

# Newport Hills Community Association

## Architectural Review Policy for Accessory Dwelling Units and Junior Accessory Dwelling Units

[Proposed]

### I. INTRODUCTION

Newport Hills Community Association (“Association”) recognizes the benefits of providing affordable housing options, and is committed to working with Owners<sup>1</sup> interested in installing Accessory Dwelling Units (“ADU”) or Junior Accessory Dwelling Units (“Junior-ADU”) on the Owner’s Lot.

The Association recognizes that in order to fulfill its responsibilities, it must impose reasonable restrictions on installations of ADUs and Junior-ADUs. On January 1, 2020, California Civil Code section 4751 went into effect voiding any provision in a planned development’s governing documents that prevented or unreasonably restricted members from constructing additional housing on their lots. In furtherance of California’s recent emphasis on additional housing within common interest developments, and pursuant to Civil Code section 4340 et seq. and the authority previously stated, Association has adopted this *Architectural Review Policy for Accessory Dwelling Units and Junior Accessory Dwelling Units* (“Policy”), which places reasonable restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct, an ADU or Junior-ADU. This Policy is based on, and designed to comply with, California Civil Code § 4751, effective January 1, 2020, and as they may be amended from time to time.

This Policy binds all members/owners and their families, grantees, lessees, tenants, occupants, guests, invitees, successors, heirs and assigns. In addition, this Policy ensures that a uniform and reasonably high standard of attractiveness is maintained within the community, and that the Association is able to continue to meet its obligations to the other Owners and residents of the community. This Policy is designed to aid Owners in designing and constructing an ADU or Junior-ADU within Association expectations, thereby minimizing the time for review and approval by the Association’s Board of Directors (“Board”). Interpretation, variances, and implementation of the Amended and Restated Declaration of Covenants Conditions and Restrictions and Reservation of Easements for Newport Hills (Tract No. 7027) (“CC&Rs”), Amended and Restated Bylaws of Newport Hills Community Association, Newport Hills Architectural and Landscape

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<sup>1</sup> All capitalized terms not defined herein shall have the meaning as described in the Association’s Amended and Restated Declaration of Covenants Conditions and Restrictions and Reservation of Easements for Newport Hills (Tract No. 7027).

Standards, and other rules and policies of the Association (collectively “Governing Documents”) are at the sole determination of the Board.

The Association’s Policy is intended to balance the public policy interests in providing affordable housing with the expectations of members who both contracted to purchase property and invested significant funds in a planned development. Association’s policy includes definitions, the application process, construction standards, inspection procedures, applicable restrictions, and the requirement for the execution of a Maintenance Agreement Affecting Real Property. The Policy places reasonable restrictions on the construction of an ADU or Junior-ADU that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct a dwelling unit. In addition, this Policy ensures that the Association is able to satisfy the requirements of the Governing Documents as well as maintain a uniform and reasonably high standard of attractiveness within the community.

## **II. DEFINITIONS**

2.1 An Accessory Dwelling Unit, as set forth in California Government Code section 65852.2 and meeting the requirements therein, is a separate living unit on a lot. It can either be detached or contained within the walls of the house on the lot. An ADU may not exceed 50 percent of the existing primary dwelling living area if attached to the existing primary dwelling area, or 1,200 square feet in size for a detached ADU. To be considered an ADU it must provide 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.

2.2 A Junior Accessory Dwelling Unit, as set forth in California Government Code section 65852.22 and meeting the requirements therein, means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A Junior-ADU may include separate sanitation facilities or may share sanitation facilities with the existing structure. A Junior-ADU must include a separate entrance from the main entrance to the home and must include an efficiency kitchen containing a sink with a maximum waste line diameter of 1.5 inches, a cooking facility with appliances that do not require electrical service greater than 120 volts, and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the Junior-ADU.

## **III. APPLICATION FOR CONSTRUCTION OF AN ACCESSORY DWELLING UNIT OR JUNIOR ACCESSORY DWELLING UNIT**

3.1 No member/owner (“Applicant”) shall proceed with the construction of an ADU or Junior-ADU, or any related improvement or infrastructure until the Applicant has obtained a permitted set of design and construction drawings, fully completed an architectural application on a specific form approved by the Board and provided by management, notified Applicant’s adjacent neighbors on a specific form approved by the Board and provided by management, and obtained the written approval of the Board of Directors. An Applicant who commences construction

without written approval shall be solely responsible for all costs incurred to remove, relocate, or modify the ADU or Junior-ADU. Unauthorized activity may or will, in the sole determination of the Board, subject the Applicant to discipline in accordance with the Governing Documents.

3.2 The Application shall specifically state (a) the square footage of the existing residence on the lot, (b) the number of parking spaces currently existing on the lot, (c) whether the proposed unit is an ADU or Junior-ADU, (d) whether the proposed unit is attached or detached from the existing residence, (e) the square footage of the proposed unit, (f) the number of bedrooms in the proposed unit, and (g) whether any additional parking spaces will be created during the construction of the proposed improvements and how many.

