ORDINANCE NO. 1164

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS BANOS AMENDING ARTICLE 18 CHAPTER 3 OF TITLE 9 OF THE LOS BANOS MUNICIPAL CODE AND ADDING ARTICLE 44 TO CHAPTER 3 TITLE 9 RELATING TO ACCESSORY BUILDINGS AND STRUCTURES

WHEREAS, the City Council of the City of Los Banos finds and declares that Chapter 3 of Title 9 of the Los Banos Municipal Code, relating to accessory buildings and structures requires updating and revision; and

WHEREAS, accessory buildings and structures are a permitted use in the R-1 and R-2 residential zoning districts within the City; and

WHEREAS, the Los Banos Municipal Zoning Code does not have general regulations specific to accessory buildings and structures as to design, location and setbacks; and

WHEREAS, the lack of general regulations specific to accessory buildings and structures has caused confusion for property owners as to the zoning and building code requirements for an accessory buildings and structure in the R-1 and R-2 residential zoning districts within the City.

WHEREAS, the subject Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2), 15060(c)(3) and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378, and the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, the Planning Commission held public hearings on July 11, 2018 and August 22, 2018 and recommended approval of the Zoning Ordinance amendment with findings of General Plan consistency, and

WHEREAS, the City Council conducted a duly noticed public hearing on the recommended changes to the Zoning Code pertaining to accessory buildings and structures on September 19, 2018 and October 3, 2018 at which time all individuals desiring to comment on the proposed amendments were heard; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LOS BANOS DOES ORDAIN AS FOLLOWS:

Section 1: Sections 9-3.1803, 9-3.1804, 9-3.1805, and 9-3.1807 are hereby repealed.

Section 2: Article 44 of Chapter 3 of Title 9 of the Los Banos Municipal Code shall be added to read as follows:

TITLE 9 PLANNING AND ZONING
CHAPTER 3 ZONING
ARTICLE 44 ACCESSORY STRUCTURES
IN RESIDENTIAL R-1 and R-2 ZONING DISTRICTS
Sec. 9-3.4401. Purpose and Applicability.

The purpose of this Article is to establish standards to regulate attached and detached accessory buildings and structures, in the R-1 and R-2 residential zoning districts within the City, to ensure that such buildings and structures: (i) do not create public safety or public nuisance issues; (ii) do not create an adverse aesthetic from street rights-of-way or adjacent/neighbor properties; and (iii) do not create an adverse impact to adjacent parcels or the surrounding neighborhood. The intent of these regulations is to complement the requirements and standards of the City's adopted building code and fire code.

Sec. 9-3.4402. Definitions. For the purposes of this Article unless otherwise apparent from the context, certain words and phrases in this Article are defined below.

"Accessory building or structure" means an attached or detached building or structure, permanent or temporary, the use and size of which is necessarily and customarily associated with, and incidental and subordinate to that of the principal dwelling on the same lot. Examples of accessory buildings or structures include, but are not limited to: a detached garage, a tool shed, a storage shed, a carport, a shade canopy structure, a greenhouse, a gazebo, a pergola, a patio cover, a landscape feature, a deck, a recreational structure, and/or a swimming pool. Second dwelling units (as defined in Sec. 9-3.3002) are not considered an accessory building or structure for the purposes of this Article.

"Carport" means an attached or detached permanent roofed structure used for shielding or protection of vehicles.

"Clear vision triangle" means for an intersection: the area created by drawing a triangle having twenty foot (20') tangents at the curb line; and for a driveway: the area created by drawing a triangle having twenty foot (20') tangents at the outside of the driveway and the curb line.

"Enclosed" means closed on all sides such as an outdoor room with walls or windows.

"Patio cover means an attached or detached structure that provides shade and/or rain coverage for a patio or deck. A patio cover may have an open or solid roof. Open on at least three (3) sides.
"Pergola" means a freestanding structure with an open roof that is supported by columns or posts. A pergola may be used to cover a walkway or to provide filtered shade for an outdoor living space. Open on at least three (3) sides.

