

Proposed Code Amendments to Conform the  
**S-JW Jefferson Westside Special Area Zone**  
to the Requirements of ORS 197.312(5)

21-August-2021

[Dwelling, One-Family.<sup>1</sup> No amendment]

**Section 20.** Subsections (3) and (7) of Section 9.3625 of the Eugene Code, 1971, are amended to provide as follows:

**9.3625 S-JW Jefferson Westside Special Area Zone Development Standards.**

**(1) Application of Standards and Adjustment.**

\* \* \*

**(b) Accessory Dwelling Standards.**

**1. In lieu of the Accessory Dwelling standards in EC Table 9.2750 and section EC 9.2751(17), Accessory Dwellings in the S-JW Zone shall be subject to the same development standards as apply to other dwellings on sites zoned S-JW.**

[2.<sup>2</sup> No amendment]

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<sup>1</sup> The current land use code defines “Dwelling, One-Family,” but does not define “Dwelling, Single-Family.” Despite the code’s omission of a definition of “single-family dwelling,” that term is used in the definition of “Dwelling, Accessory.” Throughout, the code uses “single-family” in many cases and “one-family” in others. The ordinance should include a definition of “Dwelling, Single-Family” under EC 9.0500 Definitions. For the record: The JWN agrees – under protest for the reasons below – to not require the following addition to this definition:

9.0500 Definitions. As used in this land use code, unless the context requires otherwise, the following words and phrases mean:

\* \* \*

**Dwelling, One-Family.** A dwelling that may have a common wall, roof or foundation with another one-family dwelling on a separate lot or may share a common wall, roof, or foundation with an accessory dwelling on the same lot. **For the S-C Chambers Special Area Zone, S C/R-2 subarea provisions at EC 9.3065(3), and for purposes of the S-JW Jefferson Westside Special Area Zone provisions at EC 9.3600 through 9.3640, a dwelling that is not an accessory dwelling and is either detached or may have one or more interior or attached accessory dwelling(s) that is/are used in connection with or that is/are accessory to the dwelling.**

<sup>2</sup> For the record: The JWN agrees – under protest for the reasons below – to not require the following addition to EC 9.3625.

**2. Accessory Dwellings shall be included in any dwelling counts.**

Neither the statutes, nor the LUBA and Court of Appeal decisions prohibit counting accessory dwellings. The legal requirement is simple: Maximum density and/or minimum lot size regulations for a detached, single-family dwelling plus an accessory dwelling on one lot must be the same as the regulations for a detached, single-family dwelling that is the only dwelling on a lot. In other words, for a lot of any particular size, the standards must allow at least as many accessory dwellings as the standards allow detached, single-family dwellings. This is the direct “1-to-1” principle that the Court of Appeals established. The 1-to-1 principle in no way prohibits not counting accessory dwellings.

**(bc) Adjustment.** The development standards in subsections EC 9.3625(6) regarding driveway width and EC 9.3625(3)(a)(2)(b) regarding primary vehicle access may be adjusted in accordance with EC 9.8030(26). For sites zoned S-JW Special Area Zone, these are the only standards that may be adjusted.

\* \* \*

**(3) Alley development standards.**

(d) For a dwelling whose primary vehicle access is an alley:

3. One on-site parking space, accessible from the alley, **per for each dwelling that is not an accessory dwelling**, is required.

\* \* \*

**(7) Parking Standards.**

(a) Except as provided in (3)(d)3. above, each dwelling, **that is not an accessory dwelling** shall have one **on-street or on-site** vehicle parking space for every three bedrooms, rounded up to the next whole number (i.e. a four-bedroom dwelling must have at least two parking spaces). **The total number of on-street parking spaces less the number of accessory dwellings can be counted towards the parking requirement.** For purposes of this subsection, each uninterrupted twenty feet of lot line that abuts a street right-of-way where parking is legal within the entirety of that twenty feet shall ~~count~~ be considered as one on-street parking space. The twenty feet may not include any portion of a curb cut.<sup>3</sup>

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In fact, the Oregon Supreme Court in *Baker v. City of Milwaukie* (21 OR 500 (1975)) ruled that “a zoning ordinance which allows a more intensive use than that prescribed in the plan must fail.” By adopting an amendment to not counting accessory dwellings in the base zones, the City might be subject to remand on appeal for not conforming with the comprehensive plan residential designations.

