

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING SECTIONS 20.42 ("ACCESSORY
DWELLING UNITS") OF THE MERCED
MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN
AS FOLLOWS:

SECTION 1. AMENDMENT TO CODE. Chapter 20.42, "Accessory Dwelling Units," of the Merced Municipal Code is hereby repealed and amended to read as follows:

"20.42 Accessory Dwelling Units

Sections:

20.42.010 Purpose and Applicability

20.42.020 ~~Minor Use Permit Required~~ Application Process and Review and Nonconforming Conditions

20.42.030 Type and Number of ADUs and Site and Design Standards

20.42.040 Occupancy Standards and Fee Requirements

20.42.050 Standards for Junior Accessory Dwelling Units (JADUs)

20.42.010 Purpose and Applicability

This chapter establishes standards for the ~~location and construction~~ development of accessory dwelling units ("ADUs") in conformance with Government Code Section 65852.2 and 65852.22. These standards are intended to allow for accessory dwelling units and junior accessory dwelling units as an important form of affordable housing while preserving the character and integrity of residential neighborhoods within the City.

The provisions of this chapter apply to all parcels in the City of Merced that are zoned residential or allow residential uses.

20.42.020 Minor Use Permit Required Application Process and Review and Nonconforming Conditions

Approval of a Minor Use Permit is required prior to the establishment of any accessory dwelling unit or a subdivision with multiple accessory dwelling units

A. Ministerial Review. A permit application for an accessory dwelling unit (ADU) or junior accessory dwelling (JADU) may be allowed with ministerial review, approval, and issuance of a building permit, without discretionary review or a public hearing. The correction of nonconforming zoning conditions (“a physical improvement on a property that does not conform to zoning standards”) or the installation of public improvements cannot be required as a condition for ministerial approval.

B. Processing Time. If there is an existing single-family or multi-family dwelling on the parcel, the City shall act on the application to create an ADU or a JADU within 60 days from the date a complete application is received, unless either:

1. The applicant requests a delay, in which case the 60-day time period shall be tolled for the period of the delay; or,
2. The construction of a single-family dwelling is proposed at the same time as a construction of an ADU or a parcel, in which case, the City shall not approve the permit for the ADU prior to the permit for the single-family dwelling and shall not issue the Certificate of Occupancy for the ADU prior to the Certificate of Occupancy for the single-family dwelling.

If the local agency has not acted upon the complete application within 60 days, and neither of the above criteria is met, the application shall be deemed approved.

C. Nonconforming Conditions. Notwithstanding Chapter 20.52 (Nonconforming Parcels, Uses, and Structures) to the contrary, an owner of an ADU or JADU that receives a notice to correct violations or abate nuisance, in relation to the ADU or JADU, may request a delay for 5 years in enforcement of a building standard, as long as the violation is not a health and safety issue as determined by the City of Merced, subject to compliance with the Health and Safety Code Section 17980.12 and the following conditions:

1. The ADU was built before January 1, 2020; or,
2. The ADU was built on or after January 1, 2020 in a local jurisdiction with a noncompliant ADU ordinance, but the ordinance is compliant at the time the request is made; and,
3. The City shall not approve any such applications after January 1, 2030; and,
- ~~4.~~ This section shall remain in effect only until January 1, 2035 and as of that date is repealed.

20.42.030 Type and Number of ADUs and Site and Design Standards

A. Location. Accessory dwelling units shall be permitted in districts zoned to allow single-family or multi-family residential or mixed use as provided in Part 2 (Zoning Districts).

B. Types of Accessory Dwelling Units. An accessory dwelling unit (ADU) approved under this Chapter may take any of the following forms:

1. **Attached.** An ADU may be a new habitable space attached to an existing or proposed single-family dwelling.
2. **Detached.** An ADU may be a new detached habitable structure located on the same parcel as an existing or proposed single-family dwelling.

3. **Converted.** An ADU may be located within areas converted to habitable space that complies with the California Building Code for a dwelling, such as:

- a) An area within an existing single-family dwelling (e.g. an attached garage); or,
- b) An existing accessory structure (e.g. a detached garaged or pool house) located on the same parcel as the single-family dwelling; or,
- c) Portions of existing multi-family structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages.

