

ORDINANCE NO. 18-___

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES
APPROVING ZONING TEXT AMENDMENT #ZTA 18-01 REPEALING AND
REPLACING SECTION 35.320 AND AMENDING SECTION 60.200 OF THE ZONING
ORDINANCE RELATED TO ACCESSORY DWELLING UNITS, AND FINDING THAT
THIS ORDINANCE IS EXEMPT FROM CEQA**

WHEREAS, the California Legislature requires and authorizes cities to provide for secondary, smaller housing units on residential parcels, at Government Code sections 65852.1 et seq.; and

WHEREAS, the California Legislature recently passed several amendments to Government Code sections 65852.1 et seq., including but not limited to SB 1069 and AB 2299, and these amendments designate and define secondary dwelling units as “accessory dwelling units” (ADUs), streamline their approval, minimize parking requirements for ADUs, and otherwise encourage local approval of ADUs; and

WHEREAS, the City currently provides for ADUs at section 35.320 of the Zoning Ordinance, and as a result of the recent changes to state law, the City proposes to update its existing requirements and make consistent amendments to definitions within the Zoning Ordinance to conform to current state law (collectively, the “Zoning Text Amendment”); and

WHEREAS, the Planning Commission had a study session regarding the recent changes in state law at their August 7, 2017 and January 16, 2018 meetings and made recommendations to staff regarding amending section 35.320 of the Zoning Ordinance; and

WHEREAS, the Planning Commission held a properly noticed public hearing on February 20, 2018 and adopted Resolution 18-03 recommending that the City Council approve the Zoning Text Amendment; and

WHEREAS, Section 52.400 of City of Hercules Zoning Ordinance allows for amendments of the Zoning Ordinance whenever the City Council determines that the proposed amendment is consistent with the General Plan; would not be detrimental to the health, safety, welfare, and public interest of the City; and that the proposed amendment is internally consistent and does not conflict with the purposes, regulations and required findings of the Zoning Ordinance; and

WHEREAS, in accordance with Chapter 52 (Zoning Amendments) of the City of Hercules Zoning Ordinance, the City Council received and considered the Zoning Text Amendment at a properly noticed public hearing on March 13, 2018 to consider the Zoning Text Amendment and related environmental review and did hear and use its independent judgment to consider all reports, recommendations, and testimony before taking any action on this Zoning Text Amendment.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HERCULES DOES
HEREBY ORDAIN AS FOLLOWS:**

After due study and deliberation, and after convening a public hearing for the proposed Zoning Text Amendment #ZTA 18-01 in accordance with Section 52.400 of the Zoning Ordinance of the Hercules Municipal Code, the City Council finds that #ZTA 18-01 is consistent with the General Plan; would not be detrimental to the health, safety, welfare, and public interest of the City; and that it is internally consistent and does not conflict with the purposes, regulations and required findings of the Zoning Ordinance.

SECTION 1. Compliance with California Environmental Quality Act (“CEQA”): The City Council determined that the Zoning Text Amendment is categorically exempt from CEQA pursuant to section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that the Zoning Text Amendment will not have a significant effect on the environment. The City Council also determined that the Zoning Text Amendment is categorically exempt from CEQA pursuant to section 15303(a) of the CEQA Guidelines because it governs construction of second dwelling units in residential zones.

SECTION 2.

Title 10 of the Hercules Municipal Code Zoning Ordinance Section 35.320 - Second Residential Units is hereby repealed and to be replaced with the following text:

35.320 Accessory Dwelling Units

1. Purpose. This section is intended to implement the General Plan policies which encourage Accessory Dwelling Units (ADUs) on owner-occupied, single family residential parcels, and is also intended to address the State's ADU provisions as set forth in Government Code Section 65852.1 et seq. ADUs are commonly referred to as second units, in-law-units, and accessory-apartments, and contribute needed housing to the City’s housing stock.

2. Administrative Use Permit Required. Except as set forth in this section 35.320, all ADUs are subject to administrative use permit requirements as set forth in Chapter 50 of the Zoning Ordinance. The Planning Director shall issue an administrative use permit to ADUs in compliance with this section 35.320. No public hearing or any additional permit shall be required of applicants seeking an administrative use permit for an ADU under this section.

3. Definitions.

A. *Accessory Dwelling Unit (ADU).* An ADU shall consist of complete independent living facilities for one or more persons including permanent provisions for sleeping, living, eating, cooking, and sanitation. An ADU shall have a separate exterior entrance. An efficiency unit as defined in Health and Safety Code section 17958.1 and a manufactured home as defined in Health and Safety Code section 18007 are considered ADUs.

B. *Living Area.* Living area includes the interior habitable area of a dwelling unit including basements and attics, but does not include a garage or any accessory structure.

