



## Agenda Report

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Item #: 25-199

Meeting Date: 3/18/2025

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**TITLE: FIRST READING OF AN ORDINANCE TO AMEND 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)**

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

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

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

**RECOMMENDATION:**

The Planning Commission recommends the City Council adopt the revisions to the City's Accessory Dwelling Unit (ADU) provisions to reflect recent State laws and respond to comments from the California Department of Housing and Community Development (HCD). Therefore, staff recommends the City Council introduce for first reading, by title only, Ordinance No. 2025-XX approving Code Amendment PCTY-24-0002, amending Title 13 of the Costa Mesa Municipal Code (CMMC) pertaining to ADUs to conform to recent revisions to State law.

**BACKGROUND:**

On January 1, 2020, the City of Costa Mesa's 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:

<http://ftp.costamesaca.gov/costamesaca/council/agenda/2019/2019-12-17/NB-2.pdf>

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, HCD sent a letter (Attachment 3) 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 4).

In addition to ordinance modifications requested by HCD, City staff proposes to update 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 requires 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. Agenda details for the meeting are found in the following link:

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

On February 24, 2025, the Planning Commission reviewed the proposed Code Amendment. The Planning Commission supported the ordinance and voted 5-1 to recommend that the City Council adopt the ordinance. Agenda details for the meeting are found in the following link:

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=7144849&GUID=7A6DF926-D55C-4442-A32B-C52A8F5F07C3>

### **Implementation Programs**

The City’s ADU program has successfully increased housing opportunities in the City. Since this same time last year, the City has permitted approximately 90 ADUs. In addition, City staff regularly reviews the City’s ADU program to improve processing, permitting efficiencies and project streamlining. City staff has launched a new program on the City’s website to offer customers “pre-approved ADU designs”. The use of pre-approved ADU plans will allow customers to benefit from an expedited permit process which will reduce application time and overall costs. Seven ADU plan designs are currently being pre-plan checked for conformance and will be made available to the public on the City website this spring.

Because the State ADU provisions are constantly evolving, City staff also closely monitors State ADU laws to ensure that the City’s ADU provisions are up to date and consistent. In response to recent State ADU related legislation, staff and the City Attorney have prepared amendments to the ADU ordinance that have been recently considered by the Planning Commission.

**ANALYSIS:**

The proposed ordinance changes amend Section 13-35 (“Accessory Dwelling Units”) of Title 13 of the CMMC. Proposed amendments in the Ordinance include renumbering referenced government code sections, clarifying the required site density of ADUs and size of ADUs, removing regulatory requirements for JADUs, and modifying and clarifying various ADU/JADU development standards.

The existing ADU Ordinance (CMMC 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 CMMC Section 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 required 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. SB 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, changes to the City's ADU "maximum size" standards are proposed for detached ADUs on a multifamily lot to 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, only certain development standards can be applied to ADUs. Certain requirements of the underlying zone would not be permissible pursuant to the Government Code and therefore, the section is proposed to be deleted from the ordinance.

#### "Short-term Rentals Prohibited"

As discussed below, regarding "Recorded Covenants", the City is not permitted to require a deed restriction for ADU projects. The deed restriction section of the City's ADU provisions included a provision which prohibited short-term rentals for ADUs. Since the section has been modified, CMMC Section 13-35(b)(8) is proposed 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". Staff believes and the Planning Commission confirmed that allowing JADUs to be rented for short-term housing would reduce the number of 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 indicated in the attached HCD letter, the City may adopt an ordinance without the requested changes if findings are included in the resolution adopting the ordinance that explains the reasons why the City believes that the ordinance complies with State ADU law. Staff has included the following reasons/findings in the draft ADU ordinance update:

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

*facilitated by online marketplaces would reduce and threaten the availability of the City's long-term housing, including affordable housing, within the City during the State housing crisis, and therefore allowing the prohibition of short-term lodging of the City's JADUs is consistent with State ADU law, specifically Government Code Section 66310.*

#### **(d) Development Standards**

CMMC Section 13-35(d) provides development standards that are applicable to ADUs, including, but not limited to, standards related to: setbacks, height, stairways and balconies, architectural standards, and garage conversions. Government Code Section 66323 identifies certain ADUs which are not subject to local development standards; however, the current ordinance requires that all ADUs meet the local development standards. As requested by the HCD, the proposed Ordinance [CMMC Section 13-35(d) and 13-35(d)(1)] has been revised to exempt the following ADUs from local standards:

1. All converted 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).

ADUs are subject to the State Government Code 66323 standards which include applicable four-foot side and rear setbacks, separate entry, and applicable height restrictions. No additional standards may be applied to these units. For other ADUs that are subject to local control, the City can only establish development standards which would not preclude an 800 square-foot ADU.

#### **"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. The section is proposed to be modified to apply to JADUs only and is limited to prohibiting the separate sale of the JADU from the main residence.

#### **"Architectural Standards"**

State ADU provisions limits development standards to be "objective". 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 would be modified to be recommendations.

"Parking"

Pursuant to SB 1211, CMMC Section 13-35(d)(14)(b) is proposed to be 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 would allow any parking space in any form to be removed and not replaced in conjunction with the development of an ADU.

**Public Comment**

Prior to the Planning Commission study sessions, the California Housing Defense Fund submitted a comment letter (attachment 5) suggesting additional amendments which were incorporated into the proposed ordinance. The incorporated changes include removing reference to ADUs complying with "underlying zone" standards, bolstering the Development Standards section to list out all the State exempt units and their required development standards; and removing the requirement for a deed restriction for ADUs as required by State law.

**GENERAL PLAN CONFORMANCE:**

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

**ENVIRONMENTAL DETERMINATION:**

The 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 of 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:**

1. **Give first reading with modifications.** The City Council may recommend approval with modifications provided that the revisions are consistent with State law.
2. **Not adopt the changes to the City's ADU provisions.** The City Council may choose to not adopt the proposed Code amendments.
3. **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.

**PUBLIC NOTICE:**

Pursuant to government Code Section 65854(a), a public notice was published once in the Daily Pilot newspaper on March 1, 2025, exceeding the minimum 10 days prior to the March 18, 2025, public hearing.

**FISCAL REVIEW:**

The adoption of the proposed Ordinance increases the number of ADUs allowed on both “Single family” and “Multi-family” dwelling lots which can result in an increase of the overall number of ADUs within the City. Revenue earned from the increase of ADUs will be part of the General fund (Fund 101) and Park Development Fees Fund (Fund 208).

**LEGAL REVIEW:**

The proposed Resolution, draft Code Amendment and report have been prepared in conjunction with and review 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 ADU Ordinance amendments are consistent with the General Plan and are proposed to clarify existing ADU provisions and comply with recently adopted State ADU laws. 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.