



NEWPORT BEACH

City Council Staff Report

January 24, 2023
Agenda Item No. 16

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2023-2: A Code Amendment Updating Accessory Dwelling Unit Regulations to Implement Council Policy K-4 and to Comply with State Law (PA2021-113)

ABSTRACT:

For the City Council's consideration are amendments to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code revising regulations pertaining to Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU). The update will conform with revisions to State law that went into effect on January 1, 2023. The amendments also include revisions recommended by the Planning Commission Ad Hoc Committee to incentivize ADU production consistent with Council Policy K-4.

RECOMMENDATIONS:

- a) Conduct a public hearing;
- b) Find this project statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15282(h) of the CEQA Guidelines, which states that the adoption of an ordinance regarding second units to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code are exempt from the requirements of CEQA;
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2023-2, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Code Amendment No. CA2021-005 Amending Section 20.48.200 (Accessory Dwelling Units) of the Newport Beach Municipal Code to Implement Council Policy K-4 (Reducing the Barriers to the Creation Of Housing) and New State Law Requirements Related to Accessory Dwelling Units (PA2021-113)*, and pass to second reading on February 14, 2023; and
- d) Adopt Resolution No. 2023-8, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of Local Coastal Program Amendment No. LC2021-003 to the California Coastal Commission to Amend Section 21.48.200 (Accessory Dwelling Units) of the Newport Beach Municipal Code to Implement Council Policy K-4 (Reducing the Barriers to the Creation of Housing) and New State Law Requirements Related to Accessory Dwelling Units (PA2019-248)*.

DISCUSSION:

In 2022, the State of California adopted another group of housing bills aimed at addressing the housing crisis. The Legislature approved, and the Governor signed, [SB 897 \(Chapter 6664, Statutes of 2021\)](#) and [AB 2221 \(Chapter 650, Statutes of 2021\)](#) into law that amended Government Code Sections 65852.2 and 65852.22 to impose new limits on the City's ability to regulate ADUs and JADUs. These changes are discussed in more detail in Table 1 of this report. In adopting these new regulations, the State Legislature determined that these changes are a matter of statewide concern, rather than a municipal affair, and mandates that charter cities, such as the City of Newport Beach, implement the new ADU laws. The State Legislature intends to further reduce regulatory barriers and costs, streamline the approval process, and expand the potential capacity for ADUs in response to California's housing shortage.

City Efforts to Incentivize ADU Production

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. Council Policy K-4 encourages the development of ADUs as an important strategy to accommodate future growth and is an integral strategy to help meet the City's Regional Housing Needs Assessment (RHNA) allocation. ADUs allow for a dispersion of density citywide and avoid the need for excessive rezoning and high infrastructure costs associated with new, higher-density developments. Since ADUs tend to be relatively small with modest amenities, they provide more affordable housing options for select groups, such as students, seniors, caretakers and people with disabilities.

On May 25, 2021, the City Council adopted Resolution 2021-43, initiating the subject Code Amendment and Local Coastal Program (LCP) Amendment directing staff to modify regulations related to the development of ADUs.

On September 9, 2021, the Planning Commission formed an Ad Hoc Committee to evaluate potential code amendments related to encouraging new ADU development within the City. The Ad Hoc Committee met a total of five times and developed recommendations that were shared with the Planning Commission at a study session on July 7, 2022. However, due to new ADU legislation that was pending, the Planning Commission directed staff to delay the amendments, monitor the pending legislation, and incorporate any necessary code revisions needed to comply with new legislation.

On September 13, 2022, the City Council adopted the 6th Cycle Housing Element Update for the 2021-2029 planning period. Housing Element Policy Actions 1H (Accessory Dwelling Unit Construction) and 1I (Accessory Dwelling Unit Monitoring Program) establish a target of permitting at least 30 ADUs annually, for a total of at least 240 ADUs constructed by the end of the planning period. The two policy actions also require the City to analyze methods to aggressively support and accommodate ADU construction within 12 months of Housing Element adoption and establish a program within 24 months of adoption. This amendment would help serve to implement these two policy actions.

