

ORDINANCE NO. 1668

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SAN CLEMENTE, CALIFORNIA, FOR A CITY-INITIATED
AMENDMENT (ZA 18-243) OF THE CITY OF SAN
CLEMENTE MUNICIPAL CODE TITLE 17 FOR
ACCESSORY DWELLING UNITS.**

WHEREAS, California Government Code, Section 65800 et seq. authorizes the City of San Clemente ("City") to adopt and administer zoning laws, ordinances, rules and regulations as a means of implementing the General Plan;

WHEREAS, the San Clemente Municipal Code currently permits accessory dwelling units ("ADU") (formerly second residential dwelling units) in residential districts, subject to applicable state and federal law;

WHEREAS, the state Legislature has long held that ADUs in single-family and multifamily zones are a valuable way to provide affordable housing in California and, from time to time, changes the statutes related to accessory dwelling units including updates that took effect on January 1, 2017, and January 1, 2018;

WHEREAS, state law requires the City to deem ADUs to be "a residential use that is consistent with the existing general plan and zoning designation" (Gov. Code § 65852.2(a)(1)(C));

WHEREAS, state law makes an ADU a permitted use on any lot that is "zoned to allow single-family or multifamily use and [that] includes a proposed or existing single-family dwelling" (Gov. Code § 65852.2(a)(1)(D)(ii));

WHEREAS, on December 6, 2018, the City gave proper notice of the public hearing for the proposed ordinance by publishing in a newspaper of general circulation notice of a Planning Commission public hearing at which the ordinance would be considered;

WHEREAS, on December 19, 2018, the Planning Commission of the City of San Clemente held a duly noticed public hearing on amendments to San Clemente Municipal Code Title 17 hereinafter referred to as Zoning Amendment ("ZA") 18-243, and considered evidence presented by City staff and other interested parties and made a recommendation to the City Council as fully set forth in this Resolution No. 18-036 relating to ZA 18-243;

WHEREAS, on January 25, 2019, the City gave proper notice of the proposed ordinance by publishing in a newspaper of general circulation notice of the public hearing before the City Council at which the ordinance would be considered; and

WHEREAS, on February 19, 2019, the City Council held a duly noticed public hearing on the subject recommendation, and considered evidence presented by City staff and other interested parties and the recommendation of the Planning Commission.

NOW, THEREFORE, the City Council of the City of San Clemente hereby ordains as follows:

Section 1: CEQA Findings.

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commission and City Council, and the facts outlined below, the City Council hereby finds and determines that this ordinance has been assessed in accordance with the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines (Cal. Code Regs., § 15000 et seq.) and is statutorily exempt from the CEQA under Public Resources Code section 21080.17, which exempts from CEQA any ordinance that is adopted to implement Government Code section 65852.1 or 65852.2. This ordinance implements section 65852.2. Therefore, this ordinance is statutorily exempt.

The documents and materials that constitute the record of proceedings on which this ordinance and the above findings are based are located at the City of San Clemente, Community Development Department, 910 Calle Negocio, #100, San Clemente, CA 92673. The custodian of records is the Community Development Director.

Section 2: San Clemente Municipal Code, Title 17, is hereby amended as follows:

Section 17.28.270 is repealed in its entirety.

A new Section 17.28.270 is added as follows:

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 accessory dwelling units ("ADUs") 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 section 65852.2. 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 that conforms to this section is:
1. Deemed an accessory use or an accessory building and is not considered to exceed the allowable density for the lot on which it is located;
 2. Deemed a residential use that is consistent with the General Plan and the zoning designations for the lot; and
 3. Not considered in the application of any ordinance, policy, or program to limit residential growth.

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. Permits.
 - a. 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.
 - b. 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) a building permit as required by the building code and
 - (2) a recorded deed restriction as required by subsection F below.
2. Application Processing.
 - 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 an application for an ADU permit within 120 days after receiving the complete application.

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. Standards.

- 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.
- (6) No passageway shall be required in conjunction with the construction of 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, eave, etc.) to the closest point of the primary dwelling.

d. Parking.

