

ORDINANCE NO. 2022-5

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADOPTING REVISIONS TO ZONING CODE AMENDMENT NO. CA2019-009 AMENDING TITLE 20 (PLANNING AND ZONING) OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE RELATED TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS FOR CONSISTENCY WITH THE CALIFORNIA COASTAL COMMISSION'S MODIFICATIONS AND STATE LAW (PA2019-248)

WHEREAS, Section 200 of the Charter of the City of Newport Beach ("City") vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to the municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges or procedures granted or prescribed by any law of the State of California;

WHEREAS, on March 10, 2020, the City Council introduced Ordinance No. 2020-9 revising Title 20 (Planning and Zoning) related to the accessory dwelling units ("Zoning Code Amendment No. CA2019-009") and adopted Resolution No. 2020-24 authorizing submittal of LCP Amendment No. LC2019-008 to the California Coastal Commission ("Coastal Commission") by a unanimous vote (7 ayes, 0 nays);

WHEREAS, on March 24, 2020, the City Council adopted Ordinance No. 2020-9 revising Title 20 (Planning and Zoning) in order to implement Zoning Code Amendment No. CA2019-009;

WHEREAS, at its December 15, 2021 hearing, the Coastal Commission approved and certified LCP Amendment No. LC2019-008 with modifications (LCP-5- NPB-20-0025-1 Part C) as being consistent with the California Coastal Act;

WHEREAS, revisions to Zoning Code Amendment No. CA2019-009 are necessary for consistency with Coastal Commission modifications to LCP Amendment. No. LC2019-008 (LCP-5- NPB-20-0025-1 Part C) and comments received by the California Department of Housing and Community Development; and

WHEREAS, a public hearing was held by the City Council on February 22, 2022, 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 Ralph M. Brown Act, 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 City Council at this public hearing.

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

Section 1: Section 20.48.200 (Accessory Dwelling Units) of Chapter 20.48 (Standards for Specific Land Uses) of Title 20 (Planning and Zoning) of the NBMC is hereby amended 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 a legally established nonconforming zoning condition. 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 Zoning Clearance provided by the Director 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. Zoning clearance 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 Units Allowed. The following is the maximum number of accessory dwelling units and/or junior accessory dwelling units allowed on any residential lot. For the purposes of this section, multi-unit dwelling means a structure or development containing two or more dwelling units. Unless otherwise specified below, 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. Only one (1) accessory dwelling unit or one (1) junior 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 150 square feet if the expansion is limited to accommodating ingress and egress.

b. The junior accessory dwelling unit is proposed:

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

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

c. The accessory dwelling unit or junior accessory dwelling unit will have independent exterior access from the single-unit dwelling.

- d. Side and rear setbacks comply with Title 9 (Fire Code) and Title 15 (Buildings and Construction) of the Municipal Code.
2. Detached/Attached on Lot with Single-Unit or Multi-Unit Dwelling Category. One (1) detached or 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. A detached, new-construction accessory dwelling unit may also be permitted in addition to any junior accessory dwelling unit that might otherwise be established on the lot under subsection (D)(1)(b).
3. 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 (1) 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.
4. Detached on Multi-Unit Lot Category. Up to two (2) detached accessory dwelling units may be constructed on a lot that has an existing multi-unit dwelling. 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.
- E. Development Standards. Except as modified by this subsection, 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 20 (Planning and Zoning) of this Code, 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.
 - 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.
 - 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 one (1) story and a height of sixteen (16) feet. 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 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 850 square feet for a studio or one (1) bedroom unit and 1,000 square feet for a two (2) or more bedroom unit.
 - b. An attached accessory dwelling unit that is created on a lot with an existing single-unit dwelling is further limited to fifty (50) percent of the floor area of the existing dwelling.
 - c. Application of size limitations set forth in subsections (E)(4)(a) and (E)(4)(b) above, 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.

- d. Application of size limitations set forth in subsection (E)(4)(b) above, or other 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 floor area limit, open space, or site coverage requirement reduce the accessory dwelling unit to less than 800 square feet and the ADU shall not exceed a height of 16 feet measured from the finished grade as determined by the Director.
 - e. The maximum size of a junior accessory dwelling unit shall be 500 square feet.
 - f. The minimum size of an accessory dwelling unit or junior accessory dwelling unit shall be at least that of an efficiency unit.
5. Design. An accessory dwelling unit and/or junior accessory dwelling unit shall be similar to the principal dwelling with respect to architectural style, roof pitch, color, and materials.
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; however, fire sprinklers are encouraged.
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 (1) 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. 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. Refer to Section 21.48.200(F)(8)(e) for replacement parking in the coastal zone.

F. 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 (F)(3) below, 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 onsite 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.

G. 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.**
 - a. **Accessory dwelling units.** A natural person with legal or equitable title to the lot must reside in either the principal dwelling unit or the accessory dwelling unit as the person's legal domicile and permanent residence. However, this owner-occupancy requirement shall not apply to any accessory dwelling unit that is permitted in accordance with this section between January 1, 2020 and January 1, 2025.
 - b. **Junior accessory dwelling units.** A natural person with legal or equitable title to the lot must reside in either the principal 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.

H. 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.

I. 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.

Section 2: The recitals provided in this ordinance are true and correct and are incorporated into the substantive part of this ordinance.

Section 3: 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 4: The City Council finds the introduction and adoption of this ordinance is statutorily exempt under the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code Section 21080.17 and Section 15282(h) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, which exempts adoption of an ordinance regarding second units to implement provisions of Sections 65852.2 and 65852.22 of the Government Code. Additionally, this ordinance is categorically exempt pursuant to Sections 15303 (New Construction or Conversion of Small Structures) and 15305 (Minor Alterations in Land Use/Limitations). Similarly, the ministerial approval of accessory dwelling units and junior accessory dwelling units is not a "project" for CEQA purposes, and environmental review is not required prior to approving individual applications.

Section 5: 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 6: 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 shall become effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 22nd day of February, 2022, and adopted on the 8th day of March, 2022, by the following vote, to-wit:

AYES: Mayor Muldoon, Mayor Pro Tem Blom, Council Member Avery,
Council Member Dixon, Council Member Duffield, Council Member
O'Neill

NAYS: _____

RECUSED: Council Member Brenner



KEVIN MULDOON, MAYOR

ATTEST:



LEILANI I. BROWN, CITY CLERK



APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF NEWPORT BEACH }

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Ordinance No. 2022-5 was duly introduced on the 22nd day of February, 2022, at a regular meeting, and adopted by the City Council at a regular meeting duly held on the 8th day of March, 2022, and that the same was so passed and adopted by the following vote, to wit:

AYES: Mayor Kevin Muldoon, Mayor Pro Tem Noah Blom, Council Member Brad Avery,
Council Member Diane Dixon, Council Member Duffy Duffield, Council Member
Will O'Neill

NAYS: None

RECUSED: Council Member Joy Brenner

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 9th day of March, 2022.



Leilani I. Brown, MMC
City Clerk
City of Newport Beach, California

CERTIFICATE OF PUBLICATION

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF NEWPORT BEACH }

I, LEILANI I. BROWN, City Clerk of the City of Newport Beach, California, do hereby certify that Ordinance No. 2022-5 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in *The Daily Pilot*, a newspaper of general circulation on the following dates:

Introduced Ordinance: February 26, 2022
Adopted Ordinance: March 12, 2022

In witness whereof, I have hereunto subscribed my name this _____ day of March, 2022.

Leilani I. Brown, MMC
City Clerk
City of Newport Beach, California