

CITY OF BELVEDERE

ORDINANCE NO. 2019-11

**AN URGENCY ORDINANCE OF THE CITY OF BELVEDERE
AMENDING TITLE 19, "ZONING," OF THE BELVEDERE MUNICIPAL CODE
REGARDING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY
DWELLING UNITS TO CONFORM WITH CALIFORNIA STATE LAW**

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

SECTION 1. Findings.

- A. A housing crisis exists in the State of California where the demand for housing far outstrips supply, and Accessory Dwelling Units and Junior Accessory Dwelling Units (ADUs and JADUs, otherwise known as second units) provide one tool to increase housing supply while maintaining neighborhood character; and
- B. In 2017, the State adopted legislation to encourage the development of ADUs by constraining local jurisdictions' ability to regulate ADUs; and
- C. In 2017 the City of Belvedere adopted an ADU Ordinance in compliance with State law; and
- D. The California Legislature recently adopted additional legislation effective January 1, 2020, intended to increase the construction of ADUs and JADUs by further constraining local control; and
- E. California Government Code section 36937 authorizes a city to adopt an interim urgency ordinance to be effective immediately if passed by a four-fifths (4/5ths) vote where necessary for the immediate preservation of the public peace, health, and safety; and
- F. On December 9, 2019 the City Council held a duly noticed public hearing to consider an urgency ordinance that would amend the City's Accessory Dwelling Unit Ordinance to comply with State law (the "Ordinance Amendments"); and
- G. The Ordinance Amendments are exempt from the provisions of the California Environmental Quality Act ("CEQA") per Public Resources Code section 21080.17, as the Ordinance Amendments modify existing regulatory requirements in order to comply with Government Code section 65852.2; and
- H. The Ordinance Amendments are consistent with the City of Belvedere's General Plan Housing Element, which encourages housing policies and programs that promote a variety of housing choices, including second units, as a vehicle to encourage affordable rental housing opportunities within the City, especially for senior households, single persons, single parents, and young households. The General Plan Housing Element also identifies second units as a strategy to meet Belvedere's Regional Housing Needs Allocation; and
- I. The Ordinance Amendments protect and promote the public health, safety, and welfare of residents by providing additional housing opportunities while maintaining neighborhood character; and

- J. The adoption of the Ordinance Amendments are necessary for the immediate preservation of the public peace, health, and safety because it will bring Belvedere's Accessory Dwelling Unit Ordinance into compliance with State law, which becomes effective January 1, 2020; and
- K. The Ordinance Amendments comply with the 2019 State of California amendments to the Government Code regarding Accessory Dwelling Units; and

SECTION 2. Declaration of Facts Constituting Urgency.

- A. Recitals. The facts set forth in the recitals of this Ordinance are true and correct and incorporated herein by reference. The recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony, and other information contained in the record incorporated herein, are an adequate and appropriate evidentiary basis for the actions taken in the Ordinance.
- B. Urgency Finding. The City Council finds and determines that the adoption of this Urgency Ordinance is necessary for the immediate preservation of the public peace, health, and safety pursuant to Government Code section 36937 because:
 - 1. Newly adopted State law regarding Accessory Dwelling Units allows local jurisdictions to impose certain standards on ADUs to the extent the standards are consistent with State law; and
 - 2. Any local ordinance that conflicts with State Accessory Dwelling Unit law is null and void; and
 - 3. Belvedere's current ADU Code requires modification in order to comply with recently adopted State law; and
 - 4. The City of Belvedere is a small, residential community with many homes in close proximity on narrow streets. If not regulated to the extent allowed by State law pursuant to this Ordinance, the construction of ADUs and JADUs will create traffic and fire hazards, and negatively impact neighborhood character.
- C. Consistency. The Ordinance is consistent with Federal and State law, and the City's General Plan, as set forth above.
- D. Authority and Effective Date. This Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council by Government Code sections 36934 and 36937 and shall be in full force and effect immediately upon its adoption by a four-fifths (4/5ths) vote of the City Council.

SECTION 3. Amendment. Belvedere Municipal Code Chapter 19.79 "Accessory Dwelling Units and Junior Accessory Dwelling Units" is hereby deleted in its entirety and replaced as follows:

19.79.010 Purpose. The purpose of this Chapter is to provide for the creation of Accessory Dwelling Units and Junior Accessory Dwelling Units in a manner consistent with the requirements set forth in the California Government Code. The purpose of Accessory Dwelling

Units and Junior Accessory Dwelling Units is to expand the opportunity for small, lower cost housing in the City of Belvedere, while preserving the residential character of its neighborhoods.

