

HANSEN Alissa H

From: David Barajas <fatrock@riouisa.com>
Sent: Tuesday, June 11, 2019 10:52 PM
To: HANSEN Alissa H
Subject: Re: My testimony re: ADU's David Barajas R1 Ward 1 97405

Observations about ADU's.

R1 = 14 units per acre (or less). But a "unit" can vary from a few hundred sq. ft to several thousand feet.

2nd component completes the definition, "land use" of a 50% max footprint.

Height max is 30ft.

NO mention of sq footage of the structure.

Limiting the footprint and the height take care of that.

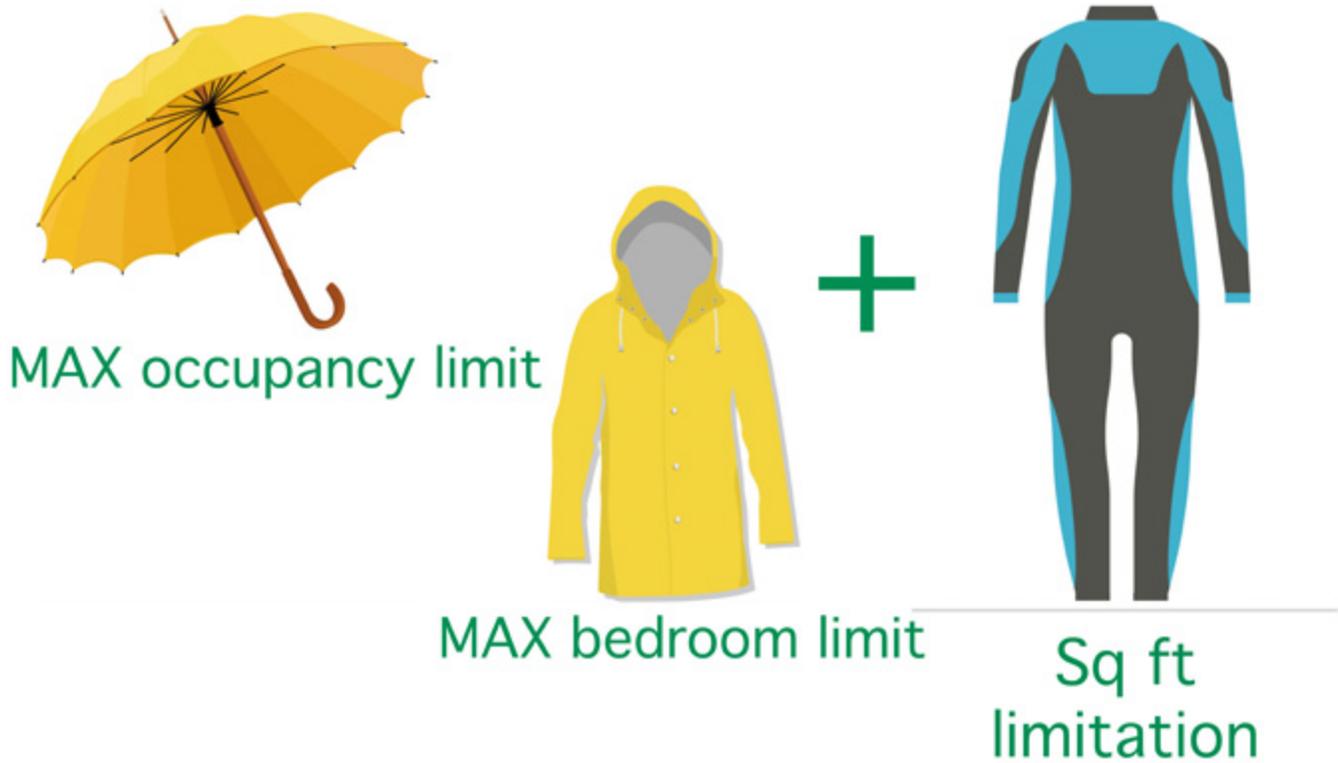
R1 = 14 units per acre
But
"unit" can be a few hundred sq ft
or several thousand feet
R1's land use limits
to 50% MAX footprint
height MAX is 30 ft.

ADU has a max occupancy limit, a max bedroom limit AND the sq. ft limit.

Conceptually: a code raincoat, a code umbrella and a code wetsuit. All three are not needed !

Eliminating a sq ft *living space* limit allows us to go back to land use. Use the 10% of lot size, to be applied as FootPrint. For example a 7000 sq ft lot would be allowed 700 sq ft FootPrint.

Instead of ADU call it FPD, for *added* FootPrint Dwelling. FootPrint gets us back to land use criteria.



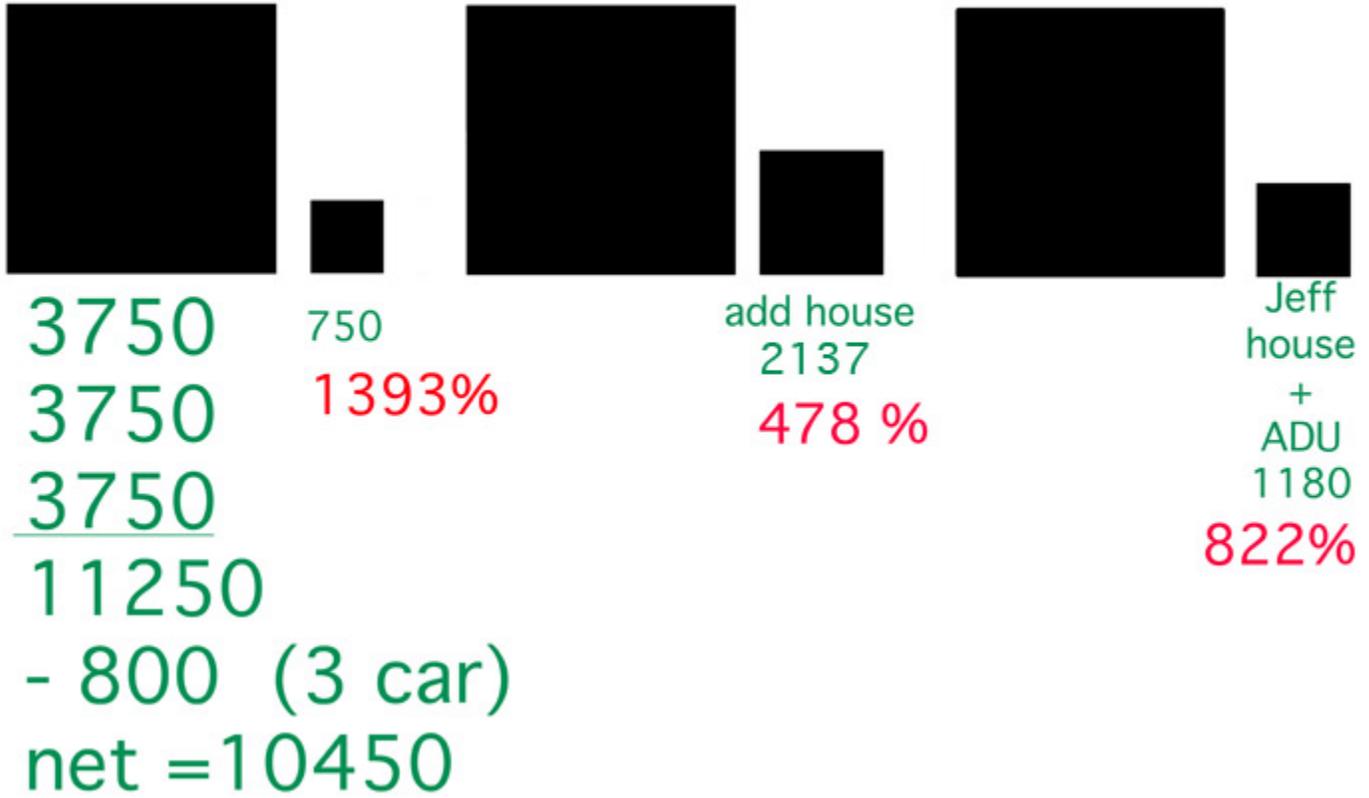
Let's look at the current ADU allowance. I have a house on a 7500 R1 lot. (ward 1). ADU allows 750 sq ft living space. Let say I inherit a cool 1 Million. I take my lot and raze the existing house. Now I can build a 30ft tall 3750 footprint, 3 stories x 3750 = 11,250 sq ft house, let's minus 800 sq ft. for a 3 car garage, still nets 10450 sq ft. So if I raze the house I can work with 14 times the floor space (1393%) of the ADU allowance.

If I factor my existing house sq footage plus the allowed ADU that brings the ratio to 5 to 1. (478%)

Looking briefly a Zillow recent sales I found a house in R1 Ward 1 on Jefferson St. It is 1 story 480 sq ft on 7000 ft lot. So in this example the Accessory Dwelling can be larger than the main house, so Accessory is not always true. Added FootPrint Dwelling always is true.

In the Jefferson example the ratio between total ADU plus existing house, to razing & starting from scratch is 822%.

1393%, 478%, and 822% the differences are HUGE. People with smaller houses on larger lots are disproportionately limited.



ADU attached height max is 18 ft. or mathematically 60% of standard R1 height limit.
 Using this 60% proportion I would take the land use footprint x 60% = 30% total FPrint limit when adding separate structure.
 I don't want to see infill go to the point of looking like Kinsrow.

ADU (attached) height
 max 18 ft

$$30\text{ft} \times .6 = 18 \text{ ft}$$

footprint of
 $50\% \times .6 = 30\%$

I suggest allowing up to 30% TOTAL footprint on a lot. One component is a FPD (Foot Print Dwelling) max size of 10% footprint to lot size.

And if still under 30% total FootPrint then allow a THAD (Tiny House Accessory Dwelling) option of truly tiny 400 footprint and 11 ft height limit. (Nominal numbers).

If combined total of all structures does not exceed 30% FP of lot size, then both THAD & FPD are allowed.

A Thad exceeding 400 sq ft or 11 ft. height would then use up a owner's FPD option,

2 bedroom limit on FPD is good, 1 bedroom limit on THAD seems reasonable.

If total FP existing is greater than 30% then only a THAD can be added, naturally adding to existing structure would be allowed as currently defined.

Currently ADU restricts to 18 ft if attached, and height of existing if non attached. Looking at various neighborhoods, such as Hawkins Heights (Hendricks/Kelly Butte...etc) I see easily 20% variations in building heights. Encourage design variations, allowing 120 % of existing. The absolute 30 ft limit would always apply.



My house is 11.4 ft tall, as per current ADU unattached unit limit is 11.4 ft.

I have provided a photos to illustrate how this 11.4 ft limit is obviously not needed.

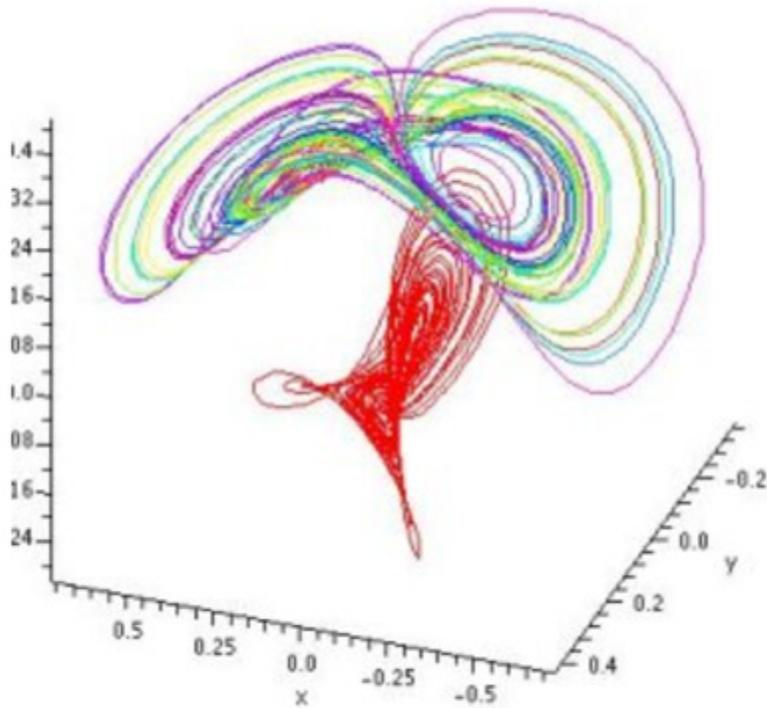
For clarity, I photoshopped bright pastel colors of my fence and 2 houses. Distances are from outside walls on my likely FPD to neighbors to the East 104 ft away, directly south is 279 feet away from the FPD wall. FPD corner on diagonal, across the street to this house is 56 feet.

Back wall to house behind me is 55 ft. away. House below is 38 feet away. House below loses no view, since it is well below grade.

Extrapolating house behind me roof height to FPD location is about 22 ft, extrapolating brown house roofline I get 28 feet, extrapolating 104 ft orange house roof is close to 30 ft.



I propose getting a height variance based on adjoining properties heights, views and solar access.
Artificial intelligence uses differential equations to evaluation multiple variables in a non linear fashion.
I have illustrated a graph of a differential equation, compared to a totally binary outlook.



the dissonance, between simple arithmetic and human intelligence

We currently can have online information such as Google Maps, Zillow etc. City could have a variance process by which a freelance photographer would go to sites requesting variances and Facetime a video (to the appropriate city employee) or save in a app such as Marco Polo. This site visit would be confirming that Google maps and/or Trulia/Zillow information was correct. No new buildings etc. The site visit would be generated by owner request for variance and the request form would be carried by the photog for reference of specifics.



Human intelligence
preliminary Variance
assessment PVA
(small fee) research
(Google maps/Trulia etc.)
Followed by site visit video
Facetime/Marco Polo
to confirm layout & structures

I did a test video of my street, weekday, non holiday, afternoon. In 1 hour 11 cars came by. There was a 12 minute span without a car ! Not all areas are like 18th and Agate. Parking needs vary. As this society realizes that global health is at risk, that plants are a need not a luxury, we should not default to paved parking and sidewalks. The default should at least be open to a variance. The variance process can be inexpensive and fast, given current online information. Please consider using human intelligence versus mid century code.



David Barajas
R1 Ward 1 Eugene resident since 1974

Keep kennel restriction please.

Owner occupied could be prudently raised for Eugene resident owner plus 2 more addresses.

Yes out of state landlord with many houses are likelier to not be as diligent and careful as a local resident with just 2 or 3 rentals.

On Jun 7, 2019, at 5:18 PM, HANSEN Alissa H <AHansen@eugene-or.gov> wrote:

There is still time!

-----Original Message-----

From: David Barajas <fatrock@riousa.com>

Sent: Friday, June 7, 2019 5:17 PM

To: HANSEN Alissa H <AHansen@eugene-or.gov>

Subject: has the time window closed for submitting testimony for ADU's ?

The title is the essence of my question. Is there still time to submit testimony re: ADU's.

Thanks,

David Barajas

HANSEN Alissa H

From: SELSER Lindsay R
Sent: Wednesday, June 12, 2019 1:39 PM
To: HANSEN Alissa H; HOSTICK Robin A
Subject: FW: Owner Occupancy and ADUs
Attachments: JWN_Owner Occupancy_ADU_letterhead.docx

Just making sure this made its way to you.

From: Jefferson Westside Neighbors <jwneugene@gmail.com>
Sent: Tuesday, June 11, 2019 1:29 PM
To: *Eugene Mayor, City Council, and City Manager <MayorCouncilandCityManager@eugene-or.gov>
Subject: Owner Occupancy and ADUs

Dear Mayor and Councilors,

The Jefferson Westside Neighbors Executive Board wishes to go on the record in opposition to removing the owner occupancy requirement for Accessory Dwelling Units (ADU). The city should retain the owner occupancy requirement as a condition related to siting.

To be clear, the JWN Board is not taking a position on whether or not and under what conditions an ADU should or could be allowed in all R-1.

While there are many aspects of the ADU issue that are salient, the current drive to eliminate owner occupancy is fundamentally flawed on its face for two reasons that come under the JWN's purview as actionable under our existing mandates and policies:

First, the code description and the rationale for an Accessory Dwelling Unit is that it is an accessory or in addition to or in conjunction with a primary dwelling unit. That is why it is allowed in R-1.

It is our contention that, if you eliminate the owner occupancy requirement, the added unit is no longer an *accessory*, it is simply another dwelling unit, which would be a de facto up-zoning of R-1 into R-2. In our analysis, the drive to eliminate owner occupancy is apparently a strategy to functionally eliminate R-1 without having to invite a more robust public discussion of up-zoning. Removing owner occupancy is functionally equivalent to eliminating R-1. While there can certainly be a discussion on the future viability of R-1, it also is not the issue for us here. The issue is transparency and honesty. Further, if there were ways to tweak owner occupancy, for example allowing families (related by blood and/or marriage) where one party could rent both buildings together only, that would also be a possibility. However, that is not what the staff appears to be proposing.

Second, considering that removing owner occupancy would effectively up-zone all of R-1 to R-2 (except for the all the subdivisions that are CCRs that prohibit it) it should be described as such and elicit a robust public process on making that decision. Therefore, the current effort for removing owner occupancy does not meet the spirit or letter of State Planning Goal 1 and legitimate public process as most people do not know what eliminating owner occupancy would mean to them. The bottom line here is that if the purpose is to allow a second dwelling in R-1, the city needs to state that, and not obscure it via a discussion on owner occupancy for ADUs.

Considering the implications for honesty, public process, and transparency, the Jefferson Westside Neighbors Executive Board takes a position in opposition to removing owner occupancy while making clear we are neutral on the larger ADU issue in R-1 and agnostic on any changes that might allow an exception to owner occupancy under specific, meaningful, and limited circumstances.

Sincerely,

Ted M. Coopman, Chair

--

Jefferson Westside Neighbors

Executive Board

Eugene, OR

www.jwneugene.org



June 9, 2019

Re: Owner Occupancy for Accessory Dwelling Units

Dear Mayor and Councilors,

The Jefferson Westside Neighbors Executive Board wishes to go on the record in opposition to removing the owner occupancy requirement for Accessory Dwelling Units (ADU).

The city should retain the owner occupancy requirement as a condition related to siting.

To be clear, the JWN Board is not taking a position on whether or not and under what conditions an ADU should or could be allowed in all R-1.

While there are many aspects of the ADU issue that are salient, the current drive to eliminate owner occupancy is fundamentally flawed on its face for two reasons that come under the JWN's purview as actionable under our existing mandates and policies:

First, the code description and the rationale for an Accessory Dwelling Unit is that it is an accessory or in addition to or in conjunction with a primary dwelling unit. That is why it is allowed in R-1.

It is our contention that, if you eliminate the owner occupancy requirement, the added unit is no longer an *accessory*, it is simply another dwelling unit, which would be a de facto up-zoning of R-1 into R-2. In our analysis, the drive to eliminate owner occupancy is apparently a strategy to functionally eliminate R-1 without having to invite a more robust public discussion of up-zoning. Removing owner occupancy is functionally equivalent to eliminating R-1. While there can certainly be a discussion on the future viability of R-1, it also is not the issue for us here. The issue is transparency and honesty. Further, if there were ways to tweak owner occupancy, for example allowing families (related by blood and/or marriage) where one party could rent both buildings together only, that would also be a possibility. However, that is not what the staff appears to be proposing.

Second, considering that removing owner occupancy would effectively up-zone all of R-1 to R-2 (except for the all the subdivisions that are CCRs that prohibit it) it should be

Jefferson Westside Neighbors (JWN) is the City-chartered neighborhood for the area roughly between W. 7th and 18th Avenues and between Chambers Street and Lawrence/Willamette Streets.

<http://jwneugene.org/>

described as such and elicit a robust public process on making that decision. Therefore, the current effort for removing owner occupancy does not meet the spirit or letter of State Planning Goal 1 and legitimate public process as most people do not know what eliminating owner occupancy would mean to them. The bottom line here is that if the purpose is to allow a second dwelling in R-1, the city needs to state that, and not obscure it via a discussion on owner occupancy for ADUs.

Considering the implications for honesty, public process, and transparency, the Jefferson Westside Neighbors Executive Board takes a position in opposition to removing owner occupancy while making clear we are neutral on the larger ADU issue in R-1 and agnostic on any changes that might allow an exception to owner occupancy under specific, meaningful, and limited circumstances.

Sincerely,
Ted M. Coopman, Chair
Jefferson Westside Neighbors

HANSEN Alissa H

From: voyage46@comcast.net
Sent: Saturday, June 8, 2019 7:42 AM
To: HANSEN Alissa H
Subject: ADUs

Please past this issue of dwelling. If you have any question you should look at the success and positive Support it provided for Marin County CA. who offer this dwelling arrangement on their properties

Thank you
Patricia Oshea

Sent from my T-Mobile 4G LTE device

HANSEN Alissa H

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Friday, May 31, 2019 10:03 AM
To: *Eugene Mayor, City Council, and City Manager
Cc: JEROME Emily N; HANSEN Alissa H; Eugene Planning Commission; Eugene NLC
Subject: City Attorney Jerome provides clear and credible clarification of "ADU statute"

May 31, 2019

Mayor and Councilors:

Earlier this year, attorney Bill Kloos filed a LUBA appeal against the City's decision that two rental dwellings were not allowed on an R-1 lot under the Oregon ADU statutes. Councilors should understand that Mr. Kloos is an experienced attorney who has been deeply engaged in trying to eliminate any "owner occupancy" requirement for ADUs. This appeal was even a "Version 2.0" of his earlier appeal of the same application on the same issues. His appeal brief fired everything he could muster to try to demonstrate that a second smaller, rental dwelling on the same lot as a larger rental dwelling was an "ADU" that met the ORS 197.312(5)(b) requirement that an ADU be "used in connection with or that is accessory to a single-family dwelling." If there were any argument even remotely plausible, Mr. Kloos would have included it in his brief. In essence, Mr. Kloos provided the Council with a "test by fire" regarding how the Eugene Code defines "Dwelling, Accessory."

Emily Jerome filed the attached brief as the City's response defending its decision. (I've copied excerpts below relevant to the points addressed in this e-mail.)

In her brief, Ms. Jerome did an excellent job of establishing the following points.

1. In the R-1 zone, there must be a reasonable and relevant relationship between a second single-family dwelling on a lot and an existing single-family dwelling on the same lot in order for the second dwelling to meet the statutory definition of an ADU, which requires an ADU to be "used in connection with or that is accessory to a single-family dwelling." ORS 197.312(5)(b).
2. A requirement for the owner to occupy the first or second dwelling does satisfy the statutory definition.
3. The second dwelling having a smaller size and/or fewer bedrooms does not satisfy the statutory definition.

It follows from the first point that the City Council must provide explicit, clear and objective criterion(a) establishing what condition(s) would unequivocally demonstrate that a second dwelling would be "used in connection with or [be] accessory to a single-family dwelling." It follows from the second point that the City Council should at least include "owner occupancy of either dwelling" (or equivalent language) as an alternative that qualifies a second dwelling as an ADU.

That leaves only one thing for the Council to determine: Is/are there any other condition(s) which would unequivocally demonstrate that a second dwelling would be "used in connection with or [be] accessory to a single-family dwelling"?

It follows from the third point in Ms. Jerome's legal brief that, in considering this question, the Council must reject smaller size and/or fewer bedrooms as sufficient.

To date, I'm aware of only one proposed alternative besides owner occupancy that has merit: Both dwellings being occupied under a single rental/lease agreement only by related persons. (Using the language from HB 2469, which the Legislature has adopted: "Related persons include: spouse, child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin.")

It's important for Councilors to keep in mind that in Eugene Code, "Dwelling, Accessory" is a specific **use** of a structure. While the code may include development and lot criteria that an ADU is required to meet, these physical criteria do not define a *use* that's sufficient for the statutory requirement. That principle was reflected in Ms. Jerome's brief (Point #3, above.)

Another way to understand this is that, no *physical* criterion(a) alone can establish a second dwelling as "accessory to" or "used in conjunction with." The first term implies some manner in which the use of the ADU supports the use of the principal dwelling, e.g., provides financial or functional benefit to the occupant of the principal dwelling. Obviously, owner occupancy of the principal dwelling is sufficient. So, to would rental of both units to one family, wherein the second dwelling provides capacity for more members of the family, thus providing financial and/or functional benefit to the occupants of the principal dwelling (or vice-versa), even though an owner doesn't reside on the property. The second term *explicitly* requires describing some means of a "use" relationship beyond mere physical characteristics. Owner occupancy of the ADU is sufficient.

I think Ms. Jerome's brief provides a very helpful understanding of the issues; and, in fact, having her arguments should greatly narrow and focus your consideration of how to define "Dwelling, Accessory" in a way that conforms to the statutes and is true to the core concept of an "accessory" dwelling in a single-family neighborhood.

Keep in mind that as hard as he tried, Mr. Kloos was apparently unable to dig up anything that would be adequate to meet the statutes while allowing two, independent rental dwellings under ADU provisions. Whether or not there may be other alternatives other than owner occupancy or relatives occupying both dwellings is up to the Council.

Paul Conte

Accredited Earth Advantage
Sustainable Homes Professional

=====

Excerpts from City's "Response Brief"

“ORS 197.312(5), by its own terms, applies only to ‘an interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.’ ORS 197.312(5)(b). Petitioner is incorrect in asserting that the statute requires the City to allow the proposed dwelling simply because the proposed dwelling would be located on the same lot as the existing dwelling and be smaller / have fewer bedrooms than the existing dwelling. There is no reasonable interpretation of ‘used in connection with’ or ‘accessory to’ that would support Petitioner’s ‘size differential’ position.” Page 2.

“ORS 197.312(5)(b) defines ‘accessory dwelling unit’ as: ‘an interior, attached or detached residential structure *that is used in connection with or that is accessory to a single-family dwelling?*’ The statute is not intended to apply to every case in which two detached single-family dwellings are proposed for co-location on one lot. The definition of ‘accessory dwelling unit’ at ORS 197.312(5)(b) is narrower than that; it limits the statute’s application to a dwelling that will be ‘used in connection with’ or that will be ‘accessory to’ another single-family dwelling. Conversely, the statute does not apply to a dwelling that will not be ‘used in connection with’ or as an ‘accessory to’ another single-family dwelling. For the statute to apply directly to Petitioner’s request, Petitioner’s proposal must be for a dwelling that will have this type of relationship with the other dwelling on Petitioner’s lot.” Page 10-11.

“It appears the statute also leaves it to cities to decide in the first instance what it means for one dwelling to be ‘used in connection with’ or ‘accessory to’ another single-family dwelling, as well. Whether intentional, or not, that is the position the legislature has put the City in.” Page 12.

“Petitioner also makes it clear that the two dwellings are not intended to be ‘use’ in connection with one another. Petitioner specifically rejected the City code’s requirement that Petitioner live on the lot, a requirement that, when met, demonstrates that the dwellings would be used in connection with or accessory to one another.” Page 13.

“[T]he fact that the proposed dwelling would be smaller than the existing dwelling is insufficient to establish an ‘accessory’ relationship between the two dwellings. A mere difference in size does not form any sort of relationship as the definition requires. If a ‘smaller size’ or ‘fewer bedrooms’ is all that is necessary for one dwelling to be ‘accessory to’ the other, it would render the statute’s other term ‘in connection with’ meaningless, since that term would never matter ...” Page 14.

“Petitioner’s assertion that the necessary relationship is demonstrated by the location of the new dwelling on the same lot as the existing dwelling is gratuitous, at best, given the fact that a shared lot is a fundamental prerequisite to any potential application of ORS 197.312(5).” Page 14

“The City’s decision was correct in finding it unreasonable to determine that a size differential and shared lot demonstrates that the new dwelling will be ‘used in connection with ... or accessory to’ the existing dwelling,” Page 15.

HANSEN Alissa H

From: Tom Bruno <brunoassoc@aol.com>
Sent: Thursday, May 30, 2019 10:06 AM
To: KANE Rene C; eugene-nlc@googlegroups.com; Eugene Planning Commission; *Eugene Mayor, City Council, and City Manager; Rep.MartyWilde@oregonlegislature.gov
Subject: Here's the Truth About Those \$7,000 Tiny Houses for Sale on Amazon...

This is the beginning of what SEARs did a hundred years ago. More and more homes and office buildings will be built at a factory and shipped for assembly.

<https://www.google.com/amp/s/news.yahoo.com/amphtml/apos-truth-those-7-000-120054677.html>

There are prefabricated Medical ADUs for sale with wheel chair showers / prewired for 220 medical beds and devices. Ten story office buildings being built at factories and shipped to US with a cost savings of 40%.

Tom Bruno
Co-Chair LHVC

Sent from my iPhone

HANSEN Alissa H

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Thursday, May 30, 2019 8:03 AM
To: *Eugene Mayor, City Council, and City Manager
Cc: Eugene Planning Commission; Eugene NLC
Subject: Fwd: HB 2001 should NOT prohibit "owner occupancy." House and Senate sensibly voted IN FAVOR OF "owner occupancy" in HB 2469

Here are further details on the House and Senate actions.

[Accredited Earth Advantage](#)
[Sustainable Homes Professional](#)

----- Forwarded message -----

From: **Paul Conte** <paul.t.conte@gmail.com>
Date: Thu, May 30, 2019 at 8:00 AM
Subject: HB 2001 should NOT prohibit "owner occupancy." House and Senate sensibly voted IN FAVOR OF "owner occupancy" in HB 2469
To: [All Senators and Representatives]

May 30, 2019

Dear Honorable Senators and Representatives,

HB 2001 would dictate that local regulations regarding ADUs must be based on a **patently false**, but legally constraining, assertion that "occupancy requirements of either the primary or accessory structure following" are *never* "[r]easonable local regulations relating to siting and design."

The House has approved (56-2) and the Senate has also approved (28-0) **HB 2469** which includes the following owner-occupancy requirement for a dwelling that "is used in connection with or that is accessory to a single-family dwelling" (i.e., the definition of an ADU).

- (g) The existing single-family dwelling unit is occupied by the owner or a relative;
- (h) The new single-family dwelling unit will be occupied by the owner or a relative; and
- (i) The owner or a relative occupies the new single-family dwelling unit **to allow the relative to assist** in the harvesting, processing or replanting of forest products or in the management, operation, planning, acquisition or supervision of forest lots or parcels of the owner.

I strongly supported this bill because of its owner-occupancy requirement, including the additional alternative of an owner's relative.

I strongly support ADUs with the obvious, necessary requirement that the "new single-family dwelling" (the ADU) is truly "used in connection with or [] is accessory to [the existing] single-family dwelling," in particular by "assisting" the owner in some way (i.e., by ADU rental income, residency for a relative or caretaker, etc.).

As the House and Senate have overwhelmingly confirmed, a local jurisdiction adopting a requirement that either the principal dwelling or ADU "is occupied by the owner" is perfectly reasonable as a definitional element for an "accessory" dwelling. It would also be reasonable for a jurisdiction to do, as the House and Senate have done with **HB 2469**, to include reasonable options that establish alternative, credible "accessory" relationships. For example, several Eugene neighborhood leaders are suggesting that the definition of "ADU" include three alternatives: owner resides in

principal dwelling, owner resides in ADU, OR a single family (i.e., all related to one another, but not necessarily to the owner) occupy both dwellings under a single rental/lease agreement.

Legislators who sensibly voted to include an "owner occupancy" requirement in their own statutory bill allowing an "accessory dwelling" on forest land should not now vote in direct conflict for the HB 2001 provision that states all "owner occupancy" requirements for urban ADUs would be "unreasonable" and unlawful no matter what the circumstances in local jurisdictions.

Please oppose HB 2001 because it is a poorly-drafted, unwise and counter-productive bill. At the very least, please honor your prior, sensible votes that reasonable regulations for accessory dwellings can include "owner-occupancy" requirements.

Thank you,

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402

**Accredited Earth Advantage
Sustainable Homes Professional**

HANSEN Alissa H

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Wednesday, May 29, 2019 9:20 PM
To: *Eugene Mayor, City Council, and City Manager
Cc: Eugene Planning Commission; Eugene NLC
Subject: Oregon Legislature passes bill REQUIRING owner occupancy for accessory dwelling on forest land

Councilors,

Despite all the false information from zealots who want to upzone the entire R-1 district and their misleading representations, parroted by the Mayor in her comments about the "ADU remand" ordinance, the Legislature has settled the question of whether an owner occupancy requirement can be considered "reasonable" for an accessory dwelling. Both houses have now passed a bill with exactly such a requirement.

Please read the bill and check out the overwhelming votes in both houses at:
<https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB2469?pubDate=2019-05-29-11-49>

This bill makes clear that an "accessory" dwelling is one that has a functional relationship to a resident property owner.

Stop the deception Mayor! Have the integrity to say that what you really want to see happen is to do away with the entire single-family R-1 zoning. You're not fooling anyone! Stop your deceitful attempt to sneak this upzoning past the public.

Paul Conte

Accredited Earth Advantage
Sustainable Homes Professional

HANSEN Alissa H

From: VINIS Lucy K
Sent: Tuesday, May 28, 2019 1:45 PM
To: YEH Jennifer K; EDWARDS Tiffany (SMTP); *Eugene Mayor, City Council, and City Manager; Eugene Planning Commission
Cc: Tiffany Edwards
Subject: Re: Tiffany Edwards lack of impartiality requires recusal on housing matters

I agree with Jennifer. Thank you for your thorough exploration and explanation.

All the best,
Lucy

Get [Outlook for iOS](#)

From: YEH Jennifer K
Sent: Friday, May 24, 2019 3:29:42 PM
To: EDWARDS Tiffany (SMTP); *Eugene Mayor, City Council, and City Manager; Eugene Planning Commission
Cc: Tiffany Edwards
Subject: Re: Tiffany Edwards lack of impartiality requires recusal on housing matters

Tiffany,
Thank you for that very thorough response and for your service. You seem to be taking all the appropriate actions.
Jennifer

Jennifer Yeh
Eugene City Council
Ward 4

From: Tiffany Edwards <tiffanyedwardspc@gmail.com>
Sent: Friday, May 24, 2019 3:15:27 PM
To: *Eugene Mayor, City Council, and City Manager; Eugene Planning Commission
Cc: Tiffany Edwards
Subject: FW: Tiffany Edwards lack of impartiality requires recusal on housing matters

Mayor Vinis, Councilors and fellow Planning Commissioners,
I wanted to take the opportunity to follow-up and respond to Mr. Conte's concerns (below), in the event that there is any confusion by members of Council or the Commission.

I had inquired on this particular issue, whether it would be appropriate for me to participate in providing testimony on the ADU ordinance, back on May 1st. It was made clear to me by the City's Attorney and planning staff that there was no issue with my providing testimony on ADUs, provided that it was not on behalf of the Planning Commission. So long as I am acting on behalf of myself or my organization, there is nothing that should keep me from doing so. A conflict of interest arises when there is a financial benefit or detriment to me (or my business) that could result in my actions as a Planning Commissioner, which is not the case here.

In the case of a "bias" it's also been made clear to me that bias applies in quasi-judicial proceedings and in order to participate, I must be able to make a decision without bias, based solely on the merits of the evidence. This has not

been an issue on any of the matters that have come before me on the Planning Commission and it is required for this to be explicitly stated commencing all proceedings of this matter.

In an effort to mitigate this issue moving forward, back on April 1st, had sought the opinion of the state's Ethics Commission as it pertained to Mr. Conte's concerns over the Chamber weighing in on a small provision of HB 2001 (for the record, the Chamber has not taken a position on the bill itself). I received a response on April 10th, which clarifies what I have explained as well as what the City's legal staff had previously stated. This document has been provided to the City Attorney. Rest assured that I am extremely proactive in these matters and if ever I have questions, I am prompt to seek legal advice by the City's attorneys prior to taking any actions.

I believe Mr. Conte may simply be confused as to what constitutes as a "conflict of interest" and how the issue of bias would be applied to non-legislative matters and I anticipate you may continue to receive these communications by Mr. Conte. Please do not hesitate to reach out to me directly if you ever have questions pertaining to my volunteer position with the Planning Commission. I am always happy to make myself available.

Enjoy your holiday weekend,
Kind regards,
Tiffany

Tiffany Edwards

Planning Commissioner | City of Eugene
TiffanyEdwardsPC@gmail.com
Mobile 541-678-3370

Messages to and from this e-mail may be available to the public under Oregon Public Records Law.

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Tuesday, May 21, 2019 9:18 AM
To: Eugene Planning Commission <epc@ci.eugene.or.us>
Cc: *Eugene Mayor, City Council, and City Manager <MayorCouncilandCityManager@eugene-or.gov>; Eugene NLC <eugene-nlc@googlegroups.com>
Subject: Tiffany Edwards lack of impartiality requires recusal on housing matters

May 21, 2019

For the record

Commissioners,

At the May 20, 2019 City Council public hearing, Tiffany Edwards provided oral testimony on behalf of the Chamber of Commerce advocating that the City Council remove an owner-occupancy requirement for ADUs and advocating that the Council "do what's needed" to allow more so-called "missing middle housing."

Ms. Edwards also gave a deplorable diatribe attacking Eugene citizens "who have owned their homes for decades" and "can't understand the needs" of other community members.

Ms. Edwards is adding to her long track record of serving her commercial employers and denigrating residents who care for their neighborhoods.

There is clear and compelling documented evidence of Ms. Edwards' lack of impartiality with respect to housing code and quasi-judicial decisions related to housing proposals.

She should be removed from the Planning Commission; but barring that, she must be recused from deliberations and decision-making on all housing related matters.

Should she not be recused, her involvement will subject any EPC decision or recommendation to appeal.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402
541.344.2552

**Accredited Earth Advantage
Sustainable Homes Professional**

HANSEN Alissa H

From: YEH Jennifer K
Sent: Friday, May 24, 2019 3:30 PM
To: EDWARDS Tiffany (SMTP); *Eugene Mayor, City Council, and City Manager; Eugene Planning Commission
Cc: Tiffany Edwards
Subject: Re: Tiffany Edwards lack of impartiality requires recusal on housing matters

Tiffany,
Thank you for that very thorough response and for your service. You seem to be taking all the appropriate actions.
Jennifer

Jennifer Yeh
Eugene City Council
Ward 4

From: Tiffany Edwards <tiffanyedwardspc@gmail.com>
Sent: Friday, May 24, 2019 3:15:27 PM
To: *Eugene Mayor, City Council, and City Manager; Eugene Planning Commission
Cc: Tiffany Edwards
Subject: FW: Tiffany Edwards lack of impartiality requires recusal on housing matters

Mayor Vinis, Councilors and fellow Planning Commissioners,
I wanted to take the opportunity to follow-up and respond to Mr. Conte's concerns (below), in the event that there is any confusion by members of Council or the Commission.

I had inquired on this particular issue, whether it would be appropriate for me to participate in providing testimony on the ADU ordinance, back on May 1st. It was made clear to me by the City's Attorney and planning staff that there was no issue with my providing testimony on ADUs, provided that it was not on behalf of the Planning Commission. So long as I am acting on behalf of myself or my organization, there is nothing that should keep me from doing so. A conflict of interest arises when there is a financial benefit or detriment to me (or my business) that could result in my actions as a Planning Commissioner, which is not the case here.

In the case of a "bias" it's also been made clear to me that bias applies in quasi-judicial proceedings and in order to participate, I must be able to make a decision without bias, based solely on the merits of the evidence. This has not been an issue on any of the matters that have come before me on the Planning Commission and it is required for this to be explicitly stated commencing all proceedings of this matter.

In an effort to mitigate this issue moving forward, back on April 1st, had sought the opinion of the state's Ethics Commission as it pertained to Mr. Conte's concerns over the Chamber weighing in on a small provision of HB 2001 (for the record, the Chamber has not taken a position on the bill itself). I received a response on April 10th, which clarifies what I have explained as well as what the City's legal staff had previously stated. This document has been provided to the City Attorney. Rest assured that I am extremely proactive in these matters and if ever I have questions, I am prompt to seek legal advice by the City's attorneys prior to taking any actions.

I believe Mr. Conte may simply be confused as to what constitutes as a "conflict of interest" and how the issue of bias would be applied to non-legislative matters and I anticipate you may continue to receive these communications by Mr. Conte. Please do not hesitate to reach out to me directly if you ever have questions pertaining to my volunteer position with the Planning Commission. I am always happy to make myself available.

Enjoy your holiday weekend,
Kind regards,
Tiffany

Tiffany Edwards

Planning Commissioner | City of Eugene

TiffanyEdwardsPC@gmail.com

Mobile 541-678-3370

Messages to and from this e-mail may be available to the public under Oregon Public Records Law.

From: Paul Conte <paul.t.conte@gmail.com>

Sent: Tuesday, May 21, 2019 9:18 AM

To: Eugene Planning Commission <epc@ci.eugene.or.us>

Cc: *Eugene Mayor, City Council, and City Manager <MayorCouncilandCityManager@eugene-or.gov>; Eugene NLC <eugene-nlc@googlegroups.com>

Subject: Tiffany Edwards lack of impartiality requires recusal on housing matters

May 21, 2019

For the record

Commissioners,

At the May 20, 2019 City Council public hearing, Tiffany Edwards provided oral testimony on behalf of the Chamber of Commerce advocating that the City Council remove an owner-occupancy requirement for ADUs and advocating that the Council "do what's needed" to allow more so-called "missing middle housing."

Ms. Edwards also gave a deplorable diatribe attacking Eugene citizens "who have owned their homes for decades" and "can't understand the needs" of other community members.

Ms. Edwards is adding to her long track record of serving her commercial employers and denigrating residents who care for their neighborhoods.

There is clear and compelling documented evidence of Ms. Edwards' lack of impartiality with respect to housing code and quasi-judicial decisions related to housing proposals.

She should be removed from the Planning Commission; but barring that, she must be recused from deliberations and decision-making on all housing related matters.

Should she not be recused, her involvement will subject any EPC decision or recommendation to appeal.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402
541.344.2552

**Accredited Earth Advantage
Sustainable Homes Professional**

HANSEN Alissa H

From: EDWARDS Tiffany (SMTP)
Sent: Friday, May 24, 2019 3:15 PM
To: *Eugene Mayor, City Council, and City Manager; Eugene Planning Commission
Cc: Tiffany Edwards
Subject: FW: Tiffany Edwards lack of impartiality requires recusal on housing matters

Mayor Vinis, Councilors and fellow Planning Commissioners,
I wanted to take the opportunity to follow-up and respond to Mr. Conte's concerns (below), in the event that there is any confusion by members of Council or the Commission.

I had inquired on this particular issue, whether it would be appropriate for me to participate in providing testimony on the ADU ordinance, back on May 1st. It was made clear to me by the City's Attorney and planning staff that there was no issue with my providing testimony on ADUs, provided that it was not on behalf of the Planning Commission. So long as I am acting on behalf of myself or my organization, there is nothing that should keep me from doing so. A conflict of interest arises when there is a financial benefit or detriment to me (or my business) that could result in my actions as a Planning Commissioner, which is not the case here.

In the case of a "bias" it's also been made clear to me that bias applies in quasi-judicial proceedings and in order to participate, I must be able to make a decision without bias, based solely on the merits of the evidence. This has not been an issue on any of the matters that have come before me on the Planning Commission and it is required for this to be explicitly stated commencing all proceedings of this matter.

In an effort to mitigate this issue moving forward, back on April 1st, had sought the opinion of the state's Ethics Commission as it pertained to Mr. Conte's concerns over the Chamber weighing in on a small provision of HB 2001 (for the record, the Chamber has not taken a position on the bill itself). I received a response on April 10th, which clarifies what I have explained as well as what the City's legal staff had previously stated. This document has been provided to the City Attorney. Rest assured that I am extremely proactive in these matters and if ever I have questions, I am prompt to seek legal advice by the City's attorneys prior to taking any actions.

I believe Mr. Conte may simply be confused as to what constitutes as a "conflict of interest" and how the issue of bias would be applied to non-legislative matters and I anticipate you may continue to receive these communications by Mr. Conte. Please do not hesitate to reach out to me directly if you ever have questions pertaining to my volunteer position with the Planning Commission. I am always happy to make myself available.

Enjoy your holiday weekend,
Kind regards,
Tiffany

Tiffany Edwards
Planning Commissioner | City of Eugene
TiffanyEdwardsPC@gmail.com
Mobile 541-678-3370

Messages to and from this e-mail may be available to the public under Oregon Public Records Law.

From: Paul Conte <paul.t.conte@gmail.com>

Sent: Tuesday, May 21, 2019 9:18 AM

To: Eugene Planning Commission <epc@ci.eugene.or.us>

Cc: *Eugene Mayor, City Council, and City Manager <MayorCouncilandCityManager@eugene-or.gov>; Eugene NLC <eugene-nlc@googlegroups.com>

Subject: Tiffany Edwards lack of impartiality requires recusal on housing matters

May 21, 2019

For the record

Commissioners,

At the May 20, 2019 City Council public hearing, Tiffany Edwards provided oral testimony on behalf of the Chamber of Commerce advocating that the City Council remove an owner-occupancy requirement for ADUs and advocating that the Council "do what's needed" to allow more so-called "missing middle housing."

Ms. Edwards also gave a deplorable diatribe attacking Eugene citizens "who have owned their homes for decades" and "can't understand the needs" of other community members.

Ms. Edwards is adding to her long track record of serving her commercial employers and denigrating residents who care for their neighborhoods.

There is clear and compelling documented evidence of Ms. Edwards' lack of impartiality with respect to housing code and quasi-judicial decisions related to housing proposals.

She should be removed from the Planning Commission; but barring that, she must be recused from deliberations and decision-making on all housing related matters.

Should she not be recused, her involvement will subject any EPC decision or recommendation to appeal.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402
541.344.2552

Accredited Earth Advantage
Sustainable Homes Professional

HANSEN Alissa H

From: JEROME Emily N
Sent: Friday, May 24, 2019 9:38 AM
To: HANSEN Alissa H
Subject: FW: HB 2001 -- California APA Recommends AGAINST State prohibiting ADU owner-occupancy requirements
Attachments: CaliforniaAPA_ADUrecommendations.pdf

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Friday, May 24, 2019 8:07 AM
To: *Eugene Mayor, City Council, and City Manager <MayorCouncilandCityManager@eugene-or.gov>
Cc: Eugene NLC <eugene-nlc@googlegroups.com>
Subject: Fwd: HB 2001 -- California APA Recommends AGAINST State prohibiting ADU owner-occupancy requirements

----- Forwarded message -----

From: Paul Conte <paul.t.conte@gmail.com>
Date: Fri, May 24, 2019 at 8:05 AM
Subject: HB 2001 -- California APA Recommends AGAINST State prohibiting ADU owner-occupancy requirements
To: [All Oregon Representatives]

May 21, 2019

Honorable Representatives,

Regardless of the position you take on the HB 2001 dictate on so-called "Middle Housing," it's imperative that you not turn the current statutory requirement for *Accessory Dwelling Units* (ADUs) into a whole different beast -- a "stealth" upzoning to do away with all single-family zoning in Oregon cities. Cities must be allowed to require owner-occupancy in situations where such a provision is reasonable; for example, in the older single-family neighborhoods around the University of Oregon in Eugene.

Another authoritative organization -- the **American Planning Association of California** -- has argued that the State should NOT adopt statutory prohibition against owner occupancy requirements. See attached.

As the APA accurately advises: "remov[ing] owner occupancy requirements altogether, allow[s] for-profit developers to rent out both the main dwelling and the accessory dwelling at whatever rent they choose."

That's precisely what the outcome would be in many areas (e.g., around U of O) if HB 2001-A is passed without removing the proposed amendment to ORS 197.312 that would dictate the following one-size-fits-all prohibition:

(B) "Reasonable local regulations relating to siting and design" **does not include owner-occupancy requirements of either the primary or accessory structure** or requirements to construct additional off-street parking.

Representatives should not be misled by the clever, "bait-and-switch" argument that: "removing owner-occupancy requirements will result in more ADUs being built."

In fact, removing owner-occupancy requirements may result in more **second dwellings** being built, but these second dwellings would not be Accessory Dwellings in anything but name. All of the additional second dwellings on lots with no owner resident would not be "used in connection with or ... accessory to a single-family dwelling," as required by ORS 197.312. Yes, there would likely be an increase in dwellings, exactly the same outcome that would be accomplished by a transparent upzoning of single-family districts to "two-dwelling" districts.

This proposed provision of HB 2001-A is NOT a means of improving housing affordability, it is a massive giveaway to parasitic absentee rental investors.

HB 2001-A is a misguided attempt to impose ineffective and counter-productive amateurish attempt by zealots and parasitic financial entities. The HB 2001-A provision to prohibit any circumstance where the property owner may be required to reside on a property with an ADU would be an unmitigated disaster for many neighborhoods across Oregon cities.

Thank you for resisting the strong-arm tactics being applied to force this monstrous bill through the House over the sensible objections of Oregon city elected officials and their citizens.

Paul Conte

1461 W. 10th Ave.
Eugene, OR 97402
541.344.2552

Accredited Earth Advantage
Sustainable Homes Professional

APA CALIFORNIA SUPPORTS STANDARDS THAT ENCOURAGE ACCESSORY DWELLING UNIT (ADU) DEVELOPMENT BUT DOESN'T SUPPORT ANNUAL CHANGES

[Link to article on the web](#)

[Jump to](#) the APA's recommendation to NOT prohibit owner-occupancy requirement.

[NOTE: All formatting is in the original, except **highlighting** has been added to some items.]

APA California Supports ADUs

APA California supports ADUs as an important source of housing to help combat the housing crisis our communities are facing. **APA also supports standards that encourage the development of ADUs. APA's opposition to AB 2890 and SB 831 are not to the permitting of ADUs. Instead, our concerns are that these new ADU requirements are not functional and will create unintended consequences.** In addition, APA objects to another round of substantial changes proposed in two bills that, yet again, set specific standards that will not work in all jurisdictions throughout the state.

Local governments have been working very hard to comply with major changes in ADU regulations over the past few years and that effort has already been shown to have had a positive effect on the state's housing supply. However, it is critical that cities and counties, and the state, have time – before another set of new requirements are imposed – to assess the impact that the resulting increased density in existing neighborhoods has on tangible community capacity for services, such as sewer and water capacity, roads, transit, schools and other important community facilities. **A “build first, plan later” approach can have major impacts on our communities. These bills don't take a holistic approach to achieve both the goals of providing more housing and well-planned communities – these goals can and should be achieved simultaneously.**

General Workability

Local governments have been working very hard to comply with changes from SB 1069 (Wieckowski)/AB 2299 (Bloom) signed into law in 2016 and SB 229 (Wieckowski)/AB 494 (Bloom) signed into law in 2017. The new 2018 bills propose another extensive round of changes to ADU law – for the third year in a row. They confusingly share both similar and conflicting language. As has been stated many times by the Legislature and HCD, there have already been substantial increases in permits for ADUs in 2017 without these new requirements. There is no need for two, new and separate ADU bills. APA California would appreciate the

Legislature allowing cities and counties time to focus on implementation of existing ADU laws, adding only clarifications or clean up where needed.

The Most Troubling Changes

Elimination of Lot Size and Coverage Standards

Floor area ratio (FAR), minimum lot size, and lot coverage are tools that serve important planning purposes. Mainly, they ensure that large mansions aren't developed on tiny lots, otherwise known as "mansionization." In many instances, these requirements also ensure the inclusion of green space in dense, urban areas. SB 831 eliminates those requirements for ADUs. AB 2890 also eliminates these standards for ADUs in certain situations. These changes could allow a property owner to construct a massive house and one or more full-sized ADUs on the same lot, which encourages larger, less affordable units. *RECOMMENDED AMENDMENT: Allow ADUs entirely within existing structures even where the FAR exceeds current local standards. And establish minimum lot coverage standards that must be allowed for new detached ADU units.*

Mandatory JADUs and ADUs on the Same Lot and Multiple Multifamily ADUs

Both AB 2890 and SB 831 require ministerial approval of both JADUs and ADUs within existing space on any lot with a single-family home. The bills also require approval of multiple ADUs within a multifamily building. Multiple ADUs or JADUs on one lot or within multifamily buildings could substantially increase the density in areas built with infrastructure designed to handle only single-family homes and fewer overall units, negatively impacting infrastructure capacity and services as noted above. Taking into account the requirement that no parking can be required for these potentially large and multiple ADUs, there likely will be substantial impacts on many neighborhoods. While this may work in some jurisdictions, such as San Francisco, that doesn't mean it will work throughout the state. *RECOMMENDED AMENDMENT: These requirements should be optional, not mandated.*

Impact Fees

SB 831 eliminates impact fees even though these ADUs will still have an impact on the infrastructure and services in the community. For example, a 1200 square foot ADU could be a 3-bedroom, 1-2 bath dwelling — the same as a small house. Certainly, these units will have an impact on services. The bill appears to assume that residents of ADUs will be single, or that ADUs will serve as homes to only a couple of people. That may or may not be the case. But, local governments need to plan for all types of residents, whether a single person or many more, that could live in an ADU. *RECOMMENDED AMENDMENT: A better approach would be to allow for reduced impact fees on new ADU structures where feasible, such as limiting ADU fees to 50% of the current impact fees imposed on single-family residences.*

Restrictions or Removal of Owner Occupancy Requirements and No Affordability Requirements

None of the three bills contain any affordability requirements. While the discussion of these bills has been that ADUs are a source of affordable housing, most will likely be rented at market rate and nothing in these bills prevents that, or expressly allows cities to impose affordability restrictions on ADUs. SB 831 removes owner occupancy requirements altogether, allowing for-profit developers to rent out both the main dwelling and the accessory dwelling at whatever rent they choose. *RECOMMENDED AMENDMENT: Owner-occupancy requirements should be optional, not mandated.* [NOTE: It's clear from the text that this means "not mandated by the State either was, i.e., to require or to prohibit.]

