

ORDINANCE NO. 2017-192

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA AMENDING TITLE 15 OF THE ALISO VIEJO MUNICIPAL CODE RELATED TO ACCESSORY DWELLING UNITS

WHEREAS, effective January 1, 2017, Assembly Bill 2299 ("AB 2299") and Senate Bill 1069 ("SB 1069") amended Government Code Section 65852.2 to further limit the standards that cities may impose on second units (now termed "accessory dwelling units"); and

WHEREAS, as amended, Government Code section 65852.2 now requires that the City's zoning provisions regarding accessory dwelling units, or ADUs, incorporate State-mandated standards for certain types of ADUs; and

WHEREAS, in addition, Government Code section 65852.2 as amended allows the City to establish certain objective standards related to parking, height, setback, lot coverage, landscaping, and certain architectural requirements, which must be applied ministerially except where a property owner is seeking an exception to such standards; and

WHEREAS, Government Code section 65852.2 now effectively requires the City to allow housing density to double in certain residential neighborhoods; and

WHEREAS, the City was largely developed at a time when the need for higher residential density was already commonly recognized, and as a result, the City's single-family dwellings have mostly been developed on (A) smaller-than-normal lots (the average lot size in the City's lowest-density residential zone (RL) is only 4,700 square feet, which is significantly lower than the average for neighboring communities and Southern California in general) with (B) greater-than-normal lot coverage (as-built lot coverage in the RL zone averages 50 percent, not including decks, patio covers, carports, etc., which is higher than that of most other lots in the region with single-family dwellings); and

WHEREAS, because of the relatively high density of the City's existing residential neighborhoods, the introduction of new ADUs into the already-small yards and existing tight setbacks raises significant concerns for the public health, safety, and welfare, including, among other things, environmental concerns about noise, aesthetics, parking, traffic, sewer, water, stormwater, air quality, and use and availability of parks and other open-space areas, as well as concerns about privacy and peaceful enjoyment; and

WHEREAS, in the absence of a State-compliant ADU ordinance, on January 1, 2017, the City's existing second-unit ordinance became null and void automatically under Government Code section 65852.2(a)(4), and until the City adopts a new ADU ordinance that conforms to the amended statute, the City must approve any ADU that meets the State's minimal statutory criteria; and

WHEREAS, the City Council held a duly-noticed public hearing on October 18, 2017 to consider the first reading of this ordinance and public testimony and recommendations presented by staff in a staff report and oral presentation.

THE CITY COUNCIL OF THE CITY OF ALISO VIEJO HEREBY ORDAINS AS FOLLOWS:

Section 1. The City Council hereby determines that this ordinance is statutorily exempt from the California Environmental Quality Act ("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 as amended by AB 2299 and SB 1069. Therefore, the ADU ordinance is statutorily exempt.

Section 2. After receiving public testimony, reviewing the evidence submitted by staff, and discussing the proposed ordinance, the City Council hereby finds that the zoning code amendment proposed herein is supported by the following findings:

A. **Public Welfare.** Approval of the code amendment will not create conditions materially detrimental to the public health, safety, or general welfare. The proposed standards regulating ADUs permit the construction of ADUs on properties with existing single-family homes. The code amendment also provides generally that ADUs must continue to adhere to the base zoning district's land-use standards, including lot coverage, setbacks, and height restrictions. The proposed ordinance provides that new ADUs must provide additional off-street parking unless statutorily exempt. It also provides that the design, materials, and overall ADU must be generally consistent with those of the principal unit and with the principal unit itself so that the ADU blends into the neighborhood.

B. **General Plan Consistency.** The proposed Zoning Code Amendment conforms to the following goals and policies of the General Plan:

1. Housing Element Policy H-1.1 states, "Identify sites appropriate for the development of a variety of housing types and price ranges to meet the needs of all socioeconomic segments of the community (including lower, moderate, and upper income households), offering both entry-level and move-up homes." The proposed Zoning Code Amendment would allow for additional housing opportunities with reduced barriers to entry on sites already developed with single-family homes. Accessory dwelling units are generally considered more affordable than the primary units due to their reduced size.