19.79.020 Definitions. For purposes of this Chapter, the following definitions apply:

A. "Accessory Dwelling Unit" shall have the same meaning as defined in California Government Code section 65852.2 as amended from time to time.

B. "Interior Accessory Dwelling Unit" means an Accessory Dwelling Unit that is created wholly within the space of an existing structure.

C. "Junior Accessory Dwelling Unit" shall have the same meaning as defined in California Government Code section 65752.22 as amended from time to time.

D. "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or an accessory structure.

E. "Multifamily dwelling" means a dwelling on a site with more than one dwelling unit that is not within a single-family residential district. A site with more than one residential unit in a single-family zoning district shall be considered a single-family residence for determining eligibility for Accessory Dwelling Units.

F. "Passageway" as defined in Government Code section 65852.2 as amended from time to time, means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of an Accessory Dwelling Unit.

G. "Public Transit" means a designated bus stop, train stop, ferry terminal, or other public transit station that operates fixed routes and is available to the public.

H. "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.

19.79.030 Application. An application for an Accessory Dwelling Unit or Junior Accessory Dwelling Unit shall be made by the property owner and filed with the Planning Department on a form prescribed by the Director of Planning and Building and containing such information as reasonably requested by the Director of Planning and Building.

19.79.040. Accessory Dwelling Units —Permit required. An Accessory Dwelling Unit Permit is required for the creation of an attached or detached Accessory Dwelling Unit, unless otherwise provided in this Chapter. It shall be unlawful for any person to construct or maintain an Accessory Dwelling Unit or Junior Accessory Dwelling Unit on property within the City without compliance with this Chapter. The maintenance, ownership, or use of any Accessory Dwelling Unit or Junior Accessory Dwelling Unit except as permitted in this Chapter shall constitute a nuisance, subject to abatement pursuant to the Municipal Code, or any other remedy allowed by law.

19.79.050 Ministerial Approval. An application for a building permit shall be ministerially approved with no Accessory Dwelling Permit required within sixty (60) days of receiving a complete application in the following instances:

A. The Accessory Dwelling Unit or Junior Accessory Dwelling Unit is:

1. Within the proposed space of a single-family dwelling, or the existing space of a single-family dwelling or accessory structure. An expansion of not more than 150 square feet beyond the same physical dimensions of an existing accessory structure is allowed if necessary to accommodate ingress and egress.

2. Has exterior access from the proposed or existing single-family dwelling.

3. Has side and rear yard setbacks sufficient for fire safety.

B. A newly constructed detached Accessory Dwelling Unit that is up to 800 square feet of floor area, up to 16 feet in Height, with at least 4-foot side and rear yard setbacks on a lot with a proposed or existing single-family dwelling. The Accessory Dwelling Unit may be combined with a Junior Accessory Dwelling Unit.

C. The Junior Accessory Dwelling Unit complies with the requirements of California Government Code section 65852.22 as may be amended from time to time.

D. Accessory Dwelling Units within the portions of existing multifamily dwelling structures that are not used as livable space, including but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with State building standards for dwellings. Accessory Dwelling Units in existing multifamily structures shall be limited to one unit or 25% of the existing multifamily dwelling units.

E. Not more than two detached Accessory Dwelling Units located on a lot that has an existing multifamily dwelling, and are up to 16 feet in Height and have at least 4-foot side and rear yard setbacks.

19.79.060 General Requirements for Accessory Dwelling Units and Junior Accessory Dwelling Units. Unless otherwise provided for in this Chapter, Accessory Dwelling Units and Junior Accessory Dwelling Units are subject to the following requirements:

A. Zoning Conformance. Accessory Dwelling Units and Junior Accessory Dwelling Units shall comply with the provisions in this Chapter as well as the underlying zoning district. In instances where there is a conflict, this Chapter shall govern.

B. Number of Units. One Accessory Dwelling Unit and one Junior Accessory Dwelling Unit are permitted per residentially zoned lot that contains an existing or proposed single-family dwelling.

C. Building Codes. Accessory Dwelling Units and Junior Accessory Dwelling Units shall comply with all applicable building, fire, and health and safety codes.

D. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit may not be sold separately from the existing dwelling unit. Owner occupancy of the primary dwelling unit, or the Accessory Dwelling Unit or Junior Accessory Dwelling Unit is not required.

E. Adequate Services. Proof of the proposed method of water supply and sewage disposal must be provided and confirmed by letters of service availability from the appropriate utility service providers for the lot. The property must have existing or future legal access.

F. Building Permit and Fees. A building permit shall be required for an Accessory Dwelling Unit or a Junior Accessory Dwelling Unit if repair, rehabilitation, or work otherwise requiring a building permit is necessary. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit shall not be considered a separate or new dwelling unit for purposes of collecting impact fees, or the provision of water, sewer, and power.

19.79.070. Accessory Dwelling Unit Development Standards. Unless otherwise provided for in this Chapter, Accessory Dwelling Units are subject to the following requirements:

A. Setbacks.

1. No setbacks 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 a portion thereof.

2. A setback of no more than four feet from the side and rear yard lot lines is required for an Accessory Dwelling Unit that is not converted from an existing structure, or a new structure constructed in the same location and to the same dimensions as an existing structure.

3. Notwithstanding any provision in this Chapter, side and rear yard setbacks must be sufficient for fire safety as determined by the Building Department and/or the Fire District.

B. Maximum and Minimum Unit Size.

1. The maximum floor area square footage for a studio or one bedroom Accessory Dwelling Unit is 850 square feet, and 1,000 square feet if the Accessory Dwelling Unit contains more than one bedroom. All Accessory Dwelling Units are limited to a maximum of two bedrooms.

2. If there is an existing primary dwelling, the total floor area of an attached or Interior Accessory Dwelling Unit shall not exceed 50% of the existing primary dwelling. Notwithstanding this provision, an attached or Interior Accessory Dwelling Unit must be allowed at least 800 square feet of floor area.

3. The minimum floor area for an Accessory Dwelling Unit is 150 square feet, or the minimum square footage required for an efficiency unit as defined in California Government Code section 17958.1 as may be amended from time to time.

C. Height. A detached Accessory Dwelling unit shall not exceed 16 feet in Height and is limited to a single story. If 50% or more of an Accessory Dwelling Unit is above a proposed or existing garage, the total combined structure shall not exceed 25 feet in Height.

D. Lot Coverage and Floor Area Ratio. The Accessory Dwelling Unit shall comply with the lot coverage and floor area ratio requirements of the underlying zoning district unless otherwise required by this Chapter or State law.

E. An Accessory Dwelling Unit shall include a separate kitchen, bathroom, and access from the primary dwelling unit, but it may contain an interior connection to the primary dwelling unit.

F. Pursuant to State law, an Accessory Dwelling Unit that conforms to this Chapter shall be deemed to be an accessory use or an accessory building, shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the General Plan and zoning district.

G. The City shall not apply limits on lot coverage or floor area ratio for either attached or detached Accessory Dwelling Units that does not permit at least an 800 square foot Accessory Dwelling Unit that is at least 16 feet in Height with 4 foot side and rear yard setbacks to be constructed in compliance with all other development standards.

H. Accessory Dwelling Units are not required to have fire sprinklers or other fire safety requirements if not required in the primary dwelling unit.

I. No Passageway shall be required in conjunction with the construction of an Accessory Dwelling Unit.

J. The correction of underlying nonconforming zoning conditions may not be required as a condition of approval.

19.79.080 Parking Requirements.

A. One parking space is required per Accessory Dwelling Unit unless otherwise provided in this Chapter.

B. Parking spaces may be located on a contiguous lot if that lot is owned by the record owner of the Accessory Dwelling Unit, however, in such case a parking easement or other deed restriction in a form acceptable to the City Attorney, shall be recorded prior to issuance of a building permit.

C. Parking may be provided through tandem parking on an existing driveway.

D. Off street parking shall be permitted in setback areas in locations determined by the Director of Planning and Building, unless specific findings are made that parking in setback areas is not feasible based on specific site, regional, topographical, or fire and life safety conditions, which conditions shall include but are not limited to circumstances where said parking would impede reasonable emergency and fire access.

E. Parking Exemptions. An Accessory Dwelling Unit shall be exempt from the parking requirement of this Section if the unit is:

1. Located within one-half mile of a Public Transit Stop;
2. Located within an historic district, as may be designated by the City Council from time to time;
3. Located within one block of a car share vehicle pick up or drop off location as defined in the California Vehicle Code;
4. The Accessory Dwelling Unit is an Interior Accessory Dwelling Unit; or
5. If on-street parking permits are required but not offered to the occupant of the Accessory Dwelling Unit.

F. No replacement parking for the primary dwelling unit shall be required if the Accessory Dwelling Unit was created by the demolition or conversion of a garage, carport, or covered parking structure to an Accessory Dwelling Unit.

19.79.090 Accessory Dwelling Unit Architectural Standards. Accessory Dwelling Units are subject to the following objective standards:

A. Newly constructed Accessory Dwelling Units shall be of the same or similar architectural style, detail, color, and building material as the primary dwelling unit.

B. Any new windows, doors, or other openings that face an adjoining residential property shall be designed to protect the privacy of neighbors by using such techniques as opaque glass and/or sill heights above eye level, and/or include appropriate landscape screening.

C. All exterior lighting shall be low wattage, shielded, and directed downward.

D. Where visible from offsite locations, skylights shall not have white or light opaque colored exterior lenses.

E. An Accessory Dwelling Unit that includes exterior alterations or additions to a property that is listed in the California Register of Historic Places or on a local historical register shall not be approved if it may cause an adverse impact to the historical significance of the property.

19.79.100 Junior Accessory Dwelling Unit Development Standards. Unless otherwise provided for in this Chapter, Junior Accessory Dwelling Units are subject to the following requirements:

A. Location. A Junior Accessory Dwelling Unit must be created from a bedroom within an existing single-family or multifamily residence.

B. Unit Size. No Junior Accessory Dwelling Unit shall be less than 150 square feet or more than 500 square feet in size. The square footage of any shared sanitation facilities with the primary dwelling unit shall not be included in the square footage calculation.

C. Access. The Junior Accessory Dwelling Unit shall have a separate exterior entrance from the primary dwelling unit, with an interior doorway to the main living area of the primary dwelling unit. A Junior Accessory Dwelling Unit may include a second interior doorway for sound attenuation.

D. Sanitation and Kitchen Facilities. A Junior Accessory Dwelling Unit may include separate sanitation facilities, or it may share such facilities with the primary dwelling unit. The Junior Accessory Dwelling Unit shall include an efficiency kitchen as defined in California Government Code section 65852.22 as may be amended from time to time.

E. No parking is required for a Junior Accessory Dwelling Unit.

19.79.110 Deed restrictions.

A. Before obtaining a building permit for an Accessory Dwelling Unit or a Junior Accessory Dwelling Unit, the property owner shall file a deed restriction with the Marin County Recorder requiring that:

1. The Accessory Dwelling Unit or Junior Accessory Dwelling Unit shall not be sold separately from the primary dwelling unit;

2. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit may be rented, but no short-term rentals of 30 days or less are allowed;

3. The restrictions applicable to the unit shall be binding upon any successor in ownership and may be enforced against future purchasers; and

4. The deed restrictions shall lapse upon removal of the Accessory Dwelling Unit or Junior Accessory Dwelling Unit.

B. In any case where a building permit is not required for an Accessory Dwelling Unit or Junior Accessory Dwelling Unit, an executed declaration or agreement of restrictions as required herein shall be submitted to the City for recordation in a form acceptable to the City Attorney, along with applicable recordation fees, prior approval of the Accessory Dwelling Unit or Junior Accessory Dwelling Unit.

19.79.120 Exceptions. An applicant may request exceptions to the requirements in this Chapter by applying for a Conditional Use Permit pursuant to Belvedere Municipal Code Chapter 19.80. Any exceptions approved pursuant to a Conditional Use Permit must also comply with all Design Review standards. Any detached Accessory Dwelling Unit approved by a Conditional Use Permit shall not exceed 1,200 square feet.

SECTION 4. Amendment. The following Section of Belvedere Municipal Code Chapter 19.08 “Definitions” are hereby deleted as follows:

- 19.08.035. Accessory Dwelling Unit
- 19.08.084. Attached Accessory Dwelling Unit
- 19.08.138. Detached Accessory Dwelling Unit
- 19.08.282. Interior Accessory Dwelling Unit
- 19.08.283. Junior Accessory Dwelling Unit
- 19.08.383. Passageway
- 19.08.453. Public Transit Stop

SECTION 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 6. Effective Date. This Ordinance shall take effect immediately upon its passage by a four-fifths (4/5) vote of the City Council. Within fifteen (15) days following its passage, a summary of the Ordinance shall be published with the names of those City Council members voting for and against the Ordinance and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of the adopted Ordinance.

INTRODUCED AND ADOPTED AT A PUBLIC HEARING at a regular meeting of the Belvedere City Council on December 9, 2019 by the following vote:

AYES: Claire McAuliffe, Marty Winter, Bob McCaskill, James Campbell and Mayor Nancy Kemnitzer

NOES: None

ABSENT: None

ABSTAIN: None

ATTEST:

Christina Cook, City Clerk

APPROVED: Nancy Kemnitzer
Nancy Kemnitzer, Mayor