ORDINANCE NO. 2023-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA MESA ADOPTING AMENDMENTS TO TITLE 24 (ZONING) OF THE LA MESA MUNICIPAL CODE FOR THE DEVELOPMENT OF ACCESSORY DWELLING UNITS (ADUs) IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTIONS 65852.2, 65852.23, and 65852.26 AND HEALTH AND SAFETY CODE SECTION 17980.12

WHEREAS, housing in California is becoming increasingly unaffordable, and the availability of housing is a substantial concern for individuals of all demographics, ages, and income groups in communities throughout the City of La Mesa (City);

WHEREAS, the state is falling far short of meeting current and future housing demand and the housing affordability crisis threatens the public health, safety, and/or welfare of our citizenry;

WHEREAS, accessory dwelling units are additional living quarters that are independent of the primary dwelling unit that may be either attached or detached and provide complete independent living facilities, including facilities for living, sleeping, eating, cooking, and sanitation;

WHEREAS, alternative housing models such as accessory dwelling units contribute to addressing housing supply and affordability;

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 65852.150(b) of the California Government Code provides that the Legislature's intent is that local agencies adopt an ordinance relating to matters including unit size, parking, fees, and other requirements, that are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance;

WHEREAS, the State of California has pursued and enacted various legislation since 2017 regarding the development of accessory dwelling units (ADUs), intended to further address barriers to accessory dwelling unit construction, which the Legislature has determined is a common-sense, cost effective approach to accommodate future growth and to encourage infill development in developed neighborhoods;

WHEREAS, in September 2021, the State of California enacted Assembly Bill 345, which requires cities to allow the separate sale or conveyance of certain ADUs that satisfy the conditions set forth in Government Code section 65852.26, including, among other things, that the ADU or the primary dwelling was constructed by a qualified nonprofit and the ADU is sold to a qualified low-income buyer;

WHEREAS, in September 2022, the State of California enacted Assembly Bill 2221 and Senate Bill 897 ("AB 2221" and "SB 897," respectively), which collectively imposed further restrictions on local authority to regulate ADUs and JADUs, including with respect to height limits, setbacks, application review and denial procedures, unpermitted structures, and JADU configurations;

WHEREAS, the City Council seeks to implement the State legislation through adoption of local regulations for the development of accessory dwelling units, as provided by California Government Code Section 65852.2(a), to provide increased affordable housing options and to further the public health, safety, and welfare;

WHEREAS, pursuant to Section 65852.2 et seq. of the California Government Code, accessory dwelling units are a residential use consistent with the existing General Plan and zoning designation for the lot, and accessory dwelling units do not exceed the allowable density for the lot on which the accessory unit is located;

WHEREAS, the City desires to clearly communicate to the residents and citizens and business community how the City intends to implement Section 65852.2 of the California Government Code;

WHEREAS, the Planning Commission conducted a public hearing on December 21, 2022, regarding the herein proposed amendments to Title 24 (Zoning) of the La Mesa Municipal Code (Project 2022-2565), considered all evidence, including testimony and the evaluation and recommendation by staff, presented at said hearing;

WHEREAS, the Planning Commission adopted Resolution No. PC-2022-12 recommending that the City Council adopt an ordinance amending Title 24 (Zoning) of the La Mesa Municipal Code for the development of accessory dwelling units and junior accessory dwelling units;

WHEREAS, the City Council conducted a public hearing on February 28, 2023, regarding the herein proposed amendments to Title 24 (Zoning) of the La Mesa Municipal Code, considered all evidence, including testimony and the evaluation and recommendation by staff, presented at said hearing;

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

WHEREAS, this Ordinance is enacted pursuant to the powers vested in the City pursuant to Article XI, Sections 5 and 7, of the California Constitution; and

WHEREAS, the California Environmental Quality Act (CEQA) does not apply to the City's adoption of an ordinance to implement Government Code Section 65852.2 regarding accessory dwelling units pursuant to Public Resources Code Section 21080.17.

