

ORDINANCE NO. 528

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NEWARK AMENDING TITLE 17 (ZONING) OF THE
NEWARK MUNICIPAL CODE TO REVISE CHAPTER 17.26,
SECTION 17.26.040 ACCESSORY DWELLING UNITS TO
GENERALLY AFFECT DEVELOPMENT STANDARDS FOR
CONSTRUCTION OF ACCESSORY DWELLING UNITS

WHEREAS, Accessory Dwelling Units can provide an important housing resource for low and very low income households, and a means of making home ownership more viable for moderate income homeowners; and

WHEREAS, the City has developed provisions in its Zoning Code for Accessory Dwelling Units in Title 17, Section 17.26.040; and

WHEREAS, these provisions are subject to periodic modification in response to new State laws and changes to the California Government Code; and

WHEREAS, recent State laws that impact regulations related to Accessory Dwelling Units include, Senate Bill 13, Assembly Bill 68, Assembly Bill 587, Assembly Bill 670, and Assembly Bill 881; and

WHEREAS, the proposed amendments to Newark Municipal Code Section 17.26.040 would meet all requirements of State law and are consistent with the new State guidelines for Accessory Dwelling Unit regulations published by the California Department of Housing and Community Development; and

WHEREAS, the proposed amendment to Newark Municipal Code Section 17.26.040 is in conformance with the City's General Plan; and

WHEREAS, pursuant to Newark Municipal Code Section 17.31.060, the Planning Commission held a public hearing on the proposed amendment at 7:30 p.m. on December 15, 2020 at the City Administration Building (via virtual meeting), 37101 Newark Boulevard, Newark, California, made the necessary findings required pursuant to the Newark Municipal Code and recommended City Council adoption by a 5-0 decision; and

WHEREAS, pursuant to Newark Municipal Code Section 17.31.070, the City Council held a public hearing on the proposed amendment on February 11, 2021 at the City Administration Building (via virtual meeting), 37101 Newark Boulevard, Newark, California.

NOW, THEREFORE, the City Council of the City of Newark does ordain as follows:

Section 1: That the foregoing recitals are true and correct and hereby made part of this Ordinance.

Section 2: The City Council of the City of Newark does hereby find and declare that the zoning text amendment embodied in this ordinance as set forth in Exhibit A, attached hereto and made a part hereof by reference, is categorically exempt from the requirements of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15282(h) pertaining to “[t]he adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code,” and under CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility the adoption of this ordinance may have a significant effect on the environment.

Section 3: Pursuant to Section 17.39.070 of Title 17 (Zoning) of the City of Newark Municipal Code, the City Council of the City of Newark does hereby find that the zoning text amendments embodied in this ordinance as set forth in Exhibit A, attached hereto and made a part of by reference, is necessary and desirable to achieve the purposes of Title 17 (Zoning) of the Newark Municipal Code, which seeks to amend Newark Municipal Code Section 17.26.040 by amending the zoning development standards affecting the construction of Accessory Dwelling Units.

Section 4: Title 17 (Zoning) of the Newark Municipal Code is hereby amended as shown in Exhibit A, with ~~strikeout~~ denoting deletions and underline denoting additions.

Section 5: If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Newark hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

Section 6: Effective Date. This ordinance shall take effect thirty (30) days from the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance shall be published in The Tri-City Voice, a newspaper of general circulation published and printed in the County of Alameda and circulated in the City of Newark.

The foregoing ordinance was introduced and read before the City Council of the City of Newark by Vice Mayor Bucci at the regular meeting of the City Council of the City of Newark held on February 11, 2021.

This ordinance was read at the regular meeting of the City Council held February 25, 2021. Council Member Collazo moved that it be adopted and passed, which motion was duly seconded, and said ordinance was passed and adopted.

