



- I. **CALL TO ORDER: A REGULAR PLANNING COMMISSION MEETING - 6:30 P.M.**
- II. **FLAG SALUTE**
- III. **ROLL CALL:** Chair Ortiz, Vice Chair Uva, Duarte, and Guerra
- IV. **PLANNING COMMISSIONER ANNOUNCEMENTS; REQUEST FOR FUTURE AGENDA ITEMS; AND CONFERENCE/MEETING REPORTS:**
- V. **REPORT ON CITY COUNCIL ACTIONS**
- VI. **PRESENTATIONS:**

- 1. **Brown Act and Hearing Protocols**

- VII. **OTHER BUSINESS/NON-AGENDA/CONSENT CALENDAR/ PUBLIC COMMENTS:**

Persons wishing to address the Planning Commission on City business not listed on the agenda may do so at this time.

Persons wishing to address the Planning Commission on any item listed on the Agenda, other than public hearing items, may do so at this time. Persons wishing to address public hearing items shall do so at the time of the public hearing.

It is requested, but not required, that you state your name, address and subject matter upon which you wish to speak. Please limit your comments to no more than four (4) minutes. Pursuant to the Brown Act, no discussion or action, other than a brief response, referral to the City Planning staff or schedule for a subsequent agenda, shall be taken by the Planning Commission on any issue brought forth that is not listed on the Agenda.

- VIII. **CONSENT CALENDAR ITEMS:** Items in this section will be voted on in one motion unless a Commissioner requests separate actions. Further, any Consent Calendar items removed from the agenda will be considered by the Commission following the public hearing items.

- IX. **OTHER BUSINESS:**

- X. **PUBLIC HEARINGS:**

- 2. **PLN-22-00092 (Conditional Use Permit)**

- Location: 7375 Stewart and Gray Road

- Request: A request to modify an existing building mounted wireless telecommunications facility.

- CEQA: Categorical Exemption – Section 15301 (Class 1, Existing Facilities)

- Staff: Assistant Planner Abraham Luna

- Contact: aluna@downeyca.org

- Recommendation: Continue to 5/17/2023 Planning Commission meeting



3. **Accessory Dwelling Unit Ordinance (Zone Text Amendment)**

Location: City Wide

Request: A Code Text Amendment to amend Article 9 of the Downey Municipal Code regarding Accessory Dwelling Units, in order to comply with state law.

CEQA: Not subject to CEQA pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h)

Staff: Assistant Planner Abraham Luna

Contact: aluna@downeyca.org

Recommendation: Recommend approval to City Council

XI. **ITEMS TO BE PLACED ON FUTURE AGENDAS:**

a. **Conditional Use Permit for a new Wireless Cell Site - 7375 Stewart and Gray Road**

XII. **STAFF MEMBER COMMENTS:**

XIII. **ADJOURNMENT:** To Wednesday, May 17, 2023 at 6:30 pm, at Downey City Hall, 11111 Brookshire Avenue, Downey, CA. 90241.

NOTICE: SECTION 9806 – APPEALS

Any person aggrieved or affected by any final determinations of the Commission concerning an application for action of an administrative nature, including a variance or a permit, or any condition or requirement thereon, or upon the failure of the Commission to make its findings and determinations within thirty (30) days after the closure of the hearing thereon, no later than fifteen (15) calendar days, (Exception: subdivisions. no later than ten (10) calendar days) after the date of the decision or of the Commission's failure to make a determination, may file with the City Planner a written notice of appeal therefrom to the Council. Such appeal shall set forth specifically wherein it is claimed the Commission's findings were in error, and wherein the decision of the Commission is not supported by the evidence in the matter, and wherein the public necessity, convenience, and welfare require the Commission's decision to be reversed or modified

The City of Downey prohibits discrimination on the basis of disability in any of its program and services. For questions, concerns, complaints, or for additional information regarding the ADA, contact the City's ADA/Section 504 Coordinator at ADACoordinator@downeyca.org; Phone: (562) 299-6619; or TTY at 7-1-1.

In compliance with Title VI of the Civil Rights Act, the City of Downey prohibits discrimination of any person in any of its program and services. If written language translation of City agendas or minutes, or for oral language interpretation at a City meeting is needed, contact (562) 299-6619, **48 business hours prior to the meeting.**

En cumplimiento con el Título VI de la Ley de Derechos Civiles, la Ciudad de Downey prohíbe la discriminación de cualquier persona en todos sus programas y servicios. En caso de necesitar una traducción escrita de los órdenes del día o las actas de las reuniones de la ciudad, o para solicitar un intérprete oral para una reunion de la ciudad, comuníquese con el (562) 299-6619 en el horario de atención comercial, **48 horas antes de la reunión.**



I, Art Bashmakian, Interim City Planner, City of Downey, do hereby certify, under penalty of perjury under the laws of the State of California that the foregoing notice was posted pursuant to Government Code Section 54950 Et. Seq. and City of Downey Ordinance at the following locations: Downey City Hall, Downey City Library, and Barbara J. Riley Senior Center.

