

RESOLUTION NO. 2019-010

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PACIFICA
INITIATING A TEXT AMENDMENT AND RECOMMENDING THAT THE CITY
COUNCIL ADOPT AN ORDINANCE AMENDING THE PACIFICA MUNICIPAL CODE
TO INCORPORATE CALIFORNIA LAW UPDATES RELATED TO ACCESSORY
DWELLING UNIT CONSTRUCTION (TEXT AMENDMENT TA-115-19) AND FINDING
THE TEXT AMENDMENT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT (CEQA) (FILE NO. 2019-004)**

Initiated by: Planning Commission

WHEREAS, on October 9, 2017, the City Council adopted Ordinance No. 825-C.S. approving Text Amendment TA-105-17 to amend the Pacifica Municipal Code (PMC) to be consistent with Section 65852.2 of the Government Code (Gov. Code), as amended by Assembly Bill 2299 (Bloom) ("AB 2299") and Senate Bill 1069 (Wieckowski) ("SB 1069"), which became effective January 1, 2017, pertaining to local regulation of accessory dwelling unit (ADU) construction; and

WHEREAS, Section 65852.2 of the Gov. Code, as amended by AB 2299 and SB 1069, nullifies local ordinances regulating ADU construction if such ordinances do not comply with its provisions; and

WHEREAS, in 2017, the California Legislature enacted Senate Bill 229 (Wieckowski) ("SB 229") and Assembly Bill 494 (Bloom) ("AB 494"), effective January 1, 2018, further amending Section 65852.2 of the Gov. Code pertaining to local regulation of ADU construction; and

WHEREAS, amendments to the zoning ordinance are necessary in order to maintain consistency with Section 65852.2 of Government Code, as amended by SB 229 and AB 494; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed amendments contained in Text Amendment TA-115-19 on March 18, 2019.

NOW, THEREFORE BE IT RESOLVED, by the Planning Commission of the City of Pacifica as follows:

1. The above recitals are true and correct and material to this Resolution.
2. In making its finding, the Planning Commission relied upon and hereby incorporates by reference all correspondence, staff report, and other related materials.
3. The proposed amendments recommended by the Planning Commission are consistent with the City's General Plan and Local Coastal Land Use Plan.
4. The project is categorically exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to the statute (Public Resources Code Section 21000, et seq.) and the CEQA Guidelines (14 Cal. Code Regs. 15000 et. seq.), including without limitation under section 15282(h) of the CEQA Guidelines 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 Section 65852.1 and

65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code," and under Section 15061(b)(3) of the CEQA Guidelines 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.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Pacifica does hereby recommend the City Council to adopt an ordinance amending the Pacifica Municipal Code to incorporate further amendments to California law related to ADU construction as provided in Exhibit A to this Resolution.

* * * * *

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Pacifica, California, held on the 18th day of March, 2019.

AYES, Commissioners: Clifford, Nibbelin, Kraske, Berman, Bigstycck

NOES, Commissioners: None

ABSENT, Commissioners: Campbell, Rubinstein

ABSTAIN, Commissioners: None



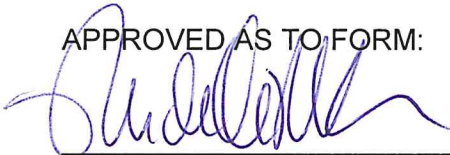
Thomas Clifford, Vice Chair

ATTEST:



Tina Wehrmeister, Planning Director

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney

EXHIBIT A

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA AMENDING ARTICLE 4 (R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT); ARTICLE 4.5 (ACCESSORY DWELLING UNITS); ARTICLE 5 (R-2 TWO-FAMILY RESIDENTIAL DISTRICT); AND ARTICLE 6 (R-3 MULTIPLE-FAMILY RESIDENTIAL DISTRICT) OF CHAPTER 4 OF TITLE 9 OF THE PACIFICA MUNICIPAL CODE TO INCORPORATE CALIFORNIA LAW UPDATES RELATED TO ACCESSORY DWELLING UNIT CONSTRUCTION (TA-115-19) AND FINDING ADOPTION OF THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT(CEQA)

WHEREAS, on October 9, 2017, the City Council adopted Ordinance No. 825-C.S. approving Text Amendment TA-105-17 to amend the Pacifica Municipal Code (PMC) to be consistent with Section 65852.2 of the Government Code (Gov. Code), as amended by Assembly Bill 2299 (Bloom) ("AB 2299") and Senate Bill 1069 (Wieckowski) ("SB 1069"), which became effective January 1, 2017, pertaining to local regulation of accessory dwelling unit (ADU) construction; and

