



**NOTES/CORRECTIONS for the MAY 11, 2023
PLANNING COMMISSION SPECIAL MEETING**

***Modifications appear in *italics*, new text is underlined, and deleted text appears as ~~strikethrough~~.**

Item 1. MISSION PEAK VILLAGE – 40871 High Street – (PLN2023-00134)

Staff requests that the following corrections be included in the Conditions of Approval:

Conditions of Approval:

Staff recommends the deletion of condition of approval C-6:

~~**C-6 – Fire Sprinkler System.** *The applicant shall install an N.F.P.A. 13-D fire sprinkler system complying with local amendments for new dwellings, the existing house, new garage and water tower. Residence sprinkler heads shall be used in the dwelling/guest portions of the building. The sprinkler system shall provide protection to at least all of the following areas: garages, carports, bathrooms, concealed spaces, water heater/furnace rooms, closets, laundry rooms, attic spaces, under walks, or overhangs, balconies or deck greater than four feet in depth, floor landings if wholly or partial enclosed, covered guest carports or other areas as required. Fire sprinkler test water must drain to an appropriately sized landscaped area.*~~

Item 5. 2023 ACCESSORY DWELLING UNIT ZONING TEXT AMENDMENT – Citywide – (PLN2023-00218)

Staff requests that the following corrections be included in the Staff Report and its Attachment:

Staff Report:

“FMC Table 18.90.80” is corrected to read “FMC Table 18.90.080” under the “FMC Reference” column of Table 1 in the Staff Report as follows:

Table 1. Summary of Amendments

Section	Topic	Description	FMC Reference
1	Rent Review Program	Eliminate incorrect reference to JADU definition.	FMC §9.60.050
2	Single Family Dwelling	Update definition for clarification.	FMC §18.25.960

Section	Topic	Description	FMC Reference
3	ADUs	Update definition to better reflect state law.	FMC §18.25.983
4	JADUs	Update definition to better reflect state law.	FMC §18.25.986
5	Permitted Uses in Residential Zoning Districts	Replace “Standard accessory dwelling units” with “Accessory dwelling units” and alphabetize Table 18.90.080 accordingly.	FMC Table 18.90.080
6	Required Parking Spaces	Clarify ADU parking requirements.	FMC Table 18.183.030
7	Tandem Parking	Remove reference to ADUs.	FMC §18.183.175
8	ADU Regulations	Rescind and replace the existing ADU Ordinance to comply with recent state law as well as clarify and simplify regulations to incentivize and promote the production of ADUs. A few key changes/updates include: <ul style="list-style-type: none"> • Clarification on the maximum number of ADUs associated with a single-family dwelling. • Uniform maximum size for detached ADUs associated with a single-family dwelling. • Elimination of parking requirements. • Increase in maximum building heights for certain ADUs. 	FMC §18.190.005

Attachment:

A formatting issue starting under Section 8, FMC §18.190.005, Repealed and Replaced, of the Draft Ordinance, has been corrected to include the subsection lettering [(a), (b), (c), (d), and (e)]. The updated Draft Ordinance is attached.

RESPECTFULLY SUBMITTED,

Trish Cordova for Joel Pullen

JOEL PULLEN, AICP, SECRETARY
PLANNING COMMISSION

DRAFT
ORDINANCE NO. XX-2023

AN ORDINANCE OF THE CITY OF FREMONT TO REPEAL AND REPLACE FREMONT MUNICIPAL CODE (FMC) SECTION 18.190.005 (ACCESSORY DWELLING UNITS) TO COMPLY WITH NEW STATE LAW AS WELL AS CARRY OUT PROGRAM IMPLEMENTATION FROM THE CITY'S 2023-2031 HOUSING ELEMENT AND AMEND OTHER, RELATED SECTIONS OF FMC TITLES 9 (PUBLIC PEACE, MORALS AND WELFARE) AND 18 (PLANNING AND ZONING) FOR INTERNAL CONSISTENCY; AND MAKING FINDINGS OF CEQA EXEMPTION (PLN2022-00218).

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

SECTION 1. FMC §9.60.050, AMENDED

FMC §9.60.050(a) is amended to read as follows:

§9.60.050 Rent review program.

- (a) The provisions of this chapter shall apply to all residential rental units in the city. This chapter shall not apply to hotels, boarding houses, transient accommodations, dormitories, mobile home space renters, junior accessory dwelling units as defined in Section-Chapter 18.25-1525, and shared housing units.

SECTION 2. FMC §18.25.960, AMENDED

FMC §18.25.960 is amended to read as follows:

§18.25.960 Dwelling, single-family.

“Single-family dwelling” shall mean a primary dwelling designed to contain a single dwelling unit. This definition includes manufactured and mobile homes constructed after July 1, 1976, and placed pursuant to Section 18.190.350(g).

SECTION 3. FMC §18.25.983, AMENDED

FMC §18.25.986 is amended to read as follows:

§18.25.983 Dwelling unit, accessory (ADU).

“Accessory dwelling unit (ADU)” shall mean a residential dwelling unit, which provides complete independent living facilities for one or more persons, that is either attached to, or located within, a proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure, or detached from a proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling~~an attached or detached residential~~

~~dwelling unit which provides complete independent living facilities for one or more persons. It An ADU shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the principal residence single-family or multifamily dwelling is or will be situated. An ADU also includes an efficiency unit and a manufactured home, as defined in Health and Safety Code Section 18007. As provided in Cal. Gov't Code § 65852.2, efficiency apartments and manufactured homes may be developed and occupied as accessory dwelling units consistent with this title. Only manufactured or mobile homes constructed after July 1, 1976, and placed pursuant to Section 18.190.350(g) are permitted.~~ ADUs are subject to development standards that are specified in Section 18.190.005. See also “junior accessory dwelling unit.”

SECTION 4. FMC §18.25.986, AMENDED

FMC §18.25.986 is amended to read as follows:

§18.25.986 Dwelling unit, junior accessory (JADU).

“Junior accessory dwelling unit (JADU)” shall mean ~~an ADU unit~~ that is no more than 500 square feet in size and is contained entirely within a single-family ~~dwelling residence, including an attached garage or primary dwelling unit.~~ A JADU may include separate sanitation facilities, or it may share sanitation facilities with the existing structure. A JADU shall include an efficiency kitchen, which shall include 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. A JADU is ~~are~~ subject to ~~the development standards that are regulations~~ specified in Sections 18.190.005 ~~(b) and (d)~~—and shall comply with the requirements of California Governmen’t Code ~~Section~~ § 65852.22 ~~(a), as may be amended.~~

SECTION 5. FMC TABLE 18.90.80, AMENDED

FMC Table 18.90.80 is amended to update, and reorder alphabetically, the following row under the “Land Use” category as follows:

**Table 18.90.080
Allowed Land Uses and Permit Requirements for Residential Zoning Districts**

Land Use	2012 NAICS2	R-1	R-2	R-3	R-G	Specific Use Regulations
Standard a Accessory dwelling units		A ⁶	A ⁶	A ^{3,6}	A ^{3,6}	18.190.005

[All other portions of this table remain unchanged]

SECTION 6. FMC TABLE 18.183.030, AMENDED

FMC Table 18.183.030 is amended to eliminate foot note 6 and update the “Required Resident Uncovered or Covered Spaces” field in the Accessory dwelling unit row, listed under the “Residential Uses” category, as follows:

**Table 18.18.030
Required Parking Spaces**

Use	Required Resident Covered Spaces	Required Resident Uncovered or Covered Spaces	Required Guest Spaces
Accessory dwelling unit ¹⁻⁶	0	None for studio units or JADUs; otherwise one per unit, except as noted in Footnote (6) below <u>0</u>	0

[All other portions of this table remain unchanged]

SECTION 7. FMC §18.183.175, AMENDED

FMC §18.183.175(a) is amended to read as follows:

§18.183.175 Tandem parking spaces for residential uses.

- (a) Required parking spaces for residential uses may be accommodated by tandem parking spaces in the following zoning districts: D, R-1, R-2, R-3, TOD, and WSI. Additionally, they may be authorized as part of a density bonus application ~~or for an accessory dwelling unit~~; however, in R-1, R-2, and R-3 districts tandem parking spaces may only be considered through a discretionary design review permit and shall be limited to no more than 30 percent of the required parking, subject to the approval authority’s discretion when considering specifics of the proposed site layout and design. For single-family dwellings, no more than one-third of required parking spaces may be tandem, subject to the approval authority’s discretion when considering specifics of the proposed site layout and design.

SECTION 8. FMC §18.190.005, REPEALED AND REPLACED

FMC §18.190.005 is repealed and replaced to read as follows:

§18.190.005 Accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs).

