TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT

MEETING DATE: 09/13/2023

ITEM NO: 3

DATE: September 8, 2023

TO: Planning Commission

FROM: Joel Paulson, Community Development Director

SUBJECT: Forward a Recommendation to the Town Council on Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding Accessory Dwelling Units. The Proposed Amendments Also Correct Outdated References to Sections of the Town Code Included in Sections Pertaining to Termination of Nonconforming Use Status, Requirements for a Two-Unit Development Under Senate Bill 9 (SB 9), and Civil Penalties. The Environmental Impacts of the Proposed Amendments to the Town Code were Analyzed in the Environmental Impact Report for the 2040 General Plan. Additionally, the Proposed Amendments are Exempt Pursuant to CEQA, Section 15061(b)(3). Town Code Amendment Application A-23-002. **Project Location: Town Wide**. Applicant: Town of Los Gatos.

RECOMMENDATION:

Forward a recommendation to the Town Council for approval of the amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding accessory dwelling units. The proposed amendments also correct outdated references to sections of the Town Code included in sections pertaining to termination of nonconforming use status, requirements for a two-unit development under Senate Bill 9 (SB 9), and civil penalties.

CEQA:

The legal advertisement printed in the newspaper indicated that the proposed amendments to the Town Code are not considered a project under CEQA since they only affect processing of applications. CORRECTION: The environmental impacts of the proposed amendments to the Town Code were analyzed in the Environmental Impact Report for the 2040 General Plan. In addition, the Proposed Amendments are Exempt Pursuant to CEQA, Section 15061(b)(3), because it can be seen with certainty that they will not significantly affect the physical environment in that they make minor changes to the regulations applicable to accessory dwelling units and junior accessory dwelling units.

PREPARED BY: Sean Mullin, AICP
Senior Planner

Reviewed by: Planning Manager, Community Development Director, and Town Attorney

FINDINGS:

- The environmental impacts of the proposed amendments to the Town Code were analyzed in the Environmental Impact Report for the 2040 General Plan, and that the proposed amendments are Exempt Pursuant to CEQA, Section 15061(b)(3); and
- The amendments to Chapter 29 of the Town Code are consistent with the General Plan.

BACKGROUND:

In 2016, the Governor signed several bills intended to address the State's housing crisis by creating new housing opportunities through accessory dwelling units (ADU) and junior accessory dwelling units (JADU). Through 2022, the Governor continued to sign additional bills into law that further streamlined the permitting process for ADUs and JADUs. As a result, the Town updated the Town Code regarding ADUs/JADUs in 2017 and 2020 to comply with updated State laws. Since the current ADU/JADU regulations have been in place, additional bills have been signed into law and the Town has received clarification from the California Department of Housing and Community Development (HCD) on specific aspects of the Town's ADU/JADU regulations. Additionally, staff has received feedback from Town residents regarding privacy impacts caused by new ADUs on neighboring properties.

In September 2022, the Governor signed Senate Bill (SB) 897 and Assembly Bill (AB) 2221, which made substantial changes in the development standards applicable to ADUs, including height, front yard setbacks, owner-occupancy, permit review time limits, and fire sprinklers (Exhibits 3 and 4). The new State ADU/JADU regulations took effect on January 1, 2023. Local ordinances that do not wholly conform to the new State regulations (Exhibit 5) are superseded until conforming local ordinances are adopted.

Below is a discussion of a Draft Ordinance that includes amendments to Chapter 29 of the Town Code (Zoning Regulations), Sections 29.10.195, 29.10.305 through 29.10.400, 29.10.630, and 29.10.960 (Exhibit 2).

DISCUSSION:

Through an audit of the Town's current ADU Ordinance (Exhibit 6) against the applicable sections of the CA Government Code (Exhibit 5), staff determined that a complete overhaul of the Town's ADU regulations is necessary. The Draft Ordinance, included as Exhibit 2, would align the Town's regulations with State law, respond to HCD feedback, and address privacy impacts created by construction of new ADUs. While the Draft Ordinance is mostly new, existing regulations have been carried forward as reflected in Exhibit 7, which shows existing language carried forward (highlighted in green), with a reference to where the existing language can be found in the Draft Ordinance (highlighted in yellow). The discussion below

DISCUSSION (continued):

goes through the Code sections and provides staff's assessment of the existing regulations and how and why they are modified under the Draft Ordinance.

Sec. 29.10.305. Intent and authority.

The current language has been carried forward. References to CA Government Code have been updated.

Sec. 29.10.310. Definitions.

The existing definitions have been carried forward with modifications in content and formatting. Several new definitions have been added, with many taken from the CA Government Code.

Sec. 29.10.315. Review process.

A framework for the permit review process is not included in the current Ordinance. This new section explicitly states that review of a Building Permit for an ADU/JADU shall be ministerial, and that final action must be taken by the Town within sixty days of receiving a complete application, per State law. The State law does not allow the Town to require an applicant to provide written notice or post a placard for the demolition of a detached garage that is to be replaced with an ADU, unless the property is located within an architecturally or historically significant district. The Draft Ordinance would not require an applicant to provide written notice for the construction of any ADU/JADU. This reflects the ministerial nature of the ADU/JADU Building Permit process and aligns with the Town's Housing Element by removing barriers to development of ADUs and JADUs. Lastly, the Draft Ordinance states that the ministerial decision of the Town is not subject to appeal and provides findings for denial of an application.

Sec. 29.10.320. General requirements and restrictions.

The Draft Ordinance includes a new section detailing general requirements and regulations applicable to ADU and JADU projects.

Incentive program: This language has been carried over from the current Ordinance.

Parcel requirements: Portions of this information are currently included in the definition of an ADU. This new subsection clarifies what parcels qualify for an ADU/JADU, project consistent with State law.

DISCUSSION (continued):

Number: The language in this subsection has been slightly modified from the current Ordinance to reflect that JADUs may only be located within the space of a proposed or existing single-family dwelling.

FAR Standards: This revised subsection carries forward the Town Council's previous decision to allow a ten percent increase in FAR standards to help create opportunities for ADUs on properties with limited unbuilt FAR. The Draft Ordinance exempts up to 800 square feet from the FAR standards, consistent with current Ordinance and State law. The language also clarifies that the increased FAR standard is not applicable to JADUs, which are subject to the regular house FAR requirements.

Lot coverage: The current Ordinance requires that ADUs comply with the regulations of the Zone, while exempting up to 800 square feet of coverage for an ADU consistent with State law. The current language is silent on the accessory structure lot coverage limitations included in Section 29.40.015 (A)(5) of the Town Code, limiting accessory structure lot coverage to no more than 15 percent of the lot area exclusive of the required yard areas. This creates some conflict between these two sets of regulations, with staff deferring to the State law requirements to exempt 800 square feet of coverage. The draft lot coverage language exempts ADUs and JADUs from the zone's lot coverage limitations and the accessory structure lot coverage, regardless of size. This draft language is more permissible than the current Ordinance; is consistent with State law which states that lot coverage cannot be used to preclude the development of an 800-square foot ADU; and aligns with the Town's Housing Element by removing barriers to development of ADUs and JADUs.

Parking: The parking regulations in the Draft Ordinance remain largely unchanged. Some reorganization has occurred to group all exceptions together.

Design standards: The current Ordinance includes a "design, form, materials, and color" section whose purpose is to ensure that an ADU is compatible with the primary dwelling and the neighborhood and that it maintains the residential appearance of the property. The current Ordinance lacks clear objective criteria that can be enforced in the effort to achieve this purpose. Additionally, the current Ordinance prohibits entrances serving an ADU on a street-facing elevation; a requirement that HCD has deemed inconsistent with State law. The Draft Ordinance would add enforceable objective design standards intended to meet the stated purpose. The Draft Ordinance would also introduce objective design standards aimed at protecting the privacy of adjacent properties. The draft standards would limit second-story window types for an ADU/JADU within 10 feet of a side or rear property line and prohibit balconies, rooftop terraces, and second-story decks. Since these design standards are objective, they would be consistent with State law. These design standards are consistent with some of those included in the recently adopted SB 9 Ordinance.

DISCUSSION (continued):

Additional development standards: In addition to the new design standards, the Draft Ordinance introduces a number of development standards that are consistent with those in the recently adopted SB 9 Ordinance. These development standards are related to cut and fill; retaining walls; light reflectivity value in the hillside area; landscaping; lighting; trees; and stormwater management. Since these development standards are objective, they would be consistent with State law.

Conveyance: The draft conveyance subsection allows an ADU to be rented, but not sold separately from the primary dwelling except as provided in CA Government Code Section 65852.26. This section of the Government Code allows separate sale of an ADU to a qualified buyer (persons and families of low or moderate income) when the residence and/or the ADU was built or developed by a qualified nonprofit corporation. The sale must meet all of the conditions detailed in CA Government Code Section 65852.26.

Other requirements and restrictions: The regulations in the following subsections remain unchanged in the Draft Ordinance:

- Town Codes and ordinances;
- Building Codes;
- Rentals longer than 30 days; and
- Maximum number of dogs, cats, or litters.

Sec. 29.10.325. Accessory dwelling unit development standards.

The Draft Ordinance includes a new section that provides requirements and regulations specific to ADU projects. A separate section specific to JADU projects follows.

Location: The regulations in the location subsection of the Draft Ordinance remain consistent with the current Ordinance. The regulations pertaining to historic resources have expanded to detail what is considered a historic resource by the Town.

Setbacks: The Draft Ordinance includes a revised setbacks section that expands upon the current Ordinance and reorganizes setback requirements into a table. The new table separates ADU setback requirements for single-family and multi-family properties and provides regulations specific to several development scenarios.

Maximum unit size: The Draft Ordinance continues to limit the size of an ADU to 1,200 square feet and clarifies that detached ADUs are not subject to a discretionary application process as may be required for other detached accessory structures of certain sizes. As required by State law, the Draft Ordinance restricts the size ratio of an ADU to primary dwelling to 50 percent for

DISCUSSION (continued):

ADU not created through conversion of existing space. An exception is included that exempts up to 800 square feet of an attached ADU from the ratio restriction.

Maximum number of bedrooms: The Draft Ordinance reflects guidance from HCD that clarifies that the Town cannot impose a maximum number of bedrooms in an ADU.

Stories: The regulations in the stories subsection of the Draft Ordinance remain consistent with the current Ordinance; however the language has been revised slightly.

Height: The height regulations in the Draft Ordinance replace those included in the current Ordinance to align with State law. The draft regulations provide four different maximum heights based on different scenarios:

- 16 feet for a detached ADU on a property with a proposed or existing single-family or multi-family dwelling throughout the Town;
- 18 feet when located within one-half mile walking distance of a major transit stop or high-quality transit corridor, which are terms defined by the State. Currently, there is only one VTA bus route meeting the State's definitions that runs along a short portion of Los Gatos Boulevard and Samaritan Drive adjacent to the Town boundary. Only properties within one-half mile walking distance of this bus route would be allowed an ADU with a maximum height of 18 feet;
- 18 feet for a detached ADU on a property with a proposed or existing multi-family, multi-story dwelling; and
- 25 feet or the height limitation of the zone for an ADU attached to a proposed or exiting two-story primary dwelling.

The height regulations in the Draft Ordinance continue to allow for an ADU to be constructed directly above an existing one-story detached accessory structure on a lot with a proposed or existing two-story residence. The Draft Ordinance clarifies that an ADU constructed above a detached structure may not be internally connected to the structure below, consistent with the Town's limitation that ADUs be located within a single story.

Entrances: The Draft Ordinance requires that attached ADUs include a separate entrance from the main entrance to the proposed or existing primary dwelling, including those located on the second floor. Further, a passageway connecting the ADU to the street is allowed, but not required.

Interior connection: The Draft Ordinance allows for, but does not require, interior connections between the primary dwelling and the attached ADUs.

DISCUSSION (continued):

Conversion of existing floor area: The regulations in the Draft Ordinance pertaining to converting existing floor area to an ADU remain unchanged.

Density: As required by State law, the Draft Ordinance deems ADUs an accessory use that shall not be considered to exceed the allowable density of the zone and that ADUs are a residential use that is consistent with the General Plan and the zone.

Fire Sprinklers: The revised language in the Draft Ordinance pertaining to fire sprinklers reflects the limitations imposed by the State law.

Sec. 29.10.330. Junior accessory dwelling unit development standards.

The current Ordinance contains all regulations specific to JADUs within the definition of a *junior accessory dwelling unit*. The Draft Ordinance continues to include a definition for a JADU but moves the requirements and regulations for JADUs into a new section. All the requirements and regulations for JADUs in the Draft Ordinance have been updated to reflect State law and guidance from HCD.

Location: The current Ordinance allows a JADU within the proposed or existing space of a primary dwelling or detached ADU. The Draft Ordinance specifies that a JADU may only be located within the proposed or existing space of a single-family residence consistent with State law. This change clarifies that a JADU may not be located within the space of a detached ADU or multi-family dwelling.

Setbacks: The Draft Ordinance specifies that a JADU shall be subject to the setback requirements of the zone for a single-family residence, or the setbacks established by an existing single-family residence, whichever is less. This allows for an existing legal nonconforming setback of a single-family residence to be continued consistent with Section 29.10.245 (e)(1) of the Town Code.

Maximum unit size: The Draft Ordinance specifies that the maximum size of a JADU is 500 square feet, consistent with State law.

Entrances: The Draft Ordinance requires that JADUs include a separate entrance from the main entrance to the proposed or existing primary dwelling, including those located on the second floor. If the JADU shares a bathroom with the single-family residence, as allowed by State law, an interior doorway must be provided between the JADU and the living area of the single-family dwelling. Further, a passageway connecting the ADU to the street is allowed, but not required.

Kitchen: The Draft Ordinance clarifies that a JADU may include either a kitchen or an efficiency kitchen, as defined in the definitions section of the Draft Ordinance.

DISCUSSION (continued):

Sanitation facilities: The Draft Ordinance allows for a JADU to share a bathroom with the single-family residence, consistent with State law, and requires a doorway between the JADU and the living space of the single-family residence.

Owner-occupancy: Pursuant to State law, the property owner shall reside in either the JADU or the remaining portion of the single-family residence. The Draft Ordinance reflects this requirement.

Deed restriction: Consistent with State law, the Draft Ordinance requires that a Deed Restriction be recorded prohibiting the sale of the JADU separate from the single-family residence; restricting the size and attributes of the JADU; and requiring owner-occupancy of the JADU or the remaining portion of the single-family residence.

Fire or life protection: The Draft Ordinance clarifies that a JADU shall not be considered a separate or new dwelling unit for the purposes of fire or life protection.

Sec. 29.10.335. Unpermitted units.

The Draft Ordinance includes regulations pertaining to unpermitted ADUs/JADUs. The new section establishes applicability and outlines a process for remedy, which includes the review process established under Section 29.10.315 of the Draft Ordinance.

Sec. 29.10.340. Nonconforming accessory dwelling units and junior accessory dwelling units.

A *nonconforming accessory dwelling unit* is a term defined in the current and Draft Ordinances. The definition recognizes situations where an ADU or JADU is created lawfully, but made nonconforming through changes to the Town Code or annexation from the County. The Draft Ordinance eliminates outdated requirements for a nonconforming ADU/JADU contained in the current Ordinance and defaults review to draft Section 29.10.315 (Review process).

Sec. 29.10.350. Elimination and/or demolition of existing accessory dwelling units and/or junior accessory dwelling units.

The regulations in the Draft Ordinance regarding elimination and/or demolition of existing ADUs/JADUs remain largely unchanged.

Sec. 29.10.355. Legal nonconforming zoning conditions.

Consistent with State law, the Draft Ordinance indicates that the Town cannot deny a permit for an ADU or JADU based on the need to correct a legal nonconforming zoning condition,

DISCUSSION (continued):

Building Code violation, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the ADU/JADU.

Sec. 29.10.360. Utilities.

Consistent with State law, the Draft Ordinance clarifies that separate utility connections may be required and that a connection fee may apply. The Draft Ordinance outlines scenarios when separate connections may not apply.

Sec. 29.10.365. Fees.

Connection fees and capacity charges: The Draft Ordinance indicates that an ADU shall not be considered a new residential unit for the purposes of calculating utility connection fees.

Impact fees: Consistent with State law, the Draft Ordinance exempts ADUs less than 750 square feet and all JADUs from impact fees proposed by the Town. When an impact fee does apply, the Draft Ordinance establishes that the fee be charged proportionally in relation to the square footage of the primary dwelling unit. Further, the Draft Ordinance specifies that an ADU that is 750 square feet or greater is subject to the Town's Transportation Impact Policy 1-08 (Exhibit 8), as may be amended from time to time, which currently exempts all ADUs from traffic impact fees regardless of size.

Amendments to other Code Sections.

Since the Draft Ordinance includes a reorganization of the ADU/JADU regulations, several minor changes are required in other Sections of Chapter 29 to update cross-referencing and update terminology. The following impacted sections are included in the Draft Ordinance:

- Sec. 29.10.195. Termination of nonconforming use status.
- Sec. 29.10.630. Requirements.
- Sec. 29.20.960. Civil penalties.

PUBLIC COMMENTS:

Staff conducted outreach through the following media and social media resources, as well as direct communication with stakeholders as summarized below:

- The Town's website home page, What's New;
- The Town's Facebook page;
- The Town's Twitter account;
- The Town's Instagram account;

PUBLIC COMMENTS (continued):

- The Town's NextDoor page; and
- Direct email communication to local architects and designers.

CEQA DETERMINATION:

The environmental impacts of the proposed amendments to the Town Code were analyzed in the Environmental Impact Report for the 2040 General Plan. In addition, the Proposed Amendments are Exempt Pursuant to CEQA, Section 15061(b)(3), because it can be seen with certainty that they will not significantly affect the physical environment in that they make minor changes to the regulations applicable to accessory dwelling units and junior accessory dwelling units.

CONCLUSION:

A. Summary

The Draft Ordinance aligns the Town's ADU/JADU regulations with State law, responds to HCD feedback, and addresses privacy impacts created by construction of new ADUs. The Draft Ordinance provides a clear set of regulations and process framework for residents to follow when pursuing an ADU/JADU project. The Draft Ordinance also corrects outdated references to sections of the Town Code included in sections pertaining to termination of nonconforming use status, requirements for a two-unit development under Senate Bill 9 (SB 9), and civil penalties.

B. Recommendation

Staff recommends that the Planning Commission review the information included in the staff report and forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code in the Draft Ordinance Amendments (Exhibit 2). The Planning Commission should also include any comments or recommended changes to the Draft Ordinance in taking the following actions:

1. Make the finding that the environmental impacts of the proposed amendments to the Town Code were analyzed in the Environmental Impact Report for the 2040 General Plan. In addition, the Proposed Amendments are Exempt Pursuant to CEQA, Section 15061(b)(3), because it can be seen with certainty that they will not significantly affect the physical environment in that they make minor changes to the regulations applicable to accessory dwelling units and junior accessory dwelling units (Exhibit 1);
2. Make the required finding that the amendments to Chapter 29 of the Town Code in the Draft Ordinance are consistent with the General Plan (Exhibit 1); and

CONCLUSION (continued):

3. Forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code in the Draft Ordinance (Exhibit 2).

C. Alternatives

Alternatively, the Commission can:

1. Forward a recommendation to the Town Council for approval of the Draft Ordinance with modifications; or
2. Forward a recommendation to the Town Council for no changes to the Town Code; or
3. Continue the matter to a date certain with specific direction.

EXHIBITS:

1. Required Findings
2. Draft Ordinance Amendments
3. Senate Bill 897
4. Assembly Bill 2221
5. CA Government Code Sections 65852.2, 65852.22, 65852.23, and 65852.26
6. Current Town ADU/JADU Ordinance
7. Disposition of Current Ordinance
8. Transportation Impact Policy 1-08

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PLANNING COMMISSION – *September 13, 2023*
REQUIRED FINDINGS FOR:

Town Code Amendment Application A-23-002
Forward a Recommendation to the Town Council on Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding Accessory Dwelling Units. The Environmental Impacts of the Proposed Amendments to the Town Code were Analyzed in the Environmental Impact Report for the 2040 General Plan. Additionally, the Proposed Amendments are Exempt Pursuant to CEQA, Section 15061(b)(3).

FINDINGS

Required Findings for CEQA:

- The environmental impacts of the proposed amendments to the Town Code were analyzed in the Environmental Impact Report for the 2040 General Plan. In addition, the Proposed Amendments are Exempt Pursuant to CEQA, Section 15061(b)(3), because it can be seen with certainty that they will not significantly affect the physical environment in that they make minor changes to the regulations applicable to accessory dwelling units and junior accessory dwelling units.

Required Findings for General Plan:

- The amendments to Chapter 29 of the Town Code regarding accessory dwelling units are consistent with the General Plan.

EXHIBIT 1

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DIVISION 7. ACCESSORY DWELLING UNITS

Sec. 29.10.305. Intent and authority.

This Division is adopted to comply with amendments to Government Code §§ 65852.2, 65852.22, 65852.23, and 65852.26, which mandate that applications for accessory dwelling units be considered ministerially without a public hearing; and sets Town standards for the development of accessory dwelling units in order to increase the supply of affordable housing in a manner that is compatible with existing neighborhoods.

Sec. 29.10.310. Definitions.

The following words, terms, and phrases, when used in these accessory dwelling unit regulations, shall have the meanings ascribed to them in this section:

Accessory dwelling unit means a detached or attached residential dwelling unit that is located on the same parcel as a proposed or existing primary dwelling. It shall provide complete independent living facilities for one or more persons with permanent provisions for living, sleeping, eating, cooking, and sanitation. An accessory dwelling unit also includes efficiency units and manufactured homes.