NOW, THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the Council of the City of La Mesa, California as follows:

SECTION 1: The City Council finds and determines the following:

A. That the foregoing recitals are true and correct and an integral part of the City

Council's decision, and hereby adopts such recitals as findings.

B. That the regulations proposed herein are consistent with California Government Code Section 65852.2.

C. That this action is exempt from CEQA pursuant to Public Resources Code Section 21080.17.

SECTION 2: Title 24 (Zoning) of the La Mesa Municipal Code (LMMC) is hereby amended as follows, additions are shown as underline and deletions are shown as strikethrough:

A. Amend accessory dwelling unit parking requirement in LMMC Section 24.04.050A(8):

"8. Accessory dwelling unit — No parking spaces required (See Municipal Code Section 24.05.020D8(~~e~~f))"

B. Delete existing LMMC Section 24.05.020D8:

~~8. Accessory dwelling units, attached and detached.~~

~~a. One attached or one detached accessory dwelling unit may be permitted in conjunction with an existing or proposed single-family residence on lots zoned for single-family or multifamily residential use.~~

~~b. The greater of one accessory dwelling unit or accessory dwelling units totaling not more than twenty-five percent of the existing dwelling units in a multifamily dwelling structure may be permitted on lots with existing multifamily dwelling structures in any residential or mixed-use zone. Such accessory dwelling units must be within existing portions of the existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, provided each unit complies with state building standards for dwellings.~~

~~c. Not more than two detached accessory dwelling units not exceeding sixteen feet in height may be permitted on a lot with an existing multifamily dwelling in any residential or mixed-use zone.~~

~~d. An accessory dwelling unit may be permitted on the same lot as a junior accessory dwelling unit.~~

~~e. An accessory dwelling unit shall not be sold or otherwise conveyed separately from the primary residence, but may be rented, except as provided in Section 24.05.020D8(bb).~~

~~f. The rental of an accessory dwelling unit created under Section 24.05.020D8b or c shall be for terms longer than thirty days.~~

~~g. Except as provided herein, attached and detached accessory dwelling units shall comply with the development standards of the underlying zone and/or overlay zone, and all other ordinances, regulations, and policies, applicable to the development of residential dwelling units.~~

~~h. Except as provided herein, attached and detached accessory dwelling units shall comply with all local building and fire code requirements, as appropriate.~~

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

j. Projects solely proposing the development of an accessory dwelling unit shall be exempt from public right-of-way dedication and improvement requirements.

k. The floor area of an attached or detached accessory dwelling unit shall not exceed one thousand two hundred square feet.

l. Setbacks for accessory dwelling units:

i. Except as provided herein, attached and detached accessory dwelling units shall comply with the setbacks required for the primary dwelling as established by the underlying zoning designation or overlay zone, as applicable.

ii. Notwithstanding the setbacks established by the underlying zoning designation or overlay zone, attached or detached accessory dwelling units shall have a setback of not less than four feet from side and rear property lines, or from the interior edge of adjacent access easements, whichever is more restrictive, except where the underlying zoning allows a lesser setback. Any accessory dwelling unit that is created by new construction, including additions to existing structures, that does not comply with the setbacks established by the underlying zoning designation or overlay zone shall be:

(1) Maintained as an accessory dwelling unit and shall not be converted to or used for any other purpose without express authorization of the city.

(2) Limited to a height of one story and sixteen feet.

iii. Notwithstanding any other setback requirement, no setback shall be required for the conversion of existing space wholly within an existing primary single-family residence, or an existing garage or accessory structure that are accessory to a single-family residence, to an accessory dwelling unit, provided that setbacks are sufficient for fire safety as determined by the fire marshal or the building official.

iv. Notwithstanding any other setback requirement, an existing garage or accessory structure located on the same lot as a single-family residence may be replaced with an accessory dwelling unit in compliance with this section in the same location and to the same physical dimension as the existing accessory structure to be replaced, provided that setbacks are sufficient for fire safety as determined by the fire marshal or the building official. The area of the existing accessory structure, or the replacement structure, may be increased by not more than one hundred fifty square feet solely for the purpose of accommodating ingress and egress provided that the new construction for the expansion complies with setback requirements and the area of the accessory dwelling unit plus the area of expansion does not exceed the limits on total living area allowed for an accessory dwelling unit.

v. Building appendages for accessory dwelling units shall comply with Municipal Code Section 24.05.030G.

m. An additional five percent of lot coverage above that established for the underlying zoning designation shall be allowed for accessory dwelling units only for lots of ten thousand square feet or less and where there is an existing single-family residence.

n. No lot coverage limitation, minimum open space requirement, or minimum lot size requirement shall preclude the development of an accessory dwelling unit that is at least eight hundred square feet in area with side and rear setbacks of not less than four feet, provided that all other development standards are met.

o. Parking

i. New or additional parking spaces shall not be required for the creation of accessory dwelling units.

ii. Where provided, parking spaces for accessory dwelling units shall comply with Chapter 24.04 (Parking) of the Municipal Code, including, but not limited to, the design requirements of the Parking Standards adopted by city council resolution no. 17128, or as those standards may be amended or modified by city council action.

iii. 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, any required parking spaces removed shall not be required to be replaced.

p. No impact fees shall be imposed for an accessory dwelling unit that is less than seven hundred fifty square feet in area. Any impact fees charged for an accessory dwelling unit that is seven hundred fifty square feet in area or greater shall be assessed proportionately in relation to the square footage of the primary dwelling unit. "Impact fee" as used herein does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

q. Utilities

i. 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, except that an accessory dwelling unit proposed to be constructed with a new single-family residence may be considered a new residential use for the purposes of calculations connection fees or capacity charges.

ii. For an accessory dwelling unit that is contained wholly within the space of an existing or proposed single-family residence or an existing accessory structure, plus any expansion of the accessory structure as allowed by Section 24.05.020D8l(iv), 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, unless the accessory dwelling unit is proposed to be constructed with a new single-family residence.

iii. For an accessory dwelling unit that does not meet the criteria of Municipal Code Section 24.05.020D8q(ii) and where the physical characteristics of the lot on which the accessory dwelling unit is proposed preclude connection to the existing utility connection of the primary dwelling, a new or separate connection directly to the utility shall be required and related connection fees and capacity charges shall be imposed.

iv. For attached or detached accessory dwelling units constructed on the same lot as an existing multifamily dwelling structure as described in Section

24.05.020D8b and c, a new or separate utility connection may be required between the accessory dwelling unit and the utility. The connection may be subject to a connection fee and/or capacity charge.

v. Connection fees and capacity charges shall be imposed for accessory dwelling unit projects that voluntarily propose a new or separate connection directly between the accessory dwelling unit and the utility.

vi. When connection fees and/or capacity charges are imposed, the fee and/or charge shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its area or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code, upon the water or sewer system. The fee and/or charge shall not exceed the reasonable cost of providing this service.

vii. 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.

r. Historical sites and districts.

i. An accessory dwelling unit may be allowed on designated historical sites and within historical districts provided that the location and design of the accessory dwelling unit meets corresponding historical preservation requirements in place at the time the accessory second dwelling unit is built and complies with the requirement of this section.

ii. Detached accessory dwelling units shall be located behind the primary residence and/or historic structure.

iii. The construction of the accessory dwelling unit shall not result in the removal of any other historically significant accessory structure, such as garages, outbuildings, stables or other similar structures.

iv. The accessory dwelling unit shall be designed in substantially the same architectural style and finished materials composition as the primary residence or historic structure.

v. Construction of an accessory dwelling unit shall not result in demolition, alteration or movement of the primary residence/historic house and any other on-site features that convey the historic significance of the house and site.

vi. If the historic house/site is under a Mills Act contract with the City, the contract shall be amended, as needed, to authorize the introduction of the accessory dwelling unit on the site.