Dated this 27th day of April, 2023

Art Bashmakian

Art Bashmakian
Interim City Planner



STAFF REPORT
PLANNING DIVISION

DATE: MAY 3, 2023

TO: PLANNING COMMISSION

SUBMITTED BY: GREGORY PFOST, INTERIM DIRECTOR OF COMMUNITY DEVELOPMENT *GP*

REVIEWED BY: ART BASHMAKIAN, AICP, INTERIM CITY PLANNER *AB*

PREPARED BY: ABRAHAM LUNA, ASSISTANT PLANNER *A.L*

SUBJECT: **PLN-22-00092 (CONDITIONAL USE PERMIT) – A REQUEST TO MODIFY AN EXISTING BUILDING MOUNTED WIRELESS TELECOMMUNICATION FACILITY**

LOCATION: 7375 STEWART AND GRAY ROAD

ZONING: C-1 (NEIGHBORHOOD COMMERCIAL)

REPORT SUMMARY

On April 19th, 2023, the City Planning Commission held a noticed public hearing for the consideration of a modification to an existing wireless facility. At the Commission's request and applicant's concurrence, the item was continued to the May 3rd, 2023 Planning Commission meeting. The applicant request the item be continued to May 17th, 2023 Planning Commission to allow more time for the applicant to address the concerns raised by the Planning Commission.

RECOMMENDATION

Continue item PLN-22-00092 to the May 21st, 2023 Planning Commission meeting date.



STAFF REPORT

PLANNING DIVISION

DATE: MAY 3, 2023

TO: PLANNING COMMISSION

SUBMITTED BY: GREGORY PFOST, INTERIM DIRECTOR OF COMMUNITY DEVELOPMENT *GP*

REVIEWED BY: ART BASKMAKIAN, AICP, INTERIM CITY PLANNER *AB*

PREPARED BY: ABRAHAM LUNA, ASSISTANT PLANNER *A.L.*

SUBJECT: **PLN-22-00155 - ZONE TEXT AMENDMENT TO AMEND ARTICLE 9 OF THE DOWNEY MUNICIPAL CODE REGULATING THE DEVELOPMENT OF ACCESSORY DWELLING UNITS**

**LOCATION/
ZONING:** CITYWIDE – RESIDENTIAL AND MIXED-USE ZONES

REPORT SUMMARY

Over the past four years, the California Legislature approved and the Governor signed into law a number of bills regulating Accessory Dwelling Units which are now codified primarily in Government Code Sections 65852.2 and 65852.22. The proposed zoning code amendment will repeal and replace Section 9414 (Accessory Dwelling Unit Developments) of the City's Zoning Code (Article IX Land Use) to comply with aforementioned Government Code Sections.

Based on the analysis contained in this report, staff is recommending the Planning Commission adopt the following titled resolution:

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DOWNEY RECOMMENDING THAT THE CITY COUNCIL APPROVE A ZONE TEXT AMENDMENT (PLN-22-00155), THEREBY AMENDING VARIOUS SECTIONS OF ARTICLE IX OF THE MUNICIPAL CODE REGARDING ACCESSORY DWELLING UNITS

BACKGROUND

The last time the City of Downey amended its zoning standards regarding Accessory Dwelling Units (ADU), previously called "Second Unit Developments" was on May 22, 2018. Since then, numerous new laws have been passed by the State of California restricting the abilities of cities to regulate the construction of ADUs. The aim of the new laws is to reduce barriers and streamline developments of new ADUs. The State requires cities to amend their ordinance to comply with the provisions of the new laws or the local ADU ordinance is considered invalid. When the local

ordinance is considered invalid, cities must abide by regulations of state law. Because Downey does not have a local ordinance that is consistent with state law, it has applied the regulations of State law instead.

An ADU is accessory to a primary residence and has complete independent living facilities for one or more persons and has a few variations:

- Detached: The unit is separated from the primary structure.
- Attached: The unit is attached to the primary structure.
- Converted Existing Space: Space (e.g., master bedroom, attached garage, storage area, or similar use, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.
- Junior Accessory Dwelling Unit (JADU): A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence.

The State has declared that among other things, allowing ADUs in zones that allow single-family and multifamily uses provides additional rental housing and is an essential component in addressing California's housing needs. Over the years, State ADU Law has been revised to improve its effectiveness at creating more housing units by reducing barriers, streamlining approval processes, and expanding capacity to accommodate the development of ADUs and JADUs. Cities are left with very little opportunity to regulate ADUs on their terms.

LEGAL NOTIFICATION AND PUBLIC COMMENTS

On November 24, 2022, notice of the pending zone text amendment was published in the Downey Patriot as 1/8th page ad for the planning commission meeting held on December 7, 2022. On the commission meeting date of December 7th, the item was continued to a date uncertain. On March 23, 2023, notice of the pending zone text amendment was published in the Downey Patriot as a 1/8th page ad in accordance with the requirements of the Downey Municipal Code. The Notice invited the public to comment on the proposed amendment and informed the public of the April 5, 2023 scheduled public hearing. On April 5, 2023, the Planning Commission continued the item to the April 19, 2023 meeting date and subsequently again to May 3, 2023. As of the date of this report, no public comment has been received. Any written comments received will be forwarded under separate cover.

