

**AN ORDINANCE**

**TO AMEND CHAPTER 197, "ZONING", SECTION 197-46.1(F), "ACCESSORY DWELLING UNITS (ADUS)" OF THE MUNICIPAL CODE OF THE CITY OF LEWES RELATING TO ACCESSORY DWELLING UNITS**

**WHEREAS**, on September 9, 2024, the Mayor and City Council adopted an ordinance relating to the regulation of accessory dwelling units; and

**WHEREAS**, the Mayor and City Council find it is in the best interest of the City of Lewes to update said regulations; and

**WHEREAS**, Title 22, Chapter 3, Section 301 of the Delaware Code provides that "[f]or the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns may regulate and restrict the height, number of stories and size of buildings and other structures, percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes"; and

**WHEREAS**, Section 38 of the Charter of The City of Lewes provides that the above-referenced grant of power "shall embrace new buildings or additions to or alterations of existing structures of every kind; to condemn buildings or structures, or portions thereof, that constitute a fire menace and to require or cause same to be torn down, removed or so altered as to eliminate the menace of fires; to prescribe the height and thickness of any building and the kind and grade of materials used in the construction thereof"; and

**WHEREAS**, Chapter 197, Zoning, Section 197-104, Text and map amendments, of the Municipal Code of the City of Lewes provides that any amendment to the Zoning Ordinance shall be made after a public hearing following fifteen (15) days' notice by publication in an official paper or a paper of general circulation in the City. *Accord 22 Del. C. § 304*; and

**WHEREAS**, at least fifteen (15) days' notice of such hearing was provided by publishing notice of the time and place of such hearing in an official paper or newspaper of general circulation in the City; and

**WHEREAS**, public hearings were conducted on March 2, 2026, and May 4, 2026.

**BE IT ORDAINED** by the Mayor and City Council, in session met, a quorum pertaining at all times thereto, in the manner following to-wit:

42           **Section 1.**     Chapter 197, Zoning, Section 197-46.1, Accessory dwelling units  
43 (ADUs), is hereby further amended by making insertions as shown by underlining and deletions  
44 as shown by strikethrough as follows:

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46 § 197-46.1 **Accessory dwelling units (ADUs).**  
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50 **F. Requirements.**  
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- 52       **(1)** Prior to constructing, converting, altering, erecting, improving, or otherwise modifying an  
53       ADU, a building permit for an accessory dwelling unit must be applied for and issued by  
54       the Planning and Building Department. No more than 40 accessory dwelling unit building  
55       permits may be issued within 12 months of September 9, 2024. After the first year, there  
56       is no limit on the number of ADUs that may be issued unless a separate number is  
57       determined by the Mayor and City Council.  
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- 59       **(2)** A City of Lewes building permit is required for any work in connection with the creation  
60       of an ADU as identified in Chapter 70.  
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- 62       **(3)** An ADU shall not be used or occupied in whole or in part, and a change of occupancy of  
63       an ADU shall not be made, until the Planning and Building Department has issued a  
64       certificate of occupancy for the accessory dwelling unit.  
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- 66       **(4)** The property owner must submit a signed and notarized accessory dwelling unit property  
67       owner affidavit prior to receiving an accessory dwelling unit ~~building permit~~ certificate of  
68       occupancy, as a condition of having an ADU on the property. This affidavit is provided  
69       by the City and must be recorded at the Recorder of Deeds in and for Sussex County  
70       prior to submission to the City.  
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- 72       **(5)** Any fraud, material misrepresentations, or false statements contained in the attestations,  
73       required documentation, or correlating materials associated with securing approval for an  
74       ADU shall be grounds for immediate revocation of a certificate of occupancy for the  
75       accessory dwelling unit. Furthermore, all requirements herein shall be continuously  
76       maintained throughout the duration of the certificate of occupancy for the accessory  
77       dwelling unit.  
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- 79       **(6)** No more than one ADU shall be permitted on a single lot.  
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- 81       **(7)** The property owner must occupy and reside in either the principal dwelling unit or the  
82       ADU as their principal legal residence.  
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84 (8) One additional off-street parking space is required for an ADU, in addition to the number  
85 of spaces required for the existing primary dwelling (§ 197-61).

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87 (9) An ADU shall not be sublet.

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89 (10) An ADU shall not be used as a short-term rental (Ch. 150).

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91 (11) Upon a change in occupancy of an ADU, the property owner agrees to allow the  
92 Planning and Building Department the right to inspect the ADU to confirm attestations of  
93 all previously submitted application information and applicable code requirements.  
94 Inspections shall be performed at an agreed upon time with no less than 48 hours prior  
95 notice, except in the case of an immediate threat to public safety. Nonresponse to or  
96 refusal of an inspection shall be grounds for the suspension of an accessory dwelling unit  
97 certificate of occupancy.

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99 (12) An ADU shall not be used for commercial use.

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101 (13) Prior to a new tenant moving into the ADU, an inspection shall be performed by the City  
102 of Lewes.

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104 (14) Existing ADUs. An ADU that was in existence as of January 1, 2027, as evidenced by  
105 City rental licensing records (an "Existing ADU"), shall be exempt from the requirements  
106 of §§ 197-46.1(F)(7), (8), and (10), provided that the property owner maintains a valid  
107 rental license issued pursuant to Chapter 150 for each calendar year. In the event that the  
108 property owner fails to maintain a valid rental license for two consecutive calendar years,  
109 the exemption provided by this subsection shall terminate and the property owner shall be  
110 required to comply with all requirements of § 197-46.1(F).

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112 **Section 2.** If any provision of this Ordinance shall be deemed or held to be invalid or  
113 unenforceable for any reason whatsoever, such invalidity or unenforceability shall not affect any  
114 other provision of this Ordinance which may be given effect without such invalid or  
115 unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to  
116 be severable.

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119 **Section 3.** This Ordinance shall take effect immediately upon its adoption by the  
120 Mayor and City Council.

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122 I, Timothy Ritzert, Secretary of the City Council of the City of Lewes, do hereby certify that the  
123 foregoing is a true and correct copy of the ordinance passed by Mayor and City Council at its  
124 regular meeting on MAY 19, 2026, at which a quorum was present and voting throughout  
125 and the same is still in full force and effect.

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VERSION: FINAL - Ord 2-26 Ordinance

Author: Alex Burns

Adopted: May 19, 2026

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Secretary

SYNOPSIS: This Ordinance amends accessory dwelling unit requirements in two respects. First, it adds a new subsection which exempts ADUs in existence as of January 1, 2027, from the owner-occupancy requirement, the additional parking requirement, and the prohibition on the use of an ADU as a short-term rental. If a valid rental license is not maintained for two consecutive calendar years, the above-mentioned exemption terminates. Second, it ties the owner-occupancy affidavit to the issuance of a certificate of occupancy rather than the building permit.