4. **Junior Accessory Dwelling Unit (JADU).** A JADU is a dwelling, contained entirely within an existing or proposed single-family dwelling, that is a maximum of 500 square feet in size. A JADU may include separate facilities or may share sanitation facilities with the existing single-family dwelling. JADUs shall comply with Section 20.42.050 (Standards for Junior Accessory Dwelling Units).

C. **Number of Accessory Dwelling Units Permitted Per Parcel**

1. **Parcels with a Single-Family Dwelling.**

One ADU (converted, attached, or detached) and one JADU shall be allowed per lot with a proposed or existing single-family dwelling in conformance with the rest of this Chapter.

2. **Parcels with Multi-Family Dwelling(s).**

a. **Converted ADUs.** The number of converted ADUs, on a parcel with an existing multi-family dwelling, shall not exceed 25 percent of the total number of dwelling units.

b. **Detached ADUs.** Not more than two detached ADUs may be located on a parcel that contains an existing multi-family dwelling.

B.D. Site Requirements

1. **No Minimum Parcel Size.** Accessory dwelling units that comply with this chapter shall be permitted on all legally established ~~residential~~ parcels, regardless of parcel size. ~~so long as the parcel size permits at least an 'efficiency unit' to be constructed in compliance with local design standards. [An 'efficiency unit' provides for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities.]~~
2. ~~_____~~ An accessory dwelling unit may only be established if a single-family dwelling unit ("primary dwelling") exists on the parcel or is being built at the same time.
- ~~2.3.~~ **Statewide Exemption ADU.** No lot coverage, floor area ratio, open space, or minimum lot size requirement shall preclude the construction of an ADU up to 800 square feet, 16 feet in height, and with 4-foot side and rear yard setbacks. The construction of a detached Statewide Exemption ADU may be combined with a Junior ADU within any zone allowing residential or mixed use.

C.E. Size/Floor Area

1. *Attached or Converted Accessory Dwelling Units.* The floor area of an attached ~~second unit or converted~~ ADU shall not exceed 50 percent of the living area of the ~~primary-existing primary single-family~~ dwelling on the parcel or 1,200 square feet, whichever is less. Garages and carports are excluded from floor area calculations for both the primary dwelling and accessory unit.
2. *Detached Accessory Dwelling Units.* The floor area of a detached accessory dwelling unit shall not exceed 1,200 square feet, excluding any space devoted to a carport or garage.

~~D. Relationship to Primary Dwelling~~

~~1. An accessory dwelling unit may be within, attached to, or detached from the primary dwelling, or within an attached or detached accessory structure. Attachment to the primary dwelling shall be by sharing a common interior wall or common roof.~~

~~2. An accessory dwelling unit shall have its own kitchen, bathroom facilities, and entrance separate from the primary dwelling.~~

~~3. The accessory dwelling unit shall be clearly subordinate to the primary dwelling by size.~~

E.F. Development Standards

1. An accessory dwelling unit shall comply with all current development and design standards of the General Plan and Zoning Ordinance that are applicable to the primary dwelling, including, but not limited to, building setbacks, parcel coverage, building height, and architectural design, with certain exceptions, discussed ~~herein in this Chapter. As long as existing setbacks are sufficient for fire safety, no setback shall be required for an accessory dwelling unit contained within the existing space of a single-family residence or accessory structure, including an existing garage, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit constructed above a garage.~~

2. The accessory dwelling unit (ADU) in compliance with this section shall not be considered to exceed the allowable density for the lot upon which it is located and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot. The ADU shall be deemed to be an accessory use or accessory building and shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

3. No lot line adjustment, ~~-subdivision -of land,~~ air rights or condominium shall ~~-be allowed -to enable-~~ the sale, transfer, or disposal of the accessory dwelling unit independently of the primary dwelling unit or any portion of the property except in accordance with MMC 20.42.040(C). This stipulation shall be included in a recorded deed restriction on the property.