s. 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 sixty calendar days after receiving the application, if there is an existing single-family or multifamily dwelling on the lot. If a permit application for an accessory dwelling unit is submitted with an application for a new single-family dwelling on the same lot, the action on the accessory dwelling unit shall be delayed until the City acts on the permit application for the single-family residence. If the applicant requests a delay, the sixty-day time period shall be extended for the period of the delay.

t. A certificate of occupancy for an accessory dwelling unit shall not be issued before issuance of a certificate of occupancy for the primary dwelling.

u. The requirements of Municipal Code Chapter 24.09, Scenic Preservation Overlay Zone, shall apply to the development of accessory dwelling units, except that planning commission review shall not be required for a project that solely proposes an accessory dwelling unit.

v. Projects proposing solely the development of an accessory dwelling unit shall not be subject to the requirements of Municipal Code Chapter 24.11, Urban Design Overlay Zone, or the requirements of the Urban Design Program.

w. The requirements of Municipal Code Chapter 24.13, Hillside Overlay Zone, shall apply to the development of accessory dwelling units, except that planning commission review shall not be required for a project that solely proposes an accessory dwelling unit.

x. Within the Bowling Green Overlay Zone, any tree that was required to be planted pursuant to Municipal Code Section 24.17.030D that is disturbed by a project to construct an accessory dwelling unit shall be preserved in place, or replaced in kind on the subject property if disturbed by the project.

y. Accessory dwelling units shall not be considered in the application of any ordinance, policy, or program to limit residential growth.

z. The correction of nonconforming zoning conditions shall not be required as a condition for approval of a permit application for the creation of an accessory dwelling unit.

aa. At the request of the owner of an accessory dwelling unit, enforcement of state building standards related to the accessory dwelling unit shall be delayed, subject to compliance with Section 17980.12 of the Health and Safety Code, provided that the accessory dwelling unit was built prior to January 1, 2020.

bb. An accessory dwelling unit may be conveyed separately from the primary residence provided that all of the following apply:

i. The property was built or developed by a qualified nonprofit corporation.

ii. There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

iii. The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

(1) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.

(2) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property.

(3) A requirement that the qualified buyer occupy the property as the buyer's principal residence.

~~(4) Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing for forty-five years for owner-occupied housing units and will be sold or resold to a qualified buyer.~~

~~iv. A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the Office of the San Diego County Recorder. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.~~

~~v. Notwithstanding Section 24.05.020D8q, if requested by a utility providing service to the primary residence, the accessory dwelling unit shall have a separate water, sewer, or electrical connection to that utility.~~

~~vi. For purposes of this section, the following definitions apply:~~

~~(1) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.~~

~~(2) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.~~

~~cc. For the purposes of this section, the following definitions apply:~~

~~i. "Accessory dwelling unit" shall be as defined in Municipal Code Section 24.01.100.~~

~~ii. "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 structure.~~

~~iii. "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.~~

~~iv. "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.~~

~~v. "Public transit" shall mean a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.~~

C. Add new LMMC Section 24.05.020D8:

"8. Accessory dwelling units, attached and detached.

a. Development and use standards

i. One attached or one detached accessory dwelling unit may be permitted in conjunction with an existing or proposed dwelling on lots zoned for single-family or multifamily residential use.

ii. The floor area of an attached or detached accessory dwelling unit shall not exceed one thousand two hundred square feet.

iii. An additional five percent of lot coverage above that established for the underlying zoning designation shall be allowed for accessory dwelling units only for lots of ten thousand square feet or less and where there is an existing single-family residence.

iv. An accessory dwelling unit may be permitted on the same lot as a junior accessory dwelling unit.

v. Except as provided herein, attached and detached accessory dwelling units shall comply with the development standards of the underlying zone and/or overlay zone, and all other ordinances, regulations, and policies, applicable to the development of residential dwelling units.

vi. No lot coverage limitation, front setback, minimum open space requirement, or minimum lot size requirement shall preclude the development of an accessory dwelling unit that is at least eight hundred square feet in area with side and rear setbacks of not less than four feet, provided that all other development standards are met.

