

**ORDINANCE NO. 21-996**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING PORTIONS OF CHAPTERS 11.02, 11.16, 11.18, 11.19, 11.20, 11.22, and 11.36 AND REPEALING AND REPLACING CHAPTER 11.23 OF TITLE 11 OF THE MONTCLAIR MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS IN THE CITY**

**WHEREAS**, the California Legislature adopted legislation in 2019 amending California Government Code Sections 65852.2 and 65852.22, which took effect January 1, 2020, imposing new limitations on a local agency's ability to regulate accessory dwelling units (ADUs), and junior accessory dwelling units (JADUs); and

**WHEREAS**, the City Council finds that it is necessary and appropriate to amend Chapter 11.02 (Definitions), portions of Chapters 11.16, 11.18, 11.19, 11.20, 11.22, and 11.36, and replace Chapter 11.23 of the Montclair Municipal Code in order to comply with California Government Code Sections 65852.2 and 65852.22. The state found that accessory dwelling units (also commonly referred to as "granny flats," in-law apartments," or "accessory units") provided an important source of affordable rental housing designed to meet the special housing needs of individuals and families, particularly those of low and moderate income; and

**WHEREAS**, adopting an Ordinance consistent with California Government Code Sections 65852.2 and 65852.22 ensures that the character of the City is preserved to the maximum extent permitted by law and that the City's regulation of ADUs and JADUs continues to promote the health, safety, and welfare of the community; and

**WHEREAS**, allowing ADUs and JADUs in conjunction with existing or proposed residential development provides additional rental housing stock, some of which will satisfy the City's 6th Cycle Regional Housing Needs Assessment (RNHA) for the period covering 2021-2029; and

**WHEREAS**, ADUs and JADUs offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character; and

**WHEREAS**, a public hearing was held by the Planning Commission on June 14, 2021, at 7:00 p.m. in the Council Chambers located at 5111 Benito Street, Montclair, California. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing; and

**WHEREAS**, on June 14, 2021, the Planning Commission, by a 4-0-1 vote, approved Resolution No. 21-1947 recommending City Council approval of Zoning Code Amendment ZCA 2021-16 to modify the regulations pertaining to accessory dwelling units and junior accessory dwelling units; and

**WHEREAS**, on August 16, 2021, the City Council conducted a first reading of proposed Ordinance No. 21-996 to amend portions of Chapters 11.02, 11.16, 11.18, 11.19, 11.20, 11.22, 11.36, and repeal and replace Chapter 11.23 of the Montclair Municipal Code relating to ADUs and JADUs in the City; and moved to set a public hearing to consider adoption of Ordinance No. 21-996 for Monday, September 20, 2021; and

**WHEREAS**, a public hearing was held by the City Council on September 20, 2021, at 7:00 p.m. in the Council Chambers located at 5111 Benito Street, Montclair, California. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing; and

**WHEREAS**, revisions to the Ordinance requested at the August 16, 2021 meeting were incorporated into revised Ordinance presented to the City Council on Monday, September 20, 2021; and

**WHEREAS**, pursuant to Government Code Section 36934 revisions are limited to only "corrections of typographical or clerical errors," while other revisions are considered an "alteration" within the meaning of this code section. As such, the revised ordinance requires a new first reading, with a second reading at the following meeting; and



**WHEREAS**, on September 20, 2021, the City Council conducted a first reading of revised Ordinance No. 21-996 and moved to set a public hearing to consider adoption of the Ordinance for Monday, October 4, 2021; and

**WHEREAS**, a public hearing was held by the City Council on October 4, 2021, at 7:00 p.m. in the Council Chambers located at 5111 Benito Street, Montclair, California. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED** by the Montclair City Council as follows:

**SECTION I.** The foregoing Recitals are adopted as findings of the City Council as though set forth in full within the body of this Ordinance.