(1) A detached accessory dwelling unit is physically separate from a primary dwelling.

(2) An attached accessory dwelling unit is contained within the space of and/or physically attached to a proposed or existing primary dwelling.

Efficiency kitchen means a limited kitchen that includes a cooking facility with appliances, a food preparation counter, and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit. Examples of cooking appliances that may be used are: microwave ovens, hot plates, and similar appliances intended for use on top of a countertop. Refrigerator size is not limited.

Efficiency unit has the meaning set forth in Section 17958.1 of the Health and Safety Code.

High-quality transit corridor has the meaning set forth in Section 21155 of the Public Resources Code.

Junior accessory dwelling unit means a dwelling unit that does not exceed a floor area of five hundred (500) square feet and is entirely contained within the space of a proposed or existing single-family residence. For the purposes of this definition, enclosed spaces within the single-family residence, such as attached garages, are considered a part of the proposed or existing single-family residence.

Kitchen means a cooking facility that includes a permanently installed cooking appliance, sink, refrigerator, food preparation counter, and storage cabinets that are of reasonable size in relation to the size of the dwelling unit.

Legal nonconforming zoning condition means a physical improvement on a property that was lawful when it was constructed but does not conform with current zoning standards.

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.

Major transit stop has the meaning set forth in Section 21155 of the Public Resources Code.

Manufactured home has the meaning set forth in Section 18007 of the Health and Safety Code.

Nonconforming accessory dwelling unit means a unit that exists under the following circumstances:

(1) A unit which was created or converted lawfully but, which due to a zone change or an amendment to the zoning ordinance, has become nonconforming; or

(2) A unit which was created lawfully while within the County, but which upon annexation to the Town, became nonconforming.

Objective design standards means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.

Passageway means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit and/or junior accessory dwelling unit.

Proposed dwelling means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

Public transit means a location, such as 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.

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.

Unpermitted accessory dwelling unit means a dwelling unit that was created through the construction of a new structure or expansion of an existing structure without the benefit of a Building Permit (at a time when a Building Permit was required) and that cannot be otherwise legalized because it does not comply with development standards provided in this Chapter.

Sec. 29.10.315. Review process.

(a) Development of an accessory dwelling unit and/or junior accessory dwelling unit consistent with this Division shall be reviewed ministerially as a Building Permit and the Town shall take final action within sixty (60) days of submittal of a complete application.

(1) When an accessory dwelling unit and/or junior accessory dwelling unit is proposed in conjunction with a permit application to create a new single-family or multi-family dwelling, the Town shall not take final action on the accessory dwelling unit and/or junior accessory dwelling unit until the application for the new single-family or multi-family dwelling is approved.

(2) The Town shall not issue a Certificate of Occupancy for an accessory dwelling and/or junior accessory dwelling unit before the Town issues a Certificate of Occupancy for the primary dwelling.

(b) *Notification.* The Town shall not require, and the applicant shall not be otherwise required to provide written notice or post a placard for construction of an accessory dwelling unit and/or junior accessory dwelling unit.

(c) *Denial*. An application may be denied if it does not meet the design and development standards. An application may also be denied if the following findings are made:

(1) Adverse impacts on health, safety, and/or welfare of the public.

(d) *Appeals*. Accessory dwelling units and junior accessory dwelling units that are consistent with this Division are ministerial and are not subject to an appeal.

Sec. 29.10.320. General requirements and restrictions.

(a) *Incentive program.* Any accessory dwelling unit or junior accessory dwelling unit developed under an Incentive Program which may be established by Resolution of the Town Council shall be made affordable to eligible applicants pursuant to the requirements of the Incentive Program. A Deed Restriction shall be recorded specifying that the accessory dwelling unit or junior accessory dwelling unit shall be offered at a reduced rent that is affordable to a lower income renter (less than eighty (80) percent AMI) provided that the unit is occupied by someone other than a member of the household occupying the primary dwelling.

(b) *Parcel requirements.* An accessory dwelling unit and/or junior accessory dwelling unit may only be created on parcels satisfying all the following general requirements:

(1) *Permitted zones.* A parcel zoned to allow single-family or multi-family residential use.

(2) *Dwelling unit.* A parcel that includes a proposed or existing primary dwelling.

(c) *Number.* Accessory dwelling units and/or a junior accessory dwelling unit may be permitted on a residential parcel as follows:

(1) *Single-family development.* Not more than one (1) junior accessory dwelling unit contained within the space of a proposed or existing single-family dwelling, and one (1) accessory dwelling unit, may be permitted on a lot with a proposed or existing primary dwelling.

(2) *Multi-family development.* Not more than a number equal to twenty-five (25) percent of the existing multi-family dwelling units rounded-up to the next whole number, within the portions of an existing multi-family dwelling not used as livable space (such as storage rooms, boiler rooms, passageways, attics, basements, or garages), and two (2) detached accessory dwelling units, may be permitted on a lot with a proposed or existing multi-family dwelling.

(d) *Floor area ratio (FAR) standards.*

(1) *Accessory dwelling units.* Accessory dwelling units (attached or detached) are allowed a ten (10) percent increase in the floor area ratio standards for all structures, excluding garages. Exception: Up to eight hundred (800) square feet of gross floor area of an accessory dwelling unit shall be exempt from the applicable FAR standards. This subsection does not apply to junior accessory dwelling units.

(2) *Junior accessory dwelling units.* Junior accessory dwelling units are subject to the floor area ratio standards for all structures, excluding garages.

(e) *Lot coverage.* Accessory dwelling units and junior accessory dwelling units are exempt from the lot coverage standards applicable to the zone and the accessory structure lot coverage limitations included in Section 29.40.015 (A)(5).

(f) *Parking.* One (1) parking space per accessory dwelling unit or per bedroom, whichever is less, shall be provided in addition to the required minimum number of parking spaces for the primary dwelling. These spaces may be provided in a front or side setback abutting a street on a driveway (provided that it is feasible based on specific site or fire and life safety conditions) or through tandem parking. In addition to parking otherwise required for units as set forth in section 29.10.150 of the Town Code, the number of off-street parking spaces required by this Chapter for the primary dwelling shall be provided prior to the issuance of a Building Permit or final inspection, for a new accessory dwelling unit.

(1) *Exceptions.* No parking space shall be required under any of the following conditions:

a. No additional parking shall be required for a junior accessory dwelling unit.
b. The accessory dwelling unit is located within one-half mile walking distance of public transit.
c. The accessory dwelling unit is located within an architecturally and historically significant historic district.
d. The accessory dwelling unit is contained within the proposed or existing space of, or constructed in substantially the same location and manner as, an existing primary dwelling or accessory structure.
e. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
f. When there is a car share vehicle (as defined by the California Vehicle Code) located within one (1) block of the accessory dwelling unit.
g. When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or multi-family dwelling on the same lot.
h. When a garage is demolished in conjunction with the construction of an accessory dwelling unit, or converted to an accessory dwelling unit, any lost off-street parking spaces required for the primary dwelling shall not be required to be replaced.
i. When the Director finds that the lot does not have adequate area to provide parking.

(g) *Design standards.* The purpose of these objective design standards is to ensure that the residential appearance of a property is maintained and that an accessory dwelling unit and/or junior accessory dwelling

unit are compatible with the primary dwelling and the neighborhood. The following objective design standards apply to the construction of an accessory dwelling unit and/or junior accessory dwelling unit:

(1) *Front entryway.* A front entryway framing a front door shall have a roof eave that matches or connects at the level of the adjacent eave line.

(2) *Front porch.* If proposed, front porches shall have a minimum depth of six (6) feet and a minimum width equal to twenty-five (25) percent of the linear width of the front elevation.

(3) *Windows.* All second-story windows less than ten (10) feet from rear and/or side property lines shall be clerestory with the bottom of the glass at least six (6) feet above the finished floor, except as necessary for egress purposes as required by the Building Code.

(4) *Balconies and Decks.* Balconies, rooftop terraces, and second-story decks are prohibited for all accessory dwelling units and junior accessory dwelling units.

(h) *Grading*.

(1) To the extent required by Chapter 12, Article II and Section 29.10.09045 (b) of the Town Code, the grading activities set forth in subsection (2) below may require a Grading Permit, but will not require discretionary review of an Architecture and Site Application.

(2) Grading activities associated with the construction of an accessory dwelling unit and/or junior accessory dwelling unit shall not exceed fifty (50) cubic yards, cut plus fill, except:

a. Light wells that do not exceed the minimum required by the Building Code shall not count as grading activity for the purpose of this section.

b. Excavation within the footprint of a proposed accessory dwelling unit shall not count as grading activity for the purpose of this section.

(i) *Cut and fill*. Construction of an accessory dwelling unit and/or a junior accessory dwelling unit shall be subject to the cut and fill requirements specified by Table 1-1 (Cut and Fill Requirements for Accessory Dwelling Units and Junior Accessory Dwelling Units) below:

Table 1-1 – Cut and Fill Requirements for Accessory Dwelling Units and Junior Accessory Dwelling Units

Site Element	**Cut***	**Fill***
Accessory dwelling unit/junior accessory dwelling unit	4 feet	3 feet
Driveways**	4 feet	3 feet
Other (decks, yards)*	4 feet	3 feet
* Combined depths of cut plus fill for an accessory dwelling unit or junior accessory dwelling unit shall be limited to six (6) feet.		
** Excludes cut and fill for the minimum driveway and fire access standards as required by the Santa Clara County Fire Department.		

(j) *Retaining walls*. Retaining walls shall not exceed five (5) feet in height and shall not run in a continuous direction for more than fifty (50) feet without a break, offset, or planting pocket. Retaining walls shall have a five (5) foot landscape buffer adjacent to the street.

(k) *Light reflectivity value.* Exterior materials for accessory dwelling units and/or junior accessory dwelling units in the Hillside Overlay shall comply with requirements in Chapter V, Section I, of the Town's Hillside Development Standards and Guidelines.

(l) *Landscaping.* All landscaping shall comply with the California Model Water Efficient Landscape Ordinance (MWELO).

(m) *Lighting.* New exterior lighting fixtures shall be downward directed and utilize shields so that no bulb is visible to ensure that the light is directed to the ground surface and does not spill onto neighboring parcels consistent with Section 29.10.09015 of the Town Code.

(n) *Trees.* Any proposed work shall comply with the protection, removal, and replacement requirements for protected trees in Chapter 29, Article I, Division 2, "Tree Protection," of the Town Code.

(o) *Stormwater management.* The development shall comply with the requirements of the Town's National Pollution Discharge Elimination System Permit as implemented by Chapter 22 of the Town Code, and as demonstrated by a grading and drainage plan prepared by a registered civil engineer.

(p) *Conveyance*. Except as provided in CA Government Code Section 65852.26, an accessory dwelling unit may be rented separate from the primary dwelling but may not be sold or otherwise conveyed separate from the primary dwelling.

(q) *Town codes and ordinances.* All accessory dwelling units and junior accessory dwelling units shall comply with all the provisions of this Chapter and other applicable Town Codes.

(r) *Building codes.* All accessory dwelling units and junior accessory dwelling units shall comply with applicable building, health, and fire codes, except that the construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local 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 of the local 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.

(s) *Rentals longer than 30 days*. Rentals for durations of less than thirty (30) days, including short-term rentals (as defined by the California Government Code), are prohibited.

(t) *Maximum number of dogs, cats, or litters*. All accessory dwelling units shall comply with Section 4.40.010 of the Town Code.

Sec. 29.10.325. Accessory dwelling unit development standards.

An accessory dwelling unit must comply with the following objective development standards:

(a) *Location.*

(1) No detached accessory dwelling unit may be constructed in front of the primary dwelling except in the HR zones.

(2) No accessory dwelling unit may be constructed in front of a primary dwelling or added to an existing second story of a primary dwelling that is any of the following:

a. A Historic Structure, as defined in Section 29.10.020 of the Zoning Code;

b. Listed in the Town of Los Gatos Historic Resource Inventory, as defined by Town Code Chapter 29, Article VII, Division 3, "Historic Preservation and LHP or Landmark and Historic Preservation Overlay Zone;" or

c. Listed in the California Register of Historical Resources.

(b) *Setbacks.* Accessory dwelling units shall be subject to the setback requirements specified in Table 1-2 (Accessory Dwelling Unit Setback Requirements) below:

Table 1-2. Accessory Dwelling Unit Setback Requirements[1]

	Single-Family			Multi-Family		
	New construction detached ADU	New attached ADU within the existing space of the primary dwelling[2] or accessory structure	New attached ADU within the proposed space of the primary dwelling	New construction detached ADU	Conversion of portions existing multi-family dwelling not used as livable space[3]	Conversion of existing accessory structure(s)
Front	Per the applicable zoning district[4]	N/A	Per the applicable zoning district	Per the applicable zoning district	N/A	N/A
Rear	4 feet minimum	Sufficient for fire and safety		4 feet minimum		
Side (including street-side)	4 feet minimum			4 feet minimum		
From any other structure located on the same lot[5]	5 feet minimum	N/A	5 feet minimum	5 feet minimum	N/A	N/A

(1) Cornices, eaves, belt courses, sills, canopies, bay windows, chimneys, or other similar architectural features may extend into required setbacks as specified in Section 29.40.070 (b) of the Zoning Code.

(2) Includes attached garages.

(3) Such as storage rooms, boiler rooms, passageways, attics, basements, or garages.

(4) Front setback requirements shall not preclude construction of an 800 square-foot accessory dwelling unit.

(5) Measured from the exterior wall surface and/or supporting posts.

(c) *Maximum unit size.*

(1) The maximum floor area of an accessory dwelling unit is one thousand two hundred (1,200) square feet.

(2) An attached accessory dwelling unit that is not created though conversion of existing space shall not exceed fifty (50) percent of the size of the existing primary dwelling. Exception: Up to eight hundred (800) square feet of gross floor area of an attached accessory dwelling unit shall be exempt from this subsection.

(3) Detached accessory dwelling units exceeding a combined square footage of four hundred fifty (450) square feet in the R-1, R-D, R-M, RMH, and R-1D zones shall not be subject to the Administrative Procedure for Minor Residential Projects. Detached accessory dwelling units exceeding a combined square footage of six hundred (600) or one thousand (1,000) square feet in the HR and RC zones shall not be subject to Development Review Committee or Planning Commission approval.

(d) *Maximum number of bedrooms.* There is no limit on the number of bedrooms in an accessory dwelling unit.

(e) *Stories.* Accessory dwelling units shall be contained within one (1) story.

(f) *Height.* Accessory dwelling units shall be subject to the height requirements below:

(1) A height of sixteen (16) feet for a detached accessory dwelling unit on a lot with a proposed or existing single-family or multi-family dwelling.

(2) A height of eighteen (18) feet for a detached accessory dwelling unit on a lot with a proposed or existing single-family or multi-family dwelling that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor. An additional two feet in height shall be provided to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit.

(3) A height of eighteen (18) feet for a detached accessory dwelling unit on a lot with a proposed or existing multi-family, multi-story dwelling.

(4) A height of twenty-five (25) feet or the height limitation of the applicable zoning district that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a proposed or existing two-story primary dwelling.

(5) Accessory dwelling units may be added directly above an existing one-story accessory structure on a property with a proposed or existing two-story primary dwelling in the R-1, R-D, R-M, RMH, and R-1D zones. These second-story accessory dwelling units may not be internally connected to the accessory structure below by an interior staircase.

(g) *Entrances.* Attached accessory dwelling units shall include a separate entrance from the main entrance to the proposed or existing primary dwelling. An accessory dwelling unit contained on a second story shall be served by a separate, dedicated interior or exterior stairway. A passageway from the accessory dwelling unit to a public street may be created but shall not be required by the Town.

(h) *Interior connection.* An attached accessory dwelling unit may, but shall not be required to, contain an interior doorway connection between the primary dwelling and the accessory dwelling unit.

(i) *Conversion of existing floor area.* An accessory dwelling unit shall be permitted if the accessory dwelling unit is contained within the existing space of, or constructed in the same location and manner as, an existing primary dwelling or accessory structure. The following provisions shall apply:

(1) The accessory dwelling unit shall be located on a lot zoned to allow single-family, two-family, or multi-family residential use.

(2) The accessory dwelling unit shall have separate entrance from the primary dwelling.

(3) The accessory dwelling unit shall have existing side and rear setbacks sufficient for fire safety.

(4) An expansion of one hundred fifty (150) square feet beyond the physical dimensions of an existing structure, limited to accommodating ingress and egress, shall be permitted.

(5) When an existing structure is nonconforming as to setback standards and converted to an accessory dwelling unit, any expansion of that structure may not be nearer to a property line than the existing building in accordance with section 29.10.245.

(j) *Density. Accessory* dwelling units that conform to California Government Code Section 65852.2 shall be deemed an accessory use and shall not be considered to exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing General Plan and zoning designation for the lot.

(k) *Fire sprinklers.* Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

Sec. 29.10.330. Junior accessory dwelling unit development standards.

(a) *Location*. A junior accessory dwelling unit shall be constructed entirely within the walls of the proposed or existing single-family residence. For the purposes of this paragraph, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence. Junior accessory dwelling units may not be located within the space of, or attached to, a detached accessory structure of any type.

(b) *Setbacks.* A junior accessory dwelling unit shall be subject to the setback requirements of the applicable zoning district for a single-family residence or the setbacks established by the existing single-family residence within which the junior accessory dwelling unit is located, whichever is less and sufficient for fire safety.

(c) *Maximum unit size*. The maximum floor area of a junior accessory dwelling unit is five hundred (500) square feet, measured from the outer face of exterior walls and the centerline of shared interior walls.

(d) *Entrances*. A junior accessory dwelling unit shall include a separate entrance from the main entrance to the proposed or existing single-family residence. When separate sanitation facilities are not included within the space of the junior accessory dwelling unit, an interior entry into the main living area of the primary dwelling shall be provided in addition to the separate entrance from the main entrance to the proposed or existing single-family residence. A junior accessory dwelling unit contained on a second story shall be served by a separate, dedicated interior or exterior stairway. A passageway from the accessory dwelling unit to a public street may be created but shall not be required by the Town.

(e) *Kitchen*. A junior accessory dwelling unit shall contain a kitchen or an efficiency kitchen.

(f) *Sanitation facilities*. A junior accessory dwelling unit may include separate sanitation facilities, or it may share sanitation facilities with the single-family residence. If sanitation facilities are not provided within the space of the junior accessory dwelling unit, an interior doorway shall be provided between the junior accessory dwelling unit and the living area of the single-family dwelling.

(g) *Owner-occupancy.* The property owner shall reside in the single-family residence in which the junior accessory dwelling unit will be located. The property owner may reside in either the remaining portion of the single-family residence or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(h) *Deed Restriction.* Prior to Building Permit issuance, the applicant shall record a Deed Restriction in the form prescribed by the Town, which shall run with the land and provide for all the following:

(1) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(2) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(3) Owner-occupancy consistent with this section.

(i) *Fire or life protection*. For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

Sec. 29.10.335. Unpermitted units.

This section provides a mechanism to legalize unpermitted accessory dwelling in compliance with Government Code Section 65852.23.

(a) *Applicability*. This section applies to accessory dwelling units that were unlawfully constructed prior to January 1, 2018, and that have not been deemed substandard pursuant to Section 17920.3 of the Health and Safety Code by the building official. The Community Development Director may determine construction date by any credible means warranted, including use of aerial photography, county records, photographs, and signed affidavits.

(b) *Relief*. The Town shall not deny a permit to legalize an unpermitted accessory dwelling solely due to either of the following:

(1) The accessory dwelling unit is in violation of building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code; or

(2) The accessory dwelling unit does not comply with Government Code Section 65852.2; or

(3) The accessory dwelling unit does not comply with this Chapter.

(c) *Approval*. An unpermitted accessory dwelling unit may be legalized in compliance with Section 29.10.315 (Review Process).

(d) *Enforcement*. A property owner who makes known to the Town the existence of an unpermitted accessory dwelling unit but who fails to obtain and finalize a Building Permit, shall be subject to enforcement and penalties as specified by Division 9 of this Chapter.

(e) *Exception*. The Town may deny a permit to legalize an unpermitted accessory dwelling unit and instead require correction of the violation(s) if the Building Official makes a finding that correcting the violation(s) is necessary to protect the health and safety of the public or occupants of the structure.

Sec. 29.10.340. Nonconforming accessory dwelling units and junior accessory dwelling units.

(a) *Permits*. The owner of a nonconforming accessory dwelling unit and/or junior accessory dwelling unit, as defined in Section 29.10.310, must obtain a permit in compliance with Section 29.10.315 (Review Process).

Where an application has been submitted for a nonconforming accessory dwelling unit and/or junior accessory dwelling unit and Town records do not establish its nonconforming status, the property owner will have sixty (60) days from the date the Town provides notice of its findings to submit any facts and evidence to support a claim that the unit is nonconforming as defined in this Article. If at the end of sixty (60) days evidence has not been submitted by the property owner to establish the accessory dwelling unit and/or junior accessory dwelling unit is nonconforming to the satisfaction of the Community Development Director, the unit shall be determined to be an unpermitted accessory dwelling unit pursuant to section 29.10.3xx and subject to its regulations.

(b) *Units existing at time of annexation*. Upon annexation a lawful accessory dwelling unit and/or junior accessory dwelling unit shall become nonconforming and the owner must either apply for a permit pursuant to Section 29.10.315 (Review Process) within one (1) year of the date of annexation. A property owner who makes known to the Town the existence of a nonconforming accessory dwelling unit and/or junior accessory dwelling unit but who fails to obtain and finalize a Building Permit, shall be subject to enforcement and penalties as specified by Division 9 of this chapter.

