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LCP-6-ENC-21-0002-2 (ADU and JADU Update)

August 13, 2021

EXHIBITS

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ORDINANCE 2020-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA, ADOPTING AMENDMENTS TO TITLE 30 (ZONING) OF THE ENCINITAS MUNICIPAL CODE TO ADDRESS CHANGES IN STATE LAW REGARDING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS

CASE NUMBER: PLCY-003712-2020 ZA/LCPA

The City Council of the City of Encinitas hereby finds and declares as follows:

WHEREAS, on January 1, 2020, changes to California Government Code Sections 65852.2 (Accessory Dwelling Units) and 65852.22 (Junior Accessory Dwelling Units) went into effect;

WHEREAS, Government Code Sections 65852.2 and 65852.22 require the City of Encinitas to adopt zoning regulations in compliance with state law provisions regarding accessory dwelling units and junior accessory dwelling units;

WHEREAS, in order to encourage the construction of additional dwelling units to provide more housing for California residents, the State of California has enacted legislation to encourage the construction of accessory dwelling units and junior accessory dwelling units, as further defined in this ordinance;

WHEREAS, state lawmakers are increasingly concerned about the unaffordability of housing in the State of California;

WHEREAS, accessory dwelling units are commonly referred to as "second units," and are additional living quarters on lots that allow single-family and multifamily residential uses that are independent of the primary dwelling unit. They are also known as accessory apartments, accessory dwellings, mother-in-law units, or granny flats. They may be either attached or detached to the primary dwelling unit, and they typically provide complete independent living facilities, including facilities for living, sleeping, eating, cooking, and sanitation;

WHEREAS, Section 65582.1 of the California Government Code provides that accessory dwelling units are one of the reforms and incentives adopted to facilitate and expedite the construction of affordable housing;

WHEREAS, Section 65852.150(a) of the California Government Code provides that accessory dwelling units are a valuable form of housing; that they may provide housing for family members, students, the elderly, in-home healthcare providers, the disabled, and others at below market prices within existing neighborhoods; that they may add income and an increased sense of security to homeowners; that they will provide additional rental housing stock; that they offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character; and that they are an essential component of California's housing supply;

WHEREAS, Section 65852.2(a)(4) of the California Gover
local ordinance that is inconsistent with Section 65852.2(a) shall

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65852.2(a) shall apply unless or until the local agency adopts an ordinance consistent with that provision;

WHEREAS, the 2013-2021 Housing Element approved by the City Council on March 13, 2019 contains Housing Element Program 1C, which provides that the City promote the development of accessory housing units and continue to administer the accessory dwelling unit ordinance;

WHEREAS, the City finds this Ordinance is statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 21080.17 of the Public Resources Code, which provides that CEQA does not apply to the adoption of an ordinance to implement the provisions of Section 65852.2 of the Government Code regarding accessory dwelling units. The proposed amendments regarding junior accessory dwelling units are also exempt from environmental review pursuant to General Rule, Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines since it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment. Regardless of whether the City adopts this Ordinance, accessory dwelling units and junior accessory dwelling units must be allowed in the City in accordance with the standards set forth in state law. Therefore, it can be seen with certainty that the project will not cause any significant impacts;

WHEREAS, a Public Notice of Availability of proposed Local Coastal Plan Amendments (LCPA) was issued which opened a six-week public review period that ran from May 1, 2020 and concluded on June 12, 2020;

WHEREAS, the proposed Local Coastal Program Amendment meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act and does not conflict with any coastal zone regulations or policies with which future development must comply;

WHEREAS, the Planning Commission conducted Public Hearings on May 21, 2020, June 4, 2020, June 18, 2020, and August 2020 for the purpose of considering amendments to Title 30 (Zoning) of the Encinitas Municipal Code and considered public testimony and made a recommendation to the City Council to adopt the proposed amendments;

WHEREAS, the Planning Commission adopted Planning Commission Resolution No. PC-2020-16, on file with the Office of the City Clerk and incorporated by this reference, recommending approval of said Ordinance;

WHEREAS, the City Council conducted Public Hearings on October 21, 2020 and November 18, 2020 for the purpose of considering amendments to Title 30 (Zoning) of the Encinitas Municipal Code; and,

WHEREAS, the City Council has duly considered the totality of the record and all evidence submitted into the record, including public testimony and the evaluation and recommendations by staff, presented at said hearing;

WHEREAS, notices of said public hearings were made at the time and in the manner required by law;

WHEREAS, the City Council finds that this Ordinance is intended to be carried out in a manner in full conformance with the California Coastal Act of 1976 and the Development Services

Director is hereby authorized to submit this Ordinance as part of the Local Coastal Program Amendment to the California Coastal Commission for their review and adoption; and

WHEREAS, based on the totality of the record and evidence described and referenced in this Ordinance, the City Council finds that the proposed text amendments are consistent with the purposes of the General Plan, Municipal Code, and adopted Local Coastal Program.

