

**Shadow Brook Swim Club and Homeowners Association**  
**Accessory Dwelling Unit & Junior Accessory Dwelling Unit Policy**  
**Adopted February 12, 2020**

This Policy has been created in accordance with California Government Code Section 65852.2, pertaining to ADUs (“ADUs”), California Government Code Section 658522.22 pertaining to Junior ADUs (“JADUs”) and California Civil Code Section 4751. Any and all construction to build an ADU or a JADU must be pre-approved by the Shadow Brook Swim Club and Homeowners Association (“HOA”) in accordance with this Policy, the HOA’s Architectural Control Rules, and the HOA’s Covenants, Conditions and Restrictions (“CC&Rs”).

**A. Definitions**

- (1) “ADU” means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.
- (2) “Accessory structure” means a structure that is accessory and incidental to a dwelling located on the same lot.
- (3) “Board of Directors” means the Board of Directors of the Shadow Brook Swim Club and Homeowners Association.
- (4) “Common Area” means all real property and improvements owned by the Association for the common use and enjoyment of the Members, including the swimming pool and related recreational facilities, but does not include real property over which the Association only has an easement.
- (5) “HOA” means the Shadow Brook Swim Club and Homeowners Association.
- (6) “Junior ADU” means a unit that is no more than 500 square feet in size and contained entirely within the existing footprint of single-family residence. A Junior ADU must include separate sanitation facilities.
- (7) “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.
- (8) “Owner” means an owner of a separate interest within the HOA.

**B. ADU Restrictions**

All ADUs shall comply with the following requirements:

- (1) The ADU may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
- (2) An ADU shall be permitted so long as the lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
- (3) The ADU may be either attached to, or located within, the proposed or existing primary dwelling, including attached garages, or an accessory structure detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
- (4) If there is an existing primary dwelling, the total floor area of an attached ADU shall not exceed 25 percent of the Living Area of the existing primary dwelling prior to the addition of the attached ADU, but in no event shall the attached ADU exceed 800 square feet. Consistent with the existing Remodel Rule, the total percentage of the lot covered by structures shall not exceed 33%. Consistent with current City of San Jose regulations, the cumulative coverage of the rear yard by structures - including coverage by the ADU, any accessory buildings, gazebos, sheds, or other structures – may not exceed 40% of the rear yard or 800 square feet, whichever is greater.
- (5) No additional setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing CC&R and Rules-compliant structure that is converted to an ADU or to a portion of an ADU, and a setback of no less than ~~more than~~ four feet from the side and rear lot lines shall be required for an ADU that is not converted from an existing CC&R and Rules-compliant structure or a new structure constructed in the same location and to the same dimensions as an existing CC&R and Rules-compliant structure. Consistent with current City of San Jose regulations, a minimum 10 foot setback is required on the street side for ADU's built on corner lots.
- (6) ADUs shall not be required to provide fire sprinklers if they are not required for the primary residence.
- (7) Owner-occupancy is required on the lot in which a detached ADU is built. The owner may reside in either the main residence or in the detached ADU.
- (8) ADUs shall be rented out for terms no less than one year. There shall be no short-term rentals, including but not limited to Airbnb, Vrbo, timeshares, etc. For the sake of clarity, there shall be no individual room rentals within the boundaries of the Shadow Brook Swim Club and Homeowners Association.
- (9) One ADU OR Junior ADU per lot with a proposed or existing single-family dwelling will be permitted if all of the following apply:
  - (a) The ADU or Junior ADU is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.
  - (b) In the case of a Junior ADU, the space has exterior access from the proposed or existing single-family dwelling.

(c) The side and rear setbacks are sufficient for fire and safety.

(d) The JADU complies with the requirements of California Government Code Section 65852.22, as well as all local applicable ordinances.

(e) In the case of a detached, new construction ADU, it is built in the backyard and it does not breach the minimum ~~exceed~~ four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling, and it does not exceed 300 square feet. Consistent with current City of San Jose regulations, a minimum 10 foot setback is required for corner lots on the street side.

(10) For the health and safety of the community and surrounding area, only two people are permitted to live in each ADU.

(11) No septic systems may be installed on any lot to service any type of ADU, and the ADU must be connected to the city sewer system.

**C. Junior ADU (JADU) Restrictions (in addition to the ADU restrictions above)**

(1) No more than one JADU per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot is permitted. Only two people are permitted to live in each JADU.

(2) Owner-occupancy in the single-family residence in which the Junior ADU is located shall be required. The owner may reside in either the main residence or the newly created JADU. Owner-occupancy shall not be required if the owner is a governmental agency, land trust, or housing organization.

(3) JADUs shall be rented out for terms no less than one year. There shall be no short-term rentals, including but not limited to Airbnb, Vrbo, timeshares, etc. For the sake of clarity, there shall be no individual room rentals within the boundaries of the Shadow Brook Swim Club and Homeowners Association.

(4) A permitted JADU shall be constructed within the walls of the proposed or existing single-family residence.