vii. Except as provided herein, attached and detached accessory dwelling units shall comply with all local building and fire code requirements, as appropriate.

viii. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

ix. Projects solely proposing the development of an accessory dwelling unit shall be exempt from public right-of-way dedication and improvement requirements.

b. Setbacks for accessory dwelling units

i. Except as provided herein, attached and detached accessory dwelling units shall comply with the setbacks required for the primary dwelling as established by the underlying zoning designation or overlay zone, as applicable.

ii. Notwithstanding the setbacks established by the underlying zoning designation or overlay zone, attached or detached accessory dwelling units shall have a setback of not less than four feet from side and rear property lines, or from the interior edge of adjacent access easements, whichever is more restrictive, except where the underlying zoning allows a lesser setback.

iii. Any accessory dwelling unit that is created by new construction, including additions to existing structures, that does not comply with the setbacks established by the underlying zoning designation or overlay zone shall be maintained as an accessory dwelling unit and shall not be converted to or used for any other purpose without express authorization of the city.

iv. Building appendages for accessory dwelling units shall comply with Municipal Code Section 24.05.030G.

c. Historical sites and districts

i. An accessory dwelling unit may be allowed on designated historical sites and within historical districts provided that the location and design of the accessory dwelling unit meets corresponding historical preservation requirements in

place at the time the accessory second dwelling unit is built and complies with the requirement of this section.

ii. Detached accessory dwelling units shall be located behind the primary residence and/or historic structure.

iii. The construction of the accessory dwelling unit shall not result in the removal of any other historically significant accessory structure, such as garages, outbuildings, stables or other similar structures.

iv. The accessory dwelling unit shall be designed in substantially the same architectural style and finished materials composition as the primary residence or historic structure.

v. Construction of an accessory dwelling unit shall not result in demolition, alteration or movement of the primary residence/historic house and any other on-site features that convey the historic significance of the house and site.

vi. If the historic house/site is under a Mills Act contract with the City, the contract shall be amended, as needed, to authorize the introduction of the accessory dwelling unit on the site.

d. Overlay zones

i. The requirements of Municipal Code Chapter 24.09, Scenic Preservation Overlay Zone, shall apply to the development of accessory dwelling units, except that planning commission review shall not be required for a project that solely proposes an accessory dwelling unit.

ii. Projects proposing solely the development of an accessory dwelling unit shall not be subject to the requirements of Municipal Code Chapter 24.11, Urban Design Overlay Zone, or the requirements of the Urban Design Program.

iii. The requirements of Municipal Code Chapter 24.13, Hillside Overlay Zone, shall apply to the development of accessory dwelling units, except that planning commission review shall not be required for a project that solely proposes an accessory dwelling unit.

iv. Within the Bowling Green Overlay Zone, any tree that was required to be planted pursuant to Municipal Code Section 24.17.030D that is disturbed by a project to construct an accessory dwelling unit shall be preserved in place, or replaced in kind on the subject property if disturbed by the project.

e. Notwithstanding subsections (a) through (d) above, a building permit shall be ministerially approved for accessory dwelling units in a residential or mixed-use zone when it falls into one of the four categories listed below as provided by California Government Code section 65852.2(e):

i. One accessory dwelling unit on a lot with an existing or proposed single-family dwelling created from converting existing or proposed space within a single-family dwelling, or existing accessory structure, provided that the accessory dwelling unit has exterior access from the existing or proposed single-family dwelling and setbacks are sufficient for fire safety as determined by the fire marshal or the building official. Accessory dwelling units converted from an existing accessory structure may include an expansion of not more than 150

square feet beyond the same physical dimensions as the existing accessory structure solely for the purpose of accommodating ingress and egress.

ii. One detached, new construction, accessory dwelling unit on a lot with an existing or proposed single-family dwelling, provided that the accessory dwelling unit is at least eight hundred square feet in area, has side and rear setbacks of not less than four feet, and complies with the maximum height limitations of the underlying zoning district.

