



# **PLANNING COMMISSION AGENDA REPORT**

**MEETING DATE: OCTOBER 24, 2022**

**ITEM NUMBER: PH-2**

**SUBJECT: A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE APPROVING CODE AMENDMENT CO-2022-XX AMENDING CHAPTER V, ARTICLE 1, SECTION 13-35 (ACCESSORY DWELLING UNITS) OF TITLE 13 OF THE COSTA MESA MUNICIPAL CODE TO CLARIFY EXISTING ACCESSORY DWELLING UNIT PROVISIONS AND TO MODIFY STANDARDS TO CONFORM TO RECENT REVISIONS TO STATE LAW (CODE AMENDMENT CO-2022-01)**

**FROM: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/  
PLANNING DIVISION**

**PRESENTATION BY: CHRIS YEAGER, ASSOCIATE PLANNER**

**FOR FURTHER INFORMATION**                      **CHRIS YEAGER**

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## **RECOMMENDATION**

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 154282(h), and
2. Recommend that the City Council give first reading to an Ordinance approving Code Amendment CO-2022-01, amending Title 13 of the Costa Mesa Municipal Code (Zoning Code) regarding accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs).

## **APPLICANT OR AUTHORIZED AGENT**

The subject Code Amendment is a City initiated request.

## **BACKGROUND**

In response to new State mandates effective on January 1, 2020, the City Council adopted an Urgency Ordinance at its December 17, 2019 meeting to establish temporary provisions permitting ADUs and JADUs in the City's residential zones. On March 2, 2021, City Council adopted Ordinance 2021-03 to establish permanent regulations, which provide the City current ADU regulations.

The City has historically allowed ADUs (and similar uses such as granny flats) as either permitted or conditionally permitted uses. Currently, the City allows for ADUs on all residentially zoned lots which can be established through new construction or the conversion of existing floor area. ADUs are subject to specific development standards including, but not limited to, regulating the number of units, floor area, setbacks, and height. The City's intent in allowing ADUs is to increase the housing supply and provide an additional housing option that is more affordable. In regulating ADUs, the City intends to ensure that ADUs remain as an accessory use to single-family and multi-family residences and to ensure, consistent with State ADU laws, that ADUs do not adversely impact surrounding residents or the community.

Since the adoption of the Urgency Ordinance, the City has approved and/or is processing 190 ADUs and JADUs throughout the City as indicated in the table below.

ADUs and JADUs in Costa Mesa	
Total Approved/In Process	190
Attached ADUs	81
Detached ADUs	109
ADUs on Single Family Properties	133
ADUs on Multiple Family Properties	57
Average Square Footage	634 SF
Median Square Footage	589 SF
Smallest Approved	152 SF
Largest Approved (converted ADU)	1,508 SF

## **DESCRIPTION**

In order to clarify certain existing City ADU provisions and to comply with the recent State Government Code modifications as enacted by the State Legislature, this ADU Code Amendment is proposed. The Code Amendment is limited to modifications to Section 13-35 of Title 13 of the Municipal Code (Accessory Dwelling Units). Amendments are proposed throughout the Ordinance, including modifications to definitions, ADU development standards on multi-family dwelling properties, setback requirements and height requirements.

After several years of implementing the City's current ADU provisions, several ADU processing issues/questions have occurred that staff believes require clarification to improve the processing of ADU applications. These clarifications are proposed in the draft Ordinance. Additionally, recent State laws were enacted modifying the California Government Code regarding ADUs and JADUs, including AB 2221 and SB 897 (more specifically described further below) which also require modifications to the City's local ADU provisions in order to establish consistency with State law. In compliance with State law, the City's ADU Ordinance will need to be amended to account for the updated State provisions because, according to Government Code section 65852.2(a)(4), if a local agency has an existing accessory dwelling unit ordinance that fails to meet the

requirements of the Government Code, then that ordinance shall be considered “null and void.”

In addition, the California Department of Housing and Community Development (HCD) recently sent a letter to the City indicating that the City’s ADU provisions include inconsistencies with State Law (see the attached HCD letter). In response to HCD, the Housing Element Program 3E is included in the 6<sup>th</sup> Cycle Housing Element adopted by the City Council in February 2022. Program 3E specifies that the City will revise the ADU Ordinance as appropriate. This Code Amendment implements Housing Element Program 3E. In addition, staff sent the proposed draft amendments to the State for review and staff has incorporated the State’s returned suggested edits.

