

REGULAR

NUMBER: 38.833

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTIONS 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 April 16, 2019, upon motion by Councilmember Phan, and was adopted (second reading) by the City Council at its meeting of May 7, 2019, upon motion by Councilmember Montano. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

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

NOES: (0) None

ABSENT: (0) None

ABSTAIN: (0) None

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the availability of housing is a substantial concern for individuals of all demographics, ages, and economic backgrounds in communities throughout the State of California; and

WHEREAS, accessory dwelling units and junior accessory dwelling units offer lower-cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character; and

WHEREAS, in September 2016, the Legislature passed new laws including AB 2299, SB 1069, and AB 2406 intended to increase the number of accessory dwelling units and junior accessory dwelling units by simplifying the approval process and reducing costs associated with their creation, developing new standards and regulations, and modifying the City's ability to regulate accessory dwelling units; and

WHEREAS, the State of California has established that a local agency may, by ordinance, provide for the creation of accessory dwelling units and junior accessory dwelling units in single family residential zones and that the ordinance must designate areas within its jurisdiction where accessory dwelling units may be permitted; and

WHEREAS, accessory dwelling units and junior accessory dwelling units are, by law, deemed to be residential uses consistent with existing residential zoning and General Plan designations; and

WHEREAS, the proposed Zoning Ordinance amendments comply with the legislative amendments made in 2016 to Government Code Sections 65852.2 and 65852.22, which establish standards for the development of accessory dwelling units and junior accessory dwelling units, respectively, so as to increase the supply of smaller and affordable housing while ensuring that they remain compatible with the existing neighborhood; and

WHEREAS, the City has prepared a Zoning Amendment ("Amendment") to the City's Municipal Code, including refinements to Section XI-10-2 "Definitions," Subsection XI-10-13.08 "Second Family Unit," and Section XI-10-57 "Applications" of the Municipal Code; and

WHEREAS, on February 13, 2019 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 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 (Cal. Pub. Res. Code, § 21000 et seq.) ("CEQA") and the State CEQA Guidelines (14 Cal. Code Regs., § 15000 et seq.) and is statutorily exempt from the 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. This Ordinance implements section 65852.2. Therefore, this Ordinance is 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." (Cal. Gov. 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 2

The following entries in Title XI, Chapter 10, Section 2 “Definitions,” Subsection XI-10-2.03 “Definitions,” of the Milpitas Municipal Code are hereby amended to read as follows:

“Accessory Building or Use” means a subordinate building or use, whose purpose is clearly incidental to that of the main building or the use of the land, and which shall not contain living or sleeping quarters or storage for commercial vehicles in excess of three-quarter (¾) ton size. Accessory dwelling units, as defined in subsection XI-13.08 “Accessory Dwelling Units,” are exempted from the prohibition against living and sleeping quarters. An accessory building shall be considered attached to the main building if:

1. It shares a common wall with the main building; or
It shares an integral roof structure having the same framing system and roof covering as the main building and is separated from the main structure by no more than ten (10) feet at any given point.

“Single Household Unit” means the functional equivalent of a traditional family, whose members are a non-transient interactive group of persons jointly occupying a single dwelling unit, including the joint use of common areas which are not compartmentalized, such locked cabinets or doors. A single housekeeping unit shall be limited to one (1) kitchen and shall have permanent internal access to all rooms within the dwelling unit, except as provided for Accessory Dwelling Units.

SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 4

The following text and footnote of Table XI-10-4.02-1 “Residential Zone Uses” in Title XI, Chapter 10, Section 4 “Residential Zones and Standards,” Subsection XI-10-4.02 “Residential Use Regulations of the Milpitas Municipal Code are hereby amended to read as follows:

4. Residential Uses					
Condominiums and condo conversions	NP	SFR: C Duplex: C	C	C	C
Duplex (Two dwellings)	NP	P	NP	NP	NP
Group dwelling	NP	NP	NP	C	C
Guest house	C	NP	NP	NP	NP
Manufactured home ⁴	P	P	NP	NP	NP
Multi-family dwellings (Three or more units)	NP	NP	P	P	P
Planned unit development ⁵	P	P	P	P	P
Accessory dwelling unit ⁶	P	SFR: P Duplex: P	NP	NP	NP

⁶ In conjunction with an existing or proposed legal single-family dwelling or duplex. Refer to Subsection XI-10-13.08, Accessory Dwelling Units, of this Chapter, for standards.

