ORDINANCE NO. 2563

AN URGENCY ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER AUTHORIZING ACCESSORY DWELLING UNITS CONSISTENT WITH STATE LAW REQUIREMENTS

WHEREAS, effective January 1, 2020 multiple new housing bills relating to accessory dwelling units (ADUs) will become law, including AB 68, AB 881, SB 13, AB 587, and AB 670; and

WHEREAS, municipal regulations which are inconsistent with state law may be preempted effective January 1, 2020; and

WHEREAS, to preserve what limited authority the City has remaining to regulate ADUs, it is desirable that the City update its laws consistent with the law as it will be in effect January 1, 2020.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WESTMINSTER DOES ORDAIN AS FOLLOWS:

SECTION 1: General Plan Consistency. Pursuant to Section 17.620.030 of the Westminster Municipal Code, the Mayor and City Council approve a Zone Text Amendment (Case No. 2019-234) related to accessory dwelling units, based upon the following findings:

1. The proposed amendment ensures and maintains internal consistency with the goals, policies, and strategies of all elements of the General Plan and will not create any inconsistencies with this Title, in the case of a Zoning Code amendment;

The Zoning Text Amendment conforms to the City’s General Plan because it facilitates the construction of accessory dwelling units (subject to limitations in terms of size, height, location, design, and parking standards) as a source of housing consistent with goals and policies of the General Plan-Housing Element.

2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City;

The proposed amendment, consistent with Government Code Section 65852.2 and 65852.22, ensures the character of the City’s residential neighborhoods is preserved to the maximum extent possible. The new standards establish regulations upon height, size, location, and parking; which will ensure that accessory dwelling units will not create negative impacts and will be in harmony with the character of the community.

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3. The proposed amendment is in compliance with the provisions of CEQA.

Pursuant to the California Environmental Quality Act (CEQA) and the City's CEQA guidelines, the project has been determined to be exempt from CEQA per Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), which state the adoption of an ordinance regarding second dwelling units (accessory dwelling units) to implement the provision of Section 65852.2 of the Government Code are exempt from the requirements of CEQA.


**17.210.010 Residential Zoning District Land Uses and Permit Requirements**

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SECTION 3: Municipal Code Section 17.400.120. On January 1, 2020, Section 17.400.120 (Residential Uses--Single-Family Residential) of Chapter 17.400 (Standards for Specific Land Uses and Accessory Uses) of Title 17 of the Westminster Municipal Code is hereby amended as follows:

A. Purpose and Intent. The purpose of this Section is to provide general development standards for single-family residences in any residential district unless noted otherwise.

B. Development Standards. A single-family dwelling unit and any expansion of such unit shall comply with the following criteria. The Director may require recordation of a covenant stipulating the conditions of approval for any project approved hereunder, whenever, in the judgment of the Director, such a covenant is necessary to provide constructive notice to any successor in interest on the subject property as to the nature of the approval conferred hereunder.
1. The design of an addition shall be consistent with the design of the surrounding neighborhood and shall be compatible with the materials, color palette, architectural theme, and roof pitch of the existing dwelling unit.
2. Common interior access to all living, sleeping, eating, and food preparation areas shall be provided through common use areas or a common hallway, and the dwelling unit, including any additions, shall function as a single-family dwelling. No addition or modification to a single-family dwelling shall be permitted that facilitates subdividing the interior of the dwelling unit into separate areas that may be used as independent living space, or that subverts or violates the R1 zoning district regulations when a project is within an R1 district.
3. The second floor of the house shall not have a kitchen, a wet bar or the utilities available to facilitate the installation of kitchen facilities unless a second kitchen is approved pursuant to Section 17.400.135, Residential Uses—Accessory Dwelling Units.
4. Each single-family dwelling shall have no more than one kitchen unless a second kitchen is approved pursuant to Section 17.400.135, Residential Uses—Accessory Dwelling Units.
5. Three enclosed garage spaces with minimum interior dimensions of 10 feet by 20 feet each and 3 open parking spaces with minimum dimensions of 9 feet by 19 feet each shall be provided if a single-family dwelling has 5 or more bedrooms, or rooms which by the virtue of their design, location, and means of access within the dwelling can reasonably be used primarily for sleeping purposes without structural modifications.
6. An exterior door from a bedroom shall not be permitted except under the following conditions:
   a. Installation of the exterior bedroom door shall not facilitate subdivision of the interior of the dwelling unit into smaller, independent separate living or dwelling units.
   b. The door shall be decorative in nature and the area of the door shall be at least 50 percent translucent, such as a sliding glass door or French doors.
   c. The door shall provide access to an improved landscaped or recreational area, such as a garden, spa, or patio, in the rear or side yard. If the exterior bedroom door opens onto a side yard, the side yard shall have a minimum dimension of 10 feet.
7. If a wet bar is proposed, it shall be located in a common living space, such as a family room or living room, with open access to other areas of the home provided that the portion of the home containing the wet bar can comply with the standard outlined in Section 17.400.130.B.3.
8. Exterior stairs to the second floor or balcony of a single-family dwelling shall not be permitted except under the following conditions:
   a. Installation of the staircase shall not facilitate subdivision of the interior of the dwelling unit into smaller, independent living spaces or dwelling units including accessory dwelling units and junior accessory dwelling units.
b. The exterior door leading to the second-floor landing of the staircase shall be decorative in nature and the area of the door shall be at least 50 percent translucent, such as a sliding glass door or French doors.
c. The staircase shall provide access from the second floor to an improved landscaped or recreational area, such as a garden, spa, or patio.
d. The interior staircase of the dwelling shall be retained and shall be utilized as the primary means of access to the second floor of the dwelling.
e. A deed restriction stipulating compliance with the above conditions shall be recorded on property in all cases where a second floor exterior staircase is approved.

9. Each single-family dwelling shall provide an enclosed 2-car garage having a minimum interior dimension of 20 feet in width and 20 feet in depth, unless otherwise required by Section 17.400.120.B.4. A garage may have windows and may be finished with drywall provided that the garage shall not be used for habitable space and shall be available for storage of automobiles. The maximum size of a detached 2-car garage shall be 550 square feet, and the maximum size for a 3-car detached garage shall be 750 square feet. If the accessory dwelling unit’s required parking space will be provided in a garage, the garage space for that parking space is exempt from the total maximum. Detached garages exceeding the established maximum size and attached garages exceeding 800 square feet in area are subject to an Administrative Use Permit, Chapter 17.550.

SECTION 4: Municipal Code Section 17.400.135. On January 1, 2020 the text of Municipal Code Section 17.400.135, entitled “Residential Uses – Accessory Dwelling Units” is deleted and replaced with the following:

A. Accessory dwelling units and junior accessory dwelling units —Purpose, definitions, occupancy.

1. Purpose. The intent of this Section is to ensure that accessory dwelling units and junior accessory dwelling units remain as an accessory use to a single-family residence, and multi-family residences, that the parcels are organized to accommodate an accessory dwelling unit and/or junior accessory dwelling unit, and that such dwelling units do not adversely impact surrounding residents or the community.

2. Definitions. For purposes of this section 17.400.135:

a. The terms “accessory dwelling unit”, “public transit”, “passageway” and “tandem parking” all have the same meaning as that stated in Government Code section 65852.2 as that section may be amended time to time.

b. “Junior accessory dwelling unit” shall have same meaning as that stated in Government Code section 65852.22(h)(1) as that section may be amended time to time.
3. **Occupancy and Rental.** Except as otherwise provided by law, accessory dwelling units and junior accessory dwelling units may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence. Rental period shall not be less than 31 days.