Sec. 29.10.350. Elimination and/or demolition of existing accessory dwelling units and/or junior accessory dwelling units.

In order to eliminate and/or demolish, without replacement, an approved accessory dwelling unit and/or junior accessory dwelling unit, the Development Review Committee shall make the finding that the proposed elimination and/or demolition, (without replacement), is consistent with the Town's Housing Element of the General Plan. In order to eliminate and/or demolish an existing accessory dwelling unit, the Development Review Committee must make the demolition findings pursuant to Section 29.10.09030.

Sec. 29.10.355. Nonconforming zoning conditions.

The Town shall not deny an application for a permit to create an accessory dwelling unit and/or junior accessory dwelling unit based on a need for the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and that are not affected by the construction of the accessory dwelling unit and/or junior accessory dwelling unit.

Sec. 29.10.360. Utilities.

(a) An accessory dwelling unit may be required to have a new or separate unity 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.

(1) Exceptions: Junior accessory dwelling units, accessory dwelling units within the proposed space of a single-family dwelling, or accessory dwelling units within 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 was constructed with a new single-family dwelling.

Sec. 29.10.365. Fees.

(a) *Connection fees and capacity charges.* An accessory dwelling unit shall not be considered by the Town, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(b) *Impact fees.* An accessory dwelling unit less than 750 square feet or a junior accessory dwelling unit is exempt from impact fees imposed by the Town, special district, or water corporation. An accessory dwelling 750 square feet or greater is subject to the Traffic Impact Fee requirements of the Town's Traffic Impact Policy (Policy 1-08), as may be amended from time to time. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit. For purposes of this subparagraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of CA Government Code Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

Sec. 29.10.195. Termination of legal nonconforming use status.

(a) Unless this ~~division~~ Division is amended to provide otherwise, the following legal nonconforming uses may continue interminably so long as they conform to the other requirements of this Division:

(1) ~~Nonconforming~~ Legal nonconforming residential uses ~~(except nonconforming accessory dwelling units pursuant to Section 29.10.320)~~.

(2) Schools.

(3) Church uses.

(4) Nonresidential uses in the downtown which would otherwise be nonconforming due to zone changes and ordinance amendments which occurred after July 1, 1982.

(5) Residential care facilities for the elderly that existed as of January 1, 1988 and are nonconforming only as to parking.

(6) Hotels/motels located in residential zones which were converted to multiple-family dwelling units prior to March 22, 1986, if a conditional use permit is obtained.

(7) Commercial uses that are nonconforming as to parking if parking has been provided on-site by July 1, 1992, or twenty (20) years from the date the use became legal nonconforming, whichever is later.

(b) The following legal nonconforming uses shall cease at the end of the following time periods:

(1) A junkyard shall cease ninety (90) days from the date it becomes nonconforming.

(2) Where there are improvements on land, but of a type for which no Building Permit would currently be required, the legal nonconforming use shall cease three (3) years from the date the use becomes legal nonconforming.

(3) Where the land is improved with one (1) or more structures of a type for which a Building Permit would currently be required and the structure(s) are utilized in connection with the legal nonconforming use, the legal nonconforming use shall cease twenty (20) years from March 23, 1966, or twenty (20) years from the date the use became legal nonconforming, whichever is later.

(4) When a zoning amendment is adopted after 1981 that causes a use to be legal nonconforming solely by subjecting it to the requirement of obtaining a conditional use permit, all uses affected by the amendment shall apply for a use permit within sixty (60) days after the amendment becomes effective. Failure to make such application within that time shall make the subject use immediately unlawful

(5) A business engaged in the retail sales [of] firearms and/or destructive devices shall cease four (4) years from the date it becomes legal nonconforming.

(c) If any period of authorized duration is held by a court to be too short and therefore unconstitutional or unlawful on its face or as applied, the period of duration shall be extended to such time as the court determines is lawful.

Sec. 29.10.630. Requirements.

(e) Floor Area Ratio and Lot Coverage.

(1) The maximum floor area ratio and lot coverage shall be as specified by the applicable zoning regulations.

(2) For flag/corridor lots, the gross lot size includes the access corridor for the purposes of determining maximum floor area ratio and lot coverage as follows:

i. When an easement is used to provide access, the access corridor is included in the gross lot size for the lot granting the easement; and

ii. When the access corridor is owned in-fee and is part of the rear lot, the access corridor is included in the gross lot size for the rear lot.

(3) The maximum size of the first new residential unit shall not exceed 1,200 square feet.

(4) When a two-unit housing development is proposed, a 10 percent increase in the floor area ratio standards for residential structures is allowed, excluding garages, and this increase in floor area cannot be combined with a separate increase for an Accessory Dwelling Unit allowed by Town Code Section 29.10.320. The additional floor area allowed by this subsection shall not exceed 1,200 square feet.

(5) Notwithstanding the floor area ratio standards in this subsection, a new two-unit housing development with unit sizes of 800 square feet or less shall be permitted.

Sec. 29.20.960. Civil penalties.

Notwithstanding section 29.20.950 relating to criminal penalty, any person found to have violated section 29.10.0970 shall be liable to pay the Town a civil penalty as prescribed in subsections (1) through (3). Any person found to have violated section 29.10.320 shall be liable to pay the Town a civil penalty as prescribed in subsection (4):

(1) Replacing the unlawfully removed tree with a new tree as similar thereto as reasonably feasible, or if such replacement is not feasible because of size or age of tree, with such number of similar trees as will provide reasonably equivalent aesthetic quality based on the determination of the Director of Parks, Forestry and Maintenance Services. Where similar replacement trees will not provide reasonably equivalent aesthetic quality, the Director of Parks, Forestry and Maintenance Services shall calculate the value of the removed tree in accordance with The Guide for Establishing Values of Trees and Other Plants by the International Society of Arboriculture and such value will be the civil penalty for violation of section 29.10.0970 in addition to subsection (2). Where replanting cannot be accomplished to the satisfaction of the Director of Parks, Forestry and Maintenance Services, the amount of the value of the removed tree shall be deposited into the street tree deposit account.

(2) The cost of enforcing this ~~chapter~~ Chapter, which shall include all costs, staff time, and attorneys' fees.

(3) All replacement trees planted as required by subsection (1) shall be maintained by the property owner under a two-year written maintenance agreement with the Town.

(4) A five thousand dollar ($5,000.00) civil penalty shall be imposed against any property owner found in violation of section 29.10.320(b) in addition to any application fees required and the cost for correcting any housing code deficiencies.

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Senate Bill No. 897

CHAPTER 664

An act to amend Section 65852.22 of, to add Section 65852.23 to, and to repeal and amend Section 65852.2 of, the Government Code, and to amend Section 17980.12 of the Health and Safety Code, relating to land use.

[Approved by Governor September 28, 2022. Filed with Secretary of State September 28, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 897, Wieckowski. Accessory dwelling units: junior accessory dwelling units.

(1) Existing law, the Planning and Zoning Law, authorizes a local agency, by ordinance or ministerial approval, to provide for the creation of accessory dwelling units in areas zoned for residential use, as specified. Existing law authorizes a local agency to impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, and maximum size of a unit.

This bill would require that the standards imposed on accessory dwelling units be objective. For purposes of this requirement, the bill would define "objective standard" as a standard that involves no personal or subjective judgment by a public official and is uniformly verifiable, as specified. The bill would also prohibit a local agency from denying an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.

This bill would require a local agency to review and issue a demolition permit for a detached garage that is to be replaced by an accessory dwelling unit at the same time as it reviews and issues the permit for the accessory dwelling unit. The bill would prohibit an applicant from being required to provide written notice or post a placard for the demolition of a detached garage that is to be replaced by an accessory dwelling unit, as specified.

Existing law provides that an accessory dwelling unit may either be an attached or detached residential dwelling unit, and prescribes the minimum and maximum unit size requirements, height limitations, and setback requirements that a local agency may establish, including a 16-foot height limitation and a 4-foot side and rear setback requirement.

This bill would increase the maximum height limitation that may be imposed by a local agency on an accessory dwelling unit to 18 feet if the accessory dwelling unit is within ½ mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined, or if the

accessory dwelling unit is detached and on a lot that has an existing multifamily, multistory dwelling, as specified. The bill would increase the maximum height limitation that may be imposed by a local agency on an accessory dwelling unit to 25 feet if the accessory dwelling unit is attached to a primary dwelling, except as specified.

Existing law requires an ordinance that provides for the creation of an accessory dwelling unit to require accessory dwelling units to comply with local building code requirements that apply to detached dwellings, as appropriate. Existing law also prohibits an ordinance from requiring an accessory dwelling unit to provide fire sprinklers if they are not required for the primary residence.

This bill would provide that the construction of an accessory dwelling unit does not constitute a Group R occupancy change under the local building code, except as specified. The bill would prohibit the construction of an accessory dwelling unit from triggering a requirement that fire sprinklers be installed in the existing primary dwelling.

Existing law provides that a local agency must ministerially approve an application for a building permit within a residential or mixed-use zone to create not more than 2 accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limitation of 16 feet and a 4-foot side and rear setback requirement.

This bill would change the height limitation applicable to an accessory dwelling unit subject to ministerial approval to 18 feet if the accessory dwelling unit is within ½ mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined, or if the accessory dwelling unit is detached and on a lot that has an existing multifamily, multistory dwelling, as specified. The bill would change the height limitation applicable to an accessory dwelling unit subject to ministerial approval to 25 feet if the accessory dwelling unit is attached to a primary dwelling, except as specified. The bill, if the existing multifamily dwelling exceeds applicable height requirements or has a rear or side setback of less than 4 feet, would prohibit a local agency from requiring any modification to the existing multifamily dwelling to satisfy these requirements. The bill would prohibit a local agency from rejecting an application for an accessory dwelling unit because the existing multifamily dwelling exceeds applicable height requirements or has a rear or side setback of less than 4 feet.

Existing law prohibits a local agency from imposing parking standards on certain accessory dwelling units, including those that are located within ½-mile walking distance of public transit.

This bill would also prohibit a local agency from imposing any parking standards on an accessory dwelling unit that is included in an application to create a new single-family dwelling unit or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit meets other specified requirements.

Existing law, when a local agency has not adopted an ordinance governing accessory dwelling units, requires a permitting agency to act on an

application to create an accessory dwelling unit or a junior accessory dwelling unit within specified timeframes.

This bill would require a permitting agency to return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant, if the permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit.

(2) Existing law also provides for the creation of junior accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions. Existing law requires an ordinance that provides for the creation of a junior accessory dwelling unit to, among other things, (A) require that the unit be constructed within the walls of the proposed or existing single-family residence, (B) require that the unit include a separate entrance from the main entrance to the proposed or existing single-family residence, and (C) require owner-occupancy in the single-family residence in which the junior accessory dwelling unit is permitted.

This bill would specify that enclosed uses within the proposed or existing single-family residence, such as attached garages, are considered a part of the proposed or existing single-family residence. The bill would require a junior accessory dwelling unit that does not include a separate bathroom to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area. The bill would also prohibit a local agency from denying an application for a permit to create a junior accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the junior accessory dwelling unit.

(3) Existing law requires a local agency, in enforcing building standards applicable to accessory dwelling units, to delay enforcement for up to 5 years upon the owner submitting an application requesting the delay on the basis that correcting the violation is not necessary to protect health and safety.

This bill would prohibit a local agency from denying a permit for an unpermitted accessory dwelling unit that was constructed before January 1, 2018, because, among other things, the unit is in violation of building standards or state or local standards applicable to accessory dwelling units, unless the local agency makes a finding that correcting the violation is necessary to protect the health and safety of the public or occupants of the structure. This bill would specify that this prohibition does not apply to a building that is deemed substandard under specified provisions of law.

(4) Existing law requires the Department of Housing and Community Development to administer various programs intended to promote the development of housing, including the Multifamily Housing Program, pursuant to which the department provides financial assistance in the form of deferred payment loans to pay for the eligible costs of development for specified activities.

This bill would state the intent of the Legislature that accessory dwelling unit grant programs provide funding for predevelopment costs and facilitate accountability and oversight, as specified.

(5) This bill would incorporate additional changes to Section 65852.2 of the Government Code proposed by AB 2221 to be operative only if this bill and AB 2221 are enacted and this bill is enacted last.

(6) By imposing new duties on local governments with respect to the approval of accessory dwelling units and junior accessory dwelling units, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to ensure that grant programs that fund the construction and maintenance of accessory dwelling units undertake both of the following:

(a) Provide funding for predevelopment costs, such as development of plans and permitting of accessory dwelling units.

(b) Facilitate accountability and oversight, including annual reporting on outcomes to the Legislature.

SEC. 2. Section 65852.2 of the Government Code, as amended by Section 1 of Chapter 343 of the Statutes of 2021, is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) Except as provided in Section 65852.26, the accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, except that the construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local 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 of the local 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. Nothing in this clause shall be interpreted to prevent a local agency from changing the occupancy code of a space that was unhabitable space or was only permitted for nonresidential use and was subsequently converted for residential use pursuant to this section.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall either approve or deny the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) The ordinance shall require that a demolition permit for a detached garage that is to be replaced with an accessory dwelling unit be reviewed

with the application for the accessory dwelling unit and issued at the same time.

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

(6) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(7) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(8) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, except that, subject to subparagraphs (B) and (C), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

(B) (i) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit before January 1, 2025.

(ii) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit that was permitted between January 1, 2020, and January 1, 2025.

(C) Notwithstanding subparagraphs (A) and (B), a local agency may require that an accessory dwelling unit be used for rentals of terms longer than 30 days.

(9) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(10) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) (1) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create or serve an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create or serve a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create or serve the new single-family dwelling or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved.

(2) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to paragraph (1), the permitting agency shall, within the time period described in paragraph (1), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard

setbacks to be constructed in compliance with all other local development standards.

(D) Any height limitation that does not allow at least the following, as applicable:

(i) A height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit.

(ii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit that 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 Section 21155 of the Public Resources Code. A local agency shall also allow an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit.

(iii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.

(iv) A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. This clause shall not require a local agency to allow an accessory dwelling unit to exceed two stories.

(d) Notwithstanding any other law, and whether or not the local agency has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), all of the following shall apply:

(1) The local agency shall not impose any parking standards for an accessory dwelling unit in any of the following instances:

(A) Where the accessory dwelling unit is located within one-half mile walking distance of public transit.

(B) Where the accessory dwelling unit is located within an architecturally and historically significant historic district.

(C) Where the accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(D) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(E) When there is a car share vehicle located within one block of the accessory dwelling unit.

(F) When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this paragraph.

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

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation as provided in clause (i), (ii), or (iii) as applicable, of subparagraph (D) of paragraph (2) of subdivision (c).

(C) (i) Multiple accessory dwelling units within the 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 unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) (i) Not more than two accessory dwelling units that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling and are subject to the applicable height limitation in clause (i), (ii), or (iii), as applicable, of subparagraph (D) of paragraph (2) of subdivision (c) and rear yard and side setbacks of no more than four feet.

(ii) If the existing multifamily dwelling has a rear or side setback of less than four feet, the local agency shall not require any modification of the existing multifamily dwelling as a condition of approving the application to construct an accessory dwelling unit that satisfies the requirements of this subparagraph.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing multifamily dwelling.

(4) A local agency may require owner-occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (8) of subdivision (a).

(5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose objective standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or

water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" 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. It shall include 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. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

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

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "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.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(7) "Objective standards" means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.

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

(9) "Permitting agency" means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.

(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.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2), a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

SEC. 2.5. Section 65852.2 of the Government Code, as amended by Section 1 of Chapter 343 of the Statutes of 2021, is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) Except as provided in Section 65852.26, the accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, except that the construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local 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 of the local 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. Nothing in this clause shall be interpreted to prevent a local agency from changing the occupancy code of a space that was unhabitable space or was only permitted for nonresidential use and was subsequently converted for residential use pursuant to this section.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) (A) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(B) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subparagraph (A), the permitting agency shall, within the time period described in subparagraph (A), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(4) The ordinance shall require that a demolition permit for a detached garage that is to be replaced with an accessory dwelling unit be reviewed with the application for the accessory dwelling unit and issued at the same time.

(5) The ordinance shall not require, and the applicant shall not be otherwise required, to provide written notice or post a placard for the

demolition of a detached garage that is to be replaced with an accessory dwelling unit, unless the property is located within an architecturally and historically significant historic district.

(6) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(7) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(8) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, except that, subject to subparagraphs (B) and (C), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

(B) (i) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit before January 1, 2025.

(ii) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit that was permitted between January 1, 2020, and January 1, 2025.

(C) Notwithstanding subparagraphs (A) and (B), a local agency may require that an accessory dwelling unit be used for rentals of terms longer than 30 days.

(9) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(10) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) (1) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create or serve an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the

application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create or serve a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create or serve the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved.

(2) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to paragraph (1), the permitting agency shall, within the time period described in paragraph (1), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(D) Any height limitation that does not allow at least the following, as applicable:

(i) A height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit.

(ii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit that 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 Section 21155 of the Public Resources Code. A local agency shall also allow an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit.

(iii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.

(iv) A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. This clause shall not require a local agency to allow an accessory dwelling unit to exceed two stories.

(d) Notwithstanding any other law, and whether or not the local agency has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), all of the following shall apply:

(1) The local agency shall not impose any parking standards for an accessory dwelling unit in any of the following instances:

(A) Where the accessory dwelling unit is located within one-half mile walking distance of public transit.

(B) Where the accessory dwelling unit is located within an architecturally and historically significant historic district.

(C) Where the accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(D) When onstreet parking permits are required but not offered to the occupant of the accessory dwelling unit.

(E) When there is a car share vehicle located within one block of the accessory dwelling unit.

(F) When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this paragraph.

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

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation as provided in clause (i), (ii), or (iii) as applicable, of subparagraph (D) of paragraph (2) of subdivision (c).

(C) (i) Multiple accessory dwelling units within the 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 unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) (i) Not more than two accessory dwelling units that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limitation in clause (i), (ii), or (iii), as applicable, of subparagraph (D) of paragraph (2) of subdivision (c) and rear yard and side setbacks of no more than four feet.

(ii) If the existing multifamily dwelling has a rear or side setback of less than four feet, the local agency shall not require any modification of the existing multifamily dwelling as a condition of approving the application to construct an accessory dwelling unit that satisfies the requirements of this subparagraph.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing multifamily dwelling.

(4) A local agency may require owner-occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (8) of subdivision (a).

(5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose objective standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling

unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section shall supersede a conflicting local ordinance. This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" 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. It shall include 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. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

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

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "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.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(7) "Objective standards" means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.

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

(9) "Permitting agency" means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.

(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.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of

Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2), a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

SEC. 3. Section 65852.2 of the Government Code, as amended by Section 2 of Chapter 343 of the Statutes of 2021, is repealed.

SEC. 4. Section 65852.22 of the Government Code is amended to read:

65852.22. (a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.

(2) Require owner-occupancy in the single family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the walls of the proposed or existing single-family residence. For purposes of this paragraph, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.

(5) (A) Require a permitted junior accessory dwelling unit to include a separate entrance from the main entrance to the proposed or existing single-family residence.

(B) If a permitted junior accessory dwelling unit does not include a separate bathroom, the permitted junior accessory dwelling unit shall include a separate entrance from the main entrance to the structure, with an interior entry to the main living area.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A cooking facility with appliances.

(B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine if the junior accessory dwelling unit complies with applicable building standards.

(c) (1) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. The permitting agency shall either approve or deny the application to create or serve a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create or serve a junior accessory dwelling unit is submitted with a permit application to create or serve a new single-family dwelling on the lot, the permitting agency may delay approving or denying the permit application for the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create or serve the new single-family dwelling, but the application to create or serve the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(2) If a permitting agency denies an application for a junior accessory dwelling unit pursuant to paragraph (1), the permitting agency shall, within the time period described in paragraph (1), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(d) A local agency shall not deny an application for a permit to create a junior accessory dwelling unit pursuant to this section due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and that are not affected by the construction of the junior accessory dwelling unit.

(e) For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county,

city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(f) For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(g) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation related to a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(h) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.

(i) For purposes of this section, the following terms have the following meanings:

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

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) "Permitting agency" means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.

SEC. 5. Section 65852.23 is added to the Government Code, to read:

65852.23. (a) Notwithstanding any other law, and except as otherwise provided in subdivision (b), a local agency shall not deny a permit for an unpermitted accessory dwelling unit that was constructed before January 1, 2018, due to either of the following:

(1) The accessory dwelling unit is in violation of building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code.

(2) The accessory dwelling unit does not comply with Section 65852.2 or any local ordinance regulating accessory dwelling units.

(b) Notwithstanding subdivision (a), a local agency may deny a permit for an accessory dwelling unit subject to subdivision (a) if the local agency makes a finding that correcting the violation is necessary to protect the health and safety of the public or occupants of the structure.

(c) The section shall not apply to a building that is deemed substandard pursuant to Section 17920.3 of the Health and Safety Code.

SEC. 6. Section 17980.12 of the Health and Safety Code is amended to read:

17980.12. (a) (1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:

(A) The accessory dwelling unit was built before January 1, 2020.

(B) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(2) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.

(3) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of a violation on the primary dwelling unit, provided that correcting the violation is not necessary to protect health and safety.

(4) The enforcement agency shall grant an application described in paragraph (2) if the enforcement agency determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.

(5) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (4).

(b) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2.

