

MONTEREY COUNTY

AIRPORT LAND USE COMMISSION



Monterey County ALUC Staff
c/o HCD-Planning
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Salinas, CA 93901

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REGULAR MEETING AGENDA

Monterey Peninsula Airport District
Board Meeting Room
200 Fred Kane Drive, Suite 200
Monterey, California

November 14, 2022

3:00 p.m.

IMPORTANCE NOTICE REGARDING PARTICIPATION IN THE LAIRPORT LAND USE COMMISSION MEETING

Starting January 24, 2023, all meetings of the Monterey County Airport Land Use Commission shall be held at the Monterey Peninsula Airport District Board Meeting Room. No teleconference option will be available for this meeting. Airport Land Use Commission members must attend in-person. To participate in this Monterey County Airport Land Use Commission meeting, public participants are invited to observe and address the Commission in-person at the Board Meeting Room. Instructions for the public to participate are below:

Participate at the Physical Meeting Site: Monterey Peninsula Airport District, Board Meeting Road. 200 Fred Kane Drive, Suite 200, Monterey, CA 93940.

Meeting Instructions:

1. If a member of the public wishes to comment on a particular agenda item, the public is strongly encouraged to submit their comments in writing via email to the Commission staff at JensenF1@co.monterey.ca.us (Fionna Jensen). Comments should be submitted by 2:00 p.m. on the business day prior to the commission meeting date. To assist Commission staff in identifying the agenda item to which the comment relates, the public is requested to include the file number in the subject line. Comments received by the 2:00 p.m. deadline will be distributed to the Commission and will be placed in the record.
2. If speakers or other members of the public have documents they wish to distribute to the Commission for an agenda item, they are encouraged to submit such documents via email to the Commission staff at JensenF1@co.monterey.ca.us (Fionna Jensen). Documents should be submitted by 2:00 p.m. on the business day prior to the commission meeting date. To assist Commission staff in identifying the agenda item to which the document relates, the public is requested to include the file number in the subject line.
3. If applicants or members of the public want to present documents and/or Power Point presentations while speaking, they should submit the document and/or presentation electronically by 2:00 p.m. on the business day prior to the commission meeting date to Commission staff at JensenF1@co.monterey.ca.us (Fionna Jensen). If submitted after that deadline, staff will make best efforts, but cannot guarantee, to make the document and/or presentation available to present during the meeting.
4. While the matter is being heard, a member of the public may submit a comment via email, preferably limited to 250 words or less, to Commission staff JensenF1@co.monterey.ca.us (Fionna Jensen). To assist Commission staff in identifying the agenda item to which the comment relates, the public is requested to include the file

number in the subject line. If the comment is received prior to close of public comment on an agenda item, every effort will be made to read the comment into the record, but some comments may not be read out loud due to time limitations or length of the comment (e.g., if the comment exceeds 250 words). Comments received prior to the close of the public comment period on an agenda item will be made part of the record for that item.

5. Members of the public who wish to make a general public comment for items not on the day's agenda may submit their comment via email, preferably limited to 250 words or less, to the Airport Land Use Commission staff at JensenF1@co.monterey.ca.us (Fionna Jensen). The Airport Land Use Commission name and meeting date, and "general comment", should be indicated in the subject line. The comment will be placed in the record for the meeting, and every effort will be made to read the comment into the record at the appropriate time on the agenda.
6. Individuals with disabilities who desire to request a reasonable accommodation or modification to observe or participate in the meeting may make such request by sending an email to the Commission staff at JensenF1@co.monterey.ca.us (Fionna Jensen). Such requests include but are not limited to: Wheelchair Accessible Facilities, Sign Language Interpreters and Printed Materials in large print, Braille, or on disk, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 USC Sec. 12132) and the federal rules and regulations adopted in implementation thereof. The request should be made no later than 12:00 p.m. (i.e., noon) two (2) business days prior to the Airport Land Use Commission meeting date in order to provide time for the Commission staff to address the request.
7. The Commission Chair and/or Secretary may set reasonable rules as needed to conduct the meeting in an orderly manner.

1. CALL TO ORDER – Pledge of Allegiance

2. ROLL CALL

Any Commissioner who will not be able to attend the scheduled public meeting shall notify the Chair, their Proxy, and ALUC staff.

3. PUBLIC COMMENT

The Commission will receive public comment on non-agenda items within the purview of the Commission. It is not necessary to complete a speaker request form. The Chair may limit the length of individual presentations to 3 minutes.

4. COMMISSIONER'S COMMENTS

Commissioners may speak on non-agenda items within the purview of the Commission.

5. APPROVAL OF MINUTES

September 26, 2022

6. CONSENT

7. SCHEDULED ITEMS

Note: Action listed for each item represents staff recommendation. The Commission may, at its discretion, take any action on the items listed on the Agenda.

a. ALUC File No. REF220059 / CITY OF MONTEREY - ACCESSORY DWELLING UNIT AND JUNIOR ACCESSORY DWELLING UNIT ORDINANCE

Proposed amendment (update) to Section 38-112.6 of the City of Monterey's Zoning Ordinance (ADUs and JADUs).

Proposed Action: Find the existing ordinance and draft zoning amendment consistent with the 2019 MRY ALUCP, provided the City incorporates staff's recommended language into Section 38-112.6.1.g.

b. Airport Land Use Compatibility Plan (ALUCP) Update

Update regarding local jurisdiction progress on the requirement to amend applicable general and specific plans in response to the adoption of the ALUCPs for Monterey Regional Airport and Marina Municipal Airport.

Proposed Action: For information only. No action required.

c. Future Airport Land Use Compatibility Plan (ALUCP) Update

Update regarding funding and staff resources for future updates to the ALUCPs for Salinas Municipal Airport and Mesa Del Rey (King City) Airport.

Proposed Action: For information only. No action required.

8. ANNOUNCEMENTS

9. ADJOURNMENT

MONTEREY COUNTY

AIRPORT LAND USE COMMISSION



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Monterey Peninsula Airport
Board Meeting Room
200 Fred Kane Drive, Suite 200
Monterey, California

Action Minutes of the Proceedings of the Commissioners of the Monterey County Airport Land Use Commission for Monday, September 26, 2022 – Regular Meeting

1. **CALL TO ORDER – Pledge of Allegiance**

The Monterey County Airport Land Use Commission (ALUC), Commissioner (Chair) Carbone presiding, convened at 3:03 p.m. Commission members and members of the public attended/participated physically.

2. **ROLL CALL**

Commissioners (or Proxy) Present:

Commissioner Sabo, Carbone, Cleveland, Stewart, Scherer, Delgado– a quorum

Commissioners Not Present and Not Represented by Proxy:

Commissioner Cohan

ALUC (Monterey County) Staff Present:

Fionna Jensen, Housing and Community Development (HCD)-Planning

For Informational Purposes Only, Members of the Public Participating:

Christy Sabdo – City of Monterey
Fernanda Roveri – City of Monterey
Applicants of REF220055

3. **PUBLIC COMMENT**

The Commission will receive public comment on non-agenda items within the purview of the Commission. It is not necessary to complete a speaker request form. The Chair may limit the length of individual presentations to 3 minutes.

Christy Sabdo informed the Commission that the City of Monterey is updating their General Plan. Referral to the ALUC is forthcoming.

4. COMMISSIONER'S COMMENTS

None

Commissioners may speak on non-agenda items within the purview of the Commission.

5. APPROVAL OF MINUTES

The Commission voted 6-0 (6 ayes – 0 nays) to approve the minutes of the July 25, 2022 meeting. Motion to approve made by Commissioner Sabo and seconded by Commissioner Delgado. (Commissioner Sabo, Carbone, Cleveland, Stewart, Scherer, Delgado)

6. CONSENT

None

7. SCHEDULED ITEMS

Note: Action listed for each item represents staff recommendation. The Commission may, at its discretion, take any action on the items listed on the Agenda.

a. **ALUC File No. REF220055 / CITY OF MONTEREY (CAREY RICHARD W & ELDRED JANET C)**

Proposed construction of a 632 square foot Accessory Dwelling Unit located at 419 Del Rosa Avenue, Monterey.

Proposed Action: Find the proposed development consistent with the 2019 MRY ALUCP.

ALUC Staff (Jensen) provided a verbal presentation and responded to Commissioner questions regarding ADUs and non-habitable accessory structures, density requirements of Zone 3, compatibility with California Law regarding ADUs and lighting.

Commissioner Sabo raised concerns around density and allowing such development.

The Commission voted 5-1 (5 ayes – 1 nays) to find REF220055 consistent with the MRY ALUCP, subject one condition of approval. Motion to approve made by Commissioner Delgado and seconded by Commissioner Cleveland (Aye - Commissioner, Carbone, Cleveland, Stewart, Scherer, Delgado; Naye- Commissioner Sabo).

b. **Airport Land Use Compatibility Plan (ALUCP) Update**

Update regarding local jurisdiction progress on the requirement to amend applicable general and specific plans in response to the adoption of the ALUCPs for Monterey Regional Airport and Marina Municipal Airport.

Proposed Action: For information only. No action required.

No update at this time.

c. **Future Airport Land Use Compatibility Plan (ALUCP) Update**

Update regarding funding and staff resources for future updates to the ALUCPs for Salinas Municipal Airport and Mesa Del Rey (King City) Airport.

Proposed Action: For information only. No action required.

No update at this time.

8. ANNOUNCEMENTS

Commissioner Sabo requested that Staff speak with County Counsel about preparing an amendment to the 2019 MRY ALUCP regarding the preparation of a “secondary dwelling” and “secondary units” definition/interpretation and for Staff to schedule this as a future item.

9. ADJOURNMENT

Meeting adjourned at 4:03PM

Next scheduled regular meeting: October 24, 2022

MONTEREY COUNTY

AIRPORT LAND USE COMMISSION



MEMORANDUM

To:	Airport Land Use Commission
From:	Fionna Jensen, ALUC Staff; November 3, 2022 (831) 796-6407, JensenF1@co.monterey.ca.us
Meeting Date:	November 14, 2022
Subject:	Scheduled Item 7a – Proposed adoption of an amendment (update) to Chapter 38-112.6, Accessory Dwelling Units and Junior Accessory Dwelling Units, of the City of Monterey’s Zoning Ordinance (ALUC File No. REF220059).

RECOMMENDATION:

Staff recommends the Monterey County Airport Land Use Commission (ALUC) find the proposed amendment to the Chapter 38 of the City of Monterey’s Municipal Code (ALUC File No. REF220059) consistent with the 2019 Airport Land Use Compatibility Plan for Monterey Regional Airport (ALUCP) if the proposed modifications are made.

SUMMARY:

On September 6, 2022, the City of Monterey submitted an application (ALUC File No. REF220059) to ALUC staff requesting consideration of Chapter 38 of the City’s Municipal Code relating to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units. On September 28, 2022, the Governor of California signed two bills, AB 2221 and SB 897, affecting state ADU law. On or about October 31, 2022, the City submitted to ALUC staff a draft revision of Chapter 38 that incorporates the new state law requirements (“Zoning Code amendment”). Accordingly, this ALUC review is of the proposed draft city Zoning Code amendment. However, if the City were not to adopt its proposed amendment to Chapter 38, the analysis herein also applies to Chapter 38 in its current form.

BACKGROUND AND DISCUSSION:

In October 2019, the Governor of California signed into law Assembly Bill (AB) 68, AB 881, and Senate Bill (SB) 13 to address the state of California’s housing supply crisis. AB 68 and 881, and SB 13 aim to reduce barriers, establish better streamline approval processes and expand the capacity to accommodate the development of Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs). Additionally, AB 68 amended standards for JADUs and SB 13 made additions to the State Health and Safety Code (added Section 17980.12). The new laws took effect on January 1, 2020.

In accordance with Government Code Sections 65852.2 and 65852.22, on November 2, 2021, the City of Monterey amended Chapter 38 of its Zoning Ordinance, through adoption of Ordinance No. 3641, to reflect the new ADU and JADU state law. Ordinance No. 3641 was not referred to the ALUC for review prior to adoption. Therefore, ALUC staff requested that the City of Monterey submit the 2019 ADU and JADU Ordinance to the ALUC for a consistency determination.

During ALUC staff's review of the 2021 ADU & JADU Ordinance (Ordinance No. 3641), the Governor of California signed into law AB 2221 and SB 897. As a result, the City of Monterey has drafted a revision to their Ordinance to reflect the new requirements of AB 2221 and SB 897. The goal of this proposed Zoning Code amendment is to make the City's Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) Ordinance consistent with the recently passed state law, specifically Assembly Bill 2221 and Senate Bill 897. AB 2221 prohibits a local agency from establishing limits on front setbacks, further streamlines the approval process, and clarifies the definition of ADUs and JADUs. Amongst other changes pertaining to parking standards and application processing, SB 897 increases the maximum height limitation that may be imposed by a local agency to 18 feet (currently 16 feet) if the ADU is within ½ mile walking distance of a major transit stop or a high-quality transit corridor. Additionally, SB 897 would allow an ADU to be constructed to a height of 25 feet if the ADU is attached to a primary residence. These new laws go into effect on January 1, 2023.

The below analysis is based on the proposed amendment to City of Monterey Zoning Ordinance Section 38-112.6.

The ALUCP uses the terms "secondary units" (Table 4B, fn. 1, pg. 4-29), "secondary dwellings" (pg. 4-16), and "Accessory dwelling units" (Table 4A, fn 3, pg. 4-21) but does not provide definitions distinguishing each term from one another. Therefore, these terms call for interpretation. On September 26, 2022, in connection with review of an application for an ADU within the Monterey Regional Airport Influence Area, the ALUC found that a reasonable interpretation in light of the context in which the terms are used is that these terms are interchangeable and refer to a detached or attached secondary residential dwelling unit, which is subordinate and independent from a main dwelling unit located on the same property. Accordingly, these terms can be understood to include "accessory dwelling units (ADU)" and "junior accessory dwelling units (JADU)", which tend to be limited by size and other requirements under state law and local ordinance, but would not include non-habitable structures or second single family dwellings. Based on the current version of the City of Monterey's Zoning Code Section 38-112.6, an ADU may not exceed 1,000 square feet and a JADU may not exceed 500 square feet. Therefore, an ADU or JADU unit located within the City of Monterey is distinguished from a second single family dwelling by its limited square footage.

