



February 16, 2024

### CITY OF LYNDEN TECHNICAL REVIEW COMMITTEE STAFF REPORT

Re: The application of Jamie and Rachel Vos for a Zoning Text Amendment to LMC 19.20

ZTA #24-01, Vos Zoning Text Amendment

#### **I. APPLICATION SUMMARY AND RECOMMENDATIONS**

Proposal: The applicant is requesting a zoning text amendment to Chapter 19.20 of the Lynden Municipal Code regarding Accessory Dwelling Units. See project description below.

Recommendation: The Technical Review Committee recommends approval of the proposed Zoning Text Amendment with specific conditions related to effective dates.

#### **II. PRELIMINARY INFORMATION**

Applicant: Jamie and Rachel Vos

Property Owner: Jamie and Rachel Vos

Property Location: City Wide Zoning Text Amendment

Parcel Number: City Wide

Legal Description: N/A

<u>Notice Information:</u>	Application Submitted:	December 28, 2023
	Notice of Application:	January 24, 2024
	Notice of Hearing:	January 24, 2024
	Comment Period Ending:	February 7, 2024
	Public Hearing:	February 22, 2024

<u>SEPA Review:</u>	SEPA Determination	January 19, 2024
	Notice of SEPA Determination	January 24, 2024

Authorizing Codes, Policies, and Plans:

- LMC Chapter 17 Land Development
  - LMC Chapter 17.09, Review and Approval Process
    - LMC Chapter 17.09.040, Planning Commission Review and Recommendation
- LMC Chapter 19 Zoning Code
  - LMC Chapter 19.20 – Accessory Dwelling Units
- LMC Chapter 17.09.030 – Legislative Decisions
- LMC Chapter 16 Environmental Policy
- RCW 36.70A.680 and RCW 36.70A.681- Accessory Dwelling Units

**III. ACCESSORY DWELLING UNIT DEFINITION**

An Accessory Dwelling Unit (ADU) is a self-contained residential unit located on the same lot as an existing single-family home. A detached accessory dwelling unit is housed within a separate structure while an attached accessory dwelling unit is located within the primary dwelling unit.

Traditionally these have also been called mother-in-law suites as they can provide a co-housing option for multiple generations or family members who require support of assistance with basic living functions. ADUs can also provide rental income that, by supplementing mortgage costs, make home ownership financially feasible for the primary homeowner.

The City of Lynden currently allows ADUs to be constructed in association with any single-family home. ADUs are not permitted in association with duplexes or other multi-family units.

**IV. PROJECT DESCRIPTION**

This text amendment application proposes to update Lynden Municipal Code Chapter 19.20 regarding Accessory Dwelling Units (ADUs). The update would further ease potential barriers for residents in establishing legal ADUs on residential properties in the City. The City is required to adopt these updates by December 31, 2025, as a condition of HB1337, which was passed by the state legislature in 2023. The city intends to make

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these ADU code updates for compliance as part of its Comprehensive Plan update process and expects to be in compliance by the State's deadline (2026). Ahead of that deadline, this text amendment request is being brought forward by a private property owner and, if approved, would bring the city into compliance with HB 1337.

The applicant is motivated to spearhead the text amendment because the change would correct a current building height violation at their property located at 143 Terrace Drive. Here, construction is nearly complete on a detached accessory dwelling unit. Unfortunately, prior to completion, it was discovered that the building had reached a height that exceeds the current 18-foot maximum allowed in the city. The error was made early in the process when the starting grade was established at an elevation which was inconsistent with the approved permit. Modifying the constructed building to conform with the City's current code on height (18 ft) is possible but difficult. Instead, the applicant is proposing this text amendment which would increase the maximum permitted height of detached ADUS, bringing their building into compliance, and would amend the city's code as required by HB 1337.

This Zoning Text Amendment is not exclusive to this project or a specific zoning designation but would affect all properties within the city limits that permit accessory dwelling units.

## V. **PUBLIC NOTICE AND COMMENT**

Notice of Application: Formal legal notice for this application was published in the Lynden Tribune on January 24, 2024

Public Comment Received:

*Letter of support received from Jerry Roetcisoender, JWR Design..*

## VI. **ANALYSIS AND CONSISTENCY WITH REGULATIONS**

The City recognizes the value of ADUs in helping meet resident housing needs. This form of housing:

- Adds to the diversity of housing types in the city (particularly for seniors and smaller household sizes).
- Promotes the ability of intergenerational living.
- Provides a type of housing that blends into existing low-density neighborhoods.

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- Adds units as infill to neighborhoods that already have service infrastructure available.
- Provides a type of housing that is typically more affordable than traditional single-family homes and provides an opportunity for a homeowner to supplement their housing costs through renting out the ADU.

When ADU regulations are difficult to meet, homeowners are motivated to create unregulated “illegal” ADUs. Recognizing this, the City updated its code on ADUs in 2018 to increase feasibility. The amendment allowed detached ADUs for the first time, increased the maximum size of the units, and clarified design standards for their construction.

The city’s goals in ADU creation have sought to support homeowners rather than investors / landlords and, to facilitate this, has required property owners to record a covenant that mandates that the owner live either in the primary home or the ADU. This requirement is aimed at preventing investors from beating out homebuyers in order to hold residential properties as rental investments – leasing out both the primary home and the ADU.

Since the 2018 update the city has seen more ADUs being constructed and approved on residential lots, particularly on new construction. According to recent building permit data, approximately 10% of new home construction in Lynden now include an ADU.

As mentioned above in Section IV, HB 1337, passed in 2023, now requires Lynden to revise its ADU regulations to conform to the mandates of the bill within 6 months after the periodic update of the Lynden Comprehensive Plan. . The State sees ADUs as a vital component of easing the housing crisis by further reducing barriers to the construction and approval of ADUs. While Lynden’s current ADU code is fairly amenable, the new requirements will further reduce regulations by increasing the number of ADUs permitted, increasing the size and height of detached units, reducing parking requirements, and eliminating the owner occupancy requirements.

RCW 36.70A.680 and RCW 36.70A.681 (as a result of HB1337) requires all local governments planning under the Growth Management Act (GMA), to revise their regulations as needed to conform with HB 1337. The following list highlights the limitations on local regulation as required by HB 1337:

- **Minimum number of ADUs per lot:** Two ADUs per lot must be allowed in all GMA urban growth areas, in addition to the principal unit, for lots that meet the minimum lot size required for the principal housing unit. Local regulations must permit ADUs to be attached, detached or a combination of both types. In addition,

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a conversion of an existing structure, such as a detached garage, must be allowed.

- **Maximum ADU size and height standards:** Local governments may not require ADUs to be smaller than 1,000 gross square feet in size and may not establish roof height limits on an accessory dwelling unit of less than 24 feet, unless the height limitation that applies to the principal unit is less than 24 feet.
- **Dimensional standards:** A local government may not impose setback requirements, yard coverage limits, tree retention mandates, or restrictions on entry door location that are more restrictive than those required for the principal unit.
- **Street improvements:** A local government may not require street improvements as a condition of permitting accessory dwelling units.
- **Owner occupancy:** A local government may not require owner occupancy for a principal unit or ADUs.
- **Condominium sales:** Local governments may not prohibit the sale or other conveyance of a condominium unit independently of a principal unit solely on the grounds that the condominium unit was originally built as an ADU.
- **Design review:** Local governments may not impose aesthetic standards or requirements for design review that are more restrictive for ADUs than those for principal units.
- **Required parking:** There are restrictions on how much on-site parking can be required, with a sliding scale for smaller-sized lots.
- **Impact fees:** Impact fees for ADUs are limited to no more than 50% of those assessed to the principal housing unit. (The City of Lynden currently does not charge impact fees on ADUs).
- **Rear Setbacks:** A city must allow detached accessory dwelling units to be sited at a lot line if the lot line abuts a public alley, unless the city routinely plows snow on the public alley.
- **Critical Areas:** Critical Area provisions (LMC 16.16) still apply to ADU construction if there are critical areas and/or their buffers on that lot.

- **Common Interest Communities:** New “Common Interest Communities” (for example, a new subdivision with a homeowners association) are prohibited from adopting covenants, conditions, and restrictions (commonly called “CC&Rs”) that would limit the construction of ADUs on any lot. Existing CC&Rs, however, are not impacted by the new law and may remain in effect.

The LMC 19.20 amendments being proposed by the applicant take these requirements into account and do not propose additional changes. The city may elect, through the public hearing process, to further reduce the restrictions.

Staff is supportive of the revisions proposed by the applicant but has provided a revised amendment that addresses additional details outlined in HB 1337, clarifies the process for securing ADU approval, and includes some provisions as to staggered dates of effectiveness. The resulting amended document showing staff recommended text with staff comments is attached to this report.

## VII. TECHNICAL REVIEW COMMITTEE COMMENTS

### Community Development Department Comments

1. *Owner Occupancy Requirements:* Staff has proposed that, consistent with the city’s goals to support homeownership, and to allow for additional time to assess impacts, that the owner occupancy requirement be maintained until January 1, 2026
2. *Impact Fees:* Staff has proposed that ADUs be subject to 50% of applicable residential impact fees starting January 1, 2026 which coincides with the proposed timeline to lift the owner-occupancy requirement.
3. *Restricted Commercial Use:* It should be noted that the use of an ADU for commercial purposes is restricted by permitted uses defined for each zoning designation. The use of an ADU as a vacation / Short-Term Rental (STR) is limited as outlined in LMC 19.57.300 – 19.57.320.
4. *ADU Approval:* Staff revisions are intended to clarify the process for ADU approval. Although owner occupancy requirements are being lifted in 2026 the proposed code maintains a requirement for property owners to record a covenant on the property related to ADU use and associated regulations.

5. *Inspection:* Be advised, ADUs are subject to inspection to insure that zoning, building, and fire codes are addressed. An applicable inspection fee, as set by the city's unified fee schedule, is required.

### **Public Works Department**

6. *Utilities:* Water, sewer and stormwater requirements are addressed at the time of building permit and / or ADU covenant review.

### **Fire and Life Safety**

7. *Life and Safety:* Life and safety standards will be addressed at time of building permit and verified at the time of ADU inspection.
8. *Impact Fees:* The Fire Department anticipates that ADU inhabitants, like all residents of the city, will impact the service demands on the Fire Department and agrees that collecting impact fees on ADUs will assist in offsetting the cost of these demands in addition to the ambulance fee which is already collected on ADUs within the city.

### **Parks and Recreation**

9. *Impact Fees:* The Parks Department anticipates that ADU inhabitants will utilize and impact the city's park and trail system and is supportive of collecting impact fees on ADUs to offset these impacts and assist in providing facilities for all users.

## **VIII. RECOMMENDATION**

The Technical Review Committee recommends the approval of the proposed Zoning Text Amendment with the clarifications added to the attached, amended document of LMC 19.22. This includes a proposed delay to the following revisions:

1. Owner occupancy requirement to remain in place until January 1, 2026.
2. Assessment of impact fees on ADUs in the amount of 50% of that assessed to a single-family home begin on January 1, 2026. (RCW 36.70A.680 limits impact fee assessment to no more than 50% of the impact fees that would be imposed on the primary residence).