SECTION 6. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 13

Title XI, Chapter 10, Section 13 “Special Uses,” Subsection XI-10-13.08 “Second Family Unit” is amended as follows:

XI-10-13.08 - Accessory Dwelling Units

- A. Purpose and Intent. The purpose of these standards is to comply with Government Code Sections 65852.2 and 65852.22.

B. Definitions:

1. Accessory Dwelling Unit: As defined by Government Code Section 65852.2, an accessory dwelling unit is an attached or a detached dwelling unit which provides complete independent living facilities for one or more persons and shall include permanent provisions for living, sleeping, eating, cooking, and sanitation. An accessory dwelling unit also includes an efficiency unit as defined in Section 17958.1 of the Health and Safety Code and a manufactured home as defined in Section 8007 of the Health and Safety Code.
2. Attached Accessory Dwelling Unit: An attached accessory dwelling unit is an accessory dwelling unit that either shares, at minimum, one wall with the primary dwelling.
3. Converted Accessory Dwelling Unit: A converted accessory dwelling unit is an accessory dwelling unit that is contained within the existing space of a single-family residence or accessory structure, including, but not limited to, a studio, pool house, or other similar structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety.
4. Detached Accessory Dwelling Unit: An accessory dwelling unit is detached if it does not share any walls with the primary dwelling unit or existing attached accessory structure.
5. Efficiency Kitchen: As defined by Government Code Section 65852.22(a)(6), an efficiency kitchen includes all of the following: (a) a sink with a maximum waste line diameter of one-and-a-half (1.5) inches, (b) A cooking facility with appliance which do not require electrical service greater than one-hundred-and twenty (120) volts or natural or propane gas, and (c) a food preparation counter and storage cabinets that are reasonable to size of the unit.
6. Junior Accessory Dwelling Unit: As defined by Government Code Section 65852.22, a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling must be constructed within the existing walls of the structure and incorporate an existing bedroom. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.
7. Living Area: As defined by Government Code Section 65852.2, the interior habitable area of a dwelling unit including basements and attics not including a garage or any existing accessory building or structure.
8. Public Transit: Any form of public transportation that runs on fixed routes and 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.

C. General Provisions

1. Existing Use. A single accessory dwelling unit may be established on any lot in any district where a single-family detached primary dwelling or two-family dwelling has been legally established or is proposed to be established in conjunction with construction of an accessory dwelling-unit.
2. Number. A maximum of either one accessory dwelling unit or junior accessory dwelling unit is permitted on any lot.
3. Owner Occupancy. Either the primary dwelling unit or the accessory dwelling unit or junior accessory dwelling unit must be occupied by the owner as the owner's primary residence and legal domicile.

4. Number of Bedrooms and Kitchen. In non-Hillside zoning districts, an accessory dwelling unit may not have more than one bedroom or more than one kitchen. In the Hillside zoning district, an accessory dwelling unit may not have more than two bedrooms or more than one kitchen.
5. Sale Prohibited. The primary dwelling unit and accessory dwelling unit must be held under the same ownership and may not be sold separately.
6. Rental. The accessory dwelling unit may be rented.