"Shade Canopy or Shade Canopy Structure" means a detached roofed structure consisting of a sheet of metal or flexible material, fabric, or membrane such as nylon, plastic, or other similar material that is supported by or attached to a frame having a location on the ground and made of fiberglass, metal, or plastic or any other similar material, and used for the shielding or protection of vehicles or other equipment stored outside. Shade canopy structures include but are not limited to prefabricated canopies ready-made for simple assembly and canopies which are built, constructed, or composed of parts joined together in some definite manner.

"Unenclosed" means open on at least three (3) sides.

Sec. 9-3.4403. Accessory Buildings or Structures in General.

(a) An accessory building or structure shall only be constructed concurrent with or after the construction of the primary residence on the same site. No accessory building or structure is permitted unless a principal residential dwelling exists and is occupied for the use intended. If the principal residential dwelling is destroyed or demolished the property owner shall within ninety (90) days apply for an administrative permit to allow an existing accessory building or structure to remain on the site. In the case of destruction or demolition of the principal residential dwelling the existing accessory building or structure may be allowed to remain on the site for twenty four (24) months and an extension of twelve (12) months if a building permit has been issued for the construction of the principal residential dwelling.

(b) An accessory building or structure shall be necessarily and customarily associated with, incidental and subordinate to the primary residential use of the site and shall not alter the character of the primary use.

(c) It shall be the responsibility of the Community and Economic Development Director to determine if a proposed accessory building or structure is necessarily and customarily associated with, incidental, and subordinate to the principal residential dwelling.
Sec. 9-3.4404. General Requirements. Except as otherwise specifically set forth in Section 9-3.4405 all accessory buildings or structures in the R-1 and R-2 residential zoning districts within the City are subject to the following standards.

(a) Lot coverage. A single accessory building or structure shall not occupy more than thirty percent (30%) of the required rear yard area, nor shall all such accessory buildings or structures collectively occupy more than fifty percent (50%) of the required rear yard area. The required rear yard area is defined as that area of the property between the rear property line and the required rear yard setback line for the principal residential dwelling. The total coverage for all buildings, including the principal residential dwelling, and all accessory buildings or structures, parking areas, driveways and patios shall not exceed seventy percent (70%) of the entire lot. Back and Side Yard Patio Covers, Front Yard and Back Yard Landscape Features, Swimming Pools, and Play Equipment, shall not be included in the lot coverage calculations.

(b) Location.

1. Accessory buildings or structures shall be located on the same lot as the principal residential dwelling.

2. No accessory building or structure shall be attached to a boundary fence or wall.

3. Except as set forth in Section 9-3.4405 no accessory building or structure shall be located in the front of the house regardless of setback requirements.

4. Enclosed accessory buildings or structures of one hundred twenty (120) square foot or less shall have a minimum separation of three feet (3') from the principal residential dwelling or any other enclosed building or structure on the lot. Increased separation requirements may be applicable to habitable buildings or structures as provided in the building and fire codes.

5. Enclosed accessory buildings or structures greater than one hundred twenty (120) square feet shall have a minimum separation of six feet (6') from the principal residential dwelling or any other enclosed building or structure on the lot. Increased separation requirements may be applicable to habitable buildings or structures as provided in the building and fire codes.

(c) Setbacks and height limitations.

1. Enclosed accessory buildings or structures of one hundred twenty (120) square foot or less of area and not exceeding ten feet (10') in height must be set back from the rear or side property line a minimum of one foot (1') six inches (6") as measured from the wall or eave of the accessory structure, whichever is closer to the property line.

2. Enclosed accessory buildings or structures greater than one hundred twenty (120) square feet of area or greater than ten feet (10') in height, but not exceeding fifteen feet (15') in height, must be setback from the rear and side property lines a minimum of three feet (3') as measured from the wall or eave of the accessory structure, whichever is closer to the property line. For each foot in height above ten feet (10') the three foot (3') setback from the rear and side property lines shall be increased by one foot (1').

