**RESOLUTION NO. PC-2022-29**

**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**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA HEREBY FINDS AND RESOLVES AS FOLLOWS:

WHEREAS, in response to multiple housing laws relating to accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs), including AB 68, AB 881, SB 13, AB 587, and AB 670, the City adopted Ordinance 2021-03 on March 3, 2021 to establish and amend the City's laws in relation to ADUs and JADUs;

WHEREAS, by adopting its own ADU and JADU laws, the city was able to retain at least some authority to regulate ADUs and JADUs that it might not otherwise have;

WHEREAS, through the implementation of the ADU and JADU laws, the city found inconsistencies in the laws which need to be corrected;

WHEREAS, additional housing State laws including AB 2221 and SB 987 were approved by the State in 2022, become effective January 1, 2023, and require additional modification to the City's ADU and JADU laws;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on October 24, 2022 with all persons having the opportunity to speak for and against the proposal; and,

NOW THEREFORE, THE COSTA MESA PLANNING COMMISSION RESOLVES AS FOLLOWS:

1. Adoption of this resolution is exempt from 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 multifamily 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 amendment 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.

2. The Planning Commission recommends the City Council approve the ordinance attached hereto as Exhibit A.

BE IT FURTHER RESOLVED that the CEQA exemption for this projects reflects the independent judgement of the Planning Commission.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the document in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

**PASSED AND ADOPTED this 24th day of October, 2022.**

Byron de Arakal, Chair
Costa Mesa Planning Commission

STATE OF CALIFORNIA )
COUNTY OF ORANGE )ss
CITY OF COSTA MESA )

I, Scott Drapkin, Secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution No. PC-2022-29 was passed and adopted at a regular meeting of the City of Costa Mesa Planning Commission held on October 24, 2022 by the following votes:

AYES: de Arakal, Zich, Rojas, Russell, Toler, Vivar

NOES: None

ABSENT: Ereth

ABSTAIN: None

Scott Drapkin, Secretary
Costa Mesa Planning Commission

# 13-35. Accessory dwelling units.

(a) *Purpose, general plan consistency, definitions.*

(1) *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.

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

(3) *Definitions.* For purpose of this section 13-35 only:

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

b. "Junior ADU" shall have the same meaning as that stated in Government Code section 65852.22(h)(1) as that section may be amended from time to time.

c. A structure is considered "existing" if a building permit was issued and finaled ~~at least two (2) years~~ before an ADU or JADU application is submitted under this section.

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.

~~e~~f. 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.~~

~~f~~g. 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.

(b) *Accessory dwelling units.*

(1) *Residential and mixed use zones only.* ADUs are permitted in single-family, multifamily ~~zones~~, and mixed use zones (i.e., zones where single-family and/or multifamily dwellings are allowed), and only on a legal lot with proposed or existing residential dwelling(s) which will remain on site. By way of illustration only, the zones where accessory dwellings are allowed are shown on the Citywide Land Use Matrix at section 13-30. If there is any conflict between the requirement that ADUs be approved in (and only in) zones where single-family and multifamily dwellings are allowed and the Land Use Matrix, the former shall control.

(2) *Underlying zone.* Except as otherwise provided in this section, ADUs shall conform to the development standards of the underlying zone.

(3) *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.

(4) *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 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 ~~2~~3, 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

~~2~~3. *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

4~~3~~. *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 multifamily 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.~~.

(5) *Maximum size.*

a. *Single-family.*

1. *Detached.* For lots with a proposed or existing single-family dwelling, a detached ADU shall not have more than one thousand two hundred (1,200) square feet.

2. *Attached.* An ADU attached to a single-family dwelling shall be no more than the greater of fifty (50) percent of the square footage of the existing single-family dwelling or one thousand (1,000) square feet.

b. *Multifamily, exterior construction.*

1. *Detached.* For lots with an existing legal multifamily dwelling structure proposing one (1)~~, a~~ new construction detached~~n~~ 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.

c. *Interior conversions.* Notwithstanding subsections a and b immediately above, ADUs which are converted from space entirely within lawful existing structures, and ADUs entirely within proposed lawful single-family dwellings, are not subject to a limit on maximum square footage.

(6) *Minimum size.*

a. ADUs may be efficiency units. Notwithstanding the general limitation on efficiency units being no smaller than two hundred twenty (220) square feet, ADUs may also be less than two hundred twenty (220) square feet, provided that they are no smaller than one hundred fifty (150) square feet, and comply with all other legal requirements.

(7) *Conversions of dwelling units.*

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.

(c) *Junior ADUs.*

(1) *Rule.* Junior ADUs shall comply with the requirements of this subsection (c), in addition to the requirements of subsection (d) of this section 13-35.

(2) *Maximum size.* A Junior ADU shall not exceed five hundred (500) square feet in gross floor area.

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

(4) *Short-term rentals prohibited.* A Junior ADU shall not be rented for periods of less than 31 days unless otherwise authorized by the municipal code.

(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 cookto~~a cooking facility with appliances~~p~~, 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.

(7) *Parking.* No additional parking is required beyond that already required for the primary dwelling.

