

Draft Ordinance No. 20-2199

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CHAPTER 19.112, ACCESSORY DWELLING UNITS, CHAPTER
19.20 – PERMITTED, CONDITIONAL AND EXCLUDED USES IN
AGRICULTURAL AND RESIDENTIAL ZONES AND CHAPTER 19.08
DEFINITIONS**

WHEREAS, this Ordinance is determined to be exempt from environmental review under the California Environmental Quality Act of 1970 (Public Resources Code section 21000 et seq.) (“CEQA”), together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, “CEQA Guidelines”), in that an Ordinance to implement the provisions of Government Code Section 65852.2 is statutorily exempt from CEQA under Public Resources Code Section 21080.17. Any portion of the proposed Ordinance that is not statutorily exempt is categorically exempt as there is no potential for this action to cause a significant effect on the environment and/or any project would be exempt under relevant provisions of the CEQA Guidelines, including, but not limited to Existing Facilities (Sec. 15301), Replacement or Reconstruction (Sec. 15302), or Construction or Conversion of Small Structures (Sec. 15303). and

WHEREAS, the City Council is the decision-making body for this Ordinance; and

WHEREAS, the City Council before taking action on this Ordinance has reviewed the not a project determination and exemption, and using its independent judgment, determines the Ordinance to be not a project or exempt from CEQA as stated above; and

WHEREAS, as required by Cupertino Municipal Code Section 19.152.030, the City Council makes the following findings in connection with the changes to zoning regulations proposed in Chapters 19.08, 19.20 & 19.112:

1. That the proposed zoning is in accord with Title 19 of the Municipal Code and the City’s Comprehensive General Plan.

The Ordinance modifies Title 19 to be consistent with recently passed State Assembly and Senate Bills aimed at promoting the development of Accessory Dwelling Units to alleviate the existing housing crisis in the State of California. Cities must comply with state law. By adopting a local ordinance, the City is exercising the limited discretion allowed by state law for certain types of Accessory Dwelling Units.

The proposed Ordinance amendments conform with the City’s Housing Element’s goal of providing an adequate supply of residential units for all economic segments through its strategy of continuing to implement the Accessory Dwelling Unit Ordinance and encouraging the production of second units.

2. The proposed zoning is in compliance with the provisions of the California Environmental Quality Act (CEQA).

Adoption of zoning code provisions regarding accessory dwelling units are statutorily exempt from CEQA under Public Resources Code Section 21080.17.

3. The site is physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints) for the requested zoning designation(s) and anticipated land use development(s).

The Ordinance is a citywide amendment to be in conformance with State standards to encourage Accessory Dwelling Unit development. State law explicitly states that Accessory Dwelling Units cannot be considered additional density. Therefore, the amendments do not impact the residential density designations for sites within the City. Accessory Dwelling Units are limited to single family, multifamily, and mixed-use residential zoning districts subject to their conformance with standards outlined in Title 19.

4. The proposed zoning will promote orderly development of the City.

By updating the Accessory Dwelling Unit development standards, the Ordinance allows for additional affordable housing development. The ordinance also prohibits the use of Accessory Dwelling Units, which includes Junior Accessory Dwelling Units, as Short Term Rentals. This would allow the City to grow its long-term housing stock. By adopting a local ordinance, the City is exercising the limited discretion allowed by state law for certain types of Accessory Dwelling Units.

5. That the proposed zoning is not detrimental to the health, safety, peace, morals and general welfare of persons residing or working in the neighborhood of subject parcels.

The Ordinance is a citywide amendment to be in conformance with State standards to encourage Accessory Unit Development. The Ordinance contains various developments standards that require conformance with fire, life safety, and building codes to ensure that new development is not detrimental to the health, safety, peace, morals and general welfare of the community.

6. The proposed amendments are internally consistent with Title 19.

All necessary chapters and section of the Title 19 have been amended to ensure internal consistency with the proposed regulations.

NOW, THEREFORE, THE CITY COUNCIL OF THE OF CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 19.08.030(A) of Chapter 19.08 of Title 19 of the Cupertino Municipal Code is hereby amended by editing the following definition:

“Accessory dwelling unit” means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking and sanitation on the

same parcel as the primary dwelling unit is situated. An accessory dwelling unit also includes the following:

1. An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.
2. A manufactured home, as defined in Section 18007 of the Health and Safety Code.
3. “Junior accessory dwelling unit” means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. Junior accessory dwelling units must include an efficiency kitchen, which must include both a cooking facility with appliances and a food preparation counter and storage cabinets that are of a reasonable size in relation to the size of the unit. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure, as defined in California Government Code Section 65852.22.

