

ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO
PROPOSED AND INITIATED BY _____
MOVED BY _____ SECONDED BY _____

BILL NO. _____

ORDINANCE NO. _____

2ND UNIT
ORDINANCE
*
SPECIAL
PERMIT
PROCESSING

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA REPEALING SUBSECTIONS 12-105-A-4.1., 12-105-D-20., 12-105-D-24. AND 12-306-N-38., AMENDING SUBSECTIONS 12-105-A-3., 12-105-A-4., 12-105-D-18., 12-105-D-23., AND 12-306-N-1., ADDING SUBSECTIONS 12-306-N-38., AND 12-306-N-38.5., REPEALING SECTION 12-405-H, AMENDING SECTIONS 12-206.1-A, 12-207.1-A, 12-209.1-A, 12-210.1-A, 12-211.1-A AND 12-406 OF THE FRESNO MUNICIPAL CODE, RELATING TO SECOND DWELLINGS ON SINGLE FAMILY ZONED LOTS AND STREAMLINING THE PROCESS TO REFER SPECIAL PERMITS TO COUNCIL

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

SECTION 1. Subsection 3. of Section 12-105-A of the Fresno Municipal Code is amended to read:

3. ACCESSORY BUILDING shall mean a [detached] building, ~~part of a building, or structure which~~ [in size and use] is subordinate to, ~~and the use of which is incidental to that of the main building, structure or use on the same lot.~~ The Special Standards of S[ub]section 12-306-N[1] shall apply.

SECTION 2. Subsection 4. of Section 12-105-A of the Fresno Municipal Code is amended to read:

4. ACCESSORY LIVING QUARTERS shall mean [sleeping or] living quarters [accommodations] within an accessory building located on the same premises with the main building[,] ~~for use by temporary guests of the occupant of the premises,~~ such quarters [accommodations] having no kitchen facilities and not rented or otherwise used as a separate dwelling unit. [The Special Standards of Subsection 12-306-N-38.5 shall apply.]

SECTION 3. Subsection 4.1. of Section 12-105-A of the Fresno Municipal Code is repealed.

SECTION 4. Subsection 18. of Section 12-105-D of the Fresno Municipal Code is amended to read:

18. DWELLING shall mean a building[,] ~~or portion~~ [of a building or a manufactured unit] thereof designed [for] and used exclusively for residential occupancy [by one family as defined in subsection 12-105-F-1 below], ~~and permitted home occupations, including one family, two family,~~

~~and multiple dwellings, but not [to] including[e] hotels, motels, boarding or lodging houses[.] , or trailers except in the "T-P" District.~~

SECTION 5. Subsection 20. of Section 12-105-D of the Fresno Municipal Code is repealed.

SECTION 6. Subsection 23. of Section 12-105-D of the Fresno Municipal Code is amended to read:

23. ~~DWELLING GROUP shall mean two or more dwellings located on a single lot and each having separate kitchen and toilet facilities.~~

[DWELLING, SECOND shall mean a second dwelling either attached to, or detached from, the existing one-family dwelling on a lot in a single family residential zone district as provided for by State Government Code Section 65852.2, and subject to the standards of Subsection 12-306-N-38 of this Code.]

SECTION 7. Subsection 24. of Section 12-105-D of the Fresno Municipal Code is amended to read:

24. DWELLING UNIT shall mean [a suite of] two or more rooms ~~in a dwelling apartment house or apartment hotel designed for or occupied~~ [used] by one family [as defined in subsection 12-105-F-1 below,] for living or sleeping purposes and having only one kitchen and separate toilet facilities.

SECTION 8. Section 12-206.1-A of the Fresno Municipal Code is amended to read:

A. One single family dwellings unit per lot-[, except for a Second Dwelling in accordance with Subsection 12-306-N-38.]

SECTION 9. Section 12-207.1-A of the Fresno Municipal Code is amended to read:

A. One single family dwelling unit, per lot-[, except for a Second Dwelling in accordance with Subsection 12-306-N-38.]

SECTION 10. Section 12-209.1-A of the Fresno Municipal Code is amended to read:

A. One single family dwelling unit per lot, ~~except[.] in a Planned Development as permitted by Section 12-209.3-F.~~

- [1. In a Planned Development as permitted by Section 12-209.3-F; and
2. A Second Dwelling in accordance with Subsection 12-306-N-38.]

