocates an undivided, unequal interest in the property based on the size of the dwelling that each buyer occupies if the development and the transaction meet the requirements of Government Code Section 65852.26.

f. Fire sprinklers shall not be required in the accessory dwelling unit unless fire sprinklers are required for the single-family dwelling or multifamily dwelling. Fire sprinklers shall not be required for an existing single-family dwelling or multifamily dwelling as a condition of the construction of an accessory dwelling unit.

g. 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.

h. Accessory dwelling units and junior accessory dwelling units are prohibited in Airport Safety Zones 1 and 6, pursuant to the 2019 Monterey Airport Land Use Compatibility Plan.

i. An accessory dwelling unit or junior accessory dwelling unit conforming to the provisions of this subsection shall be approved ministerially as provided in Section 38-153(B).

2. *Accessory Dwelling Unit Development Standards.* Except as otherwise provided in this Section 38-112.6, all accessory dwelling units shall comply with the following development standards:

a. The accessory dwelling unit shall conform to all requirements of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions of this chapter. Notwithstanding this requirement:

i. the accessory dwelling unit is contained in a structure that is unpermitted and/or nonconforming with zoning and/or State and local building code requirements and all of the following apply:

(1) the creation of an accessory dwelling unit does not expand or affect the nonconformity or the building code violations, and

(2) the nonconformity does not pose a threat to public health and safety.

ii. the unpermitted accessory dwelling unit was constructed prior to January 1, 2018, even if the accessory dwelling unit is nonconforming with local zoning, California Government Code section 65852.2, and/or State and local building code requirements. However, the city can deny the application for an unpermitted accessory dwelling unit as described in this subsection (a)(ii) if the building is deemed substandard under Section 17920.3 of the Health & Safety Code or if the Building Official makes a finding that correcting the violation is necessary to protect the health and safety of the public or occupants of the structure.

iii. the applicable provisions of this Chapter 38 are inconsistent with the provisions of this Section 38-112.6, in which case the standards of this section shall apply.

b. *Floor Area.*

i. No accessory dwelling unit shall be smaller than the size required to allow an efficiency unit pursuant to Health and Safety Code section 17958.1.

ii. The floor area of an attached or detached accessory dwelling unit shall not exceed 850 square feet for a studio or one bedroom and 1,000 square feet for a unit that contains more than one bedroom.

c. *Setbacks.* Except as specified below, an accessory dwelling unit shall be required to comply with the setback requirements of the zone in which the unit is to be located.

i. No setback is required for an existing living area or an existing accessory structure converted to an accessory dwelling unit, or for a new accessory dwelling unit constructed in the same location and built to the same dimensions as an existing structure, except that:

(1) An expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure is allowed solely for the purpose of accommodating ingress and egress.

(2) Setbacks shall be sufficient for fire safety.

ii. For all other accessory dwelling units, a setback of four feet is required from the rear and side property lines.

d. *Height.*

i. Attached Accessory Dwelling Unit. The height of an attached accessory dwelling unit shall not exceed 25 feet or the height limitation that applies to the single-family dwelling or multifamily dwelling, whichever is lower. However, the accessory dwelling unit may not exceed two stories.

ii. Detached Accessory Dwelling Unit. The height of a detached accessory dwelling unit shall not exceed the following:

(1) 16 feet on a lot with an existing or proposed single-family dwelling or multifamily dwelling;

(2) 18 feet on a lot with an existing or proposed single-family dwelling or multifamily dwelling if the lot is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Public Resources Code Section 21155. The accessory dwelling unit may be up to 20 feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the single-family dwelling or multifamily dwelling

(3) 18 feet on a lot with an existing or proposed multifamily, multistory dwelling.

iii. *Second Story Accessory Dwelling Unit Above Garage or Carport.* If an accessory dwelling unit is attached to a detached garage or carport, then the accessory dwelling unit is a detached accessory dwelling unit. If a detached accessory dwelling unit exceeds the maximum permitted height set forth in subsection (2)(d)(ii) of this section, the applicant may apply for an exception through the discretionary architectural review process pursuant to Article 25 of this Chapter if:

(1) The total building height is 25 feet or less;

(2) The parcel is within the R-3 zone;

(3) The garage or carport is detached from the single-family dwelling and is at the ground level of the accessory dwelling unit;

(4) No windows or openings are permitted for that portion of the accessory dwelling unit that is closer than four feet to a property line; and

(5) Any window parallel to an adjoining property line and closer than 10 feet shall be opaque.

e. Limits on lot coverage, floor area ratio, open space, front setbacks, and size cannot prevent the construction of a detached or attached accessory dwelling unit, with a maximum floor area of 800 square feet and minimum four-foot side and rear yard setbacks, if the proposed accessory dwelling unit is in compliance with all other development standards.

f. *Access.* An accessory dwelling unit shall have a separate entrance from other dwelling units.

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, including an accessory dwelling unit that is being proposed along with a proposed single-family dwelling or multifamily dwelling, 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 the proposed or existing single-family dwelling or multifamily dwelling 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 do not need to be replaced.

h. *Properties with Historic Overlay Zoning or Historic Zoning.* 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, unless these requirements prevent creation of the accessory dwelling unit. 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. Notwithstanding the design standards below, not match the exterior finish of the historic building; and

iii. Be designed so that any new exterior door for the accessory dwelling unit is not facing the front yard, unless this requirement prevents creation of the accessory dwelling unit.

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 identical in texture and appearance to the single-family dwelling or multifamily dwelling, including but not limited to roofing, siding, and windows and doors; and

b. *Roof Pitch and Form.* The accessory dwelling unit shall match the roof pitch and roof form of the single-family dwelling or multifamily dwelling in order to blend with the architecture of the single-family dwelling or multifamily dwelling. The applicant may apply for an exception through the discretionary architectural review process pursuant to Article 25 of this Chapter. The Architectural Review Committee may grant such an exception if it finds that an alternative roof pitch and form design are compatible with the single-family or multifamily structure and neighborhood.

c. *State and Local Building Code Requirements*. The accessory dwelling unit shall conform to all applicable State and local building code requirements. The new construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the building code, as described in Section 310 of the California Building Code (Title 24 of the California Code of Regulations), unless the building official or enforcement agency makes a written finding based on substantial evidence in the record that the construction of the accessory dwelling unit could have a specific, adverse impact on public health and safety or the accessory dwelling unit is converted from unhabitable or nonresidential space.

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 entrance of 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 dwelling. If provided as part of the single-family dwelling, the junior accessory dwelling unit shall have direct access to the single-family 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:

i. A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family dwelling;

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 single-family dwelling 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.

A copy of the recorded covenant shall be filed with the Building Division prior to issuance of a building permit.

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 nine 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 (5)(b) of this section, an accessory dwelling unit shall provide a new or separate utility connection, including a separate sewer lateral, between the accessory dwelling unit and the utility, unless the applicant has obtained a sewer lateral inspection performed by a licensed plumber demonstrating that the sewer lateral meets the City's standards and specifications. Proof that the sewer lateral meets the City's requirements shall be submitted on a sewer lateral inspection form provided by the City and completed by the professional who completed the inspection. 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 dwelling.

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 Sections 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 single-family dwelling or multifamily dwelling.

6. *Process and Timing.*

a. *Permit Review.* The City requires a building permit and, as applicable, any additional services permits, to create and serve an accessory dwelling unit or junior accessory dwelling unit.

i. The City must approve or deny an application for a permit to create or serve an accessory dwelling unit or junior accessory dwelling unit within 60 days from the date that the City receives the completed application without discretionary review or a hearing, unless either:

(1) The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay; or

(2) When an accessory dwelling unit or a junior accessory dwelling unit is submitted along with a permit application to create a new single-family dwelling or multifamily dwelling on the parcel, the City may delay approving or denying the permit application until the City approves or denies the permit application to create the single-family dwelling or multifamily dwelling; or

(3) The applicant requests discretionary architectural review for a second story accessory dwelling unit above a detached garage or carport that exceeds the height limit pursuant to subsection (2)(d)(ii) of this section and/or for alternative roof pitch/form, as provided in subsection (2)(d)(iii) or (3)(b) of this section.

ii. If the City denies the permit application, the City will provide to the applicant within the 60 day review period a complete list of the application's deficiencies and describe how the applicant can remedy the application.

iii. If the applicant applies for a demolition permit to demolish a detached garage or carport and a building permit to construct a detached accessory dwelling unit, the demolition permit and building permit for the detached accessory dwelling unit will be issued at the same time.

b. *Mills Act.* An accessory dwelling unit or junior accessory dwelling unit proposed on a property subject to a Mills Act contract pursuant to Government Code section 50280 et seq. 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 4. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. 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 6. This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

SECTION 7. 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 8. 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 6th day of June, 2023, by the following vote:

AYES:	5	COUNCILMEMBERS:	Barber, Garcia, Haffa, Smith, Williamson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

DocuSigned by:
Tyller Williamson
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Mayor

ATTEST:

DocuSigned by:
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City Clerk