



# PLANNING COMMISSION AGENDA REPORT

MEETING DATE: February 24, 2025

ITEM NUMBER: PH-1

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**SUBJECT: A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE TO AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE PERTAINING TO ACCESSORY DWELLING UNITS TO CONFORM TO RECENT REVISIONS TO STATE LAW (CODE AMENDMENT PCTY-24-0002)**

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

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

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## **RECOMMENDATION:**

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.174 and CEQA Guidelines Section 15282(h), and
2. Recommend that the City Council adopt an Ordinance approving Code Amendment PCTY-24-0002, amending Title 13 of the Costa Mesa Municipal Code (Zoning Code) pertaining to Accessory Dwelling Units.

## **APPLICANT OR AUTHORIZED AGENT:**

The subject Code Amendment is a City-initiated request.

## **BACKGROUND:**

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

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

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

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

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

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

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

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

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

On January 27, 2025, the Planning Commission received a presentation and provided feedback on the proposed ordinance. Since the hearing, the ordinance has been updated to incorporate comments provided by commissioners and the public including recommendations made from the California Housing Defense Fund (CalHDF) in their attached letter. Additional analysis and details about the meeting are provided below and in the following link:

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=7104638&GUID=38429968-1C83-4987-A2F2-56E18D4CD203>

## **DESCRIPTION**

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

## **ANALYSIS**

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

### **(a) Purpose, General Plan Consistency, Definitions.**

This section has no proposed modifications.

### **(b) Accessory Dwelling Units**

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

#### "Single-Family" Development

Pursuant to CMMC Section 13-35(b)(4)(a), the City's current ADU provisions allow a maximum of one ADU and one JADU on a single-family dwelling lot. HCD's letter indicated that the City must revise the ordinance to allow for "one converted ADU", "one

detached, new construction ADU” and “one JADU” on a single-family lot. Therefore, changes are proposed in the draft ordinance to reflect compliance with State law and would allow for an additional ADU on a single-family dwelling lot.

#### “Multifamily” Development

Pursuant to CMMC Section 13-35(b)(4)(b), the current ADU provisions allow a maximum of two detached ADUs on multiple-family dwelling properties and does not allow for ADUs within new construction multifamily residences. Assembly Bill 1211 recently modified State ADU law to allow up to eight detached ADUs on multifamily lots, with the caveat that the number of detached ADUs does not exceed the number of existing primary units on the lot. In addition, new construction multifamily dwellings are permitted to construct one ADU within the structure. Therefore, changes are proposed in the draft ordinance to allow up to eight detached ADUs and to allow one ADU within a new multifamily dwelling structure on a multifamily lot to reflect State law.

#### Multifamily “Maximum Size” Detached ADU

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

#### Underlying Zone

Pursuant to CMMC Section 13-35(b)(2), ADUs are required to conform to the development standards of the underlying zone unless otherwise provided in the ADU Ordinance. Pursuant to the Government Code and as indicated in the HCD letter, only certain development standards can be applied to ADUs, and local ADU requirements cannot preclude the development of certain ADUs. Therefore, Section 13-35(b)(2) relating to “underlying zone” has been removed, and the City ADU requirements and standards have been updated throughout to specifically account for local standard exemptions.

#### “Short-term Rentals Prohibited”

As discussed further below, regarding “Recorded Covenants”, the City is not permitted to require a deed restriction for ADU projects. The deed restriction section included a provision which prohibited short-term rentals for ADUs. Since the section has been modified, CMMC Section 13-35(b)(8) has been added to prohibit ADU rentals of less than 31 days.

### **(c) Junior ADUs**

#### "Short-term Rentals Prohibited"

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

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

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

*Pursuant to Government Code Section 66310, the legislature has determined the following: (1) ADUs and JADUs are "a valuable form of housing in California"; (2) ADUs and JADUs "provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods"; (3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security"; (4) "Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California"; (5) "California faces a severe housing crisis"; (6) "The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners"; (7) "Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character"; and (8) Accessory dwelling units are an essential component of California's housing supply. Thus, allowing JADUs to be rented for short-term rentals that are facilitated by online marketplaces would reduce and threaten the availability of the City's long-term housing, including affordable housing, within the City during the State housing crisis, and therefore allowing the prohibition of short-term lodging of the City's JADUs is consistent with State ADU law, specifically Government Code Section 66310.*

## **(d) Development Standards**

CMMC Section 13-35(d) provides development standards that are applicable to ADUs, including, but not limited to, standards related to: setbacks, height, stairways and balconies, architectural standards, and garage conversions. However, Government Code Section 66323 specifies specific ADUs which are not subject to local development standards. Therefore, and as requested by the HCD, the proposed Ordinance (CMMC Section 13-35(d) and 13-35(d)(1)) has been revised to exempt the following ADUs from local standards: (1) all converted ADUs (converted accessory structures are eligible for a 150 square foot expansion for purposes of ingress and egress), (2) all converted JADUs, (3) 800 square foot or less new-construction detached units with four-foot setbacks and height not exceeding 18 feet (two additional feet of height may be permitted to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary unit) with single-family primary dwellings, and (4) detached units with multifamily primary dwelling structures not exceeding 18 feet (two additional feet of height may be permitted to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary units). The aforementioned ADUs are subject to the State government code standards which include applicable four-foot side and rear setbacks, separate entry, and applicable height restrictions; and no additional standards may be applied to these units.

### "Recorded Covenants"

Pursuant to CMMC Section 13-35(d)(5), a recorded covenant (deed restriction) is required as a condition of issuing building permits for ADUs and JADUs. The recorded restriction prohibits separate sales of ADUs and JADUs, restricts the units to the maximum size allowed by the code and prohibits short-term rentals. Pursuant to the HCD ADU Handbook, Cities may not impose deed restrictions on ADUs. Therefore, CMMC Section 13-35(d)(5) has been modified to apply to JADUs only.

### "Architectural Standards"

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

### "Parking"

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

## **GENERAL PLAN CONFORMANCE**

The City's approved 6<sup>th</sup> Cycle Housing Element includes Program 3E which states to "continue to promote the construction of ADUs as part of an overall housing plan". The proposed ordinance amendment is consistent with the General Plan in that it provides greater opportunities for ADUs pursuant to current State ADU law.

## **ENVIRONMENTAL DETERMINATION**

The project is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code Section 21080.174 and CEQA Guidelines Section 15282(h), "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 and 65852.2 if the Government Code" relating to "granny" housing and "second unit ordinances" are exempt from the requirements of CEQA. Similarly, the ministerial approval of an ADU would not be a "project" pursuant to CEQA purposes (See Guidelines Section 15378), and environmental review is not required with the review/approval of individual ADU applications.

## **ALTERNATIVES**

The Planning Commission has the following alternatives:

1. **Recommend City Council approval with modifications.** The Planning Commission may recommend approval with modifications provided that the revisions are consistent with State law.
2. **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.
3. **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 for Planning Commission consideration.

## **PUBLIC NOTICE**

Pursuant to government Code Section 65854(a), a 1/8th page public notice was published once in the Daily Pilot newspaper no less than 20 days prior to the February 24, 2025, public hearing.

## **CONCLUSION**

The proposed adoption of the Accessory Dwelling Unit Code Amendment would allow for clarifications and compliance with State law for the construction and conversion of new ADUs and JADUs.

## **ATTACHMENTS**

1. Draft Resolution
2. Draft Ordinance
3. Tracked Changes Ordinance (Exhibit A to Ordinance)
4. September 11, 2024 HCD Letter
5. October 10, 2024 Response Letter to HCD
6. January 27, 2025 California Housing Defense Fund Letter