iii. One or more accessory dwelling units on a lot with an existing multifamily dwelling converted from non-livable space (including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages), provided that each unit complies with state building standards. The greater of one accessory dwelling unit or accessory dwelling units totaling not more than twenty-five percent of the existing dwelling units in a multifamily dwelling structure may be permitted on lots with existing multifamily dwelling structures in any residential or mixed-use zone.

iv. Up to two detached accessory dwelling units located on a lot with an existing or proposed multifamily dwelling, provided that each unit has side and rear setbacks of not less than four feet and complies with the height limitations of the underlying zoning district. The two accessory dwelling units allowed by this subsection may be created from converting space within an existing accessory structure that is detached from the primary residential structure(s), provided that setbacks are sufficient for fire safety as determined by the fire marshal or the building official. If the existing multifamily dwelling has a rear or side setback of less than four feet, modifications to the existing multifamily dwelling shall not be required.

f. Parking

i. New or additional parking spaces shall not be required for the creation of accessory dwelling units.

ii. Where provided, parking spaces for accessory dwelling units shall comply with Chapter 24.04 (Parking) of the Municipal Code, including, but not limited to, the design requirements of the Parking Standards adopted by city council resolution no. 17128, or as those standards may be amended or modified by city council action.

iii. 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, any required parking spaces removed shall not be required to be replaced.

g. Utilities

i. 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, except that an accessory dwelling unit proposed to be constructed with a new single-family residence may be considered a new residential use for the purposes of calculations connection fees or capacity charges.

ii. For an accessory dwelling unit that is contained wholly within the space of an existing or proposed single-family residence or an existing accessory structure, plus any expansion of the accessory structure as allowed by Section 24.05.020D8e(i), 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, unless the accessory dwelling unit is proposed to be constructed with a new single-family residence.

iii. For an accessory dwelling unit that does not meet the criteria of Municipal Code Section 24.05.020D8c(ii) and where the physical characteristics of the lot on which the accessory dwelling unit is proposed preclude connection to the existing utility connection of the primary dwelling, a new or separate connection directly to the utility shall be required and related connection fees and capacity charges shall be imposed.

iv. For attached or detached accessory dwelling units constructed on the same lot as an existing multifamily dwelling structure as described in Section 24.05.020D8e(iii) and (iv), a new or separate utility connection may be required between the accessory dwelling unit and the utility. The connection may be subject to a connection fee and/or capacity charge.

v. Connection fees and capacity charges shall be imposed for accessory dwelling unit projects that voluntarily propose a new or separate connection directly between the accessory dwelling unit and the utility.

vi. When connection fees and/or capacity charges are imposed, the fee and/or charge shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its area or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code, upon the water or sewer system. The fee and/or charge shall not exceed the reasonable cost of providing this service.

vii. 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.

h. Permit and review requirements

i. Not more than one attached accessory dwelling, one detached accessory dwelling unit, and one junior accessory dwelling unit shall be permitted on a lot with an existing or proposed single-family dwelling.

ii. Not more than two detached, new construction accessory dwelling units shall be permitted on a lot with an existing or proposed multifamily dwelling.

iii. 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 sixty calendar days after receiving the application, if there is an existing single-family or multifamily dwelling on the lot. If a permit application for an accessory dwelling unit is submitted with an application for a new single-family or multifamily dwelling on the same lot, approval or denial of the accessory dwelling unit shall be delayed until the City approves or denies the permit

application for the single-family or multifamily residence. If the applicant requests a delay, the sixty-day time period shall be extended for the period of the delay.

iv. The correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and that are not affected by the construction of the junior accessory dwelling unit shall not be required for approval of a building permit for an accessory dwelling unit.

v. No impact fees shall be imposed for an accessory dwelling unit that is less than seven hundred fifty square feet in area. Any impact fees charged for an accessory dwelling unit that is seven hundred fifty square feet in area or greater shall be assessed proportionately in relation to the square footage of the primary dwelling unit. "Impact fee" as used herein does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

vi. Any demolition permit required for or associated with an application for construction of an accessory dwelling unit shall be reviewed with the application for the accessory dwelling unit and issued at the same time.

