



## Town Council Agenda Report

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Date: March 10, 2020 Item No. 13

To: Honorable Mayor and Town Council

Subject: DEVELOPMENT CODE AMENDMENT NO. 2019-017 IS A REQUEST TO CONSIDER AN AMENDMENT TO TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE BY MODIFYING PROVISIONS RELATING TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AS REQUIRED FOR COMPLIANCE WITH GOVERNMENT CODE 65852.2 AND 65852.22.

From: Douglas Robertson, Town Manager

Submitted by: Pam Cupp, Senior Planner  
Planning Department

Budgeted Item:  Yes  No  N/A

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### RECOMMENDED ACTION:

- A. **Determine** that, Pursuant to Section 21080.17 of the State Guidelines to Implement the California Environmental Quality Act (CEQA), this proposal is exempt because CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code.
- B. **Find** the facts presented within the staff report, including the attached Planning Commission Resolution No. 2019-020 adopted December 18, 2019, together with subsequent attorney comments, support the required Findings for approval of the proposed Development Code Amendment and adopt the Findings.
- C. **Move** to waive the reading of Ordinance No.530 in its entirety and read by title only.
- D. **Introduce** Ordinance No.530 approving Development Code Amendment No. 2019-017; and
- E. **Direct** staff to file a Notice of Exemption with the San Bernardino County Clerk of the Board.

## **SUMMARY:**

On October 9, 2019, Governor Newsome signed into law SB 13, AB 68 and AB 881, all of which amended Government Code 65852.2 by further restricting the Town's land use authority over accessory dwelling units. The effective date for the latest modifications was January 1, 2020.

On December 18, 2019, the Planning Commission reviewed the modifications proposed under Development Code Amendment No. 2019-017. The Commission expressed concerns regarding State Funding should the Town not support these changes. Also, of concern was how the new law could impact community services. Upon presentation of the staff report and subsequent Commission discussion, Planning Commission Resolution No. 2019-020 was approved recommending the Town Council modify the Development Code for compliance with Government Code Section 65852.2. Legal examination of the Planning Commission's Resolution resulted in modifications to the Ordinance as presented to the Town Council. It should be noted that, the modifications recommended by the attorney are not substantive enough to require a second Planning Commission review.

## **ANALYSIS:**

Government Code Section 65852.2 allows local governments to determine where accessory dwelling units are permitted, based upon adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. It should be further noted that the State provides minimum standards and the Town cannot be more restrictive. The legislation authorizes the California Department of Housing and Community Development final review of all approved Ordinances. It further authorizes the Attorney General to take legal action for noncompliance.

As proposed, the development standards previously adopted will remain when not in conflict with the new legislation. New standards adopted by the State include:

- Accessory dwelling units are now permitted on lots with an existing multi-family dwelling;
- All discretionary design language was removed and replaced with objective design standards recommended by the attorney.
- Until January 1, 2025, owner occupancy is no longer a requirement for an accessory dwelling unit; however, the Town may require owner occupancy for properties with a junior accessory dwelling unit;
- Legal nonconforming zoning conditions do not need correction for the creation of an accessory dwelling unit.
- Lot coverage or size of existing dwelling unit shall not preclude a minimum of one (1) 800-square foot accessory dwelling unit on any lot with a proposed or existing single-family residence, or two (2) accessory dwelling units on any lot with an existing multi-family dwelling.
- Minimum setbacks for any detached, accessory dwelling unit cannot be greater than four (4) feet.

- State law does not allow the Town to restrict the floor area of a detached ADU when constructed on a lot with an existing multifamily dwelling structure.

The legislation clearly separates accessory dwelling units from junior accessory dwelling units where density is concerned. The previous Code did not include provisions for junior accessory dwelling units; therefore, pursuant to Government Code Section 95852.22, it is recommended that this specific language to the Development Code.

It is required by law that all standards concerning accessory dwelling units be contained within Section 9.29.120 "Accessory Dwelling Units. Therefore, as recommended by the attorney, reference to other Code Sections will be removed and all applicable definitions will be incorporated into Section 9.29.120.

Staff had provided the Planning Commission with a strike-through/underline version of the State required modifications. The following is the final strike-through/underline version with substantive attorney recommended modifications noted in red:

### **9.29.120 Accessory Dwelling Units**

**A. Purpose.** The purpose of this Section is to expand the variety of housing opportunities in the Town by implementing Government Code sections 6585.2 and 65852.22 to allow and regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs). Implementation of these regulations will ensure that accessory dwelling units are located in areas where services are adequate for support and that accessory dwelling units are designed and maintained as a compatible and integral part of the Town's residential zoning districts.

**B. Applicability.** In compliance with the requirements of Government Code 65852.2, the provisions of this Chapter shall apply to all accessory dwelling units located within any zoning designation for single-family, multifamily or mixed-uses, or any property with an existing single-family dwelling unit or multi-family dwelling structure. ~~lots that are occupied with a single-family, dwelling unit and zoned residential.~~

**C. Definitions.** As used in this section, terms are defined as follows:

(1) "Accessory dwelling unit" or "ADU" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An accessory dwelling unit also includes the following:

(a) An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code; and

(b) A manufactured home, as defined by Section 18007 of the California Health and Safety Code.

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

- (3) “Complete independent living facilities” means 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.
- (4) “Efficiency kitchen” means a kitchen that includes each of the following:
- (a) A cooking facility with appliances.
  - (b) A food preparation counter or counters that total at least 15 square feet in area.
  - (c) Food storage cabinets that total at least 30 square feet of shelf space.
- (5) “Junior accessory dwelling unit” or “JADU” means a residential unit that
- (a) is no more than 500 square feet in size,
  - (b) is contained entirely within an existing or proposed single-family structure,
  - (c) includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure, and
  - (d) includes an efficiency kitchen, as defined in subsection (c)(4) above
- (6) “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.
- (7) “Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.
- (8) “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.
- (9) “Proposed dwelling” means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
- (10) “Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
- (11) “Tandem parking” means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

**D. Permit Requirements. All accessory dwelling units shall be subject to a building permit and compliance with all Building and Fire Codes.** Applications for accessory dwelling units shall be approved or disapproved ministerially pursuant to

the requirements of this Section within ~~420~~ **sixty (60)** days of a determination that the application is complete, as required by Gov. Code, § 65852.2(b).

**E. Density. As provided by Government Code Section 65852.2(a)(1)(C), accessory dwelling units are exempt from the density limitations of the General Plan and subject to the following:**

1. Lots with an existing or proposed single-family dwelling may be permitted (1) accessory dwelling unit, **and one (1) junior accessory dwelling unit located within the primary residence.**
2. **Lots with an existing multifamily dwelling structure may incorporate accessory dwelling units into non-habitable areas of the existing structure. The number of this type of accessory dwelling units is limited to one (1), or twenty-five (25) percent of the number of existing multifamily dwelling units within the multifamily dwelling structure, whichever is number is greater. Lots with an existing multifamily dwelling structure may also have no more than two (2), detached accessory dwelling units.**

**F. Public Utility Requirements.**

~~There shall be adequate utilities available to serve the accessory dwelling unit and adequate water supply pursuant to specifications of the Uniform Plumbing Code.~~

1. **Construction of an accessory dwelling unit will require the entire property be connected to sewer, when available. When public sewer is not available, and in compliance with the State of California Lahontan Regional Water Quality Control Board, the following provisions apply:**
  - a. The accessory dwelling unit will occupy bedrooms within an existing single-family dwelling with an onsite wastewater system sized appropriately for the use as determined by the Building Official.
  - b. **An accessory structure constructed prior to January 1, 2020 may be converted to an accessory dwelling unit when connected to an existing, onsite wastewater system sized appropriately for the use, as determined by the Building Official.**
2. No onsite wastewater systems shall be installed or expanded for an accessory dwelling unit unless the site is one (1) acre or more in size.