NOW, THEREFORE, the City Council of the City of Encinitas, California, hereby ordains as follows:

SECTION ONE: CHAPTER 30.04 (DEFINITIONS) OF TITLE 30, ZONING

Chapter 30.04 (Definitions) of Title 30 of the Encinitas Municipal Code is hereby amended as follows (~~strikeout~~ is used to denote existing text being deleted; underline is used to denote new text being added):

ACCESSORY DWELLING UNIT shall mean an attached or a detached residential dwelling unit on the same lot as an existing or proposed ~~dwelling unit~~ primary residence zoned ~~for~~ to allow single-family or multifamily residential use that provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the primary residential structure(s) are~~single family dwelling is~~ or will be situated. An ADU can be an efficiency unit, as defined in Section 17958.1 of Health and Safety Code, or a manufactured home, as defined in Section 18007 of the Health and Safety Code.

JUNIOR ACCESSORY DWELLING UNIT shall mean a residential dwelling unit that is no more than 500 square feet in area, contained entirely within a~~n existing~~ single-family residence, and with separate sanitation facilities from, or shared sanitation facilities with, the existing residence.

SECTION TWO: SECTION 30.16.010 (DEVELOPMENT STANDARDS) OF TITLE 30, ZONING

Subsection 30.16.010(F) (Accessory Structures) of Section 30.16.010 (Development Standards) of Title 30 of the Encinitas Municipal Code is hereby amended as follows (underline is used to denote new text being added):

F. Accessory Structures. In all residential zones except for the R-30 Overlay zone, and except for accessory dwelling units and junior accessory dwelling units conforming to Sections 30.48.040(T) and 30.48.040(U), the following development standards related to accessory structures shall apply (refer to Chapter 30.48, Accessory Use Regulations, for additional standards related to accessory uses, location, quantity permitted, size, etc. of permitted accessory structures),

SECTION THREE: SECTION 30.48.040 (ACCESSORY USE REGULATIONS) OF TITLE 30, ZONING

Subsection 30.48.040(T) (Accessory Dwelling Units) of Section 30.48.040 (Accessory Use Regulations) of Title 30 of the Encinitas Municipal Code is hereby amended as follows (~~strikeout~~ is used to denote existing text being deleted; underline is used to denote new text being added):

T. Accessory Dwelling Units, General. ~~Attached and Detached~~.

1. Accessory dwelling units shall be a permitted use in all areas zoned to allow single-family or multifamily residential use.

~~1~~2. One ~~attached or one detached~~ accessory dwelling unit may be permitted in conjunction with an existing or proposed single-family residence ~~or the construction of a new single-family residence~~ on a lot zoned for residential ~~single-family or multifamily~~ use. Accessory dwelling units meeting the standards of Subsection 30.48.040(T)(19) are permitted in conjunction with multifamily dwelling units.

~~2~~3. An accessory dwelling unit may be permitted on a lot ~~where~~ with an existing or proposed junior accessory dwelling unit ~~exists~~ meeting the standards of Section 30.48.040(U).

~~3. An accessory dwelling unit shall be incidental, appropriate, and clearly subordinate to the primary single-family residence.~~

~~4. Attached and detached accessory units must maintain the general character of a single-family residential neighborhood, and maintain the character as a single-family dwelling as determined by the Development Services Director.~~ Architectural ~~design,~~ building materials~~, and exterior colors~~ of the accessory dwelling unit shall be compatible with the ~~principal residence~~ primary residential structure(s).

5. All development standards contained in the underlying zoning district shall apply to accessory dwelling units unless they are inconsistent with the provisions of this Section 34.48.040(T), in which case the standards of this Section 34.48.040(T) shall apply.

~~5~~6. An accessory dwelling unit shall not be sold separately from the primary residence or multifamily ownership structure as detailed within the covenant for the accessory dwelling unit.

~~6~~7. An accessory dwelling unit may be rented, but only with a rental agreement with terms greater than 30 days.

~~7~~8. ~~Except as provided herein, attached and detached a~~Accessory dwelling units shall comply with all applicable local building and fire code requirements~~, as appropriate~~.

~~8~~9. Prior to approval of an accessory dwelling unit on properties with a private sewage system, approval by the County of San Diego Department of Environmental Health, or any successor agency, shall be required.

~~9~~10. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

~~10~~11. An ~~attached~~ accessory dwelling unit shall have a separate exterior entrance from that of the primary dwelling unit. ~~entry with no interior access to the primary dwelling unit.~~

12. An accessory dwelling unit may be constructed above a garage provided that there is no loss of parking provided within the garage.

13. Zoning limits on lot coverage, floor area ratio, open space requirements, and size must permit, or shall be waived, to allow up to an 800 square foot detached or attached accessory dwelling unit, up to 16 feet high, with four-foot side and rear yards, unless the open space is within a recorded easement or protected by the Local Coastal Plan.

~~11~~14. Unit Size.

a. An attached or detached accessory dwelling unit with a living area of up to 800 square feet, a maximum height of 16-feet, and four-foot side and rear setbacks, is permitted regardless of the living area of the primary dwelling unit.

b. The ~~M~~maximum living area of an attached or detached accessory unit shall not exceed 1,200 square feet or the total living area of the primary dwelling unit, whichever is less.