(c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

SEC. 7. Section 2.5 of this bill incorporates amendments to Section 65852.2 of the Government Code proposed by both this bill and Assembly Bill 2221. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2023, (2) each bill amends Section 65852.2 of the Government Code, and (3) this bill

is enacted after Assembly Bill 2221, in which case Section 2 of this bill shall not become operative.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

O

Assembly Bill No. 2221

CHAPTER 650

An act to repeal and amend Section 65852.2 of the Government Code, relating to land use.

[Approved by Governor September 28, 2022. Filed with Secretary of State September 28, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2221, Quirk-Silva. Accessory dwelling units.

The Planning and Zoning Law, among other things, provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions. Existing law requires a local ordinance to require an accessory dwelling unit to be either attached to, or located within, the proposed or existing primary dwelling, as specified, or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

This bill would specify that an accessory dwelling unit that is detached from the proposed or existing primary dwelling may include a detached garage.

Existing law requires a permitting agency to act on an application to create an accessory dwelling unit or a junior accessory dwelling unit within specified timeframes.

This bill would require a permitting agency to approve or deny an application to serve an accessory dwelling unit or a junior accessory dwelling unit within the same timeframes. If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit, the bill would require a permitting agency to return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant within the same timeframes. The bill would define "permitting agency" for its purposes.

Existing law authorizes a local agency to establish minimum and maximum unit size requirements for attached and detached accessory dwelling units, subject to certain exceptions, including that a local agency is prohibited from establishing limits on lot coverage, floor area ratio, open space, and minimum lot size, that do not permit the construction of at least an 800 square foot accessory dwelling unit, as specified.

This bill would additionally prohibit a local agency from establishing limits on front setbacks, as described above.

This bill would incorporate additional changes to Section 65852.2 of the Government Code proposed by SB 897 to be operative only if this bill and SB 897 are enacted and this bill is enacted last.

By imposing additional duties on local governments in the administration of the development of accessory dwelling units, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 65852.2 of the Government Code, as amended by Section 1 of Chapter 343 of the Statutes of 2021, is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) Except as provided in Section 65852.26, the accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) (A) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901

or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall approve or deny an application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create or serve a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create or serve the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation or service of an accessory dwelling unit.

(B) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subparagraph (A), the permitting agency shall, within the time period described in subparagraph (A), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(7) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is

located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(8) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, except that, subject to subparagraphs (B) and (C), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

(B) (i) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit before January 1, 2025.

(ii) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit that was permitted between January 1, 2020, and January 1, 2025.

(C) Notwithstanding subparagraphs (A) and (B), a local agency may require that an accessory dwelling unit be used for rentals of terms longer than 30 days.

(b) (1) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create or serve an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall either approve or deny the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create or serve the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved.

(2) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to paragraph (1), the permitting agency shall, within the time period described in subparagraph (1), return in writing a full set of comments to the applicant with a list of

items that are defective or deficient and a description of how the application can be remedied by the applicant.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When onstreet parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical

dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the 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 unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency may require owner-occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (8) of subdivision (a).

(5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including,

but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section shall supersede a conflicting local ordinance. This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" 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. It shall include 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. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

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

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "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.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

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

(8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(9) "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.

(10) "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.

(11) "Permitting agency" means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2), a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

SEC. 1.5. Section 65852.2 of the Government Code, as amended by Section 1 of Chapter 343 of the Statutes of 2021, is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) Except as provided in Section 65852.26, the accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or

a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, except that the construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local 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 of the local 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. Nothing in this clause shall be interpreted to prevent a local agency from changing the occupancy code of a space that was unhabitable space or was only permitted for nonresidential use and was subsequently converted for residential use pursuant to this section.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) (A) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family or multifamily dwelling on the

lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(B) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subparagraph (A), the permitting agency shall, within the time period described in subparagraph (A), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(4) The ordinance shall require that a demolition permit for a detached garage that is to be replaced with an accessory dwelling unit be reviewed with the application for the accessory dwelling unit and issued at the same time.

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

(6) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(7) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(8) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, except that, subject to subparagraphs (B) and (C), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

(B) (i) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit before January 1, 2025.

(ii) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit that was permitted between January 1, 2020, and January 1, 2025.

(C) Notwithstanding subparagraphs (A) and (B), a local agency may require that an accessory dwelling unit be used for rentals of terms longer than 30 days.

(9) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(10) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) (1) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create or serve an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create or serve a new single-family or multi-family dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create or serve the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved.

(2) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to paragraph (1), the permitting agency shall, within the time period described in subparagraph (1), return in writing a full set of comments to the applicant with a list of

items that are defective or deficient and a description of how the application can be remedied by the applicant.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(D) Any height limitation that does not allow at least the following, as applicable:

(i) A height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit.

(ii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit that 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 Section 21155 of the Public Resources Code. A local agency shall also allow an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit.

(iii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.

(iv) A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. This clause shall not require a local agency to allow an accessory dwelling unit to exceed two stories.

(d) Notwithstanding any other law, and whether or not the local agency has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), all of the following shall apply:

(1) The local agency shall not impose any parking standards for an accessory dwelling unit in any of the following instances:

(A) Where the accessory dwelling unit is located within one-half mile walking distance of public transit.

(B) Where the accessory dwelling unit is located within an architecturally and historically significant historic district.

(C) Where the accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(D) When onstreet parking permits are required but not offered to the occupant of the accessory dwelling unit.

(E) When there is a car share vehicle located within one block of the accessory dwelling unit.

(F) When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this paragraph.

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

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation as provided in clause (i), (ii), or (iii) as applicable, of subparagraph (D) of paragraph (2) of subdivision (c).

(C) (i) Multiple accessory dwelling units within the 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 unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) (i) Not more than two accessory dwelling units that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limitation in clause (i), (ii), or (iii), as applicable, of subparagraph (D) of paragraph (2) of subdivision (c) and rear yard and side setbacks of no more than four feet.

(ii) If the existing multifamily dwelling has a rear or side setback of less than four feet, the local agency shall not require any modification of the existing multifamily dwelling as a condition of approving the application to construct an accessory dwelling unit that satisfies the requirements of this subparagraph.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing multifamily dwelling.

(4) A local agency may require owner-occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (8) of subdivision (a).

(5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose objective standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including

water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section shall supersede a conflicting local ordinance. This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the

local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" 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. It shall include 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. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

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

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "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.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(7) "Objective standards" means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.

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

(9) "Permitting agency" means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.

(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.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2), a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

SEC. 2. Section 65852.2 of the Government Code, as amended by Section 2 of Chapter 343 of the Statutes of 2021, is repealed.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 65852.2 of the Government Code proposed by both this bill and Senate Bill 897. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2023, (2) each bill amends Section 65852.2 of the Government Code, and (3) this bill is enacted after Senate Bill 897, in which case Section 1 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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State of California

GOVERNMENT CODE

Section 65852.2

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose objective standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) Except as provided in Section 65852.26, the accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, except that the construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local 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 of the local 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. Nothing in this clause shall be interpreted to prevent a local agency from changing the occupancy code of a space that was unhabitable space or was only permitted for nonresidential use and was subsequently converted for residential use pursuant to this section.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) (A) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance

regulating the issuance of variances or special use permits. The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(B) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subparagraph (A), the permitting agency shall, within the time period described in subparagraph (A), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(4) The ordinance shall require that a demolition permit for a detached garage that is to be replaced with an accessory dwelling unit be reviewed with the application for the accessory dwelling unit and issued at the same time.

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

(6) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(7) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(8) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a

proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, except that, subject to subparagraphs (B) and (C), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

(B) (i) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit before January 1, 2025.

(ii) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit that was permitted between January 1, 2020, and January 1, 2025.

(C) Notwithstanding subparagraphs (A) and (B), a local agency may require that an accessory dwelling unit be used for rentals of terms longer than 30 days.

(9) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(10) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) (1) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create or serve an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create or serve an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create or serve a new single-family or multifamily dwelling on the lot, the permitting agency may delay approving or denying the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create or serve the new single-family or multifamily dwelling, but the application to create or serve the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not approved or denied the completed application within 60 days, the application shall be deemed approved.

(2) If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to paragraph (1), the permitting agency shall, within the time period described in paragraph (1), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(D) Any height limitation that does not allow at least the following, as applicable:

(i) A height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit.

(ii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit that 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 Section 21155 of the Public Resources Code. A local agency shall also allow an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit.

(iii) A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.

(iv) A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. This clause shall not require a local agency to allow an accessory dwelling unit to exceed two stories.

(d) Notwithstanding any other law, and whether or not the local agency has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), all of the following shall apply:

(1) The local agency shall not impose any parking standards for an accessory dwelling unit in any of the following instances:

(A) Where the accessory dwelling unit is located within one-half mile walking distance of public transit.

(B) Where the accessory dwelling unit is located within an architecturally and historically significant historic district.

(C) Where the accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(D) When onstreet parking permits are required but not offered to the occupant of the accessory dwelling unit.

(E) When there is a car share vehicle located within one block of the accessory dwelling unit.

(F) When a permit application for an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling or a new multifamily dwelling on the same lot, provided that the accessory dwelling unit or the parcel satisfies any other criteria listed in this paragraph.

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

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation as provided in clause (i), (ii), or (iii) as applicable, of subparagraph (D) of paragraph (2) of subdivision (c).

(C) (i) Multiple accessory dwelling units within the 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 unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) (i) Not more than two accessory dwelling units that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limitation in clause (i), (ii), or (iii), as applicable, of subparagraph (D) of paragraph (2) of subdivision (c) and rear yard and side setbacks of no more than four feet.

(ii) If the existing multifamily dwelling has a rear or side setback of less than four feet, the local agency shall not require any modification of the existing multifamily dwelling as a condition of approving the application to construct an accessory dwelling unit that satisfies the requirements of this subparagraph.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing multifamily dwelling.

(4) A local agency may require owner-occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (8) of subdivision (a).

(5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose objective standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square

feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section shall supersede a conflicting local ordinance. This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the

reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" 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. It shall include 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. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

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

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "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.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(7) "Objective standards" means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.

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

(9) "Permitting agency" means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.

(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.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(*l*) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2), a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(Amended (as amended by Stats. 2021, Ch. 343, Sec. 1) by Stats. 2022, Ch. 664, Sec. 2.5. (SB 897) Effective January 1, 2023.)

State of California

GOVERNMENT CODE

Section 65852.22

65852.22. (a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.

(2) Require owner-occupancy in the single family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the walls of the proposed or existing single-family residence. For purposes of this paragraph, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.

(5) (A) Require a permitted junior accessory dwelling unit to include a separate entrance from the main entrance to the proposed or existing single-family residence.

(B) If a permitted junior accessory dwelling unit does not include a separate bathroom, the permitted junior accessory dwelling unit shall include a separate entrance from the main entrance to the structure, with an interior entry to the main living area.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A cooking facility with appliances.

(B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine if the junior accessory dwelling unit complies with applicable building standards.

(c) (1) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. The permitting agency shall either approve or deny the application to create or serve a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create or serve a junior accessory dwelling unit is submitted with a permit application to create or serve a new single-family dwelling on the lot, the permitting agency may delay approving or denying the permit application for the junior accessory dwelling unit until the permitting agency approves or denies the permit application to create or serve the new single-family dwelling, but the application to create or serve the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(2) If a permitting agency denies an application for a junior accessory dwelling unit pursuant to paragraph (1), the permitting agency shall, within the time period described in paragraph (1), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

(d) A local agency shall not deny an application for a permit to create a junior accessory dwelling unit pursuant to this section due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and that are not affected by the construction of the junior accessory dwelling unit.

(e) For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(f) For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(g) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation related to a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all

single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(h) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.

(i) For purposes of this section, the following terms have the following meanings:

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

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) "Permitting agency" means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.

(Amended by Stats. 2022, Ch. 664, Sec. 4. (SB 897) Effective January 1, 2023.)

Cal. Gov. Code § 65852.23

Section 65852.23 - Unpermitted accessory dwelling units constructed before January 1, 2018

(a) Notwithstanding any other law, and except as otherwise provided in subdivision (b), a local agency shall not deny a permit for an unpermitted accessory dwelling unit that was constructed before January 1, 2018, due to either of the following:

(1) The accessory dwelling unit is in violation of building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code.

(2) The accessory dwelling unit does not comply with Section 65852.2 or any local ordinance regulating accessory dwelling units.

(b) Notwithstanding subdivision (a), a local agency may deny a permit for an accessory dwelling unit subject to subdivision (a) if the local agency makes a finding that correcting the violation is necessary to protect the health and safety of the public or occupants of the structure.

(c) The section shall not apply to a building that is deemed substandard pursuant to Section 17920.3 of the Health and Safety Code.

Ca. Gov. Code § 65852.23

Added by Stats 2022 ch 664 (SB 897),s 5, eff. 1/1/2023.

State of California

GOVERNMENT CODE

Section 65852.26

65852.26. (a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency shall allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

(1) The accessory dwelling unit or the primary dwelling was built or developed by a qualified nonprofit corporation.

(2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

(3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

(A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling that each qualified buyer occupies.

(B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the accessory dwelling unit or primary dwelling if the buyer desires to sell or convey the property.

(C) A requirement that the qualified buyer occupy the accessory dwelling unit or primary dwelling as the buyer's principal residence.

(D) Affordability restrictions on the sale and conveyance of the accessory dwelling unit or primary dwelling that ensure the accessory dwelling unit and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.

(E) If the tenancy in common agreement is recorded after December 31, 2021, it shall also include all of the following:

(i) Delineation of all areas of the property that are for the exclusive use of a cotenant. Each cotenant shall agree not to claim a right of occupancy to an area delineated for the exclusive use of another cotenant, provided that the latter cotenant's obligations to each of the other cotenants have been satisfied.

(ii) Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property. This delineation shall only be binding on the parties to the agreement, and shall not supersede or obviate the liability, whether joint and several or otherwise, of the parties for any cost, obligation, or liability associated with the property where such liability is otherwise established by law or by agreement with a third party.

(iii) Procedures for dispute resolution among the parties before resorting to legal action.

(4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

(5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.

(b) For purposes of this section, the following definitions apply:

(1) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

(2) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

(Amended by Stats. 2021, Ch. 343, Sec. 3. (AB 345) Effective January 1, 2022.)

DIVISION 7. ACCESSORY DWELLING UNITS[1]

Sec. 29.10.305. Intent and authority.

This division is adopted to comply with amendments to Government Code §§ 65852.2 and 65852.22 which mandate that applications for accessory dwelling units be considered ministerially without a public hearing; and sets Town standards for the development of accessory dwelling units in order to increase the supply of affordable housing in a manner that is compatible with existing neighborhoods.

(Ord. No. 2270, § I, 2-6-18 ; Ord. No. 2307 , § I, 4-21-20)

Sec. 29.10.310. Definitions.

Accessory dwelling unit. An accessory dwelling unit is a detached or attached dwelling unit. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation and is generally smaller and located on the same parcel as a proposed or existing primary dwelling. An accessory dwelling unit also includes efficiency units and manufactured homes.

(1) A detached accessory dwelling unit is physically separate from a primary dwelling.

(2) An attached accessory dwelling unit is contained within the space of and/or physically attached to a proposed or existing primary dwelling.

Efficiency unit. As defined by Section 17958.1 of the Health and Safety Code.

Junior accessory dwelling unit. A junior accessory dwelling unit is a dwelling unit that does not exceed a floor area of five hundred (500) square feet and is contained within the space of a proposed or existing primary dwelling or detached accessory dwelling unit. It shall include a cooking facility with appliances, and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit. If the junior accessory dwelling unit is contained within the proposed or existing space of a primary dwelling, it may include separate sanitation facilities, or it may share sanitation facilities with the primary dwelling. If the junior accessory dwelling unit is contained within the proposed or existing space of a detached accessory dwelling unit, it shall include separate sanitation facilities.

Manufactured home. As defined by Section 18007 of the Health and Safety Code.

Nonconforming accessory dwelling units. A nonconforming accessory dwelling unit is an accessory dwelling unit that exists under the following circumstances:

(1) A unit which was created or converted lawfully but which due to a zone change or an amendment to the zoning ordinance, has become nonconforming.

(2) A unit which was created lawfully while within the County, but which upon annexation to the Town, became nonconforming.

(Ord. No. 2270, § I, 2-6-18 ; Ord. No. 2307 , § I, 4-21-20)

[1]Editor's note(s)—Ord. No. 2270, § I, adopted Feb. 6, 2018, repealed the former Div. 7, §§ 29.10.305—29.10.335 and enacted new Div. 7, §§ 29.10.305 through 29.10.330. Former §§ 29.10.305—29.10.335. The former Div. 7 pertained to second dwelling units and derived from Ord. No. 2115, § I, 9-15-03.

Sec. 29.10.315. Reserved.

Sec. 29.10.320. New accessory dwelling units.

(a) *Incentive program.* Any accessory dwelling unit developed under an Incentive Program which may be established by Resolution of the Town Council shall be made affordable to eligible applicants pursuant to the requirements of the Incentive Program. A deed restriction shall be recorded specifying that the accessory dwelling unit shall be offered at a reduced rent that is affordable to a lower income renter (less than eighty (80) percent AMI) provided that the unit is occupied by someone other than a member of the household occupying the primary dwelling.

(b) *Design and development standards.*

(1) *Number.* Not more than one (1) junior accessory dwelling unit contained within the space of a proposed or existing primary dwelling or detached accessory dwelling unit, and one (1) accessory dwelling unit, may be permitted on a lot with a proposed or existing primary dwelling.

Not more than a number equal to twenty-five (25) percent of the existing multi-family dwelling units rounded-up to the next whole number, within the portions of an existing multi-family dwelling not used as livable space, and two (2) detached accessory dwelling units, may be permitted on a lot with a proposed or existing multi-family dwelling.

(2) *Permitted zones.* Accessory dwelling units are allowed on lots in the R-1, R-D, R-M, R-1D, RMH, HR, and RC zones, or include an existing primary dwelling.

(3) *Setbacks.*

No accessory dwelling unit may be constructed in front of a primary dwelling that is a historic resource.

No detached accessory dwelling unit may be placed in front of the primary dwelling in the R-1, R-D, R-M, RMH, and R-1D zones.

Accessory dwelling units shall comply with the following minimum setbacks:

a. Front setbacks of the zone for a primary dwelling.

b. Rear and side setbacks of four (4) feet in the R-1, R-D, R-M, RMH, and R-1D zones.

c. Setbacks from any other structure located on the same lot of five (5) feet.

d. Setbacks for a primary dwelling and located within the Least Restrictive Development Area (LRDA), in the HR and RC zones.

(4) *Height.* Accessory dwelling units shall not exceed one (1) story and shall not exceed sixteen (16) feet in height, unless the accessory dwelling unit is contained within the existing second story space of a primary dwelling or accessory structure; added to an existing second story of a primary dwelling that is not a historic resource; or added directly above an existing one-story accessory structure on a property with an existing two-story primary dwelling in the R-1, R-D, R-M, RMH, and R-1D zones.

(5) *Maximum unit size and maximum number of bedrooms.* The maximum floor area of an accessory dwelling unit is one thousand two hundred (1,200) square feet. The maximum number of bedrooms is two (2).

Detached accessory dwelling units exceeding a combined square footage of four hundred fifty (450) square feet in the R-1, R-D, R-M, RMH, and R-1D zones shall not be subject to the Administrative Procedure for Minor Residential Projects. Detached accessory dwelling units exceeding a combined square footage of six hundred (600) or one thousand (1,000) square feet in the HR and RC zones shall not be subject to Development Review Committee or Planning Commission approval.

(6) *Floor area ratio (FAR) standards.* All accessory dwelling units (attached or detached) are allowed a ten (10) percent increase in the floor area ratio standards for all structures, excluding garages; except, notwithstanding the FAR standards in this subsection, an accessory dwelling unit that does not exceed a floor area of eight hundred (800) square feet shall be permitted.

(7) *Lot coverage.* Accessory dwelling units must comply with lot coverage maximums for the zone; except, notwithstanding the lot coverage standards in this subsection, an accessory dwelling unit that does not exceed a floor area of eight hundred (800) square feet shall be permitted.

(8) *Parking.* One (1) accessory dwelling unit parking space per unit or bedroom, whichever is less, shall be provided in addition to the required minimum number of parking spaces for the primary dwelling. These spaces may be provided in a front or side setback abutting a street on a driveway (provided that it is feasible based on specific site or fire and life safety conditions) or through tandem parking. In addition to parking otherwise required for units as set forth in section 29.10.150 of the Town Code, the number of off-street parking spaces required by this chapter for the primary dwelling shall be provided prior to the issuance of a building permit or final inspection, for a new accessory dwelling unit. When a garage is demolished in conjunction with the construction of an accessory dwelling unit, or converted to an accessory dwelling unit, any lost off-street parking spaces required for the primary dwelling shall not be required to be replaced.

a. *Exceptions.* No parking space shall be required if the accessory dwelling unit meets any of the following criteria:

1. The accessory dwelling unit is located within one-half mile walking distance of a public transit stop.

2. The accessory dwelling unit is located within an architecturally and historically significant historic district.

3. The accessory dwelling unit or junior accessory dwelling unit is contained within the existing space of or constructed in substantially the same location and manner as an existing primary dwelling or accessory structure.

4. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

5. When there is a car share vehicle (as defined by the California Vehicle Code) located within one (1) block of the accessory dwelling unit.

6. When the Director finds that the lot does not have adequate area to provide parking.

(9) *Design, form, materials, and color.* The design, form, roof pitch, materials, and color of a new accessory dwelling unit shall be compatible with the primary dwelling and the neighborhood. Entrances serving the accessory dwelling unit shall not be constructed on any elevation facing a public street. Accessory dwelling units shall retain the residential appearance of the property. Detached junior accessory dwelling units shall be

(10) *Town codes and ordinances.* All accessory dwelling units shall comply with all the provisions of this chapter and other applicable Town codes.