Additionally, on September 26, 2022, the ALUC found that a reasonable interpretation the term "secondary units" in footnote 1 of Table 4B to include accessory dwelling units and junior accessory dwelling units, meaning that ADUs and JADUs are excluded from the density restrictions of Safety Zones 2-5, are allowable in Safety Zone 7 which has no residential development restriction, and are prohibited in Safety Zones 1 and 6.

CONSISTENCY DETERMINATION ANALYSIS:

ALUC staff reviewed the City's proposed Zoning Code amendment in accordance with the adopted ALUCP as discussed below:

The current language of Section 38-112.6.1.g of the City's Zoning Ordinance states "An accessory dwelling unit or junior accessory dwelling shall not be permitted within the airport safety zone pursuant to the Airport Land Use Plan of the City." This language is not clear and needs further specificity and clarification in order for the City's Ordinance to be consistent with the ALUCP. In order to be consistent with the ALUCP safety and noise standards, Staff is recommending the following language be incorporated into the proposed Zoning Ordinance Amendment to achieve consistency with the ALUCP:

"Section 38-112.6.1.g. Accessory Dwelling Units and Junior Accessory Dwelling Units are prohibited in Airport Safety Zones 1 and 6, which do not allow residential use. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit is allowable where residential use is consistent with the Airport Land Use Compatibility Plan for the Monterey Regional Airport (ALUCP), as may be periodically amended, and the Accessory Dwelling Unit or Junior Accessory Dwelling Unit meets the following criteria, as applicable:

- (i) The Accessory Dwelling Unit does not exceed 850 square feet in Airport Safety Zones 2, 3, 4, and 5, as delineated by the ALUCP; and*
- (ii) The Junior Accessory Dwelling Unit does not exceed 500 square feet in Airport Safety Zones 2, 3, 4, and 5, as delineated by the ALUCP; and*
- (iii) Any Accessory Dwelling Unit or Junior Accessory Dwelling Unit is required to be constructed to meet Allowable Interior Noise Levels as established by the California Building Standards Code; and*
- (iv) Neither the Accessory Dwelling Unit or Junior Accessory Dwelling Unit is located in noise contour zones where airport noise may equal or exceed 65 CNEL (Community Noise Equivalent Level) as delineated by the ALUCP."*

This language should be incorporated into the City's draft ordinance in order for the ordinance to be consistent with the ALUCP. If the City were not to proceed with its draft ordinance, then this change should be made to the existing City ordinance in order for the existing City ordinance to be consistent with the ALUCP.

NOISE COMPATIBILITY

The proposed Zoning Code amendment was reviewed for consistency with the most up-to-date Noise Contour Exposure Maps completed in 2018 for the MRY Airport Master Plan Environmental Impact Report. Pursuant to Table 4A of the ALUCP and Exhibit 2E, Noise Compatibility Criteria and Long-Range Noise Exposure Contours, residential development is an incompatible use within the 65-, 70-, or 75- Community Noise Equivalent Levels (CNELs). After review of the City of Monterey's Geographic Information System mapping and the ALUCP, ALUC staff has determined that there are four residential properties (APNs: 013-231-027-000, 013-231-017-000, 013-231-018-000 and 013-231-028-000) within the City of Monterey boundaries that are located within a 65-, 70-, or 75- CNELs. Staff's proposed ordinance language modification would clarify that ADUs and JADUs are considered compatible uses within the residential properties of the City of Monterey except for the four above-referenced properties. As a result, staff recommends finding that the proposed amendment is consistent with the ALUCP with

regard to noise compatibility criteria, subject to incorporation of the above ordinance language.

AIRSPACE PROTECTION AND SAFETY COMPATIBILITY

The proposed Zoning Code Amendment will be applied citywide. ALUCP Policy 4.2.3 addresses the objective of airspace protection to avoid the development of land use conditions that would pose hazards to flight, such as airspace obstructions, wildlife hazards, and land use characteristics which pose other potential hazards to flight by creating visual or electronic interference. ALUCP Safety Zones 2, 3, 4, and 5 have the following respective accident risk levels: high, moderate to high, moderate and low to moderate. Therefore, to minimize the risk associated with potential aircraft accidents, the proposed modified Zoning Ordinance language limits ADUs to one bedroom and 850 square feet and JADUs to 500 square feet, thus limiting total occupancy. The proposed amendment to Section 38-112.6.2.d of the City's Zoning Ordinance limits ADUs to 16 feet in height if detached from the main residence, 18 feet in height if detached from the main residence and within a ½ mile of major transit stop or a high-quality transit corridor or on a lot with an existing multifamily dwelling, and 25 feet in height if attached to a main residence. JADUs must be within the footprint of an existing or proposed single family dwelling. Pursuant to Table 4B of the ALUCP, in Safety Zones 2 through 5, development over 35 feet in height requires airspace review. The maximum allowed height for a single-family dwelling in Safety Zones 2 through 5 of the City of Monterey is 25 or 35 feet, depending on the underlying land use zoning district. Therefore, future ADU and JADU development will not encroach Part 77 Surfaces and will not require ALUC review with respect to airspace protection criteria.

Therefore, as altered by the above proposed language, the proposed amendment would not allow any new prohibited uses and can be found consistent with the safety policies of the ALUCP.

MONTEREY REGIONAL AIRPORT REVIEW:

Pursuant to ALUCP Policy 4.1.8.1, ALUC staff forwarded project information to Monterey Regional Airport staff on September 20, 2022, and Airport staff submitted a comment letter on September 30, 2022 (see Attachment D). On November 1, 2022, the City of Monterey submitted the draft Zoning Code amendment to ALUC staff. Staff has forwarded the draft Zoning Code amendment to Airport staff for review. The Airport District had no comments or concerns with the draft Zoning Code amendment, provided ALUC staff's recommended language was incorporated into the existing or draft ordinance.

ALUC staff reviewed these comments as they relate to consistency with the ALUCP for Monterey Regional Airport. The Monterey Regional Airport, in correspondence to the ALUC regarding the proposed Zoning Code amendment, requested that insulation be installed in all habitable rooms of future ADU and JADU developments to ensure interior noise levels do not exceed of CNEL 45 dB, and aviation easements be recorded prior to the construction of all future ADU or JADU developments, if one has not already been recorded for the applicable property. In response to the Airport District's first recommendation, the proposed modified Zoning Ordinance language requires all ADUs and JADUs be constructed to meet the Allowable Interior Noise Levels as established by the California Building Standards Code. Section 4.2.1.6 of the ALUCP requires an aviation easement be conveyed to the Airport District over a certain portion of a real property only for an action that would either permit or result in the development or

construction of a land use considered to be conditionally compatible with aircraft noise of CNEL 65 dB or greater. In this case, staff’s proposed revision of Section 38-112.6.1.g of the City’s Zoning Ordinance would prohibit ADUs and JADUs in noise contour zones where airport noise may equal or exceed 65 CNEL, thus addressing the Airport District’s second recommendation.

CONCLUSION:

Based on review and analysis of the proposed Zoning Ordinance amendment, staff recommends the ALUC adopt a resolution finding the City’s existing ordinance and its proposed amendment (update) to Section 38-112.6 of the City of Monterey’s Zoning Ordinance consistent with the 2019 Airport Land Use Compatibility Plan for Monterey Regional Airport, provided that the City modifies Section 38-112.6.1.g of the proposed ordinance (or existing ordinance) to include the following language:

“Accessory Dwelling Units and Junior Accessory Dwelling Units are prohibited in Airport Safety Zones 1 and 6, which do not allow residential use. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit is allowable where residential use is consistent with the Airport Land Use Compatibility Plan for the Monterey Regional Airport (ALUCP), as may be periodically amended, and the Accessory Dwelling Unit or Junior Accessory Dwelling Unit meets the following criteria, as applicable:

- (i) The Accessory Dwelling Unit does not exceed 850 square feet in Airport Safety Zones 2, 3, 4, and 5, as delineated by the ALUCP; and*
- (ii) The Junior Accessory Dwelling Unit does not exceed 500 square feet in Airport Safety Zones 2, 3, 4, and 5, as delineated by the ALUCP; and*
- (iii) Any Accessory Dwelling Unit or Junior Accessory Dwelling Unit is required to be constructed to meet Allowable Interior Noise Levels as established by the California Building Standards Code; and*
- (iv) Neither the Accessory Dwelling Unit or Junior Accessory Dwelling Unit is located in noise contour zones where airport noise may equal or exceed 65 CNEL (Community Noise Equivalent Level) as delineated by the ALUCP.”*

Attachments:

Attachment A	Draft ALUC Resolution
Attachment B	City of Monterey Consistency Analysis Letter, dated September 6, 2022 (prepared by City of Monterey – Planning Division)
Attachment C	Existing ADU and JADU Ordinance* (Chapter 38-112.6)
Attachment D	Draft ADU and JADU Ordinance*
Attachment E	Monterey Regional Airport Comment letter, dated September 30, 2022

*Attachment C and D – Existing and Draft ADU & JADU Ordinance does not incorporate the recommended ordinance language.

cc: ALUC Commissioners; ALUC Counsel; Monterey Peninsula Airport District (C. Morello); City of Monterey (Fernanda Roveri and Kim Cole); ALUC File No. REF220059

**Before the Monterey County Airport Land Use Commission,
State of California**

Resolution No. 22-

Finding the existing ordinance and proposed amendment to Section 38-112.6 of the City of Monterey's Zoning Ordinance pertaining to ADUs and JADUs, with proposed modifications, consistent with the 2019 Airport Land Use Compatibility Plan (ALUCP) for Monterey Regional Airport.

REF220059, City of Monterey

WHEREAS, on September 6, 2022, the City of Monterey submitted an application (ALUC File No. REF220059) to ALUC staff requesting a consistency determination of Section 38-112.6 of the City of Monterey's Zoning Ordinance, pertaining to Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU). Section 38-112.6 applies City-wide; and

WHEREAS, the ALUC is responsible for the review of local land use regulations affecting land uses within the Airport Influence Area for Monterey Regional Airport, as identified in the Monterey Regional Airport Land Use Compatibility Plan (ALUCP), incorporated herein by reference, for consistency with the ALUCP; and

WHEREAS, in October 2019, the Governor of California signed into law Assembly Bill (AB) 68, AB 881, and Senate Bill (SB) 13 to address the state of California's housing supply crisis. AB 68 and 881, and SB 13 aim to reduce barriers, establish better streamline approval processes and expand the capacity to accommodate the development of Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs). Additionally, AB 68 amended standards for JADUs and SB 13 made additions to the State Health and Safety Code (added Section 17980.12). The new laws took effect on January 1, 2020; and

WHEREAS, in accordance with Government Code Sections 65852.2 and 65852.22, on November 2, 2021 the City of Monterey amended Chapter 38 of its Zoning Ordinance, through adoption of Ordinance No. 3641, to reflect the new ADU and JADU state law. Ordinance No. 3641 was not referred to the ALUC for review prior to adoption; and

WHEREAS, in September 2022, the Governor of California signed into law AB 2221 and SB 897 to further restrict local regulation of ADUs and JADUs. AB 2221 prohibits a local agency from establishing limits on front setbacks, further streamlines the approval process, and clarifies the definition of ADUs and JADUs. Amongst other changes pertaining to parking standards and application processing, SB 897 increases the maximum height limitation that may be imposed by a local agency to 18 feet (currently 16 feet) if the ADU is within ½ mile walking distance of a major transit stop or a high-quality transit corridor. Additionally, SB 897 would allow an ADU to be constructed to a

height of 25 feet if the ADU is attached to a primary residence. These new laws go into effect on January 1, 2023; and

WHEREAS, the City of Monterey proposes amendments to Section 38-112.6 of the City's Zoning Ordinance to reflect AB 2221 and SB 897, and on November 1, 2022, the City submitted its proposed amendment to ALUC staff for review; and

WHEREAS, Section 38-112.6.1.g of the City's existing and draft Zoning Ordinance states "An accessory dwelling unit or junior accessory dwelling shall not be permitted within the airport safety zone pursuant to the Airport Land Use Plan of the City," and;

WHEREAS, Section 38-112.6.1.g of the City's Zoning Ordinance is not clear and needs further specificity and clarification in order for the City's ordinance to be consistent with the ALUCP, for the reasons described below; and

WHEREAS, to protect public safety, the ALUCP provides the following limitations on residential development in the Airport Influence Area per Table 4B (Safety Criteria Matrix) of the ALUCP:

- Safety Zones 1 and 6: residential development, inclusive of ADUs and JADUs, is prohibited;
- Safety Zones 2, 3, and 5: residential development is restricted to low residential and infill in developed areas with a density requirement of 1 dwelling unit per 2 acres;
- Safety Zone 4: residential development is an allowed use but is restricted to 1 dwelling unit per 2 acres;
- Safety Zone 7: residential development is an allowed use with no density restriction; and

WHEREAS, footnote 1 of Table 4B states "residential development must not contain more than the indicated number of dwelling units (excluding secondary units) per gross acre (d.u./ac)"; and

WHEREAS, the ALUCP uses the terms "secondary units" (Table 4B, fn. 1, pg. 4-29), "secondary dwellings" (pg. 4-16), and "Accessory dwelling units" (Table 4A, fn 3, pg. 4-21) without defining the terms; and

WHEREAS, the ALUC finds that a reasonable interpretation in light of the context in which the terms are used is that these terms are interchangeable and refer to a detached or attached secondary residential dwelling unit, which is subordinate and independent from a main dwelling unit located on the same property; and

WHEREAS, accordingly, these terms can be understood to include "accessory dwelling units (ADU)" and "junior accessory dwelling units (JADU)", which tend to be limited by size and other requirements under state law and local ordinance, but would not include non-habitable structures or second single family dwellings; and

WHEREAS, the ALUC interprets the term “secondary units” in footnote 1 of Table 4B to include accessory dwelling units and junior accessory dwelling units, meaning that ADUs and JADUs are excluded from the density restrictions of Safety Zones 2-5, are allowable in Safety Zone 7 which has no residential development restriction, and are prohibited in Safety Zones 1 and 6, and accordingly the City’s ordinance needs clarification; and

