

AN URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK ESTABLISHING INTERIM MODIFICATIONS TO THE EXISTING DEVELOPMENT STANDARDS FOR ACCESSORY DWELLING UNITS (ADU) AND JUNIOR ACCESSORY DWELLING UNITS (JADU) IN ALL SINGLE-FAMILY AND MULTI-FAMILY RESIDENTIAL ZONES TO ENSURE CONSISTENCY WITH CHANGES TO GOVERNMENT CODE SECTIONS 65852.2 AND 65852.22

City Attorney's Synopsis

This Urgency Ordinance establishes interim objective development standards to add to the existing development controls regulating Accessory Dwelling Units ("ADU") and Junior Accessory Dwelling Units ("JADU") in the City's single family and multiple family residential zones in compliance with changes made to state law under Senate Bill 897 and Assembly Bill 2221, which amended, in part, California Government Code Sections 65852.2 and 65852.22.

THE COUNCIL OF THE CITY OF BURBANK FINDS, DETERMINES AND DECLARES THAT:

A. California Senate Bill 897 (SB 897) and California Assembly Bill (AB 2221) (Amending, in part, Government Code Sections 65852.2 and 65852.22) (collectively referred to herein as "ADU Laws") were signed by Governor Gavin Newsom on September 28, 2022, and will become effective January 1, 2023. SB 897 and AB2221 establish additional regulations for Accessory Dwelling Units ("ADU") and Junior Accessory Dwelling Units ("JADU").

B. Pursuant to the ADU Laws, all cities must make modifications to local ADU and JADU development standards and controls to be consistent with state law that include, but are not limited to: increasing the maximum height limit from 17 feet to 18 feet (or in certain instances, to 20 feet) for certain ADUs that are either located within a half-mile of a high-quality transit corridor or major transit stop, removing front yard setback requirements where construction of certain ADUs would otherwise be infeasible, and requiring that local ordinances only impose objective standards on ADUs. Failure to update local ordinances in compliance with state law before January 1, 2023 may render local ADU ordinances null and void.

C. On December 13, 2022, pursuant to Government Code Section 65858 and Burbank Municipal Code 10-1-1996, the Burbank City Council considered an urgency ordinance to adopt interim regulations establishing objective development standards for ADU and JADU projects consistent with the ADU Laws.

D. The City Council considered the report and recommendations of the Community Development Director and the evidence presented at said meeting, which noted that the Urgency Ordinance is necessary because the City's existing ADU and JADU development standards are inconsistent with the State mandated ADU and JADU

regulations under SB 897 and AB 2221. Since 2017 when the State began mandating more permissive local standards for ADU development through April 2022, the City has received roughly 1,136 applications for ADUs and it is likely that the City will continue to receive such applications. Absent the Urgency Ordinance, inconsistencies between the City's local ADU standards and state ADU Laws will have a detrimental effect on the public health, safety and general welfare by causing confusion and ambiguity for applicants with potentially inconsistent and unfair results for City residents.

E. Furthermore, implementation of the state's ADU Laws without local refinements may result in development impacts to public safety and welfare and conflict with the character of the surrounding neighborhoods. The City's existing ADU and JADU regulations, do not currently address all of the state mandated changes called for in the ADU Laws and the City has not had time to address all of the potential impacts to the community. The Urgency Ordinance would allow staff valuable time to further evaluate and refine the City's ADU and JADU regulations to comply with applicable state law while also protecting and preserving existing neighborhoods where ADUs and JADUs are allowed, to the extent permissible by State ADU Laws.

F. Based on the above recitals, and pursuant to Burbank City Charter Section 500, the Council finds it is necessary as an emergency measure for preserving the public peace, health, safety and welfare of its citizens to adopt this proposed Ordinance as an urgency measure.