2. Housing Element Policy H-1.3 states, "Identify physical, legal, economic and other constraints to the development of housing and collaborate with other public and private agencies to overcome such factors." The State of California has identified development regulations imposed on accessory dwelling units as a constraint to the development of housing. This Zoning Code Amendment would remove certain constraints to the construction of accessory dwelling units as required by State law.

3. Housing Element Policy H-3.4, states, "Maintain a variety of housing types that complements the employment opportunities within the community and

encourages a jobs/housing balance, provided fiscal land use objectives are met". The City of Aliso Viejo offers a wide range of employment opportunities, from entry level positions to very skilled jobs required specialized training. This Zoning Code Amendment would allow property owners with the ability to construct accessory dwelling units that would be more affordable than the primary unit on the property.

Section 3. Table 15.14.020 in Section 15.14.020 of the Aliso Viejo Municipal Code is hereby amended to remove the section addressing "Second Residential Units" so that the table reads in its entirety as follows:

TABLE 15.14.020:

NUMERICAL SUPPLEMENTAL REGULATIONS FOR RESIDENTIAL USES

Type	Standard
Maximum Fence Height:	
Single-family: In side or rear yards	6 ft.
Single-family: In front yards	42 in.
Multifamily: In setback areas not adjacent to streets, alleys or driveways	6 ft.*
Multifamily: In setback areas adjacent to streets, alleys or driveways	6 ft.*, except that the maximum height shall be 42 in. within the first 10 ft. of the setback area, measured from the ultimate street R.O.W.
In corner cutoff areas, for sight distance	30 in.
Entry gates for residential neighborhoods	8 ft. for vehicular gates and 6 ft. for pedestrian gates, exclusive of decorative elements on top of gates such as scrolls and finials.
Temporary fencing for construction sites	10 ft.
	*But up to 8 ft. measured on lower side where there is a grade differential

TABLE 15.14.020:

NUMERICAL SUPPLEMENTAL REGULATIONS FOR RESIDENTIAL USES

Type	Standard
Maximum Encroachments into Setbacks:	
	The following encroachments are allowed provided a minimum distance of 3 ft. from all property lines is maintained:
Awnings	4 ft. into front and rear setbacks; 3 ft. into side setbacks.
Balconies	5 ft. into front and rear setbacks; 3 ft. into side setbacks.
Bay windows	30 in. into any setback.
Chimneys up to 7 ft. in width	2 ft. into any setback.
Architectural projections, e.g., eaves	3 ft. into any setback.
Open porches	3 ft. into any front or rear setback. Porches shall not encroach into side yard setbacks.
Air conditioning ventilation and similar equipment	May be placed in rear and side yard setbacks. Not permitted in front yard setbacks.
Multifamily perimeter setbacks	All of the preceding front and rear setback encroachments are also permitted into perimeter setbacks in multifamily projects.
Patio Covers and Other Yard Structures:	
Yard structures under 6 ft. high	May be up to side or rear property line, subject to building or fire code limitations. At least 3 ft. from property line in front yard; and not permitted in panhandle portion of panhandle lot.
Yard structures 6 – 12 ft. high	At least 3 ft. from side or rear property line. Not permitted in front yard setback.
Yard structures on common lots	Under 6 ft. high: may be placed up to any property line, subject to building or fire code limitations; 6 – 12 ft. high: at least 3 ft. from any property line.

TABLE 15.14.020:

NUMERICAL SUPPLEMENTAL REGULATIONS FOR RESIDENTIAL USES

Type	Standard
Storage Sheds and Other Yard Buildings:	
Yard buildings under 6 ft. high	May be up to side or rear property line subject to building or fire code limitations. No closer to front property line than front wall of main building.
Yard buildings 6 – 8 ft. high	At least 3 ft. from side or rear property line. No closer to front property line than front wall of main building.
Yard buildings on common lots	Under 6 ft. high: may be placed up to any property line subject to building or fire code limitations; 6 ft. – 8 ft. high: at least 3 ft. from any property line.
Number and size allowed per lot	No more than 2 yard buildings per lot and no more than 200 sq/ft ground area per yard building.
Swimming Pools and Water Features:	
Pool location	At least 3 ft. from edge of water to side or rear property line. No pools in front yard setback. Community pools adjacent to common area may be located up to the property line.
Pool filter or heating equipment	At least 3 ft. from equipment to side or rear property line, unless equipment is placed within an enclosure which provides effective noise attenuation to less than 45 dBA at the property line. Equipment shall be screened from ground view.
Water features such as fountains, waterfalls, slides and similar	Maximum 8 ft. high for single-family residences. For common areas and community entry features, maximum 12 ft. high.
Guest Houses:	
Maximum floor area of guest house	800 sq/ft, with no cooking facilities.

Section 4. Table 15.38.030 of Section 15.38.030 of Title 15 of the Aliso Viejo Municipal Code is hereby amended in part so that the entries below read as follows:

TABLE 15.38.030:

RESIDENTIAL PARKING REQUIREMENTS

Land Use	Minimum Off-Street Parking Requirement	Additional Requirements
Single-family detached and single-family attached; Multifamily dwellings, townhomes	2 spaces per unit in a garage	Plus 0.5 off-street guest spaces per unit if there is no on-street parking in front of the units. Each garage space shall have minimum unobstructed interior dimensions of 10 ft. x 20 ft.

Section 5. Table 15.10.020 of Section 15.10.020 of Title 15 of the Aliso Viejo Municipal Code is hereby amended in part so that the entry that begins with "Second residential units" under the heading "Accessory Uses and Structures" reads as follows:

TABLE 15.10.020:

PERMITTED USES IN RESIDENTIAL DISTRICTS

	RL Low Density Residential	RM Med. Density Residential	RH High Density Residential	RVH Very High Density Res.
Accessory dwelling unit on a lot with one single-family detached dwelling, subject to AVMC 15.14.080	A	A	A	A

Section 6. Section 15.94.020 of Title 15 of the AVMC is hereby amended to delete the following definitions each in its entirety:

- Dwelling, Second.

- "Second dwelling unit" or "second residential unit."

Section 7. Section 15.14.080 of Title 15 of the AVMC is hereby repealed in its entirety and replaced as follows:

15.14.080 Accessory dwelling units.

A. Purpose. The purpose of this chapter is to provide reasonable regulations for the development of accessory dwelling units in certain areas and on lots developed or proposed to be developed with single-family residential dwellings. Such accessory dwelling units are allowed as required by state law, including California Government Code section 65852.2.

B. Definitions.

1. "Accessory dwelling unit" is defined as an attached or a detached residential dwelling unit that provides complete independent living 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.

2. "Complete independent living facilities" means permanent provisions for living, sleeping, eating, cooking, and sanitation.

3. "Living area" is defined as the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

C. Approval by Planning Director.

1. Generally. An accessory dwelling unit may be constructed on a lot containing one single-family detached dwelling unit, subject to the requirements of this section and subject to a Development Review Permit under Section 15.82.040. The planning director shall approve an application for an accessory dwelling unit ministerially, without public notice or a public hearing, within 120 days if the director finds and determines that the proposed unit conforms to the provisions of this section. Any action of the director under this section may be appealed in accordance with Chapter 1.10. The scope of such an appeal is limited to questions of compliance with the provisions of this section.

2. ADU Converted from Existing Space.

a. As required by Government Code section 65852.2, subdivision (e), an ADU is exempt from the approval process in subsection (C)(1) ("converted ADU") above if the ADU will be

1. contained within the existing space of a single-family residence or accessory structure such as a studio or pool house,
2. located in the RL (Low Density Residential) zone,
3. have exterior access separate from that of the existing primary residence, and
4. converted from the existing space that does not encroach into any side or rear setback that is necessary for fire safety under current standards.

b. A building permit is required for a converted ADU. The converted ADU must satisfy current building and safety standards in every respect, except that fire sprinklers are only required in the converted ADU if they are required in the primary residence.

c. A converted ADU is not required to have a direct utility connection to the utility provider. It may connect to the utility services provided to the primary dwelling.

D. **Design and Development Standards.** An accessory dwelling unit must meet the following standards:

1. A maximum of one accessory dwelling unit may be permitted on a lot.
2. The legal parcel containing the accessory dwelling unit must contain no more than one legally established single-family detached dwelling unit. An accessory dwelling unit may be constructed concurrently with one legally established single-family detached dwelling.
3. In the absence of a more restrictive standard in this section, an accessory dwelling unit must conform to the development standards for the zoning district in which it is located, including, but not limited to, setbacks, height, lot coverage, and minimum open area.
4. The design, building and roofing materials, colors, and overall appearance of the accessory dwelling unit must be substantially the same as those of the principal unit, while conforming to the current building code. For example, the roof pitch, roof and exterior-wall materials and colors, and window and door styles and colors must be the same.
5. There is a maximum of two bedrooms per accessory dwelling unit.
6. 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.

7. An accessory dwelling unit may not be visible from any point on an adjacent residential property where residents of the adjacent property are likely to be in the ordinary use of their property.

a. This includes any point from a doorway, window, patio, or at grade in a front, rear, or side yard.

b. It does not include a point in a tree or on the roof of any building or other structure on the adjacent property.

8. An accessory dwelling unit shall be no less than 300 square foot in gross floor area for all residential districts unless it is an efficiency unit, as defined by statute in Health and Safety Code section 17958.1. The cumulative building square footage for the property, which includes the primary dwelling and the accessory dwelling unit shall not exceed the maximum floor area ratio for the applicable district, if applicable.

a. Accessory dwelling units attached to an existing single-family dwelling unit shall be no more than 50 percent of the existing living area of the existing single-family detached dwelling unit, with a maximum increase of 750 square feet in gross floor area.

b. Accessory dwelling units detached from an existing single family detached dwelling unit shall be no more than 750 square feet in gross floor area.

c. No passageway shall be required for the construction of an accessory dwelling unit. "Passageway" means a pathway that is unobstructed clear to the sky and extends from street to one entrance of the accessory dwelling unit.

E. Parking: Except as provided in subparagraph (b), parking shall be provided as follows for the accessory dwelling unit, in addition to any required parking for the primary unit:

1 Required Parking:

a. One parking space for the unit or for each bedroom shall be required, whichever is less. A studio is deemed to have one bedroom for purposes of determining the required parking.

b. Parking spaces shall be constructed on the same lot as the accessory dwelling unit in accordance with the standards set forth in Section 15.38, and parking for accessory dwelling units shall be in addition to those required for the principal unit. Parking spaces for principal and accessory dwelling units shall be independently usable, and the use of each space shall not interfere with access to any other space, except as provided in subparagraph (F) for garage conversions.

c. Parking for the ADU may be either provided in setback areas or in tandem, without blocking access to required spaces in a garage, with a minimum dimension of nine feet in width by 19 feet in depth.

2. Parking spaces shall not be imposed on an accessory dwelling unit in any of the following circumstances:

a. The accessory dwelling unit is located within one-half mile of public transit;

b. The accessory dwelling unit is located within an official architecturally and historically significant district;

c. The accessory dwelling unit qualifies under subsection (C)(2)(a) of this section;

d. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit; or

e. When there is a car share vehicle station located within one block of the accessory dwelling unit.

