

ATTACHMENT 1

ORDINANCE NO. 20-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES APPROVING ZONING TEXT AMENDMENT #20-03 REPEALING AND REPLACING SECTION 13-35.320 OF THE HERCULES MUNICIPAL CODE RELATED TO ACCESSORY DWELLING UNITS, AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

WHEREAS, the California Legislature, through Government Code Sections 65852.1 et seq, requires and authorizes cities to provide for accessory dwelling units (ADUs) on residential parcels; and

WHEREAS, to address the statewide housing shortage, the California Legislature recently passed several amendments to Government Code Sections 65852.1 et seq.— including but not limited to SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671—which took effect January 1, 2020, and which reduce barriers, better streamline approval processes, and expand capacity to accommodate the development of ADUs and junior accessory dwelling units (JADUs); and

WHEREAS, the City currently provides for ADUs at Section 13-35.320 of the Municipal Code, 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 and regulations within the Municipal Code to conform to current state law (collectively, the “Zoning Text Amendment”); and

WHEREAS, the City Council, at its regular meetings on August 8, 2020, and October 13, 2020, directed staff to draft amendments to the City’s ADU Ordinance consistent with state law; and

WHEREAS, the Planning Commission held a properly noticed public hearing on November 2, 2020, and continued the hearing to November 16, 2020 and adopted Resolution 20-07 recommending that the City Council approve Zoning Text Amendment #20-03 amending Section 13-35.320 of the Municipal Code; and

WHEREAS, Chapter 13-52.400 of City of Hercules Municipal Code 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 is internally consistent and does not conflict with the purposes, regulations, and required findings of the Zoning Ordinance; and

WHEREAS, in accordance with Chapter 13-52 (Zoning Amendments) of the City of Hercules Municipal Code, the City Council received and considered Zoning Text Amendment #20-03 and related environmental review at a properly noticed public hearing on January 12, 2021, 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 #20-03 in accordance with Chapter 13-52.400 of the Hercules Municipal Code, the City Council finds that Zoning Text Amendment #20-03: is consistent with the General Plan; would not be detrimental to the health, safety, welfare, and public interest of the City; and 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 under Public Resources Code Section 21080.17, the California Environmental Quality Act (CEQA) does not apply to the adoption of the proposed ordinance amendments by a city or county to implement the provisions of Section 65852.1 or 65852.2 of the Government Code (the state ADU law). The draft ordinance would implement Government Code Section 65852.2 within the City of Hercules in a manner that is consistent with the requirements of state law. As such, the adoption of the ordinance is exempt from CEQA.

SECTION 2.

Title 13 of the Hercules Municipal Code Zoning Ordinance Section 35.320 – Accessory Dwelling Units, is hereby repealed and replaced with the following text:

Sec. 13-35.320 Accessory Dwelling Units.

1. Purpose. This section is intended to implement the General Plan policies which encourage accessory dwelling units (ADUs) on 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. ADUs do not exceed the allowable density for the lot and are consistent with general plan and zoning designations.
2. Building Permit Required. The Planning Director shall ministerially approve building permits for ADUs in compliance with this Section 13-35.320. No public hearing or any additional permit shall be required of applicants seeking approval of an ADU pursuant to this Section 13-35.320. The Planning Director shall act on the application to create an ADU within 60 days from the date an application is complete if there is an existing single-family or multi-family dwelling on the lot. If the application involves an ADU where there is also an application for a new single-family dwelling on the lot, then the Planning Director may delay action on the ADU application to coincide with the single-family dwelling application as long as the Director applies the ministerial review required by this section. Applicants may request a delay or waive the 60-day approval period. Applications for ADUs not meeting the requirements of this section are subject to the administrative use permit requirements set forth in Chapter 13-50.
3. Definitions.
 - A. “Accessory dwelling unit (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 exterior entrance separate from the primary dwelling. 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. “Attached ADU” means an ADU that is attached to an existing or proposed primary dwelling or accessory structure.
 - C. “ADU Within Existing Space” or “JADU Within Existing Space” means an ADU or JADU within the living area of an existing primary dwelling, within an attached or detached garage, or within other permitted accessory structure. An ADU Within Existing Space may include an expansion of up to 150 square feet beyond the physical dimensions of the existing structure to accommodate ingress and egress.
 - E. “Detached ADU” means an ADU that is not attached to an existing or proposed primary dwelling or accessory structure.
 - E. “Junior accessory dwelling unit (JADU)” means an ADU that is no more than 500 square feet in size and contained entirely within the walls of an existing or proposed single-family residence and which may or may not share sanitation facilities with the existing structure.
 - F. “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 and multi-family residential zoning districts where there is exactly one conforming single-family residence or at least one conforming multi-family building on the parcel or proposed for the parcel. Except as specified in Section 10 below, a maximum of one ADU is allowed on a single-family lot. The City will not approve a building permit for an ADU unless and until the City receives the following:
- A. Deed Restriction. A copy of a recorded deed restriction that complies with Government Code Section [27281.5](#), and states that the ADU will not be rented for less than 30 days and that the ADU will not be sold separately from the primary residence; and
 - B. Fees.
 - (1) ADUs containing 750 or more square feet are subject to any fees for residential units required by the City’s Master Fee Schedule as it exists at the time the ADU application is filed. Fees shall be charged in proportion to the square footage of the primary dwelling (e.g., a 1,000 square-foot ADU would be charged 50 percent of the applicable fee if the primary dwelling is 2,000 square feet). ADUs on lots with a single-family residence are subject to single-family unit fees, while ADUs on lots with a multi-family residence are subject to multi-family unit fees. All fees are subject to the requirements of Government Code [65852.2](#) and the Mitigation Fee Act.
 - (2) ADUs Within Existing Space and ADUs containing less than 750 square feet are not subject to fees under this Subsection (4)(B).

- (3) Notwithstanding the requirements of this Subsection (4)(B), unless an ADU is constructed with a new single-family dwelling, it is not considered a “new” residential use for the purpose of calculating any connection fees, sewer facilities fees, or capacity charges. ADUs not constructed with a new single-family home are only subject to connection fees, sewer facilities fees, and capacity charges to the extent that such fees and charges apply to existing uses.

5. Development Standards.

- A. ADUs Within Existing Space. An ADU Within Existing Space or a JADU Within Existing Space is permitted as long as the side and rear setbacks are sufficient for fire and safety. No other development standards in this section apply to ADUs and JADUs Within Existing Space, except that:

- (1) Only one ADU Within Existing Space or one JADU Within Existing Space is allowed per lot unless a building permit or permits are obtained for multiple ADUs under Section 10(A) below;
- (2) Garage spaces converted to ADUs shall replace garage doors with walls, windows, and/or doors rated by building code for habitable spaces.

- B. Attached ADUs. Attached ADUs shall comply with the following requirements:

- (1) If the Attached ADU contains one bedroom, it shall not exceed 850 square feet. If the Attached ADU contains more than one bedroom, it shall not exceed 1,000 square feet.
- (2) All other development standards required by this Section 5.

- C. Detached ADUs. Detached ADUs shall comply with the following requirements:

- (1) If the Detached ADU contains one bedroom, it shall not exceed 850 square feet. If the Detached ADU contains more than one bedroom, it shall not exceed 1,000 square feet.
- (2) Detached ADUs shall have individual addresses separate from the primary residence. Addresses shall be displayed on the ADU building so that it is clearly visible and legible from the street or adjacent alley. If the ADU is located on the property such that it cannot be seen from a street or alley, the property shall post a sign or display some other type of marker in the front yard with the ADU address on it, subject to Fire District approval.

- (3) All other development standards required by this Section 5.

- D. Setbacks. No setbacks shall be required for ADUs Within Existing Space as long as side and rear setbacks are sufficient for fire safety. A setback of four (4) feet from side and rear lot lines is required for all other ADUs. No ADU shall be built over utility easements or recorded setbacks. No passageway between an ADU and an existing dwelling shall be required. All ADUs are subject to the same front and corner setbacks as the primary

residence, except that front setbacks may not preclude Statewide Exemption ADUs (see Section 10 below).

- E. Height. An ADU shall conform to the applicable height limits of the zoning district in which it is located, except that:

- (1) No new Detached ADU shall exceed 18 feet or 1 habitable story;
- (2) Second-story ADUs are allowed on top of existing, legally-approved detached structures, provided height does not exceed that of the existing primary residence.

- F. Building Code Requirements. Except as otherwise provided in this section, all Building Code requirements that apply to detached dwellings apply to Detached ADUs. Notwithstanding any requirements of this Subsection 5(F), a new or separate utility connection directly between the ADU and the utility is not required for either Detached ADUs or Attached ADUs unless a new or separate connection is necessary to serve the ADU due to:

- (1) the topography of the property;
- (2) existing impediments such as trees, structures, or easements;
- (3) the location of the ADU on the property; or
- (4) inadequate existing connections.