SECTION 11. Section 12-210.1-A of the Fresno Municipal Code is amended to read:

- A. One single family dwelling unit per lot, except[:] ~~in a Planned Development as permitted by Section 12-210.3-G.~~

- [1. In a Planned Development as permitted by Section 12-210.3-G; and
2. A Second Dwelling in accordance with Subsection 12-306-N-38.]

SECTION 12. Section 12-211.1-A of the Fresno Municipal Code is amended to read:

- A. One single family dwelling unit per lot[,] except[:] ~~in a Planned Development as permitted by Section 12-211.3-G.~~

- [1. In a Planned Development as permitted by Section 12-211.3-G; and
2. A Second Dwelling in accordance with Subsection 12-306-N-38.]

SECTION 13. Subsection 21 of Section 12-304-B of the Fresno Municipal code is repealed.

SECTION 14. Subsection 1. of Section 12-306-N of the Fresno Municipal Code is amended to read:

1. Accessory Building

- a. Where an accessory building is less than six (6) feet from a main building or ~~part of, or joined to the main building by a common wall,~~ or where any accessory building [contains] sleeping or living accommodations, said accessory building shall be deemed a main building for purposes of applying the property development standards of this Zoning Ordinance.

- ~~b. Where an accessory building, either attached to or detached from the main building, is less than six (6) feet from said main building, said accessory building shall be deemed a main building for purposes of applying the property development standards of this Zoning Ordinance.~~

e[b]. Where an accessory building is [six (6) feet or more] detached and separated from the main building by ~~six (6) feet or more~~, said accessory building need not be considered a main building for purposes of applying the property development standards of this Zoning Ordinance.

d[c]. Where an accessory building is [six (6) feet or more from the main building, but is] attached to the main building by a breezeway roof with an intervening space of ~~six (6) feet or more~~ and where said space [which] is open on at least two (2) sides, said accessory building need not be considered a main building for purposes of applying the property development standards of this Zoning Ordinance.

SECTION 15. Subsection 38 of Section 12-306-N of the Fresno Municipal code is repealed.

SECTION 16. Section 12-306-N of the Fresno Municipal Code is amended by adding Subsection 38. thereto to read:

[38. Second Dwelling, when proposed as defined in Subsection 12-105-D-23, shall be permitted subject to the following conditions:

- a. A site plan review application is required and shall be considered ministerially without discretionary review or hearing.
- b. The unit is not intended for sale but may be rented.
- c. The lot on which the second dwelling is proposed, shall contain an existing one-family dwelling. A second dwelling will not be permitted on a lot that already contains an Accessory Living Quarters, or another dwelling unit.

12.96 ac
50' x 140

- d. When developed with a second dwelling, the density of the subject lot shall not exceed one hundred twenty-five percent (125%) of the residential density designated by the Fresno General Plan.
- e. The second dwelling may be either attached to the existing dwelling, or detached from the existing dwelling and located on the same lot as the existing dwelling.
- f. There are neither maximum nor minimum living area limitations for a Second Dwelling, other than as a result of the project meeting all property development standards of the district in which it is located, and the density limitations of this Subsection.
- g. The second dwelling, whether attached or detached, will be considered a main building and shall comply with all property development standards of the District in which it is located.
- h. A detached second dwelling shall be a minimum of six (6) feet from the primary residence, or ten (10) feet if there is an entry from one of the units into the space between.
- i. Parking. Parking shall be provided in the following manner:
 - (1) One covered (garage or carport) parking space for the existing dwelling; plus
 - (2) One covered parking space for a second dwelling unit with one bedroom; plus
 - (3) One additional, covered or uncovered, parking space for two or more bedrooms in the second dwelling unit
- j. Access. Vehicular access shall be provided in the following manner:
 - (1) Vehicular access. If a second driveway is proposed from the street frontage of the subject lot, it shall be a "ribbon"

type driveway; i.e. two parallel strips of pavement (tire travel) with landscaping between.

(2) Pedestrian access. An all-weather surface path to the second unit shall be provided from the street frontage of the lot via a side yard area.

k. The site plan review application shall not be approved unless findings are made that there are adequate public utilities and services such as but not limited to, water, sewer, streets, fire, flood control and solid waste collection, to support the second dwelling.

l. All applications for a Second Dwelling as authorized by this subsection shall be subject to the provisions for residential development when located within the review area of the following specific plans: 1) Sierra Skypark Land Use Policy Plan; 2) Fresno-Chandler Downtown Airport Master and Environs Specific Plan; and 3) Airport and Environs Plan, Fresno Yosemite International Airport.

m. A covenant running with the land between the City and the property owner(s) shall be recorded in the Office of the County Recorder prior to the occupancy of the second dwelling, requiring that one of the dwelling units be occupied by an owner of record.