D. Specific Standards

1. Attached Accessory Dwelling Unit.

- a. An attached accessory dwelling unit must comply with the same objective building height, setback (except as provided in (viii) below), and lot coverage requirements as the primary dwelling per Section XI-10-4.04 - Residential Zone General Development Standards and Sections XI-10-45.04 – Height Regulations and XI-10-45.05 – Yard Requirements for lots within the Hillside Combining District, except that where an accessory unit is constructed above a detached garage the setback for that accessory dwelling unit must be at least five feet from the side and rear lot lines.
- b. In a non-Hillside Combining District, the floor area of an attached accessory dwelling unit may not exceed 50 percent of the existing living area of the primary dwelling or 800 square feet, whichever is smaller. When located on a lot with a two-family dwelling, the floor area of an attached accessory dwelling unit may not exceed 50 percent of the existing living area of the smaller of the two units.
- c. The increased floor area of an attached accessory dwelling unit in the Hillside combining district may not exceed 50 percent of the existing living area or 1,200 square feet, whichever is smaller. However, in no case shall the overall building size exceed that allowed in Section XI-10-45-17 – Maximum Size of Residence Accessory Structures and Impervious Surface Coverage.
- d. An attached accessory dwelling unit must match the architectural style, roof pitch, exterior materials, and color palette of the existing primary dwelling.
- e. The accessory dwelling unit may not encroach into a public utility easement.
- f. Where an attached garage that was legally constructed is converted to an accessory dwelling unit, no greater setback shall be required, but the resulting accessory dwelling unit must conform to height, lot coverage, and other requirements of this Section.

2. Converted Accessory Dwelling Unit. A converted attached accessory dwelling unit must:

- a. be contained entirely within the existing space of a single-family residence or accessory structure,
- b. have independent exterior access from the existing residence, and
- c. have rear and side-yard setbacks that are sufficient for fire safety.

3. Detached Accessory Dwelling Unit.

- a. A detached accessory dwelling unit in a non-Hillside combining district must be located on the rear half of the lot, and no farther than 100 feet from the primary dwelling, or two-family

dwelling. The minimum setback for a detached accessory dwelling unit from the side property line is zero, as long as it is sufficient for fire safety, and 10 feet from the rear property line. When located on a lot with a single-family residential dwelling, the floor area of an accessory dwelling unit may not exceed 50 percent of the existing living area of the primary dwelling or 800 square feet, whichever is smaller. When located on a lot with a two-family dwelling, the floor area of the accessory dwelling unit may not exceed 50 percent of the existing living area of the smaller of the two units. The height of a detached accessory dwelling unit may not exceed two stories or 28 feet. Windows located on the second-story of a detached accessory dwelling unit must be either clerestory or consist of obscured glazing.

- b. A detached accessory dwelling unit in the Hillside combining district may not exceed two stories or 27 feet from the finished grade to the highest ridgeline of the building, and its floor area may not exceed 50 percent of the living area of the primary dwelling or 1,200 square feet, whichever is smaller. It must be located on the rear half of the lot, no farther than 100 feet from the primary dwelling. It may not cover more than 50 percent of the required rear yard area. It must match the same side yard setback at which the primary dwelling is built. Its floor area counts towards the maximum allowed impervious surface coverage for the parcel on which it is located. Windows located on the second-story of a detached accessory dwelling unit must be either clerestory or consist of obscured glazing.
- c. A detached accessory dwelling unit may be a manufactured home as defined in Section 18007 of the Health and Safety Code, subject to the development standards in this Section.
- d. A detached accessory dwelling unit must match the architectural style, roof pitch, exterior materials, and color palette of the existing primary dwelling.
- e. Where an accessory dwelling unit is constructed above a garage, the setback for that unit is no more than five feet from the side and rear lot lines, and the unit must conform to the standards of this Section, and other requirements of the zoning ordinance, and other applicable City codes.
- f. A detached accessory dwelling unit must be located at least six feet to the rear of the primary dwelling unit.
- g. Two-story detached accessory dwelling units not located above a garage in non-Hillside Combining districts shall have a minimum side yard setback of five feet and a minimum rear yard setback of 10 feet.

4. Parking.

- a. The owner must provide one additional off-street parking space for the accessory dwelling unit unless one of the following conditions is met:
 - i. The accessory dwelling unit is located within one-half mile of public transit.
 - ii. The accessory dwelling unit is located within an architecturally and historically significant historic district.
 - iii. The accessory unit is part of an existing or proposed primary residence or accessory structure (i.e., it is a converted ADU).
 - iv. On-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
 - v. When there is a car share vehicle located within one block of the accessory dwelling unit.
- b. If a parking space is required for an accessory dwelling unit, the space must comply with all development standards set forth in Section XI-10-53 – Off-Street Parking Regulations, except that the parking space may be located within any setback area, in a tandem configuration, or on a mechanical lift.

