

## Land Use Code Amendment History

### Accessory Dwellings Land Use Code Amendment – City File: CA 18-1

#### **2017 - Adoption of Senate Bill 2051**

In 2017, the Oregon Legislature adopted a new law, Senate Bill 1051 (“2017 law”) as part of its efforts to promote housing affordability statewide. Pertinent to this work session is the portion of the 2017 law that addresses “accessory dwelling units.” The 2017 law defines “accessory dwelling unit” as an “interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.” It requires: “A city with a population greater than 2,500 . . . shall allow in areas zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design.”

#### **2018 - City Council Process**

To implement Senate Bill 1051, the City Council initiated a two-phased approach for land use code changes to implement the 2017 law. Phase 1 would address the 2017 law’s requirement that the City allow accessory dwelling units in more areas of the City (the “where” phase). The intent was to address, as a later Phase 2, the 2017 law’s requirement that accessory dwelling units be subject to only “reasonable local regulations relating to siting and design.”

In June 2018, the Council adopted ordinances (Ordinance Nos. [20594](#) and [20595](#)) that revised the land use code to allow accessory dwellings in additional zones. The ordinances also adopted the 2017 law’s “accessory dwelling” terminology. Notably, these ordinances made the accessory dwelling units in these additional zones subject to the development standards that were already set out in the land use code for secondary dwellings in the R-1 zone.

Ordinances Nos. 20594 and 20595 were appealed to The Oregon Land Use Board of Appeals (LUBA) by numerous parties. LUBA sent the ordinances back (“remanded”) to the City Council for additional work on November 29, 2018, meaning they are no longer in effect. LUBA’s 2018 decision is available [here](#). LUBA found that the ordinances were inconsistent with the 2017 law because they extended the applicability of the code’s R-1 zone development standards for secondary dwellings to the additional zones without addressing the part of the 2017 law that requires such development standards to be “reasonable local regulations relating to siting and design.”

#### **2019/2020 - City Council Process**

In 2019, staff provided the City Council with a list of the land use code standards that were raised / challenged in the 2018 LUBA appeal. Staff provided recommendations for each standard’s retention or elimination, based on the “reasonable regulation relating to siting

and design” requirement in the 2017 law, but the meaning of those terms was unclear. For each of the standards raised in the LUBA appeal, Council provided preliminary input and a draft ordinance was prepared to re-adopt the allowances for accessory dwellings and to eliminate from the land use code those development standards that, in this initial review, were found to not be “reasonable regulations relating to siting and design.”

On May 20, 2019, the City Council held a public hearing on the draft ordinance, hearing from 33 people. A majority of those who provided testimony (20 people) expressed support for removing barriers to accessory dwellings and for the provision of more affordable housing. Support was also expressed for eliminating even more of the standards that now apply to accessory dwellings and concern was expressed by some that Eugene is not doing enough to comply with the intent of the 2017 law. Testimony from others expressed concern that the actions could reduce the livability of existing neighborhoods.

In addition, before the City adopted the ordinance, LUBA issued an order in a different appeal that added *some* clarity to the statutory definition of “accessory dwelling unit.” Additionally, the Oregon Legislature adopted House Bill (HB) 2001 (“2019 law”) that explicitly prohibited regulations that require owner-occupancy or on-site parking.

Based on the testimony and new state-level developments, the City Council made numerous changes to the draft ordinance. In January 2020, the City adopted Ordinance No. [20625](#) based on these changes. However, the ordinance process was difficult due to some lack of clarity within State’s ADU law requirements. The City’s ordinance was appealed to LUBA by the Homebuilders Association and two groups of individuals.

### **2020/2021 - Court of Appeal Decision and LUBA Remand**

Since the City Council adopted the ADU ordinance in January 2020, LUBA and the Oregon Court of Appeals have issued decisions that dictate how cities must interpret the 2017 law. These decisions were issued in a property-specific appeal filed against the City of Eugene (the Kamps-Hughes appeal) and in the appeal of the City’s 2020 Ordinance, itself. LUBA’s and the Court’s interpretations of the law clarify which types of regulations can, and cannot, be applied to ADUs. Their interpretations, and their remand of the City’s 2020 Ordinance require the City Council to eliminate specific ADU regulations from the Eugene Code. LUBA’s decision providing clear direction on the remaining issues is available [here](#).

Using the interpretations issued by LUBA and the Court, we now know that the 2017 law imposes the following requirements on the City’s regulation of ADUs:

1. On every lot in the City where the City’s code allows a single-family dwelling, the code must also allow at least one ADU per single-family dwelling.
2. The only development standards the City can impose on ADUs are standards that either:
  - a. Relate to where the ADU can be placed on an individual lot that has a single family dwelling (“siting”); or

- b. The layout of the ADU or the materials used in the ADU's fabrication ("design").
3. The development standards described at 2. a. and b. must be "moderate," they cannot be "extreme," "absurd" or "excessive."

Proposed changes to the 2020 ordinance that respond to these clear direction will be presented to the City Council for their consideration in 2021.