

# City of Salem

*In the year Two Thousand and Twenty*

**An Ordinance** to amend an ordinance relative to accessory dwelling units.

Be it ordained by the City Council of the City of Salem, as follows:

**Section 1.** The City of Salem Zoning Ordinance Section 3.1 Table of Principal and Accessory Use Regulations is hereby amended by deleting the “Accessory Living Area” Accessory Use in its entirety and inserting an “Accessory Dwelling Unit” Accessory Use in the RC, R1, R2 and R3 zoning districts as follows:

E. ACCESSORY USES	RC	R1	R2	R3	B1	B2	B4	B5	I	BPD	NRCC
Accessory Dwelling Unit	Y	Y	Y	Y	N	N	N	N	N	N	-

**Section 2.** This Ordinance shall take effect as provided by City Charter.

# City of Salem

In the year Two Thousand and Twenty

An Ordinance to amend an ordinance relative to accessory dwelling units.

Be it Ordained by the City Council of the City of Salem, as follows:

**Section 1.** The Salem Zoning Ordinance Section 10 Definitions is hereby amended by deleting the definition "Accessory Living Area" in its entirety and inserting the definition "Accessory Dwelling Unit" as follows:

"Accessory dwelling unit: A housekeeping unit, with its own sleeping, cooking and sanitary facilities, located within a principal dwelling ~~that is and~~ subordinate in size to the principal unit(s), separated from it in a manner which maintains the appearance of the principal unit(s), and allowed pursuant to Section 3.2.8 of this ordinance"

**Section 2.** The Salem Zoning Ordinance Section 3.2.4 Accessory Buildings and Structures is hereby amended by deleting paragraphs numbered 4 and 5 and replacing them with the following:

~~4. Unattached accessory dwelling units shall comply with all regulations set forth in Section 3.2.4 (Accessory Buildings and Structures) of this Ordinance with the exception of setbacks.~~

~~5. Unattached accessory dwelling units shall comply with all setbacks of the principal structure, as set forth in Section 4.1 of this ordinance (Dimensional Requirements), irrespective of whether the principal structure on the property in question complies with such setbacks or not.~~

~~6. Accessory structures, garages and unattached accessory dwelling units shall not exceed one-half (1.5) stories or eighteen (18) feet in height."~~

**Section 3.** The Salem Zoning Ordinance Section 3.2.8 Accessory Dwelling Areas is hereby amended by deleting this Section in its entirety and replacing it with the following:

**"3.2.8 Accessory Dwelling Units.** Accessory Dwelling Units shall be allowed as provided set forth in this section.

1. Purpose.

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Commented [AC1]: This section was edited per the two comments below.

The intention is for ADU to comply with all the underlying zoning dimensional standards for accessory structures with the exception of setbacks because setbacks are allowed to be closer to the property line than a principal structure.

If any of the dimensional standards are not met the applicant would need a variance OR a special permit all per section 3.3. it follows the same rules as any other development.

1. All new construction should comply with the underlying The proposed ordinance DOES NOT PROVIDE dimensional table in the supplementary materials which says that new Permit.

By Right: New construction is allowed BY RIGHT if it "com means -- and should say -- "complies with all dimensiona By Special Permit: New construction which does not confi Special Permit.

But this is CONTRADICTED by the page in the supplement Ordinance" (the one with the pictures of houses) on which "ADU must comply with the same setbacks as the primary Existing setbacks may or may not conform to the underlyi number of houses could disregard the underlying zoning, So which is it? What it says in the table or what is says on In any case, I urge the Council not to pass this proposed in all respects with the underlying zoning.

B. In Section 2, the new language for Item 4 says "shall con Section 4.1 of this ordinance (Dimensional Requirements)." underlying zoning setbacks apply, since that is what is men misinterpretation that could result in unintended outcomes, I setbacks prescribed by the underlying zoning, as set forth in Even further clarity could be gained by adding, at the end, " in question complies with such setbacks or not".

- A. To add rental units to the housing stock to meet the needs of smaller households and make housing units available to households who might otherwise have difficulty finding housing.
- B. To encourage the efficient use of the city's housing supply while preserving the character of the city's neighborhoods.
- C. To maximize privacy, dignity, and independent living among family members preserving domestic family bonds as well as to protect the stability, property values, and the residential character of the neighborhood.
- D. To permit the owner of an existing, or a proposed, ~~detached principal~~ dwelling to construct one additional dwelling unit per lot. Such a use is incidental and subordinate to the principal dwelling.
- E. To increase the supply of housing and the diversity of housing options, in response to demographic changes such as smaller households and older households.

**Commented [AC2]:** Only one ADU is allowed per lot. That is covered under Section 4.E.

Nevertheless, "per lot" is proposed to make it clear.

The proposed building means you are applying for a building, e.g. a new home. The ADU could be permitted at the same time the primary home is permitted.

## 2. Procedure.

- A. The Building Inspector shall administer and enforce the provisions of this section unless a Special Permit is required then the Zoning Board of Appeals shall be the Special Permit Granting Authority and the Building Inspector shall enforce the provisions of this section and of the Special Permit-
- B. When a waiver is required, a Building Permit shall not be issued until a Special Permit has been granted and duly recorded.

### 3. This proposed ordinance is dangerously vague:

Under Purpose, D: "To permit the owner of an existing, o dwelling unit." WHAT? If you have a detached building you expand it to TWO dwelling units? You don't even have to does this mean?

**I urge the Council not to pass this proposed ordinance u modified so that it provides ONE dwelling unit; and the allowed ONLY if it complies in ALL respects with the und**

## 3. Application

- A. The Application for the Special Permit and/or Building Permit, if required, shall:
  - 1. Be signed by one hundred (100) percent of the record title ownership interest of the principal dwelling and shall include a copy of the deed and - in the case of a property held by a condominium trust, all owners of all units within the condominium.
  - 2. Include a floor plan of the accessory dwelling unit, the principal dwelling where it is to be located and all elevations. All plans shall be drawn to scale and identify the existing structure and proposed modifications to create the accessory dwelling unit.

## 4. Requirements.

- A. The minimum parking required for the principal dwelling pursuant to Section 5.1 of this ordinance shall not count as off-street parking for the accessory dwelling unit. The accessory dwelling unit shall have one (1) dedicated off-street parking space unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.
- B. There shall not be a net loss in the caliper of private trees on the lot in which the accessory dwelling unit will be located unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.

- C. The accessory dwelling unit shall not contain less than 350 square feet of habitable space.
- D. The accessory dwelling unit shall not contain in excess of 800 square feet of habitable space, unless otherwise waived pursuant to sub-section 6 of Section 3.2.8.
- E. No more than one (1) accessory dwelling unit shall be located upon a single lot.
- F. An accessory dwelling unit shall not be permitted in a building with five (5) or more units.
- G. At least one (1) owner of the residence in which the accessory dwelling unit is created shall reside in one (1) of the dwelling units as a principal place of residence. For the purpose of this section, the "owner" shall be one or more individuals who hold title to the property and for whom the dwelling is the ~~principal primary~~ residence as evidenced by voter registration, tax return or other documentation demonstrating ~~principal primary~~ residence.--
- H. Electricity, water and gas shall be provided by a single service to both the accessory dwelling unit and the principal dwelling.
- I. The accessory dwelling unit may not be sold or transferred separate and apart from the principal dwelling to which it is an accessory use. The principal dwelling and the accessory dwelling unit shall remain in common or single ownership and shall not be severed in ownership.
- J. Entry shall be located through existing entry or on the back or side of the main dwelling.
- K. Egress access shall be located on the side or rear of the building so that visibility from public ways is minimized.
- L. The accessory dwelling unit shall not contain more than two (2) bedrooms.
- M. The accessory dwelling unit shall be clearly subordinate in use, size and design to the principal dwelling.
- N. The accessory dwelling unit must be capable of being discontinued as a separate dwelling unit without demolition of any structural component of the principal dwelling.
- O. There shall be no occupancy of the accessory dwelling unit until the Building Inspector has issued a certificate of occupancy that the principal dwelling and accessory dwelling unit shall be in compliance with all applicable health and building codes.
- P. The Building Permit shall be revoked upon determination by the Building Inspector that any condition imposed by Section 3.2.8 and/or special permit conditions has not been fulfilled.
- Q. By filing the Application for a Special Permit or Building Permit for an accessory dwelling unit, all owners consent to an inspection without a warrant upon reasonable notice by the Building Inspector to ensure compliance with all terms of this section and conditions imposed upon the grant of the Special Permit.

- R. Short term rentals, as defined in Salem Code of Ordinances Chapter 15, are prohibited in the accessory ~~living dwelling~~ unit.
  - S. The accessory ~~living dwelling~~ unit shall obtain certificate of fitness subject to the provisions of Section 2-705 of the City of Salem Code of Ordinances.
5. Special Permit. A Special Permit shall be required to use an existing accessory structure that does not comply with Section 4.1 (Table of Dimensional Requirements) as an accessory dwelling unit.
6. Waivers. Upon the request of the Applicant, the Zoning Board of Appeals may grant a Special Permit pursuant to Section 9.4 to waive the following requirements in the interests of design flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the accessory dwelling unit ordinance.
- A. Notwithstanding anything to the contrary herein, the minimum required amount of parking may be waived if the Zoning Board of Appeals finds it is impractical to meet the parking standards and that such waivers are appropriate by reason that it will not result in or worsen parking problems in or in proximity to the Project, and upon demonstration to the reasonable satisfaction of the Zoning Board of Appeals that a lesser amount of parking will provide positive environmental or other benefits, taking into consideration:
    - 1. The availability of surplus off-street parking in the vicinity of the use being served
    - 2. The proximity to public transportation;
    - 3. The availability of public or commercial parking facilities in the vicinity of the accessory dwelling unit;
    - 4. The impact of the parking requirement on the physical environment of the affected lot or the adjacent lots including reduction in green space, destruction of significant existing trees and other vegetation, destruction of existing dwelling units, or loss of pedestrian amenities along public ways; and
    - 5. Such other factors as may be considered by the Zoning Board of Appeals.
  - B. The Zoning Board of Appeals may grant a waiver to allow a net loss in the caliper of trees on the lot in which the accessory dwelling unit will be located taking into consideration the species of the tree, health of the tree, whether a replacement tree will be planted on another property or if a contribution to a tree replacement fund will be provided.
  - C. The Zoning Board of Appeals may grant a waiver to allow the accessory dwelling unit to exceed 800 square feet of habitable space, up to a maximum of 1,000 square feet, taking into consideration peculiarities of the layout of the ~~principal~~~~primary~~ dwelling.
7. Termination.
- A. The accessory living unit use shall terminate immediately upon any violation of any term or condition of this ordinance or of the Special Permit that the owner fails to

cure, upon two (2) weeks written notice mailed to the applicant and to the occupants at the dwelling address by certified mail, return receipt requested.

B. Duty of Owner Upon Termination include:

- a. The owner shall discontinue the use of the accessory dwelling unit as a separate dwelling unit.
- b. The kitchen facilities of the accessory dwelling unit shall be removed unless determined by the Building Inspector to be incidental and subordinate as an accessory use of the principal dwelling.
- c. Any additional exterior entrance constructed to provide access to the accessory dwelling unit shall be permanently closed, unless the Building Inspector provides a waiver. The owner shall permit an inspection by the Building Inspector without a warrant.

7. Severability. All the clauses of this ordinance are distinct and severable, and if any clause shall be deemed illegal, void, or unenforceable, it shall not affect the validity, legality, or enforceability of any other clause or portion of this bylaw.”

**Section 2.** This Ordinance shall take effect as provided by City Charter.