Comparison of Existing and Proposed Regulations

ADUs and JADUs are both independent living units with an exterior entrance into the unit; however, JADUs are limited to no more than 500 square feet. Additionally, JADUs are permitted an efficiency size kitchen with only a hot plate, can have an internal access to the primary dwelling unit, and can share sanitary facilities (bathrooms) with the primary unit. Conversely, ADUs can be up to 1,000 square feet and are fully self-contained (including full kitchen and sanitation facilities), and they may not include internal access to the primary dwelling unit.

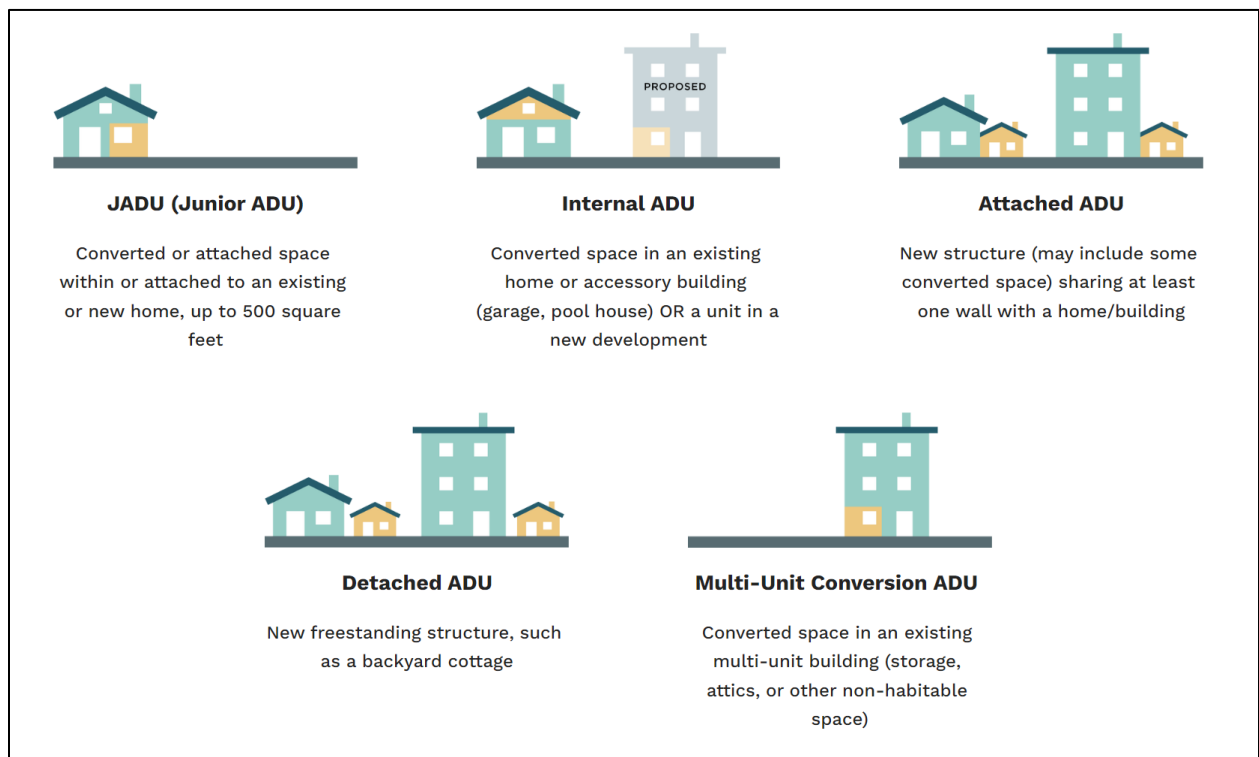


Figure 1- Different ADU/JADU Types

Due to the complexity of State ADU and JADU law, and the different standards that apply depending on the proposed type (i.e., internal, conversion, attached, or detached), the City’s local regulations are also complex. To help better explain and communicate the different standards that apply depending on ADU or JADU type, staff has developed two development matrixes that help illustrate the differences. Attachment C includes a matrix of development standards under *current* standards and Attachment D includes a matrix of developments standards under the *proposed* amendments. A redline/strikeout version of both the Title 20 and Title 21 amendments is included as Attachment E.

