

Attachment No. PC 1

Draft resolution recommending approval of
Zoning Code Amendment and Local
Coastal Program Amendment (PA2025-
0093)

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RESOLUTION NO. PC2025-014

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, RECOMMENDING CITY COUNCIL ADOPT AN AMENDMENT TO TITLE 20 (PLANNING AND ZONING) AND TITLE 21 (LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN) TO MODIFY STANDARDS FOR ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS (PA2025-0093)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. On August 8, 2017, the City of Newport Beach adopted its accessory dwelling unit ordinance as Sections 20.48.200 (Accessory Dwelling Units) and 21.48.200 (Accessory Dwelling Units) ("ADU Ordinance") of the Newport Beach Municipal Code ("NBMC") (Ordinance No. 2017-11). Since its original adoption, the ADU Ordinance has been amended several times to address changes to State ADU law including, Ordinance No. 2018-14, Ordinance No. 2020-9, Ordinance No. 2022-5, and Ordinance No. 2023-2.
2. On March 9, 2021, the City Council adopted Resolution No. 2021-18 to add City Council Policy K-4 (Reducing the Barriers of the Creation of Housing) to the City Council Policy Manual. Council Policy K-4 encourages the development of accessory dwelling units as an important strategy to accommodate future growth and is an integral strategy to help meet the City's Regional Housing Needs Allocation ("RHNA").
3. On February 14, 2023, the City Council adopted Ordinance No. 2023-2, the City's most recent amendment to the ADU ordinance. Subsequent to its adoption, the ordinance was submitted to the California Department of Housing and Community Development ("HCD") on February 18, 2023, pursuant to Government Code Section 66326, which requires local governments to submit their adopted ADU ordinances for review by HCD within 60 days of adoption.
4. Senate Bill 477 ("SB 477"), was adopted in 2024 which, renumbered California Government Code Sections 65852.2, 65852.22, 65852.23, and 65852.26 to Government Code Section 66310-*et seq.* 66342 and imposed new limits on cities ability to regulate ADUS and JADUs.
5. Additionally, Assembly Bill 2533 ("AB 2533"), and Senate Bill 1211 ("SB 1211"), also adopted in 2024, amended Government Code Section 66310 *et seq.* to impose further limits on cities ability to regulate ADUs and JADUs.
6. On October 1, 2024, HCD completed its review of the ADU Ordinance and issued a letter titled "Review of Newport Beach's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, §§ 66310 – 66342)" (HCD Letter) stating that the

City's current ADU Ordinance does not comply with State ADU Law governing ADUs. The HCD Letter is attached as Exhibit "C" to this resolution. The HCD letter outlined the various components of the City's ADU Ordinance that HCD believes are not in compliance with State ADU Law. In its letter, HCD directs the City to update its ADU Ordinance to comply with State ADU Law, or provide findings as part of a resolution that justify why the City's existing ADU Ordinance is consistent with State ADU Law. If the City fails to take either course of action, HCD will notify the City and potentially the California Office of the Attorney General that the City is in violation of State ADU Law.

7. On October 25, 2024, the City of Newport Beach Community Development Department issued a letter to HCD in response to their review of the ADU Ordinance. In its letter, the City affirmed its commitment to addressing the required revisions to the City's ADU Ordinance to comply with current SB 477, AB 2533, SB 1211, and SB 1077.
8. The City desires to amend its local regulatory scheme for the construction of ADUs and JADUs to respond to the HCD Letter and address the amended provisions of Government Code Section 66310 *et seq.*
9. A public hearing was held on July 17, 2025, in the Council Chambers located at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the public hearing was given in accordance with California Government Code Section 54950 *et seq.* and Chapters 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Zoning Code Amendment is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 21080.17 of the Public Resources Code and Section 15282(h) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, which states the adoption of an ordinance regarding second units to implement the provisions of Sections 66310 through 66342 of the Government Code are exempt from the requirements of CEQA. In addition, this Local Coastal Program Amendment is exempt from environmental review pursuant to CEQA Guidelines Section 15265(a)(1), as local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program. Similarly, the ministerial approval of accessory dwelling units is not a project for CEQA purposes, and environmental review is not required prior to approving individual applications.

SECTION 3. FINDINGS.

1. Amendments to the NBMC are legislative acts. Neither the City nor State Planning Law set forth any required findings for either approval or denial of such amendments.
2. ADUs and JADUs provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

In addition, homeowners who construct ADUs and JADUs benefit from added income and increased sense of security.

3. Allowing ADUs and JADUs in conjunction with existing or proposed residential development provides additional rental housing stock, some of which will satisfy the City's 6th Cycle Regional Housing Needs Assessment (RNHA).
4. Adopting an ordinance consistent with Government Code Sections 66310 through 66342 ensures and reinforces the commitment that the City has made to promote and incentivize ADU growth via the established Policy Action 1H: Accessory Dwelling Unit Construction of the City's 6th Cycle Housing Element.
5. Adopting an ordinance to address State ADU Law revisions is consistent with Council Policy K-4 (Reducing the Barriers to the Creation of Housing) which encourages the development of accessory dwelling units as an important strategy to accommodate future growth and as an integral strategy to help meet the City's Regional Housing Needs Allocation (RHNA).
6. By adopting an ordinance amending the Local Coastal Program, the City will continue to implement Coastal Land Use Plan Policy 2.7-5 of the Local Coastal Program, which encourages consistency with State ADU Law for the purpose of increasing the supply of lower-cost housing in the coastal zone that meets the needs of existing and future residents, while respecting the architectural character of the existing neighborhoods and remaining consistent with the LCP.
7. ADUs and JADUs offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods inside and outside the coastal zone, while respecting architectural character.
8. Adopting an ordinance consistent with Government Code Sections 66310 through 66342 ensures that the character of the City is preserved to the maximum extent possible and that the City's regulation regarding ADUs and JADUs continues to promote the health, safety, and welfare of the community.
9. The proposed amendments are consistent with and implement California Government Code Sections 66310 through 66342. The proposed changes to the NBMC are solely intended to address updated requirements under State ADU Law and the HCD Letter. No additional changes are proposed as part of this amendment.
10. The HCD Letter requests that NBMC Section 20.38.200 (D) (3) and (4)(a)(iii) be amended to address the definition of a "lot". HCD cites the 2022 California Building Code (CBC), which defines "lot" as "A portion or parcel of land considered as a unit". However, Government Code Sections 66310 through 66342 do not include a definition of a "lot" and do not cite the CBC for the definition of a "lot". The existing language of NBMC Section 20.38.200 (D)(3) and (4)(a)(iii) reads, "For purposes of this section, a multi-unit development approved and built as a single complex shall be considered one lot, regardless of the number of parcels." This language is consistent with NBMC Section 20.70.020 (Definitions of Specialized Terms and Phrases) which defines a "lot" as, "...the basic unit of land development. A designated area of land established by plat, subdivision, lot line adjustment, or as otherwise permitted by law, to be

used, developed, or built upon as a unit. Typically, a lot is indicated upon a final map, parcel map, lot line adjustment map, certificate of compliance, or record of merger filed in the Office of the County Recorder...". Furthermore, NBMC Section 20.70.020 (Definitions of Specialized Terms and Phrases) defines "Site" as, "...a lot or adjoining lots under single ownership or single control, considered as a [Numerical] unit for the purposes of development or other use." These codified definitions adequately define "lot" for the purpose of regulating ADUs and JADUs, therefore, no changes are necessary to address this comment from HCD.

11. The HCD Letter asserts that the City cannot impose standards of a local ordinance, regulation, or policy not contained within the City's ADU ordinance from being the basis of delay or denial of an ADU or JADU, with the exception of the CBC. However, pursuant to Government Code Section 66314 (b)(1), a local jurisdiction is allowed to impose objective standards on ADUs and JADUs, with the exception of ADUs and JADUs that are specifically protected under Section 66323 of the Government Code. Therefore, the proposed amendment includes references to Government Code 66323 to ensure that Government Code 66323 supersedes the development standards of the NBMC where applicable.
12. The HCD Letter requests NBMC Section 20.38.200 (F)(2)(b) related to setbacks be amended to include reference to JADUs in the language to process building permits and demolition permits concurrently for ADUs that are proposed to replace a detached garage. However, Government Code sections 66310 through 66342 do not explicitly allow JADUs to be created from detached structures, including garages. Therefore, adding JADUs into NBMC Section 20.38.200 (F)(3) would create privileges for JADU development that are not found in Government Code Sections 66310 through 66342. Therefore, the existing language is consistent with the provisions of Government Code Section 66333(d). No changes are necessary to address this comment from HCD.
13. The HCD Letter requests that NBMC Section 20.38.200 (F)(3)(b) be amended to clarify that the height limit for ADUs and JADUs attached to a primary dwelling shall not be less than 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower. The existing ADU ordinance language outlines that attached ADUs and JADUs are limited to the base height limit for the primary dwelling. The City's various residential zoning districts have base height limits that exceed the 25-foot height limit allowed by the State, therefore, the City's existing ADU Ordinance is more permissive than State ADU Law. Imposing the requested amendment would impose a height limit that is lower than currently permitted by the underlying zoning districts. Therefore, The City's existing ordinance is more permissive than State ADU Law and no amendments are necessary to address this comment from HCD.
14. The HCD letter requests that NBMC Section 20.48.200 (H)(3) be amended to remove owner occupancy requirements for ADUs. This revision is not necessary given the existing ADU ordinance does not require owner occupancy of ADUs and specifies that owner occupancy is only required for JADUs. JADU owner occupancy is authorized by Government Code Section 66333(b). Therefore, no changes are necessary to address this comment from HCD.
15. The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby finds this action is statutorily and categorically exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 21080.17 of the Public Resources Code and Section 15282(h) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, which states the adoption of an ordinance regarding second units to implement the provisions of Sections 66310 through 66342 of the Government Code is exempt from the requirements of CEQA. Similarly, the ministerial approval of accessory dwelling units is not a project for CEQA purposes, and environmental review is not required prior to approving individual applications.
2. The Planning Commission hereby recommends the City Council approve an amendment to Title 20 (Planning and Zoning) of the NBMC as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.
3. The Planning Commission further recommends that the City Council authorize the submittal of an amendment to Title 21 (Local Coastal Program Implementation Plan) of the NBMC, attached hereto as "Exhibit B" and incorporated herein by reference, to the California Coastal Commission for its review and certification.

PASSED, APPROVED, AND ADOPTED THIS 17TH DAY OF JULY 2025.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Mark Rosene, Chair

BY: _____
David Salene, Secretary

Attachment(s): Exhibit A – Zoning Code Amendment No. PA2025-0093
 Exhibit B – Local Coastal Program Amendment No. PA2025-0093
 Exhibit C – HCD Review Letter Dated October 1, 2024

EXHIBIT “A”**ZONING CODE AMENDMENT NO. PA2025-0093****20.48.200 Accessory Dwelling Units.**

A. Purpose. The purpose of this section is to establish the procedures for the creation of accessory dwelling units and junior accessory dwelling units, as defined in Part 7 (Definitions) of this title and in California Government Code Sections 66310 through 66342, in areas designated for residential use, including as part of a planned community development plan or specific plan, and to provide development standards to ensure the orderly development of these units in appropriate areas of the City.

B. Effect of Conforming. An accessory dwelling unit or junior accessory dwelling unit that conforms to the requirements in this section shall not be:

1. Deemed to be inconsistent with the General Plan and zoning district designation for the lot on which the accessory dwelling unit or junior accessory dwelling unit is located;
2. Deemed to exceed the allowable density for the lot on which the accessory dwelling unit or junior accessory dwelling unit is located;
3. Considered in the application of any ordinance, policy, or program to limit residential growth; or
4. Required to correct nonconforming zoning condition(s), building code violation(s), and/or unpermitted structure(s) that do/does not present a threat to public health and safety and is/are not affected by the construction of the accessory dwelling unit or junior accessory dwelling unit. This does not prevent the City from enforcing compliance with applicable building standards in accordance with California Health and Safety Code Section 17980.12.

C. Review Authority. Accessory dwelling units and junior accessory dwelling units shall be approved in any residential or mixed-use zoning district, subject to issuance of a building permit and the following conditions:

1. There is an existing or proposed dwelling unit on the lot;
2. The dwelling conforms to the development standards and requirements for accessory dwelling units and/or junior accessory dwelling units as provided in this section and California Government Code Section 66323; and
3. The building permit shall be considered and approved ministerially, without discretionary review or a hearing, within sixty (60) days from the date that the City determines an application to be complete, unless either:
 - a. The applicant requests a delay, in which case the sixty (60)-day time period is tolled for the period of the requested delay, or
 - b. In the case of an application for an accessory dwelling unit and/or junior accessory dwelling unit submitted with an application to create a new single-unit dwelling on the lot, the City may delay acting on the accessory dwelling unit and/or junior accessory dwelling application until the City renders a decision on the new single-unit dwelling application.

D. Maximum Number of Accessory Dwelling Units Allowed. Unless precluded by Government Code Section 66323 the following is the maximum number of accessory dwelling units allowed on any residential lot. For purposes of this section, “multi-unit dwelling” means a development containing two or more dwelling units on one lot.