(11) *Building codes.* The accessory dwelling unit shall comply with applicable building, health and fire codes. The accessory dwelling unit shall not be required to provide fire sprinklers if they are not required for the primary dwelling.

(12) *Denial.* An application may be denied if it does not meet the design and development standards. An application may also be denied if the following findings are made:

a. Adverse impacts on health, safety, and/or welfare of the public.

Current Ordinance

(13) *Conversion of existing floor area.* An accessory dwelling unit shall be permitted if the accessory dwelling unit is contained within the existing space of or constructed in substantially the same location and manner as an existing primary dwelling or accessory structure. The following provisions shall apply:

a. The accessory dwelling unit shall be located on a lot zoned to allow single-family, two-family, or multi-family residential use.

b. The accessory dwelling unit shall have separate entrance from the primary dwelling.

c. The accessory dwelling unit shall have existing side and rear setbacks sufficient for fire safety.

d. No parking spaces shall be required for the accessory dwelling unit.

e. An expansion of one hundred fifty (150) square feet beyond the physical dimensions of an existing structure, limited to accommodating ingress and egress, shall be permitted.

f. When an existing structure is non-conforming as to setback standards and converted to an accessory dwelling unit, any expansion of that structure may not be nearer to a property line than the existing building in accordance with section 29.10.245.

(14) *Rentals longer than 30 days*. Rentals for durations of less than thirty (30) days, including short-term rentals (as defined by the California Government Code), are prohibited.

(15) *Maximum number of dogs, cats, or litters*. All accessory dwelling units shall comply with Section 4.40.010 of the Town code.

(Ord. No. 2270, § I, 2-6-18 ; Ord. No. 2307 , § I, 4-21-20)

Sec. 29.10.325 Nonconforming units.

(a) *Permits*. The owner of a nonconforming accessory dwelling unit must obtain an accessory dwelling unit permit. Any application received after December 31, 1987, shall be subject to an application fee and may be subject to a civil penalty pursuant to Section 29.20.960(4).

Where an application has been submitted for a nonconforming accessory dwelling unit permit and Town records do not establish its nonconforming status, the property owner will have sixty (60) days from the date the Town provides notice of its findings to submit any facts and evidence to support a claim that the unit is nonconforming as defined in this Article. If at the end of sixty (60) days evidence has not been submitted by the property owner to establish the accessory dwelling unit is nonconforming to the satisfaction of the Community Development Director, the unit shall be determined to be an existing unlawful accessory dwelling unit pursuant to section 29.10.315 and subject to its regulations.

(b) *Units existing at time of annexation*. Upon annexation a lawful accessory dwelling unit shall become nonconforming and the owner must either apply for an accessory dwelling unit permit within one (1) year of the date of annexation, or the unit shall be determined to be an unlawful accessory dwelling unit pursuant to section 29.10.315.

(c) *Number*. A maximum of two (2) nonconforming accessory dwelling units are allowed on a single lot. All other accessory dwelling units on the property must be abated.

(d) *Housing code*. Nonconforming accessory dwelling units shall comply with the Town's housing code as follows:

(1) Any nonconforming accessory dwelling unit receiving an accessory dwelling unit permit pursuant to subsection (b) shall be required to comply with the Town housing code.

(2) Any nonconforming accessory dwelling unit receiving an accessory dwelling unit permit pursuant to subsection (c) shall be required to comply with the Town housing code and all improvements shall be completed within one (1) year from the date of application.

(3) Where a timely application under subsection (b) or subsection (c) has been filed, and approved, an extension from the compliance date of up to six (6) months may be granted by the Community Development Department for good cause shown. Any extension request for longer than six (6) months may be granted by the Planning Commission upon finding that a hardship exists.

(4) Remodeling and reconstruction: Remodeling and reconstruction of nonconforming accessory dwelling units shall be as follows:

a. Where a timely application under subsection (a) or subsection (b) has been filed and approved, an accessory dwelling unit may be remodeled providing the building height and floor area do not exceed that which is allowed for a new accessory dwelling unit.

b. Community Development Director approval is required for the remodeling or reconstruction of an accessory dwelling unit in the case of destruction. The proposed construction shall be designed so as to architecturally harmonize with the surrounding structures so long as the construction does not increase the height or size of the unit. The factors to be considered when reviewing the design of such proposed construction include:

1. Building height.
2. Building materials and compatibility.
3. Colors and materials.
4. Setback conformity.
5. Floor area ratio.

(Ord. No. 2270, § I, 2-6-18)

Sec. 29.10.330. Elimination and/or demolition of existing accessory dwelling units.

In order to eliminate and/or demolish, without replacement, an approved accessory dwelling unit, the Development Review Committee shall make the finding that the proposed elimination and/or demolition, (without replacement), is consistent with the Town's Housing Element of the General Plan. In order to eliminate and/or demolish an existing accessory dwelling unit, the Development Review Committee must make the demolition findings pursuant to section 29.10.09030.

(Ord. No. 2270, § I, 2-6-18)

Sec. 29.10.335. Expansion of existing or nonconforming accessory dwelling units.

For the purposes of this section only, expansion of an accessory dwelling unit is defined as increasing the number of bedrooms or adding floor area in excess of thirty (30) square feet. Requests for expansion of any nonconforming accessory dwelling unit shall be subject to the same requirements as a new accessory dwelling unit.

(Ord. No. 2270, § I, 2-6-18)

Secs. 29.10.340—29.10.400. Reserved.

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DIVISION 7. ACCESSORY DWELLING UNITS[1]

Sec. 29.10.305. Intent and authority.

This division is adopted to comply with amendments to Government Code §§ 65852.2 and 65852.22 which mandate that applications for accessory dwelling units be considered ministerially without a public hearing; and sets Town standards for the development of accessory dwelling units in order to increase the supply of affordable housing in a manner that is compatible with existing neighborhoods. (Section 29.10.305)

(Ord. No. 2270, § I, 2-6-18 ; Ord. No. 2307 , § I, 4-21-20)

Sec. 29.10.310. Definitions.

(Section 29.10.310)

Accessory dwelling unit. ~~An accessory dwelling unit is~~ a detached or attached dwelling unit. It shall ~~include~~ permanent provisions for living, sleeping, eating, cooking, and sanitation ~~and is generally smaller and located on the same parcel as a proposed or existing primary dwelling.~~ An accessory dwelling unit also includes efficiency units and manufactured homes.

(1) A detached accessory dwelling unit is physically separate from a primary dwelling.

(2) An attached accessory dwelling unit is contained within the space of and/or physically attached to a proposed or existing primary dwelling.

Efficiency unit. ~~A~~s defined by Section 17958.1 of the Health and Safety Code.

Junior accessory dwelling unit~~. A junior accessory dwelling unit is~~ a dwelling unit that does not exceed a floor area of five hundred (500) square feet and is contained within the space of a proposed or existing ~~primary dwelling or detached accessory dwelling unit. It shall include a cooking facility with appliances, and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit. If the junior accessory dwelling unit is contained within the proposed or existing space of a primary dwelling, it may include separate sanitation facilities, or it may share sanitation facilities with the primary dwelling. If the junior accessory dwelling unit is contained within the proposed or existing space of a detached accessory dwelling unit, it shall include separate sanitation facilities.~~

Manufactured home. ~~A~~s defined by Section 18007 of the Health and Safety Code.

Nonconforming accessory dwelling units~~. A nonconforming accessory dwelling unit is an accessory dwelling~~ unit that exists under the following circumstances:

(1) A unit which was created or converted lawfully but which due to a zone change or an amendment to the zoning ordinance, has become nonconforming.

(2) A unit which was created lawfully while within the County, but which upon annexation to the Town, became nonconforming.

(Ord. No. 2270, § I, 2-6-18 ; Ord. No. 2307 , § I, 4-21-20)

Sec. 29.10.315. Reserved.

Sec. 29.10.320. New accessory dwelling units.

(a) *Incentive program.* Any accessory dwelling unit developed under an Incentive Program which may be established by Resolution of the Town Council shall be made affordable to eligible applicants pursuant to the requirements of the Incentive Program. A deed restriction shall be recorded specifying that the accessory dwelling unit shall be offered at a reduced rent that is affordable to a lower income renter (less than eighty (80) percent AMI) provided that the unit is occupied by someone other than a member of the household occupying the primary dwelling. [Section 29.10.320 (a)]

(b) *Design and development standards.*

(1) *Number.* Not more than one (1) junior accessory dwelling unit contained within the space of a proposed or existing primary dwelling or detached accessory dwelling unit, and one (1) accessory dwelling unit, may be permitted on a lot with a proposed or existing primary dwelling. [Section 29.10.320 (c)]

Not more than a number equal to twenty-five (25) percent of the existing multi-family dwelling units rounded-up to the next whole number, within the portions of an existing multi-family dwelling not used as livable space, and two (2) detached accessory dwelling units, may be permitted on a lot with a proposed or existing multi-family dwelling. [Section 29.10.320 (c)]

(2) *Permitted zones*. ~~Accessory dwelling units are allowed on lots in the R-1, R-D, R-M, R-1D, RMH, HR, and RC zones, or include an existing primary dwelling.~~ [Section 29.10.320 (b)(1)]

(3) *Setbacks.* [Section 29.10.325 (b)]

No accessory dwelling unit may be constructed in front of a primary dwelling that is a historic resource.

No detached accessory dwelling unit may be placed in front of the primary dwelling ~~in the R-1, R-D, R-M, RMH, and R-1D zones.~~

Accessory dwelling units shall comply with the following minimum setbacks:

a. Front setbacks of the zone for a primary dwelling.

b. Rear and side setbacks of four (4) feet ~~in the R-1, R-D, R-M, RMH, and R-1D zones.~~

c. Setbacks from any other structure located on the same lot of five (5) feet.

~~d. Setbacks for a primary dwelling and located within the Least Restrictive Development Area (LRDA), in the HR and RC zones.~~

(4) *Height.* ~~Accessory dwelling units shall not exceed one (1) story and shall not exceed sixteen (16) feet in height, unless the accessory dwelling unit is contained within the existing second story space of a primary dwelling or accessory structure;~~ added to an existing second story of a primary dwelling that is not a historic resource; or added directly above an existing one-story accessory structure on a property with an existing two-story primary dwelling in the R-1, R-D, R-M, RMH, and R-1D zones. [Section 29.10.325 (a)]

(5) *Maximum unit size* ~~*and maximum number of bedrooms.*~~ The maximum floor area of an accessory dwelling unit is one thousand two hundred (1,200) square feet. ~~The maximum number of bedrooms is two (2).~~ [Section 29.10.325 (c)]

Detached accessory dwelling units exceeding a combined square footage of four hundred fifty (450) square feet in the R-1, R-D, R-M, RMH, and R-1D zones shall not be subject to the Administrative Procedure for Minor Residential Projects. Detached accessory dwelling units exceeding a combined square footage of six hundred (600) or one thousand (1,000) square feet in the HR and RC zones shall

not be subject to Development Review Committee or Planning Commission approval. [Section 29.10.320 (c)]

(6) *Floor area ratio (FAR) standards.* All accessory dwelling units (attached or detached) are allowed a ten (10) percent increase in the floor area ratio standards for all structures, excluding garages; *except, notwithstanding the FAR standards in this subsection, an accessory dwelling unit that does not exceed a floor area of eight hundred (800) square feet shall be permitted*. [Section 29.10.320 (d)]

~~(7) *Lot coverage.* Accessory dwelling units must comply with lot coverage maximums for the zone; except, notwithstanding the lot coverage standards in this subsection, an accessory dwelling unit that does not exceed a floor area of eight hundred (800) square feet shall be permitted.~~

(8) *Parking.* One (1) accessory dwelling unit parking space per unit or bedroom, whichever is less, shall be provided in addition to the required minimum number of parking spaces for the primary dwelling. These spaces may be provided in a front or side setback abutting a street on a driveway (provided that it is feasible based on specific site or fire and life safety conditions) or through tandem parking. In addition to parking otherwise required for units as set forth in section 29.10.150 of the Town Code, the number of off-street parking spaces required by this chapter for the primary dwelling shall be provided prior to the issuance of a building permit or final inspection, for a new accessory dwelling unit. When a garage is demolished in conjunction with the construction of an accessory dwelling unit, or converted to an accessory dwelling unit, any lost off-street parking spaces required for the primary dwelling shall not be required to be replaced. [Section 29.10.320 (f)]

a. *Exceptions.* No parking space shall be required if the accessory dwelling unit meets any of the following criteria:

1. The accessory dwelling unit is located within one-half mile walking distance of a public transit stop.
2. The accessory dwelling unit is located within an architecturally and historically significant historic district.
3. The accessory dwelling unit or junior accessory dwelling unit is contained within the existing space of or constructed in substantially the same location and manner as an existing primary dwelling or accessory structure.
4. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
5. When there is a car share vehicle (as defined by the California Vehicle Code) located within one (1) block of the accessory dwelling unit.
6. When the Director finds that the lot does not have adequate area to provide parking.

~~(9) *Design, form, materials, and color.* The design, form, roof pitch, materials, and color of a new accessory dwelling unit shall be compatible with the primary dwelling and the neighborhood. Entrances serving the accessory dwelling unit shall not be constructed on any elevation facing a public street. Accessory dwelling units shall retain the residential appearance of the property. Detached junior accessory dwelling units shall be~~

(10) *Town codes and ordinances.* All accessory dwelling units shall comply with all the provisions of this chapter and other applicable Town codes. [Section 29.10.320 (p)]

(11) *Building codes.* The accessory dwelling unit shall comply with applicable building, health and fire codes. The accessory dwelling unit shall not be required to provide fire sprinklers if they are not required for the primary dwelling. [Section 29.10.320 (q)]

(12) *Denial.* An application may be denied if it does not meet the design and development standards. An application may also be denied if the following findings are made: [Section 29.10.315 (c)]

a. Adverse impacts on health, safety, and/or welfare of the public.

(13) *Conversion of existing floor area.* An accessory dwelling unit shall be permitted if the accessory dwelling unit is contained within the existing space of or constructed in substantially the same location and manner as an existing primary dwelling or accessory structure. The following provisions shall apply:

[Section 29.10.325 (i)]

a. The accessory dwelling unit shall be located on a lot zoned to allow single-family, two-family, or multi-family residential use.

b. The accessory dwelling unit shall have separate entrance from the primary dwelling.

c. The accessory dwelling unit shall have existing side and rear setbacks sufficient for fire safety.

d. No parking spaces shall be required for the accessory dwelling unit.

e. An expansion of one hundred fifty (150) square feet beyond the physical dimensions of an existing structure, limited to accommodating ingress and egress, shall be permitted.

f. When an existing structure is non-conforming as to setback standards and converted to an accessory dwelling unit, any expansion of that structure may not be nearer to a property line than the existing building in accordance with section 29.10.245.

(14) *Rentals longer than 30 days*. Rentals for durations of less than thirty (30) days, including short-term rentals (as defined by the California Government Code), are prohibited. [Section 29.10.320 (s)]

(15) *Maximum number of dogs, cats, or litters*. All accessory dwelling units shall comply with Section 4.40.010 of the Town code. [Section 29.10.320 (t)]

(Ord. No. 2270, § I, 2-6-18 ; Ord. No. 2307 , § I, 4-21-20)

Sec. 29.10.325 Nonconforming units.

(a) ~~*Permits*~~. The owner of a nonconforming accessory dwelling unit must obtain a~~n accessory dwelling unit~~ permit. ~~Any application received after December 31, 1987, shall be subject to an application fee and may be subject to a civil penalty pursuant to Section 29.20.960(4).~~

Where an application has been submitted for a nonconforming accessory dwelling unit permit and Town records do not establish its nonconforming status, the property owner will have sixty (60) days from the date the Town provides notice of its findings to submit any facts and evidence to support a claim that the unit is nonconforming as defined in this Article. If at the end of sixty (60) days evidence has not been submitted by the property owner to establish the accessory dwelling unit is nonconforming to the satisfaction of the Community Development Director, the unit shall be determined to be an existing unlawful accessory dwelling unit pursuant to section 29.10.315 and subject to its regulations. [Section 29.10.340 (a)]

(b) *Units existing at time of annexation*. Upon annexation a lawful accessory dwelling unit shall become nonconforming and the owner must either apply for a~~n accessory dwelling unit~~ permit within one (1) year of the date of annexation~~, or the unit shall be determined to be an unlawful accessory dwelling unit pursuant to section 29.10.315.~~ [Section 29.10.340 (b)]

~~(c) *Number*. A maximum of two (2) nonconforming accessory dwelling units are allowed on a single lot. All other accessory dwelling units on the property must be abated.~~

~~(d) *Housing code*. Nonconforming accessory dwelling units shall comply with the Town's housing code as follows:~~

~~(1) Any nonconforming accessory dwelling unit receiving an accessory dwelling unit permit pursuant to subsection (b) shall be required to comply with the Town housing code.~~

~~(2) Any nonconforming accessory dwelling unit receiving an accessory dwelling unit permit pursuant to subsection (c) shall be required to comply with the Town housing code and all improvements shall be completed within one (1) year from the date of application.~~

~~(3) Where a timely application under subsection (b) or subsection (c) has been filed, and approved, an extension from the compliance date of up to six (6) months may be granted by the Community Development Department for good cause shown. Any extension request for longer than six (6) months may be granted by the Planning Commission upon finding that a hardship exists.~~

~~(4) Remodeling and reconstruction: Remodeling and reconstruction of nonconforming accessory dwelling units shall be as follows:~~

~~a. Where a timely application under subsection (a) or subsection (b) has been filed and approved, an accessory dwelling unit may be remodeled providing the building height and floor area do not exceed that which is allowed for a new accessory dwelling unit.~~

~~b. Community Development Director approval is required for the remodeling or reconstruction of an accessory dwelling unit in the case of destruction. The proposed construction shall be designed so as to architecturally harmonize with the surrounding structures so long as the construction does not increase the height or size of the unit. The factors to be considered when reviewing the design of such proposed construction include:~~

~~1. Building height.~~

~~2. Building materials and compatibility.~~

~~3. Colors and materials.~~

~~4. Setback conformity.~~

~~5. Floor area ratio.~~

(Ord. No. 2270, § I, 2-6-18)

Sec. 29.10.330. Elimination and/or demolition of existing accessory dwelling units.

In order to eliminate and/or demolish, without replacement, an approved accessory dwelling unit, the Development Review Committee shall make the finding that the proposed elimination and/or demolition, (without replacement), is consistent with the Town's Housing Element of the General Plan. In order to eliminate and/or demolish an existing accessory dwelling unit, the Development Review Committee must make the demolition findings pursuant to section 29.10.09030. (Section 29.10.350)

(Ord. No. 2270, § I, 2-6-18)

~~Sec. 29.10.335. Expansion of existing or nonconforming accessory dwelling units.~~

~~For the purposes of this section only, expansion of an accessory dwelling unit is defined as increasing the number of bedrooms or adding floor area in excess of thirty (30) square feet. Requests for expansion of any nonconforming accessory dwelling unit shall be subject to the same requirements as a new accessory dwelling unit.~~

(Ord. No. 2270, § I, 2-6-18)

Secs. 29.10.340—29.10.400. Reserved.

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TOWN OF LOS GATOS CALIFORNIA

COUNCIL POLICY MANUAL

Small Town Service *Community Stewardship* *Future Focus*

TITLE: Transportation Impact Policy	**POLICY NUMBER**: 1-08
EFFECTIVE DATE: January 4, 1988	**PAGES:** 37
ENABLING ACTIONS: 1991-174; 2014-017, 2016-068; 2017-011	**REVISED DATES**: 8/5/91; 3/24/14; 12/6/16; 3/21/17; 12/07/2021

APPROVED: DocuSigned by: Marico Sayoc 17D41F4DB5F744F...

PURPOSE

To provide guidance to Town staff and the development community in implementing the provisions of the Town Municipal Code, Chapter 15, Article VII, Traffic Impact Mitigation Fees, and evaluating and mitigating California Environmental Quality Act (CEQA) transportation impacts.

SCOPE

This Policy is applicable to all land use entitlements, land use projects, and transportation improvements Town-wide.

POLICY

I. GENERAL CONDITIONS AND APPLICABILITY

1. Projects that are determined by the Town to generate one or more new net Average Daily Trips (ADT) are subject to this Policy.

2. An Accessory Dwelling Unit (ADU) shall be exempted from the requirements of Transportation Analysis and the Traffic Impact Fees.

3. The Town Council may exempt housing developments for very low, low, and moderate income residents (as defined by Town Ordinance, General Plan, or statute) from all or a portion of the traffic impact mitigation fee upon making a finding that the development provides a significant community benefit by meeting current needs for affordable housing.

4. Attachment 1 - Transportation Analysis (TA) Guidelines establish a process to comprehensively and accurately analyze potential project effects (adverse and beneficial) on transportation facilities and services in the Town of Los Gatos and other jurisdictions. The TA Guidelines serve three primary purposes:

   - Provide an evaluation for the California Environmental Quality Act (CEQA) significant impacts and mitigation as a part of the environmental analysis process.
   - Evaluate a project's consistency with the Town's General Plan.
   - Evaluate a project's consistency with the Santa Clara County Congestion Management Program (CMP).

II. TRANSPORTATION IMPACT FEES

1. All Projects that generate one or more new Average Daily Trips are required to pay Transportation Impact Fees, previously known as Traffic Impact Mitigation Fees.