Summary of Major Revisions Due to State Law Changes

| Table 1 – Major State Law Changes in ADU/JADU Unit Development Standards | |
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| Standard | Proposed Code Change |
| Nonconforming Conditions | Clarification that the City can't require the correction of nonconforming conditions, building code violations, or unpermitted structures that do not pose a threat to public health and safety and that are not affected by the construction or permitting of the ADU or JADU. However, this does not preclude the City from requiring correction as a separate action. |
| Objective Standards | Prohibits the application of subjective development standards. Therefore, the City's existing requirement that an ADU/JADU be designed similar to the principal unit with respect to architectural style, roof pitch, color and materials cannot be enforced and as such, it is proposed to be deleted. This provision would also pose a potential barrier for a property owner choosing to utilize the City's forthcoming pre-approved ADU plans and that does not match the architectural style of every principal unit. |
| Fire Sprinklers | Clarifies that ADU/JADU cannot trigger a requirement for fire sprinklers to be installed in the existing single-unit or multi-unit dwelling, even when it results in a building code change in occupancy. |
| 800 sf ADU Exemption | Adds <i>front setbacks</i> to the list of standards that the City is precluded from applying when the application of development standards in combination with existing development precludes the development of an 800 sf ADU. Specifically, in the case where the floor area, lot coverage, or front setbacks of existing development doesn't allow the development of an 800 sf ADU and no other compliant alternatives exist, then the ADU may exceed the floor area or lot coverage limits, and/or encroach into the front setback to the minimum extent necessary to accommodate the 800 sf ADU provided it meets all other applicable standards. |
| Height Limits | State law increases the allowed height for detached ADUs from 16 feet to 18 feet when: 1) located within ½ mile walking distance to a major transit stop of high-quality transit corridor (Attachment F). An additional 2-foot height increase permitted when needed to accommodate a roof pitch that aligns with roof pitch of principal unit); or 2) when located on a lot with a multi-story, multi-unit dwelling. |

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| | <p>To reduce variability within an already complex code and changes in transit, it is recommended that the height limit for detached ADUs be changed to the following simple standard: 18 feet for flat roofs and 20 feet for sloping roofs (min. 3:12 pitch). This will capture the mandatory changes in State law and result in a simpler code for staff and property owners and the development community to understand and implement. The minor increase in building bulk isn't significant in staff's opinion.</p> |
| Parking Exception | <p>The law adds to the list of circumstances when parking is waived. When an ADU is created as part of a new single-unit dwelling or multi-unit dwelling, no additional parking is required for the ADU itself. Effectively, one parking space can only be required for attached or detached ADUs constructed in conjunction with <i>existing</i> development and when not located within ½ mile walking distance to a bus stop. However, due to public access concerns and the impacts to the availability of public on-street parking in the coastal zone, staff is recommending that this new parking waiver not be applicable in the coastal zone (Attachment G). California Coastal Commission staff has been consulted and is supportive of this limitation.</p> |
| Increases number of detached ADUs allowed with Multi-Unit Dwellings | <p>Allows up to two detached ADUs constructed in conjunction with an existing or new multi-unit dwelling. Previously only one detached ADU was allowed when constructed in conjunction with a new multi-unit dwelling.</p> |
| Owner Occupancy | <p>State law now restricts the City from imposing an owner-occupancy requirement for ADUs constructed with multi-unit dwellings. The City remains able to impose owner-occupancy for JADUs and ADUs constructed with single-unit dwellings; however, the owner-occupancy requirement for ADUs remains suspended until January 2025.</p> <p>The owner-occupancy requirement is typically resisted by property owners and developers. The restriction clouds title and reduces flexibility in use and sales. To eliminate these barriers and to simplify implementation, staff is recommending eliminating the owner-occupancy requirement for ADUs constructed with single-unit dwellings. Owner-occupancy requirements for JADUs are recommended to remain.</p> |

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| Process | State law restricts the ability of the City to require a zoning clearance to review and process ADUs and JADUs. Code revisions will clarify ADUs and JADUs shall processed ministerially through a building permit. Projects within the coastal zone will remain subject to the processing of a coastal development permit if it is required. |
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Summary of Recommended Changes by Planning Commission Ad Hoc Committee

The Ad Hoc Committee studied several options to incentivize ADU production; however, ultimately decided to proceed carefully and only recommend changes that did not result in added building bulk. It was recognized that while ADUs help address the City’s RHNA production goals, ADUs alone won’t solve the housing need. It would also be difficult to undo code revisions that later resulted in unintended consequences due to recent changes in State law (Housing Crisis Act of 2019) that temporarily prohibits the adoption of code amendments that limit or restrict development standards. Therefore, despite recommendations from the development community during community outreach meetings requesting increased floor area above maximum floor area limits in exchange for incorporating ADUs as part of new single-unit and multi-unit developments, the Ad Hoc Committee only recommends excluding ADUs from the floor area limits when incorporated into subterranean basements with limited daylighting access.

| Table 2 – Ad Hoc Committee Recommended Changes | |
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| Standard | Proposed Code Change |
| Walkout Basement Floor Area Limit Exception | The City’s current definition of gross floor area excludes subterranean basements from the floor area calculations because they are not visible, but includes daylight basements due to visibility. In order to use subterranean basements for ADU purposes and still provide exterior access, some limited excavation and daylighting of the basement is needed. Therefore, a floor area exception is recommended for ADUs and JADUs predominately designed as a subterranean with certain criteria that allows excavation of a side yard (60 feet max), not visible from a public right-of-way, and that provides safe emergency access passageway (8-foot vertical clearance and 3-foot-wide). All other daylighting basements will remain included in floor area calculations. See Figures 2 and 3 below. |

**Attached ADU
Size Limit
Simplification**

Current regulations limit the size of attached and detached ADUs to 850 square feet for studios and 1-bedroom units and 1,000 square feet for 2+ bedroom units. However, attached ADUs are subject to an additional size limit equal to no more than 50% of the principal dwelling. For example, a 1,400-sf principal dwelling x 50% = 700 sf attached ADU. This 50% sf limitation is rarely triggered due to the small size of principal unit needed to have impact and it only serves to further complicate the regulations. Therefore, it was recommended the 50% limitation be eliminated.

