

ORDINANCE NO. 1559

AN ORDINANCE OF THE CITY OF BANNING, CALIFORNIA, AMENDING TITLE 17 (“ZONING”) OF THE BANNING MUNICIPAL CODE TO UPDATE THE CITY’S DEVELOPMENT STANDARDS FOR ACCESSORY DWELLING UNITS AND ESTABLISH DEVELOPMENT STANDARDS FOR JUNIOR ACCESSORY DWELLING UNITS CONSISTENT WITH STATE LAW, AND MAKING A DETERMINATION OF STATUTORY EXEMPTION UNDER CEQA SECTION 21080.17 AND CEQA GUIDELINES SECTION 15282(H)

The City Council of the City of Banning does hereby ordain as follows:

Section 1. The City Council makes the following findings in connection with the adoption of this Ordinance:

A. Section 17.116.010 (“Purpose”) of the Banning Municipal Code (“BMC”) provides that the City Council may amend the provisions of this Zoning Ordinance (BMC Title 17) for the public health, environmental protection, safety, general welfare and the aesthetic harmony of the City.

B. BMC Section 17.116.020 further provides that amendments to the Zoning Ordinance may be proposed by the Community Development Director, the City Attorney, members of the Planning Commission or City Council, and any land owner or his or her agent.

C. The California state legislature enacted multiple bills (Assembly Bill (“AB”) 881, AB 68, AB 587, AB 670, and Senate Bill (“SB”) 13) in an effort to reduce the barriers on the permitting and construction of accessory dwelling units (ADUs), which includes both attached and detached ADUs, as well as, junior accessory dwelling units (JADUs).

D. The BMC is inconsistent with recent state legislation concerning ADUs and JADUs, and the City is obligated to bring BMC Title 17 into conformity with AB 881, AB 68, AB 587, AB 670, and SB 13.

E. On January 2, 2020, the Community Development Director initiated Zoning Text Amendment No. 19-97506 to amend the Zoning Ordinance to update the City’s development standards for ADUs and establish development standards for JADUs in compliance with AB 881, AB 68, AB 587, AB 670, and SB 13, which remove barriers to the construction of ADUs and JADUs.

F. In accordance with BMC Chapter 17.68 (“Hearings and Appeals”) and Government Code Sections 65090 and 65091, on January 3, 2020, the City gave public notice, by advertisement in the Record Gazette, a newspaper of general circulation within the City of Banning, of a public hearing at which the proposed Zoning Text Amendment would be considered.

G. On January 15, 2020, the Planning Commission held a duly noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to proposed Zoning Text Amendment No. 19-97506, and following receipt of testimony, continued the public hearing and item to February 5, 2020, in accordance with the recommendation of the Community Development Director.

H. On February 5, 2020, the Planning Commission held a duly noticed continued public hearing at which interested persons had an opportunity to testify in support of, or opposition to proposed Zoning Text Amendment No. 19-97506 and, after the close of the hearing, adopted Resolution No. 2020-03, recommending that the City Council adopt proposed Zoning Text Amendment No. 19-97506, amending Title 17 (“Zoning”) of the BMC to update the City’s development standards for ADUs and establish development standards for JADUs consistent with state law.

I. In accordance with BMC Chapter 17.68 (“Hearings and Appeals”) and Government Code Sections 65090, on February 28, 2020, the City gave public notice, by advertisement in the Record Gazette, a newspaper of general circulation within the City of Banning, of a public hearing at which the proposed Zoning Text Amendment would be considered.

J. On March 10, 2020, the City Council held a duly noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to proposed Zoning Text Amendment No. 19-97506.

K. All other prerequisites to the adoption of this Ordinance have been satisfied.

Section 2. The City Council makes the following California Environmental Quality Act findings in connection with the adoption of this Ordinance:

A. California Environmental Quality Act (CEQA). Planning Division staff have determined that the proposed Zoning Text Amendment No. 19-97506 (the “Project”) is exempt from the requirements of the California Environmental Quality Act (“CEQA”) and the City’s CEQA Guidelines pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), which provide that the adoption of an ordinance regarding ADUs by a city to implement Government Code Section 65852.2 is statutorily exempt from CEQA. The City Council has reviewed staff’s determinations of exemption from CEQA and, based on its own independent judgment, concurs with staff’s determination of exemption.

