

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 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 **OPENS** the Public Hearing, takes any public testimony, **CLOSES** the Public Hearing, and by motion:

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 **INTRODUCES** for first reading by title only an Ordinance entitled: "An 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."

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 Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (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. To remain valid, the City's ADU ordinance must comply with requirements imposed by AB 2533 and SB 1211. Adopting the proposed ordinance (Exhibit A to Attachment 1) ensures that the City's ADU ordinance will be valid under AB 2533 and SB 1211.

On October 31, 2024, the Planning Commission held a public hearing to consider the proposed ordinance, and thereafter voted to forward the ordinance to the City Council with a recommendation in favor of its adoption (Attachment 1). Staff recommends that the City Council proceed in accordance with the recommended actions set forth above.

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. Resolution No. PC 2024-08
2. Ordinance
3. Redline of Current Code