2. All required Transportation Impact Fees shall be paid in full to the Town in association with and prior to issuance of a building permit. If no building permit is required, the fee shall be paid in full prior to issuance of a certificate of use and occupancy, or similar entitlement. The amount due shall be calculated based on the fee in place as approved by the Town Council by resolution at the time the fee is paid.

3. The per trip amount of the fee shall be as set forth by the Town Council by resolution, pursuant to Town Municipal Code, Chapter 15, Article VII, Traffic Impact Mitigation Fees.

4. Fees shall be calculated by multiplying net new ADT by the per trip amount in place at the time the fees are paid.

5. Credit against Transportation Impact Fees due shall be granted up to the amount of the Estimated Project Cost shown on Attachment 2, Town of Los Gatos Traffic Mitigation Improvements Project List, for any listed projects for which the developer, as a condition of approval, is required to either construct at the developer's sole cost or contribute a fixed or percentage amount of funding toward future construction of the listed improvement. Where construction is fully funded and completed by the developer, said credit shall be equal to the Project Cost as shown in Attachment 2. Where payment is a fixed amount or a percentage of Project Cost, credit shall be equal to the actual amount due, whether the project is constructed by the developer or others.

6. No credit shall be given for any public right-of-way dedication required for completion of projects listed on Attachment 2.

7. Credit will be given on a case-by-case basis and shall not exceed the impact fee payable. Any request for credit shall be made prior to the payment of the Transportation Impact Fees. No credit shall be given for installation of Town-standard frontage improvements, Project access improvements, or internal circulation improvements.

8. Credit shall only be granted for payment of costs or construction of projects listed in Attachment 2, unless otherwise approved by the Town Council.

III. VEHICLE MILES TRAVELLED MITIGATION MEASURES

1. To mitigate VMT impacts, the project shall be conditioned for implementation of mitigation measures in the following categories:
   - Modify the project's built environment characteristics to reduce VMT generated by the project;
   - Implement transportation Demand Management (TDM) measures to reduce VMT generated by the project; and/or
   - Participate in a VMT fee program and/or VMT mitigation exchange/banking program (if they exist) to reduce VMT from the project or other land uses to achieve acceptable levels.

2. The Town is taking a Townwide approach for VMT impact mitigation. Attachment 3, VMT Reduction Actions for the Town of Los Gatos, provides a framework for mitigating VMT in the Town.

APPROVED AS TO FORM:

DocuSigned by:
Robert W. Schultz
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Robert Schultz, Town Attorney

Town of Los Gatos
Transportation Analysis Guidelines

Table of Contents

1. Introduction

Transportation Analysis (TA) Guidelines are routinely established by jurisdictions to assess potential transportation effects of proposed projects on the local transportation system. These guidelines are intended to provide a clear and consistent technical approach to evaluating both land use and transportation infrastructure projects within Los Gatos.

These guidelines establish a process to comprehensively and accurately analyze potential project effects (adverse and beneficial) on transportation facilities and services in the Town of Los Gatos and other jurisdictions. This information is essential for decision-makers and the public when evaluating land use development and transportation infrastructure projects. These TA Guidelines serve three primary purposes:

- Provide an evaluation for the California Environmental Quality Act (CEQA) significant impacts and mitigation as a part of the environmental analysis process.
- Guide the Local Transportation Analysis in evaluating a project's consistency with the Town's General Plan Mobility Goals.
- Evaluate a project's consistency with the Santa Clara County Congestion Management Program (CMP).

1.1 Intent of TA Guidelines

The Town of Los Gatos General Plan 2040 seeks to "provide a well-connected transportation system that enables safe access for all transportation modes, including pedestrians, bicyclists, motorists, and transit riders of all ages and abilities." The TA Guidelines support this goal by evaluating new projects against the policies of the latest General Plan.

For CEQA-based environmental analysis, these TA Guidelines incorporate the use of vehicle miles traveled (VMT) to disclose the effects of the project on the surrounding environment. Town staff completed an SB 743[1] implementation process, which included the preparation of the *SB 743 Implementation for the Town of Los Gatos* (July 2020) document package. The document package provides detailed technical information pertaining to the options and data considered by the Town of Los Gatos to implement VMT as an impact criterion.

The TA Guidelines present the Town's approach for determining the need for a transportation analysis, its content, and identifying acceptable transportation improvements for land use and transportation projects proposed within Los Gatos. The TA Guidelines establish a transportation analysis protocol for the following:

- Environmental analysis

[1] Senate Bill 743 (SB 743) changed some of the transportation significance criteria under the California Environmental Quality Act (CEQA) CEQA. Specifically, vehicle level of service (LOS) is no longer used as a determinant of significant environmental impacts, and a vehicle miles traveled (VMT) analysis is required.

- General Plan consistency
- Congestion Management Program (CMP) evaluation
- Mobility deficiency criteria and thresholds
- Guidance on acceptable transportation improvements

Town staff will review transportation studies and reports based on the process presented in the TA Guidelines. However, each project is unique, and the TA Guidelines are not intended to be prescriptive beyond practical limits. Not all criteria and analyses described in the TA Guidelines will apply to every project. Early and consistent communication with Town staff is encouraged to confirm the type and level of analysis required for each study.

1.2 Environmental Evaluation

The TA Guidelines outline the methods and thresholds with which to evaluate projects consistent with the latest *CEQA Statue & Guidelines*.

The latest *CEQA Statue & Guidelines* include revised Appendix G Checklist questions for transportation impact evaluation. The four questions are as follows:

Would the project:

a) *Conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities?*
b) *Would the project conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)?*
c) *Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?*
d) *Result in inadequate emergency access?*

1.3 Project Types

A TA is prepared for a project before a discretionary action is taken. The following types of projects, which involve development activity or infrastructure changes in and around the Town of Los Gatos and affect the adjacent transportation system, should be evaluated for TA requirements.

- **Land use entitlements** or changes in use requiring discretionary approval by Los Gatos, which include General Plan amendments, specific plans (and related amendments), zoning changes, use permits, planned developments, and tentative subdivision maps; or any modifications of use that would generate 20 or more new Peak Hour (vehicle) Trips or at the discretion of the Town's Traffic Engineer
- **Land use activity** advanced by agencies other than Los Gatos that is subject to jurisdictional review under state and federal law, such as school districts, Santa Clara Valley Transportation Authority (VTA) Board of Directors, and others; or advanced within Los Gatos by agencies other than the Town and inconsistent with the Town's General Plan.

- **Transportation infrastructure modification or expansion**, including capital improvement projects on Town roads, county roads, and state highways that may impact Town facilities and services.

1.4 CEQA and Non-CEQA Terminology

To distinguish the CEQA analysis from the non-CEQA analysis (i.e., the local transportation analysis) the analyses apply different terminologies as summarized below in **Table 1**.

Table 1: Comparison of Select CEQA and Non-CEQA Terms

CEQA Term	Non-CEQA Term
CEQA Transportation Analysis	Local Transportation Analysis
Significance criteria	Threshold or performance standard
Significant impact	Deficiency
Mitigation measure	Mitigation improvement
Baseline Conditions	Existing Conditions and Background Conditions
Future Year Cumulative Conditions	Cumulative Conditions

2. Determining the Level of Transportation Analysis

Unless explicitly waived by the Town, a TA may be required when any one of the following conditions is met.

- A project has the potential to create a significant transportation environmental impact under CEQA.
- A project has the potential to generate daily vehicle miles traveled greater than the Town's General Plan future year VMT projections.
- For local transportation analysis, a project has the potential to generate 20 or more new Peak Hour (vehicle) Trips.
- A project that is not consistent with the development density established by existing zoning, community plan, or general plan policies for which an environmental impact report (EIR) was certified, per *CEQA Statue & Guidelines Section 15183*.
- A project will alter physical or operational conditions on a Town pedestrian facility, bicycle facility, transit facility or service, or other transportation facility.
- An Accessory Dwelling Unit (ADU) shall be exempted from the requirements of Transportation Analysis and the Transportation Impact Fees.

In general, a TA is applicable for two to five years. After two or more years of inactivity, a TA may need to be updated to reflect changes in the study environment, including traffic growth and other circulation issues.

Nothing in the Transportation Impact Policy shall prohibit or restrict a Project applicant from completing a local transportation study for a Project anticipated to generate less than 20 new Peak Hour trips.

2.1 CEQA Relief for Projects Consistent with General Plan or Zoning

Per *CEQA Statue & Guidelines Section 15183,* projects consistent with a general plan, zoning action, specific plan, and certified environmental impact report (EIR) would not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects. Additionally, projects consistent with a general plan, zoning action, or specific plan where cumulative impact(s) were adequately addressed in a prior EIR would not require further CEQA transportation analysis.

2.2 CMP Consistency Screening

Projects should reference the most recent *VTA Transportation Impact Analysis (TIA) Guidelines* to determine the need for a transportation impact analysis. In most cases, projects that generate fewer than 100 net new peak hour vehicle trips are not required to conduct VTA's CMP transportation analysis.

2.3 Recommended Process and Documentation

In coordination with Town staff, the project applicant shall retain a transportation professional to conduct the TA. The transportation consultant should seek Town acceptance of the scope of work before initiating the analysis. In some cases, review by other affected jurisdictions will be required. **Appendix A: Transportation Analysis Report Format Outline** contains a recommended outline for the TA document.

Each TA will begin by preparing a scope of work that describes the project description, site location, analysis methods, area-wide assumption, study elements, study time periods, and traffic data collection methods. To finalize a TA scope of work for the local transportation analysis, the project applicant will provide an estimate of the project trip generation and trip distribution . These estimates and scope of work should be shared with Town staff to finalize the scope of services. Overall, the TA report will address: 1) environmental analysis, 2) project site access and circulation, and 3) other transportation impacts and traffic deficiencies.

2.4 Contact with Appropriate Town Staff

To minimize the potential for delays in project processing, it is important for the TA to be prepared in coordination with Town staff. Timely coordination will also ensure that potential transportation improvements and environmental consequences are considered as early as

possible in the planning process, as deficiencies and corresponding improvement costs can have a substantial effect on project costs. Coordination should include the following:

- A pre-application meeting, which will include a discussion of the TA requirements.
- Development of an approved scope of work, which includes trip generation, study area, analysis scenarios and parameters, data requirements, and provisions for pedestrians, bicyclists, and transit users.
- Approval of the project trip generation (person and vehicle) and trip distribution.
- Review of all assumptions and the results of Existing Conditions analysis.
- Review of the administrative draft report, with adequate time for comments.
- Review of a draft report, with adequate time for comments.

If the TA report information will be incorporated into the transportation and circulation section of an environmental document (e.g., Initial Study, Mitigated Negative Declaration, or Environmental Impact Report), the format of this report may need to be discussed with the environmental consultant, a peer reviewer, and/or Town staff. Upon circulation of the draft environmental document, the format of the final TA report may need to be discussed with the environmental consultant.

2.5 Consultation with Other Jurisdictions

If the study area overlaps with other jurisdictions, staff from other jurisdictions must be consulted to verify study locations, the impact significance criteria, and to consider any current development applications. Section 15086 of the *CEQA Statue & Guidelines*[2] shall be followed as the basis for satisfying consultation requirements. In most cases, overlap will occur for roadway system analysis, but may also include impact analysis of active transportation modes (bicycling and walking), as well as transit system facilities and services.

2.6 Project Trip Generation and Trip Reductions

Person and vehicle trip generation rates are a way to estimate the number of expected pedestrian, bicycle, transit, and vehicle trips that a proposed development will generate. These rates establish the basis of analysis for a proposed project and its effects on the transportation network. Person trip generation should be reported for walking, bicycle, and pedestrian trips, and vehicle trip generation should be reported for single-occupant, and carpool.

Methodologies to estimate project trip generation and trip reductions shall be prepared consistent with the latest *VTA TIA Guidelines*, with the exceptions described in this document.

[2] *California Environmental Quality Act Statute & Guidelines, 2020.*

2.6.1 Vehicle Trips

Consistent with the *VTA TIA Guidelines*, pass-by trips shall not be considered in calculating the 20 new Peak Hour Trip threshold that triggers the requirement for conducting a comprehensive local transportation analysis report.

The Institute of Traffic Engineers (ITE) *Trip Generation Manual* trip generation rates for Specialty Retail Center shall apply to all Specialty Retail.

Uses within the Central Business District (C-2 Zone} are expected to change periodically as part of the natural business cycle. For the purpose of Transportation Impact Fees, changes in use without changes in net building square footage within the C-2 Zone shall not be considered to create a traffic deficiency, shall be exempt from this policy, and no fees shall be charged for a change in use. Any increases in building square footage shall pay impact fees at the ITE Shopping Center rate or comparable equivalent rate for the expanded area, as determined by the Town Traffic Engineer.

The Town reserves the right to require the project sponsor to conduct local trip generation surveys for select projects, depending on land use and conditions in the field.

2.6.2 Person Trips

Person trip generation rates should be developed from empirical studies, person travel survey data, or conversion of vehicle trip rates to person trip rates using a vehicle occupancy factor. In addition, person trip generation by mode may be derived using an approved analysis tool that incorporates data from local trip generation surveys or published trip generation rate data.

2.6.3 Establishing Trip Generation Rates for an Unspecified Use

For projects where the ultimate land use is not certain (for example, a large subdivision of flexible commercial-industrial parcels), there are two options for establishing the trip generation rates.

- Option 1: Town staff will recommend the use of the highest traffic intensity among all permitted uses to establish traffic deficiencies.
- Option 2: Estimates can be made using a lower traffic intensity use if the Town and developer establish a maximum trip allowance. Once a proposed land use has been identified, then: 1) the subdivision trip generation allowance must be monitored by the Town as development occurs; and 2) the TA report may need to be updated.

2.6.4 Credit for Existing Trips – Local Analysis

The estimate of new trips generated by the proposed development project may include credit for trips associated with existing uses on the site. Uses are considered as existing if they are actively present on the project site at the time that data is gathered for the transportation impact analysis. Similarly, if a planned (but not constructed) use was already permitted for the site and an improvement(s) was identified and funded, the new TA only needs to assess the

effects of additional trips above and beyond the trips for the permitted use. Additionally, certain commercial land uses attract vehicle traffic that currently exists on the roadway, rather than generating new trips.

Understanding there are permitted reductions that may be taken under the circumstances listed above, the Town requires that any reductions in project vehicle trip generation are applied according to the latest *VTA TIA Guidelines*.

In calculating new Peak Hour Trips for purposes of determining whether or not a TA report is required pursuant to this Policy, trip credit shall be granted for an existing use or the most recent former use.

In calculating new Average Daily Trips for purposes of determining the amount of the Transportation Impact Mitigation Fee due, trip credit shall be granted for an existing use or the most recent former use.

Where the property is vacant, the most recent former use shall be used.

Where a portion of the space is changing use, credit will apply to the proportionate square footage of the space under review.

Where the change in use results in fewer trips than the existing or former use, no credit or refund will be due the applicant.

2.6.4 Credit for Existing Trips – VMT Analysis

For the evaluation of vehicle miles of travel, VMT credit for the prior use depends on how the project changes the baseline condition, if the project sponsor had ownership and control of the previous land use, and the reason for stopping the previous land use. Baseline conditions are typically defined at the beginning of an environmental analysis and a CEQA analysis needs to isolate the effects of the project to clearly define the project's effect on the baseline condition. To receive VMT credit, the project sponsor needs to demonstrate continuous ownership of site, with on-site occupancy paused only due to the redevelopment activity and not because of some economic or other condition outside the control of the project sponsor. However, this credit should only be applied to total project generated VMT and should not be included when calculating a VMT rate.

2.7 Vehicle Miles Traveled Methods

Although the calculation of VMT is simply the number of cars multiplied by the distance traveled by each car, VMT performance measures can be reported differently. At a minimum, the VMT analysis for Los Gatos will be prepared for two purposes:

- Greenhouse gas and air quality analysis using project generated VMT on a VMT per service population basis (residents + employment).
- Environmental evaluation by land use and/or transportation project.

The project generated VMT from new population and employment growth and the boundary (total) VMT for a specific geographic area will be prepared using the latest Santa Clara Valley Transportation Authority (VTA)-City/County Association of Governments of San Mateo County (C/CAG) Bi-County Model ("VTA Travel Model"). Because emissions rates vary by vehicle speed, the project generated VMT and total VMT should be disaggregated by speed bin (typically in five mile an hour increments of speed from 0 to ~80 miles per hour) to allow different emissions factors to be applied at different speeds, which allows for the preparation of a more refined emissions analysis.

3. Transportation Analysis (CEQA) for Land Use Projects

For an environmental analysis, these TA Guidelines incorporate the use of vehicle miles traveled (VMT) to disclose the effects of the project on the environment. Town staff completed an SB 743 implementation process, which included the preparation of the *SB 743 Implementation for the Town of Los Gatos* (July 2020) document package. The document package provides detailed technical information pertaining to the options and data considered by the Town of Los Gatos to implement VMT as an impact criterion.

At its November 17, 2020 meeting, the Town Council adopted Resolution 2020-045, Designating the Use of Vehicle Miles Traveled as the Metric for Conducting Transportation Analyses Pursuant to the California Environmental Quality Act and Establishing the Thresholds of Significance to Comply with California Senate Bill 743.

The *CEQA Statue & Guidelines* allow exemptions to projects meeting certain criteria. Project applicant may review the exemptions before preparing CEQA analysis for projects.

Based on the Town's implementation of SB 743, the following methods should be used to determine VMT impact thresholds and mitigation requirements for land use projects.

3.1 VMT Analysis Methods

The Town elected to conduct a complete VMT analysis consistent with the General Plan future year VMT projections based on long-term expectations for air quality and GHG expectations as part of its General Plan EIR, so that it could make specific use of *CEQA Statue & Guidelines* Section 15183 to streamline project-specific CEQA analysis that is consistent with its General Plan and other Town documents. For the Town of Los Gatos, addressing transportation VMT impacts in the Town General Plan EIR is a useful way of understanding VMT impacts and how VMT reduction should be balanced against other community values related to the environment, social justice, and the community. By conducting a Town-wide VMT impact analysis, the Town is able to develop a program-based VMT mitigation approach. The concept of a 'program' approach to impact mitigation is commonly used in a variety of technical subjects, including

transportation, air quality, GHG, and habitat. Absent a new program-level VMT mitigation approach, there are limited feasible mitigation options for project sites, and as a result limited ability to reduce VMT. Also, practically speaking, without feasible mitigation, significant VMT impacts would be significant and unavoidable (SAU). Under these circumstances, a project must prepare an EIR, thus adding time and cost to environmental review compared to an initial study/negative declaration (IS/ND) that relies on streamlining offered in the *CEQA Statue & Guidelines.*

Should a project not be consistent with the General Plan, or for some other reason unable to benefit from streamlined CEQA review under *CEQA Statue & Guidelines* Section 15183, the following sections provide details on how to conduct a complete VMT analysis for land use plans and projects in the Town of Los Gatos.

3.1.1 Regional Transportation Plan/Sustainable Communities Strategy and General Plan Consistency

The first step in assessing project impacts is to determine if the project land use is contained within the Town of Los Gatos residential and non-residential land use allocations in the current Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS), and if the project is consistent with the latest General Plan. If the project is not consistent with the RTP/SCS and/or the latest General Plan, amendments to those documents or the project would be needed prior to proceeding with the project review.

3.1.2 VMT Assessment

Projects not consistent with the current RTP/SCS or the latest General Plan are required to complete a VMT analysis using the VTA Travel Model to determine if there would be a significant VMT impact. The tools and methodology of the VMT analysis shall be approved by PPW Director (or Traffic Engineer). The impact analysis includes two types of VMT:

1. **Total Project Generated VMT** – Daily VMT of all vehicle trips, vehicle types, and trip purposes for all project land uses, presented as a total project generated VMT.
2. **Project's Effect on VMT within the Town of Los Gatos**. VMT that occurs within the Town of Los Gatos by any type of vehicle. This captures all on-road vehicle travel on a roadway network for any purpose, and includes local trips as well as trips that pass through the area without stopping.

If the land use control totals increase between the without and with project conditions in the travel model, these VMT metrics will need to be expressed on a per service population (residents, employees, and other populations generating the VMT) basis to understand the effects of the project between scenarios.

The types of VMT analysis are evaluated for the following scenarios:

- **Baseline Conditions** – Conditions in the baseline year for the CEQA analysis, which is most often chosen as the time of notice of preparation (NOP) of an environmental document, but may be chosen as the baseline year of the VTA Travel Model, if land use and transportation network conditions can be considered largely unchanged between the model baseline year and the date of the NOP. For compliance with the *CEQA Statute & Guidelines* Section 15125(a), the transportation impact analysis must include a description of the physical environmental conditions near the project, as they exist at the time the NOP is published, or if no NOP is published, at the time environmental analysis is commenced, from both a local and regional perspective. Baseline VMT estimates will be prepared using the most recent base year VTA Travel Model.
- **Baseline with Project Conditions** – The project land use is added to the project Transportation Analysis Zone (TAZ), or a separate TAZ may be created to contain the project land uses. A full model run is performed and VMT changes (by metric of choice) are isolated for the project TAZ and across the full model network. The model output must include reasonableness checks of the production and attraction balancing to ensure the project effect is accurately captured. If this scenario results in a less-than-significant impact, then additional cumulative scenario analysis may not be required.
- **Future Year Cumulative Conditions** – Conditions requiring an RTP/SCS and/or General Plan amendment are also required to evaluate the project effect on VMT under Future Year Cumulative Conditions. This scenario buildout of the region's land use and transportation system also provides the long-range view of future travel patterns. Future Year Cumulative Conditions VMT estimates should be based on the horizon year of the most recent VTA Travel Model, ensuring the model does not already contain the land uses or transportation improvements associated with the project.
- **Future Year Cumulative with Project Conditions** – The project land use is added to the project TAZ, or a separate TAZ is created to contain the project land uses. The addition of project land uses may be accompanied by a reallocation of a similar amount of land use from other TAZs throughout the model area (focusing on Santa Clara County), especially if the proposed project is significant in size such that it would potentially reduce the potential for development throughout the rest of the model area. Land use projects will generally not change the Future Year Cumulative Conditions control totals for population and employment growth within the model area. Instead, they will influence the land use supply through changes in General Plan land use designations and zoning. If project land uses are simply added to the Future Year Cumulative Conditions scenario, then the analysis should reflect this limitation in the methods and acknowledge that the analysis may overestimate the project's effect on VMT. A full model run is performed and VMT changes (by metric of choice) would be isolated for the project TAZ and across the full model network. The model output must include reasonableness checks of the production and attraction balancing to ensure the project effect is accurately captured.

The model output should include the two VMT metrics listed earlier: 1) total project generated VMT, and 2) project's effect on VMT using the total boundary VMT. Emissions vary by speed bin; disaggregating VMT by speed bin allows different emissions factors to be applied at

different speeds, which allows for the preparation of a more refined emissions analysis. The total boundary VMT is needed as an input for air quality, greenhouse gas (GHG), and energy impact analysis, while the project generated VMT metrics are used for the transportation impact analysis.

Both "with project" scenarios noted above will summarize the two types of VMT and be compared to the without project condition.

Project generated VMT should be extracted from the VTA Travel Model by combining either the origin-destination (for total VMT) or production-attraction (for the other metrics) trip matrices and congested skims (travel distances for each origin-destination pair in the travel mode) from final assignment. The VMT should be adjusted to reflect trips that extend beyond the model boundary. The project's effect on VMT should be estimated using the Town limit boundary and extracting the total link-level VMT for both the without and with project conditions. Additional VMT metric specifications may be found in the *SB 743 Implementation for the Town of Los Gatos* (July 2020) document package.

If a project is mixed-use (i.e., composed of both residential and retail/office uses), project generated VMT should be extracted for both the total VMT and VMT per service population (residents and employees).

3.2 VMT Significance Thresholds

The Town Council adopted Resolution 2020-045, Designating the Use of Vehicle Miles Traveled as the Metric for Conducting Transportation Analyses Pursuant to the California Environmental Quality Act and Establishing the Thresholds of Significance to Comply with California Senate Bill 743. The thresholds balance the Town's priorities with respect to competing objectives, including Los Gatos's geographic and transportation context, greenhouse gas reduction goals, interest in achieving the state's greenhouse gas reduction goals, and the latest General Plan goals and policies related to land use mix, economic development, and housing provision.

VMT analyses shall evaluate a project's VMT impacts based on the thresholds established in the latest Council-adopted resolution.

3.3 VMT Mitigation Measures

To mitigate VMT impacts, the project shall be conditioned for implementation of mitigation measures in the following categories::

1. Modify the project's built environment characteristics to reduce VMT generated by the project;
2. Implement transportation Demand Management (TDM) measures to reduce VMT generated by the project; and/or
3. Participate in a VMT fee program and/or VMT mitigation exchange/banking program (if they exist) to reduce VMT from the project or other land uses to achieve acceptable levels.

The Town is in the process of updating the General Plan and the Draft Environmental Impact Report (DEIR) for the 2040 General Plan was released for public review in July 2021. The 2040 General Plan DEIR identifies significant but unavoidable transportation impacts and the mitigation measures. The Town is taking a Town-wide approach for VMT impact mitigation. Attachment 3, VMT Reduction Actions for the Town of Los Gatos, provides a framework for mitigating VMT in the Town. Attachment 2, Transportation Mitigation Improvements Project List, has many improvements that are consistent with the VMT Reduction Strategies.

Evaluation of VMT reductions should be conducted using state-of-the-practice methods, recognizing that many of the TDM strategies are dependent on building occupant performance over time. As such, actual VMT reduction cannot be reliably predicted, and monitoring may be necessary to gauge performance related to mitigation expectations.

4. Transportation Analysis (CEQA) for Transportation Projects

Transportation Analysis for transportation projects shall follow the latest CEQA Guidelines and related technical advisories from the Governor's Office of Planning and Research (OPR).

The Thresholds of Significance for all transportation projects are established in the latest Council-adopted resolution.

Transportation projects that reduce, or have no impact on, vehicle miles traveled should be presumed to cause a less than significant transportation impact.

In 2020 Caltrans adopted its guidance under SB 743. The department's *Transportation Analysis Framework* and *Transportation Analysis for CEQA* provide guidance for assessing induced travel impacts from prospective projects on the State Highway System. CEQA analysis for proposed transportation projects on the State Highway System should also follow Caltrans guidance.

5. Transportation Analysis per the Town's Transportation Policies

The contents and extent of a local transportation analysis per the Town's General Plan depend on the location and size of the proposed development, the prevailing transportation conditions in the surrounding area, and questions from decision-makers and the public. The Town is committed to a well-connected transportation system that enables safe access for all modes of travel. The methods presented in this chapter include robust data collection and analysis techniques for pedestrian, bicycle, and transit networks, in addition to vehicle circulation.

The local transportation analysis shall be prepared consistent with the latest VTA TIA Guidelines, with the exceptions described in this document.

5.1 Study Area

The study area is determined by evaluating the project location and how it may affect all transportation modes and facilities. It is not simply a map showing where the project is located. Rather, the study area is the area of influence of a project. Each local transportation analysis will consider the adjacent transportation system for site access and circulation of land development projects and street modifications for transportation projects. To properly assess the site access, the Town may require off-site intersection analysis and/or other multimodal analysis.

The study area may include the nearest CMP facility to evaluate the proposed project's conformity with the CMP facilities.

Applicants should consult with Town staff early regarding the need for a local transportation analysis based on local or site-specific issues, especially those related to pedestrians, bicyclists, and transit users.

5.2 Key Study Elements

The extent and complexity of a local transportation analysis will vary on the project attributes. **Table 2** summarizes the basic requirements for a local transportation analysis for every project requiring a complete transportation analysis. Specific significance criteria for each of the listed elements are described in further detail in *the Transportation Analysis (CEQA) for Land Use Projects* and *Transportation Analysis (CEQA) for Transportation Projects* sections. To avoid substantial off-site improvements or changes to the project site plan/description after the transportation analysis is completed, a preliminary site plan shall be included for a "fatal flaw" evaluation.

Table 2: Local Transportation Analysis – Evaluation Criteria

Study Element	Evaluation Criteria
General Plan Consistency	Evaluate the project against goals, policies, and actions set forth in the latest General Plan and other applicable Town plans.
Parking	Compare the project parking plan with Town and local specific plan standards and discuss how the proposed supply will affect demand for walking, bicycling, and transit modes. If a mix of land uses is proposed on site, or complements adjacent land uses, justify how the development will make use of shared on-site parking.
On-Site Circulation	Review and evaluate site access locations, turning radii, truck loading areas, emergency access, and other site characteristics with respect to operations and safety for all modes of transportation.
Pedestrian Facilities	Identify any existing or planned pedestrian facilities that may be affected by the project. Document how the project will affect local pedestrian circulation (e.g., disclose how widening a road or adding a driveway will affect pedestrian safety and walking time).

Table 2: Local Transportation Analysis – Evaluation Criteria	
Study Element	**Evaluation Criteria**
Bicycle Facilities	Identify any existing or planned facilities that may be affected by the project.
Transit	Identify any existing or planned transit facilities that may be affected by the project. If appropriate, document how the project improves access to or utilization of transit. For system planning, use crush load as capacity, not seated capacity.
Safety Assessment	Evaluate project trips added to safety enhancement projects within the study area that are proposed as part of other future safety studies by the Town or other agencies.
Trucks (or Other Large Vehicles)	For relevant industrial projects, identify the number of truck trips that will be generated, and design facilities necessary to accommodate these trucks.
Automated Vehicles or Transportation Network Company Pick-up/Drop-Off	For projects where automated vehicles and/or transportation network companies may have a large concentration of pick-up/drop-off, the project site circulation and pick-up/drop-off areas must be reviewed to identify opportunities and constraints of the project site. Modifications to the site circulation and/or pick-up/drop-off may be recommended.
Off-Site Traffic Operations	All roadway facility analysis and Level of Service should be conducted using the latest version of the *Highway Capacity Manual* (HCM).
Intersection Traffic Control	Evaluate unsignalized intersections located within the study area to determine appropriate traffic control. Analysis should include documentation of the appropriateness of a roundabout as an alternative or replacement to a traffic signal.
Other Issues	Consider other issues on a case-by-case basis (e.g., construction deficiencies, queuing between closely spaced intersections, emergency access, special event traffic)
Other Jurisdictional Requirements	In situations where several agencies must approve a development or are responsible for affected roadways, the applicant must contact lead and responsible agencies to determine issues to be addressed, scope of study, etc. In general, the applicant will be responsible for analyzing project impacts against appropriate jurisdictional thresholds; however, the analysis method will be determined by the Town in compliance with CEQA, and the impacts will be mitigated consistent with Town standards.

5.3 Data Collection

Accurate data is essential to achieve a high level of confidence in local transportation analysis results. Existing transportation data shall be collected using the requirements set forth below. Data should be presented on maps or figures where appropriate. To address the specific needs of each project, the extent of data collected shall be at the discretion of Town staff.

- **Pedestrian/Bicycle Facilities** – Document the existing pedestrian and bicycle facilities serving the project site. Elements will include presence and width of sidewalks, curb ramps, crosswalks, or other pedestrian facilities providing access to the nearest attractors of the project site, such as transit stops, neighborhood attractors and/or complimentary land uses, and bicycle facilities (e.g., routes, lanes, or shared-use paths) within a two-mile bicycling distance of the project site. Document barriers, deficiencies, and high pedestrian-demand land uses, including schools, parking, senior housing facilities, and transit stops or centers. The report will note any deficiencies or enhancements planned or recommended in the latest General Plan or future planning documents.
- **Transit Facilities and Ridership** – Document transit lines nearest to the project site, including stop locations, frequency of service, and any capacity issues. It will also describe transit stop amenities (e.g., benches, shelters, etc.).
- **Multimodal Peak-Period Turning Movement Counts** – Turning movement counts, including vehicles, bicycles, and pedestrians, will be collected for each study time period at all study intersections. The following parameters will be followed (fall and spring days while school is in session are preferred):
    - Data collection will cover at least two hours to ensure the peak hour is observed.
    - As applicable, 48-hour machine counts will be used to identify the peak period before conducting other counts or analysis.
    - Traffic volumes should not be influenced by a holiday, weather, construction, or other temporary change.
    - The percent of traffic that consists of heavy trucks will be noted/estimated during data collection.
    - Some projects may require vehicle classification or occupancy counts. Consult with Town staff on a case-by-case basis.
    - Traffic counts that are older than two years at study initiation will not be used without consultation and approval by Town staff. These counts may need to be adjusted to reflect current year traffic volumes.
- **Daily Traffic Counts** – Collect data for all study roadway segments using the parameters described above for peak period turning movement counts, with the exception of bicycle and pedestrian volumes. Daily counts are used to size facilities (e.g., 2-lane vs. 4-lane) and to identify temporal changes in traffic.
- **Roadway Geometry** – Document existing roadway and intersection geometries and lane configurations. Information from aerial photography and street views should be verified based on a site visit(s).
- **Intersection Controls and Signal Timings** – For use in intersection analysis, intersection control types and signal timings and phasing should be based on signal timing sheets (available from Los Gatos or Caltrans) and verified during site visits.
- **Five-Year Collision Data** – Obtain Statewide Integrated Traffic Records System (SWITRS) through the local California Highway Patrol or through the following web site: *www.chp.ca.gov/switrs.*

- **Mode Split** – Summarize daily and peak hour mode split for the study area land uses. Data could include U.S. Census journey-to-work data, empirical surveys, or any other available surveys.

5.4 Project Site Access and Circulation Review

A detailed site plan review is required for all projects. The local transportation analysis should include a review and summary of findings of the following qualitative and quantitative features.

- Consideration of roundabouts are encouraged. Conduct roundabout analysis as required by Town staff.
- Existence of any current traffic problems in the local area, such as a high-collision location, non-standard intersection or roadway, or an intersection in need of a traffic signal or a roundabout.
- Applicability of context-sensitive design practices compatible with adjacent neighborhoods or other areas that may be impacted by the project traffic.
- Proximity of proposed site driveway(s) to other driveways or intersections.
- Adequacy of the project site design to convey all vehicle types.
- Number and type of parking provided, including vehicle and bicycle parking.
- On- and off-street loading requirements.
- Adequacy of on-site vehicle, bicycle, and pedestrian circulation and provision of direct pedestrian paths from residential areas to school sites, public streets to commercial and residential areas, and the project site to nearby transit facilities.

An important aspect of a TA is to provide sufficient information for the Town to determine that a project is consistent with the latest General Plan and other applicable Town policies, plans, and standards. As such, individual projects must be reviewed against relevant policies contained in the latest General Plan or other plans and policies. Applicants should review the full policy statements in the latest General Plan Mobility Element.

If the study area extends into an adjacent jurisdiction, the applicant may be responsible for analyzing project generated operational impacts in these jurisdictions. These include intersection or segment locations in any other jurisdiction, including Caltrans-maintained facilities. The applicant shall refer to current policies in the respective jurisdiction to identify the appropriate significance criteria.

5.5 Analysis Scenarios

The range of scenarios includes Existing Conditions, Background Conditions, and Cumulative Conditions. Projects consistent with the latest General Plan will only be required to complete the Existing and Background conditions analysis; where Existing Conditions looks at the effect of the proposed project on the existing system within the next year or two, Background Conditions typically looks at a longer time frame of about three to five years. Inclusion of all three analysis conditions (e.g., Existing, Background, and Cumulative), would typically occur for large development projects, General Plan amendments, specific plans (and related amendments), with Cumulative Conditions having a time horizon of 10 to 20 years.

The following analysis scenarios will document existing or future conditions, any deficiencies, and identify deficiencies that will result from the addition of the project. Each scenario will include a qualitative description of transportation facilities for all modes (and any planned enhancements), traffic volumes, and a quantitative analysis of intersection LOS. Key study elements are identified in the *Multimodal Analysis Methods* section of this chapter. Details regarding each local transportation analysis scenario are presented below.

- **Existing Conditions** – These conditions are based on recent field observations and recent traffic count data.
- **Existing with Project Conditions** – Traffic volume forecasts for roadway analysis reflecting Existing Conditions with traffic generated by the proposed project. For reuse or conversion projects, this may involve accounting for any existing use of the site that remains or will be removed. It should also qualitatively describe how the project will affect transportation for other modes, including compliance or relation to other Town documents.
- **Background Conditions** – Traffic volume forecasts for roadway segment and intersection analysis should reflect Existing Conditions with growth due to approved development that is expected to be operational before or concurrently with the proposed project. This scenario may not be needed if the study area has limited or no approved developments.
- **Background with Project Conditions** – This scenario represents the Background Conditions with vehicle trips added by the proposed project. It provides decision-makers and the public with a view of conditions with all recently approved development and physical improvements, including the proposed project.
- **Future Year Cumulative Conditions** – This scenario represents transportation conditions for all travel modes in the study area reflecting all approved projects, pending projects, or expected development of other areas of Los Gatos designated for growth under the latest General Plan or specific plan. In most cases, the project site will likely be vacant under this scenario. In some cases, this scenario may need to account for any existing uses on the site that could continue, and potential increases in development allowed by ministerial approvals.
- **Cumulative with Project Conditions** – This scenario represents the cumulative future transportation conditions with anticipated changes to the transportation system and the additions of project trips, and provides the long-range view of future traffic operations.

5.6 Analysis Time Periods

Based on the land use of the proposed project and upon consultation with Town staff, the study shall analyze traffic operations during the peak one hour of the following time periods:

- Weekday morning peak (7:00 – 10:00 AM)
- Weekday evening peak (4:00 – 7:00 PM)

For some projects, the Town may substitute or require additional peak hour analysis for the following time periods as approved or requested by the Town's Traffic Engineer:

- Weekday afternoon peak (2:00 – 4:00 PM)
- Friday evening peak (4:00 – 7:00 PM)
- Weekend midday peak (11:00 AM – 1:00 PM)
- Sunday or holiday evening peak (4:00 – 7:00 PM)

For example, retail commercial projects should evaluate operations for Saturday midday peak hour conditions, in addition to the standard weekday morning and evening peak periods. The determination of study time periods should be made separately for each proposed project, based upon the peaking characteristics of the project generated traffic and peaking characteristics of the adjacent street system and land uses.

5.7 Multimodal Analysis Methods

The report should provide a quantitative and/or qualitative evaluation of the project's potential adverse or beneficial effects on transportation facilities and services related to pedestrians, bicyclists, and transit users.

For some projects, more detailed multimodal analysis may be required. Such analysis shall be decided upon in consultation with Town staff and consider new tools, methods, and performance measures, such as those listed below.

- **Multimodal LOS** – The latest *Highway Capacity Manual* (6th Edition) contains methods for multimodal LOS.
- **Person Delay** – Simulation models can be used to measure system performance in terms of overall person-delay for all modes within a transportation network. This method provides a better decision-making tool for developing improvements to promote efficient movement of people, rather than a particular type of vehicle.
- **Safety Assessment** – Evaluate whether the project adds vehicle trips to a safety improvement identified within the study area. (If a project may affect a Caltrans facility, a safety assessment may be needed for CEQA purposes as well.)
- **Bicycle Level of Stress (LTS)** – Evaluate LTS for all bicycle facilities within a two-mile bicycling distance of the project site. There are several methods for evaluating LTS for bicycle facilities, which generally rely on street widths/number of vehicle lanes, vehicle speeds, daily volumes, and type of bicycle facility to evaluate "low stress" bike networks. The *Low-Stress Bicycling and Network Connectivity* (2012) report and the National Association of City Transportation Officials (NACTO) *Urban Bikeway Design Guide, Second Edition* (2014) contains methods for LTS.
- **Pedestrian Level of Stress (LTS)** – Evaluate LTS for all pedestrian facilities providing access to the nearest attractors (e.g., transit stops, neighborhood attractors and/or complimentary land uses) of the project site. Compared to bicycle LTS, there are parallel methods for calculating pedestrian comfort using best practiced from the NACTO *Urban*

Street Design Guide (2013) and pedestrian safety research. As with bicycle comfort, pedestrian comfort is based on a variety of factors ranging from the quality and presence of sidewalks to the conditions of the adjacent roadway (speed, number of travel lanes, frequency of trucks).

- **Activity Connectedness** – Travel time for each mode (e.g., walking, bicycles, transit, and vehicles) between the project and surrounding land uses can be used to gauge the degree of accessibility for a project. The Town desires to minimize travel time to necessary destinations while minimizing unnecessary vehicle travel. Tools such as geographic information systems or online tools (e.g., Index and Walk Score) can be used to gauge this measure specifically for walking. The main idea is to evaluate activity centers and destinations around projects to ensure that walk times to necessary destinations are minimized and the walking experience is comfortable.

5.8 Traffic Operations Analysis

Traffic operational deficiencies shall be analyzed using standard or state-of-the-practice professional procedures. The main issues related to traffic operations analysis are the method, input data, and assumptions. These three items influence the level of confidence and the associated level of defensibility of the local transportation analysis. For traffic operations, this requires following the procedures and techniques published in the most recent *Highway Capacity Manual* (HCM).

Traffic Operations Analysis should be conducted according to the latest *VTA Traffic Level of Service Guidelines*.

5.9 Mobility Deficiency Criteria

The overall guiding principal of the General Plan 2040 Mobility Element is to, "[p]rovide a well-connected transportation system that enables safe access for all transportation modes, including pedestrians, bicyclists, motorists, and transit riders of all ages and abilities." Los Gatos evaluates each transportation mode to identify deficiencies. Local transportation analyses evaluate intersection operations focused on specific traffic issues such as queuing and safety. A greater emphasis is placed on pedestrian, bicycle, and transit facilities and services, in part to reduce traffic congestion and air quality impacts associated with automobile use. **Table 5** outlines deficiency criteria for each mode. The mobility deficiency criteria can be used to identify conflicts with existing or planned multimodal facilities.

Table 5: Mobility Deficiency Criteria

Study Element	Deficiency Determination
Parking	Project increases off-site parking demand above a level required by the Town Zoning Code and/or desirable by the Town.
On-Site Circulation	Project designs for on-street circulation, access, and parking fail to meet Town standards. Where Town standards are not defined, industry standards [*Highway Design Manual*, *California Manual on Uniform Traffic Control Devices (MUTCD),* etc.] should be referenced, as appropriate.

