



# PLANNING COMMISSION STUDY SESSION MEMORANDUM

Date: August 5, 2020

To: Planning Commissioners  
From: Long Range Planning  
Jennifer Savage, Senior Planner  
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Subject: Zoning Amendments Study Session

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## Background

On January 21, 2020, the City Council initiated Zoning Amendments to bring the City into compliance with the General Plan, and State and Federal law. In addition, the Zoning Amendments will correct erroneous and ambiguous language, and provide clear and concise direction for potential developers, staff, and decision makers. The Planning Commission held the first Study Session for these amendments on July 22, 2020.

## Discussion

Staff categorized amendments into 13 subject areas. The areas for consideration in each subject area are summarized in Table 1 below and consist of amendments identified before 2020.

The August 5, 2020 Study Session introduces Zoning Amendments for 3 subject areas: Definitions; Nonconforming; and Residential (Accessory Dwelling Units only). There are 3 attachments included with the August 5, 2020 Study Session memo; other subject area attachments will be included at future study sessions and public hearings. These attachments discuss the changes for these subject areas and identify the proposed amendments with redline changes.

**Table 1. Proposed Zoning Amendment Subject Areas**

Attachment	Subject Area	Items
1	Accessory Structures	<ul style="list-style-type: none"><li>• Definitions for accessory building; attached, accessory building; and building</li><li>• Clarify when accessory structures are attached and detached</li><li>• Consider limiting quantity of accessory buildings less than 450 square feet allowed in setbacks</li><li>• Consider retaining wall spacing exception to accommodate an in-bank garage driveway approach</li></ul>

Attachment	Subject Area	Items
		<ul style="list-style-type: none"> <li>• Modify setback for street facing garages to be consistent with Interpretation 96-41</li> <li>• Consider standards for skateboard ramps</li> <li>• Add standards for in-bank garages in street-side yards with sloped topography</li> <li>• Clarify encroachment exceptions for attached and detached accessory structures</li> </ul>
2	Definitions	<ul style="list-style-type: none"> <li>• <b>Define "alley" and residential setbacks for alleys</b></li> <li>• <b>Define cultural facilities</b></li> <li>• <b>Define hedge and when to apply height restrictions</b></li> <li>• <b>Define method to measure chimney height</b></li> <li>• <b>Define roof element</b></li> <li>• <b>Consider adding definition for lot depth for irregular lots</b></li> <li>• <b>Refine restaurant definitions</b></li> <li>• <b>Add graphic and clarify how setbacks are applied to multiple, long, or irregular street frontage</b></li> <li>• <b>Define canyon edge and inland canyon, and add specific canyon standards</b></li> <li>• <b>Add definitions for tap rooms and microbreweries, and add uses to Commercial and Mixed Use zones with a Minor Conditional Use Permit</b></li> </ul>
3	Encroachments	<ul style="list-style-type: none"> <li>• Add findings for encroachment permits, and consider removing discretionary review</li> <li>• Consider modifying/removing 6 feet width limitation for BBQs/fireplaces</li> <li>• Add exceptions to allow basements to encroach into setbacks</li> <li>• Clarify that no setback is required for pools</li> <li>• Add encroachment and setback standards for through lots</li> <li>• Clarify how to measure accessory structures, including patio covers, to determine encroachments</li> </ul>
4	General Plan	<ul style="list-style-type: none"> <li>• Update Animals, Commercial Grazing and Raising of Large Species section per General Plan</li> <li>• Add standards to reflect Bicycle and Pedestrian Master Plan and green building code</li> <li>• Define business incubator term as referenced in the General Plan Economic Development Element</li> <li>• Modify Transportation Demand Management provisions for consistency with General Plan</li> </ul>

Attachment	Subject Area	Items
		<ul style="list-style-type: none"> <li>• Modify Affordable Housing Overlay to allow stand-alone affordable housing on any mixed use zoned lots in the Housing Element site inventory</li> </ul>
5	Historic	<ul style="list-style-type: none"> <li>• Add considerations to approve demolition of structures that are older than 50 years old</li> <li>• Consolidate historic regulations and update per General Plan</li> <li>• Modify Historic Preservation Incentives section to reflect Historic Property Preservation Agreement program (inspection frequency, mandatory provisions, amendments)</li> <li>• Modify ordinance to require a Cultural Heritage Permit (instead of an Architectural Permit) for commercial lots within 300 feet of a historic residence</li> </ul>
6	<b>Nonconforming</b>	<ul style="list-style-type: none"> <li>• <b>Clarify/modify the 50% provision for detached garages and garage expansions</b></li> <li>• <b>Clarify/modify what counts as floor area for nonconforming additions</b></li> <li>• <b>Consider requiring that multi-family expansions bring parking into compliance</b></li> <li>• <b>Clarify parking requirements for demolition of homes with a one-car garage</b></li> <li>• <b>Clarify how the 50% provision applies to accessory structures</b></li> <li>• <b>Consider removing the Minor Architectural Permit requirement for an existing nonconforming structure</b></li> </ul>
7	Parking	<ul style="list-style-type: none"> <li>• Clarify parking standards for off-site parking (requirements, distance, Conditional Use Permit, agreements)</li> <li>• Consider exceptions for narrow lots</li> <li>• Consider parking standards for event centers</li> <li>• Correct typo in parking standards table</li> </ul>
8	<b>Residential</b>	<ul style="list-style-type: none"> <li>• Add minimum lot area for Residential, High Density Zone</li> <li>• Update setbacks in Special Residential Overlay Appendix A for consistency with tract plans and Covenants, Conditions &amp; Restrictions</li> <li>• Consider height exceptions for entry walls consistent with approved architectural style</li> <li>• Add storage requirements for multi-family residential projects</li> </ul>

Attachment	Subject Area	Items
		<ul style="list-style-type: none"> <li>• <b>Modify accessory dwelling unit standards for consistency with State law</b></li> </ul>
9	Retaining Walls	<ul style="list-style-type: none"> <li>• Modify retaining wall height standards for consistency with fence height standards</li> <li>• Add minimum space between a fence and a retaining wall</li> </ul>
10	Signs	<ul style="list-style-type: none"> <li>• Add size limitation for directional and parking lot signs</li> <li>• Add setbacks for free-standing signs to account for traffic visibility</li> <li>• Consider adding exemption or provisions for historic signs</li> <li>• Modify to be consistent for measuring sign area of two-sided signs</li> <li>• Clarify service station sign provisions and make consistent with State law</li> <li>• Add graphics to illustrate sign measurements</li> <li>• Modify requirements for signs on vehicles for consistency with State law</li> <li>• Define project site for monument sign locations referring to interpretation 10-089</li> <li>• Make provision and figure consistent</li> <li>• Modify for consistency with State law</li> <li>• Correct typo for grand opening banner size</li> <li>• Correct typo for Discretionary Sign Permits</li> </ul>
11	State & Federal Law	<ul style="list-style-type: none"> <li>• Consider merit and impacts of prohibiting small family day care homes in multi-family residential units</li> <li>• Add State Law provisions for home occupations, and consider modifying requirements</li> <li>• Modify tattoo regulations for consistency with case rulings</li> </ul>
12	Temporary & Special Activities	<ul style="list-style-type: none"> <li>• Correct typo in Special Activity, Applicability</li> <li>• Consider modifications to allow staff approval for some events, and define the number allowed per year</li> <li>• Add provisions for temporary storage for a specified holiday period</li> <li>• Add provisions for relocatable buildings</li> </ul>
13	Other	<ul style="list-style-type: none"> <li>• Consolidate applications where required findings and purpose of permits are similar</li> <li>• Consider modifying findings to make complying with standards more common and granting exceptions more rare</li> </ul>

Attachment	Subject Area	Items
		<ul style="list-style-type: none"> <li>• Consider revising Pedestrian Overlay to Visitor Serving Commercial District Overlay throughout for consistency with the Local Coastal Program</li> <li>• Correct typo in Inclusionary Housing Requirements</li> <li>• Consider requiring a Conditional Use Permit for a 24-hour fast food establishment when adjacent to residential</li> <li>• Re-evaluate the need for the minimum contiguous standards in the El Camino Real South, East of Interstate 5 Mixed Use Zone and its consequences for housing</li> <li>• Modify mobilehome standards for consistency with Title 25 or refer to Title 25</li> </ul>

**Attachments**

- 2. Definitions
- 6. Nonconforming
- 8. Residential (Accessory Dwelling Units only)

## Subject Area: Definitions

### **INTRODUCTION**

The Definitions subject area includes proposed zoning ordinance changes affecting definitions.

- Alleys
- Cultural Facilities
- Hedges
- Chimney height
- Roof Element
- Lot Depth
- Takeout Restaurants
- Setbacks at Street Corners
- Inland Canyon Setbacks
- Taprooms
- Senior Housing

The proposed changes amend Section 17.88.030 Definitions and related Zoning Ordinance sections.

### **Alleys**

This amendment would add a new definition for “Alleys” to Section 17.88.030. The definition does not conflict with street definitions in Title 12 or Title 17. This amendment would also add a reference to Engineering Technical Specifications for detached garages, detached carports, and parking spaces backing into alleys where required setbacks were unclear.

### **Cultural Facilities**

Cultural facilities are listed as a conditional use in the Public Zoning District. However, there is no definition for cultural facilities. This amendment would add a definition for “Cultural Facilities” to Section 17.88.030.

### **Hedges**

Section 17.24.090 - Fences, Walls and Hedges includes development standards for hedges but there is no definition for hedge. This amendment would add a definition for “Hedge” to Section 17.88.030.

### **Chimney Height Measurement**

Section 17.24.080 provides height exceptions for chimneys. Table 17.24.080B, footnote 9, says Section 17.16.070, Minor Conditional Use Permits, provides a means for chimneys to exceed height limits by more than 6 feet, but Section 17.16.070 does *not* provide a means for chimneys to exceed height limits. Section 17.16.060, Conditional Use Permits, provides a means for chimneys to exceed zone height limits by more than 2 feet. This amendment would correct the erroneous footnote reference for Table 17.24.080.B and add the definition for “Height, Chimney” to Section 17.88.030.

## Roof Element

Pursuant to Section 17.24.110, height is measured from grade to a roof element and each roof element may not exceed the height of the zone. However, there is no definition for roof element.

The calculation of height by individual roof element is intended to support the objective of preserving San Clemente's varied topography. Calculating a building's height for individual roof elements should result in buildings and roofs stepping up or down with the natural topography. Unfortunately, without a definition for roof element, height calculation by roof element has instead resulted in projects with one long roof line, with the same plateline, without variations to step buildings with the natural topography. Without a definition for roof element, applicants take advantage of averaging over a larger area with one long unvaried plateline.

This amendment would add a sub-definition for Roof Element, under Height, Building.

## Lot Depth

The code requires reference to two definitions when determining lot depth - the definitions for "Lot Depth" and "Lot Line". Both definitions contain references to front lot line and rear lot line. Past application of these definitions has proved confusing to applicants and staff for nonrectangular lots. This amendment would simplify the current "Lot Depth" definition and explicitly refer to the "Lot Line" definitions.

## Restaurant, Take-Out

This amendment would modify the existing definition for take-out restaurant. There is concern that the existing definition is too broad. The broad definition coupled with the larger amount of parking required for take-out restaurants leads some applicants to propose restaurants just outside the take-out restaurant definition in order to qualify for less parking.

Staff considered two factors: (1) the types of restaurants that require the highest amount of parking; and (2) the difference between a "Restaurant" and a "Restaurant, Take-out". First, the other types of restaurants that require the higher parking ratio are drive-thru and fast food restaurants. These types of restaurants have higher parking demands than a take-out restaurant such as a frozen yogurt shop, or a delicatessen with no seating. Second, there is little difference between the definitions for "Restaurant" and "Restaurant, Take-out". Considering these two factors together - less parking demand and similar definitions - the proposed amendment deletes the definition for take-out restaurant.

## Setbacks at Street Corners

The Zoning Ordinance does not currently identify where, in the case of a corner lot, a front lot line ends and a street side lot line begins. While the Zoning Ordinance will never cover all scenarios, the proposed amendment would:

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- Identify that front and street side lot lines terminate at the midpoint of a corner’s radius, and
- Identify that in the case of multiple curves and/or irregular shaped lots, the Planning Division shall determine the termination of the front lot line and street side lot line (or street side lot lines).

**Inland Canyon Standards**

Section 17.24.060 - Canyon Setbacks, Inland, provides regulations for inland canyons. However, there is no definition for inland canyon (noncoastal canyon) or canyon edge. This amendment adds definitions for inland canyon, noncoastal canyon, and canyon edge, consistent with the Coastal Land Use Plan definitions.

**Taprooms**

In 2013, the Planning Commission approved Interpretation 12-434 for microbreweries, which were interpreted to be a bar and require a CUP. In 2019, the City Planner approved Interpretation 19-149 for taprooms, which were interpreted to be a restaurant and require a Minor Conditional Use Permit or Conditional Use Permit. Both interpretations required certain criteria, which are included in the proposed definitions. This amendment would add definitions for “bar”, “cocktail lounge”, “microbrewery”, and “taproom”.

**Senior Housing Project**

Section 17.88.030 - Definitions provides a definition for “Senior housing project” which does not align with current State law. This amendment would modify Section 17.88.030 to be consistent with State law.

**PROPOSED CHANGES**

**Table 17.24.080B - Maximum Encroachment into Setbacks and Height Limits:**

Item	Front Encroachments Into Front Yard Setback Area	Side Encroachments Into Side Yard Setback Area	Rear Encroachments Into Rear Yard Setback Area	Maximum Projection Above Height Limit	Other Limitations
Arbors	For encroachments into front yard setback, please see <a href="#">Section 17.32.050(A)</a> , Arbors, of this title.				



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Item	Front Encroachments Into Front Yard Setback Area	Side Encroachments Into Side Yard Setback Area	Rear Encroachments Into Rear Yard Setback Area	Maximum Projection Above Height Limit	Other Limitations
<p>Architectural Projections: Awnings in Residential Zones, Cornices, Eaves, and Roof Overhangs</p>	<p>A projection of up to 25% of the front yard setback, with a maximum projection of 5 ft. <sup>2</sup></p>	<p>30 in. from property line; for dwelling units with an 8 ft. side yard setback in accordance with <a href="#">Section 17.32.050(F)</a>, Special Provisions for Dwelling Units With Front Entrances Located Along the Side Property Line, a distance of 66 in. from the property line shall be maintained within the 8 ft. setback area.</p>	<p>30 in. from property line</p>	<p>Not Permitted</p>	
<p>Awnings in Nonresidential Zones (For standards for awning signs, please refer to <a href="#">Chapter 17.84</a>, Sign Regulations)</p>	<p>Awnings in nonresidential zones shall be permitted outright to encroach into setbacks and public rights-of-way up to 48 inches if the awning complies with the following conditions, as determined by the City:</p> <ol style="list-style-type: none"> <li>1. It is permanently affixed to the building it serves;</li> <li>2. It shall not create a hazard for pedestrians or vehicles;</li> <li>3. It shall not extend beyond the edge of sidewalk or curb adjacent to street;</li> <li>4. It shall maintain a minimum of 8 feet vertical clearance between the sidewalk and bottom of awning;</li> </ol> <p>The owner of the awning encroaching into the public right-of-way shall be required to enter into an agreement with the City that indemnifies the City from all liability</p>			<p>Not Permitted</p>	

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Item	Front Encroachments Into Front Yard Setback Area	Side Encroachments Into Side Yard Setback Area	Rear Encroachments Into Rear Yard Setback Area	Maximum Projection Above Height Limit	Other Limitations
	associated with the awning that encroaches.				
Balconies, Porches, Decks, Landing Places and Stairways Open, Uncovered and Under 30 in. (As Measured from Finished Grade)	0 ft. from property line	0 ft. from property line	0 ft. from property line	Not Permitted	
Open, Uncovered and 30 in. or Taller (Measured from Finished Grade)	Projection of up to 6 ft. into front yard setback <sup>3</sup> Exception <sup>6</sup>	5 ft. from property line <sup>4</sup>	5 ft. from property line <sup>5</sup>	Not Permitted	
Barbeque structure (Maximum 6 ft. width)					
Attached:	Not permitted	Not permitted	Not permitted	Not permitted	

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Item	Front Encroachments Into Front Yard Setback Area	Side Encroachments Into Side Yard Setback Area	Rear Encroachments Into Rear Yard Setback Area	Maximum Projection Above Height Limit	Other Limitations
Detached:	Front ½ lot: Not permitted  Rear ½ of lot: Interior side: 0 ft. if the structure is less than 6 ft. in height  Street side: Not permitted	0 ft. if the structure is less than 6 ft. in height  From alley: 5 ft. from property line	When allowed to encroach into setback area, detached barbeque structures shall not exceed 6 ft.		
Basement 100% Below Grade	Not Permitted	0 ft. from property line	0 ft. from property line	N/A	
Bay Windows (maximum 8 ft. width)	30 in. projection <sup>7</sup> ; Exception <sup>8</sup>	30 in. from property line	Not Permitted	N/A	Encroaching bay windows shall not extend to the ground. (See graphic following table).
Chimneys (Maximum 6 ft. Width)	Not Permitted	30 in. from property line; For dwelling units with an 8 ft. side yard setback, in accordance with <a href="#">Section 17.32.050(F)</a> , Special	Not Permitted	2 ft. Exception <sup>9</sup>	Refer to the Building Division for additional setbacks and requirements for safety and fire.

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Item	Front Encroachments Into Front Yard Setback Area	Side Encroachments Into Side Yard Setback Area	Rear Encroachments Into Rear Yard Setback Area	Maximum Projection Above Height Limit	Other Limitations
		<p>Provisions for Dwelling Units with Front Entrances Located along the Site Property Line, a distance of 66 in. from property line shall be maintained within the 8 ft. setback area.</p>			
Outdoor Fireplaces (Maximum 6 ft. Width)	Not Permitted	<p>Front ½ lot: Not Permitted</p> <p>Rear ½ of lot: Interior side: 0 ft. if the structure is less than 6 ft. in height.</p> <p>Street-side: Not Permitted</p>	0 ft. if the structure is less than 6 ft. in height. From alley: 5 ft. from property line.	Not Permitted When allowed to encroach into setback area, detached barbeque structures shall not exceed 6 ft.	
Elevator Towers	Not Permitted	Not Permitted	Not Permitted	6 ft. Exception <sup>10</sup>	
Fences, Walls and Hedges	Please refer to <a href="#">Section 17.24.090</a> , Fences, Walls and Hedges, of this title.				

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Item	Front Encroachments Into Front Yard Setback Area	Side Encroachments Into Side Yard Setback Area	Rear Encroachments Into Rear Yard Setback Area	Maximum Projection Above Height Limit	Other Limitations
Fire Pits	Not Permitted	0 ft.	0 ft.	N/A	Refer to the Building Division for additional setbacks for safety and fire concerns
Flag Poles, Antennas (other than Sat. Ant. or Ant. on City Property), Cupolas, Church Steeples, Monuments and Similar Structures	Flag poles only: 0 ft. from property line. Others: Not Permitted.	Flag poles only: 0 ft. from property line. Others: Not Permitted.	Flag poles only: 0 ft. from property line. Others: Not Permitted.	Not Permitted Exception <sup>11</sup>	
HVAC, Mechanical Equipment, Window Mounted Air Conditioners, Tankless Water Heaters	Not Permitted	0 ft. from property line	0 ft. from property line	Not Permitted	
Patio Covers					

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Item	Front Encroachments Into Front Yard Setback Area	Side Encroachments Into Side Yard Setback Area	Rear Encroachments Into Rear Yard Setback Area	Maximum Projection Above Height Limit	Other Limitations
Attached:	Not Permitted	Not Permitted	Not Permitted	Not Permitted	
Detached:	Not Permitted	Front ½ lot: Not Permitted.  Rear ½ of lot:  Interior-side: Setback required by UBC.  Street-side: Not Permitted.  From alley: 5 ft. from property line	Minimum setback required by UBC.  From alley: 5 ft. from property line.	When allowed to encroach into setback area, detached patio covers shall not exceed 15 ft. <sup>12</sup>	
Retaining Walls	Please refer to <a href="#">Section 17.24.180</a> , Retaining Walls, of this title.				
Roof Deck	Encroachment allowed only if the structure on which the roof deck is located has been allowed to encroach in accordance with this title	Not Permitted	Not Permitted	Not Permitted, including objects which rest upon the roof deck such as guard rails, patio furniture, landscaping, and	Handrails and guard rails shall not exceed the minimum height required by UBC. The roof deck shall be architecturally compatible with the

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Item	Front Encroachments Into Front Yard Setback Area	Side Encroachments Into Side Yard Setback Area	Rear Encroachments Into Rear Yard Setback Area	Maximum Projection Above Height Limit	Other Limitations
				storage	exterior materials and colors of the existing structure, as determined by the City Planner, and appear as an integral part of the roof system
Storage Tanks and Similar Structures	Not Permitted	Not Permitted	Not Permitted	Not Permitted Exception <sup>13</sup>	
Swimming Pools, Spas, Hot Tubs, and Other Bodies of Water with Over 18 Inches in Depth	Not Permitted	Street-side: Not Permitted <sup>14</sup>	Setback required by Building Code.	N/A	A Minor Exception Permit may be required to construct a pool enclosure that is high enough to comply with Building Codes for swimming pools, spas, and other bodies of
	Exceptions <sup>14</sup>	Interior-side: Setback required by Building Code.			

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Item	Front Encroachments Into Front Yard Setback Area	Side Encroachments Into Side Yard Setback Area	Rear Encroachments Into Rear Yard Setback Area	Maximum Projection Above Height Limit	Other Limitations
					water.
Equipment for Swimming Pools, and Hot Tubs, and Other Bodies of Water over 18 Inches in Depth	Not Permitted	5 ft. from property line. Exception <sup>15</sup>	5 ft. from property line. Exception <sup>15</sup>		Filters, heating systems, and/or pumps shall be sound-proofed to the satisfaction of the City Building Official
Water fountains and other bodies of water under 18 inches in depth	No setback required if less than 42 inches in height	No setback required if less than 6 ft. in height	No setback required if less than 6 ft. in height	Max. height: 8 ft.	

EXPAND

1 The setback line may be reestablished with a change in the front, side, and/or rear yard setback, through the approval of a Minor Exception Permit, in accordance with [Section 17.16.090](#), Minor Exception Permits, of this title.

2 An increase of up to 10 percent of the permitted projection of architectural features into any required front yard may be granted through the approval of a minor exception, in accordance with [Section 17.16.090](#), Minor Exception Permits, of this title. The projection must be counted from the minimum front yard setback for the zone, and may only be counted from the median front yard setback provided for in [Section 17.32.050\(D\)](#), Front Setback, Special Provisions for Reduction, if a Minor Exception Permit is approved in accordance with [Section 17.16.090](#), Minor Exception Permits, of this title.



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3 Providing that the floor of the open, uncovered structure and the entire stairway, in the case of stairways, is no higher than the main entrance of the primary building. Entrances to in-the-bank garages, as provided for in [Section 17.32.050\(E\)](#), Garage Encroachment into the Front Yard Setback, shall not count as the main entrance to the primary building. The six-foot encroachment must be counted from the minimum front yard setback for the zone, and may only be counted from the median front yard setback provided for in [Section 17.32.050\(D\)](#), Front Setback, Special Provisions for Reduction, if a Minor Exception Permit is approved, in accordance with [Section 17.16.090](#), Minor Exception Permits, of this title.

4 An increase of up to 10 percent of the permitted encroachment of balconies, porches, decks, landing places and stairways which are open, uncovered, and 30 inches or taller into any required side yard may be granted through the approval of a minor exception, as detailed in [Section 17.16.090](#), Minor Exception Permits, of this title.

5 An increase of up to 10 percent of the permitted encroachment of balconies, porches, decks, landing places and stairways which are open, uncovered, and 30 inches or taller into any required rear yard may be granted through the approval of a minor exception, as detailed in [Section 17.16.090](#), Minor Exception Permits, of this title.

6 An increase of up to 10 percent of the permitted encroachment of balconies, porches, decks, landing places and stairways which are open, uncovered, and 30 inches or taller into any required front yard may be granted through the approval of a minor exception, as detailed in [Section 17.16.090](#), Minor Exception Permits, of this title.

7 The projection must be counted from the minimum front yard setback for the zone, and may only be counted from the median front yard setback provided for in [Section 17.32.050\(D\)](#), Front Setback, Special Provisions for Reductions, if a Minor Exception Permit is approved, in accordance with [Section 17.16.090](#), Minor Exception Permit, of this title.

8 An increase of up to 10 percent of the permitted projection of bay windows into any required front yard may be granted through the approval of a Minor Exception Permit, as detailed in [Section 17.16.090](#), Minor Exception Permits, of this title.

9 Chimneys may exceed the height limit of the zone in which they are located by more than six feet through the approval of a Minor Conditional Use Permit, as described in ~~Section 17.16.070~~ [Section 17.16.060](#), ~~Minor~~ Conditional Use Permits, of this title.

10 Elevator towers may exceed the height limit of the zone in which they are located by more than six feet through the approval of a Minor Conditional Use Permit, as described in [Section 17.16.070](#), Minor Conditional Use Permits, of this title.

11 With the approval of a Conditional Use Permit ([Section 17.16.060](#)), architectural projections may exceed the height limitations of a zoning district, as follows: flag poles and church steeples in residential zones; and flag poles, antennas (other than satellite antennas or antennas on City property), cupolas, church steeples, monuments, and similar structures in nonresidential zones. Except for flag poles, structures may not exceed the height limit of a nonresidential zone by more than 10 feet. Antennas (other than satellite antennas or antennas on City property) that are not for the exclusive use of the occupant of a site are regulated like a public utility; please refer to [Section 17.28.040](#), Public Utilities, of this title. For regulations for satellite antennas and antennas on City property, please refer to Sections [17.28.070](#), Antennas on City property and [17.28.080](#), Satellite Antennas.

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12 Patio covers allowed within setback area may exceed 15 feet through the approval of a Conditional Use Permit, in accordance with [Section 17.16.060](#), Conditional Use Permits, of this title.

[13](#) Storage tanks, Gas holders, water tanks, and similar structures in nonresidential zones may exceed the height limit of the zone in which they are located with the approval of a Conditional Use Permit, as described in [Section 17.16.060](#), Conditional Use Permits, of this title.

14 An exception may be granted to allow pools, spas, hot tubs and other bodies of water in the front yard setback or street side yard setback with the approval of a Minor Exception Permit per [Section 17.16.090](#), Minor Exception Permits.

15 The five feet distance from the property line may be reduced when the equipment is soundproofed to the satisfaction of the City Building Official and the degree of soundproofing is demonstrated in an acoustical report approved by the City Building Official.

**Table 17.36.020 - Commercial Zone Uses**

Use	Zones										NOTE	
	NC 1.1	NC 1.2	NC 1.3	NC 2	NC 3	CC 1	CC 2	CC 3	CC 4	RM F 1		
<b>7. Restaurants and bars</b>												
Bars, cocktail lounges (with or without dancing and/or entertainment)	C	C	C	C	C	C	C	C	C			
<u>Microbreweries (with limited production and tasting room)</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>			
Restaurants:												
a. With drive-through			C	C	C	C	C	C	C			<a href="#">13</a>
b. With no on-site consumption of liquor, no dancing, no entertainment	P	P	P	P	P	P	P	P	P			
c. With on-site sale of beer and wine:												
i. Indoors	MC	MC	MC	MC	MC	MC	MC	MC	MC			
ii. Outdoors with up to 16 outdoor seats or four tables	MC	MC	MC	MC	MC	MC	MC	MC	MC			

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iii. Outdoors with more than 16 outdoor seats and/or four tables	MC	MC	MC	MC	MC	MC	MC	MC	MC		
d. With on-site sale of hard alcohol:											
i. Indoors	C	C	C	C	C	C	C	C	C		
ii. Outdoors with up to 16 outdoor seats or four tables	MC /C	MC /C	MC /C	MC /C	MC /C	MC /C	MC /C	MC /C	MC /C		14,15
iii. Outdoors with more than outdoor 16 seats and/or four tables	C	C	C	C	C	C	C	C	C		14,15
e. With dancing and/or entertainment that has:											
i. No amplified sound	MC	MC	MC	MC	MC	MC	MC	MC	MC		
ii. Amplified sound	C	C	C	C	C	C	C	C	C		

**Table 17.40.030 - Mixed-Use Zone Uses**

Use	Zones							
7. Restaurants and bars	MU 1	MU 2	MU 3.0	MU 3.1	MU 3.2	MU 3.3	MU 5	NOTE
Bars, cocktail lounges (with or without dancing and/or entertainment)	C	C	C	C	C	C	C	
<u>Microbreweries (with limited production and tasting room)</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	
<u>Taproom as defined in 17.88</u>								

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<u>i. Indoors</u>	<u>MC</u>		<u>MC</u>					
<u>ii. Outdoors with up to 16 outdoor seats or four tables</u>	<u>MC</u>		<u>MC</u>					
<u>iii. Outdoors with more than 16 outdoor seats and/or four tables</u>	<u>C</u>		<u>C</u>					
Restaurants:								
a. With drive-through							C	16
b. With no on-site consumption of liquor, no dancing, no entertainment	P	P	P	P	P	P	P	
c. With on-site sale of beer and wine:								
i. Indoors	MC	MC	MC	MC	MC	MC	MC	
ii. Outdoors with up to 16 outdoor seats or four tables	MC	MC	MC	MC	MC	MC	MC	
iii. Outdoors with more than 16 outdoor seats and/or four tables	C	C	C	C	C	C	C	
d. With on-site sale of hard alcohol:								17,18,19
i. Indoors	C	C	C	C	C	C	C	
ii. Outdoors with up to 16 outdoor seats or four tables	MC/C	MC/C	MC/C	MC/C	MC/C	MC/C	MC/C	
iii. Outdoors with more than outdoor 16 seats and/or four tables	C	C	C	C	C	C	C	

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e. With dancing and/or entertainment that has:								
i. No amplified sound	MC	MC	MC	MC	MC	MC	MC	
ii. Amplified sound	C	C	C	C	C	C	C	

**Table 17.64.050 - Number of Parking Spaces Required**

<b>8. Restaurants</b>	
Bars, Cocktail Lounges	One per four seats, based on seating capacity or occupancy signs posted by the Orange County Fire Department.
Restaurants	<u>I</u> n MU Zones within the CB Overlay: One per five indoor seats. Elsewhere: One per four indoor seats. Required parking based on seating capacity or occupancy signs posted by the Orange County Fire Department, except in the following cases:
	1. Single destination restaurants over 3,000 square feet: One per 120 square feet of interior space.
	2. Drive-thru/ <del>take-out</del> /fast food restaurants: One per 35 square feet of public seating area, plus one per 200 square feet of all other gross floor area, with one lane for each drive-up window with stacking spaces for six vehicles.

**Section 17.64.060.B - Parking Setbacks:**

**Parking Setbacks.** All parking spaces, whether covered or required or otherwise, shall be subject to the setback restrictions for accessory buildings in the zone in which the parking area is located, except for the following exceptions in residential zones:

1. **Setback for Street-Facing Garages or Carports.** The minimum setback for a street-facing garage or carport shall be 20 feet, when standard garage doors are provided, and 18 feet, when roll-up garage doors are provided. In zones where the minimum setback for a street-facing garage or carport listed is greater than 18 feet or 20 feet, the more restrictive requirement shall apply. This requirement shall only apply to garages where parking would be allowed in the driveway, in accordance with [Section 17.64.030\(C\)](#), Location of Residential Parking, Permitted, of this chapter.

2. **Vehicle Parking.** In residential zones, vehicles may be parked in the front yard setback area in driveways, as provided for in [Section 17.64.030\(C\)](#), Location of Residential Parking, Permitted.
3. **Setback for Alley-Facing Garages or Carports.** When a detached garage or detached carport opens to an alley, and/or when parking spaces back into alleys, the setbacks shall conform the Engineering Technical Specifications for parking spaces backing into alleys.

### Section 17.88.030 - Definitions is amended as follows:

“Alley” is a secondary means of access to abutting property, may be improved or unimproved, but is not an arterial, collector, or local street.

“Cultural facilities” means buildings and/or space for the programming, production, presentation, and/or exhibition of art, performing art, and/or intellectual interests, including but not limited to music, dance, theatre, painting, sculpture, folk arts, photography, media art, botanical gardens, and museums.

“Hedge” means generally dense vegetation so aligned as to form a physical barrier similar in shape and proportion to a wall or fence.

**Height, Building.** Please refer to Section 17.24.110 for the method of determining building height.

“Roof Element” means an area of a building’s roof differentiated from another area of a building’s roof. Roof elements are differentiated by another roof element by a plateline that is higher or lower, and a ridge height that is higher or lower. The calculation of height by individual roof elements allows buildings to step up or down with the natural topography of the lot.

“Height, Chimney.” Chimney height is measured from grade to top of the chimney, including any spark arrestor or other appurtenance. A chimney is not counted or included in the measurement for Height, Building or used in the method for determining building height.

**"Historical Resources"** means all properties (historic, archaeological, landscapes, traditional, etc.) eligible or potentially eligible for the National Register of Historic Places, as well as those that may be significant pursuant to state and local laws and registration programs such as the California Register of Historical Resources or the City of San Clemente Historic Resources Inventory. For the purpose of this title, the following definitions shall apply:

1. **"Adjacent property"** means any property that is located within 100 yards of property which has been designated as historically significant, and which is determined by the Planning Commission to have an actual or potential visual impact on the historically significant property.
2. **"Historical district"** means an area or distinct section containing structures which have a special character, historical interest or aesthetic value or which

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represents the Spanish Heritage architectural style typical to the history of the City.

3. **"Historically significant property"** means any site, building or structure of particular historic, architectural or cultural significance to the City as determined by the Planning Commission. Such site may be identified with historic personages or with important events in the main currents of national, State or local history, or may embody the distinguishing characteristics of an architectural specimen, inherently valuable for a study of a period, style, method of construction, or may be a notable work of a master builder, designer or architect whose individual genius influenced his age.
4. **"Landmark"** means a building, site, structure, object, or improvement, manmade or natural, with special character or special historical, cultural, architectural, archeological, social, or aesthetic value inherent to the heritage of the City of San Clemente, the State of California, and/or the United States.
5. **"Demolition of Historic Structures"** means an act that destroys in whole or in part a designated historic resource.

**Inland Canyon Definitions.** For the purposes of this title and Section 17.24.060 - Canyon Setbacks, Inland, the following definitions shall apply:

**"Canyon Edge"** means the upper termination of a canyon. In cases where the top edge is rounded away from the face of the canyon as a result of erosional processes related to the presence of the canyon face, the canyon edge shall be defined as that point nearest the canyon beyond which the downward gradient of the land surface increases more or less continuously until it reaches the general gradient of the canyon. In a case where there is a steplike feature at the top of the canyon face, the landward edge of the topmost riser shall be taken to be the canyon edge.

**"Inland Canyon"** means, in noncoastal areas of San Clemente, any valley, or similar landform, which has a vertical relief of 10 feet or more. See Section 17.24.060 for Inland Canyon setbacks.

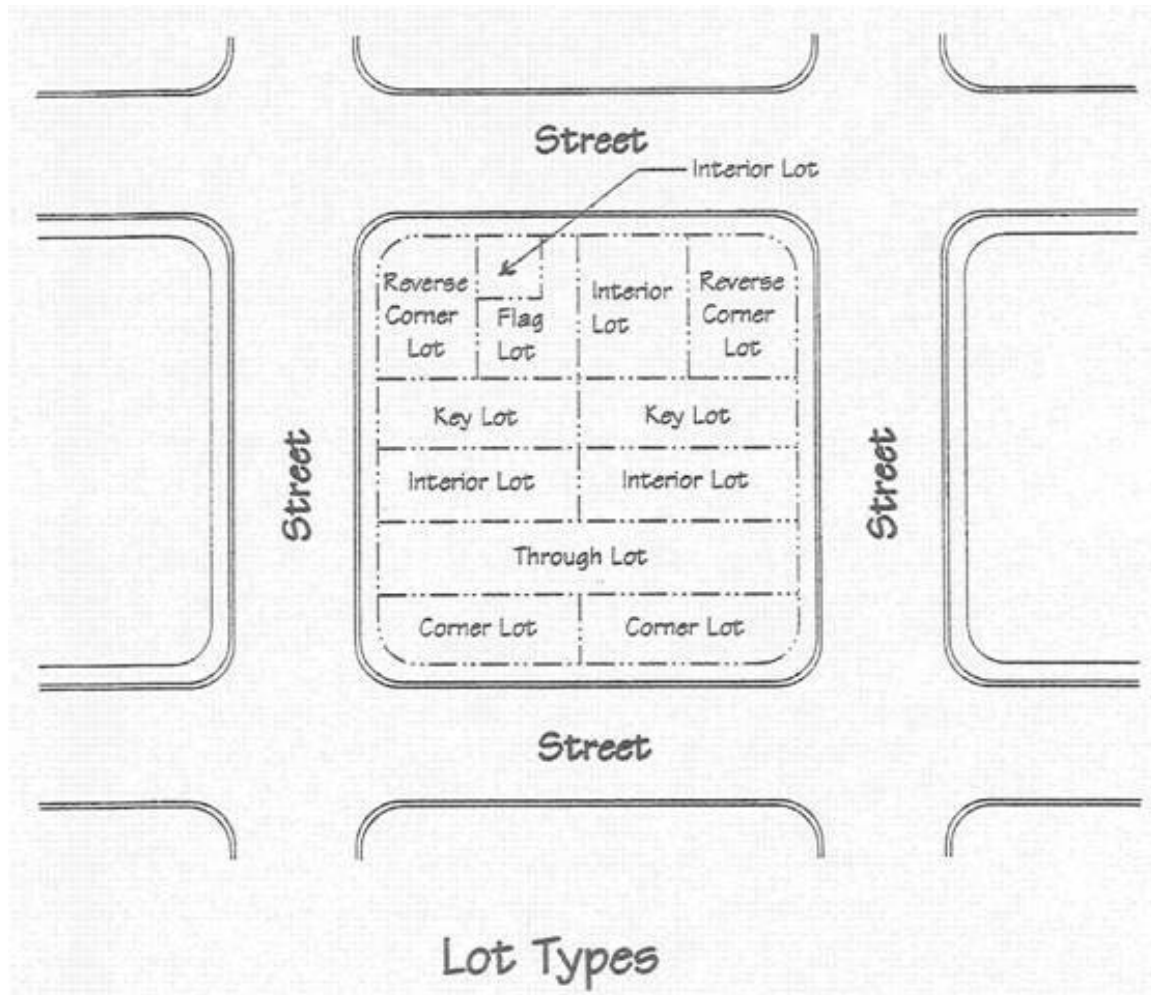
**"Noncoastal Canyon"** has the same meaning as Inland Canyon.

**"Lot"** means site or parcel of land under one ownership that has been legally subdivided, resubdivided, or combined, and having frontage upon a street, other than an alley, or a private easement determined by the City Engineer to be adequate for purposes of access.

1. **"Corner lot"** means a lot abutting upon two or more streets at their intersections, or upon two parts of the same street, forming an interior angle of less than 135 degrees.
2. **"Flag lot"** means a lot having access or an easement to a public or private street by a narrow, private right-of-way.
3. **"Interior lot"** means a lot other than a corner lot.

4. **"Key lot"** means a lot with a side line that abuts the rear line of any one or more adjoining lots.
5. **"Reverse corner lot"** means a corner lot, the rear of which abuts the side of another lot.
6. **"Through lot"** means a lot having frontage on two generally parallel streets, with only one primary access.

**Figure 17.88.030K**



### Lot Lines.

1. **"Front lot line"** means the narrowest dimension of a lot fronting on a street. In the case of a lot having a curved front lot line, the front lot line, for the purposes of calculating the rear lot line or lot depth of an irregularly shaped lot, shall be a line which is:
  - a. Tangent to the curve of the front lot line; and



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- b. Parallel to a straight line that connects the points where the side lot lines intersect the front lot line.

In the case of a curved corner, the midpoint of the corner's radius shall demarcate the front lot line from the street side lot line. In the case of multiple curves and/or irregular street frontages, the Planning Division shall determine that an appropriately situated point along that curve shall demarcate the front lot line from the exterior side lot line(s). The determination shall consider in the following order of importance: (a) the general depth-to-width orientation of the lot and the establishment of a practical and reasonable building envelope, (b) the orientation of the lot and orientation of the determined building envelope as it would most harmoniously concur with development and/or building envelopes on the adjacent lots, (c) the existing development on the subject lot and the degree to which it may conform to more than one possible determination, and (d) other factors specific to the lot that would affect the practicality and reasonableness of a determined building envelope

2. **"Rear lot line"** means a lot line, not intersecting a front lot line, which is most distant from and most closely parallel to the front lot line. For the purpose of calculating lot depth, the rear lot line of an irregularly shaped lot shall be calculated as follows:
  - a. For a trapezoidal lot, the rear line of which is not parallel to the front lot line, the rear lot line shall be deemed to be a line parallel to the front line and drawn through a point bisecting the recorded rear lot line; or
  - b. For all other irregularly shaped lots, a line 10 feet in length within the lot and farthest removed from the front lot line and parallel to the front lot line shall be used as the rear lot line.

In no case shall the application of the definition of rear lot line be interpreted as permitting a primary residential building to be located closer than five feet to any property line.

3. **"Side lot line"** means any lot line which is not a front or rear lot line.

### Lot Measurements.

1. **"Lot area"** means the horizontal area within the boundary or lot lines of a lot after dedication. Easements whose primary purpose is to provide vehicular or pedestrian access to other property shall not be calculated in the area of a lot.
2. **Lot Depth.**
  - a. **For Rectangular Lots.** The horizontal length of a straight line drawn from the midpoint of the front lot line to the midpoint of the rear lot line;
  - b. **For Other Lots.** The horizontal length of a straight line drawn ~~perpendicular to the front lot line and drawn~~ from the midpoint of the front lot line to a line which:
    - i. ~~is drawn parallel to the front lot line, and~~

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~~ii. Intersects~~ intersects the midpoint of the rear lot line. See also "Rear lot line".

3. **"Lot frontage"** means the horizontal length of the front property line.
4. **"Lot width"** means the horizontal distance between the side lot lines, measured at right angles to the lot depth, at a midway point between the front and rear lot lines.

**"Restaurants"** means an establishment which prepares and sells foods and/or beverages for immediate consumption, including but not limited to, dining rooms, cafés, cafeterias, coffee shops, and pizza parlors.

1. "Bar" or "Cocktail Lounge" means an establishment that serves beer, wine, and/or alcohol; may provide seating; and may provide food service.
2. **"Drive-in"** means an establishment that delivers prepared food and/or beverages to customers in motor vehicles, regardless of whether or not it also serves prepared food and/or beverages to customers who are not in motor vehicles, for consumption either on or off the premises.
- 3.2. **"Drive-thru"** means a restaurant which includes one or more drive-through lanes for the ordering and receipt of foods and/or beverages by patrons remaining in their vehicles.
34. **"Fast-food"** means an establishment that offers quick food service, which is accomplished through a limited menu of items already prepared and held for service, or prepared, fried or grilled quickly, or heated in a device such as a microwave oven. Orders are generally not taken at the customer's table, and food is generally served in disposable wrapping or containers for consumption either on or off the premises.
45. "Microbrewery" means a small scale brewery operation that typically is dedicated solely to the prosecution of specialty beers; may have restaurant or pub on the same property. A "microbrewery" with limited production (up to 5,000 barrels a year); with bottling devices only to transfer beer into individual kegs; and with a tasting room may be permitted in Mixed-Use and Commercial zones with a Conditional Use Permit.
4. ~~"Take-out" means a restaurant where foods and/or beverages are sold directly to the customer in a ready-to-consume state for consumption off site. A take-out restaurant provides no more than four tables and 16 seats, either inside or outside, for on-site consumption.~~
6. "Taproom" means an establishment, which may also be known as a standalone beer tasting room, that satisfies the following criteria:
  - a. Beer is the only alcohol served and there is no offering of full alcohol sales
  - b. Indoor seating is provided
  - c. Is located in the MU 3.0 or MU 1 Zone
  - d. Is under the ownership of an approved microbrewery operating in the City of San Clemente on a separate parcel or property

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- e. Is the only standalone beer tasting room permitted for the microbrewery in item d
- f. Allows customers to carry in food for on-site consumption
- g. Provides copies of food menus from nearby food establishments
- h. Includes no on-site production of beer.

**"Senior housing project"** means ~~dwelling units that house housing for~~ senior ~~citizens or caretakers~~ that are qualified residents per criteria defined in State of California Civil Code ~~51.2~~ and ~~the~~ Federal ~~Housing Act Section 3607(b)~~ Housing Act, as may be amended from time to time. ~~The following p~~People ~~are~~ qualified to reside in senior housing projects, per ~~state~~ State and ~~federal~~ Federal statutes, include:

~~A. — Caretakers as defined by State and Federal codes.~~

~~BA. — Intended for, and solely occupied by persons~~ Persons 62 years of age or older;

~~CB. — At least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older~~ in a senior citizen housing development as defined under State law.

**"Setback"** means the required distance that a building, structure, parking, or other designated item must be located from a lot line. See also "yard."

### W

**"Wine Tasting"** means the sale or offering of wine for sampling on the premises of establishments in which wine and wine-related products are primarily available for off-site sale, distribution, and consumption.

Subject Area: Nonconforming

**INTRODUCTION**

The Nonconforming Subject Area considers amendments to address the following:

- Clarify/modify the 50% provision for detached garages and garage expansions
- Clarify/modify what counts as floor area for nonconforming additions
- Consider requiring that multi-family expansions bring parking into compliance
- Clarify parking requirements for demolition of homes with a one-car garage
- Clarify how the 50% provision applies to accessory structures
- Consider removing the Minor Architectural Permit requirement for an existing nonconforming structure

**50% Threshold for Garages**

Municipal Code Chapter 17.72 requires legal-nonconforming structures to be brought into compliance with current zoning requirements when a structure's gross floor area is expanded 50 percent or greater. This is known as the "50% threshold." At a Planning Commission study session, staff was directed to clarify how the 50% threshold should be applied to garages with a focus on ensuring detached and attached garages are regulated similarly. Currently, attached garages are being counted in the 50% threshold for a residence expansion but detached garages are not. This is because "gross" floor area is used to measure the size of an addition and gross floor area is based on the outer limits of a structure. Currently, if a structure includes an attached garage, the garage area is counted as existing floor area for the 50% threshold which can result in a larger structure with more area that can be added before the structure must be made conforming. If a garage is detached, the inverse is true.

The following changes are proposed so nonconforming limitations apply to attached and detached garages similarly.

1. Remove Figure 17.72.030A to clarify required parking must be brought into compliance with parking standards (i.e. size, location, and number) when a project expands, modifies, or demolishes a primary structure by 50% or greater, regardless of whether required parking is in located within a carport or garage that is detached or attached;
2. Measure additions to nonconforming dwellings based on living area versus gross floor area so the 50% threshold is applied to dwellings separate from garages. For garages, additions would be measured based on the "interior area of an accessory building measured to the structural members of outermost walls." This is described further in the Floor Area Counted for Nonconforming Additions section below.
3. Add a definition for "Residential Accessory Building" for clarification.

## Floor Area Counted for Nonconforming Additions

As discussed above, the Municipal Code counts gross floor area towards the size of a structure and addition for applying the 50% threshold. For residential structures, staff was directed to clarify that the 50% threshold applies to living area so garages are not factored into the amount of floor area that can be added before a residence must be made conforming. Under the proposed changes, the size of an addition would be calculated based on the following:

- For dwelling units, the living area is used to calculate the size of an addition.
- For residential accessory buildings, floor area includes the interior area of an accessory building measured to the outermost walls that enclose. For example, the floor area of an attached or detached residential garage is measured to the outermost walls of the building.
- For nonresidential uses, gross floor area is used to calculate the size of an addition.

## Parking Required for Multi-family Expansions

The Municipal Code allows the expansion of multi-family residential structures without the required number of parking spaces if a project does not make a use or structure more nonconforming. If a structure is expanded less than the 50% threshold, a project is currently required to add parking spaces for the addition only, not for any shortage of parking spaces that preexisted the project. Staff was directed to consider whether code changes should be pursued that require multi-family residential structures to be brought into compliance with parking standards when the structures are expanded, even if under the 50% threshold. Staff does not recommend changes. If multi-family residential structures must meet parking standards in order to be expanded, this creates new obstacles to improving housing conditions at a time where there is high demand to meet a housing shortage and living conditions for families of varying incomes, including multiple family occupant units.

## Exemption for Residences with Single-Car Garage/Carport Prior to April 1962

The Zoning Ordinance requires two covered parking spaces for a single-family residence. Currently, Section 17.72.030.C.2.b exempts “single-family dwellings with a single car garage or carport constructed in residential zones prior to April 4, 1962” from nonconforming structure regulations. There is a need to clarify if a residence must add a second parking space when a project demolishes the majority or entirety of a residence with a single-car parking structure.

Existing residences with a single-car garage or carport often have a parking structure within rear yards with limited space to add a second parking space according to current zoning and engineering standards. If a residence is demolished, there is opportunity to bring parking into compliance with parking standards including the provision of a second space. The proposed changes exclude residences from the exemption when a project removes portions of a dwelling's structural frame, and the project's value is equal to or greater than 100 percent of the dwelling's replacement cost; measured according to a new subsection in Section 17.72.040.

### **50% Threshold for Accessory Structures**

Accessory structures are also currently subject to a 50% threshold, but it is unclear how to apply it to walls, decks, and other accessory structures that aren't enclosed with floor area. The proposed changes apply a 50% threshold based on the value of a project that removes portions of a structure, relative to the replacement value of the nonconforming accessory structure. This approach is similar to the threshold used for other nonconforming circumstances in the Municipal Code, such as replacement of nonconforming structures demolished due to an accident.

### **Review Process for Nonconforming Expansions**

Currently, expansions of nonconforming structures, both residential and nonresidential, require a Minor Architectural Permit (AP) or Minor Cultural Heritage Permit (CHP), except for the following projects that are eligible for a staff waiver according to Section 17.16.110:

- Loft additions.
- Crawlspace conversions.
- Basement additions.
- Additions to single-family residences up to 500 square feet since March 21, 1996 that don't increase the maximum height of structures.

Minor Architectural Permits and Minor Cultural Heritage Permits for additions under the 50% threshold area are commonly approved by the Zoning Administrator, often with little or no public comments that lead to changes in conditions of approval or other outcomes. The staff time used to process these applications could be refocused on other duties if the Zoning Ordinance were amended. For additions below the 50% threshold, staff recommends removing the requirement for a Minor AP or Minor CHP (assuming a project is not in an Architectural Overlay or in proximity to a historic structure, which could require a Minor/Cultural Heritage Permit). For additions 50% or greater, the Municipal Code allows residences under 1,400 square feet to be expanded up to 2,100 square feet. Staff does not recommend procedural changes for these applications, given the larger potential for public impacts or concerns.

**PROPOSED CHANGES**

Redline changes are provided below for the proposed amendments. In Section 17.72.020, the proposed ordinance moves several definitions from Section 17.88.030 into the Nonconforming Chapter to simplify and clarify application of nonconforming regulations. The following redlines show proposed changes to Section 17.72.020 including existing definitions that are moved but not amended. Please refer to the next section of this Attachment, Proposed Changes to Definitions, to see the proposed changes to definitions associated with the nonconforming subject area.

**Table 17.16.100(A)  
Architectural and Minor Architectural Permits Required**

Project Type	Architectural Permit Required	Minor Architectural Permit Required	Other/Exempt Projects
<b>A. Nonresidential and Mixed-Use Sites</b>			
New Buildings	X		<del>Some Minor Architectural Permits may be waived.</del>
Additions	> 2,000 s.f. addition	≤ 2,000 s.f. addition	<del>Some Minor Architectural Permits may be waived.</del> Refer to Section 17.16.110 for eligible projects.
New Accessory Structures and Expansions		X	Refer to Section 17.16.110 for eligible projects.
Minor Exterior Alterations		X	
<b>B. Residential and Mixed-Use Sites</b>			
New Residential Projects	5 or more units		Refer to subsection 17.16.100(C)(5) for exempt projects.
<b>C. Nonconforming Structures</b> - This subsection shall be applied in conjunction with subsections A and B to:			



<p>Additions to <del>nonconforming</del> structures. See <del>Section 17.72.050(1)</del> of this Title. <u>50 percent or greater to single-family residences with less than 1,400 square feet of floor area, as of March 21, 1996, up to 2,100 square feet</u></p>		<p>X</p>	<p><del>Some Minor Architectural Permits may be waived. Refer to Section 17.16.110 for eligible projects.</del></p>
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**Table 17.16.100(B) -Cultural Heritage and Minor Cultural Heritage Permits Required**

Project Type	Cultural Heritage Permit Required	Minor Cultural Heritage Permit Required	Other/Exempt Projects
<p><b>A. Nonresidential and Mixed-Use Sites</b> - This subsection applies to: 1) resources listed on the City's Designated Historic Resources and Landmarks Lists <sup>1</sup>; 2) development within the Architectural Overlay District (Please refer to Section 17.56.020); and 3) sites within 300 feet of residentially zoned buildings listed on the City's Designated Historic Resources and Landmarks Lists;</p>			
New Buildings	X		Some Minor Cultural Heritage Permits may be waived. Refer to Section 17.16.110 for eligible projects.
Additions	> 2,000 s.f. addition	≤ 2,000 s.f. addition	Refer to subsection 17.16.100(C)(5) for exempt projects.
New Accessory Structures and Expansions		X	
Minor Exterior Alterations		X	
<p><b>B. Residential Sites</b> - This subsection shall be applied to: 1) resources listed on the City's Designated Historic Resources and Landmarks Lists <sup>1</sup>; 2) single-family homes</p>			



Project Type	Cultural Heritage Permit Required	Minor Cultural Heritage Permit Required	Other/Exempt Projects
<p>and duplexes abutting sites listed on the City's Designated Historic Resources and Landmarks Lists; 3) sites with three or more dwelling units within 300 feet of residentially zoned buildings listed on the City's Designated Historic Resources and Landmarks Lists; and 4) development within the Architectural Overlay District (Please refer to Section 17.56.020).</p>			
New Buildings	X		<p>Some Minor Cultural Heritage Permits may be waived for additions, accessory structures, and exterior alterations. Refer to Section 17.16.110 for eligible projects.</p>
Additions	<p>&gt; 500 s.f. addition, or 50 percent or greater</p>	<p>≤ 500 s.f. addition or less than 50 percent, whichever is smaller</p>	
New Accessory Structures and Expansions		X	<p>Refer to subsection 17.16.100(C)(5) for exempt projects.</p>
Minor Exterior Alterations		X	
<p><b>C. Nonconforming Structures</b> - This subsection shall be applied in conjunction with subsections A and B.</p>			
<p>Additions <del>per Section 17.72.050(1).</del> <u>50 percent or greater to single-family residences with less than 1,400 square feet of floor area, as of March 21, 1996, up to 2,100 square feet.</u></p>		X	<p><del>Some Minor Cultural Heritage Permits may be waived for additions. Refer to Section 17.16.110 for eligible projects.</del></p>
Historic structure and use exemption	X		

Project Type	Cultural Heritage Permit Required	Minor Cultural Heritage Permit Required	Other/Exempt Projects
from requirements in Chapter 17.72, Nonconforming Structure and Uses. Refer to Section 17.72.030(C).			

**17.16.110 - Staff waivers of Minor Architectural Permits and Minor Cultural Heritage Permits.**

- A. **Purpose and Intent.** For eligible projects, the City Planner may waive Minor Architectural Permits and Minor Cultural Heritage Permits. The purpose of staff waivers is to shorten the review process of minor projects that maintain or improve quality of life, that are clearly consistent with the General Plan and City Design Guidelines, and that meet required findings for permits waived. The intent of this provision is to facilitate and incentivize minor projects that are encouraged by City goals and policies.
- B. **Authority.** The City Planner is the final authority on staff waivers, subject to the concurrent review and appeal provisions of Section 17.12.090, Consideration of Concurrent Applications, and Section 17.12.140, Appeals of an Action. The City Planner has the discretion to refer applications to the Zoning Administrator for review and final action.
- C. **Applicability.**
  - 1. Eligible Request. The City Planner may approve staff waivers for the following items:
    - a. Minor repair and preservation of historic resources and landmarks. Minor exterior repairs and preservation measures that improve the historical integrity of historic resources and landmarks.
    - b. Minor exterior changes to buildings and structures, excluding historic resources and landmarks. Exterior changes minor in nature that improve a structure's appearance and architectural integrity. The building's design, footprint, massing, and height are essentially kept intact, but minor height changes are allowed to modify roofing materials or to remove roof details that are unattractive, such as a mansard Spanish roof element on a contemporary building. Exterior changes shall be consistent with the City's

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Design Guidelines, and Architectural Overlay District policies when applicable.

- c. Minor additions to private recreational facilities and minor utility buildings located outside the Architectural Overlay District. Additions up to 2,000 square feet or less than 50 percent of existing floor area, whichever is smaller. Additions must be mostly or entirely screened from public property view and view corridors.
- d. Basement and interior additions to historic resources and landmarks. Additions that are below ground and within buildings such as lofts and the conversion of crawlspace into floor area.
- e. Additions to residential buildings up to 500 square feet that do not include or have adverse visual impacts on, excluding historic resources and landmarks. Additions up to 500 square feet that do not have adverse visual impacts on historic resources and landmarks. Additions must be mostly or entirely screened from public right-of-way that adjoins properties on the City's Designated Historic Resources and Landmarks Lists. Additions shall maintain or reduce a building's height, except for minor height increases to change roofing materials. For example, this would include an addition to the front of a residence that is adjacent to the rear of a historic structure and the addition would not increase the height of the house. ~~When a building is nonconforming, waivers shall not be issued for projects that expand the floor area of buildings by 50 percent or greater since the adoption date of the Zoning Ordinance (March 21, 1996).~~
- f. Accessory structures on sites not identified on the City's Designated Historic Resources and Landmarks List. Construction, expansion, or modification of accessory structures that do not have adverse visual impacts on historic resources and landmarks. Structures must be mostly or entirely screened from public right-of-way that adjoins properties on the City's Designated Historic Resources and Landmarks Lists. For properties in the Architectural Overlay District, accessory structures may be visible from public property view if they are minor in nature and their design, materials, and colors are clearly compatible with adjacent buildings and consistent with the City's Design Guidelines and Architectural Overlay District policies. This includes but is not limited to: fences, walls, pilasters, gates, small at-grade decks and stairs, fountains, trash enclosures, equipment screens, patio covers (residential sites), and pools (residential sites).
- g. Minor landscaping and hardscape changes.
- h. Minor site alterations required by State or Federal law. Minor site alterations required to comply with disabled access requirements or other State or Federal regulations.
- i. Other minor projects that do not substantially alter the visual appearance and/or architectural integrity of the property or structure.

2. Ineligible Requests. The following items are ineligible for a staff waiver:
  - a. Nonresidential retaining walls, walls, fences, or hedges over six feet high.
  - b. Exterior additions to nonconforming nonresidential buildings, except private recreational facilities and minor utility buildings located outside the Architectural Overlay District, per Subsection 1.c.

~~c.—Additions to nonconforming residential buildings that increase a building's height or expand its floor area by 50 percent or greater since the adoption date of the Zoning Ordinance (March 21, 1996).~~

- D. **Submittal Requirements.** Please refer to the submittal requirements in Section 17.12.040, Filing an application, and Section 17.12.060, Applications Requiring Additional Information.
- E. **Application Filing, Processing, and Review.** The City Planner shall approve, approve with modifications and/or conditions, or deny a staff waiver request within 15 days following receipt of a completed application. If more than 15 days lapse, and a decision is not made, the City Planner, the applicant may request that the waiver application be forwarded to the Planning Commission for review and action. The Planning Commission shall be provided a summary of staff waiver decisions at the next regularly scheduled meeting.
- F. **Required Findings.** The review authority shall meet the required findings for the Minor Architectural Permit or Minor Cultural Heritage Permit being waived [Section 17.16.100(F)].
- G. **Appeals.** An appeal of a staff waiver decision shall be reviewed per Section 17.12.140, Appeals of an Action.
- H. **Modifications Requested by the Applicant.** The City may make changes or revoke the approval of applications when conditions of approval are violated, it is necessary to resolve a nuisance, and/or when the application contained incorrect, false, or misleading information. Refer to Section 17.12.175 for related procedures and required findings.
- I. **Other Review Requirements.** Refer to Chapter 17.12, Development Review Process, for general application processing requirements, such as time limits on approvals, time extensions, and the review of multiple applications concurrently.

#### 17.72.020 - Definitions.

[Note: The proposed amendments move several definitions from Section 17.88.030 into the Nonconforming Chapter to simplify and clarify application of nonconforming regulations. The following redlines show proposed changes to Section 17.72.020 including existing definitions that are moved but not amended. Please refer to the next Attachment 6 section "Proposed Changes to Definitions" to see tracked changes of definition amendments and references associated with the nonconforming subject area.

Definitions of terms used in this Chapter are ~~located in Section 17.88.030 of this Title below~~, except that definitions of terms related to Mobilehome Parks and Mobilehomes are located in the State laws and regulations, including without limitation, Mobilehome Parks Act, California *Health and Safety Code* §§ 18200 *et seq.*; Manufactured Housing Act, California *Health and Safety Code* §§ 18000 *et seq.*; and California Code of Regulations, Title 25, §§ 1000 *et seq.*, as amended from time to time.

- A. "Accident" means an event that damages or destroys property and/or development, including but not limited to: earthquakes, fires, floods, other natural disasters, social conflict, and acts of war or other actions not taken by a property owner. Events shall be excluded from being "accidents" if they are illegally or voluntarily caused by a property owner. Termite, mold, or other pest damage is considered an accident.
- B. "Addition" means an increase to the floor area of a nonconforming structure.
- C. "Interior Addition" means an addition that is not visible on the exterior of a structure, does not move exterior walls, and/or is entirely below the grade of a project site (e.g. loft additions, crawlspace conversions, basement additions).
- D. "Interior Alteration" means an alteration that is not made to the exterior materials, finish, design, size, shape, massing, location, configuration, or other exterior characteristics of structures.
- E. "Living Area." Please refer to definition in Municipal Code Section 17.88.030.
- F. "Minor Exterior Alteration" means an alteration to the exterior finish, architectural details, and building materials of Nonconforming Structures, excluding alterations to the structural frame of exterior walls and roofs. Examples of minor architectural alteration projects include but are not limited to: changing building materials, changing colors and finishes of materials; replacing wood/aluminum windows for vinyl windows, installing doors and windows in new openings; and modifying the color and type of guardrails.
- G. "Major Alteration" means an alteration to the Structural Frame of exterior walls and roofs.
- H. "Nonconforming Accessory Structure." See definitions of "Nonconforming Structure" in this Section and "Structure, Accessory" in Municipal Code Section 17.88.030.
- I. "Nonconforming Building." See definitions of "Nonconforming Structure" in this Section, and definitions of "Building, Primary" and "Building, Accessory" in Municipal Code Section 17.88.030.

- J. "Nonconforming Structure" means a structure that was lawfully constructed, according to the development standards that were in effect at the time the applicant obtained a vested right to develop the structure, but the structure no longer is in compliance with development standards required in this Title, including, but not limited to: floor area ratio, height, lot coverage, number of required parking spaces, parking design standards, and setbacks [see Section 17.72.030(C)(2) for structures that are exempt from Nonconforming Structure requirements in this Chapter].
- K. "Nonconforming Use" means a land use that was lawfully established according to land use requirements that were in effect when the use was initiated, and any of the following criteria apply [see Section 17.72.030(C)(3) for land uses that are exempt from Nonconforming Use requirements in this Chapter].
- a. The use is not consistent with the purpose and intent of the zoning district in which the use is located.
  - b. The use is specifically prohibited or is not identified and interpreted to be a permitted or conditionally permitted use of the zoning district in which the use is located.
  - c. The use does not provide the number of parking spaces required in this Title.
  - d. The use does not have an entitlement required by this Title to establish the existing use.
- L. "Nonconformity" means a portion of a structure, site, or use that does not comply with requirements in this Title.
- M. "Primary Structure." See definition of "Nonconforming Structure" in this Section and definition of "Building, Primary" in Municipal Code Section 17.88.030.
- N. "Repair" means the refinishing, restoring, reinstalling, or replacing building materials to maintain a structure. Repairs exclude the replacement of: accident damage, the structural frame of exterior walls or roofs, and accessory structures. Examples of repair projects include, but are not limited to: replacing siding, replacing existing paint colors and exterior finishes, replacing drywall or stucco on exterior walls; and replacing roof tiles, roof sheathing, and roof weather proofing.
- O. "Replacement" means the act of partially or entirely reconstructing or rebuilding a structure to the condition that existed before construction work is initiated or a structure is damaged by an accident.

P. "Replacement Cost" means the actual cost of work to construct a nonconforming structure according to current City and State of California policies, codes, and guidelines, based on current construction cost estimating indices.

Q. "Residential Accessory Building" means an accessory building for a residential principal use. Also, refer to the definitions of "Building, Accessory" and "Principal Use" in Municipal Code Section 17.88.030.

R. "Structural Frame" means structural members that are integral to resisting lateral forces and or horizontal or vertical loads, including but not limited to: joists, beams, studs, blocks, and headers.

**17.72.030 - Applicability.**

A. **Legal structures and uses.** This Chapter applies ~~only~~ to Nonconforming Structures and Uses that have been "lawfully established." ~~For purposes of this ordinance,~~ Nonconforming Structures and Uses are "lawfully established" when structures are constructed and uses are established with the required and properly issued City approvals and/or permits and are consistent with regulations in effect when Nonconforming Structures or Uses were established.

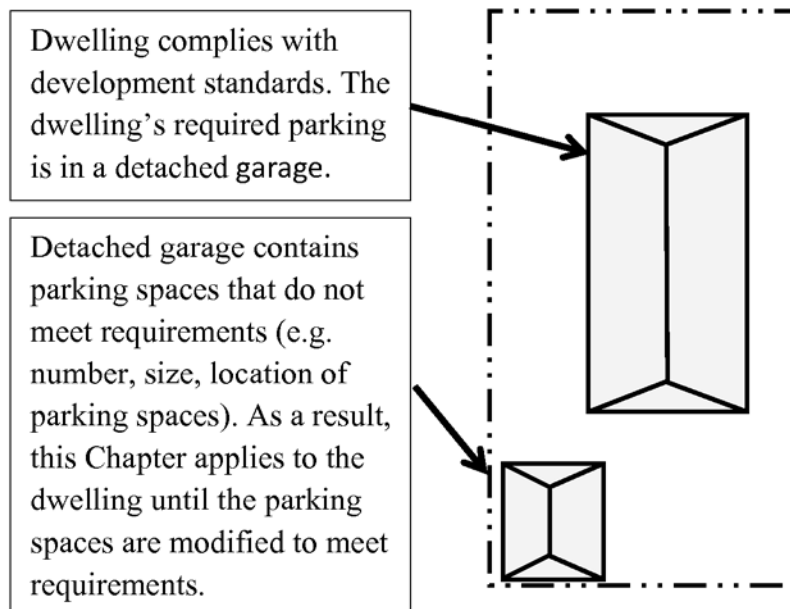
~~B. **Multiple Structures.** When there are multiple structures on a site, this Chapter shall be applied as follows:~~

~~1. **Nonconforming Structures repaired, altered, expanded, or replaced.** This Chapter applies to Nonconforming Structures being repaired, altered, expanded, or replaced.~~

~~2. **Conforming structures with substandard parking in detached garages or carports.** This Chapter applies to conforming structures with required parking in a detached garage or carport where such parking does not comply with current parking requirements (e.g. number, size, location of spaces). See Figure 17.72.030A for explanation.~~



Figure 17.72.030A — Detached garages and carports



### CB. Exemptions.

1. State and Federal Law. Structures and land uses are exempt from this Chapter if State or Federal law requires structural or site plan alterations to be made that result in a structure becoming nonconforming [e.g. earthquake retrofitting safety standards; the Americans with Disabilities Act (ADA)]. For example, ADA can require a parking space to be widened to improve disabled access. To comply with this requirement, the number of parking spaces may need to be reduced or the parking lot redesigned. A reduction in the number parking spaces can make some structures and uses nonconforming in terms of parking requirements.
2. Nonconforming Structures. The following structures are exempt from nonconforming structure regulations in this Chapter:
  - a. Structures that comply with all zoning requirements except landscape standards.
  - b. Single-family dwellings— constructed with a single-car garage or carport ("parking structure") with a single car garage or carport constructed in residential zones prior to April 4, 1962. in residential zones prior to April 4, 1962 are exempt from being a Nonconforming Structure due to insufficient parking, unless a project removes portions of the dwelling's structural frame, and the project's value is equal to or greater than 100 percent of the dwelling's Replacement Cost; measured according to Section 17.72.040.



- c. In-the-bank garages located in residential zones which do not comply with front yard setback regulations.
  - d. National, state or locally designated historic structures may be exempted from this Chapter with the approval of a Cultural Heritage Permit per Table 17.16.100B.
3. Nonconforming Land Uses. The following land uses are exempt from nonconforming use regulations in this Chapter:
- a. Multiple-family dwellings constructed in the Residential Low Density zoning district prior to April 4, 1962.
  - b. Service stations and vehicle service and repair-related facilities are exempt, provided the uses were lawfully established on or before February 4, 2014 (adoption date of General Plan), the uses have not been discontinued more than 365 consecutive calendar days, and the uses meet any of the criteria below:
    - i. The service station or vehicle service repair-related use is on property fronting El Camino Real, or fronting other arterial streets defined in Section 17.88.030, or
    - ii. The service station use is located on property in gateway areas (identified in the General Plan Urban Design Element) abutting Interstate-5 off-ramps and intersections.
  - c. Nonconforming uses associated with the historical significance of national, state or locally designated historic structures may be exempted from this Chapter with the approval of a Cultural Heritage Permit per Table 17.16.100.B.
  - d. Mobilehome Parks in compliance with any applicable Conditional Use Permit shall be exempt from all provisions of Chapter 17.72, except as provided in SCMC Subsection 17.72.060.E.

### **17.72.040 - General Requirements.**

#### **A. Proof of legal nonconforming status.**

- 1. Property owner responsibility. The property owner shall provide evidence to the satisfaction of the City Planner to prove a nonconforming structure or use was lawfully established.
- 2. City Planner determination. The City Planner determines whether a nonconforming structure or use was lawfully established.

- B. **Code compliance of projects.** Projects shall not make structures and uses more nonconforming.
- C. **Determining the safety of structures.** The City Building Official determines whether a structure is safe for occupancy and use, according to building and safety regulations.
- D. **Appeal of administrative decisions.** City Planner and Community Development Director decisions may be appealed per Section 17.12.140.
- E. **Replacement Cost Estimates.** This Chapter applies requirements in some instances based on a nonconforming structure's replacement cost. Replacement cost estimates must meet the following criteria.
  - 1. Property Owner Responsibility. Property owners or their representative shall submit a detailed written analysis of a structure's replacement cost.
  - 2. Professional Analysis. A qualified and experienced construction cost estimator shall estimate the cost to replace structures and other applicable site improvements, according to existing construction cost estimating indices, to the approval of the City Planner.
  - 3. City Planner Determination. The City Planner has the sole discretion to determine a structure's replacement cost based upon substantial evidence. The City Planner may require a third-party review of a replacement cost analysis. If required, a third-party review shall be entirely paid for by the property owner or their representative.

**17.72.050 - Repair, Alteration, and Expansion of Nonconforming Structures.**

- A. **Applicability of other review procedures.** Section 17.16.050 (Site Plan Permits and Minor Site Plan Permits) or Section 17.16.100 (Architectural/Cultural Heritage Permits and Minor Architectural/Cultural Heritage Permits) may apply to projects that change Nonconforming Structures. These permits may be required to ensure site plans and architecture are reviewed through a discretionary process, where applicable.
- B. **Repairs.** Nonconforming Structures may be Repaired according to City and State Codes, policies, and guidelines.
- C. **Interior alterations.** The interior of Nonconforming Structures may be altered. ~~Interior Additions are regulated by Subsection (I) (e.g. loft additions, crawlspace conversions).~~
- D. **Minor Exterior Alterations.** Minor Exterior Alterations are permitted. Examples of Minor Exterior Alterations include but are not limited to: changing building materials, changing colors and finishes of materials; replacing wood/aluminum windows for

vinyl windows; installing doors and windows in new openings; and modifying the color and type of guardrails.

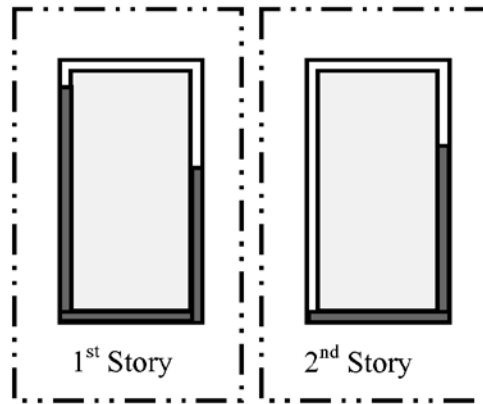
**E. Removal, replacement, and Major Alteration of Exterior Walls.** The structural frame of a Nonconforming Structure's exterior walls may be removed, replaced, or altered as follows:

1. Nonconforming status may be continued. A Nonconforming Structure may continue to be nonconforming if a project:
  - a. Removes the structural frame in less than 50 percent of a structure's exterior walls.
  - b. Alters the structural frame in less than 50 percent of a structure's exterior walls.
  
2. 50 percent or greater of exterior walls removed or altered. The following requirements apply when the structural frame is removed or altered in 50 percent or greater of a structure's exterior walls:
  - a. Nonconforming status shall be terminated. Nonconforming Structures shall be made to comply with zoning requirements.
  - b. Substandard parking in ~~detached~~ garages and carports. If ~~detached~~ garages or carports provide-contain required parking for primary buildings (e.g. a house), ~~and the parking that~~ does not meet parking requirements (e.g. size, location, number of spaces), the required parking spaces shall be modified to meet zoning requirements.
  
3. Measuring exterior walls.
  - a. Multiple stories. Exterior walls are measured on all stories.
  - b. Units of measurement. Exterior walls are measured in lineal feet.
  - c. Calculation. Exterior wall improvements are regulated based on the percentage of exterior walls that are removed or altered. The percentage of improvements is calculated by dividing the total length of exterior walls that are removed or altered by the total length of a structure's exterior walls. This fraction is multiplied by 100. For example, when wood framing is removed from the exterior wall of a wood framed building, then that wall would be counted along the entire length of the area where the wood framing is removed. See Figure 17.72.050A for explanation.

**Figure 17.72.050A — Measuring Exterior Walls**

Structure must be made conforming because the project removes 53 percent of the structure's exterior walls from the 1st and 2nd story. Below is an example of the calculation used.

Story	Walls Removed (shaded)	Total Length of Walls
1 <sup>st</sup> Story	135 feet	210 feet
2 <sup>nd</sup> Story	85 feet	210 feet
Total	220 feet	420 feet



Calculation:  

$$\frac{220 \text{ feet of walls removed}}{420 \text{ total feet of walls}} \times 100 = 53\%$$

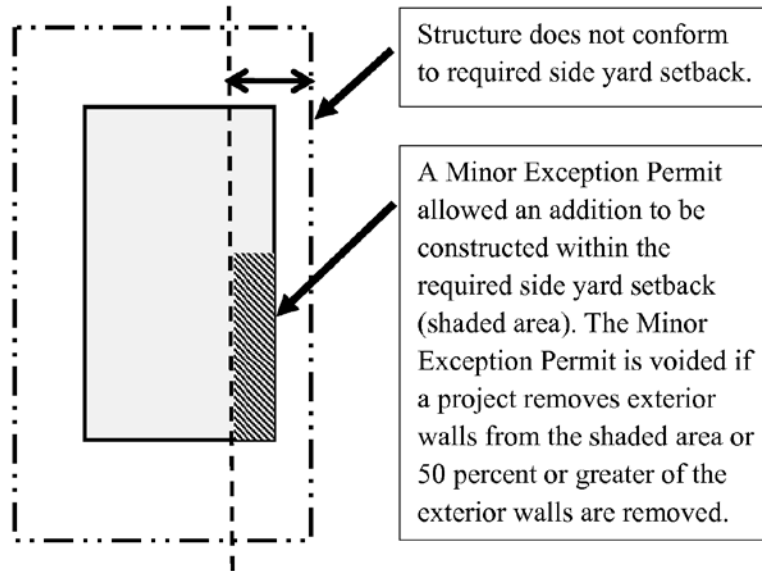
4. Exceptions.

- a. Exception for safety, compatibility, or architectural improvements. Major alterations are not restricted, if the City Planner finds one or more of the following:
  - i. The Major Alterations improve the safety of structures.
  - ii. The Major Alterations improve the compatibility of the structure with the neighborhood.
  - iii. The Major Alterations improve the architecture's compatibility with the City of San Clemente Design Guidelines.
- b. Single-family dwellings less than 1,400 square feet. Nonconforming single-family dwellings with less than 1,400 square feet of gross floor area are exempt from Subsection (2), with the approval of a Minor Exception Permit per Section 17.16.090. For approval, the Zoning Administrator must find: the proposed Minor Exception Permit is necessary for the general appearance of a project to be in character with the neighborhood. The general required findings shall also be met for the approval of a Minor Exception Permit.

F. **Voiding of Minor Exception Permits.** Minor Exception Permits allow structures to encroach into required setbacks and for required setbacks to be reduced per Section 17.16.090. Minor Exception Permits shall be voided if any of the following criteria applies:

1. A project removes the exterior walls that were allowed to encroach into required setbacks by a Minor Exception Permit.
2. A project removes 50 percent or greater of a structure's exterior walls.

**Figure 17.72.050 B—Voiding of Minor Exception Permits**

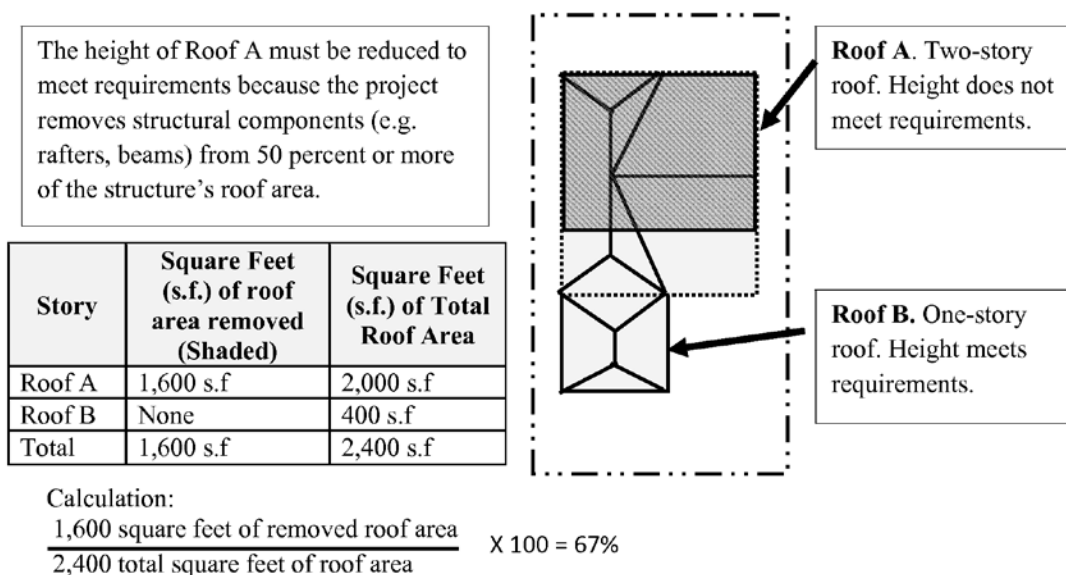


**G. Removal, replacement, and Major Alteration of Roofs.** The structural frame of a Nonconforming Structure's roof may be removed, replaced, or altered as follows:

1. Roofs which comply with height requirements. Roofs of Nonconforming Structures may be partially or completely removed, replaced, or altered if their height complies with height requirements.
2. Over-height roofs. When a Nonconforming Structure has a roof that does not comply with height requirements, the roof's height shall be reduced to meet requirements, when 50 percent or greater of a roof's structural frame is removed or altered.
  - a. Exception for safety, compatibility, or architectural improvements. Major Alterations are not restricted, if the City Planner finds one or more of the following:
    - i. The Major Alterations improve the safety of structures.
    - ii. The Major Alterations improve the compatibility of the structure with the neighborhood.
    - iii. The Major Alterations improve the architecture's compatibility with the City of San Clemente Design Guidelines.

3. Measuring roofs.
  - a. Units of measurement. Roof area is measured in square feet of surface area.
  - b. Calculation. Roof improvements are regulated based on the percentage of roof area that is removed or altered. The percentage of improvements is calculated by dividing the square footage of roof area that is removed or altered by the total roof area of a structure. This fraction is multiplied by 100. See Figure 17.72.050C for explanation.

**Figure 17.72.050C — Measuring Roofs**



**H. Nonconforming Accessory Structures.** ~~Nonconforming Accessory Structures may be removed, replaced, or enlarged as follows: Projects involving nonconforming accessory structures shall comply with the following:~~

1. Nonconforming status may be continued.
  - a. ~~Removal or replacement of structures~~Less than 50 percent of structures removed. ~~A-Nonconforming Accessory Structures~~ (e.g. patio covers, decks, stairways, walls) may continue to be nonconforming when a project removes portions less than 50 percent of the accessory structure is removed and the project's value is less than 50 percent of the accessory structure's Replacement Cost.
  - b. Expansion of accessory structures. ~~A-Nonconforming Accessory Structures~~, may be expanded and continue to be nonconforming. Expansions shall comply with zoning requirements.
2. Nonconforming status shall be terminated.

- a. 50 percent or greater of structures removed. ~~A Nonconforming Accessory Structure~~s shall lose ~~its~~ nonconforming status and be made to comply with zoning requirements if a project removes 50 percent or more of portions of the accessory structure is removed and the project's value is 50 percent or greater of the accessory structure's Replacement Cost.
- b. Accessory structures attached to Nonconforming Buildings. A Nonconforming Accessory Structure shall be made to comply with zoning requirements if it is attached to a Nonconforming Building that must be made conforming by this Chapter.

**I. Additions.** ~~Floor area may be added to Nonconforming Buildings as follows. Additions are based on square feet of gross floor area:~~

- ~~1. Review Procedures. Additions shall meet the requirements in Table 17.72.050A.~~

**Table 17.72.050A — Review Procedures for Additions**

<b>Project</b>	<b>Permit or Action Required</b>
<del>Interior Addition (e.g. loft Addition, crawlspace conversion) or Addition below grade (e.g. basement).</del>	<del>Projects may be eligible for a staff waiver of a Minor Architectural Permit/Minor Cultural Heritage Permit.</del>
<del>Less than 50 percent expansion of gross floor area.</del>	<del>Minor Architectural Permit/Minor Cultural Heritage Permit or staff waiver.</del>
<del>50 percent or greater expansion of gross floor area.</del>	<del>Buildings must be made to conform to requirements, except for single-family dwellings that are less than 1,400 square feet. These buildings may be expanded to a maximum of 2,100 square feet and remain nonconforming with the approval of a Minor Architectural Permit/Minor Cultural Heritage Permit. The Design Review Subcommittee shall review these projects prior to a Zoning Administrator hearing.</del>

- ~~12. Additions that may continue nonconforming status~~Less than 50 percent Addition. ~~Nonconforming Buildings may continue to be nonconforming if they~~

- ~~are~~ be expanded less than 50 percent and continue to be nonconforming if project ~~the addition complies with, in compliance with~~ zoning requirements.
23. 50 percent or greater Addition. The following requirements apply when a Nonconforming Building is expanded by 50 percent or greater.:
- a. Nonconforming status shall be terminated. Nonconforming Buildings expanded by 50 percent or greater shall be made to conform to zoning requirements, except as follows:
    - i. Exception for single-family dwellings less than 1,400 square feet. Nonconforming single-family dwellings, smaller than 1,400 square feet, may continue to be nonconforming if they are expanded to a maximum of 2,100 square feet, provided that a Minor Architectural Permit or Minor Cultural Heritage Permit is approved in compliance with Section 17.16.100. The Design Review Subcommittee shall review projects, prior to a Zoning Administrator hearing, to ensure additions are in character with a neighborhood and are consistent with the City's Design Guidelines.
  - b. Substandard parking in ~~detached~~ garages and carports. If ~~detached~~ garages or carports provide contain required parking for primary buildings (e.g. dwelling), ~~and the parking does that do~~ not meet parking requirements (e.g. size, location, number of spaces), the required parking spaces shall be modified to meet requirements, except as follows:
    - i. Exception for single-family dwellings less than 1,400 square feet. Nonconforming single-family dwellings, smaller than 1,400 square feet, may be expanded to a maximum of 2,100 square feet without modifying parking, provided that a Minor Exception Permit is approved. For approval, the Zoning Administrator must find: the proposed Minor Exception Permit is necessary for the general appearance of a project to be in character with the neighborhood. The general required findings shall also be met for the approval of a Minor Exception Permit per Section 17.16.090.
34. Measurement.
- a. Floor area measured. Floor area used to calculate the size of an addition, according to paragraph (b) below is based on the following:
    - i. For dwelling units, the floor area of living space living area is used to calculate the size of an addition.
    - ii. For residential accessory buildings, floor area includes the interior area of an accessory building measured to the structural members of outermost walls. For example, the floor area of an attached or



detached residential garage is measured to the structural frame of the building.

iii. For nonresidential uses, gross floor area is used to calculate the size of an addition.

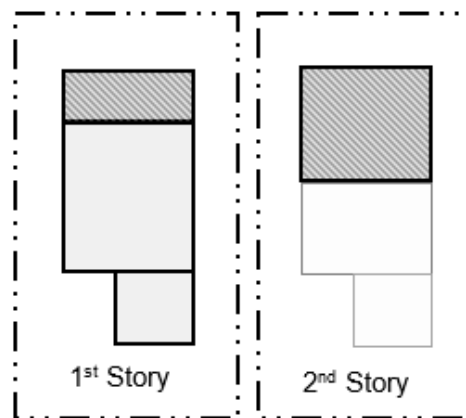
~~Units of measurement. Additions are measured in square feet of gross ("gross floor area" is defined in Section 17.88.030).~~

- b. Calculation. Additions are regulated by percentages. The percentage of an Addition ("or percent added") is calculated by dividing the square footage of an addition's square footage of an floor area ~~Addition~~ by the square footage of square footage of a building's existing floor area before it is expanded. This fraction is then multiplied by 100. See Figure 17.72.050(D) for explanation.
- c. Measurement of multiple projects. If a building has been expanded more than once, regulations are applied based on the total amount of floor area that is added to a building on or after March 21, 1996. For example, if a building is expanded by 10 percent in 1997 and expanded another 20 percent in 1999, then the building has been expanded a total of 30 percent since March 21, 1996.

**Figure 17.72.050D — Measuring Additions**

Building ~~must be made conforming~~ because when the project expands the gross structure's floor area ~~of the building~~ more than 50 percent. Below is an example of the calculation used.

Story	Existing floor area	Addition (shaded)	Total square feet (sq ft)
1 <sup>st</sup> Story	1,680 sq ft	288 sq ft	1,968 sq ft
2 <sup>nd</sup> Story	0 sq ft	800 sq ft	800 sq ft
Total	1,680 sq ft	1,080 sq ft	2,760 sq ft



Calculation:

$$\frac{1,080 \text{ sq ft total floor area added}}{1,680 \text{ sq ft total existing floor area}} \times 100 = 65\%$$

**17.72.070 - Deferred Repairs and Accident Damage of Nonconforming Structures and Uses.**

- A. **Deferred Repairs.** Structures, and the uses that occupy them, shall be made to comply with zoning requirements if structures are damaged by deferred maintenance or repairs and the City Planner finds either of the following:
1. The damaged structure is a public nuisance and/or is unsafe for occupancy due to deferred repairs.
  2. The cost of replacing structural damage is equal to or greater than the damaged structure's replacement cost.
- B. **Accident Damage.** Structures, and the uses that occupy them, may be replaced when structures are damaged by an accident, as follows:
1. Exemption of multi-family dwellings. Multi-family dwellings are exempted from requirements in this Subsection, provided that a building permit is approved within three years (1,095 consecutive days), from the date of an accident that causes damage. Per California Government Code Section 65852.25, multi-family dwellings are "any structure designed for human habitation that is divided into two or more independent living quarters."
  2. Nonconforming single-family dwellings located in residential zones. Nonconforming single-family dwellings may be replaced if dwellings are located in residential zoning districts. To replace a dwelling, a building permit shall be approved within three years (1,095 consecutive days) from the date of an accident that causes damage.
  3. Nonconforming Structures located in non-residential zones. Nonconforming Structures may be replaced as follows when they are located in non-residential zones:
    - a. Structures damaged less than 50 percent of a structure's replacement cost. Nonconforming structures may be replaced if the cost to replace or repair accident damage is less than 50 percent than the structure's replacement cost. To replace a structure, a building permit shall be approved within three years (1,095 consecutive days) from the date of an accident that causes damage.
    - b. Structures damaged by 50 percent or greater of a structure's replacement cost. A Conditional Use Permit is required to replace Nonconforming Structures if the cost to replace or repair accident damage is 50 percent or greater than the structure's replacement cost, immediately before the

## ATTACHMENT 6

damage occurred. To replace a structure, a Conditional Use Permit application shall be submitted within two years (730 consecutive days) from the date of an accident that causes damage. For permit approval, the following findings shall be made and the general required findings for Conditional Use Permits:

- i. The proposed structure has less impacts upon the neighborhood than the structure(s) being replaced, including, but not limited to, impacts upon parking, traffic, neighborhood aesthetics, noise levels, and residential density.
  - ii. The proposed Nonconforming Structure more closely meets the intent and development standards of the Zoning Ordinance and the zone in which the Nonconforming structure is located than the structure(s) being replaced.
  - iii. The proposed structure is less detrimental to the public welfare and to surrounding properties than the structure(s) being replaced.
4. Structures occupied by a Nonconforming Use. A Nonconforming Use shall be terminated when a use occupies a structure that is damaged by an accident and the cost to replace or repair the accident damage is 50 percent or greater than the structure's replacement cost, immediately before the damage occurred. The structure shall be occupied by a use that complies with zoning requirements.
  5. Time extensions. The Community Development Director may grant one or more 90-day time extensions for the issuance of building permits, if he/she determines permits have been pursued in good faith and there has been a justifiable cause for the delays.
  6. Progress of construction. Construction work shall be completed within required time frames per Title 15 of the Municipal Code.

### ~~7. Estimating replacement cost.~~

- ~~a. Property owner responsibility. Property owners or their representative shall submit a detailed written analysis of a structure's replacement cost.~~
- ~~b. Professional analysis. A qualified and experienced construction cost estimator shall estimate the cost to replace structures and other applicable site improvements, according to existing construction cost estimating indices, to the approval of the City Planner.~~
- ~~c. City Planner determination. The City Planner has the sole discretion to determine a structure's replacement cost based upon substantial evidence. The City Planner may require a third-party review of a replacement cost analysis. If~~

~~required, a third-party review shall be entirely paid for by the property owner or their representative.~~

### **Section 17.88.030 Definitions under heading “Nonconforming Structure and Use”**

~~**"Nonconforming Structure and Use"** Definitions. For the purposes of Chapter 17.72, Nonconforming Structures and Uses, of this title, the following definitions apply: means a structure or use that does not comply with requirements in this Title. Refer to Chapter 17.72 for definitions related to Nonconforming Structures and Uses.~~

~~1. **"Accident"** means an event that damages or destroys property and/or development, including but not limited to: earthquakes, fires, floods, other natural disasters, social conflict, and acts of war or other actions not taken by a property owner. Events shall be excluded from being "accidents" if they are illegally or voluntarily caused by a property owner. Termite, mold, or other pest damage is considered an accident.~~

~~2. **"Addition"** means an increase in the gross floor area of a nonconforming structure.~~

~~3. **"Interior Addition"** means an addition that is not visible on the exterior of a structure, does not move exterior walls, and/or is entirely below the grade of a project site (e.g. loft additions, crawlspace conversions, basement additions).~~

~~4. **"Interior Alteration"** means an alteration that is not made to the exterior materials, finish, design, size, shape, massing, location, configuration, or other exterior characteristics of structures.~~

~~5. **"Minor Exterior Alteration"** means an alteration to the exterior finish, architectural details, and building materials of nonconforming structures, excluding alterations to the structural frame of exterior walls and roofs. Examples of minor architectural alteration projects include but are not limited to: changing building materials, changing colors and finishes of materials; replacing wood/aluminum windows for vinyl windows, installing doors and windows in new openings; and modifying the color and type of guardrails.~~

~~6. **"Major Alteration"** means an alteration to the structural frame of exterior walls and roofs.~~

~~7. **"Nonconforming Accessory Structure."** See definitions of "Nonconforming Structure" and "Structure, Accessory".~~

~~8. **"Nonconforming Building."** See definitions of "Nonconforming Structure", "Building, Primary", and "Building, Accessory".~~

~~9. **"Nonconforming Structure"** means a structure that was lawfully constructed, according to the development standards that were in effect at the time the applicant obtained a vested right to develop the structure, but the structure no longer is in compliance with development standards required in this Title, including, but not limited to: floor area ratio, height, lot coverage, number of required parking spaces, parking design~~

~~standards, and setbacks [see Section 17.72.030(C)(2) for structures that are exempt from requirements in Chapter 17.72, Nonconforming Structures and Uses, of this Title].~~

~~10.—"Nonconforming Use" means a land use that was lawfully established according to land use requirements that were in effect when the use was initiated, and any of the following criteria apply [see Section 17.72.030(C)(3) for land uses that are exempt from requirements in Chapter 17.72, Nonconforming Structures and Uses, of this Title]:~~

~~a.—The use is not consistent with the purpose and intent of the zoning district in which the use is located.~~

~~b.—The use is specifically prohibited or is not identified and interpreted to be a permitted or conditionally permitted use of the zoning district in which the use is located.~~

~~c.—The use does not provide the number of parking spaces required in this Title.~~

~~d.—The use does not have an entitlement required by this Title to establish the existing use.~~

~~11.—"Nonconformity" means a portion of a structure, site, or use that does not comply with requirements in this Title.~~

~~12.—"Repair" means the refinishing, restoring, reinstalling, or replacing building materials to maintain a structure. Repairs exclude the replacement of: accident damage, the structural frame of exterior walls or roofs, and accessory structures. Examples of repair projects include, but are not limited to: replacing siding, replacing existing paint colors and exterior finishes, replacing drywall or stucco on exterior walls, and replacing roof tiles, roof sheathing, and roof weather proofing.~~

~~13.—"Replacement" means the act of partially or entirely reconstructing or rebuilding a structure to the condition that existed before construction work is initiated or a structure is damaged by an accident.~~

~~14.—"Replacement Cost" means the actual cost of work to construct a nonconforming structure according to current City and State of California policies, codes, and guidelines, based on current construction cost estimating indices.~~

~~15.—"Structural Frame" means structural members that are integral to resisting lateral forces and or horizontal or vertical loads, including but not limited to: joists, beams, studs, blocks, and headers.~~

### PROPOSED CHANGES TO DEFINITIONS

The following tracked changes show proposed amendments associated with definitions moved Chapter 17.88 to Chapter 17.72. These amendments add new or amend existing definitions for consistency with nonconforming subject area amendments, such as changes to the measurement of additions to nonconforming structures.

## ATTACHMENT 6

- A. "Accident" means an event that damages or destroys property and/or development, including but not limited to: earthquakes, fires, floods, other natural disasters, social conflict, and acts of war or other actions not taken by a property owner. Events shall be excluded from being "accidents" if they are illegally or voluntarily caused by a property owner. Termite, mold, or other pest damage is considered an accident.
- B. "Addition" means an increase in the ~~gross~~-floor area of a nonconforming structure.
- C. "Interior Addition" means an addition that is not visible on the exterior of a structure, does not move exterior walls, and/or is entirely below the grade of a project site (e.g. loft additions, crawlspace conversions, basement additions).
- D. "Interior Alteration" means an alteration that is not made to the exterior materials, finish, design, size, shape, massing, location, configuration, or other exterior characteristics of structures.
- E. "Living Area." Please refer to definition in Municipal Code Section 17.88.030.
- EF. "Minor Exterior Alteration" means an alteration to the exterior finish, architectural details, and building materials of Nonconforming Structures, excluding alterations to the structural frame of exterior walls and roofs. Examples of minor architectural alteration projects include but are not limited to: changing building materials, changing colors and finishes of materials; replacing wood/aluminum windows for vinyl windows, installing doors and windows in new openings; and modifying the color and type of guardrails.
- FG. "Major Alteration" means an alteration to the structural frame of exterior walls and roofs.
- GH. "Nonconforming Accessory Structure." See definitions of "Nonconforming Structure" in this Section and "Structure, Accessory" in Municipal Code Section 17.88.030.
- HJ. "Nonconforming Building." See definitions of "Nonconforming Structure" in this Section, and definitions of "Building, Primary" and "Building, Accessory" in Municipal Code Section 17.88.030.
- IJ. "Nonconforming Structure" means a structure that was lawfully constructed, according to the development standards that were in effect at the time the applicant obtained a vested right to develop the structure, but the structure no longer is in compliance with development standards required in this Title, including, but not limited to: floor area ratio, height, lot coverage, number of required parking spaces, parking design standards, and setbacks [see Section 17.72.030(C)(2) for structures that are exempt from Nonconforming Structure requirements in this Chapter ~~17.72, Nonconforming Structures and Uses, of this Title~~].

KJ. "Nonconforming Use" means a land use that was lawfully established according to land use requirements that were in effect when the use was initiated, and any of the following criteria apply [see Section 17.72.030(C)(3) for land uses that are exempt from Nonconforming Use requirements in this Chapter ~~17.72, Nonconforming Structures and Uses, of this Title~~].

- a. The use is not consistent with the purpose and intent of the zoning district in which the use is located.
- b. The use is specifically prohibited or is not identified and interpreted to be a permitted or conditionally permitted use of the zoning district in which the use is located.
- c. The use does not provide the number of parking spaces required in this Title.
- d. The use does not have an entitlement required by this Title to establish the existing use.

KL. "Nonconformity" means a portion of a structure, site, or use that does not comply with requirements in this Title.

M. "Primary Structure." See definition of "Building, Primary" in Municipal Code Section 17.88.030.

LN. "Repair" means the refinishing, restoring, reinstalling, or replacing building materials to maintain a structure. Repairs exclude the replacement of: accident damage, the Structural Frame of exterior walls or roofs, and accessory structures. Examples of repair projects include, but are not limited to: replacing siding, replacing existing paint colors and exterior finishes, replacing drywall or stucco on exterior walls; and replacing roof tiles, roof sheathing, and roof weather proofing.

MO. "Replacement" means the act of partially or entirely reconstructing or rebuilding a structure to the condition that existed before construction work is initiated or a structure is damaged by an accident.

PN. "Replacement Cost" means the actual cost of work to construct a nonconforming structure according to current City and State of California policies, codes, and guidelines, based on current construction cost estimating indices.

Q. "Residential Accessory Building" means an Accessory Building for a residential Principal Use. Also, refer to the definitions of "Building, Accessory" and "Principal Use" in Municipal Code Section 17.88.030.

RO. "Structural Frame" means structural members that are integral to resisting lateral forces and or horizontal or vertical loads, including but not limited to: joists, beams, studs, blocks, and headers.



Subject Area: Residential

**INTRODUCTION**

This subject area addresses amendments for Accessory Dwelling Units.

**Accessory Dwelling Units**

In 2019, the City adopted new Accessory Dwelling Unit (ADU) regulations, Section 17.28.270, to comply with State ADU law effective January 1, 2017. The State adopted new ADU laws in 2019. As a result, the City’s 2019 ADU regulations became null and City staff began processing ADU applications pursuant to State law.

Table 1 below compares some of the changes required by the new laws with San Clemente’s current ADU Ordinance.

**Table 1. Comparison of Existing and New ADU Regulations**

Existing ADU Ordinance	New ADU Regulations
One ADU per lot	Two ADUs per lot
No Junior ADU provisions	Ministerial approval of a Junior ADU
Allowed for single-family lots	Allowed for single-family and multifamily lots, and mixed-use zones
At least 5-foot setbacks	4-foot setbacks
15-foot height limitation	16-foot limitation
Limits attached ADUs to 50% of existing dwelling but no more than 1,200 ft <sup>2</sup>	Removes 1,200 ft <sup>2</sup> maximum for attached ADUs, reduces maximum size, and limits bedroom count
Requires parking if garage is converted to ADU	No replacement parking required for garage converted to ADU
ADU permits processed in 120 days	ADU permits processed in 60 days
Owner-occupancy required	Removes owner-occupancy requirement until Jan. 2025, except for Junior ADUs
Ability to apply development standards such as floor area limits and architecture requirements	No development standards may be applied to 4 types of ADUs

**Proposed Amendments.** Proposed amendments include:

- Add Definition subsection
- Add types of ADUs/JADUs (discussed further below)
- Expand the Fee subsection
- Separate requirements between requirements that apply to all ADUs/JADUs and development standards that apply to some ADUs
- Add Income Reporting subsection
- Remove Building and Construction subsection
- Update height, setbacks, and maximum size



- Adde subsection for discretionary review

While many of the changes to State ADU laws are relatively minor - 5-foot setbacks to 4-foot setbacks; 15-foot height to 16-foot height - there are a significant amount of redline changes under the Proposed Changes section. The redline changes comply with the narrow scope and language of the State ADU laws. A “clean” version of the proposed amendments is provided after the Proposed Changes section.

**Types of ADUs and JADUs - Without Development Standards.** Perhaps one of the most significant changes is the loss of the City’s ability to apply development standards to certain types of ADUs. The four types of ADUs or Junior ADUs (JADUs) to which the City cannot apply development standards are listed in Table 2 below with the qualifying limitations. If the ADU/JADU meets the limitations, the City must approve the ADU/JADU with a building permit only.

**Table 2. ADUs or JADUs Requiring a Building Permit Only**

Description	Qualifying Limitations
<b>ADU or JADU Conversion on a Single-Family Lot</b>	
One ADU or JADU on a lot within a proposed or existing single-family dwelling on the lot.	<ul style="list-style-type: none"> <li>• Within living area of proposed single-family dwelling; OR within existing space of an existing single-family dwelling; OR within existing space of an existing accessory structure, plus up to 150 sf if limited to ingress and egress</li> <li>• Has exterior access independent of the single-family dwelling</li> <li>• Has side and rear setbacks sufficient for fire and safety</li> </ul>
<b>Detached ADU on a Single-Family Lot</b>	
One detached, new construction on a lot with a proposed or existing single-family dwelling on the lot. This detached ADU is in addition to a JADU established by the above JADU provision.	<ul style="list-style-type: none"> <li>• Side and rear setbacks are at least 4 feet</li> <li>• Floor area is 800 sf or less</li> <li>• Peak height above grade is 16 feet or less</li> </ul>
<b>ADU Conversion on Multifamily Lot</b>	
One or more ADUs within portions of existing multifamily dwelling structures. At least one ADU is allowed. Maximum number of ADUs converted from existing space is 25% of existing multifamily dwelling units.	<ul style="list-style-type: none"> <li>• Within portions of existing multifamily dwelling structures that are not used as livable space, including but not limited to storage rooms, passageways, attics, basements, or garages</li> <li>• Complies with building standards for dwellings</li> </ul>
<b>Detached on Multifamily Lot</b>	

Up to two detached ADUs on a lot with an existing multifamily dwelling.	<ul style="list-style-type: none"> <li>• Side and rear setbacks are at least 4 feet</li> <li>• Peak height above grade is 16 feet or less</li> </ul>
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The current State law requires approval of an ADU or JADU meeting limitations noted in the Table 2 above and no other standards may be applied by the City. Consider the “Detached ADU on a Single-Family Lot” for example. If the ADU has at least 4-foot side and rear setbacks, floor area less than 800 square feet, and a height less than 16 feet, the City must approve a building permit. The approval cannot be subject to City development standards such as matching the roof slope to the primary dwelling, or specifying window and door placement to reduce privacy concerns to neighbors.

**Types of ADUs - With Development Standards.** The City has the ability to apply development standards, such as the standards in our existing ADU ordinance, to ADUs that do not fall into the 4 ADU types in the table above. In these cases, the amendments would maintain, modify, and/or add the following standards:

**Table 3. ADU Development Standards**

Maintain	Modify	Add
<ul style="list-style-type: none"> <li>• Architectural requirements</li> <li>• Historic resource protections</li> </ul>	<ul style="list-style-type: none"> <li>• Size limits</li> <li>• Setbacks</li> <li>• Height</li> <li>• Parking requirements and exceptions</li> </ul>	<ul style="list-style-type: none"> <li>• Bedroom requirements</li> <li>• Exceptions for nonconformities</li> </ul>

Consider again the “Detached ADU on a Single-Family Lot” for example. If the ADU is more than 800 square feet, the ADU could *not* qualify the scenario without development standards. In this case, the City could apply development standards such as maximum floor area and architectural requirements.

**PROPOSED CHANGES**

Section 17.28.270 - Accessory Dwelling Units.

A. **Purpose and Intent.** The purpose and intent of this section is to ~~provide reasonable regulations concerning the development of~~ allow and regulate accessory dwelling units (“ADUs”) and junior accessory dwelling units (JADUs) within the City. These regulations in this section are intended to comply with ~~requirements codified in the state Planning and Zoning Law related to ADUs in residential areas, including California Government Code sections~~ 65852.2 and 65852.22, as they may be amended. ~~It is not the intent of this chapter to override lawful use restrictions as may be set forth in any applicable deed restriction or covenant affecting real property.~~

- B. **Effect of Conforming ~~Accessory Dwelling Unit~~.** An ADU or JADU that conforms to the standards in this section ~~is~~will not be:
1. Deemed ~~an accessory use or an accessory building and is not considered~~ to exceed the allowable density for the lot on which ~~it~~the ADU or JADU is located;
  2. Deemed ~~a residential use that is to be~~ inconsistent with the General Plan and the zoning designations for the lot on which the ADU or JADU is located; and
  3. ~~Not~~Considered in the application of any ordinance, policy, or program to limit residential growth.
  4. Required to correct a nonconforming zoning condition, as defined below. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code section 17980.12.
- C. **Definitions.** As used in this section, terms are defined as follows:
- a. “Accessory dwelling unit” or “ADU” means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An accessory dwelling unit also includes the following:
    - i. An efficiency unit, as defined by section 17958.1 of the California Health and Safety Code; and
    - ii. A manufactured home, as defined by section 18007 of the California Health and Safety Code.
  - b. “Accessory structure” means a structure that is accessory and incidental to a dwelling located on the same lot.
  - c. “Complete independent living facilities” means permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.
  - d. “Efficiency kitchen” means a kitchen that includes each of the following:
    - i. A cooking facility with appliances.
    - ii. A food preparation counter or counters that total at least 15 square feet in area.
    - iii. Food storage cabinets that total at least 30 square feet of shelf space.
  - e. “Junior accessory dwelling unit” or “JADU” means a residential unit that:
    - i. is no more than 500 square feet in size,
    - ii. is contained entirely within an existing or proposed single-family structure,

- iii. includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure, and
- iv. includes an efficiency kitchen, as defined in subsection C.d above.
- f. “Living area” means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
- g. “Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.
- h. “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.
- i. “Proposed dwelling” means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
- j. “Public transit” means a location, including, but not limited to, a bus stop or train station or SC Rides, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
- k. “Tandem parking” means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

**C. ~~Locations Permitted.~~**

- ~~1. An ADU is only permitted on a residentially zoned lot that includes one detached single-family dwelling unit on the lot.~~
- ~~2. Where an ADU is permitted under subsection C.1 above and a "guest house" is also permitted by this Code, only the ADU or the guest house is permitted. The approval or development of one precludes the other.~~

**D. Permit Procedures.**

- 1. **Approvals and Types of ADUs and JADUs.** The following approvals apply to ADUs and JADUs:Permits.
  - a. **ADUs and JADUs that Require Only a Building Permit.** If an ADU or JADU complies with each of the general requirements in subsection E below, it is allowed with only a building permit in the following scenarios:~~Except as provided in subsection D.1.b below, an ADU is not permitted without each of the following:~~
    - ~~(1) An ADU permit,~~
    - ~~(2) A building permit as required by the building code, and~~
    - ~~(3) A recorded deed restriction as required by subsection F below.~~

- (1) **Converted on Single-family Lot:** Except as allowed by subsection D.1.a(2) below, only one ADU or JADU on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:
- i. Is either: within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or within the existing space of an accessory structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress; and
  - ii. Has exterior access that is independent of that for the single-family dwelling; and
  - iii. Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes.

- (2) **Limited Detached on Single-family Lot:** One detached, new-construction ADU on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot under subsection D.1.a(1) above), if the detached ADU satisfies each of the following limitations:

- i. The side- and rear-yard setbacks are at least four-feet.
- ii. The total floor area is 800 square feet or smaller.
- iii. The peak height above grade is 16 feet or less.

- (3) **Converted on Multifamily Lot:** One or more ADUs within portions of existing multifamily dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each converted ADU complies with state building standards for dwellings. Under this subsection D.1.a(3), at least one converted ADU is allowed within an existing multifamily dwelling, up to a quantity equal to 25 percent of the existing multifamily dwelling units.

- (4) **Limited Detached on Multifamily Lot:** No more than two detached ADUs on a lot that has an existing multifamily dwelling if each detached ADU satisfies both of the following limitations:

- i. The side- and rear-yard setbacks are at least four-feet.
- ii. The peak height above grade is 16 feet or less.

- b. **ADUs that Require an ADU Permit,** ~~Special Exception for Conversions of Existing Legal Living Area Space.~~ An ADU that meets the requirements of subsection E.2 below does not require an ADU permit. It only requires the following:

- (1) Except as allowed under subsection D.1.a above, no ADU may be created without a building permit and an ADU permit in compliance with the standards set forth in subsections E and F below. A building permit as required by the building code; and

- (2) The City may charge a fee to reimburse it for costs incurred in processing ADU permits, including the costs of adopting or amending the City's ADU ordinance. The ADU permit processing fee is determined the Planning Division and approve by the City Council by resolution. A recorded deed restriction as required by subsection F below.

**2. Application Process and Timing.**

- a. ~~An application for an ADU permit must be submitted to the City Planner on a form that is prepared and approved by the City Planner. The application must include all the information and materials that are requested in the approved application form.~~
- b. ~~The City Planner may collect a fee for processing the application provided that the fee is first approved by the City Council through a resolution or ordinance.~~

~~3. Review.~~

- a. ~~The City Planner will review complete applications for an ADU permit for compliance with all the requirements of this section, including those in subsections E (Standards) and F (Deed Restrictions). The ADU permit application shall be considered ministerially, without any discretionary review or a hearing.~~
- b. ~~The City Planner shall approve or deny~~must act on an application ~~for to create an ADU permit or JADU~~ within ~~120-60~~ 60 days ~~after receiving from the day the City receives a complete application, unless either:-~~
  - (1) The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or
  - (2) When an application to create an ADU or JADU is submitted with a permit application to create a new single-family dwelling on the lot, the City may delay acting on the ADU permit application for the ADU or JADU until the City acts on the permit application to create the new single-family dwelling, but the application to create the ADU or JADU will still be considered ministerially without discretionary review or a hearing.

**3. Impact and Utility Fees.** The following requirements apply to all ADUs and JADUs that are approved under subsections D.1.a or D.1.b above.

**a. Impact Fees.**

- (1) No impact fee is required for an ADU or JADU that is less than 750 square feet in size. For purposes of this subsection D.3, "impact fee" means a "fee" under the Mitigation Fee Act (Gov. Code § 66000(b)) and a fee under the Quimby Act (Gov. Code § 66477).

(2) Any impact fee that is required for an ADU that is 750 square feet or larger in size must be charged proportionately in relation to the square footage of the primary dwelling unit. (E.g., the floor area of the ADU, divided by the floor area of the primary dwelling, times the typical fee amount charged for a new dwelling.) "Impact fee" here does not include any connection fee or capacity charge for water or sewer service.

**b. Utility Fees.**

(1) If an ADU or JADU is constructed with a new single-family home, a separate utility connection directly between the ADU or JADU and the utility and payment of the normal connection fee and capacity charge for a new dwelling are required.

(2) Except as described in subsection D.3.b(1), converted ADUs and JADUs on a single-family lot that are created under subsection D.1.a(1) above are not required to have a new or separate utility connection directly between the ADU or JADU and the utility. Nor is a connection fee or capacity charge required.

(3) Except as described in subsection D.3.b(1) all ADUs and JADUs that are not covered by subsection D.3.b(2) require a new, separate utility connection directly between the ADU or JADU and the utility.

(a) The connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU or JADU, based on either the floor area or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system.

(b) The portion of the fee or charge that is charged by the City may not exceed the reasonable cost of providing this service.

**4. Fees.**

~~a. Except as otherwise provided in this section, the construction of an ADU is subject to any applicable fee adopted under California, Title 7, Division 1, Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).~~

~~b. An ADU that conforms to this section is not considered a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service.~~

**E. General ADU and JADU Requirements.** The following requirements apply to all ADUs and JADUs that approved under subsections D.1.a and D.1.b above:

**1. Zoning.**



- a. An ADU or JADU subject only to a building permit under subsection D.1.a above may be created on a lot in a residential or mixed-use zone.
  - b. An ADU subject to an ADU permit under subsection D.1.b above may be created on a lot that is zoned to allow single-family dwelling residential use or multifamily dwelling residential use.
2. **Fire Sprinklers.** Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.
3. **Rental Term.** No ADU or JADU may be rented for a term that is shorter than 30 days.
4. **No Separate Conveyance.** An ADU or JADU may be rented, but no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot), or from the lot and all of the dwellings (in the case of a multifamily lot).
5. **Septic System.** If the ADU or JADU will connect to an onsite water-treatment system, 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 10 years.
6. **Owner Occupancy.**
  - a. All ADUs permitted before January 1, 2020 are subject to the owner-occupancy requirement that was in place when the ADU was created.
  - b. An ADU that is permitted after that date but before January 1, 2025, is not subject to any owner-occupancy requirement.
  - c. All ADUs that are permitted on or after January 1, 2025 are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property as the person's legal domicile and permanent residence.
  - d. All JADUs are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement in this subsection E.6.d does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.
7. **Deed Restriction.** Prior to issuance of a building permit for an ADU or JADU, a deed restriction must be recorded against the title of the property in the County Recorder's office and a copy filed with the Planning Division. The deed restriction must run with the land and bind all future owners. The form of the deed restriction will be provided by the City and must provide that:
  - a. The ADU or JADU may not be sold separately from the primary dwelling.
  - b. The ADU or JADU is restricted to the approved size and to other attributes allowed by this section.
  - c. The deed restriction runs with the land and may be enforced against future property owners.



- d. The deed restriction may be removed if the owner eliminates the ADU or JADU, as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request of the Planning Division, providing evidence that the ADU or JADU has in fact been eliminated. The Planning Division may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated. Appeal may be taken from the Planning Division's determination consistent with other provisions of this Code. If the ADU or JADU is not entirely physically removed, but is only eliminated by virtue of having a necessary component of an ADU or JADU removed, the remaining structure and improvements must otherwise comply with all applicable legal requirements, including those of the Zoning Code.
- e. The deed restriction is enforceable by the Planning Division for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining the use of the ADU or JADU in violation of the recorded restrictions or abatement of the illegal unit.
8. **Income Reporting.** In order to facilitate the city's obligation to identify adequate sites for housing in accordance with Government Code sections 65583.1 and 65852.2, the following requirements must be satisfied:
- a. With the building permit application, the applicant must provide the city with an estimate of the projected annualized rent that will be charged for the ADU or JADU.
- b. Within 90 days after each yearly anniversary of the issuance of the building permit, the owner must report the actual rent charged for the ADU or JADU during the prior year. If the city does not receive the report within the 90-day period, the owner is in violation of this Code, and the city may send the owner a notice of violation and allow the owner another 30 days to submit the report. If the owner fails to submit the report within the 30-day period, the city may enforce this provision in accordance with applicable law.
- E. **Development Standards for ADUs that Require an ADU Permit.** The following requirements apply only to ADUs that require an ADU permit.
- ~~1. An ADU, except as provided in subsection E.2 below for repurposed living space, must meet the following standards:~~
- ~~a. Development on the Lot.~~
- ~~(1) The accessory dwelling unit must either be:~~
- ~~(a) Detached from the existing primary dwelling, but located on the same lot as the existing dwelling; or~~

~~(b) Attached to the existing dwelling.~~

~~(2) Only one ADU is allowed on a lot.~~

~~(3) The ADU may not be sold separately from the primary residence.~~

~~b. Occupancy and Tenancy.~~

~~(1) The property owner must occupy either the primary dwelling or the ADU as his or her domicile.~~

~~(2) An ADU may be rented long-term (longer than 30 days). The ADU may not be rented on a short-term basis (i.e., for 30 or fewer days).~~

~~c. **Building and Construction.**~~

~~(1) An ADU must include permanent provisions for living, sleeping, eating, cooking (a kitchen as defined by this Code), and sanitation facilities (including sink, toilet, bathing facilities).~~

~~(2) An ADU must have fire sprinklers if the primary dwelling unit is also required to have fire sprinklers. If the City's Building Code requires a second-story addition to the primary dwelling unit to have fire sprinklers, then an ADU that is built as a second-story addition to the primary dwelling unit is required to have fire sprinklers.~~

~~(3) An ADU must be approved by the Local Health Officer if a private sewage-disposal system is used on the lot. If the primary dwelling on the lot is connected to a public or community-owned sewer system, then the ADU must also be connected to the same system.~~

~~(4) An ADU must satisfy the requirements of the City's Building and Fire Codes that apply to detached dwellings at the time that the building permit is issued, whether the ADU is a new detached ADU or a new addition to a detached primary dwelling. In the case of the latter, the new addition must comply with current Building and Fire Code regardless of whether the rest of the primary dwelling fully complies with current requirements.~~

~~(5) An ADU must have utility connections that conform to the City's building and plumbing requirements. The connections may be separate from or connected to those of the primary dwelling unit, depending on what the code requires.~~

~~1.(6) **Passageway.** No passageway shall be required in conjunction with the construction of is required for an ADU. "Passageway" means a pathway that is unobstructed clear to the sky and extends from the street to one entrance of the accessory dwelling unit.~~

~~(7) **Distance from the Primary Building.** A detached ADU shall be a minimum of five feet from the primary building, measured from the closest point of~~

~~the ADU (whether wall, balcony, cave, etc.) to the closest point of the primary dwelling.~~

**~~e2. Parking.~~**

~~(1)a. Except as provided in subsection E.1.d(2) below, ADUs must meet the following parking standards:~~

~~(a) One off-street parking space must be provided for theis required for each ADU. The property owner may establish the required ADU parking space may be provided in setback areas or as tandem parking on an existing driveway.~~

~~b.(b) —When a garage, carport, or other covered parking structure is demolished or converted for the construction of an ADU, the those off-street parking spaces for the primary dwelling must are not required be replaced, the replacement spaces must be located on the same lot but they may be in any configuration that is allowed for an ADU parking space, including, but not limited to, as covered spaces, uncovered spaces, tandem spaces, or by the use of mechanical automobile parking lifts.~~

~~(2)c. Exceptions. No Pparking standards shall not be imposed on an ADU whenis required in the following situations:~~

~~(a1) The ADU is located within one-half mile walking distance of public transit stops (bus, rail, or SC Rides); or,~~

~~(b2) The ADU is located within an architecturally or and historically significant historic district; or,~~

~~(e3) The ADU is part of the proposed or existing primary residence or an existing accessory structure under subsection D.1.a(1) above. (i.e., is a repurposed living space) as set forth in subsection E.2 below; or~~

~~(d4) When on-street parking permits are required but not offered to the occupant of the ADU; or,~~

~~(e5) When there is a city-sanctioned, posted car-share pick-up or drop-off location within one block of the ADU.~~

**~~e3. Height. No ADU subject to this subsection E may exceed 16 feet in height above grade, measured to the peak of the structure.~~**

~~(1) An ADU shall not exceed the legal conforming height of the existing primary dwelling.~~

~~(2) A detached ADU shall not exceed 15 feet in height within 20 feet of another residentially zoned property.~~

~~(3) Exception: An ADU that is constructed above a legally established existing garage that is nonconforming as to setback may be up to 25 feet in height or the legal conforming height of the primary dwelling.~~

**f4. Setbacks.**

- ~~(1) No attached or detached An ADU that is subject to this subsection E must conform to may be located within:~~
- ~~(a.) Twenty A 20-fooeet of the front-yard setback. property line and In addition, the ADU may not be closer than the living area of the primary dwelling to the front property line.;~~
  - ~~(b.) Ten feet of a side property line;~~
  - ~~(c) Ten 4-foot side- and feet of a rear-yard setbacks. \_property line or 20 feet of a rear property line for any through-lot;~~
  - c. A detached ADU shall be a minimum of five feet from the primary building, measured from the closest point of the ADU (whether wall, balcony, eave, etc.) to the closest point of the primary dwelling.
  - d. No setback if the ADU is constructed in the same location and to the same dimensions as an existing accessory building.
  - ~~(d) Five feet of any alley;~~
  - ~~(e) Twenty-five feet of any coastal bluff, coastal canyon, inland canyon; or~~
  - ~~(f) Ten feet from open space zone.~~
- ~~(2) Any portion of a property line that is contiguous with public right-of-way is deemed a front property line.~~
- ~~(3) Setback Exceptions. The following limited exceptions apply to the setbacks set forth in subsection E.1.f(1) above.~~
- ~~(a) Garage Conversions. No setback is required for a legally established existing garage that is converted to an ADU.~~
  - ~~(b) For an ADU that is constructed above a legally established existing garage that is nonconforming as to setback, a minimum setback of five feet is required from the side and rear property lines.~~

**g5. Unit Maximum Size.**

- a.(1) The increased floor area of maximum size of an attached ADU subject to this subsection E is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two bedrooms. No more than two bedrooms are allowed. An attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of the existing primary dwelling, shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.
- b.(2) The total floor areamaximum size of a detached ADU subject to this subsection E is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two bedrooms. No more than two bedrooms are allowed. shall not exceed 1,200 square feet.

