

ORDINANCE NO. 2023-07

AN ORDINANCE AMENDING THE LaVERKIN CITY CODE TO PROVIDE FOR THE RECOGNITION AND REGULATION OF DETACHED ACCESSORY DWELLING UNITS (“DADUs”) AS A PERMITTED USE IN RESIDENTIAL ZONES WITHIN THE COMMUNITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Utah enacted House Bill 82 (“H.B. 82”) in its 2021 General Session, mandating the recognition of and authorizing the limited regulation of internal accessory dwelling units (“IADUs”) within the communities of the State of Utah; and

WHEREAS, the City had already been interested in possibly allowing IADUs, in some form, within the City; and

WHEREAS, in accordance with the mandates of H.B. 82, the City Council adopted Ordinance No. 2021-07 in October 2021; and

WHEREAS, though not mandated by State law, the City has also been interested (for some time) in allowing detached accessory dwelling units (“DADUs”), in some form and with appropriate regulation, within the City; and

WHEREAS, the Planning Commission has researched, discussed, and requested the preparation of a DADU ordinance that could receive public input and a recommendation of the Planning Commission; and

WHEREAS, those efforts have resulted in this proposed Ordinance, which was set for public hearing on April 12, 2023; and

WHEREAS, a duly-noticed public hearing was held on the proposed Ordinance on April 26, 2023, and

WHEREAS, upon recommendation of City Staff, and having heard, considered, and discussed any input received at said public hearing, the Planning Commission recommended the proposed Ordinance (as amended, as deemed necessary or appropriate, to incorporate such input as was received); and

WHEREAS, the City desires to provide for the availability of DADUs, under certain conditions and to regulate DADUs so as to maintain the nature and feel of the City’s residential neighborhoods, prevent unnecessary parking issues and clustering, and ensure safety to those who occupy and inhabit the DADUs and the primary homes housing such within the City; and

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WHEREAS, having reviewed and carefully considered the proposed Ordinance, the City Council approves the Ordinance (as written or as further modified by the City Council), and deems it to be in the best interests of the City and its residents, guests, and businesses to amend the City Code as provided herein.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF LaVERKIN, UTAH:

SECTION I: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY ADDING / INSERTING THE FOLLOWING TERMS AND DEFINITIONS TO SECTION 10-1-6:

Section 10-1-6 of *The LaVerkin City Code* ("LVCC") is hereby amended to include the following terms and definitions, inserted alphabetically into the text thereof as appropriate:

"Accessory dwelling unit" ("ADU") means an adjunct living unit—sometimes known as a casita, guest house, or mother-in-law apartment—(a) which is clearly incidental and secondary to the primary use of the primary dwelling or residence (for residential purposes), and (b) which contains a sleeping area and has access to a bathroom within the structure in which it is located, and (c) which may or may not have its own dedicated kitchen facilities, and (d) which is located either within or detached from the primary dwelling or residence on the same lot or parcel of real property, and (e) which may be used by members of the family or nonpaying guests, or rented for thirty (30) consecutive days or longer, but shall not be used for short-term rental purposes [rentals intended to be rented out for a period of twenty-nine (29) days or fewer]. No more than one ADU per lot or parcel of property, whether designated as detached ("DADU") or internal ("IADU"), is permitted; *provided that*, a lot or parcel of property that is one-half (1/2) acre or larger may contain a DADU and an IADU.

"Detached accessory dwelling unit" ("DADU") means an accessory dwelling unit created or established and operated or used: (a) outside of a primary dwelling or residence, and having its own separate outside entrance; and (b) within the appropriate and relevant setbacks established by law or ordinance, and not encumbering dedicated rights-of-way; and (c) in accordance with the provisions of Section 10-7-22.

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SECTION II: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY AMENDING THE FOLLOWING TERM AND DEFINITION IN SECTION 10-1-6 TO READ AS FOLLOWS:

The terms “Internal accessory dwelling unit” (IADU”) and “Primary dwelling”, in Section 10-1-6, LVCC, are hereby amended to read as follows:

“Internal accessory dwelling unit” (“IADU”) means “an accessory dwelling unit created or established and operated or used: (a) within a primary dwelling or residence; and (b) within the footprint of the primary dwelling or residence at the time the internal accessory dwelling unit is created; and (c) in accordance with the provisions of Section 10-7-21.”

“Primary dwelling or residence” means “a single-family (or one-family) dwelling that is (a) detached, (b) occupied for residential purposes, and (c) located on the lot or parcel of real property upon which the owner (or representative thereof, as provided in Section 10-7-22 hereof) resides as his or her primary residence of record.

SECTION III: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY ADDING THE FOLLOWING SECTION 10-7-21 THERETO:

Section 10-7-22 is hereby added to *The LaVerkin City Code*, to read as follows:

SECTION 10-7-22: DETACHED ACCESSORY DWELLING UNITS.

- A. **PURPOSE:** Detached Accessory Dwelling Units (“DADUs”) can be a valuable tool in addressing housing needs, allowing for alternative and flexible housing options for owner-occupied single-family residences, and broadening the range of affordable housing opportunities within and throughout the City. They:
1. Create new housing units while respecting the appearance, neighborhood character, and scale of single-family residential development.
 2. Provide more housing choices in residential zones.
 3. Allow more efficient use of existing housing and large underutilized yards.
 4. Provide housing options for family caregivers, adult children, aging parents, and families seeking smaller households.

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5. Offer a means for residents, particularly seniors, single parents, and families with grown children, to remain in their homes and neighborhoods, and to obtain extra income, security, companionship, and services.

B. A Permitted Use in Residential Zones:

In any area zoned primarily for residential use, except mobile home subdivisions, the use of a detached accessory dwelling unit (“DADU”) is a **permitted use** on any lot or parcel of property that is at least ten thousand square feet (10,000 sq. ft.) in size and contains a single-family dwelling or residence, subject to the conditions, restrictions, limitations, and regulations established by this Section and by other applicable provisions of this Code and State and Federal law.

C. Minimal Requirements for Detached Accessory Dwelling Units (DADUs):

1. A DADU shall comply with the *International Residential Code* (“IRC”) and all other applicable City, State or Federal building, health, fire, nuisance, and business license codes (including but not limited to Chapters 3, 4, and 9 of this Code).
2. The City:
 - a. Prohibits the severance, sale, or subdivision of the DADU from the lot or parcel of property on which the primary dwelling or residence is situated.
 - b. Prohibits the rental of any part of the residential dwelling or DADU if the lot or parcel of property on which the DADU is located is not occupied as the owner's primary dwelling or residence.
 - (1) Subject to the provisions of subsection b(2) below, “owner occupancy” or “owner occupied” means that any one or more of the following individuals are residing on the subject property for the entire time during which a DADU or primary dwelling or residence on the lot or parcel of property is rented or otherwise occupied:

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- (a) An individual who is listed in a recorded deed as an owner of the property.
 - (b) An individual who is a trustor of a family trust who possesses legal ownership of the property.
 - (2) When an owner of the lot or parcel of property has a bona fide, temporary absence of not more than three (3) consecutive years, for activities, assignments, or work, such as a temporary job assignment, sabbatical, or voluntary humanitarian or church service, and another record owner of said lot or parcel of property cannot reside on the property as his or her primary residence: the requirements of this subsection shall be satisfied if a person residing on the lot or parcel of property possesses legal authority to make decisions, and enforce judgments and legal determinations, concerning the property or structures thereon, including but not limited to a holder of a Durable General Power of Attorney, a Trustee of a Family Trust, or court-ordered representative or designee. *[Indefinite periods of absence and absences for more than three (3) years from the dwelling do not qualify under this subsection.]*
 - (3) To be considered “owner occupied,” an owner may live in either the principal dwelling or the DADU on the lot or parcel of property.
- c. Requires compliance with the following size, height, and setback requirements:

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- (1) The DADU must meet the setback requirements for the applicable zone, as well as the required separation from the primary dwelling unit for an accessory structure, and may not encroach upon or interfere with any public easement or right-of-way on or across the lot or parcel of property.
 - (2) The DADU shall not be less than two hundred fifty square feet (250 sq. ft.) in size, but not shall not exceed one-third ($1/3$) of square footage of the footprint of the primary dwelling or residence (structure).
 - (3) DADUs are limited to a height not in excess of (a) the roofline of the primary dwelling residence and (b) twenty feet (20'), whichever is smaller.
 - (4) The total square footage of all accessory structures, including those containing a DADUs, is limited to a maximum of eight percent (8%) of the total square footage of the lot or parcel of property.
- d. Prohibits the installation of a separate electric, water, and/or sewer utility meter for an DADU; but it may assess applicable and legally-supportable impact fees, as may be established and imposed from time to time.
 - e. Requires that an DADU be designed in a manner that does not substantially change the appearance of the lot or parcel of property as a single-family residence.