B. Multi-Species Habitat Conservation Plan (MSHCP). The proposed Zoning Text Amendment does not relate to any one physical project and are not subject to the MSHCP.

Section 3. The City Council hereby finds the following in accordance with BMC Section 17.116.050:

A. The Proposed Amendment is Consistent with the Goals and Policies of the General Plan. The proposed Zoning Text Amendment No. 19-97506 is consistent with the following goals and policies of the General Plan:

Findings of Fact: The proposed Zoning Text Amendment No. 19-97506 is consistent with the goals and policies of the General Plan.

The residential goals of the General Plan encourage the preservation and enhancement of the City's neighborhoods with a broad range of housing types to fill the needs of future residents.

It is a stated policy (Residential Policy 1) that the City's General Plan shall provide for a range of housing densities while considering land use compatibility.

Policy 6 of the General Plan Community Development Element incorporates a need for creative and flexible design standards for residential projects, including clustered housing units.

As such, the proposed amendment is consistent with the stated goals, programs, and policies of the General Plan.

B. The Proposed Amendment is Internally Consistent with the Zoning Ordinance.

Findings of Fact: The proposed Zoning Text Amendment No. 19-97506 is internally consistent with the Zoning Ordinance.

The proposed Zoning Text Amendment is consistent with the purpose and objective of the Zoning Ordinance (Title 17) to ensure orderly development of uses and lands within the City to protect the public health, safety, and welfare. With the approval of proposed Zoning Text Amendment No. 19-97506, the amendment will be internally consistent with the Zoning Ordinance and California State Law regarding ADUs and JADUs.

C. The City Council has Independently Reviewed and Considered the Requirements of the California Environmental Quality Act.

Findings of Fact: Planning Division staff have determined that the proposed Zoning Text Amendment No. 19-97506 (the "Project") is exempt from the requirements of the California Environmental Quality Act ("CEQA") and the City's CEQA Guidelines pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), which provide that the adoption of an ordinance regarding ADUs by a city to implement Government Code Section 65852.2 is statutorily exempt from CEQA. The City Council has reviewed staff's determinations of exemption from CEQA and, based on its own

independent judgment, concurred with staff's determination of exemption in Section 2.A. of this Ordinance.

Section 4. The definition of "Accessory Dwelling Unit/Second Unit" in Section 17.04.070 ("Definitions") of Chapter 17.04 ("Basic Provisions") of Division I ("General Provisions") of Title 17 ("Zoning") of the Banning Municipal Code is hereby amended to read as follows:

Accessory Dwelling Unit is an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons, is located on a lot with a proposed or existing primary residence, and meets all the development standards set forth in Section 17.08.100, including an efficiency unit, as defined in Section 17.08.100(E)(5)(a), and a manufactured home, as defined in Health and Safety Code Section 18007. An accessory dwelling unit shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multi-family dwelling is or will be situated."

Section 5. Section 17.04.070 ("Definitions") of Chapter 17.04 ("Basic Provisions") of Division I ("General Provisions") of Title 17 ("Zoning") of the Banning Municipal Code is hereby amended to add a definition for "Junior Accessory Dwelling Unit" in alphabetical order to read as follows:

Junior Accessory Dwelling Unit is a unit that is no more than five hundred square feet in size, is contained entirely within a single-family residence, and may include separate sanitation facilities, or may share sanitation facilities with the existing structure."

Section 6. Section 17.08.100 ("Accessory Dwelling Unit Standards") of Article II ("Land Use District Development Standards") of Chapter 17.08 ("Residential Districts") of Division II ("Land Use Districts") of Title 17 ("Zoning") of the Banning Municipal Code is hereby amended in its entirety to read as follows:

"17.08.100 – Accessory dwelling unit and junior accessory dwelling unit standards.