**SECTION II.** The Montclair Municipal Code for the City of Montclair ("Code") shall be amended to add new definitions to Chapter 11.02 DEFINITIONS, Section 11.02.010 as follows:

**Accessory Dwelling Unit (ADU)** means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include a permanent structure, with a permanent foundation, connection to utilities, with provisions for living, sleeping, eating, cooking, and bathroom facilities on the same parcel the main dwelling exists. The definition of accessory dwelling unit includes the following:

1. An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code for occupancy by no more than two persons which have a minimum floor area of 150 square feet and shall have kitchen and bathroom facilities; and
2. A manufactured home, as defined by Section 18007 of the California Health and Safety Code.

**Accessory Dwelling Unit Types.** For purposes of this section, there are three types of accessory dwelling units allowed, subject to the requirements of Chapter 11.23.030, and as described below:

1. **Detached Accessory Dwelling Unit.** A detached ADU is a dwelling unit with complete independent living facilities constructed as a separate structure from the main dwelling unit on the property.
2. **Attached Accessory Dwelling Unit.** An attached ADU is a dwelling unit with complete independent living facilities that shares at least one common wall with the existing main dwelling unit on the property.
3. **Junior Accessory Dwelling Units (JADU).** A JADU is a dwelling unit that is no more than 500 square feet in size and contained entirely within a single-family residence that provides living facilities for up to two persons. A JADU may include separate sanitation facilities or may share sanitation facilities with the existing residence.

**Accessory Structure** means a structure that is accessory and incidental to a dwelling located on the same lot.

**Complete Independent Living Facilities** means the permanent provision for living, sleeping, eating, cooking, and bathroom facilities for a main or accessory dwelling unit.

**Kitchen** means a room or area that is designed for and contains approved permanent cooking, refrigeration and sink facilities.

**Kitchenette or Efficiency Kitchen** means a small area designated for preparing food as part of a room instead of a separate room. A kitchenette or Efficiency Kitchen shall include each of the following elements:

1. Approved cooking, refrigeration, and sink facilities. A microwave or toaster oven shall not be considered an approved cooking appliance for purposes of determining if a room constitutes a kitchenette/efficiency kitchen.
2. A food preparation counter or counters that total at least 15 square feet in area; and



3. Food storage cabinets that total at least 30 square feet of shelf space.

**Floor Area** means the total floor area measured from the outside of the exterior walls of a detached ADU, or the area from the outside of the exterior walls of the ADU to the centerline of shared interior walls that separate the accessory unit and primary-unit living space. Proposed habitable space located under a sloping roof where the sloping ceiling measures less than five feet from the finished floor to the finished ceiling is not counted as floor area. Carports, covered porches (open on three sides) and patios, chimneys, stairwells and mechanical closets are not counted toward the determination of floor area of an ADU.

**Habitable Floor Area** means the total floor area of all habitable rooms in a dwelling unit.

**Habitable Room** means any finished and conditioned (heated) space or room in a dwelling unit other than a bathroom, closet, pantry, hallway, storage space, enclosed patio, laundry room, garage or carport as defined by the Building Code.

**Main Dwelling Unit** means the existing or proposed single-family dwelling on the lot where an ADU would be located.

**Nonconforming Zoning Condition** means a physical improvement on a property that does not conform to current zoning standards.

**Passageway** means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.

**Proposed Dwelling** means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

**Public Transit** means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

**Tandem Parking** means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

**SECTION III.** The Code shall be further amended at the following sections to ensure consistency with Chapter 11.23, with the following additions and ~~deletions~~:

**11.16.030 – Uses permitted.**

~~No building or structure or land in the A Zone shall be used, and no building or structure shall be hereafter erected, structurally altered, or enlarged in the A Zone, except for those uses which shall be subsequently adopted by resolution of the Planning Commission to provide for the estate development.~~

The following uses shall be permitted in the Estate A zone:

- A. Accessory Dwelling Units and Junior Accessory Dwellings Units

**11.18.30 – Uses Permitted**

The following uses shall be permitted in the R-1 zone:

- H. ~~Second dwelling units~~ Accessory Dwelling Units and Junior Accessory Dwellings Units pursuant to Chapter 11.23 of this title and accessory buildings pursuant to Chapter 11.19 of this title or improvements incidental to any of the permitted uses in this chapter. No motor home, mobile home, tank, shipping container, trailer, business, or other vehicle or similar item shall be considered or permitted as accessory buildings.

**11.18.040 – Property development standards.**

- E. Yards. The following yards shall be established and maintained (see Section 11.38.060 of this Code for additional setbacks which may be required for planned rights-of-way):

4. See Chapter 11.23 for setbacks applicable to Accessory Dwelling Units; refer to Tables 1 and 2.

**11.19.080 – Building separation.**

- C. See Chapter 11.23 for building separation standards applicable to Accessory Dwelling Units; refer to Tables 1 and 2.



**11.20.020 – Uses permitted.**

- F. Accessory Dwelling Units subject to Chapter 11.23 of this title.

**11.20.070 – Yards.**

- E. See Chapter 11.23 for setbacks applicable to Accessory Dwelling Units refer to Table 2.

**11.22.020 – Uses permitted.**

- B. The following shall be permitted as accessory uses:

5. Accessory Dwelling Units subject to Chapter 11.23 of this title; refer to Table 2.

**11.22.040 – Property development standards.**

- I. Yards and Setbacks. Developments in the R-3 Zone shall have and maintain the following minimum yards and setbacks (see Sections 11.38.050 and 11.38.060 of this title for additional requirements). Building setbacks shall be measured from the front property line.

5. See Chapter 11.23 for setbacks applicable to Accessory Dwelling Units; refer to Table 2.

**SECTION IV.** The Code shall be amended to repeal existing Chapter 11.23 and replace it with new Chapter 11.23 entitled " ACCESSORY DWELLING UNITS" as follows:

**11.23.010 – Purpose and intent.**

The purpose and intent of this chapter is to establish procedures for permitting accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) on lots zoned for residential uses, in accordance with California Government Code sections 65852.2 and 65852.22. This chapter provides standards for ADUs to minimize adverse impacts on the public health, safety, and general welfare from the establishment of accessory dwelling units.

Nothing herein shall preclude or prevent the City from undertaking any other enforcement action with respect to an accessory dwelling unit which the City is otherwise authorized under this code or applicable state or federal law, including but not limited to the abatement of public nuisances.

**11.23.020 – Applicability.**

- A. This chapter shall apply to the construction of any ADU in single-family and multifamily residential districts within the City as defined herein.
- B. The construction, establishment, alteration, enlargement, or modification of an accessory dwelling unit shall comply with the requirements of this chapter in conjunction with the issuance of necessary construction and alteration permits as may be required by adopted codes listed in Title 10 of the Montclair Municipal Code.
- C. The provisions of this chapter shall in no way validate any existing accessory dwelling unit constructed without City approval and permits. Accessory structures erected without benefit of City approval and a building permit shall be removed upon notification or, if possible, modified to comply with the provisions of this chapter and any applicable requirements in the adopted codes listed in Title 10 of the Montclair Municipal Code.
- D. Existing ADUs that were approved pursuant to City requirements and permits prior to the adoption of this Chapter are deemed to be lawfully permitted. Existing ADUs shall count towards the maximum number of ADUs allowed for each property. Modifications to the size of existing ADUs shall be subject to the provisions of this Chapter as modified from time to time.
- E. ADUs are prohibited in all zones other than those zones where residential uses are permitted. ADUs are also prohibited in the following locations:



1. Adopted specific plans that already contain provisions for high-density residential and mixed-use development, including but not limited to the *North Montclair Downtown Specific Plan, Montclair Place District Specific Plan, and the Arrow Highway Mixed-Use District Specific Plan.*
2. Non-conforming residential developments on Commercial and Industrial zoned properties.

**11.23.030 – Permitted locations and standards.**

Accessory dwelling units are allowed in all residential zones with a legally established existing, or proposed, main dwelling unit as specified in this section, and generally by means of one of the following scenarios:

- A. In Single Family Zoned Districts (Table 1):
  1. Conversion of existing space within the floor space of the main dwelling unit to provide a JADU. In a single-family zoned districts, only one JADU shall be allowed on a single parcel.
  2. Construction of an attached ADU or a detached ADU. In single-family zoned districts only one ADU, attached or detached, shall be allowed with or without one JADU on a single parcel.