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- f. Requires the installation of two additional on-site parking spaces for an DADU, regardless of whether the primary dwelling or residence on the property is “existing” or “new construction”.
 - (1) Parking spaces shall be not less than nine feet (9’) wide and eighteen feet (18’) long.
 - (2) Parked vehicles shall not be allowed to encroach upon the City’s sidewalks.
 - (3) Parking surfacing shall consist of either asphalt or cement.
- g. To the extent any may exist within the City, prohibits the creation of an DADU if the primary dwelling is served by a failing septic tank.
- h. Establishes the following design standards and criteria with regards to DADUs:
 - (1) Architectural design, materials, and construction shall be consistent with and reasonably match the existing primary residential structure.
 - (2) All submitted building plans shall be accompanied by an engineer’s stamp.
 - (3) Plan shall be submitted through the City’s online building permit process.
 - (4) All structures containing or comprising DADUs shall follow the provisions and requirements of the current IRC as well as any other applicable code.
 - (5) No existing nonresidential structures (except detached garages), including but not limited to sheds and metal structures, may be converted to DADUs.

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- (6) All DADUs must be “slab on grade”—meaning that they are attached to a slab on grade, with footings, as required by the IRC; no basements shall be allowed.
- (7) An outside entrance shall be required.
- (8) A landscaping plan of the lot or parcel of property, including that portion fronting on a city street, shall be submitted to and approved by the Director of Operations, or his or her designee, and shall be complied with and adhered to, and the property maintained in accordance therewith, in order (1) to minimize potential negative impacts on neighboring properties, (2) to retain the residential character of the lot or parcel of property, and (3) to provide a visual buffer for onsite parking in relation to adjacent properties and the street.
- (9) Addressing:
 - (a) The primary dwelling or residence and the DADU shall have the same address, except for the use of lettering to differentiate between the primary dwelling or residence and the DADU for mail or emergency-response purposes.
 - (b) The address identification shall be legible, attached to a permanently-fixed structure, and positioned to be visible from the street fronting the property.

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- (c) Address identification characters shall contrast with their background and shall contain Arabic numbers or alphabetical letters, *provided that* numbers shall not be spelled out. Each character shall be not smaller than four inches (4") (or 102 mm) in height and one-half inch (1/2") (or 12.7 mm) in width.
- (d) Additional mailboxes will only be allowed for the principal dwelling.

3. DADU Application Requirements:

- a. Generally: Any property owner of property who meets the requirements of this Section and desires to construct, expand, renovate, or convert a structure to contain a DADU on his or her lot or parcel of property shall first obtain a DADU permit, which shall be acquired in addition to any other building permits that may be necessary to create the DADU.
- b. The applicant shall submit the following as part of the application for a DADU:
 - (1) A site plan drawn accurately to scale—showing showing the property lines and dimensions; the location of and entrances to any existing buildings or structures, and entrances; any proposed building or structure, its dimensions, and its distance from other buildings and structures, and property lines; and the location of parking stalls (current and proposed).
 - (2) Detailed floor plans, drawn to scale, with labels on rooms indicating current and proposed uses.

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- (3) To be provided to the City prior to the issuance of the building permit: written verification (e.g., a copy of a warranty deed, affidavit, a recorded deed restriction, etc.) showing (a) that the applicant is the owner of the property, (b) that he or she has or intends to have permanent residency on the lot or parcel of property where the request is being made, and (c) that either the primary dwelling or residence or the DADU will remain owner-occupied if structure is to be or remain rented out.
- (4) A rental dwelling business license, if and to the extent that such is or shall be required by law.

SECTION IV: REPEAL OF CONFLICTING PROVISIONS.

All ordinances or resolutions, or parts or provisions thereof, in conflict with the provisions of this Ordinance, are hereby repealed to the extent that they conflict herewith.

SECTION V: SEVERABILITY.


The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable. If any such section, paragraph, sentence, clause, or phrase shall be declared invalid or unconstitutional by the valid judgment or decree of a Court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases of this Ordinance.

SECTION VI: EFFECTIVE DATE.

In the opinion of the City Council of LaVerkin City, it is necessary for the preservation of the peace, welfare, health, and safety of the inhabitants of LaVerkin City that this Ordinance take effect as soon as possible. This Ordinance, therefore, shall take effect immediately upon its passage and first publication as provided by law.

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PASSED AND ADOPTED by the City Council of LaVerkin City this 3rd day of May, 2023.



KELLY WILSON, Mayor

ATTEST:



CHRISTY BALLARD, City Recorder

