

ORDINANCE NO. 2018-14

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NEWPORT BEACH, CALIFORNIA, ADOPTING ZONING
CODE AMENDMENT NO. CA2018-003 TO IMPLEMENT
REVISIONS TO STATE LAW RELATING TO ACCESSORY
DWELLING UNITS (PA2018-099)**

WHEREAS, State law (Senate Bill 229 and Assembly Bill 494, Statutes of 2017) requires jurisdictions to amend their local zoning ordinances to conform to California Government Code Section 65852.2;

WHEREAS, Senate Bill 229 and Assembly Bill 494 are intended to address the State housing crisis by easing regulatory barriers for homeowners who choose to construct accessory dwelling units;

WHEREAS, accessory dwelling units 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 accessory dwelling units benefit from added income and increased sense of security;

WHEREAS, allowing accessory dwelling units in conjunction with single-family residential development provides additional rental housing stock;

WHEREAS, accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character;

WHEREAS, adopting an ordinance consistent with California Government Code Section 65852.2 ensures that the character of the City of Newport Beach ("City") is preserved to the maximum extent possible and that the City's regulation regarding accessory dwelling units continues to promote the health, safety, and welfare of the community;

WHEREAS, the City has designated areas where accessory dwelling units may be located, when permitted by California Government Code Section 65852.2, based in part upon adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety;

WHEREAS, as permitted by California Government Code Section 65852.2, the City finds that prohibiting parking in rear alley setbacks is essential to preserve vehicular maneuverability for residents and fire-life safety personnel traveling through the City's narrow alleyways. In addition, prohibiting parking in front setbacks, unless located on a driveway with a minimum twenty-foot (20') 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.

WHEREAS, a public hearing was held on August 9, 2018, 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 the Newport Beach Municipal Code ("NBMC"). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

WHEREAS, on August 9, 2018, the Planning Commission adopted Resolution No. PC2018-025 by a unanimous vote (7-0), recommending approval of Zoning Code Amendment No. CA2018-003 to the City Council;

WHEREAS, a public hearing was held on September 11, 2018, 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 the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing; and

WHEREAS, pursuant to Section 13515 of Title 14, Division 5.5, of the California Code of Regulations, review drafts of LCP Amendment No. LC2018-002 were made available and a notice of the availability was distributed a minimum of six weeks prior the City Council public hearing.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: Newport Beach Municipal Code ("NBMC") Subsection 20.18.010(A) and (B) are amended to read as follows:

- A. R-A (Residential-Agricultural) Zoning District. The R-A zoning district is intended to provide for areas appropriate for detached single-family residential dwelling units and light farming uses, each located on a single legal lot;
- B. R-1 (Single-Unit Residential) Zoning District. The R-1 zoning district is intended to provide for areas appropriate for a range of detached single-family residential dwelling units; each located on a single legal lot, and does not include condominiums or cooperative housing.

Section 2: Table 2-1 in NBMC Section 20.18.020(C) (Allowed Uses and Permit Requirements) is amended, in part to the Accessory Dwelling Units" row as follows:

Land Use See Part 7 of this Implementation Plan for land use definitions. See Chapter 20.12 for unlisted uses.	R-A	R-1	R-BI R-2	RM RMD	Specific Use Regulations
Residential Uses					
Accessory Dwelling Units	P	P	P	P	Section 20.48.200

Section 3: NBMC Section 20.48.200 (Senior Accessory Dwelling Units) 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 as defined in Part 7 (Definitions) and in the California Government Code Section 65852.2, or any successor statute, in single-unit residential zoning districts or areas designated for single unit 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. Review Authority. Accessory dwelling units shall be approved in conjunction with single-unit dwellings in all residential zoning districts, subject to the approval of the Director upon finding that the following conditions have been met:
 - 1. The dwelling conforms to the development standards and requirements for accessory dwelling units established in the subsections below.
 - 2. Public and utility services including emergency access are adequate to serve both dwellings.
- C. Development standards. Except as modified by this subsection, an accessory dwelling unit shall conform to all requirements of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions of this Code, including but not limited to height, setback, site coverage, floor area limit, and residential development standards and design criteria; unless the unit is contained within a legal, nonconforming structure and does not expand the nonconformity.

