

ATTACHMENT #1
URGENCY ORDINANCE NO. ___

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 AND FINDING THE ACTION TO BE STATUTORILY EXEMPT FROM CEQA UNDER PUBLIC RESOURCES CODE § 21080.17

WHEREAS, the City of Indian Wells, California (“City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, state law authorizes cities to act by ordinance to provide for the creation and regulation of accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”); and

WHEREAS, in recent years, the California Legislature has approved, and the Governor has signed into law, numerous bills that, among other things, amend various sections of the Government Code to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, in 2024, the California Legislature approved, and the Governor signed into law, Assembly Bill 2533 (“AB 2533”) and Senate Bill 1211 (“SB 1211”), which further amend state ADU law; and

WHEREAS, AB 2533 and SB 1211 take effect January 1, 2025, and if the City’s ADU ordinance does not comply with the requirements imposed by those bills by that date, the City’s entire existing ADU ordinance becomes null and void as a matter of law; and

WHEREAS, the City desires to amend its local regulatory scheme for the construction of ADUs and JADUs to reflect AB 2533’s and SB 1211’s changes to state law; and

WHEREAS, there is a current and immediate threat to the public health, safety, or welfare based on the passage of AB 2533 and SB 1211 because if the City’s ordinance does not comply with this legislation by January 1, 2025 — and the City’s ADU ordinance becomes null and void — the City would thereafter be required to approve ADUs and JADUs in accordance with the few default standards that are provided in Chapter 13 of Division 1 of Title 7 of the California Government Code, which is the state ADU law; and

WHEREAS, the approval of ADUs and JADUs based solely on the 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. These threats to public safety, health, and welfare justify adoption of this Ordinance as an urgency ordinance to be effective immediately upon adoption by a four-fifths vote of the City Council; and

WHEREAS, to protect the public safety, health, and welfare, the City Council may adopt this Ordinance as an urgency measure in accordance with Government Code section 36937, subdivision (b).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF INDIAN WELLS DOES ORDAIN AS FOLLOWS:

Section 1. Incorporation. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. CEQA. Under California Public Resources Code section 21080.17, the California Environmental Quality Act ("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 California Government Code, which is California's ADU law and which also regulates JADUs, as defined by section 66313. Therefore, adoption of the Ordinance is statutorily exempt from CEQA in that it implements state ADU law.

Section 3. Code Amendment. Chapter 21.85 of the Indian Wells Municipal Code is hereby amended and restated to read in its entirety as provided in Exhibit "A," attached hereto and incorporated herein by reference.

Section 4. Effective Date. This Ordinance takes effect immediately upon its adoption.

Section 5. HCD Submittal. In accordance with Government Code section 66326, the City Clerk is directed to submit a copy of this Ordinance to the California Department of Housing and Community Development within 60 days after adoption.

Section 6. Publication. The City Clerk directed to certify to the adoption of this Ordinance and post or publish this Ordinance as required by law.

Section 7. Custodian of Records. The custodian of records for this Ordinance is the City Clerk and the records comprising the administrative record are located at 44950 Eldorado Drive, Indian Wells, California 92210.

Section 8. Severability. If any provision of this Ordinance or its application to any person or circumstance is held to be invalid by a court of competent jurisdiction, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this Ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

PASSED APPROVED AND ADOPTED by the City Council of the City of Indian Wells, California, at a regular meeting held on the 7th day of November 2024.

GREG SANDERS
MAYOR

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF INDIAN WELLS)

CERTIFICATION FOR URGENCY ORDINANCE NO. ____

I, Angelica Avila, City Clerk of the City Council of the City of Indian Wells, California, **DO HEREBY CERTIFY** that Urgency Ordinance No. ____, the reading in full thereof unanimously waived, was duly passed and adopted at a regular meeting of the City Council held on the 7th day of November 2024, and said Ordinance was passed and adopted by the following vote, to wit:

AYES:
NOES:

and was thereafter on said day signed by the Mayor of said City of Indian Wells.

ATTEST:

APPROVED AS TO FORM:

ANGELICA AVILA
CITY CLERK

TODD LEISHMAN FOR
BEST BEST & KRIEGER LLP
CITY ATTORNEY

EXHIBIT A

Amended ADU Regulations

ADU REGULATIONS THAT COMPLY WITH SB 1211 & AB 2553 (2024)

Chapter 21.85 Accessory Dwelling Units

§ 21.85.010. Purpose.

The purpose of this section is to allow and regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in compliance with Chapter 13 of Division 1 of Title 7 of the California Government Code.

§ 21.85.020. Effect of Conforming.

