

# Draft ADU Ordinance Language

## Zones Allowed

Accessory dwelling units and junior accessory dwelling units shall be allowed in all areas zoned to allow single family residential and multifamily residential uses in compliance with the development standards set forth in section 17.52.040 (Development Standards and General Requirements) of this Chapter.

## Location of ADUs

All ADUs shall be located on the same lot with an existing or proposed dwelling.

## Number of ADUs & JADUs/Density

On lots that allow Single Family Dwellings, the property owner can have both a) 1 JADU and b) 1 ADU that is attached or detached from the main residence, provided that:

- i. The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling, existing space of a single-family dwelling, or in an accessory structure. The ADU may include an expansion of not more than 150 square feet beyond the same physical dimensions as an existing accessory structure. An expansion beyond the physical dimensions of an existing accessory structure shall be limited to accommodating ingress and egress.
- ii. The space has exterior access separate from the proposed or existing single-family dwelling.
- iii. The side and rear setbacks are sufficient for fire and safety.
- iv. The junior accessory dwelling unit complies with the requirements of Section 65852.22.

Multiple accessory dwelling units are allowed within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

At least one accessory dwelling unit is allowed within an existing multifamily dwelling. The total number of ADUs allowed is up to 25 percent of the existing multifamily dwelling units.

Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

Any ADU or JADU does not count towards the allowable density for the lot upon which it is located.

On lots of two (2) acres or more, the property owner may have two (2) ADUs, attached or detached, from the main residence provided that one of the two units are deed restricted as low income for a period of 10 years or more.

These efficiency units shall include;

- For units that are not accessible or adaptable, a partial kitchen with a sink (minimum 18 inches wide), a permanently installed two or more burner cooktop and oven, hood vent, and refrigerator (minimum 10 cubic feet), each having a clear working space of not less than 30 inches in front of the counter.
  - Food preparation counter or counters that total at least 20 square feet.
  - Storage cabinets that total at least 30 cubic feet of shelf space.
  - A separate closet.
- Compliance with light and ventilation requirements of the Atherton Building Code.
- A separate bathroom containing a water closet (toilet), lavatory (bathroom sink) and bathtub and/or shower.

### **Size allowances (Floor Area)/Setbacks**

All ADUs that comply with standards outlined in this chapter (and State Regulations) are exempt from floor area. (State code only requires 800 sq. ft. to be exempt) ADUs that are greater than 800 square feet shall comply with all local regulatory requirements.

A newly constructed detached or attached ADU that is 800 sq. ft. or less must be located at least 4 ft. from a side or rear property line. This type of ADU does not have a front yard setback and is not subject to the Heritage Tree Ordinance.

For double frontage lots, the front yard is the yard that is adjacent to the designated front of the property. The rear yard shall be the yard adjacent to the property line on the opposite side of the property from the designated front property line. ADUs would be allowed to have access from rear property line on a double frontage lot.

A newly constructed detached ADU that has a size over 800 sq. ft. up to 1,200 sq. ft. shall be located outside the accessory building setbacks and is subject to the Heritage Tree Ordinance.

A newly constructed attached ADU that has a size over 800 sq. ft. up to 1,200 sq. ft. shall be located outside the accessory building setbacks **and is subject to the Heritage Tree Ordinance.**

For any ADU, the maximum size for a studio or 1 bedroom shall be 850 square feet. A two-bedroom ADU shall be limited to 1,200 sq. ft. ADUs cannot exceed 2 bedrooms.

The maximum size for a JADU is 500 sq. ft. and is exempt from floor area.

Efficiency ADUs and JADUs are allowed. No ADU or JADU may be smaller than the size required to allow an efficiency unit pursuant to Health and Safety Code Section 17958.1, which is 150 sq. ft. The maximum size of an efficiency unit is 500 sq. ft.

Conversions of detached accessory structures to detached ADUs shall also be exempt from floor area.

Newly constructed attached ADUs with a size of 800 sq. ft. or less shall have side and rear setback of 4 ft.. There is no front setback requirement for attached ADUs with a size of 800 sq. ft. or less.

Additional square footage up to 1,200 sq. ft. would need to meet accessory structure setbacks. ADUs shall not exceed 1,200 sq. ft.

Newly constructed attached ADUs with a size over 800 sq. ft. to 1,200 sq. ft. shall be located in the main building area. These ADUs may encroach side and rear yard setbacks by not more than twenty percent (20%) of the required setback.

The increased floor area of an attached ADU shall not exceed fifty percent of the existing floor area of the main residence, unless necessary to accommodate at least an eight hundred (800) square foot ADU.

If an existing multifamily dwelling has a rear or side setback of less than four feet, no modification is required of the existing multifamily dwelling as a condition of approving the application to construct an accessory dwelling unit.

JADUs shall have the same setbacks as the main residence.

Garage and accessory structures are not considered part of the ADU as noted living area definitions.

The detached ADU shall maintain the required separation distances between main residence, accessory buildings and accessory structures as required in the accessory structures section of the zoning code.

No decks or mechanical equipment is allowed in the 4 ft. side and rear setback.

### **Separation Requirement**

A separation of at least eight feet shall be maintained between any detached ADU and the proposed or existing primary residence, unless necessary to accommodate at least an eight hundred (800) square foot ADU.

### **Entrance Requirements**

Any new attached ADU or JADU that is incorporated into a proposed or existing primary residence shall have a separate entrance facing the interior side or rear yard, where feasible. Any new detached ADU shall have a separate entrance facing towards the interior of the lot.

### **Passageway/Connections**

Internal connections are not required for attached ADUs. Internal connections are allowed between the main residence building and attached ADUs. Internal connections are not allowed for detached ADUs to other accessory buildings. Internal connections are required for JADUs.

### **Height of ADUs**

A height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit.

A maximum height of 18 feet is allowed for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit that 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 Section 21155 of the Public Resources Code. An additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit is also allowed.

A maximum height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling.

A maximum height of 25 feet or the allowed height of zoning district, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling.

Accessory dwelling units are limited to 2 stories.

ADUs are allowed above an existing garage with a height of up to 18 feet. A portion of the ADU can be located on the first floor.

No sidewall height limitations apply to ADUs

### **Parking Requirements**

Accessory dwelling units shall have one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

Uncovered off-street parking for ADUs are permitted the setback areas including tandem parking.

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, no off-street parking spaces are required.

No parking spaces for the ADU/JADU is required in the following circumstances:

- (1) The accessory dwelling unit is located within one-half mile walking distance of public transit.
- (2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

### **Lighting Restrictions**

Any lighting associated with an ADU or JADU shall be shielded or downlit and shall not shine onto adjoining properties, while meeting the minimum Building Code.

### **Screening**

A solid 6 foot high fence shall be provided along the entire front, side or rear property line adjacent to where the ADU is located. Fences shall be at the property line.

### **Existing Structures**

No setback (for ADUs/JADUs) shall be required for an existing legal living area or accessory structure (including a garage) or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit. A new structure constructed in the same location as the previously existing structure shall conform to setback requirements for the ADU.

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, off-street parking spaces do not need to be replaced.

A demolition permit for a detached garage that is to be replaced with an accessory dwelling unit shall be reviewed with the application for the accessory dwelling unit and issued at the same time.

Nonconforming zoning conditions do not have to be corrected as part of application for an accessory dwelling unit or junior accessory dwelling unit.

Nonconforming zoning conditions do not need to be corrected as part of an ADU or JADU approval. An accessory dwelling unit shall be approved regardless of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.

Only ADUs/JADUs that do not present a threat to public health and safety shall be allowed a permit without correction of nonconforming zoning conditions, building code violations, or unpermitted structures.

### **Heritage Tree Ordinance**

The Heritage Tree Ordinance does not apply to ADUs upto 800 sq. ft and JADUs upto 500 sq. ft. In all other cases, the Heritage Tree Ordinance applies. **Add Tree Ordinance language**

The main residence and accessory buildings/structures are subject to the Heritage Tree Ordinance.

### **Windows**

There are no window limitations for ADUs, except as required by the building code.

## **Basements**

Kitchens for ADUs/JADUs are not allowed in a basement.

Habitable basements are allowed under Detached ADUs; however, these basements shall count toward the floor area of the ADU. An internal connection from the ADU to the habitable basement is required. No special structures permit is required for these basements.

Habitable basements are allowed under Attached ADUs; however, these basements shall count toward the floor area of the ADU if located outside the main building area setback. An internal connection from the ADU to the habitable basement is required.

Basements under JADU will be considered as the basement for the main residence and will not count toward the sq. ft. of the JADU and no internal connection from the JADU will be allowed into the basement.

Non-habitable basements under ADUs are only allowed outside the accessory structure setback and are subject to the Heritage Tree Ordinance. Exterior access to the non-habitable basement shall be located outside the accessory structure setback. (AMC Section 17.44.030.B)

The floor area of an attached ADU or JADU do not count toward the basement allowance under 17.44.030.A.

## **Fire Sprinklers**

The installation of fire sprinklers is not required in an accessory dwelling unit if sprinklers are not required for the primary residence.