3.3 The Application shall include a site plan prepared and executed by a licensed architect, engineer, or design/build firm that accurately depicts all structures on the lot including but not limited to the proposed unit, set-back footage, changes to existing drainage, changes to existing grading, exterior HVAC equipment, parking areas, and any other exterior improvements.

3.4 The Application shall include a permitted set of plans prepared and executed by a licensed architect, engineer, and/or design build firm that includes elevation drawings; design of exterior cladding, roofing, and decking systems; structural drawings; and landscaping drawings. It shall be the Applicant's sole obligation to obtain any and all required permits, licenses, and approvals of any government agency, and such permits licenses, and approvals shall be a mandatory prerequisite to obtaining approval by the Board.

3.5 The Application shall include specifications setting forth the specific exterior products, materials, style, and colors.

3.6 The Application shall include acknowledgement forms from each adjacent neighbor setting forth the neighbor's approval of the unit or the specific reasons for neighbors' concern regarding construction of the unit.

3.7 The Application shall include the Review Deposit and Construction Deposit associated with the Type of Application "2. Additions & Major Remodels", the specific Review Deposit and Construction Deposit for which are included on the attached Newport Hills Community Association Fee Schedule.

3.8 The Board shall have forty-five days to review and approve or reject the application. If the application does not include all information required by this policy, it will be rejected by the Board.

3.9 The Board's review and response shall not in any way be interpreted as confirmation that the submitted plans or specifications complies with any applicable codes or with authority having jurisdiction. Rather, the Board is reviewing the documents to determine whether the design and construction is consistent with the standards in the community. The Board shall have the right to

deny an application based solely on aesthetics or for any other criteria. The Board's denial shall specifically set forth any matter resulting in the denial.

3.10 If the Board rejects an architectural application for any reason, the Applicant may resubmit the application once the reason(s) for the prior denial have been addressed.

3.11 Once the application has been approved, the Applicant has sixty (60) days to provide Association with (a) copies of any contracts entered into to complete construction of the improvements, and (b) certificates of insurance from each contractor demonstrating that the Association, the managing agent, and the Applicant have been named as additional insureds on each necessary policy of insurance.

#### **IV. CONSTRUCTION STANDARDS**

4.1 Applicant shall complete the construction of the ADU or Junior-ADU in strict compliance with the submitted and approved plans and specifications.

4.2 The design and construction shall be consistent with the architecture of the existing residence in terms of color, materials, and style. Exterior cladding shall be similar or the same as the existing residence. Roofing and windows shall be similar or the same as the existing residence.

4.3 Applicant's construction shall not negatively impact any sewer, drain, or water lines, nor shall it cause damage to any adjacent structure or improvement.

4.4 Only properly licensed and insured contractors shall be used for the construction of the ADU or Junior-ADU. Contractors shall maintain policies of insurance for public liability, workers compensation, and property damage insurance which does not contain any exclusions for work performed at community associations. The Association, the Association's managing agent, and the Applicant shall be named as additional insureds on the contractors' policy of insurance.

4.5 The timely disposal or removal of unused construction materials shall be the responsibility of the Applicant and at the Applicant's sole cost.

#### **V. INSPECTION**

5.1 Owner shall notify the Association in writing within thirty (30) days of completion of construction. Applicant's failure to notify the Association of completion shall constitute an architectural violation for which discipline may be imposed.

5.2 Within forty-five (45) days of receipt of the notice of completion, Association may retain a qualified architect or contractor, at Applicant's expense, and inspect the ADU or Junior-ADU to ensure visual compliance with the approved plans or specifications. If the construction is in compliance, then the Association shall notify the Applicant of the same.

5.3 If the construction is not in compliance, then the Association may work with the Applicant to bring the ADU or Junior-ADU into compliance with the plans and specifications. If the Association and Applicant are unable to informally resolve any matters, the Association may initiate disciplinary proceedings, including but not limited to the filing of a legal action in superior court.

## **VI. MAINTENANCE**

6.1 Applicant shall be responsible for all maintenance, repair, replacement and costs for the same associated with the construction and use of ADUs and Junior-ADUs wherever located.

6.2 Association and Applicant shall enter into a Maintenance Agreement Affecting Real Property that shall set forth (a) the Applicant's responsibility for the maintenance, repair, and replacement of the ADU and/or Junior-ADU, and (b) the Applicant's responsibility to defend, indemnify, and hold harmless the Association for any and all loss or damage caused by the construction, installation, maintenance, or use of the ADU and/or Junior-ADU. Applicant shall be responsible for the payment of legal fees for the drafting of said Agreement and the recording of the document in the County Recorder's Office.

## **VII. USE OF ADUs AND Junior-ADUs**

7.1 An ADU or Junior-ADU may not be transferred separate and apart from the Lot upon which it is located and vice versa.

7.2 All Owners, guests, tenants, invitees, family, and others residing in an ADU and/or Junior-ADU must at all times comply with the Association's Governing Documents.

7.3 ADUs and Junior-ADUs shall not be used for short term rental purposes of less than thirty (30) days, nor shall the housing be used for transient hotel purposes.

7.4 A Junior-ADU may only be constructed and maintained on a Lot which is occupied by the Owner of said Lot as their primary residence.