AYES: Council Members Collazo, Freitas, Hannon and Mayor Nagy

NOES: None

ABSENT: Vice Mayor Bucci

SECONDED: Council Member Hannon

APPROVED:

ATTEST:

s/ALAN L. NAGY
Mayor

s/SHEILA HARRINGTON
City Clerk

APPROVED AS TO FORM:

s/KRISTOPHER J. KOKOTAYLO
Interim City Attorney

Exhibit A

(2/11/2020)

Chapter 17.26 Standards for Specific Uses

17.26.010 Purpose

The purpose of this chapter is to establish standards for specific uses and activities that are permitted or conditionally permitted in several or all districts. These provisions are supplemental standards and requirements to minimize the impacts of these uses and activities on surrounding properties and to protect the health, safety, and welfare of their occupants and of the general public.

17.26.020 Applicability

Each land use and activity covered by this chapter shall comply with the requirements of the section applicable to the specific use or activity, in addition to any applicable standard this Ordinance requires in the zoning district where the use or activity is proposed and all other applicable provisions of this Ordinance.

- A. The uses that are subject to the standards in this chapter shall be located only where allowed by base zoning district or overlay district use regulations.
- B. The uses that are subject to the standards in this chapter are allowed only when authorized by the planning permit required by base district regulations, such as a Conditional Use Permit, except where this chapter establishes a different planning permit requirement for a specific use.

17.26.030 Accessory Uses

An accessory use shall be secondary to a primary use and shall be allowed only in conjunction with a principal use or building to which it relates under the same regulations as the main use in any zoning district. These regulations are found in the use regulation tables in Article II, Base and Overlay Districts, and may be subject to specific standards found in this chapter or within each district, as specified in the tables. Accessory uses and structures are also subject to the development and site regulations found in Chapter 17.17, General Site Regulations.

17.26.040 Accessory Dwelling Units

Accessory Dwelling Units (~~ADUs~~) shall be located, developed, and operated in compliance with the following standards:

- A. **Categories.** ~~ADUs~~ Accessory Dwelling Units include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the ~~principal~~ primary residence. There are two categories of Accessory Dwelling Units ~~ADUs~~, distinguished by the size and location of the ADU-unit and the extent to which the Accessory Dwelling Unit ~~ADU~~ results in a net increase in habitable floor space on the property. These categories are defined as follows:
 - 1. Standard ADUs. Standard ADUs (~~SADUs~~) may be attached to the principal residence or may be a detached structure that provides complete independent living facilities and is located on a lot with a proposed or existing primary residence and meet any of the following criteria when constructed:

- a. ~~An interior conversion of non-habitable area within an existing or proposed single family dwelling or existing accessory structure, a "Conversion ADU"; or~~
- b. ~~An interior conversion of habitable area exceeding 500 square feet within single family dwelling or an attached new construction or addition to single family dwelling~~ A newly constructed attached unit, an "Attached ADU"; or
- ~~1.c. A newly constructed detached unit or an addition to an existing detached accessory structures, a "Detached ADU".~~
- a. ~~A net increase in habitable floor space on a property; or~~
- b. ~~A floor area exceeding 500 square feet; or~~
- c. ~~Created within the footprint of an existing primary residence without incorporating an existing bedroom.~~

2. **Junior ADUs.** Junior ADUs (JADUs) include Accessory Dwelling Units ADUs that meet all of the following criteria when constructed:

- a. No net increase in habitable floor space on a property; and
- b. A floor area of 500 square feet or less; and
- c. Contained entirely within the existing walls of an existing ~~principal or proposed primary~~ residence, ~~and~~
- d. ~~Created at least in part through the conversion of an existing bedroom.~~

