

## **ACCESSORY DWELLING UNIT ORDINANCE (2018-01 AND 2018-11)**

**SECTION TWO.** Title 30 (Zoning) of the Encinitas Municipal Code (EMC) shall be amended as follows.

Add new definition for “Accessory Dwelling Unit” in EMC Chapter 30.04 (Definitions):

ACCESSORY DWELLING UNIT shall mean an attached or a detached residential dwelling unit on the same lot as an existing dwelling unit zoned for single-family or multifamily 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 single-family dwelling is 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.

Add new EMC Section 30.48.040T:

### T. Accessory Dwelling Units, Attached and Detached

1. One attached or one detached accessory dwelling unit may be permitted in conjunction with an existing single-family residence or the construction of a new single-family residence on a lot zoned for single-family or multifamily use.
2. An accessory dwelling unit may be permitted on a lot where a junior accessory dwelling unit exists.
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 shall be compatible with the principal residence.
5. An accessory dwelling unit shall not be sold separately from the primary residence.
6. An accessory unit may be rented, but only with a rental agreement with terms greater than 30 days.
7. Except as provided herein, attached and detached accessory dwelling units shall comply with all local building and fire code requirements, as appropriate.
8. 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. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

10. An attached accessory dwelling unit shall have a separate exterior entry with no interior access to the primary dwelling unit.
11. 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. Setbacks for accessory units:
  - a. Except as provided herein, 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 accessory dwelling units shall comply with the setbacks established in Chapter 30.34 (Special Purpose Overlay Zones) of the Municipal Code.
  - c. Attached and detached accessory dwelling units shall have a setback of not less than five feet from side and rear property lines, except:
    - i. An accessory dwelling unit that is constructed above (may be cantilevered, or supported by posts, but not solid walls) an existing attached or detached garage shall have a setback of five 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.
    - ii. No setback shall be required for the conversion of existing space wholly within an existing primary residence or wholly within an existing accessory building to an accessory dwelling unit. 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.
    - 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 with the setbacks required for the primary dwelling unit as established by the underlying zoning designation.
13. Any accessory dwelling unit that is permitted or constructed in reliance on the setback relief provisions established for accessory dwelling units in Subsection 30.48.040T12 shall be:
  - a. Maintained as an accessory dwelling unit and shall not be converted to or used for any other purpose.
  - b. Shall be 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.

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 or less and where there is an existing single-family residence.

15. 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. 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.

16. 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.
  - b. For an accessory dwelling unit that is contained within the existing space of a single-family residence or accessory building, 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.
17. Applications for accessory dwelling units conforming to the requirements of this section shall be considered ministerially without discretionary review or a hearing, and the City shall approve or deny such applications within 120 calendar days after receiving the completed application.
18. Development Service Department fees for accessory dwelling units may be waived.
19. 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. The accessory dwelling unit shall not be sold separately from the primary dwelling unit.
  - b. The accessory unit may be rented, but only with rental agreements with terms greater than 30 days.
  - c. The accessory unit is limited to the size and attributes set forth by this Section.
  - d. 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.
20. 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 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 this ordinance 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.
- 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.