

**An Ordinance Adopting Amendments to the City Code
Related to Accessory (Second) Dwelling Units Pursuant to 2016 State Legislation**

The City Council of the City of Saratoga finds that:

1. The State of California adopted new legislation in October 2016 requiring cities to update local regulations related to Accessory (Second) Dwelling Units and Junior Accessory Dwelling Units by January 1, 2017; and
2. The City General Plan contains policies and objectives supporting accessory (second) dwelling units, to create additional opportunities to provide housing for people of all ages and economic levels.
3. The City Code has contained provisions to help achieve the goals and policies of the Housing Element of the General Plan since at least 2003.
4. The City desires to make amendments to update the City Code to assure compliance with the 2016 State Legislation, and
5. An opportunity for public participation was provided through a Planning Commission Study Session held on November 1, 2016 and a duly noticed Public Hearing on November 9, 2016, and
6. The Planning Commission considered the draft Ordinance, supporting documents, the Staff Report, CEQA exemption, and all testimony and other evidence presented at the Public Hearing, and recommended that the City Council find that the proposed amendments to the City Code comply with the 2016 State Legislation and are consistent with the City of Saratoga General Plan, and
7. The City Council of the City of Saratoga held a duly noticed public hearing on December 7, 2016, and after considering all testimony and written materials provided in connection with that hearing introduced this ordinance and waived the reading thereof. The City Council adopted this ordinance at a duly noticed public meeting on December 21, 2016.

The City Council of the City of Saratoga does ordain as follows:

Section 1. Adoption.

The Saratoga City Code is hereby amended as set forth in Attachment A.

Section 2. California Environmental Quality Act.

Pursuant to the California Environmental Quality Act (“CEQA”), this action to update the City Code regarding Accessory (Second) Dwelling Units is exempt under California Code of Regulations, Title 14, Section 15061(b)(3) which provides that CEQA applies only to projects which have the potential of causing a significant effect on the environment, and that where, as here, it can be seen with certainty that there is no reasonable possibility that the

activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Section 3. Severance Clause.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause, and phrase of this ordinance is severable and independent of every other section, sub-section, sentence, clause, and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause, or phrase is held invalid, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of the portion held invalid and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated.

Section 4. Publication.

A summary of this Ordinance shall be published in a newspaper of general circulation of the City of Saratoga within fifteen days after its adoption.

Following a duly noticed public hearing, the foregoing ordinance was introduced at the regular meeting of the City Council of the City of Saratoga held on December 7, 2016, and was adopted by the following vote on December 21, 2016.

COUNCIL MEMBERS:

- AYES:**
- NAYS:**
- ABSENT:**
- ABSTAIN:**

SIGNED:

 E. Manny Capello
 MAYOR OF THE CITY OF SARATOGA

ATTEST:

 Crystal Bothelio
 CLERK OF THE CITY OF SARATOGA

Date: _____

APPROVED AS TO FORM:

 RICHARD TAYLOR, CITY ATTORNEY

Date: _____

**Attachment A – An Ordinance Adopting Amendments to the City Code
Related to Accessory (Second) Dwelling Units**

The sections of the Saratoga Municipal Code as set forth below are amended or adopted as follows:

*Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted is shown in strikethrough (~~example~~). Text in italics is explanatory and is not an amendment to the Code.*

Where the explanatory text indicates that a new section is being added to the City Code, the new section is shown in plain text.

This Ordinance amends several portions of the Municipal Code. For ease of review, the amendments advancing the primary objective are presented first followed by conforming amendments. There is a separate heading in bold underlined italics for each portion of the Code being amended.

1. Amendments to Article 15-56 – SECOND DWELLING UNITS

Article 15-56 – ~~SECOND~~ **ACCESSORY** DWELLING UNITS

15-56.010 - Purpose.

The purpose of this Chapter ~~Article~~ **Article** is to authorize the establishment of ~~second~~ **accessory** dwelling units in single-family **residential zoning** districts to comply with state law and to help achieve the goals and policies of the Housing Element of the Saratoga General Plan. Controlled construction of ~~second~~ **accessory** dwelling units will promote a stable heterogeneous community with a balanced social and economic mix.

15-56.015 – Definitions

The following definitions apply only to this Article:

- (1) Accessory dwelling unit is defined in Article 15-06.**
- (2) “Junior accessory dwelling unit” is a type of accessory dwelling unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.**
- (3) “Living area” means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.**

- (4) **“Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.**

15-56.020 - One second accessory dwelling unit per site lot.

Only one second accessory dwelling unit or junior accessory dwelling unit shall be allowed on any one site lot and only **if the lot is zoned for single-family use and contains an existing, single-family dwelling unit.**

15-56.030 - Development standards.

Except as otherwise provided in Section 15-56.050, each second accessory dwelling unit shall comply with all of the following development standards:

(a) Newly constructed accessory dwelling unit.

Except as otherwise provided in this Article, each newly constructed accessory dwelling unit is required to satisfy the following criteria:

- (1) **Lot size.** The net site area of the lot upon which the second accessory dwelling unit is located shall not be less than ninety percent of the minimum standard prescribed for the district applicable to such lot. Minimum standards for lots located in the HR Residential District are determined per Section 15-13.060(a) of the City Code.
- (2) **Building codes.** The second accessory dwelling unit shall comply with applicable building, health and fire codes.
- (3) **Zoning regulations.** ~~The~~ **Unless otherwise provided in this Article, the** second accessory dwelling unit shall comply with applicable zoning regulations (including, but not limited to, required setbacks, **floor area limits, site** coverage, and height limits). A one-time ten percent increase in site coverage and allowable floor area may be granted by the Community Development Director if the new second accessory dwelling unit is deed restricted so that it may only be rented to below market rate households.
- (4) **Sale prohibited. The unit shall not be intended for sale, or sold, separately from the main dwelling.**
- (5) ~~Unit size and use.~~ **Location and configuration. The accessory dwelling unit must be either (i) attached to the existing main dwelling (including being located within the living area of the existing main dwelling) or (ii) detached from the existing main dwelling and located on the same lot as the existing main dwelling.**
- (6) **Floor Area.**

- (A) The minimum floor area of any accessory dwelling unit shall be 400 square feet.**
- (B) The maximum floor area limit for an ~~second~~ accessory dwelling unit shall be as follows:**
- i. an attached accessory dwelling unit, shall not exceed 50 percent of the existing living area, with a maximum size of 1,200 square feet, not including the garage.**
 - ii. a detached accessory dwelling unit, shall not exceed ~~one thousand two hundred~~ 1,200 square feet of living space, not including the garage.**
- (C) If a ~~an~~ second accessory dwelling unit has a basement or an attic, ~~the~~ that area of the basement is included as part of the total maximum floor area allowed.**
- (D) Floor area limit. Both the accessory dwelling unit and the main dwelling unit shall count toward the total floor area limit set by applicable zoning regulations.**
- (7) Construction above garage. Notwithstanding other setback requirements in the City Code, a setback as low as five feet from the side and rear lot lines shall be allowed for an accessory dwelling unit that is constructed above a garage that is non-conforming as to setbacks.**
- (8) Parking. Parking requirements for an accessory dwelling unit shall be as follows:**
- (A) Unless otherwise provided in this section, a minimum of one off-street covered parking space within a garage shall be provided for the ~~second~~ accessory dwelling unit in addition to the off-street covered parking spaces required for the main dwelling. The garage requirement may be waived if the ~~second~~ accessory dwelling unit is deed restricted so that ~~they~~ it may only be rented to below market rate households. If the garage requirement is waived, an open off-street parking space must be provided.**
- (B) No parking space shall be required for an accessory dwelling unit in any of the following instances:**
- i. The accessory dwelling unit is located within one-half mile of a major transit stop, as defined in California Public Resources Code § 21064.3 or included in the regional transportation plan;**
 - ii. The accessory dwelling unit is located within a designated historic district;**
 - iii. The accessory dwelling unit is part of the existing main dwelling or an existing residential accessory structure intended for human habitation;**
 - iv. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit;**
 - v. When there is a car share vehicle, in a location determined by the Community Development Director to have at least three dedicated**

parking spaces, located within one block of the accessory dwelling unit;
or

vi. The unit is permitted as a junior accessory dwelling unit.

(C) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, any lost off-street parking spaces required for the main dwelling must be replaced with off-street covered parking. However, the construction of additional parking will not be required for the accessory dwelling unit in any of the instances described in subsection 15-56.030(a)(8)(B).

(9) Access. The ~~second~~ accessory dwelling unit shall be served by the same driveway access to the street as the existing main dwelling.

(10) Common entrance. If the ~~second~~ accessory dwelling unit is attached to the main dwelling, both the ~~second~~ accessory dwelling unit and the main dwelling must be served by either a common entrance or a separate entrance to the ~~second~~ accessory dwelling unit must be located on the side or at the rear of the main dwelling.

(11) Fire sprinklers. An accessory dwelling unit may be required to provide fire sprinklers, but only if they are required for the main dwelling.

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

(13) Owner-occupation. The lot containing the accessory dwelling unit shall remain occupied by the owner of the lot, as evidenced by a valid Homeowners' Property Tax Exemption. The accessory dwelling must be vacated within one year after the termination of the owner-occupier's Homeowners' Property Tax Exemption, unless and until an owner-occupier reobtains the Homeowner's Property Tax Exemption.

(14) Limitations on number of bedrooms. A ~~second~~ accessory dwelling unit may not have more than two bedrooms.

(15) Appearance. All new construction to create a an ~~second~~ accessory dwelling unit must match the existing main structure in color, materials and architectural design. (Amended by Ord. 218 § 2 (part), 2003; Ord. 245 § 2 (Att. A) (part), 2006).

(16) Sewage disposal. An accessory dwelling unit shall be connected to a public sewer system.

(b) Permitting

(1) Construction of additional floor area. Within 120 days of receipt of a complete application, the Community Development Department shall ministerially process for approval any application for a building permit for a newly created accessory dwelling unit that meets all the criteria in subsection 15-56.030(a).

- (2) Conversion of existing floor area. The following provisions shall apply to a complete application for a building permit to convert existing floor area of a single-family dwelling or accessory structure to an accessory dwelling unit:
- i. The Community Development Department shall ministerially approve within 120 days any complete application for an accessory dwelling unit building permit.
 - ii. The accessory dwelling unit must:
 - 1. be located within a single-family residential zone;
 - 2. be contained within the existing space of a single-family dwelling or accessory structure;
 - 3. have independent exterior access from the existing main dwelling;
 - 4. have side and rear setbacks sufficient for fire safety as determined by the fire agency having jurisdiction; and
 - 5. comply with all building codes and health and safety regulations.
 - iii. Parking.
 - 1. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, any lost off-street parking spaces required for the main dwelling must be replaced with off-street covered parking.
 - 2. No additional parking will be required for the accessory dwelling unit in instances where the accessory dwelling unit is part of the existing main dwelling or an existing residential accessory structure intended for human habitation.
 - iv. Fire sprinklers. The accessory dwelling unit may be required to provide fire sprinklers only if they are required for the main dwelling.
 - v. Converted garage setbacks. No setback shall be required for an existing garage that is converted to an accessory dwelling unit.
 - vi. Junior accessory dwelling unit. One junior accessory dwelling unit may be permitted that complies with all provisions contained in Government Code § 65852.22 and all applicable building, health, fire, and zoning codes, provided that the single-family residential lot does not already contain an accessory dwelling unit or junior accessory dwelling unit.

15-56.040 - Inspections.

(a) Where the application is for legalization of an any existing ~~second~~ accessory dwelling unit or approval of a proposed accessory dwelling unit to be attached to the main dwelling, an inspection

of the property shall be conducted to determine that the existing or proposed second accessory dwelling unit, and any main dwelling to which a an second accessory dwelling unit will be attached by a common wall, will comply with all applicable building, health, fire and zoning codes. Such inspections shall be performed by the City or by an independent contractor retained by the City for such purpose, and the applicant thereof shall pay the cost.

(b) Each existing second accessory dwelling unit and a main dwelling, to which a an second accessory dwelling unit will be attached by a common wall, shall be reviewed by the Fire ~~Marshall~~ Marshal or his ~~the Fire Marshall's~~ Marshal's designated representative. Any recommendations by the Fire ~~Marshall~~ Marshal shall be included as conditions for the granting of a building permit. Such recommendations may include the connection of the second accessory dwelling unit to an existing or proposed early warning fire alarm system installed in the main dwelling.

(c) The inspections to be conducted pursuant to this Section shall not constitute an assumption by the City, or by anyone acting in its behalf, of any liability with respect to the physical condition of the property, nor shall the authorization to construct a new second accessory dwelling unit or the legalization of an existing second accessory dwelling unit, pursuant to this Code, represent a warranty by the City to the owner of the property or any other person that such property fully complies with all applicable building, health and fire codes.

15-56.050 - Legalization of existing second accessory dwelling units.

(a) **Purpose of Section.** It is in the public interest that all residents of the City live in safe, sanitary housing conditions. ~~Second~~ Accessory dwelling units currently exist which were created prior to the adoption of this Article. In order to encourage the legitimating of such units under the law, the owners of property on which ~~second~~ accessory dwelling units are located should be encouraged to legalize such units provided the units are determined to be both safe and sanitary for continued human occupancy. Conversely, if existing ~~second~~ accessory dwelling units are not safe and sanitary for continued human occupancy, the City has the responsibility to either insure they are made both safe and sanitary or their use for human occupancy is discontinued. The purpose of this Section is to establish special procedures and standards for legalization of existing ~~second~~ accessory dwelling units that are or can be made fit for human occupancy.

(b) **Scope of Section.** This Section shall apply only to ~~second~~ accessory dwelling units established prior to February 19, 2003 but after August 18, 1984 within a structure for which a building permit was issued, or otherwise was lawfully constructed, and which complied with any applicable zoning or development standards in force at the time of construction. Any ~~second~~ accessory dwelling unit established from and after February 19, 2003, shall be deemed a new unit subject to the remaining provisions of this Article.

(c) **Contents of application.** Application to legalize an existing ~~second~~ accessory dwelling unit shall be filed with the Community Development Director on such form as shall be prescribed. The application shall be accompanied by the following:

- (1) A vicinity map showing the location of the site.
- (2) An accurate scale drawing showing the location of all structures, trees, landscaping and off-street parking spaces on the site.
- (3) Inspection reports by an independent contractor and the Fire ~~Marshall~~ Marshal, as required under Section 15-56.050 of this Article.
- (4) A preliminary title report covering the site, or other evidence showing the applicant to be the owner of the property.
- (5) If the site is a hillside lot, either or both of the following documents shall be furnished if requested by the Community Development Director: (i) a topographic map of the site showing contours at intervals of not more than five feet; and/or (ii) a geologic report on the site prepared by a certified engineering geologist or a registered civil engineer qualified in soil mechanics.
- (6) If the existing ~~second~~ accessory dwelling unit is served by a septic system, a description thereof together with a drawing showing the location of the septic tank and leach field on the site.

(d) **Standards.** Existing ~~second~~ accessory dwelling units shall comply with the following standards:

- (1) Where the ~~second~~ accessory dwelling unit is located upon a hillside lot, the applicant shall demonstrate, to the satisfaction of the Community Development Director that the ~~second~~ accessory dwelling unit is not subject to actual or potential damage from landslide, earth movement or other geologic ~~hazard~~ hazards.
- (2) In lieu of compliance with the Uniform Building Code, the ~~second~~ accessory dwelling unit shall comply with the Uniform Housing Code as adopted by the City and shall otherwise comply with applicable health and fire codes.
- (3) Provided that not less than three off-street parking spaces are available on the site, the requirement of a covered parking space for the ~~second~~ accessory dwelling unit may be waived if there is no feasible location on the site for either a garage or carport. In such event, the parking space for the ~~second~~ accessory dwelling unit shall be screened from view from the street, if possible; otherwise, the driveway on the site may be utilized as a parking space for the ~~second~~ accessory dwelling unit.
- (4) Where the ~~second~~ accessory dwelling unit is served by a septic tank, the septic system shall be inspected and approved by the County Health Department. In addition, the applicant shall execute and record a deferred improvement agreement wherein the applicant and ~~his~~ the applicant's successors will be obligated to connect the ~~second~~ accessory dwelling unit, and the main dwelling if also served by a septic system, to a

sanitary sewer whenever the same becomes available and to pay ~~his~~ **the applicant's or the applicant's successors'** proportionate share of the installation cost.

(e) **Disqualified existing units.** Any ~~second~~ **accessory** dwelling unit established prior to February 19, 2003 which does not qualify for legalization under this Section by reason of not having been lawfully constructed, shall be deemed a new unit subject to the remaining provisions of this Article, except as follows:

- (1) The existing ~~second~~ **accessory** dwelling unit shall comply with the standards set forth in subsection (d) of this Section.
- (2) The existing ~~second~~ **accessory** dwelling unit shall comply with current zoning regulations, unless a variance is granted pursuant to Article 15-70 of this Chapter.

(f) **Burden of proof.** Wherever in this Section the legalization of an existing ~~second~~ **accessory** dwelling unit depends upon the establishment of any event occurring on or before a specified date, the burden of proof shall be upon the applicant.

OTHER INCIDENTAL CHANGES

2. Amendments to Article 7-05 - GARBAGE DISPOSAL

7-05.020 - Definitions.

(n) Single-unit dwelling means one or more rooms and a single kitchen, designed for occupancy by one family for residential purposes. Each dwelling unit within a condominium project, duplex, townhouse project or apartment, and each ~~second~~ accessory dwelling unit, as defined in ~~Chapter~~ Section 15-06.240, shall constitute a separate single-unit dwelling to which garbage collection service is provided or made available, unless the owner or occupants thereof arrange for garbage collection service to be provided to all dwelling units upon the premises at commercial rates.

3. Amendment Article 9-65 - HILLSIDE STREET REPAIR FEE

9-65.020 - Exemptions.

(c) ~~Second~~ Accessory dwelling units, as defined in Chapter 15.

4. Amendments to Article 14-05 - GENERAL PROVISIONS

14-05.060 - Exclusions from Chapter.

(d) The construction, financing or leasing of a ~~an~~ ~~second~~ accessory dwelling unit, as defined in Chapter 15, but this Chapter shall be applicable to the sale or other transfer of ownership of such units where the sale or transfer does not include the entire site.

5. Amendments to Article 14-10 - DEFINITIONS

14-10.300 - Structure.

(b) Accessory structure means a structure which is: (1) detached from the main structure on the lot such that the distance between any part of the two structures is thirty-six inches or more; (2) subordinate and incidental to, and customarily associated with, the main structure or the principal use of the lot; and (3) located on the same lot as the main structure or principal use.

Notwithstanding the foregoing, an accessory dwelling units ~~are~~ is not an accessory structures structure as that term is used in this Code.

6. Amendments to Article 15-06 - DEFINITIONS

15-06.022 - Accessory structure.

"Accessory structure" means a structure which is: (a) detached from any other structure such that the distance between any part of the two structures is thirty-six inches or more; and (b) incidental and subordinate to, and customarily associated with, the main structure or principal use on the lot. Notwithstanding the foregoing, a an second accessory dwelling units ~~are~~ is not an accessory structures structure as that term is used in this Code. No accessory structure is permitted in any zone district in the absence of an existing or concurrently established main structure or principal use on the lot.

15-06.240 - Dwelling.

(d) ~~Second~~ Accessory dwelling unit means an attached or detached residential dwelling unit, built or legalized pursuant to this Chapter, which provides complete independent living facilities for one or more persons, including permanent provisions for living, cooking, sleeping and sanitation on a ~~parcel~~ lot within the A, R-1, or HR district where a legally created single-family dwelling is situated. ~~Second~~ Accessory dwelling units are not to be sold separately from the primary main dwelling, but may be rented. An accessory dwelling unit also includes the following:

(A) An accessory dwelling unit that is an efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) An accessory dwelling unit that is a manufactured home, as defined in Section 18007 of the Health and Safety Code.

7. Amendments to Article 15-11 - A: AGRICULTURAL DISTRICT

15-11.060 - Site density.

Each lot shall have not less than two and one-half acres of net site area for each dwelling unit on the lot, excluding any ~~second~~ accessory dwelling unit.

8. Amendments to Article 15-12 - R-1: SINGLE-FAMILY RESIDENTIAL DISTRICTS

15-12.020 – Permitted uses.

(c) Accessory structures and uses located on the same site as a permitted use, including garages and carports, garden sheds, greenhouses, shade structures, recreation rooms, home hobby shops, cabanas, structures for housing swimming pool equipment, one ~~second~~ accessory dwelling unit or one guest house.

15-12.040 – One dwelling unit per site.

Not more than one dwelling unit shall be located on each site, except for a an ~~second~~ accessory dwelling unit.

9. Amendments to Article 15-35 - OFF-STREET PARKING AND LOADING FACILITIES

15-35.030 - Schedule of off-street parking spaces.

Use	Spaces Required
(a) Single-family dwelling, excluding second <u>accessory</u> dwelling units	Two covered spaces within a garage.
(b) Second <u>Accessory</u> dwelling unit	One covered space within a garage, except as otherwise provided in Article 15-56.

15-35.040 - Design standards for off-street parking facilities.

(e) Each parking space shall be accessible from a street or alley, independent of any other parking space; provided, however, in the case of off-street parking for a single-family dwelling or a an ~~second~~ accessory dwelling unit, the approving authority may permit tandem parking.

10. Amendments to Article 16-71 - OCCUPANCY INSPECTIONS

16-71.010 - Definitions.

(c) Single-family dwelling means a detached dwelling unit, or a condominium or townhouse unit, which is separately owned and intended for occupancy by one family. A site containing a single-family dwelling as the main structure thereon and a an ~~second~~ accessory dwelling unit shall be treated as a single-family dwelling for purposes of this Article.

11. Amendments to Article 17-05 - EXISTING LAWS

17-05.010 - Greenhouse gas reduction policies.

(m) **15-56 ~~Second~~ Accessory dwelling units**. Section 15-56.030~~(d)~~**(a)(3)** allows additional site coverage and allowable floor area in a **an ~~second~~ accessory** dwelling unit, if that unit is deed restricted to only be rented to below market rate households.

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