



CITY OF COSTA MESA

PLANNING COMMISSION

Agenda

Monday, January 27, 2025

6:00 PM

**City Council Chambers
77 Fair Drive**

The Commission meetings are presented in a hybrid format, both in-person at City Hall and as a courtesy virtually via Zoom Webinar. If the Zoom feature is having system outages or experiencing other critical issues, the meeting will continue in person.

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Please click the link below to join the webinar:

<https://zoom.us/j/96060379921?pwd=N2lrbzhJM2hWU3puZkk1T3VYTXhoQT09>

Or sign into Zoom.com and “Join a Meeting”

Enter Webinar ID: 960 6037 9921 / Password: 595958

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- During the Public Comment Period, use the “raise hand” feature located in the participants’ window and wait for city staff to announce your name and unmute your line when it is your turn to speak. Comments are limited to 3 minutes, or as otherwise directed.

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During the Public Comment Period, press *9 to add yourself to the queue and wait for city staff to announce your name/phone number and press *6 to unmute your line when it is your turn to speak. Comments are limited to 3 minutes, or as otherwise directed.

4. Additionally, members of the public who wish to make a written comment on a specific agenda item, may submit a written comment via email to the PCPublicComments@costamesaca.gov. Comments received by 12:00 p.m. on the date of the meeting will be provided to the Commission, made available to the public, and will be part of the meeting record.

5. Please know that it is important for the City to allow public participation at this meeting. If you are unable to participate in the meeting via the processes set forth above, please contact the City Clerk at (714) 754-5225 or cityclerk@costamesaca.gov and staff will attempt to accommodate you. While the City does not expect there to be any changes to the above process for participating in this meeting, if there is a change, the City will post the information as soon as possible to the City’s website.

Note that records submitted by the public will not be redacted in any way and will be posted online as submitted, including any personal contact information.

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Note regarding agenda-related documents provided to a majority of the Commission after distribution of the agenda packet (GC §54957.5): Any related documents provided to a majority of the Commission after distribution of the Agenda Packets will be made available for public inspection. Such documents will be posted on the city's website and will be available at the City Clerk's office, 77 Fair Drive, Costa Mesa, CA 92626.

All cell phones and other electronic devices are to be turned off or set to vibrate. Members of the audience are requested to step outside the Council Chambers to conduct a phone conversation.

Free Wi-Fi is available in the Council Chambers during the meetings. The network username available is: CM_Council. The password is: cmcouncil1953.

As a LEED Gold Certified City, Costa Mesa is fully committed to environmental sustainability. A minimum number of hard copies of the agenda will be available in the Council Chambers. For your convenience, a binder of the entire agenda packet will be at the table in the foyer of the Council Chambers for viewing. Agendas and reports can be viewed on the City website at <https://costamesa.legistar.com/Calendar.aspx>.

In compliance with the Americans with Disabilities Act, Assistive Listening headphones are available and can be checked out from the City Clerk. If you need special assistance to participate in this meeting, please contact the City Clerk at (714) 754-5225. Notification at least 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.102.35.104 ADA Title II].

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PLANNING COMMISSION REGULAR MEETING**JANUARY 27, 2025 – 6:00 P.M.****ANGELY ANDRADE
PLANNING COMMISSIONER****ROBERT L. DICKSON
PLANNING COMMISSIONER****JEFFREY HARLAN
PLANNING COMMISSIONER****KAREN KLEPACK
PLANNING COMMISSIONER****DAVID MARTINEZ
PLANNING COMMISSIONER****JONNY ROJAS
PLANNING COMMISSIONER****JON ZICH
PLANNING COMMISSIONER****TARQUIN PREZIOSI
ASSISTANT CITY ATTORNEY****SCOTT DRAPKIN
ASSISTANT DIRECTOR****CALL TO ORDER****PLEDGE OF ALLEGIANCE****OATH OF OFFICE FOR NEWLY-APPOINTED PLANNING COMMISSIONERS BY CITY
CLERK****ROLL CALL****ELECTION OF OFFICERS:**

1. Selection of Chairperson: Commission Secretary, or designee, declares nominations open for Chairperson and calls for Commission vote.
2. Selection of Vice Chairperson: Newly elected Planning Commission Chair declares nominations open for Vice Chairperson and calls for Commission vote.

ANNOUNCEMENTS AND PRESENTATIONS:

1. [TESSA UPDATE PRESENTATION](#) [25-162](#)
Attachments: [TESSA Update Presentation](#)

PUBLIC COMMENTS – MATTERS NOT LISTED ON THE AGENDA

Comments are limited to three (3) minutes, or as otherwise directed.

PLANNING COMMISSIONER COMMENTS AND SUGGESTIONS**CONSENT CALENDAR:**

1. [DECEMBER 9, 2024 UNOFFICIAL MEETING MINUTES](#) [25-163](#)

RECOMMENDATION:

Planning Commission approve the minutes of the regular meeting of December 9, 2024.

Attachments: [December 9, 2024 Unofficial Meeting Minutes](#)

PUBLIC HEARINGS:

1. [PRESENTATION PERTAINING TO THE UPDATE OF THE CITY'S 25-165 ACCESSORY DWELLING UNIT \(ADU\) PROVISIONS TO CONFORM WITH RECENT REVISIONS TO STATE LAW](#)

RECOMMENDATION:

Staff recommends the Planning Commission:

1. Find that the staff presentation is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(1),(2)&(3) and 15061(b)(3). The presentation is not a "project" under CEQA. , and
2. Receive an informational presentation from staff regarding the update of the City's Accessory Dwelling Units provisions.

Attachments: [Agenda Report](#)

[1. Tracked Changes Ordinance \(Exhibit A to Draft Ordinance\)](#)

[2. September 11, 2024 HCD Letter](#)

[3. October 10, 2024 Response Letter to HCD](#)

OLD BUSINESS: NONE.

NEW BUSINESS: NONE.

DEPARTMENTAL REPORTS:

1. PUBLIC WORKS REPORT
2. DEVELOPMENT SERVICES REPORT

CITY ATTORNEY REPORTS:

1. CITY ATTORNEY REPORT

ADJOURNMENT

PLANNING COMMISSION MEETING:

Costa Mesa Planning Commission meets on the second and fourth Monday of each month at 6:00 p.m.

APPEAL PROCEDURE:

Unless otherwise indicated, the decision of the Planning Commission is final at 5:00 p.m., seven (7) days following the action, unless an affected party files an appeal to the City Council, or a member of City Council requests a review. Applications for appeals are available through the City Clerk's Office; please call (714) 754-5225 for additional information.

CONTACT CITY STAFF:

77 Fair Drive, Costa Mesa, CA 92626
Planning Division (714) 754-5245
planninginfo@costamesaca.gov



CITY OF COSTA MESA

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 25-162

Meeting Date: 1/27/2025

TITLE:

TESSA UPDATE PRESENTATION

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/PLANNING
DIVISION

TESSA Update

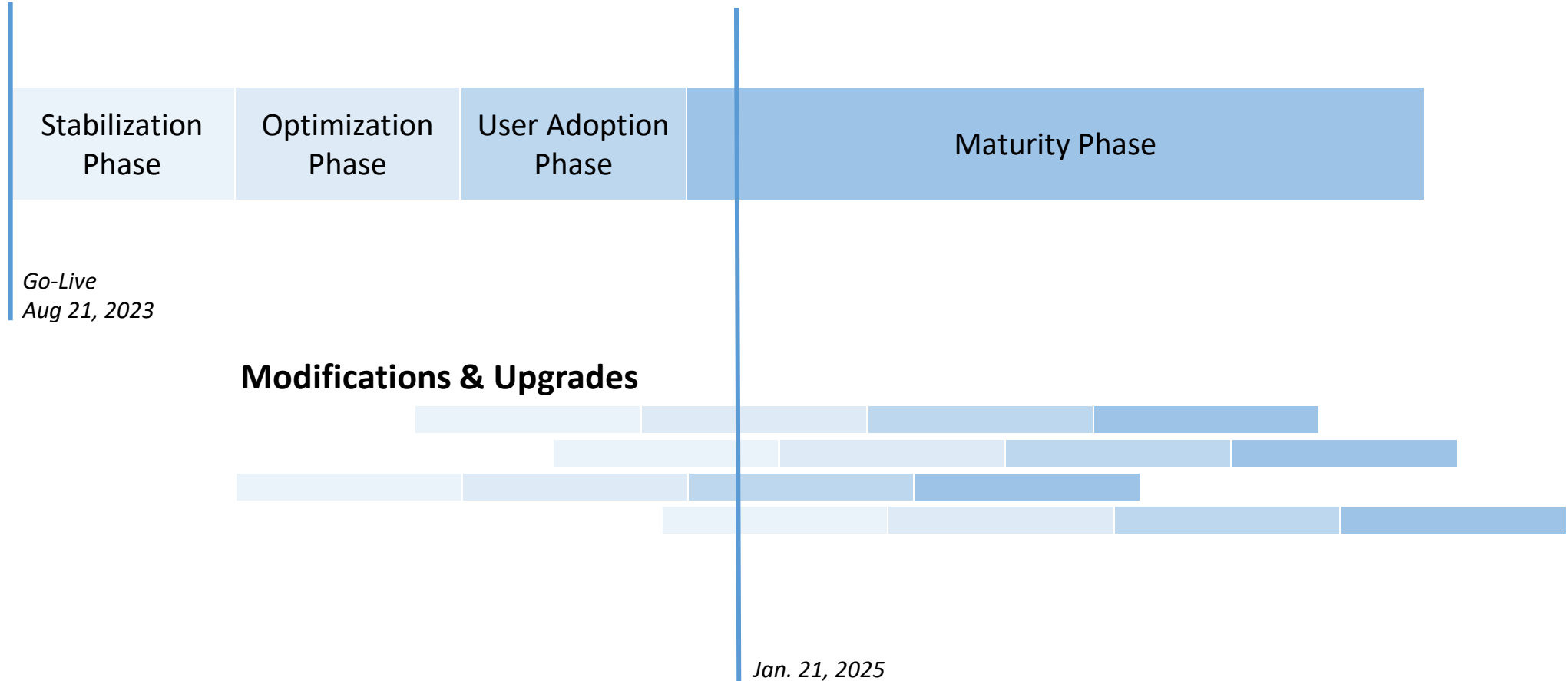
Planning Commission Meeting

January 27, 2025



Implementation

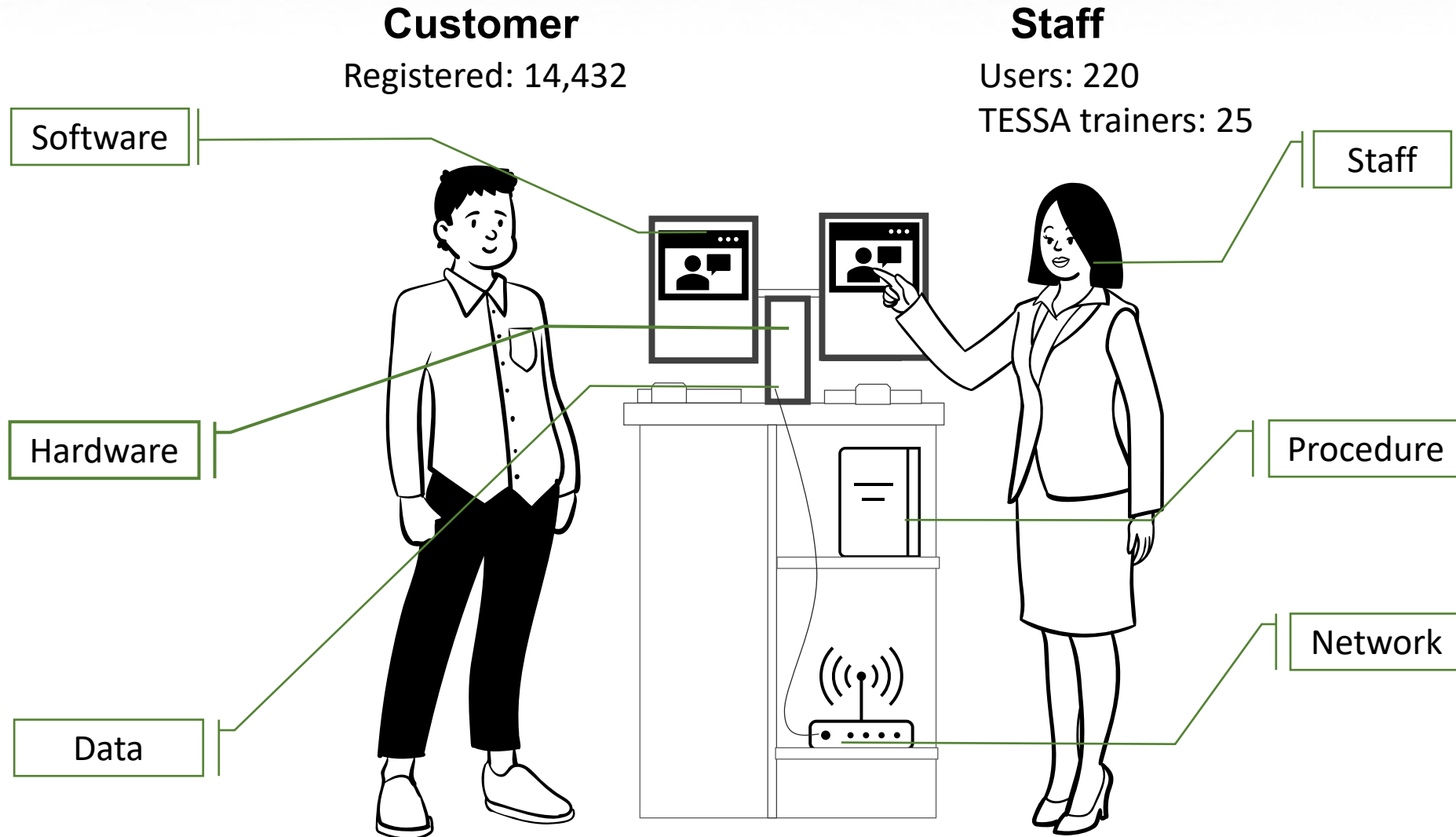
TESSA



Continued Improvements

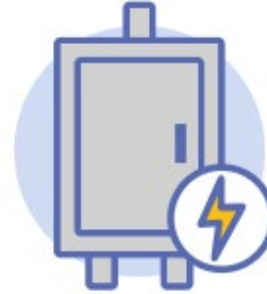
At Go-Live – August 21,2023	Since Go-Live
Launched City-Wide	Added 15 New Applications
Imported 25 years of data	Adding additional historical data daily
Simple on-line public interface	Added over 50 automations and emails
Launched geographic/map-based system	Added dozens of layers for public
Enhanced transparency	Updated instructions, Provide staff directory
Streamline processing	Updated procedures, removed steps
Paperless processing for staff	Revisioning what an application is digitally
Remote access for staff, real time data	Code Enforcement Remote Integration
Greater accuracy	Greater efficiency 30% decrease processing
Established system to gather data	More reliable data / improved reporting

User Acceptance



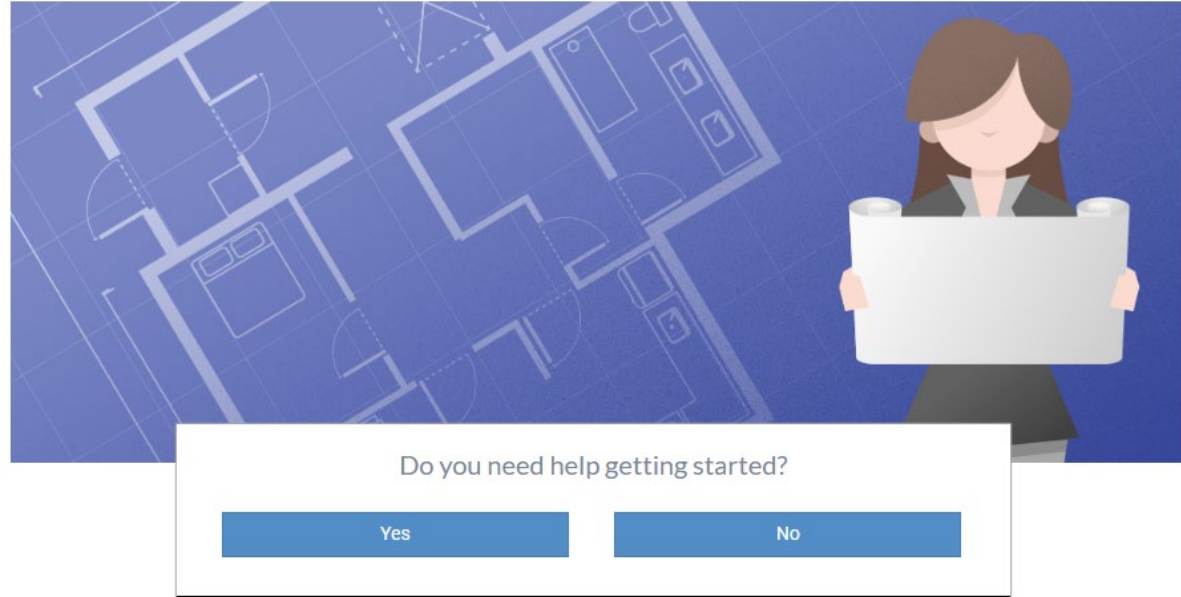
Insta-Permit

- Residential Re-roof
- Residential EV Charger
- Residential Solar
- Temporary Power
- Residential Panel Upgrade
- Residential HVAC
- Residential Water Heater
- Residential Repipe
- Pool Demolition



Innovative

- Application selection guide
- City-wide system
- Digital permits/approvals
- 10 Insta-Permits



In the Future

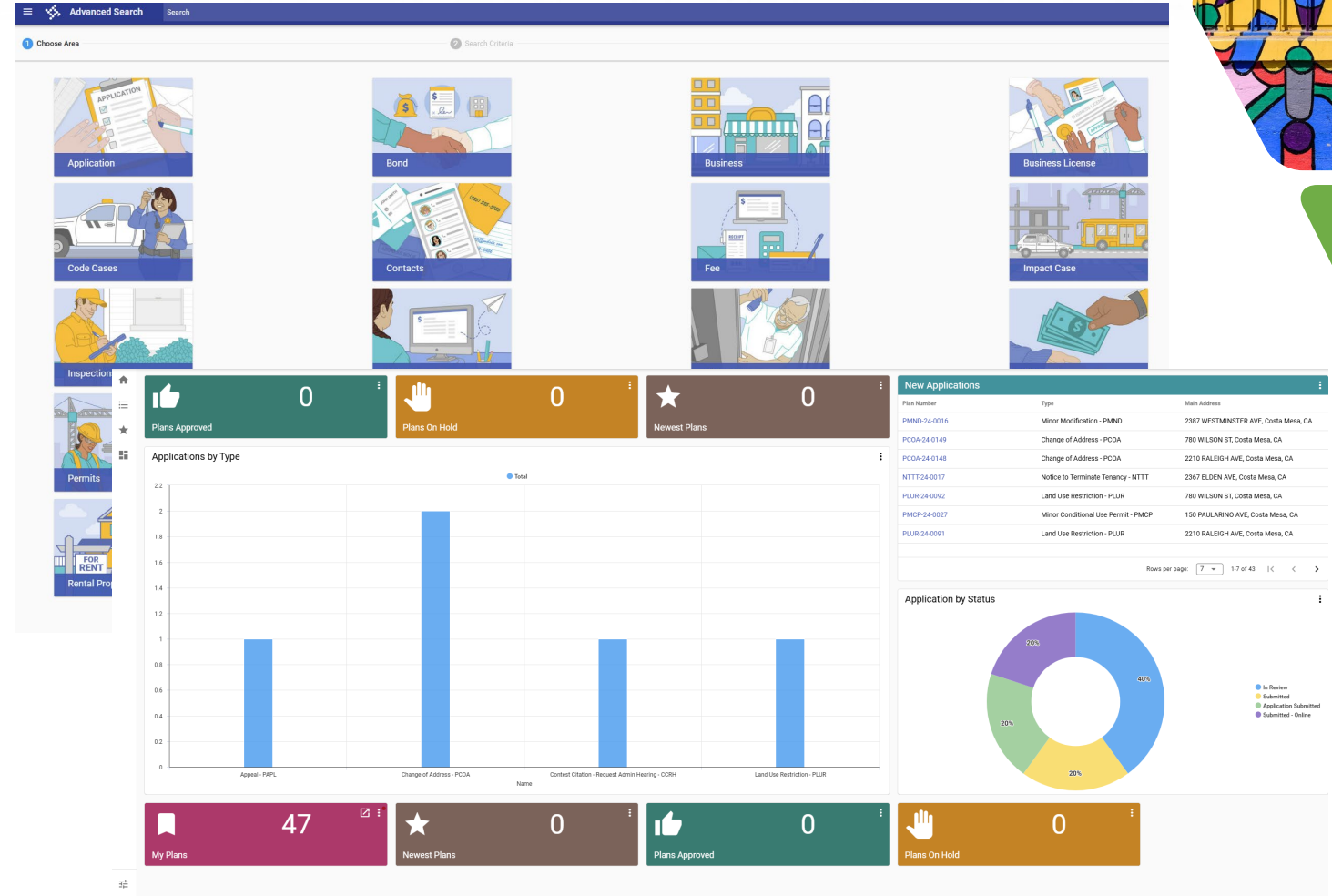
- More dynamic features
- Standardized handouts
- Express permits
- Cover sheets for permits

From Log-in to Issuance it is no more than 20 minutes



Monitoring & Reporting

- Regular Subject Matter Expert Meetings
- TESSA issue tracker
- Regular Training
- Continued meetings with regular users
- Performance Reports by Division





Next Steps

- Continue monitoring the system
- Continuing to add upgrades and modifications requested by staff and community users
- Continue to train staff
- Seek opportunities to increase customer-service interface and make applications more certain, simple & swift



TESSA Update

Planning Commission Meeting

January 27, 2025





CITY OF COSTA MESA

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 25-163

Meeting Date: 1/27/2025

TITLE:

DECEMBER 9, 2024 UNOFFICIAL MEETING MINUTES

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES
DEPARTMENT/PLANNING DIVISION

RECOMMENDATION:

Planning Commission approve the minutes of the regular meeting of December 9, 2024.



REGULAR PLANNING COMMISSION MONDAY, DECEMBER 9, 2024 - MINUTES

CALL TO ORDER – The Planning Commission Meeting was called to order by Chair Adam Ereth at 6:05 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG - Chair Adam Ereth led the Pledge of Allegiance

ROLL CALL

Present: Chair Adam Ereth, Commissioner Angely Andrade, Commissioner Karen Klepack, Commissioner David Martinez, Commissioner Jonny Rojas

Absent: Vice Chair Russell Toler, Commissioner Jon Zich

ANNOUNCEMENTS AND PRESENTATIONS: None.

PUBLIC COMMENTS – MATTERS NOT LISTED ON THE AGENDA:

Caller One, expressed concerns about the City's non-compliance with Senate Bill 379, which requires instantaneous permitting for solar and battery systems in cities with populations over 50,000 by September 30, 2023. Caller One reported delays in their application for a solar and battery system, which was submitted on November 21, 2024 and is still in the preliminary review stage as of December 9, 2024. Caller One noted that the city only provides instantaneous permitting for solar systems, not batteries, which violates the law. Citing the statute's specific requirements, Caller One expressed frustration over the delays, potential loss of tax credits, and financial impacts, and urged the city to explain its non-compliance and take immediate action to remedy the situation.

PLANNING COMMISSIONER COMMENTS AND SUGGESTIONS:

Commissioner Martinez announced several community events and initiatives, including the Snoopy House display at City Hall from December 13-20, running from 5:30 p. m. to 8:30 p. m., with decorations already in place. He also highlighted the Costa Mesa Fire Department's toy drive accepting new, unwrapped toys at any of the six fire stations until December 23rd. Additionally, Commissioner Martinez shared that the Costa Mesa Historical Society, in collaboration with Councilmember Reynolds, will host a historic walking tour on December 14th at 2 p. m., with RSVP's available via email or on the Historic Society's social media sites.

Commissioner Klepack stated that she plans to attend the historic walking tour hosted by the Costa Mesa Historical Society on December 14, 2024.

Chair Ereth shared that he attended the senior center meeting last week, where he enjoyed listening to public comments and engaging with staff in a setting outside the City Council Chambers, finding the experience informative and valuable.

CONSENT CALENDAR:

1. MINUTES:

- 1. NOVEMBER 12, 2024 UNOFFICIAL MEETING MINUTES**
- 2. OCTOBER 28, 2024 UNOFFICIAL MEETING MINUTES**
- 3. OCTOBER 14, 2024 UNOFFICIAL MEETING MINUTES**
- 4. APRIL 11, 2022 UNOFFICIAL MEETING MINUTES**
- 5. JULY 24, 2023 UNOFFICIAL MEETING MINUTES**

Chair Ereth pulled the minutes of November 12, 2024 and asked staff to add more detail to the discussion on CC-1 regarding the General Plan Conformity determination for property located at 778 Shalimar Drive.

Commissioner Martinez made a motion to approve the remainder of the consent calendar. Seconded by Commissioner Andrade.

Commissioner Martinez expressed appreciation for the detailed minutes.

MOVED/SECOND: Martinez/Andrade

MOTION: Approve the Consent Calendar except for Item Number 1, November 12, 2024 Unofficial Meeting Minutes.

The motion carried by the following roll call vote:

Ayes: Chair Ereth, Commissioner Andrade, Commissioner Klepack, Commissioner Martinez, Commissioner Rojas

Nays: None

Absent: Vice Chair Toler, Commissioner Zich

Abstained: None

Motion carried: 5-0-2

-----**END OF CONSENT CALENDAR**-----

PUBLIC HEARINGS:

- 1. GENERAL PLAN CONFORMITY REPORT FOR THE PROPOSED LEASE OF A PORTION OF CITY PROPERTY, AND RECOMMENDATION TO THE CITY COUNCIL ON A TENTATIVE PARCEL MAP (2023-160) TO SUBDIVIDE THE SUBJECT PROPERTY INTO TWO PARCELS, AND A MASTER PLAN (PMAP-24-0001) WITH DENSITY BONUS PURSUANT TO STATE LAW FOR THE**

DEVELOPMENT OF A 70-UNIT MULTI-FAMILY RESIDENTIAL PROJECT THAT INCLUDES 34 PERMANENT SUPPORTIVE HOUSING UNITS, 35 INDEPENDENT LIVING UNITS AND ONE UNRESTRICTED MANAGER'S UNIT; LOCATED IN A PORTION OF THE PARKING LOT AT 695 WEST 19TH STREET (COSTA MESA SENIOR CENTER)

Description: General Plan Conformity Report for the proposed lease of a portion of City property located at 695 West 19th Street (Costa Mesa Senior Center), and recommendation to the City Council on a Tentative Parcel Map to subdivide the subject property into two parcels, and a Master Plan with Density Bonus pursuant to State Law for the development of a 70-unit multi-family residential senior affordable project that includes 34 permanent supportive housing units, 35 independent living units and one manager's unit. The request includes concessions from specified development standards pursuant to State Density Bonus Law.

Environmental Determination: The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15332 (Class 32), In-Fill Development Projects.

Two ex-parte communications reported:

- Commissioner Martinez attended the senior center meeting and spoke with the applicant.
- Chair Ereth attended the senior center meeting.

Presentation by Mr. Victor Mendez, Senior Planner.

The Planning Commission asked staff a range of questions regarding the proposed affordable senior housing project. Topics included prioritization for Costa Mesa residents, outreach efforts in multiple languages, and the definition of "senior" for eligibility. Parking design, ADA compliance, and the allocation of reserved and electric vehicle parking were discussed, along with measures to maintain sidewalk access and manage construction impacts. Questions also addressed the project's mixed-use designation, parcel subdivision for tax credit financing, lease terms, and alignment with State Density Bonus Law. Planning Commissioners also inquired about the need for affordable senior housing in Costa Mesa, referencing data from the Affordable Housing Coalition, and raised concerns about ensuring that the project meets both community needs and legal requirements. Staff provided detailed responses, with certain issues deferred to the applicant for further clarification.

The Chair called for a break at 7:10 p. m.

The Chair called the meeting back to order at 7:22 p. m.

The Chair opened the public hearing.

Planning Commissioners asked the applicant about various aspects of the proposed affordable senior housing project. Key questions focused on the range of units (60-70) and how financing limitations influenced that number, the project's potential disturbance to the Senior Center during construction, and the applicant's plans to mitigate parking and access impacts through valet services and off-site parking. Planning Commissioners also inquired about the design of community amenity spaces, their alignment with tax credit program requirements, and how they complement existing Senior Center amenities. Additional questions addressed services for non-driving seniors, such as van transportation for errands and tailored support services. The applicant clarified their commitment to addressing community needs, collaborating with the city and Senior Center, and providing comprehensive on-site services for residents.

Public Comments:

Shirley McDaniels expressed opposition to the proposed Senior Center housing project, raising concerns about the lack of realistic accommodations for senior parking during construction. She criticized the proposed shuttle system as impractical for seniors, many of whom do not use texting technology, and argued that the Senior Center parking lot is an unsuitable location for the project.

Diane Russell, voiced strong support for the proposed affordable senior housing project, citing its convenient location near amenities like the Senior Center, grocery stores, and public transportation. While she acknowledged the need for housing for aging residents on fixed incomes, she suggested improvements such as providing printed, updated project information at the Senior Center to address misinformation and evaluating nearby intersections for enhanced pedestrian safety for seniors.

Betsy Densmore, expressed strong support for the proposed senior housing project, emphasizing the urgent need for affordable housing for seniors who are often isolated and struggling. Highlighting the benefits of the project's location within a "15-minute neighborhood" near essential amenities, she noted the long waitlists for existing senior housing and praised the project's potential to address the growing demand for downsizing and affordable living options in Costa Mesa.

Frances Woods, expressed concerns about the proposed senior housing project, particularly regarding traffic safety and accessibility issues. She highlighted the narrow entrance near the bus stop, potential traffic jams caused by emergency vehicles and cars turning quickly, and challenges for seniors crossing in front of the entrance. Ms. Woods also raised concerns about the adequacy of handicap

parking spaces, noting the high-demand among seniors and their caregivers, as well as the rising costs of construction and their impact on the project's feasibility.

Alan Maedo, raised concerns about the adequacy of information provided about the senior housing project, particularly regarding its costs and long-term impact. He questioned the lack of details on total lifecycle costs, financing comparisons with other affordable housing models, and the absence of consideration for ownership options versus renting. He also highlighted the strain on parking and the Senior Center's lunch program, urging the city to secure firm parking commitments before increasing the number of units to 70 and to clarify the application process and costs for future residents.

Speaker Six, expressed support for the development but raised concerns about parking and safety. Speaker Six noted existing parking challenges due to homeless individuals and halfway houses on Plumer Street, as well as potential competition for parking spaces during and after construction. Additionally, Speaker Six highlighted safety concerns for seniors walking at night, suggesting the need for security measures, and requested that any additional street lighting be mindful of nearby residential areas.

Speaker Seven, expressed opposition to the senior housing project, citing concerns about reduced parking at the Senior Center, unsafe driveway placement, and potential delays for emergency response vehicles due to traffic changes on 19th Street. They criticized the project for being overly dense, redundant in amenities already available nearby, and costly for taxpayers. While acknowledging the need for senior housing, they argued that this site is not suitable and suggested exploring less impactful locations with better planning and standards.

Linda Tang, expressed strong support for the proposed 70-unit senior housing development, emphasizing the critical need for affordable housing for seniors with fixed incomes in the city. She praised the partnership with Jamboree Housing for their proven track record and highlighted the city's efforts to address community needs. She urged the Planning Commission to approve the project as a vital step toward easing the housing burden for low-income seniors.