~~12~~15. Setbacks. ~~for accessory units:~~

a. Except as provided ~~herein~~ in this Section 34.48.040(T), ~~attached and detached~~ accessory dwelling units shall comply with the setbacks required for the primary dwelling unit as established by the underlying zoning designation.

b. ~~Attached and detached~~ Notwithstanding any other provision of this Section 34.48.040(T), accessory dwelling units shall comply with the setbacks established in Chapter 30.34 (Special Purpose Overlay Zones) of the Municipal Code where required by the Local Coastal Program.

c. ~~Attached and detached a~~Accessory dwelling units may be located within a required street side, interior side, ~~yard~~ or rear yard setback area provided that such structure is located no closer than four feet to a side or rear lot line ~~shall have a setback of not less than five feet from side and rear property lines, except~~ unless any of the following are true:

i. The underlying zoning allows for a setback of less than four feet.

ii. An accessory dwelling unit that is constructed above (may be cantilevered~~,~~ or supported by posts, but not solid walls) an existing or proposed attached or detached garage shall have a setback of ~~five~~ four feet from the side and rear property lines. ~~However, an accessory dwelling unit that is constructed above a garage shall comply with the setbacks established in Chapter 30.34 (Special Purpose Overlay Zones) of the Municipal Code.~~

iii. No setback shall be required ~~for~~ if the accessory dwelling unit consists of the conversion of existing space wholly within an existing primary residence, or wholly within an existing accessory ~~building to an accessory dwelling unit.~~ structure, or ~~for~~ is a structure constructed in the same location and to the same dimensions as an existing structure, unless the Local Coastal Program requires a greater setback. ~~However, an existing accessory building (including an existing garage) that is converted to an accessory dwelling unit shall comply with the setbacks established in Chapter 30.34 (Special Purpose Overlay Zones) of the Municipal Code.~~

ivii. Side and rear setbacks sufficient for fire and safety conditions and regulations shall be required for an accessory dwelling unit constructed within the existing space of an accessory structure except for an expansion of up to 150 square feet to accommodate ingress and egress only, unless the Local Coastal Program requires a greater setback.

~~iii. Roof eaves and other architectural projections for accessory dwelling units shall comply with Section 30.16.010E8.~~

~~iv~~. Accessory dwelling units constructed on properties directly adjacent to a coastal bluff shall ~~be consistent~~ comply with the setbacks ~~required for the primary dwelling unit as~~ established by ~~the underlying zoning designation~~ the Local Coastal Program.

~~13~~.d. Any accessory dwelling unit that is permitted or constructed in reliance on the setback ~~relief~~ provisions established for accessory dwelling units in Subsection 30.48.040(T)(12)(c) shall be maintained~~:~~

~~a. Maintained~~ as an accessory dwelling unit and shall not be converted to or used for any other purpose.

~~b. Limited to a height of one story for (1) any portion of an attached ADU relying on the setback reliefs, or (2) an entire detached ADU structure if any portion of the structure relies on the setback reliefs.~~

~~13~~16. Height.

a. Any accessory dwelling unit in compliance with the required setbacks of the underlying zone shall be permitted to build to the height limit for that

zone pursuant to Chapter 30.16.010.B.6 (Residential Zones) of the Encinitas Municipal Code.

b. An accessory dwelling unit that is constructed above a proposed or existing attached or detached garage shall be permitted to construct to the height regulations of the underlying zone pursuant to Chapter 30.16.010.B.6 (Residential Zones).

c. Any accessory dwelling unit not constructed above a garage, or wholly within or to the same dimensions as an existing or proposed primary residence or accessory structure, and not in compliance with the required setbacks of the underlying zone shall be permitted to build to a maximum of 16-feet in height, with no projections permitted above the maximum 16-foot height limit. Roof decks shall be permitted provided the design of the roof or deck railings do not extend beyond the maximum 16-foot height limit.

~~14~~17. Architectural Projections.

a. Architectural features of the accessory dwelling unit including required access stairways, awnings, chimneys, bay windows, window seats, fireplaces, planters, and porches, steps, and decks less than thirty inches above grade, which do not create additional livable area, may project into any yard not more than four feet; however, architectural features shall not be permitted to project into the minimum required four-foot side and rear setback, unless permitted by the underlying zoning.

b. Roof eaves for the accessory dwelling unit shall be permitted to project a maximum of two feet into the minimum required four-foot street side, interior side, and rear yard setback.

~~14. An additional five percent (5%) of lot coverage and ten percent (0.1) of floor area ratio above that established for the underlying zoning designation shall be allowed for accessory dwelling units only for lots of 10,000 square feet of less and where there is an existing single-family residence.~~

~~15~~18. Parking.

a. Except as otherwise provided herein, parking spaces for accessory dwelling units shall comply with Chapter 30.54 (Off-Street Parking) of the Municipal Code, including, but not limited to, the design requirements of the Off-Street Parking Design Manual.

b. One parking space shall be required for an accessory dwelling unit, which may be provided as tandem parking on an existing driveway or within setback

areas, provided that the parking area is properly surfaced in accordance with applicable regulations.

c. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the city shall not require that those off-street parking spaces be replaced.