### **Recent ADU State Law Changes**

This year, the State approved two bills that modify the Government Code in regard to ADUs (Assembly Bill 2221 and Senate Bill 897). Several of these recently adopted State provisions preempt a City’s discretion to regulate ADUs, and also provides clarification on the processing of ADUs. Below is a summary of the State laws that inform the proposed amendments to the City’s ADU Ordinance (these provisions are also specifically described as applicable to this Ordinance update in the “Analysis” section of this report):

#### ***ADU Height***

The 2022 State laws mandate that a jurisdiction must allow the following minimum heights for ADUs:

- 18 feet for a detached ADU on a lot within one-half mile walking distance of a major transit stop or high-quality transit corridor, with an allowance of an additional two feet to accommodate a roof pitch aligned with the primary dwelling unit;
- 18 feet for a detached ADU on a lot with an existing or proposed multi-family, multi-story dwelling; and
- 25 feet or the height limit under the local zoning ordinance, for an ADU attached to a primary dwelling, although a local agency can ensure the ADU does not exceed two stories.

The City currently permits two-story ADUs on single-family properties up to 27 feet in height (similar to the primary residential structure) and, as described further below, the proposed revisions would allow for similar ADU height regulations on multi-family dwelling properties.

#### ***ADU Processing***

The 2022 State laws provide additional requirements regarding the review and processing of ADUs including the following:

- In reviewing ADU applications, the City must return comments on a proposed ADU within 60 days. If the City denies an ADU application, it must provide the applicant with a “full set of comments” listing the specific items that are “defective or deficient.” These comments must also describe, “how the application can be remedied” by the applicant.
- A demolition permit for a detached garage that is to be replaced with an ADU must now be reviewed with the ADU application and issued at the same time.
- Local agencies cannot deny an application to create an ADU solely because corrections are needed to address nonconforming zoning conditions, building code violations, or unpermitted structures elsewhere on the lot that do not present a threat to public health and safety and are not affected by the construction of the ADU.

The City currently processes applications for ADUs in compliance with the aforementioned State laws. Since these processing changes do not directly affect the Ordinance, no modifications are proposed that specifically address these requirements. Nonetheless, the City will continue to permit ADUs as it has been, within the requirements of State law.

### ***JADU Standards***

The 2022 State laws specifically allow JADUs within attached garages and provide clarifications regarding access as follows:

- Under existing State law, a junior accessory dwelling unit (JADU) must be “within the walls” of a proposed or existing single-family dwelling. The new laws specify that “enclosed uses within the residence, such as attached garages, are considered part of the proposed or existing single-family residence.”
- In instances where the JADU shares a bathroom with the primary dwelling, local agencies must now require that the JADU maintain an interior entry to the primary dwelling’s “main living area,” independent of the exterior entrances of the JADU and primary dwelling.

### **ANALYSIS**

Overall, the structure of the City’s existing ADU Ordinance is proposed to remain the same; however, various State required amendments and clarifications are proposed throughout. The current Ordinance (Costa Mesa Municipal Code Section 13-35 – Accessory Dwelling Units) consists of sections entitled (a) “*Purpose, general plan consistency, and definitions*,” (b) standards for “*Accessory dwelling units*”, (c) standards

for “Junior ADUs”, and (d) general ADU/JADU “Development standards.” Below is a summary of the substantive changes proposed in the Ordinance, organized by ADU Code section. For each proposed change, a summary of the proposed amendment, the existing Code language with proposed language shown in underline/strikethrough format, and lastly, a summary of the “purpose of the proposed amendment” is provided.

**CMMC Section 13-35 (a) – “Purpose, general plan consistency, definitions”**

1. **Summary:** Modifications to Section “a” include clarifying that ADUs and JADUs are a permitted use in “residential and mixed-use zones,” pursuant to CMMC Section 13-35(a)(1).

**Existing Language:** *Purpose and interpretation. The intent of this section is to ensure that accessory dwelling units (ADUs) and Junior ADUs remain as ~~an~~ accessory uses to a single-family residence in residential and mixed-use zones, that the structures on parcels are organized to accommodate an ADU and/or Junior ADU, and that such dwelling units do not adversely impact surrounding residents or the community. This section 13-35 is intended to retain the ability of the city to regulate ADUs in terms of design, aesthetics, massing and integration with existing structures and to comply with the requirements of state law.*

**Purpose of the proposed amendment:** The State HCD commented that this section should be changed to not limit consideration of ADUs to only an accessory use in single-family zones. Therefore, the proposed amendments to this section clarify that ADUs are accessory uses in all residential developments. This change is required for internal consistency and consistency with State law per Government Code section 65852.2(a)(1).

2. **Summary:** Modifications to Section “a” include changing the definition of “existing structure.”

**Existing language:** *A structure is considered “existing” if a building permit was issued and finalized ~~at least two (2) years before an~~ ADU or JADU application is submitted under this section.*

**Purpose of the proposed amendment:** The current Code considers structures to be “existing” two years after the building permit is final. The two-year period was originally proposed to reduce the instances of applicant’s constructing additions or structures solely to be converted to ADUs immediately after. The State HCD staff commented that this section is inconsistent with State Law because it creates a third category of structure that is not “existing” or “proposed” which would not allow for ADUs required by State Law. This amendment will allow property owners to convert structures into ADUs or JADUs without a two-year waiting period and would comply with State Law.

This change is required for consistency with State law per HCD's letter to the City.

3. **Summary:** Modifications to Section "a" include revising and clarifying the definitions of "single-family dwelling" and "multifamily dwelling," pursuant to CMMC Sections 13-35(a)(3)(d-f). This Ordinance clarification assists in regulating the maximum number and configuration of permitted ADUs.

**Existing language:**

*d. The terms "single-family dwelling" and "multifamily dwelling" exclude all detached garages, carports, and similar accessory structures, regardless of whether such structures are attached or detached from the dwelling.*

*e. The term "single-family dwelling" is a dwelling (excluding any ADU or Junior ADU) that is not attached to another dwelling. Single-family dwellings may include detached single-family homes where there is more than one (1) primary dwelling on a lot.*

*~~ef.~~ A "multifamily dwelling" is a dwelling (excluding any ADU or Junior ADU) within a multifamily dwelling structure, ~~including detached single-family homes where there is more than one (1) primary dwelling unit on a lot.~~*

*fg. A "multifamily dwelling structure" is a structure which contains at least two (2) lawful dwellings within the structure, excluding ADUs and Junior ADUs. Storage rooms, boiler rooms, passageways, attics, basements, garages and other non-habitable spaces are considered within a "multifamily dwelling structure" if such non-habitable spaces are within the same structure as at least two (2) other multifamily dwellings.*

**Purpose of the proposed amendment:** The intent of the proposed amendments is to clarify the types of ADUs that are permitted on lots that include a mixture and/or multiple freestanding single-family dwellings and multifamily dwellings. The City's current ADU Ordinance considers multiple single-family dwellings on one property to be a "multi-family dwelling property". According to the "*HCD Accessory Dwelling Unit Handbook*," HCD clarifies that properties with multiple detached dwellings (single-family dwellings) are subject to the same limitations in the number of ADUs as properties developed with only one single-family residence; one ADU. However and pursuant to State law, a single property that is developed with multiple detached single-family residences is not permitted to have a JADU in addition to the ADU, as allowed with a single-family residence developed on a single parcel. This change is required for consistency with State law per HCD's letter to the City.

**CMMC Section 13-35 - (b) Accessory Dwelling Units**

4. **Summary:** Section (b) includes ADU standards and permitting provisions, and includes language clarifying that ADUs compliant with the CMMC are to be processed ministerially.

**Existing language:** *Ministerial. Any application for an ADU that meets the requirements of this section shall be approved ministerially by the city by applying the standards herein and without a public hearing or notice of decision or zoning approval.*

**Purpose of the proposed amendment:** The intent of this modification is to confirm that the processing of ADUs are ministerial per Government Code Section 65852.2(a)(3)(A). The City's "Residential Design Guidelines" require that a "notice of zoning approval" (also referred to as a notice of decision) be sent to abutting properties whenever a residential second-story addition is approved, which provides an opportunity to appeal the decision to the Planning Commission for a public hearing. In order to clarify that ADU approvals are non-discretionary (including permitted second-story ADU development), the text has been added to specify that such noticing for ADUs is not required. This change is required for internal consistency and consistency with State law.

5. **Summary:** Section 13-35(b)(4) includes provisions specifying the maximum number of ADUs permitted on a property. Pursuant to State law, the proposed amendments are included to clarify the number of units permitted based on the type of existing or proposed development (i.e. single-family or multi-family). Modifications are also proposed under this section to relocate development standards that are currently included and do not relate to the number of dwelling units.

**Existing language:**

*Maximum number of dwelling units. The following is the maximum number of ADUs and or Junior ADUs allowed on any lot. Only one category may be used per lot including lots that include a mixture of single-family and multiple family dwellings.*

- a) *Single-family. Only one ADU and only one Junior ADU may be permitted on a lot with a proposed or existing single-family dwelling subject to the following:*

1. *Conversion within a single-family dwelling.*

- (i) *An ADU or Junior ADU may be within the existing footprint of a lawful single-family dwelling. Alternatively, an ADU may be within a lawfully constructed existing accessory structure; in this case up to one hundred fifty (150) square feet may be added beyond the physical dimensions of the existing accessory structure solely to accommodate ingress and egress to the ADU; and*

- (ii) *Each such ADU and Junior ADU must have independent exterior access from the single-family dwelling, and have side and rear setbacks sufficient for fire safety; or*
- 2. *New construction. One (1) new construction ADU may be permitted on a lot with a proposed or existing single-family dwelling. One (1) new construction Junior ADU may be allowed on the lot if the Junior ADU is to be in a single-family dwelling that meets all applicable legal standards.*
- b) *Multifamily. Junior ADUs are not allowed on a lot with more than one residence. ADUs are not allowed within new construction residences where, after construction, there will be at least two (2) residences on the lot (e.g. detached residential structures, duplexes, apartments); up to two (2) ADUs are allowed with such structures pursuant to subsection 23, below. For lots with an existing legal multifamily dwelling (e.g., a legal non-conforming multifamily dwelling), the applicant may have ADU(s) pursuant to one of the following:*
  - 1. *Maximum ADUs within existing multifamily dwelling structure. No more than twenty-five (25) percent, with any partial unit rounded down) of the number of existing multifamily dwelling units on the lot, but at least one (1) unit, shall be permitted as ADU(s) constructed within the enclosed non-livable space (e.g., storage rooms, boiler rooms, hallways, attics, basements, or garages) of the existing multifamily dwelling structures; or*
  - 2. *Maximum attached ADUs. No more than one (1) attached ADU is permitted. The ADU shall be attached to the multifamily dwelling structure; or*
  - ~~23.~~ *Maximum detached ~~external~~ ADUs. No more than two (2) detached ADUs are permitted. Both units shall be detached from every residence on site (but need not be detached from each other). This section shall apply to detached structures that are converted and new construction detached ADUs. Conversion detached ADUs are not subject to height, setbacks, and maximum square footage. Such ADUs shall not exceed eight hundred (800) square feet of gross floor area, shall be no taller than sixteen (16) feet in height, and shall have at least four (4) feet of side and rear yard setbacks; or*
  - ~~34.~~ *Maximum mixed (detached/within) ADUs. No more than twenty-five (25) percent (with any partial unit rounded down) of the number of existing multifamily dwelling units on the lot, but at least one (1) unit, shall be permitted as ADU(s) constructed within the enclosed non-livable space (e.g., storage rooms, boiler rooms, hallways, attics, basements, or garages) of the existing multifamily dwelling*



~~structures. No more than one ADU is permitted within the existing and enclosed non-livable space (e.g., storage rooms, boiler rooms, hallways, attics, basements, or garages) of the existing multifamily dwelling structure; and no more than one two ADUs that is are detached from each multi-family dwelling structure on site, provided that such ADU does not exceed eight hundred (800) square feet of gross floor area, is no taller than sixteen (16) feet in height, and has at least four (4) feet of side and rear yard setbacks.~~

**Purpose of the proposed amendment:** Two modifications are primarily proposed to Section 13-35(b)(4) of the Ordinance. First, the current Code includes references to various development standards (including maximum floor area, height and setbacks) within multiple sections of the Code. In order to remove redundancy and improve readability, these redundant development standards have been removed from this Section and are provided appropriately elsewhere.

Secondly, the proposed modifications include updating the City's current Code to be consistent with the State provisions in regard to the number of ADUs permitted in a multi-family development when an ADU application proposes a "mixed" ADU development (including both detached ADUs and conversion of non-livable space ADUs). The City's current Ordinance permits a maximum of one (1) converted (non-livable space) ADU, and one (1) detached ADU in a "mixed" ADU proposal. However, the State allows converted ADUs (existing non-livable areas that are converted to ADUs) to equal 25% of the number of existing dwelling units on the property, and allows an additional two detached ADUs. The text has been modified to reflect this change. These changes are required for internal consistency and consistency with State law.

6. **Summary:** Section 13-35(b)(5)(b) includes provisions for the floor area of multi-family dwelling property ADUs. The section is proposed to be revised for consistency with the State law regarding maximum size.