Kathy Esfahani, expressed strong support for the proposed senior housing project, highlighting the long-standing advocacy for affordable housing at the Senior Center site since its inclusion in the City's Housing Element in 2008. She emphasized the critical need for affordable housing, citing that 62% of Costa Mesa seniors over 65 are low or very low income and cannot afford market-rate rents, and praised the City and Jamboree Housing for addressing this urgent need to prevent senior homelessness. Ms. Esfahani acknowledged parking concerns but urged prioritization of creating homes for seniors in need.

The Chair closed the public comments.

The Planning Commission and applicant discussion included commitments for off-site parking with local businesses and churches, addressing concerns about senior transportation during construction. The applicant explained ongoing negotiations with Smart and Final and nearby churches and emphasized efforts to minimize transit times for seniors. They addressed concerns about seniors using text-based shuttle systems, noting plans for tech training and additional community meetings to refine solutions during construction. Questions also covered driveway reconfiguration, construction phasing for ADA stalls and the new driveway, rising construction costs, and site security, with the applicant ensuring that costs would not impact residents and committing to robust lighting and security systems. The applicant thanked City staff and the community for their collaboration, emphasizing their long-term commitment to the project and the Costa Mesa community.

MOVED/SECOND: Ereth / Andrade

MOTION: Approve staff's recommendation.

The motion carried by the following roll call vote:

Ayes: Chair Ereth, Commissioner Andrade, Commissioner Klepack, Commissioner Martinez, Commissioner Rojas

Nays: None

Absent: Vice Chair Toler, Commissioner Zich

Recused: None

Motion carried: 5-0-2

ACTION:

The Planning Commission:

1. Found that the lease and use of the City property for affordable senior housing purposes is in conformance with the General Plan in regard to location, purpose and extent pursuant to California Government Code Section 65402.

And the Planning Commission recommended that the City Council:

2. Find the project is categorically exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15332 (Class 32), In-Fill Development Projects; and
 3. Approve the Master Plan (PMAP-24-0001) with Density Bonus, and the updated Tentative Parcel Map 2023-160.
-
2. **CONDITIONAL USE PERMIT (PCUP-23-0001) AND TENTATIVE PARCEL MAP TO CONVERT FOUR EXISTING OFFICE BUILDINGS INTO A NON-RESIDENTIAL COMMON INTEREST DEVELOPMENT; LOCATED AT 660 BAKER STREET**

Presentation by Mr. Victor Mendez, Senior Planner.

Public Comments: None.

MOVED/SECOND: Martinez / Klepack

MOTION: Approve staff's recommendation.

The motion carried by the following roll call vote:

Ayes: Chair Ereth, Commissioner Andrade, Commissioner Klepack,
Commissioner Martinez, Commissioner Rojas

Nays: None

Absent: Vice Chair Toler, Commissioner Zich

Recused: None

Motion carried: 5-0-2

ACTION:

The Planning Commission:

1. Found that the project is categorically exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Class 1), Existing Facilities and 15315 (Class 15), Minor Land Divisions; and
2. Approved Conditional Use Permit (PCUP-23-0001) and updated Tentative Parcel Map based on findings of fact and subject to conditions of approval.

OLD BUSINESS: None.

NEW BUSINESS: None.

REPORT - PUBLIC WORKS - None.

REPORT - DEVELOPMENT SERVICES – None.

REPORT - ASSISTANT CITY ATTORNEY – None.

ADJOURNMENT AT 9:20 PM

Submitted by:

SCOTT DRAPKIN, SECRETARY
COSTA MESA PLANNING COMMISSION



CITY OF COSTA MESA

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 25-165

Meeting Date: 1/27/2025

TITLE:

PRESENTATION PERTAINING TO THE UPDATE OF THE CITY'S ACCESSORY DWELLING UNIT (ADU) PROVISIONS TO CONFORM WITH RECENT REVISIONS TO STATE LAW

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES
DEPARTMENT/PLANNING DIVISION

PRESENTED BY: CHRIS YEAGER, SENIOR PLANNER

CONTACT INFORMATION: CHRIS YEAGER 714-754-4883
Christopher.Yeager@costamesaca.gov

RECOMMENDATION:

Staff recommends the Planning Commission:

1. Find that the staff presentation is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(1),(2)&(3) and 15061(b)(3). The presentation is not a "project" under CEQA. , and
2. Receive an informational presentation from staff regarding the update of the City's Accessory Dwelling Units provisions.



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: JANUARY 27, 2025

ITEM NUMBER: PH-1

**SUBJECT: PRESENTATION PERTAINING TO THE UPDATE OF THE CITY'S
ACCESSORY DWELLING UNIT (ADU) PROVISIONS TO CONFORM
WITH RECENT REVISIONS TO STATE LAW**

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

PRESENTATION BY: CHRIS YEAGER, SENIOR PLANNER

**FOR FURTHER INFORMATION CONTACT: CHRIS YEAGER
714-754-4883
Christopher.Yeager@costamesaca.gov**

RECOMMENDATION:

Staff recommends the Planning Commission:

1. Find that the staff presentation is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(1),(2)&(3) and 15061(b)(3). The presentation is not a "project" under CEQA. , and
2. Receive an informational presentation from staff regarding the update of the City's Accessory Dwelling Units provisions.

APPLICANT OR AUTHORIZED AGENT:

The ADU presentation is a City-initiated request.

BACKGROUND:

On January 1, 2020, the City of Costa Mesa Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) [Urgency Ordinance](#) went into effect allowing for ADUs and JADUs to be constructed citywide in residential and mixed-use zones. The Urgency Ordinance was adopted on December 17, 2019. Details about the meeting are found in the following link:

<https://www.costamesaca.gov/government/mayor-city-council/archived-agendas-videos-and-minutes/2019-agendas-videos-minutes>

On March 2, 2021, City Council adopted Ordinance 2021-03 which provided the framework of the City's current ADU standards. The staff report is linked:

<http://ftp.costamesaca.gov/costamesaca/council/agenda/2021/2021-03-02/CC-8.pdf>

On February 21, 2023, City Council modified the ordinance to comply with new State laws that went into effect at that time. Following adoption, the ordinance was provided to the California Department of Housing and Community Development (HCD) for review as required by State law. The staff report is linked,

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=6031044&GUID=965EA92D-CA6D-48F1-A84D-3C77DA936D66>

On September 11, 2024, a letter from the HCD (Attachment 2) was sent to the City requesting modifications to the ADU Ordinance to conform with recently-adopted State law. Pursuant to HCD direction and revised State law, City staff subsequently sent a response to HCD outlining proposed revisions to the ordinance (Attachment 3).

In addition to code amendments requested by HCD, City staff proposes additional amendments to the ordinance to comply with recently adopted State Laws pertaining to ADUs including Senate Bill (SB) 477, SB 1211, and Assembly Bill (AB) 2533.

- [SB 477](#): This bill primarily aims to reorganize and renumber California's ADU statutes to make them clearer and more understandable for local governments and the public.
- [SB 1211](#): This bill provides more flexibility for developing ADUs on multifamily properties. It allows the demolition of both covered and uncovered parking spaces for ADUs without requiring replacement parking. It also increases the number of detached ADUs allowed on existing multifamily lots from two to eight ADUs provided that the number of ADUs does not exceed the number of existing primary units.
- [AB 2533](#): This bill focuses on the legalization of unpermitted ADUs and Junior ADUs that were built before January 1, 2020. It aims to simplify the process for homeowners to bring their unpermitted ADUs into legal compliance.

DESCRIPTION

To comply with the Government Code as enacted by the State Legislator and to respond to HCD's Ordinance review letter, staff proposes to amend the City's ADU regulations. The Code Amendments are limited to proposed modifications to Section 13-35 ("Accessory Dwelling Units") of Title 13 of the Municipal Code. Amendments are proposed throughout the Ordinance including renumbering referenced government code sections, clarifying the number of ADUs and size of ADUs, removing regulatory requirements for JADUs, and modifying and clarifying various ADU/JADU development standards.

ANALYSIS

The existing ADU Ordinance (Costa Mesa Municipal Code Section 13-35) consists of sections devoted to (a) *Purpose, General Plan Consistency, and Definitions*, (b) *ADU Standards*, (c) *JADU Standards*, and (d) *General Development Standards*. Overall, the structure and intent of the ADU Ordinance is proposed to remain the same. Attachment 1 includes the proposed ordinance with deletions shown in "~~striketrough~~" and additions shown "underlined". Below is a summary of the proposed ADU Ordinance changes in each section of Costa Mesa Municipal Code Section (CMMC) 13-35:

(a) Purpose, General Plan Consistency, Definitions.

This section has no proposed modifications.

(b) Accessory Dwelling Units

CMMC Section 13-35(b) includes general standards for ADUs. The section includes a variety of amendments including clarifying the ministerial nature of ADU approvals, clarifying the number of ADUs permitted on a lot, and clarifying maximum sizes of ADUs.

"Single-Family" Development

Pursuant to CMMC Section 13-35(b)(4)(a), the City's current ADU provisions allow a maximum of one ADU and one JADU on a single-family dwelling lot. HCD's letter indicated that the City must revise the ordinance to allow for "one converted ADU", "one detached, new construction ADU" and "one JADU" on a single-family lot. Therefore, changes are proposed in the draft ordinance to reflect compliance with State law and would allow for an additional ADU on a single-family dwelling lot.

"Multifamily" Development

Pursuant to CMMC Section 13-35(b)(4)(b), the current ADU provisions allow a maximum of two detached ADUs on multiple-family dwelling properties and does not allow for ADUs within new construction multifamily residences. Assembly Bill 1211 recently modified State ADU law to allow up to eight detached ADUs on multifamily lots, with the

caveat that the number of detached ADUs does not exceed the number of existing primary units on the lot. In addition, new construction multifamily dwellings are permitted to construct one ADU within the structure. Therefore, changes are proposed in the draft ordinance to allow up to eight detached ADUs and to allow one ADU within a new multifamily dwelling structure on a multifamily lot to reflect State law.

Multifamily "Maximum Size" Detached ADU

Pursuant to CMMC Section 13-35(b)(5)(b), the City's detached multifamily ADU maximum size is limited to 800 square feet unless only one ADU is proposed (instead of two currently permitted), in which case the detached ADU could be 1,200 square feet. HCD's letter indicated that this standard needed to be updated to comply with State ADU law. To respond to this HCD comment, staff updated CMMC Section 13.35(b)(5)(b) to be consistent with Government Code Section 66321, which restricts local ADU ordinances to allowing a minimum detached ADU of 850 square feet, or 1,000 square feet if it provides more than one bedroom. Therefore, the proposed amendments to the City's ADU "maximum size" standards for detached ADUs on a multifamily lot have been updated to reflect State law.