B. **Regulations Applicable to All Accessory Dwelling Units ("ADUs"):**

- 1. **Permitting Procedure.** Any application for an ADU that meets the applicable location and development standards contained in this Section shall be subject to ministerial review and ~~approval decision~~ without discretionary review or public hearing. Consistent with State law, All permits decisions shall be issued within 120-60 days of submission of a complete application for ADUs conforming to the provisions of this Section. If the permit application to create an ADU is submitted with a permit application to create a new primary single-family dwelling, two-unit dwelling, or multi-unit dwelling on the lot, the City may delay acting on the permit application for the ADU until the City acts on the permit application to create new dwelling. In this case, the application to create the ADU shall be considered without discretionary review or public hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay.
- 2. **Building Permit Required.** No ADU shall be established or maintained until there has been a Building Permit approved by the City. The application for the permit shall include:
 - a. Site plan indicating the location of the ~~principal primary~~ residence, the location and type of the proposed ADU, and parking (for those ADUs where parking is required);
 - b. Floor plans of the ~~principal primary~~ residence and proposed ADU; ~~and~~
 - c. Elevations of all sides of ~~the principal the primary~~ residence and ADU; ~~and~~

~~e.d.~~ Other building permit drawings including architectural, structural, civil, plumbing, mechanical, and electrical as requested by the Chief Building Official.

3. **Applicability of Fees.**

- a. This Ordinance shall not be construed to prohibit the City from adopting an ordinance or regulation relating to services or utility connection fees that applies to a ~~single-unit residence~~ single-family dwelling, two-unit dwelling, or multi-unit dwelling that contains an ADU so long as that ordinance or regulation applies uniformly to all single-family dwellings, two-unit dwellings, or multi-unit dwellings ~~single-unit residences~~ regardless of whether they include an ADU.
- b. Nothing in this Section shall be construed so as to impact the connection or fees charged by other government entities.

4. **Locational Criteria.**

- a. ~~In no case shall the total number of dwelling units exceed two (including the principal residence) on any lot wherein a principal single-unit residence has been authorized.~~ Except as otherwise prohibited by this section, ADUs shall be allowed in any zoning district that allows residential use including single-family, two-unit dwelling or multi-family dwellings.
- b. ADUs are not required to meet the density requirements of the General Plan or Zoning Ordinance and do not count toward the permissible number of units per acre (or required lot area per dwelling). However, ADUs shall otherwise be consistent with the General Plan text and diagrams as provided in California Government Code §65852.2.
- ~~c. An ADU shall be located only within the area of the lot allowed for the principal residence as established by its zoning district, except as provided in this Section.~~
- ~~d. An ADU may be attached to the principal residence either created through conversion of existing floor area or addition of new floor area to the principal residence or may also be detached.~~
- ~~e.c.~~ An ADU shall not be counted in any ordinance, policy, or program to limit growth, such as, but limited to, the number of residential units permitted in a year.

5. **Occupancy Criteria.**

- a. The rental of ADUs for terms shorter than 30 days shall be prohibited.
- b. Nothing in this Section shall be construed so as to limit the ADU or ~~principal~~ primary residence on the lot from remaining vacant.

6. **Size.**

- a. Single-Family Dwellings. An ADU that is on a lot with a primary single-family dwelling shall comply with all of the following:
 - (i) Maximum Percentage. An ADU shall not exceed 50 percent of the living area of the primary single-family dwelling. Notwithstanding the preceding requirement, the maximum floor area of an ADU shall be restricted to no less than 800 square feet or such greater maximum square footage, but not to exceed same, as may

be required to comply with Government Code Section 65852.2 et seq, as may be amended.

(ii) Maximum Floor Area. On a lot less than 10,000 square feet, an ADU shall not exceed 1,000 square feet in floor area. On a lot 10,000 square feet or greater, a ADU shall not exceed 1,200 square feet

- ~~a.b. Two-family dwellings and multiple dwellings. An ADU that is on a lot with a primary two-family dwelling or multiple dwelling shall not exceed 1,000 square feet. An ADU must be a minimum of 150 square feet and may not exceed the lower of 600 square feet or 50 percent of the existing living area of the principal residence on the property.~~
- ~~b. An ADU may not include more than one bedroom.~~

7. **Design.**

- a. An ADU shall incorporate architectural features, building materials and colors, window and door trims, and roof pitch ~~that are compatible with the principal residence and the adjacent neighborhood to compliment the primary residence.~~
- b. Outside stairways to the ADU shall not be in the front of the principal residence.
- ~~c. If the ADU is visible from the public right of way it shall be subject to Design Review.~~
- c. An entrance to an ADU shall not be located on the front wall planes facing a public street of the primary residence.
- d. A second story addition for an ADU that is taller than 16 feet shall require Design Review.

8. **Building Safety.**

- a. A smoke alarm and carbon monoxide detector shall be installed in all ADUs.
- b. The installation of fire sprinklers shall not be required in an ADU if sprinklers are not required for the primary residence. ~~No fire sprinklers shall be required for the ADU, unless the associated improvements are required under the Newark Municipal Code, or are associated with a new detached ADU on a property where sprinklers would otherwise be required for a new single-unit home.~~
- c. A permanent foundation shall be required for all detached ADUs.
- ~~d. This Section shall not be construed so as to prohibit the City from adopting an ordinance or regulation relating to fire or life protection requirements for ADUs so long as the ordinance or regulation applies uniformly to all single-unit homes within the zoning district regardless of whether the single-unit residence has an ADU or not.~~

9. **Deed Restriction.** A deed restriction, which shall run with the land, shall be filed and recorded with the County of Alameda for each ADU prior to the issuance of a building permit and shall include the following:

- a. A prohibition on the sale of the ADU separate from the sale of the ~~principal~~ primary residence, including a statement that the deed restriction may be enforced against future purchasers.
- b. Occupancy restrictions and requirements, as specified in ~~this~~ subsection (b)(5) of this Section.
- c. The ~~A restriction on the~~ size and attributes of the ADU that conforms with this Section.

C. **Regulations Applicable to ~~Standard~~ Conversion, Detached and Attached Accessory Dwelling Units ~~("SADUs").~~**

~~1. **Location.** A SADU may only be permitted where only one principal residence exists on the lot. SADUs are not permitted in duplexes, triplexes, or other buildings with more than one principal residence.~~

1. **Number Per Lot.**

a. **Lots with Single-Family Dwellings.** A maximum of one Conversion, Detached or Attached ADU shall be permitted with a single-family dwelling, and is permitted even if a JADU already exists or is proposed on the lot provided that the area of the ADU does not exceed 800 square feet.

b. **Lots with Two-Units Dwellings and Multiple Dwellings.**

i. **Conversion ADUs.** ~~An~~ Multiple ADUs may be authorized through conversion of existing floor area within a two-dwelling unit or a multi-family dwelling that is not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings. The maximum numbers of ~~Conversion~~ ADUs allowed shall be one ADU within an existing multifamily dwelling plus shall be 25 percent of number of existing multifamily dwelling units on the lot, but in no instance less than one ADU.

ii. **Detached ADUs.** A maximum of two ~~D~~etached ADUs shall be permitted on a lot developed with a two-unit dwelling or multi-family dwelling.

2. **Building Height.**

a. ~~A SADU~~ Conversion or Attached ADU may shall not exceed the building height limitation applicable to the ~~principal~~ primary residence on the lot.

b. ~~A Detached ADU~~ shall not exceed 16 feet in height.

3. **Setbacks.**

a. **Conversion ADU.** No setbacks shall be required when a lawfully existing structure (e.g., garage, shed, guest house) is converted to an ADU, or where an ADU is constructed in the same location and to the same dimensions as a lawfully existing structure. The structure may not be expanded, except that up to 150 square feet may be added if necessary to provide egress from the ADU.