**Existing language:**

1. Detached. For lots with an existing legal multi-family dwelling structure proposing one (1), an new construction detached ADU, the ADU shall not exceed eight one thousand two hundred (1,200~~800~~) square feet. For lots with an existing or proposed legal multifamily dwelling structure proposing two (2) detached ADUs, the ADUs shall not exceed eight hundred (800) square feet; or
2. Attached. For lots with an existing legal multifamily dwelling structure, an attached ADU shall not exceed the greater of 1,000 square feet or fifty (50) percent of the average floor area of the existing multiple family dwelling units.

**Purpose of the proposed amendment:** The current Code allows for two detached ADUs of no greater size than 800 square feet each in an existing multi-family development. The proposed revisions would modify the City's ADU provisions to be consistent with State Law, which allows a maximum of 1,200 square feet for a single proposed detached ADU. In addition, the current State ADU provisions allow for attached ADUs in a multi-family development and the City's provisions are silent in this regard. Therefore, a Section "2" has been added to the CMMC Section 13-35(b)(5)(b) to regulate the size of attached ADUs in a multi-family development. These changes are required for consistency with State law per HCD's letter to the City.

7. **Summary:** Section 13-35(b)(7) includes modification of standards to prevent the total conversion of existing multi-family dwelling units into ADUs.

**Existing language:**

- a. *Total conversion of single-family ~~unit~~dwelling. An entire existing single-family ~~or multifamily~~ dwelling may be converted to an ADU if the ADU complies with all applicable requirements of this section and a new single-family residence with a total gross floor area exceeding that of the ADU is constructed in full compliance with code requirements.*
- b. *Partial conversion/addition. A portion of the existing single-family or multifamily dwelling may be converted to an ADU with new additional square footage, which additional square footage shall comply with all standards applicable to attached ADUs, and all converted square footage shall comply with standards applicable to conversions. The maximum square footage of the attached ADU shall be based upon the size of the existing ~~primary~~ dwelling before construction of the ADU addition.*

**Purpose of the proposed amendment:** The modifications are proposed to remove multi-family dwellings from being eligible for "total" conversion to ADUs. Although a single-family dwelling can be converted in total, the State does not allow for the "total" conversion of multi-family dwelling livable-space to be converted into an ADU. This change is required for consistency with State law.

***CMMC Section 13-35 - (c) Junior ADUs***

8. **Summary:** Section (c) includes standards and provisions specifically regarding Junior Accessory Dwelling Units (JADUs). Below is the proposed edited version of CMMC Section 13-35(c)(5, 6 and 9) which is modified to comply with current State ADU provisions.

**Existing language:**

- (5) *Location of Junior ADU. A Junior ADU shall be entirely within an existing or proposed single-family residence dwelling.*
- (6) *Kitchen requirements. A Junior ADU shall include an efficiency kitchen, including a sink, a single or multiple cooktop a cooking facility with appliances, outlet for a small refrigerator, food preparation counter and storage cabinets that are of reasonable size in relation to the size of the Junior ADU.*
- (9) *Exterior and interior access. The Junior ADU shall include an exterior entrance separate from the main entrance to the single-family dwelling. If the Junior ADU shares bathroom facilities with the main dwelling, the Junior ADU shall also have an interior entry to the main dwelling's living area.*

**Purpose of the proposed amendment:** The modifications are proposed to provide consistency with State law and to provide clarification that JADUs may be constructed within proposed (new) single-family dwellings. This would also allow for existing residences to add a JADU addition provided that the addition complies with the underlying requirements for the single-family dwelling. In addition, the proposed modifications update the Ordinance to comply with HCDs interpretations for JADU kitchen requirements, and requiring separate interior access if the JADU shares a bathroom facility with the main residence. These changes are required for consistency with State law.

#### **CMMC Section 13-35 - (d) Development Standards**

- 9. **Summary:** Section 13-35(d)(4)(d) includes address standards for all ADUs and JADUs developed in the City. The proposed revisions to this Section include clarifications for addressing in compliance with City's addressing provisions.

**Existing language:** Each ADU and Junior ADU shall have a separate mailing address as assigned by the City.

**Purpose of the proposed amendment:** The modification is proposed to ensure that the City will assign street addresses to ADUs in compliance with the City's addressing provisions. Properly addressing residential units in the City is vital for the City and other agencies to provide life safety response and other necessary services to residents.