1. Internal to a Single-Unit or Multi-Unit Dwelling Category. Only one accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling, subject to the following:

- a. The accessory dwelling unit is proposed:
 - i. Within the space of a proposed single-unit or multi-unit dwelling;
 - ii. Within the existing space of an existing single-unit or multi-unit dwelling; or
 - iii. Within the existing space of an existing accessory structure, plus an addition beyond the physical dimensions of the existing structure of up to one hundred fifty (150) square feet if the expansion is limited to accommodating ingress and egress.
 - b. The accessory dwelling unit shall have independent exterior access from the single-unit dwelling.
 - c. Side and rear setbacks comply with Titles 9 (Fire Code) and 15 (Buildings and Construction).
2. Attached on Lot With Single-Unit or Multi-Unit Dwelling Category. Only one attached, new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling.
 3. Detached on Lot With Single-Unit or Multi-Unit Dwelling Category. Only one detached new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling. Up to two detached new-construction accessory dwelling units may be constructed on a lot that has an existing or proposed multi-unit dwelling. For purposes of this section, a multi-unit development approved and built as a single complex shall be considered one lot, regardless of the number of parcels.
 4. Conversion of Multi-Unit Dwelling Category. Multiple accessory dwelling units may be permitted on lots with existing multi-unit dwellings subject to the following:
 - a. The number of accessory dwelling units shall not exceed twenty-five (25) percent of the existing multi-unit dwellings on the lot. For the purpose of calculating the number of allowable accessory dwelling units, the following shall apply:
 - i. Previously approved accessory dwelling units shall not count towards the number of existing multi-unit dwellings;
 - ii. Fractions shall be rounded down to the next lower number of dwelling units, except that at least one accessory dwelling unit shall be allowed; and
 - iii. For the purposes of this section, multi-unit developments approved and built as a single complex shall be considered one lot, regardless of the number of parcels.
 - b. The portion of the existing multi-unit dwelling that is to be converted to an accessory dwelling unit is not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages.

E. Maximum Number of Junior Accessory Dwelling Units Allowed. One junior accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling, subject to the following:

1. The junior accessory dwelling unit is proposed to be attached to, or within the space of, a proposed or existing single-unit dwelling.
2. The junior accessory dwelling unit shall have independent exterior access from the single-unit dwelling and may provide interior access to the single-unit dwelling.
3. Side and rear setbacks comply with Titles 9 (Fire Code) and 15 (Buildings and Construction).
4. The junior accessory dwelling unit may be constructed in addition to an accessory dwelling unit on the lot with a proposed or existing single-unit dwelling. A junior accessory dwelling unit is not permitted on a lot with a proposed or existing multi-unit dwelling.

F. Development Standards. Except as modified by this subsection or authorized by California Government Code Section 66317 and 66323, an accessory dwelling unit and/or junior accessory dwelling unit shall conform to all objective standards of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions of Title 20 (Planning and Zoning), including but not limited to height, setback, site coverage, floor area limit, and residential development standards and design criteria.

1. Minimum Lot Area. There shall be no minimum lot area required to establish an accessory dwelling unit and/or junior accessory dwelling unit.
2. Setback Requirements. Accessory dwelling units and junior accessory dwelling units shall comply with the setback requirements applicable to the zoning district, except as noted below:
 - a. For conversion of existing enclosed floor area, garage, or carport, no additional setback is required, beyond the existing provided setback.
 - b. For replacement of an existing enclosed structure, garage, or carport, no existing setback is required, beyond the existing setback provided. This provision shall only apply to accessory dwelling units and junior accessory dwelling units that are replacing existing structures within the same footprint and do not exceed the existing structure's size and/or height. For an accessory dwelling unit that will replace a detached garage, the building and demolition permits shall be reviewed and issued concurrently.
 - c. Attached and detached accessory dwelling units shall provide a minimum setback of four feet from all side property lines and rear property lines not abutting an alley unless the setback requirements of the underlying zoning district are less restrictive.
3. Building Height.
 - a. Internal. Accessory dwelling units and junior accessory dwelling units internal to an existing or proposed single-unit or multi-unit dwelling shall comply with the height limit as required by underlying zoning district.
 - b. Attached. Accessory dwelling units and junior accessory dwelling units attached to an existing or proposed single-unit or multi-unit dwelling shall comply with the height limit as required by underlying zoning district.
 - c. Detached accessory dwelling units shall not exceed a height of sixteen (16) feet except as noted below:
 - i. An accessory dwelling unit constructed on a lot with an existing or proposed multi-unit, multi-story dwelling shall not exceed a height of eighteen (18) feet.
 - ii. An accessory dwelling unit constructed above a detached garage shall not exceed two stories and the maximum allowable height of the underlying zoning district, provided the accessory dwelling unit meets the minimum setbacks required by underlying zoning district and the principal dwelling unit complies with parking standards set forth in Section 20.40.040.
 - iii. An accessory dwelling unit constructed on a lot with an existing or proposed single-unit or multi-unit dwelling that is located within one-half-mile walking distance of a major transit stop or high-quality transit corridor, as those terms are defined in California Public Resources Code Section 21155, shall not exceed a height of eighteen (18) feet. An additional two feet in height shall be permitted to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary unit.
4. Unit Size.
 - a. The maximum size of a detached or attached accessory dwelling unit is eight hundred fifty (850) square feet for a studio or one-bedroom unit and one thousand (1,000) square feet for a two or more bedroom unit.

- b. Application of size limitations set forth in subsection (F)(4)(a) of this section shall not apply to an accessory dwelling unit that is converted as part of a proposed or existing space of a principal residence or existing accessory structure.
 - c. Application of development standards, such as floor area limit or site coverage, may further limit the size of the accessory dwelling unit, but in no case shall the front setback, floor area limit, open space, or site coverage requirement reduce the accessory dwelling unit to less than eight hundred (800) square feet where there is no other alternative to comply, and only to the extent necessary to construct the accessory dwelling unit.
 - d. The maximum size of a junior accessory dwelling unit shall be five hundred (500) square feet.
 - e. The minimum size of an accessory dwelling unit or junior accessory dwelling unit shall be at least that of an efficiency unit or as required by the California Building Code (CBC).
5. Walkout Basement Floor Area Limit Exception. The gross floor area of an accessory dwelling unit or junior accessory dwelling shall be excluded from the allowable floor area limit when located below grade within a basement. Daylighting of the basement shall only be permitted where excavation is necessary to provide exterior access to the main surface level and in compliance with the following:
- a. The access passageway, inclusive of any necessary shoring, may encroach into a side setback area;
 - b. The passageway shall be free of obstructions from the ground level to a height of eight feet; and
 - c. The access passageway shall measure a minimum of thirty-six (36) inches in width, measure a maximum of sixty (60) feet in length, and shall not be located within a yard fronting a public right-of-way.

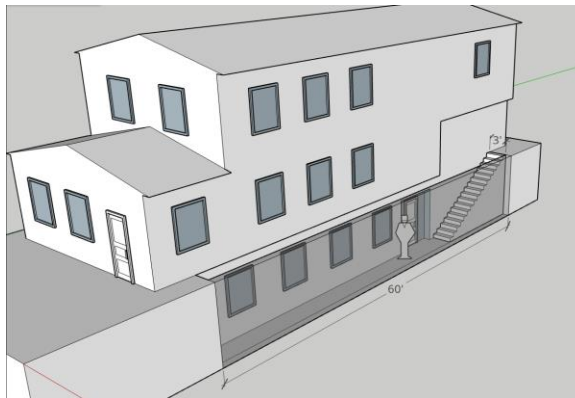


Figure 3-7

Walkout Basement Floor Area Limit Exception

6. Fire Sprinklers. An accessory dwelling unit and/or junior accessory dwelling unit shall not require fire sprinklers so long as fire sprinklers are not required for the principal residence, nor shall the construction of an accessory dwelling unit and/or junior accessory dwelling unit require fire sprinklers to be installed in the existing single-unit or multi-unit dwelling.
7. Passageway. No passageway shall be required in conjunction with the construction of an accessory dwelling unit and/or junior accessory dwelling unit. For the purposes of this section, “passageway” means a pathway that is unobstructed clear to the sky and extends from the street to one entrance of the accessory dwelling unit.