c. Required parking for the primary dwelling may not be removed for the creation of an accessory dwelling unit (e.g., garage conversions), or allocated to meet the parking requirement for the accessory dwelling unit, unless replacement parking is provided in accord with this Section. Replacement parking spaces for the primary dwelling unit may be located in any configuration on the site, such as covered spaces, uncovered spaces, tandem spaces, or on mechanical parking lifts, subject to the City of Milpitas Engineering Division residential driveway development standards.

d. If the primary dwelling is nonconforming because it does not meet parking standards, an accessory dwelling unit may be established when parking for the primary dwelling unit is provided to meet the applicable requirements of Section XI-10-53 – Off-Street Parking Regulations. Parking for the primary dwelling unit may be located in any configuration on the site, such as covered spaces, uncovered spaces, tandem spaces, or mechanical parking lifts, subject to the City of Milpitas Engineering Division residential driveway development standards.

E. Junior Accessory Dwelling Units

1. A junior accessory dwelling unit is a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. The junior accessory dwelling unit must incorporate an existing bedroom and must be within the existing footprint of a structure and may only include an efficiency kitchen. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

a. Junior accessory dwelling units must comply with the following standards:

- i. Only one accessory junior accessory dwelling unit may be located on any lot that a primary single unit dwelling has been legally established or is proposed to be established in conjunction with construction of a junior accessory dwelling unit.
- ii. A junior accessory dwelling unit may only be located on a lot which already contains one legally established or proposed to be established single-family dwelling. A junior accessory dwelling unit must be created within the existing walls of an existing primary dwelling, and must include conversion of an existing bedroom.
- iii. A separate exterior entry must be provided to serve a junior accessory dwelling unit.
- iv. The interior connection to the main living area must be maintained, but a second door may be added for sound attenuation.
- v. The junior accessory dwelling unit must include an efficiency kitchen, requiring and limited to the following components:
 - a) A sink with a maximum waste line diameter of one-and-a-half (1.5) inches,
 - b) A cooking facility with appliance which do not require electrical service greater than one-hundred-and twenty (120) volts or natural or propane gas, and
 - c) A food preparation counter and storage cabinets that are reasonable to size of the unit.
- vi. The minimum total area of floor space of a junior accessory dwelling unit must be at least the minimum area of an efficiency unit as described in Section 17958.1 of the California Health and Safety Code but may not exceed a maximum of 500 square feet of floor area.
- vii. No additional parking is required.
- viii. The owner of a parcel proposed for a junior accessory dwelling unit must occupy as a principal residence either the primary dwelling unit or the junior accessory dwelling unit.
- ix. A junior accessory dwelling unit may not be sold independently of the primary dwelling on the parcel.
- x. Prior to obtaining a building permit for a junior accessory dwelling unit, a deed restriction, approved by the City Attorney, must be recorded with the County Recorder's office, which must include the pertinent restrictions and limitations of a junior accessory dwelling unit identified in this Section. Said deed restriction must run with the land and bind all future owners, heirs, and assigns. A copy of the recorded deed restriction must be filed with the Department stating that:

- a) The junior accessory dwelling unit may not be sold separately from the primary dwelling unit;
 - b) The junior accessory dwelling unit is restricted to the maximum size allowed per the development standards;
 - c) The junior accessory dwelling unit is legal only so long as either the primary residence, or the junior accessory dwelling unit, is occupied by the owner of record of the property;
 - 2. These junior accessory dwelling unit restrictions bind every successor in ownership of the property and a lack of compliance with this provision may result in legal action against the property owner, including revocation of any right to maintain a junior accessory dwelling unit on the property.
- F. Other Standards.
- 1. Any accessory dwelling unit must meet the minimum requirements of an efficiency unit, as defined by Section 17958.1 of the State Health and Safety Code, and may not have a floor area that is smaller than 150 square feet.
 - 2. A permanent foundation shall be required for all accessory dwelling units.
 - 3. Every accessory dwelling unit must comply with local building code requirements.
 - 4. An accessory dwelling unit that conforms to the requirements of this section is not considered to exceed the allowable density for the lot upon which it is located and must be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. An accessory dwelling unit may not be considered in the application of any local ordinance, policy, or program to limit residential growth.
- G. Review Requirements. Any application for accessory dwelling unit that satisfies the standards in this Section will be approved ministerially without discretionary review or public hearing. An application that does not satisfy the standards in this Section are subject to a Minor Site Development Permit in accordance with Section XI-10-57 “Applications.”