SECTION 2: Section 19.08.030(L) of Chapter 19.08 of Title 19 of the Cupertino Municipal Code is hereby amended by editing the following definition:

“Living space” means, for the purposes of Chapter 19.112, the same as that set forth for “living area” in California Government Code Section 65852.2(j)(4). All attic and basement square footage proposed as part of an Accessory Dwelling Unit shall be limited by the maximum size allowed per Chapter 19.112.

SECTION 3: Section 19.08.030(S) of Chapter 19.08 of Title 19 of the Cupertino Municipal Code is hereby amended by editing the following definition:

“Single family residence,” for purposes of Chapter 19.112, shall mean one dwelling unit located on a separately owned lot. Single family residence does not include property with only air parcels or condominiums.

SECTION 4: Table 19.20.020 of Section 19.20.020 of Chapter 19.20 of Title 19 of the Cupertino Municipal Code is hereby amended to read as follows:

Table 19.20.020–Permitted, Conditional and Excluded Uses in Agricultural and Residential Zones							
Uses	Zoning Districts						
	A	A1	R1	RHS	R1C	R2	R3
NO CHANGE ROWS #1 - #6b							
7. An accessory dwelling unit that conforms to the requirements of Chapter 19.112;	P	P	P	P	P	P	P
NO CHANGE ROWS #8 - #42							

SECTION 5: Chapter 19.112 “Accessory Dwelling Units” of Title 19 of the Cupertino Municipal Code is hereby amended to read as follows:

19.112.010 Purpose.

19.112.020 Accessory Dwelling Units Regulations.

19.112.030 Site development regulations for Streamlined Accessory Dwelling Units & Junior Accessory Dwelling Units.

19.112.040 Site Development Regulations for Non-Streamlined Accessory Dwelling Units.

19.112.050 Review process.

19.112.010 Purpose.

The purpose of this chapter is to promote the goal of affordable housing within the City through provision of additional housing in certain residential, agricultural, and mixed-use zoning districts in a manner which minimizes adverse impacts of accessory dwelling units on neighborhoods.

19.112.020 Accessory Dwelling Unit Regulations.

Notwithstanding any provision of this title to the contrary:

1. Accessory dwelling units are permitted on lots within any residential or mixed-use residential zoning district. The lot must have an existing single family dwelling unit or if zoned multi-family or mixed use residential, at least one residential unit. If the lot is vacant, an accessory dwelling unit may only be proposed in conjunction with the development of at least one residential unit. Notwithstanding the underlying zoning, an accessory dwelling unit developed pursuant to this chapter does not cause the lot upon which it is located to exceed its maximum the allowable density on the lot.

2. Accessory dwelling units must comply with the site development regulations and guideline specified in those zoning districts for dwelling units, including but not limited to: lot coverage; floor area ratio; height; setbacks; landscape; the regulations contained in this chapter; Chapter 19.100, Accessory Structures/Buildings; and Chapter 19.124, Parking; except as those standards are modified by this chapter.

3. No impact fees, as defined in Government Code Section 65852.2(f), shall be imposed on any accessory dwelling unit or junior accessory dwelling unit with a gross floor area of less than 750 square feet. Impact fees for all other accessory dwelling units shall be charged in compliance with State Law.

4. Accessory dwelling units may be rented separately from the single-family dwelling or multi-family dwelling structure but may not be sold or otherwise conveyed separately from the other dwellings on the lot, except pursuant to Government Code Section 65852.26. Any accessory dwelling unit, including a Junior Accessory Dwelling Unit (JADU), shall not be used as a short-term rental.

5. For JADUs, either the single-family residence or JADU must be owner-occupied, unless the owner is a governmental agency, land trust, or housing organization. Further, the owner shall record a deed restriction, expressly enforceable against future purchasers, containing the following: (a) a prohibition on the sale of the JADU separate from the single-family residence, and (b) a restriction on the size and attributes of the JADU to conform to this section.