F. Garage Conversions

1. When off-street parking that is required by this Code to serve the primary dwelling unit is located in a garage, carport, or covered parking structure that is demolished or converted in conjunction with the construction of an accessory dwelling unit, the required off-street parking spaces must be replaced on the same lot where the accessory dwelling unit is located.

2. Replacement parking spaces required under this subsection shall be located in any configuration on the same lot that would be permitted for a primary dwelling unit. E.g., in a garage, carport, or other covered parking structure.

3. If an existing garage is legal but nonconforming as to the current generally applicable setback requirements, and the garage is converted in whole or in part to an ADU, then the ADU benefits from the legal nonconforming status that applied to the garage as to the setbacks. The ADU does not need to conform to the current setback requirements as long as it remains wholly within the walls of the previously legal but nonconforming garage; however, any expansion or new construction outside of the garage walls must conform to the current setbacks.

G. Deed Restriction

1. Before the City may issue a building permit for an accessory dwelling unit, the owner of the property where the ADU will be built must record a deed restriction against the title of the property in the County Recorder's office and file a copy of the recorded document with the Department of Planning Services.

2. The deed restriction shall provide that the accessory dwelling unit may not be sold separately from the primary residence, that the unit is restricted to the permitted size and attributes under this section at the time of permitting, and that the deed restriction runs with the land and may be enforced against future purchasers by the City.
3. Failure of the property owner to comply with the deed restriction constitutes a violation of the AVMC and may result in legal action against the property owner. The City may obtain any remedy available to it at law or equity, including but not limited to obtaining an injunction enjoining use of the accessory dwelling unit in violation of the AVMC.
4. The accessory dwelling unit shall be permitted only so long as either the main residence, or the accessory unit, is occupied by the owner of record as the owner's principal residence and legal domicile. The deed restriction shall so note.
5. The deed restrictions terminate upon removal of the accessory unit.

H. Additional Standards

1. The property owner shall occupy either the principal dwelling or accessory dwelling unit as the owner's primary residence and legal domicile.
2. An accessory dwelling unit may only be rented on a month-to-month or longer basis, and the entire accessory dwelling unit must be rented out to the same tenant or tenants. The unit may not be rented as a boarding or rooming house as defined in Section 15.94.
3. Short-term rentals are prohibited and are subject to the provisions of Section 15.14.165.
4. Unless an accessory dwelling unit qualifies under subsection (C)(2)(a) of this section, the ADU may only be established on a lot that is at least 4,700 square feet in size.
5. Detached accessory dwelling units shall comply with the following:
 - a. The maximum height shall be fifteen feet.
 - b. The maximum number of stories is one.
 - c. There shall be a minimum of fifteen feet separation between the primary dwelling unit and a detached accessory dwelling unit and a minimum of five feet between a detached accessory dwelling unit and an accessory building.
 - d. The accessory dwelling unit shall be located behind the rear building line of the primary dwelling.

6. Attached accessory dwelling units shall comply with the following:

a. The height shall not exceed the height limit applied to a primary unit in the underlying zoning district.

b. There shall be no exterior stairs.

c. An outside door giving access to the ADU may not be located on the primary elevation of the primary dwelling unit or anywhere else that is visible from the street.

7. An accessory dwelling unit contained within an existing single-family residence, existing garage, or existing accessory structure shall comply with the following:

a. The ADU may not exceed 750 square feet in size or 50 percent of the size of the primary dwelling unit.

b. The side and rear setbacks must be sufficient for fire safety.

c. The ADU must have independent exterior access from the existing primary residence, and the outside door may not be located on the primary elevation of the primary dwelling unit or anywhere else that is visible from the street.

8. Utilities.

a. Any ADU that is not a converted ADU must have its own direct connection to each utility provider and pay the corresponding connection fee and capacity charge.

b. Before an ADU that is not a converted ADU may be permitted, the owner must provide the City with a will-serve letter from each utility that will provide service to the ADU. The will-serve letter must indicate that the utility provider is aware of the new ADU; it must show that the provider has capacity to meet the additional demand created by the ADU; and it must include a commitment to serve the ADU in addition to the primary dwelling.