~~c. Any required parking spaces removed in conjunction with the construction of an accessory dwelling unit shall be replaced on the same lot as the accessory dwelling unit.~~

~~i. The replacement parking spaces may be located in any configuration on the lot, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts.~~

~~ii. Uncovered replacement parking spaces may be located within building setback areas.~~

~~iii. Structures for covered parking spaces shall be required to comply with applicable setbacks.~~

d. Notwithstanding the above or any other law, no parking standards shall be imposed for an accessory dwelling unit in any of the following instances:

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

ii. The accessory dwelling unit is located within an architecturally and historically significant historic district.

iii. The accessory dwelling unit is contained wholly within the existing space of an existing primary residence or an existing accessory building, with no additional area added. If an accessory dwelling unit constructed under this provision is expanded, parking shall be provided for the accessory dwelling unit in accordance with this section.

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 facility located within one block of the accessory dwelling unit.

~~17~~19. Multifamily Dwelling Structures.

a. Accessory dwelling units are permitted within any portions of an existing multifamily dwelling structure in space currently not being used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, crawlspaces, or garages, if each unit complies with state building standards for dwellings. The number of accessory dwelling units permitted under this subsection is equivalent to up to 25 percent of the existing units in the building or one, whichever is greater. In determining the maximum number of accessory dwelling units

allowed, any fraction of an accessory dwelling unit shall be rounded down to the next whole number not less than one.

b. Not more than two detached accessory dwelling units may be constructed on a lot that has an existing multifamily dwelling, subject to a height limit of sixteen feet and four-foot interior side and rear yard setbacks. Any accessory dwelling unit in compliance with the required setbacks of the underlying zone shall be permitted to build to the height limit for that zone pursuant to Chapter 30.16.010.B.6 (Residential Zones) of the Encinitas Municipal Code.

~~16~~20. Utilities.

a. Accessory dwelling units shall not be considered new residential uses for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service~~.~~, unless the accessory dwelling unit is constructed with a new single-family dwelling. Any fees related to utilities shall be proportional to the burden of the accessory dwelling unit on the water or sewer system, based upon either its size in square feet or fixture units.

b. For an accessory dwelling unit that is contained within the existing space of a single-family residence or accessory building, including up to 150 square foot expansion of the accessory building to accommodate egress and ingress, that has independent exterior access from the existing residence and the side and rear setbacks are sufficient for fire safety, no new or separate utility connection directly between the accessory dwelling unit and the utility shall be required and no related connection fee or capacity charge shall be imposed. For accessory units that do not meet these criteria, new or separate utility connections may be required, and related connection fees or capacity charges may be imposed.

c. Accessory dwelling units shall be exempt from the requirements of undergrounding overhead utilities and public right-of-way dedication and improvements.

21. Applications.

~~17.~~ Applications for accessory dwelling units on a lot with an existing single-family residence or multifamily dwelling units that conform~~ing~~ to the requirements of this section shall be considered as ministerial~~ly~~ permits without discretionary review or a hearing, and the City shall approve or deny such applications within ~~120~~60 calendar days after receiving the completed application. If the permit application to create an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on

the permit application for the accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit shall still be considered as a ministerial permit without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay.

~~18~~22. Fees.

Development Service Department fees for accessory dwelling units may be waived. Any impact fees shall not be imposed upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged 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.

23. Nonconforming.

The city shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of legal nonconforming zoning conditions.

24. Covenants.

~~19~~a. Prior to issuance of a building permit for an accessory dwelling unit, a covenant shall be recorded between the owner and the City of Encinitas agreeing to the terms stipulated in this chapter. The covenant shall specifically mention that:

~~a~~i. The accessory dwelling unit shall not be sold separately from the primary dwelling unit or multifamily ownership structure as detailed within the covenant for the accessory dwelling unit.

~~b~~ii. The accessory unit may be rented, but only with rental agreements with terms greater than 30 days.

~~c~~iii. The accessory unit is limited to the size and attributes set forth by this section.

~~d~~iv. The covenant shall be binding upon any successors in interest or ownership of the property and lack of compliance with the provisions thereof may result in legal action against the property owner, including revocation of the right to maintain an accessory dwelling unit on the property.

25. In cases of conflict between this subsection 30.48.040(T) and any other provision of this title, the provisions of this subsection shall prevail. To the extent that any provision of this subsection conflicts with state law, the applicable provision of state

law shall control, but all other provisions of this chapter shall remain in full force and effect.

~~2~~026. Definitions.

The definitions found in Government Code Section 65852.2 Accessory Dwelling Units, as amended, and the following definitions shall apply to the terms contained in this section. ~~For the purposes of this section, the following definitions apply:~~

a. "Accessory dwelling unit" shall be as defined in Chapter 30.04 of this title.

b. "Car share facility" shall mean a city permitted designated area where a car share vehicle can be parked for extended periods of time.

c. "Existing space" shall mean an enclosed area within the existing exterior walls and existing roofline of an existing structure that can be made safely habitable under applicable building and fire codes at the determination of the building official, notwithstanding any noncompliance with zoning regulations ~~that was in existence on the date the ordinance codified in this section became effective~~.

d. "Living area" shall mean the interior habitable area of a dwelling unit including basements and attics, but does not include a garage or any accessory ~~building~~ structure.

~~e. "Major public transit center" shall mean a multimodal transportation hub.~~

~~f. "Public transit" shall mean any major public transit center, or any bus stop.~~

Subsection 30.48.040(U) (Junior Accessory Dwelling Units) of Section 30.48.040 (Accessory Use Regulations) of Title 30 of the Encinitas Municipal Code is hereby amended as follows (~~strikeout~~ is used to denote existing text being deleted; underline is used to denote new text being added):

U. Junior Accessory Dwelling Units.

1. One junior accessory dwelling unit may be permitted in conjunction with ~~an existing, previously constructed~~ a proposed or existing single-family residence on lots zoned for single-family or multifamily use.

2. A junior accessory dwelling unit may be permitted within a single-family residence on a lot with an existing or proposed accessory dwelling unit ~~exists~~ conforming with Section 34.48.040(T).

3. A junior accessory dwelling unit shall not be sold separately from the primary residence.

4. A junior accessory dwelling unit may be rented, but only with a rental agreement with terms greater than 30 days.

5. The owner of a lot with a junior accessory dwelling unit shall occupy as a principal residence either the primary dwelling or the junior accessory dwelling unit or, if applicable, the accessory dwelling unit, except where the primary dwelling and junior accessory dwelling are held by a governmental agency, a land trust or housing organization in an effort to create affordable housing.

6. ~~Junior Accessory Dwelling Unit~~ Development Standards.

   a. A junior accessory dwelling unit shall not exceed 500 square feet in total floor area.

   b. A junior accessory dwelling unit shall be contained entirely within ~~an~~ the walls of a proposed or existing single-family residence.

   ~~c. Creation of a junior accessory dwelling unit must include the conversion of an existing bedroom.~~

   ~~d~~c. A junior accessory dwelling unit shall be provided with a separate exterior entry from that of the primary dwelling.

   ~~e. An interior connection to the main living area of the primary residence shall be maintained. A second door may be added for sound attenuation.~~

   ~~f~~d. A junior accessory dwelling unit shall include an efficiency kitchen, ~~requiring and limited to~~ which shall include the following ~~components~~:

      ~~i. A sink with a maximum waste line of one and one-half inches.~~

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

      iii. A food preparation counter and storage cabinets that are reasonable to the size of the unit.

   ~~g~~e. No additional parking shall be required for a junior accessory dwelling unit ~~other than that required when the existing primary residence was constructed~~.

   ~~h~~f. ~~The junior accessory dwelling unit may share a bath/sanitation facility with the primary residence or have its own.~~ Access to a bathroom is required, which may be part of the junior accessory dwelling unit or located in the existing primary dwelling. If provided as part of the primary dwelling, the

junior accessory dwelling unit shall have direct access to the main living area of the primary dwelling so as to not need to go outside to access a bathroom.

7. Except as provided herein, a junior accessory dwelling unit shall comply with all local building and fire code requirements, as appropriate.

8. Junior accessory dwelling units shall not be required to provide fire sprinklers or fire attenuation specifications if they are not required for the primary residence. ~~An inspection to confirm that the junior accessory dwelling unit complies with development standards may be assessed.~~

9. No sewer or water connection fees shall be required for the development of a junior accessory dwelling unit. ~~An inspection to confirm that the junior accessory dwelling unit complies with development standards may be assessed.~~

10. Prior to issuance of a building permit for a junior accessory dwelling unit, a covenant shall be recorded between the owner and the City of Encinitas agreeing to the terms stipulated in this chapter. The covenant shall specifically mention that:

    a. The junior accessory dwelling unit shall not be sold separately from the primary dwelling unit.

    b. The junior accessory unit may be rented, but only with a rental agreement with terms greater than 30 days.

    c. The junior accessory unit is limited to the size and attributes set forth by this section.

    d. The owner of record of the property shall occupy the primary dwelling unit or the junior accessory dwelling unit or, if applicable, the accessory dwelling unit, except where the primary dwelling and junior accessory dwelling are held by a governmental agency, land trust or housing organization in an effort to create affordable housing.

    e. The covenant shall be binding upon any successors in interest or ownership of the property and lack of compliance with the provisions thereof may result in legal action against the property owner, including revocation of the right to maintain a junior accessory dwelling unit on the property.

11. Applications for junior accessory dwelling units conforming to the requirements of this section shall be considered as ministerial~~ly~~ permits, without discretionary review or a hearing, and the City shall approve or deny such applications within ~~120~~60 calendar days after receiving the completed application. If the permit 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 permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerial, without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay.

12. Impact fees shall not be imposed upon the development of a junior accessory dwelling unit.

13. Junior accessory dwelling units shall be exempt from the requirements of undergrounding overhead utilities and public right-of-way dedication and improvements.

14. In cases of conflict between this subsection 30.48.040(U) and any other provision of this title, the provisions of this subsection shall prevail. To the extent that any provision of this subsection is in conflict with state law, the applicable provision of state law shall control, but all other provisions of this chapter shall remain in full force and effect.

SECTION FOUR: SECTION 30.76.120 (REMODELING OR RECONSTRUCTION OF RESIDENTIAL BUILDINGS WITH STRUCTURAL/USE NONCONFORMITY) OF TITLE 30, ZONING

Subsection 30.76.120(A) (Remodeling or Reconstruction of Residential Buildings with Structural/Use Nonconformity) of Title 30 of the Encinitas Municipal Code is hereby amended as follows (strikeout is used to denote existing text being deleted; underline is used to denote new text being added):

A. Any residential project of four or fewer dwelling units with one or more structural or use nonconformities that is damaged up to 100% (by accident or voluntary) of its valuation can be reconstructed with the continuation of the nonconformities provided such nonconformities are not increased in density or intensity. Nonconforming residential buildings of four units or less may be reconstructed, added to, or structurally altered so long as neither the density nor the intensity of the nonconformity is increased, and the number and size of existing required parking spaces is not reduced.

1. An increase to the "intensity" of a nonconforming structure/use would refer to:

   a. Expanding the structural nonconformity, e.g., not meeting development standards.

   b. Any additions to a nonconforming use (e.g., an existing duplex in a single-family zone) that would expand or intensify the nonconforming use. Expansions/additions to such nonconforming uses shall not be considered an intensification when the combined development of all units on the subject property does not exceed the cumulative limitations of the

underlying zone. Where more than one dwelling unit exists on a legal lot, the development allowances of the underlying zone shall be applied on a pro-rata basis (for example, if two dwelling units exist on one lot, each would be allowed one half of the lot coverage and/or floor area ratio applicable to the zone). Where all of the units on the lot are under common ownership, or, in the case of multiple ownership, where all owners of units on the property are in agreement, a different combination of percentages may be established and recorded on the subject property by covenant.

c. An addition for the enclosing of parking shall not be considered an increase in intensity of the nonconforming use.

d. Conversion of a nonconforming detached accessory structure from a ~~non-~~un habitable use type (for example, storage building or garage) to a habitable structure type (for example, a portion of the primary dwelling unit ~~or accessory unit~~) shall be considered an intensification or creation of a nonconformity. However, conversion of such ~~non~~unin habitable structures to accessory ~~structures~~ dwelling units permitted under Municipal Code Section 30.48.040~~W~~(T) shall not be considered an intensification~~, provided the structure is not located closer than five feet to rear and interior side lot lines, and not located within front or exterior side yard setback areas, pursuant to Municipal Code Section 30.16.010E3~~.

2. An increase to the "density" of a legal nonconforming structure/use ~~would refer to:~~is

~~a.~~ ~~N~~new construction or conversion of existing structures with the result of creating any dwelling units above the number allowed for the subject property in the applicable zone.

~~b. A conforming addition to, or the conversion of a portion of a legal nonconforming single-family residential building in order to create an accessory unit in accordance with Sections 30.16.010 and 30.48.040W shall not be considered an increase in density or intensity for purposes of this section.~~

3. New construction, a conforming addition to an existing dwelling, or the conversion existing structures in order to create an accessory dwelling unit or junior accessory dwelling unit in accordance with 30.48.040(T) and 30.48.040(U) shall not be considered an increase in density or intensity for purposes of this section.

SECTION FIVE: SEVERABILITY

If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have adopted the Ordinance and each section, sub-section, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases or portions to be declared invalid or unconstitutional.

SECTION SIX: PUBLIC NOTICE AND EFFECTIVE DATE

The City Clerk is directed to prepare and have published a summary of the ordinance no less than five days prior to consideration of its adoption, and again within 15 days following adoption, indicating the votes cast. This Ordinance will become effective following certification by the California Coastal Commission as being consistent with the Local Coastal Program for the City of Encinitas and California Coastal Act.

SECTION SEVEN: INTRODUCTION

This Ordinance was introduced on October 21, 2020.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council held on the 18th day of November, 2020.

Catherine Blakespear, Mayor

ATTEST:

Kathy Hollywood, City Clerk

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney

CERTIFICATION: I, Kathy Hollywood, City Clerk of the City of Encinitas, California, do hereby certify under penalty of perjury that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on the 21st day of October, 2020 and that thereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on the 18th day of November, 2020 by the following vote, to wit:

AYES:	Blakespear, Hinze, Hubbard, Kranz, Mosca
NAYS:	None
ABSENT:	None
ABSTAIN:	None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Encinitas, California, this 19 day of November, 2020.

Kathy Hollywood, City Clerk

LCP-6-ENC-21-0002-2 Encinitas LCPA (ADU/JADU Update) -- Suggested Modifications

*City of Encinitas' proposed amendments in underline/strikeout format

**Commission's suggested modifications in double-underline/double strikeout format

Suggested Modifications:

1. Revise Section 30.48.040(T)(15)(b) as follows:

b. ~~Attached and detached~~ Notwithstanding any other provision of this Section 34.48.040(T), accessory dwelling units shall comply with the setbacks established in Chapter 30.34 (Special Purpose Overlay Zones) and the sensitive habitat protection policies of the Municipal Code where required ~~by~~ to comply with the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource policies of the Local Coastal Program.

