URGENCY ORDINANCE NO. 19-19

AN URGENCY ORDINANCE OF THE COSTA MESA CITY COUNCIL TO AUTHORIZE ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS CONSISTENT WITH STATE LAW REQUIREMENTS BY AMENDING PORTIONS OF TITLE 13 OF THE MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Findings. The City Council finds as follows:

WHEREAS, effective January 1, 2020 multiple new housing laws relating to accessory dwelling units (ADUs) will become law, including AB 68, AB 881, SB 13, AB 587, and AB 670; and

WHEREAS, municipal regulations which are inconsistent with state law may be preempted effective January 1, 2020; and

WHEREAS, to preserve what limited authority the city has remaining to regulate ADUs, it is desirable that the City update its laws consistent with the law as it will be in effect January 1, 2020.

SECTION 2: Code Amendment. Section 13-6 (Definitions). Effective January 1, 2020, the definition of "Accessory Dwelling Unit (ADU)" within Title 13, Chapter I, Article 2, Section 13-6 (Definitions) is hereby amended as follows:

> Accessory Dwelling Unit (ADU). ~~A second dwelling unit established in conjunction with and subordinate to the single-family dwelling unit existing on the property. The accessory dwelling unit may be as studio with no bedroom or contain a maximum of two (2) bedrooms and be attached to the single-family dwelling unit or located in a detached accessory building on the same lot. It may also be referred to as an accessory apartment, granny unit, granny flat, or in-law apartment.~~ See Section 13-35.

SECTION 3. Municipal Code Section 13-35. Effective January 1, 2020, Title 13, Chapter V, Article 1, Section 13-35 is revised to provide:

Section 13-35. Accessory Dwelling Units

A. Accessory dwelling units and junior accessory dwelling units —Purpose, definitions, occupancy.

1. **Purpose and Interpretation.** The intent of this Section is to ensure that accessory dwelling units and junior accessory dwelling units remain as an accessory use to a single-family residence, that the structures on parcels are organized to accommodate an accessory dwelling unit and/or junior accessory dwelling unit, and that such dwelling units do not adversely impact surrounding residents or the community. This Section 13-35 is intended to retain the maximum ability of the city to regulate accessory dwelling units and to comply with the requirements of state law, but only to the extent the city is required to do so. Notwithstanding any other provision of this Section 13-15 to the contrary, nothing in this Section shall be interpreted to allow any accessory dwelling unit or junior accessory dwelling unit except to the extent required by state law.

2. **Definitions.**

   a. The terms "accessory dwelling unit", "public transit", "passageway" and "tandem parking" all have the same meaning as that stated in Government Code section 65852.2 as that section may be amended time to time.

   b. "Junior accessory dwelling unit" shall have same meaning as that stated in Government Code section 65852.22(h)(1) as that section may be amended time to time.

3. **Occupancy.** Except as otherwise provided by law (e.g., Government Code section 65852.26), accessory dwelling units and junior accessory dwelling units may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

B. Accessory dwelling units—Application for accessory dwelling unit permit.

1. Accessory dwelling units are permitted only in the zones shown on the Citywide Land Use Matrix at Section 13-30, (and any subsequently created zones or overlay zones where single-family or multi-family residential units are permitted), subject to the owner first obtaining a building permit. Any application for an accessory dwelling unit that meets the unit size standards and development standards contained in Sections C or D of this section, or is the type of accessory dwelling unit described in Subsection E of this section, shall be approved ministerially by the city by applying the standards herein and without a public hearing.
2. An application for an accessory dwelling unit building permit shall be made by the owner of the parcel on which the primary unit sits and shall be filed with the city on a city-approved application form and subject to the established fee set by city council resolution as it may be amended from time to time..
3. Applications for accessory dwelling units shall conform to the requirements for, and shall obtain, a building permit consistent with the requirements of Title 5 (Buildings and Structures).

C. Accessory dwelling units—Unit size standards. Except as otherwise provided in subsection E of this section, below, all accessory dwelling units shall not exceed the

size standards listed below. No accessory dwelling unit may contain more than two bedrooms.

1. Attached accessory dwelling units: The maximum floor area of an attached accessory dwelling unit shall be the higher of:
   a. 850 square feet for an accessory dwelling unit with 0-1 bedrooms or 1,000 square feet for an accessory dwelling unit with 2 or more bedrooms; or
   b. If there is an existing primary single family dwelling, 50% of the square footage of the existing primary single family dwelling;

2. Detached Units. A detached accessory dwelling unit shall not have more than one thousand two hundred (1,200) square feet of living area.

3. Setback requirements.
   a. No setbacks are required for: either (i) those portions of accessory dwelling units that are created by converting existing living area or existing accessory structures to new accessory dwelling units or (ii) constructing new accessory dwelling units in the same location and to the same dimensions as an existing structure.
   b. For all other accessory dwelling units, there must be a minimum of four feet of setbacks from side and rear lot lines and comply with all applicable front yard setbacks.
   c. The minimum required distance between a detached accessory dwelling unit and the primary dwelling unit, and all other structures, including garages, on the property, shall be six feet.

D. Accessory dwelling units—Development standards.

Any permit for an accessory dwelling unit shall be subject to the development standards listed below.

1. Legal lot/residence. An accessory dwelling unit shall only be allowed on a lot within the city that contains a legal, single-family or multi-family residence as an existing or proposed primary unit on a lot.

2. Number of accessory dwelling units per lot.
   a. For lots with proposed or existing single-family residences, no more than one accessory dwelling unit and one junior accessory dwelling unit may be on the lot.
   b. For lots with existing multi-family residential dwellings:
      i. No more than twenty-five percent (25%) of the number of the existing units, but at least one (1) unit, shall be permitted as accessory dwelling units constructed within the non-livable space (e.g., storage rooms, boiler rooms, hallways, attics, basements, or garages) of the existing multifamily dwelling structure provided that applicable building codes are met; or

ii. No more than two detached accessory dwelling units, provided that no such unit shall be more than sixteen (16) feet in height, and each such unit complies with front yard setbacks, and meets rear-yard and side yard setbacks of four feet. The maximum square footage of detached accessory dwelling units on lots with existing multi-family residential dwellings shall comply with the limits set forth in subsection C (or E, if applicable) of this section.

3. Building Code Compliance. All new accessory dwelling units must comply with Title 5 of the Municipal Code ("Buildings and Structures") and any other applicable provisions of the California Building Standards Code. However, fire sprinklers shall not be required if they are not required for the primary residence.

4. Utilities.

a. All accessory dwelling units and junior accessory dwelling units must be connected to public utilities (or their equivalent), including water, electric, and sewer services.
b. Except as provided in subsection iii below, the City may require the installation of a new or separate utility connection between the accessory dwelling unit, junior accessory dwelling unit and the utility. The connection fee or capacity charge shall be proportionate to the burden of the proposed accessory dwelling unit based on either its square feet or number of drainage fixture unit values.
c. No separate connection between the accessory dwelling unit and the utility shall be required for units created within a single-family dwelling, unless the accessory dwelling unit is being constructed in connection with a new single-family dwelling.

5. Parking.

a. The City shall require the owner to provide one parking space unless the accessory dwelling unit has no bedrooms (e.g., a studio), in which case no space is required. The required parking space may be provided as:
    i. Tandem parking on an existing driveway in a manner that does not encroach onto a public sidewalk and otherwise complies with city parking requirements; or
    ii. Within a setback area or as tandem parking in locations determined feasible by the City for such use. Locations will be determined infeasible based upon specific site or regional topographical or fire and life safety conditions, or that such parking is not permitted anywhere else in the City.

b. Notwithstanding the foregoing, no parking space shall be required for an accessory dwelling unit if:
    i. It is located within one-half mile walking distance of public transit;
    ii. It is located within an architecturally and historically significant district;

iii. It is part of a proposed or existing primary residence or accessory structure;
iv. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit; or
v. Where there is a car share vehicle located within one block of the accessory dwelling unit.

c. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the off-street parking spaces do not have to be replaced.

6. Recorded Covenants. Before obtaining a permit for an accessory dwelling unit, the property owner shall file with the county recorder a declaration or agreement of restrictions, which has been approved by the city attorney as to its form and content, describing restrictions that allows for and the continued use of the accessory dwelling as follows:

a. the accessory dwelling unit shall not be sold separately from the primary residence;

b. the accessory second unit is restricted to the maximum size allowed per the development standards set forth in this section;

c. for accessory dwelling units approved on or after January 1, 2025, the accessory dwelling unit shall be considered legal only as long as either the primary residence or the accessory dwelling unit is occupied by the owner of record or state law is amended to prohibit such requirements; and

d. the restrictions shall be binding upon any successor in ownership of the property, and lack of compliance shall result in legal action against the property owner for noncompliance with the requirements for an accessory dwelling unit.

7. Conversion of existing primary unit. An existing primary dwelling may be converted to an accessory dwelling unit if it complies with all applicable requirements of this ordinance. If so, a new, larger primary residence may be constructed.

8. Design requirements for new units. All accessory dwelling units must comply with the following design requirements:

a. The exterior materials, colors, roof pitch and architecture shall be similar to and compatible with those of the primary unit.

b. Accessory dwelling units shall not exceed the height level of the tallest existing structure on the parcel or as required in the base zoning district, whichever is less.

c. Lighting shall not spill on to neighboring lots.

9. Accessibility standards. New construction of any ground level accessory dwelling unit shall be designed and constructed to allow for disability/accessibility standards. Plans shall demonstrate future entrance capability and actual construction shall include adequate door and hallway widths, maneuvering space in kitchens and bathrooms, and structural reinforcements for grab bars.

10. Passageway. No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

E. Accessory Dwelling Unit and Junior Accessory Dwelling Unit Exceptions.

1. Accessory dwelling units shall be approved for the following types of accessory dwelling units, regardless of whether the applicant meets the development standards contained in this Title. In no event may any parcel with a single-family dwelling have more than one accessory dwelling unit on site or more than one junior accessory dwelling unit per site. In no event may any parcel with a multi-family housing unit have more than two detached accessory dwelling units or any junior accessory dwelling units on site.

a. For Single Family Dwelling lots in residential zones each lot may have up to one junior accessory dwelling unit that complies with the requirements of subsection G below. Additionally, each lot may have either:

i. One accessory dwelling unit within an existing or proposed single-family dwelling. Alternatively, the accessory dwelling unit may be constructed within existing accessory structure (as that term is defined in Government Code section 65852.2) and such proposal may include an expansion of not more than 150 square feet beyond the physical dimensions of the existing accessory structure to accommodate ingress and egress. Each accessory dwelling unit must have exterior access and side and rear setbacks sufficient for fire safety and comply with all other setback requirements or

ii. One detached, new construction, accessory dwelling unit with setbacks of at least four feet from side and rear yards and in compliance with front yard setbacks, no more than eight hundred (800) square feet floor area, and a height not exceeding sixteen (16) feet on a lot with an existing or proposed single family dwelling.

b. On a lot with an existing multifamily dwelling within a residential zone:

i. Accessory dwelling units may be constructed in areas that are not used as livable space within an existing multi-family dwelling

structure (e.g., storage rooms, boiler rooms, passageways, attics, basements, or garages), provided the spaces meet state building standards for dwellings. The number of interior accessory dwelling units permitted on the lot shall not exceed twenty-five percent (25%) of the current number of units of the multi-family complex on the lot and at least one such unit shall be allowed; and

ii. Up to two (2) detached accessory dwelling units may be on a parcel, provided they are no taller than sixteen (16) feet, and they have at least four (4) feet of side and rear yard setbacks. Detached accessory dwelling units approved pursuant to this subsection (b) shall not exceed eight hundred (800) square feet in floor area.

2. Accessory dwelling units approved under this Subsection E shall not be rented for a term of less than thirty (30) days.

3. Accessory dwelling units or junior accessory dwelling units approved under this Subsection E shall not be required to correct legal nonconforming zoning conditions as a pre-condition to obtaining this authorization.

F. Accessory dwelling units—General plan consistency.

In adopting these standards, the city recognizes that the approval of dwelling units may, in some instances, result in dwelling densities exceeding the maximum densities prescribed by the general plan. The city finds that this occurrence is consistent with the general plan, as allowed under state planning and zoning law applicable to accessory dwelling units, and that the amendment furthers the goals, objectives, and policies of the general plan housing element.

G. Junior Accessory Dwelling Units.

1. Purposes: This section provides standards for the establishment of junior accessory dwelling units. Junior accessory dwelling units will typically be smaller than an accessory dwelling unit, will be constructed within the walls of an existing or proposed single family residence and requires owner occupancy in the single family residence where the unit is located.

2. Size: A junior accessory dwelling unit shall not exceed 500 square feet in size.

3. Owner Occupancy: The owner of a parcel proposed for a junior accessory dwelling unit shall occupy as a primary residence either the primary dwelling or the junior accessory dwelling. Owner-occupancy is not required if the owner is a governmental agency, land trust, or "housing organization" as that term is defined in Government Code Section 65589.5(k)(2), as that section may be amended from time to time.

4. Sale Prohibited: A junior accessory dwelling unit shall not be sold independently of the primary dwelling on the parcel.

5. Short term rentals: The junior accessory dwelling unit shall not be rented for periods of less than 30 days.

6. Location of Junior Accessory Dwelling Unit: A junior accessory dwelling unit shall be entirely within a single-family residence.

7. Kitchen Requirements: The junior accessory dwelling unit shall include an efficiency kitchen, including a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

8. Parking. No additional parking is required beyond that already required for the primary dwelling.

9. Fire Protection; Utility Service. For the purposes of any fire or life protection ordinance or regulation or for the purposes of providing service for water, sewer, or power, a junior accessory dwelling unit shall not be considered a separate or new unit, unless the junior accessory dwelling unit was constructed in conjunction with a new single-family dwelling. No separate connection between the junior accessory dwelling unit and the utility shall be required for units created within a single-family dwelling, unless the junior accessory dwelling unit is being constructed in connection with a new single-family dwelling.

10. Deed Restriction. Prior to the issuance of a building permit for a junior accessory dwelling unit, the owner shall record a deed restriction in a form approved by the city that includes a prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, requires owner-occupancy consistent with subsection (3) above, does not permit rentals for periods 30 days or shorter, and restricts the size and attributes of the junior dwelling unit to those that conform with this section.

11. Exterior Access. The junior accessory dwelling unit shall have access and side and rear setbacks sufficient for fire safety.

SECTION 4. Municipal Code: Land Use Matrix. Effective January 1, 2020, Title 13, Chapter IV, Section 13-30 (Citywide Land Use Matrix), is hereby amended as follows:

	ZONES																					
LAND USES[4]	R1	R2MD	R2HD	R3	AP	CL	C1	C2	C1S1	TC1	MG	MP	PDRLD1	PDRMD1	PDRHD1	PDRNCM1	PDC1	PDI1	I&R1	I&RS1	I&RMLT1	P
22.2 Accessory dwelling unit and junior accessory dwelling unit (subject to the requirements of chapter V, section 13-35, accessory dwelling units)	P[2]	P[2]	P[2]	P[2]	•	•	•	•	•	P[2]			P[2]	P[2]	P[2]	P[2]	P[2]	P[2]	•	•	P[2]	•

SECTION 5. Municipal Code Section 13-85 (Parking). Effective January 1, 2020, Title 13, Chapter VI, Section 13-85 (Parking Requirements for Residential Development) of the Costa Mesa Municipal Code is hereby amended as follows (new text underlined and removed text is ~~strikethrough~~):

(d) Parking for accessory dwelling units and junior accessory dwelling units shall be provided per the requirements of Section 13-35. ~~. One (1) parking space shall be provided for an accessory dwelling unit unless the accessory dwelling unit has no bedrooms, in which case, no parking space is required. Parking may be provided as tandem parking on an existing driveway leading to a garage or carport but must be in addition to any parking required for the single-family residence. Tandem parking means that two (2) or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.~~

~~Parking for the accessory dwelling unit is not required in each of the following situations:~~

~~(1) When the accessory dwelling unit is located within one-half (0.5) mile walking distance of public transit;~~
~~(2) When the accessory dwelling unit is located within an architecturally and historically significant district;~~
~~(3) When the accessory dwelling unit is part of the proposed or existing single-family residence or an accessory structure;~~
~~(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit; and~~
~~(5) When there is a car-share vehicle located within one (1) block of the accessory dwelling unit. To prevent car-sharing applications that allow individuals to rent personal vehicles to qualify, "Car-share vehicle" means that the vehicle is part of an established program intended to stay in a fixed location for at least ten (10) years and available to the public.~~

~~In conjunction with an accessory dwelling unit application, the parking required for the single-family residence shall meet the current parking requirements specified in~~

~~Chapter VI Off-Street Parking Standards, and shall not be attributed to the accessory dwelling unit.~~

SECTION 6. Urgency. Effective January 1, 2020 multiple new housing relating to accessory dwelling units (ADUs) will become law, including AB 68, AB 881, SB 13, AB 587, and AB 670. Subsection (a)(4) of Government Code 65852.2 will state in part, "if a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void...." If the City is unable to enforce its design standards, or otherwise approve ADUs in a manner consistent with state law effective January 1, 2020, the City could be required to approve ADUs that are directly inconsistent with the development standards that apply throughout the City, or could be subject to litigation. The City desires to allow the public to know the processes that will apply to proposed ADUs effective January 1, 2020, and absent an urgency ordinance, the ordinance could not be in effect by January 1, 2020. For these reasons, this ordinance is necessary for the immediate preservation of the public peace, health and safety.

SECTION 7. Compliance with CEQA. Adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") under Public Resources Code section 21080.17 [statutory exemption for second unit ordinances]; CEQA Guidelines sections 15282(h) [statutory exemption for second unit ordinances]; 15303 [new construction or small structures] and 15305 [minor alterations to land]. This ordinance is also exempt under CEQA Guidelines section 15061, because this ordinance will not have a significant effect on the environment, because ADUs will largely constitute infill housing which is exempt from CEQA.

SECTION 8. Inconsistencies. Any provision of this ordinance which is inconsistent with state law shall be interpreted in a manner to be consistent with state law. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 9. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 10. Effective Date. Consistent with its authority to adopt an urgency ordinance pursuant to Government Code 36934 and 36937, this Ordinance shall take effect immediately.

SECTION 11. Certification. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted in the manner required by law.

SECTION 12. Transmit Ordinance to HCD. The City Clerk is directed to send a copy of this ordinance to the Department of Housing and Community Development within 60 days of the adoption of this ordinance.

PASSED AND ADOPTED this 17th day of December, 2019.

Katrina Foley, Mayor

ATTEST:

Brenda Green

Brenda Green, City Clerk

APPROVED AS TO FORM:

Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, BRENDA GREEN, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing Urgency Ordinance No. 19-19 was duly introduced and adopted at a regular meeting of the City Council of the City of Costa Mesa held on the 17th day of December, 2019, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS: CHAVEZ, GENIS, MANSOOR, MARR, REYNOLDS, STEPHENS, FOLEY

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 18th day of December, 2019

Brenda Green

Brenda Green, City Clerk