3. Accessory buildings or structures exceeding fifteen feet (15') in height are subject to Conditional Use Permit approval by the Planning Commission. The Commission may conditionally approve or deny a use permit for an accessory building or structure exceeding fifteen feet (15') in height if it finds that said building or structure may have a demonstrated reduction of privacy on adjoining properties, a negative aesthetic effect on adjoining properties, a reduction in air flow onto adjoining properties, or the shading of an adjoining property that may reduce vegetative use or solar access of said property.
(d) Design. Accessory buildings or structures greater than one hundred twenty (120) square feet of area shall share compatible architecture, material, and surface textures and colors as the principal residential dwelling.

(e) Building Permit. All accessory structures require building permits except as noted in the 2013 California Building Code (CBC) section 105.2 "Work exempt from permit", which specifies no building permit is required for "One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet". However, a permit is required for any electrical, plumbing or mechanical that is run to, or installed in, an accessory structure even if the structure does not exceed one hundred twenty (120) square feet. All accessory buildings or structures must comply with the provisions of this Article whether or not a building permit is required.

(f) Zoning Clearance Certificate. All accessory buildings or structures in the R-1 and R-2 residential zoning districts within the City require a zoning clearance certificate issued by the Community and Economic Development Director verifying that the accessory building or structure complies with the requirements of this Article and/or other applicable provisions of the Los Banos Municipal Codes whether or not a building permit is required.

Sec. 9-3.4405. Standards for Specific Accessory Buildings and Structures. In addition to the General Requirements set forth in this Article the following standards shall apply to specific accessory buildings and structures.

(a) Shipping Containers. Shipping containers are not permitted as a residential accessory building or structure subject to the provisions of Section 9-3.3803.

(b) Front Yard - Shade Canopy or Shade Canopy Structure(s). Shade Canopy or Shade Canopy Structure(s) are not permitted in the front setback.

(1) A Shade Canopy or Shade Canopy Structure existing on a residential lot in the front set back prior to January 1, 2018, shall be allowed if the following criteria is met:

(i) The Shade Canopy Structure is detached from the principal residential dwelling;
(ii) The Shade Canopy Structure is constructed of metal or wood material frame;
(iii) The Shade Canopy Structure has a peaked roof;
(iv) The Shade Canopy Structure is secured directly into a concrete driveway;
(v) The Shade Canopy Structure matches or compliments the exterior color of the principal residential dwelling;
(vi) The Shade Canopy Structure is located at least twelve inches (12") from the front property line and at least twelve inches (12") from the side property line;
(vii) The Shade Canopy Structure is completely open on all sides;
(viii) The Shade Canopy Structure is located directly over a City approved driveway/hardscape;
(ix) The Shade Canopy Structure does not exceed a height of fifteen feet (15');
(x) The Shade Canopy Structure does not exceed 50% of frontage;
(xi) The Shade Canopy Structure is not located in the public right of way and is located outside of the clear vision triangle.

(2) Registration Requirement - Existing Front Yard - Shade Canopy or Shade Canopy Structure(s). On or before December 31, 2018, an owner or tenant of a residential property shall register with the Community and Economic Development Department in order to maintain a Shade Canopy Structure within the front yard setback. The registration application shall include, at a minimum, the following information: name, address, telephone number(s), of the tenant and/or the legal owner of the property; proof that the Shade Canopy Structure existed on the property prior to January 1, 2018; addresses the criteria set forth in sub section (1); and, a current photo of the Shade Canopy Structure. The Community and Economic Development Director shall be responsible for
determining whether or not the required criteria set forth in sub section (1) has been satisfied.

