

INDIAN WELLS CITY COUNCIL

November 7, 2024



To: City Council
From: City Attorney
Prepared by: Todd Leishman, Best, Best, & Krieger LLP
Subject: **Consideration of an Urgency Ordinance Amending Chapter 21.85 of the Indian Wells Municipal Code Regarding Accessory Dwelling Units and Junior Accessory Dwelling Units to Comply with Recent Changes in State Law**

RECOMMENDED ACTIONS:

Council **FINDS** that the adoption of the proposed ordinance is statutorily exempt from review under the California Environmental Quality Act ("CEQA") under Public Resources Code section 21080.17; and

WAIVES full reading and **ADOPTS** by title only an Urgency Ordinance entitled: "An Urgency Ordinance of the City Council of the City of Indian Wells amending Chapter 21.85 of the City of Indian Wells Municipal Code relating to Accessory Dwelling Units and Junior Accessory Dwelling Units to comply with recent changes in State Law."

BACKGROUND AND ANALYSIS:

In recent years, the California Legislature has approved, and the Governor has signed into law, a number of bills that, among other things, amended various sections of the Government Code to impose new limits on local authority to regulate ADUs and JADUs. In 2024, the California Legislature approved, and the Governor signed into law, two new bills — AB 2533 and SB 1211 — that further amend state ADU law as summarized below.

AB 2533 – Unpermitted ADUs and JADUs

Subject to limited exceptions, existing state law prohibits a city from denying a permit to legalize an unpermitted ADU that was constructed before January 1, 2018, if the denial is based on the ADU not complying with applicable building, state, or local ADU standards. One exception allows a city to deny a permit to legalize if the city makes a written finding that correcting the violation is necessary to protect the health and safety of the public or the occupants of the structure.

AB 2533 changes this by: (1) expanding the above prohibition to also include JADUs; (2) moving the construction-cutoff date from January 1, 2018, to January 1, 2020; and

(3) replacing the above exception with a requirement that local agencies find that correcting the violation is necessary to comply with the standards specified in Health and Safety Code section 17920.3 (Substandard Buildings). (See amended Gov. Code, § 66332(a)–(f).)

SB 1211 – Replacement Parking Requirements; Multifamily ADUs

Replacement Parking

Existing state law prohibits the City from requiring off-street parking spaces to be replaced when a garage, carport, or covered parking structure is demolished in conjunction with the construction of, or conversion to, an ADU.

SB 1211 amends this prohibition to now also prohibit a city from requiring replacement parking when an uncovered parking space is demolished for or replaced with an ADU. (See amended Gov. Code, § 66314(d)(11).)

Multifamily ADUs

SB 1211 further defines *livable space* in connection with converted ADUs inside a multifamily dwelling structure. Existing state law requires the City to ministerially approve qualifying building-permit applications for ADUs within “portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages” The term “livable space” is not defined by existing state ADU law.

SB 1211 changes this by adding a new definition: “‘Livable space’ means a space in a dwelling intended for human habitation, including living, sleeping, eating, cooking, or sanitation.” (See amended Gov. Code, § 66313(e).)

SB 1211 also increases the number of detached ADUs that lots with an existing multifamily dwelling can have. Existing state law allows a lot with an existing or proposed multifamily dwelling to have up to two detached ADUs.

Under SB 1211, a lot with an *existing* multifamily dwelling can have up to eight detached ADUs, or as many detached ADUs as there are primary dwelling units on the lot, whichever is less. (See amended Gov. Code, § 66323(a)(4)(A)(ii).) SB 1211 does not alter the number of ADUs that a lot with a *proposed* multifamily dwelling can have — the limit remains at two. (See amended Gov. Code, § 66323(a)(4).)

Additional Amendments

Section 21.85.090 currently permits discretionary approval for proposed ADUs or JADUs that do not conform to the objective standards set forth in Chapter 21.85 through the Conditional Use Permit process. This provision was originally introduced to offer relief from the requirements outlined in Sections 21.85.010 through 21.85.080. However, as the State continues to enact legislation limiting local authority, the City no longer finds a need for such relief being offered to nonconforming ADUs or JADUs. The

removal of Section 21.85.090 will simply result in nonconforming ADUs or JADUs that fail to meet the City's established standards being denied formal approval.

Next Steps & Recommendation

Both AB 2533 and SB 1211 take effect January 1, 2025. If the City's ADU ordinance does not comply with requirements of both bills by that date, the City's entire existing ADU ordinance becomes null and void as a matter of law, and the City will have to allow ADUs with no regulation except for the few requirements in the state ADU law itself. The approval of ADUs and JADUs based solely on these default statutory standards, without local regulations governing height, setback, landscape, and architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety.

The proposed ordinance is an urgency measure, which means it will take immediate effect upon adoption. Typically, an ordinance affecting planning and zoning is approved by the Council after a planning-agency recommendation, a first reading and introduction before the Council and then a second reading at a regular Council meeting — with the ordinance taking effect 30 days following adoption. But here it is necessary for the City Council to adopt this ordinance as an urgency measure because AB 2533 and SB 1211 will take effect on January 1, 2025, before a non-urgency adoption would take effect. The urgency ordinance will be followed at the earliest possible time by a non-urgency ordinance subject to all normal procedures.

For the above reasons, staffs recommends that the City Council adopt the proposed urgency ordinance (Attachment 1), which will ensure that the City's ADU ordinance remains valid when AB 2533 and SB 1211 take effect on January 1, 2025.

FISCAL IMPACT:

The proposed ordinance will not result in any new cost to the City.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

Under California Public Resources Code section 21080.17, CEQA does not apply to the adoption of an ordinance by a city or county implementing the provisions of Article 2 of Chapter 13 of Division 1 of Title 7 of the Government Code, which is California's ADU law and which also regulates JADUs, as defined by section 66313. Therefore, the adoption of the proposed ordinance is statutorily exempt from CEQA in that it implements state ADU law.

ATTACHMENTS:

1. Urgency Ordinance