WHEREAS, pursuant to Table 4A of the ALUCP and Exhibit 2E, Noise Compatibility Criteria and Long Range Noise Exposure Contours, residential development is an incompatible use within the 65-, 70-, or 75- Community Noise Equivalent Levels (CNELs); and

WHEREAS, four residential properties (APNs: 013-231-027-000, 013-231-017-000, 013-231-018-000 and 013-231-028-000) within the City of Monterey boundaries are located within a 65-, 70-, or 75- CNELs, and therefore, from a noise compatibility standpoint, ADUs and JADUs are considered compatible uses within the residential properties of the City of Monterey except for the four above-referenced properties; and

WHEREAS, per the proposed amendment to Section 38-112.6.2.d of the City’s Zoning Ordinance, ADUs are limited to 16 feet in height if detached from the main residence, 18 feet in height if detached from the main residence and within a ½ mile of major transit stop or a high-quality transit corridor or on a lot with an existing multifamily dwelling, and 25 feet in height if attached to a main residence. JADUs must be within the footprint of an existing or proposed single-family dwelling. Pursuant to Table 4B of the ALUCP, development of objects over 35 feet in height requires airspace review in Safety Zones 2 through 5. Within Safety Zones 2 through 5, the maximum allowed height for a single-family dwelling in the City of Monterey is 25 or 35 feet, depending on the underlying land use zoning district. Therefore, future ADU and JADU development will not encroach Part 77 Surfaces and will not require ALUC review with respect to airspace protection criteria (ALUCP Policy 4.2.3.2); and

WHEREAS, Section 38-112.6.1.g of the City’s existing and drafted Zoning Ordinance requires clarification in order to be consistent with the ALUCP safety and noise standards, and therefore, the following language is proposed to achieve consistency with the ALUCP:

“Section 38-112.6.1.g. Accessory Dwelling Units and Junior Accessory Dwelling Units are prohibited in Airport Safety Zones 1 and 6, which do not allow residential use. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit is allowable where residential use is consistent with the Airport Land Use Compatibility Plan for the Monterey Regional Airport (ALUCP), as may be periodically amended, and the Accessory Dwelling Unit or Junior Accessory Dwelling Unit meets the following criteria, as applicable:

- (i) The Accessory Dwelling Unit does not exceed 850 square feet in Airport Safety Zones 2, 3, 4, and 5, as delineated by the ALUCP; and*
- (ii) The Junior Accessory Dwelling Unit does not exceed 500 square feet in Airport Safety Zones 2, 3, 4, and 5, as delineated by the ALUCP; and*

- (iii) Any Accessory Dwelling Unit or Junior Accessory Dwelling Unit is required to be constructed to meet Allowable Interior Noise Levels as established by the California Building Standards Code; and*
- (iv) Neither the Accessory Dwelling Unit or Junior Accessory Dwelling Unit is located in noise contour zones where airport noise may equal or exceed 65 CNEL (Community Noise Equivalent Level) as delineated by the ALUCP. ”*

WHEREAS, the above language should be incorporated into the City’s draft ordinance in order for the ordinance to be consistent with the ALUCP. If the City were not to proceed with its draft ordinance, then this change should be made to the existing City ordinance in order for the existing City ordinance to be consistent with the ALUCP; and

WHEREAS, Safety Zones 2, 3, 4, and 5 have the following respective accident risk levels: high, moderate to high, moderate, and low to moderate. Therefore, to minimize the risk associated with potential aircraft accidents, the proposed modified Zoning Ordinance language limits ADUs to one bedroom and 850 square feet and JADUs to 500 square feet, thus limiting total occupancy; and

WHEREAS, per correspondence dated September 30, 2022, the Monterey Regional Airport District staff stated its determination that the project is consistent with the ALUCP, provided 1) insulation shall be installed in all habitable rooms of future ADU and JADU developments to ensure interior noise levels do not exceed of CNEL 45 dB, and 2) avigation easements shall be recorded prior to the construction of all future ADU or JADU developments, if one has not already been recorded for the applicable property; and

WHEREAS, the proposed modified Zoning Ordinance language requires all ADUs and JADUs be constructed to meet the Allowable Interior Noise Levels as established by the California Building Standards Code, which addresses the Airport District’s first recommendation; and

WHEREAS, the proposed revision of Section 38-112.6.1.g of the City’s Zoning Ordinance to prohibit ADUs and JADUs in noise contour zones where airport noise may equal or exceed 65 CNEL addresses the Airport District’s second recommendation because Section 4.2.1.6 of the ALUCP requires an avigation easement only for an action that would either permit or result in the development or construction of a land use considered to be conditionally compatible with aircraft noise of CNEL 65 dB or greater; and

WHEREAS, on September 12, 2022, the City of Monterey agreed an extension of the mandated 60-day ALUC review period for its existing ordinance (Policy 4.1.11.2), and the ALUC hearing for the proposed ordinance amendment is within the 60 day review period; and

WHEREAS, on November 14, 2022, the ALUC conducted a duly noticed public meeting to consider Section 38-112.6 of the City of Monterey’s Zoning Ordinance, both in its existing form and as proposed to be amended by the City.

NOW, THEREFORE, BE IT RESOLVED, the Monterey County Airport Land Use Commission does hereby find the City’s existing ordinance and its proposed amendment (update) to Section 38-112.6 of the City of Monterey’s Zoning Ordinance consistent with the 2019 Airport Land Use Compatibility Plan for Monterey Regional Airport, provided that the City modifies Section 38-112.6.1.g of the proposed ordinance (or existing ordinance) to include the following language:

“Accessory Dwelling Units and Junior Accessory Dwelling Units are prohibited in Airport Safety Zones 1 and 6, which do not allow residential use. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit is allowable where residential use is consistent with the Airport Land Use Compatibility Plan for the Monterey Regional Airport (ALUCP), as may be periodically amended, and the Accessory Dwelling Unit or Junior Accessory Dwelling Unit meets the following criteria, as applicable:

- (i) The Accessory Dwelling Unit does not exceed 850 square feet in Airport Safety Zones 2, 3, 4, and 5, as delineated by the ALUCP; and*
- (ii) The Junior Accessory Dwelling Unit does not exceed 500 square feet in Airport Safety Zones 2, 3, 4, and 5, as delineated by the ALUCP; and*
- (iii) Any Accessory Dwelling Unit or Junior Accessory Dwelling Unit is required to be constructed to meet Allowable Interior Noise Levels as established by the California Building Standards Code; and*
- (iv) Neither the Accessory Dwelling Unit or Junior Accessory Dwelling Unit is located in noise contour zones where airport noise may equal or exceed 65 CNEL (Community Noise Equivalent Level) as delineated by the ALUCP.”*

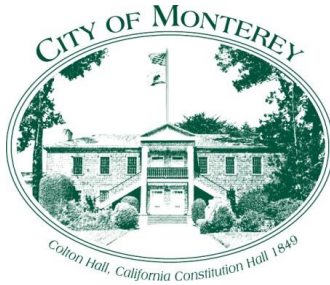
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PASSED AND ADOPTED on this 14th day of November 2022, upon motion of Commissioner _____ and seconded by Commissioner _____ by the following vote, to-wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST
Erik Lundquist, AICP, Secretary to the ALUC

By: _____
Fionna Jensen, Designee of Secretary to the ALUC
November 14, 2022



MEMORANDUM

TO: Airport Land Use Commission (ALUC) – Monterey County

FROM: City of Monterey – Planning Division

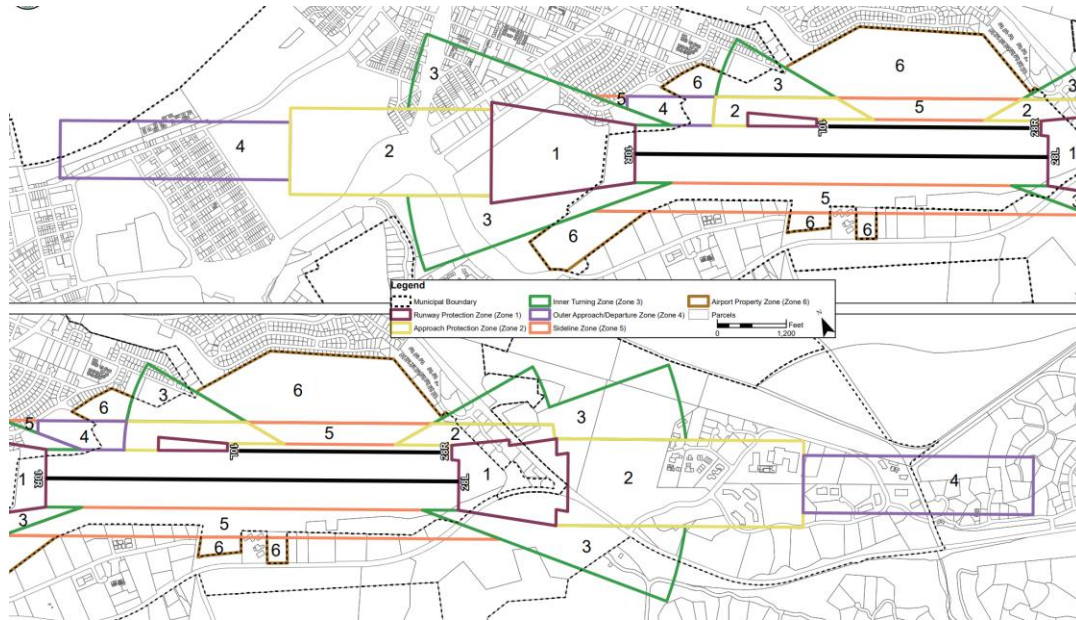
DATE: September 6, 2022

SUBJECT: ALUC Consistency Review – City of Monterey Ordinance No. 3641 Regarding Accessory Dwelling Units

The City of Monterey is applying for consistency review of its Ordinance No. 3641 regarding Accessory Dwelling Units and Junior Accessory Dwelling Units. The Ordinance allows the construction of Accessory Dwelling Units (ADUs) or a Junior Accessory Dwelling Unit (JADU) within the Safety Zones designated by the Airport Land Use Compatibility Plan (ALUCP). The project description, land use designations, and consistency recommendation are included below. Ultimately, it is the recommendation of the City of Monterey that – following Airport Land Use Commission (ALUC) consistency review of the City’s ADU ordinance – the existing ADU ordinance complies with the ALUCP. As a result, ADUs are allowed within certain safety zones and individual ADU applications are not required to undergo ALUC consistency review following the consistency determination.

The City of Monterey adopted Ordinance No. 3641 regarding ADUs in 2021 as required by state law. Compliance with the airport’s safety zones and ALUCP is established via Monterey Municipal Code Section 38-112.6(1)(g), which states, “An accessory dwelling unit or junior accessory dwelling shall not be permitted within the airport safety zone pursuant to the Airport Land Use Plan.” This standard directs one to the Monterey Regional Airport’s ALUCP, which includes detailed compatibility considerations for any development that occurs within the airport’s vicinity.

Section 4.2.2.2 of the ALUCP¹ includes mapping of the airport’s safety zones and describes the safety zone criteria (densities and uses) within those zones within Table 4B.



In summary as it relates to residential development, Safety Zones 1 and 6 do not allow any dwelling units and thus ADUs are not permitted in these zones. ADUs would be allowed in the remaining Safety Zones. Safety Zones 4 and 7 allow residential development. Safety Zones 2 through 5 further limit the number of residential units to a certain density of dwelling units per acre, varying from 1 dwelling unit per 10 acres to 1 dwelling unit per 2 acres.¹ However, Footnote #1 for Table 4B notes on the calculation for “Dwelling Units per Acre” that:

Residential development must not contain more than the indicated number of dwelling units (excluding secondary units) per gross acre (d.u./ac). Clustering of units is encouraged. Gross acreage includes the property at issue plus a share of adjacent roads and any adjacent, permanently dedicated, open lands associated with the property.

“Secondary units” (pg. 4-29), “Secondary dwellings” (pg. 4-16), and “Accessory dwelling units” (pg. 4-21) are mentioned in the ALUCP, but the terms are not defined. The use of the terms interchangeably indicates that ‘secondary units’ are the same as ADUs. Prior to adoption of state legislation in 2017, ADUs were referred to as ‘second units.’ It is difficult to ascribe another meaning to the term “secondary units.” Further, because ADUs are accessory to a primary dwelling and cannot be conveyed separately, ADUs are considered secondary units. Based on the above footnote, because ADUs are considered secondary units, they would not contribute to gross acreage density as defined for Safety Zones 2 through 5. Notably, ADUs are only allowed on properties with proposed or existing primary residential structures, effectively clustering potential habitable development together as supported by the footnote.

In addition to the ALUCP explicitly exempting ADUs from the calculation of dwelling units per acre, Government Code Section 65852.2(a)(1)(C)² states that the City's ADU ordinance shall “Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the ADU is located, and that accessory dwelling units are a residential use that is consistent with the

¹ ALUCP weblink: <https://www.co.monterey.ca.us/home/showpublisheddocument/75251/636875603145330000>

² Section 65852.2(a)(1)(C) and 65852.2(a)(3) weblink:

https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65852.2.&nodeTreePath=10.1.10.2&lawCode=GOV

existing general plan and zoning designation for the lot.” With this consideration, and as noted by the California Department of Housing and Community Development Accessory Dwelling Handbook (ADU Handbook³, Section 2(A)), an ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning and does not count toward the allowable density. For example, under state law, if a zoning district allows one unit per 10 acres, then an ADU on a 10-acre parcel with a primary dwelling unit would not be counted as an additional unit, and the calculated density would remain as one unit per 10 acres.

With regards to other safety criteria imposed by the ALUCP, the ADU ordinance explicitly prohibits ADUs in Safety Zones if the ADU would not be permitted pursuant to the Airport Land Use Plan. ADUs must be considered, approved, and permitted ministerially, without discretionary action.² Development and other decision-making standards must be sufficiently objective to allow for ministerial review such as heights, setbacks, colors, or materials. ADUs cannot be subject to a hearing or any ordinance regulating the issuance of variances or special use permits and must be considered ministerially. Individual ALUC review of ADUs would be inconsistent with these provisions. In any case, ADUs will not be subject to ALUC review because the ADU ordinance is consistent with the ALUCP. A full consistency analysis is presented on the following pages.