- 10. **Summary:** Section 13-35(d)(8)(a-b) includes the requirements for setbacks for ADUs. The following edits are provided to ensure consistency with State ADU setback provisions.

**Existing language:**

- a. *None. No setbacks are required for either: (1) those portions of ADUs that are created by converting existing living area or existing accessory structures to a new ADU; or (2) constructing new ADUs in the same location, while not exceeding the existing dimensions, including height and to the same dimensions as an existing structure. Notwithstanding the foregoing, ADUs and Junior ADUs shall, at minimum, comply with setbacks that are sufficient for fire and life safety.*
- b. *Other setbacks. For all other ADUs, there shall be a minimum of setbacks of four (4) feet from side and rear property lines and full compliance with all applicable front-yard setbacks for the underlying zone. Second floor ADUs shall provide setbacks in conformance with the underlying zone. An ADU on a corner lot shall maintain a minimum setback of ten (10) feet from the public right-of-way on the street side or be consistent with the existing setback distance of the main residential structure, whichever is less.*

**Purpose of the proposed amendment:** The modifications in subsection “a” are proposed to clarify that an ADU may be constructed within the footprint of an existing structure with no setback required as long as it is constructed within the existing building envelope. Section “b” also includes proposed modifications to remove the required 10-foot street side-yard setback for ADUs located on corner lots. The 10-foot requirement would still apply to the main structures on the property; however and consistent with State ADU provisions, ADUs would be permitted to be constructed four feet from the property line. These changes are required for internal consistency and consistency with State law per HCD’s letter to the City.

11. **Summary:** Section 13-35(d)(9) includes height requirements for ADUs. The current Code allows for new construction two-story/second-floor ADUs on single-family dwelling properties. The proposed code amendments would modify that provision to allow for two-story/second-floor ADUs on multi-family dwelling properties as well, subject to certain requirements.

**Existing language:**

- (9) *Height. Except as authorized in subsection b, below, in no event may any portion of a new construction ADU exceed two (2) stories or exceed the height of any other dwelling that will could legally be on the property. except that in all cases, a height of at least sixteen eighteen (1618) feet shall be allowed for ADUs. An additional two feet in height may be permitted to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit. Furthermore, except as authorized in subsection a and b, below, an ADU shall be entirely only on the first floor.*
  - a. *Second floor or two-stories. An ADU on a lot which has an existing lawfully constructed single-family dwelling or will have a new single-*

*family dwelling, may be in whole or in part on a second floor, or be a two (2) story ADU, if all five (5) of the following occur:*

- 1. All portions of the ADU structure on a second floor are at least twenty-five (25) feet from the front property line ~~(except that front facing balconies may be constructed as close as twenty (20) feet from the front property line if the balcony is open on three (3) sides and the wall of the main structure is at least twenty-five (25) feet from the front property line)~~; and*
  - 2. Each stairwell for the ADU is interior or complies with subsection (10), below; and*
  - 3. The second floor of any portion of the ADU, if built above a detached garage, does not exceed the footprint of the garage; and*
  - 4. No windows are installed on the second floor on side elevations if such windows are within twenty-five (25) feet of a neighboring dwelling and face the neighboring property unless such windows have a minimum sill height of at least five (5) feet; and*
  - 5. The second floor (or the entire two (2) story ADU as applicable) meets the setbacks applicable to additions ~~and accessory structures~~ for the underlying zone.*
- b. Within structure. The ADU is built entirely within either:*
- 1. A proposed or existing lawfully constructed single-family dwelling, except that an external stairwell to the ADU which meets all requirements of this code, including the requirements of subsection (10), below, may be constructed to allow access to the ADU; or*
  - 2. The non-habitable space of an existing multifamily structure or within an accessory structure on a lot with a multifamily structure.*

**Purpose of the proposed amendment:** The proposed modifications are intended to comply with the new State Laws including increasing the height allowed for all ADUs to 18 feet from the previously allowed 16 feet. In addition, the modifications include allowing for an additional two feet of height for an ADU's roof pitch to align with the roof pitch of an existing primary dwelling. In practice, these modifications will not affect the City's residential neighborhood character in that the City's existing ADU provisions currently permit a maximum height of 27 feet so long as the two story/second floor meets setback requirements of the underlying zone (consistent with the "*Maximum Number of Stories and Building Height*" standards indicated in Table 13-32 for primary residential structures). The proposed amendments are more lenient than the State Law in that 27 feet height structures would be permitted for both detached and attached structures. The amendments

are consistent with the existing residential and ADU development standards for single-family dwelling properties, and would also improve processing.