(8) *Fire protection; utility service.* For the purposes of any fire or life protection ordinance or regulation or for the purposes of providing service for water, sewer, or power, a Junior ADU shall not be considered a separate or new unit, unless the Junior ADU was constructed in conjunction with a new single-family dwelling. No

separate connection between the Junior ADU and the utility shall be required for units created within a single-family dwelling, unless the Junior ADU is being constructed in connection with a new single-family dwelling.

(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 interior entry to the main dwelling's living area.

(d) *Development standards.* All ADUs and Junior ADUs must comply with the following requirements:

(1) *Ministerial project.* Any application for an ADU or Junior ADU that meets the requirements of this section shall be approved without a public hearing.

(2) *Application by owner.* An application for a building permit for an ADU or Junior ADU building permit shall be made by the owner of the parcel on which the primary unit sits and shall be filed with the city on a city-approved application form and subject to the established fee set by city council resolution as it may be amended from time to time.

(3) *Separate sale prohibited.* Except as otherwise provided by law (e.g., Government Code section 65852.26), ADUs and Junior ADUs may not be sold or otherwise conveyed separate from the primary residence.

(4) *Utilities.*

a. All ADUs and Junior ADUs must be connected to public utilities (or their equivalent), including water, electric, and sewer services.

b. Except as provided in subsection c immediately below, the city may require the installation of a new or separate utility connection between the ADU and the utility. For Junior ADUs, see subsection (c)(8), above.

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

d. Each ADU and Junior ADU shall have a separate mailing address as assigned by the City.

(5) *Recorded covenants.* Before obtaining a building permit, the owner shall file with the county recorder, in a form approved by the city attorney, a covenant which does all of the following:

a. Prohibit the sale of the ADU and Junior ADU separate from the single-family residence; and

b. Unless subsequently prohibited by an amendment to state law, for ADUs approved on or after January 1, 2025, the ADU shall be considered legal only as long as either the primary residence or the ADU is occupied by the owner of record or state law is amended to prohibit such requirements. Junior ADUs require owner occupancy of either the single-family dwelling or the Junior ADU; and

c. Restrict the ~~accessory second unit~~ADU or JADU to the maximum size allowed by Municipal Code section 13-35, as it may be amended from time to time; and

d. Unless authorized by this Code, prohibit renting the ADU for periods less than thirty-one (31) days; and

e. Confirm that the restrictions shall be binding upon any successor in ownership of the property, and lack of compliance shall result in legal action against the property owner for noncompliance.

(6) *Passageway.* No passageway shall be required in conjunction with the construction of an ADU.

(7) *Building permits required.* Applications for ADUs and Junior ADUs shall conform to the requirements for, and shall obtain, a building permit consistent with the requirements of Title 5 (Buildings and Structures). By way of reference only, current requirements generally require all dwellings to have no less than two hundred twenty (220) square feet. Fire sprinklers shall not be required if they are not required for the primary residence; if, however, the ADU is attached to the primary dwelling, and if an addition to the ~~house~~ dwelling would require sprinklers for an addition to the primary dwelling in the same location, then sprinklers shall be required.

(8) *Setbacks.*

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.~~

c. *Distance between structures*. The minimum required distance between a detached ADU and the primary dwelling unit, and all other structures on the property, including garages, shall be six (6) feet.

(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 i~~In all cases, a height of at least ~~sixteen~~ eighteen (~~16~~18) 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.~~.~~

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

a. *Exterior Stairways.* A new~~n~~ 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~~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.

(11) *Architectural standards.*

a. *Attached ADUs.* Each ADU which is attached to the primary dwelling shall appear to be part of the primary dwelling. It shall have the same design, materials, finishes, and colors as the primary dwelling and shall be in accordance with code design standards and guidelines applicable to the zone.

b. *Detached ADUs.* Any detached ADU shall be compatible in exterior appearance with the primary unit or units 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.

c. *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.

(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.

(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.~~

(14) *Parking.*

a. The owner may provide parking that is at least eight and a half (8.5) feet wide and eighteen (18) feet long and may be provided as:

1. Tandem parking on an existing driveway in a manner that does not encroach onto a public sidewalk; or

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

b. When an existing garage, carport, or covered parking structure is converted or demolished in conjunction with the construction of an ADU or converted to an ADU, the off-street parking spaces do not have to be replaced, notwithstanding any other provision of this code to the contrary (e.g., the definition of "driveway" in section 13-6, Table 20-8(c) a driveway does not lose its status as a lawful "driveway" if it leads to a structure that was either converted from a garage into either an ADU or Junior ADU or demolished in conjunction with the construction of an ADU or Junior ADU. In no event shall the demolition of a garage be considered "in conjunction with" the construction of an ADU if the ADU will not be constructed within any portion of the footprint of the demolished garage.

(15) *Non-conforming.* The city shall not require, as a condition of a permit for an ADU or Junior ADU the correction of nonconforming development standards.

(16) *Short-term rentals prohibited.* ADUs and Junior ADUs shall not be rented for a term of less thirty-one (31) days, unless otherwise authorized by this code.

(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~~.~~. (Ord. No. 11-10, § 1, 9-20-11; Ord. No. 18-03, § 5, 1-16-18; Ord. No. 21-03, § 3, 3-2-21)