2. Revise Section 30.48.040(T)(15)(c)(iii) as follows:

c. ~~Attached and detached a~~Accessory dwelling units may be located within a required street side, interior side, yard or rear yard setback area provided that such structure is located no closer than four feet to a side or rear lot line ~~shall have a setback of not less than five feet from side and rear property lines, except~~ unless any of the following are true:

[…]

ii. No setback shall be required ~~for~~ if the accessory dwelling unit consists of the conversion of existing space wholly within an existing primary residence, or wholly within an existing accessory ~~building to an accessory dwelling unit.~~ structure, or ~~for~~ is a structure constructed in the same location and to the same dimensions as an existing structure, unless the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource policies of the Local Coastal Program require~~s~~ a greater setback. ~~However, an existing accessory building (including an existing garage) that is converted to an accessory dwelling unit shall comply with the setbacks established in Chapter 30.34 (Special Purpose Overlay Zones) of the Municipal Code.~~

3. Revise Section 30.48.040(T)(15)(c)(iv) as follows:

[…]

EXHIBIT #2

Proposed Text Changes in Strikeout/Underline

LCP-6-ENC-21-0002-2
ADU and JADU Update

California Coastal Commission

iv~~ii~~. Side and rear yard setbacks sufficient for fire and safety conditions and regulations shall be required for an accessory dwelling unit constructed within the existing space of an accessory structure except for an expansion of up to 150 square feet to accommodate ingress and egress only, unless the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource protection policies of the Local Coastal Program require~~s~~ a greater setback.

4. Revise Section 30.48.040(T)(15)(c)(v) as follows:

[…]

~~i~~v. Accessory dwelling units constructed on properties directly adjacent to a coastal bluff shall ~~be consistent~~ comply with the setbacks ~~required for the primary dwelling unit as~~ established by the ~~underlying zoning designation~~ coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource protection policies of the Local Coastal Program.

5. Revise Section 30.48.040(T)(18)(c) as follows:

~~15~~18. Parking

[…]

c. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the city shall not require that those off-street parking spaces be replaced, unless the lot is located west of Coast Highway 101 from La Costa Avenue to Swami's Beach, including the residences just south along the bluff as depicted in Figure 1.

6. Revise Section 30.48.040(T)(18) to restore existing subdivision c. (proposed to be removed) as subdivision d., and add language as follows:

~~c. Any required parking spaces removed in conjunction with the construction of an accessory dwelling unit shall be replaced on the same lot as the accessory dwelling unit.~~

~~i. The replacement parking spaces may be located in any configuration on the lot, including, but not limited to, as covered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts.~~

~~ii. Uncovered replacement parking spaces may be located within building setback areas.~~

~~iii. Structures for covered parking spaces shall be required to comply with applicable setbacks.~~

d. Any required parking spaces removed in conjunction with the construction of an accessory dwelling unit on all lots located west of Coastal Highway 101 as depicted in Figure 1 shall be replaced on the same lot as the accessory dwelling unit.

i. The replacement parking spaces may be located in any configuration on the lot, including, but not limited to, as covered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts.

ii. Uncovered replacement parking spaces may be located within building setback areas.

iii. Structures for covered parking spaces shall be required to comply with applicable setbacks.

7. A new Figure shall be added into the certified Implementation Plan component of the Local Coastal Program. The boundaries of the proposed ADU Replacement Parking Area are depicted on Exhibit 3 to this staff report and generally consist of the area west of Highway 101.

8. Section 30.48.040(T)(18)(d) shall be re-lettered as follows:

~~d~~e. Notwithstanding the above or any other law, no parking standards shall be imposed for an accessory dwelling unit in any of the following instances:

[…]

9. Revise Section 30.48.040(T)(23) as follows:

23. Nonconforming

The city shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of legal nonconforming zoning conditions, except as provided for nonconforming detached accessory structures under Municipal Code Section 30.76.120(A)(1)(d).

10. Revise Section 30.76.120(A)(1)(d) as follows:

[…]

1. An increase to the “intensity” of a nonconforming structure/use would refer to:

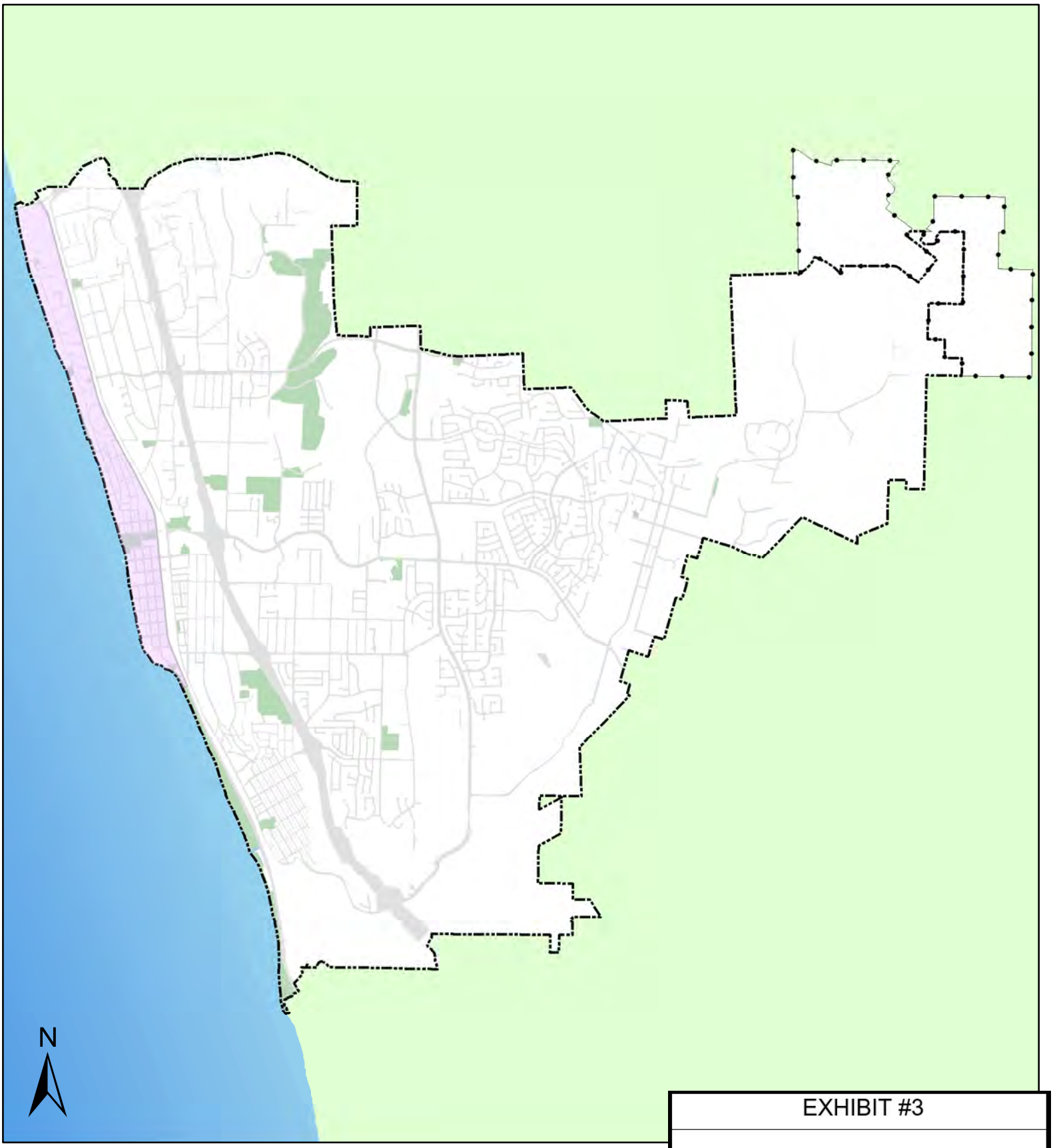
[…]

d. Conversion of a nonconforming detached accessory structure from a ~~non-~~un habitable use type (for example, storage building or garage) to a habitable structure type (for example, a portion of the primary dwelling ~~unit or accessory unit~~) shall be considered an intensification or creation of a nonconformity. However, conversion of such ~~non~~unin habitable structures to accessory ~~structures~~ dwelling units permitted under Municipal Code Section 30.48.040~~W~~(T) shall not be considered an intensification, ~~provided the structure is not located closer than five feet to rear and interior side lot lines, and not located within front or exterior side yard setback areas, pursuant to Municipal Code Section 30.16.010E3~~ unless the structure does not conform with the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource protection policies of the Local Coastal Program.

11. Revise Section 30.76.120(A)(3) as follows:

3. New construction, a conforming addition to an existing dwelling, or the conversion existing structures in order to create an accessory dwelling unit or junior accessory dwelling unit in accordance with 30.48.040(T) and 30.48.040(U) shall not be considered an increase in density or intensity for purposes of this section, unless the reconstructed structure does not conform with the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource protection policies of the Local Coastal Program.

City of Encinitas - Proposed ADU Replacement Parking Area



DISCLAIMER:

This map should not be used for Engineering, Survey, or Site-Specific Analysis.

Every reasonable effort has been made to assure the accuracy of the data provided; nevertheless, some information may not be accurate. The City of Encinitas assumes no liability or responsibility arising from the use of or reliance upon this information.

- **Map Coordinates: Stateplane NAD83 Feet, CA Zone 6**
- **Parcel lines are not survey accurate, and some parcels can be positionally off up to +/- 40 feet**
- **Photo flight dates: July 2009. 4 inch pixel resolution. Digital true color.**
- **Orthophoto and Topo positional accuracy meet the precision adequate to support National Map Accuracy Standards for 1" = 100' mapping.**

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EXHIBIT #3

Recommended Figure 1

LCP-6-ENC-21-0002-2
ADU and JADU Update

California Coastal Commission

City of Encinitas - Proposed ADU Replacement Parking Area

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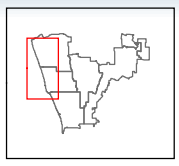
- Orthophoto and Topo positional accuracy meet the precision adequate to support National Map Accuracy Standards for 1" = 100' mapping.



0 1,000 2,000 Feet