SECTION 7. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XI, CHAPTER 10, SECTION 57

Title XI, Chapter 10, Section 57 “Applications,” Subsection XI-10-57.03 “Site Development Permits and Minor Site Development Permits,” Table XI-10-57.03-1 “Additions or Alterations Requiring Minor Site Development Permits” of the Milpitas Municipal Code is hereby amended to read as follows:

Project Type	Planning Commission Subcommittee	Staff review
Accessory Buildings	<p>A. Non-Residential and Mixed Use Districts:</p> <p>1. Accessory buildings up to 2,500 square feet in area, provided that the proposed structure is not adjacent to a residential or Mobile Home Park Overlay (-MHP) district or use, and provided that building height, parking, setback, yard coverage, Floor Area Ratio, landscaping, open space and other ordinance requirements are met. The following shall also apply:</p> <p>a. Accessory buildings must be located on the rear half of the lot. On corner lots, the accessory building must be set back from the adjacent street at least as far as the main building.</p> <p>b. Accessory buildings must be of permanent construction (no modular buildings or metal buildings) with the exception of small pre-fabricated structures for chemical storage and the like, so long as such structures are adequately screened from public rights-of-way.</p>	<p>A. Residential Only</p> <p>1. Accessory buildings in residential districts (excluding -H Combining District), provided building height, parking, setback, yard coverage and other ordinance requirements are met. The following shall also apply:</p> <p>a. Accessory buildings for conditional uses in Residential R1 and R2 districts and for permitted and conditional uses in R3 and R4 districts shall comprise building materials, colors and style which complement the existing main structure.</p> <p>2. Accessory dwelling units that do not meet the standards set forth in Section XI-10-13.08(C), General Provisions and Section XI-10-13.08(D) Specific Standards</p> <p>B. All zones</p> <p>1. Community emergency caches as defined in</p>

	c. Architecture shall match that of the existing building in terms of material, colors, style, etc.	Subsection XI-10-2.03, Definitions, of this Chapter are exempt. Refer to Subsection XI-10-54.08(B)(12) for performance standards.
Building Additions	<p>A. Non-residential and Mixed Use Districts:</p> <p>1. All non-residential and mixed use building additions for legal, conforming buildings not adjacent to residential or Mobile Home Park Overlay District or use.</p> <p>a. Size of building addition shall not exceed 10,000 square feet or ten percent (10%) of the existing building gross floor area, whichever is less. Calculation shall cumulatively count all additions or enlargements completed since June 20, 2003.</p> <p>b. In addition to other development standards, the following shall also apply:</p> <p>i. Architecture shall match that of existing building in terms of material, colors, style, etc.</p> <p>ii. The height of the addition shall not exceed the height of the adjacent portion of the existing building.</p> <p>B. Residential Districts</p> <p>1. All single-family dwellings in Hillside (-H) PUDs which are specifically conditioned not to require Planning Commission or City Council review for building additions (refer to Section XI-10-56, Non-Conforming Buildings and Uses, of this Chapter regarding non-conforming buildings). In addition to other development standards, the following shall also apply:</p> <p>a. Existing front yard paving shall be brought into conformance.</p>	<p>1. Residential building additions in R1 and R2 districts.</p> <p>2. Residential building additions in multi-family districts up to 200 square feet.</p> <p>3. All single-family dwellings in Hillside (-H) Overlay PUDs which specifically allow for staff approval. (refer to Section XI-10-56, Non-conforming Buildings and Uses, of this Chapter regarding non-conforming buildings). In addition to other development standards, the following shall also apply:</p> <p>a. Existing front yard paving shall be brought into conformance.</p> <p>b. The addition shall comprise building materials, colors and style which complement the existing structure.</p> <p>4. Accessory dwelling units that do not meet the standards set forth in Section XI-10-13.08(C), General Provisions and Section XI-10-13.08(D) Specific Standards</p>

SECTION 8. 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 9. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after 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.