ANALYSIS

This report will analyze key development standards that are absolutely mandated by state law and standards that allow cities very limited choices. The following is a summary of the key standards:

Ministerial process for approval: The City is required to approve ADU and JADU permits through a ministerial review process within 60 days of submittal of a complete application. A ministerial process includes only objective standards and does not provide for the same level of discretionary permit review that is typical of Site Plan Review applications. Cities may apply development and design standards that include but are not limited to, parking, height, setback, landscape, architectural review, maximum size of an ADU and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. However, these standards must be objective to allow ministerial review of an ADU.

Zones where ADUs and JADUs are permitted: ADUs are permitted on a lot with an existing or proposed single family or multi family dwelling any zone that allows single-family dwellings or multiple-family dwelling. JADUs are permitted only in single-family zones.

Development Standards for ADUs: Cities are prohibited from applying development standards to ADUs including lot coverage, minimum square footage, maximum floor area ratio (FAR), certain setbacks (distance from property lines or other structures) or minimum open space requirements if such standards would preclude the construction of an ADU of up to 800 square feet in floor area, a minimum 4-foot side and rear yard setbacks and any height limitation that does not allow at least the following:

1. 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.
2. 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 a half-mile walking distance of a major transit stop or a high-quality transit corridor. A local agency is also to 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.
3. A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.
4. 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.

Notwithstanding the above limitation, cities may establish minimum and maximum unit size requirements for both attached and detached ADU provided the maximum size must allow at least an 850 square feet ADU or a 1,000 square foot ADU that provides more than one bedroom.

The proposed ordinance establishes the following development standards:

- **Size:** 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two or more bedrooms.
- **Height:** Same as shown above. With regards to attached, the height is 25 feet since that is a lower height than the 28-foot height limit in the R1 zones.
- **Setback:** Front setback same as existing zoning typically 15 to 20 feet. Side and rear setbacks is 4 feet.
- **Parking:** None required for JADU. One parking space required for an ADU that can be on a driveway. Parking is not required if within one-half mile walking distance to public transit. If existing attached or detached garage is converted to an ADU, then replacement parking is not required.

- Architectural Standards: Various objective standards regarding compatibility with the primary building in terms of roof pitch, colors, materials and window and door styles.

ADUs on lots with Multiple Family Dwelling Units: At least one ADU within an existing multifamily dwelling and up to 25 percent of the existing multifamily dwelling units within the portions of the 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. And no more than two detached ADUs subject to same setback and height standards as above.

The draft ordinance also addresses other issues such as development impact fees, short term rentals, owner-occupancy requirements and limitations on denial of permits to create ADU due to 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. These issues including the proposed development standards and procedures for processing ADU applications are found in Attachment “A” of the attached draft Planning Commission Resolution (Exhibit A)

ENVIRONMENTAL ANALYSIS

The adoption of an Accessory Dwelling Unit Ordinance is exempt from the California Environmental Quality Act (CEQA) per Statutory Exemption (Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h) which pertain to adoption of an ordinance regarding second units (accessory dwelling units).

FINDINGS

Pursuant to Municipal Code Section 9832.06, prior to making recommendations to the Council and the Council prior to approving an amendment to the Zoning Code must make the following findings:

A. The requested amendment is necessary and desirable for the development of the community and is in the interests or furtherance of the public health, safety, and general welfare.

The requested amendment is necessary and desirable for the development of the community and is in the interests or furtherance of the public health, safety, and general welfare because the proposed Zone Text Amendment implements development standards for ADUs that are designed to facilitate construction that furthers the public health, safety and general welfare. Furthermore, the proposed amendments will bring the City’s code into compliance with current state law.

B. The proposed amendment is in general conformance with the General Plan.

The proposed amendment fulfills General Plan Housing Element Program 1.4 which calls for the adoption of an ADU ordinance that reflects current State law, and that also streamlines, facilitates and encourages ADU development.

Moreover, under Government Code section 65852.2(a)(10), the development of any ADU or JADU that conforms to state law “shall be deemed to be consistent with the existing

general plan” as a matter of law. This ordinance implements that statutory provision and so by extension is consistent with the general plan as a matter of law.

RECOMMENDATION

Based on the above analysis and findings, staff recommends the Planning Commission conduct a public hearing and after closing the public hearing, adopt the attached draft resolution recommending that the City Council adopt the proposed Zone Text Amendment (PLN-22-00155) which repeals the City’s current ordinance on ADUs and replaces with a new ordinance that reflects current State law, including related amendments to other sections of the Zoning Code.

EXHIBITS

- A. Planning Commission Resolution (includes the draft Ordinance)

RESOLUTION NO. 23-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DOWNEY RECOMMENDING THAT THE CITY COUNCIL APPROVE A ZONE TEXT AMENDMENT (PLN-22-00155), THEREBY AMENDING VARIOUS SECTIONS OF ARTICLE IX OF THE MUNICIPAL CODE REGARDING ACCESSORY DWELLING UNITS

THE PLANNING COMMISSION OF THE CITY OF DOWNEY DOES RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission of the City of Downey does hereby find, determine and declare that:

- A. The California Legislature has approved and the Governor has signed into law, a number of bills that, among other things, amended Government Code Sections 65852.22 65852.22 to impose new limits on local authority to regulate Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs); and,
- B. The Planning Commission has authority pursuant to Section 9832.04(d) of the Municipal Code to make a recommendation to the City Council to approve, approve with modifications, or disapprove amendments to the Zoning code; and,
- C. The City desires to update its ADU and JADU regulations to conform to current state law as stipulated in the City's General Plan.
- D. The Planning Commission held a duly noticed public hearing on May 13, 2023, and after fully considering all oral and written testimony and facts and opinions offered at the aforesaid public hearing, adopted this resolution.