- (a) **Purpose.** The purpose of this section is to implement Government Code Sections 65852.2 and 65852.22 by allowing the creation of accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) through ministerial review.
- (b) **General Regulations.**
 - (1) **Density.** An ADU and/or a JADUs shall not count toward the allowed density for the lot upon which the ADU and/or the JADU is located. An ADU and/or a JADU approved in compliance with this section shall be considered a residential use that is consistent with the existing general plan and zoning designation for the lot.
 - (2) **Fees.**
 - (A) The city may charge a fee covering the costs associated with the issuance of the design review permit, building permits, and related inspections to

determine whether an ADU and/or a JADU complies with applicable building standards and the provisions of this section.

- (B) This section shall not be construed to prohibit the city from adopting an ordinance or regulation relating to services or utility connection fees that applies to a single-family or multifamily dwelling that contain an ADU and/or a JADU so long as that ordinance or regulation applies uniformly to all single-family or multifamily dwelling regardless of whether they include an ADU and/or a JADU.
- (3) **Nonconforming Zoning Conditions.** The correction of nonconforming zoning conditions, which do not present a threat to public health and safety and are not affected by the construction of an ADU and/or a JADU, shall not be required as a condition for ministerial approval of a permit application for the creation of an ADU and/or a JADU.
- (4) **Permitting Procedure.** Any application for an ADU and/or a JADU that meets the applicable location and development standards contained in this section shall be subject to ministerial review and approval without discretionary review or public hearing. A permit shall be issued within 60 days of submission of a complete application for an ADU and/or a JADU conforming to the provisions of this section if there is an existing single-family or multifamily dwelling on the same lot. If the permit application to create an ADU and/or a JADU is submitted with a permit application to create or serve a new single-family or multifamily dwelling on the lot, the city may delay acting on the permit application for that ADU and/or JADU until the city acts on the permit application to create or serve the new single-family or multifamily dwelling, but the application to create an ADU and/or a JADU shall be considered ministerially without discretionary review or a public hearing. If the applicant provides a written request for a delay, the 60-day time period shall be tolled for the period of the delay.
- (5) **Building Permit Required.** All ADUs and/or JADUs, including those that are internal to an existing structure and converted from existing floor area, require a building permit.
- (6) **Rental.** An ADU and/or a JADU shall not be rented for a term of less than 30 days.
- (c) **Regulations Applicable to ADUs.** The following provisions apply to all ADUs, except for the “Statewide Exemption ADUs,” which are only subject to the provisions provided in subsection (e) of this section. In the event of a conflict between the provisions of this section and another section of the Fremont Municipal Code, the provisions of this section shall prevail. In the event of a conflict between the provisions of this section and the California Government Code, including without limitation California Government Code Section 65852.2, as may be amended, the provisions of the applicable Government Code shall prevail.

- (1) **ADU Types.** An ADU shall be either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.
- (2) **Number of Units.**
 - (A) **ADUs on Single-Family Lots.** Except as provided under subsection (e), no more than one ADU shall be permitted to be located on the same lot that has an existing or proposed single-family dwelling. An ADU and JADU may be located in the same primary dwelling.
 - (B) **ADUs on Multifamily Lots.** See subsection (e).
- (3) **Permitted Location.** An ADU may be constructed on the same lot as an existing or proposed single-family or multifamily dwelling in residential or mixed-use zoning districts, as well as planned districts that allow residential uses.
- (4) **Size.** The maximum allowable square footage for an ADU shall not exceed the area limitations specified below. For the purposes of this subsection, the calculation of square footage for an ADU shall not include garages, carports, covered porches/patios, breezeways, and/or other accessory structures.
 - (A) **ADU Size – Existing Floor Area.** An ADU converted from existing floor area shall not be subject to any size limitations.
 - (B) **ADU Size – New Floor Area.**
 - (i) **Attached ADUs.** The total floor area for an attached ADU (new addition) created from new floor area shall not exceed 1,000 square feet.
 - (ii) **Detached ADUs.** The total floor area for a detached ADU (new structure) created from new floor area shall not exceed 1,200 square feet.
- (5) **Building Height.**
 - (A) **ADU Building Height – Existing Floor Area.** An ADU converted from existing floor area shall not be subject to building height limitations.
 - (B) **ADU Building Height – New Floor Area.**
 - (i) **Single Family – Attached.** An ADU that is attached to a single-family dwelling shall be limited to a building height of 30 feet or the building height limitation of the underlying zoning district that

applies to the single-family dwelling, whichever is lower. This clause shall not allow an ADU to exceed two stories.