vii. A certificate of occupancy for an accessory dwelling unit shall not be issued before issuance of a certificate of occupancy for the primary dwelling.

viii. At the request of the owner of an accessory dwelling unit, enforcement of state building standards related to the accessory dwelling unit shall be delayed, subject to compliance with Section 17980.12 of the Health and Safety Code, provided that the accessory dwelling unit was built prior to January 1, 2020.

ix. Accessory dwelling units shall not be considered in the application of any ordinance, policy, or program to limit residential growth.

i. Conveyance and rental

i. The rental of an accessory dwelling unit created under Section 24.05.020D8f shall be for terms longer than thirty days.

ii. An accessory dwelling unit shall not be sold or otherwise conveyed separately from the primary residence, but may be rented.

iii. An accessory dwelling unit may be sold or conveyed separately from the primary residence to a qualified buyer provided that all of the following apply:

(1) The ADU or primary dwelling was built or developed by a qualified nonprofit corporation.

(2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

(3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

(a) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.

(b) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property.

(c) A requirement that the qualified buyer occupy the property as the buyer's principal residence.

(d) Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing for forty-five years for owner-occupied housing units and will be sold or resold to a qualified buyer.

(4) If the tenancy in common agreement is recorded after December 31, 2021, it shall also include all of the following:

(a) Delineation of all areas of the property that are for the exclusive use of a cotenant. Each cotenant shall agree not to claim a right of occupancy to an area delineated for the exclusive use of another cotenant, provided that the latter cotenant's obligations to each of the other cotenants have been satisfied.

(b) Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property. This delineation shall only be binding on the parties to the agreement, and shall not supersede or obviate the liability, whether joint and several or otherwise, of the parties for any cost, obligation, or liability associated with the property where such liability is otherwise established by law or by agreement with a third party.

(c) Procedures for dispute resolution among the parties before resorting to legal action.

(5) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the Office of the San Diego County Recorder. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

(6) Notwithstanding Section 24.05.020D8c, if requested by a utility providing service to the primary residence, the accessory dwelling unit shall have a separate water, sewer, or electrical connection to that utility.

j. For the purposes of this section, the following definitions apply:

i. "Accessory dwelling unit" shall be as defined in Municipal Code Section 24.01.100.

ii. "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 structure.

iii. "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

iv. “Objective standards” means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.

v. "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

vi. "Public transit" shall mean a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

vii. "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

viii. "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.”

D. Amend LMMC Section 24.05.030B, Note 3b:

“b. The maximum height of a detached accessory structure shall be one story not to exceed 15 feet, except by special permit. This limitation shall not apply to the construction or permitting of accessory dwelling units~~, which shall comply with the standards set forth in Municipal Code Section 24.05.020D8~~.”

SECTION 3: This ordinance shall be effective 30 days after its adoption and the City Clerk shall certify to the adoption of this Ordinance and cause the same to be published at least once within 15 days of its adoption.

INTRODUCED AND FIRST READ at a Regular meeting of the City Council of the City of La Mesa, California, held on the 28th day of February, 2023, and thereafter PASSED AND ADOPTED at a regular meeting of said City Council held the ___ day of _____, 2023, by the following vote, to wit:

AYES:

NOES:

ABSENT:

APPROVED:

_____
Mark Arapostathis, Mayor

ATTEST:

_____
MEGAN WIEGELMAN, CMC, City Clerk

CERTIFICATE OF CITY CLERK

I, MEGAN WIEGELMAN, City Clerk of the City of La Mesa, California, do hereby certify the foregoing to be a true and correct copy of Ordinance No. 2023-___, duly passed and adopted by the City Council of said City on the date and by the vote therein recited and that the same has been duly published according to law.

MEGAN WIEGELMAN, CMC, City Clerk

(SEAL OF CITY)