

**REGULAR**

**NUMBER: 38.843**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTION 13.08 (“ACCESSORY DWELLING UNITS”) OF CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of August 5, 2021, upon motion by Councilmember Chua and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Wendy Wood, City Clerk

\_\_\_\_\_  
Rich Tran, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

## **RECITALS AND FINDINGS:**

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

**WHEREAS**, the Planning and Zoning 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 2019, the California Legislature approved, and the Governor signed into law a number of bills (“2019 ADU Laws”) 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; and

**WHEREAS**, on June 16, 2020, the City Council adopted Ordinance No. 38.840 amending the City’s zoning regulations related to ADUs and JADUs to comply with the 2019 ADU Laws. These amendments included changes to Milpitas Municipal Code section XI-10-13.08 (“Accessory Dwelling Units”); and

**WHEREAS**, in September of 2020, the California Legislature approved, and the Governor signed into law, Assembly Bill 3182 (“AB 3182”); and

**WHEREAS**, consistent with the 2019 ADU Laws, the City currently allows construction of one ADU or JADU (with only a building permit and subject to limited requirements) when the ADU or JADU is on a lot with a proposed or existing single-family dwelling and located within the space of a single-family dwelling or within the space of an existing accessory structure. Following AB 3182, the City must now allow construction of both an ADU and JADU in such circumstances; and

**WHEREAS**, the City desires to amend existing provisions in Milpitas Municipal Code section XI-10-13.08 related to the regulation of ADUs and JADUs to add clarity for the benefit of staff and the general public and comply with changes in state law; and

**WHEREAS**, there is a current and immediate threat to the public health, safety, or welfare arising from the current lack of clarity in the provisions in Milpitas Municipal Code section XI-10-13.08 because if these provisions are deemed to contradict the requirements of state law, all of the City’s ADU and JADU regulations may be nullified. The City would thereafter be limited to applying only those few default standards that are provided in Government Code sections 65852.2 and 65852.22, and the approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, landscape, architectural review, among other things, may threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety; and

**WHEREAS**, staff and the City Attorney prepared the proposed ordinance, including the proposed language and terminology, and any additional information and documents deemed necessary; and

**WHEREAS**, the City has prepared Zoning Amendment No. ZA20-0003 (“Amendment”) to the City’s Municipal Code, including refinements to Section XI-10-13.08 (“Accessory Dwelling Units”); and

**WHEREAS**, on June 23, 2021, the Planning Commission of the City of Milpitas held a lawfully-noticed public hearing to solicit public comment and consider the proposed Amendment, take public testimony, and make a recommendation to the City Council on the Amendment.

**NOW, THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

## **SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

## **SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commission and City Council, and the facts outlined below, the City Council hereby finds and determines that this Ordinance has been assessed in accordance with the California Environmental Quality Act (California Public Resources Code, § 21000 et seq.) (“CEQA”) and the State CEQA Guidelines (14 California Code of Regulations § 15000 et seq.) and is statutorily exempt from CEQA under Public Resources Code section 21080.17, which exempts from CEQA any ordinance that is adopted to implement Government Code section 65852.1 or 65852.2. The Ordinance implements section 65852.2 and is therefore statutorily exempt.

## **SECTION 3. GENERAL PLAN CONSISTENCY**

State law requires the City to deem accessory dwelling units, as permitted by this Ordinance, to be “a residential use that is consistent with the existing general plan and zoning designation.” (California Government Code §65852.2(a)(1)(C).) Furthermore, the City Council has considered the Planning Commission staff report, which provides a robust analysis demonstrating that this Ordinance is consistent with the General Plan. Therefore, the Council deems this Ordinance to be consistent with the General Plan both in substance and as a matter of law.

## **SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13, SUBSECTION 8**

Title XI, Chapter 10, Section 13 “Special Uses”, Subsection 8 “Accessory Dwelling Units” of the Milpitas Municipal Code is hereby amended to read as follows:

- A. Purpose and Intent. The purpose of these standards is to allow and regulate accessory dwelling units (hereinafter referred to as ADUs) and junior accessory dwelling units (hereinafter referred to as JADUs) in compliance comply with Government Code Sections 65852.2 and 65852.22.
- B. Effect of Conforming. An ADU or JADU that conforms to the standards in this section shall:
  - 1. Be deemed to be consistent with the City's general plan and zoning designation for the lot on which the unit is located.
  - 2. Not be deemed to exceed the allowable density for the lot on which the unit is located.
  - 3. Not be considered in the application of any local ordinance, policy, or program to limit residential growth.
  - 4. Not be required to correct a "nonconforming zoning condition."
- C. Definitions.
  - 1. Accessory Dwelling Unit: As defined by Government Code Section 65852.2, an ADU is an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating,

cooking, and sanitation. An ADU also includes an efficiency unit as defined in Section 17958.1 of the Health and Safety Code and a manufactured home as defined by Section 18007 of the Health and Safety Code.

2. Accessory Structure: For purposes of this section, an accessory structure is a structure that is accessory and incidental to a dwelling located on the same lot.
3. Attached Accessory Dwelling Unit: An attached ADU is an ADU that shares at least one wall with the primary dwelling.
4. Detached Accessory Dwelling Unit: An ADU is detached if it does not share any walls with the primary dwelling unit or existing attached accessory structure.
5. Efficiency Kitchen: In accordance with Government Code Section 65852.22(a)(6), an efficiency kitchen includes the following: (a) a cooking facility with appliances and (b) food-preparation counter space with a total area of at least 15 square feet and food-storage cabinets with a total of at least 30 square feet of shelf space.
6. Junior Accessory Dwelling Unit: As defined by Government Code Section 65852.22, a JADU is a unit that is no more than 500 square feet in size and contained entirely within an existing or proposed single-family structure. A JADU may have only an efficiency kitchen and may include separate sanitation facilities or may share sanitation facilities with the primary dwelling.
7. Livable Space: A space within a building designed for living, sleeping, eating or food preparation, including but not limited to a den, study, library, home office, sewing room, or recreational room and excluding such areas as garages.
89. Living Area: As defined by Government Code Section 65852.2, the interior habitable area of a dwelling unit including basements and attics but not including a garage or any accessory building or structure.
9. Natural Person: An individual and living human being, as opposed to a legal person which may be a private (i.e. business entity or non-governmental organization) or public (i.e. government) entity.
10. Nonconforming zoning condition: A physical improvement on a property that does not conform with current zoning standards.
11. Passageway: A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.
12. Proposed dwelling: A dwelling that is the subject of a permit application and that meets the requirements for permitting.
13. Public Transit: 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. Examples include, but are not limited to, Altamont Commuter Express (ACE), Bay Area Rapid Transit (BART), AC Transit, Valley Transportation Authority (VTA) bus service and light rail, and paratransit.

#### D. General Provisions.

1. Where permitted. An ADU may be established on any lot in any district that allows single-family or multi-family dwelling residential uses. A JADU may be established on any lot in any district that allows single-family residential use.

2. Review Requirements. Any application for an ADU or JADU that satisfies the standards in subdivisions (A) through (J) of this section shall be approved ministerially without discretionary review or public hearing.
3. An ADU or JADU shall meet or exceed the minimum floor area requirements of an efficiency unit, as defined by Section 17958.1 of the State Health and Safety Code, and so may not have a floor area that is smaller than 220 square feet.
4. All ADUs shall comply with local building code requirements.
5. No passageway shall be required for an ADU or JADU.
6. Owner Occupancy. 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 the JADU, as the person's primary residence and legal domicile. However, the owner-occupancy requirement of this paragraph does not apply if the property is entirely owned by a governmental agency, land trust, or housing organization.
7. Sale Prohibited. 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 multi-family lot).
8. Rental. An ADU or JADU may be rented for a term of 30 days or more. Short-term rental for periods of less than 30 days are not permitted.

E. Action on Application.

1. The City shall act on an application to establish an ADU or JADU within 60 days from the date the City receives a complete application, unless either:
  - a. The applicant requests a delay, in which the 60-day time period is tolled for the period of the requested delay, or
  - b. The application for the ADU or JADU is submitted as part of a permit application for a new single-family dwelling on the lot, in which case the City may delay acting on the permit application for the ADU or JADU until it acts on the permit application for the new single-family dwelling; however, the application shall still be considered ministerially without discretionary review or a hearing.

F. ADUs and JADUs Subject to Limited Requirements.

1. Specific Types of ADUs and JADUs. To qualify for a building permit, the following types of ADUs and JADUs are subject only to the limited requirements that define each type.
  - a. Converted on Single-family Lot: One ADU as described in this Subsection XI-10-13.08(F)(1)(a) and one JADU are allowed on a lot with a proposed or existing single-family dwelling on it, where the unit:
    - i. Is within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or 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.
    - ii. Has exterior access that is independent of that for the single-family dwelling.
    - iii. Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes.
  - b. Limited Detached on Single-family Lot. One detached, new-construction ADU is allowed 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 XI-10-13.08(F)(1)(a)), if the detached ADU satisfies 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 less.
  - iii. The height above grade is 16 feet or less.
- c. **Converted on Multi-family Lot:** One or more ADUs are allowed within portions of existing multi-family 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 XI-10-13.08(F)(1)(c), at least one converted ADU is allowed within an existing multifamily dwelling, up to a quantity equal to 25 percent of the number of existing multifamily dwelling units.
- d. **Limited Detached on Multi-family Lot:**
- i. Up to two detached ADUs are allowed on a lot that has an existing multi-family dwelling if each detached ADU satisfies the following limitations:
    1. The side- and rear-yard setbacks are at least four feet.
    2. The peak height above grade is 16 feet or less.
  - ii. If more than one detached ADU is created, the ADUs may share a common wall.
2. **Deed Restriction for JADUs.** Prior to obtaining a building permit for a JADU, a deed restriction, approved by the City Attorney, must be recorded with the County Recorder's office, which shall include the pertinent restrictions and limitations of a JADU identified in this Section. Said deed restriction shall run with the land and bind all future owners, heirs, and assigns. A copy of the recorded deed restriction shall be filed with the Department stating that:
- a. The JADU may not be sold separately from the primary dwelling unit;
  - b. The JADU is restricted to the maximum size allowed per the development standards;
  - c. The JADU is legal only so long as either the primary residence, or the JADU, is occupied by the owner of record of the property.

**G. ADUs Subject to Additional Objective Requirements.**

1. **Review Requirements.** A proposed ADU that does not conform to the standards set forth in Subsection XI-10-13.08 (F)(1) and (F)(2) only requires a building permit if it complies with all of the objective standards set forth in Subsection XI-10-13.08(G)(2) below.
2. **Specific Standards.**
  - a. **Maximum Size.**
    - i. The maximum size of an attached or detached ADU on a property not located in the "H" Hillside Combining District is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a two-bedroom unit.
    - ii. The maximum size of an attached or detached ADU on a property located in the "H" Hillside Combining District is 1,200 square feet.
    - iii. The maximum size of 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 existing

primary dwelling. No application of the percent-based size limit in this paragraph may require the ADU to be less than 800 square feet.

- b. Maximum Height.
  - i. For properties not located in the "H" Hillside Combining District, a single-story attached or detached ADU may not exceed 16 feet in height above grade. A two-story attached or detached ADU may not exceed 28 feet in height above grade.
  - ii. For properties located in the "H" Hillside Combining District, an attached or detached ADU on the west side of the crestline may not exceed a height of 17 feet in height and one story from the lowest finished grade to the highest ridgeline of the building. On the east side of the crestline, a detached or attached ADU may not exceed a height of 27 feet and two stories from the lowest finished grade to the highest ridgeline of the building.
- c. Minimum Setbacks.
  - i. Except for ADUs located in the R1-H zoning district, the minimum front yard setback requirement an attached ADU is 4 feet. In the R1-H zoning district, the minimum front yard setback for attached ADUs must be a minimum of 25 feet when the average slope of the lot is less than sixteen 16 percent, or when the front yard slope does not exceed 16 percent; otherwise, the minimum front yard setback must be 40 feet.
  - ii. An ADU that is subject to Subsection XI-10-13.08(G)(2) must conform to 4-foot side- and rear-yard setbacks.
  - iii. No setback is required for an ADU that is subject to Subsection XI-10-13.08(G)(2) if the ADU is constructed in the same location and to the same dimensions as an existing structure.
- d. An attached ADU shall have a separate entrance from the primary dwelling.
- e. A detached ADU shall be located at least six feet to the rear plane of the primary dwelling unit.
- f. . Parking.
  - i. For each ADU, one off-street parking space is required unless one of the following conditions is met:
    - (1). The ADU is located within one-half mile walking distance of public transit.
    - (2) . The ADU is located within an architecturally and historically significant historic district.
    - (3). The ADU is part of a proposed or existing primary residence or an accessory structure (i.e., it is a converted ADU under Subsection XI-10-13.08(F)(1)(a) above).
    - (4). On-street parking permits are required but not offered to the occupant of the ADU.
    - (5). An established car share vehicle stop is located within one block of the ADU.
  - ii. No off-street parking is required for a JADU, except as required under paragraph iv below.

- iii. If a parking space is required for an ADU, the space may be located within any setback area, in a tandem configuration, or on a mechanical lift. Each unenclosed parking space shall be at least 8½ feet wide and 18 feet long. Each parking space that is provided in an enclosed garage shall be at least 10 feet wide and 20 feet long.
- iv. When a garage, carport, or covered parking structure is converted to an ADU or demolished in conjunction with the construction of an ADU, the off-street parking space or spaces are not required to be replaced. If the parking structure is converted to a JADU, the lost off-street parking spaces must be replaced.
- g. Design Standards.
  - i. The architectural style, exterior materials, and color palette of an ADU or JADU shall match the appearance of the existing or proposed primary dwelling.
  - ii. The entrance to an attached ADU or JADU shall be located on a side or rear building façade, not facing a public right-of-way.
  - iii. Exterior lighting shall be limited to down-lights (or as otherwise required by the building or fire code).
  - iv. Windows and doors of an ADU or JADU may not have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.
  - v. Windows located on the second story of an ADU or JADU shall be either clerestory or consist of obscured glazing.
  - vi. Evergreen landscape screening must be planted and maintained between the ADU and adjacent parcels as follows:
    - (1). At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall. Alternatively, at least one 24-inch box size plant shall be provided for every ten linear feet of exterior wall.
    - (2). Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least 6 feet in height may be installed.
    - (3). All landscaping shall be drought tolerant.
  - vii. The ADU and primary dwelling must use the same driveway to access the street, unless otherwise required for fire-apparatus access, as determined by the fire authority.

## H. Fees.

### 1. Impact Fees and other City Fees.

- a. No impact fee shall be required for a JADU or for an ADU that is less than 750 square feet in floor area. For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in the Mitigation Fee Act (Gov. Code § 66000(b)), except that it also includes fees specified in the Quimby Act (Gov. Code § 66477). "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.
- b. Any impact fee that is required for an ADU that is 750 square feet or greater in floor area shall be assessed proportionally in relation to the square footage of the primary dwelling unit (e.g. the floor area of the primary dwelling divided by the floor area of the ADU, times the impact fees charged for a new dwelling).



2. Utility Fees.

- a. Converted ADUs and JADUs on a single-family lot that are created under Subsection XI-10-13.08(F)(1)(a) are not required to have a new or separate utility connection directly between the ADU or JADU and the utility. Nor is a connection fee or capacity charge required.
  - b. ADUs and JADUs that are not covered by Subsection XI-10-13.08(H)(2)(a) are also not required to have a new or separate utility connection directly between the ADU or JADU and the utility.
  - c. Except as described in Subsection XI-10-13.08(H)(2)(a), if a separate utility connection is installed directly between the ADU or JADU and the utility, then a connection fee or capacity charge will be required. The fee or charge shall be proportionate to the burden created by the ADU or JADU, based on either the floor area or the drainage-fixtured units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system. .
- K. Nonconforming ADUs and Discretionary Approval. Any proposed ADU or JADU that does not conform to the objective standards set forth in Subsections XI-10-13.08(A) through (H) may be allowed by the City with a Minor Site Development Permit, in accordance with Section XI-10-57 "Applications".

**SECTION 5. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision, or part has no effect on the validity of the remainder.

**SECTION 6. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The City Council hereby directs the City Clerk to cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

**SECTION 7. SUBMISSION TO HCD**

The City Clerk shall submit a copy of this Ordinance to the Department of Housing and Community Development within 60 days after adoption.