- (ii) **Single Family – Detached.** An ADU that is detached from a single-family dwelling shall be limited to a building height of 16 feet. If the lot on which the ADU will be created is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Public Resources Code Section 21155, the ADU shall be limited to a building height of 18 feet. An additional building height of two feet shall be allowed to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the single-family dwelling.
- (iii) **Multifamily.** An ADU that is detached from a multifamily dwelling unit shall be limited to a building height of 16 feet, or a building height of 18 feet if either of the following conditions are met.
 - a. The lot on which the ADU will be created is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Public Resources Code Section 21155. An additional building height of two feet shall be allowed to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the single-family dwelling.
 - b. The lot on which the ADU will be created consists of an existing or proposed multifamily, multistory dwelling.

(6) **Building Setbacks.**

- (A) **ADU Setbacks – Existing Floor Area.** No setback shall be required for an ADU located within the existing living area or an existing accessory structure, or an ADU that replaces an existing structure and is in the same location and to the same dimensions as the structure being replaced. Except for an expansion of up to 150 square feet if necessary to provide ingress or egress for the ADU, further expansion beyond what was existing shall be subject to the height and setback restrictions applicable to a new detached ADU.
- (B) **ADU Setbacks – New Floor Area.** A side- and rear-yard setback of four feet shall be required for attached and detached ADUs created from new floor area. ADUs shall be subject to the front yard setbacks applicable to the primary dwelling, unless such a requirement would preclude the construction of an ADU described in subsection (e).

- (7) **Fire Sprinklers.** The installation of fire sprinklers shall not be required for an ADU if fire sprinklers are not required for the primary dwelling unit. The construction of

an ADU shall not trigger a requirement for fire sprinklers to be installed in an existing multifamily dwelling.

- (8) **Historic Property.** An ADU that involves exterior modifications to structures listed in the California Register of Historical Resources shall be designed and constructed in conformance with the objective standards for preservation provided in the Secretary of the Department of the Interior's Standards for the Treatment of Historic Properties.
 - (9) **Owner Occupancy.** Owner occupancy shall not be required for either the primary dwelling unit or the ADU.
 - (10) **Passageway.** No passageway shall be required in conjunction with the construction of an ADU. Per Government Code 65858.2(j), as may be amended, "passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU.
 - (11) **Separate Entrance.** An ADU shall provide at least one exterior entrance that is separate from the main entrance of the primary dwelling. An ADU shall also provide a separate address from the primary dwelling.
 - (12) **Separate Sale.** Except as provided in Government Code Section 65852.26, as may be amended, an ADU may be rented separate from the primary residence; however, the ADU shall not be sold or otherwise conveyed separate from the primary residence.
 - (13) **Sewage.** If applicable, where a private sewage disposal system is being used or an ADU, the approval by the local health officer shall be required.
 - (14) **Parking.** No additional parking spaces shall be required for an ADU. Additionally, no replacement parking shall be required when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted into an ADU.
 - (15) **Utility Connection.** Pursuant to California Government Code Section 65852.2(f)(4), as may be amended, an ADU within the proposed space of a primary dwelling unit or existing space of a primary dwelling unit or accessory structure shall not be required to install a new or separate utility connection directly between the ADU and the utility nor shall a related connection fee or capacity be charged unless the ADU is proposed to be constructed with a new primary dwelling.
- (d) Regulations Applicable to JADUs.** The following provisions apply to all JADUs. In the event of a conflict between the provisions of this section and another section of the Fremont Municipal Code, the provisions of this section shall prevail. In the event of a conflict between the provisions of this section and California Government Code Section 65852.22, as may be amended, the provisions of the respective Government Code shall prevail.
- (1) **Number of Units.** Excluding an ADU, no more than one JADU shall be allowed.

