

**ORDINANCE NO. CS-449**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD,  
CALIFORNIA, APPROVING AN AMENDMENT TO THE ZONING ORDINANCE,  
TITLE 21 OF THE CARLSBAD MUNICIPAL CODE, TO ENSURE CONSISTENCY  
WITH STATE LAW RELATED TO ACCESSORY DWELLING UNITS AND JUNIOR  
ACCESSORY DWELLING UNITS

CASE NAME: ACCESSORY DWELLING UNIT AMENDMENT 2023

CASE NO: ZCA 2023-0001/ LCPA 2023-0017/ PUB 2023-0002

WHEREAS, Sections 65852.2 and 65852.22 of the California Government Code requires cities and counties to permit construction of accessory dwelling units and junior accessory dwelling units, and allows cities and counties to adopt ordinances that govern the permitting of accessory dwelling units and junior accessory dwelling units consistent with state law; and

WHEREAS, Senate Bill 897 and Assembly Bill 2221 were signed into law in 2022, which amended state law to further encourage and incentivize the construction of accessory dwelling units and junior accessory dwelling units; and

WHEREAS, the above legislative bills took effect Jan. 1, 2023, and existing provisions of the Carlsbad Municipal Code (CMC) are inconsistent with the new law provisions; and

WHEREAS, the City Planner has prepared an amendment to the CMC (ZCA 2023-0001) and the Local Coastal Program (LCPA 2023-0017) pursuant to Chapter 21.52 of the CMC, Section 30514 of the Public Resources Code, and Section 13551 of California Code of Regulations Title 14, Division 5.5; and

WHEREAS, on March 2, 2023, the Airport Land Use Commission reviewed and found that the proposed Zone Code Amendment is consistent with the adopted San Diego County McClellan-Palomar Airport Land Use Compatibility Plan; and

WHEREAS, on March 15, 2023, the Planning Commission held a duly noticed public hearing as prescribed by law to consider ZCA 2023-0001/ LCPA 2023-0017; and

WHEREAS, the Planning Commission adopted Planning Commission Resolution No. 7473 recommending to the City Council that ZCA 2023-0001/LCPA 2023-0017 be approved; and

WHEREAS, the City Council of the City of Carlsbad held a duly noticed public hearing as prescribed by law to consider ZCA 2023-0001/LCPA 2023-0017; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors, including written public comments, if any, related to ZCA 2023-0001/LCPA 2023-0017; and

NOW, THEREFORE, the City Council of the City of Carlsbad, California, does ordain that:

1. The above recitations are true and correct.
2. The findings of the Planning Commission in Planning Commission Resolution No. 7473 shall also constitute the findings of the City Council.
3. Carlsbad Municipal Code Section 21.04.020 is amended to read as follows:

**21.04.020 Accessory.**

“Accessory” means a building, part of a building or structure, or use that is subordinate to and the use of which is incidental to that of the main building, structure or use on the same lot. If an accessory building is attached to the main building by a common wall, with a width dimension of at least three feet and a height dimension of at least one story, such building area is considered a part of the main building and not an accessory building or structure, except for “accessory dwelling units” or “junior accessory dwelling units” as defined in Sections 21.04.121 and 21.04.122. Accessory dwelling units and junior accessory dwelling units that comply with the requirements of Section 21.10.030 and California Government Code Sections 65852.2 (effective Jan. 1, 2023) and 65852.22 (effective Jan. 1, 2023), respectively, are considered accessory.

**21.04.121 Dwelling unit, accessory (ADU).**

Refer to California Government Code Section 65852.2 (effective Jan. 1, 2023).

**21.04.122 Dwelling unit, junior accessory (JADU).**

Refer to California Government Code Section 65852.22 (effective Jan.1, 2023).

4. *Carlsbad Municipal Code Section 21.09.140 is amended to read as follows:*

**21.09.140 Parking.**

Notwithstanding parking requirements of Chapter 21.44, not fewer than two off-street parking spaces shall be provided for each residence. The required two spaces shall be covered by a garage or carport, and the driveway adequately paved with either concrete or asphalt cement prepared over adequate base.

5. *Carlsbad Municipal Code Section 21.10.030 is amended to read as follows:*

**21.10.030 Accessory dwelling units and junior accessory dwelling units.**

- A. Purpose. This section provides standards for the establishment of accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs). Pursuant to California Government Code Sections 65852.2 (effective Jan. 1, 2023) and 65852.22 (effective Jan. 1, 2023), local governments have the authority to adopt regulations designed to promote ADUs and JADUs.
- B. Standards of Review. Review of ADUs and JADUs shall be consistent with the following:

1. ADU or JADU applications shall be considered a ministerial action without discretionary review or a public hearing if all requirements of this section (21.10.030) are met, notwithstanding any other requirements of state law or this development code.
2. ADUs or JADUs developed within the coastal zone are subject to the permit requirements of Chapter 21.201 and require a building permit. Development of ADUs or JADUs outside of the coastal zone requires a building permit.
3. The city shall approve or deny an application to create an ADU or a JADU within the time period specified under California Government Code Sections 65852.2 (effective Jan. 1, 2023) and 65852.22 (effective Jan. 1, 2023).
4. The city shall not deny an application for a permit to create an ADU or a JADU due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the ADU as specified under California Government Code Sections 65852.2 (effective Jan. 1, 2023) and 65852.22 (effective Jan. 1, 2023).
5. If the city denies an application for an ADU or a JADU, the city shall supply in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant within the time period specified under California Government Code Section 65852.2 (effective Jan. 1, 2023) and 65852.22 (effective Jan. 1, 2023).
6. A demolition permit for a detached garage that is to be replaced with an accessory dwelling unit shall be reviewed with the application for the accessory dwelling unit and issued at the same time.
7. If the permit application to create an ADU or a JADU is submitted with a permit application to create a new one-family dwelling on the lot, the city may delay acting on the permit application for the ADU or the JADU until the city acts on the permit application to create the new one-family dwelling, but the application to create the ADU or JADU shall be considered without discretionary review or public hearing. If the applicant requests a delay, the time period specified under California Government Code Sections 65852.2 (effective Jan. 1, 2023) and 65852.22 (effective Jan. 1, 2023) shall be tolled for the period of the delay.

C. Residential Use and Density. ADUs and JADUs, which comply with the requirements of this section (21.10.030) and California Government Code Sections 65852.2 (effective Jan. 1, 2023) and 65852.22 (effective Jan. 1, 2023):

1. Shall be considered accessory residential uses or accessory residential buildings that are consistent with the general plan or zoning designations for the lot; and

2. Shall not be considered to exceed the allowable density for the lot upon which it is located; and

D. Number and Location.

1. ADUs shall be permitted in zones that allow one-family dwellings, two-family dwellings, multiple-family dwellings, and mixed-use (residential uses in combination with non-residential uses), provided there is an existing or proposed dwelling on the lot where the ADU is proposed, as specified in California Government Code Sections 65852.2 (effective Jan. 1, 2022) and 65852.22 (effective Jan. 1, 2023). Refer to a specific zone's Permitted Uses table within this Title.
2. For zones that allow one-family dwellings, one JADU shall be permitted with an associated existing or proposed one-family dwelling. Refer to a specific zone's Permitted Uses table within this Title.
3. The number and location of ADUs or JADUs on a lot shall be subject to California Government Code Sections 65852.2 (effective Jan. 1, 2023) and 65852.22 (effective Jan. 1, 2023).

E. Other Requirements and Standards. ADUs and JADUs shall comply with all the following requirements and standards:

1. ADUs and JADUs shall comply with the development requirements and standards of California Government Code Sections 65852.2 (effective Jan. 1, 2023) and 65852.22 (effective Jan. 1, 2023).
2. When not in conflict with California Government Code Sections 65852.2 (effective Jan. 1, 2023) and 65852.22 (effective Jan. 1, 2023) and the coastal resource and public access protection requirements of the certified local coastal program, ADUs and JADUs shall also comply with applicable development requirements and standards of this code.

