

City of Salem

First Passage

In the year Two Thousand and Twenty One

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. Table of Principal and Accessory Use Regulations is hereby amended by deleting the use entitled Accessory Living Area and adding the following new uses within Section E Accessory Uses:

E. ACCESSORY USES	RC	R1	R2	R3	B1	B2	B4	B5	I	BPD	NRCC
Affordable Accessory Dwelling Unit attached to a Principal Dwelling (as defined in Sec 3.2.8) or within a Principal Dwelling.	Y	Y	Y	Y	N	N	N	N	N	N	Y
Affordable Accessory Dwelling Unit within an Existing Detached Accessory Building, as defined in Sec 3.2.8	Y	Y	Y	Y	N	N	N	N	N	N	Y

Section 2. Section 10 Definitions is hereby amended by deleting the definition “Accessory Living Area” in its entirety and inserting the definition “Affordable Accessory Dwelling Unit” as follows:

“Affordable Accessory Dwelling Unit: A housekeeping unit with a maximum rent at least 30 percent below the United States Department of Housing and Urban Development (HUD) fair market rent limit for Salem, with its own sleeping, cooking and sanitary facilities, located either in a detached accessory building, or within or attached to a principal dwelling 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 3. Section 3.2.4 Accessory Buildings and Structures is hereby amended by deleting paragraph 4 in its entirety and replacing it with the following new paragraphs 4, 5 and 6 as follows:

“4. Accessory structures, garages and detached affordable accessory dwelling units shall not exceed one and one-half (1.5) stories or eighteen (18) feet in height.

5. Detached affordable 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, which shall comply with Section 3.2.4(6).

6. Detached affordable 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, unless otherwise permitted by a Special Permit pursuant to subsection 3 of Section 3.2.8.”

Section 4. Section 3.2.8 Accessory Dwelling Areas is hereby amended by deleting Section 3.2.8 in its entirety and replacing it with the following:

“3.2.8 Affordable Accessory Dwelling Units. Affordable Accessory Dwelling Units shall be allowed as provided set forth in this section.

1. Purpose.

- A. To add affordable 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, principal dwelling to construct one additional affordable dwelling unit per principal dwelling. Such a use is incidental and subordinate in size 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.

2. Procedure.

- A. The Building Inspector shall administer and enforce the provisions of this section.

3. Special Permit. Pursuant to Section 9.4, in the interests of design flexibility and overall project quality, the Zoning Board of Appeals may grant a Special Permit for the following:

- A. An existing detached accessory building as defined in subsection 8 of Section 3.2.8 that is not in compliance with the setbacks of the principal dwelling unit.
- B. An expanded detached accessory building as defined in subsection 8 of Section 3.2.8.

4. Application.

- A. The Application for the Building Permit, 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 affordable 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 affordable accessory dwelling unit.
3. Be accompanied by a letter of intent signed by the homeowner(s) and shall be submitted to the Department of Planning and Community Development that certifies the rent of the accessory dwelling unit will be at least 30 percent below the established fair market rent limit determined by the United States Department of Housing and Urban Development.

5. Requirements.

- A. The maximum rent of the affordable accessory dwelling unit, including utilities and parking, shall be at least thirty percent below the established Fair Market Rent limit for the City of Salem as determined annually by the United States Department of Housing and Urban Development.
- B. The affordable accessory dwelling unit shall not be constructed within a new detached accessory building, as defined in subsection 8 of Section 3.2.8.
- C. The affordable accessory dwelling unit shall not be considered a dwelling unit for the purpose of Section 5.1 Required Parking.
- D. The affordable accessory dwelling unit shall not result in a net loss of the total measured caliper inches of private trees on the lot in which the affordable accessory dwelling unit will be located unless a payment in per caliper inch of the tree diameter at breast height (DBH) at the prevailing rate set by the Tree Warden is made to the tree replacement fund.
- E. The affordable accessory dwelling unit shall not contain less than 350 square feet of habitable space.
- F. The affordable accessory dwelling unit shall not contain in excess of 900 square feet of habitable space.
- G. The affordable accessory dwelling unit shall not exceed 50% of the gross floor area of the principal dwelling.
- H. No more than one (1) affordable accessory dwelling unit shall be permitted for each principal dwelling unit and at least one (1) owner of the residence in which the affordable accessory dwelling unit is created shall reside in one (1) of the dwelling units, either the principal or accessory unit created therein, 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, or a purchase and sales agreement and for whom the dwelling shall be the primary residence as evidenced by voter registration, tax return or other documentation demonstrating primary residence. Owner occupancy is required for an affordable accessory dwelling unit to be permitted.
- I. An affordable accessory dwelling unit shall not be permitted in a building with five (5) or more units.
- J. Electricity, water, oil and gas shall be provided by a single service to both the affordable accessory dwelling unit and the principal dwelling, and included in the rent.
- K. The affordable 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.

- L. All stairways to the affordable accessory dwelling unit above the first floor shall be located on the rear or side of the dwelling.
- M. The affordable accessory dwelling unit shall not contain more than two (2) bedrooms.
- N. The affordable accessory dwelling unit shall be clearly subordinate in use, size and design to the principal dwelling.
- O. The affordable accessory dwelling unit must be capable of being discontinued as a separate dwelling unit without demolition of any structural component of the principal dwelling.
- P. There shall be no occupancy of the affordable accessory dwelling unit until the Building Inspector has issued a certificate of occupancy that the principal dwelling and affordable accessory dwelling unit are in compliance with all applicable health and building codes.
- Q. The Building Permit shall be revoked upon determination by the Building Inspector that any condition imposed by Section 3.2.8 has not been fulfilled.
- R. By filing the Application for a Building Permit for an affordable 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.
- S. Short term rentals, as defined in Salem Code of Ordinances Chapter 15, are prohibited in the accessory dwelling unit.
- T. The affordable accessory dwelling unit shall obtain a certificate of fitness subject to the provisions of Section 2-705 of the City of Salem Code of Ordinances.

6. Termination.

- A. The affordable accessory dwelling unit use shall terminate immediately upon any violation of any term or condition of this ordinance that the owner fails to cure, upon thirty (30) days 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 affordable accessory dwelling unit as a separate dwelling unit.
 - b. The kitchen facilities of the affordable 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.”

8. Definitions.

Attached affordable accessory dwelling unit: An affordable accessory dwelling unit created by adding gross floor area to the principal dwelling after the adoption of this ordinance.

Existing detached accessory building: A detached accessory building that is existing as of the effective date of this ordinance, that has a foundation, and is a minimum of 350 square feet.

Expanded detached accessory building: An existing detached accessory building that is expanded after the effective date of this ordinance.

New detached accessory building: A detached accessory building that is not existing as of the effective date of this ordinance.

Principal dwelling unit: A dwelling unit permitted as a principal residential use under Section 3, Table of Principal and Accessory Use Regulations. By way of example a single-family home permitted pursuant to Section 3 shall comprise of one principal dwelling unit, whereas a two-family home permitted pursuant to Section 3 shall comprise of two principal dwelling units. An accessory dwelling unit shall not be considered a principal dwelling unit.

Section 5. This Ordinance shall take effect as provided by City Charter.

In City Council February 11, 2021

Referred to the Planning Board to hold a Joint Public Hearing by a roll call vote of 11 yeas, 0 nays and 0 absent

Joint Public Hearing Held on March 30, 2021

Advertised in the Salem News on March 15, 2021 and March 22, 2021

Joint Public Hearing Closed by a roll call vote of 11 yeas, 0 nays and 0 absent

Referred to the Planning Board for their review and recommendation by a roll call vote of 11 yeas, 0 nays and 0 absent

In City Council April 8, 2021

Referred to the Committee on Ordinances, Licenses and Legal Affairs co-posted with the Committee of the Whole and invite the Zoning Enforcement Officer

In City Council April 22, 2021

Motion to strike section to allow one (1) affordable accessory dwelling unit per dwelling unit was denied by a roll call vote of 4 yeas, 7 nays and 0 absent

Adopted as amended for first passage as amended by a roll call of 7 yeas, 4 nays and 0 absent

ATTEST:

ILENE SIMONS
CITY CLERK

Adv: 04/28/2021