Table 5: Mobility Deficiency Criteria	
Study Element	**Deficiency Determination**
	Failure to provide adequate accessibility for service and delivery trucks on site, including access to loading areas. Project will result in a hazard or potentially unsafe conditions without improvements.
Pedestrian Facilities	Project fails to provide safe and accessible pedestrian connections between project buildings and adjacent streets, trails, and transit facilities.
Bicycle Facilities	Project disrupts existing or planned bicycle facilities or is otherwise inconsistent with the latest General Plan, Bicycle and Pedestrian Master Plan, or other related plans. Project adds bicycle trips along project frontage to an existing facility that needs improvements per the latest BPMP.
Transit	Project disrupts existing or planned transit facilities and services or conflicts with Town adopted plans, guidelines, policies, or standards.
Heavy Vehicles (Trucks and Buses)	A project fails to provide adequate accommodation of forecasted heavy traffic or temporary construction-related truck traffic consistent with Town or industry standards (*Highway Design Manual*, MUTCD, etc.).
Off-Site Traffic Operations	95th percentile vehicle queues exceed the existing or planned length of a turn pocket. The proposed project introduces a design feature that substantially increases safety hazards.
Signalized Intersection Traffic Control	Addition of project traffic causes a signalized intersection to 1) drop more than one level overall or at the worst individual approach delay if it is at LOS A, B, or C or 2) drop at all overall or at the worst individual approach delay if it is at LOS D or below.
Unsignalized Intersection Traffic Control	Addition of project traffic causes an all-way stop-controlled or side street stop-controlled intersection to 1) operate at LOS E or F overall or the worst-case movement, and 2) meets the Caltrans signal warrant criteria.
General Plan Consistency	Evaluate the project against mobility, safety, and other related goals, policies, and actions set forth in the latest General Plan.
Other Subject Areas	Consider other areas on a case-by-case basis (e.g., construction impacts, queuing between closely spaced intersections, emergency access, special event traffic, etc.).
Requirements for Other Jurisdictions	The project exceeds established deficiency thresholds for transportation facilities and services under the jurisdiction of other agencies.

5.10 CMP Deficiency Criteria

To determine consistency with the CMP, off-site intersection analysis may be needed and should be applied according to the latest *VTA TIA Guidelines*.

5.11 Mitigation Improvements

All project deficiencies should be addressed consistent with the policies of the latest General Plan Mobility Element. Under these circumstances, the applicant should meet with Town staff to identify transportation improvements that address the deficiencies. **Table 6** shows example types of improvements to address transportation deficiencies.

Potential improvements may require a more detailed review, often including traffic operations, to demonstrate how they address a specific deficiency.

Selected improvements should be identified whether they will be implemented under Existing Conditions, Background Conditions, or Cumulative Conditions. Background Conditions generally reflect conditions at the time of full occupancy of a project.

If a transportation improvement is selected to address a deficiency, it should include a description of the benefit to traffic reduction generated by a proposed development and how the improvement contributes to the multimodal transportation system in Los Gatos. In addition, all transportation improvements need to consider whether they have secondary effects to VMT [i.e., whether the improvement is VMT inducing per guidance in the OPR *Technical Advisory* (December 2018, Pages 20-21)].

The improvement shall not unreasonably degrade bicycle, pedestrian or transit access, and circulation. If a project proposes improvements in response to auto LOS deficiency involving a change to existing roadway or intersection geometry, or changes to signal operations, the TA shall analyze and disclose secondary effects on other modes, i.e., whether the mitigation would affect pedestrian or bicycle conditions or increase transit vehicle delay, per the methodologies in 5.7.

Table 6: Example Improvements

Study Element	Improvement
Project Modifications and Transportation Demand Management	• Alter density or diversity of project uses or integrate affordable housing • Encourage telecommuting and alternative work schedules • Provide ride-sharing programs to encourage carpooling and vanpooling • Provide local shuttle service • Provide employer-sponsored vanpools or shuttles • Provide pedestrian network improvements • Provide traffic calming measures and low-stress bicycle network improvements • Implement car-sharing (e.g., ZipCar) program • Limit parking supply • Unbundle parking costs from property costs • Institute on-street market pricing for parking

Pedestrian and Bicycle Facilities	• Provide for access to, from, and through the development for pedestrians and bicyclists • Construct Class I bicycle paths, Class II bicycle lanes, and other facilities • Provide secure bicycle parking and shower amenities • Reduce travel lanes on a street to install a two-way left-turn lane and Class II bicycle lanes • Add corner bulbouts, reduce curb radii, add pedestrian refuges, or implement other walking-related improvements
Transit Facilities	• Provide bus turnouts, bus shelters, additional bus stops, and park-and-ride lots • Fund increases in transit service
Parking Facilities	• Design parking facilities to allow free-flow access to and from the street • Provide off-street parking per Town standards or recommendations • Implement shared parking among complementary land uses
Traffic Control Modifications	• Provide for yield or stop control • Evaluate unsignalized intersections with substandard LOS for conversion to roundabout intersection control or for signalization • Provide coordination/synchronization of traffic signals along a corridor • Provide turn-lane channelization through raised islands • Restrict selected turning movements
Street Operations Modifications	• Optimize location of access driveway(s) • Provide improvements to traffic signal phasing, or lengthen existing turning pocket • Provide additional through traffic lane(s), right-turn lane(s), and left-turn lane(s) if they do not adversely impact other modes or induce additional vehicle travel • Reduce travel lanes on a street to install a two-way left-turn lane • Address congestion pricing on roads or within a specific area

Appendix A: Transportation Analysis Report Format Outline

Note: Not all sections are required for all projects. The project applicant shall consult with the Town Traffic Engineer to determine the required sections.

1. Introductory Items
    - Front Cover/Title Page
    - Table of Contents, List of Figures, and List of Tables
    - Executive Summary
2. Introduction
    - Project description
    - Project sponsor/contact info
    - Type and size of development
    - Site plan (include proposed driveways, roadways, traffic control, parking facilities, emergency vehicle access, and internal circulation for vehicles, bicyclists, and pedestrians)
    - Location map (include major streets, study intersections, and neighboring zoning and land uses)
    - Scope of transportation analysis
3. Current Conditions
    - Description of existing street system within project site and surrounding area
    - Location and routes of nearest public transit system serving the project
    - Location and routes of nearest pedestrian and bicycle facilities serving the project
    - Vehicle Miles Traveled Assessment
        - Description of baseline VMT estimates (may include site and regional VMT estimates)
    - Intersection Analysis for Site Access and Circulation Evaluation and CMP Evaluation
        - Figure of study intersections with peak hour turning movement counts, lane geometries, and traffic control

- Map of study area showing average daily traffic (ADT) of study roadways
- Table of existing peak hour average vehicle delay and level of service (LOS)

4. Project Trip Generation
   - Table of project generated trip estimate
   - Figure/map of trip distribution (in percent)
5. Project Site Access and Circulation Evaluation
   - Summary of a detailed site review for all modes of travel
   - Mobility deficiency analysis and summary to vehicle, transit, bicycle, and pedestrian facilities (under Project Conditions and Cumulative Conditions)
   - Summary of transportation improvements

CEQA Transportation Analysis Report Section

6. Vehicle Miles Traveled Assessment
   - Summary of project generated VMT under Baseline Conditions
   - Summary of project's effect on VMT under Future Year Cumulative Conditions
   - Identification of significant impacts
   - Discussion of mitigation measures
   - Evaluation of impacts of mitigation measures
7. Other CEQA Requirements
   - Summary of conflicts with a plan, ordinance, or policy addressing the circulation system, including transit, roadways, bicycle lanes, and pedestrian paths. Present mitigation measures, as needed.
   - Evaluation of hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment). Present mitigation measures, as needed.
   - Emergency access evaluation. Present mitigation measures, as needed.

Local Transportation Analysis Report Section

8. Existing with Project Conditions

- Maps of study area with applicable peak hour turning movements (Project Only and Existing with Project Conditions)
- Table of Existing Conditions and Existing with Project Conditions intersection peak hour average vehicle delay and LOS (or other multimodal performance measure)
- Traffic signal and other warrants
- Changes/Deficiencies to bike, pedestrian, and transit networks
- Findings of project deficiencies
- Improvements for project deficiencies (include a map showing physical improvements)
- Scheduling and implementation responsibility of improvements
- Deficiencies of proposed improvements

9. Background Conditions
    - Table of trip generation for approved project(s)
    - Figure and/or table of approved projects trip distribution (in percent)
    - Map of study area with applicable peak hour turning movements (Background Conditions)
    - Table of intersection peak hour average vehicle delay and LOS (or other multimodal performance measure) (including queue lengths, etc)
    - Changes/deficiencies to bike, pedestrian, and transit networks
    - Traffic signal and other warrants
10. Background with Project Conditions
    - Similar content to Existing with Project Conditions
11. Cumulative Conditions and Cumulative with Project Conditions
    - Map of study area with Cumulative Conditions peak hour turning movements
    - Map of study area with Cumulative with Project Conditions peak hour turning movements
    - Table of Cumulative Conditions and Cumulative with Project Conditions intersection peak hour average vehicle delay and LOS (or other multimodal performance measure)
    - Changes/Deficiencies to bike, pedestrian, and transit networks
    - Traffic signal and other warrants

- Findings of project deficiencies
- Improvements for project deficiencies (include a map showing physical improvements)
- Scheduling and implementation responsibility of improvements
- Deficiencies of proposed improvements

Additional Sections for Transportation Analysis Report

12. Construction Deficiencies
    - Trips due to construction workers
    - Truck trips and truck access routes
13. Phasing Deficiencies (For Large Projects Only)
14. Appendices
    - List of references
    - List of authors
    - Pedestrian, bicycle, and vehicle counts
    - Technical calculations for all analyses

Town of Los Gatos Traffic Mitigation Improvements Project List

Source	Description	Estimated Project Cost (2014 $)	Growth Related Project Cost Share	Mitigation Impact Fee Eligible Cost
GP/VTP 2035	Blossom Hill Rd and Union Ave Intersection Improvements	$ 1,200,000	90.00%	$ 1,080,000
GP/VTP 2035	Los Gatos - Almaden Rd Improvements	$ 3,000,000	50.00%	$ 1,500,000
GP/VTP 2035	Los Gatos Blvd Widening - Samaritan Dr to Camino Del Sol - Road widening, new sidewalks and bike lanes	$ 4,000,000	50.00%	$ 2,000,000
GP/VTP 2035	Union Ave Widening and Sidewalks - complete ped and bike routes	$ 3,000,000	50.00%	$ 1,500,000
GP/VTP 2035	Wood Rd Gateway on Santa Cruz Ave - roundabout	$ 1,200,000	50.00%	$ 600,000
GP/VTP 2035	Central Traffic Signal Control System	$ 750,000	9.68%	$ 72,600
GP/VTP 2035	Hwy 9 Los Gatos Creek Trail connector - new path and bridge for ped/bike	$ 1,000,000	50.00%	$ 500,000
GP/VTP 2035	Hwy 9/N. Santa Cruz Ave Intersection Improvements	$ 1,400,000	90.00%	$ 1,260,000
CIP	Roberts Road Improvements from bridge to University	$ 600,000	50.00%	$ 300,000
CIP	Pollard Road Widening from Knowles to York Avenue	$ 2,500,000	50.00%	$ 1,250,000
CIP	Sidewalks infill - Van Meter, Fischer and Blossom Hill Schools	$ 1,000,000	50.00%	$ 500,000
CIP	Winchester Blvd/Lark Avenue Intersection Improvements	$ 850,000	90.00%	$ 765,000
CIP	Westbound Lark to Hwy 17 northbound ramps - add two right-turn lanes	$ 3,750,000	90.00%	$ 3,375,000
CIP	Unfunded Deferred Street Maintenance (Annual PMS Survey)	$ 10,500,000	9.68%	$ 1,016,400
GP	Lark/Los Gatos Intersection Improvements - Add Third Left Turn Lanes for Eastbound and Northbound Approaches	$ 1,200,000	90.00%	$ 1,080,000
GP	Complete Street Improvements - Lark from Garden Hill to Los Gatos Blvd	$ 2,100,000	50.00%	$ 1,050,000
GP	Complete Street Improvements - SR 9 from University to Los Gatos Blvd	$ 650,000	50.00%	$ 325,000
GP	Complete Street Improvements - Blossom Hill Road from Old Blossom Hill Road to Regent Drive	$ 3,000,000	50.00%	$ 1,500,000
GP	Complete Street Improvements - Knowles from Pollard to Winchester	$ 2,000,000	50.00%	$ 1,000,000
GP	Complete Street Improvements - Winchester from Blossom Hill to Lark	$ 1,500,000	50.00%	$ 750,000
GP	Blossom Hill Road widening over Highway 17	$ 2,000,000	50.00%	$ 1,000,000
GP	Local Bikeway Improvements	$ 750,000	50.00%	$ 375,000
Notes:	Total	**$ 47,950,000**		**$ 22,799,000**
VTP = Valley Transportation Plan, 2035 by Santa Clara Valley Transportation Authority.				
Town CIP = Town of Los Gatos, Capital Improvement Program and pending construction project list.				
Source: Town of Los Gatos.				

VMT REDUCTION STRATEGIES

For projects that would generate Vehicle Miles Traveled (VMT), one or more VMT reduction strategies shall be required to reduce VMT of the project. Examples of VMT reduction strategies are provided below. The VMT reduction strategies are organized by their relative scale for implementation (i.e., individual site level, Town-wide level, and regional level).

INDIVIDUAL SITE LEVEL

- **Encourage Telecommuting and Alternative Work Schedules:** This strategy relies on effective internet access and speeds to individual project sites/buildings to provide the opportunity for telecommuting. This strategy would reduce commute VMT but also result in a change in VMTfor other travel purposes; thus, this strategy should consider the net change in the Town's project-generated VMT.
- **Provide Ride-Sharing Programs:** This strategy focuses on encouraging carpooling and vanpooling by project site/building tenants.
- **Implement Car-Sharing Program:** This strategy reduces the need to own a vehicle or reducesthe number of vehicles owned by a household by making it convenient to access a shared vehicle for those trips where vehicle use is essential. Examples include programs like ZipCar,Car2Go, and Gig.
- **Provide Employer-Sponsored Vanpool/Shuttle:** This strategy relies on employers purchasing orleasing vans or shuttles, and often subsidizing the cost of at least program administration, if notmore. Vanpools typically service employee's commute to work, while shuttles service nearby transit stations and surrounding commercial centers. Scheduling and rider charges, if any, are within the employer's purview. A supplemental strategy may include facilitating or enhancing the service by improving the shuttle stops and biking/walking paths to the stops.

TOWN-WIDE LEVEL

- **Provide Bicycle and Pedestrian Network Improvements:** This strategy focuses on creating a comprehensive bicycle and pedestrian network within the project and connecting to nearby destinations. Projects in Los Gatos tend to be smaller so the emphasis of this strategy would likely be the construction of network improvements that connect the project site directly to nearby destinations. Alternatively, implementation could occur through an impact fee programor benefit/assessment district based on regional or local plans such as the *Bicycle and Pedestrian Master Plan*.
- **Provide Local Transit or Microtransit Solutions:** This strategy focuses on providing transit solutions that serve the local circulation needs and connections to key regional destinations. The service would connect to transit hubs, schools, commercial centers, and residential areas to improve transit connectivity and address the "first/last mile" problems. The service may be in the form of a local shuttle, microtransit service using dynamic routing and scheduling, fare subsidies to private transportation network companies (TNCs) or taxi companies, or other service delivery methods. The service may be open to all or target a special population, such as seniors, disabled or students. The implementation of this strategy may require regional or private partnership.

- **Provide Transit Signal Priority:** This strategy would upgrade the Town's traffic signals along transit corridors to provide transit signal priority to improve transit bus travel time.
- **Improve Biking and Walking Paths to Bus Stops and Transit Amenities:** This strategy improves the biking and walking paths to bus stops, enhances amenities at bus stops such as shelters, benches, and ADA accessible loading areas.
- **Provide Traffic Calming Measures:** This strategy combines the California Air Pollution Control Officers Association (CAPCOA) research focused on traffic calming with new research on providing a low-stress bicycle network. Traffic calming creates networks with low vehicle speeds and volumes that are more conducive to walking and bicycling. Building a low-stress bicycle network produces a similar outcome. One potential change in this strategy over time is that ebikes (and e-scooters) could extend the effective range of travel on the bicycle network,which could enhance the effectiveness of this strategy.
- **Limit Parking Supply:** When combined with companion TDM measures, reduced parking supplydiscourages driving by limiting easy and convenient parking options. Implementation of this strategy may require reducing (or removing) minimum parking requirements and allowing developers to use shared parking strategies.
- **Unbundle Parking Costs from Property Cost:** Unbundling separates parking costs from propertycost, for instance by not including a parking space in a residential unit's rent, or by requiring employers to lease each parking space separately from the building owner. This strategy ensures that the user understands that the cost of driving includes parking and can encourage people to use an alternative mode to save money.
- **Implement Market Price Public Parking (On-Street):** This strategy focuses on implementing a pricing strategy for parking by pricing all on-street parking in central business districts, employment centers, and retail centers. Priced parking would encourage "park once" behaviorand may also result in area-wide mode shifts.

REGIONAL LEVEL

- **Increase Density:** This strategy focuses on increasing density of land uses, where allowed by the General Plan and/or Zoning Ordinance, to reduce distances people travel and provide more travel mode options. This strategy also provides a foundation for many other strategies. For example, densification increases transit ridership, which justifies enhanced transit service.
- **Increase Diversity of Urban and Suburban Developments:** This strategy focuses on inclusion of mixed uses within projects or in consideration of the surrounding area to minimize vehicle travelin terms of both the number of trips and the length of those trips.
- **Increase Transit Accessibility:** This strategy focuses on encouraging the use of transit by locating a project with high density near transit. A project with a residential/commercial center designed around a bus station is referred to as a transit-oriented development (TOD).
- **Integrate Affordable and Below Market Rate Housing:** This strategy provides greater opportunities for lower income families to live closer to job centers since

income effectsprobability that a commute will take transit or walk to work.

- **Increase Transit Service Frequency/Speed:** This strategy focuses on improving transit service convenience and travel time competitiveness with driving. Given existing land use density in LosGatos, this strategy may be limited to traditional commuter transit where trips can be pooled at the start and end locations, or it may require new forms of demand-responsive transit service. Note that implementation of this strategy would require regional or local agency implementation, substantial changes to current transit practices, and would not likely be applicable for individual development projects.
- **Implement Area or Cordon Pricing:** This strategy focuses on implementing a cordon (i.e., boundary) pricing scheme, where a cordon is set around a specific area to charge a toll to enterthe area by vehicle. The cordon location is usually the boundary of an area with limited points of access. The cordon toll may be constant, applied during peak periods, or be variable, with higher prices during congestion peak periods. The toll can also be based on a fixed schedule or be dynamic, responding to real-time congestion levels. Note that implementation of this strategy requires alternative modes of travel that are available and reliable, such as high-qualitytransit infrastructure.

DEFINITIONS:

Land use entitlements shall mean entitlement changes in use requiring discretionary approval by Los Gatos, which include General Plan amendments, specific plans (and related amendments), zoning changes, use permits, planned developments, and tentative subdivision maps.

Land Use Projects or Development shall mean residential or nonresidential improvements on a site.

Existing development shall mean any already existing habitable residential or nonresidential building or projects which rebuild or remodel the existing development without increasing the trips generated. No fee shall be charged for development already existing.

Expansion of use, to determine traffic increases, shall include any increase in the number of living units, gross floor area in a nonresidential development and/or any intensification of use which increases trips generated.

Transportation improvements shall mean those improvements to the transportation facilities and related actions necessary to implement the transportation element of the Town's general plan and any applicable specific plan.

Site shall mean a plot of ground consisting of one (1) or more lots or parcels on which a common improvement is proposed or exists.

Trip generation rate shall mean the number of vehicle trips over a weekday twenty-four-hour period generated by a particular type of land use and shall be expressed in terms of the number of acres or square feet of land for each land use category. The Town Engineer may exercise reasonable discretion to establish recommended trip generation rates for land use categories consisting of groupings of land uses having similar use and functional characteristics. When the trip generation rate is multiplied by the amount of land, the number of trips, both incoming and outgoing, shall be estimated.

Average Daily Trips (ADT) shall mean the total number of trips, both in-bound and out-bound, within a 24-hour weekday period, generated by a particular use or development.
Pass-By Trip: Trips generated by the proposed Project that would be attracted from traffic passing the proposed project site on an adjacent street that contains direct access to the Project.

Peak Hour Trips shall mean vehicle trips, both in-bound and out-bound, occurring during a 60-minute period either during the A.M. Peak (7 A.M. to 9 A.M.) or the P.M. Peak (4 P.M. to 6 P.M.), generated by a particular use or Project.

Specialty Retail. Specialty Retail uses are defined as walk-in and impulse businesses such as juice bars, yogurt shops, coffee shops, donut shops, and similar uses which do not generally serve meals and have limited or no seating. Specialty Retail uses are defined under this policy for purposes of establishing trip generation data and this definition does not provide any land use or zoning guidance.

Use shall mean the purpose for which a site or structure is arranged, designed, intended, constructed, erected, moved, altered or enlarged or for which either a site or a structure is or may be occupied or maintained.

Vehicle Trip End shall mean an incoming or outgoing trip going to or coming from anywhere within the Town or outside the Town.

CEQA shall mean the California Environmental Quality Act. These terms are reserved for definitions per the CEQA Guidelines: significance criteria, significant impact, and mitigation measures.

Local Transportation Analysis shall mean analysis to assess potential mobility deficiencies caused by new developments on the local roadway performance, following the Town's transportation policies. These terms are reserved for Local Transportation Analysis: threshold or performance standard, deficiency, and mitigation improvement.

Vehicle Miles Traveled (VMT) is a metric that accounts for the number of vehicle trips generated times the length or distance of those trips. VMT is an accessibility performance metric that evaluates the changes in land use patterns, regional transportation systems, and other built environment characteristics.

Level of Service (LOS) is a metric that assigns a letter grade to network performance. The typical application is to measure the average amount of delay experienced by vehicle drivers at an intersection during the most congested time of day and assign a report card range from LOS A (fewer than 10 seconds of delay) to LOS F (more than 80 seconds of delay). Vehicle level of service is used to measure vehicle mobility.

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