SECTION 2. The Planning Commission further finds, determines and declares that the proposed project was reviewed for compliance with the California Environmental Quality Act (CEQA), and is categorically exempt from CEQA, pursuant to Public Resources Code Section 21080.17 and CEQA Guiltiness Section 15282(h), because this is an action to implement the provisions of Government Code Sections 65852.2 and 65852.22.

SECTION 3. Having considered all of the oral and written evidence presented to it at said public hearings regarding the Zone Text Amendment, and in accordance with Section 9832.06 of the Municipal Code, the Planning Commission further finds, determines and declares that:

- 1. The requested amendment is necessary and desirable for the development of the community and is in the interests or furtherance of the public health, safety, and general welfare because the proposed Zone Text Amendment implements development standards for ADUs that are designed to facilitate construction that furthers the public health, safety and general welfare. Furthermore,
- 2. The proposed amendments will bring the City's code into compliance with current state law consistent with General Plan Housing Element Program 1.4 which calls for the adoption of an ADU ordinance that reflects current State law, and that also streamlines, facilitates and encourages ADU development. Moreover, under

Government Code section 65852.2(a)(10), the development of any ADU or JADU that conforms to state law “shall be deemed to be consistent with the existing general plan” as a matter of law. This ordinance implements that statutory provision and so by extension is consistent with the general plan as a matter of law.

SECTION 4. Based upon the findings set forth in Sections 1 through 3 of this Resolution, the Planning Commission of the City of Downey hereby recommends that the City Council adopt Ordinance No. _____ included hereto as “Attachment A.”

SECTION 5. The Secretary shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 3rd day of May 2023.

Horacio Ortiz, Chairman
City Planning Commission

I HEREBY CERTIFY that the foregoing is a true copy of a Resolution adopted by the Planning Commission of the City of Downey at a regular meeting thereof held on the 03rd day of May 2023, by the following vote, to wit:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSENT: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:

Irving Anaya
Associate Planner

EXHIBIT A

CITY OF DOWNEY

ORDINANCE NO. 23-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DOWNEY AMENDING SECTION 9414 WITHIN CHAPTER 9 OF ARTICLE IX OF THE DOWNEY MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS AND DETERMINING THE ACTION TO BE EXEMPT FROM CEQA

WHEREAS, the City of Downey, California (“City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, California law allows cities to provide by ordinance for the creation of accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”); and

WHEREAS, in recent years, the California Legislature has approved, and the Governor has signed into law, a number of bills that, among other things, amended Government Code sections 65852.2 and 65852.22 to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, in 2022, the California Legislature approved, and the Governor signed into law, a new bill (SB 897) that further amends Government Code sections 65852.2 and 65852.22; and

WHEREAS, the City desires to update its ADU and JADU regulations to conform to current state law; and

WHEREAS, the City also desires to set the form and manner in which a property owner may request an extension to bring an ADU into compliance with required building standards in specific circumstances consistent with California Government Code section 65852.2(n) and California Health & Safety Code section 17980.12; and

WHEREAS, on May 3, 2023, the Planning Commission held a duly noticed public hearing, and after fully considering all oral and written testimony, and facts and opinions offered before and at the hearing, adopted Planning Commission Resolution No. 23-____ recommending approval of the proposed Zone Text Amendment to the City Council by a ____ vote; and

WHEREAS, on June _____, 2023, the City Council held a duly noticed public hearing to fully consider all oral and written testimony and facts and opinions regarding the amendment to the Municipal Code; and

WHEREAS, having further considered all of the oral and written evidence presented to it before and at the public hearing, the City Council of the City of Downey finds, determines and declares that approval of this ordinance is statutorily exempt from review under the California Environmental Quality Act (“CEQA”) under Public Resources Code section 21080.17 and CEQA Guidelines section 15282(h), because the ordinance implements the provisions of California Government Code sections 65852.2, 65852.22 and 65852.26; and

WHEREAS, having further considered all of the oral and written evidence presented to it before and at the public hearing, the City Council of the City of Downey further finds, determines and declares the following:

The requested amendment is necessary and desirable for the development of the community and is in the interests or furtherance of the public health, safety, and general welfare because the proposed Zone Text Amendment implements development standards for ADUs that are designed to facilitate construction that furthers the public health, safety and general welfare. Furthermore, the proposed amendments will bring the City’s code into compliance with current state law consistent with General Plan Housing Element Program 1.4 which calls for the adoption of an ADU ordinance that reflects current State law, and that also streamlines, facilitates and encourages ADU development.

Moreover, under Government Code section 65852.2(a)(10), the development of any ADU or JADU that conforms to state law “shall be deemed to be consistent with the existing general plan” as a matter of law. This ordinance implements that statutory provision and so by extension is consistent with the general plan as a matter of law.