An ADU or JADU that conforms to the standards in this Chapter will not be:

- (a) Deemed to be inconsistent with the City's General Plan and zoning designation for the lot on which the ADU or JADU is located.
- (b) Deemed to exceed the allowable density for the lot on which the ADU or JADU is located.
- (c) Considered in the application of any local ordinance, policy, or program to limit residential growth.
- (d) Required to correct a nonconforming zoning condition, as defined in subsection § 21.85.030(h) below. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code section 17980.12.

§ 21.85.030. Definitions.

As used in this section, terms are defined as follows:

- (a) "Accessory dwelling unit" or "ADU" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An accessory dwelling unit also includes the following:
 - (1) An efficiency unit, as defined by section 17958.1 of the California Health and Safety Code; and
 - (2) A manufactured home, as defined by section 18007 of the California Health and Safety Code.

- (b) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
- (c) "Complete independent living facilities" means permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.
- (d) "Efficiency kitchen" means a kitchen that includes all of the following:
 - (1) A cooking facility with appliances.
 - (2) A food preparation counter and storage cabinets that are of a reasonable size in relation to the size of the JADU.
- (e) "Junior accessory dwelling unit" or "JADU" means a residential unit that satisfies all of the following:
 - (1) It is no more than 500 square feet in size.
 - (2) It is contained entirely within an existing or proposed single-family structure. An enclosed use within the residence, such as an attached garage, is considered to be a part of and contained within the single-family structure.
 - (3) It includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure.
 - (4) If the unit does not include its own separate bathroom, then it contains an interior entrance to the main living area of the existing or proposed single-family structure in addition to an exterior entrance that is separate from the main entrance to the primary dwelling.
 - (5) It includes an efficiency kitchen, as defined in subsection § 21.85.030(d) above.
- (f) "Livable space" means a space in a dwelling intended for human habitation, including living, sleeping, eating, cooking, or sanitation.
- (g) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
- (h) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.
- (i) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.
- (j) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

- (k) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
- (l) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

§ 21.85.040. Approvals.

The following approvals apply to ADUs and JADUs under this Chapter:

- (a) **Building-permit Only.** If an ADU or JADU complies with each of the general requirements in subsection § 21.85.050 below, it is allowed with only a building permit in the following scenarios:
 - (1) **Converted on Single-family Lot:** One ADU as described in this subsection § 21.85.040(a)(1) and (1) JADU on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:
 - (i) Is either: within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or (in the case of an ADU only) within the existing space of an accessory structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress; and
 - (ii) Has exterior access that is independent of that for the single-family dwelling; and
 - (iii) Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes.
 - (iv) The JADU complies with the requirements of Government Code sections 66333 through 66339.
 - (2) **Limited Detached on Single-family Lot:** One detached, new-construction ADU on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot under subsection § 21.85.040(a)(1) above), if the detached ADU satisfies each of the following limitations:
 - (i) The side- and rear-yard setbacks are at least four feet.
 - (ii) The total floor area is 800 square feet or smaller.
 - (iii) The peak height above grade does not exceed the applicable height limit in subsection § 21.85.050(b) below.
 - (3) **Converted on Multifamily Lot:** One or more 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, if each converted ADU complies with state building standards for dwellings. Under this subsection § 21.85.040(a)(3), at least one (1) converted ADU is allowed within an existing multifamily dwelling, up to a quantity equal to 25 percent of the existing multifamily dwelling units.

(4) **Limited Detached on Multifamily Lot:** No more than two (2) detached ADUs on a lot with a proposed multifamily dwelling, or up to eight detached ADUs on a lot with an existing multifamily dwelling, if each detached ADU satisfies all of the following:

- (i) The side- and rear-yard setbacks are at least four (4) feet. If the existing multifamily dwelling has a rear or side yard setback of less than four (4) feet, the City will not require any modification to the multifamily dwelling as a condition of approving the ADU.
- (ii) The peak height above grade does not exceed the applicable height limit provided in subsection § 21.85.050(b) below.
- (iii) If the lot has an existing multifamily dwelling, the quantity of detached ADUs does not exceed the number of primary dwelling units on the lot.

(b) **ADU Permit.**

- (1) Except as allowed under subsection § 21.85.040(a) above, no ADU may be created without a building permit and an ADU permit in compliance with the standards set forth in subsections § 21.85.050 and § 21.85.060 below.
- (2) The City may charge a fee to reimburse it for costs incurred in processing ADU permits, including the costs of adopting or amending the City's ADU ordinance. The ADU-permit processing fee is determined by the Community Development Director and approved by the City Council by resolution.

(c) **Process and Timing.**

- (1) An ADU permit is considered and approved ministerially, without discretionary review or a hearing.
- (2) The City must approve or deny an application to create an ADU or JADU within 60 days from the date that the City receives a completed application. If the City has not approved or denied the completed application within 60 days, the application is deemed approved unless either:
 - (i) The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or
 - (ii) When an application to create an ADU or JADU is submitted with a permit application to create a new single-family or multifamily dwelling on the lot,

the City may delay acting on the permit application for the ADU or JADU until the City acts on the permit application to create the new single-family or multifamily dwelling, but the application to create the ADU or JADU will still be considered ministerially without discretionary review or a hearing.

- (3) If the City denies an application to create an ADU or JADU, the City must provide the applicant with comments that include, among other things, a list of all the defective or deficient items and a description of how the application may be remedied by the applicant. Notice of the denial and corresponding comments must be provided to the applicant within the 60-day time period established by subsection § 21.85.040(c)(2) above.
- (4) A demolition permits for a detached garage that is to be replaced with an ADU is reviewed with the application for the ADU and issued at the same time.

§ 21.85.050. General ADU and JADU Requirements.

The following requirements apply to all ADUs and JADUs that are approved under subsections § 21.85.040(a) or § 21.85.040(b) above:

(a) **Zoning.**

- (1) An ADU subject only to a building permit under subsection § 21.85.040(a) above may be created on a lot in a residential or mixed-use zone.
- (2) An ADU subject to an ADU permit under subsection § 21.85.040(b) above may be created on a lot that is zoned to allow single-family dwelling residential use or multifamily dwelling residential use.
- (3) In accordance with Government Code section 66333(a), a JADU may only be created on a lot zoned for single-family residences.

(b) **Height.**

- (1) Except as otherwise provided by subsections § 21.85.050(b)(2) and § 21.85.050(b)(3) below, a detached ADU created on a lot with an existing or proposed single family or multifamily dwelling unit may not exceed 16 feet in height.
- (2) A detached ADU may be up to 18 feet in height if it is created on a lot with an existing or proposed single family or multifamily dwelling unit that is located within one-half mile walking distance of a major transit stop or high quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code, and the ADU may be up to two additional feet in height (for a maximum of 20 feet) if necessary to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.

- (3) A detached ADU created on a lot with an existing or proposed multifamily dwelling that has more than one story above grade may not exceed 18 feet in height.
 - (4) An ADU that is attached to the primary dwelling may not exceed 25 feet in height or the height limitation imposed by the underlying zone that applies to the primary dwelling, whichever is lower. Notwithstanding the foregoing, ADUs subject to this subsection § 21.85.050(b)(4) may not exceed two stories.
 - (5) For purposes of this subsection § 21.85.050(b), height is measured from existing legal grade or the level of the lowest floor, whichever is lower, to the peak of the structure.
- (c) **Fire Sprinklers.**
- (1) Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.
 - (2) The construction of an ADU does not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.
- (d) **Rental Term.** No ADU or JADU may be rented for a term that is shorter than 30 days. This prohibition applies regardless of when the ADU or JADU was created.
- (e) **No Separate Conveyance.** An ADU or JADU may be rented, but except as otherwise provided in Government Code section 66341, no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multifamily lot).
- (f) **Septic System.** If the ADU or JADU connects to an onsite wastewater-treatment system, the owner must include with the application a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.
- (g) **Owner Occupancy.**
- (1) ADUs created under this section on or after January 1, 2020, are not subject to any owner-occupancy requirement.
 - (2) As required by state law, all JADUs are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement in this subsection § 21.85.050(g)(2) does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.
- (h) **Deed Restriction.** Prior to issuance of a certificate of occupancy for an ADU or JADU, a deed restriction must be recorded against the title of the property in the County Recorder's office and a copy filed with the Community Development Director. The deed restriction

must run with the land and bind all future owners. The form of the deed restriction will be provided by the City and must provide that:

- (1) Except as otherwise provided in Government Code section 66341, the ADU or JADU may not be sold separately from the primary dwelling.
 - (2) The ADU or JADU is restricted to the approved size and to other attributes allowed by this section.
 - (3) The deed restriction runs with the land and may be enforced against future property owners.
 - (4) The deed restriction may be removed if the owner eliminates the ADU or JADU, as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request of the Community Development Director, providing evidence that the ADU or JADU has in fact been eliminated. The Community Development Director may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated. Appeal may be taken from the Community Development Director's determination consistent with other provisions of this Code. If the ADU or JADU is not entirely physically removed but is only eliminated by virtue of having a necessary component of an ADU or JADU removed, the remaining structure and improvements must otherwise comply with applicable provisions of this Code.
 - (5) The deed restriction is enforceable by the Community Development Director or his or her designee for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining the use of the ADU or JADU in violation of the recorded restrictions or abatement of the illegal unit.
- (i) **Income Reporting.** In order to facilitate the City's obligation to identify adequate sites for housing in accordance with Government Code sections 65583.1 and 66330, the following requirements must be satisfied:
- (1) With the building-permit application, the applicant must provide the City with an estimate of the projected annualized rent that will be charged for the ADU or JADU.
 - (2) Within 90 days after each January 1 following issuance of the building permit, the owner must report the actual rent charged for the ADU or JADU during the prior year. If the City does not receive the report within the 90-day period, the owner is in violation of this Code, and the City may send the owner a notice of violation and allow the owner another 30 days to submit the report. If the owner fails to submit the report within the 30-day period, the City may enforce this provision in accordance with applicable law.

(j) **Building & Safety.**

- (1) **Must comply with building code.** Subject to subsection § 21.85.050(j)(2) below, all ADUs and JADUs must comply with all local building code requirements.
- (2) **No change of occupancy.** Construction of an ADU does not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code, unless the building official or Code Enforcement Division officer makes a written finding based on substantial evidence in the record that the construction of the ADU could have a specific, adverse impact on public health and safety. Nothing in this subsection § 21.85.050(j)(2) prevents the City from changing the occupancy code of a space that was uninhabitable space or that was only permitted for nonresidential use and was subsequently converted for residential use in accordance with this section.

§ 21.85.060. Specific ADU Requirements.

The following requirements apply only to ADUs that require an ADU permit under subsection § 21.85.040(b) above.

(a) **Maximum Size.**

- (1) The maximum size of a detached or attached ADU subject to this subsection § 21.85.060 is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two (2) or more bedrooms.
- (2) An attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of the existing primary dwelling.
- (3) Application of other development standards in this subsection § 21.85.060, such as FAR or lot coverage, might further limit the size of the ADU, but no application of the percent-based size limit in subsection § 21.85.060(a)(2) above or of an FAR, front setback, lot coverage limit, or open-space requirement may require the ADU to be less than 800 square feet.

(b) **Floor Area Ratio (FAR).** No ADU subject to this subsection § 21.85.060 may cause the total FAR of the lot to exceed 45 percent, subject to subsection § 21.85.060(a)(3) above.

(c) **Setbacks.**

- (1) An ADU that is subject to this subsection § 21.85.060 must conform to 4-foot side and rear setbacks. ADUs that are subject to this subsection § 21.85.060 must conform to 25-foot front setbacks, subject to subsection § 21.85.060(a)(3) above.
- (2) No setback is required for an ADU that is subject to this subsection § 21.85.060 if the ADU is constructed in the same location and to the same dimensions as an existing structure.

- (d) **Lot Coverage.** No ADU subject to this subsection § 21.85.060 may cause the total lot coverage of the lot to exceed 50 percent, subject to subsection § 21.85.060(a)(3) above.
- (e) **Minimum Open Space.** No ADU subject to this subsection § 21.85.060 may cause the total percentage of open space of the lot to fall below 50 percent, subject to subsection § 21.85.060(a)(3) above.
- (f) **Passageway.** No passageway, as defined by subsection § 21.85.030(i) above, is required for an ADU.
- (g) **Parking.**
 - (1) Generally. One off-street parking space is required for each ADU. The parking space may be provided in setback areas or as tandem parking, as defined by subsection § 21.85.030(l) above.
 - (2) Exceptions. No parking under subsection § 21.85.060(g)(1) is required in the following situations:
 - (i) The ADU is located within one-half mile walking distance of public transit, as defined in subsection § 21.85.030(k) above.
 - (ii) The ADU is located within an architecturally and historically significant historic district.
 - (iii) The ADU is part of the proposed or existing primary residence or an accessory structure under subsection § 21.85.040(a)(1) above.
 - (iv) When on-street parking permits are required but not offered to the occupant of the ADU.
 - (v) When there is an established car share vehicle stop located within one (1) block of the ADU.
 - (vi) When the permit application to create an ADU is submitted with an application to create a new single-family or new multifamily dwelling on the same lot, provided that the ADU or the lot satisfies any other criteria listed in subsections § 21.85.060(g)(2)(i) through (v) above.
 - (3) No Replacement. When a garage, carport, covered parking structure, or uncovered parking space is demolished in conjunction with the construction of an ADU or converted to an ADU, those off-street parking spaces are not required to be replaced.
- (h) **Architectural Requirements.**
 - (1) The materials and colors of the exterior walls, roof, windows and doors must be the same as those of the primary dwelling.

- (2) The roof slope must match that of the dominant roof slope of the primary dwelling. The dominant roof slope is the slope shared by the largest portion of the roof.
 - (3) The exterior lighting must be limited to down-lights or as otherwise required by the building or fire code.
 - (4) The ADU must have an independent exterior entrance, apart from that of the primary dwelling.
 - (5) The interior horizontal dimensions of an ADU must be at least ten (10) feet wide in every direction, with a minimum interior wall height of seven (7) feet.
 - (6) No window or door of the ADU may have a direct line of sight to an adjoining residential property. Each window and door must either be located where there is no direct line of sight or screened using fencing, landscaping, or privacy glass to prevent a direct line of sight.
 - (7) All windows and doors in an ADU less than 30 feet from a property line that is not a public right-of-way line must either be (for windows) clerestory with the bottom of the glass at least six feet above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.
- (i) **Landscape Requirements.** Evergreen landscape screening must be planted and maintained between the ADU and adjacent parcels as follows:
- (1) At least one 15-gallon size plant must be provided for every five linear feet of exterior ADU wall. Alternatively, at least one 24" box size plant must be provided for every ten linear feet of exterior ADU wall.
 - (2) Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least six feet in height may be installed.
 - (3) All landscaping must be drought tolerant.
 - (4) All landscaping must be from the City's approved plant list.
- (j) **Historical Protections.** An ADU that is on or within 600 feet of real property that is listed in the California Register of Historic Resources must be located so as to not be visible from any public right-of-way.
- (k) **Allowed Stories.** No ADU subject to this subsection § 21.85.060 may have more than one story, except that an ADU that is attached to the primary dwelling may have the stories allowed under subparagraph § 21.85.050(b)(4) of this section.

§ 21.85.070. Fees.

The following requirements apply to all ADUs that are approved under subsections § 21.85.040(a) or § 21.85.040(b) above.

(a) **Impact Fees.**

- (1) No impact fee is required for an ADU that is less than 750 square feet in size. For purposes of this subsection § 21.85.070(a), "impact fee" means a "fee" under the Mitigation Fee Act (Gov. Code § 66000(b)) and a fee under the Quimby Act (Gov. Code § 66477). "Impact fee" here does not include any connection fee or capacity charge for water or sewer service.
- (2) Any impact fee that is required for an ADU that is 750 square feet or larger in size must be charged proportionately in relation to the square footage of the primary dwelling unit. (E.g., the floor area of the ADU, divided by the floor area of the primary dwelling, times the typical fee amount charged for a new dwelling.)

(b) **Utility Fees.**

- (1) If an ADU is constructed with a new single-family home, a separate utility connection directly between the ADU and the utility and payment of the normal connection fee and capacity charge for a new dwelling are required.
- (2) Except as described in subsection § 21.85.070(b)(1), converted ADUs on a single-family lot that are created under subsection § 21.85.040(a)(1) above are not required to have a new or separate utility connection directly between the ADU and the utility. Nor is a connection fee or capacity charge required.
- (3) Except as described in subsection § 21.85.070(b)(1), all ADUs that are not covered by subsection § 21.85.070(b)(2) require a new, separate utility connection directly between the ADU and the utility.
 - (i) The connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU based on either the floor area or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system.
 - (ii) The portion of the fee or charge that is charged by the City may not exceed the reasonable cost of providing this service.

§ 21.85.080. Nonconforming Zoning Code Conditions, Building Code Violations, and Unpermitted Structures.

- (a) **Generally.** The City will not deny an ADU or JADU application due to a nonconforming zoning condition, building code violation, or unpermitted structure on the lot that does not present a threat to the public health and safety and that is not affected by the construction of the ADU or JADU.

(b) **Unpermitted ADUs and JADUs constructed before 2020.**

- (1) **Permit to Legalize.** As required by state law, the City may not deny a permit to legalize an existing but unpermitted ADU or JADU that was constructed before January 1, 2020, if denial is based on either of the following grounds:
 - (i) The ADU or JADU violates applicable building standards, or
 - (ii) The ADU or JADU does not comply with state ADU or JADU law or this ADU ordinance (Chapter 21.85).

- (2) **Exceptions:**
 - (i) Notwithstanding subsection § 21.85.080(b)(1) above, the City may deny a permit to legalize an existing but unpermitted ADU or JADU that was constructed before January 1, 2020, if the City makes a finding that correcting a violation is necessary to comply with the standards specified in California Health and Safety Code section 17920.3.

 - (ii) Subsection § 21.85.080(b)(1) above does not apply to a building that is deemed to be substandard in accordance with California Health and Safety Code section 17920.3.