6. Design Standards. An ADU must conform to the design characteristics of the existing residence or residences. A determination of conformity shall be made if the ADU utilizes any of the following features of the existing residence or residences: architectural features, building materials, or paint color. When an existing garage is converted to an ADU, windows and/or door features may be required for consistency with fire and building codes and in consultation with the Fire Marshal. ADUs constructed on any property that is designated in the California Register of Historic Resources as a historic contributing or landmark structure shall adhere to the Hercules Design Guidelines for Historic Preservation.
7. Fire Sprinklers. If the primary residence, whether existing or proposed, is required to contain fire sprinklers, then sprinkler installation is also required for the ADU.
8. Parking. In addition to the off-street parking spaces required for the existing residence, each ADU with one or more bedrooms must provide at least one off-street parking space; for ADUs without separate bedrooms (i.e., studios), additional off-street parking is not required. 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 mile walking distance 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) of this section; (iv) in an area requiring on-street parking permits not offered to the ADU occupant; or (v) within 1 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 (excluding JADUs), replacement parking shall not be required.

10. Statewide Exemption ADUs.

- A. Notwithstanding the requirements of this Section 13-35.320, only building permits shall be required for ADUs or JADUs in the following circumstances:

- (1) One ADU Within Existing Space of an existing or proposed single-family dwelling if the ADU has exterior access separate from the primary dwelling and sufficient side and rear setbacks for fire and safety.
- (2) One JADU Within Existing Space of an existing or proposed single-family dwelling that has exterior access separate from the single-family dwelling, sufficient side and rear setbacks for fire and safety, and meets all requirements of Section 11 below.
- (3) One detached, new construction ADU on a lot with an existing or proposed single-family dwelling that does not exceed four-foot side and rear setbacks, that has a total floor area of no more than 800 square feet, and that does not exceed 16 feet in height. An ADU approved pursuant to this subsection 10(A)(3) may be combined with a JADU described in subsection 10(A)(2) above.
- (4) Multiple ADUs within the portions of existing multifamily 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 unit complies with state building standards for dwellings. At least one ADU and up to 25% of the number of existing multi-family dwellings shall be allowed within an existing multifamily dwelling. No more than two detached ADUs are allowed on a lot with an existing multifamily dwelling, subject to a height limit of 16 feet and four-foot side and rear yard setbacks.

- B. No applicant for a building permit sought under this Section 10 shall be required to do, perform, or construct any of the following:

- (1) Correct nonconforming zoning conditions; or
- (2) Install fire sprinklers, unless they are required for the primary residence; or
- (3) Install new or separate utility connection or pay any connection fee, sewer facilities fee, or capacity charge, unless the ADU is constructed with a new single-family home.

- C. ADUs constructed pursuant to this section cannot be rented for a term less than 30 days.

- D. An applicant for a building permit under this section may be required to provide proof of a percolation test within the last five years (or 10 years if the percolation test has been recertified).

11. Junior Accessory Dwelling Units (JADUs). One JADU may be built per residential lot zoned for single-family residences with an existing or proposed single-family residence. The owner of the existing or proposed single-family residence must reside in the JADU or the remaining portion of the single-family residence unless owner is a governmental agency, land trust, or housing organization.

A. Deed Restriction Required. The owner of the single-family lot upon which a JADU is constructed must record a deed restriction that: complies with Government Code Section [27281.5](#), runs with the land, states that the JADU cannot be separately sold from the single-family residence, states that the deed restriction can be enforced against future purchasers, and states that the size and attributes of the JADU must conform to the requirements of this Section 13-35.320 and state law.

B. JADU Development Standards. The following development standards apply to JADUs:

- (1) Efficiency Kitchen. A JADU must have at least an efficiency kitchen, which includes a cooking facility with appliances, and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the JADU.
- (2) Parking. JADUs are not subject to the parking requirements of Section 8 above but may provide one or more parking spaces at the option of the owner.
- (3) Utilities. For purposes of providing service for water, sewer, or power, including any connection fee, a JADU shall not be considered a separate or new dwelling unit. No separate or new utility connections are required for JADUs.

SECTION 3. 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 4. Effective Date and Publication. The City Clerk shall certify to the adoption of this Ordinance and shall publish or post the Ordinance as required by law. This Ordinance shall be effective thirty (30) days from date of final adoption.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Hercules City Council on the 12th day of January, 2021, and was passed and adopted at a regular meeting of the Hercules City Council on the ____ day of _____, 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Chris Kelley, Mayor

Lori Martin, MMC
Administrative Services Director / City Clerk