**G. Use of Property.**

1. **On properties with an existing or proposed single-family residence, the primary dwelling or accessory dwelling unit, must be occupied by the property owner. (This provision does not apply to an accessory dwelling unit for which a permit is issued between 1/1/2020 and 1/1/2025.)**

~~**Restrictive Covenant.** Prior to the issuance of a building permit for an accessory~~

~~dwelling unit, a restrictive covenant against the land, which is binding on the property owner and their successors in interest, shall be recorded with the office of the San Bernardino County Recorder, which specifies that the following:~~

- ~~a. The use of the accessory dwelling unit as an independent living space may continue only if one dwelling on the lot is occupied by the property owner.~~
- ~~b. The property may only contain one (1) rented unit.~~
2. **The creation of a junior accessory dwelling unit shall require the owner to occupy either the primary dwelling, accessory dwelling, or junior accessory dwelling unit on the property. This provision does not apply if the owner is a governmental agency, land trust, or housing organization.**
3. The accessory dwelling unit or junior accessory dwelling unit may be rented separately from the primary residence but may not be sold or otherwise conveyed separately from the primary residence.
4. The rental term for an accessory dwelling unit or junior accessory dwelling unit shall not be less than thirty (30) days.
5. **The correction of a legal nonconforming zoning condition shall not be required for the creation of an accessory dwelling unit or junior accessory dwelling unit.**
6. **When constructed concurrently with a primary dwelling, the accessory dwelling unit shall not receive its final inspection for occupancy prior to that of the primary dwelling.**

#### **H. Design and Development Standards**

~~The parcel upon which the accessory dwelling unit is to be built shall comply with all development standards for the district in which it is located.~~

1. An accessory dwelling unit may be attached to, or detached from, **an existing or proposed single-family residence** ~~the existing primary dwelling~~ or converted from an existing accessory structure, attached garage, storage area or other similar non-habitable structure on the same lot as the single-family residence. **An accessory dwelling may be converted from non-habitable space within an existing multi-family structure and may be detached from but on the same lot as a multifamily dwelling structure.**
2. An accessory dwelling unit shall be located on the same lot as the proposed or existing primary dwelling.
3. **The accessory dwelling unit or junior accessory dwelling unit may include an expansion of not more than 150 square feet beyond the same physical**

dimensions as the existing primary dwelling or converted accessory structure. An expansion beyond the physical dimensions of the existing structure shall be limited to accommodating ingress and egress.

4. An attached accessory dwelling unit or junior accessory dwelling unit must have separate, exterior access from the proposed or existing primary dwelling.

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, those off-street parking spaces do not need to be replaced.

5. No parking shall be required for any accessory dwelling unit; however, the accessory dwelling unit may have an attached garage if the total footprint of the accessory dwelling unit with the garage does not exceed seventy-five (75) percent of the total area under roof of the primary dwelling. Paved access must be provided to any attached garage.

6. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary dwelling unit.

- ~~7. Each accessory dwelling unit and junior accessory dwelling unit shall be provided with a minimum of 450 square feet of shared or private, usable open space.~~

- ~~8. At no time may the primary dwelling unit be converted to the extent that it becomes substandard in size as a single-family residence. Except that a 150 square foot maximum, efficiency unit with a partial kitchen and a bathroom as authorized by California Health & Safety Code Section 17958.1, shall be permitted upon any lot containing a single-family residence and shall be considered an accessory dwelling unit.~~

9. No provisions within this Code, including lot coverage or legal nonconformity, shall preclude either an attached or detached 800 square foot accessory dwelling unit that is at least sixteen (16) feet in height with (4) four-foot side yard and rear yard setbacks. ~~outside any recorded easements, and that is constructed in compliance with all other development standards.~~

- ~~10. An accessory dwelling unit may occupy all, or a portion, of an existing detached accessory structure meeting the architectural guidelines set forth in this chapter.~~

11. The driveway serving the primary dwelling shall be used to serve the accessory dwelling unit unless otherwise required for fire safety.

12. The owner may meter the accessory dwelling unit separately from the main dwelling for gas, electricity and water/sewer services.

13. No setback shall be required for an existing living area or accessory

structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit.

~~No setback shall be required for an existing garage that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.~~

**I. Junior Accessory Dwelling Units (Pursuant to Government Code Section 65852.22).**

1. Owner occupancy shall be required on the property which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the primary or accessory dwelling unit or the junior accessory dwelling unit. This provision does not apply if the owner is a governmental agency, land trust, or housing organization.
2. ~~The junior accessory dwelling unit shall be provided with interior access to the proposed or existing single-family residence or accessory dwelling unit.~~
3. The junior accessory dwelling unit shall be provided with a separate exterior entrance from the main entrance to the proposed or existing single-family residence or accessory dwelling unit. The separate entrance may not be on the same elevation as the primary entrance to the proposed or existing single-family residence or accessory dwelling unit.
4. The junior accessory dwelling unit must include an efficiency kitchen that includes a cooking facility with appliances, a food preparation counter ~~and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.~~ that is at least fifteen (15) square feet and includes at least thirty (30) square feet of storage cabinet or shelf space.
5. Floor area for junior accessory dwelling unit shall not be less than ~~150-220~~ square feet or greater than 500 square feet, excluding bathroom.
6. The junior accessory dwelling unit may have bathroom or share with the proposed or existing single-family dwelling or accessory dwelling unit.
7. Additional parking shall not be required.

**J. Attached Accessory Dwelling Units.**

1. The maximum size for an attached accessory dwelling unit is ~~thirty (30)~~ **fifty (50)** percent of the habitable floor area of the primary dwelling ~~not to exceed~~ or 1,200 square feet, whichever is greater.

~~An attached accessory dwelling unit shall architecturally match the~~



- ~~primary dwelling and not alter the single-family character of the structure.~~
2. The materials and colors of the exterior walls, roof, windows and doors must match the appearance and architectural design of those of the primary dwelling.
  3. 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.
  4. Independent access to the accessory dwelling unit shall not be located on the same elevation as the access to the primary dwelling.
  5. The new construction of an attached accessory dwelling unit shall not be permitted with an existing multi-family dwelling; however, conversion of existing non-habitable space may be permitted subject to the above density provisions.

**K. Detached Accessory Dwelling Units.**

1. ~~Detached accessory dwelling units are subject to all provision within Section 9.29.020 "Accessory Uses and Structures".~~
2. On lots with an existing multifamily dwelling, the maximum ~~size shall be 800 square feet with a maximum~~ height of an accessory dwelling unit shall be sixteen (16) feet with minimum rear yard and side yard setbacks of four (4)-foot.
3. The accessory dwelling unit shall be located upon a permanent foundation and ~~architecturally compatible with the main dwelling which could include the use of similar colors, materials and architectural style of the primary dwelling unit.~~ must include the use of the same colors, materials and architectural style of the primary dwelling unit.
4. For lots less than two and one-half (2-1/2) acres in size, detached accessory dwelling units on property with an existing or proposed single-family dwelling shall comply with the following:
  - a. Shall be located to the rear of the primary dwelling unit;
  - b. On corner lots, the minimum front or street side yard setback of the accessory dwelling unit shall be at least ten (10) feet greater than the primary dwelling or have its access from the street opposite that of the primary dwelling. Notwithstanding the foregoing, an accessory dwelling unit may be in front of the primary dwelling when ~~when architectural consistent.~~ constructed with the same architectural style as the primary dwelling.
  - c. The maximum habitable floor area shall be fifty (50) percent of the total footprint of the primary dwelling, or 1,200 square feet, whichever is greater.