8. Parking. Parking shall comply with requirements of Chapter 20.40 (Off-Street Parking) except as modified below:

- a. No additional parking shall be required for junior accessory dwelling units.
- b. A maximum of one parking space shall be required for each accessory dwelling unit.
- c. When additional parking is required, the parking may be provided as tandem parking and/or located on an existing driveway; however, in no case shall parking be allowed in a rear setback abutting an alley or within the front setback, unless the driveway in the front setback has a minimum depth of twenty (20) feet.
- d. No additional parking shall be required for:
 - i. An accessory dwelling unit internal to a proposed principal residence or converted from existing space of a principal residence or existing accessory structure;
 - ii. An accessory dwelling unit located within one-half-mile walking distance of public transit. For the purposes of this section “public transit” shall include a bus stop where the public may access buses that charge set fares, run on fixed routes, and are available to the public;
 - iii. An accessory dwelling unit located within an architecturally and historically significant historic district;
 - iv. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit; or
 - v. When there is a car-share vehicle located within one block of the accessory dwelling unit. For the purposes of this section, “car-share vehicle” shall mean part of an established program intended to remain in effect at a fixed location for at least ten (10) years and available to the public.
 - vi. Outside the coastal zone, when an accessory dwelling unit is constructed in conjunction with a new single-unit or multi-unit dwelling on the same lot.
- e. No Replacement Parking Necessary. Outside the coastal zone, when a garage, carport, covered or uncovered parking space is demolished in conjunction with the construction of an accessory dwelling unit at the same location or converted to an accessory dwelling unit, those off-street parking spaces are not required to be replaced. Outside the coastal zone, when a garage is demolished in conjunction with the construction of a junior accessory dwelling unit at the same location or converted to a junior accessory dwelling unit, that off-street parking space is not required to be replaced. Refer to Section 21.48.200(F)(8)(e) for replacement parking in the coastal zone.

G. Utility Connection.

- 1. Connection Required. All accessory dwelling units and junior accessory dwelling units shall connect to public utilities (or their equivalent), including water, electric, and sewer services.
- 2. Except as provided in subsection (G)(3) of this section, the City may require the installation of new or separate utility connections between the accessory dwelling unit, junior accessory dwelling unit and the utilities.
- 3. Conversion. No separate connection between the accessory dwelling unit and the utility shall be required for units created within a single-unit or multi-unit dwelling(s), unless the accessory dwelling unit is being constructed in connection with a new single-unit dwelling.
- 4. Septic Systems. If the principal dwelling unit is currently connected to an on-site wastewater treatment system and is unable to connect to a sewer system, accessory dwelling units and junior accessory dwelling units may connect to the on-site wastewater treatment system. However, the owner must include with the

application a percolation test completed within the last five years or, if the percolation test has been recertified, within the last ten (10) years.

H. Additional Requirements for All Accessory Dwelling Units and Junior Accessory Dwelling Units.

1. No Separate Conveyance. Except as authorized in California Government Code 66341, an accessory dwelling unit or junior accessory dwelling unit may be rented, but no accessory dwelling unit or junior accessory dwelling unit may be sold or otherwise conveyed separately from the lot and the principal dwelling (in the case of a single-unit dwelling) or from the lot and all of the dwellings (in the case of a multi-unit dwelling).

2. Short-Term Lodging. The accessory dwelling unit and/or junior accessory dwelling unit shall not be rented for periods of thirty (30) days or less.

3. Owner-Occupancy for Junior Accessory Dwelling Units. A natural person with legal or equitable title to the lot must reside in either the principal single-unit dwelling unit or the junior accessory dwelling unit as the person's legal domicile and permanent residence. However, this owner-occupancy requirement shall not apply to any junior accessory dwelling unit owned by a governmental agency, land trust, or housing organization.

I. Deed Restriction and Recordation Required. Prior to the issuance of a building and/or grading permit for a junior accessory dwelling unit, the property owner shall record a deed restriction with the County Recorder's Office, the form and content of which is satisfactory to the City Attorney. The deed restriction document shall notify future owners of the owner occupancy requirements, prohibition on the separate conveyance, the approved size and attributes of the unit, and restrictions on short-term rentals. This deed restriction shall remain in effect so long as the junior accessory dwelling unit exists on the lot.

J. Historic Resources. Accessory dwelling units and/or junior accessory dwelling units proposed on residential or mixed-use properties that are determined to be historic shall be approved ministerially, in conformance with California Government Code Sections 65852.2 and 65852.22. However, any accessory dwelling unit or junior accessory dwelling unit that is listed on the California Register of Historic Resources shall meet all Secretary of the Interior Standards, as applicable. (Ord. 2023-22 § 918, 2023; Ord. 2023-2 § 1 (Exh. A), 2023; Ord. 2022-5 § 1, 2022; Ord. 2020-9 § 4, 2020)

EXHIBIT “B”**LOCAL COASTAL PROGRAM AMENDMENT NO. PA2025-0093****21.48.200 Accessory Dwelling Units.**

A. Purpose. The purpose of this section is to establish the procedures for the creation of accessory dwelling units and junior accessory dwelling units, as defined in Part 7 (Definitions) of this title and in California Government Code Sections 66310 through 66342, or any successor statute, in areas designated for residential use, including as part of a planned community development plan or specific plan, and to provide development standards to ensure the orderly development of these units in appropriate areas of the City.

B. Effect of Conforming. An accessory dwelling unit or junior accessory dwelling unit that conforms to the requirements in this section shall not be:

1. Deemed to be inconsistent with the Coastal Land Use Plan and coastal zoning district designation for the lot on which the accessory dwelling unit or junior accessory dwelling unit is located;
2. Deemed to exceed the allowable density for the lot on which the accessory dwelling unit or junior accessory dwelling unit is located;
3. Considered in the application of any ordinance, policy, or program to limit residential growth; or
4. Required to correct nonconforming zoning condition(s), building code violation(s), and/or unpermitted structure(s) that do/does not present a threat to public health and safety and is/are not affected by the construction of the accessory dwelling unit or junior accessory dwelling unit; and do/does not raise inconsistency with the coastal resource protection policies of subsection (C)(3) of this section. This does not prevent the City from enforcing compliance with applicable building standards in accordance with California Health and Safety Code Section 17980.12.