(c) Junior ADUs

"Short-term Rentals Prohibited"

Pursuant to CMMC Section 13-35(c)(4), "a Junior ADU shall not be rented for periods of less than 31 days unless otherwise authorized by the municipal code". HCD's letter indicates that Government Code Section 66333 does not provide rental term limits for JADUs and is thus, "prohibiting short term rentals is inconsistent with State JADU Law". City staff disagrees with the comment provided by HCD in that allowing JADUs to be rented for short-term housing would reduce the number of local long-term housing units in the City. Specifically, the loss would result in the potential removal of more affordable long-term housing units in Costa Mesa for the benefit of short-term vacation rental operations such as "VRBO" and "Airbnb".

As permitted in the attached HCD Letter, the City may adopt an ordinance without the requested changes if findings are included in the resolution adopting the ordinance that explains the reasons why the City believes that the ordinance complies with State ADU law.

Staff has included the following reasons/findings in the draft ADU ordinance update:

Pursuant to Government Code Section 66310, the legislature has determined the following: (1) ADUs and JADUs are "a valuable form of housing in California"; (2) ADUs and JADUs "provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods"; (3) Homeowners who create accessory dwelling units

benefit from added income, and an increased sense of security”; (4) “Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California”; (5) “California faces a severe housing crisis”; (6) “The state is falling far short of meeting current and future housing demand with serious consequences for the state’s economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners”; (7) “Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character”; and (8) Accessory dwelling units are an essential component of California’s housing supply. Thus, allowing JADUs to be rented for short-term rentals that are facilitated by online marketplaces would reduce and threaten the availability of the City’s long-term housing, including affordable housing, within the City during the State housing crisis, and therefore allowing the prohibition of short-term lodging of the City’s JADUs is consistent with State ADU law, specifically Government Code Section 66310.

(d) Development Standards

CMMC Section 13-35(d) provides development standards that are applicable to ADUs, including, but not limited to, standards related to: setbacks, height, stairways and balconies, architectural standards, and garage conversions. Government Code Section 66323 specifies specific ADUs which are not subject to local development standards; The current ordinance requires that all ADUs meet the local development standards. As requested by the HCD, the proposed Ordinance (CMMC Section 13-35(d) and 13-35(d)(1)) has been revised to exempt the following ADUs from local standards: (1) all converted units, (2) all converted JADUs, (3) 800 square foot or less new-construction detached units with four-foot setbacks with single-family primary dwellings, and (4) detached units with multifamily primary dwelling structures. The aforementioned ADUs are subject to the State government code standards which include applicable four-foot side and rear setbacks, separate entry, and applicable height restrictions.

“Recorded Covenants”

Pursuant to CMMC Section 13-35(d)(5), a recorded covenant (deed restriction) is required as a condition of issuing building permits for ADUs. The recorded restriction prohibits separate sales of ADUs and JADUs, restricts the ADU to the maximum size allowed by the code and prohibits short-term rentals. To reduce the barrier to obtaining permits for constructing new ADUs, the deed restriction will now be required “prior to final inspection and occupancy” instead of “before obtaining a building permit”.

In addition, the current CMMC Section 13-35(d)(5)(b) included language requiring owner occupancy for ADUs that were approved on or after January 1, 2025. The Government code now prohibits owner occupancy requirements, so this Section has been removed.

"Architectural Standards"

Similar to several current State housing laws, the State ADU provisions only allows for objective development ADU standards. Therefore, various City ADU development standards have been modified including architectural standards which have changed to require matching materials, finishes, and colors of the primary dwelling(s). In addition, garage conversion design standards have been modified to be recommendations.

"Parking"

Pursuant to Assembly Bill 1211, CMMC Section 13-35(d)(14)(b) has been modified to clarify that an ADU may be constructed in the place of any required uncovered parking space without requiring replacement parking spaces. The City's current code (pursuant to previous State ADU law) only allows for the removal of garage and carport parking spaces without replacement. The revised code allows any required parking space in any form to be removed and not replaced in conjunction with the development of an ADU.

GENERAL PLAN CONFORMANCE

The City's approved 6th Cycle Housing Element includes Program 3E which states to "continue 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 staff presentation is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(1),(2)&(3) and 15061(b)(3). The presentation is not a "project" under CEQA.

ALTERNATIVES

This agenda report is limited to providing an informational presentation to the Planning Commission with no associated decisions; therefore, alternative actions is not applicable.

PUBLIC NOTICE

Pursuant to the Brown Act, this item was posted on the Agenda 72 hours prior to the meeting.

CONCLUSION

Staff will be providing the Planning Commission with an informational presentation regarding a proposed update to the City's adopted ADU ordinance. The Planning

Commission will receive a presentation by staff, may ask staff any questions, and open the item for public comment. This agenda item is informational only and no project level decisions will be made.

ATTACHMENTS

1. Tracked Changes Ordinance
2. September 11, 2024 HCD Letter
3. October 10, 2024 Response Letter to HCD

§ 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 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~~**66313** as that section may be amended from time to time.

b. "Junior ADU" shall have the same meaning as that stated in Government Code section ~~65852.22~~**66313(dh)(4)** as that section may be amended from time to time.

c. A structure is considered "existing" if a building permit was issued and finalized before an ADU or JADU application is submitted under this section.

d. The terms "single-family dwelling" and "multifamily dwelling" exclude all detached accessory structures.

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 primary dwelling on a lot.

f. A "multifamily dwelling" is a dwelling (excluding any ADU or Junior ADU) within a multifamily dwelling structure.

g. A "multifamily dwelling structure" is a structure which contains at least two 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 other multifamily dwellings.

(b) *Accessory dwelling units.*

(1) *Residential and mixed use zones only.* ADUs are permitted in single-family, multifamily, 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 in compliance with government code section 66317.

(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 with the exception as allowed in subsection c below.~~

a. *Single-family.* One new construction ADU, one conversion ADU, and one junior ADU ~~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 and~~ Junior ADU may be within the existing footprint of a lawful single-family dwelling. Alternatively, an ADU may be within a lawfully constructed existing detached accessory structure; in this case up to 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~~ ADUs and Junior ADUs must have independent exterior access from the single-family dwelling, and have side and rear setbacks sufficient for fire safety; ~~or and~~

2. *New construction (attached or detached).* One new construction ADU may be permitted on a lot with proposed or existing single-family dwelling. One 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. ~~One ADUs are not is~~ allowed within new construction residences where, after construction, there will be at least two residences on the lot (e.g. detached residential structures, duplexes, apartments); up to two ADUs are allowed with such structures pursuant to subsection **32**, 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 25%, with any partial unit rounded down) of the number of existing multifamily dwelling units on the lot, but at least one unit, shall be permitted as ADU(s) constructed within the enclosed nonlivable space (e.g., a space in a dwelling not intended for human habitation, including living, sleeping, eating, cooking, or sanitation) ~~storage rooms, boiler rooms, hallways, attics, basements, or garages~~ of the existing multifamily dwelling structures; or

~~**2.** *Maximum attached ADUs.* No more than one attached ADU is permitted. The attached ADU shall be included in the number of detached ADUs. The ADU shall be attached to the multifamily dwelling structure; or~~

~~3.2. Maximum detached ADUs.~~ No more than ~~two-eight~~ detached ADUs are permitted, provided that the number of accessory dwelling units allowable pursuant to this clause shall not exceed the number of existing units on the lot. ~~Both~~ The units shall be detached from every residence on site (but need not be detached from each other) with the exception of one ADU, which may be attached to the multifamily dwelling structure. 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; or

~~4. Maximum mixed (detached/within) ADUs.~~ No more than 25%, ~~with any partial unit rounded down~~ of the number of existing multifamily dwelling units on the lot, but at least one unit, shall be permitted as ADU(s) constructed within the enclosed nonlivable space (e.g., storage rooms, boiler rooms, hallways, attics, basements, or garages) of the existing multifamily dwelling structures; and no more than two ADUs that are detached from each multifamily dwelling structure on site.

~~c. Common interest developments.~~ One conversion ADU may be permitted per unit on lots developed with common interest developments.

(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 1,200 square feet.

2. Attached. An ADU attached to a single-family dwelling shall be no more than the greater of 50% of the square footage of the existing single-family dwelling or 1,000 square feet.

b. Multifamily, ~~exterior new~~ construction.

1. Detached. For lots with an existing legal multifamily dwelling structure the maximum square footage for either an attached or detached ADU is 850 square feet or 1,000 square feet for an ADU that provides more than one bedroom; ~~proposing one new construction detached ADU, the ADU shall not exceed 1,200 square feet.~~ For lots with an existing or proposed legal multifamily

~~dwelling structure proposing two detached ADUs, the ADUs shall not exceed 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 50% 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 220 square feet, ADUs may also be less than 220 square feet, provided that they are no smaller than 150 square feet, and comply with all other legal requirements.

(7) Conversions of dwelling units.

a. Total conversion of single-family dwelling. An entire existing single-family 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~~ the underlying zone, 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 dwelling before construction of the ADU addition.

(c) Junior ADUs.

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

(2) Maximum size. A Junior ADU shall not exceed 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 dwelling, including an attached garage.

(6) Kitchen requirements. A Junior ADU shall include an efficiency kitchen, including 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.

(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. The following standards shall not preclude a unit built subject to Government Code section 66323 (a), which includes all converted units ADUs, all converted JADUs, 800–square–foot, new-construction, detached ADUs with four-foot setbacks with single-family primary dwellings, and detached units with multifamily primary dwelling structures. Otherwise, Aall 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 or as permissible in Government Code Section 66332 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,~~Prior to final inspection and occupancy, 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~~ Reserved

c. Restrict the 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 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 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 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 of an existing structure, including height. Notwithstanding the foregoing, 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 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. All mechanical equipment associated with the ADU shall maintain the minimum setbacks.

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 feet.

(9) Height. Except as authorized in subsection b, below, in no event may any portion of a new construction ADU exceed two stories or exceed the height of any other dwelling that could legally be on the property. ~~In all cases, a height of at least 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 dwelling, may be in whole or in part on a second floor, or be a two story ADU, if all five of the following occur:

1. All portions of the ADU structure on a second floor are at least 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 25 feet of a neighboring dwelling and face the neighboring property unless such windows have a minimum sill height of at least five feet; and

5. The second floor (or the entire two story ADU as applicable) meets the setbacks applicable to additions 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, balconies.

a. Exterior stairways. A new exterior stairway to a second-floor ADU shall not be 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 abutting properties. Stairways and landings, which exceed building code minimum sizes, 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 main residential structure are permitted provided that the balcony be set back a minimum of 20 feet from the front property line. On corner properties, balconies may face the side street provided that they maintain the setback for the underlying zone. Balconies within 25 feet of a neighboring residence shall incorporate screening to ensure there are no direct views into the abutting property. New construction balconies that are not facing the front of the property or a side street, are prohibited.