(3) Conditions - Existing Front Yard - Shade Canopy or Shade Canopy Structure(s). If the Community and Economic Development Director determines that the criteria for relief from the setback requirement has been satisfied the following conditions shall apply:

(i) The Shade Canopy Structure shall only be utilized for legally parked operable vehicles/trailers;
(ii) The Shade Canopy Structure shall not to be used for storage of personal property other than vehicles/trailers;
(iii) The Shade Canopy Structure shall be maintained in good condition;
(iv) Upon sale or transfer of ownership of the property the Shade Canopy Structure shall be immediately removed. In the case of a tenant, upon the tenant ceasing to occupy the property the Shade Canopy Structure shall be immediately removed.

(4) Removal - Existing Front Yard - Shade Canopy or Shade Canopy Structure(s). An owner or tenant who does not register a pre-existing Shade Canopy Structure on or before December 31, 2018 or if it is determined that the criteria set forth in sub section (1) has not been satisfied, shall remove the Shade Canopy Structure from the front yard setback on or before December 31, 2018.

(c) Back and Side Yard - Shade Canopy or Shade Canopy Structure(s). A Shade Canopy or Shade Canopy Structure that is detached from the primary dwelling, and open on all sides, may be located within the required rear and side setback subject to the following:

(1) No part of a Shade Canopy or Shade Canopy Structure shall be closer than three feet (3') to the rear property line, three (3) feet to interior side property line, and ten feet (10') to street side property line of a reverse corner lot.

(2) The Shade Canopy or Shade Canopy Structure shall not exceed fifteen feet (15') in height. For each foot in height above eight feet (8') the three foot (3') set back from the rear property line shall be increased by one foot (1').

(d) Back and Side Yard Patio Covers. A patio cover or pergola that is attached to or detached from the primary dwelling, and open on at least three sides, may be located within the required rear and side setback subject to the following:

(1) No part of a patio cover or pergola shall be closer than three feet (3') to the rear property line, three (3) feet to interior side property line, and ten feet (10') to street side property line of a reverse corner lot.

(2) The patio cover or pergola shall not exceed fifteen feet (15') in height. For each foot in height above eight feet (8') the setbacks set forth in subsection (1) shall be increased by one foot (1').

(e) Front Yard Landscape Features

(1) Unenclosed pergolas or similar structures may be located in front yard, but not within the required front yard setback;

(2) An entry trellis or entry arbor structure may be located over a walkway that extends between the public sidewalk and the front entrance of a residential dwelling provided that the structure shall not exceed ten feet (10') in height, shall not exceed eight feet (8') in width, shall be at least three feet (3') from the front property line and at least three feet (3') from the side property line, provided the structure is located outside of the clear vision triangle.
(3) Other decorative landscape features (structures) covering no more than twenty five (25) square feet and no more than eight feet (8') tall may be located within the front yard and front yard setback, but not within the public right-of-way, provided the structure is located outside of the clear vision triangle.

(f) Swimming pools.

(1) An in-ground swimming pool may be located in the rear or side yard, with a minimum of a three foot (3') setback between the pool and the rear and side property lines and a five foot (5') setback between the pool and the principal dwelling.

(2) An in-ground swimming pool shall be secured by fencing or building walls with a minimum height of five feet (5'). Any gates in the fencing must be provided with self-closing and self-latching mechanisms.

(3) An above-ground swimming pool may be located in the rear or side yard, with a minimum of a three foot (3') setback between the pool and the rear and side property lines and a five foot (5') setback between the pool and the principal dwelling.

(4) An above-ground swimming pool in excess of fifty (50) gallons shall be secured by fencing or building walls with a minimum height of five feet (5'). Any gates in the fencing must be provided with self-closing and self-latching mechanisms.

(g) Play equipment. Play equipment (structure) including but not limited to play sets, playhouses, skate ramps, basketball hoops, may be located within the required rear and side setback subject to the following:

(1) No part of the play equipment (structure) shall be closer than three feet (3') to the rear property line, three feet (3') to interior side property line, and ten feet (10') to street side property line of a reverse corner lot.