1. Minimum lot area. A minimum lot area of five thousand (5,000) square feet, excluding submerged land area, shall be required in order to establish an accessory dwelling unit.
2. Setback requirements. Accessory dwelling units shall comply with the setback requirements applicable to the zoning district in which they are located, except in cases where the minimum required garage setbacks differ from principal building setbacks, in which case the following applies:
 - a. No additional setback shall be required for an existing garage that is converted to an accessory dwelling unit, provided that the side and rear setbacks comply with required Building Codes.
 - b. A setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit constructed above the garage.
3. Building height. Detached accessory dwelling units shall not exceed one story and a height of 14 feet, unless the accessory dwelling unit is constructed above a garage, in which case the structure shall comply with the height limits of the underlying zoning district.
4. Unit size. The maximum size of an accessory dwelling unit shall not exceed a 750 square feet of floor area, or 50 percent of the existing floor area (excluding garage) of the principal unit, whichever is less. The minimum size of an accessory dwelling unit must be at least that of an efficiency unit.
5. Design. An accessory dwelling unit shall be similar to the principal dwelling with respect to architectural style, roof pitch, color, and materials.
6. Conversion of space within existing structure. Notwithstanding the provisions of subsections C(1), C(2), C(3), C(4) and C(5) above, an accessory dwelling unit shall be permitted if the unit is contained within the existing space of a single-unit dwelling or existing accessory structure, has independent exterior access from the existing dwelling, and the side and rear setbacks comply with required Building Codes, and if the accessory dwelling unit conforms with the following:
 - a. For the purposes of this section, the portion of the single-unit dwelling or accessory structure must have been legally permitted and existing for a

minimum of three years prior to the issuance of a permit to convert the space into an accessory dwelling unit.

- b. No new or separate utility connection may be required between the accessory dwelling unit and the utility service, such as water, sewer, and power.
 - c. The property is located within a residential zoning district that permits single-unit dwellings and no more than one dwelling unit exists on the property.
7. Fire sprinklers. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the principal residence.
8. Passageway. No passageway shall be required in conjunction with the construction of an 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.
9. Parking. Parking shall comply with requirements of Chapter 20.40 (Off-Street Parking), except as modified below:
1.
 - a. A minimum of one parking space shall be provided for an accessory dwelling unit.
 - b. Such parking may be provided as tandem parking and/or may be located on an existing driveway; however, in no case shall parking be allowed in a rear setback abutting an alley.
 - c. No parking shall be required for:
 - i. Accessory dwelling unit converted as part of the existing principal residence or existing accessory structure as described in subsection (C)6.
 - ii. Accessory dwelling units located within one-half mile of a public transit. For the purposes of this section "public transit" shall include a bus stop with fixed route bus service that provides transit service at 15-minute intervals or better during peak commute periods.
 - 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.
 - 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 stay in a fixed location for at least 10 years and available to the public.
- d. If an accessory dwelling unit replaces an existing garage, replacement spaces must be provided. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, any required replacement spaces 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.

D. Additional requirements for all accessory dwelling units.

- 1. Sale of units. The accessory dwelling unit shall not be sold separately from the principal dwelling.
- 2. Short-term lodging. The accessory dwelling unit shall not be rented for periods of less than 30 days.
- 3. Number of units allowed. Only one accessory dwelling unit may be located on the lot.
- 4. Existing development. A single-unit dwelling must exist on the lot or shall be constructed on the lot in conjunction with the construction of the accessory dwelling unit.
- 5. Occupancy. The principal dwelling unit or the accessory dwelling unit shall be continuously occupied by at least one person having an ownership interest in the lot.

E. Deed restriction and recordation required. Prior to the issuance of a Building and/or Grading Permit for an 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 and restrictions on short-term rentals. This deed restriction shall remain in effect so long as the accessory dwelling unit exists on the property.

Section 4: The definition of “Dwelling Unit, Accessory (Land Use)” in NBMC Section 20.70.020 (Definition of Specialized Terms and Phrases) is amended to read as follows:

Dwelling Unit, Accessory (Land Use). A dwelling unit accessory to and attached to, detached from, or contained within, the principal dwelling unit on a site zoned for a single-family residential use. An accessory dwelling unit also includes the following:

1. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code, or any successor statute.
2. A manufactured home, as defined in Section 18007 of the Health and Safety Code, or any successor statute.

Section 5: NBMC Subsection 20.90.090(D) (Accessory Uses Permitted) is amended to include subpart 8, which shall read as follows:

8. Accessory dwelling unit in conformance with Section 20.48.200.

Section 6: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 7: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 8: 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 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. 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 9: An amendment to the Local Coastal Program (“LCP”) is also underway to comply with State law. This Zoning Code Amendment shall not become effective for projects located in the coastal zone for which the LCP is applicable until approval of the subject LCP amendment by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution and/or ordinance of the City Council of the City of Newport Beach.

Section 10: Except as expressly modified in this ordinance, all other Sections, Subsections, terms, clauses and phrases set forth in the NBMC shall remain unchanged and shall be in full force and effect.

Section 11: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 11th day of September, 2018, and adopted on the 25th day of September, 2018, by the following vote, to-wit:

AYES, COUNCILMEMBERS _____

NOES, COUNCILMEMBERS _____

ABSENT COUNCILMEMBERS _____

MARSHALL "DUFFY" DUFFIELD, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY