ORDINANCE NO. 2020-215

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO AMENDING TITLE 15 OF THE CITY OF ALISO VIEJO MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND FINDING THE ORDINANCE TO BE EXEMPT FROM CEQA

WHEREAS, the City of Aliso Viejo, California ("City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, the Planning and Zoning Law authorizes cities to act by ordinance to provide for the creation and regulation of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"); and

WHEREAS, in 2019, the California Legislature approved, and the Governor signed into law a number of bills ("New ADU Laws") that, among other things, amended Government Code section 65852.2 and 65852.22 to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, the New ADU Laws take effect January 1, 2020, and if the City's ADU ordinance does not comply with the New ADU Laws, the City's ordinance becomes null and void on that date as a matter of law; and

WHEREAS, the City desires to amend its local regulatory scheme for the construction of ADUs and JADUs to comply with the amended provisions of Government Code sections 65852.2 and 65852.22; and

WHEREAS, failure to comply with Government Code sections 65852.2 and 65852.22 (as amended) as of January 1, 2020 renders the City's ordinance regulating ADUs and JADUs null and void, thereby limiting the City to the application of the few default standards provided in Government Code sections 65852.2 and 65852.22 for the approval of ADUs and JADUs; and

WHEREAS, the approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety.

WHEREAS, the City Council has reviewed and considered the public testimony and agenda reports prepared in connection with this ordinance, including the policy considerations discussed therein; and

WHEREAS, in accordance with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) ("CEQA") and the State CEQA Guidelines (Cal.
Code Regs., tit. 14, § 15000 et seq.), the City has determined that the revisions to the Aliso Viejo Municipal Code are exempt from environmental review.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

Section 1. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. Under California Public Resources Code section 21080.17, the California Environmental Quality Act ("CEQA") does not apply to the adoption of an ordinance by a city or county implementing the provisions of section 65852.2 of the Government Code, which is California’s ADU law and which also regulates JADUs, as defined by section 65852.22. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State’s ADU law.


Section 4. This ordinance shall take effect 30 days following its adoption.

Section 5. The City Clerk shall either: (a) have this ordinance published in a newspaper of general circulation within 15 days after its adoption or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five days before its adoption and again within 15 days after its adoption.

Section 6. The City Clerk shall submit a copy of this ordinance to the Department of Housing and Community Development within 60 days after adoption.

Section 7. The City Council hereby directs staff to prepare, execute and file with the Orange County Clerk a Notice of Exemption within five working days of first reading of this ordinance.

Section 8. If any provision of this ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this resolution irrespective of the invalidity of any portion thereof.

Section 9. Location and Custodian of Records. The documents and materials associated with this ordinance that constitute the record of proceedings on which these findings are based are located at Aliso Viejo City Hall, 12 Journey, Aliso Viejo, California 92656. The Director of Community Development is the custodian of the record of proceedings.
PASSED, APPROVED AND ADOPTED this 17th day of June, 2020.

Mike Munzing
Mayor

APPROVED AS TO FORM:

Scott C. Smith
City Attorney

ATTEST:

Mitzi Ortiz
City Clerk
STATE OF CALIFORNIA  )
COUNTY OF ORANGE    ) ss.
CITY OF ALISO VIEJO  )

I, MITZI ORTIZ, City Clerk of the City of Aliso Viejo, California, DO HEREBY CERTIFY that foregoing Ordinance No. 2020-215 was duly passed and adopted by the City Council of the City of Aliso Viejo at their regular meeting held on the 17th day of June 2020, by the following roll call vote, to wit:

AYES: Mayor Munzing, Mayor Pro Tem Ackley, Councilmembers Chun, Harrington, and Phillips

NOES: None

ABSENT: None

MITZI ORTIZ, MMC
CITY CLERK

(SEAL)
EXHIBIT A
Amendments to Municipal Code
(follows this page)
Section 15.14.080 Accessory Dwelling Units

A. Purpose The purpose of this Section is to allow and regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in compliance with California Government Code sections 65852.2 and 65852.22.

B. Effect of Conforming. An ADU or JADU that conforms to the standards in this Section will not be:

1. Deemed to be inconsistent with the city's general plan and zoning designation for the lot on which the ADU or JADU is located.

2. Deemed to exceed the allowable density for the lot on which the ADU or JADU is located.

3. Considered in the application of any local ordinance, policy, or program to limit residential growth.

4. Required to correct a nonconforming zoning condition, as defined in Subsection C.7 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.

1. "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:

   a. An efficiency unit, as defined by section 17958.1 of the California Health and Safety Code; and

   b. A manufactured home, as defined by section 18007 of the California Health and Safety Code.

2. "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

3. "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.

4. "Efficiency kitchen" means a kitchen that includes each of the following:

   a. A cooking facility with appliances;
b. A food preparation counter or counters that total at least 15 square feet in area; and

c. Food storage cabinets that total at least 30 square feet of shelf space.

5. "Junior accessory dwelling unit" or "JADU" means a residential unit that:

a. Is no more than 500 square feet in size;

b. Is contained entirely within an existing or proposed single-family structure;

c. Includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure; and

d. Includes an efficiency kitchen, as defined in Subsection 0 above.

6. "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.

7. "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

8. "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.

9. "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

10. "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.

11. "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. Application

1. An application for an ADU that is subject only to a building permit under Subsection 0 below shall be submitted to the Building Division. Site plans, floor plans, elevations, and draft deed restrictions, shall be submitted with the application and documents required for submittal to the Building Division.
An application for a Development Review Permit under Subsection 0 below shall be submitted to the Planning Division. Site plans, floor plans, elevations, a project narrative, draft deed restrictions, and evidence of having given notice to the HOA, if applicable, shall be submitted with the application.

E. Approvals: Building-Permit Only. If an ADU or JADU complies with each of the general requirements in Subsection 0 below, it is allowed with only a building permit in the following scenarios:

1. Converted on Single-family Lot: Only one ADU or JADU on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:

   a. 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 (for purposes of this paragraph, "within the existing space" includes a structure that is constructed in the same location and to the same dimensions), and

   b. Has exterior access that is independent of that for the single-family dwelling; and

   c. 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 0 above), if the detached ADU satisfies the following limitations:

   a. The side- and rear-yard setbacks are at least four feet; and

   b. The total living area is 800 square feet or smaller, and

   c. The peak height above grade is 16 feet or less

3. Converted on Multifamily Lot Multiple 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. At least one converted ADU is allowed within an existing multifamily dwelling, up to a number equal to 25 percent of the existing multifamily dwelling units.
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 the following limitations:

a. The side- and rear-yard setbacks are at least four feet; and

b. The peak height above grade is 16 feet or less.

F. Approvals: Development Review Permit (DRP). Except as allowed under Subsection E above, no ADU may be created without both a building permit and a DRP permit in compliance with the standards set forth in Subsections 0 and 0 below.

1. Process. A Development Review Permit (DRP) is considered and approved ministerially, without discretionary review or a hearing.

2. Permit Fees. The City may charge a fee to reimburse it for costs incurred in processing Development Review Permit (DRP), including the costs of adopting or amending the City's ADU ordinance. The DRP-permit processing fee is determined by the Planning Director and approved by the City Council by resolution.

G. General ADU and JADU Requirements. The following requirements apply to all ADUs and JADUs that are approved under Subsections 0 and 0 above:

1. Timing. The City must act on an application to create an ADU or JADU within 60 days from the date that the City receives a completed application, unless either:

   a. The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or

   b. In the case of a JADU and the application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the City may delay acting on the permit application for the JADU until the City acts on the permit application to create the new single-family dwelling, but the application to create the JADU will still be considered ministerially without discretionary review or a hearing.

2. Zoning.

   a. An ADU or JADU subject only to a building permit under Subsection 0 above may be created on a lot in a residential or mixed-use zone.
b. An ADU or JADU subject to an DRP permit under Subsection 0 above may be created on a lot that is zoned to allow single-family dwelling residential use or multifamily dwelling residential use.

3. Fire Sprinklers. Fire sprinklers, approved by Orange County Fire Authority (OCFA), are required in an ADU if sprinklers are required in the primary residence when constructed.

4. Rental Term. No ADU or JADU may be rented for a term that is shorter than 30 days.

5. 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).

6. Septic System. If the ADU or JADU will connect to an existing onsite water-treatment system serving the property, 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. If the property on which the ADU or JADU is constructed does not utilize an onsite water treatment system, nothing in this Section authorizes an ADU or JADU to utilize an onsite water-treatment system.

7. Owner Occupancy.

a. All ADUs legally created 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 created after that date but before January 1, 2025, is not subject to any owner-occupancy requirement.

c. All ADUs that are created 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 of this paragraph does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.
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 Director. 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 Director, providing evidence that the ADU or JADU has in fact been eliminated. The Director may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated. Appeal may be taken from the Director'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 applicable provisions of this Code.

e. The deed restriction is enforceable by the Director or his or her 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 the use of the ADU or JADU in violation of the recorded restrictions or abatement of the illegal unit.

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 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.

**H Specific DRP Requirements.** The following requirements apply only to ADUs that require an DRP permit under Subsection 0 above

1. **Maximum Size.**
   
   a. The maximum size of a detached or attached ADU subject to this subsection 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.
   
   b. 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.
   
   c. Application of other development standards in this Subsection 0, such as FAR or lot coverage, might further limit the size of the ADU, but no application of FAR, lot coverage, open-space, or the percentage-based size limit in Subsection 0 above may require the ADU to be smaller than 800 square feet

2. **Lot Coverage.** No ADU subject to this subsection may cause the total lot coverage of the lot to exceed 75 percent.

3. **Minimum Open Space.** For multi-family residential projects, no ADU subject to this Subsection 0 may cause the total percentage of open space of the development to fall below 25 percent.

4. **Height.** No ADU subject to this Subsection H may exceed 16 feet in height above grade, measured to the peak of the structure.

5. **Passageway.** No passageway, as defined by Subsection 0 above, is required for an ADU.

6. **Parking.**
a. Generally. One off-street parking space is required for each ADU. The parking space may be provided in setback areas or as tandem parking, as defined by Subsection 0 above.

b. Exceptions No parking under Subsection 0 above, is required in the following situations:

i. The ADU is located within one-half mile walking distance of public transit, as defined in Subsection 0 above.

ii. The ADU is located within an architecturally and historically significant historic district.

iii. The ADU is part of the proposed or existing primary residence or an accessory structure under Subsection E above

iv. When on-street parking permits are required but not offered to the occupant of the ADU

v. When there is an established car share vehicle stop located within one block of the ADU.

c. No Replacement. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, those offstreet parking spaces are not required to be replaced.

7. Architectural Requirements.

a. Windows and doors of the accessory dwelling unit 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.

b. 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. 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. Mechanical equipment shall be located at the furthest location possible from surrounding residents, nor shall mechanical equipment be placed within four feet of an adjacent property
8. Landscape Requirements. Trees removed on site for construction of the ADU or to provide parking, should be replaced with 24-inch box trees of the same variety.

I. 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 I.1 above, converted ADUs and JADUs on a single-family lot, created under Subsection 0 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 I.1 above, all ADUs and JADUs not covered by Subsection 0 require a new, separate utility connection directly between the ADU or JADU and the utility. 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. The portion of the fee charged by the City may not exceed the reasonable cost of providing this service.

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