(2) The play equipment (structure) shall not exceed fifteen feet (15') in height. For each foot in height above eight feet (8') the setbacks set forth in subsection (1) shall be increased by one foot (1').

(h) Decks.

(1) Front yard - Decks. Uncovered decks under thirty inches (30") in height, as measured from the pad grade, may be located in front yard, but not within the required front yard setback.

(2) Back yard and side yard - Decks. Uncovered decks under thirty inches (30") in height, as measured from the pad grade, may be located in the back yard or side yard. No part of an uncovered deck shall be closer than three feet (3') to the rear property line, three feet (3') to interior side property line, and three feet (3') to street side property line of a reverse corner lot. Uncovered decks over thirty inches (30") in height, as measured from the pad grade, may be located in the back yard or side yard subject to the setback requirements of the principal residential dwelling.

(i) Carports and Garages. Carports and garages shall comply with the development and setback requirements of the applicable/underlying zoning district and shall share compatible architecture, material, and surface textures and colors as the principal residential dwelling.
Sec. 9-3.4406. Minor Adjustments.

(a) The Director may grant minor adjustments to provide for minor exceptions from the site standards established by this Article for height, setbacks, separation between accessory structures on the same property, and lot coverage, in order to address practical hardships that would result from the strict application of site standards or to accommodate a superior design that is also compatible with the neighborhood. In evaluating the hardship the Director shall consider the degree and nature of the hardship as against the stated purpose of the Article.

(b) Minor adjustments shall be limited to the following exceptions from site standards:

(1) Height: Up to a 10% increase in the allowed height;

(2) Setbacks: Up to a 25% reduction in the required front, side or rear setback;

(3) Separation between structures: Up to a 15% exception from the separation requirement between accessory structures on the same property; and/or

(4) Lot Coverage: Up to a 15% increase of the total allowable lot coverage.

(c) When the Director approves a minor adjustment, property owners existing at the time, located within three hundred feet (300') shall be notified of the decision in compliance with Section 9-3.2323 of this title (Administrative Permit) and Chapter 3 Part 4 of this title (Use Permits). The notice shall identify the proposed adjustment and the available appeal process. The decision shall not take effect until the appeal period ends in compliance with Section 9-3.2330 of this title (Appeals).

Sec. 9-3.4407. Appeal. The decision of the Community and Economic Development Director or designee may be appealed as provided by the appeal procedure provided in Part 6 of Article 23 of this Chapter.

Sec. 9-3.4408. Enforcement.

(a) It is unlawful and a public nuisance to intentionally violate any of the provisions of this Article. Violation of this Article may be charged as either an infraction or a misdemeanor. Upon conviction of a misdemeanor, a person shall be subject to payment of a fine, or imprisonment, or both, not to exceed the limits set forth in California Government Code Section 36901.

(b) In addition to any other remedy or penalty set forth in this Article or this Code, administrative penalties may be imposed pursuant to applicable provisions of Chapter 11 Title 4 of this Code against any responsible party, in violation of any of the provisions of this Article. Imposition, enforcement, collection and administrative review of administrative penalties imposed shall be conducted pursuant to Chapter 11 Title 4 of this Code.

(c) Remedies under this Article are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

Section 3. To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent or conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

Section 4. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this
Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

Section 5. The proposed amendments to the Los Banos Municipal Code do not propose any changes to City policies or regulations that would result in a direct or indirect physical environmental impact; therefore it has been determined that this ordinance amendment is covered by the general rule that the California Environmental Quality Act applies only to projects which have the potential for causing a significant effect on the environment pursuant to CEQA guidelines section 15601(b)(3) and is not subject to environmental review.

Section 6. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member Lewis and seconded by Council Member Silveira on the 19th day of September, 2018.

Passed on the 3rd day of October, 2018 by the following vote:

AYES: Council Members Faria, Johnson-Santos, Lewis, Silveira
       Mayor Villalta
NOES: None
ABSENT: None

APPROVED:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk