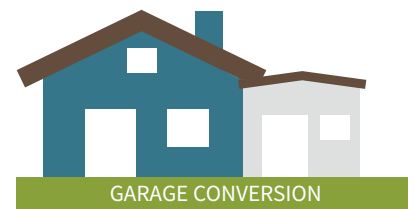
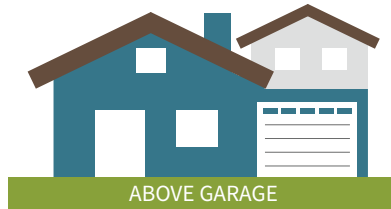
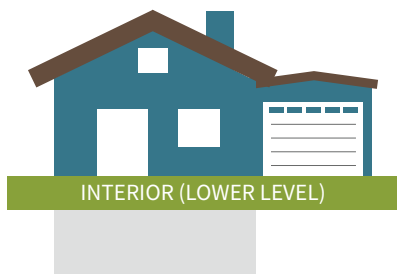
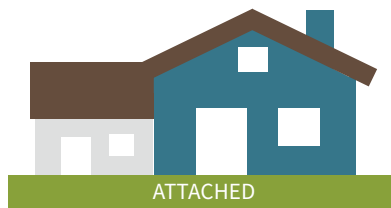
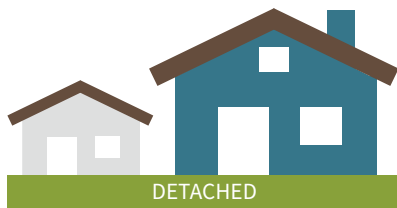




# ▶ **A**CCESSORY **D**WELLING **U**NITS

## Model State Act and Local Ordinance



CREATED FOR STATE AND LOCAL LEADERS BY  
**AARP Government Affairs**



AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering people 50 and older to choose how they live as they age. With a nationwide presence and nearly 38 million members, AARP strengthens communities and advocates for what matters most to families: health security, financial stability and personal fulfillment. AARP also produces the nation's largest circulation publications: *AARP The Magazine* and *AARP Bulletin*. To learn more, visit [AARP.org](http://AARP.org), [AARP.org/Espanol](http://AARP.org/Espanol) or follow @AARP, @AARPenEspanol, @AARPadvocates and @AliadosAdelante on social media.

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## **Accessory Dwelling Units: Model State Act and Local Ordinance**

Created for state and local leaders by:

### **AARP Government Affairs**

A part of the AARP Community, State and National Affairs (CSN) group, Government Affairs advances AARP's work on behalf of older adults and their families through legislative and regulatory advocacy with policymakers and elected officials at the federal, state and local levels, as well as through judicial advocacy.

Assistance provided by:

### **AARP Public Policy Institute**

Founded in 1985 and part of the AARP Policy, Research and International Group, the AARP Public Policy Institute (PPI) promotes the development of sound, creative policies to address the common need for economic security, health care and quality of life. PPI's livability experts focus on policies that relate to issues including land use, housing, transportation and broadband — all of which facilitate aging in place. PPI also hosts the AARP Livability Index, a free, interactive, online tool that scores neighborhoods and communities throughout the United States based on the presence of the types of services and amenities that impact people's lives the most.

### **AARP Livable Communities**

Also within the CSN group, the AARP Livable Communities initiative works nationwide to support the efforts of neighborhoods, towns, cities, counties and rural areas to be livable for people of *all* ages. The initiative's programs include the AARP Network of Age-Friendly States and Communities, the AARP Community Challenge "quick-action" grant program, livability training for local leaders and free educational resources — including the weekly, award-winning *AARP Livable Communities e-Newsletter* and several printed and downloadable publications.

**See page 52 for contact information and links to the mentioned resources.**

**This report is available as a PDF download via [AARP.org/ADUs](http://AARP.org/ADUs).**

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# ACCESSORY DWELLING UNITS

## Model State Act and Local Ordinance



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# I. ABOUT ACCESSORY DWELLING UNITS

## An Introduction

Accessory dwelling units (ADUs) are independent housing units, typically (but not always) created on single-family lots through remodeling or expanding the existing home or constructed as a detached dwelling. Detached ADUs may be freestanding or incorporated into another structure, most often a garage.

ADUs have many other names, such as “secondary suites,” “granny flats,” “English basements,” “accessory apartments,” “laneway homes,” “ohana houses,” “casitas” and “backyard cottages.” To avoid confusion and in recognition of the term’s increasing prevalence, this document simply uses “ADU.”

ADUs serve multiple purposes for their owners, purposes that may change over time. They assist older homeowners in maintaining their independence by providing additional income to offset property taxes and maintenance and repair costs or by providing housing for a caregiver. ADUs can also become the residents’ home if they wish to downsize, allowing them to rent out the main house or to have family move into it.

As of the date of this publication, efforts are underway across the country to test the feasibility of using ADUs as a way of providing below-market housing through a variety of public and nonprofit investments and incentives. In this way, ADUs help realize equity objectives by increasing the economic diversity of neighborhoods that may be rich in opportunities and amenities. They help realize goals of compact growth found in many land use and transportation plans. In most places, ADUs do not require the construction of new infrastructure (roads, sewers, schools, etc.) to serve them.

Accessory dwelling units were relatively common before World War II. Many were created by middle-aged and older persons, often widows, seeking to take in boarders after their children moved out. During the war, ADUs housed the influx of workers in war industries. Following the war, the explosive growth of the suburbs was governed by suburban zoning ordinances that reserved land almost exclusively for single-family housing for the middle-class nuclear family. →

### ADUs and Housing That’s Affordable

ADUs can be a cost-effective means of increasing the supply of market-affordable rental housing in a community and accommodating new growth without dramatic changes to the character of a neighborhood. The critical qualifying words at the time of this edition are *can* and *market-affordable*.

According to a 2018 survey of ADU occupants in the Canadian city of Vancouver, British Columbia, 15% of the ADU occupants reported incomes of less than \$40,000. Another 16% had incomes of \$40,000 to \$60,000, and another 6% had incomes of \$60,000 to \$80,000. The median household income in Vancouver in 2015 was \$65,327. The median household income in the Vancouver metropolitan region in 2018 was \$89,000.

A report on ADU production in California found that 20% of ADUs constructed from 2016 to 2019 were built in census tracts with a median household income of less than \$61,000, and another 24% were completed in census tracts with incomes of \$61,000 to \$84,000. The median household income in California from 2014 to 2018 was \$71,228.

SOURCES: City of Vancouver, *Laneway Housing Survey Summary*, 2019 | *Census Profile, 2016 Census Vancouver*, British Columbia. | Statistics Canada, Table 11-10-0009-01, Selected Income Characteristics of Census Families by Family Type | Chapple, Garcia, Valchuis, Tucker, *Reaching California’s ADU Potential: Progress to Date and the Need for ADU Finance*, Turner Center for Housing Innovation, University of California, Berkeley, August 2020 | U.S. Census Bureau Quick Facts, California “Income and Poverty,” table CA-PST04529 | *Accessory Dwelling Units as Low-Income Housing: California’s Faustian Bargain*, Ramsey-Musolf, *Urban Sci.* 2018, 2(3) 89

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Some communities prohibited any and all types of multifamily housing and mandated large homes and large lot sizes for single-family homes.

These regulations often excluded Americans of modest means from significant portions of urban regions. Zoning combined with federal redlining, and other public and private practices enforced racial and ethnic as well as economic segregation. Zoning in many older cities was changed to prohibit ADUs along with town houses, duplexes and courtyard apartments — what is now commonly called “missing middle housing.”<sup>1</sup>

At the same time, the size of single-family homes grew. In 1950 the average single-family home was 983 square feet. According to the U.S. Census the average size of a single-family home completed in 2019 was 2,301 square feet. From 1973 to 2016 the average square feet per resident of those homes increased from 551 to 1,058.<sup>2</sup> The United States has much more house per person but not nearly enough homes for people.

## ■ Changing Circumstances Have Strengthened the Case for ADUs

**During the past 20 years, communities have been forced to reconsider postwar housing regulations due to:**

- The aging of the U.S. population and the growing need for housing that serves people of all ages, including older adults
- The crisis of unaffordable rents and home prices, which has spread to many urban areas, large and small
- Out-of-pocket costs for care in residential settings may be out of reach for many who need long-term care and are looking for lower-cost housing alternatives to allow for family caregiving needs
- The COVID-19 pandemic, which has driven home the need for housing that allows for caregiving. The pandemic has also worsened socioeconomic disparities in housing affordability as well as substandard housing conditions, which impact many households, including ones in communities of color affected by discriminatory housing practices and residential segregation
- The lack of adequate retirement savings for many older adults
- A greater awareness of the significant fiscal and environmental benefits of infill and redevelopment, including as part of a strategy for combating climate change
- The rise of online, short-term rental services that compete for existing housing in high amenity locations
- An increase in the awareness of systemic racism and class division that is embedded in typical single-family zoning, which excludes people of color and of modest means from neighborhoods that offer advantages in schooling, amenities, transportation and jobs
- A modest shift back to larger, multigenerational households (partly a reflection of high home prices and rents), which are a more traditional form of households

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## The vast majority of older adults want to remain in their current homes and communities.



### According to an AARP survey of people age 50 or older ...

- *77% want to live in their community for as long as possible*
- *76% want to continue living in their current residence*
- *59% anticipate they will be able to remain in their community, either in their current home (46%) or a different home (13%)*
- *About 1 in 3 would consider building an accessory dwelling unit on their property independent of a care need*
- *The most compelling reason for why older adults would consider living in an accessory dwelling unit is to live near others but still have their own space (67%), receive help with daily activities (63%) or for economic reasons (54%)*
- *7 in 10 respondents said they would consider building an ADU for a loved one who needs care*

AARP Home and Community Preferences National Survey of Adults Age 18-plus (August 2018)

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## ■ Accumulating Experience with ADU Legislation and Ordinances

Since 2000, many more local governments have adopted or revised regulations authorizing the construction of accessory dwelling units.

- Los Angeles, California, issued permits for 4,171 ADUs in 2018, up from 117 in 2016. This volume is equivalent to 20% of all permitted housing units (including a substantial share of permits legalizing formerly illegal ADUs).<sup>3</sup>
- Portland, Oregon, authorized an average of about 450 ADUs per year from 2015 to 2018, equivalent to about 10% of all housing permits.<sup>4</sup>
- In Canada, Vancouver, British Columbia, approved about 550 ADUs per year from 2015 to 2019, accounting for slightly more than 8% of the new housing supply for 2017 to 2019.<sup>5</sup>

On the other hand, some changes to local land use regulations intended to authorize ADUs or make it easier to build them have not (yet) resulted in a significant increase in ADU construction. By 2015, four years after legalizing ADUs, the city of Minneapolis, Minnesota, had permitted only 137.<sup>6</sup>

Seattle, Washington, initiated a pilot program in 2006 allowing detached ADUs to be built in the southeast part of the city. It was considered a success, and the city expanded the program to include all of Seattle in 2009. Yet, as of 2016, only 221 ADUs had been built on the roughly 75,000 eligible single-family lots.

In response to the low ADU production numbers, during the 2010s the previously cited communities and others (such as Austin, Texas, and Montgomery County, Maryland) revised their ADU ordinances to reduce the regulatory barriers that seem to be obstacles to ADU construction.

In 2018, Minneapolis reformed its land use plan and followed up in 2019 by adopting sweeping changes to all of its residential zones. In 2019, Seattle adopted an ambitious round of reforms of ADU regulation.

When AARP issued its 2000 edition of the *Accessory Dwelling Units: Model State Act and Local Ordinance*, only Washington State had legislation requiring local governments to authorize ADUs.<sup>7</sup> Since then, many states have adopted legislation preempting local prohibitions to one degree or another, usually for larger cities and towns. This legislation has been enacted in California (2016),<sup>8</sup> New Hampshire (2017),<sup>9</sup> Oregon (2017),<sup>10</sup> Rhode Island (2017)<sup>11</sup> and Vermont (2005).<sup>12</sup> In parallel with local governments' continuing revisions to their ADU ordinances, California (2019),<sup>13</sup> Oregon (2019)<sup>14</sup> and Vermont (2020)<sup>15</sup> passed many amendments to their initial ADU legislation, chipping away at various local regulatory barriers to ADU construction. Legislation authorizing or encouraging local governments to authorize ADUs was passed in Florida (allowing ADUs as affordable housing, 2004)<sup>16</sup> and Maine (2019).<sup>17</sup> Hawai'i has had legislation allowing counties to permit two dwellings on all single-family lots since 1981.<sup>18</sup>

The American Planning Association documented ADU legislation in many other states in the years immediately preceding the publication of this update.<sup>19</sup> The continuing demand for, and evolving experience with, ADU legislation spurred AARP to prepare an updated version of *Accessory Dwelling Units: Model State Act and Local Ordinance*. AARP recognizes that the rapidly changing regulatory landscape and its intersection with changes in the housing market and the need to evaluate the results of recent changes means this edition is unlikely to be AARP's last effort on this topic.

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## ■ Major Changes from the 2000 Edition

The 2000 edition included provisions for states to mandate local government authorization of ADUs. That was a far-sighted provision at the time. As noted previously, since 2000 several states have adopted legislation to override local regulatory barriers and require local governments to authorize ADUs, broadly following the AARP Model State ADU Act. This state-level legislation has informed the update of the Model State ADU Act. Similarly, local government amendments on the same topics have informed the update of the Model Local ADU Ordinance. Many of these regulatory changes reformed provisions that were identified as problematic in the 2000 edition. Such “poison pills” are:

- Owner occupancy requirements
- Parking requirements
- Conditional use permit review procedures and standards
- Discretionary standards related to design or “neighborhood character”

Several notes in the 2000 edition raised the question of the fairness and the logic of imposing limits and constraints on ADUs that were not applied to the primary single-family dwellings.

The 2020–2021 edition treats ADUs as a legitimate rather than a suspect and contingent type of housing. This change is the basis for not including several provisions from the 2000 Model Local ADU Ordinance that limited the purposes for which ADUs could be constructed, as well as the types of homes and lots that could be used for ADUs. →

### ■ Methodology of the 2020 Update

The 2000 (first) edition relied on an analysis of all state ADU legislation, 50 local ADU ordinances, a review of the existing literature on ADUs, a survey of planning agencies and consultants, and follow-up interviews. After an initial draft was prepared, several state and local officials interviewed earlier reviewed the draft model legislation to assess its utility and feasibility in light of actual administrative practice and community experience.

This edition — prepared in 2020 and released in early 2021 — shifted the methods used to reflect the intervening quarter-century of experience with ADU legislation and the implementation of that legislation. The update looks to those state and local governments that are experiencing a significant volume in ADU construction as models. In these locations there are other forces at play supporting the construction of ADUs: market factors (e.g., high rents), public education efforts by nonprofit organizations and governments, and the blossoming of professional services (in design, permitting and finance) to help homeowners take advantage of the opportunity to build an ADU. However, those influences would have no effect if ADU laws and regulations made the construction of ADUs impossible.

*Continued on page 7 →*



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*Continued from page 6*

### **Methodology of the 2020 Update**

The revision process began with the preparation of a heavily annotated version of the 2000 edition referencing the evolving state and local ADU legislation along with recent policy discussions. Working group members used the annotated version to provide more than 300 comments on the overall structure and audience for this edition. These were compiled into a spreadsheet for consideration by the entire working group and AARP leadership. A teleconference was used to confirm major areas of agreement. Summaries of relevant research on a few topics were prepared and additional model provisions were identified to help inform the drafting process.

Based on the working group's comments and direction from AARP leadership, a first draft of the 2020 edition was provided for another round of comments. A second draft was prepared and went through a similar review. During the preparation of the second draft additional examples and supporting information were identified. The second draft received a final technical editing review, leading to a third draft, which became this publication.

### **A few new topics have been added, including:**

- ADUs in an expanded range of zones
- Development opportunities and fee waivers to incentivize meeting equity and environmental goals
- Appeal procedures
- Short-term rentals

Not all of these topics are associated with proposed statutory or ordinance language, either because provisions addressing them are not necessary or can be found in provisions of more general application. The update draws on some of the accumulating research on ADUs and the continuing legislative and administrative innovations by state and local governments adopted to promote their construction.

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## ■ Organization of the 2020 Edition

Significant changes have been made from the 2000 edition. The most important is that, consistently with the idea of a “model” act and ordinance, only the best, model language is offered for each section; the “favorable” and “minimal” provisions have been deleted. In a few instances, different but equally favorable provisions are offered.

### 1. The **Model State Act on Accessory Dwelling Units**

The 2020 edition of the Model State ADU Act is organized differently from the 2000 edition in that it offers both an “optimal” and “minimal” version of the entire Model State ADU Act.

The **Optimal** version of the Model State ADU Act mandates the authorization of ADUs by local governments. It limits local governments’ discretion over procedures, regulations and conditions that may effectively block the construction of ADUs. It retains the prior version’s approach of including default standards that ADU applicants can use in the event local implementation regulations are rejected or delayed. As in the 2000 edition, the state plays a role in monitoring and enforcing these provisions.

With a very few exceptions, the 2020 version of the Model State ADU Act eliminates the optimal, favorable and minimal versions for various subsections; it specifies only the best, “model” language. The ordering and grouping of the subsections have been modified. The updated Model State ADU Act includes a new optional section related to private covenants, conditions and restrictions (CCRs) that bar the construction of ADUs.

The **Minimal** version of the Model State ADU Act removes any question about the authority of local governments to authorize ADUs in states where local government authority is limited to what the legislature has expressly authorized. In other words, it clears the way for action by local governments without obliging them to authorize ADUs or constraining how they regulate them. In this minimal state act, state governments’ role is limited to collecting and disseminating information about ADU production. A discussion of short-term rental issues has been added, but no suggested statutory language is offered, for reasons given in the commentary itself.

In the Optimal version, this includes commentary on the reasons for eliminating local authority to impose conditions and procedures that effectively block ADU construction.

### 2. The **Model Local Ordinance on Accessory Dwelling Units**

The Model Local ADU Ordinance is drafted for those local governments that have complete discretion over the regulation of ADUs, without any state legislative constraints. Of course, if there is state legislation constraining local discretion, as is found in the Model State ADU Act, then the local ordinance must conform to those requirements. The Model Local ADU Ordinance has been reorganized in parallel with the Model State ADU Act.

Commentary has been added identifying regulatory requirements common in local ADU ordinances that should not be retained, such as owner occupancy requirements. The commentary explains how these provisions inhibit or effectively prohibit ADU construction. New regulatory options for authorizing ADUs on multifamily properties and through remodeling units have been added. Also added is a commentary on possible building code revisions that may facilitate ADU construction.

**A Note to Readers:** The *italic* text that appears in the **Model State ADU Act** and the **Model Local ADU Ordinance** is used to provide an explanation or discussion of the recommended provisions.

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## II. MODEL STATE ADU ACT

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# OPTIMAL MODEL STATE ADU ACT

## Statutory Authorization of Accessory Dwelling Units (ADUs) in Residential Zones and Limits on Local Government Discretion That May Be Used to Prohibit or Discourage ADUs

### I. Findings, Policy and Legislative Intent, Definitions

#### A. Findings

(1) The Legislature finds and declares:

- (a) Many communities in our state face a severe housing crisis, with home prices and rents unaffordable by families and households of middle and moderate incomes.
- (b) The State is falling far short of meeting current and future housing demand, with serious potential consequences for the state's economy and the well-being of our residents, particularly lower-income and middle-income earners.
- (c) The State can play an important role in reducing the barriers that prevent homeowners from building accessory dwelling units.
- (d) There are many benefits associated with the creation of legal accessory dwelling units on lots in single-family zones and other zoning districts. These benefits include:
  - (i) Increasing the supply of a more affordable and diverse type of housing not requiring government subsidies;
  - (ii) Helping older homeowners, single parents, young home buyers, and renters seeking a wider range of homes, prices, rents and locations;
  - (iii) Providing opportunities to reduce segregation of people by race, ethnicity, and income that resulted from decades of exclusionary zoning;
  - (iv) Providing homeowners with extra income to help meet rising ownership costs;
  - (v) Creating a convenient living arrangement that allows family members or other persons to provide care and support for someone in a semi-independent living arrangement while remaining in his or her community;
  - (vi) Increased security, home care and companionship for older or other homeowners;
  - (vii) Reducing burdens on taxpayers while enhancing the local property tax base by providing a cost-effective means of accommodating development without the cost of building, operating and maintaining new infrastructure;
  - (viii) Promoting more compact urban and suburban growth, which reduces the loss of farm and forest lands, as well as natural areas and resources, while limiting increases in pollution that contributes to climate instability; and
  - (ix) Enhancing job opportunities for individuals by providing housing nearer to employment centers and public transportation.

(2) Accessory dwelling units are, therefore, an essential component of the state's housing supply.

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## B. Policy and Intent

It is the policy of the State to promote and encourage the creation of accessory dwelling units in order to meet our residents' housing needs and to realize other benefits of ADUs.

It is the intent of the Legislature that accessory dwelling unit ordinances adopted by local governments allow the creation of such units and that these local ordinances not unreasonably restrict the ability of homeowners to create these units in zones in which they are authorized.

## C. Definitions

*There are many alternative terms for ADUs. Although the term "Accessory Dwelling Unit" may be awkward and technical, it is now in such widespread use that it would add to the confusion to propose a replacement term or terms. To further simplify the discussion, the Model State ADU Act and Model Local ADU Ordinance do not distinguish between the different forms and types of ADUs, such as detached "cottages" or "internal apartments," since the standards do not require that differentiation. The sole exception is the "Junior Accessory Dwelling Unit" (JADU), which is offered as an optional provision.*

**Three alternative definitions of ADUs are presented with the numeral "1." Choose one of the following options:**

### ***Limiting ADUs to parcels that are already the site of a single-family dwelling***

1. **"Accessory Dwelling Unit"** (ADU) means a residential living unit on the same parcel as a single-family dwelling. The ADU provides complete independent living facilities for one or more persons. It may take various forms: a detached unit; a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled primary dwelling.

### ***The ADU to be built before or concurrently with a single-family home***

1. **"Accessory Dwelling Unit"** (ADU) means a residential living unit on the same parcel on which a single-family dwelling is present or may be constructed. It provides complete independent living facilities for one or more persons and may take various forms: a detached unit; a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled dwelling.

*This definition allows for the construction of an ADU prior to or concurrent with that of the primary residence. Two common circumstances in which an ADU might be built before the primary residence are: (1) when a homeowner wishes to stage construction expenses and living arrangements and (2) when the homeowner owns an adjacent legal lot (typically used as a side or backyard) and would prefer to site an ADU there rather than on the lot with the primary residence. Suppose that an owner built a 600-square-foot detached dwelling on the second lot to serve as an ADU. If that lot was separately sold and the home on it was not identified as an ADU, then the new owner might find that regulations limiting the size of an ADU to 75% of the primary dwelling would treat the small home as the primary residence and limit the size of an official ADU to 400 square feet.*

### ***The ADU to be created is on a lot with a multifamily dwelling***

1. **"Accessory Dwelling Unit"** (ADU) means a residential living unit on the same parcel as a single-family dwelling or a multifamily structure. It provides complete independent living facilities for one or more persons and may take various forms: a detached unit; a unit that is part of an accessory structure, such as a →

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detached garage; a unit that is part of an expanded or remodeled single-family unit; or a unit in a multifamily dwelling.

*This third alternative allows for building detached ADUs on properties with multifamily housing structures and through additions to or remodeling of those structures.*

2. **“Default Provisions”** means the standards of Section XIII of this Act, which a community must apply if it has no local ADU ordinance.
3. **“Dwelling Unit”** means a residential living unit that provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation and a separate entrance.
4. **“Governing Document”** means articles of incorporation or bylaws or else a declaration, rule, regulation or resolution, any of which were properly adopted by a homeowners association, or else any other instrument or plat relating to common ownership or common maintenance of a portion of a planned community that is binding upon lots within the planned community.
5. **“Junior Accessory Dwelling Unit”** (JADU) is a separate living unit of less than 500 square feet, with a separate entrance. It may share sanitation facilities with another dwelling unit other than an ADU.

*The definition and authorization of junior accessory dwelling units are based on California’s definition and authorization of this type of ADU. See California Government Code Section § 65852.22.*

6. **“Living Area”** means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
7. **“Local Government”** means a general-purpose local government created by general law or a charter. It exists in a city of any class or a county, borough, township or village.
8. **“Reasonable Local Regulations”** means regulations that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct an accessory dwelling unit [or junior accessory dwelling unit] consistently with the provisions of this Act. “Reasonable local regulations” do not include owner occupancy requirements applied to either the primary or accessory dwelling unit; requirements to construct off-street parking beyond what is required by this Act; or restrictions on the terms of rentals that do not apply generally to other housing in the same district or zone.

*For an explanation of the limits imposed on local government regulation of owner occupancy, parking and short-term rentals, see the notes under Section VII-A, “Authority to Adopt Reasonable Regulations and Impose Reasonable Conditions.”*

9. **“Town House”** is a single-family dwelling constructed in a group of three or more attached units, with each unit extending from foundation to roof and with a yard or public way on not fewer than two sides.

*This definition is included to enable implementation of provisions allowing ADUs in or with town houses. →*

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**10. “Zoning Administrator”** means the local official who is responsible for processing and approving or denying applications to develop or legalize ADUs.

## **II. Authorization of ADUs, Local Government Implementation**

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Local governments shall adopt ordinances, in conformity with this Act, authorizing accessory dwelling units in single-family zones or districts and on appropriate lots in other zones that allow housing (except as specifically exempted in Section B) and authorizing their use as rental housing.

*This provision is written to require local governments to authorize ADUs in single-family residential zones and in a range of zones that authorize housing, such as zones that allow detached and attached housing, or in mixed-use zones that allow commercial, institutional and other uses along with housing. However, it does not limit the discretion of local governments to authorize ADUs only on certain lots within those zones, such as lots with a single-family residence or, more broadly, lots in residential use.*

## **III. Health and Safety Exemptions**

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The [appropriate state agency] may grant an exemption from these provisions for those properties where new single-family homes have been prohibited because of limitations on safe drinking water or because of risks to public health due to limits on sewage disposal or because of the risk of fires, floods or landslides.

## **IV. Private Deed and Homeowner Association Restrictions on ADUs**

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Any covenant, restriction or condition contained in any deed, contract, security instrument or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit [or junior accessory dwelling unit] as a rental unit, though the latter otherwise meets the requirements of this Act, is void and unenforceable.

This section does not apply to provisions that impose reasonable private restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, “reasonable private restrictions” means restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or →



**“Neighborhood fears and misperceptions about ADUs can put political pressure on local elected officials to use their powers to veto homeowners’ plans to develop ADUs. A wide variety of local government actions and regulations can be used for this purpose. This section makes it illegal for them to do so.”**



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extinguish the ability to otherwise construct an accessory dwelling unit or junior accessory dwelling unit consistently with the provisions of this Act.

*Based on California Civil Code Section 4751, which was added by Statutes 2019, Chapter 178, Section 2. [AB 670], effective January 1, 2020.*

*Covenants, Conditions and Restrictions (CCRs): These are private regulations incorporated into the deed of a property and administered by an association for a Common Interest Community, such as a homeowners association. They were used in the past to prevent ethnic and racial minorities from buying or renting homes in some neighborhoods. Judicial decisions invalidated those provisions many decades ago as violations of the U.S. Constitution. However, other provisions of these private restrictions are still valid and remain an important tool in maintaining economic, racial and ethnic segregation even in situations in which the underlying zoning has been reformed. In legislation adopted in 2019, California invalidated CCRs that directly or indirectly prohibit ADUs and junior ADUs.*

*There may be state constitutional or statutory limits on a legislature’s ability to invalidate existing CCRs. If so, a legislature should adopt a provision invalidating any future covenants, codes or restrictions that would preclude ADU construction. Two examples of prohibitions that operate only prospectively are Oregon Revised Statutes 94.776 and 27 Vermont Statutes Annotated § 545 as amended by Section X of Vermont Senate Bill 237, signed by the Governor and effective October 12, 2020.*

## **V. Local Regulations and Interpretations May Not Be Used to Frustrate Purposes of the Act**

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Local governments may adopt only reasonable regulations to govern the review and operation of accessory dwelling units. No local government may develop, amend or interpret other codes or regulations, such as building codes or special taxing district provisions, in ways that interfere with the intent of this Act.

## **VI. Utility Connections and Building Codes**

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### **A. Utility Connections**

A local agency, special district or water corporation shall not require the applicant to install new or separate water and sewer lines directly between the accessory dwelling unit and the trunk lines unless the accessory dwelling unit was constructed with a new single-family dwelling. Applicants may choose to use a shared water meter for the primary structure and the ADU or have a separate water meter installed for the ADU.<sup>20</sup>

*A best practice for municipalities is to not require new, dedicated lateral services from the utility/right-of-way to the property. These utilities include water, sewer, electric and gas connections. Commonly, water and sewer services are provided in part by governmental agencies, whereas electric and gas utilities are commonly provided by private energy providers. Ideally, energy providers do not require ADUs to have a dedicated lateral service connection from the right-of-way to an ADU, as new connections often cost several thousand dollars. When energy utilities are publicly owned, the same principle should apply.*

### **B. Building Codes**

- (1) Within one year of the effective date of this Act, the [State Building Codes Division] shall by rule establish building codes that local governments shall use to approve the conversion of single-family dwellings, →

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[town houses] and accessory structures to create accessory dwelling units [and junior accessory dwelling units] for structures legally in existence prior to the effective date of this Act. The standards established under this subsection shall allow for revisions to local government building code standards governing ceiling heights, access and egress; energy efficiency; seismic safety; and other standards that may unnecessarily inhibit the construction of accessory dwelling units within, or primarily within, existing structures. These alternate standards shall describe the information that must be submitted before an application for conversion of a structure into an ADU will be deemed complete.

- (2) A building official must approve or deny an application to create an accessory dwelling unit under the accessory dwelling unit building codes adopted pursuant to subsection (1) of this section no later than 25 business days after receiving a complete application. A building official who denies an application for alternate approval under this subsection shall provide to the applicant a written explanation of the basis for the denial and a statement that describes the applicant’s appeal rights.

*Based in part on Oregon Revised Statutes 455.610(8),(9)(2019).*

*Building codes can inhibit or facilitate the construction of ADUs, especially internal and garage conversions. Both state and local governments adopt building codes, often based on a variety of national and regional model codes. The degree of discretion allowed to local governments to deviate from state building codes varies between states.*

*Since many garages and basements weren’t built to today’s earthquake or frost line standards, requiring that a structure meet the current structural code will effectively require demolition and new construction, thereby eliminating a realistic or feasible option for a structural conversion.*

*Permitted, nonconforming structures should be allowed to change their use from a nonhabitable use to a habitable use without a conditional use permit or special exception from building code, even if the structure meets former but not current structural standards. This is commonly referred to as “grandfathering in” existing structures. This policy is critical to enable structural conversions.*

*There are several other key considerations for internal conversions related to existing ceiling heights and existing stairwells. In general, the goal should be to allow existing spaces to have reduced building code thresholds for numerous building code standards.<sup>21</sup> The City of Portland’s guide “Converting Attics, Basements and Garages to Living Space” makes internal conversions of living space to ADUs more feasible by adjusting several elements of building codes:*

- Ceiling heights
- Exceptions to ceiling heights for beams, heating ducts, pipes
- Sloped ceilings
- Existing stairs
- Noncompliant stairs
- Stair landings
- Firewall separation

*Achieving higher energy efficiency in buildings is a critical strategy for reducing greenhouse gases. But it can increase the cost or reduce the design feasibility of ADUs created by conversions of existing space.*

*Conversions of basements and garages to ADUs are the most common type of ADU conversion. In the past homes and garages were built with 2"x 4" stud walls versus the 2"x 6" framing used today, which accommodates much thicker insulation. Requiring a conversion to meet today’s energy standards may require the replacement of all existing →*

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*stud walls to create sufficient wall cavity space to accommodate the insulation required to meet modern energy codes. This interior stud wall, or additional 2" wall furring, or exterior rigid foam insulation, can add substantially (\$5,000 to \$20,000 in the Portland market in 2020) to construction costs and reduce the interior size of the living space of an already small dwelling. If the effect of these energy standards is that more large homes or new apartments are constructed, the net effect might be an increase in energy consumption due to higher heating and cooling costs of the larger spaces and because of the embedded energy in the materials used for new construction.*

## **VII. Local Government ADU Authority, Density Limits and Other Matters**

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### **A. Authority to Adopt Reasonable Regulations and Impose Reasonable Conditions**

Local governments may adopt reasonable local regulations governing ADUs, addressing height and bulk, setback, lot coverage, and regulations generally applicable to other residences in the same zones. Local governments may impose reasonable conditions of approval to ensure compliance with the regulations. Those regulations must be implemented using clear and objective standards and the procedures specified in this Act.

#### **Owner Occupancy Requirements**

*The definition of authorized "reasonable" local regulations in I.C.(8) forbids the imposition of a requirement that the owner live on the same property (whether in the primary dwellings or the ADU), yet such requirements are pervasive. The 2000 edition of the Model State ADU Act provided for the imposition of owner occupancy requirements on the grounds that such requirements ensured better oversight of renters and better maintenance of the property. This restriction took the form of a covenant on the deed or other restrictions on the title of the property.*

*Owner occupancy covenants or conditions give pause to homeowners and institutions financing home purchases because of the limits they place on successive owners, who will not be able to rent out or lease their main house, which might be necessary as a result of a divorce, job transfer or death. They can also make financial institutions reluctant to provide financing for construction of an ADU, and because covenants or conditions serve as a restriction on a mortgage lender's security interest in a property, lenders may withhold consent to any owner occupancy requirement that takes the form of a covenant.<sup>22</sup>*

*The 2020 Model State ADU Act prohibits any form of owner occupancy provision because the practical impact of this requirement is to inhibit construction of most ADUs. That conclusion is reflected in amendments to California's and Oregon's ADU legislation and in Seattle's 2019 local code revisions.*

*Aside from its effect on ADU production, there is a problem with the logic and fairness of applying an owner occupancy standard to ADUs if there is no such requirement with single-family homes generally. If single-family homes can be rented out (by a nonresident owner), then what is the policy basis for requiring occupancy when there is an ADU on the property?*

*One of the justifications for the owner occupancy requirement is the assertion that resident owners take better care of their property than nonresident owners. But there are certainly resident homeowners who do not take care of their property and nonresident owners who keep their property in excellent condition.*

*The 2020 Model State ADU Act treats ADUs as an equal and important type of housing that, in general, should be subject to the same set of rules that governs the use of other housing. ADUs should not be treated as an inferior form of housing that requires additional restrictions and policing. Authorizations of or prohibitions against renting out dwellings should be applied consistently to ADUs and other homes. If owner occupancy is required for the primary dwellings in a single-family zone, then that requirement can be easily extended to ADUs.*

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## **B. Short-Term Rentals**

*Many cities and residents are concerned about the use of houses, apartments and ADUs for short-term rentals, especially in regions, cities or districts that are tourist destinations. Use of these dwellings for short-term rentals can remove existing housing from the supply available for residents, worsening affordability and introducing commercial types of impacts into residential areas. Short-term rentals are often a major subject of debate in high-amenity areas, where the return on investment in ADUs used for short-term rentals is generally much higher than with those used for long-term housing.*

*But the exact same concerns apply to short-term rental use of the primary dwelling. If short-term rental regulations are adopted, they should apply to all housing in the jurisdiction or zone, not just ADUs. Many existing ordinances have such limitations or prohibitions built into the list of permitted uses authorized for all housing.*

*In legislation passed in 2020, Vermont amended its ADU legislation to allow for the regulation of short-term rentals, provided those regulations were not applicable to or did not inhibit the construction ADUs for longer-term rental use.<sup>23</sup>*

*There is a counterargument in support of short-term rental use of ADUs. The high return spurs the construction of more ADUs than would otherwise occur and these ADUs typically, over time, convert into long-term rentals or other uses. If the goal of ADU authorization is wealth creation or allowing people to stay in their homes as they age, then the use of ADUs for short-term rentals should be encouraged because short-term rentals help realize those objectives.*

## **C. Density Limitations**

An ADU authorized under this Act shall not be considered to exceed the allowable density for the lot upon which it is located and shall be deemed a residential use consistent with the existing general plan and zoning designations for the lot.

## **D. Exemption from Local Growth-Limitation Measures**

ADUs shall not be restricted by any local government ordinance, policy or program intended to limit residential growth in residential zones or residential planning districts or mixed commercial and residential zones.

*Adapted from California Government Code Section 65852.2(a)(5).*

*This section is drafted to apply only to locally adopted growth limitations and not state-level farm, forest, or natural resource conservation zones or districts that are part of a growth management program.*

## **E. Less Restrictive Provisions**

This Act does not limit the authority of municipalities to adopt less restrictive requirements for the creation of ADUs.

*Adapted from California Government Code Section 65852.2(e).*

## **F. Fees and Incentives**

*Local governments charge permit processing fees, system development charges (for funding a share of capital improvements, such as water lines, sewage treatment capacity, schools and parks), utility connection upgrades, and fees for new residential development.*

*The average local government fee charged for development of an ADU in California in the late 2010s was \$9,250, →*

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according to a paper by the Turner Center at the University of California, Berkeley.<sup>24</sup> In established neighborhoods where ADUs are being added, system development charges designed to pay for capital improvements may not be appropriate if existing capital improvements are already adequate to handle a modest increase in residential population. Many older neighborhoods have lower population densities than they did when they were built and household sizes were larger.

The Model State ADU Act waives and reduces fees for smaller ADUs to incentivize construction or to encourage affordability, equity or environmental goals.

- (1) An accessory dwelling unit shall not be considered by a local government or agency, special district or water corporation to be a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service.
- (2) A local government or agency, special district or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit with less than 750 square feet. Any impact fees charged for an Accessory Dwelling Unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.
- (3) A local government or agency, special district or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. The connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square footage or its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

## **VIII. Standards Governing ADUs**

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### **A. Number of Units**

*In California (as of 2020) a single-family lot can have both an ADU and a junior accessory dwelling unit, which may be no larger than 500 square feet and must be part of the primary residence. In 2019 Seattle, Washington, authorized the creation of one detached ADU and one internal ADU per single-family lot; if green building or affordability requirements were met, a second detached unit is also allowed.*

*In 2020, Portland, Oregon, decided to allow two ADUs in any configuration on each single-family-zoned lot as part of broad reform of residential zoning. Since 2016, the Canadian city of Vancouver, British Columbia, has allowed a “secondary suite” (internal ADU) and a “laneway home” (detached ADU with alley access) on single-family lots on corner, double-fronted lots and lots with an alley.*

*There are many different ways to accommodate more than one ADU that are sensitive to concerns about neighborhood appearance. For example, two internal ADUs can be accommodated by remodeling a large home without increasing height or bulk. An internal unit can be allowed along with an ADU over an attached garage without increasing the area of the lot occupied by the structures. Discussions about allowing more than one ADU per lot in single-family zones may result in a challenging but beneficial community discussion about the purposes of single-family zoning. Minneapolis, Minnesota; Portland, Oregon; and the State of Oregon have reformed their residential zoning. →*

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*The Model State ADU Act allows two ADUs per lot without specifying their form, leaving that to local government or homeowner discretion. This provision is written to allow for both concurrent and prior construction of ADUs. The timing of ADU construction relative to that of the primary dwelling is discussed in the alternate definitions of ADUs in I.C.(1).*

*Some ordinances, for example Seattle’s, have made additional ADUs conditional on achieving other community goals, such as affordability, accessibility and green building performance standards. This follows the precedents created by inclusionary zoning ordinances that allow for additional units in multifamily developments if the rents for those units meet an affordability standard for a specified period. It is too soon to know whether these incentives will be effective in creating additional ADUs. Provisions allowing these “Bonus ADUs” (BADUs) are presented here as options.*

- (1) Any lot with, or zoned for, a principal single-family-dwelling unit may have up to two accessory dwelling units.

### **Bonus ADU Provisions**

- (2) The Zoning Administrator may authorize an additional accessory dwelling if:
  - (a) The additional accessory dwelling unit is a rental unit affordable to and reserved solely for “income-eligible households,” as defined in this ordinance, and is subject to an agreement specifying the affordable housing requirements under this subsection to ensure that the housing shall serve only income-eligible households for a minimum of 50 years. The monthly rent, including basic utilities, shall not exceed 30% of the income limit for the unit, all as determined by the Director of Housing, and the housing owner shall submit a report to the Office of Housing annually that documents how the affordable housing meets the terms of the recorded agreement. Prior to issuance, and as a condition of issuance, of the first building permit for a project, the applicant shall execute and record a declaration in a form acceptable to the Director that shall commit the applicant to satisfying the conditions for establishing a second accessory dwelling unit as approved by the Director; or
  - (b) The applicant makes a commitment that the new principal structure or the new accessory structure containing a detached accessory dwelling unit will meet a green building standard, and the applicant shall demonstrate compliance with that commitment, all in accordance with this ordinance. A second accessory dwelling unit that is proposed within an existing structure does not require the structure to be updated to meet the green building standard; or
  - (c) The applicant designs at least one of the dwellings on the lot to meet visitability standards, including a no-step entry, [36"] wide doors and hallways, a bathroom that can be used by someone in a wheelchair, and at least [300 square feet] of living space on the main level.

*Based on Seattle Municipal Code 23.44.041.A.1.a.(2).*

### **B. Minimum Lot Size**

A local government may not require a minimum lot size for ADUs that is larger than the minimum lot size for single-family houses [or town houses] in the same zone or district.



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## C. Size of ADUs

Accessory dwelling units may be any size, provided that the proposed ADU's total square footage is less than that of the primary dwelling's and other requirements are satisfied.

*Many local governments have adopted minimum and maximum sizes for ADUs. The Model Local ADU Ordinance recommends eliminating minimum size since the basic requirements for a living space (kitchen, bathroom, living/sleeping area) and the housing market will establish a minimum size. In expensive housing markets the success of micro-apartments of less than 300 square feet and the proliferation of tiny homes on wheels demonstrates that there is demand for very small units. At the other end of the scale, limits on maximum size prevent the construction of ADUs that could be home for a family of three or more persons. For situations in which the existing residence is very small, local governments might consider authorizing ADUs up to 800 square feet when the primary dwelling is smaller than 800 square feet. Burlington, Vermont, takes a different approach to this issue. It allows accessory dwelling units to be 30% of the gross square footage of a house of 800 square feet, whichever is greater.<sup>25</sup>*

## D. Parking Requirements

*Many local governments have required one or more off-street parking spaces for each ADU. This is a serious inhibition to the construction of ADUs for two reasons. First, the cost of building off-street parking spaces.<sup>26</sup> Second, the lot size, location of the primary residence and topography may make the construction of one or more parking spaces impossible.<sup>27</sup>*

*The impact of parking requirements on ADU production is suggested by the results of a 2018 survey of California cities with ADU regulations. Out of the 168 cities, 68% reported having minimum off-street-parking requirements for ADUs. Prior to the 2017, California legislation that eliminated off-street parking within a half-mile of transit, localities receiving frequent ADU applications were much more likely to lack off-street-parking requirements (31% versus 13%).<sup>28</sup> Given the general oversupply of parking<sup>29</sup> and its impacts on home prices and rents (and more generally urban development and redevelopment), minimum parking requirements are being reconsidered and reduced. Hartford, Connecticut;<sup>30</sup> Buffalo, New York;<sup>31</sup> and Edmonton, Alberta, Canada,<sup>32</sup> are among the cities that have eliminated most or all minimum parking requirements. Other cities have reduced or eliminated parking requirements for different types of housing.<sup>33</sup>*

No additional off-street parking is required for construction of an ADU. If the ADU removes one of the existing off-street parking spaces, the local government may require that the space be replaced on site if required by the underlying zoning. In lieu of an on-site parking space, an additional on-street parking space may be substituted if there is already sufficient curb area available along the frontage for a parking space or by removing the parking space access ramp and reinstalling the curb.

*Based on Seattle Land Use Code 23.44.041 A.5.*

## E. Building Setbacks

No setback shall be required for an existing garage living area or accessory structure or for a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or for a portion of an accessory dwelling unit. A setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or for a new structure constructed in the same location and to the same dimensions as an existing structure.

*Based on California Government Code 65852.2(a)(D)(vii).*

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### **XIII. Default Provisions Governing Applications for Accessory Dwelling Units in the Absence of a Certified Local Ordinance**

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#### **A. Default Provisions**

If a local government without an adopted state-certified ADU ordinance receives an application for a permit for an ADU on or after [the effective date of the Act], it shall accept the application and approve or disapprove the application pursuant to the default provisions of this section of the Act unless it adopts a certified ordinance in accordance with this Act within 120 days after receiving the application.

*This provision governs how local governments are to process their applications to create an ADU if they do not have an ordinance that conforms to the Model State ADU Act. It also incentivizes local governments to adopt their own ordinance and secure state certification promptly rather than apply the Model State ADU Act's default provisions.*

#### **B. Only Basis for Denial**

No local ordinance, policy or regulation shall be the basis for the denial of a building permit or a use permit under the default provisions of the Act.

*Adapted from California Government Code Section 65852.2(b)(2).*

#### **C. Maximum Standards in Absence of Local Ordinance**

The default provisions of this section establish the maximum standards that municipalities shall use to evaluate proposed ADUs on lots that are zoned for residential use and contain an existing single-family dwelling. No additional standards, other than those provided in this section, shall be used or imposed.

*Adapted from California Government Code Section 65852.2(b)(2).*

#### **D. No Changes to Local Ordinances Necessary**

No changes to zoning ordinances or other ordinances or any changes to the general plan shall be required to implement the default provisions of this Act. Any local government may amend its zoning ordinance or general plan to incorporate the policies, procedures or other provisions applicable to the creation of ADUs if these provisions are consistent with the limitations of the default provisions.

*Adapted from California Government Code Section 65852.2(b)(4).*

*A community is subject to the default provisions of this Model State ADU Act if it does not have an ADU ordinance of its own. But if a community without an ADU ordinance wants to amend a comprehensive plan or other ordinance, this provision allows it to do so if the amendment is consistent with the default provisions.*

#### **E. Default Standards**

- (1) **Zones Where ADUs Are Authorized:** The lot proposed to contain the ADU is in a zone in which single-family residences are authorized and is the current site of a primary dwelling or qualifies as the site for a future primary residence.

*Many local governments have chosen to allow ADUs only in a limited number of residential zoning →*



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classifications. However, excluding ADUs from zones applicable to higher income neighborhoods will raise questions of fairness (for neighbors, property owners and prospective ADU tenants alike). Treating ADUs as a less desirable, inferior, type of housing — instead of a housing type that can benefit people of all incomes and backgrounds — will likely reinforce patterns of housing discrimination and class and residential segregation. In recent years many local governments have relaxed the stringency of residential zones, in some cases by authorizing different types of housing in the same zones as commercial uses and other times in zones with light industrial uses. There is no policy reason to exclude ADUs from these zones if single-family dwellings are allowed in them.

(2) **Time of Construction:** ADUs may be built concurrently with or before the primary residence.

*Building an ADU concurrently with the construction of a new home has many advantages in cost savings, design consistency and logical siting. California’s 2019 legislative reforms included general authorization of ADUs built concurrently with new homes. The common circumstance in which the construction of an ADU might precede that of a primary residence was discussed above in I.C.(1) under the definitions of “Accessory Dwelling Unit.”*

(3) **Detached ADUs:** Detached ADUs (including ADUs built as part of a garage or another accessory building) may be built before the primary residence. The location, scale and other aspects of the ADU must not preclude or constrain the construction of a primary dwelling in conformity with regulations governing those dwellings.

(4) **Unit Size:** The living area of an ADU shall be smaller than the living area of the primary residence. There is no minimum size, provided code requirements governing kitchen, sanitation and other relevant provisions are satisfied.

(5) **Separate Sale of ADUs:** Local governments may choose to limit or prohibit the separate sale of ADUs.

*The separate sale of ADUs is discussed in Section II-M of the Model Local ADU Ordinance.*

(6) **Other Matters:** Requirements related to height, setback, lot coverage, site plan review, fees, charges and other zoning requirements generally applicable to residential construction in the zone in which the property is located are applicable to any ADU, except when the provisions of this Act specify otherwise.

## **F. Local Government Review of Applications for ADUs**

A permit application for an accessory dwelling unit shall be approved or denied ministerially without discretionary review or a hearing, notwithstanding any local ordinance regulating the issuance of variances or special use permits, within 90 days after receipt of a completed application.

If the permit application to create an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or a junior accessory dwelling unit until the permitting agency acts on the application to create the new single-family dwelling, but the application to create the accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 90-day time period shall be tolled for the period of the delay. The ministerial decision on the ADU application shall be the final decision of the local government for purposes of judicial review.

*Adapted from California Government Code 65852.2(a)(3). →*

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*If judicial review of local ADU approvals proves to be a major inhibition to ADU (or other needed housing) construction, state legislators may wish to examine the model of a specialized state land use appeals board of the type Oregon has used since the 1980s, including provisions that limit review to an appellate review based on the local government record and require expedited review by that tribunal and the appellate courts.<sup>34</sup>*

## **XIV. State Oversight and Monitoring**

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### **A. State Certification of ADU Ordinances**

- (1) **Submission for Certification:** A local government shall submit the zoning ordinance provisions implementing this Act 90 days prior to final approval of such an ordinance or amendment, seeking an opinion from the [state agency] on whether the ordinance conforms to this statute. This submission must include the local government’s date of planned final approval. The [state agency] may notify other relevant agencies so that they may also comment on whether the municipality’s draft ordinance conforms to the statute. The [state agency] shall notify the local government prior to the planned date of final approval of its opinion as to the conformity of the ordinance to this statute. If, in the opinion of the [state agency], the ordinance and/or amendments reviewed do not conform to this statute, the [state agency] shall notify the local jurisdiction of actions that must be taken to bring the ordinance(s) and/or amendments into conformity.
- (2) **Local Government Action on Deficiencies:** The local government shall bring its ordinance into conformity, as recommended by the [state agency], within 90 days of notification of nonconformance pursuant to the prior section. If the municipality has not brought its ordinance into conformity within the 90-day period, the [state agency] will notify the jurisdiction that it must automatically accept and process applications for ADUs under the default regulations of this Act until conformity is certified by the [state agency]. Prior to any certification by the [state agency], any applications submitted under the default regulations of this Act shall be processed fully and solely under those regulations.
- (3) **Amendments:** Changes to a municipality’s ordinance certified by the [state agency] must be submitted and certified in the same manner and procedure as the initial proposed ordinance pursuant to this section.

### **B. Local Government Annual Reports to State**

- (1) Local governments shall report annually to the [state agency] the number of:
  - (a) Single-family structures in the jurisdiction;
  - (b) Single-family structures in single-family-residential zones and in multifamily residential zones in which accessory dwelling units are permitted;
  - (c) Illegal accessory dwelling units, attached and unattached, and known or estimated to be in the jurisdiction;
  - (d) Applications to legalize illegal accessory dwelling units submitted to the jurisdiction and the results of processing these applications;
  - (e) Legal accessory dwelling units in the jurisdiction;
  - (f) Applications for new accessory dwelling units accepted for processing; →

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- (g) New accessory dwelling units approved and permits issued by type of unit (internal, attached, detached integrated with another accessory structure and detached stand-alone), size, number of bedrooms, location and level of accessibility; and
  - (h) Applications disapproved, with reasons categorized by requirements not met.

### **C. State Annual Report**

The [state agency] shall prepare an annual report to the Governor and the Legislature from the annual reports from local governments, including the installation rates of ADUs and recommendations, if any, for amending the Act or other implementation measures necessary for promoting the development of ADUs to increase housing supply generally or for particular residents or communities. The annual report shall include any recommendations on ADU policies from the State Advisory Board.

### **D. State Advisory Board on ADU Policies**

- (1) **Creation:** The [state agency] shall establish an Advisory Board to monitor implementation of the Act and to recommend amendments to the Model ADU Act or Model Local Ordinance provisions to the [state agency].
- (2) **Composition:** The Advisory Board shall be appointed by the Director of the [state agency] in consultation with the Legislature and Governor and shall include one representative from each of the following groups: renters, remodelers, mortgage bankers, real estate agents, new home builders, nonprofit home builders, first-time home buyers, home health care agencies and local permitting agencies; organizations for the disabled, older persons and neighborhoods; and historically underrepresented communities and neighborhoods.
- (3) **Duties:** The Advisory Board's duties shall include, but not be limited to, preparing an annual commentary on the report prepared by the [state agency] on accessory dwelling units. The Board's commentary shall contain recommendations for furthering the purposes of the legislation and will be published and circulated with the [state agency's] annual report.

*This section of the Model State ADU Act is optional. It gives the state the role of encouraging ADUs and reviewing local efforts to accommodate them.*

*The optional monitoring provision here would require communities to report specific ADU data to the responsible state agency and to obtain ADU policy recommendations from a State Advisory Board. With the benefit of the community data and the Advisory Board recommendations, the responsible agency would prepare an annual report proposing new or amended policies to the State Legislature and Governor. This optional monitoring mechanism would assist the state in assessing the law's effectiveness. Because it allows well-informed policy adjustment to be made, it should help ensure the ultimate success of the state's ADU policies.*



# MINIMAL MODEL STATE ADU ACT

## Granting Local Governments the Full Range of Authority to Permit and Regulate Accessory Dwelling Units (ADUs)

### A. Findings

- (1) The Legislature finds and declares:
  - (a) Many communities in our state face a severe housing crisis, with home prices and rents unaffordable by families and households of middle and moderate income.
  - (b) The State is falling far short of meeting current and future housing demand, with serious consequences for the state's economy and the well-being of our residents, particularly lower-income and middle-income earners.
  - (c) There are many benefits associated with the creation of legal accessory dwelling units [and junior accessory dwelling units] on lots in single-family zones and in other zoning districts. These benefits include:
    - (i) Increasing the supply of a more affordable type of housing not requiring government subsidies;
    - (ii) Helping older homeowners, single parents, young home buyers and renters seeking a wider range of homes, prices, rents and locations;
    - (iii) Increasing housing diversity and supply, thereby providing opportunities to reduce the segregation of people by race, ethnicity and income that resulted from decades of exclusionary zoning;
    - (iv) Providing homeowners with extra income to help meet rising homeownership costs;
    - (v) Creating a means for a family member or others to provide care and support to a family member in a semi-independent living arrangement while remaining in the community;
    - (vi) Providing an opportunity for increased security, home care and companionship for older or other homeowners;
    - (vii) Reducing burdens on taxpayers by providing a cost-effective means of accommodating development that can avoid the construction, operations and maintenance of new infrastructure while accommodating population growth and increasing the local tax base;
    - (viii) Promoting more compact urban and suburban growth, a pattern that reduces the loss of farm and forest lands and natural areas and resources and limits increases in pollution that contributes to climate instability; and
    - (ix) Enhancing job opportunities for individuals by providing housing nearer to employment centers and public transportation.
- (2) Therefore, accessory dwelling units [and junior accessory dwelling units] can be an essential component of the local housing supply.

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## B. Policy and Intent

It is the policy of the state to grant local governments the full range of authority needed to promote and encourage the creation of accessory dwelling units in order to meet their housing needs and to realize other benefits of accessory dwelling units.

## C. Definitions

*There are many alternative terms for ADUs. Although the term “Accessory Dwelling Unit” may be awkward and technical, it is now in such widespread use that it would add to the confusion to propose a replacement term or terms. To further simplify the discussion, the Model ADU Act and Model ADU Ordinance do not distinguish between the different forms and types of ADUs, such as detached “cottages” or “internal apartments,” since the standards do not require that differentiation. The sole exception is the junior accessory dwelling unit, which is offered as an optional provision.*

**Three alternative definitions of ADUs are presented with the numeral “1.” Choose one of the following options:**

### ***Limiting ADUs to parcels that already are the site of a single-family dwelling***

1. **“Accessory Dwelling Unit”** (ADU) means a residential living unit on the same parcel as a single-family dwelling [or town house]. The ADU provides complete independent living facilities for one or more persons. It may take various forms: a detached unit; a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled dwelling.

### ***The ADU to be built before or concurrently with a single-family home***

1. **“Accessory Dwelling Unit”** (ADU) means a residential living unit on the same parcel as a single-family dwelling [or town house] or a parcel on which a single-family dwelling is present or may be constructed. It provides complete independent living facilities for one or more persons and may take various forms: a detached unit; a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled dwelling.

### ***The ADU to be created on a lot with a multifamily dwelling***

1. **“Accessory Dwelling Unit”** (ADU) means a residential living unit on the same parcel as a single-family dwelling, [a town house] or a multifamily structure. It provides complete independent living facilities for one or more persons. It may take various forms: a detached unit, a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled single-family unit or a unit in a multifamily dwelling.
2. **“Default Provisions”** means the standards of Section 4 of this Act, which a community must apply if it has no local ADU ordinance.
3. **“Dwelling Unit”** means a residential living unit that provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking and sanitation, as well as a separate entrance. →

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4. **“Governing Document”** means articles of incorporation or bylaws or else a declaration, rule, regulation or resolution, any of which were properly adopted by a homeowners association, or else any other instrument or plat relating to common ownership or common maintenance of a portion of a planned community that is binding upon lots within the planned community.
  5. **“Junior Accessory Dwelling Unit”** (JADU) is a separate living unit of less than 500 square feet, with a separate entrance. It may share sanitation facilities with another dwelling unit other than an ADU.

*The provision of junior accessory dwelling units is based on California’s definition and authorization of this type of ADU. See California Government Code Section § 65852.22.*

6. **“Living Area”** means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
7. **“Local Government”** means a general-purpose local government created by general law or a charter, including a city of any class or a county, borough, township or village.
8. **“Reasonable Local Regulations”** means regulations that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct an accessory dwelling unit or junior accessory dwelling unit consistently with the provisions of this Act. “Reasonable local regulations” do not include owner occupancy requirements for either the primary or accessory structure, requirements to construct off-street parking beyond what is required by this Act or restrictions on the term of rentals that do not apply generally to other housing in the same district or zone.

*For an explanation of the limits imposed on local government regulation of owner occupancy, parking and short-term rentals, see notes under “Authority to Adopt Reasonable Regulations and Impose Reasonable Conditions” in the longer version of the Model State ADU Act.*

9. **“Town House”** is a single-family-dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof and with a yard or public way on not fewer than two sides.
10. **“Zoning Administrator”** means the local official who is responsible for processing and approving or denying applications to develop or legalize ADUs.