Substandard ADUs

SB 831 puts building officials in the conflicting position of finding an existing, nonpermitted ADU as an "imminent risk to health and safety" to the ADU resident, but if the homeowner requests it, requiring the building official to delay enforcement of the building code because it's "not necessary to protect the public health and safety." It could also create unintended consequences of encouraging residents to illegally build an ADU and then get that unit permitted after the fact, rather than complying with existing law. *RECOMMENDED AMENDMENT: Work with Building Officials to find an appropriate solution to permitting existing illegal units.*

Timeframe for Permits

All three bills provide for a deemed-approved provision for a permit application not acted on within 60 days. *RECOMMENDED AMENDMENT: Any deemed-approved clause should be based upon a complete application and allow for mutual time extensions. Otherwise, applicants that are not timely in responding to review comments will face automatic denial*

HANSEN Alissa H

From: BRAUD Denny
Sent: Friday, May 24, 2019 8:36 AM
To: HANSEN Alissa H
Subject: FW: ADU's
Attachments: ADU letter to City Council.docx

From: Jean Tate <jeantate48@gmail.com>
Sent: Thursday, May 23, 2019 2:55 PM
To: RUIZ Jon R <JRuiz@eugene-or.gov>
Cc: BRAUD Denny <DBraud@eugene-or.gov>
Subject: ADU's

I always marvel at how you seem to pay strong attention to speakers at public meetings. The council does the same. Would you please share these thoughts with them?

Thank you,
Jean

May 23, 2019

To the August Members of the Eugene City Council:

I should begin by confessing that I am probably one of those “developers” and perhaps “speculators” referred to by several of the speakers on Monday evening’s well attended public hearing. I always marvel at how attentive you are to every one of the speakers.

The speakers were polite and raised some issues for you to consider. It was interesting that the majority of the speakers were very positive about the benefits of allowing ADU’s in most R-1 zones. The resulting increase in small, less expensive units will at least help to alleviate the very real housing crunch here in Eugene.

In the late 50’s and early 60’s, one of the developers working to provide housing for those of low to moderate income was a man named Ray Lindberg. Many of the purchasers of these units eventually moved “up” to Breeden or other homes in the area allowing others of more moderate means to buy their own Lindberg Home.

Developers are no longer able to build homes for folks of just moderate incomes. Because of my involvement in real estate over the years, I check out the Saturday section on real estate in the Register Guard. I am shocked at the very few houses which seem affordable. A friend of mine has been looking in southwest Eugene. She found a three bedroom, two bath house which was listed for \$350,000. She made an appointment to go to see it, was told that there were going to probably be multiple offers since so few homes in this price range seemed to be on the market.

My friend asked me to go with her, liked the house and decided (along with her out of town partner) to make an offer. There were seven (!) offers on this property by the 3:00 p.m. deadline the next day! My friend and her partner had the accepted offer. The price they offered was over \$400,000.

Which brings me to the many reasons that ADU’s are really essential at this time. I would like to speak to the reasons that folks were against ADU’s. The majority of the negative comments were about allowing ADU’s on properties not occupied by an owner. That limitation would dramatically decrease the number of those units being built.

I was most disturbed by the negative comments made about renters. I don’t think people realize that the majority of people living in Eugene are living in rentals. And, they all are not college students. It is possible to regulate behavior around messy, unkempt yards and loud noise in a residential neighborhood. Frankly, it is easier to do this with tenants than with owners. Years ago I sold a house here in Eugene to a couple who, unbeknownst to me, had three really bratty kids. A friend of mine lived next door. They had to sell their house to escape the bratty kids. That was an owner-occupant.

A second part of this argument was that the neighbors would have to deal with out of town “developers” who wouldn’t care about their property. As an out of town owner of a duplex in Forest Grove, I can tell you that I certainly was interested in the condition of the property. It was a \$300,000 investment. No way would I allow renters to do damage to my investment.

A requirement you might consider, which an ordinance adopted by some coastal towns, would be to require owners to use a property management firm if they are going to build and rent out an ADU, perhaps to anyone other than a relative. Or, maybe this should only apply to a house and ADU both of which were rented rather than one being owner-occupied.

Another concern was about height restrictions. My understanding is that a unit under the proposed ordinance could be 20 feet high. I can understand that concern. Perhaps a height restriction could be relative to the distance from a property line. If the ADU is going to be just one story high, it could be the now required distance of five feet. If it’s over say 15 feet, it might need to be 10 or 12 feet from the property line.

One speaker mentioned that renters often don’t move their grass. I believe there is a requirement in the city code stating that grass must be kept lower than a certain height. Garbage in the driveway was also named as a problem. Unbeknownst to me, one of my tenants had begun storing their garbage in plastic bags next to their garage. I got a letter from the county (since this property isn’t in the city) stating that this must be corrected or they would do so and bill me for the work. I, of course, got on my tenant’s case and they moved the garbage to the dump. I then signed up for garbage service as part of their rent so the problem did not recur.

A final problem mentioned concerned density. I confess to not having read the ordinance so don’t know if this has been addressed but it can be. You can limit the number of secondary units according to lot size. For instance, if someone has an acre and is willing to put in four ADU’s, that should not be a problem. If it were a 4,000 foot lot, perhaps only one ADU should be allowed.

In closing: It is my opinion that the vast majority of concerns brought up at this meeting can be addressed in an ordinance. I, other rental owners and local property management organizations would, I am sure, be happy to work with staff as they work on this ordinance. ADU’s can work and can help to solve part of the local housing homeless situation. Everyone wants to have a home of their own. Let’s make this happen!

Jean Tate
1375 Olive #510
Eugene, OR, 97401

Email: jeantate48@gmail.com

HANSEN Alissa H

From: JEROME Emily N
Sent: Wednesday, May 22, 2019 2:05 PM
To: HANSEN Alissa H
Subject: FW: Accessory Dwelling Units
Attachments: OR_ADU Letter to Council_5.22.19.docx; The ABCs of ADUs.pdf

Importance: High

From: Snyder, Carmel P. <CSnyder@aarp.org>
Sent: Wednesday, May 22, 2019 2:00 PM
To: *Eugene Mayor, City Council, and City Manager <MayorCouncilandCityManager@eugene-or.gov>
Subject: Accessory Dwelling Units
Importance: High

May 22, 2019

Dear Mayor and Councilors,

Thank you for your time and consideration of the city's current Accessory Dwelling Unit (ADU) ordinances and working to remove barriers to this housing option in Eugene.

AARP is a nationwide organization of more than 38 million members – of those, almost 50,000 live in Eugene.

In the year 2000, we worked with the American Planning Association, on a model ordinance^[1] that “[was] intended to serve as a guide for communities . . . seeking to increase the housing choices available to their residents.” The model ordinance lays out a menu of options from least favorable to most favorable for local jurisdictions to use to develop their own legislation on ADUs. . The model ordinance also states on the second page, “The views expressed herein are for information, debate, and discussion and do not necessarily represent the formal policies of AARP.”^[2] As this model ordinance was created 19 years ago, times have changed, and AARP has recently released, the “ABCs of ADUs,”^[3] which is a guide to ADUs and how they expand housing options for people of all ages.

In this new publication, owner occupancy is discussed on page 17. While some jurisdictions require owner occupancy, it has become less common, and can have negative impacts on financing, home appraisals, and options for lenders. The “ABCs of ADUs” also states that according to a study by the Oregon Department of Environmental Quality, more than two-thirds of properties with ADUs are owner-occupied even without an owner-occupancy mandate.

AARP Oregon continues to support removing barriers to ADUs as they provide alternatives for housing for older adults and their families of all ages.

By the year 2030, the first of the Gen-Xers will be turning 65; and the first of the Millennials will be turning 50. And, by the year 2035, there will be more Oregonians older than 65 than children 18 and younger. As the demographics in states and cities change, neighborhoods' and communities' needs change. Zoning needs to reflect those changes.

Oregon is facing a housing crisis – it is a crisis of availability, affordability and of housing options. Restrictions such as parking, lot size, and owner-occupancy can limit options such as ADUs.

In places where housing affordability or the opportunities to age-in-place are limited, ADUs can positively affect many families. Empty nesters can build an ADU, move into it, and rent out the main house for supplemental income, allowing them to age in their community. Families with young children can reside in an ADU to be near family members. Individuals in need of care, can reside in an ADU close to their family, or have a caregiver live in the ADU.

We urge you to move forward in creating the options residents in your community need.

Respectfully submitted, on behalf of AARP Oregon

Carmel Perez Snyder, AARP OR Associate State Director (Ward 8, Eugene)

Carmel Perez Snyder
Director of Advocacy & Outreach, AARP Oregon
Phone: 541-525-8123
Email: csnyder@aarp.org

“Each one of us has powers of which we are unaware, each of us has a circle of influence. Our limitations are the product of our own thinking and self-evaluation. If only we think we can!” – Dr. Ethel Percy Andrus

^[1] *Accessory Dwelling Units Model State Act and Local Ordinance*, https://assets.aarp.org/rgcenter/consume/d17158_dwell.pdf.

^[2] *Id.*

^[3] *ABCs of ADUs*, <https://www.aarp.org/content/dam/aarp/livable-communities/livable-documents/documents-2019/ADU-guide-web-singles.pdf>



9200 SE Sunnybrook Boulevard, #410 | Clackamas, OR 97015
1-866-554-5360 | Fax: 503-652-9933 | TTY: 1-877-434-7598
aarp.org/or | oraarp@aarp.org | twitter: @aarpor
facebook.com/AARPOregon

May 21, 2019

Dear Mayor and Councilors,

Thank you for your time and consideration of the city's current Accessory Dwelling Unit (ADU) ordinances and working to remove barriers to this housing option in Eugene.

AARP is a nationwide organization of more than 38 million members – of those, almost 50,000 live in Eugene.

In the year 2000, we worked with the American Planning Association, on a model ordinance¹ that “[was] intended to serve as a guide for communities . . . seeking to increase the housing choices available to their residents.” The model ordinance lays out a menu of options from least favorable to most favorable for local jurisdictions to use to develop their own legislation on ADUs. . The model ordinance also states on the second page, “The views expressed herein are for information, debate, and discussion and do not necessarily represent the formal policies of AARP.”² As this model ordinance was created 19 years ago, times have changed, and AARP has recently released, the “ABCs of ADUs,”³ which is a guide to ADUs and how they expand housing options for people of all ages.

In this new publication, owner occupancy is discussed on page 17. While some jurisdictions require owner occupancy, it has become less common, and can have negative impacts on financing, home appraisals, and options for lenders. The “ABCs of ADUs” also states that according to a study by the Oregon Department of Environmental Quality, more than two-thirds of properties with ADUs are owner-occupied even without an owner-occupancy mandate.

AARP Oregon continues to support removing barriers to ADUs as they provide alternatives for housing for older adults and their families of all ages.

By the year 2030, the first of the Gen-Xers will be turning 65; and the first of the Millennials will be turning 50. And, by the year 2035, there will be more Oregonians older than 65 than children 18 and younger. As the demographics in states and cities change, neighborhoods' and communities' needs change. Zoning needs to reflect those changes.

¹ *Accessory Dwelling Units Model State Act and Local Ordinance*, https://assets.aarp.org/rgcenter/consume/d17158_dwll.pdf.

² *Id.*

³ *ABCs of ADUs*, <https://www.aarp.org/content/dam/aarp/livable-communities/livable-documents/documents-2019/ADU-guide-web-singles.pdf>

Oregon is facing a housing crisis – it is a crisis of availability, affordability and of housing options. Restrictions such as parking, lot size, and owner-occupancy can limit options such as ADUs.

In places where housing affordability or the opportunities to age-in-place are limited, ADUs can positively affect many families. Empty nesters can build an ADU, move into it, and rent out the main house for supplemental income, allowing them to age in their community. Families with young children can reside in an ADU to be near family members. Individuals in need of care, can reside in an ADU close to their family, or have a caregiver live in the ADU.

We urge you to move forward in creating the options residents in your community need.

Respectfully submitted, on behalf of AARP Oregon

Carmel Perez Snyder, AARP OR Associate State Director (Ward 8, Eugene)

The ABCs of ADUs

A guide to
Accessory Dwelling Units
and how they expand housing options
for people of all ages



BASEMENT ADU



DETACHED ADU



ATTACHED ADU



SECOND-STORY ADU



GARAGE-CONVERSION ADU



Websites: AARP.org and AARP.org/Livable
Email: Livable@AARP.org
Facebook: /AARPLivableCommunities
Twitter: @AARPLivable
Free Newsletter: AARP.org/Livable-Subscribe

AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering people 50 or older to choose how they live as they age. With nearly 38 million members and offices in every state, the District of Columbia, Puerto Rico and the U.S. Virgin Islands, AARP strengthens communities and advocates for what matters most to families: health security, financial stability and personal fulfillment. The AARP Livable Communities initiative works nationwide to support the efforts by neighborhoods, towns, cities, counties, rural areas and entire states to be livable for people of all ages.



Website: OrangeSplot.net
Email: eli@OrangeSplot.net

Orange Splot LLC is a development, general contracting and consulting company with a mission to pioneer new models of community-oriented, affordable green housing developments. Orange Splot projects have been featured in the *New York Times*, *Sunset Magazine* and on NBC's *Today* show. (The detached ADUs on page 3 and the back cover are by Orange Splot.) Company founder Eli Spevak has managed the financing and construction of more than 250 units of affordable housing, was awarded a Loeb Fellowship by the Harvard University Graduate School of Design, cofounded the website AccessoryDwellings.org and serves as a vice chair of Portland, Oregon's Planning and Sustainability Commission.

The ABCs of ADUs

A guide to Accessory Dwelling Units and how they expand housing options for people of all ages

WRITTEN AND EDITED BY: Eli Spevak, Orange Splot LLC | Melissa Stanton, AARP Livable Communities
ART DIRECTOR: Mimi Park, Design Park, Inc.
COPY EDITOR: Don Armstrong | **ART PRODUCTION:** Steve Walkowiak

PROJECT ADVISERS AND REVIEWERS:

Danielle Arigoni, Director, AARP Livable Communities
Karen Chapple, Professor, University of California, Berkeley
Lina Menard, Founder, Niche Consulting
Heather Peters, Senior Housing and Community Development Policy Analyst, San Mateo County, California
Kol Peterson, Cofounder, AccessoryDwellings.org | Caravan: The Tiny House Hotel | ADU Tour: Portland, Oregon
Denise Pinkston, Partner, TMG Partners
Harriet Tregoning, past Principal Deputy Assistant Secretary, U.S. Housing and Urban Development
Jake Wegmann, Assistant Professor, University of Texas at Austin

COVER IMAGE CREDITS (clockwise from top left)

Front: Communitecture: Architecture, Planning, Design | Alex Hayden | AccessoryDwellings.org | AccessoryDwellings.org | Melissa Stanton, AARP
Back: Eli Spevak, Orange Splot LLC | Kol Peterson, BuildingAnADU.com | Schuyler Smith, Polyphon Architecture & Design, LLC

A NOTE TO READERS: Many of the photographs and project examples in this publication are from Portland, Oregon, one of the first municipalities in the nation to encourage the creation of accessory dwelling units.

Visit AARP.org/ADU to download or order this free guide and find more resources about accessory dwelling units.

Welcome! Come On In

AARP surveys consistently show that the vast majority of people age 50 or over want to remain in their homes and communities as they age rather than relocate

We know from surveys by AARP and others that a majority of Americans prefer to live in walkable neighborhoods that offer a mix of housing and transportation options and are close to jobs, schools, shopping, entertainment and parks.

These preferences — coupled with the rapid aging of the United States' population overall and decrease in households with children — will continue to boost the demand for smaller homes in more compact neighborhoods.

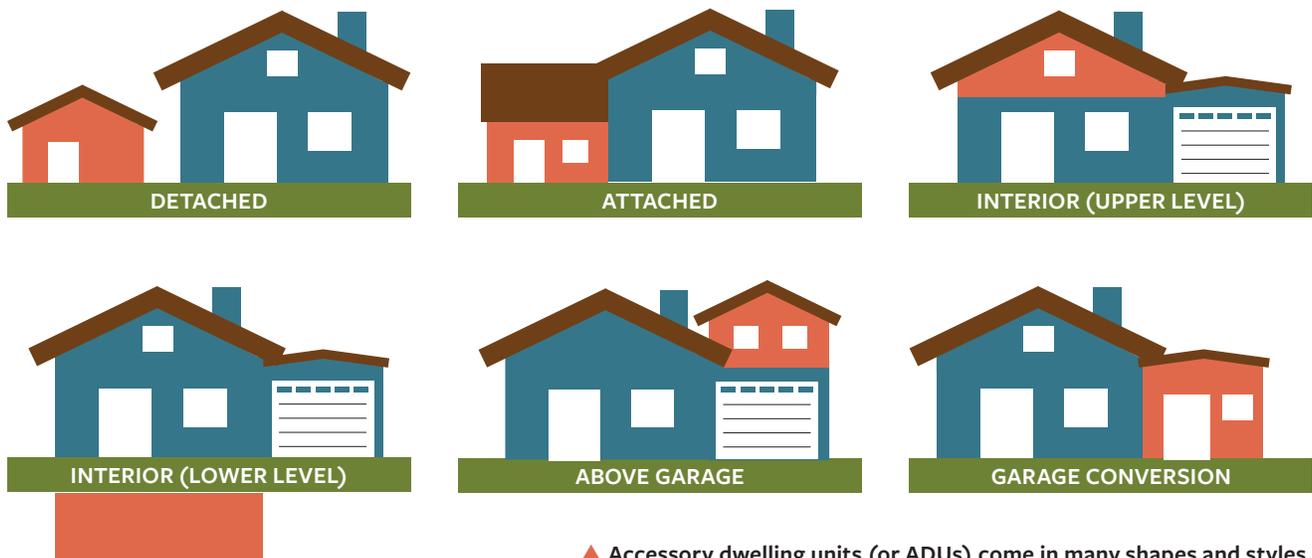
As small houses or apartments that exist on the same property lot as a single-family residence, accessory dwelling units — or ADUs — play a major role in serving a national housing need.