**B. Accessory dwelling units—Development standards.** Except as otherwise provided below or in subsection C of this section, accessory dwelling units shall conform to the development standards of the underlying zone.

1. Legal lot/residence. An accessory dwelling unit shall only be allowed on a lot within the City that contains or will be developed with a legal, single-family or multiple-family residence on a lot.

2. Accessory dwelling units shall not have more than two bedrooms.

3. Newly constructed accessory dwelling units shall be located in line with, or behind the front-most building wall of the primary dwelling unit.

4. Size requirements. Except as otherwise provided in subsection C of this section, all accessory dwelling units shall not exceed the size standards listed below:

   a. Attached accessory dwelling units: The maximum floor area of an attached accessory dwelling unit shall be the higher of:

      i. 850 square feet for an accessory dwelling unit with 0-1 bedrooms or 1,000 square feet for an accessory dwelling unit with 2 bedrooms; or

      ii. If there is an existing primary single family dwelling, 50% of the square footage of the existing primary single family dwelling. For the purposes of this section, an existing primary single family dwelling means a dwelling for which proper permits have been issued and finalized at least two (2) years prior to submitting plans for an ADU application.

   b. Detached accessory dwelling units: 850 square feet for an accessory dwelling unit with 0-1 bedrooms or 1,000 square feet for an accessory dwelling unit with 2 bedrooms.

4. Setback requirements.

   a. No setbacks are required for: either (i) those portions of accessory dwelling units that are created by converting existing living area or existing accessory structures to new accessory dwelling units or (ii) constructing new accessory dwelling units in the same location and to the same dimensions as an existing structure.
b. For all other accessory dwelling units, there must be a minimum of four feet of setbacks from interior side and rear lot lines and comply with all applicable front and street side yard setbacks.

5. Number of accessory dwelling units per lot.

a. For lots with proposed or existing single-family residences, no more than one accessory dwelling unit and no more than one junior accessory dwelling unit may be on the lot.

b. For lots with existing multi-family residential dwellings:

i. No more than twenty-five percent (25%) of the number of the existing units, but at least one (1) unit, shall be permitted as accessory dwelling units constructed within the non-livable space (e.g., storage rooms, boiler rooms, hallways, attics, basements, or garages) of the existing multifamily dwelling structure provided that applicable building codes are met;

ii. No more than two detached accessory dwelling units, provided that no such unit shall be more than sixteen (16) feet in height, and each such unit complies with front yard and street side yard setbacks, and meets rear-yard and interior side yard setbacks of four feet. The maximum square footage of detached accessory dwelling units on lots with existing multi-family residential dwellings shall comply with the limits set forth in subsection B (or C, if applicable) of this section.

6. Building Code Compliance. All new accessory dwelling units must comply with Title 15 of the Municipal Code ("Buildings and Construction") and any other applicable provisions of the California Building Standards Code. However, fire sprinklers shall not be required if they are not required for the primary residence.

7. City/public utilities.

a. All accessory dwelling units and junior accessory dwelling units must be connected to public utilities, including water, electric, and sewer services. For example, dwelling units that are proposed to be installed on a property with only septic tanks are prohibited.

b. Except as provided in subsection c below, the City may require the installation of a new or separate utility connection between the accessory dwelling unit, junior accessory dwelling unit and the utility. The connection fee or capacity charge shall be proportionate to the
burden of the proposed accessory dwelling unit based on either its square feet or number of drainage fixture unit values.

c. No separate connection between the accessory dwelling unit and the utility shall be required for units created within a single-family dwelling, unless the accessory dwelling unit is being constructed in connection with a new single-family dwelling.

d. Regardless of where it is located, for the purposes of calculating utility connection fees or capacity charges, accessory dwelling units and junior accessory dwelling units shall not be considered a new residential use unless the unit was constructed with a new single-family dwelling.