The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling or an existing multifamily dwelling.

## **Certificate of Occupancy**

A certificate of occupancy for an accessory dwelling unit will only be issued after a certificate of occupancy is issued for the primary dwelling.

## **Owner Occupancy**

For an ADU/JADU that on a single family lot, no owner-occupancy will be required on an accessory dwelling unit before January 1, 2025. Any accessory dwelling unit that was permitted between January 1, 2020, and January 1, 2025 shall not have an owner-occupant requirement.

Owner-occupancy will be not requirement for an accessory dwellings unit until January 1, 2025.

Owner occupancy is not a requirement for all accessory dwelling unit that was permitted between January 1, 2020, and January 1, 2025.

ADUs and JADUs permitted after January 1, 2025. Prior to finaling of the project for an ADU or JADU, the property owner shall record a deed restriction requiring that the owner of the property occupy either the primary dwelling unit, ADU, or JADU, or if the owner will not be residing in one of the units, lease the entire property including the primary dwelling unit, ADU, and JADU to a single tenant.

### **ADU/JADU Ownership & Rentals**

An ADU or JADU may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence.

Rentals of ADUs/JADUs shall be for more than 30 days. Short term rentals are not allowed for Accessory dwelling units.

### **Impact fees**

No Impact fees will be charges on ADU that are 750 square feet or less.

### **Utilities**

A new ADU with where there is an existing main residence shall not be required to have separate utility connections. A new ADU combined with a new house shall have separate utility connections. The connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

No impact fees will be charged on an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

### **Building Code**

Local building code requirements that apply to detached dwellings, except that the construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local 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 of the local 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. Nothing in this clause shall be interpreted to prevent a local agency from changing the occupancy code of a space that was uninhabitable space or was only permitted for nonresidential use and was subsequently converted for residential use pursuant to this section.

## Other Zoning Code

### Title 17 Zoning

#### 17.30.050 Certain Commercial-Residential Uses Prohibited.

No new commercial-residential uses are permitted anywhere in the Town of Atherton. Such prohibited uses include hotels, motels, boardinghouses, and transient guest quarters, **rentals under 30 days, including** bed and breakfasts. (Ord. 582 § 1 (Exh. A (part)), 2009)

### Title 17 Zoning

#### 17.36.030 Allowed Uses and Permit Requirements.

Table 17.36.030-1 (Allowed Uses and Permit Requirements for PFS District) identifies the allowed uses in the PFS district subject to the development standards of this chapter and all other provisions of this title. Allowed use provisions are symbolized in the table as follows:

- P = Land use permitted by right
- CUP = Land use permitted with approval of a conditional use permit
- L/ER = Land use permitted with location and environmental review

Table 17.36.030-1. Allowed Uses and Permit Requirements for PFS District

Land Use	Zoning District
	PFS
Public library	P
Public school	P
Town corporation yard	P
Town hall and associated community uses	P
Accessory Dwelling Unit in conjunction with multifamily residential uses (that accommodate housing for very low- and low-income households)	<b>P</b>
Emergency shelters	P <sup>4</sup>
Churches and places of worship	CUP
Convents	CUP
Country clubs	CUP
Residential associated with primary nonresidential use of property on same site <sup>1</sup>	CUP
Multiple-family residential uses that could accommodate housing	L/ER <sup>5</sup>



Land Use	Zoning District
	PFS
for very low- and low-income households associated with primary nonresidential use of property on same site	
Private schools	CUP <sup>2, 3</sup>
Public utilities and facilities, uses, and structures	CUP
Transportation terminal facilities	CUP

Notes:

1 Examples include dorms or teacher housing associated with school site, convent when associated with religious institutions, etc.

2 Where a master plan for a private school has been prepared and filed with the town for public record, any application for a conditional use permit shall be compared to the master plan for consistency with that document. All building and/or faculty changes, improvements, or new construction shall require a conditional use permit. To that end, all conditional use permit applications shall include the following:

- Maps and diagrams showing the proposal in relation to the master plan layout;
- History of student and faculty growth and projections of future growth, including an analysis of that growth's consistency with the master plan projections;
- A traffic and parking analysis of the proposal and comparison to the master plan projections;
- A circulation plan showing how the traffic and pedestrian circulation will function upon implementation of the proposals; and
- Other information that might be required for specific proposals, such as noise analyses, lighting plans, landscape screening plans, heritage tree locations, and other similar information.