#### **D. Grant of Regulatory Authority**

Notwithstanding any other statute, local governments are granted full authority to adopt ordinances in conformity with this Act authorizing and regulating accessory dwelling units and junior accessory dwelling units in any zones or districts that allow housing.

#### **E. Local Government Authority to Prospectively Limit or Prohibit Private Agreements or Restrictions That Bar the Construction of ADUs**

Notwithstanding any other statute, local governments are granted full authority to adopt ordinances that limit or prohibit future private agreements or restrictions that bar the construction of accessory dwelling units and junior accessory dwelling units within their jurisdictional boundaries.

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# III. MODEL LOCAL ADU ORDINANCE

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# MODEL LOCAL ADU ORDINANCE

*This Model Local ADU Ordinance is designed for communities in states where state law allows for local ordinances authorizing and governing ADUs but does not impose any constraints on local governments.*

*In states where local governments do not have the discretionary authority to approve ADUs (Dillon Rule states) state legislation giving them that authority must be adopted first. AARP's "Minimal Version" of the Model State ADU Act would give local governments that authority along with complete discretion over the content of their ADU ordinances. If there is a state ADU statute that limits local government discretion (as is proposed in the AARP Model State ADU Act) then the local ordinance will need to conform to those requirements.*

*Many provisions and notes related to standards and procedures for ADUs are duplicates, or near duplicates, of provisions and notes in the Model State ADU Act. Rather than referring readers back to those sections, which can be tiresome and confusing, this guide reproduces them as parts of the Model Local ADU Ordinance.*

## I. General Provisions

### A. Purpose and Intent

*In this section of the ordinance, a community states its purposes in adopting the ordinance. This information may help in defending the ordinance when informing residents of how the ordinance will benefit and protect their interests and in responding to legal challenges.*

*If a community has no purposes that differ from those of the Model State ADU Act, it may choose to reference that act's findings and its purposes and intent, but it is recommended that at a minimum the minutes of the meeting at which the ordinance is adopted include a discussion of those benefits and a statement that they are the basis for the local ordinance.*

*If a community has public purposes that are different from those in the Model State ADU Act, those purposes should be specified in the ordinance (after consulting legal counsel on whether they are inconsistent with any state ADU legislation).*

- (1) The [local governing body] finds and declares:
  - (a) Our community faces a severe housing crisis, with home prices and rents unaffordable by families and households of middle and moderate incomes.
  - (b) The community is falling far short of meeting current and future housing demand with serious consequences for the state's economy and the well-being of our residents, particularly lower-income and middle-income earners.
  - (c) The [local government] can play an important role in reducing the barriers that prevent homeowners from building accessory dwellings. →



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- (d) There are many benefits associated with the creation of legal accessory dwellings on lots in single-family zones and in other zoning districts. These include:
- (i) Increasing the supply of a more affordable type of housing not requiring government subsidies;
  - (ii) Helping older homeowners, single parents, young home buyers, and renters seeking a wider range of homes, prices, rents and locations;
  - (iii) Increasing housing diversity and supply, providing opportunities to reduce the segregation of people by race, ethnicity and income that resulted from decades of exclusionary zoning;
  - (iv) Providing homeowners with extra income to help meet rising homeownership costs;
  - (v) Creating a convenient living arrangement that allows family members or other persons to provide care and support for someone in a semi-independent living situation without the latter leaving his or her community;
  - (vi) Providing an opportunity for increased security, home care and companionship for older and other homeowners;
  - (vii) Reducing burdens on taxpayers while enhancing the local property tax base by providing a cost-effective means of accommodating development without the cost of building, operating and maintaining new infrastructure;
  - (viii) Promoting more compact urban and suburban growth, a pattern that reduces the loss of farm and forest lands and natural areas and resources and limits increases in pollution that contributes to climate instability; and
  - (ix) Enhancing job opportunities for individuals by providing housing nearer to employment centers and public transportation.

(2) Accessory dwelling units are, therefore, an essential component of housing choices and supply in [local government name].

## **B. Definitions**

*Even if there are controlling definitions in state ADU legislation, it is preferable to incorporate them into a local ordinance for the convenience of the users, as has been done here. The same notes found in the Model State ADU Act are repeated here.*

*There are many alternative terms for “ADUs.” Although the term “Accessory Dwelling Unit” may be awkward and technical, it is now in such widespread use that it would add to the confusion to propose a replacement term or terms. To further simplify the discussion, the Model State ADU Act and Model Local ADU Ordinance do not distinguish between the different forms and types of ADUs, such as detached “cottages” or “internal apartments,” since the standards do not require that differentiation. The sole exception is the Junior Accessory Dwelling Unit, which is offered as an optional provision. →*

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**Three alternative definitions of ADUs are presented with the numeral “1.” Choose one of the following options:**

***Limiting ADUs to parcels that are already the site of a single-family dwelling***

1. **“Accessory Dwelling Unit”** (ADU) means a residential living unit on the same parcel as a single-family dwelling. The ADU provides complete independent living facilities for one or more persons. It may take various forms: a detached unit; a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled dwelling.

***The ADU to be built before or concurrently with a single-family home***

1. **“Accessory Dwelling Unit”** (ADU) means a residential living unit on the same parcel as a single-family dwelling or a parcel on which a single-family dwelling is present or may be constructed. The ADU provides complete independent living facilities for one or more persons. It may take various forms: a detached unit, a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled dwelling.

*The preceding definition allows for the construction of an ADU prior to or concurrent with that of the primary residence. Two common circumstances in which an ADU might be built before the primary residence are (1) when a homeowner wishes to stage construction expenses and living arrangements; and (2) when the homeowner owns an adjacent legal lot (typically used as a side or backyard) and prefers to site an ADU there rather than on the lot with the primary residence. Suppose an owner built a 600 square foot detached dwelling on her second lot to serve as an ADU. If that lot was separately sold and the home on it was not identified as an ADU, the new owner might find that regulations limiting the size of ADUs to 75% of the primary dwelling’s size would treat the small home as the primary residence and limit the size of an official ADU to 400 square feet.*

***The ADU to be created on a lot with a multifamily dwelling***

1. **“Accessory Dwelling Unit”** (ADU) means a residential living unit on the same parcel as a single-family dwelling or a multifamily structure. The ADU provides complete independent living facilities for one or more persons. It may take various forms: a detached unit; a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled single-family unit or a unit in a multifamily dwelling.
2. **“Junior Accessory Dwelling Unit”** (JADU) is a separate living unit of less than 500 square feet, with a separate entrance, that may share sanitation facilities with another dwelling unit other than an ADU.

*The provision on junior accessory dwelling units is based on California’s definition and authorization of this type of ADU. See California Government Code Section § 65852.22.*

3. **“Living Area”** means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
4. **“Zoning Administrator”** means the local official who is responsible for processing and approving or denying applications to develop or legalize ADUs.

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## C. Authorization of ADUs by Zoning District

*In the absence of state legislation addressing the issue, communities have wide discretion in permitting ADUs in many types of residential zoning districts. The merits of locating ADUs in the major types of residential zones is discussed below. As a general principle, in communities with high rents and home prices relative to incomes, the governing body should allow ADUs in the full range of zones where residences are authorized. Different zones and their suitability for ADUs are discussed below.*

**Mixed-Use Zones:** *In the last few decades, governments and planning advocacy groups (including AARP) have recognized the many adverse consequences of strict single-use zoning. Across the country, zoning has been reformed to allow a greater mixture of uses along with residential uses, such as institutional uses, professional services and retail commercial uses. Because of the success over the last century in reducing the pollution and noise impacts from many types of urban land uses, some communities have gone further and allowed residential uses intermingled within a wide range of nonretail commercial and light industrial zones. ADUs may not be appropriate on a variety of lots in these mixed-use zones, but they make sense on lots that are the site of a detached single-family dwelling.*

**Multifamily Zones:** *These zones are distinguished by apartments or condominiums with multiple dwellings on the same lot, typically in multiunit and/or multistory structures. In recent years some cities with high housing costs have approved or are considering the authorization of ADUs on lots with multifamily structures.*

*California requires jurisdictions to allow new ADU units to be created out of existing parts of multifamily buildings if those parts are not currently used as livable space, such as storage rooms, garages, or basements or through an addition to the building.<sup>35</sup> In May 2020 the Chicago City Council considered a draft ADU ordinance that would allow new ADUs equal in number to 33% of the existing units in a multifamily structure on the lot.*

**Town House Zones:** *These zones contain single-family dwelling units that have common walls but are not atop one another, typically one dwelling per lot. Siting ADUs in these zones can have its challenges, given building orientation and lot coverage. On the other hand, Washington, D.C., is an example of a city where many historic townhouses included an “English basement” on the lowest floors of the building. Ordinances addressing the creation of ADUs in these districts will need to provide more flexibility regarding both siting requirements and some building code standards (flexibility that does not compromise health and safety).*

**Single-Family Zones:** *These zones contain one single-family dwelling unit per lot and provide the greatest opportunities for siting all types of ADUs. Some jurisdictions also allow clusters of small single-family homes, each on their own small lot or as condominium units with common space. Single-family zones also include detached single-family homes on their own lot and can be treated the same way as those homes are treated in single-family zones. Even in these single-family zones, however, neighbors’ concerns about property values, aesthetics and “neighborhood character” have often caused communities to ban detached ADUs or to allow them only on larger lots. Perversely, this can mean that ADUs are prohibited in single-family zones with large lots and bigger houses, where they can be more easily sited as detached units or created by remodeling existing space, but allowed on small lots where this is more challenging. This kind of policy choice reinforces rather than reduces the impact of exclusionary zoning.*

*For reasons of equity and to realize the benefits described in the statement of purpose and intent, ADUs should be authorized in all single-family residential zones.*

*In adapting the model provisions to a local zoning ordinance, a community will substitute its zoning district →*

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names (or abbreviations) for the model provisions' descriptions of zoning districts.

Accessory dwelling units are allowed in all zoning districts that allow residential use, subject to the requirements of this ordinance.

### **Optional Provision: Accessory Dwelling Units on Town House Lots**

**Definition:** “Town house” is a single-family dwelling unit constructed in a group of three or more attached units, with each unit extending from foundation to roof and having a yard or public way on not fewer than two sides.

A town house structure may be constructed or remodeled as a group of two or more attached two-family dwellings under the following conditions: (1) one of the two-family dwelling units shall conform to the requirements of the accessory dwelling unit standards and (2) each two-family dwelling within the town house structure shall meet the definition of an attached house, including that it be located on its own lot.

### **D. Number of ADUs Allowed Per Lot in Single-Family Zones**

*In California (as of 2020) a single-family lot can have both an ADU and a junior accessory dwelling unit that is no larger than 500 square feet and is part of the primary residence. In 2019, Seattle authorized that one detached ADU and one internal ADU can be located per single-family lot. If green building or affordability requirements are met, a second detached unit could be allowed. In 2020, Portland, Oregon, decided to allow two ADUs in any configuration on each single-family zoned lot as part of a broad reform of residential zoning. Since 2016, the Canadian city of Vancouver, British Columbia, has allowed a “secondary suite” (internal ADU) and a “laneway home” (detached ADU with alley access) on single-family corner lots, double-fronted lots and lots with alleys.*

*There are many ways to accommodate more than one ADU while being sensitive to concerns about neighborhood appearance. For example, two internal ADUs can be accommodated by remodeling a large home without increasing height or bulk. An internal unit can be allowed along with an ADU over an attached garage without increasing the area of the lot occupied by structures.*

*Discussions about allowing more than one ADU per lot in single-family zones may result in a challenging but beneficial community discussion about the purposes of single-family zoning. Minneapolis, Minnesota; Portland, Oregon; and the State of Oregon have reformed their residential zoning.*

*The Model State ADU Act allows two ADUs per lot without specifying their form, leaving that to local government or homeowner discretion. This provision is written to allow for both concurrent and prior construction of ADUs. (The issue of the timing of ADU construction relative to construction of the primary dwelling is discussed in the alternate definitions of ADUs in I.C.1.)*

*Some ordinances, for example Seattle's, have made the creation of additional ADUs conditional on achieving other community goals, such as affordability, accessibility and green building performance standards. This follows the precedents created by inclusionary zoning ordinances that allow for additional units in multifamily developments if the rents for those units meet an affordability standard for a specified period. It is too soon to know whether these incentives will be effective in spurring the creation of additional ADUs. Provisions allowing these “Bonus ADUs” (BADUs) are presented here as options.*

- (1) Any lot with, or zoned for, a principal single-family dwelling unit may have up to two ADUs. →

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## Bonus ADU Provisions

- (2) The Zoning Administrator may authorize an additional accessory dwelling if:
- (a) The additional accessory dwelling unit is a rental unit affordable for and reserved solely for “income-eligible households,” as defined in this ordinance. It is subject to an agreement specifying the affordability requirements under this subsection in order to ensure that the housing shall serve only income-eligible households for a minimum period of 50 years. The monthly rent, including basic utilities, shall not exceed 30% of the income limit for the unit, all as determined by the Director of Housing, and the housing owner shall submit a report to the office of housing annually that documents how the affordable housing meets the terms of the recorded agreement. Prior to issuance of the first building permit for a project, and as a condition of that issuance, the applicant shall execute and record a declaration in a form acceptable to the Director that shall commit the applicant to satisfying the conditions for establishing a second accessory dwelling unit as approved by the Director; or
  - (b) The applicant makes a commitment, in the manner required by this ordinance, that the new principal structure or the new accessory structure shall contain a detached accessory dwelling unit will meet a green building standard. A second accessory dwelling unit that is proposed within an existing structure does not require the structure to be updated to meet the green building standard; or
  - (c) The applicant designs at least one of the dwellings on the lot to meet visitability standards including a no-step entry, [36"] wide doors and hallways, a bathroom that can be used by someone in a wheelchair, and at least [300 square feet] of living space on the main level.

*Based on Seattle Municipal Code 23.44.041.A.1.a.(2).*

*“Income eligible” is not defined in the Model Local ADU Ordinance, since that can be a matter left to local discretion. Seattle has chosen to link its definition to a percentage of the U.S. Housing and Urban Development’s published Median Family Income data. See Seattle Municipal Code Section 23.84A.025.*

*This Model Local ADU Ordinance also does not incorporate a green building standard; a local government may rely on its existing standards or adopt new ones for this purpose. Seattle’s green building standard is rigorous, referencing the standards in Leadership in Energy and Environment Design (LEED), passive house and living building design standards, and other standards. The green building standard was adopted by the Director of Seattle’s Department of Construction as Rule 20-2017 and Inspections and can be found at [Seattle.gov/dpd/codes/dr/DR2017-20.pdf](http://Seattle.gov/dpd/codes/dr/DR2017-20.pdf).*

*Some other mechanisms to promote affordable ADUs are:*

- *Letting the landlord charge market rate rent, but adopting no-fault eviction protection and/or a cap on the rate of rent increase over time.*
- *Requiring the landlord to accept Section 8 vouchers.*

*Based on Philadelphia Fair Housing Ordinance [Chapter 9-800 of the Philadelphia Code]:*

- *Adopting the Good Cause eviction regulations for short-term rental [less than 12 months]. →*

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Provisions like these require a commitment to enforcement that is often a challenge for local planning and building departments, which are frequently underfunded. One simple mechanism for enforcement is to send a letter to the landlord every year that must be signed and returned attesting to his or her adherence to the income limit, a practice Santa Cruz adopted.

## **II. Standards**

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### **A. Minimum Lot Size in Single-Family (and Town House) Zones**

*This section addresses the lot sizes required for ADU installation. Local governments have often imposed excessive minimum lot sizes for ADUs, which greatly restricts the number of ADUs in a community. In a survey of 50 ordinances for the 2000 edition of the Model State ADU Act and Local Ordinance, the minimum lot size requirement varied from 4,500 square feet to 1 acre (APA 1996). One community allowed detached ADUs only on lots that were 1.5 times the minimum lot size of the zoning district (Orange County, Florida, Zoning Code Sec. 38-1426 (f)(4)). Some communities have the same minimum lot-size requirements for all ADUs.*

*As a policy matter, it should not be necessary to establish a separate qualifying lot size for ADUs if the purpose is to assure the retention of landscaping and privacy between homes, because the setback and lot coverage standards can achieve those objectives.*

*The language below requires that the minimum sized lot required for an ADU is the same as the minimum lot size for the primary dwelling.*

*There is one exception: ADUs may be created within or attached to an existing house on lots smaller than the minimum lot size if there is an existing house on the lot. It also allows ADUs to be built concurrently with or before the primary residence (for reasons discussed in notes to the alternative definitions for accessory dwelling units). This provision also addresses the issue of legally platted lots made nonconforming by the imposition of subsequent lower-density zoning, something that occurred in many cities in the middle of the 20th century.*

Accessory Dwelling Units may be created on any lot that meets the minimum lot size required for a single-family dwelling (or town houses). Attached and internal accessory dwelling units may be built on any lot with a single-family dwelling (or town house) that is nonconforming solely because the lot is smaller than the minimum size, provided the accessory dwelling units would not increase the nonconformity of the residential use with respect to building height, bulk or lot coverage.

### **B. Types of Structures**

*Many off-site manufactured and modular ADUs have been and continue to be produced; old conceptions of what constitutes a manufactured or modular home have become outdated. The Model Local ADU Ordinance provision maximizes the opportunities for ADUs by allowing any type of structure to be an ADU if that structure is allowed as a principal unit in the zoning district.*

A manufactured or modular dwelling unit may be used as an accessory dwelling unit in any zone in which accessory dwelling units are permitted.



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## C. Size of ADUs

Many local governments have adopted minimum and maximum sizes for ADUs. The Model Local ADU Ordinance recommends eliminating minimum-size limits since the basic requirements for a living space (kitchen, bathroom, living/sleeping space) and the housing market will establish a minimum size. In expensive housing markets the success of micro-apartments of less than 300 square feet and the proliferation of tiny homes on wheels demonstrate that there is demand for very small units. At the other end of the scale, limits on the maximum size prevent the construction of ADUs that could be home for families of three or more persons.

An accessory dwelling unit may be any size, provided the proposed unit's total square footage is less than the primary dwelling's and other requirements are satisfied.

For situations in which the existing residence is very small, local governments might consider authorizing ADUs up to 800 square feet when the primary dwelling is smaller than that size. Burlington, Vermont, takes a different approach to this issue; it allows accessory dwelling units to be 30% of the gross square footage of the house or 800 square feet, whichever is greater.<sup>36</sup>

### ■ Introduction to Lot Coverage, Setbacks, Height, Bulk and Floor Area Ratios

Lot coverage, setbacks, height and bulk (floor area ratio) limits are adopted primarily to address the appearance (the "built character") of neighborhoods. (There are some fire safety aspects to setbacks.) Cities with steep terrain apply additional or modified requirements that address vertical proximity as well as structural safety.

Local governments use a number of methods to regulate the size and location of buildings (residences and other structures) to achieve aesthetic goals and assure a minimum amount of undeveloped land. These methods are limits on the proportion of a lot that is used as a site for permanent structures ("lot coverage"); the setback from the property lines; and height and floor area ratios that establish the maximum square footage of residential structures based on a percentage of the total lot area.

These limits are often used in various combinations, sometimes as alternative standards. For example, setbacks alone without a separate lot coverage limit can effectively create a lot coverage maximum. The failure of some ADU ordinances to result in the production of ADUs can be traced back, in part, to these requirements, especially the unintended interaction between those regulations.

Before adoption of these requirements for ADUs, local governments may benefit from analyzing the combined effect of these regulations on a representative set of lots in each zone. In addition to determining whether the effect is to make it physically impossible to build a detached (or attached) ADU on some lots, the local government should estimate the return on investment on that portion of the lots where ADU construction is allowed. This will provide some idea of the strength of the potential market incentive for ADU construction.

However, the analysis needs to reflect that the homeowners building ADUs are often considering both a market return and nonmarket returns. For example, assume the desired ADU is intended to meet the needs of an older relative with mobility limitations. A 500-square-foot structure would be small but sufficient. But if the overlapping regulations on lot coverage and setbacks mean the structure would need to have two stories in order to provide 500 square feet of living space, then this kind of structure might generate a good rental return but would not meet the needs of the intended resident.

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## **D. Lot Coverage Limits**

Coverage limits can be applied to all structures on a lot, combined (e.g., primary house, detached garage, garden shed, ADU); all accessory structures combined, including an ADU; or a separate lot coverage applicable just to detached ADUs that are not part of another accessory structure. Lot coverage allowances and limits intersect not only setbacks but floor area ratio limits and height limits. If detached or attached ADUs are significantly constrained by a lot coverage limit, then the possibility of having a two-story ADU may determine whether the investment in an ADU will generate a big enough return to justify its construction.

Steep slopes and impacts on stormwater runoff may require differences in lot coverage allowances for some sites.

Some communities are under consent decrees entered into with the U.S. Environmental Protection Agency to address stormwater discharges. These consent decrees, which set standards for the maximum proportion of a lot that can be covered with impermeable surfaces, must be incorporated into local standards. Requiring or allowing the use of permeable pavers, which can be exempted from lot coverage calculations, helps address those standards. These consent decrees are another good reason not to require on-site parking.

Whenever possible, limitations on lot coverage should be addressed at the planning stage (for example, through the use of overlay districts) rather than being determined and applied in the permitting process. Siting and design standards that help meet performance standards for building safety and stormwater runoff can be determined and adjusted at the permitting stage for these kinds of sites. That is preferable to a complete prohibition.

An accessory dwelling unit (detached, attached or built by expanding the footprint of an existing dwelling) on a lot of 4,000 square feet or larger shall not occupy more than 15% of the total lot area. For single family lots of less than 4,000 square feet, the combined lot coverage of the primary dwelling and the accessory dwelling shall not exceed 60%. Accessory dwelling units built within the footprint of existing, legal accessory structures are considered not to have changed existing lot coverage.

## **E. ADU Setbacks**

- (1) A setback of no more than 4 feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and with the same dimensions as an existing structure.
- (2) No setback shall be required for an existing garage living area or accessory structure or a structure constructed in the same location and with the same dimensions as an existing structure and converted to an accessory dwelling unit or to a portion of an accessory dwelling unit.
- (3) A detached accessory dwelling unit is not permitted on the front half of a lot, except when located a minimum of 30 feet from the front line or if it falls within the provision of subsection (2).

*Adapted from California Government Code 65852.2(a)(D)(vii) and Los Angeles Metropolitan Code 12.22 A.33(d)(3).*



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## **F. Floor Area Ratios**

*Floor area ratios (FARs) qualify the relationship between the size of a lot and the maximum square footage that can be built on the lot. A FAR can be written as, for instance, 0:75 to 1, 0.75 or 75. FARs are commonly used in commercial districts, like downtowns, but sometimes are applied to residential zones. For example, a FAR of 0.75 applied to a 5,000-square-foot lot would allow for a maximum of 3,750 square feet of residential living space. The most common substitute for FARs is a zonewide maximum square footage for homes.*

*FARs have advantages as a method for regulating ADUs because they provide more flexibility about the size of the ADU, whether internal, attached or detached. They also lend themselves to bonus provisions that allow for ADUs or types of ADUs that achieve goals concerning housing production, affordability and the like.*

*Many local governments do not include the area of a below ground basement in the FAR limitation. This exclusion makes sense when applied to basement ADUs. In the absence of this kind of provision, the design of basement ADUs can include strange elements, like a small storage area usable only by the upstairs primary dwelling, in order to reduce the square footage of the ADU in an effort to conform to the maximum-size regulation.*

*The Model Local ADU Ordinance does not propose provisions on the topic because of the wide variety of variations possible and potential complexity when combined with other siting standards. But readers interested in how FARs can be tailored to accommodate and promote a variety of housing types, may wish to consider the application of FARs developed through the residential infill project in Portland, Oregon (2016–2020). Portland sharply reduced the maximum size of single-family dwellings but allowed additional FAR for additional units.<sup>37</sup>*

## **G. ADU Height Limit**

The maximum height of an Accessory Dwelling Unit is 25 feet or the height of the primary residence, based on the highest point of its roof compared with the lowest point of ground level at the foundation, whichever is less.

*Adapted from Charlottesville, Virginia, Municipal Code Sec. 34-1171.(3).*

## **H. Architectural Consistency and Design Review**

*Concern about the consistency of detached ADUs with the design of residential architecture in the neighborhood has translated into a variety of standards and procedures. Highly discretionary standards based on neighborhood “character” or “quality” can be serious obstacles to the construction of ADUs. Vague standards of that sort hamper homeowners and decisions-makers alike. They can become an avenue for channeling neighborhood objections to ADUs in general.*

*In some cases, the prescriptions for particular designs and materials can also add considerably to the cost of an ADU. A better approach is to reduce key design elements to a set of objective standards governing roof pitch, window orientation and siding. In some cases, design standards only apply in certain districts or when the ADU is larger than a specified height or taller than one story.*

*Some cities are experimenting with standardized, preapproved designs for ADUs that do not require the same level of regulatory review. This approach can be used to encourage the use of designs that fit comfortably within the prevailing aesthetic of neighborhoods.*

*As has been noted in other parts of the Model Local ADU Ordinance, with regard to design standards ADUs →*

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should be held to the same standards as primary dwellings. If bold new architectural designs are allowed for primary residences, then it does not make sense to require an ADU to look like a craftsman bungalow.

For this reason, the Model Local ADU Ordinance recommends against establishing separate architectural or design standards for ADUs.

## **I. Orientation of Entrance**

Many ADU regulations limit the location and design of the entrance to the ADU.

While presented as a matter of aesthetics, an ADU entrance on the same side of the house as the main entrance may be considered objectionable because it advertises the existence of a second dwelling, which is taken as detrimental to the single-family-dwelling “character” of the neighborhood. This is evident in communities that allow direct access into different levels of the house (daylight basement or French doors for a bedroom) or stairs to outside decks but prohibit entrance doors and stairways accessing ADUs. Ironically, some of these places have policies promoting ADUs and requiring notice to the neighbors before an ADU can be built, yet also have a code provision intended to hide the entrance to the ADU. These requirements can compromise the design and increase the cost of the ADU, substituting a more awkward and expensive entrance.

Following the general principal of treating ADUs like the primary dwelling, the authorization and location of access doors and stairs for detached and attached ADUs should be the same as for primary dwellings.

Regulations governing the location, type and number of entrances into primary dwellings apply to ADUs.

## **J. ADU Screening, Landscaping and Orientation**

Privacy is a major concern of neighbors, but ADU regulations addressing privacy were/are relatively rare. In some cases, the loss of privacy caused by an ADU is identical to the loss of privacy that would result from the construction or remodeling of an adjacent home. Sometimes the loss of privacy is caused by the removal of trees or shrubbery necessitated by the construction of the ADU. Again, this loss of screening vegetation for the primary dwelling is often not regulated. Thus, it should not be regulated with ADUs.

## **K. Parking Requirements**

Many local governments require one or more off-street parking spaces for each ADU. This is a serious inhibition to the construction of ADUs for two reasons. First, the cost of creating off-street parking spaces.<sup>38</sup> Second, the lot size, location of the primary residence and topography may make the creation of a parking space impossible.<sup>39</sup>

The impact of parking requirements on ADU production is suggested by the results of a 2018 survey of California cities with ADU regulations. Out of the 168 cities, 68% reported having minimum off-street parking requirements for ADUs. Prior to the 2017 California legislation that eliminated off-street parking within a half-mile of transit, localities receiving frequent ADU applications were much more likely to lack off-street parking requirements (31% versus 13%).<sup>40</sup>

Given the general oversupply of parking<sup>41</sup> and its impacts on home prices and rents (and more generally urban development and redevelopment) minimum parking requirements are being reconsidered and reduced. Hartford, Connecticut;<sup>42</sup> Buffalo, New York;<sup>43</sup> and Edmonton, Alberta,<sup>44</sup> are among the cities that have eliminated most or all minimum parking requirements. Other cities have reduced or eliminated parking requirements for different types of housing.<sup>45</sup> →

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No additional off-street parking is required for construction of an ADU. If the construction of the ADU necessitates the removal of an existing off-street parking space, it must be replaced on-site if required by the underlying zoning. In lieu of an on-site parking space, an additional on-street parking space may be substituted if there's already sufficient curb area available along the frontage for a parking space or by removing the parking space access ramp and reinstalling the curb.

*Based on Seattle Land Use Code 23.44.041 A.5.*

## **L. Short-Term Rentals**

*Many cities and residents are concerned about the use of homes, apartments and ADUs for short-term rentals, especially in regions, cities or districts that are tourist destinations. Use of these dwellings for short-term rentals can remove existing housing from the supply available for residents, worsening affordability and introducing commercial-use types of impacts in residential areas. Short-term rentals are often a major subject of debate in high-amenity areas where the return on investment in an ADU used for short-term rentals is much higher than from those used for long-term housing.*

*But the exact the same concerns apply to the short-term rental use of primary dwellings. If short-term rental regulations or prohibitions are adopted they should apply to all housing in the jurisdiction or zone, not just ADUs. Many ordinances already have such limitations or prohibitions on the use of homes as transient lodging in their land use regulations, and those could be extended to ADUs. However, the following are examples of counterarguments in support of the short-term rental use of ADUs (and primary dwellings):*

- The high return from short-term rentals spurs the construction of more ADUs than would otherwise occur, and these ADUs will, over time, convert into long-term rentals or other uses.*
- The goals of ADU authorization are wealth creation and allowing seniors to stay in their homes, and the high return from short-term rentals helps realize those objectives.*
- Survey research shows that ADU owners value the flexibility of ADUs. If the owner loses a job, she may cope by turning her home office in the ADU into a short-term rental. If an elderly parent living in an ADU moves to a nursing home, the owners can then rent out the ADU as a short-term rental to pay the nursing home costs.*

## **M. Separate Sale of ADUs**

*Most accessory dwelling unit ordinances are silent on the separate sale of the units as condominiums. A few prohibit this practice. The policy basis for these restrictions seems to be a concern that allowing ADUs to be sold as condos will fuel speculative redevelopment of existing housing in high-cost neighborhoods.*

*In addition, neighbors and local officials fear the prospect of both units being rental units, which is the basis for the owner occupancy requirement. On the other hand, neighbors who have concerns about having rental units nearby might logically prefer an owned ADU to a rented ADU.*

*Property owners and developers in Austin, Texas, determined that state law authorizes the separate sale of ADUs as condominiums. Developers subsequently began to purchase single-family homes, build ADUs (called Auxiliary Dwelling Units) on the lots, then sell the ADU condominiums and primary residences separately. Only some lots and homes are appropriate, however — typically those with alley access, because of the requirements for separate access and parking. As of the writing of the second edition of the Model Local ADU Ordinance, builders in Austin are contacting homeowners about forming a condo association with them and buying backyards as sites for the second homes. →*

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Vancouver, British Columbia, allows the separate sale as “strata” (condominium) units alley-fronting “coach houses” on lots with “character” homes (certain ones built before 1940 that are not on a historic register) as a financial incentive to carry out major upgrades needed to bring homes up to current building codes.<sup>46</sup>

“Condominium” refers not to a type of structure but a form of ownership in which an agreement among the parties defines separate and common areas and establishes standards and procedures governing the common areas. Allowing ADUs to become separately owned condominium units avoids the political reaction of authorizing land divisions to create separate lots for ADUs. But fee simple ownership is less complicated and easier to finance and sell than condominiums. As a matter of terminology and logic, it would be confusing to call a detached dwelling “accessory” to a principal dwelling if that dwelling is on a separate lot with separate ownership.

The Model Local ADU Ordinance leaves this policy question open, providing as alternatives the allowance of and prohibition of the separate sale of ADUs.

## **N. Owner Occupancy (Residency) Standards**

Requirements that the owner live on the same property (whether in the primary dwellings or the ADU) are pervasive. The 2000 edition of the AARP Model Local ADU Ordinance noted: “Many communities monitor ADUs to ensure that the owner still lives on the premises. A variety of methods are used to do this monitoring including registration of occupants, certification of occupancy, and annual licensing of rental units with annual inspections. Other communities require ADU owners to record the requirements of the ADU ordinance as deed restrictions, particularly the owner-occupancy requirement. The deed restrictions accompany the title of the property and give notice to all subsequent buyers of the occupancy requirement.”

Owner occupancy covenants or conditions give pause to homeowners or institutions financing home purchases because of the limits they place on successive owners who will not be able to rent out or lease their main house, which might be necessary as a result of a divorce, job transfer or death. They can also make financial institutions reluctant to provide financing for construction of the ADU. Finally, because a covenant or condition serves as a restriction on a mortgage lender’s security interest in the property, the mortgage lender can withhold consent to any requirement that takes the form of a covenant, which means the local government would be required to deny the application to build an ADU.<sup>47</sup>

The practical impact of the occupancy requirement is to inhibit construction of most ADUs. That conclusion is reflected in amendments to California’s and Oregon’s ADU legislation and in Seattle’s 2019 local code revisions.

Aside from its effect on ADU production, there is a problem with the logic and fairness of applying an occupancy standard to ADUs if there is no such requirement for single-family homes generally. If single-family homes can be rented out (by a nonresident owner), then what is the policy basis for requiring occupancy when there is an ADU on the property?

One of the justifications for the owner occupancy requirement is the assertion that owners take better care of their property than nonresident owners. But there are certainly resident homeowners who do not take care of their property and nonresident owners who keep their property in excellent condition.

The 2020 Model State ADU Act treats ADUs as an equal and important type of housing that, in general, should be subject to the same set of rules that governs the use of other housing. ADUs should not be treated as an inferior form of housing that requires additional restrictions and policing. Authorizations of or prohibitions on renting out →

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*dwelling should be applied consistently to ADUs and other homes; if there is no owner occupancy requirement for primary residences, there should be none for ADUs.*

## **O. Other Common Standards Not Recommended for Application to ADUs**

*The following commonly used standards are no longer recommended for inclusion in ADU ordinances:*

- *Density of ADUs in a zone or district*
- *Age of principal dwelling*
- *Size of principal dwelling*
- *Tenure of current owner*
- *Number, age, relationship and physical condition of persons who can live in the ADU*
- *Annual renewal and monitoring of permits*
- *Owner occupancy/residency on the same property*

## **III. Utility Connections and Building Codes**

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### **A. Utility Connections**

New or separate water and sewer lines directly between the accessory dwelling unit and the trunk lines are not required unless the accessory dwelling unit is constructed before or in conjunction with a new single-family dwelling. Applicants may choose to use a shared water meter for the primary structure and the ADU or have a separate water meter installed for each.

*A best practice for municipalities is to not require new, dedicated lateral services from the utility/right-of-way to the property. These utilities include water, sewer, electric, and gas connections.*

*Commonly, water and sewer services are provided in part by governmental agencies, whereas electric and gas utilities are commonly provided by private energy providers.*

*Ideally, energy providers do not require ADUs to have a dedicated lateral service connection from the right-of-way to an ADU, as new connections often cost several thousand dollars. However, when energy utilities are publicly owned, then the same principle should apply.*

### **B. Local Building Codes**

*Since many garages and basements weren't built to today's earthquake or frost line standards, requiring that a structure meet current code may effectively require demolition and new construction, thereby eliminating a realistic or feasible option for a structural conversion.*

*Permitted, nonconforming structures should be allowed to change their use from a nonhabitable use to a habitable use without a conditional use permit or special exception from the building code, even if the structure does not meet current structural standards. This is commonly referred to as "grandfathering in" existing structures. This policy is critical in enabling structural conversions.*

*There are several other key considerations for internal conversions related to existing ceiling heights and →*

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existing stairwells. In general, the goals should be to allow existing spaces to have reduced building code thresholds for numerous building code standards.<sup>48</sup>

The Portland, Oregon, guide to “Converting Attics, Basements and Garages to Living Space” makes internal conversions of living space to create ADUs more feasible by adjusting several elements of building codes:

- Ceiling heights
- Exceptions to ceiling heights for beams, heating ducts, pipes
- Sloped ceilings
- Existing stairs
- Noncompliant stairs
- Stair landings
- Firewall separation

Achieving higher energy efficiency in buildings is a critical strategy for reducing greenhouse gases. But it can increase the cost or reduce the design feasibility of ADUs created by conversions of existing space.

Conversions of basements and garages to ADUs are typically the most common type of ADU conversion. In the past, homes and garages were built with 2"x 4" stud walls versus the 2"x 6" framing used today, which accommodates much thicker insulation.

Requiring a conversion to meet today's energy standards may require the replacement of all of the existing stud walls to provide sufficient wall cavity space to accommodate sufficient insulation and meet modern energy code. This interior stud wall or additional 2" wall furring or exterior rigid foam insulation can add substantially (\$5,000 to \$20,000 in the Portland market in 2020) to construction costs and reduce the interior size of the living space of an already small dwelling.

If the effect of these energy standards is that more large homes or new apartments are constructed the net effect might be to increase energy consumption in order to heat and cool the larger spaces and because of the embedded energy in the materials used for new construction.

## **IV. ADU Application and Review Procedures**

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There are many potential procedural challenges facing ADU applicants: complex regulations, complicated application forms and procedures, vague and discretionary standards that must be addressed by the applications, the length and complexity of the procedures for acting upon an application, and appeals from the initial decision on the application.

### **A. Application Process**

Zoning regulations, even in small jurisdictions, are almost inevitably complicated. Even in mid-sized cities they can run to hundreds of pages. Unlike developers and homebuilders, many applicants for ADUs don't have the resources to hire an attorney or consulting planner for more than a few hours to help them navigate the regulations and application process. In response, many local governments have developed simplified application forms, guidebooks, and online tools to determine whether and how an ADU can be sited on a property. This is a best practice recommended by AARP. See the Resources section for links to some examples. With the authorization and construction of more ADUs, more private sector specialists in ADU permitting are helping to fill this need.



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## **B. Clear and Objective Versus Discretionary Standards**

*Vaguely worded standards contribute to the difficulty of securing ADU permits and may even inhibit homeowners from applying for a permit. Particularly problematic are standards that leave a great deal of discretion to the zoning administrator or require extensive interpretation. Even an apparently objective standard such as a 25-foot height limit requires the exercise of considerable discretion if the ADU roof has different elevations and the ground slopes in different directions.*

*AARP recommends using only clear and objective standards to govern ADUs.<sup>49</sup> A best practice is to use expert advice to prepare and test language to ensure that it is clear enough to be administered fairly and easily.*

## **C. Review Procedures**

*The two basic options available to a community are to allow ADUs “by right” or to allow ADUs through conditional use permits (sometimes called special exception, special permit, or special land use).*

*“By right” means that the process involves filling out an application and presenting it to a local building official or zoning administrator, then checks to see that it meets the requirements of the ordinance. If the standards are clear and objective, no discretionary decision-making is involved and thus no hearing is necessary. This is also called a “ministerial” review.*

*This is the way building or remodeling a home or building an accessory structure is typically treated. By contrast a conditional use permit process typically involves the application of discretionary standards, public notice of the application and a public hearing.*

*Discretionary standards combined with a public hearing process create opportunities for obstruction by neighbors or organizations opposed to new housing in an established neighborhood. The cost of hiring attorneys or other experts and the delays associated with hearings and appeals can easily exhaust the budget and patience of even an affluent ADU applicant.*

*These obstacles have led many local and state governments to decide that ADUs should be a use allowed by right and subject only to ministerial review. Some have also imposed time limits for decisions on ADUs. (Some governments apply these requirements to other types of housing.)*

*The Model Local ADU Ordinance takes the position that building an ADU should be treated the same way as building or remodeling a home or building any accessory structure — it is a ministerial matter decided by a zoning administrator without notice or opportunity for a hearing.*

## **D. Appeals of ADU Decisions**

*Many local zoning ordinances allow for initial decisions on ADU applications by a zoning administrator to be subject to internal appeals — to a hearing officer, the planning commission or a local governing body. Some local governments allow up to two internal appeals.*

*The final local government decision on an ADU, or other land use matter, may be followed by an appeal to the judicial system. There are many variations on internal appeal procedures, for example whether the scope of review is limited and who qualifies as a party to such an appeal. →*

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*The Model Local ADU Ordinance obviates the need for detailing these provisions by making the ministerial decision the final local government decision, reviewable by the courts subject to the standards and procedures generally applicable to judicial review of local government decisions. This is consistent with the default procedural provisions in the Model State ADU Act.*

The zoning administrator's decision on an application for an Accessory Dwelling Unit constitutes the final decision of [name of local government].

## **V. Fees**

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In addition to construction cost, regulatory standards and procedures, homeowners interested in building an ADU must consider permit processing fees, system development charges (to fund a share of capital improvements, such as water lines, sewage treatment capacity, schools and parks), and utility connection upgrades and charges.

*The average local government fee for development of an ADU in California in the late 2010s was \$9,250.<sup>50</sup> In established neighborhoods where ADUs are being added, system development charges designed to pay for capital improvements may not be as appropriate if existing capital improvements are already adequate to handle a modest increase in residential population. Many older neighborhoods have a lower population density than when they were built and household sizes were larger.*

*Another approach is to offer fee processing waivers for homeowners who use preapproved ADU designs.*

*Waiving or reducing fees can incentivize ADU construction. Portland, Oregon, saw a surge in ADU applications when it offered to temporarily waive up to \$15,000 in system development charges that would have applied to ADUs; ADU permits tripled from about 200 per year to 600 per year.<sup>51</sup>*

*The Model Local ADU Ordinance follows the Model State ADU Act in limiting charges for ADUs to 30% of the charges applied to a single-family residence.*

Permit application and review fees, utility hook-up fees and charges for public improvements for accessory dwelling units shall not be more than 30% of the application fees for a typical single-family dwelling unit of 2,000 square feet or greater than 10% of the estimated construction costs for the ADU, whichever is less. Additional amounts may be charged for a variance but subject to the overall maximum fee limit of 30% of the fees charged for a typical single-family residence of 2,000 square feet. The information required on applications for creating or legalizing ADUs shall be the same information required to construct a single-family-dwelling unit.

## **VI. Legalizing ADUs**

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*An illegal ADU is one installed without obtaining the required permits from the local government.*

*Some ADUs existed prior to any ordinance that made them illegal. Local governments generally have the discretion to certify those ADUs as legal, nonconforming ADUs if they conformed to building codes in effect at the time of their construction. To this end, California has adopted legislation allowing that “the appropriate enforcement official may make a determination of when a residential unit was constructed and then apply the California Building Standards Code and other specified rules and regulations in effect when the residential unit was determined to be constructed for purposes of issuing a building permit for the residential unit.” →*



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*Other ADUs that were nonconforming may be made conforming by subsequent code revisions, such as those proposed in the Model Local ADU Ordinance, and an application and receipt of a permit.*

*The continued existence of illegal ADUs may actually be encouraged by harsh regulations, excessive fees and tedious application procedures.*

*Many ADU owners strongly resist legalization out of a fear of higher (and possibly unaffordable) property taxes, fines, legal sanctions, income taxes on rental income, the costs of conforming to local codes and the possibility that code inspectors will discover a variety of code violations.*

*For these reasons, programs to accommodate illegal ADUs have not been very successful. In addition, most communities have limited budgets for enforcing ADU regulations, meaning that code enforcement relies on specific complaints. Thus, most communities simply ignore illegal ADUs.*

*Especially challenging are the large numbers of unpermitted units in working class and poor neighborhoods with high housing costs. The number of unpermitted units can be so great that they cannot be treated as a minor compliance problem that can be remedied quickly.*

*In these places, unlike in many other neighborhoods, water and sewer systems are overtaxed due to high population densities and low revenue from system development charges over time (given that most of the added units are unpermitted). A grant program or long-term investment strategy is needed to allow for infrastructure capacity and state-of-good-repair upgrades.*

*Regulations imposed on units applying for amnesty in these areas need to distinguish between matters of true health and safety (adequate egress, electrical wiring, light, ventilation, etc.) and other concerns (parking, setbacks, building heights, etc.).*

*Amnesty should not be an all-or-nothing process. There should be some sort of mechanism for graduated compliance over time (perhaps several years), with the most urgent life-and-death conditions being fixed first and others later.*

*Onerous utility-related requirements (such as fully separate water and sewer main connections) may be counterproductive. Many or most homeowners going through amnesty will need technical assistance and perhaps grant funding. Grant funding should be justified on the basis of an amnesty ADU typically costing far less than the city subsidies needed for a below market new construction housing unit.*

*There are many entities, such as nonprofits and university planning and architecture departments, with which a city can partner for technical assistance.*

*A city can also require affordable rent concessions as a condition of amnesty, at least for middle- and higher-income homeowners.*

*Some benefits accrue to communities that legalize illegal ADUs. If illegal units are tolerated, the risk increases that other people will be encouraged to have illegal units. In this instance, it can be quite important for community leaders to make the statement through ADU regulation that they are committed to the public interest, as demonstrated by requirements that owners of illegal ADUs come forward and legalize their units, coupled with a commitment to the kinds of funding and assistance programs for moderate- and low-income homeowners →*

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*of the type described previously. Legalizing illegal ADUs provides the opportunity to correct safety hazards, such as inadequate electrical wiring.*

*We recommend against harsh regulations, lengthy application processes and high fees, which will lead to even more illegal ADUs. We recommend publicizing the opportunity for amnesty for ADUs made compliant as a result of amendments to local ordinances, nonpunitive safety inspections when public health is threatened, amnesty periods from enforcement, extended periods to comply with regulations, exemption from all but safety regulations, a comprehensive long-term approach to code compliance in moderate-income neighborhoods, and reliance on the threat of stiff penalties only after all else has failed.*

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## Endnotes

- 1 See *MissingMiddleHousing.org*.
- 2 Find the average size of a single-family home, the square footage per person, the number of new homes that began construction and gross domestic product per person, starting in 1920. “Size of a Home the Year You Were Born,” Evan Comen, Michael B. Sauter, April 5, 2019, *247wallst.com*
- 3 “California ADU Growth by City from 2012–2019, Charted,” August 22, 2020, *BuildingAnADU.com*..
- 4 Kol Peterson, *AccessoryDwellings.org*.
- 5 “Housing Vancouver,” City of Vancouver, Progress Report and Data Book to Council (June 2020), pages 7, 8, 25. *Vancouver.ca*.
- 6 Jessica Lee, Greta Kaul, “ADUs Were Supposed to Help Minneapolis’ Housing Crunch. How’s That Working Out?” May 1, 2019, *MinnPost.com*.
- 7 Revised Code of Washington 43.63A.215.
- 8 California Government Code 65852.150.
- 9 New Hampshire RSA 674:71-73.
- 10 Oregon Revised Statutes 197.312(5).
- 11 § 45-24-37 (limited to use by persons over 62 or with disabilities).
- 12 24 Vermont Statutes Annotated Section 4412 (E).
- 13 The revisions made as the result of passage of one Senate and five Assembly bills are summarized in the California Department of Housing and Community Development’s *Accessory Dwelling Unit Handbook*, pages 4–7 (September 2020).
- 14 Oregon Revised Statutes 197.312(5)(b)(B), 455.610(8), (9) as amended or added by Oregon House Bill 2001 (2019), *HCD.ca.gov*.
- 15 Vermont Senate Bill 237 signed by the Governor and effective October 12, 2020, amending 24 Vermont Statutes Annotated §4412(1)(E), 24 Vermont Statutes Annotated § 2291(29) and 27 Vermont Statutes Annotated §545.
- 16 2019 Florida Statutes online §163.31771.
- 17 30-A Maine Revised Statutes Annotated §4301, sub-§1-B.
- 18 Hawai’i Revised Statutes §46-4(c).
- 19 *Accessory Dwelling Unit Legislation: An Overview of State Policy*, American Planning Association (APA) and AARP, 2021.
- 20 ADU Program Guide, City of Portland, Oregon, March 2019, *Portland.gov*..
- 21 City of Portland, Oregon, “Converting Attics, Basements and Garages to Living Space,” February 2019, *Portland.gov*
- 22 Here is an excerpt from a 2018 letter sent from a bank to a prospective borrower. It discusses an owner occupancy covenant on the property that would be required as a condition of approval for construction of an ADU: “I have reviewed the Accessory Dwelling Unit Covenant and as a lender I have a number of concerns: 1. The covenant does not provide the lender with protections in the case of a foreclosure or deed in lieu of foreclosure as the restriction will affect marketability of the property. The covenant requires at least one of the units be owner-occupied. In a market where there is a demand for investment property, this limits the pool of potential buyers thus affecting the sales price and marketability of the property. A potential homeowner or home purchaser may have a difficult time obtaining conventional financing with this deed restriction; 2. Your covenant states that the owner needs to occupy the residence, if the lender forecloses the lender can clearly not occupy the property and will be in violation of your proposed covenant.” Another example is provided by a reply to a request from homeowners asking their mortgage lender to consent to an owner occupancy covenant, which was required by the local government as a condition of approval of an ADU that the homeowners hoped to build. The mortgage lender replied: “The proposed Accessory Dwelling Unit Covenant would place certain limitations on this property, and as such could be construed as a transfer of interest in the property. [The bank] is not able to provide consent to such transfer at this time.”
- 23 24 Vermont Statutes Annotated § 4412 (1)(F)(2) and 24 Vermont Statutes Annotated § 2291(29) as amended by Sections 1 and 3 of Vermont Senate Bill 237, signed by the Governor and effective October 12, 2020.

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- 25 “Accessory Dwelling Units,” City of Burlington, Vermont, *BurlingtonVT.gov*.
- 26 The cost to put in a new driveway averages \$4,421, with a typical range between \$2,379 and \$6,472. A customer can expect to pay \$2 to \$15 per square foot for materials and installation. (“How Much Does a Driveway Cost?” *HomeAdvisor.com*, checked December 21, 2020). A 10-foot-wide driveway 60 feet in length would cost between \$1,200 and \$9,000, using these cost-per-square-foot numbers. | Kol Peterson, author of *Backdoor Revolution: The Definitive Guide to Accessory Dwelling Unit Development*, estimates the cost range as \$2,500 to \$15,000, depending on whether the additional driveway requires excavating and pouring a new pad on a flat surface next to the street or if it calls for a new curb cut and new landscaping.
- 27 Research conducted for Oregon’s House Bill 2001 (2019), which mandates the authorization of middle housing in single-family residential zones), found “[o]n small lots, even requiring more than 1 parking space per development creates feasibility issues because it limits the potential building footprint.” *EcoNorthwest* (2020), *Summary of Triplex/Fourplex Financial Feasibility Sensitivity Testing for Middle Housing Model Code*, *Oregon.gov*.
- 28 “Regulating ADUs in California: Local Approaches & Outcomes,” Deirdre Pfeiffer, University of California, Berkeley, Turner Center for Housing Innovation (2018), *CaliforniaLandUse.org*.
- 29 Professor Donald Shoup of the University of California, Los Angeles (UCLA), calculates that the U.S. has 2 billion parking spaces for 250 million cars and light trucks and that more land has been set aside for housing cars than housing people. “Parking Is Sexy Now. Thank Donald Shoup,” Bloomberg News CityLab, May 20, 2018, *Bloomberg.com*.
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- 33 For example, City of Oakland, California, Oakland Planning Code (as amended through June 2020), 17.116.060, “Off-Street Parking: Residential Activities” (no parking required for single family and multifamily residences in many zones): City of Portland, for sites within 1,500 feet of a transit stop, “The minimum number of required parking spaces for a site with a Household Living use is: (1) Where there are up to 30 dwelling units on the site, no parking is required; (2) Where there are 31 to 40 dwelling units on the site, the minimum number of required parking spaces is 0.20 spaces per dwelling unit”; Portland City Code, Title 33, Planning and Zoning 33.266.110, “Minimum Required Parking Spaces,” as of October 2020.
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- 38 The cost to put in a new driveway averages \$4,421, with a typical range between \$2,379 and \$6,472. A customer can expect to pay \$2 to \$15 per square foot for materials and installation. (“How Much Does a Driveway Cost?” *HomeAdvisor.com*, checked December 21, 2020). A 10-foot-wide driveway 60 feet in length would cost between \$1,200 and \$9,000 using these cost-per-square-foot numbers. | Kol Peterson, author of *Backdoor Revolution: The Definitive Guide to Accessory Dwelling Unit Development*, estimates the cost range as \$2,500 to \$15,000, depending on whether the additional driveway requires excavating and pouring a new pad on a flat surface next to the street or if it calls for a new curb cut and new landscaping.
- 39 Research conducted for Oregon’s House Bill 2001 (2019), which mandates the authorization of missing middle housing in single-family residential zones, found “[o]n small lots, even requiring more than 1 parking space per development creates feasibility issues because it limits the potential building footprint.” *EcoNorthwest* (2020), “Summary of Triplex/Fourplex Financial Feasibility Sensitivity Testing for Middle Housing Model Code,” *Oregon.gov*.
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- 45 For example, City of Oakland, Oakland Planning Code (as amended through June 2020), 17.116.060, “Off-Street Parking: Residential Activities” (no parking required for single-family and multifamily residences in many zones): City of Portland, for sites within 1,500 feet of a transit stop, “[the] minimum number of required parking spaces for a site with a Household Living use is: (1) Where there are up to 30 dwelling units on the site, no parking is required; (2) Where there are 31 to 40 dwelling units on the site, the minimum number of required parking spaces is 0.20 spaces per dwelling unit,” Portland City Code, Title 33, Planning and Zoning 33.266.110, “Minimum Required Parking Spaces,” as of October 2020.
- 46 Details can be found at *Vancouver.ca/home-property-development/retain-your-character-house.aspx*.
- 47 Here is an excerpt from a 2018 letter sent from a bank to a prospective borrower. It discusses an owner occupancy covenant on the property that would be required as a condition of approval for construction of an ADU: *“I have reviewed the Accessory Dwelling Unit Covenant and as a lender I have a number of concerns: 1. The covenant does not provide the lender with protections in the case of a foreclosure or deed in lieu of foreclosure as the restriction will affect marketability of the property. The covenant requires at least one of the units be owner-occupied. In a market where there is a demand for investment property, this limits the pool of potential buyers thus affecting the sales price and marketability of the property. A potential homeowner or home purchaser may have a difficult time obtaining conventional financing with this deed restriction; 2. Your covenant states that the owner needs to occupy the residence, if the lender forecloses the lender can clearly not occupy the property and will be in violation of your proposed covenant.”* Another example is provided by a reply to a request from homeowners asking their mortgage lender to consent to an owner occupancy covenant, which was required by the local government as a condition of approval of an ADU that the homeowners hoped to build. The mortgage lender replied: *“The proposed Accessory Dwelling Unit Covenant would place certain limitations on this property, and as such could be construed as a transfer of interest in the property. [The bank] is not able to provide consent to such transfer at this time.”*
- 48 “Converting Attics, Basements and Garages to Living Space,” City of Portland, 2019, *Portland.gov*.
- 49 Because of the uncertainties created for approval of housing, Oregon has, since the 1980s, required local governments to use only clear and objective standards to review needed housing. Oregon Revised Statutes 197.307(4).
- 50 “Regulating ADUs in California: Local Approaches and Outcomes,” Deirdre Pfeiffer (2018), University of California, Berkeley, Turner Center for Housing Innovation, *CaliforniaLandUse.org*.
- 51 *When the waiver was made permanent for ADUs that were subject to a prohibition on short-term rentals the volume declined as the deadline was removed, but remained at more than 300 per year.*



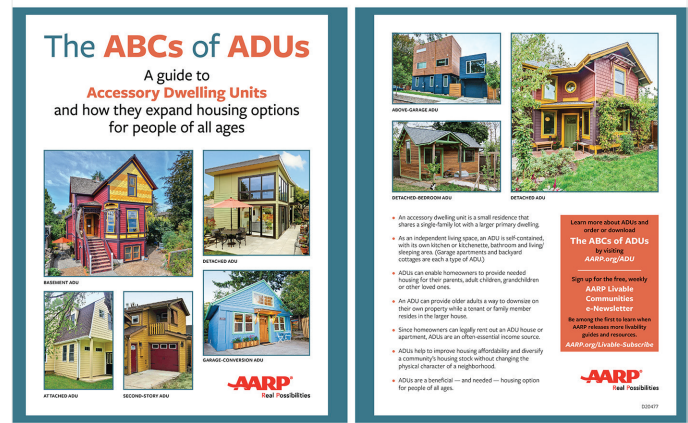
## LEARN MORE

# Two free publications about how ADUs expand housing options for people of *all* ages

### ■ *The ABCs of ADUs*

## A Guide to Accessory Dwelling Units and How They Expand Housing Options for People of All Ages

A primer for elected officials, policymakers, local leaders, homeowners, consumers and others, *The ABCs of ADUs* is an award-winning, 20-page introductory and best-practices guide for how towns, cities, counties and states can include ADUs in their mix of housing options.



### ■ *Accessory Dwelling Units*

## A Step by Step Guide to Design and Development

Featuring ADU policies and projects from Austin, Texas; Denver, Colorado; Oakland, California; and Washington, D.C., this 113-page Accessory Dwelling Units design catalog contains information about financing and budgeting for an ADU project as well as visuals that show how ADUs can be easily designed to serve people of differing ages and abilities.

Visit [AARP.org/ADUs](http://AARP.org/ADUs) to download or order these free guides and find links to other ADU resources, including this publication.



## AARP Livable Communities

Website: [AARP.org/Livable](http://AARP.org/Livable)

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[AARP.org/FutureOfHousing](http://AARP.org/FutureOfHousing)

Twitter: [@AARPPolicy](https://twitter.com/AARPPolicy)

Interactive Tool: [AARP.org/LivabilityIndex](http://AARP.org/LivabilityIndex)





## ACKNOWLEDGMENTS

Late in the last century, the AARP Public Policy Institute asked the American Planning Association to develop model legislation (a state statute and a local ordinance) that would assist AARP volunteer leaders and other interested residents, planners and government officials in evaluating potential changes to state laws and local zoning ordinances in order to encourage the wider availability of ADUs.

This update of ***Accessory Dwelling Units: Model State Act and Local Ordinance*** was produced by members of the AARP State Advocacy & Strategy Integration group:

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# ▶ **A**CCESSORY **D**WELLING **U**NITS

## **Model State Act and Local Ordinance**

Model State Act and  
Local Ordinance



**ADUs are an affordable, accessible housing option for people of all ages. This resource was created for use by state and local leaders and other interested citizens, planners and government officials to evaluate potential changes to state laws and local zoning codes.**

**Learn more and download this guide by visiting**

***[AARP.org/ADUs](https://www.aarp.org/ADUs)***

Illustration from *Accessory Dwelling Units: Model State Act and Local Ordinance*, published in 2000 by AARP and the American Planning Association.