

CITY OF MILPITAS

Office of Building Safety
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LEGALIZATION OF UNPERMITTED ACCESSORY DWELLING UNITS (ADU)

These guidelines provide the information and permitting procedures for legalizing an existing unpermitted accessory dwelling unit (ADU) or junior accessory dwelling unit (JADU).

Obtaining proper building permits and inspections will help ensure that all work will comply with code requirements to safeguard the occupants and the structure. Permits can also help the property owner avoid entanglements due to complaints, code violation notices and fines. Lastly, obtaining permits helps avoid adverse effects on homeowner insurance rates and at the sale of the property.

Legalizing an unpermitted ADU/JADU requires a review and approval by the Planning Department as well as a building permit. To review the Milpitas Accessory Dwelling Unit Ordinance, go to [Milpitas Municipal Code XI-10-13.08](#).

For questions on the ADU Ordinance, please call the Planning Department at 408-586-3279 or email planningdepartment@milpitas.gov.

For questions on building permit requirements, please call Building Permit Center at 408-586-3240 or email BuildingPermitCenter@milpitas.gov.

STEPS TO LEGALIZE UNPERMITTED ADU

1. Hire a design professional (licensed or unlicensed, except structural work will require licensed design professional) who will be responsible for providing a professional assessment of what legalization may entail and preparing submittal documents and plans for permit application.
2. Submit permit application and submittal documents and plans through the electronic submittal system.
3. Obtain permit issuance through the plan review process.
4. Address any code issues of the unpermitted work to comply with the current codes and approved plans.
5. Obtain final permit approval through the inspection process.

Property owners who receive a code violation notice for an unpermitted ADU/JADU may request a 5-year delay on the enforcement of a violation that is not necessary to protect health and safety, as determined by the Building Official.

NOTE: The Safe ADU Legalization Program eligibility qualifications preclude participation in the program if the conversion/construction has already been discovered and is under an active code enforcement case to legalize the unit or has an active building permit to legalize the unit. Property owners who voluntarily seek to legalize the unpermitted ADU, either through the Safe ADU Legalization Program or otherwise, may also request delay in correcting non-health and safety code issues.

The following will be required during Step 2 above for such request:

- a) Identify the list of non-health and safety code issues requested to be delayed for compliance in the ADU Code Compliance Delay Request Form.
- b) The plans shall show the existing conditions of code issues and the corrections required.
- c) The plans shall identify which code issue corrections will be requested to be delayed.
- d) The code issues identified to be delayed for correction shall be corrected within 5 years of the code violation issued date or the permit issuance date, whichever is earlier.

SUBMITTAL REQUIREMENTS

Submittal Documents

Converted ADU/JADU project (e.g. garage conversion to an ADU) which does not involve structural work such as wall removal or new wall opening or altered/new framing will require the following documents:

- ☐ Title Sheet with project scope and information
- ☐ Site plan
- ☐ Existing/Demolition floor plan
- ☐ Proposed floor plan
- ☐ Utility plan
- ☐ Exterior elevations (required only if there is change in elevations such as infill of the garage door opening)
- ☐ Details & notes
- ☐ [CALGreen checklist](#) (not required if converted from an existing conditioned space)
- ☐ Title 24 Energy Compliance forms (not required if converted from an existing conditioned space)
- ☐ [Blueprint for a Clean Bay](#)

Attached or detached ADUs will require the following additional documents:

- ☐ Existing/Demolition roof plan
- ☐ Proposed roof plan
- ☐ Existing exterior elevations
- ☐ Structural plans
 - Foundation plan
 - Floor and ceiling framing plans
 - Roof framing plan
 - Details and notes
- ☐ Structural calculations

Electronic Submittal Procedures

The submittal documents shall conform with the [New Permit Application Submittal Requirements](#).

The permit application and submittal documents shall be submitted through the [Online Submittal System](#).

NOTE: After the upload of the submittal package is completed, please click the “**Submittal Complete – Notify City of Milpitas**” button at the bottom of the pop-up window of the “Applicant Upload Task” to complete your submittal process.

CODE REQUIREMENTS

The ADU/JADU shall comply with requirements in these currently adopted codes:

- California Building Code (CBC) or California Residential Code (CRC)
- California Electrical Code (CEC)
- California Plumbing Code (CPC)
- California Mechanical Code (CMC)
- California Energy Code (CEnC)
- California Green Building Code (CALGreen)
- California Fire Code (CFC)
- Milpitas Municipal Code (MMC)

The applicable code requirements depend on the type of ADU proposed. The following information provides a comparison between the various types of ADU to allow property owners to make an informed decision on the type of ADU that will best suit their needs.

Definitions:

Converted ADU: An ADU that is contained within the existing space of a single-family residence or accessory structure, including, but not limited to, a studio, pool house, or other similar structure, has independent exterior access from the existing residence, and that has side and rear setbacks that are sufficient for fire safety.

Attached ADU: An ADU that shares at least one wall with the primary dwelling.

Detached ADU: An ADU that does not share any walls with the primary dwelling unit or existing attached accessory structure.

Junior ADU (JADU): A unit that is no more than 500 square feet in size, that has an entrance door directly from outside, and is contained entirely within an existing or proposed single-family structure. A JADU may have only an efficiency kitchen and may include separate sanitation facilities or may share sanitation facilities with the primary dwelling.

Efficiency Kitchen: Includes the following: (a) a cooking facility with appliances and (b) food-preparation counter space with a total area of at least 15 square feet and food-storage cabinets with a total of at least 30 square feet of shelf space.

Code Requirements:

The following are the main building code requirements specific to ADUs and are not inclusive of all code requirements that may be relevant to your project.

Requirements applicable to Converted ADU, JADU, Attached ADU and Detached ADU:

1. An ADU/JADU requires insulation, lighting, ventilation, and heating systems.
2. Exterior door in the ADU/JADU shall be side hinged swinging door per [CRC R311.2](#). Sliding door is not permitted.
3. The ADU/JADU shall be provided with direct access to the electrical panel/disconnect serving that unit per CEC 225.35 and shall not require access through the main dwelling unit.
4. Heating facilities shall be provided for the ADU/JADU per [CRC R303.10](#). These heating facilities must be separate from the main dwelling unit heating as return air from one dwelling unit shall not discharge into another dwelling unit through the heating or cooling air system per CMC 311.4.
5. Bedrooms/sleeping areas require emergency escape windows that meet the min. opening size and max. height requirements per [CRC 310.2](#).
6. When new ceiling finish is proposed on the existing ceiling framing, the existing/new ceiling framing shall be verified to meet the requirements of [CRC Table R802.5.1\(1\)](#) or structural calculations prepared by a California licensed professional engineer shall be provided to verify the ceiling framing capacity.
7. When a new bathroom is added that will increase the total number of water closets of the building to 6 or more, the sewer line downstream of the 6th water closet shall be verified to be or upgraded to 4" diameter per CPC Table 703.2 Footnote 4.
8. Alteration or addition to the existing gas fuel line will require the installation of an automatic gas shut-off device at the gas meter per [MMC II-170-2.00](#).
9. Gas fired appliances such as a furnace or water heater shall not be located in a bedroom/sleeping area or bathroom unless installed in a closet equipped with (1) both a listed, gasketed door assembly and a listed self-closing device or (2) the appliance shall be of the direct-vent type, per CPC sec. 504.1 and CMC sec. 904.1.
10. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted, per [CRC R302.5.1](#).

Additional requirements applicable to Converted ADU, Attached ADU and Detached ADU (not applicable to JADU):

1. An ADU shall meet the min. requirements of an efficiency dwelling unit per MMC sec. [XI-10-13.08\(D\)\(3\)](#) and [CBC 1208.4](#):
 - Unit shall have a living room of not less than 190 sq ft.
 - Unit shall be provided with a separate closet.
 - For other than accessible, adaptable dwelling units, the unit shall be provided with a kitchen sink, cooking appliance and refrigerator, each having a clear working space of not less than 30" in front. Light and ventilation conforming to the CBC shall be provided.

- Unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.

Additional requirements applicable to Converted ADU, JADU and Attached ADU (not applicable to Detached ADU):

1. Sound rating of min. STC 45 and NNIC 42 is required on the walls and floor-ceiling assemblies separating the ADU/JADU and the primary dwelling unit per [CRC Appendix AK AK102.1](#). Dwelling unit entrance doors, which share a common space, shall be tight fitting to the frame and sill.
2. Conversion of existing garage to an ADU/JADU will require a 10-mil Class A vapor retarder, lapped not less than 6 inches, over the existing garage slab per [CRC R506.2.3](#).

Additional requirements applicable to Converted ADU and Attached ADU (not applicable to JADU and Detached ADU):

1. 1-hour fire rated wall and floor-ceiling assembly separation from primary dwelling unit is required per [CRC R302.3](#). Supporting construction of rated floor-ceiling assembly must have the same or greater fire rating. Fire-resistance rated floor/ceiling and wall assemblies shall extend to and be tight against the exterior wall and wall assemblies shall extend from the foundation to the underside of the roof sheathing per [CRC R302.3](#).

Additional requirements applicable to JADU only:

1. *Owner Occupancy:* All JADUs are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or the JADU, as the person's primary residence and legal domicile.
2. *Deed Restriction for JADUs:* Prior to obtaining a building permit for a JADU, a deed restriction, approved by the City Attorney, must be recorded with the County Recorder's office, which shall include the pertinent restrictions and limitations of a JADU. Said deed restriction shall run with the land and bind all future owners, heirs, and assigns. A copy of the recorded deed restriction shall be filed with the Planning Department stating that:
 - a. The JADU may not be sold separately from the primary dwelling unit;
 - b. The JADU is restricted to the maximum size allowed per the development standards;
 - c. The JADU is legal only so long as either the primary residence, or the JADU, is occupied by the owner of record of the property.
3. A JADU only requires an *efficiency kitchen* (see definition above).

Additional requirements applicable to Detached ADU only:

1. Where the distance between the wall of the primary dwelling unit and the detached ADU is less than 10 ft, the wall on either the primary dwelling unit or the detached ADU shall be 1-hour fire rated and the opening on that wall shall be 45-minute fire rated per [CRC R302.3](#).