WHEREAS, Section 65852.2 of the Gov. Code, as amended by AB 2299 and SB 1069, nullifies local ordinances regulating ADU construction if such ordinances do not comply with its provisions; and

WHEREAS, in 2017, California Legislature enacted Senate Bill 229 (Wieckowski) ("SB 229") and Assembly Bill 494 (Bloom) ("AB 494"), effective January 1, 2018, further amending Section 65852.2 of the Gov. Code pertaining to local regulation of ADU construction; and

WHEREAS, amendments to the zoning ordinance are necessary in order to maintain consistency with Section 65852.2 of Gov. Code, as amended by SB 229 and AB 494; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed amendments contained in Text Amendment TA-115-19 (File No. 2019-004) on March 18, 2019 and adopted Resolution No. 2019-__ by a vote of ___ initiating and recommending City Council approval of Text Amendment TA-115-19 on March 18, 2019; and

WHEREAS, the City Council of the City of Pacifica held a duly noticed public hearing on the proposed ordinance on _____, 2019 and introduced Ordinance No. ## on _____, 2019.

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

Section 1. Recitals. The City Council of the City of Pacifica does hereby find that the above referenced recitals are true and correct and material to the adoption of this Ordinance.

Section 2. Amendments.

Article 4 of Chapter 4 of Title 9 of the Pacifica Municipal Code (R-1 Single-Family Residential District) is hereby amended as follows (deletions in ~~striketrough~~, additions in underline):

Sec. 9-4.401. - Permitted and conditional uses.

(a) *Permitted uses.* The following uses shall be permitted in the R-1 District:

[...]

- (7) Accessory dwelling units on sites that ~~contain an~~ include a proposed or existing attached or detached single-family dwelling, subject to the standards of Article 4.5.

Article 4.5 of Chapter 4 of Title 9 of the Pacifica Municipal Code (Accessory Dwelling Units) is hereby amended as follows (deletions in ~~striketrough~~, additions in underline):

Sec. 9-4.451. - Purpose.

[...]

- (j) To preserve public health and safety by prohibiting attached and detached accessory dwelling units at sites fronted by unpaved streets or streets with widths of twenty-six (26') feet or less. Appendix D of the 2016 California Fire Code, adopted by ordinance by the City Council, establishes minimum street width and construction-type standards to ensure safe access by fire apparatus. Among other standards, Appendix D requires streets to be paved with asphalt, concrete, or another approved surface capable of supporting the load of fire apparatus weighing at least seventy-five thousand (75,000) pounds. It further requires streets to be at least twenty (20') feet in width and prohibits on-street parking on streets twenty-six (26') feet or less in width. Appendix D allows on-street parking on one side of streets greater than twenty-six (26') feet but less than thirty-two (32') feet in width. In order to preserve public safety, it is necessary to prohibit attached and detached accessory dwelling unit construction on unpaved streets and on streets where Appendix D of the 2016 California Fire Code prohibits on-street parking. Such a prohibition is necessary because accessory dwelling unit construction will generate intensified demand for on-street parking. Increased demand for on-street parking may result because off-street parking facilities may be unavailable to offset the demand, and because no mechanism exists to limit the number of automobiles owned by households occupying accessory dwelling units. In particular, accessory dwelling units located within one-half (½) mile of transit generally will not have sufficient off-street parking facilities because the City is prohibited under state law from requiring off-street parking for such accessory dwelling units (see Gov. Code §§ 65852.2(d), (e)). Additionally, households occupying accessory dwelling units located elsewhere may own more vehicles than can be accommodated in the off-street parking facilities the City is permitted to require for accessory dwelling units under state law (not more than one space per bedroom or per unit, whichever is less; see Gov. Code § 65852.2(a)(1)(D)(x)(l)). Therefore, it is

possible and likely that accessory dwelling unit construction on streets twenty-six (26') feet or less in width could result in increased on-street parking demand. On-street parking on streets of inadequate width has the potential to narrow or obstruct the path of travel of fire apparatus and other emergency vehicles, delaying response time and endangering public safety.

Sec. 9-4.452. - Definitions.

[...]

(m) "Tandem parking" shall mean that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

Sec. 9-4.453. - Development standards.

(a) *General provisions.* The following provisions shall apply to all accessory dwelling units:

(1) An accessory dwelling unit shall not be constructed unless a primary dwelling unit exists on a site and such primary dwelling unit has been constructed lawfully, or the accessory dwelling unit is proposed as part of the construction of the primary dwelling unit.

[...]

(4) An accessory dwelling unit shall become the primary dwelling unit on a site if the original primary dwelling unit is demolished or determined to be uninhabitable, and is not replaced or made habitable within one year of its demolition or the determination that it is uninhabitable, or if the primary dwelling unit proposed for construction concurrently with an accessory dwelling unit is not constructed.

(i) In such case where an accessory dwelling unit becomes the primary dwelling unit, it shall remain so, and be considered a nonconforming but lawful structure if it fails to comply with any zoning standards applicable to a primary dwelling unit in the underlying zoning district, until such time as a new structure compliant with all zoning standards applicable to a primary dwelling unit in the underlying zoning district, is lawfully constructed or otherwise created on the site.

~~(5) An applicant for a building permit to construct an accessory dwelling unit shall, at the time an application is filed with the City, be an owner-occupant of the site's primary dwelling unit and shall provide sufficient proof of occupancy upon request by the City. The site's owner may at any other time offer for rent either the primary dwelling unit or the accessory dwelling unit. The site's owner shall be required to reside in the primary dwelling unit as its primary residence at any time while the accessory dwelling unit is occupied by a tenant.~~

(i) A site's owner shall not allow occupancy of an accessory dwelling unit by a tenant for any reason, with or without payment of rent, unless the site

owner maintains occupancy of the primary dwelling unit as its primary residence.

[...]

- (7) An accessory dwelling unit shall not be sold or otherwise conveyed separate from the primary dwelling unit.

[...]

- (b) *Zoning districts where permitted* . An accessory dwelling unit shall be a permitted use, subject to the standards contained in this article, on any site zoned for residential use as a permitted use ~~that contains an~~ and that includes a proposed or existing attached or detached single-family dwelling. An accessory dwelling unit shall be prohibited on any other site.

[...]

- (d) *Attached accessory dwelling units* . The provisions of this subsection shall apply to an accessory dwelling unit attached horizontally or vertically to an ~~existing a~~ primary dwelling unit or accessory structure, including, without limitation, a garage.

[...]

(2) *Setbacks.*

- (i) *Front* . Minimum front setback shall be fifteen (15') feet; except, where an accessory dwelling unit is constructed above a garage, the minimum front setback shall be twenty (20') feet.
- (ii) *Side* . Minimum side setback shall be five (5') feet. However, the minimum street-side setback of corner lots shall be twenty (20') feet for an accessory dwelling unit constructed above a new garage, and ten (10') feet for any other accessory dwelling unit.
- (iii) *Rear* . Minimum rear setback shall be twenty (20') feet.
- (iv) Notwithstanding subsections (i) through (iii), the minimum setbacks for an accessory dwelling unit that is constructed above ~~an existing a~~ a garage shall be twenty (20') feet from the front property line and five (5') feet from the side and rear property lines, including the street side of corner lots. The provisions of this subsection shall apply only to an accessory dwelling unit constructed entirely above the footprint of ~~an existing a~~ a garage.

[...]

- (e) Accessory dwelling units contained within the existing space of a single-family residence or accessory structure. The provisions of this subsection shall apply to accessory dwelling units established within the space of an existing primary dwelling unit or an existing accessory structure, including without limitation an existing attached or detached garage, studio, pool house, or other similar structure. A primary dwelling unit or accessory building shall not be considered

to be "existing" if it was constructed unlawfully; or if it has yet to receive a successful final inspection pursuant to a valid building permit.

[...]

- (2) *Setbacks* . In order to ensure setbacks are sufficient for fire safety, an accessory dwelling unit contained within the existing space of a primary dwelling unit or accessory structure may only be established in those portions of the existing structure where the following setbacks have been satisfied:
- (i) *Front* . None.
 - (ii) *Side* . Minimum side setback shall be five (5') feet, except on the street-side of a corner lot where no side setback shall be required.
 - (iii) *Rear* . Minimum rear setback shall be five (5') feet.
 - (iv) Notwithstanding subsections (i) through (iii), no setback shall be required for an existing garage that is converted in whole or in part to an accessory dwelling unit.

[...]

(f) *Parking*.

- (1) An accessory dwelling unit shall require one (1) off-street parking space per unit or per bedroom, whichever is less. ~~with two (2) or fewer bedrooms shall require one off-street parking space and an accessory dwelling unit with three (3) or more bedrooms shall require two (2) off-street parking spaces. Any such parking space or spaces shall be located on the same site as the accessory dwelling unit.~~ No parking shall be required for an accessory dwelling unit described in subsection (7) of this subsection or an accessory dwelling unit described in subsection (e) of this section.

[...]

- (5) If an ~~existing~~ garage which provides the required covered off-street parking space or spaces for a primary dwelling unit is converted in whole or in part into an accessory dwelling unit or is demolished to enable construction of an accessory dwelling unit, the required off-street parking space or spaces for the primary dwelling unit shall be replaced on site.
- (i) The number of replacement spaces shall be equivalent to the number of spaces converted or demolished, although a greater number of replacement spaces may be provided.
 - (ii) The replacement off-street parking space or spaces shall conform to the same standards for required off-street parking for an accessory dwelling unit described in subsections (2) through (4), and may be provided in any configuration on the same site as the accessory dwelling unit, including, without limitation, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. A mechanical automobile parking lift shall be located within a garage, or else shall be located behind the minimum front, side, and rear setbacks for accessory structures in the underlying zoning district.

- (6) If an ~~existing~~ garage which provides the required covered off-street parking space or spaces for a primary dwelling unit is converted in whole or in part into an accessory dwelling unit described in subsection (7) or is demolished to enable construction of an accessory dwelling unit described in subsection (7), the required off-street covered parking space or spaces for the primary dwelling unit shall be replaced on site and shall comply with all requirements applicable to required covered off-street parking for a single-family residence contained in Article 28 of this chapter.
- (i) The number of replacement spaces shall be equivalent to the number of spaces converted or demolished, although a greater number of replacement spaces may be provided.
 - (ii) An applicant may not seek relief from the requirements of subsection (6) by application for a variance, minor modification, or parking exception.
- (7) No off-street parking shall be required for an accessory dwelling unit in any of the following circumstances:
- (i) The accessory dwelling unit is located within one-half (½) mile of public transit.
 - (ii) The accessory dwelling unit is located within an architecturally and historically significant historic district identified in a local, state, or federal register of historical places.
 - (iii) The accessory dwelling unit is a type described in subsection (d) or (e).~~is located within an existing primary residence or accessory structure.~~
 - (iv) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
 - (v) When there is a car share vehicle located within one block of the accessory dwelling unit.

[...]

Sec. 9-4.454. - Compliance with other regulations.

[...]

- (f) Accessory dwelling units shall not be considered ~~new residential uses by a local agency, special district, or water corporation to be a new residential use~~ for the purposes of calculating ~~local agency~~ connection fees or capacity charges for utilities, including water and sewer service.

Article 5 of Chapter 4 of Title 9 of the Pacifica Municipal Code (R-2 Two Family Residential District) is hereby amended as follows (deletions in ~~strikethrough~~, additions in underline):

Sec. 9-4.501. - Permitted and conditional uses.

- (a) *Permitted uses.* The following uses shall be permitted in the R-2 District:

[...]

- (7) Accessory dwelling units on sites that ~~contain an~~ include a proposed or existing attached or detached single-family dwelling, subject to the standards of Article 4.5.

Article 6 of Chapter 4 of Title 9 of the Pacifica Municipal Code (R-3 Multiple-Family Residential District) is hereby amended as follows (deletions in ~~striketrough~~, additions in underline):

Sec. 9-4.601. - Permitted and conditional uses.

- (a) *Permitted uses.* The following uses shall be permitted in the R-3 District:

[...]

- (6) Accessory dwelling units on sites that ~~contain an~~ include a proposed or existing attached or detached single-family dwelling, subject to the standards of Article 4.5.

Section 3. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to the statute (Public Resources Code Section 21000, et seq.) and the CEQA Guidelines (14 Cal. Code Regs. 15000 et. seq.), including without limitation under section 15282(h) of the CEQA Guidelines 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 Section 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code,” and under Section 15061(b)(3) of the CEQA Guidelines 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. The City Clerk shall file a Notice of Exemption with the San Mateo County Clerk.

Section 4. Severability. If any section, subsection, sentence, clause or phase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentence, clauses or phrases be declared unconstitutional.

Section 5. Publication. The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Pacifica, California and cause the same to be published in accordance with State law.

Section 6. Transmittal. The City Clerk is hereby ordered to transmit a copy of this ordinance to the Department of Housing and Community Development within 60 days after adoption for review and comment.

Section 7. Effective Date. This Ordinance shall be in full force and effective thirty (30) days after its adoption and shall be published and posted as required by law. For areas within the Coastal Zone, this Ordinance shall not become effective until the California

Coastal Commission certifies an amendment to the City's local coastal program pursuant to Section 30514 of the Public Resources Code.

PASSED AND ADOPTED this __ day of _____, 2019 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Sue Vaterlaus, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah Coffey, City Clerk

Michelle Kenyon, City Attorney