SECTION 1. The following definition is hereby deleted marked by strike-outs from Section 9122 of Article IX of the Downey Municipal Code:

~~**Accessory Dwelling Unit or “ADU”:** An attached or a detached residential dwelling unit, which provides complete independent living facilities for one (1) or more persons and includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single family dwelling unit it is accessory to, and is located on a fixed or permanent foundation. The term “ADU” captures and supersedes the terms “Second Unit Developments” under the Municipal Code and any adopted Development Code of a Specific Plan or Community Plan.~~

SECTION 2. The struck-out phrase is hereby deleted from Section 9706 – Parking Layout and Design, of Article IX of the Downey Municipal Code, as indicated below:

(c)(4) A suitable turnaround area shall be provided in all zones, ~~including approved Second Unit Developments,~~ so that vehicles shall enter the street in a forward manner, except on property in the R-1 Zone developed with a single-family dwelling and on property in the R-2 Zone developed with no more than two (2) dwellings.

SECTION 3. Section 9414 of Article IX of the Downey Municipal Code is hereby repealed in its entirety and replaced with a new Section 9414 of Article IX of the Downey Municipal Code, to read in its entirety as follows:

SECTION 9414. ACCESSORY DWELLING UNIT AND JUNIOR ACCESSORY DWELLING UNITS DEVELOPMENT.

SECTION 9414.02 INTENT AND PURPOSE.

The purpose of this section is to allow and regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in compliance with California Government Code sections 65852.2 and 65852.22 and other applicable law. An ADU or JADU that conforms to the standards in this section will not be deemed to be inconsistent with the City's general plan and zoning designation for the lot on which the ADU or JADU is located, deemed to exceed the allowable density for the lot on which the ADU or JADU is located, considered in the application of any local ordinance, policy, or program to limit residential growth, or required to correct a nonconforming zoning condition, as defined in Section 9414.04 below. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code section 17980.12.

SECTION 9414.04 DEFINITIONS.

Accessory dwelling unit or "ADU": 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. An accessory dwelling unit also includes the following:

- (a) An efficiency unit.
- (b) A manufactured home, as defined by section 18007 of the Health and Safety Code.

"Accessory structure": A structure that is accessory and incidental to a primary dwelling located on the same lot.

Complete independent living facilities: 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.

Efficiency unit: As defined by section 17958.1 of the California Health & Safety code (as that section may be amended from time to time).

Efficiency kitchen: A kitchen that includes all of the following:

- (a) A cooking facility with appliances.
- (b) A food preparation counter and storage cabinets that are of a reasonable size in relation to the size of the JADU.

Junior accessory dwelling unit or “JADU”: A residential dwelling unit that satisfies all of the following:

- (a) It is no more than 500 square feet in size.
- (b) It is contained entirely within an existing or proposed single-family structure. An enclosed use within the residence, such as an attached garage, is considered to be a part of and contained within the single-family structure.
- (c) It includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure.
- (d) If the unit does not include its own separate bathroom, then it contains an interior entrance to the main living area of the existing or proposed single-family structure in addition to an exterior entrance that is separate from the main entrance to the primary dwelling.
- (e) It includes an efficiency kitchen, as defined above.

Living area: The interior habitable area of a dwelling unit, including basements and attics, but not including a garage or any accessory structure.

Multifamily dwelling: Any structure that contains more than one primary dwelling.

Nonconforming zoning condition: A physical improvement on a property that does not conform with current zoning standards.

Passageway: Pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.

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

Public transit: 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.

SECTION 9414.06 APPROVALS.

(a) **Statutory ADUs.** If an ADU or JADU complies with each of the requirements in Section 9414.10, it is allowed with only a building permit in the following scenarios:

(1) **Converted on Lot with Single-family Dwelling:** One ADU as described in this subsection (a) and one JADU on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU satisfies each of the following:

(i) It is either within the space of a proposed single-family dwelling; within the space of an existing single-family dwelling; or (in the case of an ADU only) within the space of an existing accessory structure, plus up to 150 additional square feet if the expansion of the accessory structure is limited to accommodating ingress and egress.

(ii) It has exterior access that is independent of that for the single-family dwelling.

(iii) Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes.

(iv) JADU must comply with the requirements of Government Code section 65852.22.

(2) **Converted on Lot with Multi-family Dwelling:** One or more ADUs within portions of an existing multifamily dwelling structure that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each converted ADU complies with state building standards for dwellings. Under this subsection (a)(2), at least one converted ADU is allowed within an existing multifamily dwelling, up to a quantity equal to 25 percent of the existing multifamily dwelling units.

(3) **Limited Detached on Lot with Single-family Dwelling:** One detached, new-construction ADU on a lot with a proposed or existing

single-family dwelling (in addition to any JADU that might be otherwise be established on the lot under subsection (a)(1) above, if the detached ADU satisfies each of the following limitations:

- (i) The side and rear-yard setbacks are at least four feet.
- (ii) The total floor area is 800 square feet or smaller.
- (iii) The peak height above grade does not exceed the applicable height limit in Section 9414.10(b) below.