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

(11) *Architectural standards.*

a. *Attached and detached ADUs.* ~~Each Attached and detached ADUs 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. *New construction Junior ADUs.* New construction Junior ADUs shall 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) *Recommended ~~g~~Garage conversions ~~;~~ design considerations.*

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

following design considerations are recommended:~~facade shall implement at least one of the following:~~

1. Be covered with landscaping that covers at least 50% of the wall, or

2. Include openings of at least 10% of the facade with at least one door that complies with section (13) below or one window which matches the material and design of the existing windows on the residence.

b. 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. The entrance to an ADU or Junior ADU shall match the materials and color of the primary residence(s), not be located on the same building elevation as the main reentrance of the primary residence(s) and shall be located along the building side, rear, or within the interior of the property, unless the economic and development services director approves an alternative configuration due to unique development circumstances.

(14) Parking.

a. The owner may provide parking that is at least eight and a half (8.5) feet wide and 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 a parking space or parking structure ~~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 parking space or parking structure 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 than 31 days, unless otherwise authorized by this Code.

(17) *Open space and landscaping.* ADUs which exceed 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**.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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September 11, 2024

Barry Curtis
Economic and Development Services Director
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Dear Barry Curtis:

**RE: Review of Costa Mesa's Accessory Dwelling Unit (ADU) Ordinance under
State ADU Law (Gov. Code, §§ 66313 - 66342)**

Please Note: As of March 25, 2024, with the Chaptering of Senate Bill (SB) 477 (Chapter 7, Statutes of 2024), the sections of Government Code relevant to State ADU and junior accessory dwelling unit (JADU) Law have been renumbered (Enclosure 1).

Thank you for submitting the City of Costa Mesa (City) accessory dwelling unit (ADU) Ordinance No. 2023-03 (Ordinance), adopted February 22, 2023, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Ordinance and submits these written findings pursuant to Government Code section 66326, subdivision (a). HCD finds that the Ordinance does not comply with State ADU and JADU Laws in the manner noted below. Under section 66326, subdivision (b)(1), the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than October 11, 2024.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance does not comply with State ADU Law in the following respects:

1. *Statutory Numbering* - The Ordinance contains several references to code sections that were deleted by SB 477, effective March 25, 2024. These include Government Code sections 65852.2, 65852.22 and 65852.26. The contents of these sections were relocated to Government Code, Title 7, Division 1, Chapter 13 (sections 66310-66342, see Enclosure). The City must amend the Ordinance to refer to the correct code sections
2. Section 13.35 (b)(3) – *Ministerial Approval* – The Ordinance states, “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.” However, Government

Code section 66317, subdivision (a) states, “The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot.” It later requires that “If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subdivision (a), the permitting agency shall, within the time period described in subdivision (a), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.”

The City must amend the Ordinance to add these provisions.

3. Section 13.35 (b)(4)a. and (b)(4)b. – *Unit Allowance* – The Ordinance states that, “Only one category may be used per lot...” when introducing the different formats of allowable units with single family dwellings. Later, the Ordinance states “...the applicant may have ADUs pursuant to one of the following...” when introducing the formats of units allowable with multifamily dwellings.

Government Code section 66323, subdivision (a), states, “Notwithstanding sections 66314 to 66322, inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following: (1) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...(A) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single family dwelling or existing space of a single-family dwelling or accessory structure.” Subparagraph (2) permits “[o]ne detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks.” The use of the term “any” followed by an enumeration of by-right ADU types permitted indicate that any of these ADU types can be combined on a lot zoned for single-family dwellings.

This permits a homeowner, who meets specified requirements, to create one converted ADU; one detached, new construction ADU; and one JADU. Thus, if the local agency approves an ADU that is created from existing (or proposed) space, and the owner subsequently applies for a detached ADU (or vice versa) that meets the size and setbacks pursuant to the subdivision, the local agency cannot deny the application, nor deny a permit for a JADU under this section. HCD notes that the Legislature, in creating the list, did not use “or” or “one of” to indicate only one or another would be applicable to the exclusion of the other.

This subdivision also applies to ADUs created pursuant to Government Code section 66323, subdivisions (a)(3) and (4), on lots with proposed or existing multifamily dwellings. Limiting single-family lots to one ADU would prevent

property owners from creating ADUs by-right under subdivision (a). Therefore, the City must amend the Ordinance to allow state-mandated by-right ADU combinations. Therefore, the City must amend the Ordinance to comply with State ADU Law.

4. Section 13.35 (b)(4) – *JADUs and Multifamily* – The Ordinance states, “Junior ADUs are not allowed on a lot with more than one residence.” However, Government Code section 66333, subdivision (a) requires that local ordinances “limit the number of junior accessory dwelling units to *one per residential lot* zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.” If the underlying lot is zoned for single-family residences, then statute permits a maximum of one JADU per lot (not per single-family residence on the lot). Therefore, the City must amend the language to note that lots zoned for single family residences may have a single JADU per lot.
5. Section 13.35 (b)(4) – *Multifamily* – The Ordinance states, “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)....” However, Government Code section 66314, subdivision (d)(2) permits one ADU subject to local development standards on a lot if “[t]he lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.” Therefore, the City’s restriction on ADUs with new construction multifamily residences conflicts with statute. The City must remove this reference.
6. Section 13.35 (b)(5)(b) – *Maximum Sizes* – The Ordinance states, “For lots with an existing legal multifamily dwelling structure proposing one (1) new construction detached ADU, the ADU shall not exceed one thousand two hundred (1,200) 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...” However, local design standards may not preclude a unit created subject to Government Code section 66323; therefore, the maximum sizes stated in this section may not apply to any unit created subject to Government Code section 66323, subdivision (a)(4). The City must amend the Ordinance to comply with State ADU Law.
7. Section 13.35 (b)(4)c. – *Common Interest Developments* – The Ordinance states, “One conversion ADU may be permitted per unit on lots with common interest developments.” However, ADU law applies to any lot that is zoned to allow residential development. Civil Code Section 4751, subdivision (a) states “Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an

accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Article 2 (commencing with Section 66314) or Article 3 (commencing with Section 66333) of Chapter 13 of Division 1 of Title 7 of the Government Code, is void and unenforceable. “ Therefore, this section is inconsistent with development allowances permissible under Government Code sections 66314 and 66323. State ADU Law provides for the creation of detached and attached ADUs, not just conversions, in areas zoned to allow single-family and multifamily dwelling residential use. The City must amend the Ordinance to comply with State ADU Law.

8. Section 13.35 (c)(4) and (d)(16) – *JADU Rental Terms* – The Ordinance states, “A Junior ADU shall not be rented for periods of less than 31 days unless otherwise authorized by the municipal code.” It later states “ADUs and Junior ADUs shall not be rented for a term of less thirty-one (31) days, unless otherwise authorized by this code.” However, Government Code section 66333 does not provide rental term limits for JADUs and is thus inconsistent with State JADU Law. Therefore, the City must amend the Ordinance accordingly.
9. Section 13.35 (c)(5) – *Attached Garage* – The Ordinance states, “A Junior ADU shall be entirely within an existing or proposed single- family dwelling.” However, Government Code section 66333, subdivision (d) expands this allowance to state “For purposes of this subdivision, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” Therefore, the City must amend the Ordinance accordingly.
10. Section 13.35 (d) – *Development Standards* – The Ordinance states, “All ADUs and Junior ADUs must comply with the following requirements....” However, local design standards provided by the Ordinance pursuant to Government Code section 66314, may not preclude a unit built subject Government Code section 66323 (a), which includes all converted units, all JADUs, 800 square foot new-construction detached units with four-foot setbacks with single-family primary dwellings, and detached units with multifamily primary dwelling structures. The City must note the exceptions.
11. Section 13.35 (d)(3) – *Separate Sale* – The Ordinance states, “Except as otherwise provided by law, (e.g. Government Code section 65852.26), ADUs... may not be sold or otherwise conveyed separate from the primary residence.” Please note that with the adoption of AB1033, the City now has the option to adopt an ordinance to govern the separate sale of an ADU from its primary dwelling.
12. Section 13.35 (d)(5) – *Deed Restrictions* – The Ordinance requires a covenant as a precondition to a building permit. However, Government Code section

66315 states, “No additional standards, other than those provided in Section 66314, shall be used, or imposed....” A deed restriction would be an “additional standard” and thus cannot be imposed. Therefore, the City must remove this section.

13. Section 13.35 (d)(5)b. – *Owner-Occupancy* – The Ordinance requires owner-occupancy “for ADUs approved on or after January 1, 2025....” However, effective January 1, 2024, Government Code section 66315 states “No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement...” The City must remove this section to comply with the State ADU Law.

14. Section 13.35 (d)(8)b., 13.35 (d)(9)a.1. - *Front Setbacks* – The Ordinance requires “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.” It later requires that “All portions of the ADU structure on a second floor are at least twenty-five (25) feet from the front property line....” However, Government Code section 66321, subdivision (b) prohibits “Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Therefore, the City’s application of front setback restrictions that would preclude such a unit would be inconsistent with State ADU Law. The City must amend the Ordinance accordingly.

15. Section 13.35 (d)(9) – *Height* – The Ordinance states, “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 could legally be on the property. In all cases, a height of at least eighteen (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.”

However, Government Code section 66321, subdivision (b)(4)(D) requires “A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling.” Additionally, section 66321, subdivision (b)(4)(B) requires the allowance of “an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit” under the conditions of that

subsection. Therefore, the City must amend the Ordinance to comply with State ADU Law.

16. Section 13.35 (d)(10) a. – *Exterior Stairways* – The Ordinance states, “A new exterior stairway to a second floor ADU shall not be visible from the public right of way at the front of the property.” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66323, may not preclude a unit built subject Government Code section 66323, which includes all converted units, all JADUs, 800 square foot new construction detached units with four-foot setbacks, and detached units with multifamily primary dwelling structures. Visibility restrictions on a stairway necessary to serve such a unit may not preclude the unit or its stairway. Therefore, the City must note that section 66323 units are excepted and should add “when feasible” to the existing language.
17. Section 13.35 (d)(11)(b) – “*Compatible*” – The Ordinance states, “Any detached ADU shall be compatible in exterior appearance with the primary unit or units in terms of design, materials, finishes, and colors....” However, Government Code section 66314, subdivision (b)(1) requires that a local agency “Impose objective standards on accessory dwelling units”. Government Code section 66313, subdivision (h) defines “Objective standards” as “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.” As “compatible” is a term that is subjective, this section is inconsistent with State ADU Law. Therefore, the City must amend the Ordinance to remove subjective terminology.
18. Section 13.35 (d)(11)c. – *JADUs and Exterior Appearance* – The Ordinance states, “Junior ADUs shall 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....” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323, which includes all JADUs. Therefore, the City must remove this section.
19. Section 13.35 (d)(12) – *Garage Conversion* – The Ordinance requires design standards in the event of a garage conversion. However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323, which includes all converted units and all JADUs, both of which may be created in garages. Therefore, the City’s design standards may not preclude converted units. The City must note the exceptions.