C. Review Authority. Accessory dwelling units and junior accessory dwelling units shall be approved in any residential or mixed-use zoning district, subject to a building permit and the following conditions:

1. There is an existing or proposed dwelling unit on the lot;
2. The dwelling conforms to the development standards and requirements for accessory dwelling units and/or junior accessory dwelling units as provided in this section and California Government Code Section 66323;
3. The dwelling conforms to the coastal resource protection development regulations of the Implementation Plan and Coastal Land Use Plan provisions, including Implementation Plan Section 21.28.040 (Bluff (B) Overlay District), 21.28.050 (Canyon (C) Overlay District), 21.30.100 (Scenic and Visual Quality Protection), or Chapter 21.30B (Habitat Protection); and
4. The building permit shall be considered and approved ministerially, without discretionary review or a hearing, within sixty (60) days from the date that the City determines an application to be complete, unless either:
 - a. The applicant requests a delay, in which case the sixty (60) day time period is tolled for the period of the requested delay, or
 - b. In the case of an application for an accessory dwelling unit and/or junior accessory dwelling unit submitted with an application to create a new single-unit dwelling on the lot, the City may delay acting on the accessory dwelling unit and/or junior accessory dwelling application until the City renders a decision on the new single-unit dwelling application.

D. Coastal Development Permits.

1. Application. The applicant shall obtain a coastal development permit, pursuant to Chapter 21.52 (Coastal Development Review Procedures), unless otherwise exempt or excluded from the coastal development permit process pursuant to Section 21.52.035 (Projects Exempt From Coastal Development Permit Requirements) or 21.52.045 (Categorical Exclusions).

2. Hearing Exemption. All of the provisions of Chapter 21.52 (Coastal Development Review Procedures) regarding the review and approval of coastal development permits in relation to accessory dwelling units are applicable, except that a public hearing as required by Chapter 21.62 (Public Hearings) shall not be required. Public notice shall be provided as required in Section 21.62.020, except the requirements of Section 21.62.020(A) shall be replaced with a statement that no local public hearing will be held and that written comments on the proposed development may be submitted. Written comments received shall be reviewed by the review authority.

3. Appeal Exemption. Notwithstanding the local appeal provisions of Chapter 21.64 (Appeals and Calls for Review), coastal development permits for accessory dwelling units that are defined as “appealable development” pursuant to Section 21.64.035(A) may be directly appealed to the Coastal Commission in accordance with the provisions of Section 21.64.035 without a discretionary hearing by the Planning Commission or City Council.

E. Maximum Number of Accessory Dwelling Units Allowed. Unless precluded by Government Code Section 66323 the following is the maximum number of accessory dwelling units allowed on any residential lot. For purposes of this section, “multi-unit dwelling” means a development containing two more dwelling units on one lot.

1. Internal to a Single-Unit or Multi-Unit Dwelling Category. Only one accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling, subject to the following:

a. The accessory dwelling unit is proposed:

i. Within the space of a proposed single-unit or multi-unit dwelling; or

ii. Within the existing space of an existing single-unit or multi-unit dwelling; or

iii. Within the existing space of an existing accessory structure, plus an addition beyond the physical dimensions of the existing structure of up to one hundred fifty (150) square feet if the expansion is limited to accommodating ingress and egress.

b. The accessory dwelling unit shall have independent exterior access from the single-unit dwelling.

c. Side and rear setbacks comply with Titles 9 (Fire Code) and 15 (Buildings and Construction).

2. Attached on Lot With Single-Unit or Multi-Unit Dwelling Category. Only one attached, new construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit or multi-unit dwelling.

3. Detached on Lot With Single-Unit or Multi-Unit Dwelling Category. Only one detached new construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling. Up to two detached new construction accessory dwelling units may be constructed on a lot that has an existing or proposed multi-unit dwelling. For purposes of this section, a multi-unit development approved and built as a single complex shall be considered one lot, regardless of the number of parcels.

4. Conversion of Multi-Unit Dwelling Category. Multiple accessory dwelling units may be permitted on lots with existing multi-unit dwellings subject to the following:

a. The number of accessory dwelling units shall not exceed twenty-five (25) percent of the existing multi-unit dwellings on the lot. For the purpose of calculating the number of allowable accessory dwelling units, the following shall apply:

- i. Previously approved accessory dwelling units shall not count towards the number of existing multi-unit dwellings;
 - ii. Fractions shall be rounded down to the next lower number of dwelling units, except that at least one accessory dwelling unit shall be allowed; and
 - iii. For the purposes of this section, multi-unit developments approved and built as a single complex shall be considered one lot, regardless of the number of parcels.
- b. The portion of the existing multi-unit dwelling that is to be converted to an accessory dwelling unit is not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages.

F. Maximum Number of Junior Accessory Dwelling Units Allowed. One junior accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling, subject to the following:

1. The junior accessory dwelling unit is proposed to be attached to, or within the space of, a proposed or existing single-unit dwelling.
2. The junior accessory dwelling unit shall have independent exterior access from the single-unit dwelling and may provide interior access to the single-unit dwelling.
3. Side and rear setbacks comply with Titles 9 (Fire Code) and 15 (Buildings and Construction).
4. The junior accessory dwelling unit may be constructed in addition to an accessory dwelling unit on the lot with a proposed or existing single-unit dwelling. A junior accessory dwelling unit is not permitted on a lot with a proposed or existing multi-unit dwelling.

G. Development Standards. Except as modified by this subsection or authorized by California Government Code Section 66317 and 66323, an accessory dwelling unit and/or junior accessory dwelling unit shall conform to all requirements of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions of Title 21 (Local Coastal Program Implementation Plan), including but not limited to height, setback, site coverage, floor area limit, and residential development standards and design criteria.

1. Minimum Lot Area. There shall be no minimum lot area required to establish an accessory dwelling unit and/or junior accessory dwelling unit.
2. Setback Requirements. Accessory dwelling units and junior accessory dwelling units shall comply with the setback requirements applicable to the zoning district, except as noted below:
 - a. For conversion of existing enclosed floor area, garage, or carport, no additional setback is required, beyond the existing provided setback, unless a greater setback is needed to comply with subsection (C)(3) of this section.
 - b. For replacement of an existing enclosed structure, garage, or carport, no additional setback is required, beyond the existing setback provided, unless a greater setback is needed to comply with subsection (C)(3) of this section. This provision shall only apply to accessory dwelling units and junior accessory dwelling units that are replacing existing structures within the same footprint and do not exceed the existing structure's size and/or height. For an accessory dwelling unit that will replace a detached garage, the building and demolition permits shall be reviewed and issued concurrently.
 - c. Attached and detached accessory dwelling units shall provide a minimum setback of four feet from all side property lines and rear property lines not abutting an alley unless the setback requirements of the underlying zoning district are less restrictive.
3. Building Height.

