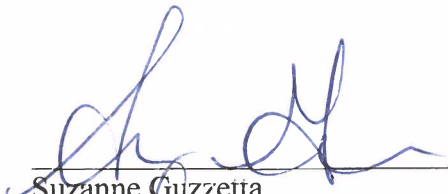


**CERTIFICATION OF CITY CLERK**  
**URGENCY ORDINANCE NO. 38.851**

I, Suzanne Guzzetta, City Clerk of the City of Milpitas, do hereby certify that the attached Urgency Ordinance is a true and correct copy of Urgency Ordinance No. 38.851 of the City of Milpitas, that said Ordinance was duly enacted and adopted by the City Council of the City of Milpitas at a meeting of said City Council held on the 6<sup>th</sup> day of December, 2022, and that said Ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of Milpitas, California, this 13<sup>th</sup> day of December, 2022.

  
Suzanne Guzzetta  
Milpitas City Clerk

**URGENCY**

**NUMBER: 38.851**

**TITLE: AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTION 13 (“SPECIAL USES”) OF CHAPTER 10 (“ZONING”) OF TITLE XI OF THE MILPITAS MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA**

**HISTORY:** This Ordinance adopted by the City Council by a four-fifths (4/5) vote in order to protect the public health, safety, and welfare at its meeting of December 6, 2022 upon motion by Mayor Rich Tran. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

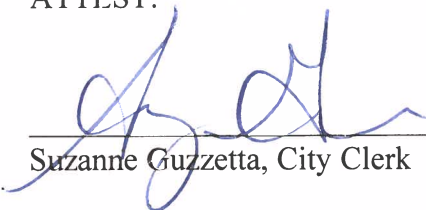
AYES: (5) Mayor Tran, Vice Mayor Montano, Councilmembers Chua, Dominguez, and Phan

NOES: (0) None

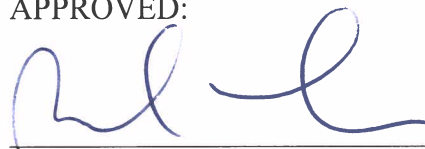
ABSENT: (0) None

ABSTAIN: (0) None


ATTEST:

  
\_\_\_\_\_  
Suzanne Guzzetta, City Clerk

APPROVED:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael Mutalipassi, 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 September and October of 2022, the California Legislature approved, and the Governor signed into law, Assembly Bill 2221 and Senate Bill 897 (“2022 ADU Laws”), which among other things, amended Government Code sections 65852.2, 65852.22, and 65852.23 to impose new limits on local authority to regulate ADUs and JADUs; and

**WHEREAS**, the 2022 ADU Laws take effect January 1, 2023, and preempt any conflicting City ordinance; and

**WHEREAS**, State law requires consistency between local regulations for ADUs and JADUs and the state ADU law, so the City must amend the current provisions of Milpitas Municipal Code Section XI-10-13.08 (“Accessory Dwelling Units”) to comply with the new provisions of the 2022 ADU Laws; 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 comply with the 2022 ADU Laws; and

**WHEREAS**, there is a current and immediate threat to the public health, safety, or welfare based on the passage of AB2221 and SB897 because if the City does not amend its local Zoning Ordinance for consistency with state ADU law, all of the City’s ADU and JADU regulations may be nullified, and the City would thereafter be limited to applying only those few default standards that are provided in Government Code sections 65852.2, 65852.22, and 65852.23; and

**WHEREAS**, 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**, Planning Department staff 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. ZA22-0007 (“Amendment”) to the City’s Municipal Code, including additions, deletions, and refinements to Section XI-10-13.08 (“Accessory Dwelling Units”); and

**WHEREAS**, on November 9, 2022, the Planning Commission for 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 project; 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 Milpitas does ordain as follows:

## **SECTION 1. INCORPORATION OF RECITALS**

The City Council hereby finds that all the foregoing recitals and staff report presented herewith are true and correct and are hereby incorporated by reference and adopted as findings by the City Council as if fully set forth herein.