- A. These standards are adopted pursuant to California Government Code Sections 65852.2 and 65852.22. The purpose of these standards is to establish procedures and standards for the development of accessory dwelling units and junior accessory dwelling units in a manner that preserves the integrity of single-family and multi-family residential areas, avoids adverse impacts on such areas, and ensures a safe and attractive residential environment.
- B. Building Permit Application Required. Applicants for accessory dwelling units or junior accessory dwelling units shall submit an application for approval of a building permit and the applicable application fee, as established by resolution of the City Council.
- C. Notwithstanding the provisions of Chapter 17.112 of this title, a building permit application for an accessory dwelling unit or junior accessory

dwelling unit shall be considered ministerially without discretionary review or hearing.

1. Existing single-family or multi-family dwelling on lot. If there is an existing single-family or multi-family dwelling unit on the lot on which the accessory dwelling unit or junior accessory dwelling unit is proposed, the building permit application for the accessory dwelling unit or junior accessory dwelling unit shall be acted upon within sixty days after receiving a complete building permit application, unless the sixty-day period is tolled upon the applicant's request.
2. New single-family or multi-family dwelling on lot. If a building permit application for an accessory dwelling unit or junior accessory dwelling unit is submitted with an application to construct a new single-family or multi-family dwelling on the lot, the building permit application for the accessory dwelling unit or junior accessory dwelling unit shall be acted upon after any permits required for the single-family or multi-family dwelling have been approved.

D. Notwithstanding the provisions of this section to the contrary, the City shall ministerially approve a building permit application within a residential or mixed-use zone to create any of the following:

1. One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:
 - a. 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 one hundred fifty 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. For purposes of this section, the term "accessory structure" shall mean a structure that is accessory and incidental to a dwelling located on the same lot.
 - b. The space has exterior access from the proposed or existing single-family dwelling.
 - c. The side and rear setbacks are sufficient for fire and safety.
 - d. The junior accessory dwelling unit complies with the requirements of Subsection (F) of this section and Government Code Section 65852.22.

2. One detached, new construction, accessory dwelling unit that does not exceed eight hundred square feet or sixteen feet in height and has at least four-foot side and rear yard setbacks on 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 Subsection (D)(1) of this section.
3. At least one accessory dwelling unit within the portions of existing multi-family 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. The applicant may request and the City shall allow the number of accessory dwelling units that equal up to twenty-five percent of the number of multi-family dwelling units in the existing building.
4. Not more than two detached accessory dwelling units that are located on a lot that has an existing multi-family dwelling so long as the units do not exceed a height of sixteen feet and have at least four-foot rear and side yard setbacks.

E. Except for those accessory dwelling units approved pursuant to Subsection D of this section, the following standards shall apply to accessory dwelling units:

1. General plan designation and zoning classification consistency. An accessory dwelling unit shall be consistent with the General Plan designation and the zoning classification for the lot. For purposes of this Subsection (E)(1), an accessory dwelling unit that conforms to the provisions of this section shall be deemed to be consistent with the General Plan designation and the zoning classification for the lot.
2. Zone. The accessory dwelling unit shall be located or proposed to be located on a lot zoned to allow single-family or multi-family dwelling residential use.
3. Density. An accessory dwelling unit shall not exceed the allowable density for the lot upon which the accessory dwelling unit is located or proposed to be located. For purposes of this Subsection (E)(3), an accessory dwelling unit that conforms to the provisions of this section shall not be considered to exceed the allowable density for the lot upon which it is located or proposed to be located.
4. Lot location. The accessory dwelling unit shall either be attached to, or located within, the proposed or existing primary single-family or multi-family dwelling, including attached garages, storage areas, or similar uses, or an accessory structure, or detached from the

proposed or existing primary single-family or multi-family dwelling and located on the same lot as the proposed or existing primary single-family or multi-family dwelling.

