

INDIAN WELLS CITY COUNCIL

November 3, 2022



To: City Council
From: City Attorney
Prepared by: Todd Leishman, City Attorney
Subject: **An ordinance Adopting an Urgency Ordinance Amending Chapter 21.85 of the Indian Wells Municipal Code Relating to Accessory Dwelling Units and Junior Accessory Dwelling Units, and Determining the Action to be Exempt from CEQA**

RECOMMENDED ACTION:

Council **CONSIDERS** and **ADOPTS** Urgency Ordinance Amending Chapter 21.85 of the Indian Wells Municipal Code relating to Accessory Dwelling Units and Junior Accessory Dwelling Units; and

FINDS that 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 section 65852.2 of the Government Code, which is California's ADU law and which also regulates JADUs, as defined by section 65852.22. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State's ADU law.

REPORT IN BRIEF:

The proposed Urgency Ordinance will amend Chapter 21.85 of the Indian Wells Municipal Code to impose new limits on local authority to regulate Accessory Dwelling Units and Junior Accessory Dwelling Units in compliance with the provisions of Government Code sections 65852.2 and 65852.22 as amended by recently approved legislation that will take effect on January 1, 2023.

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 Government Code sections 65852.2 and 65852.22 to impose new limits on local authority to regulate ADUs and JADUs. In 2022, the California Legislature approved, and the Governor signed into law, a new bill (SB 897) that further amends Government Code sections 65852.2 and 65852.22 (“New Amendments”). Among other things, the New Amendments

- require the City to allow certain ADUs to be higher — up to 18 or 25 feet, depending the situation,
- require the City’s front setback to yield for certain ADUs,
- require the City to justify a denial with a full set of detailed comments describing the deficiencies in the application and explaining how to remedy them, and
- remove the automatic repeal in 2025 (now the ADU statute is permanent).

SB 897 takes effect January 1, 2023. If the City’s ADU ordinance does not comply with requirements of SB 897 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 local regulation except for the few requirements in the state ADU law itself.

Summary of Amendments:

The proposed ordinance amends the City’s local regulatory scheme for the construction of ADUs and JADUs to comply with recently amended provisions of Government Code sections 65852.2 and 65852.22.

Failure to comply with Government Code sections 65852.2 and 65852.22 (as amended) by January 1, 2023, renders the City’s ADU ordinance null and void, thereby limiting the City to the application of the few default state standards provided in Government Code sections 65852.2 and 65852.22. 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 attached proposed Urgency Ordinance includes changes to Indian Wells Municipal Code, Chapter 21.85, substantially in the form attached.

The ADU code amendments are proposed for adoption by urgency ordinance, in accordance with Government Code section 36937, subdivision (b), and will be followed at the earliest possible time by a non-urgency ordinance that will be considered for approval by the Planning Commission before returning to the City Council for ultimate adoption.

Environmental Review:

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 section 65852.2 of the Government Code, which is California's ADU law and which also regulates JADUs, as defined by section 65852.22. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State's ADU law.

ATTACHMENTS:

1. Draft Urgency Ordinance, with Exhibit A (updated code)
2. Redline of Current Code