The JWN proposal in Table 9.3625 very directly implements the “1-to-1” requirement without using the staff’s proposed “kludge” of not counting accessory dwellings in any dwelling count. Obviously, an “accessory dwelling” is a dwelling and has impacts of the same nature (if not degree) as impacts of that arise from all other forms of dwellings. The S-JW approach also avoids the risk of remand that not counting accessory dwellings may have.

Rather than staff promoting baseless arguments against the way that the JWN’s proposed code implements the “1-to-1” requirement, staff *should* have proposed amending the base zone’s standards to use the more direct and transparent approach.

<sup>3</sup> Revised version comment. This provides the same total reduction of on-site parking spaces without allowing “double reduction” when there is/are accessory dwelling(s).

Prior version comment: To balance the statutory exclusion of parking requirements for accessory dwellings, this strikethrough removes the provision that would allow two dwellings on a lot with no parking. This change is directly related to addressing statutory requirements for ADUs and entirely within the scope of the City’s discretion to approve. Since any second dwelling in this version of the code amendments can be an accessory dwelling, which would not require off-street parking under any circumstances, the proposed amended regulation would be a net *reduction* in scenarios where additional on-site parking would be required.

**Section 21.** Table 9.3625 in Subsection (8) of Section 9.3625 of the Eugene Code, 1971, is amended by replacing it in entirety with the table, below:

**(8)** The following Table 9.3625 sets forth the S-JW Special Area Zone development standards, subject to the special development standards in EC 9.3626.

<b>Table 9.3625 S-JW Jefferson Westside Special Area Zone Development Standards (See EC 9.3626 Special Development Standards for Table 9.3625.)</b>		
<b>Dwellings Per Lot</b>		
<b>Minimum Dwellings Per Lot</b>		
Lots less than 13,500 square feet		There is no minimum.
Lots 13,500 square feet and larger		1 dwelling per lot for every 6,750 square feet (fractional values are rounded down to the nearest whole number)
<b>Maximum Dwellings Per Lot (1, 2)</b>		<b>Maximum Total Bedrooms</b>
<b>Alley Access Only Lots</b>		
All	Per lot, 1 detached, one-family dwelling and optionally 1 interior or attached accessory dwelling	4 Bedrooms
<b>Other than Alley Access Only Lots</b>		
Lots up to 4,499 square feet	Per lot, 1 detached, one-family dwelling and optionally 1 interior or attached accessory dwelling	4 Bedrooms
Lots 4,500 square feet to 8,999 square feet	Per lot, one of the following alternatives: a) 1 detached, one-family dwelling and optionally 1 accessory dwelling b) 1 Duplex	6 Bedrooms
Lots 9,000 square feet to 11,999 square feet	Per lot, one of the following alternatives: a) 1 detached, one-family dwelling and optionally 1 or 2 accessory dwelling(s) b) 1 Duplex <sup>4</sup> c) 1 Triplex	9 Bedrooms

This is a simple solution, fully conforming to the statutory requirements, clearly within scope of the remand to address S-JW parking requirements, and consistent with the way parking requirements work in the R-1 and R-2 base zones.

<sup>4</sup> Note that while the combination of a Duplex and a One-Family Dwelling is not explicitly allowed, the exact same configuration can be developed as a One-Family Dwelling with one *attached* Accessory Dwelling and one *detached* Accessory Dwelling. This is another example of how the cleaner, easier to understand and less restrictive S-JW code is superior to the R-1 Zone standards, as proposed by staff.