5. Floor area.
 - a. The minimum gross floor area of an accessory dwelling unit shall be no less than the size of a two hundred twenty square foot efficiency unit. For purposes of this Subsection (E)(5)(a), the term "efficiency unit" shall have the same meaning as defined in Health and Safety Code Section 17958.1.
 - b. If there is an existing primary single-family or multi-family dwelling, the total floor area of an attached accessory dwelling unit shall not exceed fifty percent of the existing primary single-family dwelling or twenty percent lot coverage of the lot on which the existing multi-family dwelling is located.
 - c. The total floor area of a detached accessory dwelling unit shall not exceed one thousand two hundred square feet.
6. Lot coverage/floor area ratio. The total gross floor area of all covered structures, including an attached accessory dwelling unit, shall not exceed the lot coverage or floor area ratio as prescribed in the applicable zoning district, except that the lot coverage or floor area ratio prescribed in a particular zone shall not prohibit an accessory dwelling unit that is at least eight hundred square feet and sixteen feet tall, with four-foot rear yard and side yard setbacks.
7. Setbacks.
 - a. No setback shall be required for an existing living area, existing 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. For purposes of this Subsection (E)(7)(a), the term "living area" shall mean the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
 - b. Any accessory dwelling unit that is not subject to Subsection (E)(7)(a) of this section shall be at least four feet from the side and rear lot lines.
8. Height. Notwithstanding the maximum height requirements applicable to the zone in which the lot is located, the maximum height of an attached or detached accessory dwelling unit shall be sixteen feet.

9. Parking.

- a. On-site Parking. Accessory dwelling units shall not be subject to the provisions of the Parking Standards set forth in Chapter 17.32 of this title.
- b. Replacement of On-Site Parking Not Required. The City shall not require the replacement of on-site parking spaces lost 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.

10. Local building code. Accessory dwelling units shall comply with building and fire code requirements that apply to detached dwellings, as applicable and set forth in the Building Ordinance of the City of Banning in Title 15, and the California Fire Code, as applicable and amended and codified in Chapter 8.16.

11. Fire sprinklers. An accessory dwelling unit shall not be required to provide fire sprinklers if sprinklers are not required for the primary single-family or multi-family residence.

12. Rental and conveyance. An accessory dwelling unit may be rented separate from the primary residence only for terms longer than thirty consecutive calendar days, but shall not be sold or otherwise conveyed separate from the primary residence.

13. Passageways. No passageway shall be required in conjunction with the construction of an accessory dwelling unit. For purposes of this section, the term "passageway" shall mean a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

F. The following standards shall apply to junior accessory dwelling units:

1. Number. The number of junior accessory dwelling units shall be limited 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. Zone. The junior accessory dwelling unit is located or proposed to be located on a lot zoned to allow single-family dwelling residential use.
3. Lot location. A permitted junior accessory dwelling unit shall be constructed within the walls of the proposed or existing single-family residence.

4. Floor area. A junior accessory dwelling unit shall be a maximum of five hundred square feet of gross floor area. The gross floor area of a shared sanitation facility shall not be included in the maximum gross floor area of a junior accessory dwelling unit.
5. Access. A permitted junior accessory dwelling unit shall include a separate entrance from the main entrance to the proposed or existing single-family residence.
6. Kitchen. The permitted junior accessory dwelling unit shall 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.
7. Utilities. 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.
8. Owner-occupancy. Owner-occupancy is required in the single-family residence in which the junior accessory dwelling unit will be permitted, unless the property owner is another governmental agency, land trust, or housing organization. The property owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit.
9. Deed restriction. The property owner shall record a deed restriction, which shall run with the land, shall file the deed restriction with the City. The deed restriction 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.

G. The following standards shall apply to accessory dwelling units described in Subsection (D) of this section:

1. The City shall not require, as a condition for ministerial approval of a building permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions. For purposes of this Subsection

(G)(1), the term “nonconforming zoning condition” shall mean a physical improvement on a property that does not conform with current zoning standards.

2. The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.
3. A rental of an accessory dwelling unit created pursuant to Subsection (D) of this section shall be for a term longer than thirty consecutive days.
4. The City may require, as part of the building permit application to create an accessory dwelling unit connected to an onsite water treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last ten years.