## **SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Under Public Resources Code section 21080.17, the adoption of an ordinance by a city or county implementing the provisions of Government Code sections 65852.1 or 65852.2 and regulating the creation of ADUs and JADUs is statutorily exempt from the requirements of the California Environmental Quality Act (“CEQA”). The Ordinance implements Government Code section 65852.2 and is therefore statutorily exempt.

## **SECTION 3. URGENT NEED**

Based on the foregoing recitals and findings, all of which are deemed true and correct, this ordinance is urgently needed for the immediate preservation of the public peace, health, and safety. This Urgency Ordinance shall take effect immediately upon adoption in accordance with the provisions set forth in Government Code Section 36937.

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

Section 13 (“Special Uses”) Chapters 10 (“Zoning”) of Title XI of the Milpitas Municipal Code is hereby amended and restated as provided in Exhibit “A”, attached hereto and incorporated herein by reference.

## **SECTION 5. AUTHORITY**

This Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council of the City of Milpitas by Government Code 36937, and therefore shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council.

## **SECTION 6. EFFECTIVENESS OF ORDINANCE**

This ordinance takes effect immediately upon its adoption.

## **SECTION 7. EXPIRATION**

This Ordinance expires 6 months after the day of adoption or upon the effective date of Ordinance number 38.852 whichever is sooner, unless otherwise extended by the City Council prior to expiration.

## **SECTION 8. SEVERABILITY**

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

## **SECTION 9. NOTICE OF CEQA EXEMPTION**

The City Council hereby directs staff to prepare, execute, and file with the County of Santa Clara Clerk a notice of CEQA exemption within five (5) working days of the adoption of this Ordinance.

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**SECTION 10.**        **CERTIFICATION**

The City Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

**EXHIBIT A**

**Amendments to Section 13 of Chapter 10 of Title XI of the Milpitas Municipal Code**

(follows this page)

## EXHIBIT A

### **AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13**

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 consistent with the City's general plan and zoning designation for the lot on which the ADU or JADU is located.
  - 2. Not be deemed to exceed the allowable density for the lot on which the ADU or JADU 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" as defined in Subsection XI-10-13.08(C)(10) below. This does not prevent the City from enforcing compliance with applicable building safety standards in accordance with Health and Safety Code section 17980.12.
- C. Definitions.
  - 1. Accessory Dwelling Unit or ADU: 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 and is located on a lot with a proposed or existing primary residence. 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. Complete and Independent Living Facilities: Permanent provisions for living, sleeping, eating, cooking, and sanitation in an accessory structure located on the same parcel as a proposed or existing primary single-family or multi-family dwelling.
  - 5. 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.
  - 6. 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.



7. Junior Accessory Dwelling Unit or JADU: As defined by Government Code Section 65852.22, a JADU is a unit that satisfies all the following:
  - a. The unit is no more than 500 square feet in size.
  - b. The unit is contained entirely within an existing or proposed single-family structure.
  - c. The unit includes an efficiency kitchen, as defined in Subsection XI-10-13.08(C)(6) above.
  - d. The unit includes separate sanitation facilities or shares sanitation facilities with the existing or proposed primary dwelling.
  - e. If the unit does not include separate sanitation facilities, then it includes an interior entrance to the main living area of the existing or proposed primary dwelling in addition to an exterior entrance that is separate from the main entrance to the primary dwelling.
8. 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.
9. 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 structure.
10. 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.
11. Nonconforming Zoning Condition: A physical improvement on a property that does not conform with current zoning standards.
12. Passageway: A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.
13. Proposed Dwelling: A dwelling that is the subject of a permit application and that meets the requirements for permitting.
15. 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.
15. Tandem Parking: Two or more vehicles parked on a driveway or in a garage or any other location on a lot, lined up behind one another.

D. Approval Process. The following approvals shall apply to ADUs and JADUs under this section:

1. Requiring a Building Permit Only. ADUs and JADUs that comply with the general requirements outlined in Subsection XI-10-13.08(E) below shall be allowed with only a building permit in the following scenarios:



- a. Converted on Single-family Lot: One ADU as described in this Subsection XI-10-13.08(D)(1)(a) and one JADU are allowed on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:
  - i. Is 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 required by applicable building and fire codes.
  - iv. The JADU complies with the requirements of Government Code Section 65852.22.
- 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(D)(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 peak height above grade does not exceed the applicable height limit in Subsection XI-10-13.08(E)(3) below.
- 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(D)(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: No more than two detached ADUs are allowed on a lot that has an existing multi-family dwelling if each detached ADU satisfies the following limitations:
  - i. The side- and rear-yard setbacks are at least four feet. If the existing multifamily dwelling has a rear or side yard setback of less than four feet, the City will not require any modification to the multifamily dwelling as a condition of approval for the ADU.
  - ii. The peak height above grade does not exceed the applicable height limit provided in Subsection XI-10-13.08(E)(3) below.
  - iii. If more than one detached ADU is created, the ADUs may share a common wall.

2. Requiring a Building Permit and a Minor Site Development Permit (Minor SDP).

- a. Except as allowed under Subsection XI-10-13.08(D)(1) above, no ADU may be created without approval of a Building Permit and a Minor SDP in compliance with the standards set forth in Subsections E and F below.
- b. The City may charge a fee to reimburse the costs incurred in processing Minor SDPs for ADUs, including the costs of adopting or amending the City's ADU Ordinance. The additional fee for ADUs shall be determined by the Planning Director and approved by the City Council by Resolution.

### 3. Timing and Process for Review

- a. Any application for an ADU that satisfies the standards in Subsections XI-10-13.08(E) through (F) of this section shall be subject to ministerial approval without discretionary review or public hearing.
- b. The City shall act on an application to create an ADU or JADU within 60 days from the date the City receives a complete application. If the City has not acted on the complete application within 60 days, the application is deemed approved unless either:
  - i. The applicant requests a delay, in which the 60-day time period is tolled for the period of the requested delay; or
  - ii. The application for the ADU or JADU is submitted as part of a permit application for a new single-family or multi-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 to create the new single-family dwelling; however, the application for the ADU or JADU shall still be subject to ministerial approval without discretionary review or a hearing.
- c. 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 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 XI-10-13.08 (D)(3)(a) above.
- d. A demolition permit for a detached garage that is to be replaced with an ADU shall be reviewed with the application for the ADU and issued concurrently.

### E. General ADU and JADU Requirements. The following requirements shall apply to all ADUs and JADUs approved under Subsection XI-10-13.08(D)(1) and (D)(2) above.

#### 1. Location and Zoning.

- a. An ADU or JADU requiring only a building permit under Subsection XI-10-13.08(D)(1) above may be created on any lot located in any residential or mixed-use zone.
- b. An ADU or JADU requiring both a Minor SDP and a building permit under Subsection XI-10-13.08(D)(2) above may be created on any lot located in any zoning district that allows single-family or multi-family residential uses.

#### 2. Building and Safety.

- a. Subject to Subsection XI-10-13.08(E)(2)(b) below, all ADUs and JADUs shall comply with all local building code requirements.
- b. 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 XI-10-13.08(E)(2)(b) prevents the City from changing the occupancy code of a space that was non-habitable space or that was only permitted for nonresidential use and was subsequently converted for residential use in accordance with this section.
- c. Fire sprinklers.
  - i. Fire sprinklers are required in an ADU or JADU if sprinklers are required in the primary residence.
  - ii. The construction of an ADU or JADU does not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

### 3. Maximum Height.

- a. Except as otherwise provided by Subsections XI-10-13.08(E)(3)(b) and (E)(3)(c) below, a detached ADU created on a lot with an existing or proposed single family or multifamily dwelling unit shall not exceed 16 feet in height.
- b. A detached ADU may be up to 18 feet in height when located on a lot with an existing or proposed single-family or multifamily unit that is located within one-half mile walking distance of a major transit stop or a high quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code.
- c. A detached ADU may be up to two additional feet in height (for a maximum of 20 feet) if needed to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.
- d. A detached ADU created on a lot with an existing or proposed multifamily dwelling that has more than one story above grade shall not exceed 18 feet in height.
- e. An attached ADU shall not exceed 25 feet in height or the height limitation imposed by the standards for the underlying zoning district, whichever is less. Notwithstanding the foregoing, ADUs subject to this Subsection XI-10-13.08(E)(3)(d) shall not exceed two stories.
- f. For purposes of this Subsection XI-10-13.08(E)(3), height is measured from the finished grade to the peak of the structure.

### 4. Owner Occupancy.

- a. An ADU that is permitted after January 1, 2020, but before January 1, 2025, shall not be subject to any owner-occupancy requirement.

- b. Unless applicable law requires otherwise, all ADUs permitted on or after January 1, 2025 shall be subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property as the person's legal domicile and permanent residence.
  - c. As required by state law, all JADUs shall be 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 XI-10-13.08(E)(4)(c) shall not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.
5. No Separate Conveyance. An ADU or JADU may be rented, but, except as otherwise provided in Government Code Section 65852.26, 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 the dwellings (in the case of a multifamily lot).
6. No Short-Term Rental. 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.
7. Deed Restriction. Prior to issuance of a building permit for an ADU or JADU, a deed restriction, in a form approved by the City Attorney, shall be recorded against the title of the property in the County Recorder's office and a copy filed with the Planning Department. The deed restriction shall run with the land and bind all future owners, heirs, and assigns. The deed restriction shall provide that:
- a. Except as otherwise provided in Government Code Section 65852.26, the ADU or JADU may not be sold separately from the primary dwelling;
  - b. The ADU or JADU is restricted to the approved size and other development standards established in this Section;
  - 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;
  - d. The ADU or JADU shall not be used as a short-term rental of less than 30 days;
  - e. The deed restriction runs with the land and may be enforced against future property owner(s);f. The deed restriction may be removed if the property owner eliminates the ADU or JADU. To remove the deed restriction, an owner shall make a written request to the Planning Director and provide evidence that the ADU or JADU has been eliminated. The Director shall then decide whether the evidence supports the claim. The Director's determination may be appealed to the City Council.
  - g. The deed restriction is enforceable by the City, and failure to comply with the deed restriction may result in legal action against the property owner.
8. 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 65852.2, the following requirements must be satisfied:



- a. 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.

F. Specific ADU Requirements. The following specific standards shall apply only to ADUs that require a minor Site Development Permit under Subsection XI-10-13.08(D)(2) above.

1. Maximum Size.

- a. The maximum size of an attached or detached ADU subject to this Subsection XI-10-13.08(F) is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a two-bedroom unit. These standards shall not apply to properties located in the "H" Hillside Combining District.
- b. The maximum size of an attached or detached ADU on a property located in the "H" Hillside Combining District is 1,200 square feet.
- c. 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 or of a floor area ratio (FAR), front setback, lot coverage limit, or open-space requirement may require the ADU to be less than 800 square feet.
- d. No ADU subject to this Subsection XI-10-13.08(F) may cause the total FAR of the lot to exceed 0.45, subject to Subsection XI-10-13.08(F)(1)(c) above.

2. Minimum Setbacks.

- a. An ADU that is subject to this Subsection XI-10-13.08(F) must conform to a 25-foot minimum front-yard setback, subject to Subsection XI-10-13.08(F)(1)(c) above.
- b. An ADU that is subject to this Subsection XI-10-13.08(F) must conform to minimum 4-foot side- and rear-yard setbacks.
- c. No setback is required for an ADU that is subject to Subsection XI-10-13.08(F) if the ADU is constructed in the same location and to the same dimensions as an existing structure.

3. Building Separation. A detached ADU shall be located at least six feet from the rear wall of the primary dwelling unit.

4. Lot Coverage. No ADU subject to this Subsection XI-10-13.08(F) may cause the total lot coverage of the lot to exceed 50 percent, subject to Subsection XI-10-13.08(F)(1)(c) above.

5. Minimum Open Space. No ADU subject to this Subsection XI-10-13.08(F) may cause the total percentage of open space of the lot to be less than 50 percent, subject to Subsection XI-10-13.08(F)(1)(c) above.

6. Passageway. No passageway is required for an ADU.

7. Parking.

- a. Generally, one off-street parking space is required for each ADU unless one or more of the following conditions is met:

- i. The ADU is located within one-half mile walking distance of public transit.
- ii. The ADU is located within an architecturally and historically significant historic district.
- iii. The ADU is part of an existing primary residence or an accessory structure (i.e., it is a converted ADU under Subsection XI-10-13.08(D)(1)(a) above).
- iv. On-street parking permits are required but not offered to the occupant of the ADU.
- v. An established car share vehicle stop is located within one 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 (F)(7)(a)(i) through (v) above.
- b. No off-street parking is required for a JADU, except as required under Subsection XI-10-13.08(F)(5)(d) below.
- c. 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.
- d. 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.

#### 8. Architectural Design Standards.

- a. The materials and colors of the exterior walls, roof, and windows and doors an ADU or JADU shall match the appearance of the existing or proposed primary dwelling.
- b. The roof slope shall match that of the dominant roof slope of the primary dwelling. The dominant roof slope is the slope of the largest portion of the roof.
- c. An ADU or JADU shall have an independent exterior entrance, separate from that of the primary dwelling. 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.
- d. Exterior lighting shall be limited to down-lights (or as otherwise required by the building or fire code).
- e. The interior horizontal dimensions shall be at least 10 feet wide in every direction, with a minimum interior wall height of seven feet.
- f. Windows and doors shall 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.

- g. Windows located on the second story of an ADU or JADU shall be either clerestory with the bottom of the glass at least six feet above the finished floor or use frosted or obscure glass to preserve privacy.
- h. 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 Milpitas Fire Department.

9. Landscape Design Standards.

- a. Evergreen landscape screening shall be planted and maintained between the ADU and adjacent parcels as follows:
  - i. 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.
  - ii. 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. iii. All landscaping shall be drought tolerant.

G. Fees.

1. Impact Fees and other City Fees.

- a. No impact fee shall be required for an ADU or JADU 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. When an ADU is constructed with a new single-family dwelling, a separate utility connection directly between the ADU and the utility, and payment of the standard connection fee and capacity charge for a new dwelling, is required.
- b. Except as described in Subsection XI-10-13.08(G)(2)(a), converted ADUs and JADUs on a single-family lot that are created under Subsection XI-10-13.08(D)(1)(a) above 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.
- c. Except as described in Subsection XI-10-13.08(G)(2)(a), all ADUs and JADUs that are not covered by Subsection XI-10-13.08(G)(2)(b) require a new, separate utility connection directly between the ADU and the utility.
  - i. The connection shall be subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU on the water and sewer systems, based on either the floor area



or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code.

- ii. The portion of the fee or charge that is charged by the City may not exceed the reasonable cost of providing this service.

H. Nonconforming Zoning Code Conditions, Building Code Violations, and Unpermitted Structures.

1. The City shall 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.
  2. Unpermitted ADUs constructed before 2018.
    - a. Permit to Legalize. As required by state law, the City may not deny a permit to legalize an existing but unpermitted ADU that was constructed before January 1, 2018, if denial is based on either of the following grounds:
      - i. The ADU violates applicable building standards, or
      - ii. The ADU does not comply with Government Code section 65852.2 (State ADU law) or this ADU ordinance (MMC Section XI-10-13.08).
    - b. Exceptions:
      - i. Notwithstanding Subsection XI-10-13.08(H)(2)(a) above, the City may deny a permit to legalize an existing but unpermitted ADU that was constructed before January 1, 2018, if the Building Official makes a finding that correcting a violation is necessary to protect the health and safety of the public or of occupants of the structure.
      - ii. Subsection XI-10-13.08(H)(2)(a) above does not apply to a building that is deemed to be substandard in accordance with California Health and Safety Code section 17920.3.
- I. 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.

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