- ~~2.b.~~ A Detached and Attached ADU shall be setback a minimum of four feet from side and rear property lines. The minimum front yard and street side yard setback requirements of the underlying zoning district shall apply to a Detached and Attached ADU.
- ~~3.4.~~ **Connection to Street.** No passageway shall be required in conjunction with the construction of a SADU, unless such a connection is mandated by the Americans with Disabilities Act, or other State or Federal safety code or standard. A passageway is a pathway that is unobstructed and clear to the sky and that extends from the street to the door of the SADU.
- ~~4.5.~~ **Separation.** Except as noted in Paragraph 5 below, a ~~detached SADU~~ Detached ADU must be separated from other habitable structures on site ~~by at least 10 six feet as per the building code. The separation may be reduced to eight feet if one structure is equipped with fire sprinklers or six feet if both structures maintain fire sprinklers.~~ Roof eave projections into this separation may be limited by applicable building code(s).
- ~~6.~~ **Garage Conversions.** ~~An existing garage may only be converted to a SADU if the property will meet all applicable parking standards upon completion of the SADU. Setback requirements shall not apply to an existing garage that is converted to an ADU, provided that any walls within setback areas comply with applicable building and fire codes. In the event an ADU is constructed above an existing or newly constructed garage, a setback requirement of five feet from the side and rear property lines shall be required.~~ An attached or detached garage may be converted into an ADU. No replacement parking is required for garage conversion into an ADU. If replacement parking is proposed, it shall conform to City requirements for parking space dimensions, backup area, and landscaping. The conversion of an existing garage to an ADU shall include the removal of the garage door. The garage door shall be replaced with an exterior building wall and shall be designed with one or more windows, architectural detailing, trim, colors and materials consistent with the primary dwelling. The improvements shall appear as a typical extension of the primary residence.
- ~~5-7.~~ **Other Development Standards.** Any ADU greater than 800 square feet in size shall comply with the applicable lot coverage and open space requirements of the underlying zoning district, except as modified by this section. ADUs 800 square feet or less in size are not required to conform to the lot coverage, or open space requirements of the underlying zoning district.
- ~~6-8.~~ **Parking.** Studio ADUs shall not be required to provide parking. A maximum of ~~One~~ one off-street parking space ~~per bedroom~~ (regardless of number of bedrooms) shall be required for an SADU, except as noted ~~below~~ under the subsection (C)(8)(b) and (c) of this section.
- a. Required parking may be provided through any of the following methods:
 - i. Conventional garages or carports;
 - ii. Uncovered paved areas such as an extended driveway;
 - iii. Tandem parking in an existing driveway; or

- iv. Parking on other locations on the property, unless specific findings are made that parking in setback areas is not feasible based upon life safety conditions. Mechanical lifts may be permitted where consistent with design review criteria.
- b. No off-street parking shall be required for ~~a~~an SADU in any of the following instances:
 - ~~i.~~ i. The SADU is located within one-half mile of public transit. The term "public transit" means a location, including, but not limited to, a bus stop or train station, 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. ~~shall mean transit service adequate to facilitate area residents' reliance on transit for primary mobility. Factors used to determine adequacy include, but are not limited to, ridership, routing, frequency, and reliability. The City Council finds and declares that no area in Newark currently meets this definition of adequate public transit; however the City Council shall review this determination each time the Housing Element is updated;~~
 - ~~ii.i.~~ ii.i. The SADU is located within a designated architecturally and historically significant historic district or on a property that includes a register resource or potential register resource;
 - ~~iii.ji.~~ iii.ji. The SADU is located entirely within the existing principal residence or an existing habitable accessory structure and results in no net addition of habitable floor area on the property;
 - ~~iv.jii.~~ iv.jii. The SADU is located in an area where on-street parking permits are required, but are not offered to the occupants of the SADU;
 - ~~v.iv.~~ v.iv. ~~The SADU is located within~~ When there is a dedicated car share vehicle parking area located within one block of the ADU. ~~one block of a designated parking area for one or more car share vehicles available to the general public by subscription.~~
 - ~~vi.v.~~ vi.v. The ADU meets the requirements of Government Code section 65852.2(e)(1), that provides the minimum requirements for specific ADU types to be issued a ministerial permit, without discretion.
- ~~e.~~ c. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, no replacement parking is required. ~~When a garage, carport, or covered parking structure is demolished in conjunction with the construction of a SADU, and replacement parking is required, the replacement parking spaces may be provided as in Subparagraph 6.a above.~~
- ~~d.~~ Although permitted by right in Residential Districts under this Chapter, in situations in which there is 90 percent overnight street parking occupancy within a 150 foot radius of the subject property, the Council may, after review and consideration by the Planning Commission, issue a Conditional Use Permit