a. In addition to the required parking for the primary unit, one parking space shall be provided unless the accessory dwelling unit has no bedrooms (e.g., a studio), in which case no parking space is required. The required parking space may be provided as:

i. Tandem parking on an existing driveway in a manner that does not encroach onto a public sidewalk and otherwise complies with city parking requirements; or

ii. Within a setback area or as tandem parking in locations determined feasible by the City for such use. Locations will be determined infeasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the City.

b. Notwithstanding the foregoing, no parking space shall be required for an accessory dwelling unit if:

i. It is located within one-half mile walking distance of public transit;

ii. It is located within an architecturally and historically significant district;

iii. It is part of a proposed or existing primary residence or accessory structure;

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

v. Where there is a car share vehicle located within one block of the accessory dwelling unit.
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 off-street parking spaces do not have to be replaced.

9. Recorded Covenants. Before obtaining a permit for an accessory dwelling unit, the property owner shall file with the county recorder a declaration or agreement of restrictions, which has been approved by the City attorney as to its form and content, describing restrictions that allow for and the continued use of the accessory dwelling as follows:

   a. the accessory dwelling unit shall not be sold separately from the primary residence;
   
   b. the accessory dwelling unit is restricted to the maximum size allowed per the development standards set forth in this section;
   
   c. the unit shall not be rented for periods of 30 days or shorter;
   
   d. the restrictions shall be binding upon any successor in ownership of the property, and lack of compliance shall result in legal action against the property owner for noncompliance with the requirements for an accessory dwelling unit.

10. Conversion of existing primary unit. An existing single-family dwelling may be converted to an accessory dwelling unit if it complies with all applicable requirements of this chapter when a new, larger primary residence is proposed to be constructed.

11. Design requirements for new units. All new accessory dwelling units must comply with the following design requirements:

   a. The exterior materials, colors, roof pitch and architecture shall be similar to and compatible with those of the primary unit(s)
   
   b. Accessory dwelling units shall not exceed the height of 16’ unless the units are within the existing space of a single-family dwelling, an accessory structure or multifamily dwelling structures.

12. Accessibility standards. New construction of any ground level accessory dwelling unit shall be designed and constructed to allow for disability/accessibility standards. Plans shall demonstrate future entrance capability and actual construction shall include adequate door and hallway widths, maneuvering space in kitchens and bathrooms, and structural reinforcements for grab bars.
13. Passageway. No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

14. Stairways. An accessory dwelling unit proposed within the second floor of an existing or proposed single-family dwelling shall not have exterior stairways.

15. Nonconforming. Accessory dwelling units and junior accessory dwelling units shall not be required to correct legal nonconforming zoning conditions as a pre-condition to obtaining authorization to construct.

C. Accessory Dwelling Unit and Junior Accessory Dwelling Unit Exceptions.

1. The following types of accessory dwelling units, shall be approved regardless of whether the proposed accessory dwelling unit meets the development standards for lot coverage, open space, and floor area ratio, contained in this Title.

   a. On lot with proposed or existing single-family dwelling, either:

      i. One accessory dwelling unit or one junior accessory dwelling unit per lot may be constructed within an existing or proposed single-family or accessory structure, including the construction of up to a one hundred fifty (150) square foot expansion beyond the same physical dimensions as the existing accessory structure to accommodate ingress and egress. The accessory dwelling unit or junior accessory dwelling unit must have exterior access and side and rear setbacks sufficient for fire safety. If the unit is a junior accessory dwelling unit, it must also comply with the requirements of subsection E below; or

      ii. One detached, new construction, accessory dwelling unit with setbacks of at least four feet from side and rear yards and in compliance with front yard and street side yard setbacks, no more than eight hundred (800) square feet floor area, and a height not exceeding sixteen (16) feet on a lot with an existing or proposed single family dwelling. A junior accessory dwelling unit may also be built within the existing or proposed single-family dwelling of such residence in connection with the accessory dwelling unit.