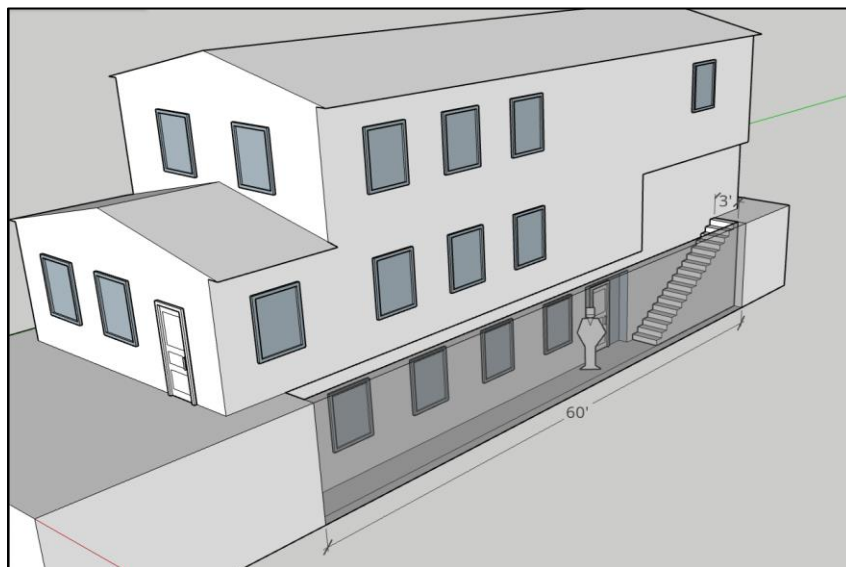


Figure 2- Proposed Daylight Basement Exception for ADUs/JADUs

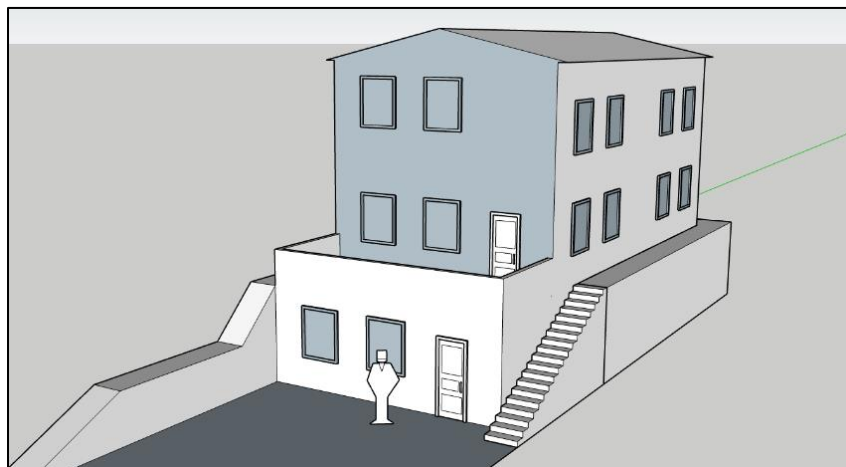


Figure 3- Typical Daylight Basement – No Exclusion Proposed

Planning Commission Recommendation

On January 5, 2023, the Planning Commission considered the proposed amendments and adopted Resolution Nos. PC2023-004 and PC2023-005 (Attachments H and I), recommending approval of Code Amendment No. CA2021-005 to the City Council and recommending the City Council authorize submittal of Local Coastal Program Amendment No. LC2021-003 to the California Coastal Commission.

State Department of Housing and Community Development Review

Per State law, the City is required to submit the ordinance to the State Department of Housing and Community Development (HCD) within 60 days of adoption. Should the City Council approve the proposed ordinance to amend Title 20, staff will forward the ordinance to HCD for review. If HCD finds the ordinance does not comply with the new ADU laws, HCD will notify the City. Should this occur, the City would have 30 days to either amend the ordinance or adopt additional findings that explain the reason the ordinance complies with the statute. Since the amendment to Title 21 requires Coastal Commission approval, the ordinance amending Title 21 will also be submitted to HCD *after* the Coastal Commission process is complete. Staff will coordinate with both State agencies with the goal to ensure that Coastal Commission modifications, if any, will be found acceptable to HCD and the City.

Local Coastal Plan

Similar to the Title 20, Title 21 currently regulates ADUs inconsistent with State law. Therefore, subsequent to City Council adoption of this Zoning Code Amendment, staff will submit corresponding amendments (Attachment B) to the Local Coastal Program (LCP) for review and approval of the California Coastal Commission.

Alternatives

The City Council may recommend revisions to the draft ordinance provided the revisions are consistent with State law and are not more restrictive than the State's allowance.

FISCAL IMPACT:

There is no fiscal impact related to this item.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), which states that the adoption of an ordinance regarding second units in a single-family or multifamily zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code are exempt from the requirements of CEQA. Similarly, the ministerial approval of ADUs would not be a project for CEQA purposes, and environmental review would not be required prior to approving individual applications.

NOTICING:

Pursuant to Section 13515 of the California Code of Regulations, a review draft of the LCP Amendment was made available, and a Notice of Availability was distributed on November 16, 2022, to all persons and agencies on the Notice of Availability mailing list. In addition, notice of this amendment was published in the Daily Pilot as an eighth-page advertisement, consistent with the provisions of the Municipal Code and State law. The item also appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

ATTACHMENTS:

- Attachment A – Ordinance No. 2023-2 (Title 20 Amendment)
- Attachment B – Resolution No. 2023-8 (Title 21 Amendment)
- Attachment C – Matrix of Current ADU/JADU Development Standards
- Attachment D – Matrix of Proposed ADU/JADU Development Standards
- Attachment E – Redline/Strikeouts Version of Title 20 and Title 21 Amendments
- Attachment F – Map of Major Transit Stops and High-Quality Transit Corridors
- Attachment G – Map of Coastal Zone
- Attachment H – Planning Commission Resolution No. PC2023-004
- Attachment I – Planning Commission Resolution No. PC2023-005