

CITY OF NEWPORT

ORDINANCE NO. 2152

**AN ORDINANCE AMENDING CHAPTERS 14.16 AND 14.30
OF THE NEWPORT MUNICIPAL CODE RELATED TO
ACCESSORY DWELLING UNITS**

WHEREAS, the City of Newport Zoning Ordinance, codified as Title XIV of the Newport Municipal Code (NMC), contains development standards for Accessory Dwelling Units (ADUs); and

WHEREAS, those regulations, found in NMC Chapters 14.16 and 14.30, implement provisions of ORS 197.312(5), which require that at least one ADU be allowed for each detached single family dwelling in residentially zoned areas; and

WHEREAS, the Oregon Legislature passed HB 2001 in the 2019 legislative session, a bill that amended ORS 197.312 such that the City of Newport may no longer require owner occupancy or additional off-street parking associated with the construction of ADUs; and

WHEREAS, on August 12, 2019, the Planning Commission moved to initiate amendments to NMC Chapters 14.16 and 14.30 to bring the City's land use regulations into compliance with this new law; and

WHEREAS, the Planning Commission further determined that additional changes were needed to make it easier for property owners to construct ADUs given the challenges Newport is facing relative to the availability of needed housing, including (a) increasing the maximum size of ADUs to 800 square feet or 75% of the size of the primary dwelling, whichever is less; (b) allowing ADU's to exceed this size limit in circumstances where a floor of a building is converted to an ADU; and (c) removing the requirement that an ADU share water, sewer, electric, and gas connections with the primary dwelling; and

WHEREAS, the City of Newport currently allows one ADU for each attached or detached single family dwelling on a lot or parcel, but limits the circumstances where attached housing is permissible in low density residential areas; and

WHEREAS, HB 2001 contains provisions that will eventually require the City allow attached housing throughout its low density residential areas, an outcome that was not anticipated when the current allowance of one ADU per attached dwelling was established; and

WHEREAS, the Planning Commission, being concerned about the adequacy of underdeveloped streets in low-density residential areas, the potential demand that attached housing will have on available parking, and constraints the legislature has

placed on the ability of local governments to require off-street parking for ADUs, concluded that only one ADU should be permitted per lot or parcel developed with single family attached housing; and

WHEREAS, in making the above referenced changes, the Planning Commission concludes that it is timely to revisit the provisions of the Nye Beach Design Review Overlay that trigger design review as they relate to ADUs; and

WHEREAS, said design review, which is focused on the exterior architectural appearance of a structure, cannot be reasonably applied to an ADU being built within an existing structure, since an ADU is small enough that it is not justifiable that the City require the exterior of the entire structure be made complaint, nor is it practical that only the portion of a structure converted to ADU use be made to conform to design standards. Accordingly, the Planning Commission concludes that ADUs should be exempt from Nye Beach design standards in cases where the unit is contained within an existing structure; and

WHEREAS, the Planning Commission held a public hearing on September 23, 2019 to consider public testimony and comment on the draft amendments and, at the conclusion of the hearing, passed a motion recommending the City Council adopt the amendments; and

WHEREAS, in making its recommendation, the Planning Commission concluded that the amendments satisfy the City's requirement that legislative amendments be necessary and further the general welfare of the community because they, on balance, make it easier for ADUs to be established, fulfilling a niche segment of housing need in the City of Newport at a time when the supply of available housing is tight; and

WHEREAS, the City Council held a public hearing on November 4, 2019 regarding the question of the proposed revisions and voted in favor of their adoption after considering the recommendation of the Planning Commission and evidence and argument in the record; and

WHEREAS, information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council hearings.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. The above findings are hereby adopted as support for the amendments, below.

Section 2. Chapters 14.16 and 14.30 of the Newport Municipal Code are hereby amended as depicted in Exhibit "A."

Section 3. This ordinance shall take effect 30 days after its adoption.

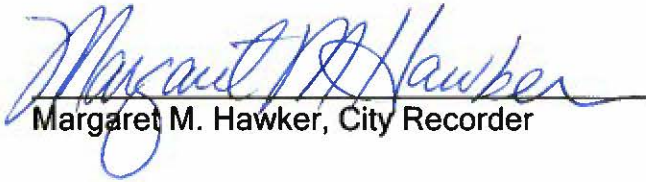
Date adopted and read by title only: November 4, 2019.

Signed by the Mayor on November 5, 2019.

A handwritten signature in blue ink, appearing to read "Dean Sawyer", written over a horizontal line.

Dean H. Sawyer, Mayor

ATTEST:

A handwritten signature in blue ink, appearing to read "Margaret M. Hawker", written over a horizontal line.

Margaret M. Hawker, City Recorder

Exhibit A of Ordinance No. 2152: Amendments to NMC Chapters 14.16 and 14.30,
Accessory Dwelling Units

(Deleted language shown in ~~strikethrough~~ and new language is underlined. Staff comments are not a part of the amendments. They are preceded with the term "Staff" and are *italicized*.)

CHAPTER 14.16 ACCESSORY USES AND STRUCTURES

14.16.010 Purpose

The provisions of this section are intended to establish the relationship between primary and accessory structures or uses and to specify development criteria for accessory structures or uses.

14.16.020 General Provisions

- A. Accessory uses and structures are those of a nature customarily incidental and subordinate to the primary use of a property. Typical accessory structures include detached garages, sheds, workshops, greenhouses, gazebos, and similar structures that, with the exception of Accessory Dwelling Units, are not intended for habitation by people. The Community Development Director, or the Director's designee, shall determine if a proposed accessory use is customarily associated with, and subordinate to, a primary use and may at his/her discretion elect to defer the determination to the Planning Commission. A determination by the Planning Commission shall be processed as a code interpretation pursuant to Section 14.52, Procedural Requirements.
- B. An accessory use or structure shall be subject to, and comply with, the same requirements that apply to the primary use except as provided in this section.

14.16.030 Accessory Use or Structure on a Separate Lot or Parcel

An accessory use or structure may be located on a lot or parcel that is separate from the primary use provided:

- A. The lot or parcel upon which the accessory use or structure is to be located is contiguous to the property containing the primary use; and
- B. The subject lots or parcels are under common ownership and within the same zone district; and

Exhibit A of Ordinance No. 2152: Amendments to NMC Chapters 14.16 and 14.30, Accessory Dwelling Units

- C. A deed restriction, in a form approved by the city, is recorded stating that the property on which the accessory use or structure is to be located cannot be sold or otherwise transferred separate from the lot or parcel containing the primary use. This restriction shall remain in effect until a primary use is situated on the same lot or parcel as the accessory building or the accessory building is removed.

14.16.040 Development Standards (Excluding Accessory Dwelling Units)

Accessory buildings and structures, except for Accessory Dwelling Units, shall conform to the following standards:

- A. The maximum floor area of the accessory structure in a residential zoning district shall not exceed 1,500 square feet or 65% of the total floor area of the primary structure, whichever is less.
- B. The maximum height of an accessory building in a residential zoning district shall not exceed that of the primary structure.
- C. Accessory buildings shall not extend beyond the required front yard setback lines of adjacent lots or parcels.
- D. Regardless of the setback requirements, a rear yard in a residential zone district may be reduced to five (5) feet for a one-story detached accessory building provided the structure does not exceed 625 square feet in size and 15 feet in height.

14.16.050 Development Standards - Accessory Dwelling Unit Standards

Accessory Dwelling Units shall conform to the following standards:

- A. Accessory Dwelling Units are exempt from the housing density standards of residential zoning districts.
- B. A maximum of one Accessory Dwelling Unit is allowed for each ~~attached or~~ detached single family dwelling on a lot or parcel. **In cases where a property is developed with one or more single family attached dwellings, a maximum of one Accessory Dwelling Unit is allowed per lot or parcel.**

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- C. Accessory Dwelling Units may be a portion of the primary dwelling, attached to a garage, or a separate free-standing unit.
- D. The maximum floor area for ~~an~~ a freestanding Accessory Dwelling Unit shall not exceed ~~600~~ 800 square feet or ~~50~~ 75% of the area of the primary dwelling, whichever is less.
- E. The maximum floor area for an Accessory Dwelling Unit that is a portion of a primary dwelling or attached to a garage shall not exceed 800 square feet or 75% of the area of the primary dwelling, whichever is less. However, an Accessory Dwelling Unit that results from the conversion of a level or floor (e.g. basement, attic, or second story) of the primary dwelling may occupy the entire level or floor, even if the floor area of the Accessory Dwelling would be more than 800 square feet.
- ~~EF.~~ The maximum height of an Accessory Dwelling Unit detached from the primary dwelling shall not exceed that of the primary dwelling. An Accessory Dwelling Unit attached to the primary dwelling is subject to the height limitation of the residential zone district within which it is located.
- ~~FG.~~ Accessory Dwelling Units shall not extend beyond the required front yard setback lines of the adjacent lots or parcels.
- ~~H. An Accessory Dwelling Unit shall share water, sewer, electric, and gas connections with the primary dwelling.~~
- ~~I. Either the primary residence or Accessory Dwelling Unit shall be owner-occupied. The property owner shall prepare and record a covenant or deed restriction in a form acceptable to the city, providing future owners with notice of this requirement.~~
- ~~J. One off-street parking space shall be provided for each Accessory Dwelling Unit. This requirement is in addition to off-street parking standards that apply to the primary dwelling.~~

Staff: Section 7 of HB 2001 amends ORS 197.312 to prohibit local governments from imposing owner occupancy and off-street parking requirements for Accessory Dwelling Units.

Exhibit A of Ordinance No. 2152: Amendments to NMC Chapters 14.16 and 14.30, Accessory Dwelling Units

The city's existing code contains provisions that relate to both, and they are being deleted. The City may require off-street parking in cases where an accessory dwelling is used as a short-term rental, and that is addressed in NMC Chapter 14.25. Square footage allowances for Accessory Dwelling Units are being increased to align with the DLCDC model code.

At an August 12, 2019 work session, the Newport Planning Commission requested that the provision requiring an Accessory Dwelling Unit share water, sewer, electric, and gas connections with the primary dwelling be deleted to provide owners greater flexibility. They also asked that the code be amended to allow only one Accessory Dwelling Unit per lot or parcel developed with single-family attached housing. The Commission is concerned about the potential number of Accessory Dwelling Units that could be built in low density residential areas once HB 2001 is fully implemented, given the existing code language that would allow one Accessory Dwelling Unit for every single-family attached dwelling. They also expressed concerns about parking associated with such uses, considering that the City can no longer require off-street parking for Accessory Dwelling Units.

14.16.060 Conditional Use Approval of Accessory Dwelling Units

If one or more of the standards of this Chapter cannot be met, an owner may seek approval of an Accessory Dwelling Unit as a Conditional Use, pursuant to [Chapter 14.34](#). A Conditional Use Permit may allow relief from one or more of the standards of the Chapter, but does not excuse the owner from complying with the standards that can be satisfied.

CHAPTER 14.30 DESIGN REVIEW STANDARDS

14.30.050 Exemptions

The following activities are exempt from the provisions of this chapter:

- A. Development activity that is subject to the provisions of Newport Municipal Code Chapter 14.23, Historic Buildings and Sites.

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- B. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions.
- C. Development that does not involve the construction, substantial improvement, or relocation of a dwelling unit, commercial or public/institutional building, or accessory structure.
- D. Conversion of space within an existing structure into an accessory dwelling unit.

Staff: Currently, new construction, substantial improvement, or relocation of one or more dwelling units triggers design review within the Nye Beach Design Review Overlay (NMC 14.30.040(A)). The City has been approached by an individual interested in constructing an Accessory Dwelling Unit within an existing primary dwelling. This creates practical challenges in applying the architectural design standards, given that the change of use is limited to a portion of the structure. Accessory Dwelling Units are also small enough that they will not typically result in a substantial improvement (i.e. 50% or more of the value of the structure), so it is difficult to justify requiring the exterior of the entire structure be upgraded to comply with the design standards. This change would exempt construction of an Accessory Dwelling Unit from Nye Beach design standards in cases where the unit is contained within an existing structure.