   b. On a lot with an existing multifamily dwelling:

      ii. Accessory dwelling units may be constructed within portions of dwellings that are not used as livable space within an existing
multi-family dwelling structure (i.e., storage rooms, boiler rooms, passageways, attics, basements, or garages), provided the spaces meet state building standards for dwellings. The number of interior accessory dwelling units permitted on the lot shall not exceed twenty-five percent (25%) of the current number of units of the multi-family complex on the lot and at least one such unit shall be allowed; and

ii. Up to two (2) detached accessory dwelling units may be constructed, provided they are no taller than sixteen (16) feet, and they have at least four (4) feet of side and rear yard setbacks not to exceed (800) square feet in floor area.

D. Accessory dwelling units—General plan consistency.

In adopting these standards, the City recognizes that the approval of dwelling units may, in some instances, result in dwelling densities exceeding the maximum densities prescribed by the general plan. The City finds that this occurrence is consistent with the general plan, as allowed under state planning and zoning law applicable to accessory dwelling units, and that the amendment furthers the goals, objectives, and policies of the general plan housing element.

E. Junior Accessory Dwelling Units.

1. Purposes: This section provides standards for the establishment of junior accessory dwelling units. Junior accessory dwelling units will typically be smaller than an accessory dwelling unit, will be constructed within the walls of an existing or proposed single family residence and requires owner occupancy in the single family residence where the unit is located.

2. Size: A junior accessory dwelling unit shall not exceed 500 square feet in size.

3. Owner Occupancy: The owner of a parcel proposed for a junior accessory dwelling unit shall occupy as a primary residence either the primary dwelling or the junior accessory dwelling. Owner-occupancy is not required if the owner is a governmental agency, land trust, or “housing organization” as that term is defined in Government Code Section 65589.5(k)(2), as that section may be amended from time to time.

4. Sale Prohibited: A junior accessory dwelling unit shall not be sold independently of the primary dwelling on the parcel.

5. Short term rentals: The junior accessory dwelling unit shall not be rented for periods of 30 days or less.
6. Location of Junior Accessory Dwelling Unit: A junior accessory dwelling unit shall be entirely within a single-family residence.

7. Kitchen Requirements: The junior accessory dwelling unit shall include an efficiency kitchen, including a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

8. Parking. No additional parking is required beyond that already required for the primary dwelling.

9. Fire Protection; Utility Service. For the purposes of any fire or life protection ordinance or regulation or for the purposes of providing service for water, sewer, or power, a junior accessory dwelling unit shall not be considered a separate or new unit, unless the junior accessory dwelling unit was constructed in conjunction with a new single-family dwelling. No separate connection between the junior accessory dwelling unit and the utility shall be required for units created within a single-family dwelling, unless the junior accessory dwelling unit is being constructed in connection with a new single-family dwelling.

10. Deed Restriction. Prior to the issuance of a building permit for a junior accessory dwelling unit, the owner shall record a deed restriction in a form approved by the city that includes a prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, requires owner-occupancy consistent with subsection (3) above, does not permit rentals for periods 30 days or shorter, and restricts the size and attributes of the junior dwelling unit to those that conform with this section.

SECTION 5: Municipal Code Section 17.515.010. Section 17.515.010 (Applicability) of Chapter 17.515 (Zoning Clearance) of Title 17 of the Westminster Municipal Code is hereby amended as follows:

17.515.010 Applicability

A. General Applicability. Zoning Clearance shall be required in conjunction with Division review of any building or grading permit, business tax certificate (business license), or other authorization required by the WMC or this Title or for any new use or change of use. Where no other authorization is required, (e.g., Building Permit) Zoning Clearance shall be obtained from the Division before the commencement of any business or land use activity. The Director has the discretion on a case-by-case basis to determine that an application is subject to Development Review and require noticing and/or defer the action to the Commission based on criteria including traffic, parking demand, building shade, shadow, scale, design and other potential impacts.
B Accessory Dwelling Units and Junior Accessory Dwelling Units. Any application for an accessory dwelling unit or junior accessory dwelling unit that meets the development standards contained in Sections B or E of this section, or is the type of accessory dwelling unit described in Subsection C of Section 17.400.135, shall be approved ministerially.

