



CITY OF COSTA MESA

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ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT

October 10, 2024

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

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

Dear Jamie Candelaria:

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

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

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

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

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

Sincerely,

Scott Drapkin
 Assistant Director of Development Services

cc. mike.vangorder@hcd.ca.gov

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

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

Proposed Revision

Update code sections accordingly.

2. **Section 13.35 (b)(3) – Ministerial Approval** – The Ordinance states, “Any application for an ADU that meets the requirements of this section shall be approved ministerially by the city by applying the standards herein and without a public hearing or notice of decision or zoning approval.” However, Government Code section 66317, subdivision (a) states, “The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot.” It later requires that “If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subdivision (a), the permitting agency shall, within the time period described in subdivision (a), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.” The City must amend the Ordinance to add these provisions.

Proposed Revision

Ministerial. Any application for an ADU that meets the requirements of this section shall be approved ministerially by the city by applying the standards herein and without a public hearing or notice of decision or zoning approval in compliance with government code section 66317.

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

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

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

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

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

Proposed Revision

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

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

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

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

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

2. *New construction.* One (1) new construction ADU may be permitted on a lot with proposed or existing single-family dwelling. One (1) new

construction Junior ADU may be allowed on the lot in lieu of a conversion Junior ADU, if the new construction Junior ADU is to be in a single-family dwelling that meets all applicable legal standards.

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

Proposed Revision

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

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

Proposed Revision

Multifamily. Junior ADUs are not allowed on a lot with more than one residence. One ADUs are not is allowed within new construction residences where, after construction, there will be at least two residences on the lot (e.g. detached residential structures, duplexes, apartments); up to two ADUs are allowed with such structures pursuant to subsection 3, below. For lots with an existing legal multifamily dwelling (e.g., a legal non-conforming multifamily dwelling), the applicant may have ADU(s) pursuant to one of the following:

6. Section 13.35 (b)(5)(b) – Maximum Sizes – The Ordinance states, “For lots with an existing legal multifamily dwelling structure proposing one (1) new construction detached ADU, the ADU shall not exceed one thousand two hundred (1,200) square feet. For lots with an existing or proposed legal multifamily dwelling structure proposing two (2) detached ADUs, the ADUs shall not exceed eight hundred (800) square feet...” However, local design standards may not preclude a unit created subject to Government Code section 66323; therefore, the maximum sizes stated in this section may not apply to any

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

Proposed Revision

Multifamily, exterior construction.

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

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

Proposed Revision

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

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

Proposed Revision

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

CMMC Section 13.35(c)(4) ~~Short-term rentals prohibited. A Junior ADU shall not be rented for periods of less than 31 days unless otherwise authorized by the municipal code. Reserved.~~

CMMC Section 13-35(d)(16) ~~Short-term rentals prohibited. ADUs and Junior ADUs~~ shall not be rented for a term of less than thirty-one (31) days, unless otherwise authorized by this code.

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

Proposed Revision

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

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

Proposed Revision

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

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

The City is aware of the adoption of AB1033.

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

Proposed Revision

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

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

Proposed Revision

~~Unless subsequently prohibited by an amendment to state law, for ADUs approved on or after January 1, 2025, the ADU shall be considered legal only as long as either the primary residence or the ADU is occupied by the owner of record or state law is amended to prohibit such requirements. Junior ADUs require owner occupancy of either the single family dwelling or the Junior ADU; and Reserved~~

14. Section 13.35 (d)(8)b., 13.35 (d)(9)a.1. - Front Setbacks – The Ordinance requires “Minimum of setbacks of four (4) feet from side and rear property lines and full compliance with all applicable front yard setbacks for the underlying zone. Second floor ADUs shall provide setbacks in conformance with the underlying zone.” It later requires that “All portions of the ADU structure on a second floor are at least twenty-five (25) feet from the front property line...” However, Government Code section 66321, subdivision (b) prohibits “Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with

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

Proposed Revision

See No. 10 above.

15. Section 13.35 (d)(9) – Height – The Ordinance states, “Except as authorized in subsection b, below, in no event may any portion of a new construction ADU exceed two (2) stories or exceed the height of any other dwelling that could legally be on the property. In all cases, a height of at least eighteen (18) feet shall be allowed for ADUs. An additional two feet in height may be permitted to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.”

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

Proposed Revision

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

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

Proposed Revision

See No. 10 above.

17. Section 13.35 (d)(11)(b) – “Compatible” – The Ordinance states, “Any detached ADU shall be compatible in exterior appearance with the primary unit or units in terms of design, materials, finishes, and colors...” However, Government Code section 66314, subdivision (b)(1) requires that a local agency “Impose objective standards on accessory dwelling units”. Government Code section 66313, subdivision (h) defines “Objective standards” as “standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” As “compatible” is a term that is subjective, this section is inconsistent with State ADU Law. Therefore, the City must amend the Ordinance to remove subjective terminology.

Proposed Revision

See No. 10 above.

18. Section 13.35 (d)(11)(c) – JADUs and Exterior Appearance – The Ordinance states, “Junior ADUs shall match exterior appearance with the primary unit in terms of design, materials, finishes, and colors within the same property on which it is proposed to be constructed...” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323, which includes all JADUs. Therefore, the City must remove this section.

Proposed Revision

JADUs are meant to be converted from existing space. Converted JADUs are converted from existing space and therefore, match what is already there. [CMMC Section 13-35\(a\)\(4\)\(a\)\(2\)](#) allows for “One new construction Junior ADU may be allowed on the lot if the Junior ADU is to be in a single-family dwelling that meets all applicable legal standards.” Therefore, the following is proposed:

CMMC Section 13-35(d)(11)(c) Junior ADUs. New construction Junior ADUs shall match exterior appearance with the primary unit in terms of design, materials, finishes, and colors within the same property on which it is proposed to be constructed, in accordance with code design standards and guidelines applicable to the zone.

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

Proposed Revision

See No. 10 above.

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

Proposed Revision

See No. 10 above.

21. Section 13.35 (d)(17) – Open Space and Landscaping – The Ordinance requires that, “ADUs which exceed eight hundred (800) square feet in gross floor area shall meet the open space requirements of section 13-32 and shall be subject to provide landscaping....” However, and as above, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323. The City must note the exceptions.

Proposed Revision

See No. 10 above.

Proposed Ordinance Revisions Pursuant to Recent Bills

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

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

Proposed Revision

CMMC Section 13-35(d)(14)(b) Parking. When ~~an existing garage, carport, or covered parking structure~~ a parking space or parking structure is converted or demolished in conjunction with the construction of an ADU or converted to an ADU, the off-street parking spaces do not have to be replaced, notwithstanding any other provision of this code to the contrary (e.g., the definition of "driveway" in section 13-6, Table 20-8(c) a driveway does not lose its status as a lawful "driveway" if it leads to a structure that was either converted from a garage into either an ADU or Junior ADU or demolished in conjunction with the construction of an ADU or Junior ADU. In no event shall the demolition of a ~~garage parking space or parking structure~~ be considered "in conjunction with" the construction of an ADU if the ADU will not be constructed within any portion of the footprint of the demolished garage parking space or parking structure.

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

Proposed Revision

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

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

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

Proposed Revision

CMMCS Section 13-35(b)(4)(b)(3) Maximum Detached ADUs. No more than ~~two~~ eight detached ADUs are permitted, provided that the number of accessory dwelling units allowable pursuant to this clause shall not exceed the number of existing units on the lot. ~~Both~~ The units shall be detached from every residence on site (but need not be detached from each other). This section shall apply to detached structures that are converted and new construction detached ADUs. Conversion detached ADUs are not subject to height, setbacks, and maximum square footage; or

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

Proposed Revision

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