



Accessory Dwelling Units

Purpose:

Allowing accessory dwelling units – also called granny flats, casitas, backyard cottages, or basement apartments – through administrative approval (by right) anywhere single family dwellings are allowed. Benefits include: providing more housing options at different price points, and allowing people to expand their housing choices. An ADU might add rental income to make ends meet, help a household pay their mortgage, or provide a home for an aging parent or adult child.

Adapted From:

Adapted from Arizona's HB 2720 (2024), which allows two ADUs per lot by right in municipalities over 75,000.

Summary

- Legalizes two ADUs per single-family lot in communities over 75,000 in population;
- Each ADU may be up to 1000 square feet, with an additional bonus ADU for lots over 1 acre if one ADU is deed restricted to be rented at an regulated affordable price.
- Provides strong state standards to ensure ADUs are viable to build and rent out, including no parking mandates or limitations on use as a long-term rental, among other important regulatory best practices.



Legislative Text

Section 1

1. Accessory dwelling units; regulation; applicability; definitions

a. A municipality with a population of more than XX,XXX persons shall adopt regulations that allow on any lot or parcel where a single family dwelling is allowed all of the following:

- i. At least two accessory dwelling units as a permitted use, whether attached, detached, or internal to the primary dwelling.
- ii. A minimum of one additional accessory dwelling unit as a permitted use if at least one accessory dwelling unit on the lot or parcel is a restricted affordable dwelling unit.

b. A municipality may not do any of the following:

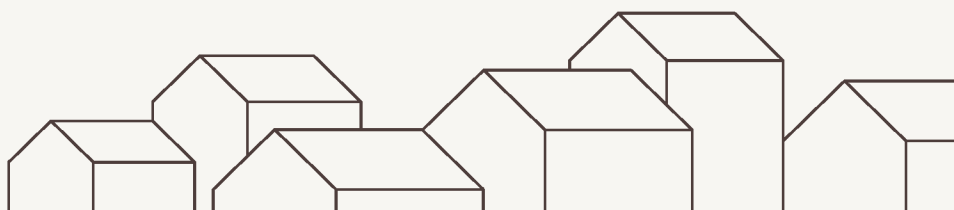
- i. Prohibit the use or advertisement of either the single family dwelling or any accessory dwelling unit located on the same lot or parcel as separately leased long-term housing.
- ii. Require a familial, marital, employment, or other preexisting relationship between the owner or occupant of a single family dwelling and the occupant of an accessory dwelling unit located on the same lot or parcel.
- iii. Require that a lot or parcel have additional parking to accommodate an accessory dwelling unit or require payment of fees instead of additional parking.
- iv. Limit the gross floor area of an accessory dwelling unit to less than seventy-five percent of the gross floor area of the single-family dwelling on the same lot or parcel or one thousand square feet, whichever is less.
- v. Require that an accessory dwelling unit match the exterior design, roof pitch or finishing materials of the single-family dwelling that is located on the same lot as the accessory dwelling unit.
- vi. Set restrictions for accessory dwelling units that are more restrictive than those for single family dwellings within the same zoning area with regard to height, setbacks, lot size, or coverage or building frontage.
- vii. Set rear or side setbacks for accessory dwelling units that are more than five feet from the property line.
- viii. Require improvements to public streets as a condition of allowing an accessory dwelling unit, except as necessary to reconstruct or repair a public street that is disturbed as a result of the construction of the accessory dwelling unit.
- ix. Impose fees related to the construction of an accessory dwelling unit greater than thirty percent of the fees related to the construction of a single-family dwelling in the same zone.
- x. Require a restrictive covenant concerning an accessory dwelling unit on a lot or parcel zoned for residential use by a single family dwelling.

c. This section does not prohibit restrictive covenants concerning accessory dwelling units entered into between private parties. The municipality may not condition a permit, license, or use of an accessory dwelling unit on adopting or implementing a restrictive covenant between private parties.

d. This section does not supersede applicable building codes, fire codes, or public health and safety regulations except that a municipality may not require an accessory dwelling unit to comply with a commercial building code or contain a fire sprinkler.

e. An accessory dwelling unit may not be built on top of a current or planned public utility easement unless the property owner receives written consent from any utility that is currently using the public easement or that may use the public utility easement in the future.

f. If a municipality fails to adopt development regulations as required by the section on or before (DATE), accessory dwelling units shall be allowed on all lots or parcels zoned for residential use in the municipality without limits.



2. For the purposes of this section:

- a. “Accessory dwelling unit” means a self contained living unit that is on the same lot or parcel as a primary dwelling of greater square footage than the accessory dwelling unit, that includes its own sleeping, cooking, and sanitation facilities.
- b. “Gross floor area” means the interior habitable area of a single family dwelling or an accessory dwelling unit.
- c. “Long term rental” means a rental use in which the tenant holds a lease of thirty days or longer.
- d. “Municipality” means a city or town that exercises zoning powers under this chapter.
- e. “Permitted use” means the ability for a development to be approved without requiring a public hearing, variance, conditional use permit, special permit or special exception, other than a discretionary zoning action to determine that a site plan conforms with applicable zoning regulations.
- f. “Restricted affordable dwelling unit” means a dwelling unit that either through a deed restriction or a development agreement with the municipality shall not charge rents and other associated costs that total a dollar amount greater than the equivalent of thirty percent of the monthly income of a household earning eighty percent of the area median income.

Specific considerations and permutation

1. Population Thresholds:

Setting a population threshold to limit opposition from small towns, particularly those with limited staff capacity to consider a new ordinance may be a political necessity. Making sure development is happening in existing towns and cities reduces opposition because of concerns over sprawl. Arizona’s bill limits ADUs to cities with populations above 75,000. Colorado’s 2024 bill limits ADUs to cities with populations above 1,000.

2. Short term Rentals:

Cities or NIMBYs may raise concerns that ADUs often just become short term rentals. Significant amounts of data contradicts this (see below, in the “Further reading” section) but some bills also explicitly prevent this, and inclusion of these prohibitions may be politically necessary. Arizona and Colorado both require owner occupancy in the principal dwelling if the ADU is to be used as a short term rental.

3. Owner Occupancy, aka Renter Ban:

Requiring owner occupancy of the primary residence is bad for a host of reasons. It bans renters from occupying at least one of the homes on the lot, it often severely limits financing options for people seeking to build an ADU, and it limits an ADUs usefulness as an owner would need to be absolutely sure there is no chance they’ll leave the home without selling it. Owner occupancy requirements should be avoided at all costs, but if it becomes a political necessity, options include: requiring owner occupancy only when the ADU is used as a short term rental, or linking owner occupancy to getting a permit for ADUs. This may alleviate concerns over speculation as well. Arizona bans owner occupancy requirements unless the ADU is to be used as a short term rental. Colorado only allows owner occupancy requirements at the time of permitting and if the ADU is to be used as a short term rental.

4. Parking:

Another poison pill, any off-street parking requirements will limit the ability of a homeowner to build an ADU due to space constraints and additional costs of providing off street parking. Arizona bans them entirely. Massachusetts limits parking requirements to one spot more than .5 miles away from transit, and no spots within .5 miles of transit.

Other examples

Colorado, [HB24-1152 \(2024\)](#):

Requires communities above 1,000 in population inside Metropolitan Planning Organizations to allow ADUs by right. Parking and owner occupancy requirements cannot be included in municipal regulations except in limited circumstances. The bill creates incentives to support the development of ADUs either by or for low or moderate income households.

Montana, [SB 528 \(2023\)](#):

Allows one ADU on every lot where single family homes are allowed, up to 1,000 square feet or 75 percent of the principal unit (whichever is smaller). Cities will no longer be able to mandate off-street parking, owner occupancy requirements, or impact fees.

Other bills:

Washington State passed [HB 1337 \(2023\)](#), which allows two ADUs per lot. California has passed [several bills legalizing ADUs](#) over the years.

Impact:

Many states and municipalities can document significant permits applied for and ADUs built once restrictions are lifted, and homeowners are able to build ADUs by right. Here are some examples:

- [Boise, ID](#)
- [Seattle, WA](#) (This includes some great demographic data about who lives in ADUs)
- [San Diego, CA](#)
- [Los Angeles, CA](#)

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Incentive programs:

Some states or municipalities build in incentive programs to support the development of ADUs. These can take many forms, and are often targeted towards lower income residents. They can include:

- **Pre-approved designs:** Rather than needing to hire an architect or builder to design an ADU and spending extra time in the permitting process, these programs offer pre-approved designs for ADUs that can move faster through the permitting process and minimize the design costs for homeowners.
- **Fee waivers:** Some states or municipalities offer financial support, including waiving permitting fees, impact fees, or other fees.
- **Financing:** Some states or municipalities offer financing options, including grants, forgivable loans, low-interest loans, or even buying down interest rates either for lower income homeowners to build an ADU or for a homeowner to build an ADU and rent it out to someone with a lower income.

Further Reading

- Read the [WNN fact sheet on ADUs](#). This fact sheet is full of links to studies about affordability, studies on who lives in ADUs, data on the use of ADUs as short term rentals, and other talking points.
- [AARP: ADU Model Code](#): A great resource for state and municipal elected officials with best practices on developing model legislation. AARP also offers [other resources](#) including many photos of different style ADUs, a dictionary, and more.
- [ALEC ADU Model Code](#): ALEC has also developed a strong model code for ADUs.
- Mercatus recently [released a paper](#) on the various state ADU laws.