(4) **Limited Detached on Lot with Multi-family Dwelling:** No more than two detached ADUs on a lot that has an existing or proposed multifamily dwelling if each detached ADU satisfies both of the following limitations:

- (i) The side and rear-yard setbacks are at least four feet. If the existing multifamily dwelling has a rear or side yard setback of less than four feet, the City will not require any modification to the multifamily dwelling as a condition of approving the ADU.
- (ii) The peak height above grade does not exceed the applicable height limit provided in Section 9414.10(b) below.

(b) **Local Ministerial ADUs.** An ADU that does not qualify under subsection (a) of this section is allowed with only a building permit if it complies with each of the general standards in Section 9414.10 and with each of the local standards in Section 9414.12.

SECTION 9414.08 PROCESS AND TIMING.

(a) An ADU or JADU permit is considered and approved ministerially without discretionary review or a hearing, notwithstanding any local ordinance regulating the issuance of variances or special use permits.

(b) An ADU or JADU application is acted on within 60 days from the date that the City receives a completed application. If the City has not approved or denied the completed application within 60 days, the application is deemed approved unless either:

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

- (2) When an application to create an ADU or JADU is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the City may delay acting on the permit application for the ADU or JADU until the City acts on the permit application to create the new single-family or multifamily dwelling, but the application to create the ADU or JADU will still be considered ministerially without discretionary review or a hearing.
- (c) If an application to create an ADU or JADU is denied, the City must provide the applicant with comments that include, among other things, a list of all the defective or deficient items and a description of how the application may be remedied by the applicant. Notice of the denial and corresponding comments must be provided to the applicant within the 60-day time period established by subsection (b) above.
- (d) A demolition permit for a detached garage that is to be replaced with an ADU is reviewed with the application for the ADU and issued at the same time.

SECTION 9414.10 GENERAL STANDARDS.

The following requirements apply to ADUs and JADUs that are approved under this Section 9414.

(a) **Zoning**

- (1) An ADU or JADU that is approved under Section 9414.06(a) may be constructed on a lot that is in a residential or mixed-use zone.
- (2) An ADU or JADU that is approved under Section 9414.06(b) may be constructed on a lot that is zoned to allow single-family dwelling or multi-family dwelling residential use.

(b) **Height**

- (1) Except as otherwise provided by this subsection (b), a detached ADU created on a lot with an existing or proposed single-family or multifamily dwelling may not exceed 16 feet in height.
- (2) A detached ADU may be up to 18 feet in height if it is constructed on a lot with an existing or proposed single family or multifamily dwelling unit that is located within one-half 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, and the ADU may be up to two additional feet in height (for a maximum of 20 feet) if necessary to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.

- (3) A detached ADU constructed on a lot with an existing or proposed multifamily dwelling that has more than one story above grade may not exceed 18 feet in height.
- (4) An ADU that is attached to the primary dwelling may not exceed 25 feet in height or the height limitation imposed by the underlying zone that applies to the primary dwelling, whichever is lower. Notwithstanding the foregoing, no ADU subject to this paragraph may exceed two stories.
- (5) For purposes of this section, height is measured from existing legal grade or the level of the lowest floor, whichever is lower, to the peak of the structure.

(c) **Fire Sprinklers**

- (1) Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.
- (2) The construction of an ADU does not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

(d) **Rental Term.** No ADU, JADU, or principal dwelling may be rented for a term that is shorter than 30 days. This prohibition applies regardless of when the ADU or JADU was constructed.

(e) **No Separate Conveyance.** An ADU or JADU may be rented, but, except as otherwise provided in Government Code section 65852.26, no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multifamily lot).

(f) **Septic System.** If the ADU or JADU will connect to an onsite wastewater-treatment system, the owner must include with the application a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.

(g) **Owner Occupancy**

- (1) An ADU that is permitted after January 1, 2020, but before January 1, 2025, is not subject to any owner-occupancy requirement.
 - (2) Unless applicable law requires otherwise, all ADUs that are permitted on or after January 1, 2025 are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property as the person's legal domicile and permanent residence.
 - (3) As required by state law, all JADUs are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement in this subsection does not apply if the property is entirely owned by another government agency, land trust, or housing organization.
- (h) **Deed Restriction.** Prior to issuance of a building permit for an ADU or JADU, a deed restriction must be recorded against the title of the property in the County Recorder's office and a copy filed with the City Planner. The deed restriction must run with the land and bind all future owners. The form of the deed restriction will be provided by the City and must provide that:
- (1) Except as otherwise provided in Government Code section 65852.26, the ADU or JADU may not be sold separately from the primary dwelling.
 - (2) The ADU or JADU is restricted to the approved size and to other attributes allowed by this section.
 - (3) The deed restriction runs with the land and may be enforced against future property owners.
 - (4) The deed restriction may be removed if the owner eliminates the ADU or JADU, as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request of the Director of Community Development, providing evidence that the ADU or JADU has in fact been eliminated. The Director may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated. If denied, an appeal can be requested if consistent with other provisions of this Code. If the ADU or JADU is not entirely physically removed, but is

only eliminated by virtue of having a necessary component of an ADU or JADU removed, the remaining structure and improvements must otherwise comply with applicable provisions of this Code.

