

## Comments re proposed ADU Code Amendments

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Submitted by Paul Conte  
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Dear Mayor and Councilors,

There are several serious issues with the proposed “ADU” ordinance that warrant your deferring action and soliciting additional public comment on the staff proposal.

- A. The ordinance fails to meet the requirements of ORS 197.307(4) that “a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing ...” This deficiency is clearly remandable by LUBA.
- B. The ordinance removes the owner-occupancy requirement, but the City hasn’t provided for any Goal 1 – Citizen Involvement process to consider alternative approaches to mitigate the potential impacts of speculative investment in redevelopment of single-family neighborhood areas.
- C. The ordinance does nothing to limit the conversion of both dwellings to “Airbnb’s.”
- D. The ordinance unnecessarily removes limits on the *maximum* vehicle use area, thus exacerbating storm water runoff issues and negative impacts on adjacent residents.
- E. The ordinance unnecessarily removes standards for alley access parking and driveways, thus exacerbating potential impacts.
- F. The ordinance unnecessarily removes prohibition of ADUs on *new* flag lots, but the City hasn’t provided for any Goal 1 – Citizen Involvement process to consider alternative approaches to mitigate the potential impacts of additional ADUs on flag lots.
- G. The ordinance unnecessarily negates the unique, flexible parking criteria for the Jefferson-Westside Special Area Zone and the Chambers Special Area Zone without having any consultation with the Jefferson Westside Neighbors or the impacted property owners and residents in the S-JW and S-C Zones.

There is plenty of time for the Council to consider these issues and make well-informed and thoughtful decisions on each one.

**A. The ordinance fails to meet the requirements of ORS 197.307(4) that “a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing ...”**

As has been previously pointed out numerous times, the added definition of “Dwelling, Accessory” is not clear and objective because “used in connection with or that is accessory to a single-family dwelling” is highly discretionary. Unless this issue is addressed, the ordinance will be appealed and remanded again.

City Council needs to invite public comments on how to define these criteria in clear and objective terms in light of HB 2001 and the LUBA remand.

**B. The ordinance removes the owner-occupancy requirement, but the City hasn’t provided for any Goal 1 – Citizen Involvement process to consider alternative approaches to mitigate the potential impacts of speculative investment in redevelopment of single-family neighborhood areas.**

Allowing ADUs without any owner-occupancy requirement is not just a mockery of the whole concept of “accessory dwelling,” it creates a huge new financial incentive to large, out-of-area,

speculative real estate investors to profit by widespread intensive development – or more likely *redevelopment* – of targeted, single-family areas that aren’t protected by CC&Rs. The inexplicable LUBA interpretation of the statutes just threw more gas on the fire, and the proposed removal of limits on bedrooms and occupants would further fuel speculative redevelopment. What’s now possible is to redevelop single-family lots as two market-rate rentals or condominiums. There is substantial, credible research that this radical change won’t produce housing that’s affordable, but instead will result in displacement and development of upscale housing.

Keep in mind that as soon as the proposed ordinance would go into effect, Measure 49 would act as a “ratchet,” and the Council would find its hands tied in reimposing adequate criteria to protect neighborhoods on wholesale transformation.

Consequently, the Council needs to hear from the public, as well as direct staff to develop alternative criteria to mitigate the potentially sweeping impacts of removing owner-occupancy.

As just one potential code requirement, the Council could amend the code as follows:

*“No individual or party may own, directly or indirectly, a share in more than one ADU in Eugene.”*

This restriction would not in any way hinder a traditional ADU on the owner’s own property (whether or not he or she resided on the property), and would also allow a person to have a single two-rental property in addition to his or her on residence on a different property.

Another alternative would be to have a general limit on ADUs to one bedroom, with an option for an additional bedroom if the owner filed a deed restriction as currently required for Secondary Dwelling Units.

**C. The ordinance does nothing to limit the conversion of both dwellings to “Airbnb’s.”**

The City Attorney has asserted (falsely) that the City does not regulate the use of dwellings in residential zones as Airbnb’s *in any way*. Under that legal assumption, the proposed ordinance would create a huge incentive to add so-called “ADUs” and turn both dwellings on a lot into Airbnb’s, further destabilizing neighborhoods.

The Council should include a provision in the ordinance that an ADU cannot be used as a short-term rental. (This also would require a definition for “short-term rental” to be added to the code.)

**D. The ordinance unnecessarily removes limits on the maximum vehicle use area, thus exacerbating storm water runoff issues and negative impacts on adjacent residents.**

It appears that staff has misinformed the City Council by stating in the AIS that off-street parking requirement is “the only change from the draft ordinance provided for the May 20, 2019 City Council public hearing.” In fact, the proposed ordinance also removes EC 9.2751(17)(c)4, which limits the amount of a lot that is covered by vehicle use areas:<sup>1</sup>

**“Vehicle Use Area.** The maximum area covered by paved and unpaved vehicle use areas including but not limited to driveways, on-site parking and turnarounds, shall be limited to 20 percent of the total lot area.

There is absolutely nothing in HB 2001 that requires this limit to be removed. In fact, by eliminating a parking requirement, this limit is even more easily met by a proposed ADU addition. This standard should be retained to address both storm water runoff and vehicle use impacts on adjacent neighbors.

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<sup>1</sup> This code section was not removed in the May 20, 2019 proposed ordinance, so the public has not had a chance to provide testimony – another remandable error.

**E. The ordinance unnecessarily removes standards for alley access parking and driveways, thus exacerbating potential impacts.**

Similarly, staff appears to have misinformed the Council by not pointing out that the proposed ordinance also removes EC 9.2751(17)(c)16, which limits the amount of a lot that is covered by vehicle use areas:<sup>2</sup>

**Alley Access Parking and Driveway.** The standards at EC 9.2751(18)(a)11. are applicable to attached and detached [secondary] **accessory** dwellings where primary vehicle access for the required parking is from an alley.

**EC 9.2751(18)(a)11. Parking and Driveway.**

- a. Only one covered or enclosed parking space may be provided (carport or garage). The covered or enclosed parking space shall be counted towards the total number of parking spaces.
- b. The maximum dimensions for a garage shall be 16 feet by 24 feet, with a maximum garage door width of 9 feet.
- c. The minimum setback for a garage shall be 5 feet from the alley. If the garage is setback greater than 5 feet from the alley, it must be setback a minimum of 15 feet and the area between the garage and the alley shall be counted towards one parking space.
- d. The maximum width for a driveway accessing a garage or carport shall be 12 feet.
- e. The maximum dimensions for one parking space located perpendicular to the alley shall be 12 feet in width by 20 feet in depth.
- f. The maximum dimensions for two side by side parking spaces perpendicular to the alley shall be 20 feet in width by 20 feet in depth.
- g. The maximum dimensions for tandem parking spaces shall be 12 feet in width by 33 feet in depth.
- h. Only one parking space parallel to the alley shall be allowed, and such space shall not exceed 10 feet in width and 20 feet in length along the length of alley.
- i. The total vehicle use area, including but not limited to driveways and on-site parking, but not including parking space in garage, shall not exceed 400 square feet.
- j. No parking shall occur outside of the vehicle use area.

**(See Figure 9.2751(18)(a)11.)**

There is absolutely nothing in HB 2001 that requires these standards to be removed, and they provide important protection against negative impacts on residents of other properties on the alley.

**F. The ordinance removes prohibition of ADUs on new flag lots, but the City hasn't provided for any Goal 1 – Citizen Involvement process to consider alternative approaches to mitigate the potential impacts of additional ADUs on flag lots.**

HB 2001 Section 12 does not prohibit *retention* of an *existing* provision prohibiting ADUs on *new* flag lots. Flag lots themselves are extremely problematic because of the substantial impacts they can create on adjacent property owners. The Council should retain this provision, particularly because the long-standing owner-occupancy requirement has been removed, which itself had provided substantial mitigation of potential impacts on adjacent residents.

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<sup>2</sup> This code section also was not removed in the May 20, 2019 proposed ordinance, so the public has not had a chance to provide testimony – another remandable error.

**G. The ordinance unnecessarily negates the unique, flexible parking criteria for the Jefferson-Westside Special Area Zone and the Chambers Special Area Zone without any consultation with the Jefferson Westside Neighbors or the impacted property owners and residents in the S-JW and S-C Zones.**

The proposed ordinance amends **Table 9.6420 Required Off-Street Motor Vehicle Parking** to state that “[An] additional one-family dwelling in the S-JW Jefferson-Westside Special Area Zone or the R-2 subarea of the S-C Chambers Special Area Zone” does not require off-street parking. There are several problems with this amendment, which could have been avoided if staff had bothered to consult the JWN Chair.

First, both zones allow more than one “additional one-family dwelling,” so the amendment would remove any parking requirement for all additional dwellings. Only the second one-family dwelling on a lot (or development site) may qualify for the “ADU” exception to off-street parking.

Second, the S-JW Zone has a very sophisticated provision for parking requirements – which minimizes on-site parking spaces – and that is based on bedroom count, not whether a dwelling is the second dwelling on the lot. In addition, the standard allows on-street parking to count.

**EC 9.3625(7) Parking Standards.**

(a) Except as provided in (3)(d)3. above, each dwelling shall have one on-street or on-site vehicle parking space for every three bedrooms, rounded up to the next whole number (i.e. a four-bedroom dwelling must have at least two parking spaces). For purposes of this subsection, each uninterrupted twenty feet of lot line that abuts a street right-of-way where parking is legal within the entirety of that twenty feet shall count as one on-street parking.

Thus, in most cases, at least one dwelling that has three or fewer bedrooms will not require an off-street parking space. To handle the rare case where there is no on-street parking space, and a second dwelling is proposed, this criterion could be amended to provide an exception that no off-street parking space is required for the second dwelling if it has no more than one bedroom.

However, Council should send the draft ordinance back to the staff to consult with the JWN in order to develop the most appropriate solution for Council to consider.

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In summation, the staff has once again failed to engage the community after the major events of HB 2001 and the LUBA remand. The proposed ordinance is legally flawed, as is the lack of public process on the *new* amendments. If Council were to adopt an ordinance at Monday’s meeting, it would be subject to appeal, delay and likely remand.

The appropriate action by the City Council is to provide direction to the City Manager to address the above issues (and possibly others) by engaging the community and to bring back a satisfactory, revised ordinance. (Unfortunately, the City Manager failed to list this as an option.)

Respectfully,



Paul Conte