

**MILLCREEK, UTAH**  
**ORDINANCE NO. 22-29**

**AN ORDINANCE AMENDING TITLE 19 OF THE MILLCREEK CODE OF  
ORDINANCES WITH RESPECT TO ACCESSORY DWELLING UNITS**

**WHEREAS**, Utah Code Ann. § 10-9a-102 grants the City Council (the “Council”) of Millcreek authority to enact ordinances that it considers necessary or appropriate for the use and development of land in Millcreek (the “City”), including uses, structures, and buildings; and

**WHEREAS**, the Council has adopted Title 19 as a comprehensive zoning ordinance (“Zoning Ordinance”) of the Millcreek Code of Ordinances (“City Code”); and

**WHEREAS**, Utah Code Ann. § 10-9a-503 provides in part that the Council, as a legislative body, may amend any regulations of a zoning district or any other provision of a land use regulation; and

**WHEREAS**, the Council met in regular session on June 27, 2022, to consider among other things, approving an ordinance amending Title 19 of City Code with respect to accessory dwelling units (“ADUs”); and

**WHEREAS**, City staff, City consultants, and other persons have recommended that the Council revise the Zoning Ordinance with respect to ADUs; and

**WHEREAS**, Utah Code Ann. § 10-9a-502 provides planning commission shall provide notice as required by Subsection 10-9a-205(1)(a) and, if applicable, Subsection 10-9a-205(4) and hold a public hearing on the proposed land use ordinances; and

**WHEREAS**, on April 27, 2022, the required notice was published; and

**WHEREAS**, on May 18, 2022, the planning commission held the required public hearing with respect to amending various sections of Title 19 of City Code; and

**WHEREAS**, at the May 18, 2022, planning commission meeting the Millcreek Planning Commission considered the amendments to various sections of Title 19 of City Code and recommended amending various sections of Title 19 of City Code; and

**WHEREAS**, the City Code, provides among other things, that before finally adopting any such rezone, the Council shall consider the application during a public meeting which has been properly noticed in compliance with the provisions of Title 52, Chapter 4, of the Open and Public Meetings Act; and

**WHEREAS**, on, June 22, 2022, the Council caused the required notice to be given; and

**WHEREAS**, on, June 27, 2022, the Council considered amending various sections of Title 19 of City Code; and

**WHEREAS**, the City Council finds that the subject text amendment will enhance the public health, safety and welfare, and will promote the goals of the General Plan.

**NOW THEREFORE, BE IT ORDAINED** by the Council that Title 19 Zoning be amended as attached (designated by interlineating the words to be deleted and underlining the words to be added) as shown in **Exhibit A** to this Ordinance.

This Ordinance, assigned Ordinance No. 22-29, shall take immediate effect as published or posted as required by law, deposited, and recorded in the office of the City Recorder, and accepted as required herein.

**PASSED AND APPROVED** this 27<sup>th</sup> day of June, 2022.

**MILLCREEK COUNCIL**

By: \_\_\_\_\_

**Jeff Silvestrini, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Elyse Sullivan, City Recorder**

Roll Call Vote:		
Silvestrini	Yes	No
Catten	Yes	No
DeSirant	Yes	No
Jackson	Yes	No
Uipi	Yes	No

**CERTIFICATE OF POSTING**

I, the duly appointed recorder for Millcreek, hereby certify that:  
ORDINANCE 22-29: AN ORDINANCE AMENDING TITLE 19 OF THE MILLCREEK CODE OF ORDINANCES WITH RESPECT TO ACCESSORY DWELLING UNITS was passed and adopted the 27<sup>th</sup> day of June, 2022 and certifies that copies of the foregoing Ordinance 22-29 were posted in the following locations within the municipality this \_\_\_\_ day of June, 2022.

1. Millcreek City Hall, 3330 S. 1300 E., Millcreek, UT 84106
2. Millcreek Community Center, 2266 E. Evergreen Ave., Millcreek, UT 84109
3. Holladay Lions Recreation Center, 1661 E. Murray Holladay Rd., Millcreek, UT 84117

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Elyse Sullivan, City Recorder

## **EXHIBIT A**

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## **Chapter 19.04 DEFINITIONS**

### **19.04.546 Translucent**

“Translucent” means a substance that allows light to pass through but does not allow an object or person to be seen through the substance.

### **19.040557 Window**

“Window” means an opening in the wall of a building for the admission of light and/or air that is usually closed by casements or sashes containing transparent and translucent materials (such as glass) and may be capable of being opened or shut and allow people to see through. A window shall include all window components of a standalone window or a window system consisting of more than one pane and window components including but not limited to casings, jambs, muntins, rails, sashes, sills and stiles.

## **Chapter 19.89 ACCESSORY DWELLING UNITS**

### **19.89.063 Development Standards for Detached Accessory Dwelling Units**

- A. A detached ADU shall be a permanent structure. Trailers, mobile homes, and other portable structures especially structures with wheels shall not be permitted as a detached ADU.
- B. A detached ADU is not eligible for The Residential Compatibility Overlay Zone Option B Deviations from General Standards Based on Neighborhood Compatibility found in MKZ 19.71.040 or the Option C Special Exception found in MKZ 19.71.050.
- C. A detached ADU shall not be used as a short-term rental.
- D. Exterior lighting shall provide illumination directed downward. Light source shall not be visible from adjacent properties.
- E. Windows on a façade, located within 15 feet of an adjacent property containing a single-family, twin home, or duplex dwelling, shall be **fixed (non-operatable) and** translucent ~~or not visible from an adjacent property~~ or **shall be** installed as a skylight.
- F. Parking shall be in a garage or 8 feet from an adjacent property or not visible from an adjacent property unless utilizing a driveway in the front yard.
- G. Entrances, parking, and stairways within 15 feet of an adjacent property shall not be visible from the adjacent property. This may be done with a fence along the side and rear property lines, landscaping that is dense enough to obscure activity or placing the entrances and stairs out of view of adjacent properties.
- H. Detached ADUs shall not be built on slopes of 30% or greater.
- I. Balconies on the second story of an ADU are prohibited.