- d. Lots one (1) acre or more in size may be permitted a larger accessory dwelling unit with the **Planning Commission's** approval of a Minor Development Permit.
5. For lots two and one-half (2-1/2) acres or more in size, detached accessory dwelling units **on property with an existing or proposed single-family dwelling** shall comply with the following:
  - a. The maximum habitable floor area shall be fifty (50) percent of the total footprint of the primary dwelling, **or 1,200 square feet, whichever is greater.**
  - b. The maximum habitable floor area of an accessory dwelling unit may **exceed the above, with habitable floor area** based upon lot coverage, ~~not based upon the size of the primary dwelling unit.~~ **subject to the Planning Commission's approval of a Minor Development Permit.**

### **NOTICING**

Development Code Amendment No. 2019-017 was advertised as a public hearing in the Apple Valley News newspaper on February 28, 2020.

### **FINDINGS**

An amendment to the Development Code requires that the Town Council address two (2) required "Findings", as listed within Development Code Section 9.06.060. For Council consideration, the required Findings are listed below, along with a comment addressing each. If the Council concurs with these comments, they may be adopted. If the Council wishes modifications to the offered comments, after considering input and public testimony at the public hearing, modifications to the Findings and Code Amendment can be included.

- A. The proposed amendment is consistent with the General Plan; and

Comment: The General Plan is the blueprint for the community's future growth. Specific Goals and Objectives are provided within each of the adopted General Plan's State-mandated Elements. The Housing Element encourages housing for special needs households, including the elderly, single parent households, large households, the disabled and the homeless. Additionally, the Housing Element encourages the development of second units. Development Code Amendment No. 2017-017 will provide standards for accessory dwelling units that will encourage additional development while providing quality site planning and design that enhances the aesthetics and economy of the Town.

- B. The proposed amendment will not be detrimental to the public health, safety or welfare of the Town or its residents.

Comment: Amending the Code as proposed under Development Code Amendment No. 2017-017 will provide a simplified permitting process, which should encourage property owners to come forward and obtain the necessary permits required. Additionally, the permit process will ensure there are adequate services available to the accessory dwelling unit so the accessory use will not be detrimental to the public health, safety or welfare of the community

### **ENVIRONMENTAL REVIEW**

Pursuant to Section 21080.17 of the State Guidelines to Implement the California Environmental Quality Act (CEQA), this proposal is exempt because CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code.

#### **Fiscal Impact:**

Not Applicable

#### **Attachments:**

Ordinance No. 530

Planning Commission Staff Report

Planning Commission Resolution No. 2019-020

**ORDINANCE NO.530**

**A ORDINANCE OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY MODIFYING CHAPTER 9.08 “DEFINITIONS” AND SECTION 9.29.120 “ACCESSORY DWELLING UNITS” OF CHAPTER 9.29 “SPECIFIC USE REGULATIONS” AS REQUIRED BY SB 13, AB 68 AND AB 881.**

**WHEREAS**, the General Plan of the Town of Apple Valley was adopted by the Town Council on August 11, 2009; and

**WHEREAS**, Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on April 27, 2010; and

**WHEREAS**, in 2019, the California Legislature approved, and the Governor signed into law a number of bills (“New ADU Laws”) that, among other things, amended Government Code section 65/852.2 and 65852.22 to impose new limits on local authority to regulate accessory dwelling units and junior accessory dwelling units; and

**WHEREAS**, Title 9 (Development Code) of the Municipal Code of the Town of Apple Valley has been previously modified by the Town Council on the recommendation of the Planning Commission; and

**WHEREAS**, specific changes are proposed to Title 9 “Development Code” of the Town of Apple Valley Municipal Code by amending Chapter 9.29 “Specific Use Regulations” and Chapter 9.08 “Definitions” as it pertains to accessory dwelling units and junior accessory dwelling units; and,

**WHEREAS**, Development Code Amendment No. 2019-017 is consistent with the Town's General Plan and Title 9 "Development Code" of the Municipal Code of the Town of Apple Valley and shall promote the health, safety, and general welfare of the citizens of the Town of Apple Valley; and

**WHEREAS**, pursuant to Section 21080.17 of the State Guidelines to Implement the California Environmental Quality Act (CEQA), this proposal is exempt because CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code; and

**WHEREAS**, on February 28, 2020, Development Code Amendment No. 2019-017 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

**WHEREAS**, on March 10, 2020 the Town Council of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2019-017 receiving testimony from the public; and

**NOW, THEREFORE**, the Town Council of the Town of Apple Valley, State of

California, does ordain as follows:

**Section 1.** Find that the changes proposed by Development Code Amendment No. 2019-017 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

**Section 2.** Pursuant to Section 21080.17 of the State Guidelines to Implement the California Environmental Quality Act (CEQA), this proposal is exempt because CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code; and,

**Section 3.** Modify Chapter 9.08 “Definitions” to changing the definition of Accessory Dwelling Unit as follows:

**“ACCESSORY DWELLING UNIT**

Accessory dwelling unit” or “ADU” means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An accessory dwelling unit also includes the following:

- (a) An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code; and
- (b) A manufactured home, as defined by Section 18007 of the California Health and Safety Code.”

**Section 4.** Replace Section 9.29.120 “Accessory Dwelling Units” of Chapter 9.29 “Specific Use Regulations for Residential Districts” with the following:

**“9.29.120 Accessory Dwelling Units**

**A. Purpose.** The purpose of this Section is to expand the variety of housing opportunities in the Town by implementing Government Code sections 6585.2 and 65852.22 to allow and regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs). Implementation of these regulations will ensure that accessory dwelling units are located in areas where services are adequate for support and that accessory dwelling units are designed and maintained as a compatible and integral part of the Town’s residential zoning districts.

**B. Applicability.** In compliance with the requirements of Government Code 65852.2, the provisions of this Chapter shall apply to all accessory dwelling units located within any zoning designation for single-family, multifamily or mixed-uses, or any property with an existing single-family dwelling unit or multi-family dwelling structure.

**C. Definitions.** As used in this section, terms are defined as follows:

1. "Accessory dwelling unit" or "ADU" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An accessory dwelling unit also includes the following:
  - a. An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code; and
  - b. A manufactured home, as defined by Section 18007 of the California Health and Safety Code.
2. "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
3. "Complete independent living facilities" means 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.
4. "Efficiency kitchen" means a kitchen that includes each of the following:
  - a. A cooking facility with appliances.
  - b. A food preparation counter or counters that total at least 15 square feet in area.
  - c. Food storage cabinets that total at least 30 square feet of shelf space.
5. "Junior accessory dwelling unit" or "JADU" means a residential unit that
  - a. is no more than 500 square feet in size,
  - b. is contained entirely within an existing or proposed single-family structure,
  - c. includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure, and
  - d. includes an efficiency kitchen, as defined in subsection (c)(4) above.
6. "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.
7. "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.
8. "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.
9. "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
10. "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
11. "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

**D. *Permit Requirements.*** All accessory dwelling units shall be subject to a building permit and comply with all Building and Fire Codes. Applications for accessory dwelling units shall be approved or disapproved ministerially pursuant to the requirements of this Section within sixty (60) days of a determination that the application is complete, as required by Gov. Code, § 65852.2(b).