- (5) The deed restriction is enforceable by the Community Development Director or the Director's designee for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining the use of the ADU or JADU in violation of the recorded restrictions or abatement of the illegal unit.
- (i) **Rent Reporting.** In order to facilitate the City's obligation to identify adequate sites for housing in accordance with Government Code sections 65583.1 and 65852.2, the following requirements must be satisfied:
 - (1) With the building-permit application, the applicant must provide the City with an estimate of the projected annualized rent that will be charged for the ADU or JADU.
 - (2) Within 90 days after each January 1 following issuance of the building permit, the owner must report the actual rent charged for the ADU or JADU during the prior year. If the City does not receive the report within the 90-day period, the owner is in violation of this Code, and the City may send the owner a notice of violation and allow the owner another 30 days to submit the report. If the owner fails to submit the report within the 30-day period, the City may enforce this provision in accordance with applicable law.
 - (j) **Building & Safety**
 - (1) **Must comply with building code.** Subject to subsection (2) below, all ADUs and JADUs must comply with all local building code requirements.
 - (2) **No change of occupancy.** Construction of an ADU does not constitute a Group R occupancy change under the local building code, as described in section 310 of the California Building Code, unless the building official or Code Enforcement Division officer makes a written finding based on substantial evidence in the record that the construction of the ADU could have a specific, adverse

impact on public health and safety. Nothing in this subsection (2) prevents the City from changing the occupancy code of a space that was uninhabitable space or that was only permitted for nonresidential use and was subsequently converted for residential use in accordance with this section.

SECTION 9414.12 LOCAL STANDARDS

Unless an ADU or JADU qualifies as one of the types described by Section 9414.06(a), the following requirements apply to ADUs and JADUs that are approved under this Section 9414.

(a) Dwelling Size

- (1) The maximum floor area of a detached or attached ADU subject to this Section 9414.12 is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two or more bedrooms.
- (2) An attached ADU that is constructed on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of the existing primary dwelling.
- (3) Application of other development standards in this Section 9414.12, such as FAR or lot coverage, might further limit the size of the ADU, but no application of the percent-based size limit in subsection (a)(2) above or of an FAR, front setback, lot coverage limit, or open-space requirement may require the ADU to be less than 800 square feet.

(b) Floor Area Ratio (FAR). ADUS that are subject to this Section 9414.12 must conform to the following FAR standards, subject to subsection (a)(3) above:

- (1) In R-1: 45 percent
- (2) In M-U: 4.0

(c) Setbacks

- (1) **Side and Rear.** ADUs that are subject to this Section 9414.12 must conform to 4-foot side and rear setbacks.
- (2) **Front.** ADUs that are subject to this Section 9414.12 must conform to the following front setbacks, subject to subsection (a)(3) above:

- (i) In R-1 and R-2: 20 feet
 - (ii) In R-3 and R-3-O: 15 feet
 - (iii) In M-U: 0 feet (none required)
- (3) **Exception.** No setback is required for an ADU if the ADU is constructed in the same location and to the same dimensions as an existing structure.
- (d) **Lot Coverage.** ADUs that are subject to this Section 9414.12 must conform to the following lot-coverage standards, subject to subsection (a)(3) above:
- (1) In R-1: 45 percent
 - (2) In R-2, R-3, R-3-O: 50 percent
 - (3) In M-U: None required

Table 9.14.4 Summary of Select Standards

Zone:	R-1	R-2	R-3	R-3-O	M-U
	(all sizes)				
Front setbacks*	20 ft	20 ft	15 ft	15 ft	NR
Side setbacks	4 ft	4 ft	4 ft	4 ft	4 ft
Rear setbacks	4 ft	4 ft	4 ft	4 ft	4 ft
FAR*	45%	NR	NR	NR	4.0
Max Lot Coverage*	45%	50%	50%	50%	NR
* Subject to Section 9414.12(a)(3) above. Notes: NR = Not required					

- (e) **Passageway.** No passageway, as defined by this Section 9414, is required in conjunction with the construction of an ADU.
- (f) **Parking**
- (1) **Generally.** One off-street parking space is required for each ADU. The parking space may be provided in setback areas or as tandem parking, as defined by this Section 9414.

(2) **Exceptions.** No parking under subsection (f)(1) above is required in the following situations:

- (i) The ADU is located within one-half mile walking distance of public transit, as defined by this Section 9414.
- (ii) The ADU is located within an architecturally and historically significant historic district.
- (iii) The ADU is part of the proposed or existing primary residence or an accessory structure under Section 9414.06(a)(1).
- (iv) When on-street parking permits are required but not offered to the occupant of the ADU.
- (v) When there is an established car share vehicle stop located within one block of the ADU.
- (vi) When the permit application to create an ADU is submitted with an application to create a new single-family or new multifamily dwelling on the same lot, provided that the ADU or the lot satisfies any other criteria listed in subsections (f)(2)(i) through (v) above.

(3) **Replacement.**

- (i) **Not required for ADU.** When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, those off-street parking spaces are not required to be replaced.
- (ii) **Required for JADU.** When required off-street parking for a primary dwelling, including a garage, carport, or covered parking structure, is demolished in conjunction with the construction of a JADU or converted to a JADU, those off-street parking spaces must be replaced in compliance with the off-street parking standards that apply to the primary dwelling.

(g) **Architectural Requirements**

- (1) The materials and colors of the exterior walls, roof, and windows and doors must match the appearance of those of the primary dwelling.

