

Amendments to the Accessory Dwelling Units Act

Summary: The following model policy authorizes the construction of accessory dwelling units (ADUs) on residential property, outlines the building and land requirements for such dwellings, the permitting processes, and, when applicable, a preemption of local laws prohibiting the construction of such dwellings.

Section 1. Purpose and Intent.

(1) To promote economic self-sufficiency and address shortages in housing supply and increasing housing affordability problems, it is the policy of [state] to promote and encourage the creation of accessory dwelling units (ADUs) in order to meet the communities' housing needs and to realize other benefits of ADUs. It is the intent of [state] that homeowners will be authorized to create and maintain ADUs as either personal residences or rental units in areas zoned for residential single-family homes, mixed use, and offices.

Section 2. Definitions.

(1) Accessory dwelling unit. An accessory dwelling unit (ADU) means a residential living unit on the same parcel as a single-family dwelling or other primary use. 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.

(2) Junior accessory dwelling unit. A junior accessory dwelling unit (JADU) is a small living unit that does not meet the definition of an ADU because either its cooking or sanitation facilities are shared rather than independent.

Section 3. Eligibility.

- (1) An ADU or JADU may be built on any lot zoned to permit residential use.
- (2) The use of an ADU and/or JADU unit is a permitted accessory use on any lot where the primary use is residence in a single-family house;
- (3) The construction and use of an ADU or JADU shall comply with all applicable health and safety codes.

Section 4. Preemption.

(1) A municipality may not establish any restriction or requirement for the construction or use of an ADU or JADU with respect to:

(a) total lot size;

(b) street frontage; or

(c) connectivity between the ADU/JADU and the primary dwelling;

(2) A municipality may not require that the single-family dwelling or the accessory dwelling unit be occupied by the owner.

(3) A municipality's regulation of architectural elements for ADUs and/or JADUs shall be consistent with the regulation of single-family units, including single-family units located in historic districts.

(4) A municipality may not require the installation of a separate utility meter or utility connection for an ADU or JADU.

(5) A municipality may not restrict the occupancy of an ADU or JADU based on income, family relationship, age, or any other personal characteristic.

(6) A municipality may:

(a) prohibit the installation of a separate utility meter for an ADU and/or JADU;

(b) require the owner of a primary dwelling to abide by local regulations applicable to rentals/landlords for renting an ADU and/or JADU provided that such regulations are consistent with similar regulations for rental property generally;

(c) prohibit the creation of an ADU and/or JADU if the primary dwelling is served by a failing septic tank;

(d) hold a lien against a property that contains an ADU and/or JADU.

~~(e) Prohibit rentals of less than 30 days on a residential lot containing an ADU and/or JADU unless the owner(s) of the residential lot maintain their primary address on said lot.~~

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Section 5. Design.

(1) Default design standards for ADUs and JADUs are stated in this section. If not addressed in this section, notwithstanding any local rules or standards, [municipality] must issue an ADU permit if it is in footprint of existing structure, in an existing structure, or meets 800 sqft. 4' setback, 16' tall.

(2) Parking. No additional parking is required for an ADU or JADU.

(3) Accessory suites must meet the following additional requirements:

(a) Size. An accessory suite ADU may be no larger than the footprint of the structure of which it is part.

(b) Nonconformity. An ADU shall not be penalized if there's a zoning nonconformity elsewhere on the lot.

(4) Garden cottages must meet the following additional requirements:

(a) A municipality may not set maximum building heights, minimum setback requirements, minimum lot sizes, maximum lot coverages, or minimum building frontages for accessory dwelling units that are more restrictive than those for the single-family dwelling on the lot. Additionally,

(1) Structure Separation. Detached ADUs must meet the separation requirements for detached dwellings per state building code.

(2) Side and front setbacks. A newly constructed garden cottage must abide by the side and front setbacks that would apply to a new single family detached house, or the actual setbacks of the existing primary dwelling, whichever is less.

(3) Rear setback. A newly constructed garden cottage must be set back at least three feet from the rear lot line.

Section 6. Number.

(1) One ADU or one JADU is permitted per lot.

Section 7. Creation.

(1) An ADU or JADU may be created through new construction, conversion of an existing structure, addition to an existing structure, or conversion of a qualifying existing house to a garden cottage while simultaneously constructing a new primary dwelling on the site.

(2) ADUs and JADUs may be prefabricated or otherwise constructed offsite.

Section 8. Density.

(1) ADUs and JADUs are exempt from the residential density standards and are not considered to increase or exceed the density on a lot.

Section 9. Approval.

(1) A permit application for an ADU and/or JADU that meets the relevant building code and design standards and fire safety codes 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 30 days after receipt of a completed application. Denial of an application shall be accompanied by written findings detailing the reason for denial and any remedy necessary to secure approval. If the local agency has not approved or denied the completed application within 30 days, the application shall be deemed approved. A request by the applicant to adjust the [state's] ADU/JADU standards will be handled through a separate [discretionary] process and is not subject to the 30 day review period.

Section 10. Occupancy and Use.

(1) Occupancy and use standards for an ADU and/or JADU shall be the same as those applicable to a primary dwelling on the same site. [State and Local] Fire and occupancy limits shall apply to the ADU and/or JADU without regard to the number of persons living in other units on the lot.

~~(2) Detached ADUs may be conveyed and sold separately from the primary dwelling on a given lot.~~

Section 11. Existing Units.

(1) ADUs and JADUs created prior to (date) may be permitted by registering the unit with the (building official) for inclusion into the [Certificate of Occupancy Program]. Application for registration will follow the same ministerial process as an application to build a new ADU and must contain the name of the owner, the address of the unit, the floor area of the two dwelling units, a plot plan of the property, evidence of the date of establishment of the unit, and a signature of the owner. Existing non-conforming ADUs/JADUs shall be permitted unless there is a written health/safety concern.

(2) A [municipality] may only initiate a code enforcement action on an unpermitted ADU or JADU based on the code governing at the time of construction. If [municipality] initiates a code enforcement it must notify the owner of the process for legalizing the unit and delay the enforcement action to allow the owner to register the unit for inclusion into the [Certificate of Occupancy Program].

Section 12. Historic Designation.

(1) ADUs and JADUs are authorized on properties containing structures subject to historic preservation laws, as long as such units do not affect the facade as visible from the right-of-way.

Section 13. Impact Fees.

(1) ADU and JADUs of less than 750 square feet are exempt from all impact fees. Impact fees applied to larger ADUs and JADUs must be scaled by unit size. ADUs and JADUs of less than 500 feet are exempt from school fees.

(2) No municipality or school district shall set an impact fee or school fee for an ADU or JADU that is larger than the impact fee for a single-family house.

Section 14. Enforcement.

(1) All incorporated cities in [state] must pass an ADU ordinance incorporating the provisions of this law and stating any compliant local requirements, processes or procedures for ADU construction or permitting. These ordinances must be filed with [State housing authority or agency].

(2) No additional state-level commission approval shall be required to implement this law and allow the permitting of ADUs or JADUs.

(3) The [State housing authority or agency] shall refer instances of non-compliance to the Attorney General who is empowered to take action to ensure compliance.

Section 15. Effective Date.

(1) This act is ordered to take immediate effect.