4. ~~The accessory dwelling unit must be eligible to receive City sewer and water services. Creation of a detached accessory dwelling unit may require installation of a new or separate utility connection. An ADU or JADU shall only be allowed on parcels connected to public water and sewer service.~~

F.G. Design Requirements

1. **Height.** ~~The height of an attached or converted An~~ accessory dwelling unit shall ~~be compatible with the primary dwelling and the surrounding neighborhood with respect to structure height, scale, and massing~~ not exceed the height of the existing single-family dwelling. The height of a detached ADU on a parcel containing a multi-family dwelling may not exceed 16 feet.

2. **Finish Materials and Roof Form.** ~~The architectural design and detailing, roof color and material, and exterior color and finish materials of an accessory dwelling unit shall match the primary dwelling to the extent possible. The ADU or JADU entrance shall have the same exterior finish materials as the existing or proposed single-family dwelling on the parcel and shall be of the same construction typical of other dwelling units in the zone. The ADU or JADU shall have the same roof form as the primary dwelling and shall not have a flat roof.~~

3. **Setbacks.** ~~The parcel shall retain a single-family appearance and the accessory dwelling unit shall be integrated into the design of the existing improvements of the property.~~

a. When an existing detached accessory structure is

converted to a detached ADU, no additional setbacks shall be required.

- b. When an ADU is constructed above a detached garage, a four-foot side and four-foot rear setback are required.
- c. No additional setbacks shall be required when a new structure containing an ADU is constructed in the same location (and to the same dimensions as the existing detached accessory structure).
- d. Four-foot side and four-foot rear setbacks shall be required for detached ADUs on parcels containing either existing single or multi-family dwellings.

4. Addresses. The addresses of both the primary dwelling and the accessory dwelling unit shall be displayed and clearly visible from the street for public safety purposes.

3.5. Fire Sprinklers and Passageways. Fire sprinklers are not required to be provided with an ADU if they are not required for the single-family dwelling. No passageway defined as “a pathway that is not unobstructed, clear to the sky, and extends from a street to one entrance of an ADU or JADU” shall be required.

G.H. Parking

1. ~~Accessory dwelling units with at least one bedroom shall provide one additional off-street parking space in addition to those spaces required for the primary dwelling. Off-street parking may be provided in the setback areas or as tandem parking on a driveway, unless the City determines that such options are not feasible on the existing property, based on fire and life safety conditions. A maximum of one additional off-street parking space shall be provided for an accessory dwelling unit or per bedroom, whichever is less. Parking for an ADU may be provided as tandem parking on an existing driveway or in the front or rear setback areas.~~ These spaces ~~may~~ **shall** not be covered if located within the setback areas.

2. When all or a portion of a garage, carport, or other parking structure is converted or demolished to construct an accessory dwelling unit, the parking spaces displaced by the conversion ~~may be allowed in any configuration on the lot, including, but not limited to, covered spaces, uncovered spaces, or tandem spaces, or by use of mechanical automobile parking lifts~~ are not required to be replaced.

3. The parking standards provided in this section and otherwise in this code do not apply to an accessory dwelling unit in any of the following instances: (a) it is located within one-half mile walking distance of public transit (defined as “a location including but limited to a bus stop or train station, where the public may access trains, subways, buses, or other forms of transportation that charges set fares, runs on fixed routes, and are available to the public”); (b) it is located within an official architecturally and historically significant historic district; (c) it is part of the proposed or existing primary residence or an accessory structure; (d) on-street parking permits are required but not offered to occupants of an accessory dwelling unit; ~~and,~~ (e) a car share vehicle is located within one block of the accessory dwelling unit; and (f) the ADU is an attached or converted ADU. To qualify for any of the above exemptions, the applicant shall provide supporting evidence as part of a ~~Minor Use Permit or~~ building permit application.

20.42.040 Occupancy Standards and Fee Requirements

A. *Owner Occupancy.* The City shall not impose owner occupancy requirements on any ADU²s or associated primary dwellings permitted between January 1, 2020, and January 1, 2025. After January 1, 2025, the following section shall apply. The owner of a parcel with an accessory dwelling unit shall be permitted to rent either the primary unit or the accessory dwelling unit, but not both, and may reside in either the primary dwelling unit or the accessory

dwelling unit, if the accessory dwelling unit is located within an R-1 Zoning District or equivalent designation in a Planned Development or Residential Planned Development only. This requirement does not apply to any other Zoning Districts.