- (2) The roof slope must match that of the dominant roof slope of the primary dwelling. The dominant roof slope is the slope shared by the largest portion of the roof.
 - (3) The exterior lighting must be limited to down-lights or as otherwise required by the building or fire code.
 - (4) The ADU must have an independent exterior entrance, apart from that of the primary dwelling.
 - (5) The interior horizontal dimensions of an ADU must be at least 10 feet wide in every direction, with a minimum interior height of 7 feet.
 - (6) The entrance of a second-story ADU must be oriented away from all adjacent residential properties. All windows and exterior glass doors in a second-story ADU that extend below eye level must be obscured or frosted glass. For purposes of this paragraph, “eye level” means the height of 5 feet 6 inches.
 - (7) An ADU under this Section 9414.12 must include permanent washer and dryer connections.
 - (8) No more than one kitchen per dwelling unit is permitted.
- (h) **Historic Protection.** An ADU that is on or within 600 feet of real property that is listed in the California Register of Historic Resources must be located so as to not be visible from any public right-of-way.

SECTION 9414.14 FEES.

(i) **Impact Fees**

- (1) No impact fee is required for an ADU that is less than 750 square feet in size. For purposes of this subsection (a), “impact fee” means a “fee” under the Mitigation Fee Act (Gov. Code § 66000(b)) and a fee under the Quimby Act (Gov. Code § 66477). “Impact fee” here does not include any connection fee or capacity charge for water or sewer service.
- (2) Any impact fee that is required for an ADU that is 750 square feet or larger in size must be charged proportionately in relation to the square footage of the primary dwelling unit. (E.g., the floor area of

the ADU, divided by the floor area of the primary dwelling, times the typical fee amount charged for a new dwelling.)

(j) **Utility Fees**

- (1) If an ADU is constructed with a new single-family home, a separate utility connection directly between the ADU and the utility and payment of the normal connection fee and capacity charge for a new dwelling are required.
- (2) Except as described in subsection (b)(1) above, converted ADUs and JADUs that are created under Section 9414.06(a)(1) are not required to have a new or separate utility connection directly between the ADU or JADU and the utility. Nor is a connection fee or capacity charge required.
- (3) Except as described in subsection (b)(1), all ADUs that are not covered by subsection (b)(2) require a new, separate utility connection directly between the ADU and the utility unless the utility provider is not the City and the utility provider has a different requirement in accordance with state law.
 - (i) The connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU based on either the floor area or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system.
 - (ii) The portion of the fee or charge that is charged by the City may not exceed the reasonable cost of providing this service.

SECTION 9414.16 NONCONFORMING ZONING CODE CONDITIONS, BUILDING CODE VIOLATIONS, AND UNPERMITTED STRUCTURES.

- (a) **Violations unaffected by ADU.** The City will not deny an ADU or JADU application due to a nonconforming zoning condition, building code violation, or unpermitted structure on the lot that does not present a threat to the public health and safety and that is not affected by the construction of the ADU or JADU.
- (b) **Permit to Legalize.** As required by state law, the City may not deny a permit to legalize an existing but unpermitted ADU that was constructed before January 1, 2018, if denial is based on either of the following grounds:

- (1) The ADU violates applicable building standards.
- (2) The ADU does not comply with the state ADU law (Government Code section 65852.2) or this ADU ordinance (Section 9414).

SECTION 4. SAVINGS CLAUSE. Neither the adoption of this Ordinance nor the repeal of any other Ordinance or provision of the Downey Municipal Code referenced in this Ordinance shall not affect in any manner any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this Ordinance; nor shall it affect any prosecution, suit, or proceeding pending or any judgment rendered prior to the effective date of this Ordinance. The provisions of this Ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. The provisions of this Ordinance shall have priority over substantially similar provisions previously adopted by the City relating to the same subject matter. All fee schedules shall remain in full force-and-effect until superseded by Council Resolution.

SECTION 5. If any section, subsection, paragraph, sentence, clause or phrase of the resolution is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this resolution. The Planning Commission declares that it would have adopted this resolution, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

SECTION 6. The City Clerk shall certify the adoption of this Ordinance and cause the same to be published in the manner prescribed by law.

APPROVED AND ADOPTED this __ day of _____, 2023.

CLAUDIA FROMETA, Mayor

ATTEST:

MARIA ALICIA DUARTE, CMC
City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF DOWNEY)

I HEREBY CERTIFY that the foregoing Ordinance No. 23-_____ was introduced at a Regular Meeting of the City Council of the City of Downey held on the ____ day of _____, 2023, and adopted at a regular meeting of the City Council of the City of Downey held on the ____ day of _____, 2023, by the following vote, to wit:

AYES: Council Members:
NOES: Council Member:
ABSENT: Council Member:
ABSTAIN: Council Member:

I FURTHER CERTIFY that a Summary of the foregoing Ordinance No. 23-_____, was published in the Downey Patriot, a newspaper of general circulation in the City of Downey, on _____, 2023 (after introduction), and on _____, 2023 (after adoption, including the vote thereon). It was also posted in the regular posting places in the City of Downey on the same dates.

MARIA ALICIA DUARTE, CMC
City Clerk