In compliance with the HCD Handbook, additional clarification has been added in section (b)(2) which clarifies that if an accessory structure is converted into a detached ADU on a multi-family dwelling property, then no maximum height is applied because the structure is existing.

The proposed modifications also remove provisions from this Section related to front facing balconies. Those provisions are relocated appropriately to Section 13-35(d)(10), discussed below.

These changes are required for internal consistency and consistency with the new State laws.

12. **Summary:** Section 13-35(d)(10) includes provisions for balconies located on ADUs. The current Code has internal inconsistencies, including providing setbacks for balconies, but elsewhere in the ADU provisions erroneously prohibiting balconies:

**Existing language:**

*(10) Exterior stairways, ~~and~~ balconies.*

*a. Exterior Stairways. An new exterior stairway to a second-floor ADU shall be facing the interior of the lot and shall not be ~~readily~~ visible from the public right-of-way at the front of the property. Second floor landings using an exterior stairway shall be kept to the minimum size required to comply with applicable codes. Stairways and landings shall incorporate screening materials designed to eliminate views into neighboring properties. Stairways and landings, which exceed ~~standard~~ building code minimum sizes, ~~and balconies~~ are prohibited. Stairways and landings shall not be counted toward residential open space requirements.*

*b. Balconies. New balconies which face the street and are located at the front of the structure are permitted provided that the balcony be set back a minimum of twenty (20) feet from the front property line. New construction balconies that are not facing the front of the property are prohibited. ~~Stairways, landings, and balconies shall not be counted toward residential open space requirements.~~*

*c. Roof Decks. No new roof decks are allowed for ADUs.*

**Purpose of the proposed amendment:** The proposed modifications are included to reduce privacy impacts on neighboring properties in regard to new ADUs. Stairways to ADUs may be interior or exterior but if exterior stairways are

proposed, they are required to be the minimum size as required by the Building Code, to incorporate screening so as not provide visibility into neighboring properties, and shall not be visible at the front of the property.

The current Code also requires a second-story front setback of 25 feet for ADUs and a 20-foot front setback for balconies, and then states that “balconies are prohibited.” In order to resolve this inconsistency, the language prohibiting balconies has been removed. Additionally, the setback to balconies regulations have been removed in other sections of the ordinance and has been provided exclusively in this section. The proposed modifications also clarify that new balconies can only be constructed on the front of the residence in order to minimize any privacy impacts to surrounding properties (similar to existing City ADU regulations). In addition, a new provision is provided to prohibit any new roof decks. These changes are for internal consistency.

13. **Summary:** Section 13-35(d)(11) includes provisions for architectural standards. Modifications are proposed to comply with the State Government Code in regard to prohibiting subjective architectural review of ADUs.

**Existing language:** *Junior ADUs. Junior ADUs shall ~~be compatible in~~ match exterior appearance with the primary unit in terms of design, materials, finishes, and colors within the same property on which it is proposed to be constructed, in accordance with code design standards and guidelines applicable to the zone.*

**Purpose of the proposed amendment:** The proposed modification is included to comply with State Law in that Section 65852.2(a)(1) and (e)(7) of the Government code limits local ADU review to “objective” standards. The State Law defines “objective” as a standard that involves “no personal or subjective judgment by a public official” and that is “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.” In order to comply with the State Law, “be compatible” has been replaced with “match” to provide for clear objectivity in regards to JADU design. This change is required for consistency with State law per HCD’s letter to the City.

14. **Summary:** Section 13-35(d)(12) includes additional provisions for garage conversions. The current Code includes subjective standards relating to garage conversions, which, as previously indicated, require removal to be consistent with State law. The changes below also clarify the ability of an applicant to remove “a portion of” a driveway in an ADU garage conversion.

**Existing language:**

(12) *Garage conversions.*

- a. *No blank façade. When a garage is converted to an ADU, if the façade of the converted garage is visible from a public right-of-way,*

~~the façade must have substantial articulation in terms of design and architectural features, or substantial landscaping, or some combination thereof to improve aesthetics. For example, obscuring the façade with shall implement at least one of the following:~~

- ~~i. be covered with landscaping that covers at least fifty (50) percent of the wall, or~~
- ~~ii. Include at least one door that complies with section 13 below or one window.~~

~~would meet this requirement, as would construction of an attached code-compliant pergola or awning which was constructed in front of the façade of the converted garage.~~

