



City of Costa Mesa

PLANNING COMMISSION

Agenda

Monday, October 24, 2022

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 virtually via Zoom Webinar. Pursuant to the State of California Assembly Bill 361 (Gov. Code §54953(b)(3)) Commission Members and staff may choose to participate in person or by video conference.

You may participate via the following options:

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2. Members of the public can view the Commission meetings live on COSTA MESA TV (SPECTRUM CHANNEL 3 AND AT&T U-VERSE CHANNEL 99) or http://costamesa.granicus.com/player/camera/2?publish_id=10&redirect=true and online at [youtube.com/costamesatv](https://www.youtube.com/costamesatv).

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- Select “Join Audio via Computer.”
- The virtual conference room will open. If you receive a message reading, “Please wait for the host to start this meeting,” simply remain in the room until the meeting begins.
- 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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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.

All pictures, PowerPoints, and videos submitted for display at a public meeting must be previously reviewed by staff to verify appropriateness for general audiences. No links to YouTube videos or other streaming services will be accepted, a direct video file will need to be emailed to staff prior to each meeting in order to minimize complications and to play the video without delay. The video must be one of the following formats, .mp4, .mov or .wmv. Only one file may be included per speaker for public comments. Please e-mail to PCPublicComments@costamesaca.gov NO LATER THAN 12:00 Noon on the date of the meeting.

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.

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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.

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]. Language translation services are available for this meeting by calling (714) 754-5225 at least 48 hours in advance.

En conformidad con la Ley de Estadounidenses con Discapacidades (ADA), aparatos de asistencia están disponibles y podrán ser prestados notificando a la Secretaria Municipal. Si necesita asistencia especial para participar en esta junta, comuníquese con la oficina de la Secretaria Municipal al (714) 754-5225. Se pide dar notificación a la Ciudad por lo mínimo 48 horas de anticipación para garantizar accesibilidad razonable a la junta. [28 CFR 35.102.35.104 ADA Title II]. Servicios de traducción de idioma están disponibles para esta junta llamando al (714) 754-5225 por lo mínimo 48 horas de anticipación.

PLANNING COMMISSION REGULAR MEETING

MONDAY, OCTOBER 24, 2022 - 6:00 P.M.

BYRON DE ARAKAL
Chair

JON ZICH
Vice Chair

DIANNE RUSSELL
Planning Commissioner

RUSSELL TOLER
Planning Commissioner

ADAM ERETH
Planning Commissioner

JOHNNY ROJAS
Planning Commissioner

JIMMY VIVAR
Planning Commissioner

TARQUIN PREZIOSI
Assistant City Attorney

JENNIFER LE
Director of Economic and
Development Services

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

ANNOUNCEMENTS AND PRESENTATIONS

PUBLIC COMMENTS – MATTERS NOT LISTED ON THE AGENDA
Comments are limited to three (3) minutes, or as otherwise directed.

COMMISSIONER COMMENTS AND SUGGESTIONS

CONSENT CALENDAR: NONE.

PUBLIC HEARINGS:

1. [PLANNING APPLICATION 22-35 FOR A CONDITIONAL USE PERMIT 22-919 TO OPERATE A NEW CONVENIENCE STORE WITH SALE OF ALCOHOLIC BEVERAGES AND OFF-SITE CONSUMPTION FOOD ITEMS AT 1500 ADAMS AVENUE SUITE 104A](#)

RECOMMENDATION:

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Existing Facilities); and
2. Approve Planning Application 22-35, subject to conditions of approval.

Full Agenda Report provided as Attachment 1.

Attachments: [Agenda Report](#)

- [1. Staff Report](#)
- [2. Draft Planning Commission Resolution](#)
- [3. Applicant Letter](#)
- [4. Vicinity Map](#)
- [5. Zoning Map](#)
- [6. Site Photos](#)
- [7. Project Plans](#)

2. [A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL GIVE 22-920 FIRST READING TO AN ORDINANCE APPROVING CODE AMENDMENT CO-2022-XX AMENDING CHAPTER V, ARTICLE 1, SECTION 13-35 \(ACCESSORY DWELLING UNITS\) OF TITLE 13 OF THE COSTA MESA MUNICIPAL CODE TO CLARIFY EXISTING ACCESSORY DWELLING UNIT PROVISIONS AND TO MODIFY STANDARDS TO CONFORM TO RECENT REVISIONS TO STATE LAW \(CODE AMENDMENT CO-2022-01\)](#)

RECOMMENDATION:

Staff recommends the Planning Commission adopt a Resolution to:

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

Full Agenda Report provided as Attachment 1.

Attachments: [Agenda Report](#)

[1. Staff Report](#)

[2. Draft Planning Commission Resolution](#)

[3. Ordinance](#)

[4. Track Changes \(Attachment A to the Ordinance\)](#)

[5. HCD Letter dated March 17, 2022](#)

OLD BUSINESS: NONE.

NEW BUSINESS: NONE.

DEPARTMENT REPORTS:

1. PUBLIC WORKS REPORT

2. DEVELOPMENT SERVICES REPORT

CITY ATTORNEY REPORTS:

1. CITY ATTORNEY

ADJOURNMENT

Next Meeting: Planning Commission regular meeting, November 14, 2022.



City of Costa Mesa

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 22-919

Meeting Date: 10/24/2022

TITLE:

PLANNING APPLICATION 22-35 FOR A CONDITIONAL USE PERMIT TO OPERATE A NEW CONVENIENCE STORE WITH SALE OF ALCOHOLIC BEVERAGES AND OFF-SITE CONSUMPTION FOOD ITEMS AT 1500 ADAMS AVENUE SUITE 104A

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

RECOMMENDATION:

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Existing Facilities); and
2. Approve Planning Application 22-35, subject to conditions of approval.

Full Agenda Report provided as Attachment 1.



City of Costa Mesa

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 22-919

Meeting Date: 10/24/2022

TITLE:

PLANNING APPLICATION 22-35 FOR A CONDITIONAL USE PERMIT TO OPERATE A NEW CONVENIENCE STORE WITH SALE OF ALCOHOLIC BEVERAGES AND OFF-SITE CONSUMPTION FOOD ITEMS AT 1500 ADAMS AVENUE SUITE 104A

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

RECOMMENDATION:

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Existing Facilities); and
2. Approve Planning Application 22-35, subject to conditions of approval.

Full Agenda Report provided as Attachment 1.



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: OCTOBER 24, 2022 ITEM NUMBER: PH-1

SUBJECT: PLANNING APPLICATION 22-35 FOR A CONDITIONAL USE PERMIT TO OPERATE A NEW CONVENIENCE STORE WITH SALE OF ALCOHOLIC BEVERAGES AND OFF-SITE CONSUMPTION FOOD ITEMS AT 1500 ADAMS AVENUE SUITE 104A

FROM: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/
PLANNING DIVISION

PRESENTATION BY: JEFFREY RIMANDO, ASSISTANT PLANNER

FOR FURTHER INFORMATION CONTACT: JEFFREY RIMANDO
714.754.5012
Jeffrey.Rimando@costamesaca.gov

RECOMMENDATION

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Existing Facilities); and
2. Approve Planning Application 22-35, subject to conditions of approval.

APPLICANT OR AUTHORIZED AGENT

The applicant/authorized agent is Gabrielle Dion, for the property owner, Sparks Enterprises LP.

PLANNING APPLICATION SUMMARY

Location:	1500 Adams Avenue Suite 104A	Application Numbers:	PA-22-35
Request:	Planning Application 22-35 for a Conditional Use Permit to operate a new convenience store with sale of alcoholic beverages and pre-prepared food items for off-site consumption.		

SUBJECT PROPERTY:

SURROUNDING PROPERTY:

Zone:	C1 (Local Business)	North:	C1
General Plan:	General Commercial	South:	C1-S (Shopping Center) & C2 (General Business)
Lot Dimensions: (General)	Front = 547 FT Side (Left) = 276 FT Side (Right) = 276 FT Rear = 625 FT	East:	C1
Lot Area:	172,062 SF	West:	C1
Existing Development:	The property is developed with 54,000 square feet of building floor area housed within four existing multi-tenant commercial buildings.		

DEVELOPMENT STANDARDS COMPARISON

Development Standard	Required/Allowed C1 Dev. Standards	Proposed/Provided
Lot Size	12,000 SF	150,000 SF
Minimum Lot Width	60 FT	315 FT
Parking	240 ¹	273 spaces
¹ Site is legal nonconforming with respect to parking. Since the proposal replaces a medical office use with a retail use and the parking requirements for retail uses are lower than for medical offices, the site's legal nonconforming status for parking remains in effect.		
CEQA Status	Exempt per CEQA Guidelines Section 15301 (Existing Facilities)	
Final Action	Planning Commission	

BACKGROUND

The subject property is located along Adams Avenue, near the corner of Adams Avenue and Harbor Boulevard, with street frontages along Harbor Boulevard, Adams Avenue, and Elm Avenue. The property is zoned C1 (Local Business), and has a General Plan land use designation of General Commercial. The site contains approximately 54,000 square feet of building floor area housed within four buildings. The site is developed with 240 existing parking spaces, and six points of ingress/egress (three on Adams Avenue, two on Elm Avenue, and one on Harbor Boulevard). The surrounding properties are all commercially zoned, with the exception of the residential properties located on the northwestern corner of Elm Avenue and Lemon Street.

The applicant has an existing business located at 3313 Hyland Avenue and intends to relocate to the proposed location. The Planning Commission approved a CUP for this business in 2013 (PA-13-39). The current location operates as a retail store with the sale of glassware and bar accessories and alcoholic beverages. In relocating to the proposed location, the business intends to operate similarly with the addition of sale of pre-prepared food items for off-site consumption.

DESCRIPTION

The proposal is for a new convenience store ("The Mixing Glass") within a 1,400-square-foot tenant space. The applicant is applying for a Type 21 ABC license (Off-Sale General). The business would provide a retail store with sale of curated specialty cocktail and barware, beer, wine and distilled spirits. Additionally, the space consists of a 515-square-foot kitchen area to prepare sandwiches and deli salads, to be packaged onsite and made available for purchase for off-site consumption. The applicant also requests that the Planning Commission make a Finding of Public Convenience or Necessity (PCN) in conjunction with the issuance of a new ABC Type 21 License.

The proposed business will operate from 9 a.m. to 8 p.m. Sunday through Wednesday and 9 a.m. to 10 p.m. Thursday through Saturday. The business' staff will consist of one to three employees on-site at any given time. The applicant is proposing interior tenant improvements to accommodate the project with no expansion of the existing building.

ANALYSIS

Conditional Use Permit

Pursuant to Table 13-30 under the Costa Mesa Municipal Code (CMMC) Section 13-30, the CMMC requires approval of a Conditional Use Permit (CUP) for a convenience store use. Additionally, the CMMC defines a "convenience store" as:

“A retail store, generally less than ten thousand (10,000) square feet in area, that sells a variety of convenience foods, beverages and non-food items. Fresh dairy products, produce and/or meat may be offered on a limited basis.”