Consistency Review

The following table includes a consistency review for the City of Monterey Ordinance No. 3641 regarding ADU development⁴, and an associated consistency analysis with the ALUCP. Parcels that allow single family or multi-family residential uses are located within all Safety Zones except for Safety Zone 6 (portions of eight parcels are included within Safety Zone 1 on the western side of the airport).

ADU Ordinance Standard (Section 38-112.6)	Consistency Assessment (ALUCP)
a. The parcel must be zoned to allow single-family or multi-family use.	Consistent. Residential uses are allowed in every ALUCP Safety Zone except for Safety Zones 1 and 6. ADUs are only permitted on lots that allow residential use. Because Safety Zones 1 and 6 prohibit residential use, the ADU ordinance would not allow ADUs in that zone (see subsection (g) below).
b. The parcel may contain the following number of Accessory Dwelling Units: i. Single-family building. One Accessory Dwelling Unit may be developed per lot. 1. A new construction Accessory Dwelling Unit may be developed as attached to or detached from the single family dwelling.	Consistent. Permitting one ADU on a parcel with a single-family dwelling is consistent with Table 4B Footnote #1 which excludes secondary units from the density calculation. Attached or detached does not affect the overall clustering or density on a subject parcel.
2. An Accessory Dwelling Unit within the walls of a proposed or existing single-family dwelling or within an existing accessory structure may be developed if the unit has exterior access separate from the proposed or existing single-family dwelling; the side and rear setbacks are sufficient for fire and safety; and an expansion of the accessory structure for ingress and egress is not more than 150 square feet.	Consistent. Permitting one ADU on a parcel with a single-family dwelling is consistent with Table 4B Footnote #1 which excludes secondary units from the density calculation.
3. Both one Accessory Dwelling Unit and one Junior Accessory Dwelling Unit may be developed on the	Consistent. Permitting one ADU and one JADU on a parcel with a single-family dwelling is

³ ADU Handbook weblink: https://www.hcd.ca.gov/policy-research/docs/adu_december_2020_handbook.pdf

⁴ ADU Ordinance 3641: <https://monterey.municipal.codes/enactments/Ord3641/media/original.pdf>

ADU Ordinance Standard (Section 38-112.6)	Consistency Assessment (ALUCP)
<p>same parcel with a proposed or existing single-family dwelling if the Accessory Dwelling Unit is developed as either of the following:</p> <ul style="list-style-type: none"> a. A new construction, detached Accessory Dwelling Unit up to 800 square feet in size, up to 16 feet in height, and with minimum four-foot side and rear setbacks; or b. The Accessory Dwelling Unit meets the standards of subsection (b)(i)(2) above. 	<p>consistent with Table 4B Footnote #1 which excludes secondary units from the density calculation. The size of the structure and height would comply with those defined by ALUCP Section 4.2.3.2, in that the maximum height of the ADU is 16 feet, which is less than maximum 35 feet under the ALUCP, and therefore would not require review. No standards within the ALUCP address square footage of structures or minimum setbacks.</p>
<p>ii. Multi-family building. A parcel may contain one of the following:</p> <ul style="list-style-type: none"> 1. One Accessory Dwelling Unit may be developed on a parcel with an existing multifamily building. 	<p>Consistent. Permitting one ADU on a parcel with a multifamily building is consistent with Table 4B Footnote #1 which excludes secondary units from the density calculation.</p>
<ul style="list-style-type: none"> 2. On a parcel with an existing multifamily building: <ul style="list-style-type: none"> a. Portions of the building that are not used as livable space may be converted into Accessory Dwelling Units. The number of Accessory Dwelling Units permitted is equivalent to up to 25 percent of the number of existing, legally permitted multi-family dwelling units, or one, whichever is greater; or b. No more than two detached Accessory Dwelling Units. The Accessory Dwelling Units may be up to 16 feet in height and must have at least four-foot side and rear setbacks. 	<p>Consistent. Permitting multiple ADUs on a parcel with a multifamily building is consistent with Table 4B Footnote #1 which excludes secondary units from the density calculation.</p>
<p>c. At the time of application, the property owner shall acknowledge in writing that:</p> <ul style="list-style-type: none"> i. The Accessory Dwelling Unit may not be sold separately from the existing single-family or multifamily dwelling; and ii. Neither the Accessory Dwelling Unit nor the Junior Accessory Dwelling Unit may be used for short-term residential rentals of less than 30 consecutive days. Prior to issuance of a building permit for the Accessory Dwelling Unit, the owner shall record a covenant in a form approved by the City to notify future owners of the requirements of this subsection (1)(c). 	<p>Consistent. Property and ADU ownership are not restricted by the ALUCP.</p>
<p>d. Exemptions. Notwithstanding the development and design standards of this section, Accessory Dwelling Units that meet the standards in subsection 38-112.6(1)(b)(i)(3) or (b)(ii)(2) are permitted.</p>	<p>Consistent. Since ADUs are subject to the ALUCP, the ADUs will have to comply with the applicable objective development criteria in the ALUCP.</p>
<p>e. Fire sprinklers shall not be required in the Accessory Dwelling Unit unless fire sprinklers are required for the primary dwelling.</p>	<p>Consistent. Fire considerations, outside of the storage of hazardous materials and Airport Rescue and Fire Fighting (ARFF), are not affected by the ALUCP.</p>
<p>f. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit conforming to the requirements of this section shall not be considered to exceed the allowable density for the parcel upon which the unit is located and shall be deemed to be a residential use consistent with the existing general plan and zoning designations for the parcel.</p>	<p>Consistent. Given Table 4B Footnote #1, this standard is consistent, as neither the City's ordinance nor the ALUCP count ADUs as additional dwelling units with regard to overall allowable density.</p>
<p>g. An Accessory Dwelling Unit or Junior accessory dwelling shall not be permitted within the airport safety zone pursuant to the Airport Land Use Plan.</p>	<p>Consistent. As shown in Table 4B of the ALUCP, all Safety Zones except for Safety Zones 1 and 6 allow for residential development. Because ADUs do not contribute to density (as defined by Footnote #1 to Table 4B), an ADU may be allowed in any zone that allows for residential development, meaning all Safety</p>

ADU Ordinance Standard (Section 38-112.6)	Consistency Assessment (ALUCP)
	Zones except Safety Zones 1 and 6 would allow their development.
h. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit conforming to the provisions of this subsection shall be approved ministerially as provided in Section 38-153(B).	Consistent. Following ALUCP consistency review of the ordinance, ADUs must be approved ministerially.
2. Accessory Dwelling Unit Development Standards. Except as otherwise provided in this Section 112-6, all Accessory Dwelling Units shall comply with the following development standards: a. Except as modified by this section, the Accessory Dwelling Unit shall conform to all requirements of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions of this chapter; unless (i) the unit is contained in a nonconforming structure and does not expand the nonconformity or (ii) the applicable provisions of this chapter are inconsistent with the provisions of this section, in which case the standards of this section shall apply.	Consistent. The development standard requires conformity to any applicable overlay district or other applicable provisions of the chapter, which would include the ALUCP.
b. Floor Area: i. No Accessory Dwelling Unit shall be smaller than the size required to allow an efficiency unit pursuant to Health and Safety Code Section 17958.1. ii. The floor area of an attached or detached Accessory Dwelling Unit shall not exceed 850 square feet for a studio or one bedroom and 1,000 square feet for a unit that contains more than one bedroom, c. Setbacks: Except as specified below, an Accessory Dwelling Unit shall be required to comply with the setback requirements of the zone in which the unit is to be located. i. No setback is required for an existing living area or an existing accessory structure converted to an Accessory Dwelling Unit, or for a new Accessory Dwelling Unit constructed in the same location and built to the same dimensions as an existing, legal structure, except that: 1. an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure is allowed solely for the purpose of accommodating ingress and egress. 2. setbacks shall be sufficient for fire safety. ii. For all other Accessory Dwelling Units, a setback of four feet is required from the rear and side property lines.	Consistent. Floor area and setbacks are not referenced within the ALUCP. However, ADUs are limited to existing residential parcels with proposed or existing residences, requiring clustered secondary unit development as encouraged by Footnote #1 to Table 4B.
d. Height. i. Attached or Detached Accessory Dwelling Unit. The height above grade of an attached or detached Accessory Dwelling Unit shall not exceed 16 feet from the ground to the highest point on the roof. ii. Second Story Attached Accessory Dwelling Unit/Above Garage. If an Accessory Dwelling Unit exceeds the maximum permitted height set forth in subsection (d)(i) above, the applicant may apply for an exception through the discretionary architectural review process pursuant to Municipal Code Chapter 38, Article 25 if: 1. The total height of the building, as defined in Section 38- 11 (Height, Building), is 25 feet or less; 2. The parcel is within the R-3 zone; 3. The garage is at the ground level; 4. No windows or openings are permitted for that portion of the building that is closer than 4 feet to a property line; and	Consistent. The size of the structure and heights would comply with those defined by ALUCP Section 4.2.3.2 because the maximum height for ADUs are 16 feet and 25 feet, which are less than the 35 foot height restriction in the ALUCP.

ADU Ordinance Standard (Section 38-112.6)	Consistency Assessment (ALUCP)
<p>5. Any window parallel to an adjoining property line and closer than 10 feet shall be either:</p> <ul style="list-style-type: none"> a. Opaque and inoperable; or b. Clerestory windows with a minimum height no less than 6 feet above floor level. 	
<p>e. Limits on lot coverage, floor area ratio, open space, and size must permit or shall be waived to allow an 800 square foot detached or attached Accessory Dwelling Unit 16 feet high with four-foot side and rear yards, if the proposed Accessory Dwelling Unit is in compliance with all other development standards, including but not limited to front yard setbacks.</p> <p>f. Access. An Accessory Dwelling Unit shall have a separate entrance from the single-family dwelling unit.</p>	<p>Consistent. The ALUCP does not specify lot coverage, floor area ratios, setbacks, or dwelling unit accessibility. While open space is considered by ALUCP Section 4.1.12.1, no specific policies or standards are included beyond density considerations.</p>
<p>g. Parking.</p> <ul style="list-style-type: none"> i. One additional parking space shall be provided per unit or per bedroom, whichever is less, which may be provided as tandem parking on an existing driveway, or in setback areas unless the Community Development Director makes specific findings that tandem parking and parking in setback areas is not feasible because of specific topographical conditions. ii. No parking may extend into a public sidewalk or public right-of way. iii. Notwithstanding this provision, no additional parking may be required for an Accessory Dwelling Unit that is: <ul style="list-style-type: none"> 1. located within one-half mile walking distance of a public transit stop, 2. located within one block of a car share vehicle pickup location, 3. located entirely within a primary residence or within an existing accessory structure, 4. located within an architecturally and historically significant historic district, or 5. located on a parcel where on-street parking permits are required but not offered to the occupant of the Accessory Dwelling Unit. iv. If an existing garage, carport, or covered parking structure is demolished in conjunction with the construction of or replaced by an Accessory Dwelling Unit, the parking spaces need not be replaced. 	<p>Consistent. The ALUCP does not address required parking for dwelling units.</p>
<p>h. Historic Review. Attached or detached Accessory Dwelling Units on a parcel with an H-1 or H-2 designation shall:</p> <ul style="list-style-type: none"> i. be located behind the historic structure. If attached, the Accessory Dwelling Unit shall be located at the rear of the main historic structure. If detached, new construction, the Accessory Dwelling Unit shall be located 10 feet behind the rear of the main historic structure; ii. not exceed 16 feet in height; iii. notwithstanding the design standards below, not match the exterior finish of the historic building; and iv. be designed so that any new exterior door for the Accessory Dwelling Unit will be located at the back of the structure such that the new exterior door is not facing the front yard. 	<p>Consistent. The ALUCP does not address historic properties.</p>
<p>i. Water and Sewer. Accessory Dwelling Units shall not be permitted on a parcel where water or sewer services are inadequate. Water restrictions imposed by the State Water Resources Control Board's Cease and Desist Order demonstrate existing water sources are insufficient to meet any</p>	<p>Consistent. The ALUCP does not address water and sewer.</p>

ADU Ordinance Standard (Section 38-112.6)	Consistency Assessment (ALUCP)
<p>expansion of water demand and do not satisfy criteria for the adequacy of water and sewer services. Water credits or water entitlements may be available to offset additional demand for an Accessory Dwelling Unit. The adequacy of water is determined by the Monterey Peninsula Water Management District (MPWMD). Verification of water credits from MPWMD is to be submitted at the time of building permit application.</p>	
<p>3. Accessory Dwelling Unit Design Standards. Except as otherwise provided in this chapter, all Accessory Dwelling Units shall comply with the following design standards:</p> <ul style="list-style-type: none"> a. Colors and Materials. The Accessory Dwelling Unit shall be constructed with facade materials identical in color, and similar in texture and appearance to the primary dwelling, including but not limited to roofing, siding, and windows and doors; and b. Roof Pitch. The Accessory Dwelling Unit shall match the roof pitch and roof form of the primary dwelling in order to blend with the architecture of the primary dwelling. c. The Accessory Dwelling Unit shall conform to all applicable State and local building code requirements, including verification from the applicable water district (submitted with the application for a building permit) that sufficient on-site water credits are available for the Accessory Dwelling Unit. Fire sprinklers may not be required for the Accessory Dwelling Unit unless they are required for the primary dwelling. 	<p>Consistent. Since ADUs are subject to the ALUCP, the ADUs will have to comply with the applicable objective design criteria in the ALUCP.</p>
<p>4. Junior Accessory Dwelling Unit Development Standards. Junior Accessory Dwelling Units shall conform with the following:</p> <ul style="list-style-type: none"> a. A Junior Accessory Dwelling Unit shall not exceed 500 square feet in size and shall contain at least an efficiency kitchen, which includes cooking appliances, a food preparation counter, and storage cabinets that are of reasonable size in relation to the Junior Accessory Dwelling Unit. b. A Junior Accessory Dwelling Unit shall have a separate entrance from the single-family dwelling. c. The Junior Accessory Dwelling Unit may, but is not required to, include separate sanitation facilities. If separate sanitation facilities are not provided, the Junior Accessory Dwelling Unit shall share sanitation facilities with the single-family residence. If provided as part of the primary dwelling, the Junior Accessory Dwelling Unit shall have direct access to the primary dwelling so as to not need to go outside to access the bathroom d. Unless the property is owned by a governmental agency, land trust, or housing organization, one of the dwellings on the parcel must be the bona fide principal residence of at least one legal owner of the parcel, as evidenced at the time of approval of the Junior Accessory Dwelling Unit by appropriate documents of title and residency. e. Prior to issuance of a building permit for a Junior Accessory Dwelling Unit, the owner shall record a covenant in a form prescribed by the city attorney, which shall run with the land and provide for the following. A copy of the recorded covenant shall be filed with the Building Department prior to issuance of a building permit: 	<p>Consistent. JADUs do not involve development outside of an existing structure, as they are required to be retained within the building envelope and under 500 square feet total. As JADUs are a type secondary unit, JADUs do not contribute to density calculations, and no conflict is found with the ALUCP.</p>

ADU Ordinance Standard (Section 38-112.6)	Consistency Assessment (ALUCP)
<p>i. A prohibition on the sale of the Junior Accessory Dwelling Unit separate from the sale of the single-family residence;</p> <p>ii. A restriction on the size and attributes of the Junior Accessory Dwelling Unit consistent with this section;</p> <p>iii. A prohibition against renting the property for fewer than 30 consecutive calendar days; and</p> <p>iv. A requirement that either the primary residence or the Junior Accessory Dwelling Unit be the owner's bona fide principal residence, unless the owner is a governmental agency, land trust, or housing organization.</p> <p>f. Parking is not required for Junior Accessory Dwelling Units. However, if an existing attached garage is replaced by a Junior Accessory Dwelling Unit, each removed parking space must be replaced with an off-street parking space that does not extend into the public right of way. If the proposed replacement parking is uncovered parking located in the driveway, the dimensions of the off-street parking space should at least be 9 feet by 18 feet and the space may occupy any part of the driveway so long as it does not extend into the public right-of-way and is not located in the front yard setback.</p> <p>g. Junior Accessory Dwelling Units shall not be permitted on a parcel where water or sewer services are inadequate. Water restrictions imposed by the State Water Resources Control Board's Cease and Desist Order demonstrate existing water sources are insufficient to meet any expansion of water demand and do not satisfy criteria for the adequacy of water and sewer services. Water credits or water entitlements may be available to offset additional demand for a Junior Accessory Dwelling Unit. The adequacy of water is determined by the Monterey Peninsula Water Management District (MPWMD). Verification of water credits from MPWMD is to be submitted at the time of building permit application.</p>	
<p>5. Utilities and Impact Fees.</p> <p>a. Except as provided in subsection (d) below, an Accessory Dwelling Unit may be required to have a new or separate utility connection, including a separate sewer lateral, between the Accessory Dwelling Unit and the utility. A connection fee or capacity charge may be charged that is proportionate to the size in square feet of the Accessory Dwelling Unit or its drainage fixture unit (DFU) values. Separate electric and water submeters shall be required for the Accessory Dwelling Unit, except that separate water meters shall be required for Accessory Dwelling Units if and when California American Water is allowed to connect new water meters.</p> <p>b. Junior Accessory Dwelling Units and Accessory Dwelling Units converted from the existing space of a single-family dwelling or accessory structure are exempt from any requirement to install a new or separate utility connection and to pay any associated connection or capacity fees or charges, unless the Accessory Dwelling Unit is constructed within a new single-family home.</p>	<p>Consistent. The ALUCP does not address utilities or development impact fees.</p>

ADU Ordinance Standard (Section 38-112.6)	Consistency Assessment (ALUCP)
<p>c. All utility extensions shall be placed underground.</p> <p>d. No impact fees may be imposed on an Accessory Dwelling Unit that is less than 750 square feet in size. For purposes of this section, "impact fees" include the fees specified in Section 66000 and 66477 of the Government Code, but do not include utility connection fees or capacity charges. For Accessory Dwelling Units that have a floor area of 750 square feet or more, impact fees shall be charged proportionately in relation to the square footage of the primary dwelling unit.</p>	
<p>6. Process and Timing.</p> <p>a. Building-permit only. The City must act on an application to create an Accessory Dwelling Unit or Junior Accessory Dwelling Unit within 60 days from the date that the City receives a completed application, unless either:</p> <ul style="list-style-type: none"> i. The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay; or ii. When an Accessory Dwelling Unit or a Junior Accessory Dwelling Unit is submitted along with a permit application to create a new primary dwelling on the parcel the City may delay acting on the permit application until the City acts on the permit application to create the primary dwelling; or iii. The applicant requests discretionary architectural review for an accessory dwelling unit more than 16 feet high, as provided in Section 112-6(2)(d)(ii) above. 	<p>Consistent. Following ALUCP consistency review, the City will be able to finalize an ADU application within the required timeframe and allow for additional discretionary architectural review for a unit more than 16 feet high. The maximum height of a new ADU would be no more than 25 feet, which would remain lower than the 35-foot height standard mandated by ALUCP Section 4.2.3.2.</p>
<p>b. Mills Act. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit proposed on a property subject to a Mills Act Contract must comply with the provisions of the contract, including conformance to the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, the United States Secretary of the Interior's Standard for Rehabilitation, and the California Historical Building Code.</p>	<p>Consistent. The ALUCP does not address historic properties.</p>

Recommendation

The City of Monterey's ADU Ordinance provides that ADUs may only be approved on parcels that contain primary residential units, are on parcels that are specifically allowed by zoning to have residential uses and are subject to the safety requirements of the ALUCP (height, density, etc.). As interpreted by this memorandum and supported by text within the ALUCP, ADUs, as "secondary units," are not counted towards allowable density. Consequently, the City's existing ADU ordinance is in compliance with the ALUCP, and ADUs may be allowed within all Safety Zones, except for Safety Zones 1 and 6 (due to runway protection standards, hazards to flight, and the list of prohibited uses), without further review by the ALUC.

City of Monterey

Attachment:

City of Monterey Ordinance No. 3641 Regarding Accessory Dwelling Units Government Code Sections 65852.2 and 65852.22.

Attachment C - Existing ADU and JADU Ordinance

ORDINANCE NO. 3641 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

AMENDING CHAPTER 38 OF THE CITY OF MONTEREY CODE RELATED TO ACCESSORY DWELLING UNITS

WHEREAS, California is experiencing a housing crisis, with housing demands outstripping supply. The California State Legislature brought forward several bills in 2019 relating to the planning and permitting of Accessory Dwelling Units (ADUs) to address the housing supply crisis. In October 2019, the Governor signed into law Assembly Bill (AB) 68, AB 881, and Senate Bill (SB) 13. Additionally, AB 68 amended standards for Junior ADUs (JADUs) and SB 13 made additions to the State Health and Safety Code (added new Section 17980.12). The new laws took effect on January 1, 2020;

WHEREAS, Government Code sections 65852.2 and 65852.22 requires cities to adopt ADU zoning regulations consistent with the new state law. In the absence of a valid local ordinance, the new state law provides a set of default standards governing local agencies' regulation and approval of ADUs;

WHEREAS, since Government Code sections 65852.2 and 65852.22 were adopted as part of a greater effort to address the housing crisis, ADUs and JADUs must be rented for periods longer than thirty days;

WHEREAS, on October 20, 2020, the City Council adopted Urgency Ordinance No. 3606, to prevent Accessory Dwelling Units over 16 feet in height until the Planning Commission had an opportunity to provide policy recommendations. Urgency Ordinance No. 3606 also repealed the City's ADU regulations, which were almost entirely inconsistent with state law. The City Code's inconsistency with state law was causing confusion among applicants, which had the potential to defeat the intent of the new legislation which is to encourage additional and expedient construction of new housing. Repeal of the City's ADU ordinance and incorporation of the state standards was to provide clarity to applicants and facilitate permit processing until this ordinance could be adopted;

WHEREAS, Ordinance No. 3626, was extended with the adoption of Ordinance No. 3633 until October 19, 2021;

WHEREAS, changes to Accessory Dwelling Unit laws effective January 1, 2021 further reduce barriers, better streamline approval processes and expand the capacity to accommodate the development of Accessory Dwelling Units and Junior Accessory Dwelling Units;

WHEREAS, adopting an ordinance consistent with Sections 65852.2 and 65852.22 will ensure that the character of the City is preserved to the maximum extent possible and that the City's regulations regarding Accessory Dwelling Units and interior Accessory Dwelling Units will continue to promote the health, safety, and welfare of the community;

WHEREAS, the Airport Land Use Plan prohibits residential uses in airport safety zones, and the development of Accessory Dwelling Units in that zone is similarly prohibited;

WHEREAS, on August 24, 2021 and September 14, 2021, the Planning Commission held a duly noticed public hearing, took public testimony, and recommended that the City Council adopt the ordinance amendments;

WHEREAS, the City Council held a duly noticed public hearing on October 19, 2021 took public testimony, and considered the ordinance amendments; and,

WHEREAS, the City of Monterey City Council has determined that the adoption of those provisions required to conform to Government Code Section 65852.2 is statutorily exempt from the California Environmental Quality Act (CEQA) as provided by Public Resources Code Section 21080.17 and by CEQA Guidelines Article 18, Section 15282.h, because it is the adoption of an ordinance by a city to implement the provisions of Section 65852.2 of the Government Code; and that the adoption of those provisions required to conform to Government Code Section 65852.22 is exempt under the common sense exemption, CEQA Guidelines Section 15061(b)(3), in that it can be seen with certainty that there is no possibility that the adoption of provisions implementing Section 65852.22 may have a significant effect on the environment, in that state law (Government Code Section 65852.22(g)) provides that the provisions of Section 65852.22 will be applicable in the City regardless of whether the City adopts the ordinance.

NOW THEREFORE, the Monterey City Council does ordain as follows:

SECTION 1. Monterey City Code, Chapter 38, Section 11- definition of 'Accessory Dwelling Unit' is hereby repealed and re-enacted to read as follows:

Accessory Dwelling Unit: An attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, which is located on the same parcel as a proposed or existing single-family dwelling or existing multifamily dwelling. An Accessory Dwelling Unit may consist of an efficiency unit, as defined in Section 17958.1 of the Health and Safety Code; or a manufactured home, as defined in Section 18007 of the Health and Safety Code.

SECTION 2. Monterey City Code, Chapter 38, Section 11- definition of 'Accessory Dwelling Unit, Interior' is hereby repealed.

SECTION 3. Monterey City Code, Chapter 38, Section 11- definition of 'Accessory Dwelling Unit, Other' is hereby repealed.

SECTION 4. Monterey City Code, Chapter 38, Section 11 – definition of Accessory Use or Structure is hereby amended as follows:

Accessory Use or Structure: A use or structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building. An Accessory Use or Structure does not include an Accessory Dwelling Unit or a Junior Accessory Dwelling Unit.

SECTION 5. Monterey City Code, Chapter 38, Section 11 is hereby amended to include the definition of Guest House' to read as follows:

Guest House: Permanently constructed living quarter without kitchen or cooking facilities, which is clearly subordinate and incidental to the main building on the same lot. Guesthouses shall not be separately rented, let or leased (by direct or indirect compensation). Guest House does not include an Accessory Dwelling Unit or a Junior Accessory Dwelling Unit.

SECTION 6. Monterey City Code, Chapter 38, Section 11 is hereby amended to include the definition of 'Junior Accessory Dwelling Unit' to read as follows:

Junior Accessory Dwelling Unit: A residential dwelling unit that is no more than 500 square feet in size, includes an efficiency kitchen consistent with building code standards, is contained entirely within the walls of an existing or proposed single-family dwelling, including attached garages, and either includes separate sanitation facilities or shares sanitation facilities with the existing residence.

SECTION 7. Monterey City Code, Chapter 38, Section 22 R-E District Land Use Regulations Table is hereby amended to add:

Additional Regulations		
Accessory Dwelling Units	P	See Section 38-112-6
Junior Accessory Dwelling Units	P	See Section 38-112-6

SECTION 8. Monterey City Code, Chapter 38, Section 23 R-1 District Land Use Regulations Table is hereby amended to add:

Additional Regulations		
Accessory Dwelling Units	P	See Section 38-112-6
Junior Accessory Dwelling Units	P	See Section 38-112-6

SECTION 9. Monterey City Code, Chapter 38, Section 24 R-2 District Land Use Regulations Table is hereby amended to add:

Additional Regulations		
<u>Accessory Dwelling Units</u>	<u>P</u>	<u>See Section 38-112-6</u>
<u>Junior Accessory Dwelling Units</u>	<u>P</u>	<u>See Section 38-112-6</u>

SECTION 10. Monterey City Code, Chapter 38, Section 25 R-3 District Land Use Regulations Table is hereby amended to add:

Additional Regulations		
Accessory Dwelling Units	P	See Section 38-112-6
Junior Accessory Dwelling Units	P	See Section 38-112-6

SECTION 11. Monterey City Code, Chapter 38, Section 28 C-1 Neighborhood Commercial District Land Use Regulations Table is hereby amended to read as follows:

C-1 NEIGHBORHOOD COMMERCIAL DISTRICT LAND USE REGULATIONS

		Additional Regulations
Accessory Dwelling Units	P	See Section 38-112-6
Junior Accessory Dwelling Units	P	See Section 38-112-6

SECTION 12. Monterey City Code, Chapter 38, Section 29 C-2 Community Commercial District Land Use Regulations Table is hereby amended to add:

		Additional Regulations
Accessory Dwelling Units	P	See Section 38-112-6

SECTION 13. Monterey City Code, Chapter 38, Section 30 C-3 District Land Use Regulations Table is hereby amended to add:

		Additional Regulations
Accessory Dwelling Units	P	See Section 38-112-6

SECTION 14. Monterey City Code, Chapter 38, Section 31CO District Land Use Regulations Table is hereby amended to add:

	Additional Regulations
Accessory Dwelling Units	P See Section 38- 112-6

SECTION 15. Monterey City Code, Chapter 38, Section 32 CR Cannery Row District Land Use Regulations Table is hereby amended to add:

	Additional Regulations
Accessory Dwelling Units	P See Section 38- 112-6

SECTION 16. Monterey City Code, Chapter 38, Section 52 is hereby repealed and reenacted to read as follows:

No use other than an existing use shall be permitted in a PC district, except in accord with a valid PC Plan or Specific Plan. Accessory Dwelling Units in accord with Section 38-112-6 may also be allowed in a PC zone where single-family or multi-family dwellings are permitted, and Junior Accessory Dwelling Units may be permitted in a PC zone where single-family dwellings are permitted. Any permitted or conditional use authorized by this chapter may be included in an approved PC Plan or an adopted Specific Plan, consistent with the General Plan land use designation(s) for land within the PC district.

SECTION 17. Monterey City Code, Chapter 38, Section 62 is hereby repealed and reenacted to read as follows:

In the AP Overlay District, any use listed as a principal permitted use in the CO Office and Professional District may be allowed with a Use Permit. Additionally, a combination of office and residential uses may be allowed with a Use Permit. Accessory Dwelling Units in accord with Section 38-112-6 may also be allowed in an AP Overlay District where single-family or multi-family dwellings are permitted, and Junior Accessory Dwelling Units may be permitted in an AP Overlay District where single-family dwellings are permitted.

SECTION 18. Monterey City Code, Chapter 38, Section 80 is hereby repealed and reenacted to read as follows:

No use other than an existing use shall be permitted in an SC Planned Commercial Overlay District, except in accord with a valid SC plan. Any permitted or conditional use authorized by this chapter may be included in an approved SC plan consistent with the General Plan Land Use Designation(s) for land within the SC district. Accessory Dwelling Units and Junior Accessory Dwelling Units in accord with Section 38-112-6 may also be allowed in an SC zone where single-family or multi-family dwellings are permitted. When the SC plan includes use or design features which require a Use Permit or variance in accord with other sections of this chapter, approval of the SC plan shall include approval of the required Use Permit or variance, and no further action shall be required.

SECTION 19. Monterey City Code, Chapter 38, Section 99.6 is hereby repealed and reenacted to read as follows:

The maximum density for this overlay district shall be 30 dwelling units per acre. No more than 405 units may be constructed in the Multifamily Residential Overlay District on Garden Road. Accessory Dwelling Units in accord with Section 38-112-6 may also be allowed in the Multifamily Residential Overlay District.

SECTION 20. Monterey City Code, Chapter 38, Section 112-6 Accessory Dwelling Units and Junior Accessory Dwelling Units is hereby added to read as follows:

112-6. Accessory Dwelling Units and Junior Accessory Dwelling Units.

1. General Requirements. All Accessory Dwelling Units shall conform with the following:
 - a. The parcel must be zoned to allow single-family or multi-family use.
 - b. The parcel may contain the following number of Accessory Dwelling Units:
 - i. *Single-family building.* One Accessory Dwelling Unit may be developed per lot.
 1. A new construction Accessory Dwelling Unit may be developed as attached to or detached from the single-family dwelling.
 2. An Accessory Dwelling Unit within the walls of a proposed or existing single-family dwelling or within an existing accessory structure may be developed if the unit has exterior access separate from the proposed or existing single-family dwelling; the side and rear setbacks are sufficient for fire and safety; and an expansion of the accessory structure for ingress and egress is not more than 150 square feet.
 3. Both one Accessory Dwelling Unit and one Junior Accessory Dwelling Unit may be developed on the same parcel with a proposed or existing single-family dwelling if the Accessory Dwelling Unit is developed as either of the following:
 - a. A new construction, detached Accessory Dwelling Unit up to 800 square feet in size, up to 16 feet in height, and with minimum four-foot side and rear setbacks; or
 - b. The Accessory Dwelling Unit meets the standards of subsection (b)(i)(2) above.

- ii. *Multi-family building.* A parcel may contain one of the following:
 - 1. One Accessory Dwelling Unit may be developed on a parcel with an existing multifamily building.
 - 2. On a parcel with an existing multifamily building:
 - a. Portions of the building that are not used as livable space may be converted into Accessory Dwelling Units. The number of Accessory Dwelling Units permitted is equivalent to up to 25 percent of the number of existing, legally permitted multi-family dwelling units, or one, whichever is greater; or
 - b. No more than two detached Accessory Dwelling Units. The Accessory Dwelling Units may be up to 16 feet in height and must have at least four-foot side and rear setbacks.
- c. At the time of application, the property owner shall acknowledge in writing that:
 - i. The Accessory Dwelling Unit may not be sold separately from the existing single-family or multifamily dwelling; and
 - ii. Neither the Accessory Dwelling Unit nor the Junior Accessory Dwelling Unit may be used for short-term residential rentals of less than 30 consecutive days.

Prior to issuance of a building permit for the Accessory Dwelling Unit, the owner shall record a covenant in a form approved by the City to notify future owners of the requirements of this subsection (1)(c).

- d. Exemptions. Notwithstanding the development and design standards of this section, Accessory Dwelling Units that meet the standards in subsection 112-6(1)(b)(i)(3) or (b)(ii)(2) are permitted.
- e. Fire sprinklers shall not be required in the Accessory Dwelling Unit unless fire sprinklers are required for the primary dwelling.
- f. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit conforming to the requirements of this section shall not be considered to exceed the allowable density for the parcel upon which the unit is located and shall be deemed to be a residential use consistent with the existing general plan and zoning designations for the parcel.
- g. An Accessory Dwelling Unit or Junior accessory dwelling shall not be permitted within the airport safety zone pursuant to the Airport Land Use Plan.

h. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit conforming to the provisions of this subsection shall be approved ministerially as provided in Section 38-153(B).

2. Accessory Dwelling Unit Development Standards. Except as otherwise provided in this Section 112-6, all Accessory Dwelling Units shall comply with the following development standards:

a. Except as modified by this section, the Accessory Dwelling Unit shall conform to all requirements of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions of this chapter; unless (i) the unit is contained in a nonconforming structure and does not expand the nonconformity or (ii) the applicable provisions of this chapter are inconsistent with the provisions of this section, in which case the standards of this section shall apply.

b. Floor Area:

i. No Accessory Dwelling Unit shall be smaller than the size required to allow an efficiency unit pursuant to Health and Safety Code Section 17958.1.

ii. The floor area of an attached or detached Accessory Dwelling Unit shall not exceed 850 square feet for a studio or one bedroom and 1,000 square feet for a unit that contains more than one bedroom,

c. Setbacks: Except as specified below, an Accessory Dwelling Unit shall be required to comply with the setback requirements of the zone in which the unit is to be located.

i. No setback is required for an existing living area or an existing accessory structure converted to an Accessory Dwelling Unit, or for a new Accessory Dwelling Unit constructed in the same location and built to the same dimensions as an existing, legal structure, except that:

1. an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure is allowed solely for the purpose of accommodating ingress and egress.

2. setbacks shall be sufficient for fire safety.

ii. For all other Accessory Dwelling Units, a setback of four feet is required from the rear and side property lines.

d. Height.

- i. Attached or Detached Accessory Dwelling Unit. The height above grade of an attached or detached Accessory Dwelling Unit shall not exceed 16 feet from the ground to the highest point on the roof.
- ii. Second Story Attached Accessory Dwelling Unit/Above Garage. If an Accessory Dwelling Unit exceeds the maximum permitted height set forth in subsection (d)(i) above, the applicant may apply for an exception through the discretionary architectural review process pursuant to Municipal Code Chapter 38, Article 25 if:
 - 1. The total height of the building, as defined in Section 38-11 (Height, Building), is 25 feet or less;
 - 2. The parcel is within the R-3 zone;
 - 3. The garage is at the ground level;
 - 4. No windows or openings are permitted for that portion of the building that is closer than 4 feet to a property line; and
 - 5. Any window parallel to an adjoining property line and closer than 10 feet shall be either:
 - a. Opaque and inoperable; or
 - b. Clerestory windows with a minimum height no less than 6 feet above floor level.
- e. Limits on lot coverage, floor area ratio, open space, and size must permit or shall be waived to allow an 800 square foot detached or attached Accessory Dwelling Unit 16 feet high with four-foot side and rear yards, if the proposed Accessory Dwelling Unit is in compliance with all other development standards, including but not limited to front yard setbacks.
- f. Access. An Accessory Dwelling Unit shall have a separate entrance from the single-family dwelling unit.
- g. Parking.
 - i. One additional parking space shall be provided per unit or per bedroom, whichever is less, which may be provided as tandem parking on an existing driveway, or in setback areas unless the Community Development Director makes specific findings that tandem parking and parking in setback areas is not feasible because of specific topographical conditions.
 - ii. No parking may extend into a public sidewalk or public right-of-way.

- iii. Notwithstanding this provision, no additional parking may be required for an Accessory Dwelling Unit that is:
 - 1. located within one-half mile walking distance of a public transit stop,
 - 2. located within one block of a car share vehicle pickup location,
 - 3. located entirely within a primary residence or within an existing accessory structure,
 - 4. located within an architecturally and historically significant historic district, or
 - 5. located on a parcel where on-street parking permits are required but not offered to the occupant of the Accessory Dwelling Unit.
- iv. If an existing garage, carport, or covered parking structure is demolished in conjunction with the construction of or replaced by an Accessory Dwelling Unit, the parking spaces need not be replaced.
- h. Historic Review. Attached or detached Accessory Dwelling Units on a parcel with an H-1 or H-2 designation shall:
 - i. be located behind the historic structure. If attached, the Accessory Dwelling Unit shall be located at the rear of the main historic structure. If detached, new construction, the Accessory Dwelling Unit shall be located 10 feet behind the rear of the main historic structure;
 - ii. not exceed 16 feet in height;
 - iii. notwithstanding the design standards below, not match the exterior finish of the historic building; and
 - iv. be designed so that any new exterior door for the Accessory Dwelling Unit will be located at the back of the structure such that the new exterior door is not facing the front yard.
- i. Water and Sewer. Accessory Dwelling Units shall not be permitted on a parcel where water or sewer services are inadequate. Water restrictions imposed by the State Water Resources Control Board's Cease and Desist Order demonstrate existing water sources are insufficient to meet any expansion of water demand and do not satisfy criteria for the adequacy of water and sewer services. Water credits or water entitlements may be available to offset additional demand for an Accessory Dwelling Unit. The adequacy of water is determined by the

Monterey Peninsula Water Management District (MPWMD). Verification of water credits from MPWMD is to be submitted at the time of building permit application.

3. Accessory Dwelling Unit Design Standards. Except as otherwise provided in this chapter, all Accessory Dwelling Units shall comply with the following design standards:
 - a. Colors and Materials. The Accessory Dwelling Unit shall be constructed with facade materials identical in color, and similar in texture and appearance to the primary dwelling, including but not limited to roofing, siding, and windows and doors; and
 - b. Roof Pitch. The Accessory Dwelling Unit shall match the roof pitch and roof form of the primary dwelling in order to blend with the architecture of the primary dwelling.
 - c. The Accessory Dwelling Unit shall conform to all applicable State and local building code requirements, including verification from the applicable water district (submitted with the application for a building permit) that sufficient on-site water credits are available for the Accessory Dwelling Unit. Fire sprinklers may not be required for the Accessory Dwelling Unit unless they are required for the primary dwelling.

4. Junior Accessory Dwelling Unit Development Standards. Junior Accessory Dwelling Units shall conform with the following:
 - a. A Junior Accessory Dwelling Unit shall not exceed 500 square feet in size and shall contain at least an efficiency kitchen, which includes cooking appliances, a food preparation counter, and storage cabinets that are of reasonable size in relation to the Junior Accessory Dwelling Unit.
 - b. A Junior Accessory Dwelling Unit shall have a separate entrance from the single-family dwelling.
 - c. The Junior Accessory Dwelling Unit may, but is not required to, include separate sanitation facilities. If separate sanitation facilities are not provided, the Junior Accessory Dwelling Unit shall share sanitation facilities with the single-family residence. If provided as part of the primary dwelling, the Junior Accessory Dwelling Unit shall have direct access to the primary dwelling so as to not need to go outside to access the bathroom
 - d. Unless the property is owned by a governmental agency, land trust, or housing organization, one of the dwellings on the parcel must be the bona fide principal residence of at least one legal owner of the parcel, as evidenced at the time of approval of the Junior Accessory Dwelling Unit by appropriate documents of title and residency.

- e. Prior to issuance of a building permit for a Junior Accessory Dwelling Unit, the owner shall record a covenant in a form prescribed by the city attorney, which shall run with the land and provide for the following. A copy of the recorded covenant shall be filed with the Building Department prior to issuance of a building permit:
 - i. A prohibition on the sale of the Junior Accessory Dwelling Unit separate from the sale of the single-family residence;
 - ii. A restriction on the size and attributes of the Junior Accessory Dwelling Unit consistent with this section;
 - iii. A prohibition against renting the property for fewer than 30 consecutive calendar days; and
 - iv. A requirement that either the primary residence or the Junior Accessory Dwelling Unit be the owner's bona fide principal residence, unless the owner is a governmental agency, land trust, or housing organization.
 - f. Parking is not required for Junior Accessory Dwelling Units. However, if an existing attached garage is replaced by a Junior Accessory Dwelling Unit, each removed parking space must be replaced with an off-street parking space that does not extend into the public right of way. If the proposed replacement parking is uncovered parking located in the driveway, the dimensions of the off-street parking space should at least be 9 feet by 18 feet and the space may occupy any part of the driveway so long as it does not extend into the public right-of-way and is not located in the front yard setback.
 - g. Junior Accessory Dwelling Units shall not be permitted on a parcel where water or sewer services are inadequate. Water restrictions imposed by the State Water Resources Control Board's Cease and Desist Order demonstrate existing water sources are insufficient to meet any expansion of water demand and do not satisfy criteria for the adequacy of water and sewer services. Water credits or water entitlements may be available to offset additional demand for a Junior Accessory Dwelling Unit. The adequacy of water is determined by the Monterey Peninsula Water Management District (MPWMD). Verification of water credits from MPWMD is to be submitted at the time of building permit application.
5. Utilities and Impact Fees.
- a. Except as provided in subsection (d) below, an Accessory Dwelling Unit may be required to have a new or separate utility connection, including a separate sewer lateral, between the Accessory Dwelling Unit and the utility. A connection fee or capacity charge may be charged that is proportionate to the size in square feet of the Accessory Dwelling Unit or its drainage fixture unit (DFU) values. Separate electric and water submeters shall be required for the Accessory Dwelling Unit, except that

separate water meters shall be required for Accessory Dwelling Units if and when California American Water is allowed to connect new water meters.

- b. Junior Accessory Dwelling Units and Accessory Dwelling Units converted from the existing space of a single-family dwelling or accessory structure are exempt from any requirement to install a new or separate utility connection and to pay any associated connection or capacity fees or charges, unless the Accessory Dwelling Unit is constructed within a new single-family home.
- c. All utility extensions shall be placed underground.
- d. No impact fees may be imposed on an Accessory Dwelling Unit that is less than 750 square feet in size. For purposes of this section, "impact fees" include the fees specified in Section 66000 and 66477 of the Government Code, but do not include utility connection fees or capacity charges. For Accessory Dwelling Units that have a floor area of 750 square feet or more, impact fees shall be charged proportionately in relation to the square footage of the primary dwelling unit.

6. Process and Timing.

- a. Building-permit only. The City must act on an application to create an Accessory Dwelling Unit or Junior Accessory Dwelling Unit within 60 days from the date that the City receives a completed application, unless either:
 - i. The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay; or
 - ii. When an Accessory Dwelling Unit or a Junior Accessory Dwelling Unit is submitted along with a permit application to create a new primary dwelling on the parcel the City may delay acting on the permit application until the City acts on the permit application to create the primary dwelling; or
 - iii. The applicant requests discretionary architectural review for an accessory dwelling unit more than 16 feet high, as provided in Section 112-6(2)(d)(ii) above.
- b. Mills Act. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit proposed on a property subject to a Mills Act Contract must comply with the provisions of the contract, including conformance to the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, the United States Secretary of the Interior's Standard for Rehabilitation, and the California Historical Building Code.

SECTION 21. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 22. Severability. If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have adopted the Ordinance and each section, sub-section, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases or portions to be declared invalid or unconstitutional.

SECTION 23. This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

SECTION 24. Publication. Pursuant to Charter section 4.4, this ordinance shall be published in the Monterey County Herald, a newspaper printed and published in the County of Monterey, at least three days before its adoption.

SECTION 25. The City Clerk shall send a copy of this Ordinance to the Department of Housing and Community Development within 60 days after adoption, as required by State law.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 2nd day of November, 2021, by the following vote:

AYES:	5	COUNCILMEMBERS:	Albert, Haffa, Smith, Williamson, Roberson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

DocuSigned by:

 FA1981217DEE4FB...

Mayor of said City

ATTEST:

DocuSigned by:

 ED8453A4F62C4AA...

City Clerk thereof

Sec. 38-11. Definitions

Accessory Dwelling Unit: An attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, which is located on the same parcel as a proposed or existing single-family dwelling or ~~existing~~ multifamily dwelling. An accessory dwelling unit may consist of an efficiency unit, as defined in Section 17958.1 of the Health and Safety Code; or a manufactured home, as defined in Section 18007 of the Health and Safety Code.

Junior Accessory Dwelling Unit: A residential dwelling unit that is no more than 500 square feet in size, includes an efficiency kitchen consistent with building code standards, is contained entirely within the walls of an existing or proposed single-family dwelling, including attached garages, and either includes separate sanitation facilities or shares sanitation facilities with the existing residence.

Sec. 38-26. ~~Repealed. Supplemental Regulations Applicable in R Districts.~~

~~S. Accessory Dwelling Units.~~

~~1. All accessory dwelling units shall conform with the following:~~

~~a. The lot must contain an existing single family home and no other dwelling units. No more than one accessory dwelling unit may be constructed on any lot.~~

~~b. At the time of application, the property owner shall acknowledge in writing that: (1) the accessory dwelling unit may not be sold separately from the existing single family home; (2) either the existing single family home or the accessory dwelling unit must be owner occupied; and (3) neither the accessory dwelling unit nor the single family home may be used for short term residential rentals. Prior to issuance of a building permit for the accessory dwelling unit, the owner shall record a covenant in a form approved by the City to notify future owners of the requirements of this subsection (S)(1)(b).~~

~~c. Except as modified by this subsection (S), the accessory dwelling unit shall conform to all requirements of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions of this chapter, including but not limited to height, setback, lot coverage, floor area ratio, landscape, and historic preservation requirements; unless the unit is contained in a nonconforming structure and does not expand the nonconformity.~~

~~d. The accessory dwelling unit shall conform to all applicable State and local building code requirements, including verification from the applicable water district (submitted with the application for a building permit).~~

~~that sufficient on-site water credits are available for the accessory dwelling unit. Fire sprinklers may not be required for the accessory dwelling unit unless they are required for the existing single family home.~~

~~e. An accessory dwelling unit conforming to the requirements of this section shall not be considered to exceed the allowable density for the lot upon which the unit is located and shall be deemed to be a residential use consistent with the existing general plan and zoning designations for the lot.~~

~~f. An accessory dwelling unit conforming to the provisions of this subsection (S) shall be approved ministerially as provided in Section 38-153(B).~~

~~2. Accessory dwelling units, interior, shall additionally conform with the following:~~

~~a. The accessory dwelling unit must be constructed entirely within the existing and legally created space of a single family home or accessory structure in the R-E or R-1 District.~~

~~b. The accessory dwelling unit must have exterior access independent from the existing single family home.~~

~~c. Side and rear setbacks must be sufficient for fire safety.~~

~~d. No additional parking for the accessory dwelling unit may be required. However, if the accessory dwelling unit replaces an existing garage, carport, or covered parking structure, replacement spaces must be provided to meet the requirements of Article 18 of this chapter but may be provided as covered spaces, uncovered spaces, tandem spaces, or mechanical parking lifts.~~

~~e. No new or separate utility connection directly between the accessory dwelling unit and the utility may be required.~~

~~3. Accessory dwelling units, other, shall additionally conform with the following:~~

~~a. The lot proposed for the accessory dwelling unit must be 5,000 square feet or larger.~~

~~b. All of the existing and proposed structures on the lot, excluding floor area exemptions listed in Section 38-25(D)(j), and including the proposed accessory dwelling unit, may not exceed a floor area ratio of 0.40.~~

~~e. The accessory dwelling unit may not exceed 12 feet in height.~~

~~d. The increased floor area of an accessory dwelling unit attached to the existing single family home shall not exceed the lesser of 50 percent of the living area (as defined in Government Code Section 65852.2(i) or successor provision) of the existing single family home or 1,200 square feet. The total floor area of a detached accessory dwelling unit may not exceed 1,200 square feet.~~

~~e. One additional parking space shall be provided per bedroom, which may be provided as tandem parking on an existing driveway, and shall meet applicable setback requirements for parking. Notwithstanding this provision, no additional parking may be required for accessory dwelling units located within one-half mile of a public transit stop or car share vehicle pickup location, located entirely within an existing primary residence or~~

~~an existing accessory structure, within an architecturally and historically significant historic district, or otherwise exempt under Government Code Section 65852.2(d) or successor provision.~~

~~f. If the accessory dwelling unit replaces an existing garage, carport, or covered parking structure, replacement spaces must be provided to meet the requirements of Article 18 of this chapter but may be provided as covered spaces, uncovered spaces, tandem spaces, or mechanical parking lifts.~~

~~g. A separate utility connection between the accessory dwelling unit and all utilities shall be required.~~

~~h. Accessory dwelling units shall comply with the following design standards:~~

~~(1) The accessory dwelling shall be constructed with facade materials identical in color, and similar in texture and appearance to the primary dwelling, including but not limited to roofing, siding, and windows and doors; and~~

~~(2) The accessory dwelling shall match the roof pitch and roof form of the primary dwelling in order to blend with the architecture of the primary dwelling.~~

Sec. 38-112.6. Accessory Dwelling Units and Junior Accessory Dwelling Units.

1. *General Requirements.* All accessory dwelling units shall conform with the following:

a. The parcel must be zoned to allow single-family or multifamily use.

b. The parcel may contain the following number of accessory dwelling units:

i. *Single-Family Building.* One accessory dwelling unit may be developed per lot.

(1) A new construction accessory dwelling unit may be developed as attached to or detached from the single-family dwelling.

(2) An accessory dwelling unit within the walls of a proposed or existing single-family dwelling or within an existing accessory structure, including detached garages, may be developed if the unit has exterior access separate from the proposed or existing single-family dwelling; the side and rear setbacks are sufficient for fire and safety; and an expansion of the accessory structure for ingress and egress is not more than 150 square feet.

(3) Both one accessory dwelling unit and one junior accessory dwelling unit may be developed on the same parcel with a proposed or existing single-family dwelling if the accessory dwelling unit is developed as either of the following:

a. A new construction, detached accessory dwelling unit up to 800 square feet in size, up to ~~16 feet in height~~the allowed height in subsection (2)(d) of this section, and with minimum four-foot side and rear setbacks; or

b. The accessory dwelling unit meets the standards of subsection (1)(b)(i)(2) of this section.

ii. *Multifamily Building.* ~~A parcel may contain one of the following:~~

(1) A parcel with a proposed or existing multifamily building may contain one of the following:

~~a. One accessory dwelling unit; unit may be developed on a parcel with an existing multifamily building.~~

b. Up to two accessory dwelling units if the accessory dwelling unit is detached, does not exceed up to the allowed height in subsection (2)(d) of this section, and has at least four-foot side and rear setbacks.

~~(2) A parcel with~~ On a parcel with an existing multifamily building ~~may contain~~ accessory dwelling units converted from ~~portions of the building that are not used as livable space may be converted into accessory dwelling units.~~ The number of accessory dwelling units permitted is equivalent to up to 25 percent of the number of existing, legally permitted multifamily dwelling units, or one, whichever is greater; ~~or.~~

~~b. No more than two detached accessory dwelling units. The accessory dwelling units may be up to 16 feet in height and must have at least four-foot side and rear setbacks.~~

~~c. At the time of application, the property owner shall acknowledge in writing that:~~Prior to issuance of a building permit for an accessory dwelling unit, the property owner shall record a covenant in a form prescribed by the city attorney, which shall run with the land and provide for the following:

i. The accessory dwelling unit may not be sold separately from the existing single-family or multifamily dwelling; and

ii. Neither the accessory dwelling unit nor the junior accessory dwelling unit may be used for short-term residential rentals of less than 30 consecutive days.

~~Prior to issuance of a building permit for the accessory dwelling unit, the owner shall record a covenant in a form approved by the City to notify future owners of the requirements of this subsection (1)(e). A copy of the recorded covenant shall be filed with the Building Department prior to issuance of a building permit.~~

d. *Exemptions.*

i. Notwithstanding the development and design standards of this section, accessory dwelling units that meet the standards in subsection (1)(b)(i)(3), ~~or (1)(b)(ii)(2)(b), or (1)(b)(ii)(2)~~ of this section are permitted.

ii. Notwithstanding subsection (1)(c), a single family dwelling and accessory dwelling unit that were developed by a qualified nonprofit, as that term is defined in and pursuant to Government Code Section 65852.26, may be conveyed pursuant to a tenancy in common agreement that allocates an undivided, unequal interest in the property based on the size of the dwelling that each buyer occupies if the development and the transaction meet the requirements of Government Code Section 65852.26.

e. Fire sprinklers shall not be required in the accessory dwelling unit unless fire sprinklers are required for the primary dwelling. Fire sprinklers shall not be required for an existing single family or multifamily dwelling as a condition of the construction of an accessory dwelling unit.

f. An accessory dwelling unit or junior accessory dwelling unit conforming to the requirements of this section shall not be considered to exceed the allowable density for the parcel upon which the unit is located and shall be deemed to be a residential use consistent with the existing general plan and zoning designations for the parcel.

g. An accessory dwelling unit or ~~J~~junior accessory dwelling shall not be permitted within the airport safety zone pursuant to the Airport Land Use Plan.

h. An accessory dwelling unit or junior accessory dwelling unit conforming to the provisions of this subsection shall be approved ministerially as provided in Section [38-153\(B\)](#).

2. *Accessory Dwelling Unit Development Standards.* Except as otherwise provided in this Section [38-112.6](#), all accessory dwelling units shall comply with the following development standards:

a. ~~Except as modified by this section, t~~The accessory dwelling unit shall conform to all requirements of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions of this chapter; unless:

i. ~~(i)~~ the accessory dwelling unit is contained in a ~~nonconforming~~ structure that is unpermitted and/or nonconforming with zoning and/or State and local building code requirements and all of the following apply:

(1) ~~and the creation of an accessory dwelling unit~~ does not expand or affect the nonconformity, or

(2) ~~or the nonconformity~~ does not pose a threat to public health and safety.

ii. the unpermitted accessory dwelling unit is nonconforming with zoning and/or State and local building code requirements and all of the following apply:

(1) the accessory dwelling unit was constructed prior to January 1, 2018;

(2) correcting the violation is not necessary to protect the public health and safety.

(iii.) the applicable provisions of this ~~chapter~~ Chapter 38 are inconsistent with the provisions of this Section 38-112.6~~section~~, in which case the standards of this section shall apply.

b. *Floor Area.*

i. No accessory dwelling unit shall be smaller than the size required to allow an efficiency unit pursuant to Health and Safety Code Section [17958.1](#).

ii. The floor area of an attached or detached accessory dwelling unit shall not exceed 850 square feet for a studio or one bedroom and 1,000 square feet for a unit that contains more than one bedroom.

c. *Setbacks.* Except as specified below, an accessory dwelling unit shall be required to comply with the setback requirements of the zone in which the unit is to be located.

i. No setback is required for an existing living area or an existing accessory structure converted to an accessory dwelling unit, or for a new accessory dwelling unit constructed in the same location and built to the same dimensions as an existing, legal structure, except that:

(1) An expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure is allowed solely for the purpose of accommodating ingress and egress.

