

CITY OF LYNDEN
ORDINANCE 24-1684

**AN ORDINANCE OF THE CITY OF LYNDEN AMENDING CHAPTER 19.20 OF THE
LYNDEN MUNICIPAL CODE REGARDING ACCESSORY DWELLING UNITS**

BACKGROUND

WHEREAS, Jamie and Rachel Vos hereinafter called the “Proponent,” submitted a complete application to the City of Lynden, hereinafter called the “City,” for a Zoning Text Amendment requesting an update to Chapter 19.20 of the Lynden Municipal Code regarding Accessory Dwelling Units, hereinafter referred to as “the Property”; and

WHEREAS, The applicant has indicated that the reason for the proposed changes to Chapter 19.20 is to align with new State mandated changes in the accessory dwelling unit code to relieve some pressure on the pricing of housing by allowing for income generation as well as generational living.

WHEREAS, as a condition of HB1337, which was passed by the state legislature in 2023, the City is required to adopt specific updates regarding Accessory Dwelling Units by December 31, 2025, and

WHEREAS, the City intends to address the Accessory Dwelling Unit provisions as required and will make these ADU code updates for compliance as part of its Comprehensive Plan update process.

WHEREAS, this text amendment would allow additional, and larger ADUs on residential properties in the City thereby providing additional housing opportunities, and

WHEREAS, ahead of the State 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 more than a year and a half ahead of time; and

WHEREAS, the City is responsible for enacting regulations that protect the health, safety and general welfare of the citizens of Lynden; and

WHEREAS, the Growth Management Act requires that local governments planning under the Act must adopt regulations which implement adopted comprehensive plans; and

WHEREAS, the City of Lynden finds it necessary to amend these regulations from time to time ensure orderly review of zoning regulations within the City.

WHEREAS, the City’s Comprehensive Plan is supportive of a variety of housing types and encourages development which may assist in the affordability of housing, including Accessory Dwelling Units (ADU’s); and

WHEREAS, RCW 36.70A.680 and RCW 36.70A.681 requires all local governments planning under the Growth Management Act (GMA), regardless of population to revise their regulations as needed to conform, within 6 months after their periodic update due date, with the following requirements:

1. **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, a conversion of an existing structure, such as a detached garage, must be allowed.
2. **Maximum ADU size standard:** Local governments may not require ADUs to be smaller than 1,000 gross square feet in size.
3. **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.
4. **Street improvements:** A local government may not require street improvements as a condition of permitting accessory dwelling units.
5. **Owner occupancy:** A local government may not require owner occupancy for a principal unit or ADUs.
6. **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.
7. **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.
8. **Required parking:** There are restrictions on how much on-site parking can be required, with a sliding scale for smaller-sized lots. No on-site parking standards may be applied to ADUs located within a half-mile of a major transit stop.
9. **Impact fees:** Impact fees for ADUs are limited to no more than 50% of those assessed to the principal housing unit.
10. **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

PROCESS

WHEREAS, the Proponent submitted an application requesting a Zoning Text Amendment to Chapter 19.20 of the Lynden Municipal Code regarding Accessory Dwelling Units (ZTA #24-01) which was determined to be complete on January 19, 2024, and the

legal notice of application and public hearing was published by the Lynden Tribune on January 24, 2024; and

WHEREAS, the City’s Technical Review Committee has reviewed the application for a Zoning Text Amendment and has provided the following findings and recommendations in a report dated February 16, 2024; and

WHEREAS, on January 19, 2024, the City issued a SEPA Determination of Non-Significance related to this Ordinance; and

WHEREAS, the Lynden Planning Commission held an open record public hearing regarding the proposed amendment on February 22, 2024, to accept public comments on the proposed amendment and recommended adoption to the City Council.

WHEREAS, on February 26, 2024, the City provided notification to the State’s Department of Commerce pursuant to RCW 36.70A.106 regarding the proposed update to Chapter 19.20 of the Lynden Municipal Code and requested expedited review thereof, and said request for expedited review having been subsequently granted; and

WHEREAS, the proposed regulations were introduced to the Lynden City Council on March 4, 2024, and a date for a public hearing was set; and

WHEREAS, on April 1, 2024, the Lynden City Council held a public hearing to accept public testimony on the proposed amendment and to consider the matters of record to that date; and

1. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1.01 Application. Jamie and Rachel Vos (“Applicant”) filed an application for a zoning text amendment which was accepted by the City as complete on January 19, 2024 and assigned as Zoning Text Amendment #24-01.

1.02 Location. As with all Zoning Text Amendments, any changes to such text could affect all properties within the city limits that permit accessory dwelling units.

1.03 Reason for Request. This proposed request is twofold,

- 1) The applicant constructed an accessory dwelling unit with a final building height that exceeded the 18-foot maximum allowed in the City. The error was made early in the process when the average grade and finished floor elevations were established. Rather than modifying the building height to conform to the current code, the applicant chose to apply for a zoning text amendment that would align with the upcoming State mandated changes for Accessory Dwelling Units.

2) RCW 36.70A.680 and RCW 36.70A.681 is requiring that all local governments planning under the Growth Management Act (GMA), regardless of population to revise their regulations to conform with the new requirements for Accessory Dwelling Units within 6 months after their periodic update of the Comprehensive Plan. The City of Lynden is scheduled to complete this required update by June 30, 2025.

1.04 Critical Area Review. Critical area review will be done at time of development.

1.05 SEPA Determination. A SEPA Determination of non-significance was issued for the zoning text amendment on January 19, 2024.

1.06 Planning Commission Recommendation. The Planning Commission has recommended approval of Zoning Text Amendment #24-01 as outlined in Planning Commission Resolution #24-01.

1.07 Findings from Zoning Text Amendment #24-01. All Findings of Fact from ZTA #24-01 are incorporated herein by this reference. If there is a conflict between any of the Findings of Fact in ZTA #24-01, the Findings of Fact outlined in this document shall apply.

2. CONCLUSIONS OF LAW

2.01 Appropriate Provisions Made for Open Spaces, Roads, Streets, Sidewalks, and Alleys. Future development applications will make appropriate provisions for public open spaces, roads, streets, sidewalks, and alleys consistent with the City's Comprehensive Plan, the Pepin Creek Sub-area Plan, and the Transportation Element.

2.02 Potable Water Supplies, Sanitary Wastes and Drainage Ways. Future development applications will make provisions for public drainage ways, potable water supplies, and sanitary wastes.

2.03 Public Interest. The application is consistent with the City's comprehensive plan and the Growth Management Act as it will provide opportunities for future residential inventory accommodating expected population growth.

2.04 Appropriate Provisions for Promoting Public Health, Safety and Welfare. Future development applications will make appropriate provisions for promoting Public Health, Safety and Welfare.

2.05 Conclusions from Zoning Text Amendment (ZTA) Application #24-01. All Conclusions and Conclusions of Law from ZTA #24-01, are incorporated herein by this reference to the extent not inconsistent with the above Conclusions of Law. If there is a conflict between any of the above Conclusions of Law and the Conclusions

of Law or Conclusions in Zoning Text Amendment 24-01, the above Conclusions of Law shall control.

Any of the foregoing Finding of Fact which should rather have been designated Conclusions of Law, and Conclusions of Law which should rather have been designated Findings of Fact, shall be validated as such and so conformed.

The foregoing recitals are a material part of this Decision. The final determination and associated findings and conditions of this resolution are fully incorporated herein by this reference.

NOW THEREFORE, BE IT RESOLVED by the Lynden City Council to approve the proposed zoning text amendment reflecting the clarifications added during the review and hearing process. This includes a proposed delay to (1) Owner occupancy requirements in that owner occupancy requirements must remain in place until January 1, 2026; and (2) Assessment of impact fees on each ADU in the amount of 50% of that assessed to a single-family home, will begin on January 1, 2025.

Section 1. LMC 19.20 – “Accessory Dwelling Units” is hereby amended as follows:

Chapter 19.20 ACCESSORY DWELLING UNITS

19.20.010 Purpose.

It is the provision of this chapter to implement the goals and policies as identified under the housing element of the city of Lynden Comprehensive Plan.

- A. The city of Lynden will encourage the availability of affordable housing to all economic segments of the population, promote a variety of residential densities and housing types, and encourage the preservation of existing housing.
- B. To consider other creative methods, such as cluster housing, cottage housing, accessory housing, and transfer of development rights to increase density and promote the opportunity for ownership of single-family homes.
- C. The city will also look to provide homeowners with a means of obtaining rental income, companionship, security and services through tenants in either the accessory dwelling unit or principal unit of the single-family dwelling.
- D. To provide a place to facilitate the care of family members who are unable to live independently.
- E. To address the State of Washington Accessory Dwelling Unit (ADU) provisions per RCW 36.70A.680 – 681.

19.20.20 Accessory dwelling unit.

Accessory dwelling unit (ADU) is a subordinate, complete living unit which includes permanent kitchen and sanitary facilities, that is secondary to a single-family home located on the same lot as defined in LMC Section 17.01.030 and further subject to the following requirements:

- A. ADUs are permitted in all residential zones including planned residential developments provided that a maximum of two (2) ADUs are allowed per lot as an accessory use to a single-family home. ADU's are permitted in multi-family zones only on lots which are restricted, by lot area, to a single-family residence.
- B. ADUs can be attached as a separate unit within the existing home or an addition to the home, or detached as a separate structure on the lot, or any configuration of attached or detached units.
- C. Two (2) ADUs are allowed per detached single-family residence. ADU's are not permitted as part of any other housing type. Accessory dwelling units are exempt from the density limitations of the underlying zone.
- D. ADUs of all types are limited to a maximum of one thousand square feet.
- E. Parking spaces dedicated to the ADU are required in addition to the parking required for the primary residence. All parking spaces for the primary structure and the ADU must be located on site.
 1. On lots of 6,000 square feet or larger, one (1) parking space per ADU bedroom is required up to a maximum requirement of two (2) spaces dedicated to the ADU.
 2. On lots less than 6,000 square feet only one parking space must be dedicated to the ADU regardless of ADU bedroom count.
- F. Utilities. All utilities servicing the site may require upgrades based on the project size. Any utilities installed on site must meet the requirements of the city of Lynden Manual for Engineering Design and Development Standards.
- G. Until January 1, 2026, the primary residence or the ADU must be owner occupied. The required ADU covenant against the property, approved by the Community Development Department, must be signed by the owner and recorded with the Whatcom County Assessor's Office which specifies this requirement.
- H. The ADU shall not be subdivided or otherwise segregated in ownership from the principal dwelling unit except that, per RCW 36.70A.681, the city shall not prohibit the sale or other conveyance of a condominium unit independently of the primary structure solely on the grounds that the condominium unit was originally built as an accessory dwelling unit.

19.20.030 Setback and height requirements.

The following text provides regulations for height and setback requirements:

- A. All setbacks are measured from the property line to the building foundation. It is the property owner's responsibility to have the property lines clearly marked for inspection.
- B. All ADUs shall follow the setback requirements for the underlying zone.
 - 1. Detached ADUs are subject to accessory structure setbacks except that detached ADUs may be situated on a lot line that abuts a public alley. No ADU may encroach into an existing easement.
 - 2. Attached ADUs are subject to the setbacks associated with the primary structure.
- C. An existing non-conforming building shall not be used for an ADU unless the structure is brought into conformance with City Code except that existing buildings that violate setbacks or lot coverage may be converted to include an ADU. The ADU conversion shall not result in an increase in the nonconformity.
- D. On corner lots in all residential zones, the side yard setback adjacent to the street must reflect the minimum side yard of that zone.
- E. Driveway access shall be allowed according to any requirements for the underlying zone.
- F. The maximum height of any detached structure housing an ADU shall be twenty-four (24) feet.
- G. The maximum lot coverage is subject to the associated zone. Thirty-five percent (is all RS zones, thirty-five percent in the RMD zone, thirty-five percent in the RM-1 zone, forty percent in the RM-2 and RM-3 zones and forty-five percent in the RM-4 zone. For lot coverage requirements within a PRD check with the PRD contract. Lots which are existing non-conforming in that they exceed lot coverage requirements are not prevented from converted existing structures into ADUs. ADU conversion shall not result in an increase in the nonconformity. Refer to LMC 19.35 regarding permitted actions as to the maintenance and demolition of non-conforming structures.

19.20.040 Permitting and enforcement.

- A. Covenant Application. In addition to any building permit that may be required for the creation of an ADU, the property owner shall apply for an ADU covenant with the Community Development Department. Application for the covenant must demonstrate that the ADU meets all requirements as listed above. The applicant must also acknowledge any private covenants such as those imposed by a homeowners association that may exist on the property.

- B. Applicable Codes. The accessory dwelling unit shall comply with all construction codes set forth in the city of Lynden Engineering Design and Development Standards and the Lynden Zoning Code however, per RCW 36.70A.681 public street improvements shall not be required as a condition of permitting ADUs.
- C. Design Requirements. A detached ADU must be reviewed consistent with applicable portions of LMC Section 19.22 Residential Design Requirements as they relate to accessory structures.
- D. Inspection. Prior to the approval of an ADU, the city may inspect the property to confirm that all applicable requirements of this code and other codes have been met. An inspection fee is required as set by the city's unified fee schedule.
- E. Recording Requirements. Prior to a request for final ADU inspection for either an attached or detached accessory dwelling unit, the property owner shall file with the Whatcom County Assessor an accessory dwelling unit covenant with all conditions and restrictions as provided by the city. The covenant will require owner occupancy of either the primary residence or the ADU until January 1, 2026. After this date owner occupancy is not required.
- F. Successors. The ADU covenant is binding upon any successor in ownership of the property. Lack of compliance shall cause the city to revoke the occupancy of the accessory dwelling unit and / or cite the property for a zoning violation and assess associated fines.
- G. Variances. Any variances to this section will be subject to Chapter 19.47 of the Lynden Municipal Code.
- H. Impact Fees. As of January 1, 2026, the city will assess impact fees on the construction of ADUs in the amount of fifty percent (50%) of the impact fees that would be imposed on the primary unit.

Section 2. Should any section, paragraph, sentence, clause or phrase of this ordinance or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. This Ordinance shall be in force and effect five (5) days from and after its passage, approval, and publication.

AFFIRMATIVE VOTE OF _____ IN FAVOR, AND _____ AGAINST, SIGNED THIS _____ DAY OF _____, 2024.

MAYOR

Scott Korthuis, Mayor

ATTEST:

Pam Brown, City Clerk

APPROVED AS TO FORM:

Bob Carmichael, City Attorney