Table 1 ADU Development Standards – Single Family Zones: R-1, R-1(SL), R-1(11), R-1(20)			
Standard	JADU	Attached- ADU	Detached-ADU
Number of ADUs Allowed Per Lot <sup>1</sup>	Minimum of 1: JADU, or Attached- ADU, or Detached-ADU Maximum of 2: One JADU plus an Attached- ADU, or Detached-ADU		
Unit Size	Minimum 150 SF Maximum 500 SF	Minimum 150 SF Maximum 1,000 SF	150 SF 1,000 SF
Lot Coverage <sup>2</sup> (All structures)	N/A	35 percent	35 percent or 50 percent <sup>3</sup>
Setbacks	Front: 25 feet Street Side: 15 feet Interior: 4 feet Rear: 4 feet		
Building Separation	N/A	N/A	6 feet
Building Height <sup>4</sup>	Maximum 16 feet for JADU, Attached- ADU, or Detached-ADU Exception for JADU or Attached-ADU when integrated into, or when attached to an existing two-story main dwelling unit.  Maximum 35 feet or the height of the existing two-story main dwelling unit, whichever is less.  Detached-ADU limited to 1-Story and maximum height of 16 feet.		

<sup>1</sup> Main dwelling unit required.

<sup>2</sup> Lot coverage Maximum does not applied to ADUs 800 SF and under

<sup>3</sup> Single family residential properties located in R1 zones on the official zoning map designated by the "SL" suffix

<sup>4</sup> Building height measured to the peak of the structure.

Minimum setback and building separation distances shall be measured from the closest points of the building or structure walls to another structure or property line, including chimneys, bay windows, or other architectural elements extending outward from the building wall plane.

- B. In multifamily-zoned districts and developments (Table 2) ADUs, except a JADU, are permitted and may be accommodated in one or more of the following ways:
  1. Conversion of covered or enclosed parking spaces, or
  2. Conversion of unused or vacated non-habitable spaces such as offices, storage rooms, passageways, attics, basements, etc.; Conversion of Laundry facilities shall be permitted unless required as part of a previously approved Precise Plan of Design and/or Conditional Use Permit for the subject property; or



3. Construction of detached ADUs on surplus or utilized open space area not within a required front or street side setback area.

Table 2 ADU Development Standards – Multi-Family Zones: R-2 and R-3		
Standard	Attached ADU	Detached ADU
Number Per Lot <sup>1</sup> (Includes conversion of qualifying existing space and new construction)	Minimum of 1 unit (Attached or Detached ADU) or Maximum of 25 percent of the total number of existing dwelling units within in the complex <sup>2</sup>	
Unit Size	150 SF Minimum 850 SF Maximum (One-bedroom) 1,000 SF Maximum (Two-bedroom)	
Lot Coverage <sup>3</sup> (All structures)	R-2:40 percent for structures over 800 SF R-3: Buildings and structures shall not cover more of a lot than would be permitted when satisfying all yard, open space, parking and access requirements for structures over 800 SF per MMC	
Setbacks	Front: 25 feet Street Side: 15 feet Interior: 4 feet Rear: 4 feet	
Building Separation	N/A	6 feet
Building Height <sup>3</sup>	Attached ADU: Maximum 16 feet or height of existing main residential building whichever is less, or Maximum height 35 feet or height of the existing two-story residential building, whichever is less. Detached ADU: 1-Story and maximum height of 16 feet	
<sup>1</sup> An approved and constructed multifamily dwelling complex required. Complex is considered one property regardless of the number of parcels. <sup>2</sup> When the calculation for maximum number of units results in a fractional number over 1 unit, it shall be rounded to the next highest whole number if the fraction is one-half or more; otherwise it shall be rounded down to the next lowest whole number. <sup>3</sup> Lot coverage Maximum does not applied to ADUs 800 SF and under		

**11.23.040 – Process and timing.**

The review of an ADU application is considered and approved ministerially, without discretionary review or a hearing. The City must act on an application to create an ADU or JADU within 60 days from the date that the City receives a completed application, unless either:

- A. The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or
- B. When an application to create an ADU or JADU is submitted on a vacant or partially vacant site involving new construction with a Precise Plan of Design permit application to create a new single-family dwelling on the lot, the City may delay acting on the permit application for the ADU or JADU until the City acts on the Precise Plan of Design permit application to create the new single-family dwelling, but the application to create the ADU or JADU will still be considered ministerial without discretionary review or a hearing.
- C. When an application to create an ADU is submitted on a vacant or partially vacant site involving new construction with a Precise Plan of Design permit application to create a new multiple family dwelling on the lot, the City may delay acting on the permit application for the ADU until the City acts on the Precise Plan of Design permit application to create the new single-family dwelling, but the application to create the ADU will still be considered ministerial without discretionary review or a hearing.

**11.23.050 – ADU and JADU permits.**



The City may charge a fee to reimburse it for costs incurred in processing ADU permits, including the costs of adopting or amending the City's ADU ordinance. The ADU-permit processing fee is determined by the Planning Department and approved by the City Council by resolution.

#### **11.23.060 – Parking.**

One on-site uncovered parking space shall be required for each ADU, regardless of the number of bedrooms. No on-site parking shall be required for a JADU.

Parking space(s) may be provided on a paved surface within:

- A. A front or street side setback area, provided that said space when combined with other hardscape surfaces within the setback does not exceed 50 percent of the required landscape setback area, as approved by the Community Development Director/Designer; or
- B. As a tandem parking space on a new or existing paved driveway.
- C. Parking space dimensions shall be at least 9 feet wide by 20 feet deep. Parking space within an enclosed garage shall have unobstructed dimensions of at least 10 feet wide by 20 feet deep.
- D. No additional driveway approaches from public streets shall be permitted for required parking spaces for ADUs. Access to an authorized parking space may be provided from an alley.
- E. Exception: No on-site parking space for an ADU shall be required in the following situations:
  - 1. The ADU is located within one-half mile walking distance of public transit, including, without limitation, a bus stop, train station, or paratransit stop, as designated by a public agency; or
  - 2. The ADU is located within an architecturally and historically significant district established by the City; or
  - 3. When on-street parking permits are required but not offered to the occupant of the ADU; or
  - 4. When there is an established car share vehicle stop located within one block of the ADU.
  - 5. The ADU is converted as part of the proposed or existing primary residence or an accessory structure.
- F. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, replacement of such structures not required.

#### **11.23.070 – Plan review submittal requirements.**

Proposals for an ADU or JADU shall require the preparation of professionally and accurately drawn plans for City review and subsequent approval of a building permit. Plans for an accessory dwelling unit shall be submitted to the Department of Community Development for review to determine compliance with each of the general requirements in subsection 11.23.090, prior to the submittal of an application for a building permit.

A complete set of plans, drawn in a standard architectural and/or engineering scale (e.g. ¼, ½, 1:10, 1:20, etc.) with appropriate dimensions and labels, shall include:

- A. Site Plan. A site plan showing the entirety of the property and the location of the proposed ADUs in context with property lines, existing and/or proposed structures, and other significant features (e.g., driveways, pools, fences and walls, trees, utility poles and boxes, major slopes, etc. ) on the site. Add dimensions for the site and setback distances from property lines and existing structures.
- B. Floor Plans. Prepare a detailed and scaled floor plan for the ADU(s), identifying each room, room dimensions, and floor area calculations. Show location and size of all windows and doors. For an attached ADU or JADU provide a complete floor plan for the main dwelling unit to which they are attached.
- C. Building Elevations. Complete set of dimensioned building elevations for detached and attached ADUs. Show all proposed openings, exterior materials/finishes, roof pitch, and architectural details. For a JADU or



Attached ADU, show proposed unit in context with the existing main dwelling unit to which it is attached.

- D. Roof Plan. Show roof pitch, and placement of any required vents. No new or additional roof top air conditioner units or ducts shall be permitted on an attached or detached ADU, or JADU.

The review and approval of plans by Community Development Department shall be performed by the Director of Community Development or his/her designee and shall be completed within 60 days of receiving a complete application for an ADU which meets the requirements and standards of this Chapter.