<p>Lots 12,000 square feet to 17,999 square feet</p>	<p>Per lot, one of the following alternatives:</p> <ul style="list-style-type: none"> <li>a) 1 or 2 detached, one-family dwelling(s) and optionally 1 accessory dwelling for each detached, one-family dwelling</li> <li>b) 1 or 2 Duplexes</li> <li>c) 1 Duplex and 1 one-family dwelling and optionally 1 accessory dwelling</li> <li>d) 1 Triplex<sup>5</sup></li> <li>e) 1 Quadplex</li> </ul>	<p>10 Bedrooms</p>
<p>Lots 18,000 square feet or larger</p>	<p>Per lot, the total dwellings of any type per lot may not exceed four dwellings plus two dwellings for every additional 6,000 square feet over 18,000 square feet, minus 1 allowable dwelling for each detached, one-family dwelling that does not have an associated accessory dwelling.<sup>6</sup></p> <p>Each detached, one-family dwelling may optionally have one and only one accessory dwelling.</p>	<ul style="list-style-type: none"> <li>a) 12 bedrooms where there are 1 to 4 dwellings</li> <li>b) Otherwise, maximum bedrooms: 3 times the number of dwellings, rounded down.</li> </ul>

<sup>5</sup> See Footnote 4 for how to accomplish the same outcome as a combination of a Triplex and a One-Family Dwelling.

<sup>6</sup> This equation avoids doubling density, while allowing complete flexibility in development configuration. In effect, the maximum number of dwellings is reduced, as needed, to ensure the possibility that every one-family dwelling can have one accessory dwelling.

Because in the S-JW Zone, the development standards for accessory dwellings is the same as for one-family dwellings many different combinations of dwelling types/structures are allowed. For example, a 24,000 s.f. lot could have up to 6 detached dwellings: 3 detached one-family dwellings and 3 detached accessory dwellings, or any lesser number (1, 2, 3, 4, or 5) of detached dwellings with or without duplex(es), triplex(es) or quadplex depending on the number (if any) detached dwellings.

**Section 22.** Section 9.3626 of the Eugene Code, 1971, is amended by replacing it in entirety with the section, below:

**9.3626 Special Development Standards for Table 9.3625.**

**(1) Maximum bedrooms.** No dwelling may be created or modified after September 15, 2021<sup>7</sup> to have more than 5 bedrooms.

**(2) Additional provisions.**

(a) As an alternative to, and notwithstanding, the provisions in Table 9.3625, for each detached, one-family dwelling that existed prior to September 15,<sup>8</sup> 2021, one interior or attached accessory dwelling, with no more than one bedroom, is allowed. Except as allowed under Table 9.3625, the associated one-family dwelling(s) shall not have the number of bedrooms increased.<sup>9</sup>

[(b) Conformance ...<sup>10</sup> not included]

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<sup>7</sup> Date can be specified close to approval by City Council.

<sup>8</sup> Date can be specified close to approval by City Council.

<sup>9</sup> This is the “catchall” provision for existing situations, even legal, nonconforming development, that would otherwise not meet any of the other alternatives, and provides that, no matter what, an additional accessory dwelling, can be added. This ensures the *universal* implementation of the 1-to-1 principle. It also allows an accessory dwelling on an Alley Access Only Lot or Lot less than 5,000 s.f. which has an existing four bedroom detached, one-family dwelling.

Note that this approach avoids problems that might arise in categorizing dwellings when there are two or more existing detached one-family dwellings. It would be advisable to vet this by identifying those cases and the number of existing detached, one-family dwellings. Limiting the accessory dwellings to interior or attached, studio or 1-bedroom mitigates the potential extreme cases. Keep in mind that all the other alternatives are still available for existing development; this provision is just a “backstop.”

<sup>10</sup> For the record: The JWN agrees – under protest for the reasons below – to not require the following subsection under EC 9.3626.

***(b) Conformance with Table 9.3625 and section 9.3626 shall be reevaluated as part of the City’s consideration of any new development proposing to increase the number of dwellings or bedrooms on a lot. The proposed change shall not be permitted unless the new configuration would comply with all applicable standards in this section.***

This section would explicitly ensure that extra bedrooms were not added with or without a permit without checking the S-JW requirements.

(b) **Cottage Cluster Bonus Dwellings.** In addition to the **Dwellings Per Lot** allowed by **Table 9.3625**, 1 additional accessory dwelling may be established on a lot that is between 9,000 square feet and 11,999 square feet, and up to 2 additional accessory dwellings may be established on a lot that is 12,000 square feet or larger, so long as:

1. No residential building on the lot has or would have more than two dwellings of any type; and
2. No dwelling of any type on the lot has or would have more than three bedrooms; and
3. No dwelling of any type added to the lot after December 14, 2009, or that is on a lot that has more than the number of dwellings allowed on the lot by **Table 9.3625**, has or would have more than 800 square feet of living area or any point, other than a chimney, higher than 18 feet.

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**(7) Common and Private Open Space. (See Figure 9.3626(7)).**

(a) All developments of three or more dwellings ~~(as calculated under EC9.3626(1))~~ shall include common or private open space, or a combination thereof, that equals or exceeds the greater of the following two areas:

1. 20% of the development site area.
2. 25% of total living area.

**Section 23.** Table 9.3630 of the Eugene Code, 1971, is amended to provide as follows:

**9.3630 S-JW Jefferson Westside Special Area Zone Lot Standards.** The following Table 9.3630 sets forth S-JW Jefferson Westside Special Area Zone lot standards, subject to the special standards in EC 9.3631.<sup>11</sup>

<b>Table 9.3630 S-JW Jefferson Westside Special Area Zone Lot Standards (See EC 9.3631 Special Standards for Table 9.3630.)</b>	
<b>Lot Area Minimum (1)</b>	
Lots, except Small Lots, Alley Access Only Lots	4,500 square feet
Small Lots (2)	2,250 square feet or per Cluster Subdivision or PUD
Alley Access Only Lots (4)	2,250 square feet <b>No new alley access only lots may be created.</b>
<b>Frontage Minimum (1)</b>	
Interior Lot	45 feet
Corner Lot	45 feet
<b>Lot Area Maximum (3)</b>	13,500 square feet

**Section 24.** Section 9.3631 of the Eugene Code, 1971, is amended to provide as follows:

**9.3631 Special Standards for Table 9.3630.**

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**(2) Other than an alley access only lot, a lot with an area of less than 4500 square feet:**

- (a) May be created only if:
  1. The original lot from which the small lot is created abutted a street for at least a continuous 45 feet and was at least 6,750 square feet prior to the creation of the small lot; and
  2. Shall not have an existing dwelling that has more than three bedrooms.
  3. Only one "small lot" may be created from any portion of a lot that exists as of December 14, 2009.
- (b) No new dwelling with more than three bedrooms is allowed on a small lot.

<sup>11</sup> Current comment: For the record: The JWN agrees – under protest for the reasons below – to allow continued creation of small lots, as long as they are not alley access-only lots.

Prior comment: To balance the statutory requirement to allow any and all nonstandard lots, no matter how small or whether the lot has street access, these changes remove the creation of additional nonstandard lots that would not be reasonable for two (or more dwellings). This change is directly related to addressing statutory requirements for ADUs and entirely within the scope of the City's discretion to approve.

This is a very simple and appropriate solution, consistent with the way lot standards exist in the R-1 and R-2 base zones.

- (3) Exceptions to the maximum lot size shall be granted if any of the following is met:
- (a) Existing physical circumstances such as topographically constrained lands, conservation easements, existing buildings, or utility easements prevent the ability to further divide the lot.
  - (b) The lot exceeding the maximum lot size is intended to reserve a large lot for future land division with feasibility demonstrated by a conceptual buildout plan.
  - (c) The subdivision achieves a minimum density of 9 units per net acre.
  - (d) The exception will enable protection of natural resources.
- (4) ~~An alley access only lots may be created. only if:~~
- ~~(a) The original lot from which the alley access only lot is created abuts a street for at least a continuous 45 feet and is at least 6,750 square feet prior to the creation of the alley access only lot;~~
  - ~~(b) Only one alley access only lot may be created from any portion of a lot that exists as of December 14, 2009; and~~
  - ~~(c) **An new** alley access only lot must include the entire portion of the original lot's lot line that abuts the alley.~~