



## Legislation Text

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File #: 23-1009, Version: 1

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### TITLE:

**CITY COUNCIL FIRST READING OF AN ORDINANCE TO AMEND TITLE 13 OF THE COSTA MESA MUNICIPAL CODE (ZONING CODE) TO MODIFY EXISTING ACCESSORY DWELLING UNIT (ADU) STANDARDS TO CONFORM WITH RECENT REVISIONS TO STATE LAW AND TO CLARIFY LOCAL PROVISIONS TO IMPROVE PERMIT PROCESSING (CODE AMENDMENT CO 2022-01)**

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

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

**CONTACT INFORMATION: CHRIS YEAGER, ASSOCIATE PLANNER, 714-754-4883**

### **RECOMMENDATION:**

Introduce for first reading, by title only, Ordinance No. 2023-XX approving Code Amendment CO-2022-01, amending Title 13 of the Costa Mesa Municipal Code (Zoning Code) to modify the City's accessory dwelling unit (ADU) standards to conform to recent revisions to State law, and to clarify several existing provisions to improve ADU permit processing.

### **BACKGROUND:**

The City of Costa Mesa has historically allowed ADUs and similar uses (such as granny flats) as either permitted or conditionally permitted uses. In response to 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. Later, on March 2, 2021, the City Council adopted Ordinance 2021-03 to establish permanent regulations, which provide the City's current ADU regulations.

Currently, the City's ADU provisions specify that ADUs can be established through new construction or the conversion of existing floor area (remodels), and are subject to specific development standards including, but not limited to, the number of allowed units on one lot, floor area, setbacks, and height. The City's ADU provision were adopted in compliance with State law and are intended to increase the City's overall housing supply while also providing additional affordable housing opportunities. The City's ADU provisions are also adopted to ensure that ADUs remain as an accessory use to single-family and multi-family residences, and that ADUs do not adversely impact surrounding residents or the community at large. The City's adopted ADU provisions are comprehensive, more flexible than the State requirements and have resulted in a successful local housing program with growing community interest.

In 2020, the City issued 19 building permits for the construction of ADUs; in 2021, the City issued 43 building permits for the construction of ADUs (a 226 percent increase from 2020); and in 2022, the City issued 68 building permits for the construction of ADUs (a 62 percent increase from 2021). Since the beginning of the year (2023), and at the time this report was drafted, the City had issued an additional 14 ADU building permits. Since the adoption of the City’s ADU provisions, the City has approved and/or is processing 223 ADUs and JADUs as indicated in the below Table 1.

Total Approved/In Process	223
Attached ADUs	91
Detached ADUs	132
ADUs on Single Family Properties	163
ADUs on Multiple Family Properties	60
Average Square Footage	641 SF
Median Square Footage	606 SF
Smallest Approved	152 SF
Largest Approved (converted ADU)	1,508 SF

### State Law Changes

Recent State laws were enacted modifying the California Government Code regarding ADUs and JADUs, including AB 2221 and SB 897. As a result, modifications to the City’s local ADU provisions are required in order to maintain consistency with State law. Pursuant 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.”

### State HCD Letter

In addition, in March 2022 the California Department of Housing and Community Development (HCD) provided a letter to the City indicating that the City’s ADU provisions included inconsistencies with State Law (see the attached HCD letter). In response to HCD, Housing Element Program 3E is included in the 6<sup>th</sup> Cycle Housing Element re-adopted by the City Council in November 2022. Housing Element Program 3E specifies that the City will revise the ADU Ordinance as appropriate by December 2024. This Code Amendment implements and completes Housing Element Program 3E ahead of schedule.

### Planning Commission Review

On October 24, 2022, staff presented the Planning Commission with a Draft Ordinance to modify the City’s ADU provisions for a recommendation to the City Council. After receiving a presentation from staff and considering public testimony, the Planning Commission voted unanimously to recommend that the City Council give first reading to an Ordinance approving the Code Amendment. With the recommendation, the Planning Commission also provided several suggested edits to the Draft Ordinance (described below in the “Analysis” section of this report).

Staff Report:

[CITY OF COSTA MESA - File #: 22-920 \(legistar.com\)](https://costamesa.legistar.com/LegislationDetail.aspx?ID=5895133&GUID=4B3859F6-A841-43BB-BD19-31759A5B79D2)  
<<https://costamesa.legistar.com/LegislationDetail.aspx?ID=5895133&GUID=4B3859F6-A841-43BB-BD19-31759A5B79D2>>

Video:

[PLANNING COMMISSION on 2022-10-24 6:00 PM \(granicus.com\)](https://costamesa.granicus.com/PLANNING%20COMMISSION%20on%202022-10-24%206:00%20PM%20(granicus.com)<https://costamesa.granicus.com/player/clip/3913?view_id=14&redirect=true&h=411624c83e350f024b332588593ae79b>)  
<[https://costamesa.granicus.com/player/clip/3913?](https://costamesa.granicus.com/player/clip/3913?view_id=14&redirect=true&h=411624c83e350f024b332588593ae79b)  
[view\\_id=14&redirect=true&h=411624c83e350f024b332588593ae79b](https://costamesa.granicus.com/player/clip/3913?view_id=14&redirect=true&h=411624c83e350f024b332588593ae79b)>

## **ANALYSIS:**

The proposed Draft Ordinance is limited to modifications to Section 13-35 of Title 13 of the Costa Mesa Municipal Code (“*Accessory Dwelling Units*”). Amendments include, but not limited to, modifications to definitions, ADU maximum size standards, setback requirements and height requirements. As previously mentioned, the proposed ordinance amendments are primarily a result of the recent changes to State laws. In addition and after several years of implementing the City’s current ADU provisions, various ADU processing issues and questions have occurred that staff believes necessitates Ordinance modification to improve the processing of ADU applications. These edits are also proposed in the Draft Ordinance. Lastly, staff has also included the Planning Commission’s suggested edits in the proposed Draft Ordinance update for City Council consideration.

The proposed amendments are included in Exhibit A to the Draft Ordinance and in underline/~~striketrough~~ format. Below is a summary of the draft changes organized under the following headings: (1) the State required updates, (2) the staff proposed revisions to improve ADU processing, and (3) the Planning Commission’s suggested edits:

### **1. Recent ADU State Law Changes**

In 2022, 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 clarifies allowable standards for local agencies’ processing of ADUs.

#### **ADU Height**

The 2022 State laws increase the State-required minimum heights for ADUs from 16 feet to 18 to 25 feet (under certain circumstances). The City’s ADU provisions currently permit two-story ADUs on single-family properties up to 27 feet in height, similar to the allowed height for the primary residential structure. (These provisions are more flexible than the State requirements). The City’s proposed revisions clarify that ADU height regulations apply on multi-family dwelling properties as well.

#### **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 demolished in conjunction with and replaced with an ADU must now be reviewed with the ADU application and issued at the same time; and
- Local agencies cannot deny an application to create an ADU because corrections are needed to address nonconforming zoning conditions, building code violations, or unpermitted structures elsewhere on the lot unless they pose a threat to public health and safety.

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 pursuant to 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”; and
- In instances where a 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.

The proposed revisions include the requirement for JADUs that share a bathroom with the main residence to maintain “interior entry to the main dwelling’s living area”.

### Maximum Size of detached ADUs in a Multifamily Development

State Law requires the following in regard to maximum floor area for ADUs proposed in a multifamily development:

- The maximum floor area for a detached ADU shall not exceed 1,200 square feet (with the below exception); and
- The maximum floor area of an ADU where two detached ADUs are proposed in a multifamily development shall not exceed 800 square feet each.

The City's current ADU provisions for detached ADUs on a multi-family property specifies that two new construction detached ADU's are allowed or for conversion ADU's, 25% of the number of units onsite are allowed. The existing provisions state that on a multi-family property "an [detached] ADU shall not exceed 800 square feet". Recent State law specifies that the City's ordinance "shall" require that "the total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet". Therefore, the Draft Ordinance has been updated. Additionally, pursuant to State Law, the Ordinance has also been updated to clarify that when two detached ADUs are proposed in a multifamily development, the maximum size of each unit shall not exceed 800 square feet.

## **2. Ordinance Clarifications to Improve Processing**

The following ADU Draft Ordinance updates are intended to clarify and improve existing ADU provisions and are based on staff's previous experiences with Code interpretations for ADUs and/or ADU permit processing issues. Proposed modifications include the following:

- Modifications to CMMC Section 13-35(d)(4)(d) regarding the assignment of street addresses to ADUs in compliance with the City's addressing requirements. 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;
- Modifications to CMMC Section 13-35(d)(8)(a) to clarify that an ADU may be constructed within the footprint of an existing accessory structure with no setback required as long as it is constructed within the existing building envelope;
- Modifications to CMMC Section 13-35(d)(9)(a) to move ADU balcony provisions to Section 13-35(d)(10);
- Modifications to CMMC Section 13-35(d)(9)(b) to clarify that if an existing 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;
- Modifications to CMMC Section 13-35(d)(17) regarding the requirement to provide landscaping in open space areas. The proposed modification clarifies that ADUs constructed that are greater than 800 square feet in gross floor area must meet site open space requirements and landscaping (similar to requirements applied to the primary dwelling).

## **3. Planning Commission Recommendations**

After review of the proposed ADU Ordinance updates at their October 22, 2022 meeting, the Planning Commission provided the following comments/suggestions for City Council consideration. Staff has included language in the Draft Ordinance to implement the Planning Commission's comments:

- **“Look for ways to continue to facilitate the development of additional ADUs within the City including considering allowing one ADU per unit on a common interest development property”**. A new provision has been added to the Draft Ordinance to permit ADUs in common interest developments. Many existing residential developments in Costa Mesa are developed with multiple attached and/or detached residences located on one lot and subdivided using a condominium-style subdivision map (referred to as a common interest development). The proposed revisions add flexibility by allowing existing floor area to be converted to one ADU for each housing unit on a common interest development lot. (See Draft Ordinance Track Changes Section 13-35(b)(4)(c));
- **“Prohibit mechanical equipment placement within required four-foot side and rear setback for ADUs”**. Because State law preempts the City for applying a lesser or more stringent setback to ADUs than is applied to the primary residential structure on the site, the Planning Commission suggested this edit to prevent noise impacts to neighbors from ancillary mechanical equipment associated with the ADU. This requirement also serves to improve site access for the City’s first responders. (See Draft Ordinance Track Changes Section 13-35(d)(8)(b));
- **“Look to reduce the occurrence of poorly designed garage facades that are converted into ADUs including providing additional requirements related to the garage door façade conversion”**. The Planning Commission suggested this edit to ensure that garage conversions include designs that avoid the creation of “blank facades”. The revised provisions include a requirement to add windows and/or doors to garage conversions to cover 10% of the façade and to match the existing residence, or provide landscaping that covers at least 50% of the façade. (See Draft Ordinance Track Changes Section 13-35(d)(12)(a));
- **“Acknowledge the difference between public facing property lines including front property lines, street side yard property lines, and alley property lines when assessing exterior stairs and entrance requirements for ADUs”**. The existing adopted ADU provisions generally require that ADU exterior stairs shall not be visible from the public right-of-way and the stair entry shall “face the interior of the lot”. The Planning Commission believed that this provision could be modified to allow additional flexibility for residences with multiple street frontages (such as a corner lot or a lot facing an alley). The revised provisions allow for ADU exterior staircases within street facing side and rear yards. (See Draft Ordinance Track Changes Section 13-35(d)(10)(a) and 13-35 (d)(13); and
- **“Provide additional nuanced requirements for balcony location to ensure privacy for neighboring properties and allowing for eyes on the street”**. Similar to the above suggested edit regarding ADU entry staircases, the Planning Commission believed that the existing ADU provisions regarding balconies could be more flexible for residences with multiple street frontages. Modifications to CMMC Section 13-35(d)(10) were made to remove inconsistent language stating “balconies are prohibited” while maintaining existing provisions allowing for front-facing balconies and adding text to allow for street facing side and rear balconies as well. (See Draft Ordinance Track Changes Section 13-35(d)(10)(b)).

## **GENERAL PLAN CONFORMANCE**

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

## **ENVIRONMENTAL DETERMINATION**

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

## **ALTERNATIVES:**

The City Council has the following alternatives:

1. Give First Reading. The City Council may give first reading, by title only, Ordinance No. 2023-XX approving Code Amendment CO-2022-01, amendment Title 13 of the Costa Mesa Municipal Code (Zoning Code) to modify standards to conform to recent revisions to State law and clarify existing accessory dwelling unit provisions.
2. Give first reading with modifications. The City Council may recommend approval with modifications provided that the revisions are consistent with State Law.
3. Not adopt the changes to the City's ADU provisions. The City Council may choose to not adopt the proposed Code amendments.
4. Continue the Ordinance review to a date certain. The City Council may continue the item to a date certain with direction for staff to return with additional information, changes and/or clarifications.

## **FISCAL REVIEW:**

The adoption of the proposed Ordinance will not have any direct fiscal impact on the City's budget.

## **LEGAL REVIEW:**

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

**CITY COUNCIL GOALS AND PRIORITIES:**

This item supports the following City Council Goal:

- Diversify, Stabilize and Increase Housing to Reflect Community Needs.

**CONCLUSION:**

The proposed ADU Code amendments are consistent with the General Plan, and will result in a local ADU program that is in compliance with State law. The City's current ADU Ordinance has shown considerable success and staff anticipates greater future success based on the City's track record of permits issued in previous years. In addition to the subject Code updates, pursuant to Housing Element Program 3E, the City will further promote ADUs through continued work efforts including:

- Coordinate with the County on implementation of a permit ready ADU program;
- Post a user friendly ADU FAQ on the City's website to assist the public;
- Expedited ADU plan check review process to ease the process for homeowners; and
- Research potential State and regional funding sources for affordable ADUs and make the information publicly available to homeowners.

Should the Council approve the Draft Ordinance for first reading, a second reading would be scheduled for the next City Council meeting.