19.112.030 Site Development Regulations for Streamlined Accessory Dwelling Units & Junior Accessory Dwelling Units.

Pursuant to California Government Code Section 65852.2(e), the City shall approve the following streamlined accessory dwelling units if the specified development standards and use restrictions are met, as identified in:

A. Table 19.112.030A for single-family developments and

B. Table 19.112.030B for multi-family developments.

Table 19.112.030A: Site Development Regulations for Streamlined Accessory Dwelling Units and Junior Accessory Dwelling Units Associated with Single-Family Developments			
		Conversion of space within principal dwelling unit or accessory structures	New Construction Detached Accessory Dwelling Unit ≤ 800 s.f.
1.	Size of living space, exclusive of decks		
	a. Minimum size	150 s.f.	
	b. Maximum size	No size limitation as long as the unit: <ul style="list-style-type: none"> i. Is wholly within the space of a proposed or existing single-family dwelling or the existing space of an accessory structure, and ii. Does not require either: <ul style="list-style-type: none"> ▪ An addition of more than 150 square feet to an existing 	800 s.f.

Table 19.112.030A: Site Development Regulations for Streamlined Accessory Dwelling Units and Junior Accessory Dwelling Units Associated with Single-Family Developments

		Conversion of space within principal dwelling unit or accessory structures	New Construction Detached Accessory Dwelling Unit ≤ 800 s.f.
		<p>accessory structure to accommodate ingress and egress only, or</p> <ul style="list-style-type: none"> Any addition to an existing single-family dwelling unit. 	
2.	Number of Units	Two accessory dwelling units are allowed only if one of the accessory dwelling units is a detached unit built pursuant to this Table 19.112.030A and the other is a junior accessory dwelling unit. Otherwise, only one accessory dwelling unit is allowed per lot.	
3.	Setbacks	Per the underlying zoning district except that if the existing structures do not meet these standards, the side and rear setbacks shall be sufficient for fire safety and life safety.	<p>a. At least four feet from the rear and side lot lines.</p> <p>b. An applicant alternately may elect to follow the setback and height standards for accessory structures in Chapter 19.100.</p>
4.	Height	The conversion shall not change the height of the existing structure.	<p>a. 16 feet</p> <p>b. An applicant alternately may elect to follow the setback and height standards for accessory structures in Chapter 19.100.</p>
5.	Second-story accessory dwelling unit	Allowed if the unit is a conversion of existing second story portions of the principal dwelling unit	Not Allowed
6.	Parking for accessory dwelling unit	None	None
7.	Direct outside access	Independent outdoor access must be provided without going through the principal dwelling unit.	

Table 19.112.030A: Site Development Regulations for Streamlined Accessory Dwelling Units and Junior Accessory Dwelling Units Associated with Single-Family Developments

		Conversion of space within principal dwelling unit or accessory structures	New Construction Detached Accessory Dwelling Unit ≤ 800 s.f.
8.	Separation from principal dwelling unit	The conversion must result in an independent unit. With the exception of a JADU that has a shared bathroom with the principal dwelling unit, no interior doors or other connections between the units are permitted.	Detached from principal dwelling unit

Table 19.112.030B: Site Development Regulations for Streamlined Accessory Dwelling Units Associated with Existing Multi-Family Developments

		Conversions of interior space within multifamily dwelling structures	Detached, New Construction
1.	Location	Conversion of space within existing dwelling structures that is not used as livable space (e.g. existing units) including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, as long as the unit meets building standards for dwellings.	Detached from the multi-family dwelling structure(s)
2.	Number of Units	The greater of: <ul style="list-style-type: none"> ▪ 25 percent of the existing number of primary dwelling units, or ▪ One accessory dwelling unit. 	No more than two units
3.	Minimum Size	150 s.f.	
4.	Maximum Size	No size limitation	1,200 s.f.

Table 19.112.030B: Site Development Regulations for Streamlined Accessory Dwelling Units Associated with Existing Multi-Family Developments

		Conversions of interior space within multifamily dwelling structures	Detached, New Construction
5.	Setbacks	The accessory dwelling unit shall not increase the size of the existing structure.	<ul style="list-style-type: none"> a. Located at least four feet from the side and rear lot lines. b. An applicant alternately may elect to follow the setback and height standards for accessory structures in Chapter 19.100.
6.	Height	The accessory dwelling unit shall not increase the size of the existing structure.	<ul style="list-style-type: none"> a. 16 feet b. An applicant alternately may elect to follow the setback and height standards for accessory structures in Chapter 19.100.
7.	Separation from principal dwelling unit	The conversion must result in an independent unit. No interior doors or other connections between the units are permitted.	Detached from principal dwelling unit.

19.112.040 Site Development Regulations for Non-Streamlined Accessory Dwelling Units.

Any accessory dwelling unit that does not meet the criteria of Section 19.112.030 shall meet the following development standards and use restrictions as identified in Table 19.112.040.