- (1) 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 the ADU. The property owner may establish the required ADU parking in setback areas or as tandem parking on an existing driveway.
 - (b) When a garage, carport, or other covered parking structure is demolished or converted for the construction of an ADU, the off-street parking spaces for the primary dwelling must 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) Parking standards shall not be imposed on an ADU when:
 - (a) The ADU is located within one-half mile of public transit stops (bus, rail, or SC Rides); or
 - (b) The ADU is located within an architecturally or historically significant historic district; or
 - (c) The ADU is part of the existing primary residence or an existing accessory structure (i.e., is a repurposed living space) as set forth in subsection E.2 below; or
 - (d) When on-street parking permits are required but not offered to the occupant of the ADU; or
 - (e) When there is a city-sanctioned, posted car-share pick-up or drop-off location within one block of the ADU.

e. Height.

- (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.

f. Setbacks.

- (1) No attached or detached ADU may be located within:
 - (a) 20 feet of the front property line and may not be closer than the living area of the primary dwelling to the front property line;
 - (b) 10 feet of a side property line;
 - (c) 10 feet of a rear property line or 20 feet of a rear property line for any through-lot;
 - (d) 5 feet of any alley;
 - (e) 25 feet of any coastal bluff, coastal canyon, inland canyon; or
 - (f) 10 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.

g. Unit Size.

- (1) The increased floor area of an attached ADU shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.
- (2) The total floor area of a detached ADU 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.
- h. Lot Coverage. Both the ADU and the primary dwelling shall not exceed a maximum fifty percent (50%) lot coverage.
- i. 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.
- j. Architecture Review.
 - (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.
 - (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.
 - (3) The exterior lighting must be limited to shielded-lights or as otherwise required by the building or fire code.
 - (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.
 - (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.
 - (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 may be used to provide screening and prevent a direct line of sight.
 - (7) The architectural treatment of an ADU to be constructed on a lot that has an identified historical resource listed on the federal, state, or local register of historic places must comply with all applicable ministerial requirements imposed by the Secretary of Interior.

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.

Section 17.32.030, Table 17.32.030 - Residential Zone Uses, is amended as follows:

Use	RVL	RL	RML	RM	RH
Second Residential Units (Inland Side of I-5) 13 <u>Accessory Dwelling Units (13)</u>	P	P	<u>P</u>	<u>P</u>	<u>P</u>

13 Refer to Section 17.28.270, ~~Second Residential~~ Accessory Dwelling Units (ADUs), of this title for special provisions for ~~second residential units~~ ADUs.

Table 17.64.050 – Number of Parking Spaces Required is amended as follows:

Use	Number of Parking Spaces Required
Second Residential <u>Accessory Dwelling Units</u>	Please refer to Section 17.28.270, Second Residential <u>Accessory Dwelling Units</u> .

Section 17.88 (Definitions), is amended to add or modify the following definitions:

“Accessory Dwelling Unit” (“ADU”): A residential dwelling unit that is detached from, attached to, or located within the living area of an existing primary dwelling unit, and that provides complete independent living facilities with permanent provisions for sleeping, eating, cooking, and sanitation facilities for one or more persons. An accessory dwelling unit also includes an efficiency unit, as defined in California Health and Safety Code section 17958.1, and a manufactured home, as defined in section 18007.

“Domicile”: A person's fixed, permanent, and principal home for legal purposes.

"Granny Flat": See "Accessory Dwelling Unit".

"Kitchen" means any room or part of a room which is designed, built, used and/or intended to be used for food preparation and/or cooking which contains facilities that include a sink; a stove, oven, range or other similar non-portable cooking device; and a refrigerator.

"Living Area": The interior habitable area of a dwelling unit, including basements and attics, but not including a garage or any uninhabitable structure.

"Second residential unit": See "Accessory Dwelling Unit".

Section 3: If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be invalid or unenforceable, such decision shall not affect the validity or enforceability of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases would be declared invalid or unenforceable.

Section 4: The City Clerk shall certify to the passage of this Ordinance and publish the same in the manner required by law, and this Ordinance shall take effect as provided by law.

APPROVED AND ADOPTED this 5th day of March, 2019.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, **JOANNE BAADE**, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. 1668 having been regularly introduced at the meeting of February 19, 2019, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the 5th day of March, 2019, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

CITY ATTORNEY