4. Lot Requirements. ADUs are allowed in single family residential zoning districts where there is exactly one single family residence on the parcel, and in other districts where there is exactly one conforming single family residence on the parcel. A maximum of one ADU is allowed on a lot. No Administrative Use Permit will be issued for an ADU unless and until the City receives the following:

A. Proof of owner occupancy of either the single family residence or of the ADU;

B. A copy of a recorded deed restriction that complies with Government Code section 27281.5 and states that (i) owner occupancy of the single family residence or ADU is required by this Chapter, and (ii) the ADU will not be sold separately from the single family residence; and

C. Any fees for Multi-Family units required by the City's Master Fee Schedule (excluding ADUs within existing living spaces) as it exists at the time the ADU application is filed. All fees are subject to the requirements of Government Code 65852.2 and the Mitigation Fee Act.

5. Development Standards.

A. *ADUs within existing space.* An ADU within an existing residential space, including the primary structure, attached or detached garage, or other accessory structure existing on January 1, 2017 shall not require an administrative use permit pursuant to this section, and shall instead only be subject to building permit requirements, only if the following requirements are met:

- (i) The ADU meets all applicable building and safety codes.
- (ii) The ADU has independent exterior access from the existing residence.
- (iii) The ADU has sufficient side and rear setbacks for fire safety.

An ADU created under this section 5.A may, but is not required to, create new or separate utility or sewer connections.

B. *Attached ADUs.* ADUs attached to an existing dwelling shall = not exceed the lesser of fifty percent (50%) of the existing living area or 1200 square feet. Attached ADUs shall meet all applicable building code requirements. For ADUs constructed above an existing garage, the City shall not impose any setback requirements from the side and rear lot lines that exceed five (5) feet. An ADU created under this section 5.B may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer.

C. *Detached ADUs.* ADUs not attached to an existing dwelling shall meet all applicable building code requirements, shall not exceed the lesser of 50% of the existing living area or 1200 square feet, and shall conform to the applicable standards and requirements of the zoning district in which it is located, including height and setback requirements. An

ADU created under this section 5.C may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer.

6. Design Standards. To the extent feasible, an ADU must conform to the design characteristics of the existing single family residence, including but not limited to architectural and landscaping features, building materials, and paint color.

7. Fire Sprinklers. ADUs shall comply with all applicable fire safety provisions of state law, as well as locally adopted building and fire codes. If the existing residence contains fire sprinklers or would be required to contain fire sprinklers if constructed at the time of the ADU application, then sprinkler installation is also required for the ADU.

8. Parking. A minimum of one off-street parking space shall be provided for each ADU in addition to the offstreet parking spaces required for the existing residence ADU parking spaces may be provided as tandem parking, including on an existing driveway or in paved setback areas, excluding the non-driveway front yard setback. Parking requirements shall be waived if the ADU is located: (i) within one-half (1/2) mile of a public transit stop; (ii) in a designated historic district; (iii) in part of an existing primary residence or an existing accessory structure pursuant to subsection 5.A above; (iv) in an area requiring on-street parking permits not offered to the ADU occupant; or (v) within one block of a car-sharing pickup/drop-off location.

9. Replacement Parking. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU, replacement parking shall be required and may be located in any configuration on the same lot as the ADU.

SECTION 3.

Title 10 of the Hercules Municipal Code Zoning Ordinance Section 60.200 – Definitions portion of Chapter 60 of the Hercules Zoning Ordinance is to be modified as follows:

60.200 Definitions.

Accessory Dwelling Unit (ADU). An ADU is defined in section 35.320 of this Zoning Ordinance.

Second Residential Unit. As used in this Zoning Ordinance, Second Residential Unit means an Accessory Dwelling Unit.

SECTION 4. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decisions shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be deleted.

SECTION 5. Publication and Effective Date.

a. This Ordinance shall be published in accordance with applicable law, by one or more of the following methods:

1. Posting the entire Ordinance in at least three (3) public places in the City of Hercules, within fifteen (15) days after its passage and adoption; or

2. Publishing the entire Ordinance at least once in the West County Times, a newspaper of general circulation published in the County of Contra Costa and circulated in the City of Hercules, within fifteen (15) days after its passage and adoption; or

3. Publishing a summary of the Ordinance in the West County Times and posting a certified copy of the entire Ordinance in the office of the City Clerk at least five (5) days prior to the passage and adoption, and a second time within fifteen (15) days after its passage and adoption, along with the names of those City Councilmembers voting for and against the Ordinance.

b. This Ordinance shall go into effect thirty (30) days after the date of its passage and adoption.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Hercules City Council on the 13TH day of March, 2018, and was passed and adopted at a regular meeting of the Hercules City Council on the ____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chris Kelley, Mayor

Lori Martin, Administrative Services Director &
City Clerk