(2) Setbacks shall be sufficient for fire safety.

ii. For all other accessory dwelling units, a setback of four feet is required from the rear and side property lines.

d. *Height.*

i. *Attached or Detached Accessory Dwelling Unit.* The height of the accessory dwelling unit is measured from the ground to the highest point on the roof. The height above grade of an attached ~~or detached~~ accessory dwelling unit shall not exceed ~~25+6 feet~~ feet or the height limitation that applies to the single-family or multifamily dwelling, whichever is lower. However, the accessory dwelling unit may not exceed two stories. The height of a detached accessory dwelling unit shall not exceed the following: from the ground to the highest point on the roof:

(1)- 16 feet on a lot with an existing or proposed single-family or multifamily dwelling;

(2) 18 feet on a lot with an existing or proposed single-family or multifamily dwelling if the lot is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Public Resources Code Section 21155. An additional two

feet in height may be permitted to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the single-family or multifamily dwelling

(3) 18 feet on a lot with an existing or proposed multifamily, multistory dwelling.

ii. *Second Story ~~Attached~~ Accessory Dwelling Unit/Above Garage or Carport.* If an detached accessory dwelling unit exceeds the maximum permitted height set forth in subsection (2)(d)(i) of this section, the applicant may apply for an exception through the discretionary architectural review process pursuant to Article 25 of this Chapter if:

- (1) The total height of the building, as defined in Section 38-11 (Height, Building), is 25 feet or less;
- (2) The parcel is within the R-3 zone;
- (3) The garage or carport is detached from the single family dwelling and is at the ground level of the accessory dwelling unit;
- (4) No windows or openings are permitted for that portion of the building-accessory dwelling unit that is closer than four feet to a property line; and
- (5) Any window parallel to an adjoining property line and closer than 10 feet shall be either:
 - a. Opaque and inoperable; or
 - b. Clerestory windows with a minimum height no less than six feet above floor level. (Ord. 3650 § 2, 2022)

e. Limits on lot coverage, floor area ratio, open space, front setbacks, and size must permit or shall be waived to allow a detached or attached accessory dwelling unit, with a maximum floor area of 800 square feet, maximum height of 25 feet, and minimum four-foot side and rear yard setbacks, if the proposed accessory dwelling unit is in compliance with all other development standards, including but not limited to front yard setbacks. (Ord. 3650 § 3, 2022)

f. *Access.* An accessory dwelling unit shall have a separate entrance from the single-family dwelling unit.

g. *Parking.*

- i. One additional parking space shall be provided per unit or per bedroom, whichever is less, which may be provided as tandem parking on an existing driveway, or in setback areas unless the Community Development Director makes specific findings that tandem parking and parking in setback areas is not feasible because of specific topographical conditions.
- ii. No parking may extend into a public sidewalk or public right-of-way.

iii. Notwithstanding this provision, no additional parking may be required for an accessory dwelling unit, including an accessory dwelling unit that is being proposed along with a proposed single-family or multifamily dwelling, that is:

- (1) Located within one-half mile walking distance of a public transit stop;
- (2) Located within one block of a car share vehicle pickup location;
- (3) Located entirely within the proposed or existing single-family or multifamily dwelling ~~primary residence~~ or within an existing accessory structure;
- (4) Located within an architecturally and historically significant historic district; or
- (5) Located on a parcel where on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

iv. If an existing garage, carport, or covered parking structure is demolished in conjunction with the construction of or replaced by an accessory dwelling unit, the parking spaces ~~need not~~ do not need to be replaced.

h. *Properties with Historic Overlay Zoning or Historic Zoning.* Attached or detached accessory dwelling units on a parcel with an H-1 or H-2 designation shall:

i. Be located behind the historic structure. If attached, the accessory dwelling unit shall be located at the rear of the main historic structure. If detached, new construction, the accessory dwelling unit shall be located 10 feet behind the rear of the main historic structure;

~~ii. Not exceed 16 feet in height;~~

~~iii.~~ Notwithstanding the design standards below, not match the exterior finish of the historic building; and

~~iiiv.~~ Be designed so that any new exterior door for the accessory dwelling unit will be located at the back of the structure such that the new exterior door is not facing the front yard. (Ord. 3650 § 4, 2022)

i. *Water and Sewer.* Accessory dwelling units shall not be permitted on a parcel where water or sewer services are inadequate. Water restrictions imposed by the State Water Resources Control Board’s Cease and Desist Order demonstrate existing water sources are insufficient to meet any expansion of water demand and do not satisfy criteria for the adequacy of water and sewer services. Water credits or water entitlements may be available to offset additional demand for an accessory dwelling unit. The adequacy of water is determined by the Monterey Peninsula Water Management District (MPWMD). Verification of water credits from MPWMD is to be submitted at the time of building permit application.

3. *Accessory Dwelling Unit Design Standards.* Except as otherwise provided in this chapter, all accessory dwelling units shall comply with the following design standards:

- a. *Colors and Materials.* The accessory dwelling unit shall be constructed with facade materials identical in color, and ~~identical similar~~ in texture and appearance to the single-family or multifamily primary dwelling, including but not limited to roofing, siding, and windows and doors; and
- b. *Roof Pitch.* The accessory dwelling unit shall match the roof pitch and roof form of the single-family or multifamily primary dwelling in order to blend with the architecture of the single-family or multifamily primary dwelling. The applicant may apply for an exception through the discretionary architectural review process pursuant to Article 25 of this Chapter. The Architectural Review Committee may grant such an exception if it finds that an alternative roof pitch and form design are compatible with the primary single-family or multifamily structure and neighborhood. (Ord. 3650 § 5, 2022)
- c. *State and Local Building Code Requirements.* The accessory dwelling unit shall conform to all applicable State and local building code requirements, ~~including verification from the applicable water district (submitted with the application for a building permit) that sufficient on-site water credits are available for the accessory dwelling unit.~~ The new construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the building code, as described in Section 310 of the California Building Code (Title 24 of the California Code of Regulations), unless the building official or enforcement agency makes a written finding based on substantial evidence in the record that the construction of the accessory dwelling unit could have a specific, adverse impact on public health and safety.

~~Fire sprinklers may not be required for the accessory dwelling unit unless they are required for the primary dwelling.~~

4. *Junior Accessory Dwelling Unit Development Standards.* Junior accessory dwelling units shall conform with the following:

- a. A junior accessory dwelling unit shall not exceed 500 square feet in size and shall contain at least an efficiency kitchen, which includes cooking appliances, a food preparation counter, and storage cabinets that are of reasonable size in relation to the junior accessory dwelling unit.
- b. A junior accessory dwelling unit shall have a separate entrance from the entrance of the single-family dwelling.
- c. The junior accessory dwelling unit may, but is not required to, include separate sanitation facilities. If separate sanitation facilities are not provided, the junior accessory dwelling unit shall share sanitation facilities with the single-family ~~residence~~ dwelling. If provided as part of the primary single-family dwelling, the junior accessory dwelling unit shall have direct access to the single-family primary dwelling so as to not need to go outside to access the bathroom.

d. Unless the property is owned by a governmental agency, land trust, or housing organization, one of the dwellings on the parcel must be the bona fide principal residence of at least one legal owner of the parcel, as evidenced at the time of approval of the junior accessory dwelling unit by appropriate documents of title and residency.

e. Prior to issuance of a building permit for a junior accessory dwelling unit, the owner shall record a covenant in a form prescribed by the city attorney, which shall run with the land and provide for the following: ~~A copy of the recorded covenant shall be filed with the Building Department prior to issuance of a building permit:~~

- i. A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence;
- ii. A restriction on the size and attributes of the junior accessory dwelling unit consistent with this section;
- iii. A prohibition against renting the property for fewer than 30 consecutive calendar days; and
- iv. A requirement that either the ~~primary residence~~single-family dwelling or the junior accessory dwelling unit be the owner's bona fide principal residence, unless the owner is a governmental agency, land trust, or housing organization.

A copy of the recorded covenant shall be filed with the Building Department prior to issuance of a building permit:

f. Parking is not required for junior accessory dwelling units. However, if an existing attached garage is replaced by a junior accessory dwelling unit, each removed parking space must be replaced with an off-street parking space that does not extend into the public right-of-way. If the proposed replacement parking is uncovered parking located in the driveway, the dimensions of the off-street parking space should at least be nine feet by 18 feet and the space may occupy any part of the driveway so long as it does not extend into the public right-of-way and is not located in the front yard setback.

g. Junior accessory dwelling units shall not be permitted on a parcel where water or sewer services are inadequate. Water restrictions imposed by the State Water Resources Control Board's Cease and Desist Order demonstrate existing water sources are insufficient to meet any expansion of water demand and do not satisfy criteria for the adequacy of water and sewer services. Water credits or water entitlements may be available to offset additional demand for a junior accessory dwelling unit. The adequacy of water is determined by the Monterey Peninsula Water Management District (MPWMD). Verification of water credits from MPWMD is to be submitted at the time of building permit application.

5. *Utilities and Impact Fees.*

a. Except as provided in subsection [\(5\)\(b\)](#) of this section, an accessory dwelling unit shall provide a new or separate utility connection, including a separate sewer lateral, between the accessory dwelling unit and

the utility, unless the applicant has obtained a sewer lateral inspection performed by a licensed plumber which demonstrating that the sewer lateral meets the City’s standards and specifications. Proof that the sewer lateral meets the City’s requirements shall be submitted on a sewer lateral inspection form provided by the City and completed by the professional who completed the inspection. A connection fee or capacity charge may be charged that is proportionate to the size in square feet of the accessory dwelling unit or its drainage fixture unit (DFU) values. Separate electric and water submeters shall be required for the accessory dwelling unit, except that separate water meters shall be required for accessory dwelling units if and when California American Water is allowed to connect new water meters. (Ord. 3650 § 6, 2022)

b. Junior accessory dwelling units and accessory dwelling units converted from the existing space of a single-family dwelling or accessory structure are exempt from any requirement to install a new or separate utility connection and to pay any associated connection or capacity fees or charges, unless the accessory dwelling unit is constructed within a new single-family home.

c. All utility extensions shall be placed underground.

d. No impact fees may be imposed on an accessory dwelling unit that is less than 750 square feet in size. For purposes of this section, "impact fees" include the fees specified in Sections 66000 and 66477 of the Government Code, but do not include utility connection fees or capacity charges. For accessory dwelling units that have a floor area of 750 square feet or more, impact fees shall be charged proportionately in relation to the square footage of the primary dwelling unit.

6. *Process and Timing.*

a. ~~*Building-Permit Only Review.* The City ~~only~~ requires a building permit and, as applicable, any additional services permits (e.g. water permits, sewer permits, etc.), to create an accessory dwelling unit or junior accessory dwelling unit. There may be additional permits necessary to serve an accessory dwelling unit or junior accessory dwelling unit (e.g. water permits, sewer permits, etc.).~~

~~i. The permitting agency must approve or deny an application for a permit to create or serve an accessory dwelling unit or junior accessory dwelling unit within 60 days from the date that the permitting agency receives the completed application without discretionary review or a hearing, unless either: The City must act on an application to create an accessory dwelling unit or junior accessory dwelling unit within 60 days from the date that the City receives a completed application, unless either:~~

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

~~ii. (2) When an accessory dwelling unit or a junior accessory dwelling unit is submitted along with a permit application to create a new ~~primary~~ single family dwelling or multifamily dwelling on the parcel, the ~~permitting agency~~ City may delay ~~acting approving or denying on~~~~

the permit application until the permitting agency City acts approves or denies ~~on the~~ permit application to create the single family dwelling or multifamily dwelling ~~primary dwelling~~; or

~~iii.~~ (3) The applicant requests discretionary architectural review for an accessory dwelling unit more than ~~16 feet high~~ the allowed height pursuant to subsection (2)(d) of this section and/or for alternative roof pitch/form, as provided in subsection (2)(d)(ii) or (3)(b) of this section. (Ord. 3650 § 7, 2022).

ii. If the permitting agency denies the permit application, the permitting agency will provide to the applicant within the 60 day review period a complete list of the application's deficiencies and describe how the applicant can remedy the application.

iii. If the applicant applies for a demolition permit to demolish a detached garage and a building permit to construct a detached accessory dwelling unit, and the demolition permit and building permit for the detached accessory dwelling unit will be issued at the same time. Unless the property is within an architecturally and historically significant historic district, the applicant is not required to provide written notice or post a placard for the demolition of the detached garage that will be replaced with an accessory dwelling unit.

iv. For purposes of this section, "permitting agency" means any local public agency that is involved in the review of a permit necessary to create or serve an accessory dwelling unit or junior accessory dwelling unit, including, but not limited to, planning departments, building departments, utilities, and special districts.

b. *Mills Act.* An accessory dwelling unit or junior accessory dwelling unit proposed on a property subject to a Mills Act Contract must comply with the provisions of the contract, including conformance to the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, the United States Secretary of the Interior’s Standard for Rehabilitation, and the California Historical Building Code. (Ord. 3641 § 20, 2021)



Via email -Fionna Jensen

September 30, 2022

TO: Airport Land Use Commission
RE: City of Monterey Ordinance No. 3641 Regarding Accessory Dwelling Units (ADU) and Junior ADU

The Monterey Regional Airport (Airport) staff have reviewed the City of Monterey ADU Ordinance No. 3641 as provided to the Airport by County Staff on 9/20/2022 and provide the following review comments based on the adopted Monterey Regional Airport – Airport Land Use Compatibility Plan (ALUCP).

Section 4.1.1 states:

“The ALUC shall also implement Business and Professions Code, Section 11010 (b)(13), by establishing an Airport Influence Area (AIA) in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by the ALUC. Any property located in the vicinity of the Airport within the AIA must be provided a real estate disclosure notice.”
The MRY AIA is included on Exhibit 1B of the ALUCP.

1. The Airport would request, as we always ask for when new development projects are being reviewed, that the ALUC require an Avigation Easement for each property requesting construction of an ADU or JADU, if one has not already been recorded for said property and file a copy of the signed easement with the Building Department prior to issuance of a building permit. ALUCP *Appendix F* includes a sample aviation easement to aid implementation of the ALUCP. This easement requirement would ensure the disclosure notice is documented during real estate transactions and should include: Right-of-flight at any altitude above the acquired easement surfaces, right to cause noise, vibrations, fumes, dust and fuel particle emissions, right to prevent construction or growth of all structures, objects or natural growth above the acquired surfaces, right to prohibit creation of electrical interference, unusual light sources and other hazards to aircraft flight, and other limitations appropriate to protect the public’s health, safety and welfare.
2. The Airport would request that sound attenuation measures be required to safeguard an appropriate interior noise level of CNEL 45 dB or lower is provided in all habitable rooms of the ADU and/or JADU.

Thank you for the opportunity to review and comment on REF220059, City of Monterey ADU Ordinance prior to ALUC consideration.

Respectfully,
Monterey Regional Airport

Michael La Pier, AAE
Executive Director

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