20. Section 13.35 (d)(13) – *Entry* – The Ordinance requires that entry for ADUs and JADUs “...not be located on the same building elevation as the main reentrance of the primary residence(s) and shall be located along the building side, rear, or within the interior or the property....” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323. The City must note the exceptions.

21. Section 13.35 (d)(17) – *Open Space and Landscaping* – The Ordinance requires that, “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....” However, and as above, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323. The City must note the exceptions.

Please note that the City has two options in response to this letter. The City can either amend the Ordinance to comply with State ADU Law¹ or adopt the Ordinance without changes and include findings in its resolution adopting the Ordinance that explain the reasons the City believes that the Ordinance complies with State ADU Law despite HCD’s findings². If the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD must notify the City and may notify the California Office of the Attorney General that the City is in violation of State ADU Law³.

HCD appreciates the City’s efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please contact Mike Van Gorder, of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov if you have any questions or would like HCD’s technical assistance in these matters.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Manager
Housing Policy Development Division

¹ Gov. Code. § 66326, subd. (b)(2)(A).

² Gov. Code, § 66326, subd. (b)(2)(B).

³ Gov. Code, § 66326, subd. (c).

State ADU/JADU Law Statutory Conversion Table

New Government Code Sections	Previous Government Code Sections
Article 1. General Provisions	
66310	65852.150 (a)
66311	65852.150 (b)
66312	65852.150 (c)
66313	General Definition Section 65852.2 (j) 65852.22 (j)
Article 2. Accessory Dwelling Unit Approvals	
66314	65852.2(a)(1)(A), (D)(i)-(xii), (a)(4)-(5)
66315	65852.2 (a)(8)
66316	65852.2 (a)(6)
66317	65852.2 (a)(3), (a)(7)
66318	65852.2 (a)(9), 65852.2 (a)(2)
66319	65852.2 (a)(10)
66320	65852.2 (b)
66321	65852.2 (c)
66322	65852.2 (d)
66323	65852.2 (e)
66324	65852.2 (f)
66325	65852.2 (g)
66326	65852.2 (h)
66327	65852.2 (i)
66328	65852.2 (k)
66329	65852.2 (l)
66330	65852.2 (m)
66331	65852.2 (n)
66332	65852.23.
Article 3. Junior Accessory Dwelling Units	
66333	65852.22 (a)
66334	65852.22 (b)
66335	65852.22 (c)
66336	65852.22 (d)
66337	65852.22 (e)
66338	65852.22 (f)-(g)
66339	65852.22 (h)
Article 4. Accessory Dwelling Unit Sales	
66340	65852.26 (b)
66341	65852.26 (a)
66342	65852.2 (a)(10)



CITY OF COSTA MESA

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ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT

October 10, 2024

Jamie Candelaria
Department of Housing and Community Development
Housing Policy Development Division
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833

**RE: Review of Costa Mesa's Accessory Dwelling Unit (ADU) Ordinance under ADU Law
(Gov. Code, Section 65852.2)**

Dear Jamie Candelaria:

Thank you for your review of the City of Costa Mesa's accessory dwelling unit (ADU) ordinance, which was adopted February 22, 2023 as Ordinance No. 2023-23. The City of Costa Mesa is proud of its successful ADU program, which, in some respects, is more permissive than the Government Code and resulted in more ADU production than would otherwise have occurred.

City staff has reviewed Housing and Community Development's (HCD) September 11, 2024 letter and intends to comply with State law and newly adopted bills pertaining to ADUs. Notwithstanding this, there are some comments provided by the State that the staff believes would be detrimental to our common goal of providing additional housing units in Costa Mesa.

Please review the attached outline for staff's proposed approach to achieve compliance with State Law. To reduce the need for further ordinance changes and additional reviews by HCD, we hereby request HCD technical assistance by reviewing our proposed modifications prior its adoption.

To ensure that our staff is responsive to HCD's letter, we would appreciate receiving any additional comments/suggestions on our approach by December 1, 2024. Should we not hear from HCD by then, staff will assume that HCD concurs with our approach and we will proceed with our recommended updates.

Staff appreciates HCD for bringing these necessary changes to our attention and its forthcoming efforts to review our draft ordinance. Should you have any follow up suggestions or comments, please contact Senior Planner Chris Yeager at (714) 754-4883 or christopher.yeager@costamesaca.gov.

Sincerely,

Scott Drapkin
Assistant Director of Development Services

cc. mike.vangorder@hcd.ca.gov

Building Division 714.754.5273 • Community Improvement Division 714.754.5638
Housing & Community Development 714.754.4870 • Planning Division 714.754.5245
www.costamesaca.gov

Proposed Ordinance Revisions Pursuant to HCD Letter Dated Sept. 11, 2024

1. **Statutory Numbering** - The Ordinance contains several references to code sections that were deleted by SB 477, effective March 25, 2024. These include Government Code sections 65852.2, 65852.22 and 65852.26. The contents of these sections were relocated to Government Code, Title 7, Division 1, Chapter 13 (sections 66310-66342, see Enclosure). The City must amend the Ordinance to refer to the correct code sections.

Proposed Revision

Update code sections accordingly.

2. **Section 13.35 (b)(3) – Ministerial Approval** – The Ordinance states, “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.” However, Government Code section 66317, subdivision (a) states, “The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot.” It later requires that “If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subdivision (a), the permitting agency shall, within the time period described in subdivision (a), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.” The City must amend the Ordinance to add these provisions.

Proposed Revision

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 in compliance with government code section 66317.

3. **Section 13.35 (b)(4)a. and (b)(4)b. – Unit Allowance** – The Ordinance states that, “Only one category may be used per lot...” when introducing the different formats of allowable units with single family dwellings. Later, the Ordinance states “...the applicant may have ADUs pursuant to one of the following...” when introducing the formats of units allowable with multifamily dwellings.

Government Code section 66323, subdivision (a), states, “Notwithstanding sections 66314 to 66322, inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following: (1) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...(A) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single family dwelling or existing space of a single-family dwelling or accessory structure.” Subparagraph (2) permits “[o]ne

detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks.” The use of the term “any” followed by an enumeration of by-right ADU types permitted indicate that any of these ADU types can be combined on a lot zoned for single-family dwellings.

This permits a homeowner, who meets specified requirements, to create one converted ADU; one detached, new construction ADU; and one JADU. Thus, if the local agency approves an ADU that is created from existing (or proposed) space, and the owner subsequently applies for a detached ADU (or vice versa) that meets the size and setbacks pursuant to the subdivision, the local agency cannot deny the application, nor deny a permit for a JADU under this section. HCD notes that the Legislature, in creating the list, did not use “or” or “one of” to indicate only one or another would be applicable to the exclusion of the other.

This subdivision also applies to ADUs created pursuant to Government Code section 66323, subdivisions (a)(3) and (4), on lots with proposed or existing multifamily dwellings. Limiting single-family lots to one ADU would prevent property owners from creating ADUs by-right under subdivision (a). Therefore, the City must amend the Ordinance to allow state-mandated by-right ADU combinations. Therefore, the City must amend the Ordinance to comply with State ADU Law.

Proposed Revision

(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 with the exception as allowed in subsection “c” below.

a. *Single-family.* ~~Only one~~ ADUs and ~~only one~~ Junior ADUs 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 ~~detached~~ 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~~ ADUs and Junior ADUs 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 in lieu of a conversion Junior ADU, if the new construction Junior ADU is to be in a single-family dwelling that meets all applicable legal standards.

4. Section 13.35 (b)(4) – JADUs and Multifamily – The Ordinance states, “Junior ADUs are not allowed on a lot with more than one residence.” However, Government Code section 66333, subdivision (a) requires that local ordinances “limit the number of junior accessory dwelling units to *one per residential lot* zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.” If the underlying lot is zoned for single-family residences, then statute permits a maximum of one JADU per lot (not per single-family residence on the lot). Therefore, the City must amend the language to note that lots zoned for single family residences may have a single JADU per lot.

Proposed Revision

No Changes. The Government Code and the CMMC have the same intent. HCD’s ADU handbook identifies that “lots with multiple detached single-family dwellings are not eligible to have JADUs”. The changes reflected in comment No. 3 above, would allow for JADUs to be converted or constructed as permitted by State Law.

5. Section 13.35 (b)(4) – Multifamily – The Ordinance states, “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)....” However, Government Code section 66314, subdivision (d)(2) permits one ADU subject to local development standards on a lot if “[t]he lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.” Therefore, the City’s restriction on ADUs with new construction multifamily residences conflicts with statute. The City must remove this reference.

Proposed Revision

Multifamily. Junior ADUs are not allowed on a lot with more than one residence. One ADUs ~~are not is~~ allowed within new construction residences where, after construction, there will be at least two residences on the lot (e.g. detached residential structures, duplexes, apartments); up to two ADUs are allowed with such structures pursuant to subsection 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:

6. Section 13.35 (b)(5)(b) – Maximum Sizes – The Ordinance states, “For lots with an existing legal multifamily dwelling structure proposing one (1) new construction detached ADU, the ADU shall not exceed one thousand two hundred (1,200) 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...” However, local design standards may not preclude a unit created subject to Government Code section 66323; therefore, the maximum sizes stated in this section may not apply to any

unit created subject to Government Code section 66323, subdivision (a)(4). The City must amend the Ordinance to comply with State ADU Law.

Proposed Revision

Multifamily, exterior construction.

1. Detached. For lots with an existing legal multifamily dwelling structure ~~proposing one new construction detached ADU, the ADU shall not exceed 1,200 square feet. For lots with an existing or proposed legal multifamily dwelling structure proposing two detached ADUs, the ADUs shall not exceed 800 square feet~~ the maximum square footage for either an attached or detached ADU is 800 square feet or 1,000 square feet for an ADU that provides more than one bedroom; or

7. Section 13.35 (b)(4)c. – Common Interest Developments – The Ordinance states, “One conversion ADU may be permitted per unit on lots with common interest developments.” However, ADU law applies to any lot that is zoned to allow residential development. Civil Code Section 4751, subdivision (a) states “Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Article 2 (commencing with Section 66314) or Article 3 (commencing with Section 66333) of Chapter 13 of Division 1 of Title 7 of the Government Code, is void and unenforceable.” Therefore, this section is inconsistent with development allowances permissible under Government Code sections 66314 and 66323. State ADU Law provides for the creation of detached and attached ADUs, not just conversions, in areas zoned to allow single-family and multifamily dwelling residential use. The City must amend the Ordinance to comply with State ADU Law.