#### **11.23.080 - Building permit required.**

Approval of an ADU application pursuant to this chapter is a ministerial action not subject to discretionary review beyond the General Requirements contained in this chapter. As such, plans receiving approval by the Community Development Department shall be submitted to the Building Division for required building permit(s). Plans shall comply with all applicable requirements of the Building Code as adopted pursuant to Title 10 of the Municipal Code and enforced at the time of application.

#### **11.23.090 - General requirements.**

- A. The property and on-site structures on which an ADU is proposed shall be in good physical condition consistent with Chapter 10.32 (Property Maintenance Code) of the Montclair Municipal Code. No building permit for an ADU or JADU shall be issued for properties having current building or zoning code violations, unpermitted construction, or code enforcement violations/liens, until such matters have been resolved.
- B. Placement of an attached or detached ADU shall not be located on a parcel in a way that would prohibit access to a designated parking area, or impede safe ingress or egress by emergency personnel to the structure or yard areas.
- C. A Detached-ADU may be of standard residential construction, manufactured housing, or factory-built housing placed on permanent foundations. Manufactured or factory-built housing shall be generally consistent with Design Guidelines specified in Section 11.23.100. The use of commercial storage or shipping containers for purposes of this Chapter shall not be permitted.
- D. An Attached or Detached ADU shall contain no more than two (2) bedrooms
- E. ADUs shall be assigned a separate address and identified by the addition of an alpha character (e.g., A, B.) to the address of the main dwelling unit on the property.
- F. An ADU may be metered separately from the main dwelling unit for gas, electricity, communications, water, sewer services. A JADU shall not be metered separately. The use of a sub meter for the JADU may be allowed to measure the amount of the utility (i.e., gas, electricity, and water) used by a JADU, subject to Building Code regulations.
- G. All new utilities for a Detached-ADU shall be installed underground.
- H. An Attached or Detached-ADU shall be constructed on a permanent foundation and connected to the public sewer.
- I. An ADU must have a separate exterior entrance, apart from that of the main dwelling unit dwelling. The separate entrance shall be located on the side or rear of the structure and whenever possible facing interior yard areas; and
- J. The primary and ADUs may not be sold separately and no subdivision of land or air rights shall be allowed.
- K. Property owner shall obtain and provide to the City a Will Serve Letter from the City's authorized solid waste hauler.
- L. Fire sprinklers shall be required in an ADU if sprinklers are required in the primary residence unless specifically exempt per Montclair City Code or State Code.
- M. The detached ADU, and attached ADU and/or principal dwelling may be rented. Junior ADU constructed with living area of principle dwelling shall be subject to owner occupancy requirements.



#### **11.23.100 – Standard ADU design guidelines.**

The design of all ADUs shall be complementary or similar to the appearance of the main dwelling unit. When appropriate, the use of City pre-approved ADU designs is encouraged. In preparing plans, consideration shall be given to the following basic design elements:

- A. Roof shape and pitch, eaves, roofing materials; and
- B. Materials, textures, finishes and colors of the exterior walls, windows, doors, etc.; and
- C. ADU façade elevations visible from the public right-of-way shall incorporate Windows, entries, or other architectural features that are compatible with the main dwelling unit.
  - 1. Avoid locating bathroom facilities and placing related windows or vents on the street facing side of a proposed ADU.
  - 2. Remove garage doors and replace with a new façade when converting a garage or carport attached to an existing main dwelling unit, or a detached garage structure. The new façade shall include windows and exhibit other architectural features that are proportionate and compatible with the appearance of the main dwelling unit. Stucco walls devoid of compatible architectural features shall not be allowed.
- D. No window-mounted or exposed roof-mounted HVAC equipment (e.g., air conditioners, condensers, and/or ductwork, etc.) shall be allowed. Roof mounted HVAC equipment may be proposed when fully screened from view to the street and adjoining properties by means of a mechanical well and/or parapets walls of a height proportionate and appropriate to architecture of the ADU and main dwelling unit, as approved by the Community Development Director. The use of a mini-split HVAC system that does not rely on ducts to deliver heated and cooled air is encouraged.