The maximum size of an ADU or JADU shall be limited as follows, consistent with California Government Code Sections 65852.2 (effective Jan. 1, 2023) and 65852.22 (effective Jan. 1, 2023):

- a. Attached ADUs – 50% of the total floor area of the main dwelling or 1,200 square feet, whichever is less, but not less than 800 square feet;
- b. Detached ADUs – 1,200 square feet
- c. JADUs – 500 square feet
3. The maximum height of an ADU or JADU shall be limited as follows, consistent with California Government Code Sections 65852.2 (effective Jan. 1, 2023) and 65852.22 (effective Jan. 1, 2023):

- a. A detached ADU on a lot with an existing or proposed single-family, two-family or multiple-family dwelling unit shall be allowed a height up to 16 feet and one story.
  - b. A detached ADU on a lot with an existing or proposed single-family, two-family dwelling, or multiple-family dwelling unit that is within one-half of one mile walking distance of a major transit stop (Carlsbad Village Station or Poinsettia Station), shall be allowed a height up to 18 feet. An additional two feet in height (20 feet maximum) is allowed to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling.
  - c. A detached ADU on a lot with an existing or proposed two-family, multiple-family, multistory dwelling shall be allowed a height up to 18 feet.
  - d. An attached ADU is allowed a height up to 25 feet, or the height limits of the applicable zoning for the primary dwelling, but not to exceed two stories.
  - e. An ADU constructed above or below a detached garage shall be permitted and shall conform to the height limits applicable to the zone. Structures that contain an ADU located above or below a detached garage shall be limited to a maximum of two stories including the garage.
4. Roof decks shall not be permitted on detached ADUs.
  5. The construction of an ADU or JADU that is all new construction, or is a conversion of a portion or all of an existing structure, or expands the square footage of an existing structure, shall be consistent with all habitat preserve buffers, geologic stability setbacks, and visual resource protection policies in the certified local coastal program, habitat management plan, general plan, or geotechnical report, as applicable.
  6. On lots with one-family dwelling(s), the exterior roofing, trim, walls, windows and the color palette of the ADU or JADU shall incorporate the same features as the primary dwelling unit.
  7. On lots with two-family or multiple-family dwellings, the exterior roofing, trim, walls, windows and the color palette of the ADU addition shall incorporate the same features as the existing building that the ADU would be provided within. For detached ADUs, it shall be reflective of the nearest building as measured from the wall of the existing building to the nearest wall of the proposed unit.
  8. Parking.
    - a. An ADU shall provide off-street parking in compliance with Chapter 21.44 (Parking), unless it qualifies for an exemption as specified in California Government Code Section 65852.2 (effective Jan. 1, 2023).
    - b. No off-street parking is required for a JADU if it meets the requirements specified in California Government Code Section 65852.22 (effective Jan. 1, 2023).

- c. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, the loss of parking for the primary dwelling does not need to be replaced, except on lots located west of the rail corridor and on lots located east of the rail corridor and west of Interstate 5 between Avenida Encinas to the north and Batiquitos Lagoon to the south. In which case, the loss of parking for the primary dwelling shall be replaced subject to the parking requirements in Chapter 21.44 (Parking), except as follows:
  - i. The replacement parking spaces may be covered, uncovered, or tandem spaces, or provided by the use of mechanical automobile parking lifts (within a garage); and may be located in the front, side or rear yard, provided the parking area is an improved parking surface, such as paving, hardscape, decomposed granite, etc.
  - ii. The location of the replacement parking spaces shall be consistent with all habitat preserve buffers, geologic stability setbacks, and visual resource protection policies in the certified local coastal program.
- 9. ADUs intended to satisfy an inclusionary requirement shall comply with the requirements of Chapter 21.85, including, but not limited to, the applicable rental rates and income limit standards.
- 10. A Notice of Restriction shall be recorded on the property declaring that:
  - a. An ADU(s) or JADU shall not be used for short-term rentals of less than 30 days. This requirement does not apply to any unit that was issued a building permit prior to January 1, 2020.
  - b. The obligations and restrictions imposed on the approval of the ADU(s) per California Government Code Section 65852.2 (effective Jan. 1, 2023) or JADU per California Government Code Section 65852.22 (effective Jan. 1, 2023) are binding on all present and future property owners.
  - c. For a JADU, the property owner must reside in either the primary residence or the JADU. Sale of the JADU separate from the single-family residence is prohibited; said prohibition is binding on all present owners and future purchasers.
- 11. For ADUs permitted prior to January 1, 2020, the city may continue to enforce a requirement for owner-occupancy of the ADU or primary residence.
- 12. An ADU may be sold separately from the primary dwelling only in limited situations pursuant to California Government Code Section 65852.26 (effective Jan. 1, 2023).
- 6. *Carlsbad Municipal Code Section 21.38.025 is amended as shown below:*

**21.38.025 Accessory dwelling units.**

Accessory dwelling units or junior accessory dwelling units are permitted according to the provisions of Section 21.10.030.

7. *Carlsbad Municipal Code Section 21.45.090 Table F is amended as shown below:*

**21.45.090 Residential additions and accessory uses.**

**Table F  
Residential Additions and Accessory Uses to One-Family Dwellings and Twin-Homes on Small Lots**

<b>Addition/Accessory Use</b>	<b>Minimum Front Yard Setback</b>	<b>Minimum Side and Rear Yard Setbacks</b>
Attached/detached patio covers <sup>(2)</sup>	10 feet to posts (2-foot overhang permitted)	5 feet to posts (2-foot overhang permitted)
Non-habitable detached accessory buildings/structures (e.g., garages, workshops, decks over 30 inches in height) <sup>(1),(2),(3)</sup>	20 feet	5 feet
Habitable detached accessory buildings (i.e. guest houses and accessory dwelling units) <sup>(2), (3), (4),(5)</sup>	Same setbacks as required for the primary dwelling	
Additions to dwelling (attached)	Same setbacks as required for the dwelling	

**Notes:**

- (1) Maximum building height is 1 story and 14 feet with a 3:12 roof pitch or 10 feet with less than a 3:12 roof pitch.
- (2) Minimum 10-foot separation required between a habitable building and any other detached accessory building/structure.
- (3) Must be architecturally compatible with the existing structure.
- (4) Except as otherwise permitted for accessory dwelling units pursuant to Section 21.10.030.
- (5) Refer to California Government Code Section 65852.2 (effective Jan. 1, 2023) for front yard setback requirements for 800 sq. ft. maximum ADUs with four-foot side and rear yard setbacks and constructed in compliance with all other development standards.

**EFFECTIVE DATE OF THIS ORDINANCE APPLICABLE TO PROPERTIES OUTSIDE THE COASTAL ZONE:** This ordinance shall be effective thirty days after its adoption; and the City Clerk shall certify the adoption of this ordinance and cause the full text of the ordinance, or a summary of the ordinance prepared by the City Attorney to be published at least once in a newspaper of general circulation in the City of Carlsbad within fifteen days after its adoption.

**EFFECTIVE DATE OF THIS ORDINANCE APPLICABLE TO PROPERTIES INSIDE THE COASTAL ZONE:** This ordinance shall be effective thirty days after its adoption or upon Coastal Commission approval of

LCPA 2023-0017, whichever occurs later; and the City Clerk shall certify the adoption of this ordinance and cause the full text of the ordinance or a summary of the ordinance prepared by the City Attorney to be published at least once in a newspaper of general circulation in the City of Carlsbad within fifteen days after its adoption.

INTRODUCED AND FIRST READ at a Regular Meeting of the Carlsbad City Council on the 23rd day of May, 2023, and thereafter

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the 6th day of June, 2023, by the following vote, to wit:

AYES: Blackburn, Bhat-Patel, Acosta, Burkholder, Luna.

NAYS: None.

ABSTAIN: None.

ABSENT: None.

APPROVED AS TO FORM AND LEGALITY:

Cindie K. McMahon  
CINDIE K. McMAHON, City Attorney

[Signature]  
KEITH BLACKBURN, Mayor

[Signature]  
for SHERRY FREISINGER, City Clerk  
(SEAL)