Section 8. Section 15.70.030 of Title 15 of the AVMC is hereby amended, to read in its entirety as follows:

**TABLE 15.70.030:
DECISION-MAKING AUTHORITY**

R = Recommending body D = Decision-making authority PH = Public hearing required A = Administrative review by Director M = Ministerial review by Director			
Type of Application	DECISION-MAKING AUTHORITY		
	Planning Director		City Council
<i>Amendments, Agreements and Specific Plans</i>			
General Plan Amendment			D-PH
Zoning Code Amendment			D-PH
Zone Change			D-PH
Specific Plan			D-PH
Development Agreement			D-PH
<i>Discretionary and Other Permits</i>			
Site Development Permit	A*		*
*The Director shall determine, on a case-by-case basis whether the public interest would be better served by review of the project administratively or by referral to the City Council and, if reviewed by the City Council, whether a public hearing is required.			
Coastal Development Permit			D-PH
Conditional Use Permit			D-PH
Variance Permit			D-PH
Exception Permit	A		
Administrative Use Permit	A		
Temporary Use Permit	A		
Sign Permit	M		
Sign Program			D
Review of Land Use not Listed	A		
Guest Houses	M		
Development Review Permit	M		
Permits in Specific Plan Areas	Per each Specific Plan Text		
Grading Permit	Per City Grading Code		
Subdivisions	Per City Subdivision Code		
Environmental Review	Per City's Environ. Review Procedures		

Section 9. CONFLICTING REGULATIONS.

Upon the effective date of this ordinance, all former ordinances or parts thereof that conflict with or are inconsistent with the provisions of this ordinance are repealed and declared to be of no further force and effect.

Section 10. SEVERABILITY.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

Section 11. RESTATEMENT OF EXISTING LAW.

The adoption of this ordinance shall not, in any manner, affect the prosecution for violation of ordinances adopted prior to its effective date or be construed as a waiver of any of the penalty or penal provisions applicable to such violation. The provisions of this ordinance shall be construed as restatements and continuations and not as new enactments.

Section 12. EFFECTIVE DATE.

This ordinance takes effect 30 days after its adoption.

Section 13. CERTIFICATION.

The City Clerk shall certify to the passage of this Ordinance and cause to be published a summary of this Ordinance five (5) days prior to the date of adoption of this Ordinance, and, within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Section 14. NOTICE OF EXEMPTION.


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 15. 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 Planning Services is the custodian of the record of proceedings.


[Signatures on following page]

PASSED, APPROVED AND ADOPTED this 6th day of December, 2017.



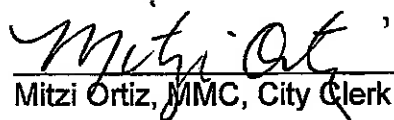
David C. Harrington
Mayor

APPROVED AS TO FORM:



Scott C. Smith, City Attorney

ATTEST:



Mitzi Ortiz, MMC, City Clerk

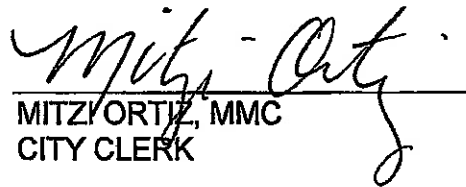
STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS.
CITY OF ALISO VIEJO)

I, Mitzi Ortiz, City Clerk of the City of Aliso Viejo, California, do hereby certify that the foregoing Ordinance No. 2017-192 was adopted at a regular meeting of the City Council of the City of Aliso Viejo held on the 6th day of December 2017, by the following vote:

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

NOES: None

ABSENT: None



MITZI ORTIZ, MMC
CITY CLERK

(SEAL)