3 In addition to other conditions of approval, the planning commission shall require the following items where relevant:

- Identification of the approved uses and hours of operation; and
- Clustering of high intensity or noise-intense structures and uses (such as gymnasiums, theaters, athletic facilities) away from neighboring residential uses, where possible.

4 Emergency shelters shall be permitted only when located within the Town Civic Center property; defined as Lots 1, 2, 24, 25 and 26, Watlington Park RSM (Resubdivision Maps) 5/8.

5 Where a master plan for a private school has been prepared and filed with the town for public record that includes multifamily residential uses that could accommodate housing for very low- and low-income households, such multifamily residential uses shall be subject to planning commission public hearing and review of the location, size, proximity to heritage trees and environmental aspects of the project but shall not result in the denial of the use.

## Title 17 Zoning

### 17.60.020 Definitions.

“Accessory building” shall mean a detached building where fifty percent or more of the footprint of the enclosed space is covered. Accessory buildings are subordinate to, and their use is customarily incidental to, that of the main building, structure, or use on the same or attached/adjacent lot as regulated in this title. This classification includes: guest houses—~~for occupancy no more than thirty days per year~~, garages, greenhouses, poolhouses, sunrooms, workshops, storage sheds, carports, patio covers, gazebos, barns, stables, and other agricultural outbuildings with solid roof construction. “Accessory structure” also means a structure that is accessory and incidental to a dwelling located on the same lot. Accessory Dwellings Units and Junior Accessory Dwelling Units have their own definition and special regulations.

“Accessory dwelling unit” or “ADU” means a building or portion of a building designed for use and occupancy by people living independently of the occupants of the main residence building. The ADU shall be on the same lot as the main residence. An ADU can be an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more

persons and is located on a lot with a proposed or existing single family or multifamily development. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation. An accessory dwelling unit also includes the following:

1. An efficiency unit.
2. A manufactured home, as defined in Section 18007 of the Health and Safety Code.

“Junior accessory dwelling unit” or “JADU” means a unit that is no more than five hundred square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit shall include an efficiency kitchen, which shall include all of the following: a cooking facility with appliances, a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.

“Efficiency unit” has the same meaning as defined in Section 17958.1 of the Health and Safety Code. “Efficiency unit” means a living unit which includes all of the following:

- Size of at least 150 square feet.
- For units that are not accessible or adaptable, a partial kitchen with a sink (minimum 18 inches wide), a permanently installed two or more burner cooktop and oven, hood vent, and refrigerator (minimum 10 cubic feet), each having a clear working space of not less than 30 inches in front of the counter.
  - Food preparation counter or counters that total at least 20 square feet.
  - Storage cabinets that total at least 30 cubic feet of shelf space
  - A separate closet.
- Compliance with light and ventilation requirements of the Atherton Building Code.
- A separate bathroom containing a water closet (toilet), lavatory (bathroom sink) and bathtub and/or shower.

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

“Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.

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

“Proposed dwelling” means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

“Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

“Tandem parking” means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

“Junior Accessory dwelling unit” or “JADU” means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence or multifamily development. A junior accessory dwelling unit shall include an efficiency kitchen, which shall include all of the following a cooking facility with appliances and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.

Efficiency kitchen defined by State Code

Health and Safety Code 65852.22(a)(6)

Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A cooking facility with appliances.

(B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

“Kitchen” (required for Attached and Detached ADUs) means any room or area intended or designed to be used or maintained for the cooking, storing, and preparation of food and includes facilities for cleaning, preparation, and storage of food and cooking and eating utensils. A standard kitchen shall have the following:

1. A cooktop, oven, hood vent (electrical burners with 110 amps allowed)
2. A refrigerator that has the following minimum dimensions 28 inches wide and 61 inches tall
3. Sink 24 inches wide with at least a 1.5 inch drain
4. Dishwasher
5. Food preparation counter or counters that total at least 20 square feet
6. Storage cabinets that total at least 40 cubic feet of shelf space
7. Kitchen area of at least 80 square feet

“Efficiency Kitchen” (allowed for JADUs and Efficiency Units) means a kitchen that includes each of the following:

1. A cook top, oven, and hood vent (electrical burners with 110 amps allowed)
2. Sink that is at least 18 inches wide with at least a 1.5 inch drain
3. Food preparation counter or counters that total at least 10 square feet in area.
4. Storage cabinets that total at least 30 cubic feet of shelf space.
5. Kitchen area of at least 50 sq. ft.

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

## **Chapter 8.10 REMOVAL OF AND DAMAGE TO HERITAGE TREES**

### **8.10.040 Permit process.**

H. Accessory Dwelling Units that have a size of 800 sq. ft. or less shall be exempt from tree protection requirements.