- ~~ba. Driveway. The driveway may only be removed if it is replaced with landscaping or open space, and the curb cut and driveway apron are removed and replaced with a curb and gutter which meet city standards. Partial driveway removals may be permitted if the remaining driveway provides the minimum parking dimensions per subsection 14 below.~~

**Purpose of the proposed amendment:** The proposed modification is included to comply with State law. Section 65852.2(a)(1) and (e)(7) of the Government Code limits local ADU review to “objective” standards. In order to comply with the State law and remove subjectivity, the modification generally removes the language that requires “substantial articulation,” “substantial landscaping” and “improve aesthetics.” In addition, language is also included that suggests instead of complete removal of a driveway, a portion of the existing driveway may be retained if the remaining driveway provides for vehicle parking in that it is in compliance with minimum parking space dimensions as specified in Section 13-35(d)(14), and the driveway area to be removed is landscaped. These changes are required for clarification and consistency with State law per HCD’s letter to the City.

- 15. **Summary:** Section 13-35(d)(13) includes existing requirements for ADU entries and walkways. Pursuant to State law, no ADU passageway shall be required and therefore this ADU provision has been modified.

**Existing language:** (13) *Entry and walkways. The entrance to an ADU or Junior ADU should be located in a manner that it is subordinate to the main entrance of the primary residence(s) such as areas along the side or within the interior of the property. The walkway leading to the ADU shall be hardscaped and connect to the driveway or the public sidewalk.*

**Purpose of the proposed amendment:** The proposed modification is included to comply with State Law. Government Code Section 65852.2(a)(1)(D)(vi) provides that no passageway shall be required in conjunction with the construction of an accessory dwelling unit and also defines passageway as a



pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit. In order to comply with State Law, the existing provision requiring a walkway from the public street/sidewalk to an ADU is proposed to be removed. This change is required for internal consistency and consistency with State law per HCD's letter to the City.

16. **Summary:** Section 13-35(d)(17) includes existing provisions for open space, and clarification is added that requires such open space area to be landscaped.

**Existing language:** (17) *Open space and landscaping. ADUs which exceed eight hundred (800) square feet in gross floor area shall meet the open space requirements of section 13-32 and shall be subject to provide landscaping as required in section 13-106.*

**Purpose of the proposed amendment:** The proposed modification provides clarity that ADUs constructed that are greater than 800 square feet in gross floor area are required to provide open space and that the open space is to be landscaped. This change is required for clarification and internal consistency.

## **GENERAL PLAN CONFORMANCE**

The City's 5<sup>th</sup> Cycle Housing Element indicates that second units (ADUs) should be promoted as a use because they "offer affordable housing opportunities for lower and moderate income households." The City's approved 6<sup>th</sup> Cycle Housing Element includes Program 3E which continues to promote the construction of ADUs as part of an overall housing plan. The proposed ordinance amendment is consistent with the General Plan in that it provides greater opportunities for ADUs pursuant to current State ADU law.

## **ENVIRONMENTAL DETERMINATION**

The proposed Ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), in that the adoption of an ordinance regarding second units in a single-family or multi-family zone by a city or county to implement the provisions of Sections 65852.1, 65852.150 and 65852.2 is exempt from the requirements of CEQA. In addition, the proposed Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) in that there is no possibility that the minor updates to the City's ADU provisions will have a significant impact on the environment.

## **ALTERNATIVES**

The Planning Commission has the following alternatives:

1. Recommend City Council approval. The Planning Commission may recommend City Council approval of the proposed modifications as drafted in the attached draft Ordinance.
2. Recommend City Council approval with modifications. The Planning Commission may recommend approval with modifications provided that the revisions are consistent with State law.
3. Recommend that the City Council not adopt the changes to the City's ADU provisions. The Planning Commission may recommend that the City Council not adopt the proposed Code amendments.
4. Continue the Ordinance review to a date certain. The Planning Commission may continue the item to a date certain with direction for staff to return with additional information, changes and/or clarifications.

### **LEGAL REVIEW**

The proposed Resolution, draft Code Amendment and report have been prepared in conjunction with and review by the City Attorney's Office.

### **PUBLIC NOTICE**

Pursuant to Title 13, Section 13-29(d), of the Costa Mesa Municipal Code, a 1/8<sup>th</sup> page public notice was published once in the Daily Pilot newspaper no less than 10 days prior to the October 24, 2022 public hearing. No public comments have been received in response to the notice.

### **CONCLUSION**

The ADU Code amendments are consistent with the General Plan, and are proposed to clarify existing ADU provisions and comply with recently adopted State ADU laws.