-
- a. Internal. Accessory dwelling units and junior accessory dwelling units internal to an existing or proposed single-unit or multi-unit dwelling shall comply with the height limit as required by underlying zoning district.
 - b. Attached. Accessory dwelling units and junior accessory dwelling units attached to an existing or proposed single-unit or multi-unit dwelling shall comply with the height limit as required by underlying zoning district.
 - c. Detached accessory dwelling units shall not exceed a height of sixteen (16) feet except as noted below:
 - i. An accessory dwelling unit constructed on a lot with an existing or proposed multi-unit, multi-story dwelling shall not exceed a height of eighteen (18) feet.
 - ii. An accessory dwelling unit constructed above a detached garage shall not exceed two stories and the maximum allowable height of the underlying zoning district, provided the accessory dwelling unit meets the minimum setbacks required by underlying zoning district and the principal dwelling unit complies with parking standards set forth in Section 21.40.040.
 - iii. An accessory dwelling unit constructed on a lot with an existing or proposed single-unit or multi-unit dwelling that is located within one-half mile walking distance of a major transit stop or high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code, shall not exceed a height of eighteen (18) feet. An additional two feet in height shall be permitted to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary unit.
4. Unit Size.
- a. The maximum size of a detached or attached accessory dwelling unit is eight hundred fifty (850) square feet for a studio or one-bedroom unit and one thousand (1,000) square feet for a two or more bedroom unit.
 - b. Application of the size limitations set forth in subsection (G)(4)(a) of this section shall not apply to an accessory dwelling unit that is converted as part of a proposed or existing space of a principal residence or existing accessory structure.
 - c. Application of development standards, such as floor area limit or site coverage, may further limit the size of the accessory dwelling unit, but in no case shall the front setbacks, floor area limit, open space, or site coverage requirement reduce the accessory dwelling unit to less than eight hundred (800) square feet where there is no other alternative to comply, and only to the extent necessary to construct the accessory dwelling unit.
 - d. The maximum size of a junior accessory dwelling unit shall be five hundred (500) square feet.
 - e. The minimum size of an accessory dwelling unit or junior accessory dwelling unit shall be at least that of an efficiency unit or as required by the California Building Code (CBC).
5. Walkout Basement Floor Area Limit Exception. The gross floor area of an accessory dwelling unit or junior accessory dwelling shall be excluded from the allowable floor area limit when located below grade within a basement. Daylighting of the basement shall only be permitted where excavation is necessary to provide exterior access to the main surface level and in compliance with the following:
- a. The access passageway, inclusive of any necessary shoring, may encroach into a side setback area;
 - b. The passageway shall be free of obstructions from the ground level to a height of eight feet; and

- c. The access passageway shall measure a minimum of thirty-six (36) inches in width, measure a maximum of sixty (60) feet in length, and shall not be located within a yard fronting a public right-of-way.

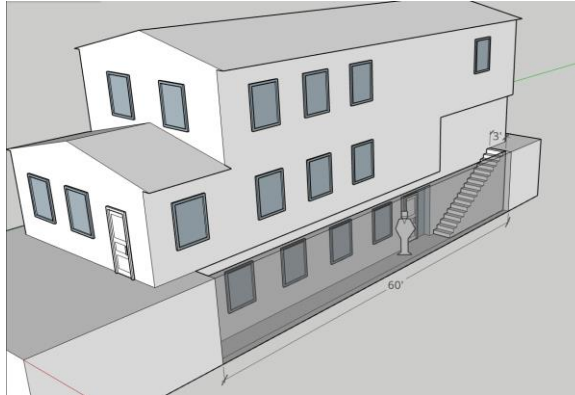


Figure 3-7

Walkout Basement Floor Area Limit Exception

6. **Fire Sprinklers.** An accessory dwelling unit and/or junior accessory dwelling unit shall not require fire sprinklers so long as fire sprinklers are not required for the principal residence, nor shall the construction of an accessory dwelling unit and/or junior accessory dwelling unit require fire sprinklers to be installed in the existing single-unit or multi-unit dwelling.
7. **Passageway.** No passageway shall be required in conjunction with the construction of an accessory dwelling unit and/or junior accessory dwelling unit. For the purposes of this section, “passageway” means a pathway that is unobstructed clear to the sky and extends from the street to one entrance of the accessory dwelling unit.
8. **Parking.** Parking shall comply with requirements of Chapter 21.40 (Off-Street Parking) except as modified below:
 - a. No additional parking shall be required for junior accessory dwelling units.
 - b. A maximum of one parking space shall be required for each accessory dwelling unit.
 - c. When additional parking is required, the parking may be provided as tandem parking and/or located on an existing driveway; however, in no case shall parking be allowed in a rear setback abutting an alley or within the front setback, unless the driveway in the front setback has a minimum depth of twenty (20) feet.
 - d. No parking shall be required for:
 - i. An accessory dwelling unit internal to a proposed principal residence or converted from existing space of principal residence or existing accessory structure;
 - ii. An accessory dwelling unit located within one-half mile walking distance of public transit. For the purposes of this section, “public transit” shall include a bus stop where the public may access buses that charge set fares, run on fixed routes, and are available to the public;
 - iii. An accessory dwelling unit located within an architecturally and historically significant historic district;
 - iv. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit; or

v. When there is a car-share vehicle located within one block of the accessory dwelling unit. For the purposes of this section, "car-share vehicle" shall mean part of an established program intended to remain in effect at a fixed location for at least ten (10) years and available to the public.

e. Replacement Parking Necessary. When a garage, carport, or covered parking is demolished in conjunction with the construction of an accessory dwelling unit at the same location or converted to an accessory dwelling unit, replacement parking shall be provided. Replacement parking may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. Accessory dwelling units shall not displace required uncovered parking spaces.

9. Waterfront Development and Flood Hazard Areas.

a. The minimum top of slab elevation for new interior living areas, including areas converted from nonliving areas, shall comply with the flood hazard and sea level rise protection standards of Section 21.30.015(D).

b. Any development in shoreline hazardous areas shall comply with Section 21.30.015(E).

H. Utility Connection.

1. Connection Required. All accessory dwelling units and junior accessory dwelling units shall connect to public utilities (or their equivalent), including water, electric, and sewer services.

2. Except as provided in subsection (H)(3) of this section, the City may require the installation of a new or separate utility connection between the accessory dwelling unit, junior accessory dwelling unit and the utilities.

3. Conversion. No separate connection between the accessory dwelling unit and the utility shall be required for units created within a single-unit or multi-unit dwelling(s), unless the accessory dwelling unit is being constructed in connection with a new single-unit dwelling or multi-unit dwellings.

4. Septic Systems. If the principal dwelling unit is currently connected to an on-site wastewater treatment system and is unable to connect to a sewer system, accessory dwelling units and junior accessory dwelling units may connect to the on-site wastewater treatment system. However, the owner must include with the application a percolation test completed within the last five years or, if the percolation test has been recertified, within the last ten (10) years.

I. Additional Requirements for All Accessory Dwelling Units and Junior Accessory Dwelling Units.

1. No Separate Conveyance. Except as authorized in California Government Code 66341, an accessory dwelling unit or junior accessory dwelling unit may be rented, but no accessory dwelling unit or junior accessory dwelling unit may be sold or otherwise conveyed separately from the lot and the principal dwelling (in the case of a single-unit dwelling) or from the lot and all of the dwellings (in the case of a multi-unit dwelling).

2. Short-Term Lodging. The accessory dwelling unit and/or junior accessory dwelling unit shall not be rented for periods of thirty (30) days or less.

3. Owner-Occupancy for Junior Accessory Dwelling Units. A natural person with legal or equitable title to the lot must reside in either the principal single-unit dwelling unit or the junior accessory dwelling unit as the person's legal domicile and permanent residence. However, this owner-occupancy requirement shall not apply to any junior accessory dwelling unit owned by a governmental agency, land trust, or housing organization.

J. Deed Restriction and Recordation Required.

1. Prior to the issuance of a building and/or grading permit for a junior accessory dwelling unit, the property owner shall record a deed restriction with the County Recorder's Office, the form and content of which is

satisfactory to the City Attorney. The deed restriction document shall notify future owners of the owner-occupancy requirements, prohibition on the separate conveyance, the approved size and attributes of the unit, and restrictions on short-term rentals. This deed restriction shall remain in effect so long as the junior accessory dwelling unit exists on the lot.

2. For properties in flood hazard areas as identified by the Federal Emergency Management Agency in the "Flood Insurance Study" for Orange County, California and Incorporated Area with accompanying FEMA Flood Insurance Rate Maps, deed restriction shall also include notice to future owners that the unit is located within an area that may be subject to flooding or future flooding.

3. For properties located in low lying shoreline areas that may be subject to future sea level rise, the property owner shall also record a waiver of future protection in compliance with Section 21.30.015(E)(5).

K. Historic Resources. Accessory dwelling units and/or junior accessory dwelling units proposed on residential or mixed-use properties that are determined to be historic shall be approved ministerially, in conformance with California Government Code Sections 66310 through 66342. However, any accessory dwelling unit or junior accessory dwelling unit that is listed on the California Register of Historic Resources shall meet all Secretary of the Interior standards, as applicable. (Ord. 2024-28 § 1 (Exh. A), 2024; Ord. 2022-6 § 5, 2022)

EXHIBIT “C”

HCD Review Letter Dated October 1, 2024

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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

651 Bannan Street
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



October 1, 2024

Jaime Murillo, Community Development Deputy Director
Department of Community Development
City of Newport Beach
100 Civic Center Drive,
Newport Beach, CA 92660

Dear Jaime Murillo:

**RE: Review of Newport Beach's Accessory Dwelling Unit (ADU) Ordinance under
State ADU Law (Gov. Code, §§ 66310 - 66342)**

Please Note: As of March 25, 2024, with the Chaptering of Senate Bill (SB) 477 (Chapter 7, Statutes of 2024), the sections of Government Code relevant to State ADU and junior accessory dwelling unit (JADU) Law have been re-numbered (Enclosure 1).

Thank you for submitting the City of Newport Beach's accessory dwelling unit (ADU) Ordinance No. 2023-2 (Ordinance), adopted February 14, 2023, to the California Department of Housing and Community Development (HCD). The Ordinance was received on February 18, 2023. HCD has reviewed the Ordinance and submits these written findings pursuant to Government Code section 66326, subdivision (a). HCD finds that the Ordinance fails to comply with State ADU and JADU Laws in the manner noted below. Pursuant to Government Code section 66326, subdivision (b)(1), the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than October 31, 2024.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance does not comply with State ADU Law as follows:

1. *Section 20.48.200 B.4. – Legally Established Non-conforming Zoning Conditions*
– The Ordinance does not require ADUs and JADUs to "...correct legally established nonconforming zoning condition(s), building code violation(s), and/or unpermitted structure(s) that do/does not present a threat to public health and safety and is/are not affected by the construction of the accessory dwelling unit or junior accessory dwelling unit." However, Government Code section 66323, subdivision (b) specifically provides that a local agency shall not require the correction of nonconforming zoning conditions. Additionally, section 66322(b) prohibits the denial of a permit due to the correction 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 ADU. Neither section includes “legally established”. Unpermitted structures are unlikely legally established. The City’s ordinance therefore likely restricts units whose protection is specifically provided for by statute. Therefore, the City must remove the phrase “legally established” from the Ordinance.

2. *Section 20.48.200 C.2. – Conditions on Development* – The Ordinance requires ADUs and JADUs conform to development standards and requirements “as provided in this section.” Government Code section 66323, subdivision (a), states, “Notwithstanding Sections 66314 to 66322, inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following...” Section 66323 precludes zoning development standards and requirements for ADUs and JADUs. Therefore, the City must note the exception for units described in subdivision (a) in its ordinance.
3. *Section 20.48.200 D.1. – Unit Allowance* – The Ordinance states, “Only one (1) of the categories described below in this subsection may be used per lot.” However, Government Code section 66323, subdivision (a), states, “Notwithstanding Sections 66314 to 66322, inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following: (1) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...(A) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single family dwelling or existing space of a single-family dwelling or accessory structure.” Paragraph (2) permits “[o]ne detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks.” The use of the term “any” followed by an enumeration of by-right ADU types permitted means that any of these ADU types found in section 66323 can be combined on a lot zoned for single-family dwellings.

This permits a homeowner, who meets specified requirements, to create one converted ADU; one detached, new construction ADU; and one JADU. Thus, if the local agency approves an ADU that is created from existing (or proposed) space, and the owner subsequently applies for a detached ADU that meets the size and setbacks pursuant to the subdivision, the local agency cannot deny the permit, nor deny a permit for a JADU under this subdivision.

This subdivision applies equally to ADUs created pursuant to Government Code section 66323, subdivisions (a)(3) and (a)(4) on lots with proposed or existing multifamily dwellings. Limiting residential lots to one ADU would prevent property owners from creating ADUs by-right under subdivision (a) of section 66323 of the Government Code.

Therefore, the City must remove the restriction on the combination of units authorized by state law.

4. *Section 20.48.200 D.3. & D.4.a.iii. – Multi-Unit Detached ADUs* – The Ordinance states, “For the purposes of this section, a multi-unit development approved and built as a single complex shall be considered one (1) lot, regardless of the number of parcels.” However, Government Code section 66323, subdivision (a)(3)(A) requires that at least one ADU be permitted on a lot with a multifamily dwelling. Moreover, the 2022 California Building Code defines “lot” as “A portion or parcel of land considered as a unit.” The City incorrectly limits the number of parcels within a ‘lot’ which could result in a limitation on the number of ADUs on parcels. This could have the effect of limiting the number of ADUs allowable on parcels with multifamily units owned as separate interests. Therefore, the City should remove the restriction on parcels.
5. *Section 20.48.200 F. – Development Standards* – The Ordinance requires ADUs and JADUs to “conform to all objective standards of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions...” However, Government Code section 66317, subdivision (c) precludes local ordinance, regulation or policy not contained within the City’s ADU ordinance from being the basis of delay or denial of an ADU or JADU permit application. While Government Code section 66314, subdivision (d)(8) refers to local building code standards, zoning and design standards that exist outside of the City’s ADU ordinance cannot be imposed on ADUs. Moreover, local design standards provided by the Ordinance pursuant to Government Code sections 66314 – 66322 may not preclude the development of ADUs created per section 66323, as noted above. Therefore, the City must amend its ordinance to remove requirements that ADUs conform to underlying zoning standards, and ‘other’ unspecified provisions not in the ADU ordinance.
6. *Section 20.48.200 F.2.b. – Building and Demolition Permits* – The Ordinance states, “For an accessory dwelling unit that will replace a detached garage, the building and demolition permits shall be reviewed and issued concurrently.” The City should amend the Ordinance to specify that building, and demolition permits are reviewed and issued concurrently for JADUs as well.
7. *Section 20.48.200 F.3. – Building Height* – The Ordinance requires attached ADUs to “comply with the height limit as required by underlying zoning district.” While this appears to comply with State ADU Law, Government Code section 66321, subdivision (b)(4)(D) precludes a local agency from requiring less than “A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. This subparagraph shall not require a local agency to allow an accessory dwelling unit to exceed two stories.” The City’s Ordinance does not reflect the 25 feet height minimum. Moreover, it is

unclear whether this requirement would permit a second story. The City should clarify these sections to ensure building heights and stories for attached ADUs are not unduly restricted.

8. *Section 20.48.200 F.4.a. – ADU Size Maximum* – The Ordinance limits the maximum unit size of attached and detached ADUs. However, Government Code section 66323, subdivision (a)(4), which applies to detached ADUs on lots with multifamily dwellings, does not have a size maximum. ADUs and JADUs created per section 66323 are not subject to the City’s objective zoning standards, including size. The City’s size maximum in this section therefore cannot limit detached ADUs allowed under section 66323. The City must amend the Ordinance to note the exception for detached ADUs allowed under section 66323.
9. *Section 20.48.200 F.4.e. – JADU Minimum Size* – The Ordinance requires a JADU to be a minimum size of an efficiency dwelling unit. While an ADU is defined as also including an efficiency dwelling unit, a JADU does not contain such a provision. While the maximum JADU size is 500 sq ft, a minimum JADU size is determined by applicable building and residential codes as the minimum room size plus an efficiency kitchen. Projects subject to the Supplement to the 2022 California Building Standards Code (CBC), section R304.1 through R304.3 of the California Residential Code (CRC), and sections 1208.1 through 1208.4 of the CBC, respectively, should be considered before applying a minimum JADU size. Since a minimum size of a JADU might be less than the minimum size of an efficiency dwelling unit, the City should amend the Ordinance to reflect the valid minimum size allowed for a room.
10. *Section 20.48.200 F.8.e. – Replacement Parking* – The Ordinance affirms that when off-street covered parking is demolished in conjunction with an ADU, “those off-street parking spaces are not required to be replaced.” This substantially complies with State ADU Law. However, JADUs must only comply with “applicable building standards,” and do not require “additional parking” as a condition for obtain a building permit.¹ JADUs must only comply with the development standards set forth in JADU Law.² The City’s ordinance does not expressly exempt JADUs from replacement parking when a garage is converted as part of the enclosed use within the residence permitted by law.³ This creates confusion and indicates the City may require replacement parking when covered parking is converted into a JADU, which is inconsistent with the Law. Therefore, the City must amend this section to specifically exclude JADUs from replacement parking.

¹ Gov. Code, § 66334, subds. (a) and (b).

² Gov. Code, § 66323, subd. (a)(1)(D).

³ Gov. Code, § 66333, subd. (d).

11. *Section 20.48.200 H.1. – Separate Conveyance* – The Ordinance states, “An accessory dwelling unit or junior accessory dwelling unit may be rented, but no accessory dwelling unit or junior accessory dwelling unit may be sold or otherwise conveyed separately...” However, Government Code section 66341 provides for the sale or separate conveyance of ADUs. The City must amend the ordinance to allow for the sale or separate conveyance of ADUs.
12. *Section 20.48.200 H.3. – Owner Occupancy* – The Ordinance requires owner occupancy requirements on ADUs. Assembly Bill 976 (Chapter 751, Statutes of 2023) amended Government Code section 66315 to prohibit owner-occupancy requirements. “No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement...” The City must remove these occupancy restrictions from the Ordinance.
13. *Section 20.48.200 I. — Deed Restrictions* – The Ordinance requires a deed restriction for ADUs. Government Code section 66333, subdivision (c) requires the recordation of a deed restriction for JADUs, which are limited to restricting the sale of the JADU separate from the single-family residence. Government Code section 66315 requires that no additional standards, other than those provided in Government Code Section 66314, shall be used, or imposed on accessory dwelling units. Deed restrictions are not authorized under state law for ADUs. The City may not require a deed restriction prior to and as a condition of approval of an ADU building permit application. Therefore, the City must amend the Ordinance to remove the requirement of a deed restriction on ADUs.

The City has two options in response to this letter.⁴ The City can either amend the Ordinance to comply with State ADU Law⁵ or adopt the Ordinance without changes and include findings in its resolution adopting the Ordinance that explain the reasons the City believes that the Ordinance complies with State ADU Law despite HCD’s findings.⁶ If the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD must notify the City and may notify the California Office of the Attorney General that the City is in violation of State ADU Law.⁷

⁴ Gov. Code, § 66326, subd. (c)(1).

⁵ Gov. Code, § 66326, subd. (b)(2)(A).

⁶ Gov. Code, § 66326, subd. (b)(2)(B).

⁷ Gov. Code, § 66326, subd. (c)(1).

HCD appreciates the City's efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assisting the City in fully complying with State ADU Law. Please feel free to contact our staff, Michael McLaughlin, at Michael.McLaughlin@hcd.ca.gov if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Jamie Candelaria". The script is cursive and fluid.

Jamie Candelaria
Senior Housing Accountability Manager
Housing Policy Development Division

Enclosures

State ADU/JADU Law Statutory Conversion Table

New Government Code Sections	Previous Government Code Sections
Article 1. General Provisions	
66310	65852.150 (a)
66311	65852.150 (b)
66312	65852.150 (c)
66313	General Definition Section 65852.2 (j) 65852.22 (j)
Article 2. Accessory Dwelling Unit Approvals	
66314	65852.2(a)(1)(A), (D)(i)-(xii), (a)(4)-(5)
66315	65852.2 (a)(8)
66316	65852.2 (a)(6)
66317	65852.2 (a)(3), (a)(7)
66318	65852.2 (a)(9), 65852.2 (a)(2)
66319	65852.2 (a)(10)
66320	65852.2 (b)
66321	65852.2 (c)
66322	65852.2 (d)
66323	65852.2 (e)
66324	65852.2 (f)
66325	65852.2 (g)
66326	65852.2 (h)
66327	65852.2 (i)
66328	65852.2 (k)
66329	65852.2 (l)
66330	65852.2 (m)
66331	65852.2 (n)
66332	65852.23.
Article 3. Junior Accessory Dwelling Units	
66333	65852.22 (a)
66334	65852.22 (b)
66335	65852.22 (c)
66336	65852.22 (d)
66337	65852.22 (e)
66338	65852.22 (f)-(g)
66339	65852.22 (h)
Article 4. Accessory Dwelling Unit Sales	
66340	65852.26 (b)
66341	65852.26 (a)
66342	65852.2 (a)(10)

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