Table 19.112.040: Site Development Regulations for Non-Streamlined Accessory Dwelling Units Created by New Construction and/or Additions to the Principal Dwelling Unit

		Attached	Detached > 800 s.f.
A.	Number of Units	Only one accessory dwelling unit pursuant to Table 19.112.040 is permitted and cannot be combined with any accessory dwelling units pursuant to Table 19.112.030A.	
B.	Size of living space, exclusive of decks		
	1. Minimum size	150 s.f.	

Table 19.112.040: Site Development Regulations for Non-Streamlined Accessory Dwelling Units Created by New Construction and/or Additions to the Principal Dwelling Unit

		Attached	Detached > 800 s.f.
	2. Maximum size	<p>a. Studios/one-bedroom unit – 850 s.f.; two or more-bedroom unit – 1,000 s.f.; and</p> <p>b. Attached accessory dwelling units shall not exceed 50% of the existing primary dwelling</p> <p>c. Application of lot coverage, floor area, and open space standards:</p> <p>i. Maximum size for units ≤ 800 s.f. shall not be limited by lot coverage, floor area ratio, and open space requirements per the underlying zoning.</p> <p>ii. Maximum size for units > 800 s.f. are limited by lot coverage, floor area ratio, and open space requirements per the underlying zoning. These standards shall apply to the gross floor area of the unit proposed. Notwithstanding application of these standards, an 800 s.f. detached accessory dwelling unit is permitted pursuant to Table 19.112.030A or an 800 s.f. attached accessory dwelling unit is permitted.</p>	
C.	Setbacks ¹	Per the underlying zoning district, except the required side and rear setbacks are modified to four feet.	The proposed structure must comply with the setback standards for accessory structures in Chapter 19.100, except the street side setbacks are modified to four feet.
D.	Height	Per the underlying zoning district	The proposed structure must comply with the height standards for accessory structures in Chapter 19.100, except that a maximum height of 16 feet is allowed at the farthest point of the proposed structure from the rear and side property lines.
E.	Second-story accessory dwelling units	Not allowed	Not allowed

¹ No setback is required for an accessory dwelling unit located within existing living area or an existing accessory structure, or an accessory dwelling unit that replaces an existing structure and is located in the same location and to the same dimensions as the structure being replaced.

Table 19.112.040: Site Development Regulations for Non-Streamlined Accessory Dwelling Units Created by New Construction and/or Additions to the Principal Dwelling Unit

		Attached	Detached > 800 s.f.
F.	Parking		
	1. Parking for accessory dwelling unit	<p>One additional off-street parking space shall be provided, if the principal dwelling unit has less than the minimum off-street parking spaces for the applicable residential zoning district in which it is located, as required in Chapter 19.124 unless the accessory dwelling unit meets one of the following requirements:</p> <ul style="list-style-type: none"> a. Located within one-half (1/2) mile of a public transit stop; or b. Located in an architecturally and historically significant historic district; or c. The occupant of the unit is not allowed/offered a required on-street parking permit; or d. Located within one block of a car share vehicle pick-up location; or e. Is part of the proposed or existing primary residence or an accessory structure. 	
	2. Replacement parking spaces for existing covered, uncovered or enclosed parking spaces converted to an accessory dwelling unit	No replacement parking spaces are required.	
G.	Direct outside access	Independent outdoor access must be provided without going through the principal dwelling unit.	
H.	Screening from public street	All access to accessory dwelling units shall be on a different wall plane than the access to the principal dwelling unit.	
I.	Structure Design	Should be compatible with the architectural style and materials of the principal structure.	

Table 19.112.040: Site Development Regulations for Non-Streamlined Accessory Dwelling Units Created by New Construction and/or Additions to the Principal Dwelling Unit

		Attached	Detached > 800 s.f.
J.	Separation from principal dwelling unit	The ADU must be an independent unit. No interior doors or other connections between the ADU and the principal dwelling unit are permitted.	Detached from principal dwelling unit.

19.112.050 Review Process.

Applications for accessory dwelling units conforming to the requirements of this chapter shall be reviewed ministerial without discretionary review and must be approved or denied within the time frame specified in Government Code Section 65852.2.

SECTION 6: Severability.

Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 7: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 8: Certification.

The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

SECTION 9: Continuity.

To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as amendments of the earlier provisions.

INTRODUCED at a regular meeting of the Cupertino City Council the ____ day of _____ 2020 and **ENACTED** at a regular meeting of the Cupertino City Council on this ____ of _____ 2020 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Steven Scharf, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	 _____ Date