**E. *Density.*** As provided by Government Code Section 65852.2(a)(1)(C), accessory dwelling units are exempt from the density limitations of the General Plan and subject to the following:

1. Lots with an existing or proposed single-family dwelling may be permitted (1) accessory dwelling unit, and one (1) junior accessory dwelling unit located within the primary residence.
2. Lots with an existing multifamily dwelling structure may incorporate accessory dwelling units into non-habitable areas of the existing structure. The number of this type of accessory dwelling units is limited to one (1), or twenty-five (25) percent of the number of existing multifamily dwelling units within the multifamily dwelling structure, whichever is number is greater. Lots with an existing multifamily dwelling structure may also have no more than two (2), detached accessory dwelling units.

**F. *Public Utility Requirements.***

1. Construction of an accessory dwelling unit will require the entire property be connected to sewer, when available. When public sewer is not available, and in compliance with the State of California Lahontan Regional Water Quality Control Board, the following provisions apply:
  - a. The accessory dwelling unit will occupy bedrooms within an existing single-family dwelling with an onsite wastewater system sized appropriately for the use as determined by the Building Official.
  - b. An accessory structure constructed prior to January 1, 2020 may be converted to an accessory dwelling unit when connected to an existing, onsite wastewater system sized appropriately for the use, as determined by the Building Official.
2. No onsite wastewater systems shall be installed or expanded for an accessory dwelling unit unless the site is one (1) acre or more in size.

**G. *Use of Property.***

1. On properties with an existing or proposed single-family residence, the primary dwelling or accessory dwelling unit, must be occupied by the property owner. (*This provision does not apply to an accessory dwelling unit for which a permit is issued between 1/1/2020 and 1/1/2025.*)
2. The creation of a junior accessory dwelling unit shall require the owner to occupy either the primary dwelling, accessory dwelling, or junior accessory dwelling unit on the property. This provision does not apply if the owner is a governmental

agency, land trust, or housing organization.

3. The accessory dwelling unit or junior accessory dwelling unit may be rented separately from the primary residence but may not be sold or otherwise conveyed separately from the primary residence.
4. The rental term for an accessory dwelling unit or junior accessory dwelling unit shall not be less than thirty (30) days.
5. The correction of a legal nonconforming zoning condition shall not be required for the creation of an accessory dwelling unit or junior accessory dwelling unit.
6. When constructed concurrently with a primary dwelling, the accessory dwelling unit shall not receive its final inspection for occupancy prior to that of the primary dwelling.

#### **H. *Design and Development Standards***

1. An accessory dwelling unit may be attached to, or detached from, an existing or proposed single-family residence or converted from an existing accessory structure, attached garage, storage area or other similar non-habitable structure on the same lot as the single-family residence. An accessory dwelling may be converted from non-habitable space within an existing multi-family structure and may be detached from but on the same lot as a multifamily dwelling structure.
2. An accessory dwelling unit shall be located on the same lot as the proposed or existing primary dwelling.
3. The accessory dwelling unit or junior accessory dwelling unit may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing primary dwelling or converted accessory structure. An expansion beyond the physical dimensions of the existing structure shall be limited to accommodating ingress and egress.
4. An attached accessory dwelling unit or junior accessory dwelling unit must have separate, exterior access from the proposed or existing primary dwelling.
5. 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, those off-street parking spaces do not need to be replaced.
6. No parking shall be required for any accessory dwelling unit; however, the accessory dwelling unit may have an attached garage if the total footprint of the accessory dwelling unit with the garage does not exceed seventy-five (75) percent of the total area under roof of the primary dwelling. Paved access must be provided to any attached garage.
7. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary dwelling unit.



8. No provisions within this Code, including lot coverage or legal nonconformity, shall preclude either an attached or detached 800 square foot accessory dwelling unit that is at least sixteen (16) feet in height with four (4)-foot side yard and rear yard setbacks.
9. The driveway serving the primary dwelling shall be used to serve the accessory dwelling unit unless otherwise required for fire safety.
10. The owner may meter the accessory dwelling unit separately from the main dwelling for gas, electricity and water/sewer services.
11. No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit.

**I. *Junior Accessory Dwelling Units* (Pursuant to Government Code Section 65852.22).**

1. Owner occupancy shall be required on the property which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the primary or accessory dwelling unit or the junior accessory dwelling unit. This provision does not apply if the owner is a governmental agency, land trust, or housing organization.
2. The junior accessory dwelling unit shall be provided with a separate exterior entrance from the main entrance to the proposed or existing single-family residence or accessory dwelling unit. The separate entrance may not be on the same elevation as the primary entrance to the proposed or existing single-family residence or accessory dwelling unit.
3. The junior accessory dwelling unit must include an efficiency kitchen that includes a cooking facility with appliances, a food preparation counter this is at least fifteen (15) square feet and include at least thirty (30) square feet of storage cabinet or shelf space.
4. Floor area for junior accessory dwelling unit shall not be less than 220 square feet or greater than 500 square feet, excluding bathroom.
5. The junior accessory dwelling unit may have bathroom or share with the proposed or existing single-family dwelling or accessory dwelling unit.
6. Additional parking shall not be required.

**J. *Attached Accessory Dwelling Units.***

1. The maximum size for an attached accessory dwelling unit is fifty (50) percent of the habitable floor area of the primary dwelling or 1,200 square feet, whichever is greater.

2. The materials and colors of the exterior walls, roof, windows and doors must match the appearance and architectural design of those of the primary dwelling.
3. 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.
4. Independent access to the accessory dwelling unit shall not be located on the same elevation as the access to the primary dwelling.
5. The new construction of an attached accessory dwelling unit shall not be permitted with an existing multi-family dwelling; however, conversion of existing non-habitable space may be permitted subject to the above density provisions.

**K. *Detached Accessory Dwelling Units.***

1. On lots with an existing multifamily dwelling, the maximum height of an accessory dwelling unit shall be sixteen (16) feet with minimum rear yard and side yard setbacks of four (4)-foot.
2. The accessory dwelling unit shall be located upon a permanent foundation and must include the use of the same colors, materials and architectural style of the primary dwelling unit.
3. For lots less than two and one-half (2-1/2) acres in size, detached accessory dwelling units on property with an existing or proposed single-family dwelling shall comply with the following:
  - a. Shall be located to the rear of the primary dwelling unit;
  - b. On corner lots, the minimum front or street side yard setback of the accessory dwelling unit shall be at least ten (10) feet greater than the primary dwelling or have its access from the street opposite that of the primary dwelling. Notwithstanding the foregoing, an accessory dwelling unit may be in front of the primary dwelling when constructed with the same architectural style as the primary dwelling.
  - c. The maximum habitable floor area shall be fifty (50) percent of the total footprint of the primary dwelling, or 1,200 square feet, whichever is greater.
  - d. Lots one (1) acre or more in size may be permitted a larger accessory dwelling unit with the Planning Commission's approval of a Minor Development Permit.
4. For lots two and one-half (2-1/2) acres or more in size, detached accessory dwelling units on property with an existing or proposed single-family dwelling shall comply with the following:

- a. The maximum habitable floor area shall be fifty (50) percent of the total footprint of the primary dwelling, or 1,200 square feet, whichever is greater.
- b. The maximum habitable floor area of an accessory dwelling unit may exceed the above, with habitable floor area based upon lot coverage subject to the Planning Commission's approval of a Minor Development Permit."

