

Wednesday, May 15th, 2019

DELIVERED VIA EMAIL

Eugene Mayor, City Council, and City Manager
City Manager's Office
125 East 8th Ave
Eugene, OR 97401

Re: CA 18-1, Accessory Dwelling Units

Dear Mayor, City Councilors, and City Manager:

I appreciate the efforts of the City to revise its code as relates to Accessory Dwelling Units. However, the draft ordinance and code changes proposed do not go nearly far enough to ensure that we are removing the unnecessary barriers to ADUs that we have put in place, both to help promote desperately needed moderately priced/sized housing in our city, and to ensure that we are in compliance with ORS 197.312(5). While the current proposed code modifications improve upon the first attempt, by removing the owner-occupancy requirement and several other items, it leaves in place many other elements that are neither necessary, reasonable, nor related to siting and design. It is my sincere hope that the City Council can make the necessary modifications to this ordinance prior to passage.

In order to ensure that this attempt is successful both at bringing us in compliance and accomplishing the city goals of removing land use barriers that reduce housing affordability, availability, and diversity of type, the following changes should be requested to the ordinance and code:

- a) **Remove Lot Size Minimums for ADUs** (Strike sections 9.2751(17)(a)1 and 9.2751(17)(c)5)
- b) **Exempt ADUs from Density Calculations** (From table 9.2740 in Residential Dwelling text, strike the words "including secondary dwellings". Strike 9.2751(1)(a)1 and add 9.2751(1)(f) "Accessory Dwelling Units are exempt from the minimum and maximum residential density standards set forth in Table 9.2750.")
- c) **Remove Alley Access Lot Prohibition** (Strike the words "except that new secondary dwellings are prohibited on alley access lots" from 9.2741(2) and the words "except that there is no allowance for a secondary dwelling" from 9.2751(18)(a)2.)
- d) **Limit Building Size to 800 square feet, regardless of lot size or location in the city** (Strike the words "10 percent of the total area" from section 9.2751(17)(a)2 and strike 9.2751(17)(c)5)
- e) **Remove Parking Minimums** (Strike 9.2751(17)(c)15 and strike from table 9.6410 the 1 per dwelling minimum number of required off street parking spaces for accessory dwelling units.)
- f) **Remove Outdoor Storage/Trash Screening Requirement** (Strike 9.2751(17)(b)4 and section 9.2751(17)(c)19)
- g) **Don't reimplement renaming of ADUs in Special Area Zones** (Remove section 10 and section 17 from the proposed ordinance)
- h) **Remove Separate Standards for Lot Coverage Calculations in the University Areas** (Strike section 9.2751(17)(c)3 from the code.)
- i) **Remove Separate University Area Lot Dimension Requirements** (Strike 9.2751(17)(c)2)
- j) **Remove Sloped Setback requirements**; retain 5 foot setback and height limit to match main building (Strike the words "located within 60 feet of a front lot line" from section 9.2751(17)(a)3a, and strike sections 9.2751(17)(a)3b, 9.2751(17)(a)3c, 9.2751(17)(b)5, and 9.2751(17)(c)9. Strike the words "In addition" through "attached secondary dwelling" in section 9.2775(5)(e)3a. Strike 9.2775(5)(e)3b.)

The findings presented for these areas fail to demonstrate that these regulations on ADUs are reasonable regulations related to siting and design, or that these regulations are so necessary to achieve a city goal that they outweigh the barriers they create. In addition, the City has expressed a commitment to remove barriers to housing in Eugene; even if a particular regulation is technically permissible under ORS 197.312(5), that doesn't mandate that the City retain that regulation if it is otherwise ill-advised or ineffective.

Livability and Overcrowding

For many of these findings, the City cites “preserving livability” and “preventing overcrowding” as the compelling reason to retain these regulations. The City does not define “livability” or “overcrowding,” much less provide information to support the idea that a failure to regulate ADUs in the manner proposed will result in decreased livability or overcrowding, or that the regulations are so necessary to address these issues that they justify the limitations on Accessory Dwelling Units, and thus on housing availability and affordability.

“Livability” is a term that is used to refer to so many different, and sometimes competing, concepts that without further definition and context it is completely meaningless. From the Eugene Springfield Metro Plan, “Perceptions of livability greatly differ between individuals; so generalizations concerning this element need to be carefully drawn.”

For some, important components of livability include quiet, physical separation or buffers from neighbors, and ample private open space. For others, livability is defined by things such as vibrancy and walkability, both of which go hand in hand with compact urban development and increased infill. Affordability is an important component of livability—paying more than one can afford for housing has a substantial impact on quality of life. Without providing more details on what, specifically, the City is trying to accomplish when it is “protecting livability” there is no way to judge if the regulations in question are protecting livability, or diminishing it.

By the same token, “preventing overcrowding” is used repeatedly as a justification with no definition. There is no indication that “overcrowding” in the sense of having “too many” housing units or “too many” people in a given neighborhood is a serious threat that needs to be protected against by implementing regulations that discourage or prevent ADUs. Most R-1 neighborhoods in Eugene are developed at housing densities significantly less than what is permitted by the code, and even new ADU construction at a rate far in excess of what could be expected even with massive incentives or deregulation would not bring them up to 14 housing units per acre. Much like livability, what is “overcrowded” in the sense of when a neighborhood has too many people or housing units is entirely in the eye of the beholder—one person’s crowd is another person’s community, and there are too many jurisdictions to list that have much higher housing densities than Eugene’s neighborhoods that are considered very “livable” and not overcrowded.

Given the lack of definitions and the subjectivity of the terms used, ultimately, when the City claims that a regulation in question serves the compelling governmental interest of “preventing overcrowding” or “preserving livability,” what is really being served is preventing some residents from feeling like there are too many people living in their neighborhood and preserving some citizens definition of livability, at the expense of other citizens ability to acquire housing in the neighborhood. By its mere existence, ORS 197.312(5) is prioritizing the compelling governmental need to ensure that we have enough housing in our communities over vague and unsubstantiated concerns surrounding overcrowding and perceived livability. Merely saying that a regulation is intended to “preserves livability” does not justify it.

History:

The vast majority of these regulations were either added or expanded as part of Ordinance 20541 (Single-Family Code Amendments), passed on July 28th, 2014, or as part of Ordinance 20526 (University Neighborhood Protection Measure), passed on March 12th, 2014. These amendments came out of a process that had, as a primary goal “Promoting [accessory] dwelling units.” However, the vast majority of the changes increased the limitations and prohibitions on Accessory Dwelling Units. Since these code amendments were passed, the number of permitted accessory dwelling units has decreased notably. Between 2009 and 2014, the City issued an average of 4.8 ADU permits per year; since 2014, the average has dropped to 2.8 ADU permits per year.

1) Lot Size Minimums/Density (recommendation a and b)

- a) **Lot size minimums and density are not related to siting or design.** The City, in their findings, claims that “regulations related to siting’ include both: (1) regulations the specify the necessary lot characteristics for the siting of an accessory dwelling; and (2) regulations that specify where, on such a lot, an accessory dwelling may be sited.” Lot size minimums and density are claimed to be “siting” regulations under the first interpretation of siting; however, the first interpretation of “siting” is not supported by the text of ORS 197.312(5). In ORS 197.312(5), the legislature provided clear direction as to the necessary lot characteristics of a lot that should permit an ADU. The language states that cities “shall allow in areas zoned for detached single family dwellings the development of at least one accessory dwelling unit for each detached single family home” The local position of the building in connection with its surroundings is specified as “areas zoned for detached single family dwellings” and “at least one accessory dwelling unit for each detached single family home.” The necessary characteristics for a lot to permit an accessory dwelling is that it has a detached single-family home, and that it is in an area zoned for detached single family homes. The City may subject ADUs to requirements about where on lot the ADU is located, and they may choose not to permit an ADU on a lot that doesn’t contain a detached single-family home or that isn’t in an area zoned for detached single family housing. These regulations do neither; instead, they prohibit 10,000 Eugene homeowners from being permitted to build at least one ADU for their single-family home, no matter how they position the ADU on the lot or how it is designed.
- b) The lot size minimums and density requirements in Eugene are not reasonable. Eugene is alone among 16 comparable cities in Oregon in subjecting ADUs to the density minimum and maximums of the zones, and is alone in requiring a lot size larger than the legal lot size in the zone in question. *(See attached analysis.)* If these tools were truly so essential for preserving livability and preventing overcrowding as to outweigh the impact they have on housing availability and affordability, it seems reasonable that other cities would have also found them necessary.
- c) **History:** Prior to the 2014 Single-Family Code Amendments, Eugene did not subject ADUs to density minimums and maximums. While detached ADUs required a lot of at least 6,000 square feet, a resident of any lot that met the overall minimum legal lot size of 4,500 square feet could build an interior/attached ADU.

2) Alley Access Lots (recommendation c)

- a) **The prohibition on Alley Access Lots in not related to siting or design.** See above section 1.a regarding interpretation of “siting.” This standard regulates ADUs based on the characteristics of the lot, not the location of the ADU on the lot.
- b) A primary justification for prohibiting ADUs on alley access lots was the traffic that would be created by the additional dwellings and the impact on alley surfaces created. The City does not require development that is expected to produce less than 100 vehicle trips during a peak hour to account for traffic impacts, as the impacts of smaller developments are considered to be minimal enough to not justify the analysis. There is no practical scenario where ADUs on alley access lots will produce enough traffic to be considered significant. The number of trips likely to be generated

is more in line with a teenaged resident receiving their drivers license or a partner or roommate moving in with a resident. In addition, the City's findings specifically mentioned unimproved alleys; liability and maintenance for unimproved alleys as well as the cost for improvements are the responsibilities of the property owners, and thus the impacts of additional wear on unimproved alleys with ADUs would not be born by the City. Finally, the concern of traffic on alleys could be addressed in a manner that does not reduce the availability of ADUs, for example by limiting the amount of parking allowed on alley access lots.

- c) In the City's findings regarding alley access lots, they cited the livability and overcrowding concerns of "unregulated" infill. See above regarding livability and overcrowding. In addition, no legal dwelling on an alley access lot would be "unregulated infill;" it would be subject the regulations related to height, setbacks, etc. and thus be regulated infill.
- d) **History:** Prohibition of ADUs on alley access lots was included as part of the 2014 code amendments.

3) Lot-Size Based Size Limitation (recommendation d)

- a) **Limiting the size of an ADU based on the size of a lot is duplicative and not reasonable.** While building size is a design regulation, and it reasonable to place some sort of size limitation on ADUs, having that size limitation vary based on the size of the lot serves no unique purpose other than to make it more difficult for owners of smaller lots to build ADUs. The City justifies this regulation on the basis that development on smaller lots can have greater impacts on overcrowding and livability, and says that it ensures that there is room for both the ADU and the primary dwelling with room left over for open space and parking. The size of an ADU on a small lot (and thus its impact) is already limited by the lot coverage maximums, setback requirements, open space requirements and other such regulations, which ensure that the need for open space will be met without this restriction. It is unclear how the impact of an 800 square foot ADU sharing a 6000 square foot lot with a 1,200 square foot primary dwelling is somehow greater that the impact of 600 square foot ADU with a 1,400 square foot primary dwelling. In both cases, the percentage of lot covered by building is the same, as is the number of units on the lot.
- b) **History:** Prior to 2014, ADUs were subject to an 800 square foot maximum size, with no separate maximums based on lot size.

4) Outdoor Storage/Trash Screening (recommendation f)

- a) **This requirement is unreasonable and conflicts with other areas of the code.** The City, in section 9.6740 of the code, imposes outdoor storage/trash screening requirements on dwellings in the City. However, it specifically exempts both one and two family dwellings from this requirement. It is unclear why it is reasonable to exempt two dwellings on a lot from the screening requirement when the two dwellings take the form of a duplex, but not when two dwellings take the form of a single-family home and an ADU. As the City has already determined that it is reasonable to exempt two dwellings on a lot from the screening requirement, this regulation serves only to add to the cost and logistical complexity of creating an ADU.
- b) **History:** A less detailed trash screening requirement existed for ADUs at least since 2001. However, prior to 2014 it was an adjustable standard and could be waived via an adjustment review process. Section 9.6740, exempting two family dwellings from screening requirements, was passed in 2012.

5) S-JW and S-C Terminology (recommendation g)

- a) While LUBA indicated that this language was permissible, it is ill-advised. These changes have been presented as merely semantics with no real impact. The underlying rational was to alleviate the fears of some individuals that changes to ADUs regulations would prevent the S-JW and S-C zones from prohibiting additional dwellings on smaller lots, as they currently do. (Lots under 4,500 square feet only permit one dwelling in the S-JW zone; approximately 40% of the residential lots in the S-JW containing detached single-family homes are under 4,500 square feet and are not permitted either an ADU or a second dwelling.)

- b) The language provides no additional protections to the S-JW and S-C zones. LUBA found that, for the purposes of ORS 197.312(5) compliance, a “second dwelling” in the S-JW and S-C zone “counts” as an accessory dwelling. If the City does not modify its zoning to comply with state law, the statute may be applied directly. Regardless of if you call them ADUs or “second dwellings”, S-JW and S-C still are required to allow each detached single family home owner the ability to add an accessory unit. By re-instituting this change and not ensuring that the S-JW and S-C code is in compliance with ORS 197.312(5), Council puts the City in the difficult position of potentially have greater restrictions on housing types, form, and density in a Metro Plan designated medium density area than in the designated low-density areas of the City. By permitting ADUs subject to the ADU standards as a housing type in S-JW and S-C through the inclusion of ADUs as a permitted housing type in the R-2 use table, the City alleviates the need to review/revise the S-JW and S-C code directly.
 - c) Calling ADUs different things in different areas of the city, though in some ways merely semantics, is not a no-impact accommodation. Lack of clarity can create confusion; in the short time this language was in effect, between the passage of ordinance last summer and the remand, there was at least one example of where notable staff time was spent trying to accommodate the difficulty presented by this terminology, when trying to craft SDC regulations that would incorporate both Accessory Dwelling Units in other zones, as well as small second dwellings in the S-JW and S-C zones. (See Eugene City Council 10/15/18 work session.)
 - d) A detailed critique of this proposal was submitted when this change was originally proposed. While staff’s revision of the draft language alleviated some of the concerns discussed, the core remains.
- 6) University Area Requirements (recommendations h and i)**
- a) **The University Lot Dimensions requirements are not related to siting.** As discussed in section 1(a) above, siting should be interpreted to include where an ADU is placed on a lot, not the characteristics required for a lot to permit an ADU.
 - b) All of the unique University Area ADU requirements are attempted to be justified by a desire protect from “unforeseen” housing development in the University areas. In fact, the development in these areas was not unforeseen. The development in question was all development that was legally permitted and zoned for. The 2004 Metro Plan includes policies such as A.11 *“Generally locate higher density residential development near employment or commercial services...”* (the University of Oregon is one of Eugene’s largest employers, and has roughly 20,000 students;) A.13 *“Increase overall residential density in the metropolitan area by creating more opportunities for effectively designed in-fill, redevelopment, and mixed use...;”* and A.19 *“Encourage residential developments in or near the downtown core areas...”* (the University areas are adjacent to the downtown core.) As the code is one of the methodologies by which the Metro Plan is implemented, the development that occurred in the University Areas was not only foreseen, but planned for. The desire of some residents of the University Neighborhoods to discourage housing targeted at students and young adults from locating near the University does not outweigh the need to provide housing for those students and young adults, including in the form of Accessory Dwelling Units. Using land use code to attempt to exclude particular classes of citizens from neighborhoods based on fears that they will reduce the “livability” of the neighborhood has a particularly ugly history in this country. While neither “students” nor “renters” are a protected class for housing in Eugene, discrimination based on age over 18 is prohibited, and I’m disappointed to see the City allow such arguments to influence its land use code.
 - c) These regulations, which have been in place for more than 5 years, are characterized as “interim,” and intended to be changed as part of some future process. However, intent to change regulations on ADUs at some point in the future does not alleviate the need for the regulations applied to ADUs to be reasonable and related to siting and design now. Future plans to amend the code are irrelevant.

d) **History:** Prior to the 2014 University Protection Measures (City Ordinance 20526) Accessory Dwelling Units in the University Neighborhoods were not regulated separately.

7) Sloped Setbacks (recommendation j)

a) While height limitations are undisputedly design regulations, **the specific height regulations on ADUs in Eugene are not reasonable.**

b) The height requirements for ADUs are complex, and draw no distinction between detached ADUs and interior/attached ADUs. The primary rationale is to reduce impacts on neighboring properties; however, they also prevent ADUs that would have no impact on neighboring properties. For example, these regulations would appear to prevent the conversion of an attic/second story space on the back half of an existing building into an ADU, despite the fact that this configuration would create no additional impacts on neighboring properties.

c) Eugene doesn't regulate the height of other dwelling types based on position on the lot. A two-story detached single-family home could be built with a second story more than 60 feet from the front of the lot line without sloped setback, which presumably would have the same impact as an ADU at that location. It is unclear why a dwelling type of an ADU would require additional height regulation that single-family dwellings, duplexes, etc. wouldn't.

d) 18 feet with a sloped setback is an atypically small height limit—it limits ADUs to 1 to 1.5 stories, as opposed to most other cities, where height limits are sufficient to allow two-story ADUs.

e) **History:** Prior to the 2014 code amendments, attached/interior ADUs had no separate height requirement. Detached ADUs were limited to 15 feet within 20 feet of a property line. No sloped setback requirements existed prior to 2014.

I could provide much additional feedback to how the ADU standards in Eugene could be improved—for example, by returning the ability to adjust ADU standards through an Adjustment Review Process as necessary to make them feasible on particular lots (the 2014 code amendments eliminated the ability for almost all of the ADU standards to be adjusted) or by examining section 9.8030(34)(b) in the code, which appears to limit ADUs that are created by converting an existing structure to 600 square feet as opposed to the 800 square feet allowed when building a new structure. But I will limit myself to the specific topics raised by the city in their findings.

The above described regulations either are not related to siting and design, or are not reasonable. They also do not serve the City's goal of increasing housing affordability, availability, and diversity. The City is currently undergoing a code audit to identify barriers within its code; many of these standards have been identified in that process as creating substantial barriers to ADUs. Given that the City has been unable to provide substantive, objective justification as to why these barriers must remain, I respectfully request that the Council request that staff revise the proposed ordinance to remove these additional restrictions.

Thank you.

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