(5) A permitted attached ADU or JADU shall include a separate entrance from the main entrance to the proposed or existing single-family residence. An ACC-approved side or rear entrance for the attached ADU or JADU will be a part of the ACC approval process for each ADU or JADU. Maintaining the front, side and rear elevation characteristics of the existing home will be an important factor for the ACC when considering approval for each ADU or JADU.

(6) A permitted JADU shall 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 ADU.

(c) A refrigerator

(7) A permitted JADU shall include sanitation facilities (e.g. at minimum a bathroom with toilet, sink and shower)

#### **D. Additional Restrictions**

(1) All constructions of an ADU and JADU shall comply with this Policy, the HOA's Architectural Control Rules, and the HOA's CC&Rs, as well as all local ordinances.

(2) All constructions of an ADU and JADU shall comply with all applicable building and safety codes.

(3) Before obtaining a building permit for an ADU or JADU, Owner shall file with the County Recorder a declaration of restrictions containing a reference to the deed under which the property was acquired by the current Owner. The deed restriction shall state that: a) the ADU and/or JADU may not be sold separately from the primary dwelling; b) the ADU and/or JADU is restricted to the approved size; c) the ADU and/or JADU shall not be rented for a period of less than one year; and d) a statement that said deed restriction shall be binding on any successor owner of the property.

(4) The design and construction of ADUs and JADUs shall be compatible with the design and scale of the primary dwelling (using substantially the same landscaping, color, materials and design on the exterior) and the general character of the neighboring residential properties. The ACC must approve all color and materials proposed for the ADU or JADU prior to construction. All questions regarding and determining the compatibility of the design and appearance shall be decided at the discretion of the HOA Board and/or ACC.

(5) Owners shall submit their complete ADU or JADU plans to the ACC at least 30 days prior to commencing construction, which will give the ACC sufficient time to review the project before providing approval. The ACC recommends that the Owners obtain ACC approval prior to submitting the plans for the necessary city approvals.

(6) Openings (i.e., doors and windows) on exterior walls of ADUs that are closest to and face adjacent to another residentially zoned property shall be designed to minimize privacy impacts and maintain access to light and ventilation on adjacent properties. This will include restrictions on window placement, window glass type, and insulation requirements for minimizing noise.

(7) There shall be no exposed utilities pertaining to an ADU or JADU.

(8) Detached ADUs shall be limited to one level with height restrictions as follows:

- a) Single story structure with a maximum floor to ceiling height of 8 feet
- b) Crawl space height high enough for reasonable plumbing requirements
- c) Roof and slope not to exceed slope of roof of primary building/residence [use first floor slope if two floors]
- d) Top of windows to be no higher than 7 feet from interior floor
- e) No additional floors are permitted

(9) In no event shall there be any construction of an ADU on Common Area.

(10) Use of the Common Area amenities, such as the swimming pool, shall be restricted to the residents of one unit, that is, to the occupants of the primary residence or to the occupants of the ADU or JADU.

Should an Owner of an ADU/JADU desire to permit access to use of the Common Area amenities by occupants/tenants of the ADU or JADU, that Owner shall apply for such use to the Board of Directors.

(11) Owner shall provide to the Board of Directors copies of the leases and contact information of all occupants of ADUs and JADUs within 10 days of commencement of leasing period.

(12) All occupants/tenants of the primary residence and of ADUs/JADUs shall be required to comply with the HOA's CC&Rs, Policies, Rules and all other HOA governing documents.

(13) The ACC and/or the Shadow Brook Board of Directors may consult with immediate neighbors bordering the lot on which the proposed ADU or JADU will be constructed.

(14) Consistent with current City of San Jose regulations, one on-site parking space, in addition to the required on-site parking spaces for the one-family dwelling, is required for an ADU or JADU, except if there is an exemption in accordance with the San Jose municipal code.

(15) Consistent with the City of San Jose municipal code section 20.30.440, no more than fifty percent (50%) of the front setback area of any lot may be paved with asphalt, cement or any other impervious or pervious surface.

a. For lots which have a frontage width less than forty (40) feet, paving in the front setback area is limited to ten (10) feet in width or fifty percent (50%) of the width of the lot at any given point, whichever is greater.

b. Notwithstanding 15.a. above, for lots which have a frontage width less than forty (40) feet, a paved area directly contiguous with, and providing primary access to, two side by side required parking spaces, may exceed the fifty percent (50%) limitation as long as it is no more than twenty-five (25) feet long and eighteen (18) feet wide.

(16) This Policy may be amended by the Board of Directors at any time subject to statutory requirements. This policy will become null and void in the event that California Government Code Section 65852.2, pertaining to ADUs ("ADUs"), California Government Code Section 65852.22 pertaining to Junior ADUs ("JADUs") and California Civil Code Section 4751 are deemed unconstitutional or unenforceable within communities that have rules against ADUs. In that event, the CC&R's as written as of the adoption date of this Policy will govern and therefore no ADUs or JADU's will be allowed within the boundaries of the Shadow Brook Swim Club and Homeowners Association.