This traditional home type is reemerging as an affordable and flexible housing option that meets the needs of older adults and young families alike.

In fact, in the 2018 AARP Home and Community Preferences Survey, people age 50-plus who would consider creating an ADU said they'd do so in order to:

- provide a home for a loved one in need of care (84%)
- provide housing for relatives or friends (83%)
- feel safer by having someone living nearby (64%)
- have a space for guests (69%)
- increase the value of their home (67%)
- create a place for a caregiver to stay (60%)
- earn extra income from renting to a tenant (53%)

Since ADUs make use of the existing infrastructure and housing stock, they're also environmentally friendly and respectful of a neighborhood's pace and style. An increasing number of towns, cities, counties and even states have been adapting their zoning or housing laws to make it easier for homeowners to create ADUs.



The ABCs of ADUs is a primer for elected officials, policymakers, local leaders, homeowners, consumers and others to learn what accessory dwelling units are and how and why they are built. The guide also suggests best practices for how towns, cities, counties and states can include ADUs in their mix of housing options.

ADUs Come in Many Shapes and Styles

ADUs are a family-friendly, community-creating type of housing the nation needs more of

Although many people have never heard the term, accessory dwelling units have been around for centuries (see page 6) and are identified by many different names. To be clear about what’s being discussed:

- An ADU is a small residence that shares a single-family lot with a larger, primary dwelling
- As an independent living space, an ADU is self-contained, with its own kitchen or kitchenette, bathroom and sleeping area
- An ADU can be located within, attached to or detached from the main residence
- An ADU can be converted from an existing structure (such as a garage) or built anew
- ADUs can be found in cities, in suburbs and in rural areas, yet are often invisible from view because they’re positioned behind or are indistinct from the main house
- Because ADUs are built on single-family lots as a secondary dwelling, they typically cannot be partitioned off to be sold separately
- An ADU can provide rental income to homeowners and an affordable way for renters to live in single-family neighborhoods
- An ADU can enable family members to live on the same property while having their own living spaces — or provide housing for a hired caregiver
- Unlike tiny houses (see page 17), ADUs are compact but not teeny, so they’re a more practical option for individuals, couples and families seeking small, affordable housing
- For homeowners looking to downsize, an ADU can be a more appealing option than moving into an apartment or, if older, an age-restricted community
- ADUs can help older residents remain in their community and “age in place”



CREATIVE COMMONS

▲ Accessory dwelling units show up in neighborhoods throughout the country — and even in pop culture. One example: In the sitcom *Happy Days*, Fonzie (right) rented an above-garage ADU from the Cunningham family in 1950s-era Milwaukee, Wisconsin.

ADUs are also known as ...

Although most local governments, zoning codes and planners in the United States use the term *accessory dwelling unit* or *ADU*, these small homes and apartments are known by dozens of other names. The different terms conjure up different images. (Who wouldn’t rather live in a “carriage house” than in an accessory or “ancillary” unit?) Even if you’ve never heard of accessory dwelling units or ADUs, you have likely heard of — and perhaps know the locations of — some of the home types noted at right.



▲ Renting out this 350-square-foot garage-conversion ADU in Portland, Oregon, helps the property owner, who lives in the lot’s primary residence, pay her home mortgage.

- accessory apartment
- alley flat
- back house
- backyard bungalow
- basement apartment
- carriage house
- coach house
- garage apartment
- granny flat
- guest house or cottage
- in-law suite
- laneway house
- mother-daughter house
- multigenerational house
- ohana unit
- secondary dwelling unit
- sidekick

PHOTO AND LIST FROM ACCESSORYDWELLINGS.ORG

Since ADUs can be created in many different shapes and styles, they're able to fit discreetly into all sorts of communities, including suburban subdivisions, row-house streets (either with or without back-alleys), walkable town or urban neighborhoods — and, of course, large lots and rural regions.



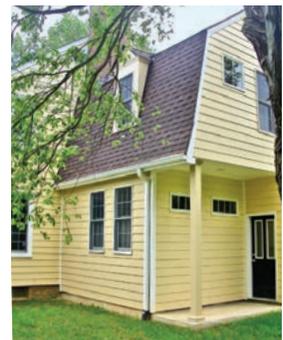
◀ A **DETACHED ADU** (aka DADU) is a stand-alone home on the same lot as a larger, primary dwelling. Examples include backyard bungalows and converted outbuildings.

Location: Portland, Oregon | Photo by David Todd



▶ An **ATTACHED ADU** connects to an existing house, typically through the construction of an addition along the home's side or rear. Such units can have a separate or shared entrance.

Location: Davidsonville, Maryland | Photo by Melissa Stanton, AARP



◀ A **GARAGE ADU** makes use of an attached or detached garage by converting the space into a residence. Other options involve adding a second-story ADU above a garage or building a new structure for both people and cars.

Location: Portland, Oregon | Photo by Radcliffe Dacanay

An **INTERNAL ADU** is created when a portion of an existing home — an entire floor, part of a floor, or an attic or basement — is partitioned off and renovated to become a separate residence.

▶ Access to an **UPPER-LEVEL ADU** can be provided through a stairway inside the main home or directly from an exterior staircase. This 500-square-foot ADU sits atop a 1,900-square-foot primary dwelling.

Location: Portland, Oregon | Photo by Eli Spevak, Orange Splot LLC



▲ A **LOWER-LEVEL ADU** is typically created through the conversion of a home's existing basement (provided that height and safety conditions can be met), during construction of the house, or (see page 7) as part of a foundation replacement and house lift.

Location: Portland, Oregon | Photo by Derin Williams

ADUs Are Good for People and Places

Communities that understand the benefits of ADUs allow homeowners to create them

ADUs are an affordable housing option

- ADUs can generate rental income to help homeowners cover mortgage payments or simply make ends meet. The income provided by an ADU tenant can be especially important for older people on fixed incomes.
- Since the land on which an ADU is built already belongs to the homeowner, the expense to build a secondary residence is for the new structure only. The lot is, in a sense, free.
- ADUs are typically owned and managed by homeowners who live on the premises. Such landlords are less likely to raise the rent once a valued tenant has moved in. Many ADUs are created for family members to reside in for free or at a discounted rate.
- Although market rate rents for ADUs tend to be slightly more than for similarly sized apartments, they often represent the *only* affordable rental choices in single-family neighborhoods, which typically contain no studio or one-bedroom housing options at all.
- Some municipalities are boosting ADUs as part of affordable housing and anti-displacement strategies. Santa Cruz, California (see opposite), is among the cities with programs to help lower-income households build ADUs or reside in them at reliably affordable rents.

ADUs are able to house people of all ages

- An individual’s housing needs change over time, and an ADU’s use can be adapted for different household types, income levels, employment situations and stages of life.
- ADUs offer young people entry-level housing choices.
- ADUs enable families to expand beyond their primary home.
- ADUs provide empty nesters and others with the option of moving into a smaller space while renting out their larger house or letting an adult child and his or her family reside in it.

ADUs are just the right size

- Generally measuring between 600 and 1,000 square feet, ADUs work well for the one- and two-bedroom homes needed by today’s smaller, childless households, which now account for nearly two-thirds of all households in the United States.

ADUs are good for the environment

- ADUs require fewer resources to build and maintain than full-sized homes.
- ADUs use significantly less energy for heating and cooling. (Of all the ADU types, internal ones tend to have the lowest building and operating costs.)

ADUs are community-compatible

- ADUs offer a way to include smaller, relatively affordable homes in established neighborhoods with minimal visual impact and without adding to an area’s sprawl.
- ADUs provide a more dispersed and incremental way of adding homes to a neighborhood than other options, such as multistory apartment buildings. As a result, it’s often easier to get community support for ADUs than for other housing types.

Big houses are being built, small houses are needed

Do we really need more than three times as much living space per person as we did in 1950? Can we afford to buy or rent, heat, cool and care for such large homes?

YEAR	1950	2017
Average square footage of new single-family homes	983	2,571
Number of people per household	3.8	2.5
Square feet of living space per person	292	1,012

Fact: ADUs house more people per square foot of living area than single-family homes do.

SOURCE: NATIONAL ASSOCIATION OF HOME BUILDERS (AVERAGE HOME SIZES); U.S. CENSUS BUREAU (AVERAGE HOUSEHOLD SIZES)

HOME VISIT #1

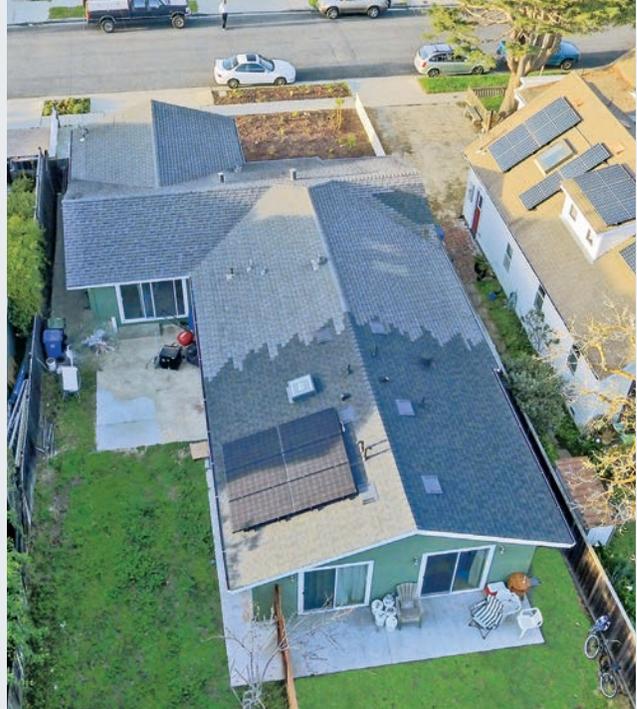
Attached ADU Addition

Santa Cruz, California

Size: 500 square feet



AARP



▲ The area with the darker roof shingles is the ADU that was added onto the home of Carrie and Sterling Whitley.

◀ ▼ The Whitleys' ADU (that's Carrie showing off the front yard's new paths and plantings) has its own entrance on the side of the home and is being rented to the couple's daughter so she can help her elderly parents when needed.

When Carrie and Sterling Whitley bought their house in 1971, they paid less than \$15,000. Nearly 50 years later, similar homes on their street have sold for more than \$1 million.

THE PROBLEM: The Whitleys, who are in their 80s, own the house outright and don't want to move. But the financial and physical demands involved in maintaining the house are a challenge.

A SOLUTION: To help low-income homeowners age 62 or older live independently and keep their homes, the Monterey Bay affiliate of Habitat for Humanity and the City of Santa Cruz launched My House My Home: A Partnership for Aging-in-Place. The pilot program builds accessory dwelling units so older homeowners can downsize into a new, aging-friendlier home and earn rental income from their original house. Or such homeowners can remain in their house and rent out the new, smaller residence. Participating homeowners are required to charge an affordable rental rate.

REALITY CHECK: When the Whitleys' project broke ground in April 2017, they were the first homeowners to receive an ADU through the program, which worked with them to design the ADU as an addition to their existing home. Since the dwelling was built with accessibility features, Carrie and Sterling know they can downsize into it if they ever need to. Until then, their daughter, Brenda, resides in the addition.

REAL LIFE: "I'm right next door to my parents in case they need me or need any help," Brenda says.

Design: Historic Sheds | Builder: Historic Sheds | Cost to build: \$158,000 in 2017 (not including volunteer labor) | Photos by Michael Daniel | Article adapted from Where We Live: Communities for All Ages (AARP 2018)



ADU ADVICE: With an attached ADU, privacy between the two residences can be achieved by locating the ADU bedroom(s) and bathroom(s) as far as possible from the main house. Providing the ADU with its own yard or outdoor space is helpful too.

ADUs Are an American Tradition

While today's interest in ADUs may be new, the housing type is centuries old

Early settlers often built a small home to live in while constructing their larger, primary house nearby.

When farming was a source of survival for most of the nation's households, families routinely constructed additional homes on their land when needed.

People with wealth and acreage regularly populated their lands with secondary mansions and ancillary buildings independent of the main estate house.

In fact, until the 20th century, people with land built as many homes as they wished. There were few or no zoning rules, municipal services or infrastructure (utilities, roads, schools, trash collection, first-responders) to consider.

A historic precedent for the modern day accessory dwelling unit is the "carriage house," or "coach house." Originally built for horse-drawn carriages, the structures associated with grander homes were frequently large enough to double as living quarters for workers and stable hands.

Decades later, in response to housing shortages and economic needs, many surviving carriage houses were

converted into rental homes. By becoming landlords, the owners gained income from their otherwise unused outbuildings.

Automobile garages have a similar history. Some were originally built with a housing unit upstairs. Over time, many garages were converted (often illegally or under zoning codes no longer applicable today) into small homes when the spaces became more valuable for housing people than vehicles.

With the rise of suburban single-family home developments following World War II, ADUs practically ceased to be built legally in the United States. Then as now, residential zoning codes typically allowed only one home per lot, regardless of the acreage and with no exceptions. Attached and detached garages occupied yard space that might otherwise have been available for ADUs.

Some cities, including Chicago, grandfathered in pre-existing ADUs — but only if the residences remained consistently occupied. In Houston's historic and trendy Heights neighborhood, old and new garage apartments are common and desired.

But elsewhere, even in rural areas with ample land, property owners are often prohibited from creating secondary dwellings. Many communities today don't allow new ADUs, even if they did in the past — and even if ADUs currently exist there. (Countless units in single-family homes or yards are technically illegal or are allowed simply because they were created when such residences had been legal.)

ADUs began making a comeback in the 1980s as cities explored ways to support smaller and more affordable housing options within single-dwelling neighborhoods. In 2000, in response to a growing demand for ADU-supportive guidelines, AARP and the American Planning Association partnered to release an influential model state act and local code for ADUs.

More recently, there's been renewed interest at the state and local levels (see page 8) in legalizing and encouraging the creation of ADUs, driven by the increasingly high cost of housing and, in some places, the belief that homeowners with suitable space shouldn't be so restricted in the use of their property.

▼ **This carriage house containing a one-bedroom, one-bath ADU above a two-car garage sits behind a six-level, Gilded Age, Hoboken, New Jersey, townhome that was built in 1883. The dual residence property was on the market in 2018 for \$5 million.**



HOME VISIT #2

Garage Apartment ADU

Denver, Colorado

Size: 360 square feet



▲ The apartment above the garage can be reached from inside the garage or from an exterior side entrance accessed from the yard it shares with the primary residence.

“I see our ADU as something very similar to a student loan,” says Mara Owen. “It’s something you invest in the future with. It was cheaper than buying a house for Mom, and it lets her have independence. It’s great knowing we can check in on her whenever.”

AH-HA MOMENT: Owen, her partner, Andrew, and their three dogs were sharing a one-bedroom, one-bath house with her mother, Diane. When Owen learned that ADUs were allowed in the city, she decided the best way to get more space for her small home’s many residents would be to remove their “leaky and defunct” garage and build a new two-car garage with an apartment above it.

WISE ADVICE: “Get a really great builder and architect,” says Owen. “Interviewing architects was similar to a first date. It’s not just who you feel connected with. That’s important, but get to the values. It’s a niche market, so see if you can find someone who has built ADUs before, because ADUs are a little different.”

FUTURE PLANS: The stairs to Diane’s apartment are wide enough for a stair lift, if it’s ever needed. The roof was built at the correct slope for the eventual installation of solar panels.

Design: Hive Architecture | Builder: Hive Architecture | Cost to build: \$167,000 in 2016 | Photo by Mara Owen | Article adapted from “ADU Case Studies” by Lina Menard on AccessoryDwellings.org. Visit the website to read about and see photographs of more ADU projects.

HOME VISIT #3

Basement ADU

Portland, Oregon

Size: 796 square feet

The transformation of this colorful Victorian was both a preservation and expansion project.

TEACHING MOMENT: “Here’s a very welcome breath of fresh air, especially in the face of so much gentrification that is going on in Portland!” declared Mark Lakeman, principal of Communitecture, an architectural, planning and design firm, about the pictured remodel. Writing on his company’s website, he says the project provides a lesson in how to “adapt and reuse our precious historic houses so they can accommodate more people while also providing more income to support the existing home.”

HOW’D THEY DO IT? To add a basement rental unit, engineers lifted the house. The resulting ADU is roughly four feet underground and four feet above.



▲ By lifting the house and digging beneath it, designers, engineers and builders turned a two-story, single-family home into a three-story, multifamily residence.

THE ACHIEVEMENT: Adds Lakeman: “Unlike the seemingly pervasive method of simply tearing down existing buildings so that new, giant ones can be built, this approach achieves upgrades in energy efficient living places and adds density while retaining the continuity of our beloved historical urban environment.”

Design: Communitecture | Home Lift: Emmert International | Builder: Tom Champion | Cost to build: \$125,000 in 2015 | Photos by Communitecture (before) and Chris Nascimento (after)

The Time Is Now

Rules for ADUs continue to evolve and frequently differ from one town to the next

Some communities allow almost any home to be set up with an ADU — so long as size limits, property line setbacks and placement caveats in relation to the primary dwelling are met.

Other communities start with those basic standards and then layer on extra requirements (see page 14) that can make it challenging to create an ADU.

Municipalities nationwide have been relaxing their restrictions against ADUs, and some states have been encouraging their creation by requiring communities to allow them.

- In 2017, California required all of its cities and counties to allow ADUs so long as the property owner secured a building permit. In Los Angeles, Mayor Eric Garcetti has said ADUs could provide the city with a needed 10,000 housing units. He's touted ADUs as a "way for homeowners to play a big part in expanding our city's housing stock and make some extra money while they're at it."
- That same year, a New Hampshire law established that local zoning codes had to allow ADUs nearly everywhere single-family housing was permitted. The change stemmed in large part from the frustration of builders who couldn't construct the type of amenities, such as backyard cottages and garage apartments, that their clients desired.
- Oregon requires cities and counties of certain sizes within urban growth boundaries to allow ADUs in all single-family neighborhoods.
- As of 2019, major cities that allow ADUs include Anchorage, Alaska; Atlanta, Georgia; Austin, Texas; Denver, Colorado; Honolulu, Hawaii; Houston, Texas; Philadelphia, Pennsylvania; Phoenix, Arizona; Seattle, Washington; and Washington, D.C. Communities in Massachusetts, Kentucky, Illinois, Indiana and Oregon have sought advice from AARP and Orange Spout about revising their zoning codes to allow ADUs.

► **The unique floor plan of this single-family Maryland farmhouse allows for a first floor residence (accessed through the door on the right) and an upper-level ADU that can be reached through the entrance at left.**

To Encourage ADUs

LOCAL OFFICIALS can ...

- allow all ADU types (detached, attached, interior)
- simplify the building permit process for ADUs
- waive or reduce permit and impact fees
- let garages be converted into ADUs without requiring replacement off-street parking
- allow a second ADU if one of the homes on the property meets accessibility standards

COMMUNITY PLANNERS can ...

- adopt simple, flexible but nondiscretionary ADU rules about setbacks, square footage and design compatibility with the primary dwelling

LENDERS can ...

- work with homeowners to finance the construction of ADUs by using renovation loans

ADVOCATES can ...

- organize tours of completed ADUs in order to inform and inspire the community
- educate homeowners, real estate agents, architects and builders about local zoning regulations and the permit process

REAL ESTATE AGENTS can ...

- educate themselves and their clients about rules for the construction of ADUs

LOCAL MEDIA can ...

- report on how and why homeowners build ADUs



PHOTO BY MELISSA STANTON, AARP

HOME VISIT #4

Internal ADU (Main Level)

Portland, Oregon

Size: 220 square feet

Even small homes can have enough space for an ADU. An underused main floor bedroom in this 1.5-story, 1,500-square-foot bungalow was transformed into a studio apartment.

AH-HA MOMENT: According to Joan Grimm, who owns the home with Rita Haberman: “What we were looking for in terms of a community and aging in place was right under our noses. Remove a fence and create a shared open space. Build a wall and create a second dwelling unit. It doesn’t have to be complicated.”

REAL LIFE: “Creatively carving out an ADU from the main floor of our house saved on design and construction costs,” Grimm adds. “It provides an opportunity for rental income, with no significant compromise to the livability of our home.”



▲ The steps and side entrance (top) lead to the studio apartment ADU, which was crafted out of an existing space. The covered porch to the right leads to the primary residence. The ADU contains a kitchen, small dining and living area, sleeping area, bathroom and laundry area.

*Design: Rita Haberman | Builder: RS Wallace Construction | Cost to build: \$55,000 in 2015 (with some work done by the homeowners)
Photos courtesy Billy Ulmer | Article adapted from “ADU Case Studies” by Lina Menard on AccessoryDwellings.org*

HOME VISIT #5

Internal ADU (Lower Level)

Portland, Oregon

Size: 795 square feet

“We were looking for a way to live in our house for the rest of our lives and to generate at least some income in the process,” Robert Mercer and Jim Heuer wrote for the program guide of the annual Portland ADU Tour when their home was part of the lineup. “An ADU offers the possibility of caregiver lodging in the future or even a place for us to live while we rent out the main house if we get to the point where we can’t handle the stairs any longer.”

THE SOUND OF SILENCE: Internal ADUs often require that soundproofing insulation be installed between the primary dwelling and the accessory unit that’s below, above or beside it. In Portland, the building code for duplex residences requires a sound insulation rating of at least STCC45. To property owners thinking about a similar ADU setup, the duo advise: “Think about how you live in your home and

▼ The door to the right of the garage leads to a ground-floor ADU with windows along the back and side walls. The upper-level windows seen below are part of the main residence.



how having downstairs neighbors will change what you can and can’t do with your space and what investment you are prepared to make in sound insulation.”

AN ADDED BONUS: “We are pleased that we have been able to provide more housing density on our property and still be in keeping with the historic character of our home.”

Design: DMS Architects | Builder: Weitzer Company | Cost to build: \$261,000 in 2016 | Photo by Melissa Stanton, AARP | Article adapted from the 2017 ADU Tour project profiles on AccessoryDwellings.org

Bringing Back ADUs

The reasons for creating or living in an ADU are as varied as the potential uses

ADUs are flexible. Over time, a single ADU might be used in many ways as an owner's needs and life circumstances change. Following are just a few reasons why ADUs are created and by whom:

EMPTY NESTERS can build an ADU and move into it, then rent out the main house for supplemental income or make it available to their adult children.

FAMILIES WITH YOUNG CHILDREN can use an ADU as housing for a nanny or au pair or even a grandparent or two, who can then help raise their grandkids and be assisted themselves as they age.

INDIVIDUALS IN NEED OF CARE can reside in an ADU to be near family members, or they can use the ADU to house a live-in aide. (In fact, ADUs can be an affordable and more comforting alternative to an assisted-living facility or nursing home.)

HOME BUYERS can look forward to the rental income from an ADU to help pay their mortgage or finance home improvements, especially in expensive housing markets.

HOME-BASED WORKERS can use an ADU as their office or workshop.

HOMEOWNERS can use an ADU for guests or as housing for friends or loved ones who:

- aren't yet financially independent, such as new high school or college graduates
- need temporary housing due to an emergency or while renovating their own home
- have disabilities but can live independently if family reside nearby



▲ The zoning code in Evanston, Illinois, permits accessory dwelling units, creating an opportunity for the owners of this 1911 home with an outbuilding in the backyard.

Planning and Paying for ADUs

Most new homes are built by developers, entire subdivisions at a time. Apartments are also built by pros.

But ADUs are different.

Although ADUs are occasionally designed into new residential developments, the vast majority are created by individual homeowners after they move in. In other words, ADUs are usually created by enthusiastic and motivated *amateurs*.

An ADU may present the ultimate chance for a do-it-yourselfer to build his or her small dream home. More often, homeowners bring in a combination of architects, designers and construction contractors to do the work, much as they would for a home addition or major kitchen remodeling. The local municipality's planning department can provide guidance on the rules for ADUs and information about what permits, utility connections and fees are involved.

ADUs aren't cheap, and they are often the most significant home improvement project a homeowner will undertake.

Although internal ADUs can sometimes be built for about \$50,000, new detached ADUs often exceed \$150,000. Most ADUs are financed through some combination of savings, second mortgages, home equity lines of credit and/or funds from family members (sometimes a relative who ends up living in it).

In some areas, the cost of building an ADU can be recouped after a few years of renting it. If that's the plan, it's worth estimating the expenses versus the potential income before undertaking an ADU project.

A few cities, nonprofits and start-ups are experimenting with creative financing options that could put ADUs within reach for more homeowners and their families, as well as prospective renters.



▲ Walt Drake’s Southern-style, one-bedroom ADU has an outdoor, wraparound porch that can be accessed without using steps. The design is in keeping with other buildings in the neighborhood.

HOME VISIT #6 Detached ADU (One-Story)

Decatur, Georgia
Size: 800 square feet

When Walt Drake decided to downsize, his son Scott purchased his dad’s house for himself and his family and built a detached ADU (or DADU) for Walt.

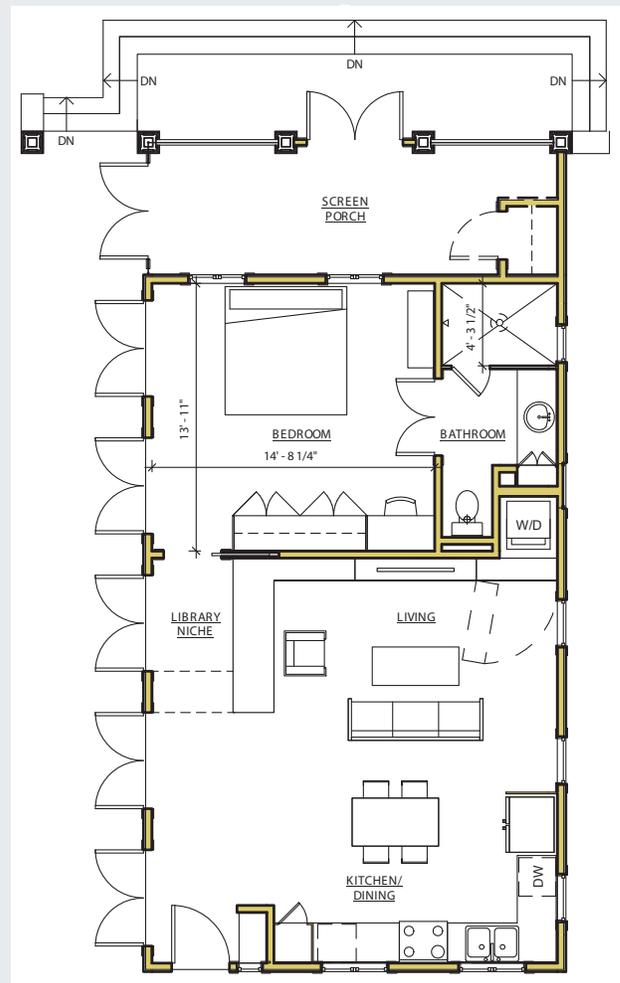
“From not finding what we wanted for Dad, we decided to create it,” says Scott. “Neighborhoods built in the 1920s have carriage houses. Building an ADU was a modern day version of something people have been doing on their property in this area for a hundred years.”

NEAR AND FAR: “We wanted the houses to be separate and to feel like we’re each on our own property, but we’re there for each other,” says Scott.

AGING-FRIENDLY: Building the ADU meant Walt didn’t have to sell his home and leave his neighborhood. “He was able to keep his own stuff and turn over what he didn’t need to us,” says Scott. “It kept my dad in place, which I think was important.”

FUTURE PLANS: Scott says the ADU is “serving its intended purpose” but that someday down the road it could be used as a long- or short-term rental. “The ADU could turn into lots of different things over the course of its lifetime.”

Design: Adam Wall, Kronberg Wall | Builder: Rob Morrell | Cost to build: \$350,000 in 2014 | Photo by Fredrik Brauer | Floor plan by Kronberg Wall Architects | Article adapted from “ADU Case Studies” by Lina Menard on AccessoryDwellings.org



ADUs Are Age-Friendly Housing

New-construction ADUs can be created with “universal design” features

An “age-friendly” home has a zero-step entrance and includes doorways, hallways and bathrooms that are accessible for people with mobility differences. Garage conversions (such as the one pictured on page 2) are among the easiest and least expensive ADU solutions for aging in place since they’re preexisting structures and generally have no-step entries. To learn more about making a home aging-friendly, download or order the *AARP HomeFit Guide* at AARP.org/HomeFit.

HOME VISIT #7

Detached ADU (Two-Story)

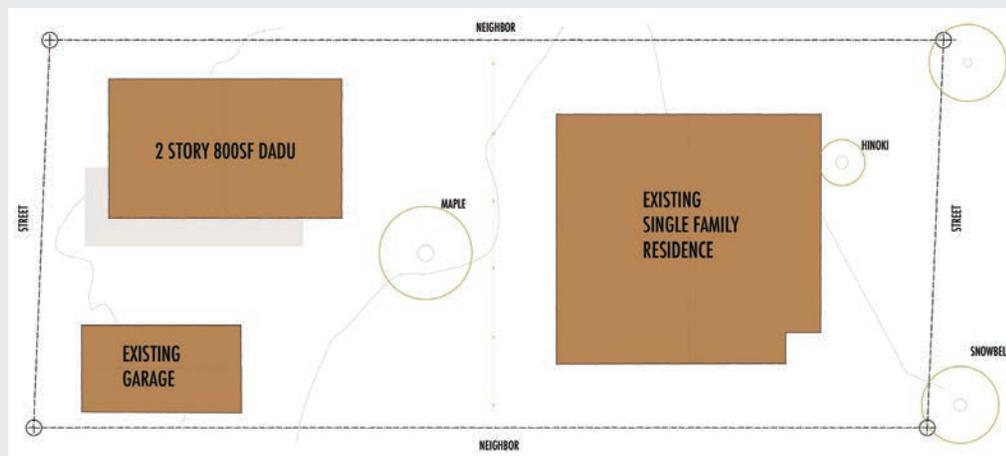
Seattle, Washington

Size: 800 square feet

Evelyn Brom’s plan was to build a backyard cottage and rent it out. She would keep living in her two-bedroom home.

AH-HA MOMENT: As the design developed, Brom realized that *she* wanted to live in the stunning wood-and-glass ADU. It was a good decision. A week before moving in, Brom was laid off from her job.

REAL LIFE: The \$3,000 a month Brom receives in rent for the main house (which is occupied by a three-generation family) provides a needed income. “Being laid off has made this arrangement a lifesaver,” Brom says. If the stairs in the cottage ever become too hard to navigate, she can move back into her original one-story house and rent out the cottage instead. “Now I have options,” she says.



▲ There’s a powder room, open kitchen and living room on the first floor, with a bedroom and bathroom upstairs.

◀ Although Brom’s property is only 0.13 acres, it’s large enough to accommodate two homes, a patio, a lawn and a garage. A slatted wood fence with a gate divides the space between the two houses and provides privacy.

Design: Chrystine Kim, NEST Architecture & Design | Builder: Ian Jones, Treebird Construction | Photo by Alex Hayden | Cost to build: \$250,000 in 2014
Article adapted from Where We Live: Communities for All Ages (AARP 2018)

HOME VISIT #8

Detached Bedroom

St. Petersburg, Florida

Size: 240 square feet

Bertha and her son John talked about someday buying a house with a mother-in-law suite. “Then one day someone came along and wanted my house, so I up and sold it,” she explains. “But that left me homeless. I asked John if I could build a small house in his backyard and he agreed.”

CREATIVE THINKING: A detached bedroom is a permanent, accessory structure that, unlike ADUs, lacks a kitchen. But that’s what makes these cabin-like homes more affordable to build than many ADUs and even tiny houses.

WHAT’S INSIDE: Bertha’s home contains a sleeping and living area and a full bathroom. “I paid for the little house and it’s on my son’s property. So I figured, if I’m cooking I can do it at my son’s house,” she says. (Her laundry is also done at his house.)



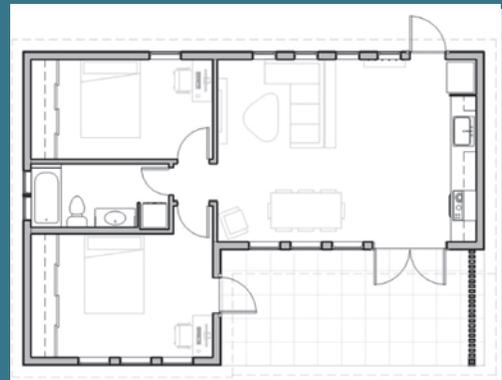
▲ A detached bedroom, which contains a bathroom but no kitchen, can provide housing for a loved one or serve as a home office or guest cottage.

REAL LIFE: “Having access to my son’s house makes it livable. Otherwise, I personally would not be happy. It’s very comforting to know that John is close by. Hopefully this will be my home forever.”

Design: Historic Sheds | Builder: Historic Sheds | Cost to Build: \$50,000 in 2017 | Photo by Historic Sheds | Article adapted from “ADU Case Studies” by Lina Menard on AccessoryDwellings.org

A Sustainable and Sunny ADU

Tired of living in a house with so many walled off and dark spaces that the sun couldn’t shine in, the home’s owners built and moved into the bright, airy, modern and very accessible ADU they created in their yard. (The original, larger home has become a rental.) The ADU is located within a conservation district and was constructed using sustainable materials and environmentally friendly techniques. One such feature is the deck trellis, which allows light in while diffusing the heat of the afternoon sun.



▲ Although this ADU has only 721 square feet of living space, there is room enough for two bedrooms.

Design: Propel Studio | Builder: JLTB Construction | Photo by Josh Partee | Cost to build: \$185,000 in 2017 | Article adapted from “ADU Case Studies” by Lina Menard on AccessoryDwellings.org

Practical Solutions for ADUs

Local laws can both allow and appropriately control the creation of accessory dwellings

There are more than 19,000 cities, 16,000 towns and 3,000 counties in the United States. Regulations about ADUs are typically written or adopted at the local government level.

Where it's legal to build ADUs, homeowners still need to follow rules about where it can be done, how tall they can be, how many square feet they can contain, what they can look like and how they can be used. These rules can be found in the local zoning code.

Over the past few decades it has become clear that there's a balance to strike between the strictness of ADU regulations and how often ADUs get built.

For instance, after Portland, Oregon, relaxed its ADU rules in 2010 and waived impact fees (a savings of up to \$12,000), the number of ADUs built there increased from about 30 per year between 2000 and 2009 to practically one ADU a day in 2015.

Changes in California's ADU laws allowed Los Angeles to achieve an even more dramatic increase, going from 80 permit applications in 2016 to nearly 2,000 in 2017. Allowing both an ADU and a "Junior ADU," or JADU — an interior ADU of 500 square feet or fewer — on properties in Sonoma County were among the urgent

policies adopted in the wake of Northern California's many devastating fires.

Meanwhile, in many jurisdictions, well-intentioned but burdensome rules can stymie the creation of ADUs. ADU-related zoning codes should be restrictive enough to prevent undesirable development but flexible enough that they actually get built.

When a community is worried about a potentially undesirable outcome, it can — and many do — craft regulations to prevent particular building types, locations or uses. A city concerned about the environmental impact of new structures might prohibit placing detached ADUs in precarious locations, such as on steeply sloping lots. Communities wary of ADUs becoming, for instance, off-campus student housing could establish occupancy rules.

Every community has its own priorities and concerns, and there's a wide enough range of regulatory controls that communities can write appropriate ADU rules.

This inherent flexibility in the form and function of ADUs allows them to pass political muster and get adopted in a wide range of places. (See page 16 for more about uses and rules.)

Rules that discourage ADUs

- ADU-specific regulations that don't also apply to primary dwellings (e.g., owner-occupancy requirements)
- complex design compatibility criteria and approval steps
- off-street parking requirements beyond those required for the primary dwelling
- restrictions that limit ADUs to certain geographic areas, particular zoning categories or to large lots
- caps on square footage relative to the primary house that make it easy to add an ADU to a large home but hard or impossible to add one to a small home

TRADING SPACES: An ADU is always the smaller of two dwellings on a property, but it's possible for an existing home to become the ADU when a larger house is built and becomes the primary dwelling.

Are ADUs allowed in your community?

Find out by calling the office in charge of land use and permits or stopping by in person. You can also search for and read the zoning code through the local government's website.

- If ADUs are allowed, ask what conditions, permit needs and impact fees apply.
- If ADUs are not allowed in your community and you want them to be, ask an elected official or the local department of zoning and planning for information about how the codes can be updated. Then get organized and start advocating!

Creating (or Understanding) an ADU Zoning Code

The ADU section of a community’s zoning code needn’t be overly complicated. It just needs to establish clear, objective and fair rules for the following:

1. A Definition: A good zoning code clearly defines its terminology. Here, for example, is a useful outline for what, in the real world, is a very fluid term: “An ADU is a smaller, secondary home on the same lot as a primary dwelling. ADUs are independently habitable and provide the basic requirements of shelter, heat, cooking and sanitation.”

2. The Purpose: This is where the code describes key reasons a community allows ADUs. They should:

- increase the number of housing units while respecting the style and scale of single-dwelling development
- bolster the efficient use of existing housing stock and infrastructure
- provide housing that’s affordable and respond to the needs of smaller, changing households
- serve as accessible housing for older adults and people with disabilities

3. Eligibility: Who can build an ADU and on what type of property? A statement in this part of the code clarifies that an ADU can be placed only on a “residentially zoned, single-family lot.” (Some communities provide lot size standards, but many don’t.)

4. Creation: This is where the code sets out how an ADU can be built. For instance: “An ADU may be created through new construction, the conversion of an existing structure, as an addition to an existing structure or as a conversion of a qualifying existing house during the construction of a new primary dwelling on the site.”

5. Quantity: Most municipalities that permit ADUs allow one per lot. Vancouver, British Columbia; Sonoma County, California; and Tigard, Oregon, are among the few that allow two per lot (typically one internal and one external). Some communities also allow duplexes or townhomes to have ADUs, either in the backyard or on the ground floor.

6. Occupancy and Use: A code should state that the use-and-safety standards for ADUs match those that apply to the primary dwelling on the same property. (See page 17 for more about ADU uses.)

7. Design Standards:

- **Size and height:** A zoning code might specify exactly how large and tall an ADU is allowed to be. For instance, “an ADU may not exceed 1,000 square feet

or the size of the primary dwelling, whichever is smaller.” Codes often limit detached ADUs to 1.5 or 2 stories in height. (An example of that language: “The maximum height allowed for a detached ADU is the lesser of 25 feet at the peak of the roof or the height of the primary dwelling.”)

- **Parking:** Most zoning codes address the amount and placement of parking. Some don’t require additional parking for ADUs, some do, and others find a middle ground — e.g., allowing tandem parking in the driveway and/or on-street parking. (See page 16 for more about parking.)
- **Appearance:** Standards can specify how an ADU’s roof shape, siding type and other features need to match the primary dwelling or neighborhood norms. Some codes exempt one-story and internal ADUs from such requirements. (See page 16 for more about making sure that ADUs fit into existing neighborhoods.)
- **Entrances and stairs:** Communities that want ADUs to blend into the background often require that an ADU’s entrance not face the street or appear on the same facade as the entrance to the primary dwelling (unless the home already had additional entrances before the ADU was created).

8. Additional Design Standards for Detached ADUs:

- **Building setbacks:** Many communities require detached ADUs to either be located behind the primary dwelling or far enough from the street to be discreet. (A code might exempt preexisting detached structures that don’t meet that standard.) Although this sort of rule can work well for neighborhoods of large properties with large rear yards, communities with smaller lot sizes may need to employ a more flexible setback-and-placement standard.
- **Building coverage:** A code will likely state that the building coverage of a detached ADU may not be larger than a certain percentage of the lot that is covered by the primary dwelling.
- **Yard setbacks:** Most communities have rules about minimum distances to property lines and between buildings on the same lot. ADUs are typically required to follow the same rules.

Visit [AARP.org/ADU](https://www.aarp.org/adu) to see examples of ADU zoning codes from selected cities.

ADU “Hot Topics”

As communities allow ADUs or update existing zoning codes and rules to be more ADU-friendly, they inevitably wrestle with some or all of the following issues:

Adding ADUs to neighborhoods

Recognizing that ADUs may represent a new housing type for existing neighborhoods, communities often write special rules to ensure they'll fit in well. These guidelines typically address visual compatibility with the primary dwelling, appearance from the street (if the ADU can be seen) and privacy for neighbors.

Rules that help achieve these goals include:

- height and size caps mandating that ADUs be shorter and smaller than the primary dwelling
- requirements that detached ADUs be behind the main house or a minimum distance from the street
- mandates that the design and location of detached ADUs be managed the same way as other detached structures (e.g., garages) on the lot
- design standards for larger or two-story ADUs so they architecturally match the primary dwelling or reflect and complement neighborhood aesthetics
- encouragement for the creation of internal ADUs, which are often unnoticed when looking at the house

Each community can strike its own unique balance between strict rules to ensure that ADUs have a minimal impact on neighborhoods and more flexible rules that make them easier to build.

▼ A top floor ADU can be a suitable rental for a student or someone who travels a lot for work. ADU expert Kol Peterson grew up in a home with an attic ADU that was usually rented to law school students. “They had to walk up the primary house’s interior stairs in order to access the affordable attic unit,” he writes in *Backdoor Revolution: The Definitive Guide to ADU Development*. “Over the years that each of them lived there, the tenants became parts of our family.”



Providing places to park

ADU regulations often include off-street-parking minimums on top of what’s already required for the primary dwelling. Such rules can prevent homeowners from building ADUs if there’s insufficient physical space to accommodate the parking. However, additional parking often isn’t needed.

Data from Portland, Oregon, shows that there are an average of 0.93 cars for each ADU, and that about half of all such cars are parked on the street. With fewer than 2 percent of Portland homes having ADUs (the highest percentage in the country), there is about one extra car parked on the street every six city blocks. This suggests that any impacts on street parking from ADUs are likely to be quite small and dispersed, even in booming ADU cities.

More-realistic parking rules might:

- require the creation of new parking only if the ADU displaces the primary dwelling’s existing parking
- waive off-street-parking requirements at locations within walking distance of transit
- allow parking requirements for the house and ADU to be met by using some combination of off-street parking, curb parking, and tandem (one car in front of the other) parking in a driveway

Dealing with unpermitted ADUs

It’s not uncommon for homeowners to convert a portion of their residence into an ADU in violation (knowingly or not) of zoning laws or without permits.

Such illegal ADUs are common in cities with tight housing markets and a history of ADU bans. One example is New York City, which gained 114,000 apartments between 1990 and 2000 that aren’t reflected in certificates of occupancy or by safety inspections.

Some cities have found that legalizing ADUs, simplifying ADU regulations and/or waiving fees can be effective at getting the owners of illegal ADUs to “go legit” — and address safety problems in the process.

Allowing and Restricting Uses

Communities get to decide whether to let ADUs be used just like any other housing type or to create special rules for them. Some municipalities take a simple approach, regulating ADUs just as they do other homes. So if a home-based childcare service is allowed to operate in the primary dwelling, it is also allowed in an ADU. Conversely, communities sometimes adopt ADU-specific regulations in order to avoid undesirable impacts on neighbors. Examples include:

Limiting short-term rentals

ADUs tend to work well as short-term rentals. They're small and the owner usually lives on-site, making it convenient to serve as host. However, if ADUs primarily serve as short-term rentals, such as for Airbnb and similar services, it undermines the objective of adding small homes to the local housing supply and creating housing that's affordable.

In popular markets, short-term rentals can be more profitable than long-term ones, allowing homeowners to recoup their ADU expenses more quickly. In addition, short-term rentals can provide owners with enough income that they can afford to occasionally use the ADU for friends and family.

A survey of ADU owners in three Pacific Northwest cities with mature ADU and short-term rental markets found that 60 percent of ADUs are used for long-term housing as compared with 12 percent for short-term rentals.

Respondents shared that they “greatly value the ability to use an

ADU flexibly.” For instance, an ADU can be rented nightly to tourists, then someday rented to a long-term tenant, then used to house an aging parent. ADUs intended primarily for visiting family are sometimes used as short-term rentals between visits.

Cities concerned about short-term rentals often regulate them across all housing types. If there are already rules like this, special ones might not be needed for ADUs. An approach employed in Portland, Oregon, is to treat ADUs the same except that any financial incentives (such as fee waivers) to create them are available only if the property owner agrees not to use the ADU as a short-term rental for at least 10 years.

Requiring owner-occupancy

Some jurisdictions require the property owner to live on-site, either in the primary house or its ADU. This is a common way of addressing concerns that absentee landlords and their tenants will allow homes and ADUs to fall into disrepair and negatively impact the neighborhood.

Owner-occupancy rules are usually implemented through a deed restriction and/or by filing an annual statement confirming residency. Some cities go further, saying ADUs can be occupied only by family members, child- or adult-care providers, or other employees in service of the family.

Owner-occupancy requirements make the financing of ADUs more difficult, just as they would if applied to single-family homes. But as ADUs have become more common, owner-occupancy restrictions have become less so, which is good. Such requirements limit the appraised value of properties with ADUs and reduce options for lenders should they need to foreclose.

Enforcing owner-occupancy laws can be tricky, and the rules have been challenged in courts, sometimes successfully. However, according to a study by the Oregon Department of Environmental Quality, more than two-thirds of properties with ADUs are owner-occupied even without an owner-occupancy mandate.

While not technically ADUs, tiny houses can serve a similar purpose

▶ Because tiny houses — such as the 100-square-foot “Lucky Penny,” pictured — are built on a trailer with wheels rather than on a fixed foundation, they are typically classified as recreational vehicles (RVs) rather than permanent residences. Although tiny homes are usually smaller than 400 square feet, many of them do contain a kitchen and bathroom.





ABOVE-GARAGE ADU



DETACHED-BEDROOM ADU



DETACHED ADU

- An accessory dwelling unit is a small residence that shares a single-family lot with a larger primary dwelling.
- As an independent living space, an ADU is self-contained, with its own kitchen or kitchenette, bathroom and living/sleeping area. (Garage apartments and backyard cottages are each a type of ADU.)
- ADUs can enable homeowners to provide needed housing for their parents, adult children, grandchildren or other loved ones.
- An ADU can provide older adults a way to downsize on their own property while a tenant or family member resides in the larger house.
- Since homeowners can legally rent out an ADU house or apartment, ADUs are an often-essential income source.
- ADUs help to improve housing affordability and diversify a community's housing stock without changing the physical character of a neighborhood.
- ADUs are a beneficial — and needed — housing option for people of all ages.

Learn more about ADUs and
order or download

The ABCs of ADUs

by visiting
AARP.org/ADU

Sign up for the free, weekly

AARP Livable Communities e-Newsletter

Be among the first to learn when
AARP releases more livability
guides and resources.

AARP.org/Livable-Subscribe

AARP[®]

Real Possibilities

HANSEN Alissa H

From: JEROME Emily N
Sent: Wednesday, May 22, 2019 10:44 AM
To: HANSEN Alissa H
Subject: FW: ADUs in Eugene

From: Richieweinman <richieweinman@gmail.com>
Sent: Tuesday, May 21, 2019 2:11 PM
To: *Eugene Mayor, City Council, and City Manager <MayorCouncilandCityManager@eugene-or.gov>
Subject: ADUs in Eugene

I missed the hearing last night related to ADUs. I'm in Quebec on vacation. I heard that a member of the public used a column from the Emerald to draw a conclusion about something attributed to me. First, the Emerald column had some inaccuracies. For instance, our ADU permits took about two months, not six months. But, at no time did I ever suggest that owner occupancy is a good idea for ADU requirements. Just the opposite is true.

The owner occupancy requirements are onerous, discriminatory and without merit. In our case we built the ADU behind a rental we own. There are four key points.

1. My wife and I have lived in our home since 1986. At some point we will want to downsize and we do not want our son to lose his home in the process. That would undo all of our efforts to secure housing for him.
2. Our own home does not have a suitable building site for an ADU. Our rental had an ideal site along an alley.
3. Our adult son, who has a disability, does not want to live next to his parents and it's healthier if he doesn't.
4. We were forced by a flawed and indefensible code provision to make him an owner. Honestly, there are some very sound reasons why this isn't in his best interest or ours. These reasons relate to his disability. I'd rather not explain them in writing in a public venue.

In my own neighborhood (which is nice and pretty high valued) I can assure you that the rentals are all well maintained but some of the owner occupied homes are run down and neglected.

I believe the City of Eugene's rules are designed to drive up the costs while creating some unreasonable design requirements. I'm chagrined that my City is fighting the state rules. The city is on the wrong side. It wasn't easy nor cheap but we built a neighborhood asset, not a liability. Please see the photo I've attached.

Respectfully,
Richie Weinman



HANSEN Alissa H

From: SELSER Lindsay R
Sent: Tuesday, May 21, 2019 1:31 PM
To: HANSEN Alissa H; KAYE Lydia S
Subject: FW: Online Form Submittal: Contact your public officials

Also, cc'ing Lydia as there is commentary about STRs

From: no-reply@ci.eugene.or.us <no-reply@ci.eugene.or.us>
Sent: Tuesday, May 21, 2019 10:52 AM
To: *Eugene Mayor, City Council, and City Manager <MayorCouncilandCityManager@eugene-or.gov>
Subject: Online Form Submittal: Contact your public officials

If you are having problems viewing this HTML email, click to view a [Text version](#).

Contact your public officials

Name*	Vickie Loeser
Your Email	Vlind100@gmail.com
Address*	
Phone (optional)	5412855647
Comments or Questions for your Public Officials	ADU's. Afordible housing and rental shortage is a problem that needs to be addressed. It is much more profitable to rent out a small house via VRBO than have long term rental.. there are currently 600 units in Eugene listed on air BNB. One person has 3 small homes rented by the day. Will these ADU's be allowed as short term rentals I.e. by the day. It is one things to have an owner occupied dwelling for rent, and quite another for someone to buy all the small houses and then use for short term rentals.
Upload an attachment	[<input type="checkbox"/>] Convert to PDF?[<input type="checkbox"/>] (DOC, DOCX, XLS, XLSX, TXT)

* indicates required fields.

View any uploaded files by [signing in](#) and then proceeding to the link below:
<http://www.eugene-or.gov/Admin/FormHistory.aspx?SID=4502>

The following form was submitted via your website: Contact your public officials

Name: Vickie Loeser

Your Email Address: Vlind100@gmail.com

Phone (optional): 5412855647

Comments or Questions

for your Public Officials: ADU's. Afordible housing and rental shortage is a problem that needs to be addressed. It is much more profitable to rent out a small house via VRBO than have long term rental.. there are currently 600 units in Eugene listed on air BNB. One person has 3 small homes rented by the day.

Will these ADU's be allowed as short term rentals I.e. by the day. It is one things to have an owner occupied dwelling for

rent, and quite another for someone to buy all the small houses and then use for short term rentals.

Upload an attachment : No file was uploaded

Additional Information:

Form submitted on: 5/21/2019 10:52:01 AM

Submitted from IP Address: 71.238.56.217

Referrer Page: <https://www.eugene-or.gov/1614/Contact-Us>

Form Address: <http://www.eugene-or.gov/Forms.aspx?FID=116>

HANSEN Alissa H

From: SELSER Lindsay R
Sent: Tuesday, May 21, 2019 1:30 PM
To: HANSEN Alissa H
Subject: FW: ADUs

From: jason elmendorf <elmendorf.jason@gmail.com>
Sent: Tuesday, May 21, 2019 10:20 AM
To: *Eugene Mayor, City Council, and City Manager <MayorCouncilandCityManager@eugene-or.gov>
Subject: ADUs

Please allow alley access dwellings and ADUs. Let's keep our urban growth boundaries in place and still find room for affordable housing!

Sincerely,

--

Jason Elmendorf
(541) 220-5460
Nowhaus, LLC
CCB# 196148
elmendorf.jason@gmail.com

HANSEN Alissa H

From: JEROME Emily N
Sent: Tuesday, May 21, 2019 9:56 AM
To: HANSEN Alissa H
Subject: FW: Tiffany Edwards lack of impartiality requires recusal on housing matters

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Tuesday, May 21, 2019 9:18 AM
To: Eugene Planning Commission <epc@ci.eugene.or.us>
Cc: *Eugene Mayor, City Council, and City Manager <MayorCouncilandCityManager@eugene-or.gov>; Eugene NLC <eugene-nlc@googlegroups.com>
Subject: Tiffany Edwards lack of impartiality requires recusal on housing matters

May 21, 2019

For the record

Commissioners,

At the May 20, 2019 City Council public hearing, Tiffany Edwards provided oral testimony on behalf of the Chamber of Commerce advocating that the City Council remove an owner-occupancy requirement for ADUs and advocating that the Council "do what's needed" to allow more so-called "missing middle housing."

Ms. Edwards also gave a deplorable diatribe attacking Eugene citizens "who have owned their homes for decades" and "can't understand the needs" of other community members.