A.B. Rental Term. An ADU or JADU may be rented, provided the rental term is at least 30 continuous days or more. Non-continuous or transient occupancy is prohibited.

~~B.C. Deed Restrictions/ Separate Conveyance. Prior to the issuance of a building permit for an accessory dwelling unit in an R-1 Zoning District, a covenant of restriction to run with the land shall be recorded by the property owner which specifies that the accessory dwelling unit cannot be sold separately, transferred, or otherwise disposed of independently from the primary dwelling unit that the property owner shall reside in either the primary or accessory dwelling unit, and that these restrictions shall be binding on successors in ownership. An ADU shall not be sold or otherwise conveyed separately from the principal residence, except when sold by a qualified nonprofit corporation to a qualified buyer in accordance with Government Code Section 65852.26 with affordability restrictions.~~

~~C.D. Fees and Other Requirements.~~

1. Accessory dwelling units are not a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service unless the ADU or JADU is constructed with a new single-family dwelling; and any utility fee or charge imposed on the creation of a detached accessory dwelling unit must not exceed the reasonable cost of providing the service.

2. Accessory dwelling units contained within the existing space of a single family residence or accessory structure ~~that have an independent exterior access and setbacks that meet fire safety requirements~~ are not required to install a new or separate utility connection

and cannot be charged for a related connection fee or capacity charge.

3. A new accessory dwelling unit shall be required to pay all applicable fees, including impact fees. _

However, no impact fees shall be imposed on ADUs of less than 750 square feet. For an ADU larger than 750 square feet, any impact fee shall be charged proportionately in relation to the square footage of the single-family dwelling.

4. Prior to occupancy of the accessory dwelling unit, a new address shall be assigned by Department of Development Services."

5. A JADU shall not be considered a separate or new dwelling for the purposes of providing service for water, sewer, and/or power.

20.42.050 Standards for Junior Accessory Dwelling Units (JADUs)

A. All other provisions for ADUs in this chapter shall also apply to Junior Accessory Dwelling Units (JADUs) except as provided below.

B. Location. A JADU shall be entirely within the walls of an existing or proposed single-family dwelling.

C. Number. A maximum of one JADU is allowed per parcel within an existing or proposed single-family dwelling.

D. Size. A JADU shall not exceed 500 square feet in size.

E. Entrance.

1. A JADU shall have an entrance that is separate from the main entrance of the existing or proposed single-family dwelling.
2. A Converted ADU or JADU may include an expansion of a maximum 150 square feet beyond the physical dimensions as the existing accessory structure or single-family dwelling. This expansion shall be limited to accommodating ingress and egress from the ADU or JADU.

F. Kitchen. A JADU shall include an efficiency kitchen which shall include all of the following:

1. Cooking facilities with appliances; and,
2. Food preparation counter and storage cabinets that are of reasonable size in relation to the size of the JADU.

G. Owner Occupancy. The owner shall reside on the property in either the newly created JADU or the remaining portion of the single-family dwelling, unless the owner is a governmental agency, land trust, or housing organization.

H. No Separate Conveyance. A JADU shall not be sold or otherwise conveyed separately from the single-family dwelling on a parcel, except when sold to a qualified buyer in accordance with Government Code Section 65852.26.

I. Deed Restriction. Prior to issuance of a Building Permit, a deed restriction shall be recorded on the property indicating the following:

1. The size of the JADU is restricted to a maximum of 500 square feet; and the JADU shall contain cooking facilities with appliances and food preparation counter and storage cabinets that are of reasonable size in relation to the size of the JADU;
2. The deed restriction shall run with the land and may be enforced against future property owners;
3. Owner-occupancy is required in either the JADU or the remaining portion of the single-family dwelling; and,
4. The JADU shall not be sold or otherwise conveyed separately from the single-family dwelling.

SECTION 2. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, 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 hereby declares that it would have adopted this Ordinance, and each 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 4. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 2021, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2021, by the following called vote:

AYES: **Council Members:**

NOES: **Council Members:**


ABSTAIN: **Council Members:**

ABSENT: **Council Members:**

APPROVED:

Mayor

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: 

Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney **Date**