G. Pursuant to Section 21080.17 of the California Public Resources Code (PRC), the adoption of the Urgency Ordinance is statutorily exempt from the California Environmental Quality Act (CEQA). Under PRC Section 21080.17, CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.2 of the Government Code (the state ADU law). The Urgency Ordinance implements Government Code Sections 65852.2 and 65852.22 within the City of Burbank in a manner that is consistent with the requirements of state law. As such, the adoption of the ordinance is exempt from CEQA.

THE COUNCIL OF THE CITY OF BURBANK DOES ORDAIN AS FOLLOWS:

Section 1. Findings. All the findings set forth above are true and correct and are incorporated herein as if restated in their entirety.

Section 2. Amendment to Burbank Municipal Code (BMC) 10-1-620.3(A).
Subsection A of BMC 10-1-620.3 is hereby amended and restated as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

"A. GENERAL PROVISIONS

Unless otherwise preempted by state law, the design and construction of all newly constructed accessory dwelling units ("ADU") and junior accessory dwelling units ("Junior ADU") shall comply with all applicable building, housing, zoning and site

development standards of this division, including but not limited to standards regarding setbacks, floor area ratio standards, height, lot coverage, architectural design review, including compatibility with existing structures located on the same property and in the surrounding neighborhood that are listed in the California Register of Historic Places. Applicants shall also comply with all applicable fee and charge requirements, and other applicable zoning requirements. Applications deemed complete for ADUs and Junior ADUs shall be approved or denied ministerially with in the applicable 60-day review period consistent with state law.

If the City denies an application for an ADU or JADU, the City shall, within the 60-day period, return in writing a full set of comments to the applicant with a list of items that are defective or deficient and provide a description of how the application can be corrected by the applicant.”

Section 3. Amendment to BMC 10-1-620.3(G). Subsection G of BMC 10-1-620.3 is hereby amended and restated as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

“G. HEIGHT

- 1) All new ADUs, attached to the main dwelling unit must comply with the height requirements defined in Code Section 10-1-603(A).
- 2) When an ADU is constructed on top of a detached garage, accessory structure, or above another ADU when applicable under this Code, the maximum top of plate height cannot exceed 20 feet as measured from grade level and the maximum height to any architectural features must not exceed 23 feet as measured from grade level.
- 3) All new detached ADUs, not constructed on top of a detached garage or accessory structure shall be no more than one (1) story with a maximum top of plate height of 12 feet as measured from existing grade level and a maximum height of 17 feet to any architectural features, unless one of the following exceptions applies:
 - a) If the detached ADU will be on a lot located within a ½ mile of a “high-quality transit corridor” or “major transit stop” (as those terms are defined in California Public Resources Code 21155), a maximum height of 18 feet (as measured from existing grade to the top of roof) shall be permitted. An additional two feet in height beyond the maximum 18 feet will be permitted to accommodate a roof pitch on the ADU that matches the roof pitch of the primary dwelling.
 - b) If there is an existing or proposed multistory, multifamily dwelling on the lot where the detached ADU will be located, a maximum height of 18 feet (as measured from existing grade to the top of roof) shall be permitted.

- 4) When an ADU is constructed on top of a garage or accessory structure, the ADU cannot touch grade level, except through support posts or stair access. The bottom of the finished floor of the ADU must be above the top of plate of the garage or accessory structure.”

Section 4. Amendment to BMC 10-1-620.3(H). Subsection H of BMC 10-1-620.3 is hereby amended and restated as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

“H. SETBACK

- 1) Unless otherwise provided in this Division, any new attached or detached ADUs must have a minimum setback of 4 feet to the rear property line and 4 feet to the side-yard property line including ADUs constructed on top of a garage or accessory structure.
- 2) Any new ADU or JADU cannot be located closer to the front property line than the prevailing front yard setback for a single family residential zoned lot or minimum required front setback for a multifamily residential zoned lot. ~~An exception to this requirement is to allow~~ Notwithstanding the foregoing, the following exceptions shall apply:
 - a) ~~The conversion of an existing legal non-conforming~~ building footprint of a primary structure or attached accessory structure into an ADU or Junior ADU that is located within the front yard setback is permitted.
 - b) An ADU that complies with all other applicable development standards may be built within the front yard setback of a lot if it is otherwise physically infeasible to build such an ADU on other areas of the lot while maintaining the minimum rear and side yard setbacks outlined in this Subsection H.
- 3) When a garage or other accessory structure exists and is legally permitted with City building permits and is converted into an ADU, the existing legal non-conforming setback of the garage or other accessory structure can be maintained. The required minimum 4 foot rear and side yard setbacks shall still apply to all added space that goes beyond the existing building footprint and/or building envelope of the garage or other accessory structure.
- 4) New ADUs must maintain a 5-foot separation from building face to building face, and a 4 foot separation from eave to eave of any adjacent structure.
- 5) No accessory dwelling unit may be located in a way that would prohibit access to a designated parking area or impede safe ingress and egress from a required side, rear, or front setback.
- 6) No setback shall be required when an ADU is constructed in the same location and to the same dimensions as an existing legal Structure that is

converted into an ADU or to a portion of an accessory dwelling unit, even when that Structure has been demolished.

7) When a balcony, porch or patio is provided in conjunction with the ADU and is 7 inches above grade level, the balcony, porch or patio must be setback from the rear and side property lines a minimum of 4 feet.

8) When a staircase or landing is provided for a new or existing second story ADU, whether attached or detached to the primary dwelling unit, that staircase or landing must provide a minimum 4 foot setback to the rear and side property line.”

Section 5. Amendment to BMC 10-1-620.3(J). Subsection J of BMC 10-1-620.3 is hereby amended and restated as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

“J. DESIGN AND DEVELOPMENT STANDARDS

1) The exterior design of the ADU shall match that of the main dwelling in terms of building forms, materials, colors, exterior finishes, roof forms and style of doors and windows. The structure(s) shall retain the appearance of a single-family dwelling, and the accessory dwelling unit shall be integrated into the design of the existing primary dwelling unit on the property or as determined by the Community Development Director or their designee.

~~2) The design of an attached ADU shall be compatible with the architectural design of the primary dwelling unit in order to ensure long term compatibility regardless of whether the use of the ADU is continued or terminated.~~ If a separate entrance is provided, it shall be located on the side or rear of the structure and whenever possible located toward interior yard areas. The additional entrance is prohibited from being located on the front of the primary dwelling unit. The second entrance shall be well lit and free of concealment from landscaping to assure safe entrance and exit by the occupants.

~~3) All ADU façade elevations visible from any public right of way must provide entries, windows, or other architectural features compatible with the existing primary dwelling unit.~~

~~43)~~ When a garage is converted into an ADU, the garage door must be removed and replaced with windows, door, or other exterior design treatments features that ~~are consistent with the overall architectural match the exterior~~ design of the structure and the primary dwelling unit.

~~54)~~ The design and construction of each new detached ADU and ADU conversion of existing structures shall conform to all applicable provisions of Title 9 Chapter 1 (Building) of this Code, unless otherwise provided for in California Government Code Section 65852.2(a)(1)(D)(viii). The accessory dwelling unit

shall comply with all provisions of the Code pertaining to the adequacy of water, sewer, electrical, drainage, and fire and emergency services to the property on which the accessory dwelling unit will be located as well as all applicable codes pertaining to building, fire, health, and/or safety.

~~65)~~ The main entrance of a detached ADU must face the same direction as the main entrance for the primary dwelling unit or face the side property lines, ~~whichever is more compatible to the neighborhood character as determined by the City Planner.~~ An ADU entrance proposed to face an alley or rear property line is subject to review and approval by the City Planner.”

Section 6. Amendment to BMC 10-1-620.3(M). Subsection M of BMC 10-1-620.3 is hereby amended and restated as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

“M. MOUNTAIN FIRE ZONE AND FIRE SPRINKLERS

1) No ADU or Junior ADU shall be permitted on R-1 or R-1-H zoned properties located within the City’s designed Mountain Fire Zones as noted in the City’s General Plan Safety Element, unless all of the following requirements are met:

1a) No more than one ADU no greater than 800 square feet or one Junior ADU no greater than 500 square feet is allowed on R-1 and R-1-H zoned properties located in the City’s Mountain Fire Zones.

2b) All new ADUs proposed within the City’s Mountain Fire Zones shall comply with any applicable brush clearance requirements.

2) Unless otherwise required by applicable City building and fire codes, in any residential zone where new ADUs are allowed, if fire sprinklers are required for the primary dwelling unit then they are also required for new ADUs. The installation of fire sprinklers will not be required in an ADU if sprinklers are not required for the primary dwelling unit. Furthermore, the construction of an ADU, by itself, will not trigger a requirement for fire sprinkles to be installed in an existing single family or multifamily primary dwelling unit.”

Section 7. Amendment to BMC 10-1-620.3(O). Subsection O of BMC 10-1-620.3 is hereby amended and restated as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

“O. ADDITIONAL STANDARDS ~~IN~~ ON LOTS WITH MULTIFAMILY ~~ZONES~~ DWELLING STRUCTURES

All of the provisions of this section shall apply to ADUs in the on lots containing an existing or proposed multifamily dwelling structure, Multifamily Zones unless otherwise stated in the following:

1) No more than two (2) ADUs can be constructed on a ~~multifamily-zoned lot or on a~~ lot with an existing or proposed multiple multifamily dwelling(s). These ADUs must be detached from the primary structure(s); these ADUs may be attached or detached from each other and must provide the required building separation from all primary and accessory structures on the lot as required in Section (H)(4).

2) ADUs may be created within a multifamily dwelling structure in areas not used as livable space, such as storage rooms, boiler rooms, passageways, attics, basements, common areas or garages, so long as the converted space complies with state building standards for dwellings. The number of ADUs so created shall be up to 25% of the existing multifamily dwelling units in the multifamily dwelling structure, but at least one ADU is permitted.”

Section 8. Amendment to BMC 10-1-620.3(P). Subsection P of BMC 10-1-620.3 is hereby amended and restated as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

“P. JUNIOR ACCESSORY DWELLING UNIT STANDARDS

All the provisions of this section shall apply to a Junior ADU unless otherwise stated in the following:

- 1) A Junior ADU is limited to 500 square feet.
- 2) One Junior ADU is allowed per residentially zoned lot that includes an existing or proposed single-family dwelling unit structure.
- 3) A deed restriction must be recorded and will run with the land prohibiting the sale of the Junior ADU separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.
- 4) The deed restriction must include the size and attributes of the Junior ADU that conforms to this section.
- 5) The Junior ADU must be constructed within the existing walls of the single-family residence or attached garage.
- 6) The Junior ADU must include a separate entrance from the main entrance to the single-family residence.

7) A Junior ADU that does not include a separate bathroom shall include a separate entrance from the main entrance to the structure, with an interior entry to the main living.

~~78)~~ The Junior ADU must include an efficiency kitchen, which shall include all

the following:

a) A cooking facility with appliances that meet the definition of Kitchen as defined in Section 10-1-202 of Title 10, Chapter 1 of the Burbank Municipal Code.

b) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the Junior ADU.”

~~89~~) Additional parking may not be required as a condition to grant a permit for a Junior ADU.

10) An inspection, including the imposition of a fee for that inspection to determine whether the Junior ADU is in compliance with applicable building standards may be required at any time after the Junior ADU has been built.

~~4011~~) For the purposes of any fire or life protection ordinance or regulation, a Junior ADU shall not be considered a separate or new dwelling unit. This section shall not preclude the city from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a Junior ADU 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 ADU or not.