~~pursuant to Chapter 17.35 to a property owner to construct a SADU. The City Council may, in its discretion, impose reasonable conditions, including, but not limited to, requiring existing covered parking be used for vehicle parking.~~

~~7.9. **Fees.** SADUs resulting in a net increase in habitable floor area on a property may be subject to City impact fees that are proportionate to the burden of the proposed ADU on City services. However, under no circumstance may the SADU be considered equivalent to a new principal dwelling unit for the purpose of fee calculation. No impact fees shall be applicable to ADUs which have floor areas less than 750 square feet. Impact fees for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.~~

D. **Junior Accessory Dwelling Units (JADUs).** The purpose of the Junior Accessory Dwelling Unit (JADU) regulations is to implement specific policies of the Housing Element of the Newark General Plan and specific provisions of State law authorizing the creation of JADUs. The intent of the JADU regulations is to expand the affordable rental housing stock through the repurposing of underutilized floor area in existing single-unit homes.

1. **Applicability.** Performance standards for JADUs shall apply in zoning districts that allows residential use including single-family, two-unit dwelling or multi-family dwellings.~~shall apply in the RS District, on lots within those portions of planned districts allowing single-unit dwellings, and on qualifying RL, RM, and RH lots developed with only one principal single-unit dwelling.~~

2. **Development Standards.**

a. Number Per Lot.

~~a. Residential Single-Family Districts-~~ Only one JADU is permitted on a single-unit residential lot. A JADU is ~~not~~ permitted even if another ADU already exists on ~~the~~ the property provided the size of ADU does not exceed 800 square feet.

b. **Location.** The JADU shall be constructed entirely within the ~~existing~~ walls of an proposed or existing single-family home. ~~and must incorporate an existing bedroom.~~

c. **Size.** The JADU shall not exceed 500 square feet in size.

d. **Unit Access.** The JADU shall include an exterior entrance that is separate from the main entrance to the single-family home. The exterior entry shall not be located on the front wall facing a public street of the ~~principal~~ primary residence. If the exterior entry is on the second floor, the stairway shall not be located in the front of the ~~principal~~ primary residence. ~~Interior access between the JADU and the principal primary residence is required, and can be a door equipped with a double lock. A second interior doorway may be provided for sound attenuation.~~

e. **Sanitation.** A JADU may include a bathroom or may share bathroom facilities within the ~~principal~~ primary residence.

f. **Kitchen.** The JADU shall include an efficiency kitchen, which shall include all of the following:

~~i. A sink with a maximum waste line diameter of 1.5 inches.~~

~~ii.i.~~ A cooking facility with appliances ~~that do not require electrical service greater than 120 volts and that do not use propane gas.~~

~~iii.ii.~~ A food preparation counter ~~no less than six feet in length~~ and storage cabinets that are of reasonable size in relation to the size of the JADU. The food preparation area may not be located in a closet.

3. **Parking.** No additional off-street parking shall be required beyond that required for the ~~principal~~ primary residence. The ~~principal~~ primary residence shall meet the current off-street parking standard in effect at the time the JADU is approved.
4. **Building and Fire Code Requirements.** For the purposes of any fire or life protection ordinance or regulation, a JADU shall not be considered a separate dwelling unit. No fire wall separation or noise attenuation measures are required between the ~~principal~~ primary residence and the JADU.
- 4.5. **Building and Fire Code Requirements.** A JADU shall not be considered a separate dwelling unit, thus no fire wall separation or noise attenuation measures are required between primary residence and the JADU.

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