#### **11.23.110 – Owner occupancy.**

An ADU and/or the main dwelling may be rented without owner occupancy requirements. ADUs can be rented for a term no fewer than 30 days for residential purposes, and cannot be used as a short-term or vacation rental (fewer than 30 days).

If there is a JADU on the property, either the JADU or Primary Dwelling shall be occupied by the owner of record, unless the property is entirely owned by another governmental agency, land trust, or housing organization.

- A. Deed Restriction. Prior to issuance of a final inspection and release of occupancy of building permit for an ADU or JADU, a deed restriction must be recorded against the title of the property in the County Recorder's office and a copy filed with the Development Services Department. The deed restriction must run with the land and bind all future owners. The form of the deed restriction will be provided by the City and must provide that:
  - 1. The ADU or JADU may not be sold separately from the main dwelling.
  - 2. The ADU or JADU is restricted to the approved size and to other attributes allowed by this section.
  - 3. The deed restriction runs with the land and may be enforced against future property owners.
  - 4. The property owner shall annually report to the City the actual rent charged for the ADU or JADU as required by Chapter 11.23 of the Montclair Municipal Code.
  - 5. If the accessory dwelling unit is a JADU, either the JADU or Primary Dwelling shall be occupied by the owner of record, unless the property is entirely owned by another governmental agency, land trust, or housing organization.
  - 6. The deed restriction may be removed if the owner eliminates the ADU or JADU, as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request to the Community Development Director, providing evidence that the ADU or JADU has in fact been eliminated. The Director may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated. Appeal may be taken from the Community Development Director's determination consistent in accordance with Chapter 17.47. If



the ADU or JADU is not entirely physically removed, but is only eliminated by virtue of having a necessary component of an ADU or JADU removed, the remaining structure and improvements must otherwise comply with applicable provisions of this Code.

- B. The deed restriction is enforceable by the Community Development Director or his or her designee for the benefit of the City. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the City is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining the use of the ADU or JADU in violation of the recorded restrictions or abatement of the illegal unit.

#### **11.23.120 – Reporting of annual rent.**

To facilitate the City's obligation to identify adequate sites for housing in accordance with Government Code sections 65583.1 and 65852.2, the following requirements shall be satisfied:

- A. With the building permit application, the applicant shall provide the City with an estimate of the projected annual rent that will be charged for the ADU or JADU.
- B. By January 31 of each calendar year, the owner of the property containing an ADU or JADU shall report the actual rent charged for the ADU or JADU during the prior calendar year. If the City does not receive the report, the owner is in violation of this Code, and the City may send the owner a notice of violation. If the owner fails to submit the report within the time period stated in the notice of violation, the City may enforce this provision in accordance with applicable law. This condition shall be added to owner occupancy covenant,

#### **11.23.130 – Impact fees.**

- A. Development impact fees are required to be paid for an attached or detached ADU greater than 750 square feet. Development impact fees charged shall be charged proportionately in relation to the square footage of the primary dwelling unit.
- B. Development impact fees are not required to be paid for construction of a JADU.

#### **11.23.140 – Conformance.**

Approved accessory dwelling units that conforms to this section shall:

- A. Be deemed an accessory use or an accessory building; and
- B. Be deemed a residential use that is consistent with the General Plan and the zoning designations for the lot; and
- C. Not be considered to exceed the allowable density for the lot on which it is located and not be counted as part of the overall density allowed in the zoning district.

**SECTION V.** Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.



**SECTION VI.** Effective Date. This Ordinance shall be in full force and effect thirty (30) days after passage.

**SECTION VII.** Posting. The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.



APPROVED AND ADOPTED this 4th day of October, 2021.

ATTEST:

  
\_\_\_\_\_  
Mayor  
  
\_\_\_\_\_  
City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 21-996 of said City, which was introduced at a regular meeting of the City Council held on the 20th day of September, 2021, and finally passed not less than five (5) days thereafter on the 4th day of October, 2021, by the following vote, to-wit:

AYES: Martinez, Johnson, Ruh, Dutrey  
NOES: None  
ABSTAIN: None  
ABSENT: Lopez

  
\_\_\_\_\_  
Andrea M. Myrick  
City Clerk