~~4112~~) For the purposes of providing service for water, sewer, or power, including a connection fee, a Junior ADU shall not be considered a separate or new dwelling unit.

~~4213~~) A Junior ADU requires owner-occupancy as follows: The owner shall reside in either the remaining portion of the single-family residence or the newly created Junior ADU. This provision does not apply if the owner is a governmental entity, land trust or housing organization. The property owner shall enter into a restrictive covenant memorializing this restriction with the City that applies to the owner and all successors in interest, in a form acceptable to the City Attorney that will be recorded on the subject property.”

Section 9. Amendment to BMC 10-1-620.7(A). Subsection A of BMC 10-1-620.7 is hereby amended and restated as follows. Additions to the BMC are underlined and deletions are marked in ~~strikeout~~:

“A. SUBMISSION OF APPLICATION.

Any person desiring to construct or establish an ADU and/or Junior ADU must submit the following materials to the Community Development Department’s Planning Division:

1) A completed ADU and/or Junior ADU Permit application on forms as established and provided by the City Planner.

- 2) Site plans, floor plans, elevations, pictures and such other materials as may be deemed necessary by the City Planner to make a determination on the application.
- 3) A copy of the Property Deed establishing the identity of the owner of record of the property (when applicable).
- 4) The Accessory Dwelling Unit and/or Junior ADU Permit application fee in accordance with the City of Burbank Adopted Citywide Fee Schedule in effect at the time of application submittal. An application shall not be deemed to be filed until such time as all necessary information has been provided to the Director.
- 5) All non-ADU structures not associated with the construction of an ADU must be reviewed under a separate permit. Applications to replace a detached garage with an ADU shall require a demolition permit for the garage. The demolition permit will be reviewed with the application for the ADU and issued at the same time as the permit to construct the ADU.

Section 10. Severability. If any provision of this Urgency Ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end each phrase, section, sentence, or word is declared to be severable.

Section 11. Environmental Review. Pursuant to Section 21080.17 of the California Public Resources Code (PRC), this Urgency Ordinance is statutorily exempt from the California Environmental Quality Act (CEQA). Under PRC Section 21080.17, CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.2 of the Government Code (the state ADU law). The Urgency Ordinance implements Government Code Sections 65852.2 and 65852.22 within the City of Burbank in a manner that is consistent with the requirements of state law. As such, the adoption of this Urgency Ordinance is exempt from CEQA.

Section 12. Effective Date. Based on the findings contained herein, the staff report, and other written evidence and testimony concerning this Urgency Ordinance, the Council declares this Urgency Ordinance is necessary as an emergency measure to preserve the public peace, health, safety and welfare. As such, this Urgency Ordinance shall be introduced, passed, and adopted at one and the same meeting and shall become effective immediately upon a 4/5ths vote the Council, and shall expire and be of no further force and effect after forty-five (45) days from the date of its adoption, unless further extended on or before this forty-fifth (45th) day.

PASSED AND ADOPTED this 13th day of December 2022.

s/Jess A. Talamantes
Jess A. Talamantes
Mayor

Approved as to Form:
Office of the City Attorney

Attest:

s/Zizette Mullins
Zizette Mullins, MMC, City Clerk

By: s/Lisa Kurihara
Lisa Kurihara
Senior Assistant City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Zizette Mullins, MMC, City Clerk of the City of Burbank, do hereby certify that the foregoing Ordinance No. 22-3,987 was duly and regularly passed and adopted by a four-fifths (4/5) vote of the Council of the City of Burbank at its regular meeting held on the 13th day of December, 2022, by the following vote:

AYES: Frutos, Schultz, Springer, Anthony and Talamantes.

NOES: None.

ABSENT: None.

I further certify that the Full Ordinance was published as required by law in a newspaper of general circulation in the City of Burbank, California within 14 days following its adoption on December 13, 2022.

s/Zizette Mullins
Zizette Mullins, MMC, City Clerk