



NEWPORT BEACH

City Council Staff Report

March 10, 2020
Agenda Item No. 10

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2020-9: Introduction of an Accessory and Junior Accessory Dwelling Unit Ordinance (PA2019-248)

ABSTRACT:

Due to a change in State law regarding Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs), the City's ADU ordinance has been rendered invalid. The proposed ordinance amends the Newport Beach Municipal Code (NBMC) Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) providing new local regulations regarding the construction of ADUs and JADUs. The changes include, but are not limited to the zoning districts that allow ADUs and JADUs, maximum allowable size, height limitation, and parking. For City Council's consideration is an ordinance that meets the requirements of State law for ADUs.

RECOMMENDATION:

- a) Conduct a public hearing;
- b) Find this project statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resource Code Section 21080.17 and Section 15282(h) of the CEQA Guidelines, which exempts adoption of an ordinance regarding second units to implement provisions of Sections 65852.2 and 65852.22 of the Government Code. Additionally, the ordinance is categorically exempt pursuant to Sections 15303 (New Construction or Conversion of Small Structures) and 15305 (Minor Alterations in Land Use/Limitations);
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2020-9, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Zoning Code Amendment No. CA2019-009 to Repeal and Replace Section 20.48.200 (Accessory Dwelling Units) of Title 20 (Planning and Zoning) and Amend Related Provisions of the Newport Beach Municipal Code Applicable to Accessory Dwelling Units and Junior Accessory Dwelling Units Pursuant to State Law (PA2019-248)* (Attachment A), and pass to second reading on March 24, 2020; and

- d) Adopt Resolution No. 2020-24, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of Local Coastal Program Amendment No. LC2019-008 to the California Coastal Commission to Repeal and Replace Section 21.48.200 (Accessory Dwelling Units) of Title 21 (Local Coastal Program Implementation Plan) and Amend Related Provisions of the Newport Beach Municipal Code Applicable to Accessory Dwelling Units and Junior Accessory Dwelling Units Pursuant to State Law (PA2019-248)* (Attachment B).

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

INTRODUCTION:

In 2019, the California Legislature adopted a group of housing bills aimed at addressing the housing crisis. The legislature approved, and the Governor signed, SB 13 (Chapter 653, Statutes of 2019), AB 68 (Chapter 655, Statutes of 2019), and AB 881 (Chapter 659, Statutes of 2019) into law that, among other things, amended Government Code sections 65852.2 and 65852.22 to impose new limits on the City's ability to regulate ADUs and JADUs (Attachment C). In adopting these new regulations, the State Legislature determined that housing is a matter of statewide concern, rather than a municipal affair. This determination allows the State to mandate charter cities to implement the new ADU laws. The State Legislature intends to reduce regulatory barriers and costs, streamline the approval process, and expand the potential capacity for ADUs.

As of January 1, 2020, the City's ordinance regulating ADUs is null and void, thereby limiting the City to the application of the few default standards provided in Government Code sections 65852.2 and 65852.22 for the approval of ADUs and JADUs, unless and until a compliant ordinance is adopted.

Initiation of Code Amendment

Zoning Code Section 20.66.020 (Initiation of Amendment) provides that a code amendment may be initiated by the City Council with or without a recommendation from the Planning Commission. City Council Policy K-1 (General Plan and Local Coastal Program) provides that a City-sponsored amendment to the certified Local Coastal Program (LCP) shall be initiated by the City Council. On January 14, 2020, the City Council adopted Resolution No. 2020-3, thereby initiating the Code and LCP Amendments (Attachments D and E).

Planning Commission Review

On February 20, 2020, the Planning Commission conducted a duly noticed public hearing to consider the proposed changes to Titles 20 and 21 of the NBMC. During the public hearing, two speakers addressed the Planning Commission expressing concern about the residential build-out under the General Plan, whether the City's existing infrastructure could support the additional units, and why the State laws apply to a Charter City.

It is important to note that the new ADU laws provide that ADUs are considered an accessory use; therefore, they are not considered to contribute towards maximum build-out densities outlined in the General Plan. While staff does anticipate an initial influx of units, the submittals can be expected to taper off. Since the City started allowing ADUs in 2017, only 16 applications have been submitted (11 of which have received building permits). It is highly unlikely that every property in the City will construct an ADU and/or JADU. Like any room addition or new house, staff will continue to monitor all new construction to ensure that the City's infrastructure is not impacted. It is further noted the State Legislature has determined that constructing ADUs are a matter of statewide concern to provide needed housing opportunities, thus allowing them to mandate these changes to charter cities. During their deliberations, the Planning Commission articulated similar concerns.

The Planning Commission staff report included a detailed comparison of the City's current ADU regulations to the proposed regulations (Attachment F). At the meeting, the Commission also requested that staff include a comparison of the proposed Newport Beach regulations to the new ADU law with the City Council report. This comparison is contained in Attachment G. While the Planning Commission expressed frustration with the State mandating these changes, they noted that it is important to move the amendments forward. However, the Planning Commission did not want to provide a blanket endorsement of the proposal. Instead, after considering all oral and written evidence, the Planning Commission voted 5-1, with Secretary Lowrey opposed and Commissioner Kleiman absent, to forward the proposed Zoning Code Amendment No. CA 2019-009 and LCP Amendment to the City Council for review (Attachments H and I - Resolutions) and approve if the terms of the code amendment retained greater local control over accessory dwelling units and junior accessory dwelling units than what is provided by Government Code Sections 65852.2 and 65852.22. The Planning Commission minutes are included as Attachment J.

DISCUSSION:

Proposed New Regulations

The State is now requiring all cities, including charter cities such as Newport Beach, ministerially approve ADUs and JADUs under the following four circumstances:

1. Convert existing space in a single-unit residence to provide either an ADU or a JADU. In this case, only one ADU or JADU is allowed.
2. Convert existing space in a single-unit residence to build a JADU and construct a new detached ADU. In this case, both an ADU and JADU are allowed.
3. Convert non-habitable space, such as garages, storage rooms, etc., in a multiple-unit dwelling property into ADUs. The number of ADUs on the property may not exceed 25 percent of the total number of units. A minimum of one ADU will be allowed and JADUs are not permitted.

4. Construct two-detached ADUs on the same property as a multiple-unit dwelling. This limits the total number of ADUs for the entire property to two. JADUs are not permitted.

As part of the new ADU law, the City can no longer require a minimum lot size (previously a 5,000 square-foot minimum lot size was required), which results in the potential that any property improved with a residential unit could be eligible to provide an ADU. Additionally, the new ADU laws limit the ability to require owner-occupants and allow the City to set maximum unit sizes of 850 square feet for a one-bedroom ADU and 1,000 square feet for a two-bedroom ADU.

Parking

The proposed amendments would require one parking space for each ADU (JADUs are not required to provide a parking space). However, the City is required to waive the ADU parking space requirement in the following circumstances:

1. The ADU is located within one-half ($\frac{1}{2}$) mile walking distance to a transit stop;
2. The ADU is located within one (1) block of a designated car share pick up and drop off location;
3. The ADU is located within an architecturally and historically significant historic district;
4. The ADU is proposed to be converted from the existing space entirely within the primary dwelling unit or an existing accessory structure; or
5. The ADU is located in a permit parking area where on-street parking permits are required, but not offered to the occupant(s) of the accessory dwelling unit.

If an owner wishes to convert their existing garage to an ADU, the new ADU laws prevent the City from requiring replacement parking for the garage spaces lost to the conversion. This allowance does not apply to JADUs, which must provide replacement parking if they convert a garage. Coastal Commission staff has expressed a concern that converting garages and not providing replacement parking could impact the public parking supply in the Coastal Zone thereby impacting public access. This would potentially make the garage conversion portions of the ADU law inconsistent with the Coastal Act. The new ADU laws specifically state, "Nothing [in the new laws] shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976..." Accordingly, the proposed amendment to Title 21 requires replacement parking for any garage, carport, or other covered parking that is converted to an ADU. This replacement parking requirement of the proposed ordinance only affects properties within the Coastal Zone.

Notwithstanding the requirement to waive parking for the above listed circumstances, during the Planning Commission hearing Vice Chair Weigand suggested the City consider an incentive to those owners who provide parking when not required to do so. An incentive has not been included with the proposed amendments; but the City Council can consider adding an incentive such as waiving building permit fees, increasing the maximum heights for detached ADUs, or providing a floor area bonus.

Redlined changes of the proposed amendments are included as Attachments K and L.

Local Coastal Plan

Similar to the Zoning Code, the Implementation Plan of the Local Coastal Program (LCP) does not permit ADUs in a manner that is consistent with changes in State law and must be revised. Therefore, subsequent to City Council adoption of this Zoning Code Amendment, staff will submit corresponding amendments to the LCP for review and approval by the California Coastal Commission (CCC). Until the LCP amendment is reviewed and approved by the CCC, the City will continue to process ADUs in the Coastal Zone in accordance with the current LCP regulations. For projects that are now consistent with State law, but inconsistent with the LCP, staff will rely on CCC Guidance Memorandums, which indicate that any eligible projects located in the Coastal Zone that qualify for a Coastal Development Permit (CDP) exemption, such as conversions of existing spaces (excluding garages) into ADUs and JADUs, may be permitted. Projects that do not qualify for an exemption, such as new construction ADUs to multi-unit buildings, cannot be processed until the LCP Amendment is approved and adopted. Once the City obtains Coastal Commission approval, staff will return to the City Council with a final ordinance to amend Title 21.

State Department of Housing and Community Development Review

Paragraph (h) of Government Code Section 65852.2 requires the City to submit the ordinance to the State Department of Housing and Community Development (HCD) within 60 days of adoption. Upon adoption of 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 be submitted to HCD after the Coastal Commission process is complete.

Relationship to Regional Housing Needs Assessment (RHNA)

At this time with our current understanding of HCD's guidelines, only a small number of ADUs and JADUs will count towards the City's housing production in meeting RHNA housing targets. In the past, HCD has relied heavily on past production to illustrate anticipated future production and current State regulations identify past production as one of several factors to determine ADUs to satisfy a portion of RHNA. In most cities and counties including Newport Beach, regulations for ADUs were much more restrictive before recent changes in law were adopted. To account for changes in law, draft guidance from HCD indicates they may allow jurisdictions to account for the increased ADU potential as follows:

- Local trends in ADU construction since 2018;
- Assume the average statewide increase of five times the previous planning period trends;
- Trends from regional production of ADUs since 2017;
- Programs that aggressively promote and incentivize ADU and JADU construction;
or
- Other analysis (reviewed on a case-by-case basis).

Within the current planning period (2014-2021), the City of Newport Beach has permitted a total of 11 ADUs. Applying HCD's factor of five times the number of past permitted ADUs results in only 55 units counting towards the City's upcoming RHNA. Should the City promote ADU and JADU development, production may increase and the City will need to rely more heavily on them to meet the City's RHNA.

The City is also supporting and has requested changes in legislation that would establish clear and objective standards that jurisdictions can utilize when determining the extent to which future ADUs count towards Housing Element RHNA site requirements. The legislation would also establish reasonable assumptions for determining the percentage of ADUs that count towards lower-income RHNA requirements.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this project 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.

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 February 14, 2020.

In addition, notice of the proposed amendments was published in the *Daily Pilot* as an eight-page advertisement, consistent with the provisions of the NBMC. The item also appears on the agenda for this meeting, which was posted at City Hall and on the City Website.

ATTACHMENTS:

Attachment A – Ordinance No. 2020-9

Attachment B – Resolution No. 2020-24

Attachment C – HCD Memorandum Summarizing Changes in State Law

Attachment D – City Council Resolution No. 2020-3

Attachment E – January 14, 2020 City Council Minutes Excerpts

Attachment F – February 20, 2020 Planning Commission Staff Report

Attachment G – Comparison State ADU Law vs Proposed NBMC

Attachment H – Planning Commission Resolution No. PC2020-006

Attachment I – Planning Commission Resolution No. PC2020-007

Attachment J – February 20, 2020 Draft Planning Commission Minutes Excerpts

Attachment K – NBMC Title 20 (Planning and Zoning), Proposed Redlined Code
Changes

Attachment L – NBMC Title 21 (Local Coastal Program Implementation Plan), Proposed
Redlined Code Changes