- ~~.(3) An ADU that is an efficiency dwelling unit as defined by Section 17958.1 of the California Health and Safety Code shall have a floor area of at least 150 square feet. An ADU that is not an efficiency unit under Section 17958.1 must have a floor area of at least 300 square feet.~~
- c. Application of other development standards in this subsection E, such as lot coverage, might further limit the size of the ADU, but no application of the percent-based size limit in subsection E.5.c above or of lot coverage requirements may require the ADU to be less than 800 square feet.
- ~~h6.~~ 6. Lot Coverage. Both the No ADU subject to this subsection E may cause the total lot coverage of the lot to and the primary dwelling shall not exceed a maximum 50 percent lot coverage, subject to E.5.c above.
- ~~7i.~~ 7i. Driveway Access. The ADU and primary dwelling must use the same driveway to access the street, unless otherwise required for Fire Apparatus Accessfire apparatus access, as determined by the fire authority.
- ~~8j.~~ 8j. Architecture Review.
- ~~a.(1)~~ a.(1) The materials and colors of the exterior walls, roof, and windows and doors must match the appearance and architectural design of those of the primary dwelling.
- ~~b.(2)~~ b.(2) The roof slope must match that of the dominant roof slope of the primary dwelling. The dominant roof slope is the slope shared by the largest portion of the roof.
- ~~c.(3)~~ c.(3) The exterior lighting must be limited to shieldeddown-lights or as otherwise required by the building or fire code.
- ~~d.(4)~~ d.(4) The ADU must have an independent exterior entrance, apart from that of the primary dwelling. The ADU entrance must be located on the side or rear building façade, or if located in front, not visible from public-right-of-way.
- ~~e.(5)~~ e.(5) The interior horizontal dimensions of an ADU must be at least 10 feet wide in every direction, with a minimum interior wall height of seven feet.
- ~~f.(6)~~ f.(6) Windows and doors of the ADU may not have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass, or clerestory windows may be used to provide screening and prevent a direct line of sight.
9. Historical Protections. (7) The architectural treatment of an ADU to be constructed that is on, or within 300 feet of, real property a lot that has an identified historical resource listed on the a federal, state, or local register of historic places must comply with all applicable ministerial requirements imposed by the Secretary of the Interior's objective Standards for the Treatment of Historic Properties, as applicable. An ADU may not be located in front of a historic resource, except when the ADU is created from an existing structure.

2. ~~A repurposed living space ADU is exempt from the requirements of subsection E.1 above if it meets each of the following requirements:
 
  - a. ~~The ADU is contained entirely within the living area space of the primary dwelling. "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any uninhabitable structure;~~
  - b. ~~The ADU has independent exterior access from the existing residence; and~~
  - c. ~~The setbacks for the ADU are sufficient for fire safety.~~~~
3. ~~If the requirements of subsection E.2 above for an ADU in repurposed living space are met, then the applicant:
 
  - a. ~~Is not required to install a new or separate utility connection directly between the ADU and the utility or to pay a related connection fee or capacity charge.~~
  - b. ~~Shall record a deed restriction as provided in subsection F below and obtain a building permit as required by the building code as adopted and amended by Chapter 8.02.~~~~

~~F. **Deed Restriction.** Prior to issuance of a building permit for an ADU, a deed restriction shall be recorded against the title of the property in the County Recorder's office and a copy filed with the City Planner. Said deed restriction shall run with the land and shall bind all future owners, heirs, successors, or assigns. The form of the deed restriction shall be provided by the City and shall provide that:~~

1. ~~The ADU may not be sold separately from the primary dwelling.~~
2. ~~The ADU is restricted to the approved size and to other attributes allowed by this section.~~
3. ~~The deed restriction runs with the land and may be enforced against future property owners.~~
4. ~~The deed restriction may be removed if the owner eliminates the ADU. To remove the deed restriction, an owner may make a written request of the City Planner, providing evidence that the ADU has in fact been removed. The City Planner may then determine whether the evidence supports the claim that the ADU has been removed. Appeal may be taken from the City Planner's determination consistent with other provisions of this Code.~~
5. ~~The deed restrictions shall be enforced by the City Planner or designee for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining use of the ADU in violation of the recorded restrictions or abatement of the illegal unit.~~

~~F. **Nonconforming ADUs and JADUs and Discretionary Approval.** Any proposed ADU or JADU that does not conform to the objective standards set forth in subsections A through E of this section may be allowed by the City with a conditional use permit, in accordance with the other provisions of this title.~~



(Ord. No. [1668](#), § 2, 3-5-2019)

**Editor's note**— Ord. No. [1668](#), § 2, adopted March 5, 2019, repealed § 17.28.270 and enacted a new section as set out herein. Former § 17.28.270 pertained to second residential dwelling units and derived from Ord. No. 1172, § 3(part), adopted in 1996.

<b>“CLEAN” VERSION OF PROPOSED CHANGES</b>
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Section 17.28.270 - Accessory Dwelling Units.

- A. **Purpose and Intent.** The purpose and intent of this section is to allow and regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) within the City. The regulations in this section are intended to comply with California Government Code sections 65852.2 and 65852.22, as they may be amended.
- B. **Effect of Conforming.** An ADU or JADU that conforms to the standards in this section will not be:
1. Deemed to exceed the allowable density for the lot on which the ADU or JADU is located;
  2. Deemed to be inconsistent with the General Plan and the zoning designation for the lot on which the ADU or JADU is located; and
  3. Considered in the application of any ordinance, policy, or program to limit residential growth.
  4. Required to correct a nonconforming zoning condition, as defined below. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code section 17980.12.
- C. **Definitions.** As used in this section, terms are defined as follows:
- a. “Accessory dwelling unit” or “ADU” means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An accessory dwelling unit also includes the following:
    - i. An efficiency unit, as defined by section 17958.1 of the California Health and Safety Code; and
    - ii. A manufactured home, as defined by section 18007 of the California Health and Safety Code.
  - b. “Accessory structure” means a structure that is accessory and incidental to a dwelling located on the same lot.
  - c. “Complete independent living facilities” means permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.
  - d. “Efficiency kitchen” means a kitchen that includes each of the following:
    - i. A cooking facility with appliances.
    - ii. A food preparation counter or counters that total at least 15 square feet in area.
    - iii. Food storage cabinets that total at least 30 square feet of shelf space.

- e. “Junior accessory dwelling unit” or “JADU” means a residential unit that:
    - i. is no more than 500 square feet in size,
    - ii. is contained entirely within an existing or proposed single-family structure,
    - iii. includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure, and
    - iv. includes an efficiency kitchen, as defined in subsection C.d. above.
  - f. “Living area” means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
  - g. “Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.
  - h. “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.
  - i. “Proposed dwelling” means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
  - j. “Public transit” means a location, including, but not limited to, a bus stop or train station or SC Rides, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
  - k. “Tandem parking” means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
- D. Permit Procedures.**
1. **Approvals and Types of ADUs and JADUs.** The following approvals apply to ADUs and JADUs:
    - a. **ADUs and JADUs that Require Only a Building Permit.** If an ADU or JADU complies with each of the general requirements in subsection E below, it is allowed with only a building permit in the following scenarios:
      - (1) **Converted on Single-family Lot:** Except as allowed by subsection D.1.a(2) below, only one ADU or JADU on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:
        - i. Is either: within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or within the existing space of an accessory structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress; and
        - ii. Has exterior access that is independent of that for the single-family dwelling; and
        - iii. Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes.
      - (2) **Limited Detached on Single-family Lot:** One detached, new-construction ADU on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on



the lot under subsection D.1.a(1) above), if the detached ADU satisfies each of the following limitations:

- i. The side- and rear-yard setbacks are at least four-feet.
- ii. The total floor area is 800 square feet or smaller.
- iii. The peak height above grade is 16 feet or less.

(3) **Converted on Multifamily Lot:** One or more ADUs within portions of existing multifamily dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each converted ADU complies with state building standards for dwellings. Under this subsection D.1.a(3), at least one converted ADU is allowed within an existing multifamily dwelling, up to a quantity equal to 25 percent of the existing multifamily dwelling units.

(4) **Limited Detached on Multifamily Lot:** No more than two detached ADUs on a lot that has an existing multifamily dwelling if each detached ADU satisfies both of the following limitations:

- i. The side- and rear-yard setbacks are at least four-feet.
- ii. The peak height above grade is 16 feet or less.

b. **ADUs that Require an ADU Permit.**

- (1) Except as allowed under subsection D.1.a above, no ADU may be created without a building permit and an ADU permit in compliance with the standards set forth in subsections E and F below.
- (2) The City may charge a fee to reimburse it for costs incurred in processing ADU permits, including the costs of adopting or amending the City's ADU ordinance. The ADU permit processing fee is determined the Planning Division and approve by the City Council by resolution.

2. **Application Process and Timing.**

- a. An ADU permit application shall be considered ministerially, without any discretionary review or a hearing.
- b. The City must act on an application to create an ADU or JADU within 60 days from the day the City receives a complete application, unless either:
  - (1) The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or
  - (2) When an application to create an ADU or JADU is submitted with a permit application to create a new single-family dwelling on the lot, the City may delay acting on the ADU permit application for the ADU or JADU until the City acts on the permit application to create the new single-family dwelling, but the application to create the ADU or JADU will still be considered ministerially without discretionary review or a hearing.

3. **Impact and Utility Fees.** The following requirements apply to all ADUs and JADUs that are approved under subsections D.1.a or D.1.b above.

a. **Impact Fees.**

- (1) No impact fee is required for an ADU or JADU that is less than 750 square feet in size. For purposes of this subsection D.3, “impact fee” means a “fee” under the Mitigation Fee Act (Gov. Code § 66000(b)) and a fee under the Quimby Act (Gov. Code § 66477).
- (2) Any impact fee that is required for an ADU that is 750 square feet or larger in size must be charged proportionately in relation to the square footage of the primary dwelling unit. (E.g., the floor area of the ADU, divided by the floor area of the primary dwelling, times the typical fee amount charged for a new dwelling.) “Impact fee” here does not include any connection fee or capacity charge for water or sewer service.

a. **Utility Fees.**

- (1) If an ADU or JADU is constructed with a new single-family home, a separate utility connection directly between the ADU or JADU and the utility and payment of the normal connection fee and capacity charge for a new dwelling are required.
- (2) Except as described in subsection D.3.b(1), converted ADUs and JADUs on a single-family lot that are created under subsection D.1.a(1) above are not required to have a new or separate utility connection directly between the ADU or JADU and the utility. Nor is a connection fee or capacity charge required.
- (3) Except as described in subsection D.3.b(1) all ADUs and JADUs that are not covered by subsection D.3.b(2) require a new, separate utility connection directly between the ADU or JADU and the utility.
  - (a) The connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU or JADU, based on either the floor area or the number of drainage-fixtured units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system.
  - (b) The portion of the fee or charge that is charged by the City may not exceed the reasonable cost of providing this service.

E. **General ADU and JADU Requirements.** The following requirements apply to all ADUs and JADUs that approved under subsections D.1.a and D.1.b above:

1. **Zoning.**

- a. An ADU or JADU subject only to a building permit under subsection D.1.a above may be created on a lot in a residential or mixed-use zone.
  - b. An ADU subject to an ADU permit under subsection D.1.b above may be created on a lot that is zoned to allow single-family dwelling residential use or multifamily dwelling residential use.
2. **Fire Sprinklers.** Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.
  3. **Rental Term.** No ADU or JADU may be rented for a term that is shorter than 30 days.

4. **No Separate Conveyance.** An ADU or JADU may be rented, but no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot), or from the lot and all of the dwellings (in the case of a multifamily lot).
5. **Septic System.** If the ADU or JADU will connect to an onsite water-treatment system, 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 10 years.
6. **Owner Occupancy.**
  - a. All ADUs permitted before January 1, 2020 are subject to the owner-occupancy requirement that was in place when the ADU was created.
  - b. An ADU that is permitted after that date but before January 1, 2025, is not subject to any owner-occupancy requirement.
  - c. All ADUs that are permitted on or after January 1, 2025 are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property as the person's legal domicile and permanent residence.
  - d. All JADUs are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement in this subsection E.6.d does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.
7. **Deed Restriction.** Prior to issuance of a building permit for an ADU or JADU, a deed restriction must be recorded against the title of the property in the County Recorder's office and a copy filed with the Planning Division. The deed restriction must run with the land and bind all future owners. The form of the deed restriction will be provided by the City and must provide that:
  - a. The ADU or JADU may not be sold separately from the primary dwelling.
  - b. The ADU or JADU is restricted to the approved size and to other attributes allowed by this section.
  - c. The deed restriction runs with the land and may be enforced against future property owners.
  - d. The deed restriction may be removed if the owner eliminates the ADU or JADU, as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request of the Planning Division, providing evidence that the ADU or JADU has in fact been eliminated. The Planning Division may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated. Appeal may be taken from the Planning Division's determination consistent with other provisions of this Code. If the ADU or JADU is not entirely physically removed, but is only eliminated by virtue of having a

necessary component of an ADU or JADU removed, the remaining structure and improvements must otherwise comply with all applicable legal requirements, including those of the Zoning Code.

- e. The deed restriction is enforceable by the Planning Division for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining the use of the ADU or JADU in violation of the recorded restrictions or abatement of the illegal unit.
8. **Income Reporting.** In order to facilitate the city's obligation to identify adequate sites for housing in accordance with Government Code sections 65583.1 and 65852.2, the following requirements must be satisfied:
- a. With the building permit application, the applicant must provide the city with an estimate of the projected annualized rent that will be charged for the ADU or JADU.
  - b. Within 90 days after each yearly anniversary of the issuance of the building permit, the owner must report the actual rent charged for the ADU or JADU during the prior year. If the city does not receive the report within the 90-day period, the owner is in violation of this Code, and the city may send the owner a notice of violation and allow the owner another 30 days to submit the report. If the owner fails to submit the report within the 30-day period, the city may enforce this provision in accordance with applicable law.
- E. **Development Standards for ADUs that Require an ADU Permit.** The following requirements apply only to ADUs that require an ADU permit.
1. **Passageway.** No passageway is required for an ADU.
  2. **Parking.**
    - a. One off-street parking space is required for each ADU. The parking space may be provided in setback areas or as tandem parking.
    - b. When a garage, carport, or other covered parking structure is demolished or converted for the construction of an ADU, those off-street parking spaces are not required be replaced.
    - c. Exceptions. No parking is required in the following situations:
      - (1) The ADU is located within one-half mile walking distance of public transit stops (bus, rail, or SC Rides).
      - (2) The ADU is located within an architecturally and historically significant historic district.
      - (3) The ADU is part of the proposed or existing primary residence or an accessory structure under subsection D.1.a(1) above.
      - (4) When on-street parking permits are required but not offered to the occupant of the ADU.

- (5) When there is a city-sanctioned, posted car-share pick-up or drop-off location within one block of the ADU.
3. **Height.** No ADU subject to this subsection E may exceed 16 feet in height above grade, measured to the peak of the structure.
  4. **Setbacks.** An ADU that is subject to this subsection E must conform to:
    - a. A 20-foot of the front-yard setback. In addition, the ADU may not be closer than the living area of the primary dwelling to the front property line.
    - b. 4-foot side- and rear-yard setbacks.
    - c. A detached ADU shall be a minimum of five feet from the primary building, measured from the closest point of the ADU (whether wall, balcony, eave, etc.) to the closest point of the primary dwelling.
    - d. No setback if the ADU is constructed in the same location and to the same dimensions as an existing accessory building.
  5. **Maximum Size.**
    - a. The maximum size of an attached ADU subject to this subsection E is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two bedrooms. No more than two bedrooms are allowed. An attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of the existing primary dwelling.
    - b. The maximum size of a detached ADU subject to this subsection E is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two bedrooms. No more than two bedrooms are allowed.
    - c. Application of other development standards in this subsection E, such as lot coverage, might further limit the size of the ADU, but no application of the percent-based size limit in subsection E.5.a above or of lot coverage requirements may require the ADU to be less than 800 square feet.
  6. **Lot Coverage.** No ADU subject to this subsection E may cause the total lot coverage of the lot to exceed 50 percent lot coverage, subject to E.5.c above.
  7. **Driveway Access.** The ADU and primary dwelling must use the same driveway to access the street, unless otherwise required for fire apparatus access as determined by the fire authority.
  8. **Architecture Review.**
    - a. The materials and colors of the exterior walls, roof, and windows and doors must match the appearance and architectural design of those of the primary dwelling.
    - b. The roof slope must match that of the dominant roof slope of the primary dwelling. The dominant roof slope is the slope shared by the largest portion of the roof.
    - c. The exterior lighting must be limited to down-lights or as otherwise required by the building or fire code.
    - d. The ADU must have an independent exterior entrance, apart from that of the primary dwelling. The ADU entrance must be located on the side or rear building façade, or if located in front, not visible from public-right-of-way.

## ATTACHMENT 8

- e. The interior horizontal dimensions of an ADU must be at least 10 feet wide in every direction, with a minimum interior wall height of seven feet.
  - f. Windows and doors of the ADU may not have a direct line of sight to an adjoining residential property. Fencing, landscaping, privacy glass, or clerestory windows may be used to provide screening and prevent a direct line of sight.
9. **Historical Protections.** An ADU that is on, or within 300 feet of, real property that has an identified historical resource listed on a federal, state, or local register of historic places must comply with the Secretary of the Interior's objective Standards for the Treatment of Historic Properties, as applicable. An ADU may not be located in front of a historic resource, except when the ADU is created from an existing structure.
- F. **Nonconforming ADUs and JADUs and Discretionary Approval.** Any proposed ADU or JADU that does not conform to the objective standards set forth in subsections A through E of this section may be allowed by the City with a conditional use permit, in accordance with the other provisions of this title.

(Ord. No. [1668](#), § 2, 3-5-2019)

**Editor's note**— Ord. No. [1668](#), § 2, adopted March 5, 2019, repealed § 17.28.270 and enacted a new section as set out herein. Former § 17.28.270 pertained to second residential dwelling units and derived from Ord. No. 1172, § 3(part), adopted in 1996.