- J. Exterior stairways and landing shall not encroach into a setback.
- K. A lot in an R-1-21 or R-1-43 zone that has a guesthouse is not eligible for a detached ADU unless the guesthouse is converted to an ADU.

### **19.89.100 Existing Buildings**

- A. Existing buildings in Millcreek **that were permitted prior to September 17, 2021**, that are intended to be used as an ADU and cannot meet **with** the standards set forth in this chapter must file an application to have a structure declared a noncomplying structure under MKZ 19.88.150 and then follow the application process set forth below to have the use allowed through special exception.
- B. The property owner shall have the burden of establishing that the building was legally created. The director or director's designee shall review application in the following procedure:
  - 1. Owner or applicant seeking determination shall file an application with the City and pay all applicable fees, including any additional fees incurred resulting from staff providing research.
  - 2. Application shall include evidence that clearly establishes the ADU lawfully existed at the time it was created.
  - 3. Acceptable evidence may include:
    - a. Historical zoning maps clearly identifying the use and structure existed.
    - b. Historical zoning code supporting historical zoning maps.
    - c. Previously issued building permits.
    - d. Previously issued conditional use permits.
    - e. Documentation supporting a variance was granted or issued for the use or structure.
    - f. Aerial imagery that clearly establishes use or structure existed.
    - g. Court Orders or Judgements.
    - h. Affidavits from previous property owners attesting to the use/structure.

- i. Evidence of utility connections.
  - j. A building inspection that certifies that the building or structure was compliant with the codes in effect of the time it was built.
4. The city shall accept application and evidence provided and make its findings and determination within fourteen business days. The City shall notify the applicant in writing stating the determination.
5. A lot that has an existing guest house does not qualify for an additional detached ADU. By definition, a guest house may not be rented out or leased. If a property owner wants to convert a guest house to a detached ADU the property owner must follow all applicable processes and design requirements for detached ADUs.

#### C. Attached Accessory Dwelling Unit Conversions

1. A portion of a building attached, or within, the primary dwelling that is noncomplying and was legally established as determined under MKZ 19.89.100 (B), may be converted or expanded for the purpose of converting or enlarged for the purpose of converting, into an ADU upon permit authorized by the Land Use Hearing Office provided that the Land Use Hearing Officer shall find that:
  - a. The primary dwelling, or portion thereof, is no less than 3 feet from the side and rear property lines;
  - b. The attached ADU does not have a light source projecting onto the neighboring property;
  - c. The attached ADU does not have any balconies, porches, or windows facing adjacent property owners, unless facing a RM or C zoned property;
  - d. The attached ADU does not protrude higher than the measured height of the existing nonconforming structure being expanded as measured from original ground surface.
  - e. The attached ADU can accommodate all required parking on the lot, and does not violate the required off-street parking standards, including parking requirements of this title.

#### D. Detached Accessory Dwelling Unit Conversions

1. A detached building that complies with all applicable height, building envelope, setback, and lot coverage requirements may be converted, or expanded for the purpose of converting, or enlarged for the purpose of converting, to an accessory

dwelling unit, provided the existing setbacks of the detached building are not further reduced and the structure complies with or can be altered to comply with the applicable sections of the adopted building and fire codes of the City.

2. A detached building, that is noncomplying and was legally established as determined under 19.89.100 (B), may be converted, or expanded for the purpose of converting, or enlarged for the purpose of converting, to an accessory dwelling unit upon permit authorized by the Land Use Hearing Office provided that the Land Use Hearing Officer shall find:
  - a. The side or rear setbacks of the detached building are not further reduced to accommodate the ADU;
  - b. The detached building does not have a light source projecting onto an adjacent property;
  - c. The ~~façade of the~~ detached building ~~located within five feet and facing an adjacent property line,~~ does not have any balconies ~~or~~ porches, landings, stairs, doors, or windows. ~~facing an adjacent property unless facing a nonresidential use.~~
  - d. For properties with rear yards that are located next to an RM or C Zone, the detached building does not exceed 24 feet in height;
  - e. For all ~~other~~ properties, ~~located adjacent to a residential zone and residential use,~~ the detached building does not protrude higher than the measured height of the existing noncomplying structure being expanded as measured from original ground surface.;
  - f. Does not create any new visual impacts that cannot be otherwise mitigated by a fence or wall.;
  - g. The detached ADU can accommodate all required parking on the lot, and does not violate or diminish the required off-street parking standards, including parking requirements of this title;
  - h. Does not violate applicable standards and regulations outlined in Chapter 19.71 Residential Compatibility Overlay Zone for accessory structures and principal structures; provided that such increase or expansion of structure does not further increase where the graduated height envelope intersects the existing structure;
  - i. Structure or proposed expansion of the structure is not within any recorded easement;
  - j. Does not result in runoff or drainage from the accessory building onto an

adjacent property; and

- k. The detached building shall meet all other requirements of MKZ 19.89.063, except as provided otherwise in this section;
- l. Meets the applicable sections of the adopted building and fire codes of the City.

E. Conditions and Limitations for Land Use Hearing Officer Permits for ADU Conversions.

The Land Use Hearing Officer may impose conditions and limitations upon issuance of a permit for an addition to, enlargement of, moving of, or reconstruction of a structure as necessary to prevent or mitigate adverse effects on other properties in the neighborhood of the subject property, consistent with the standards of this Title.