The proposed use is categorized as a “convenience store” because it is a retail store less than 10,000 square feet in an area that sells a variety of convenience foods, beverages and non-food items. The applicant is also proposing the sale of beer, wine and distilled spirits. In addition, specialty cocktail and barware will be sold including wine and beer from local producers. Food items such as sandwiches and deli salads will also be pre-prepared in the kitchen area to be available for off-site consumption. The business will consist of a retail area, a kitchen, a storage area and a restroom. No live entertainment is proposed nor will indoor seating be provided for on-site consumption of food or alcohol.

Pursuant to the CMMC, the approval of a CUP requires that the Planning Commission make specific findings related to neighborhood compatibility, health and safety, and land use compatibility. The analysis regarding CUP findings is provided later in this report. In addition to the City’s Conditional Use Permit findings and standard conditions of approval, convenience stores are also subject to CMMC Section 13-200.72. Section 13-200.72 indicates that the Planning Commission may use the following standards in review of new conditional use permits to impose conditions of approval on the use to ensure compliance with the findings contained in Chapter III, Planning Applications:

1. Alcoholic beverage sales from drive through or walk-up service windows shall be prohibited;
2. Wine, beer and other distilled spirit shall be sold in the factory manufactured packages for retail sales. Factory multiple-packed bottles or cans shall not be unpackaged to be sold individually. This restriction is not intended to prohibit the sale of beverages in a single container packaged by the manufacturer for individual sale;
3. Beer or wine shall not be displayed or sold from an ice tub or any other type of portable refrigerated unit; and
4. The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The business shall institute whatever security measures are necessary to comply with this requirement.

The aforementioned conditions have been added to the Resolution – Exhibit B (Conditions of Approval).

Sale of Alcoholic Beverages (Type 21 Off-Sale ABC License) and PCN

Section 23958.4 of the California Business & Professions Code, also known as the California Alcoholic Beverage Control Act, establishes the criteria under which off-sale alcoholic beverage licenses may be issued by ABC, which includes the ratio of off-sale retail ABC licenses to population in the census tract in which the proposed business is located; when this number is exceeded, it is commonly referred to as “overconcentration”

or “undue concentration.” ABC defines an “undue concentration” of off-sale alcoholic beverages licenses as the following:

- The area is located in a crime reporting district that has a 20 percent or greater number of reported crimes than the City average; or
- The ratio of off-sale retail licenses to population within the census tract exceeds the ratio of license to population in the county as a whole.

Pursuant to State Law, the ABC cannot approve the issuance of a license unless the City’s legislative body or its designated subordinate officer or body, makes a finding that public convenience or necessity would be served by the issuance of the license. In accordance with City Council Policy 500-8, most recently revised and updated November 17, 2009, the Planning Commission may make a PCN finding for the requested license type.

In this case, the ratio of off-sale ABC licenses to population (one license per 2,914 people) in census tract 638.02 exceeds the countywide ratio, resulting in a determination of “undue concentration.” Specifically, the State requirements limit the census tract 638.02 to one off-sale license. Pursuant to State records, two off-sale licenses already exist within the census tract (see Table 1 below). If the applicant’s request is approved, the number of off-sale licenses within the census tract would increase to three.

ABC License	Business Name	Address
Type 21 (General)	Tokyo Central	2975 Harbor Blvd
Type 21 (General)	7 Eleven	1548 Adams Ave Ste A

Source: www.abc.ca.gov

Although there is an over concentration of off-sale licenses in this census tract, the addition of this license would add a local business to the area, without negatively impacting other businesses or the surrounding neighborhood.

The Public Convenience or Necessity can be determined because the operation of the convenience store would be consistent with the requirements of the Zoning Code and the conditions included within this application. The Police Department has also reviewed the request and has no objections. Additionally, the license provides a convenience to customers without impacting the surrounding uses. Lastly, the applicant is relocating their business and therefore approval of the use would result in an additional off-site alcohol sales license in the City; however, the existing location’s census tract does not exceed the State ratio of licenses to be considered over concentrated.

Parking

Regarding parking, as noted in the table above, the site was approved and originally built with 240 parking spaces (current Code requires 273 spaces); therefore, the site is legal nonconforming with respect to parking. The tenant space was previously occupied by a medical office use. Pursuant to Table 13-89 under CMMC Section 13-89, the parking ratio for medical offices is six spaces per 1,000 square feet of gross floor area whereas the

parking ratio for retail is four spaces per 1,000 square feet. Since the proposed use replaces a medical office use with a retail use, which is a less intensive use in terms of parking requirements, the site's legal nonconforming status for parking remains in effect and no further parking is required.

GENERAL PLAN CONFORMANCE

Conformance with the City of Costa Mesa General Plan

The Costa Mesa General Plan establishes the long-range planning and policy direction that guides change and preserves the qualities that define the community. The 2015-2035 General Plan sets forth the vision for Costa Mesa through 2035. This vision focuses on protecting and enhancing Costa Mesa's diverse residential neighborhoods, accommodating an array of businesses that serve both local needs and attract regional international spending, and providing cultural, educational, social, and recreational amenities that contribute to the quality of life in the community. Over the long term, General Plan implementation will ensure that development decisions and improvements to public and private infrastructure are consistent with the goals, objectives, and policies contained in this Plan.

The following analysis evaluates the proposed project's consistency with specific policies and objectives of the 2015-2035 General Plan.

1. **Policy LU-1.1:** *Provide for the development of a mix and balance of housing opportunities, commercial goods and services, and employment opportunities in consideration of the needs of the business and residential segments of the community.*

Consistency: The relocated convenience store would add to the variety of commercial services and goods in the neighborhood by providing a service to meet the needs of businesses and residents of the community.

2. **Policy LU-3.1:** *Protect existing stabilized residential neighborhoods, including mobile home parks (and manufactured housing parks), from the encroachment of incompatible or potentially disruptive land uses and/or activities.*

Consistency: The proposed use would be conditioned so that all uses shall be conducted within the tenant space (underroof). Furthermore, conditions of approval ensure the proposed use will operate with minimal impacts to the adjacent properties and in accordance with the limitations set forth in CMMC Section 13-200.72.

3. **Policy LU-6.1:** *Encourage a mixed of land uses that maintain and improve the City's long-term fiscal health.*

Consistency: The existing center consists of a mixture of office, restaurant and retail uses. The proposed convenience store would continue a diverse and comprehensive supply of services for the retail markets within the community to assist in retaining existing and attracting new businesses.

4. **Policy LU-6.7:** *Encourage new and retain existing businesses that provide local shopping and services.*

Consistency: The applicant currently maintains an existing business of a similar use in 3313 Hyland Avenue with the intent to relocate into the proposed location. The proposed application will result in retaining an existing business that provides retail opportunities for local businesses and residents.

FINDINGS

Pursuant to Title 13, Section 13-29(g), Conditional Use Permit Findings, of the Costa Mesa Municipal Code, in order to approve the request, the Planning Commission shall find that the evidence presented in the administrative record substantially meets specified findings as follows:

- The proposed development or use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area. The proposed use would be compatible with commercial developments in the same general area and would not be materially detrimental to the nearby residential properties in that conditions of approval have been included to avoid potential noise, trash and light disturbances. The existing center contains a mix of uses including restaurants, offices and other retail uses.
- Granting the conditional use permit will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood. The proposed use, as conditioned, would not generate adverse noise, traffic, or parking impacts that are unusual for commercially-zoned properties. The subject property is located within 60 feet from the closest residential use to the rear. Residential uses would be protected from any noise or nuisance associated with the convenience store because all uses would be conducted indoors. The Police Department has reviewed the proposed use and has no objections to the approval of the application.
- Granting the conditional use permit will not allow a use, density or intensity which is not in accordance with the General Plan designation and any applicable specific plan for the property. The proposed convenience store is conditionally permitted in the C1 (Local Business) zone. The General Plan land use designation of the property is General Commercial. The proposed convenience store use is an

appropriate retail use for the General Commercial land use designation. Furthermore, the proposed project is consistent with General Plan Land Use Policies LU-1.1, LU-3.1, LU-6.1 and LU-6.7 in that the proposed project would provide a new entrepreneurial business and provide new employment opportunities in the community. Compliance with the proposed conditions of approval would ensure compatibility with the nearby residential neighborhood.

ENVIRONMENTAL DETERMINATION

The project is exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15301 (Class 1), Existing Facilities. The Class 1 exemption applies to minor alterations to existing facilities or structures involving negligible or no expansion of the existing use. The project falls within this exemption because it involves minor interior alterations and the change of use is considered negligible. As conditioned and proposed, the project will have little or no impact on the surrounding area. The project involves tenant improvements to convert an existing medical office space into convenience store. There will be no resulting increase in the existing floor area of the tenant space.

ALTERNATIVES

The Planning Commission has the following alternatives:

1. Approve the project. The Planning Commission may approve the project as proposed, subject to the conditions outlined in the attached Resolution.
2. Approve the project with modifications. The Planning Commission may suggest specific changes that are necessary to alleviate concerns. If the requested changes are substantial, the item should be continued to a future meeting to allow a redesign or additional analysis. In the event of significant modifications to the proposal, staff will return a revised Resolution incorporating new findings and/or conditions.
3. Deny the project. ***If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission must deny the application, provide facts in support of denial, and direct staff to incorporate the findings for denial into a Resolution. If the project is denied, the applicant could not submit substantially the same type of application for at least six months.***

LEGAL REVIEW

The draft Resolution has been approved as to form by the City Attorney's Office.

PUBLIC NOTICE

Pursuant to Title 13, Section 13-29(d), of the Costa Mesa Municipal Code, three types of public notification have been completed no less than 10 days prior to the date of the public hearing:

1. **Mailed notice.** A public notice was mailed to all property owners and occupants within a 500-foot radius of the project site. The required notice radius is measured from the external boundaries of the property. (See attached Notification Radius Map).
2. **On-site posting.** A public notice was posted on each street frontage of the project site.
3. **Newspaper publication.** A public notice was published once in the Daily Pilot newspaper.

As of the date of this report, no written public comments have been received. Any public comments received prior to the Planning Commission meeting will be forwarded separately to the Planning Commission.

CONCLUSION

Approval of the project will allow the establishment of a 1,400-square-foot convenience store with the sale of alcohol for off-site consumption in conjunction with a State Alcoholic Beverage Control (ABC) License Type 21. The project is consistent with the General Plan, Zoning Code and with developments in the general neighborhood. Therefore, staff recommends approval of the proposed project, subject to the conditions of approval contained in the attached resolution (Attachment 2).

RESOLUTION NO. PC-2022-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING PLANNING APPLICATION PA-22-26 FOR A CONVENIENCE STORE (THE MIXING GLASS) WITH SALE OF ALCOHOLIC BEVERAGES UNDER A STATE ALCOHOLIC BEVERAGE CONTROL (ABC) TYPE 21 LICENSE (ON-SALE GENERAL) AT 1500 ADAMS AVE SUITE 104A

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

WHEREAS, an application was filed by Gabrielle Dion, representing Slashers and as the authorized agent on behalf of the property owner, Sparks Enterprises LP;

WHEREAS, Planning Application 22-35 is a request for a Conditional Use Permit to operate a Convenience Store within a 1,400 square-foot tenant space with sale of alcoholic beverages for off-site consumption at 1500 Adams Ave Suite 104A;

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

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), the project is exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15301 (Class 1), for Existing Facilities and;

WHEREAS, the CEQA categorical exemption for this project reflects the independent judgement of the City of Costa Mesa.

NOW, THEREFORE, based on the evidence in the record and the findings contained in Exhibit A, and subject to the conditions of approval contained within Exhibit B, the Planning Commission hereby **APPROVES** Planning Application 22-35 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the staff report for Planning Application PA-22-35 and upon applicant's compliance with each and all of the conditions in Exhibit B, and compliance of all applicable state, and local laws. Any approval granted by this resolution shall be subject

to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

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

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

Byron de Arakal, Chair
Costa Mesa Planning Commission

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

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

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

ABSTAIN: COMMISSIONERS

Scott Drapkin, Secretary
Costa Mesa Planning Commission

Resolution No. PC-2022-

EXHIBIT A

FINDINGS

- A. The proposed project complies with Costa Mesa Municipal Code Section 13-29(g)(2) because:

Finding: The proposed development or use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.

Facts in Support of Finding: The proposed use would be compatible with commercial developments in the same general area and would not be materially detrimental to the nearby residential properties in that conditions of approval have been included to avoid potential noise, trash and light disturbances. The existing center contains a mix of uses including restaurants, offices and other retail uses.

Finding: Granting the conditional use permit will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.

Facts in Support of Finding: The proposed use, as conditioned, would not generate adverse noise, traffic, or parking impacts that are unusual for commercially-zoned properties. The subject property is located within 60 feet from the closest residential use to the rear. Residential uses would be protected from any noise or nuisance associated with the convenience store because all uses would be conducted underroof. The Police Department has reviewed the proposed use and has no objections to the approval of the application.

Finding: Granting the conditional use permit will not allow a use, density or intensity which is not in accordance with the general plan designation and any applicable specific plan for the property.

Facts in Support of Finding: The proposed convenience store is conditionally permitted in the C1 (Local Business) zone. The General Plan land use designation of the property is General Commercial. The proposed convenience store use is an appropriate retail use for the General Commercial land use designation. Furthermore, the proposed project is consistent with General Plan Land Use Policies LU-1.1, LU-3.1, LU-6.1 and LU-6.7 in that the proposed project would provide a new entrepreneurial business and provide new employment opportunities in the community. Compliance with the proposed conditions of approval would ensure compatibility with the nearby residential neighborhood.

- B. The project is exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15301 (Class 1), Existing Facilities. The Class 1 exemption applies to minor alterations to existing facilities or structures

involving negligible or no expansion of the existing use. The project falls within this exemption because it involves minor interior alterations and the change of use is considered negligible. As conditioned and proposed, the project will have little or no impact on the surrounding area. The project involves tenant improvements to convert an existing medical office space into convenience store. There will be no resulting increase in the existing floor area of the tenant space.

- C. The project is not exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code and a transportation impact fee will be required prior to building permit issuance.
- D. A finding of public convenience or necessity can be made because the proposed use is consistent with the requirements of the City's Zoning Code and the conditions of approval included herein. In addition, the licenses that make up the overconcentration consist of a convenience store and a grocery store with license types that allow the off-sale of beer, wine and distilled spirits. The Police Department has reviewed the request and has no objections to issuance of the license. The finding of public convenience allows ABC to issue a Type 21 license to the proposed business.

EXHIBIT B

CONDITIONS OF APPROVAL

- Plng.
1. The use shall be limited to the type of operation described in the staff report and applicant's letters dated October 10, 2022, subject to conditions. Any change in the operational characteristics including, but not limited to, hours of operation, shall be subject to Planning Division review and may require an amendment to the minor/conditional use permit, subject to either Zoning Administrator or Planning Commission approval, depending on the nature of the proposed change. The applicant is reminded that Code allows the Planning Commission to modify or revoke any planning application based on findings related to public nuisance and/or noncompliance with conditions of approval [Title 13, Section 13-29(o)].
 2. Approval of the planning/zoning application is valid for two (2) years from the effective date of this approval and will expire at the end of that period unless applicant establishes the use by one of the following actions: 1) a building permit has been issued and construction has commenced, and a valid building permit has been maintained by making satisfactory progress as determined by the Building Official; 2) a certificate of occupancy has been issued; or 3) the use has been established and a business license has been issued. A time extension can be requested no less than thirty (30) days or more than sixty (60) days before the expiration date of the permit and submitted with the appropriate fee for review to the Planning Division. The Director of Development Services may extend the time for an approved permit or approval to be exercised up to 180 days subject to specific findings listed in Title 13, Section 13-29(k)(6). Only one request for an extension of 180 days may be approved by the Director. Any subsequent extension requests shall be considered by the original approval authority.
 3. The applicant, the property owner and the operator (collectively referred to as "indemnitors") shall each jointly and severally defend, indemnify, and hold harmless the City, its elected and appointed officials, agents, officers and employees from any claim, legal action, or proceeding (collectively referred to as "proceeding") brought against the City, its elected and appointed officials, agents, officers or employees arising out of City's approval of the project, including but not limited to any proceeding under the California Environmental Quality Act. The indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and cost of suit, attorney's fees, and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, the City and/or the parties initiating or bringing such proceeding. This indemnity provision shall include the indemnitors' joint and several obligation to indemnify the City for all the City's costs, fees, and damages that the City incurs in enforcing the indemnification provisions set forth in this section.

4. The hours of operation of the business shall be limited to Sunday to Wednesday 9 a.m. to 8 p.m. and Thursday through Saturday 9 a.m. to 10 p.m. to Any minor adjustments in these hours of operation that meet the intent of this condition may be granted with written approval of the Director of Development Services.
5. Alcoholic beverage sales from drive through or walk-up service windows shall be prohibited.
6. Wine, beer and other distilled spirits shall be sold in factory manufactured packages for retail sales. Factory multiple-packed bottles or cans shall not be unpackaged to be sold individually. This restriction is not intended to prohibit the sale of beverages in a single container packaged by the manufacturer for individual sale.
7. Beer or wine shall not be displayed or sold from an ice tub or any other type of portable refrigerated unit.
8. The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The business shall institute whatever security measures are necessary to comply with this requirement.
9. The applicant shall maintain free of litter of all areas of the premises under which applicant has control.
10. No alcoholic beverage shall be displayed or offered for sale outside the building.
11. Exterior signage/advertisements promoting or indicating the availability of alcoholic beverages shall be prohibited. Exterior signage indicating the availability of alcoholic beverages shall be limited to the name of the business, e.g., The Mixing Glass. Interior signage/advertisements promoting or indicating the availability of alcoholic beverages which are visible from the exterior of the building shall be prohibited.
12. Except as permitted by the City of Costa Mesa Municipal Code for temporary window signs, windows shall not be blocked or obscured.
13. Exposed neon signage is strictly prohibited. This excludes the "open/close" sign for business.
14. All sales and service staff (within 90 days of hire) shall complete Responsible Beverage Service (RBS) training with a provider approved by the California Department of Alcoholic Beverage Control. A copy of the training certificates shall be kept on premises and presented to any authorized City official upon request.
15. The business operator shall post signs inside and outside the premises in compliance with the City of Costa Mesa Municipal Code notifying the public with regard to the prohibition of open containers of alcoholic beverages.
16. The business operator shall post signs inside and outside the premises prohibiting the on-site consumption of alcoholic beverages and loitering.
17. Alcoholic consumption on premises is prohibited.
18. All work shall be conducted under-roof. Outdoor work or display is prohibited.
19. Any graffiti painted or marked upon the premises shall be removed or painted over within 48 hours of being applied.

20. The outdoor storage of boxes, equipment materials, merchandise, and other similar items shall be prohibited.
21. If parking shortages or other parking-related problems arise, the operator shall institute appropriate operational measures necessary to minimize or eliminate the problem, including, but not limited to, reducing the days and/or hours of the business operation.
22. Prior to issuance of a Certificate of Occupancy (C of O) or commencement of operations, permits shall be obtained for all signs according to the provisions of the Costa Mesa Sign Ordinance.
23. A copy of the conditions of approval for the conditional use permit shall be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.
24. If any section, division, sentence, clause, phrase or portion of this approval is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.
25. Building permits, associated with existing interior improvements, shall be approved and finalized prior to issuance of Certificate of Occupancy and Business License.
26. Any change in the operational characteristics of the use shall be subject to Planning Division review and may require an amendment to the conditional use permit, subject to either Zoning Administrator or Planning Commission approval, depending on the nature of the proposed change.
27. All exterior lighting shall be shielded and/or directed away from residential areas.
28. Trash facilities shall be screened from view and designed and located appropriately to minimize potential noise and odor impacts to adjacent residential areas (behind fences).
29. Address assignment shall be requested from the Planning Division prior to submittal of working drawings for plan check. The approved address of individual units, suites, buildings, etc., shall be blueprinted on the site plan and on all floor plans in the working drawings.
30. A copy of the conditions of approval for the conditional use permit must be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.
31. The applicant shall contact the Planning Division to arrange a Planning inspection of the site prior to the release of occupancy/utilities. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
32. The conditional use permit herein approved shall be valid until revoked, but shall expire upon discontinuance of the activity authorized hereby for a period of 180 days or more. The conditional use permit may be referred to the Planning Commission for modification or revocation at any time if the conditions of approval have not been complied with, if the use is being

operated in violation of applicable laws or ordinances, or it, in the opinion of the development services director or his designee, any of the findings upon which the approval was based are no longer applicable.

33. The project shall be limited to the type of building as described in this staff report and in the attached plans. Any change in the use, size, or design shall require review by the Planning Division and may require an amendment to the Minor Conditional Use Permit.
34. Once the use is legally established, the planning/zoning application herein approved shall be valid until revoked. The Director of Economic & Development or designee may refer the planning/zoning application to the Planning Commission for modification or revocation at any time if any of the following circumstances exist: 1) the use is being operated in violation of the conditions of approval; 2) the use is being operated in violation of applicable laws or ordinances or 3) one or more of the findings upon which the approval was based are no longer applicable.
35. If determined necessary by the Director of Development Services, based on excessive calls for police service, loitering and/or an increase in crime attributed to the proposed use, the applicant shall contract with a security guard to monitor the business during all hours of operation.
- Trans. 36. The applicant shall submit a Traffic Impact Fee to the Transportation Division prior to issuance of building permits. The fee is required in an amount determined by the Transportation Division pursuant to the prevailing schedule of charges adopted by the City Council. The fee is calculated with consideration of standardized trip generation ratios for proposed uses and includes credits for existing uses. NOTE: The estimated Traffic Impact Fee for this application is \$78,584. The fee will be calculated at the time of issuance of building permits and based upon the prevailing schedule of charges in effect at that time.

CODE REQUIREMENTS

The following list of federal, state and local laws applicable to the project has been compiled by staff for the applicant's reference. Any reference to "City" pertains to the City of Costa Mesa.

- PIng. 1. Permits shall be obtained for all signs according to the provisions of the Costa Mesa Sign Ordinance.
2. The conditions of approval and ordinance or code provisions of Planning Application 22-35 shall be blueprinted on the face of the site plan as part of the plan check submittal package when building permits are necessary.
3. The maximum occupancy, as determined by provisions of the Uniform Building Code or other applicable codes, shall be posted in public view within the premises, and it shall be the responsibility of management to ensure that this limit is not exceeded at any time.
4. The project is subject to compliance with all applicable Federal, State, and local laws. A copy of the applicable Costa Mesa Municipal Code

requirements has been forwarded to the Applicant and, where applicable, the Authorized Agent, for reference.

5. All noise-generating construction activities shall be limited to 7 a.m. to 7 p.m. Monday through Friday and 9 a.m. to 6 p.m. Saturday. Noise-generating construction activities shall be prohibited on Sunday and the following federal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
6. Street addresses shall be visible from the public street and may be displayed either on the front door, on the fascia adjacent to the main entrance, or on another prominent location. When the property has alley access, address numerals shall be displayed in a prominent location visible from the alley. Numerals shall be a minimum six (6) inches in height with not less than one-half-inch stroke and shall contrast sharply with the background.
7. All requirements of the California Alcoholic Beverage Control Board (ABC) shall be complied with.
8. Any mechanical equipment such as air-conditioning equipment and duct work shall be screened from view in a manner approved by the Planning Division.
- Bldg. 9. Prior to issuing the Building permit the conditions of approval shall be on the approved Architectural plans.
10. Comply with the requirements of the following adopted codes Code, 2019 California Building Code, 2019 California Electrical code, 2019 California Mechanical code , 2019 California Plumbing code , 2019 California Green Building Standards Code and 2019 California Energy Code (or the applicable adopted, California Building code California Electrical code, California Mechanical code California Plumbing Code, California Green Building Standards and California Energy Code at the time of plan submittal or permit issuance) and California Code of Regulations also known as the California Building Standards Code, as amended by the City of Costa Mesa. Requirements for accessibility to sites, facilities, buildings and elements by individuals with disability shall comply with chapter 11B of the 2019 California Building Code.
11. Prior to the Building Division issuing a demolition permit. contact South Coast Air Quality Management District (AQMD) located at:
21865 Copley Dr.
Diamond Bar, CA 91765-4178
Tel: 909- 396-2000
or
Visit their web site:
<http://www.costamesaca.gov/modules/showdocument.aspx?documentid=23381>. The Building Division will not issue a demolition permit until an Identification Number is provided by AQMD.
- Fire 12. Comply with the requirements of the California Fire Code and referenced standards as amended by the City of Costa mesa.

- Bus.
Lic.
13. All contractors and subcontractors must have valid business licenses to do business in the City of Costa Mesa. Final Inspections, final occupancy and utility releases will not be granted until all such licenses have been obtained.
 14. Business license shall be obtained prior to the initiation of the business.

APPLICANT: Tasty Tippler, LLC dba "The Mixing Glass"
 REQUEST: Approval of Conditional Use Permit (CUP) Permitting a Type 21 Off-Sale General
 (Beer, Wine & Distilled Spirits) Alcoholic Beverage License and Request for a finding of
 Public Convenience or Necessity ("PCN")
 Specialty Off-Sale liquor store with Market
 1500 Adams Avenue, Suite 104A, Costa Mesa, CA 92626
 PROPOSED USE:
 ADDRESS:

PROJECT NARRATIVE

Approval of Conditional Use Permit (CUP) Permitting a Type 21 Off-Sale General (Beer, Wine & Distilled Spirits) Alcoholic Beverage License and Request for a finding of Public Convenience or Necessity ("PCN") located at 1500 Adams Avenue, Suite 104A, Costa Mesa, CA 92626.

The subject property is located on Adams Avenue and Harbor Blvd. The site is bounded by other commercial/retail and residential uses. The space was previously operated as a medical office.

The proposed project is being developed and operated by acclaimed mixologist Gabrielle Dion. She is relocating her current specialty liquor store from SOCO to the proposed location on Adams. The Mixing Glass will continue to offer curated specialty cocktail/bar ware, beer, wine and spirits. Additionally, she will be adding a small market to promote locally sourced products as well as wine and beer from local producers. There will be grab and go food items available for sale, with a selection of 2-3 sandwiches and 6-8 deli salads. All food items will be prepared in the morning and packaged up for customers to take to-go and will NOT be made to order. There will also be a selection of pre-packaged chips and snacks as well as a fridge of pre-packaged non-alcoholic drinks. Proposed specialty liquor store and market will serve the local residents of the surrounding community and tourists.

The Mixing Glass project is approximately 1,548 square feet of total interior area.

Type 21 Off-Sale General: Consists of approximately 1,233 square feet of interior square feet of which 200 square feet is dedicated specialty liquor store display and 115 square feet for storage and shipping.

The Mixing Glass will be open seven (7) days a week. The proposed hours are Sunday through Wednesday 9:00 am to 8:00 pm and Thursday through Saturday 9:00 AM to 10:00 PM. The project will employ approximately 1-3 employees that would be on-site at one time.

The surrounding land uses are as follows:

North:	Commercial/Retail	and	Residential.
South:	Commercial/Retail	and	Residential.
East:	Commercial/Retail.		
West:	Commercial/Retail.		

APPLICANT: Tasty Tippler, LLC dba "The Mixing Glass"
REQUEST: Approval of Conditional Use Permit (CUP) Permitting a Type 21 Off-Sale General (Beer, Wine & Distilled Spirits) Alcoholic Beverage License and Request for a finding of Public Convenience or Necessity ("PCN")
Specialty Off-Sale liquor store with Market
1500 Adams Avenue, Suite 104A, Costa Mesa, CA 92626
PROPOSED USE:
ADDRESS:

USE PERMIT APPLICATION JUSTIFICATION

Approval of Conditional Use Permit (CUP) Permitting a Type 21 Off-Sale General (Beer, Wine & Distilled Spirits) Alcoholic Beverage License and Request for a finding of Public Convenience or Necessity ("PCN") located at 1500 Adams Avenue, Suite 104A, Costa Mesa, CA 92626 The proposed request meets the requirements set forth in the City of Costa Mesa Municipal Code.

BURDEN OF PROOF:

1. **The use is consistent with the General Plan and any applicable specific plan;**

Response: The proposed use as a specialty liquor store with beer, wine and distilled spirits is consistent with the Costa Mesa General Plan and provisions of the Municipal Code.

2. **The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;**

Response: The proposed use as a specialty liquor store with beer, wine and distilled spirits is permitted in the zoning district and is subject to all the regulations, conditions, policies or other requirements of the Municipal Code.

3. **The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;**

Response: The proposed use is not inconsistent with the adjacent uses and will not materially affect the surrounding community or environment. The proposed project is ideally suited for the area and is not located near any residences, except those northwest behind the center and separated by the center's building itself. The approval of the request that serves the local community and tourism, will not adversely affect the public's health, safety, welfare nor will it jeopardize or endanger the public. It will not be detrimental to the use, valuation or enjoyment of surrounding property owners or residents.

4. **The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and**

Response: The proposed site, an existing shopping center, is not inconsistent with the adjacent uses and will not materially affect the surrounding community or environment. The proposed site is ideally suited for the area. The approval of the request that serves the local community and tourism, will not adversely affect the public's health, safety, welfare nor will it jeopardize or endanger the public. It will not be detrimental to the use, valuation or enjoyment of surrounding property owners or residents.

5. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise **constitute** a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the **proposed use**.

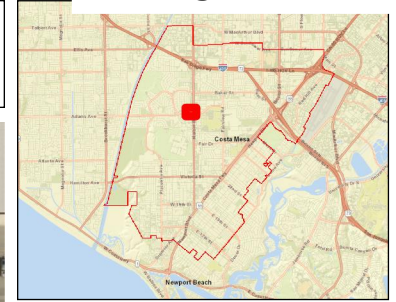
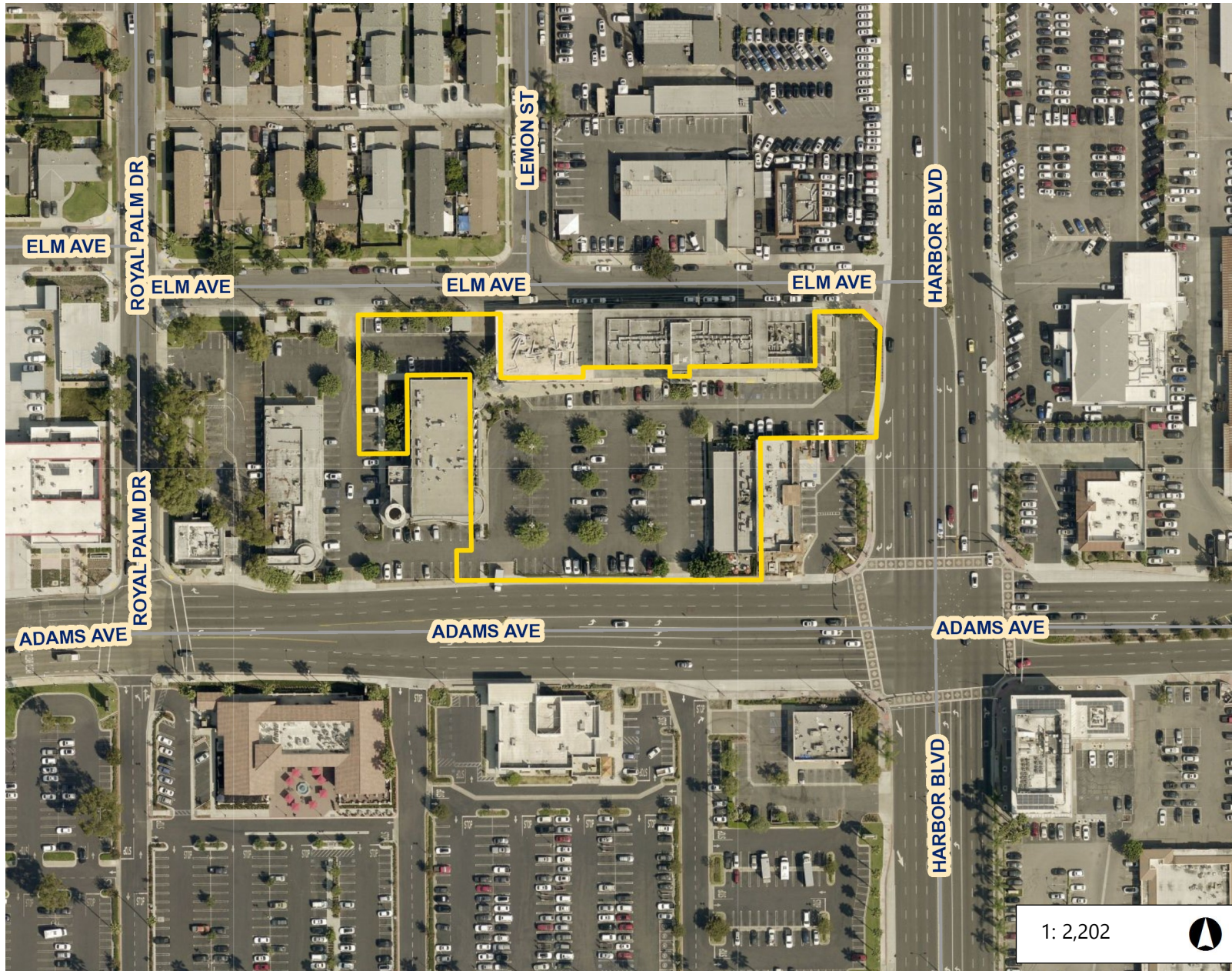
Response: The proposed use will contribute to the economic growth of the City as it will serve the local community and tourism. The proposed project will not adversely affect the public's health, safety, welfare nor will it jeopardize or endanger the public. It will not be detrimental to the use, valuation or enjoyment of surrounding property owners or residents.

6. **A finding of Public Convenience or Necessity ("PCN") is appropriate the** use of a Type 21 Of-Sale General alcoholic beverage license at the proposed location as it would not tend to create a law enforcement problem for the proposed use.

Response: The proposed use will not tend to create a law enforcement problem for the City as the applicant has a long standing track record of compliance with no law enforcement problems.



PA-22-35 (1500 Adams Ave Ste 104A) - Vicinity Map



Legend

Costa Mesa

1: 2,202



0.1 0 0.03 0.1 Miles

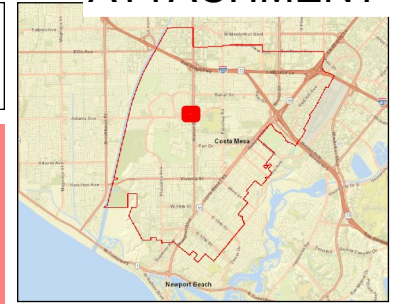
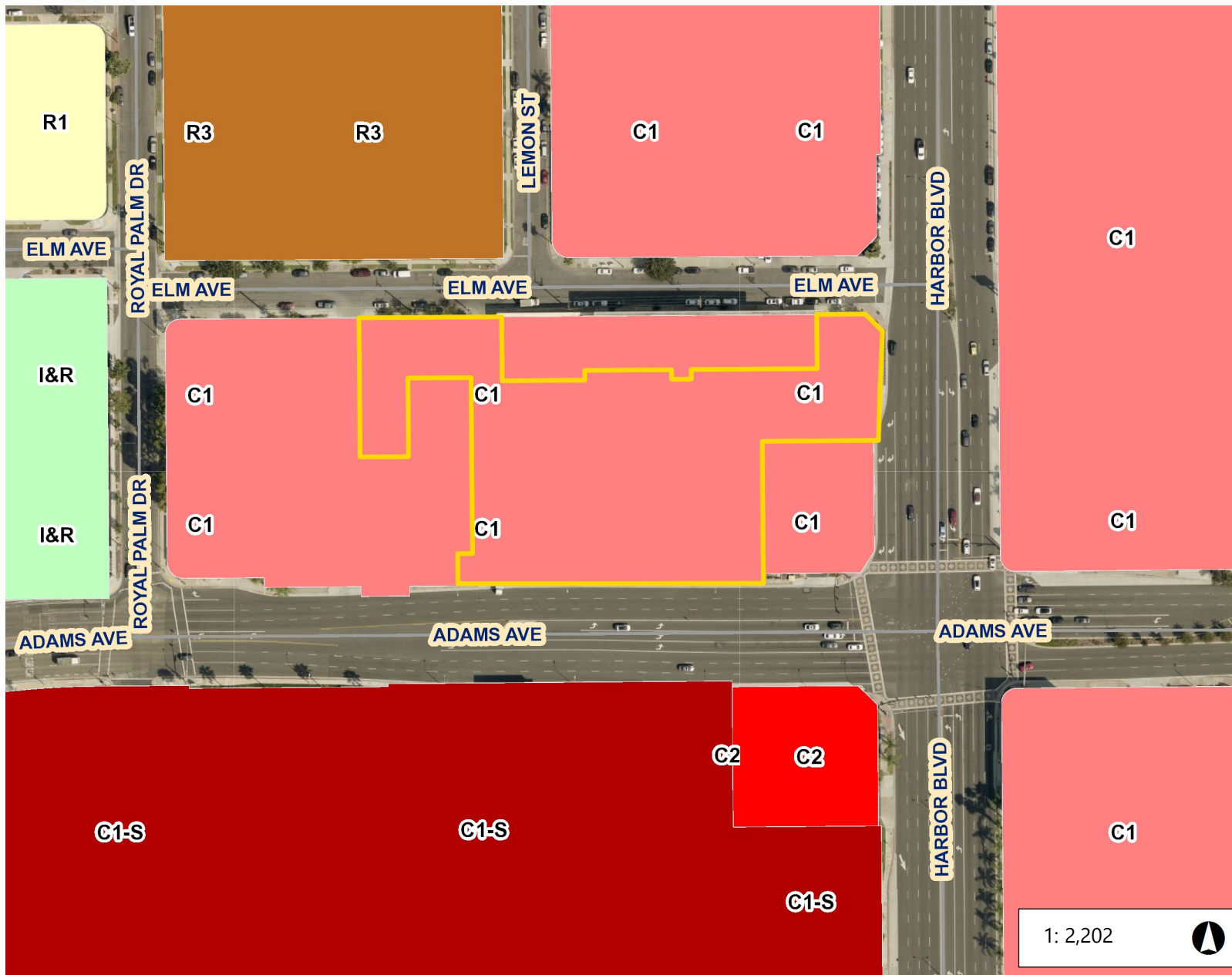
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© City of Costa Mesa

The City of Costa Mesa makes no guarantee as to the accuracy of any of the information provided and assumes no liability for any errors, omissions, or inaccuracies.

Notes



PA-22-35 (1500 Adams Ave Ste 104A) - Zoning Map



Legend

- Costa Mesa
- Zoning**
- AP - Administrative Professional
- IR-MLT - Institutional Recreational I
- R1 - Single-Family Residential
- R2-MD - Multiple-Family Residentie
- R2-HD - Multiple-Family Residentia
- R3 - Multiple Family Residential
- MG - General Industrial
- MP - Industrial Park
- PDI - Planned Development Indust
- C1 - Local Business
- C2 - General Business
- C1-S - Shopping Center
- TC - Town Center
- PDR-NCM - Planned Development Mesa
- I&R - Institutional Recreational
- I&R-S - Institutional Recreational - S
- P - Parking
- CL - Commercial Limited
- PDC - Planned Development Comr
- PDR-LD - Planned Development R
- PDR-MD - Planned Development R Density
- PDR-HD - Planned Development R

1: 2,202



Notes

0.1 0 0.03 0.1 Miles

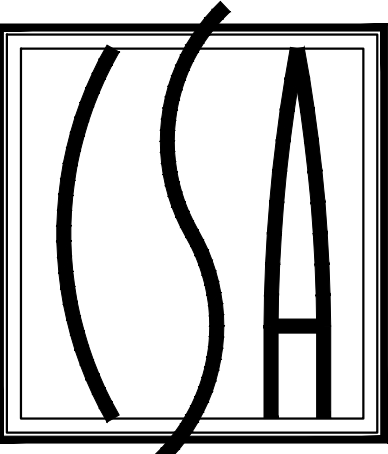
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1500 ADAMS AVENUE SUITE 104A (PA-22-35)

EXISTING SITE PHOTOS

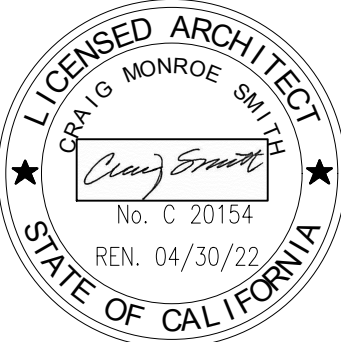




C Smith
Architects Inc.

1041 West 18th Street,
Suite a-208
Costa Mesa, CA 92627
(949) 764-0010

ARCHITECTURE
PLANNING
INTERIORS



HEALTH REV 2 3.8.22

CONTRACT DATE: 11.1.21
PROJECT TYPE: T.I.
PLAN VERSION: SUB 2
PLOT DATE: 3.8.22

THE MIXING
GLASS

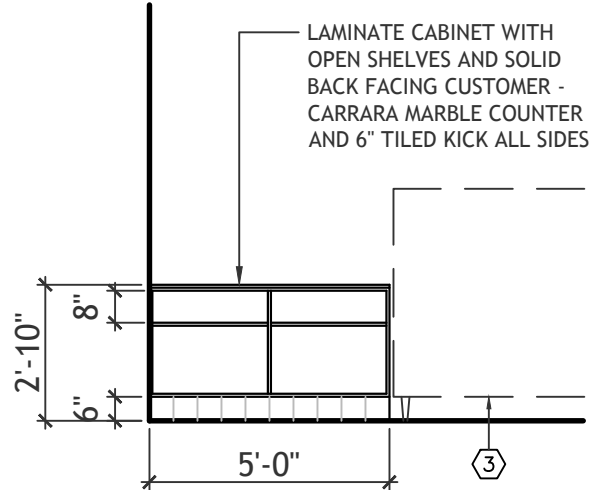
1500 ADAMS AVE. SUITE 104A
COSTA MESA, CA 92626

SCALE: 1/4" = 1'-0"



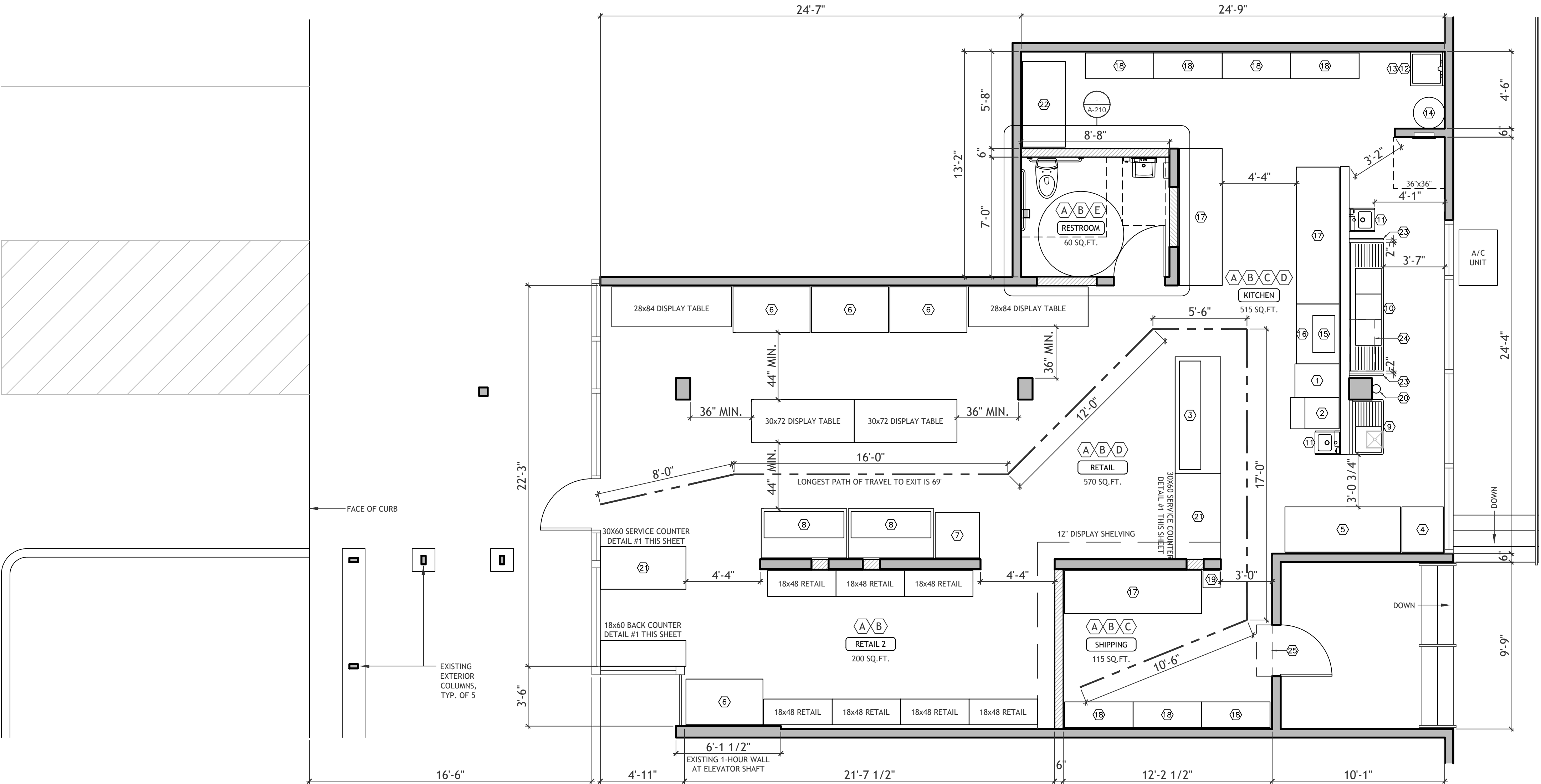
1. ALL EQUIPMENT, INCLUDING SHELVING, AND LOCKERS MUST BE SUPPORTED BY 6" HIGH EASILY CLEANABLE LEGS, COMMERCIAL CASTERS, OR COMPLETELY SEALED INTO POSITION ON A 4" HIGH CONTINUOUSLY COVERED BASE OR CONCRETE CURB.
2. ALL EQUIPMENT TO BE FASTENED TO SUPPORTING WALL / CONCRETE SLAB OR USE AN APPROVED DEVICE TO BE STATIONARY AND FOR LATERAL STABILITY.
3. MICROMATIC TAP DRAIN BOARD (#1) AND HOSHIZAKI ICEMAKER (#2) TO DRAIN INDIRECTLY TO FLOOR SINK BELOW PREP SINK. ROUTE DRAIN LINES THROUGH PONY WALL.
4. PROVIDE PERMANENT SOAP AND PAPER TOWEL DISPENSERS AT ALL HAND SINKS. HANDWASHING CLEANSER AND SINGLE-USE PAPER TOWELS MUST BE PROVIDED IN DISPENSERS AT ALL HANDWASHING FACILITIES.
5. SPLASHGUARDS AT 3-COMP SINK SHALL BE INSTALLED ON THE WALL WITH A MINIMUM 2-INCH CLEAR SPACING ON EACH SIDE OF THE SPLASHGUARD. THIS IS TO PREVENT BUILDUP OF DEBRIS BETWEEN THE SINK AND THE SPLASHGUARD.

EQUIPMENT NOTES



1. 60" SERVICE COUNTER

KITCHEN EQUIPMENT					
#	QTY.	ITEM	ELEC.	WATER	WASTE
1	1	MICROMATIC MDD23W-E-B	115V/8A		INDIRECT
2	1	HOSHIZAKI KM350 ICE MACHINE W/ B300SF BIN	115V/15A	1/2" F	INDIRECT
3	1	AVANTCO 82" DELI CASE 178DLC82HCS	115V/8A		
4	1	AVANTCO REACH-IN FREEZER #SS-1F-HC 29	115V/8A		
5	1	AVANTCO REACH-IN REFRIGERATOR #SS-3R-HC 81	115V/9A		
6	4	AVANTCO 2-DOOR MERCHANDISER #178GDS47HC	115V/5A		
7	1	AVANTCO FREEZER MERCHANDISER #178GDC24FHC	115V/10A		
8	2	FEDERAL OPEN MERCHANDISER #RSSM578SC	208V/15A		
9	1	REGENCY #600S1181818XRT PREP SINK (18X18X14 BOWL)		3/4" H&C	INDIRECT
10	1	REGENCY #600S31818218 3-COMP SINK (18X18X14 BOWLS)		3/4" H&C	DIRECT
11	2	ADVANCE-TABCO #7-PS-40 WALL HUNG HAND SINK W/ SIDE SPLASHES		3/4" H&C	DIRECT
12	1	REGENCY #600SM16206 MOP SINK (20X16X6 BOWL)		3/4" H&C	DIRECT
13	1	CHEMICAL STORAGE SHELF AND MOP RACK			
14	1	RHEEM ELD40-TB (12 KW) ELEC. WATER HEATER	208V/30A	1" C	
15	1	AVANTCO INDUCTION DOUBLE HOB #DIC35K	115V/15A		
16	1	REGENCY STAINLESS STEEL WORKTABLE 30X42			
17	3	REGENCY STAINLESS STEEL WORKTABLE 30X96			
18	7	REGENCY 5-TIER WIRE SHELVING 18X48X69 HIGH MAX			
19	1	REGENCY 5-TIER LOCKER (12" CUBES) W/ 6" ROUND LEGS			
20	1	FIRE EXTINGUISHER			
21	2	POS SYSTEM W/ U/C CASH DRAWER	115V/3A		
22	1	REGENCY STAINLESS STEEL WORKTABLE 36X60			
23	2	6X24 ALLSTRONG S.S. SPLASH PANELS			
24	1	REGENCY 18X36 #460EC1836WSK WALL MOUNT WIRE SHELF			
25	1	36" MARS #LPN36-1U AIR CURTAIN	115V/3A		





City of Costa Mesa

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 22-920

Meeting Date: 10/24/2022

TITLE:

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

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/ PLANNING DIVISION

RECOMMENDATION:

Staff recommends the Planning Commission adopt a Resolution to:

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

Full Agenda Report provided as Attachment 1.



City of Costa Mesa

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 22-920

Meeting Date: 10/24/2022

TITLE:

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

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/ PLANNING DIVISION

RECOMMENDATION:

Staff recommends the Planning Commission adopt a Resolution to:

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

Full Agenda Report provided as Attachment 1.



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: OCTOBER 24, 2022

ITEM NUMBER: PH-2

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

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

PRESENTATION BY: CHRIS YEAGER, ASSOCIATE PLANNER

FOR FURTHER INFORMATION CHRIS YEAGER

714-754-4883

CONTACT: Christopher.Yeager@costamesaca.gov

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APPLICANT OR AUTHORIZED AGENT

The subject Code Amendment is a City initiated request.

BACKGROUND

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

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

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

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

DESCRIPTION

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

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

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

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

Recent ADU State Law Changes

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

ADU Height

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

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

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

ADU Processing

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

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

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

JADU Standards

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

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

ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

Existing language:

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

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

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

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

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

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

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

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

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

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

Existing language:

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

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

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

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

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

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

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

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

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

Existing language:

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

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

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

Existing language:

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

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

CMMC Section 13-35 - (c) Junior ADUs

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

Existing language:

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

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

CMMC Section 13-35 - (d) Development Standards

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

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

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

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

Existing language:

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

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

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

Existing language:

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

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

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

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

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

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

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

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

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

Existing language:

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

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

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

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

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

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

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

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

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

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

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

Existing language:

(12) *Garage conversions.*

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

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

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

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

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

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

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

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

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

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

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

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

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

GENERAL PLAN CONFORMANCE

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

ENVIRONMENTAL DETERMINATION

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

ALTERNATIVES

The Planning Commission has the following alternatives:

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

LEGAL REVIEW

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

PUBLIC NOTICE

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

CONCLUSION

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

RESOLUTION NO. PC-2022-**A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL
GIVE FIRST READING TO AN ORDINANCE APPROVING
CODE AMENDMENT CO-2022-XX AMENDING CHAPTER V,
ARTICLE 1, SECTION 13-35 (ACCESSORY DWELLING
UNITS) OF TITLE 13 OF THE COSTA MESA MUNICIPAL
CODE TO CLARIFY EXISTING ACCESSORY DWELLING UNIT
PROVISIONS AND TO MODIFY STANDARDS TO CONFORM
TO RECENT REVISIONS TO STATE LAW**

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

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

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

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

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

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

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

1. Adoption of this resolution is exempt from the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), in that the adoption of an ordinance regarding second units in a single-family or multifamily zone by a city or county to implement the provisions of Sections 65852.1, 65852.150 and 65852.2 is exempt from the requirements of CEQA. In addition, the proposed ordinance amendment is exempt

from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) in that there is no possibility that the minor updates to the City's ADU provisions will have a significant impact on the environment.

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

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

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

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

Byron de Arakal, Chair
Costa Mesa Planning Commission

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

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

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

ABSTAIN: COMMISSIONERS

Scott Drapkin, Secretary
Costa Mesa Planning Commission

Resolution No. PC-2022-__

ORDINANCE NO. 2022-XX

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

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Findings. The City Council finds and declares as follows:

WHEREAS, updates to the City's Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) provisions are required to provide consistencies between the City's Zoning Code and the State law; and

WHEREAS, in response to the implementation of State and local law regarding ADUs and JADUs, City staff found inconsistencies in the Zoning Code that require updating; and

WHEREAS, recently adopted State housing laws, including AB 2221 and SB 987, require updates to the City's ADU and JADU provisions; and

WHEREAS, Government Code section 65852.2(a)(4) provides in part, "if a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void;" and

WHEREAS, this Ordinance is necessary to implement State and local ADU provisions, establish the minimum development standards in the Costa Mesa Municipal Code to regulate ADUs, and to ensure consistency with State law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY ORDAINS AS FOLLOWS:

SECTION 2: Code Amendment. Section 13-35 (Accessory Dwelling Units). Chapter V, Article 1, Section 13-35 (Accessory Dwelling Units) of Title 13, Planning, Zoning and Development of the Costa Mesa Municipal Code, as specified in Exhibit A, attached hereto and incorporated herein by this reference, is hereby amended as set forth therein.

SECTION 3. Repeal. All portions of prior ordinances, including those within Urgency Ordinance 19-19, to the extent that they are inconsistent with the terms of this Ordinance are hereby repealed and replaced by this Ordinance.

SECTION 4. Compliance with CEQA. Adoption of this Ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), in that the adoption of an ordinance regarding second units in a single-family or multifamily zone by a city or county to implement the provisions of Sections 65852.1, 65852.150 and 65852.2 is exempt from the requirements of CEQA. In addition, the proposed ordinance amendment is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) in that there is no possibility that the minor updates to the City’s ADU provisions will have a significant impact on the environment.

SECTION 5. Inconsistencies with State Law. Any provision of this Ordinance which is inconsistent with State law shall be interpreted in a manner which is the most limiting on the ability to create ADUs or Junior ADUs, but which is consistent with State law. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 6. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 7. Effective Date. This Ordinance shall take effect on the 31st day after adoption.

SECTION 8. Certification. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted in the manner required by law.

SECTION 9. Transmit Ordinance to HCD. The City Clerk is directed to send a copy of this ordinance to the Department of Housing and Community Development within 60 days of the adoption of this Ordinance.

PASSED AND ADOPTED this ____ day of _____, 2022

Mayor

ATTEST:

APPROVED AS TO FORM

Brenda Green, City Clerk

Kimberly Hall Barlow, City Attorney

I, Brenda Green, City Clerk of the City of Costa Mesa, do hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 2022-XX ____ introduced at a regular meeting of the City Council of the City of Costa Mesa held on the ____ day of ____, 2022, and was thereafter adopted at a regular meeting held on the ____ day of ____, 2022, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

Said ordinance has been published or posted pursuant to law.

Witness my hand and the official seal of the City of Costa Mesa this ____ day of ____, 2022.

Brenda Green, City Clerk

13-35. Accessory dwelling units.

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

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

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

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

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

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

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

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

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

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

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

(b) *Accessory dwelling units.*

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

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

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

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

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

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

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

(ii) Each such ADU and Junior ADU must have independent exterior access from the single-family dwelling, and have side and rear setbacks sufficient for fire safety; or

2. *New construction.* One (1) new construction ADU may be permitted on a lot with proposed or existing single-family dwelling. One (1) new construction Junior ADU may be allowed on the lot if the Junior ADU is to be in a single-family dwelling that meets all applicable legal standards.

b. *Multifamily.* Junior ADUs are not allowed on a lot with more than one residence. ADUs are not allowed within new construction residences where, after construction, there will be at least two (2) residences on the lot (e.g. detached residential structures, duplexes, apartments); up to two (2) ADUs are allowed with such structures pursuant to subsection 23, below. For lots with an existing legal multifamily dwelling (e.g., a legal non-conforming multifamily dwelling), the applicant may have ADU(s) pursuant to one of the following:

1. *Maximum ADUs within existing multifamily dwelling structure.* No more than twenty-five (25) percent, with any partial unit rounded down) of the number of existing multifamily dwelling units on the lot, but at least one (1) unit, shall be permitted as ADU(s) constructed within the enclosed non-livable space (e.g., storage rooms, boiler rooms, hallways, attics, basements, or garages) of the existing multifamily dwelling structures; or

2. Maximum attached ADUs. No more than one (1) attached ADU is permitted. The ADU shall be attached to the multifamily dwelling structure; or

23. Maximum detached ~~external~~ ADUs. No more than two (2) detached ADUs are permitted. Both units shall be detached from every residence on site (but need not be detached from each other). This section shall apply to detached structures that are converted and new construction detached ADUs. Conversion detached ADUs are not subject to height, setbacks, and maximum square footage. Such ADUs shall not exceed eight hundred (800) square feet of gross floor area, shall be no taller than sixteen (16) feet in height, and shall have at least four (4) feet of side and rear yard setbacks; or

43. Maximum mixed (detached/within) ADUs. No more than twenty-five (25) percent, with any partial unit rounded down) of the number of existing multifamily dwelling units on the lot, but at least one (1) unit, shall be permitted as ADU(s) constructed within the enclosed non-livable space (e.g., storage rooms, boiler rooms, hallways, attics, basements, or garages) of the existing multifamily dwelling structures. ~~No more than one ADU is permitted within the existing and enclosed non-livable space (e.g., storage rooms, boiler rooms, hallways, attics, basements, or garages) of~~

~~the existing multifamily dwelling structure; and no more than one two~~
ADUs that ~~is are~~ detached from each multifamily dwelling structure on site,
~~provided that such ADU does not exceed eight hundred (800) square feet~~
~~of gross floor area, is no taller than sixteen (16) feet in height, and has at~~
~~least four (4) feet of side and rear yard setbacks.~~

(5) *Maximum size.*

a. *Single-family.*

1. *Detached.* For lots with a proposed or existing single-family dwelling, a detached ADU shall not have more than one thousand two hundred (1,200) square feet.
2. *Attached.* An ADU attached to a single-family dwelling shall be no more than the greater of fifty (50) percent of the square footage of the existing single-family dwelling or one thousand (1,000) square feet.

b. *Multifamily, exterior construction.*

1. *Detached.* For lots with an existing legal multifamily dwelling structure proposing one (1), a new construction detached ADU, the ADU shall not exceed eight 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; or

2. *Attached.* For lots with an existing legal multifamily dwelling structure, an attached ADU shall not exceed the greater of 1,000 square feet or fifty (50) percent of the average floor area of the existing multiple family dwelling units.

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

(6) *Minimum size.*

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

(7) *Conversions of dwelling units.*

a. *Total conversion of single-family ~~unit~~dwelling.* An entire existing single-family ~~or multifamily~~ dwelling may be converted to an ADU if the ADU complies with all applicable requirements of this section and a new single-family residence with a total gross floor area exceeding that of the ADU is constructed in full compliance with code requirements.

b. *Partial conversion/addition.* A portion of the existing single-family or multifamily dwelling may be converted to an ADU with new additional square footage, which additional square footage shall comply with all standards applicable to attached ADUs, and all converted square footage shall comply with standards applicable to conversions. The maximum square footage of the attached ADU shall be based upon the size of the existing ~~primary~~ dwelling before construction of the ADU addition.

(c) *Junior ADUs.*

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

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

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

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

(5) *Location of Junior ADU.* A Junior ADU shall be entirely within an ~~existing or proposed~~ single-family ~~residence~~dwelling.

(6) *Kitchen requirements.* A Junior ADU shall include an efficiency kitchen, including ~~a sink, a single or multiple cooktop~~ a cooking facility with appliances, outlet for a small refrigerator, food preparation counter and storage cabinets that are of reasonable size in relation to the size of the Junior ADU.

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

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

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

(9) *Exterior and interior access.* The Junior ADU shall include an exterior entrance separate from the main entrance to the single-family dwelling. If the Junior ADU shares bathroom facilities with the main dwelling, the Junior ADU shall also have interior entry to the main dwelling's living area.

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

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

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

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

(4) *Utilities.*

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

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

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

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

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

- a. Prohibit the sale of the ADU and Junior ADU separate from the single-family residence; and
- b. Unless subsequently prohibited by an amendment to state law, for ADUs approved on or after January 1, 2025, the ADU shall be considered legal only as long as either the primary residence or the ADU is occupied by the owner of record or state law is amended to prohibit such requirements. Junior ADUs require owner occupancy of either the single-family dwelling or the Junior ADU; and
- c. Restrict the ~~accessory second unit~~ADU or JADU to the maximum size allowed by Municipal Code section 13-35, as it may be amended from time to time; and
- d. Unless authorized by this Code, prohibit renting the ADU for periods less than thirty-one (31) days; and
- e. Confirm that the restrictions shall be binding upon any successor in ownership of the property, and lack of compliance shall result in legal action against the property owner for noncompliance.

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

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

(8) *Setbacks.*

a. *None.* No setbacks are required for either: (1) those portions of ADUs that are created by converting existing living area or existing accessory structures to a new ADU; or (2) constructing new ADUs in the same location, while not exceeding the existing dimensions, including height and to the same dimensions as an existing structure. Notwithstanding the foregoing, ADUs ~~and Junior ADUs~~ shall, at minimum, comply with setbacks that are sufficient for fire and life safety.

b. *Other setbacks.* For all other ADUs, there shall be a minimum of setbacks of four (4) feet from side and rear property lines and full compliance with all

applicable front yard setbacks for the underlying zone. ~~Second floor ADUs shall provide setbacks in conformance with the underlying zone. An ADU on a corner lot shall maintain a minimum setback of ten (10) feet from the public right of way on the street side or be consistent with the existing setback distance of the main residential structure, whichever is less.~~

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

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

a. *Second floor or two-stories.* An ADU on a lot which has an existing lawfully constructed ~~single family dwelling or will have a new single family~~ dwelling, may be in whole or in part on a second floor, or be a two (2) story ADU, if all five (5) of the following occur:

1. All portions of the ADU structure on a second floor are at least twenty-five (25) feet from the front property line ~~(except that front facing balconies may be constructed as close as twenty (20) feet from the front property line if the balcony is open on three (3) sides and the wall of the main structure is at least twenty five (25) feet from the front property line); and~~
2. Each stairwell for the ADU is interior or complies with subsection (10), below; and
3. The second floor of any portion of the ADU, if built above a detached garage, does not exceed the footprint of the garage; and
4. No windows are installed on the second floor on side elevations if such windows are within twenty-five (25) feet of a neighboring dwelling and face the neighboring property unless such windows have a minimum sill height of at least five (5) feet; and
5. The second floor (or the entire two (2) story ADU as applicable) meets the setbacks applicable to additions ~~and accessory structures~~ for the underlying zone.

b. *Within structure.* The ADU is built entirely within either:

1. A proposed or existing lawfully constructed single-family dwelling, except that an external stairwell to the ADU which meets all requirements of this code, including the requirements of subsection (10), below, may be constructed to allow access to the ADU; or

2. The non-habitable space of an existing multifamily structure or within an accessory structure on a lot with a multifamily structure.

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

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

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

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

(11) *Architectural standards.*

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

b. *Detached ADUs.* Any detached ADU shall be compatible in exterior appearance with the primary unit or units in terms of design, materials, finishes, and colors within the same property on which it is proposed to be constructed, in accordance with code design standards and guidelines applicable to the zone.

c. *Junior ADUs.* Junior ADUs shall ~~be compatible in match~~ exterior appearance with the primary unit in terms of design, materials, finishes, and

colors within the same property on which it is proposed to be constructed, in accordance with code design standards and guidelines applicable to the zone.

(12) *Garage conversions.*

a. *No blank façade.* When a garage is converted to an ADU, if the façade of the converted garage is visible from a public right-of-way, the façade ~~must have substantial articulation in terms of design and architectural features, or substantial landscaping, or some combination thereof to improve aesthetics. For example, obscuring the façade with~~ shall implement at least one of the following:

- i. be covered with landscaping that covers at least fifty (50) percent of the wall, or
- ii. include at least one door that complies with section 13 below or one window.
~~would meet this requirement, as would construction of an attached code-compliant pergola or awning which was constructed in front of the façade of the converted garage.~~

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

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

(14) *Parking.*

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

1. Tandem parking on an existing driveway in a manner that does not encroach onto a public sidewalk; or
2. Within a setback area or in locations determined feasible by the city. Locations will be determined infeasible based upon specific site or regional topographical or fire and life safety conditions, or that such parking is not permitted anywhere else in the city.

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

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

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

(17) *Open space and landscaping.* ADUs which exceed eight hundred (800) square feet in gross floor area shall meet the open space requirements of section [13-32](#) and shall be subject to provide landscaping as required in section 13-106. (Ord. No. 11-10, § 1, 9-20-11; Ord. No. 18-03, § 5, 1-16-18; Ord. No. 21-03, § 3, 3-2-21)

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT

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March 17, 2022

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 ADU Law (Gov. Code, § 65852.2)

Thank you for submitting the City of Costa Mesa's (City) accessory dwelling unit (ADU) ordinance No. 2021-03 ("the Ordinance") adopted March 2, 2021, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Ordinance and is submitting these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD has determined that the Ordinance does not comply with section 65852.2 in the manner noted below. Under the statute, 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 April 15, 2022.

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

- **Section 13-35 (A)(1) – *Omitted Reference to Multifamily*** – The Ordinance lays out its purpose to ensure that "...ADUs and Junior ADUs remain as an accessory use to a single-family residence...." The Ordinance omits mention of multifamily dwellings. Government Code section 65852.2, subdivision (a)(1), states that "[a] local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use." Multifamily buildings are also considered to be primary buildings for the purposes of creating ADUs. The City should change the reference to "a single-family residence" to "a single-family or multifamily residence."
- **Section 13-35 (A)(3)(c) – *Definitions*** – The Ordinance states that "a structure is considered 'existing' if a building permit was issued and finalized at least two years before an application is submitted under this section...." However, defining whether a structure is "existing" based on when it was permitted rather than whether it actually exists would prohibit certain actions. For example, converting

an ADU from an existing primary dwelling or existing primary accessory structure, as allowed under Government Code section 65852.2, subdivision (e), would be prohibited by the Ordinance if it is within two years of when the primary structure was “finaled.” Moreover, in addition to “proposed” and “existing” structures, it would create a third category of structures that are in limbo because they were permitted less than two years prior. The Ordinance effectively creates a two-year waiting period before the homeowner may apply for an ADU. Therefore, the definition must be removed from the Ordinance.

- Section 13-35 (A)(3)(d) – *Definitions* – The Ordinance states that “the terms ‘single-family dwelling’ and ‘multifamily dwelling’ exclude all garages, carports, and similar structures, regardless of whether such structures are attached or detached from the dwelling.” Government Code section 65852.2, subdivision (a)(1)(D)(iii), refers to “the accessory dwelling unit [that] is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses,” and Government Code section 65852.22, subdivision (a)(4), states that a JADU must be “constructed within the walls of the proposed or existing single-family residence.” HCD has determined that a single-family residence includes an attached garage, as cited in the ADU Handbook of December 2020 on page 18. The definition as it appears in the Ordinance would impact the creation of a JADU within a single-family residence that includes an attached garage. Therefore, the City should remove the reference to garages as an ‘excluded’ area within a single-family residence.
- Section 13-35 (A)(3)(e) – *Definitions* – The Ordinance states that “a “multifamily dwelling” is a dwelling (excluding any ADU or Junior ADU) within a multifamily dwelling structure, including detached single-family homes where there is more than one (1) primary dwelling unit on a lot.” HCD has determined that, as quoted from the ADU Handbook of December 2020 on page 21, “for the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of state ADU law.” As written, the Ordinance would conflict with state law on the issue of JADUs, as JADUs are not permitted within multifamily buildings and multiple single-family homes on one lot would therefore be ineligible. Therefore, the City should revise its definition of a “multifamily dwelling.”
- Section 13-35 (B)(4)(b)(ii and iii) – *Setback Requirements* – The Ordinance states that detached ADUs on multifamily lots “shall be no taller than sixteen (16) feet in height, and shall have at least four (4) feet of side and rear yard setbacks....” However, this would be impermissible in the case of converted units. Government Code section 65852.2, subdivision (a)(1)(D)(vii) states that “[n]o setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a

portion of an accessory dwelling unit.” The City must add language noting that converted units are excepted from the setback limitations.

- Section 13-35 (B)(4)(b)(ii), (B)(4)(b)(iii), (B)(5)(b) – *Multifamily ADU Size Limitations* – The Ordinance states, in multiple sections, that the maximum size of detached ADUs for multifamily dwellings “shall not exceed 800 square feet,” and nowhere does the Ordinance mention conversions made in detached accessory structures. However, the statute provides for different size maximums for different kinds of ADUs built with multifamily buildings:
 - One new construction *attached* ADU may be built with a multifamily building under Government Code section 65852.2, subdivision (a), and be subject to a maximum size established in subdivision (c)(2)(B), which states that “a local agency shall not establish by ordinance... a maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following: (i) 850 square feet [or] (ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom....” Such a unit would also be subject to subdivision (a)(1)(D)(iv), which states, “If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.” Be advised that HCD considers that the 50-percent size limitation for such a unit may be based on the average size of a multifamily unit rather than the multifamily building’s total floor area.
 - New construction *detached* ADUs may be built under Government Code section 65852.2, subdivision (e)(1)(D), which allows “not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling....” Such units are subject to a maximum size, as permitted in subdivision (a)(1)(D)(v), of no less than 1,200 square feet.
 - Conversions of detached accessory structures may not be limited to a maximum size, as converted units are created under Government Code section 65852.2, subdivision (e), which exempts such units from local development standards like size maximums.

The City should use these references to establish maximum sizes for ADUs with multifamily buildings.

- Section 13-35 (D)(4)(b) – *Development Standards – Utilities* – The reference for JADUs is noted as subsection D.8, where it should be C.8. Please correct what appears to be a typographical error.
- Section 13-35 (D)(8)(b) – *Corner lot setbacks* – The Ordinance states that “an ADU on a corner lot shall maintain a minimum setback of ten feet from the public right of way or be consistent with the existing setback distance of the main residential structure, whichever is less.” However, Government Code section

65852.2, subdivision (e)(1)(B), states that setbacks of more than 4 feet shall not be required for side or rear lot lines, and subdivision (a)(1)(D)(vii) states that “a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.” HCD has determined that the four-foot side setback includes the side of a corner lot. Therefore, the City must remove this bullet point.

- Section 13-35 (D)(10) – *Exterior Stairway* – The Ordinance requires that “an exterior stairway to a second-floor ADU shall be facing the interior of the lot and shall not be readily visible from the public right-of-way.” This is impermissibly restrictive. Local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under Government Code section 65852.2, subdivision (e), which applies to converted units created on the second floor. Furthermore, the term “readily visible” is subjective, and the City’s compliance review of an exterior stairway may be a discretionary process in violation of Government Code section 65852.2, subdivision (a)(4), which requires “only ministerial provisions for the approval of accessory dwelling units....” This would unreasonably restrict second floor units on corner lots, on lots with a rear property line facing a street, or on homes where a side-facing entry is most feasible. The City must remove this section.
- Section 13-35 (D)(11)(c) – *Architectural Standards – Junior ADUs* – The Ordinance requires that JADUs “shall be compatible in exterior appearance with the primary unit....” However, Government Code section 65852.22, subdivision (h)(1), defines a JADU as a unit that is...contained entirely within a single-family residence. As JADUs are created entirely within the single-family residence, there should be no architectural change to the structure’s exterior. Therefore, the City should remove this section.
- Section 13-35 (D)(12)(a) – *Aesthetic Requirements* – The Ordinance states that “when a garage is converted to an ADU, if the façade of the converted garage is visible from a public right of way, the façade must have substantial articulation in terms of design and architectural features, or substantial landscaping, or some combination thereof to improve aesthetics....” However, local development standards like façade articulation provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created in converted garages, which are created under Government Code section 65852.2, subdivision (e)(1)(A). Therefore, the City must remove this section.
- Section 13-35 (D)(13) – *Entry and Walkways* – The Ordinance requires that a “walkway leading to an ADU shall be hardscaped and connect to the driveway or the public sidewalk.” This appears to be requiring a passageway. However, per

Government Code section 65852.2, subdivision (a)(1)(D)(vi), “No passageway shall be required in conjunction with the construction of an accessory dwelling unit.” Therefore, the City must remove this reference.

- Section 4 – *Land Use Matrix* – The land use matrix lacks a substantial amount of information – it does not indicate which zones allow single-family and/or multifamily development, nor does it include the allowances or definitions of the zones. Please point HCD to the part of the City’s municipal code where this information is clarified.
- Section 5 (d) – *Parking* – The Ordinance requires that “parking for ADUs and JADUs be provided per the requirements of Section 13-35....” However, as noted in Government Code section 65852.22, subdivision (b), “An ordinance shall not require additional parking as a condition to grant a permit” for a JADU. The City must remove the reference to JADUs here to comply with statute.
- Section 6, 13-261.6. (a)(2) – *Fee Structure* – The Ordinance states that “the fees for ADUs and JADUs shall take into consideration the fees charged for apartments and shall not violate Government Code 65852.2, as it may be amended from time to time.” However, the fees for JADUs are also governed by Government Code section 65852.22, not exclusively by section 65852.2. The City should amend this language to comply with statute.

In these respects, revisions are necessary to comply with statute. HCD will consider any written response to these findings, such as a revised ordinance or a detailed plan to bring the Ordinance into compliance with law by a date certain, before taking further action authorized pursuant to Government Code section 65852.2. Please note that HCD may notify the Attorney General’s Office in the event that the City fails to take appropriate and timely action under section 65852.2, subdivision (h).

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 ADU Law. Please contact Mike Van Gorder of our staff, at (916) 776-7541 or mike.vangorder@hcd.ca.gov if you have any questions or would like HCD’s technical assistance in these matters.

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability