

**BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON**

In the Matter of an Ordinance Amending )  
Marion County Code Title 16 (Urban Zone )  
Code) by adopting standards for the )  
development of accessory dwelling units, )  
and declaring an emergency. )

AN ADMINISTRATIVE ORDINANCE

**ORDINANCE NO. 1382**

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

**SECTION I. Purpose**

This ordinance is enacted pursuant to the authority granted to general law counties in the State of Oregon by ORS Chapters 203 and 197 to implement the County Comprehensive Plan by amending the Marion County Code provisions related to urban zoning.

**SECTION II. Authorization**

On June 21, 2017, the Marion County Board of Commissioners initiated consideration of amendments to the Marion County Urban Zoning Code to permit accessory dwelling units (ADU) in certain zones and consider standards that would apply to their development. The Board directed the Marion County Planning Commission to hold a hearing on the matter and make a recommendation to the Board. On August 1, 2017, the Marion County Planning Commission held a hearing on ADU standards and made a recommendation to the Board. On September 5, 2017, the Marion County Board of Commissioners held a work session to discuss the Marion County Planning Commission recommendation and to ask staff for additional information on ADUs and options for standards that could be adopted. On November 1, 2017, the Board scheduled a public hearing on the matter for November 29, 2017. The Marion County Board of Commissioners held a public hearing on November 29, 2017, for which proper notice and advertisement were given. All interested persons were given the opportunity to speak or present written statements. After receiving testimony, the Board closed the hearing and left the record open until December 12, 2017, for additional testimony regarding standards that should apply to manufactured dwellings used as an accessory dwelling unit.

**SECTION III. Evidence and Conclusion**

The amendments of the Marion County Code Title 16 (Urban Zone Code) made hereunder are based on consideration and analysis of the operation of present zoning regulations and requirements of state law. Due consideration was given to the evidence in the record and testimony was received at the hearings. As set forth in Exhibit A, attached hereto and incorporated herein, the Board finds that the amendments to the Marion County Code Title 16 (Urban Zone Code) are in compliance with county ordinance and state law, its goals and policies, and requirements of federal law.

SECTION IV. Amendments

Marion County Code Title 16 (Urban Zone Code) is amended as set forth in Exhibit B, attached hereto and incorporated herein.

SECTION V. Severability and Savings Clause

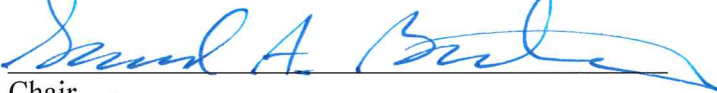
Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance, or any policy, provision, finding, statement, conclusion, or designation to a particular land use or area of land, or any other portion, segment or element of this ordinance or of the amendments adopted hereunder, be declared invalid for any reason, that declaration shall not affect the validity of any provision of this ordinance or of any other Marion County Code provisions amended herein.

SECTION VI. Effective Date

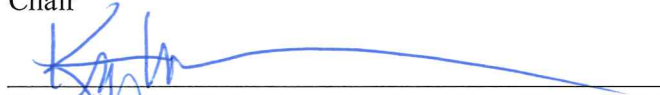
This ordinance being necessary to protect the public health, safety and welfare, an emergency is declared to exist and this ordinance shall become effective upon its passage.

SIGNED and FINALIZED this 20 day of December, 2017, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS



Chair



Recording Secretary

**JUDICIAL NOTICE**

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: December 20, 2017

Department: Public Works Agenda Planning Date: Dec. 14, 2017 Time required: 10 min

Audio/Visual aids

Contact: Brandon Reich Phone: 503-566-4175

Department Head Signature: Alan M. Haley

Form with fields: TITLE, Issue, Description & Background, Financial Impacts, Impacts to Department & External Agencies, Options for Consideration, Recommendation, List of attachments, Presenter.



MARION COUNTY BOARD OF COMMISSIONERS

## Board Session Agenda Review Form

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*Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)*

Copies to:

Brandon Reich - breich@co.marion.or.us



# ***Marion County*** **OREGON**

## **PUBLIC WORKS**

### **MEMORANDUM**

#### **BOARD OF COMMISSIONERS**

Sam Brentano  
Kevin Cameron  
Janet Carlson

#### **DIRECTOR**

Alan Haley

#### **ADMINISTRATION**

#### **BUILDING INSPECTION**

#### **EMERGENCY MANAGEMENT**

#### **ENGINEERING**

#### **ENVIRONMENTAL SERVICES**

#### **OPERATIONS**

#### **PARKS**

#### **PLANNING**

#### **SURVEY**

**TO:** Marion County Board of Commissioners  
**FROM:** Marion County Public Works, Planning/Reich  
**DATE:** December 4, 2017  
**SUBJECT:** Manufactured Dwelling Standards

At a hearing on November 29, 2017, the Marion County Board of Commissioners asked Planning staff for options to consider regarding what standards should apply to manufactured dwellings used as accessory dwelling units (ADU). The board left the record open until December 12, 2017, for this information.

The U.S. Department of Housing and Urban Development (HUD) establishes standards for the construction of manufactured dwellings. They began regulating the construction of them on June 15, 1976. Since that time there have been relatively minor updates to the standards.

In the 1980s, Oregon began the Super Good Cents program, which sought to improve the energy efficiency of housing units in Oregon. Marion County Code currently requires manufactured dwellings placed on a lot in an urban growth boundary to qualify for Super Good Cents construction.

In the 1990s, Energy Star, a federal energy efficiency program began. HUD began participating in that program in December 1997. This program is voluntary for manufacturers of manufactured dwellings and appears to improve energy efficiency over what is provided for by the earlier Super Good Cents program.

Planning staff recommends the board establish a standard that a manufactured dwelling used as an ADU be Energy Star certified in order to improve energy efficiency and save on costs for heating and cooling the housing unit.

**Urban Accessory Dwelling Units Amendments  
Legislative Amendment 17-001**

**Facts and Findings**

**BACKGROUND**

Urban areas in Oregon may permit a variety of housing types in their residential zones in order to provide the needed housing identified by Statewide Land Use Planning Goal 10—Housing. The Goal gives local governments the ability to permit accessory dwelling units (ADUs) on land within urban growth boundaries in order to provide affordable, long-term housing for urban residents.

In Marion County, Aumsville, Keizer, Salem and Silverton permit ADUs in conjunction with a residence on a parcel of land. In 2017, the Oregon State Legislature recognized the importance of ADUs as a housing choice by adopting legislation that requires, based on population, certain cities and counties to allow ADUs in areas zoned for detached single-family dwellings. This legislation goes into effect on July 1, 2018.

Accessory dwelling units are accessory to the main dwelling on the property and have standards applied to ensure the units remain accessory to the primary use of the property and cannot function as separate, independent uses on a lot. The standards also maintain the residential nature of the neighborhood.

The transportation requirements of ADUs are similar to other residential uses that make marginal increases in the demands on a roadway network, such as adding additional bedrooms to a home, changing the number of persons occupying a dwelling, or operating a home occupation. There is no evidence that permitting ADUs on urban residential properties will cause a significant increase in the traffic on a roadway network or cause a road to change its classification.

Generally, the standards that apply to the placement of an ADU fall into broad categories. A local government decides how to best adopt standards within a category in order to ensure ADUs achieve certain objectives, such as being compatible with existing neighborhoods and smaller in scale to the existing single family home on the property.

Since the beginning of 2017, Marion County Planning staff worked with the Marion County Planning Commission to discuss ADUs generally and the categories of standards that can be applied to ADU development. On June 21, 2017, the Marion County Board of Commissioners initiated consideration of amendments to the Marion County Urban Zoning Code to consider standards that would apply to ADU development. The Board directed the Marion County Planning Commission to hold a hearing on the matter and make a recommendation to the Board.

On August 1, 2017, the Marion County Planning Commission held a hearing on ADU standards and made a recommendation to the Board. The discussion that follows is the Planning Commission's recommendation except where indicated.

On September 5, 2017, the Marion County Board of Commissioners held a work session on ADU standards to discuss the Marion County Planning Commission recommendation and to ask staff for additional information on ADUs and options for standards that could be adopted. On November 1, 2017, the Board scheduled a public hearing on the matter for November 29, 2017. After receiving testimony at the public hearing on November 29, 2017, the Board left the record open for additional testimony regarding standards that should apply to manufactured dwellings used as an ADU.

## COMMENTS

The Department of Land Conservation and Development provided comments on August 1, 2017 supporting the county's work in adopting standards for ADUs. DLCD staff provided ideas for best practices when adopting standards.

Comments were also received from interested parties in support of the county permitting ADUs and suggesting standards that the county should adopt.

## FACTS AND ANALYSIS

### Type of ADU

Permit interior ADUs, units built inside an existing dwelling or attached garage; attached ADUs, units constructed as an addition to or within 5 feet of an existing dwelling or attached garage; and site built, modular and manufactured dwellings as detached ADUs, units located on a property more than 5 feet from an existing dwelling or attached garage. Allowing interior, attached and detached ADUs gives the greatest flexibility to the property owner in developing the type of ADU desired on their property. Other standards, such as size and location, will ensure that the ADU is consistent with the existing residential neighborhood. A recreation vehicle, since it is a type of vehicle, is not permitted to be used as an ADU. A manufactured dwelling meeting the ADU standards for size and location ensures the ADU is consistent with the residential nature of the area where it is placed. The manufactured home used as an ADU shall be Energy Star certified in order to improve energy efficiency of the unit and reduce the cost to heat and cool it.

### Size

Permit up to 900 square feet of living space or 75% of the size of the footprint of the main dwelling, whichever is less. This standard is consistent with other jurisdictions' maximum sizes for ADUs (Salem, 900 square feet; Silverton, 800 square feet; Aurora, 1000 square feet; Keizer, 750 square feet). The standard for the maximum size, and the requirement the ADU be smaller than the footprint of the existing home, ensure that the ADU remains accessory to the primary residence on the property and the ADU remains in scale to the residential use of the neighborhood it is placed in.

### Location

Permit detached ADUs only in side yards or rear yards. Attached or interior ADUs are permitted in front, side or rear yards. Other buildings accessory to the primary dwelling are permitted in side and rear yards. This standard is consistent with existing standards for accessory structures in residential neighborhoods. Additionally, not locating detached ADUs in front yards limits the visual impact of ADUs on neighborhoods. Attached or interior ADUs would be constructed similar to an addition on a dwelling today, which is permitted in any yard consistent with meeting property line setbacks.

### Density Standards

ADUs are exempt from density standards in MCC 16.26.100. This ensures that an ADU can be placed on a property as accessory to the dwelling when other standards are met (such as setbacks from property lines, location placed on the property, size of the ADU, etc.). If ADUs were not exempt from density standards, there could be circumstances where it is physically possible to locate an ADU on a property (or place one interior to a dwelling), but density standards prevent the placement of the ADU. Since ADUs are accessory to the dwelling on the property, and are intended to be a less intensive use than a complete, separate dwelling, it is appropriate to not apply density standards to the placement of an ADU.

### Land Division

Require that the portion of a property with an ADU cannot be divided off from the rest of the property containing the main dwelling. Since the ADU is accessory to the dwelling, it must remain on the same parcel as the dwelling.

### Number of ADUs permitted on a property

Permit one ADU on a property. Limiting ADUs to one unit associated with a dwelling minimizes any impact to residential neighborhoods. Multiple dwelling units on a property can be permitted in other zones, such as multi-family zones that permit duplexes or cottages.

### Height of ADU

Permit an ADU to be constructed to a maximum height of 25 feet for a detached ADU and 35 feet for an attached or interior ADU, the same as for a single family dwelling. These heights provide flexibility for a homeowner wishing to construct an ADU on a property with an existing one-story home, while ensuring that height of the ADU remains residential in nature. Detached ADUs are able to be up to 25 feet tall regardless of the height of the existing dwelling and less than the maximum of 35 feet permitted for residential development. These standards ensure the ADU is scaled so that it visually appears accessory to the dwelling on the property and ensure the ADU is consistent with the residential nature of the neighborhood.

### Setbacks from property lines

In order to maintain consistency with existing accessory structures placed in urban growth boundaries other than the urban area of Salem, establish setbacks as follows: If located in a side yard: behind the front plane of the home and 5 foot minimum from side property line. If located in rear yard: behind the rear plane of the home, not take up more than 25% of the required rear yard, and not project above the following height limits: nine feet at the lot line, increasing one foot for each one foot of distance from the lot line to a maximum height of 20 feet. Roof drainage shall be accommodated within the confines of the property. This standard applies the same setbacks to ADUs as are applied to other accessory structures. This ensures adequate setbacks from neighboring properties and is consistent with development already allowed in the zone.

To be consistent with setback requirements inside the City of Salem, in the Salem urban area, require setbacks for an ADU in the rear yard of 5 feet from property lines and in the side yard of 3 feet from property lines. Consistent with the memorandum regarding setbacks in the Planning file, this standard equally ensures adequate setbacks from neighboring properties and is consistent with development already allowed in the zone.

### Parking

Require one additional parking space. No new curb cuts are permitted. Existing curb cuts may be expanded with an approved access permit up to the maximum width allowed. New curb cuts to extend or create driveways removes a space from on street parking to create a new space off street, which equates to no net gain in parking spaces. New spaces can be created off street using the existing driveway or by an expansion of an existing curb cut. Requiring one off street parking space provides additional space off the street for the occupants of an ADU. It appears from evidence in the record that two additional parking spaces would be difficult to locate on a property.

### Rental duration

An ADU, if rented, shall be rented for a minimum duration of 30 days. This standard is to ensure that ADUs are not used as short-term rentals or vacation stays. ADUs are intended to be occupied over longer durations



(months) in order to address the need for affordable, long term housing. Allowing ADUs to be rented for the short-term would limit the ability of the standards to achieve that housing objective.

#### Deed Restriction

The property owner shall be required to record a deed restriction acknowledging the standards for ADUs. This ensures that future property owners are made aware of the standards that apply to the ADU that is already constructed on the property they are purchasing.

#### Zones where permitted

In Urban Transition zones permit interior or attached only. In Single Family Residential and Urban Development zones, permit interior, attached, or detached ADUs. Do not permit ADUs in other zones. Urban Transition zones are meant for future urban development upon annexation. A detached ADU would take up area on a property intended for redevelopment at city densities, limiting the ability of the property to be further developed once it's annexed into the city. Therefore, only permitting interior or attached ADUs maximizes the amount of the land available for development upon annexation. ADUs are permitted in zones where single-family residences are allowed, the Single Family Residential and Urban Development zones, subject to the ADU meeting the other standards for development (location on the parcel, setbacks, size, etc.). Additional dwelling units are already permitted on property in multi-family zones and do not need ADU provisions. In zones where dwellings are not permitted outright (i.e., industrial or commercial), permitting additional residential development could make the lot more non-conforming upon annexation, which could make financing or redevelopment of the property more difficult.

#### Approval process

ADUs are permitted outright, subject to standards and no land use review is required. Since ADUs are being permitted only in zones that already permit residences and are accessory to the residential use of the property, it is not necessary to review their placement as a land use decision. The placement of an ADU is subject to the standards outlined above upon application for a building permit to construct one on a parcel. Existing ADUs at the time the ordinance is adopted could be legalized through an adjustment application provided by the property owner. Standards for new ADUs can be varied through the urban adjustment process.

#### Decision

Based on the above facts and findings, the Board finds that the amendments to the Urban Zone Code are in compliance with county ordinance and state law, its policies and requirements, and federal law.

DELETIONS IN STRIKEOUT  
 ADDITIONS IN BOLD AND UNDERLINED

*Staff comments in gray and italics*

Chapter 16.25  
 PERMITTED USES GENERALLY

**16.25.200 Permitted secondary and accessory structures and uses.**

The following secondary and accessory uses and structures shall be permitted on a lot with a primary use and are subject to the limitations and requirements in Chapters 16.24, 16.25, 16.26, 16.27, and 16.28 MCC, and the requirements in any applicable overlay zone:

**O. One accessory dwelling unit provided as follows:**

- a. In a Single Family Residential or Urban Development zone, an interior, attached or detached accessory dwelling unit subject to the standards in MCC 16.26.100.**
- b. In an Urban Transition zone, an interior or attached accessory dwelling unit subject to the standards in MCC 16.26.100.**
- c. The area of the parcel containing an ADU cannot be divided from the area of the parcel containing the main dwelling.**
- d. A property owner constructing an ADU shall record a deed restriction acknowledging the use and development standards in in this subsection and MCC 16.26.100.**
- e. A recreational vehicle is not permitted to be used as an ADU.**
- f. ADUs are exempted from the density standards in MCC 16.27.050.**
- g. An existing, non-conforming ADU may be determined to be conforming through the adjustment process provided for in MCC 16.41; and,**
- h. As used in this subsection, interior means construction inside a dwelling or attached garage; attached means an addition to a dwelling or attached garage or a new structure constructed within five feet of a dwelling or attached garage; detached means an existing or new structure, including manufactured dwelling, located more than five feet from a dwelling or attached garage.**

Chapter 16.26  
 USE STANDARDS

**16.26.100 Accessory dwelling unit.**

**An accessory dwelling unit (ADU) shall meet the following additional use and development standards:**

**A. An ADU shall be a maximum of 900 square feet in floor area or 75% of the size of the footprint of the main dwelling, whichever is less.**

**B. If interior or attached:**

- 1. An ADU shall meet the same height requirements as the primary dwelling on the property.**
- 2. An ADU shall meet the same setbacks as the primary dwelling on the property.**

**C. If detached:**

- 1. An ADU shall not exceed 25 feet in height.**
- 2. An ADU shall be located in side or rear yard only.**
- 3. In the urban area of Salem, an ADU shall maintain setbacks of three feet from property lines where located in a side yard and five feet from property lines where located in a rear yard.**
- 3. In urban growth boundaries other than the urban area of Salem, an ADU shall meet the setbacks for accessory structures in MCC 16.28.**

**D. One additional parking space shall be required. No additional curb cuts are permitted. Existing curb cuts may be expanded with an approved access permit up to the maximum width allowed.**

**E. An ADU if rented, shall be rented for a minimum duration of 30 days.**

**F. If a manufactured dwelling is used as an ADU, then it shall be Energy Star certified and exhibit the U.S. Housing and Urban Development (HUD) certification label pursuant to OAR 918-500-0450; and,**

**G. As used in this subsection, interior means construction inside a dwelling or attached garage; attached means an addition to a dwelling or attached garage or a new structure constructed within five feet of a dwelling or attached garage; detached means an existing or new structure, including manufactured dwelling, located more than five feet from a dwelling or attached garage.**