H. In accordance with the timelines provided in Subsection (C) of this section, the directory of community development, or designee, shall approve an application for an accessory dwelling unit or junior accessory dwelling unit upon payment of all required fees set forth in Subsection (I) of this section and if all of the following requirements are met: (1) the accessory dwelling unit or junior accessory dwelling unit is located on property that is zoned to allow single-family residential uses, multi-family residential uses, or mixed-uses, as applicable; (2) the accessory dwelling unit or junior accessory dwelling unit is located on property that includes an existing or proposed primary single-family or multi-family dwelling, as required; (3) the accessory dwelling unit or junior accessory dwelling unit satisfies all applicable standards set forth in Subsections (E), (F), and (G) of this section. For purposes of this section, the term “proposed primary single-family or multi-family dwelling” shall mean a dwelling that is the subject of a permit application and that meets the requirements for permitting.

I. Fees and utility connections. Fees charged for accessory dwelling units and junior accessory dwelling units shall be determined in accordance with the provisions of Chapters 6 and 7 of the Mitigation Fee Act (Gov. Code, § 66000 *et seq.*).

1. An accessory dwelling unit shall be considered a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, only if the accessory dwelling unit is constructed in conjunction with a new single-family dwelling.
2. No impact fee shall be imposed upon the development of an accessory dwelling unit that is less than seven hundred fifty square feet. An accessory dwelling unit that is seven hundred fifty square

feet or more shall be subject to impact fees in proportion to the square footage of the primary dwelling unit. For purposes of this Subsection (I)(2), the term "impact fee" shall have the same meaning as the term "fee" is defined in Government Code Section 66000(b), except that it also includes fees specified in Government Code Section 66477. The term "Impact fee" does not include any connection fee or capacity charge charged by the City.

3. An accessory dwelling unit described in Subsection (D)(1) of this section shall not be required 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 home.
4. An accessory dwelling unit not described in Subsection (D)(1) of this section shall install a new or separate utility connection directly between the accessory dwelling unit and the applicable utility purveyor. The Public Works Director shall determine the types and method of these connections. Consistent with Government Code 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.
5. A junior accessory dwelling unit shall be subject to fees for inspection of the junior accessory dwelling unit to determine if the junior accessory dwelling unit complies with applicable building standards.
6. A junior accessory dwelling unit shall not be considered a separate or new dwelling unit for purposes of providing service for water, sewer, or power, including a connection fee.

J. Upon approval of an accessory dwelling unit or junior accessory dwelling unit on a lot, the lot shall not be further divided unless there is adequate area to divide the lot consistent with the general plan, zoning ordinance, the subdivision ordinance, and the Subdivision Map Act.

K. All construction, structural alterations, or additions made to create an accessory dwelling unit or junior accessory dwelling unit shall comply with current building, electrical, fire, and plumbing codes regulations that apply to detached dwellings, as applicable.

L. In the event of any conflicts between the standards set forth in this section and those set forth in the regulations of the applicable zoning district, the provisions of this section shall prevail."

Section 7. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid by a decision of a court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact than any one or more sections, subsections, sentences, clauses, phrases or portions thereof be declared invalid.

Section 8. Publication, Effective Date. The City Clerk shall certify to the passage and adoption of this Ordinance, and shall make a minute order of the passage and adoption thereof in the records and the proceeding of the City Council at which time the same is passed and adopted. This Ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and within fifteen (15) calendar days after its final passage, the City Clerk shall publish, or cause a summary of this Ordinance to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California. The City Clerk shall cause the Ordinance to be printed, published, and circulated.

Section 9. The City Council hereby directs the Community Development Director to submit a copy of this Ordinance to the California Department of Housing and Community and Development (HCD) within 60 days of its adoption in accordance with Government Code Section 65852.2.

INTRODUCED for the first reading, the 10th day of March, 2020, and **PASSED**, **APPROVED AND ADOPTED** at a second reading, the ___[th/rd] day of [month], 2020.

Daniela Andrade, Mayor
City of Banning

ATTEST:

Sonja De La Fuente, Deputy City Clerk
City of Banning

**APPROVED AS TO FORM
AND LEGAL CONTENT:**

Kevin G. Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that Ordinance 1552 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 10th day of March, 2020, and was duly adopted at a regular meeting of the City Council of said City Council on the __[th/rd] day of [month], 2020, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Sonja De La Fuente, Deputy City Clerk
City of Banning, California