

Attachment H

Planning Commission Resolution No. PC2023-004

RESOLUTION NO. PC2023-004

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA RECOMMENDING CITY COUNCIL ADOPTION OF 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 OF THE CREATION OF HOUSING) AND NEW STATE LAW REQUIREMENTS RELATING TO ACCESSORY DWELLING UNITS (PA2021-113)

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

SECTION 1. STATEMENT OF FACTS.

1. 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 accessory dwelling units (“ADU”) as an important strategy to accommodate future growth and is an integral strategy to help meet the City’s Regional Housing Needs Allocation (RHNA).
2. On May 25, 2021, the City Council adopted Resolution 2021-43, initiating a code amendment to Title 20 (Planning and Zoning) to modify regulations relating to the development of ADU and junior accessory dwelling units (“JADU”).
3. 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.
4. In 2022, the California Legislature adopted, and the Governor signed, SB 897 and AB 2221 into law that, among other things, amended Government Code Section 65852.2 and 65852.22 to impose new limits on the City to regulate ADU and JADU. The new regulations took effect on January 1, 2023.
5. Government Code Sections 65852.2 and 65852.22 authorize cities to act by ordinance to provide for the creation and regulation of ADUs and JADUs.
6. The City desires to amend its local regulatory scheme for the construction of ADUs and JADUs to comply with the amended provisions of Government Code sections 65852.2 and 65852.22 (“Code Amendment No. CA2021-005”).

7. A public hearing was held on January 5, 2023, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 20.62 (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. Code Amendment No. CA2021-005 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 65852.1 and 65852.2 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 exceptions to the categorical exemption under Section 15300.2 are not applicable. The Code Amendment No. CA2021-005 does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. FINDINGS.

1. Code Amendment No. CA2021-005 is consistent with and implements California Government Code Sections 65852.2 and 65852.22.
2. Adopting an ordinance consistent with Government Code Sections 65852.2 and 65852.22 ensures that the character of the City is preserved to the maximum extent possible and that the City's regulation regarding ADUs and JADUs continue to promote the health, safety, and welfare of the community.
3. As permitted by California Government Code Section 65852.2, the City finds that maintaining the prohibition of parking in rear alley setbacks is essential to preserve vehicular maneuverability for residents and fire and life safety personnel traveling through the City's narrow alleyways. Also, prohibiting parking in front setbacks, unless located on a driveway a minimum 20 feet in depth, is also essential to ensure that driveways are of sufficient depth to accommodate a vehicle entirely on-site without protruding into the public right-of-way and blocking pedestrian, bicyclist, and vehicular traffic creating a life safety condition.
4. The City is a coastal community with numerous coastal resources that attract over seven million annual visitors. This includes public beaches, Newport Harbor, Balboa Peninsula,

Balboa Island, and Newport Bay. The number of annual visitors, coupled with historic development patterns of the City, has created a significant impact on the limited parking supply. The loss of off-street parking on residential lots would exacerbate the continual public parking problems in the coastal zone, as it shifts residential parking from on-site to on-street. Government Code Section 65852.2(a)(1)(D)(xi) notes that off-street parking shall not be required to be replaced when a garage, carport, or other covered parking is converted to an ADU or JADU. Notwithstanding this, Government Code Section 65852.2(l) notes, "Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976..."

The elimination of off-street parking in residential properties within the coastal zone would create a significant impact to public parking and limit visitor access to coastal resources. In order to preserve the limited parking supply and ensure Code Amendment No. CA2021-005 is consistent with the Coastal Act, Code Amendment No. CA2021-005 maintains and clarifies that the requirement for replacement parking is needed when existing parking is displaced by an ADU or JADU. The Code Amendment also requires parking to provide for an ADU constructed in conjunction with a new single-unit or multi-unit development when not located within ½ mile walking distance to a bus stop.

5. Code Amendment No. CA2021-005 would serve to implement Housing Element Policy Action 1H (Accessory Dwelling Unit Construction) of the 2021-2029 Housing Element. Policy Action 1 requires 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.
6. Local Coastal Program Amendment No. LC2021-003 is also underway to bring the City's ADU regulations into compliance with State Law in the coastal zone.
7. 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 Code Amendment No. CA2021-005 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 65852.1 and 65852.2 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 exceptions to the categorical exemption under Section 15300.2 are not applicable. The Code Amendment does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

3. The Planning Commission hereby recommends to the City Council review Code Amendment No. CA2021-005 as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.

PASSED, APPROVED, AND ADOPTED THIS 5TH DAY OF JANUARY 2023.

AYES: Ellmore, Harris, Klaustermeier, Lowrey, and Rosene

NOES: None

ABSTAIN: None

ABSENT: None

BY: Curtis Ellmore
Curtis Ellmore, Chair

BY: Sarah Klaustermeier
Sarah Klaustermeier, Secretary

EXHIBIT "A"**ZONING CODE AMENDMENT NO. CA2021-005**

Section 20.48.200 (Accessory Dwelling Units) of the Newport Beach Municipal Code is amended in its entirety to read as follows:

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 65852.2 and 65852.22, 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 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 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. 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
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. 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 structure or development containing two (2) or more dwelling units. Only one (1) of the categories described below in this subsection may be used per lot.

1. Internal to a Single-Unit or Multi-Unit Dwelling Category. Only one (1) 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 Title 9 (Fire Code) and Title 15 (Buildings and Construction).

2. Attached on Lot with Single-Unit or Multi-Unit Dwelling Category. One (1) 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. One (1) detached new-construction accessory dwelling unit may be permitted on a lot with a proposed or existing single-unit dwelling. Up to two (2) 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, multi-unit developments approved and built as a single complex shall be considered one (1) 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 (1) 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 (1) 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 Title 9 (Fire Code) and Title 15 (Buildings and Construction).

4. The junior accessory dwelling unit may be constructed in addition to an accessory dwelling unit established 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, 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 in order 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.

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- 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 may provide a minimum setback of four (4) feet from all side property lines and rear property lines not abutting an alley.
3. **Building Height.** Detached accessory dwelling units shall not exceed a height of eighteen (18) feet for structures with flat roofs and twenty (20) feet for structures with sloped roofs (minimum 3/12 pitch). Notwithstanding the foregoing, an accessory dwelling unit constructed above a detached garage shall not exceed two (2) stories and the maximum allowable height of the underlying zoning district, provided all the following criteria are met:
- a. The accessory dwelling unit meets the minimum setbacks, as required by underlying zoning district; and
 - b. The principal dwelling unit complies with parking standards set forth in Section 20.40.040.
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 (2) or more bedroom unit.
 - b. Application of size limitations set forth in subsections (F)(4)(a) of this section, shall not apply to accessory dwelling units that are 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.
 - 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.
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 (8) 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.

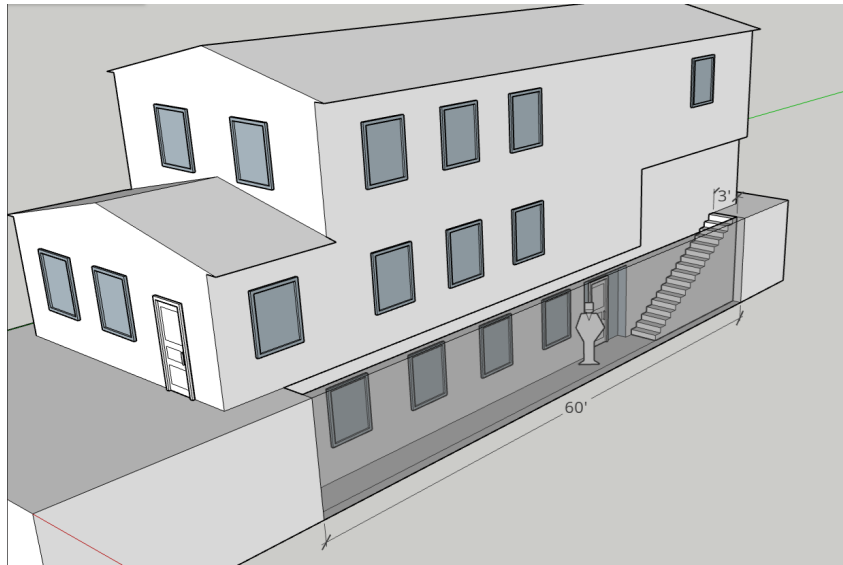


Figure 3-7

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 trigger a requirement for 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 (1) 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. Accessory dwelling unit internal to a proposed principal residence or converted from existing space of a principal residence or existing accessory structure;
 - ii. Accessory dwelling units located within one-half-mile walking distance of a 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. Accessory dwelling units 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, accessory dwelling units 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, or covered parking structure 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. Accessory dwelling units shall not displace required uncovered parking spaces. 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 a 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. 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 an accessory dwelling unit and/or 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 accessory dwelling unit and/or 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.