**Section 5.** Notice of Adoption. The Town Clerk of the Town of Apple Valley shall certify to the adoption of this ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the Town in a manner permitted under Section 36933 of the Government Code of the State of California.

**Section 6.** Effective Date. This Ordinance shall become effective thirty (30) days after the date of its adoption.

**Section 7.** Severability. If any provision of this Ordinance, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications and, to this end, the provisions of this Ordinance are declared to be severable.

**Approved and Adopted** by the Town Council and signed by the Mayor and attested to by the Town Clerk this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Honorable Scott Nassif, Mayor

ATTEST:

\_\_\_\_\_  
Ms. La Vonda M. Pearson, Town Clerk

Approved as to form:

Approved as to content:

\_\_\_\_\_  
Mr. Thomas Rice, Town Attorney

\_\_\_\_\_  
Mr. Douglas B. Robertson, Town Manager



## Planning Commission Agenda Report

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<b>DATE:</b>	December 18, 2019	Item No. 2
<b>CASE NUMBER:</b>	Development Code Amendment No. 2019-017 ( <i>continued from December 4, 2019</i> )	
<b>APPLICANT:</b>	Town of Apple Valley	
<b>PROPOSAL:</b>	An amendment to Title 9 "Development Code" of the Town of Apple Valley Municipal Code by modifying provisions relating to accessory dwelling units as required for compliance with recently approved State legislation.	
<b>LOCATION:</b>	Residential Zoning Districts Town-wide	
<b>ENVIRONMENTAL DETERMINATION:</b>	Pursuant to Section 21080.17 of the State Guidelines to Implement the California Environmental Quality Act (CEQA), this proposal is exempt because CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code.	
<b>PREPARED BY:</b>	Ms. Pam Cupp, Senior Planner	
<b>RECOMMENDATION:</b>	Adopt Planning Commission Resolution No. 2019-020.	

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### **BACKGROUND**

On October 9, 2019, Governor Newsome signed into law SB 13, AB 68 and AB 881, all of which amend Government Code 65852.2 by further restricting the Town's land use authority over accessory dwelling units. The effective date for these modifications is January 1, 2020.

### **ANALYSIS**

Government Code Section 65852.2 allows local governments to determine where accessory dwelling units are permitted, based upon adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. Local governments may also impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property

that is listed in the California Register of Historic Resources. It should be further noted that the State provides minimum standards and the Town cannot be more restrictive.

As proposed, the development standards previously adopted will remain when not in conflict with the new legislation. New standards adopted by the State include:

- Accessory dwelling units are now permitted on lots with an existing multi-family dwelling;
- Until January 1, 2025, owner occupancy is no longer a requirement for an accessory dwelling unit; however, the Town may require owner occupancy for properties with a junior accessory dwelling unit;
- Legal nonconforming zoning conditions do not need correction for the creation of an accessory dwelling unit.
- A junior accessory dwelling unit may be located within either the primary dwelling or the accessory dwelling unit.
- Lot coverage or size of existing dwelling unit shall not preclude a minimum of one (1) 800-square foot accessory dwelling unit on any lot with a proposed or existing single-family residence, or two (2), 800 square foot accessory dwelling units on any lot with an existing multi-family dwelling.

The legislation clearly separates accessory dwelling units from junior accessory dwelling units where density is concerned. The previous Code did not include provisions for junior accessory dwelling units; therefore, pursuant to Government Code Section 95852.22, staff has added this specific language to the Development Code.

Staff has provided a strike-through/underline version of the State required modifications. Only substantive modifications are shown.

Staff is recommending the following changes to Chapter 9.08 “Definitions” by modifying the definition of an accessory dwelling unit and adding a definition for “junior accessory dwelling unit” to align with the State’s definition, as follows:

**ACCESSORY DWELLING UNIT** An attached or detached residential dwelling unit that provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes an efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code or a manufactured home, as defined in Section 18007 of the Health and Safety Code. A junior accessory dwelling unit is not considered an accessory dwelling unit under this definition.

**JUNIOR ACCESSORY DWELLING UNIT, as defined in Government Code Section 65852.22, means a unit that is no more than 500 square feet in size and contained entirely within an existing dwelling unit. It shall include an efficiency kitchen and may have private sanitation facilities or share sanitation facilities with the existing dwelling.**

Staff is recommending the following changes to Section 9.29.120 “Accessory Dwelling Units” of Chapter 9.29 “Specific Use Regulations for Residential Districts” as required by SB 13, AB 68 and AB 881:

### **9.29.120 Accessory Dwelling Units**

**A. Purpose.** The purpose of this Section is to expand the variety of housing opportunities in the Town by implementing State Government Code (65852.2) as it pertains to accessory dwelling units. Implementation of these regulations will insure that accessory dwelling units are located in areas where services are adequate to support them and that accessory dwelling units are designed and maintained as a compatible and integral part of the Town's residential zoning districts.

**B. Applicability.** In compliance with the requirements of Government Code 65852.2, the provisions of this Chapter shall apply to all accessory dwelling units located within any zoning designation for single-family, multifamily or mixed-uses, or any property with an existing single-family or multi-family dwelling. A legal nonconforming zoning condition will not preclude a property from having an accessory dwelling unit. ~~lots that are occupied with a single-family, dwelling unit and zoned residential.~~

**C. Permit Requirements.** All accessory dwelling units shall be subject to a building permit and comply with all Building and Fire Codes. Applications for accessory dwelling units shall be approved or disapproved ministerially pursuant to the requirements of this Section within ~~420~~ sixty (60) days of a determination that the application is complete, as required by Gov. Code, § 65852.2(b).

**D. Density.** As provided by Government Code Section 65852.2(a)(1)(C), accessory dwelling units are exempt from the density limitations of the General Plan and subject to the following:

1. Lots with an existing or proposed single-family dwelling may be permitted (1) accessory dwelling unit, and one (1) junior accessory dwelling unit.
2. Lots with existing multifamily units may incorporate accessory dwelling units into non-habitable areas of the existing structure. The number of these types of accessory dwelling units is limited to one (1), or twenty-five (25) percent of the existing multifamily dwelling units within the building, whichever is greater, and no more than two (2), detached accessory dwelling units may be permitted on a lot that has an existing multifamily dwelling.

**E. Public Utility Requirements.**

1. There shall be adequate utilities available to serve the accessory dwelling unit and adequate water supply pursuant to specifications of the Uniform Plumbing Code.
2. Construction of an accessory dwelling unit will require the entire property be connected to sewer, when available. When public sewer is not available,

**and in compliance with the State of California Lahontan Regional Water Quality Control Board, the following provisions apply:**

- a. The accessory dwelling unit will occupy bedrooms within an existing single-family dwelling with an onsite wastewater system sized appropriately for the use as determined by the Building Official.
  - b. **An accessory structure constructed prior to January 1, 2020 may be converted to an accessory dwelling unit when connected to an existing, onsite wastewater system sized appropriately for the use, as determined by the Building Official.**
3. No onsite wastewater systems shall be installed or expanded for an accessory dwelling unit unless the site is one (1) acre or more in size.

**F. Use of Property.**

1. **On properties with an existing or proposed single-family residence, the primary dwelling or accessory dwelling unit, must be occupied by the property owner. (This provision suspended for all permits issued between 1/1/2020 and 1/1/2025.)**

~~***Restrictive Covenant.*** Prior to the issuance of a building permit for an accessory dwelling unit, a restrictive covenant against the land, which is binding on the property owner and their successors in interest, shall be recorded with the office of the San Bernardino County Recorder, which specifies that the following:~~

- ~~a. The use of the accessory dwelling unit as an independent living space may continue only if one dwelling on the lot is occupied by the property owner.~~
  - ~~b. The property may only contain one (1) rented unit.~~
2. **The creation of a junior accessory dwelling unit shall require the owner to occupy either the primary dwelling, accessory dwelling, or junior accessory dwelling unit. This provision does not apply if the owner is a governmental agency, land trust, or housing organization.**
  3. The accessory dwelling unit or junior accessory dwelling unit may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence.
  4. The rental term for an accessory dwelling unit or junior accessory dwelling unit shall not be less than thirty (30) days.
  5. **The correction of a legal nonconforming zoning condition shall not be required for the creation of an accessory dwelling unit or junior accessory dwelling unit.**

6. When constructed concurrently with a primary dwelling, the accessory dwelling unit shall not receive its final inspection for occupancy prior to that of the primary dwelling.

### **G. Design and Development Standards**

The parcel upon which the accessory dwelling unit is to be built shall comply with all development standards for the district in which it is located.

1. An accessory dwelling unit may be attached to, or detached from, an existing or proposed single-family residence the existing primary dwelling or converted from an existing accessory structures, attached garages, storage areas or other similar non-habitable uses. An accessory dwelling may be converted from non-habitable space within, or detached from, an existing multi-family structure.
2. An accessory dwelling unit shall be located on the same lot as the proposed or existing primary dwelling.
3. The accessory dwelling unit or junior accessory dwelling unit may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing primary dwelling or converted accessory structure. An expansion beyond the physical dimensions of the existing structure shall be limited to accommodating ingress and egress.
4. An attached accessory dwelling unit or junior accessory dwelling unit must have separate, exterior access from the proposed or existing primary dwelling.
5. The accessory dwelling unit may be combined with a junior accessory dwelling unit.
6. 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, those off-street parking spaces do not need to be replaced.
7. No parking shall be required for any accessory dwelling unit; however, the accessory dwelling unit may have an attached garage if the total footprint of the accessory dwelling unit with the garage does not exceed seventy-five (75) percent of the total area under roof of the primary dwelling. Paved access must be provided to any attached garage.
8. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.
9. Each accessory dwelling unit and junior accessory dwelling unit shall be provided with a minimum of 450 square feet of shared or private usable open



**space, which may not be located within the required front or street side yard setback.**

10. ~~At no time may the primary dwelling unit be converted to the extent that it becomes substandard in size as a single-family residence.—Except that a 150 square foot maximum, efficiency unit with a partial kitchen and a bathroom as authorized by California Health & Safety Code Section 17958.1, shall be permitted upon any lot containing a single-family residence and shall be considered an accessory dwelling unit.~~
11. **No provisions within this Code, including lot coverage or legal nonconformity, shall preclude either an attached or detached 800 square foot accessory dwelling unit that is at least sixteen (16) feet in height with (4) four-foot side yare and rear yard setbacks, outside any recorded easements, and that is constructed in compliance with all other development standards.**
12. An accessory dwelling unit may occupy all, or a portion, of an existing detached accessory structure meeting the architectural guidelines set forth in this chapter.
13. The driveway serving the primary dwelling shall be used to serve the accessory dwelling unit whenever feasible.
14. The accessory dwelling unit may be metered separately from the main dwelling for gas, electricity and water/sewer services.
15. **No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit.**

~~No setback shall be required for an existing garage that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.~~

**H. Junior Accessory Dwelling Units (Pursuant to Government Code Section 65852.22).**

1. **Owner occupancy shall be required on the property which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the primary or accessory dwelling unit or the junior accessory dwelling unit. This provision does not apply if the owner is a governmental agency, land trust, or housing organization.**
2. **The junior accessory dwelling unit shall be provided with interior access to the proposed or existing single-family residence or accessory dwelling unit.**
3. **The junior accessory dwelling unit shall be provided with a separate exterior**

entrance from the main entrance to the proposed or existing single-family residence or accessory dwelling unit. The separate entrance may not be on the same elevation as the primary entrance to the proposed or existing single-family residence or accessory dwelling unit.

4. The accessory dwelling unit may be combined with a junior accessory dwelling unit.
5. The junior accessory dwelling unit must include an efficiency kitchen that includes a cooking facility with appliances, a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.
6. Floor area for junior accessory dwelling unit shall not be less than 150 square feet or greater than 500 square feet, excluding bathroom.
7. The junior accessory dwelling unit may have bathroom or share with the proposed or existing single-family dwelling or accessory dwelling unit.
8. Additional parking shall not be required.

**I. Attached Accessory Dwelling Units.**

1. The maximum size for an attached accessory dwelling unit is ~~thirty (30)~~ **fifty (50)** percent of the habitable floor area of the primary dwelling ~~not to exceed~~ or 1,200 square feet, whichever is greater.
2. An attached accessory dwelling unit shall architecturally match the primary dwelling and not alter the single-family character of the structure.
3. Independent access to the accessory dwelling unit shall not be located on the same elevation as the access to the primary dwelling.
4. The new construction of an attached accessory dwelling unit shall not be permitted with an existing multi-family dwelling; however, conversion of existing non-habitable space may be permitted subject to the above density provisions.

**J. Detached Accessory Dwelling Units.**

1. Detached accessory dwelling units are subject to all provision within Section 9.29.020 "Accessory Uses and Structures".
2. On lots with an existing multifamily dwelling, the maximum size shall be 800 square feet with a maximum height of sixteen (16) feet and minimum rear yard and side yard setbacks of four (4)-foot, outside of any recorded easement.
3. The accessory dwelling unit shall be located upon a permanent foundation and

architecturally compatible with the main dwelling which could include the use of similar colors, materials and architectural style of the primary dwelling unit.

4. For lots less than two and one-half (2-1/2) acres in size, detached accessory dwelling units **on property with an existing or proposed single-family dwelling** shall comply with the following:
  - a. Shall be located to the rear of the primary dwelling unit;
  - b. On corner lots, the minimum front or street side yard setback of the accessory dwelling unit shall be at least ten (10) feet greater than the primary dwelling or have its access from the street opposite that of the primary dwelling. Notwithstanding the foregoing, an accessory dwelling unit may be in front of the primary dwelling when architectural consistent.
  - c. The maximum habitable floor area shall be fifty (50) percent of the total footprint of the primary dwelling, **or 1,200 square feet, whichever is greater.**
  - d. Lots one (1) acre or more in size may be permitted a larger accessory dwelling unit with the **Planning Commission's** approval of a Minor Development Permit.
  
5. For lots two and one-half (2-1/2) acres or more in size, detached accessory dwelling units **on property with an existing or proposed single-family dwelling** shall comply with the following:
  - a. The maximum habitable floor area shall be fifty (50) percent of the total footprint of the primary dwelling, **or 1,200 square feet, whichever is greater.**
  - b. The maximum habitable floor area of an accessory dwelling unit may **exceed the above, with habitable floor area** based upon lot coverage, ~~not based upon the size of the primary dwelling unit.~~ **subject to the Planning Commission's approval of a Minor Development Permit.**

## **NOTICING**

Development Code Amendment No. 2019-017 was advertised as a public hearing in the Apple Valley News newspaper on November 22, 2019.

## **FINDINGS**

An amendment to the Development Code requires that the Planning Commission address two (2) required “Findings”, as listed within Development Code Section 9.06.060. For Commission consideration, the required Findings are listed below, along with a comment addressing each. If the Commission concurs with these comments, they may be adopted and forwarded to the Council for its consideration of the Development Code Amendment. If the Commission wishes modifications to the offered comments, after considering input and public testimony at the public hearing, modifications to the Findings and Code Amendment recommendations can be included into the information forwarded to the Council for consideration.

- A. The proposed amendment is consistent with the General Plan; and

Comment: The General Plan is the blueprint for the community’s future growth. Specific Goals and Objectives are provided within each of the adopted General Plan’s State-mandated Elements. The Housing Element encourages housing for special needs households, including the elderly, single parent households, large households, the disabled and the homeless. Additionally, the Housing Element encourages the development of second units. Development Code Amendment No. 2017-017 will provide standards for accessory dwelling units that will encourage additional development while providing quality site planning and design that enhances the aesthetics and economy of the Town.

- B. The proposed amendment will not be detrimental to the public health, safety or welfare of the Town or its residents.

Comment: Amending the Code as proposed under Development Code Amendment No. 2017-017 will provide a simplified permitting process, which should encourage property owners to come forward and obtain the necessary permits required. Additionally, the permit process will ensure there are adequate services available to the accessory dwelling unit so the accessory use will not be detrimental to the public health, safety or welfare of the community

## **ENVIRONMENTAL REVIEW**

Pursuant to Section 21080.17 of the State Guidelines to Implement the California Environmental Quality Act (CEQA), this proposal is exempt because CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code.

## **RECOMMENDATION**

Following receipt of public input and discussion by the Commission, it is recommended that the Commission move to approve Planning Commission Resolution No. 2019-020 forwarding a recommendation that the Town Council amend Title 9 “Development Code” of the Town of Apple Valley Municipal Code as outlined within the staff report.

Attachment:

1. Draft Planning Commission Resolution No. 2019-020
2. SB 13
3. AB 68
4. AB 881

**PLANNING COMMISSION RESOLUTION NO. 2019-020**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY, CALIFORNIA, RECOMMENDING THAT THE TOWN COUNCIL ADOPT DEVELOPMENT CODE AMENDMENT NO. 2019-017 AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, AS REQUIRED BY SB 13, AB 68 AND AB 881, BY MODIFYING CHAPTER 9.29 “SPECIFIC USE REGULATIONS” AS IT PERTAINS TO ACCESSORY DWELLING UNITS AND CHAPTER 9.08 “DEFINITIONS” AS IT RELATES TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS.**

**WHEREAS**, Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on April 27, 2010; and

**WHEREAS**, Title 9 (Development Code) of the Municipal Code of the Town of Apple Valley has been previously modified by the Town Council on the recommendation of the Planning Commission; and

**WHEREAS**, specific changes are proposed to Title 9 “Development Code” of the Town of Apple Valley Municipal Code by amending Chapter 9.29 “Specific Use Regulations” and Chapter 9.08 “Definitions” as it pertains to accessory dwelling units and junior accessory dwelling units; and,

**WHEREAS**, on November 22, 2019, Development Code Amendment No. 2019-017 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

**WHEREAS**, staff has determined that pursuant to Section 21080.17 of the State Guidelines to Implement the California Environmental Quality Act (CEQA), this proposal is exempt because CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code; and

**WHEREAS**, on December 18, 2019 the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2019-017 receiving testimony from the public; and

**WHEREAS**, Development Code Amendment No. 2019-017 is consistent with Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley and shall promote the health, safety and general welfare of the citizens of the Town of Apple Valley.

**NOW, THEREFORE, BE IT RESOLVED** that in consideration of the evidence presented at the public hearing, and for the reasons discussed by the Commissioners at said hearing, the Planning Commission of the Town of Apple Valley, California, does hereby resolve, order and determine as follows and recommends that the Town Council make the following findings and take the following actions:

**Section 1.** Find that the changes proposed by Development Code Amendment No. 2019-017 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

**Section 2.** Pursuant to Section 21080.17 of the State Guidelines to Implement the California Environmental Quality Act (CEQA), this proposal is exempt because CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code; and,

**Section 3.** Modify Chapter 9.08 “Definitions” to modify the definition of Accessory Dwelling Unit as follows:

**“ACCESSORY DWELLING UNIT**

An attached or detached residential dwelling unit that provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes an efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code or a manufactured home, as defined in Section 18007 of the Health and Safety Code. A junior accessory dwelling unit is not considered an accessory dwelling unit under this definition.”

**Section 4.** Modify Chapter 9.08 “Definitions” to alphabetically add the following:

**“JUNIOR ACCESSORY DWELLING UNIT**

As defined in Government Code Section 65852.22, means a unit that is no more than 500 square feet in size and contained entirely within an existing dwelling unit. It shall include an efficiency kitchen and may have private sanitation facilities or share sanitation facilities with the existing dwelling.”

**Section 5.** Replace Section 9.29.120 “Accessory Dwelling Units” of Chapter 9.29 “Specific Use Regulations for Residential Districts” with the following:

**“9.29.120 Accessory Dwelling Units**

**A. Purpose.** The purpose of this Section is to expand the variety of housing opportunities in the Town by implementing State Government Code (65852.2) as it pertains to accessory dwelling units. Implementation of these regulations will insure that accessory dwelling units are located in areas where services are adequate to support them and that accessory dwelling units are designed and maintained as a compatible and integral part of the Town's residential zoning districts.

**B. Applicability.** In compliance with the requirements of Government Code 65852.2, the provisions of this Chapter shall apply to all accessory dwelling units located within any zoning designation for single-family, multifamily or mixed-uses, or any property with an existing single-family or multi-family dwelling. A legal nonconforming zoning condition will not preclude a property from having an accessory dwelling unit.

**C. Permit Requirements.** All accessory dwelling units shall be subject to a building permit and comply with all Building and Fire Codes. Applications for accessory dwelling units shall be approved or disapproved ministerially pursuant to the requirements of

this Section within sixty (60) days of a determination that the application is complete, as required by Gov. Code, § 65852.2(b).

**D. Density.** As provided by Government Code Section 65852.2(a)(1)(C), accessory dwelling units are exempt from the density limitations of the General Plan and subject to the following:

1. Lots with an existing or proposed single-family dwelling may be permitted (1) accessory dwelling unit, and one (1) junior accessory dwelling unit.
2. Lots with existing multifamily units may incorporate accessory dwelling units into non-habitable areas of the existing structure. The number of these types of accessory dwelling units is limited to one (1), or twenty-five (25) percent of the existing multifamily dwelling units within the building, whichever is greater, and no more than two (2), detached accessory dwelling units may be permitted on a lot that has an existing multifamily dwelling.