Any failure to comply with the conditions of the covenant is considered a violation of the Zoning Ordinance and subject to enforcement.

n. The second unit shall be architecturally and visually compatible with the existing dwelling and the neighborhood in which it is located. Said compatibility shall be accomplished by the exterior design of the second dwelling unit through architectural use of building forms.

height, construction materials, colors, windows, landscaping, and other methods that conform to acceptable construction practices.

- a. Notwithstanding any other Ordinance, Plan or Policy, this Zoning Ordinance takes precedence in the control of approving second dwellings on lots zoned for single family use.]

SECTION 17. Section 12-306-N of the Fresno Municipal Code is amended by adding Subsection 38.5. thereto to read:

[38.5. Accessory Living Quarters. Accessory living quarters, as defined in Subsection 12-105-A-4, are permitted in all Districts that permit a one-family dwelling, provided that the lot does not already contain another dwelling, subject to the following conditions:

- a. Accessory living quarters shall be located within an accessory building on the same lot as the existing dwelling.
- b. The living area shall not exceed 750 square feet or thirty (30) percent of the existing dwelling, whichever is less.
- c. The accessory living quarters will be considered a main building for purposes of applying the property development standards of the District in which it is located.
- d. All applications for Accessory Living Quarters as authorized by this subsection shall be subject to the provisions for residential development when located within the review area of the following specific plans: 1) Sierra Skypark Land Use Policy Plan; 2) Fresno-Chandler Downtown Airport Master and Environs Specific Plan; and 3) Airport and Environs Plan, Fresno Yosemite International Airport.

- e. The accessory living quarters shall not include a kitchen. A bar sink and an under-counter refrigerator is allowed, but no cooking devices or other food storage facilities are permitted.
- f. The accessory living quarters shall not be rented separately from the primary residence.
- g. A covenant, between the city and the property owner, specifying the limited use of the accessory living quarters, shall be recorded with the County Recorder prior to its occupancy.
- h. The accessory living quarters shall be architecturally and visually compatible with the existing dwelling and the neighborhood in which it is located. Said compatibility shall be accomplished by the exterior design of the accessory living quarters through architectural use of building forms, height, construction materials, colors, windows, landscaping, and other methods that conform to acceptable construction practices.]

SECTION 18. Section 12-405-H of the Fresno Municipal Code is repealed.

SECTION 19. Section 12-406 of the Fresno Municipal Code is amended to read:

SECTION 12-406. SPECIAL PERMITS; PROCEDURE. This section shall govern the procedure for the issuance of the special permits set forth in Section 12-405.

- A. INITIATION. Proceedings under this Section may be initiated pursuant to S[ubs]ection 12-401-A-1 (Council resolution), S[ubs]ection 12-401-A-4 (application) or S[ubs]ection 12-401-A-3 (director action).
- B. DIRECTOR REVIEW. When reviewing a request for a special permit, the Director may:
 - 1. Require that the applicant submit to the Director, of such type and in such form as he may specify, such additional information as he may deem relevant to the application.

2. Require that the mat[ter] be heard before the Director at a departmental hearing in accordance with such procedure as the Director may establish.
 3. Extend, for reasonable periods, the time within which the Director is required to give his decision pursuant to subsection C.
- C. DIRECTOR ACTION. ~~With 20 days a~~[A]fter initiation of a proceeding[,] the Director, based upon such information as may be available to him, shall[,] in writing[,] grant, grant in modified form, or deny the requested special permit.
- [Alternatively, the Director, on his or her discretion and for good cause, may refer the special permit to the Planning Commission for approval at a public hearing or stay his or her decision on the special permit until after a Planning Commission or Council decision on a related matter.]
- D. NOTICE OF DECISIONS. Notice of the Director's decision shall be given as follows:
1. **Denial.** A letter shall be mailed to the applicant, property owner and/or authorized agent as shown on the application form.
 2. **Grant.** For a special permit other [than] a site plan review, a Notice of Granting shall be mailed pursuant to S[ubs]ection 12-401-F-2.
 3. At the discretion of the Director, and with good cause, a notice of granting of a site plan review application may be mailed pursuant to S[ubs]ection 12-401-F-2.
 4. ~~At the discretion of the Director, and with good cause, the notice of granting may be foregone and the matter scheduled for a public hearing before the Planning Commission at the next available meeting.~~
- E. EFFECT OF [DIRECTOR] DECISION. [Unless appealed to the Commission pursuant to Section 12-406-F, below,] ~~¶ [t]he decision of the Director shall be final [and effective for all purposes,] subject to appeal to the Commission within the period of time prescribed.~~

- ~~F. APPEALS. When an appeal has been filed, the decision of the Director shall be set aside, and a public hearing upon the matter shall be set before the Commission pursuant to Section 12-401-B.~~
- [F. APPEAL TO THE COMMISSION. Pursuant to Section 12-401-H, any interested party may file an appeal of the Director's action to grant, grant in modified form, or deny a special permit. When the appeal is filed, said decision shall be set aside, and a public hearing upon the matter shall be set before the Commission pursuant to Section 12-401-B.]
- G. [COMMISSION] NOTICE AND HEARING. A public hearing before the Fresno City Planning Commission shall be noticed pursuant to Subsection 12-401-C-2 (mailing), and held pursuant to Section 12-401-D.
- H. COMMISSION ACTION. The Commission may grant, grant in modified form, or deny the requested special permit.
- I. ~~FINALITY.~~[EFFECT OF COMMISSION DECISION.] ~~Subject to Section 12-406-J below, the decision of the Commission shall be final at 12:01 a.m. on the sixteenth day after the date of the decision.~~ [Unless the Commission decision is set for hearing to the Council in accordance with Section 12-406-J below, the decision of the Commission shall be final and effective at 12:01 a.m. on the sixteenth day after the date of the decision, subject to writ of administrative mandamus under 1094.6 of the Code of Civil Procedures. Failure by any interested person to petition a Councilmember or the Mayor for said appeal will constitute a failure to exhaust administrative remedies.]
- ~~J. COUNCIL REVIEW FOLLOWING COMMISSION DECISION. Within fifteen days after the date of the Commission's decision, any Councilmember in whose district the project is located, or the Mayor, may refer the decision of the Commission to the Council for review. The reference shall be in writing and filed with the Director.~~

~~The filing of such a reference shall immediately stay the effectiveness of the special permit.~~

~~1. If no reference is filed, the decision of the Commission is final and becomes effective on the date of Commission action.~~

~~2. If a reference is timely filed, the matter shall be presented to the Council within fifteen days for a determination of whether or not a hearing to review the Commission's decision should be held. The Council shall review the Commission decision only upon the affirmative votes of a majority of the members of the Council.~~

~~3. Upon presentation to the Council:~~

~~a. If the vote is not to review the Commission decision, the decision of the Commission is final and becomes effective on the date of Commission action.~~

~~b. If the vote is to review the Commission decision, Council shall set the date, time and place of the public hearing, and direct staff to prepare and distribute a Notice of Public Hearing pursuant to Subsection 12-401-C-2 at no cost to the applicant.~~

~~The Council may approve, approve in modified form, or disapprove the decision of the Commission. The decision of the Council shall be final.~~

J. COUNCIL REVIEW FOLLOWING COMMISSION DECISION. Within fifteen (15) days of the decision of the Planning Commission, either the Councilmember of the district in which the project is located or the Mayor may, on his or her own initiative, or upon receiving a petition from any interested party, file a letter with the Director to set a hearing in front of Council to consider the Planning Commission decision. When a letter from a Councilmember or Mayor is timely filed with the Director, the

decision of the Commission shall be set aside, and a public hearing upon the matter shall be set before the Council pursuant to Section 12-401-B and noticed pursuant to Subsection 12-401-C-2 (mailing) and held pursuant to Section 12-401-D.]

[K. COUNCIL ACTION. The Council may grant, grant in modified form, or deny the requested special permit.]

[L. EFFECT OF COUNCIL DECISION. The Council decision shall be final and effective and subject to a writ under Code of Civil Procedure Section 1094.6 immediately upon Council action.]

[M. JURISDICTION UPON REMAND FROM COURT. If a Planning Commission or Council decision is appealed and under a petition for administrative mandamus, the Planning Commission or Council shall retain jurisdiction for purposes of carrying out the directions of the court.]

SECTION 20. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

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