- (2) **Maximum Size.** A JADU shall be limited to a maximum size of 500 square feet and contained entirely within a single-family residence, including an attached garage.
 - (3) **Permitted Location.** A JADU shall be allowed on a residential lot zoned for single-family residences within the walls of a single-family residence built, or proposed to be built, on the lot.
 - (4) **Separate Entrance.** A JADU shall provide at least one exterior entrance that is separate from the main entrance of the single-family residence. A JADU shall provide a separate address from the single-family residence.
 - (5) **Owner Occupancy.** Owner occupancy in the single-family residence in which the JADU will be permitted shall be required. The owner of the single-family residence may occupy either the remaining portion of the structure or the newly created JADU. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.
 - (6) **Separate Sale.** A JADU shall not be sold or otherwise conveyed separate from the single-family residence. A recordation of a deed restriction, which shall run with the land, shall be filed with the city, and shall include the following:
 - (A) A prohibition on the sale of the JADU separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers; and
 - (B) A restriction on the size and attributes of the JADU that conforms to Government Code Section 65852.22, as may be amended.
 - (7) **Fire and Life Safety.** For the purposes of any fire or life protection, a JADU shall not be considered a separate dwelling unit. This clause shall not be construed to prohibit the city from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a JADU so long as the ordinance or regulation applies uniformly to all single-family residences within the zone, regardless of whether the single-family residence includes a JADU or not.
- (e) **Statewide Exemption ADUs.** Pursuant to California Government Code Section 65852.2(e)(1), as may be amended, an application for an ADU or JADU within a residential or mixed-use zone shall be ministerially approved if it creates any of the following:
- (1) **Single Family – ADUs within Existing or Proposed Space.** One ADU and one JADU per lot with an existing or proposed single-family dwelling if all of the following apply:
 - (A) The ADU or JADU unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the

same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

- (B) The space has exterior access from the proposed or existing single-family dwelling.
 - (C) The side and rear setbacks are sufficient for fire and safety.
 - (D) The JADU complies with the requirements of Government Code Section 65852.22.
- (2) **Single Family – New Detached ADUs.** One detached, new construction, ADU that does not exceed four-foot side- and rear-yard setbacks for a lot with a proposed or existing single-family dwelling. The ADU may be combined with a JADU described in subparagraph (1) above. The ADU shall:
- (A) Not exceed a total floor area of 800 square feet; and
 - (B) Comply with the building height requirements specified in subsection (c).
- (3) **Multifamily – Conversion ADUs.** A minimum of one ADU and a maximum of 25-percent of the total number of existing multifamily dwelling units shall be permitted to be converted from 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 the state building standards for dwellings.
- (4) **Multifamily – Detached ADUs.** No more than two detached ADUs shall be permitted on a lot that has an existing or proposed multifamily dwelling. The ADU(s) shall be subject to a maximum rear- and side-yard setback of four feet and the building height limitations specified in subsection (c).

SECTION 9. CEQA

The City Council finds that the proposed amendments to the Fremont Municipal Code are exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to, without limitation, each on a separate and independent basis, CEQA Guidelines:

- (1) §15282 (Other Statutory Exemptions) in that the proposed amendments involve the adoption of an ordinance regarding second units (i.e., accessory dwelling units) in a single-family or multifamily residential zone by a city or county to implement the provisions of Government Code §§ 65852.1 and 65852.2 as set forth in Public Resources Code §21080.17.
- (2) §15061 (Review for Exemption) in that it can be seen with certainty that there is no possibility that the proposed amendments will have the potential for causing a significant effect on the environment.

- (3) §15183 (Projects Consistent with a Community Plan, General Plan, or Zoning) in that the proposed amendments are consistent with the development densities and policies in Fremont’s General Plan, for which an Environmental Impact Report (EIR) [SCH #2010082060] was certified, and existing zoning. The proposed amendments do not involve peculiar impacts that were not previously analyzed or discussed as significant effects in prior EIR(s) on the general plan and zoning with which the project is consistent, there are no previously identified significant effects which are substantially more severe than analyzed in in the prior EIR(s) or cannot be substantially mitigated by the imposition of uniformly applied development policies or standards applied on a citywide basis, and many of the proposed amendments are necessary to conform with state law. Any conceivable impact of the proposed amendments would be too speculative for reasoned analysis in the absence of specific development proposals.
- (4) §15378 (Project) in that the proposed amendments are an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

SECTION 10. SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Fremont hereby declares that it would have passed this ordinance and each section or subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 11. EFFECTIVE DATE

This Ordinance shall take effect and will be enforced thirty (30) days after its adoption.

SECTION 12. PUBLICATION AND POSTING

The City Clerk has prepared and published at least five days before the date of adoption a summary of this ordinance once in a newspaper of general circulation printed and published in Alameda County and circulated in the City of Fremont. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within 15 days after adoption of this ordinance, the City Clerk shall cause the summary to be published again with the names of those City Council members voting for and against the ordinance and shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

The foregoing ordinance was introduced before the City Council of the City of Fremont at the regular meeting of the City Council, held on **June 20, 2023**, and finally adopted at a regular meeting of the City Council held on **Click or tap to enter a date.**, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

Senior Deputy City Attorney II