Proposed Revision

No Changes. The provision allows for additional ADUs than what would be permissible by the Government Code. The Government code would allow for one of the units to construct ADUs in a “first come, first serve” basis. This code section allows for each individual unit within the Common Interest Development to convert space into an ADU.

8. Section 13.35 (c)(4) and (d)(16) – JADU Rental Terms – The Ordinance states, “A Junior ADU shall not be rented for periods of less than 31 days unless otherwise authorized by the municipal code.” It later states “ADUs and Junior ADUs shall not be rented for a term of less thirty-one (31) days, unless otherwise authorized by this code.” However, Government Code section 66333 does not provide rental term limits for JADUs and is thus inconsistent with State JADU Law. Therefore, the City must amend the Ordinance accordingly.

Proposed Revision

The City strongly disagrees with the comment provided by HCD. The intent seems to infer that HCD is in favor of removing housing units to allow for short term vacation rentals which has been proven to reduce the number of available housing units. The City is committed to providing housing and believes that allowing JADUs to be used as short-term rentals, will reduce the number of units available in the City. In light of this, the City respectfully encourages HCD to revisit their comment and modify its position. Should HCD continue to demand this change, staff would propose the following revision:

CMMC Section 13.35(c)(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. Reserved.~~

CMMC Section 13-35(d)(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.

9. Section 13.35 (c)(5) – Attached Garage – The Ordinance states, “A Junior ADU shall be entirely within an existing or proposed single- family dwelling.” However, Government Code section 66333, subdivision (d) expands this allowance to state “For purposes of this subdivision, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” Therefore, the City must amend the Ordinance accordingly.

Proposed Revision

No Changes. CMMC Section 13-35(a)(3)(d) defines “single-family dwelling” and “multifamily dwelling” as excluding all detached accessory structures. The section has been implemented to mean that attached accessory structures are included in the definition of single-family dwelling and multifamily dwelling.

10. Section 13.35 (d) – Development Standards – The Ordinance states, “All ADUs and Junior ADUs must comply with the following requirements....” However, local design standards provided by the Ordinance pursuant to Government Code section 66314, may not preclude a unit built subject Government Code section 66323 (a), which includes all converted units, all JADUs, 800 square foot new-construction detached units with four-foot setbacks with single-family primary dwellings, and detached units with multifamily primary dwelling structures. The City must note the exceptions.

Proposed Revision

Development standards. ~~The following standards shall not preclude a unit built subject to Government Code section 66323 (a), which includes all converted units, all JADUs, 800 square foot new-construction detached units with four-foot setbacks with single-family primary dwellings, and detached units with multifamily primary dwelling structures~~ Otherwise, All ADUs and Junior ADUs must comply with the following requirements:

11. Section 13.35 (d)(3) – Separate Sale – The Ordinance states, “Except as otherwise provided by law, (e.g. Government Code section 65852.26), ADUs... may not be sold or otherwise conveyed separate from the primary residence.” Please note that with the adoption of AB1033, the City now has the option to adopt an ordinance to govern the separate sale of an ADU from its primary dwelling.

The City is aware of the adoption of AB1033.

12. Section 13.35 (d)(5) – Deed Restrictions – The Ordinance requires a covenant as a precondition to a building permit. However, Government Code section 66315 states, “No additional standards, other than those provided in Section 66314, shall be used, or imposed....” A deed restriction would be an “additional standard” and thus cannot be imposed. Therefore, the City must remove this section.

Proposed Revision

Recorded covenants. ~~Before obtaining a building permit~~Prior to occupancy, the owner shall file with the county recorder, in a form approved by the city attorney, a covenant which does all of the following:

13. Section 13.35 (d)(5)b. – Owner-Occupancy – The Ordinance requires owner-occupancy “for ADUs approved on or after January 1, 2025....” However, effective January 1, 2024, Government Code section 66315 states “No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement...” The City must remove this section to comply with the State ADU Law.

Proposed Revision

~~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 Reserved~~

14. Section 13.35 (d)(8)b., 13.35 (d)(9)a.1. - Front Setbacks – The Ordinance requires “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.” It later requires that “All portions of the ADU structure on a second floor are at least twenty-five (25) feet from the front property line....” However, Government Code section 66321, subdivision (b) prohibits “Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with

four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Therefore, the City’s application of front setback restrictions that would preclude such a unit would be inconsistent with State ADU Law. The City must amend the Ordinance accordingly.

Proposed Revision

See No. 10 above.

15. Section 13.35 (d)(9) – Height – The Ordinance states, “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 could legally be on the property. In all cases, a height of at least eighteen (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.”

However, Government Code section 66321, subdivision (b)(4)(D) requires “A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling.” Additionally, section 66321, subdivision (b)(4)(B) requires the allowance of “an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit” under the conditions of that subsection. Therefore, the City must amend the Ordinance to comply with State ADU Law.

Proposed Revision

No Changes. The CMMC allows for an ADU to have a maximum height of “any other dwelling that could legally be constructed on the site”. The maximum height for residential buildings throughout the City is 27 feet or more which exceeds the Government Code and is therefore more permissive.

16. Section 13.35 (d)(10) a. – Exterior Stairways – The Ordinance states, “A new exterior stairway to a second floor ADU shall not be visible from the public right of way at the front of the property.” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66323, may not preclude a unit built subject Government Code section 66323, which includes all converted units, all JADUs, 800 square foot new construction detached units with four-foot setbacks, and detached units with multifamily primary dwelling structures. Visibility restrictions on a stairway necessary to serve such a unit may not preclude the unit or its stairway. Therefore, the City must note that section 66323 units are excepted and should add “when feasible” to the existing language.

Proposed Revision

See No. 10 above.

17. Section 13.35 (d)(11)(b) – “Compatible” – The Ordinance states, “Any detached ADU shall be compatible in exterior appearance with the primary unit or units in terms of design, materials, finishes, and colors....” However, Government Code section 66314, subdivision (b)(1) requires that a local agency “Impose objective standards on accessory dwelling units”. Government Code section 66313, subdivision (h) defines “Objective standards” as “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.” As “compatible” is a term that is subjective, this section is inconsistent with State ADU Law. Therefore, the City must amend the Ordinance to remove subjective terminology.

Proposed Revision

See No. 10 above.

18. Section 13.35 (d)(11)(c) – JADUs and Exterior Appearance – The Ordinance states, “Junior ADUs shall 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....” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323, which includes all JADUs. Therefore, the City must remove this section.

Proposed Revision

JADUs are meant to be converted from existing space. Converted JADUs are converted from existing space and therefore, match what is already there. [CMMC Section 13-35\(a\)\(4\)\(a\)\(2\)](#) allows for “One 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.” Therefore, the following is proposed:

CMMC Section 13-35(d)(11)(c) Junior ADUs. **New construction** Junior ADUs shall 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.

19. Section 13.35 (d)(12) – Garage Conversion – The Ordinance requires design standards in the event of a garage conversion. However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323, which includes all converted units and all JADUs, both of which may be created in garages. Therefore, the City’s design standards may not preclude converted units. The City must note the exceptions.

Proposed Revision

See No. 10 above.

20. Section 13.35 (d)(13) – Entry – The Ordinance requires that entry for ADUs and JADUs “...not be located on the same building elevation as the main reentrance of the primary residence(s) and shall be located along the building side, rear, or within the interior or the property....” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323. The City must note the exceptions.

Proposed Revision

See No. 10 above.

21. Section 13.35 (d)(17) – Open Space and Landscaping – The Ordinance requires that, “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....” However, and as above, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323. The City must note the exceptions.

Proposed Revision

See No. 10 above.

Proposed Ordinance Revisions Pursuant to Recent Bills

In addition to the ordinance review provided by HCD, the City is moving forward to modify its ordinance to comply with the recently adopted State Laws pertaining to ADUs including SB1211 and AB 2533. Below, you will find how the City intends to modify its ordinance to comply.

1. SB1211 – Replacement Parking - The bill amends Government Code section 66314(d)(11) to extend the prohibition on requiring replacement parking when any parking space (whether covered or uncovered) is demolished or converted to accommodate an ADU. Previously, only garages and carports were covered, but SB 1211 expands this to include all types of parking spaces

Proposed Revision

CMMC Section 13-35(d)(14)(b) Parking. When ~~an existing garage, carport, or covered parking structure~~ a parking space or 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 parking space or parking structure~~ 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 parking space or parking structure.

2. SB1211 – Non-Livable Space - The bill introduces a definition for "livable space" in Government Code section 66313(e) to clarify which portions of multifamily buildings can be converted into ADUs. "Livable space" is defined as any space intended for human habitation, such as areas for living, sleeping, cooking, or sanitation.

Proposed Revision

CMMCS Section 13-35(b)(4)(b)(1) Maximum ADUs within existing multifamily dwelling structure. No more than 25%, with any partial unit rounded down) of the number of existing multifamily dwelling units on the lot, but at least one unit, shall be permitted as ADU(s) constructed within the enclosed nonlivable space (e.g., a space in a dwelling not intended for human habitation, including living, sleeping, eating, cooking, or sanitation) ~~storage rooms, boiler rooms, hallways, attics, basements, or garages~~) of the existing multifamily dwelling structures; or

3. SB1211 – Increase in Detached ADUs -The bill amends Government Code section 66323(a)(4)(A) to increase the maximum number of detached ADUs allowed on lots with existing multifamily dwellings. The previous limit was two detached ADUs per lot; SB 1211

increases this to allow up to eight detached ADUs or one detached ADU per primary dwelling unit on the lot, whichever is less.

Proposed Revision

CMMCS Section 13-35(b)(4)(b)(3) Maximum Detached ADUs. No more than ~~two~~ eight detached ADUs are permitted, provided that the number of accessory dwelling units allowable pursuant to this clause shall not exceed the number of existing units on the lot. ~~Both~~ The 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; or

4. AB2533 – Legalizing Unpermitted ADUs and JADUs -This bill focuses on the legalization of unpermitted ADUs and Junior ADUs (JADUs) that were built before January 1, 2020. It aims to simplify the process for homeowners to bring their unpermitted ADUs into compliance.

Proposed Revision

CMMCS Section 13-35(d)(1) Ministerial project. Any application for an ADU or Junior ADU that meets the requirements of this section or as permissible in Government Code Section 66332 shall be approved without a public hearing.