**E. Public Utility Requirements.**

1. There shall be adequate utilities available to serve the accessory dwelling unit and adequate water supply pursuant to specifications of the Uniform Plumbing Code.
2. Construction of an accessory dwelling unit will require the entire property be connected to sewer, when available. When public sewer is not available, and in compliance with the State of California Lahontan Regional Water Quality Control Board, the following provisions apply:
  - a. The accessory dwelling unit will occupy bedrooms within an existing single-family dwelling with an onsite wastewater system sized appropriately for the use as determined by the Building Official.
  - b. An accessory structure constructed prior to January 1, 2020 may be converted to an accessory dwelling unit when connected to an existing, onsite wastewater system sized appropriately for the use, as determined by the Building Official.
3. No onsite wastewater systems shall be installed or expanded for an accessory dwelling unit unless the site is one (1) acre or more in size.

**F. Use of Property.**

1. On properties with an existing or proposed single-family residence, the primary dwelling or accessory dwelling unit, must be occupied by the property owner. *(This provision suspended for all permits issued between 1/1/2020 and 1/1/2025.)*
2. The creation of a junior accessory dwelling unit shall require the owner to occupy either the primary dwelling, accessory dwelling, or junior accessory dwelling unit. This provision does not apply if the owner is a governmental agency, land trust, or housing organization.



3. The accessory dwelling unit or junior accessory dwelling unit may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence.
4. The rental term for an accessory dwelling unit or junior accessory dwelling unit shall not be less than thirty (30) days.
5. The correction of a legal nonconforming zoning condition shall not be required for the creation of an accessory dwelling unit or junior accessory dwelling unit.
6. When constructed concurrently with a primary dwelling, the accessory dwelling unit shall not receive its final inspection for occupancy prior to that of the primary dwelling.

***G. Design and Development Standards.***

1. An accessory dwelling unit may be attached to, or detached from, an existing or proposed single-family residence or converted from an existing accessory structures, attached garages, storage areas or other similar non-habitable uses. An accessory dwelling may be converted from non-habitable space within, or detached from, an existing multi-family structure.
2. An accessory dwelling unit shall be located on the same lot as the proposed or existing primary dwelling.
3. The accessory dwelling unit or junior accessory dwelling unit may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing primary dwelling or converted accessory structure. An expansion beyond the physical dimensions of the existing structure shall be limited to accommodating ingress and egress.
4. An attached accessory dwelling unit or junior accessory dwelling unit must have separate, exterior access from the proposed or existing primary dwelling.
5. The accessory dwelling unit may be combined with a junior accessory dwelling unit.
6. 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, those off-street parking spaces do not need to be replaced.
7. No parking shall be required for any accessory dwelling unit; however, the accessory dwelling unit may have an attached garage if the total footprint of the accessory dwelling unit with the garage does not exceed seventy-five (75) percent of the total area under roof of the primary dwelling. Paved access must be provided to any attached garage.

8. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.
9. Each accessory dwelling unit and junior accessory dwelling unit shall be provided with a minimum of 450 square feet of shared or private usable open space, which may not be located within the required front or street side yard setback.
10. At no time may the primary dwelling unit be converted to the extent that it becomes substandard in size as a single-family residence
11. No provisions within this Code, including lot coverage or legal nonconformity, shall preclude either an attached or detached 800 square foot accessory dwelling unit that is at least sixteen (16) feet in height with (4) four-foot side yard and rear yard setbacks, outside any recorded easements, and that is constructed in compliance with all other development standards.
12. An accessory dwelling unit may occupy all, or a portion, of an existing detached accessory structure meeting the architectural guidelines set forth in this chapter.
13. The driveway serving the primary dwelling shall be used to serve the accessory dwelling unit whenever feasible.
14. The accessory dwelling unit may be metered separately from the main dwelling for gas, electricity and water/sewer services.
15. No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit.

**H. Junior Accessory Dwelling Units** (Pursuant to Government Code Section 65852.22).

1. Owner occupancy shall be required on the property which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the primary or accessory dwelling unit or the junior accessory dwelling unit. This provision does not apply if the owner is a governmental agency, land trust, or housing organization.
2. The junior accessory dwelling unit shall be provided with interior access to the proposed or existing single-family residence or accessory dwelling unit.
3. The junior accessory dwelling unit shall be provided with a separate exterior entrance from the main entrance to the proposed or existing single-family residence or accessory dwelling unit. The separate entrance may not be on the same elevation as the primary entrance to the proposed or existing single-family residence or accessory dwelling unit.

4. The accessory dwelling unit may be combined with a junior accessory dwelling unit.
5. The junior accessory dwelling unit must include an efficiency kitchen that includes a cooking facility with appliances, a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.
6. Floor area for junior accessory dwelling unit shall not be less than 150 square feet or greater than 500 square feet, excluding bathroom.
7. The junior accessory dwelling unit may have bathroom or share with the proposed or existing single-family dwelling or accessory dwelling unit.
8. Additional parking shall not be required.

**I. Attached Accessory Dwelling Units.**

1. The maximum size for an attached accessory dwelling unit is fifty (50) percent of the habitable floor area of the primary dwelling or 1,200 square feet, whichever is greater.
2. An attached accessory dwelling unit shall architecturally match the primary dwelling and not alter the single-family character of the structure.
3. Independent access to the accessory dwelling unit shall not be located on the same elevation as the access to the primary dwelling.
4. The new construction of an attached accessory dwelling unit shall not be permitted with an existing multi-family dwelling; however, conversion of existing non-habitable space may be permitted subject to the above density provisions.

**J. Detached Accessory Dwelling Units.**

1. Detached accessory dwelling units are subject to all provision within Section 9.29.020 "Accessory Uses and Structures".
2. On lots with an existing multifamily dwelling, the maximum size shall be 800 square feet with a maximum height of sixteen (16) feet and minimum rear yard and side yard setbacks of four (4)-foot, outside of any recorded easement.
3. The accessory dwelling unit shall be located upon a permanent foundation and architecturally compatible with the main dwelling which could include the use of similar colors, materials and architectural style of the primary dwelling unit.
4. For lots less than two and one-half (2-1/2) acres in size, detached accessory dwelling units on property with an existing or proposed single-family dwelling shall comply with the following:

- a.** Shall be located to the rear of the primary dwelling unit;
  - b.** On corner lots, the minimum front or street side yard setback of the accessory dwelling unit shall be at least ten (10) feet greater than the primary dwelling or have its access from the street opposite that of the primary dwelling. Notwithstanding the foregoing, an accessory dwelling unit may be in front of the primary dwelling when architecturally consistent.
  - c.** The maximum habitable floor area shall be fifty (50) percent of the total footprint of the primary dwelling, or 1,200 square feet, whichever is greater.
  - d.** Lots one (1) acre or more in size may be permitted a larger accessory dwelling unit with the Planning Commission's approval of a Minor Development Permit.
- 5.** For lots two and one-half (2-1/2) acres or more in size, detached accessory dwelling units on property with an existing or proposed single-family dwelling shall comply with the following:
  - a.** The maximum habitable floor area shall be fifty (50) percent of the total footprint of the primary dwelling, or 1,200 square feet, whichever is greater.
  - b.** The maximum habitable floor area of an accessory dwelling unit may exceed the above, with habitable floor area based upon lot coverage, not based upon the size of the primary dwelling unit subject to the Planning Commission's approval of a Minor Development Permit.

Approved and Adopted by the Planning Commission of the Town of Apple Valley this 18th day of December 2019.

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Vice Chairman Bruce Kallen

ATTEST:

I, Maribel Hernandez, Secretary to the Planning Commission of the Town of Apple Valley, California, do hereby certify that the foregoing resolution was duly and regularly adopted by the Planning Commission at a regular meeting thereof, held on the 18th day of December 2019, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Ms. Maribel Hernandez, Planning Commission Secretary