SECTION 6: Municipal Code Section 17.520.010. Subsection C of Section 17.520.010 (Applicability) of Chapter 17.520 (Development Review) of Title 17 of the Westminster Municipal Code is hereby amended as follows:

17.520.010 Applicability

C. Exempt from Development Review. The following projects are exempt from Development Review but are subject to Zoning Clearance except subsection (3):

1. Any construction, addition, or alteration to an individual single-family or two-family dwelling or appurtenant structure, or 2 single-family dwellings on a single parcel or an accessory dwelling unit or junior accessory dwelling unit.

SECTION 7: Municipal Code Section 17.700.010. The definition of “accessory dwelling unit” in Section 17.700.010 (Definitions of Specialized Terms and Phrases) of Chapter 17.700 (Definitions of Specialized Terms) of Title 17 of the Westminster Municipal Code is hereby amended as follows:

17.700.010 Definitions of Specialized Terms and Phrases

Accessory Dwelling Unit. See Government Code section 65852.2.

SECTION 8: Urgency. Effective January 1, 2020 multiple new housing bills relating to accessory dwelling units (ADUs) will become law, including AB 68, AB 881, SB 13, AB 587, and AB 670. Subsection (a)(4) of Government Code 65852.2 will state in part, “if a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void...” If the City is unable to enforce its design standards, or otherwise approve ADUs in a manner consistent with state law effective January 1, 2020, the City could be required to approve ADUs that are directly inconsistent with the development standards that apply throughout the City, or could be subject to litigation. The City desires to allow the public to know the processes that will apply to proposed ADUs effective January 1, 2020, and absent an urgency ordinance, the ordinance could not be in effect by January 1, 2020. For these reasons, this ordinance is necessary for the immediate preservation of the public peace, health and safety.

SECTION 9: Compliance with CEQA. Adoption of this Ordinance is exempt from the California Environmental Quality Act (“CEQA”) under Public Resources Code § 21080.17 [statutory exemption for second unit ordinances]; CEQA Guidelines
§§ 15282(h) [statutory exemption for second unit ordinances]; 15303 [new construction or small structures] and 15305 [minor alterations to land]. This ordinance is also exempt under CEQA Guidelines section 15061, because this ordinance will not have a significant effect on the environment, because ADUs will largely constitute infill housing which is exempt from CEQA.

SECTION 10: Inconsistencies. Any provision of this ordinance which is inconsistent with state law shall be interpreted in a manner to be consistent with state law. If any provision of the Westminster Municipal Code or appends thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 11: Severability. If any section, subsection, 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 this Ordinance. The City Council of the City of Westminster hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 12: Effective Date. Consistent with its authority to adopt an urgency ordinance pursuant to Government Code 36934 and 36937, this Ordinance shall take effect immediately.

SECTION 13: Certification. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted in the manner required by law.

SECTION 14: Transmit Ordinance to HCD. The City Clerk is directed to send a copy of this ordinance to the Department of Housing and Community Development within 60 days of the adoption of this ordinance.

PASSED, APPROVED AND ADOPTED this 18th day of December 2019 by the following vote:

AYES: COUNCIL MEMBERS: TA, HO, DO, NGUYEN
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: CONTRERAS

TRI TA, MAYOR

2563-13
STATE OF CALIFORNIA  
COUNTY OF ORANGE    ) ss.  
CITY OF WESTMINSTER )

I, CHRISTINE CORDON, City Clerk of Westminster, do hereby certify that the foregoing ordinance was introduced and adopted at a regular meeting on the 18th day of December 2019, and was published/posted pursuant to law.

Christine Cordon  
City Clerk