Ms. Edwards is adding to her long track record of serving her commercial employers and denigrating residents who care for their neighborhoods.

There is clear and compelling documented evidence of Ms. Edwards' lack of impartiality with respect to housing code and quasi-judicial decisions related to housing proposals.

She should be removed from the Planning Commission; but barring that, she must be recused from deliberations and decision-making on all housing related matters.

Should she not be recused, her involvement will subject any EPC decision or recommendation to appeal.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402
541.344.2552

Accredited Earth Advantage
Sustainable Homes Professional

HANSEN Alissa H

From: SELSER Lindsay R
Sent: Tuesday, May 21, 2019 1:29 PM
To: HANSEN Alissa H
Subject: FW: Owner occupancy ADU

From: Sabra Marcroft <sabramarcroft@gmail.com>
Sent: Monday, May 20, 2019 11:08 PM
To: *Eugene Mayor, City Council, and City Manager <MayorCouncilandCityManager@eugene-or.gov>
Subject: Owner occupancy ADU

I'm in favor of requiring owner occupancy on property- with an ADU if the owner has more than one rental property. This helps prevent whole neighborhoods from being taken over by Air BNB leaving remaining full time residents isolated as is happening in many coastal areas. Absentee landlords own multiple properties in multiple neighborhoods without any meaningful limits. This is already beginning to happen in some parts of Eugene/Springfield. Making it more lucrative by allowing multiple property landlords to get into the business of ADUs will just accelerate the transfer of property to out of state landlords. When neighborhoods no longer have enough actual residents for civic participation, the whole city suffers. Yet being able to rent a space out during wedding, graduation and sports season could help many owners stay stably housed themselves. There is a balance to be struck here that will be vital in determining the shape and character of Eugene neighborhoods for decades to come.

Thanks very much for listening

HANSEN Alissa H

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Monday, May 20, 2019 9:46 PM
To: VINIS Lucy K
Cc: *Eugene Mayor, City Council, and City Manager; Eugene NLC
Subject: Please clarify your closing remarks re the ADU remand

Mayor Vinis,

In your closing remarks, you seemed to express to citizens in attendance and watching that the LUBA remand was because the City specifically didn't address owner occupancy in a way that comported with the ADU statutes.

Or did I misunderstand your meaning? It would be helpful if you could clarify in response.

As you know, there wasn't a whit of explicit or implicit expression in the LUBA decision that gave any hint about whether or not an owner-occupancy requirement would conform or not with the statute. The remand was not at all about the specific criteria. As LUBA stated clearly, LUBA remanded because the City (stupidly) added "ADU" as a use in R-2, R-3 and R-4 with providing any findings at all.

Looking for guidance ... no matter what the outcome of HB 2001, the very fact that the Legislature apparently plans to vote on exactly that question will provide the first clear answer.

If the intent of the current ADU statute was to prohibit owner occupancy requirements, there would be no need for HB 2001 to amend that statute to explicitly prohibit an owner-occupancy requirement. A reasonable inference is the current statute does not prohibit owner occupancy requirements, especially if owner occupancy is part of a clear and objective definition of "Dwelling, Accessory." But in a few weeks, we won't have to speculate.

If HB 2001 is adopted in its current form, the Legislature will have unambiguously decided that an owner-occupancy requirement is not "reasonable" in their view.

On the other hand, if the Legislature votes down HB 2001, that will be a clear indication that the Legislature does not want to prohibit owner-occupancy requirements for ADUs.

It would be wise for the Council to wait until the outcome of HB 2001 is known before acting on the ADU remand ordinance. It would certainly be misleading to suggest that there is any indication at all from LUBA or the Legislature as to whether or not the current ADU statute intends that an owner occupancy requirement would not be "reasonable." I hope you'll make the point clearly the next chance you have.

Thank you,

Paul Conte

Accredited Earth Advantage
Sustainable Homes Professional

HANSEN Alissa H

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Monday, May 20, 2019 8:52 PM
To: HANSEN Alissa H; *Eugene Mayor, City Council, and City Manager
Subject: Re: For the record in "ADU Remand Ordinance"
Attachments: ADU-guide-web-singles.pdf

"ABCs of ADUs" attached.

Accredited Earth Advantage
Sustainable Homes Professional

On Mon, May 20, 2019 at 8:44 PM Paul Conte <paul.t.conte@gmail.com> wrote:
For the record in "ADU Remand Ordinance."

The local Director of Advocacy and Outreach for the local chapter of AARP Oregon, Carmel Perz Snyder, FALSELY stated:

"We've updated the [ADU] report one more time. The 'ABC's of ADUs,' which is available on-line. Our [AARP] recommendations for best practices have also changed for several reasons. We support removing barriers, such as owner occupancy restrictions to allow ADUs in all neighborhoods."

In fact, the AARP has NOT changed it's recommendations, which remain in the "model code" which you've been provided previously. Ms. Snyder falsely represented a document by an individual, and NOT a report or policy of AARP as supporting the removal of owner occupancy.

In fact, the attached report includes such conclusions as:

"ADUs are typically owned and managed by homeowners who live on the premises. Such landlords are less likely to raise the rent once a valued tenant has moved in. Many ADUs are created for family members to reside in for free or at a discounted rate."

"Over time, a single ADU might be used in many ways as an owner's needs and life circumstances change."

The report DOES NOT recommend eliminating the requirement for the owner to reside on the property.

This is the kind of misinformation and outright false claims that the zealots striving to "stealth" upzone the R-1 district are stooping to.

Note that the later testimony from the state AARP organization DID NOT at all confirm the false statement by Ms. Snyder.

Please reject this type of misinformation from zealots.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402

Accredited Earth Advantage
Sustainable Homes Professional

The ABCs of ADUs

A guide to
Accessory Dwelling Units
and how they expand housing options
for people of all ages



BASEMENT ADU



DETACHED ADU



ATTACHED ADU



SECOND-STORY ADU



GARAGE-CONVERSION ADU



Websites: AARP.org and AARP.org/Livable
Email: Livable@AARP.org
Facebook: /AARPLivableCommunities
Twitter: @AARPLivable
Free Newsletter: AARP.org/Livable-Subscribe

AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering people 50 or older to choose how they live as they age. With nearly 38 million members and offices in every state, the District of Columbia, Puerto Rico and the U.S. Virgin Islands, AARP strengthens communities and advocates for what matters most to families: health security, financial stability and personal fulfillment. The AARP Livable Communities initiative works nationwide to support the efforts by neighborhoods, towns, cities, counties, rural areas and entire states to be livable for people of all ages.



Website: OrangeSplot.net
Email: eli@OrangeSplot.net

Orange Splot LLC is a development, general contracting and consulting company with a mission to pioneer new models of community-oriented, affordable green housing developments. Orange Splot projects have been featured in the *New York Times*, *Sunset Magazine* and on NBC's *Today* show. (The detached ADUs on page 3 and the back cover are by Orange Splot.) Company founder Eli Spevak has managed the financing and construction of more than 250 units of affordable housing, was awarded a Loeb Fellowship by the Harvard University Graduate School of Design, cofounded the website AccessoryDwellings.org and serves as a vice chair of Portland, Oregon's Planning and Sustainability Commission.

The ABCs of ADUs

A guide to Accessory Dwelling Units and how they expand housing options for people of all ages

WRITTEN AND EDITED BY: Eli Spevak, Orange Splot LLC | Melissa Stanton, AARP Livable Communities
ART DIRECTOR: Mimi Park, Design Park, Inc.
COPY EDITOR: Don Armstrong | **ART PRODUCTION:** Steve Walkowiak

PROJECT ADVISERS AND REVIEWERS:

Danielle Arigoni, Director, AARP Livable Communities
Karen Chapple, Professor, University of California, Berkeley
Lina Menard, Founder, Niche Consulting
Heather Peters, Senior Housing and Community Development Policy Analyst, San Mateo County, California
Kol Peterson, Cofounder, AccessoryDwellings.org | Caravan: The Tiny House Hotel | ADU Tour: Portland, Oregon
Denise Pinkston, Partner, TMG Partners
Harriet Tregoning, past Principal Deputy Assistant Secretary, U.S. Housing and Urban Development
Jake Wegmann, Assistant Professor, University of Texas at Austin

COVER IMAGE CREDITS (clockwise from top left)

Front: Communitecture: Architecture, Planning, Design | Alex Hayden | AccessoryDwellings.org | AccessoryDwellings.org | Melissa Stanton, AARP
Back: Eli Spevak, Orange Splot LLC | Kol Peterson, BuildingAnADU.com | Schuyler Smith, Polyphon Architecture & Design, LLC

A NOTE TO READERS: Many of the photographs and project examples in this publication are from Portland, Oregon, one of the first municipalities in the nation to encourage the creation of accessory dwelling units.

Visit AARP.org/ADU to download or order this free guide and find more resources about accessory dwelling units.

Welcome! Come On In

AARP surveys consistently show that the vast majority of people age 50 or over want to remain in their homes and communities as they age rather than relocate

We know from surveys by AARP and others that a majority of Americans prefer to live in walkable neighborhoods that offer a mix of housing and transportation options and are close to jobs, schools, shopping, entertainment and parks.

These preferences — coupled with the rapid aging of the United States' population overall and decrease in households with children — will continue to boost the demand for smaller homes in more compact neighborhoods.

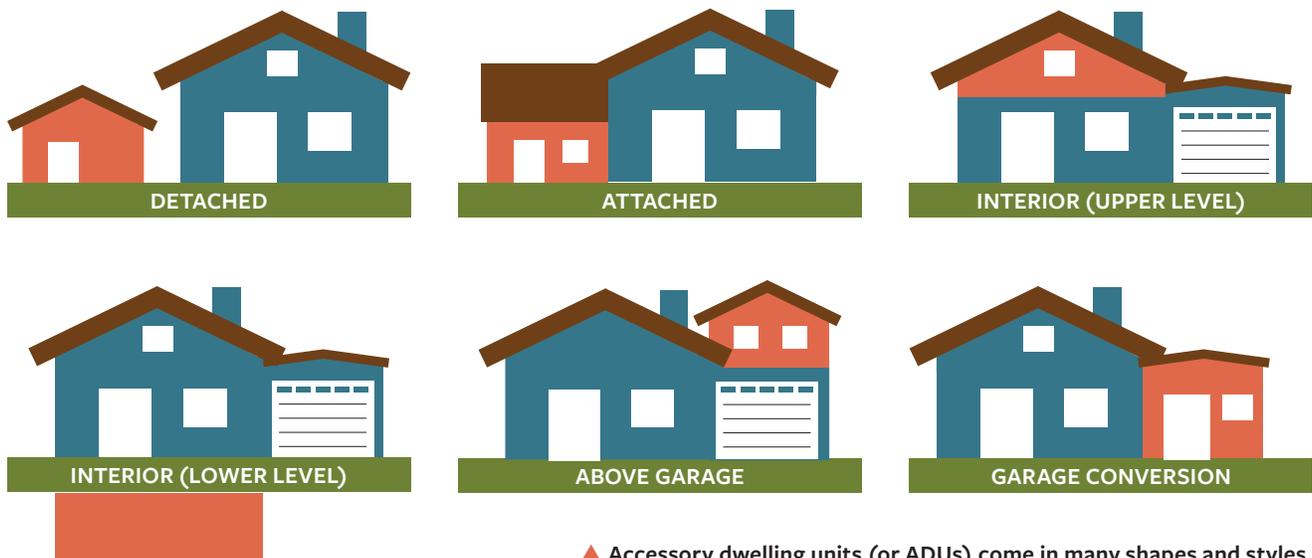
As small houses or apartments that exist on the same property lot as a single-family residence, accessory dwelling units — or ADUs — play a major role in serving a national housing need.

This traditional home type is reemerging as an affordable and flexible housing option that meets the needs of older adults and young families alike.

In fact, in the 2018 AARP Home and Community Preferences Survey, people age 50-plus who would consider creating an ADU said they'd do so in order to:

- provide a home for a loved one in need of care (84%)
- provide housing for relatives or friends (83%)
- feel safer by having someone living nearby (64%)
- have a space for guests (69%)
- increase the value of their home (67%)
- create a place for a caregiver to stay (60%)
- earn extra income from renting to a tenant (53%)

Since ADUs make use of the existing infrastructure and housing stock, they're also environmentally friendly and respectful of a neighborhood's pace and style. An increasing number of towns, cities, counties and even states have been adapting their zoning or housing laws to make it easier for homeowners to create ADUs.



The ABCs of ADUs is a primer for elected officials, policymakers, local leaders, homeowners, consumers and others to learn what accessory dwelling units are and how and why they are built. The guide also suggests best practices for how towns, cities, counties and states can include ADUs in their mix of housing options.

ADUs Come in Many Shapes and Styles

ADUs are a family-friendly, community-creating type of housing the nation needs more of

Although many people have never heard the term, accessory dwelling units have been around for centuries (see page 6) and are identified by many different names. To be clear about what’s being discussed:

- An ADU is a small residence that shares a single-family lot with a larger, primary dwelling
- As an independent living space, an ADU is self-contained, with its own kitchen or kitchenette, bathroom and sleeping area
- An ADU can be located within, attached to or detached from the main residence
- An ADU can be converted from an existing structure (such as a garage) or built anew
- ADUs can be found in cities, in suburbs and in rural areas, yet are often invisible from view because they’re positioned behind or are indistinct from the main house
- Because ADUs are built on single-family lots as a secondary dwelling, they typically cannot be partitioned off to be sold separately
- An ADU can provide rental income to homeowners and an affordable way for renters to live in single-family neighborhoods
- An ADU can enable family members to live on the same property while having their own living spaces — or provide housing for a hired caregiver
- Unlike tiny houses (see page 17), ADUs are compact but not teeny, so they’re a more practical option for individuals, couples and families seeking small, affordable housing
- For homeowners looking to downsize, an ADU can be a more appealing option than moving into an apartment or, if older, an age-restricted community
- ADUs can help older residents remain in their community and “age in place”



CREATIVE COMMONS

▲ Accessory dwelling units show up in neighborhoods throughout the country — and even in pop culture. One example: In the sitcom *Happy Days*, Fonzie (right) rented an above-garage ADU from the Cunningham family in 1950s-era Milwaukee, Wisconsin.

ADUs are also known as ...

Although most local governments, zoning codes and planners in the United States use the term *accessory dwelling unit* or *ADU*, these small homes and apartments are known by dozens of other names. The different terms conjure up different images. (Who wouldn’t rather live in a “carriage house” than in an accessory or “ancillary” unit?) Even if you’ve never heard of accessory dwelling units or ADUs, you have likely heard of — and perhaps know the locations of — some of the home types noted at right.



▲ Renting out this 350-square-foot garage-conversion ADU in Portland, Oregon, helps the property owner, who lives in the lot’s primary residence, pay her home mortgage.

- accessory apartment
- alley flat
- back house
- backyard bungalow
- basement apartment
- carriage house
- coach house
- garage apartment
- granny flat
- guest house or cottage
- in-law suite
- laneway house
- mother-daughter house
- multigenerational house
- ohana unit
- secondary dwelling unit
- sidekick

PHOTO AND LIST FROM ACCESSORYDWELLINGS.ORG

Since ADUs can be created in many different shapes and styles, they're able to fit discreetly into all sorts of communities, including suburban subdivisions, row-house streets (either with or without back-alleys), walkable town or urban neighborhoods — and, of course, large lots and rural regions.



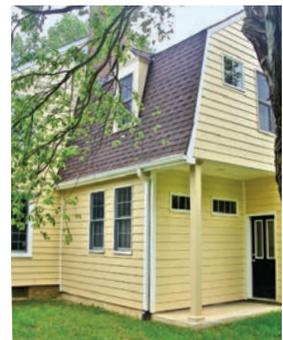
◀ A **DETACHED ADU** (aka DADU) is a stand-alone home on the same lot as a larger, primary dwelling. Examples include backyard bungalows and converted outbuildings.

Location: Portland, Oregon | Photo by David Todd



▶ An **ATTACHED ADU** connects to an existing house, typically through the construction of an addition along the home's side or rear. Such units can have a separate or shared entrance.

Location: Davidsonville, Maryland | Photo by Melissa Stanton, AARP



◀ A **GARAGE ADU** makes use of an attached or detached garage by converting the space into a residence. Other options involve adding a second-story ADU above a garage or building a new structure for both people and cars.

Location: Portland, Oregon | Photo by Radcliffe Dacanay

An **INTERNAL ADU** is created when a portion of an existing home — an entire floor, part of a floor, or an attic or basement — is partitioned off and renovated to become a separate residence.

▶ Access to an **UPPER-LEVEL ADU** can be provided through a stairway inside the main home or directly from an exterior staircase. This 500-square-foot ADU sits atop a 1,900-square-foot primary dwelling.

Location: Portland, Oregon | Photo by Eli Spevak, Orange Splot LLC



▲ A **LOWER-LEVEL ADU** is typically created through the conversion of a home's existing basement (provided that height and safety conditions can be met), during construction of the house, or (see page 7) as part of a foundation replacement and house lift.

Location: Portland, Oregon | Photo by Derin Williams

ADUs Are Good for People and Places

Communities that understand the benefits of ADUs allow homeowners to create them

ADUs are an affordable housing option

- ADUs can generate rental income to help homeowners cover mortgage payments or simply make ends meet. The income provided by an ADU tenant can be especially important for older people on fixed incomes.
- Since the land on which an ADU is built already belongs to the homeowner, the expense to build a secondary residence is for the new structure only. The lot is, in a sense, free.
- ADUs are typically owned and managed by homeowners who live on the premises. Such landlords are less likely to raise the rent once a valued tenant has moved in. Many ADUs are created for family members to reside in for free or at a discounted rate.
- Although market rate rents for ADUs tend to be slightly more than for similarly sized apartments, they often represent the *only* affordable rental choices in single-family neighborhoods, which typically contain no studio or one-bedroom housing options at all.
- Some municipalities are boosting ADUs as part of affordable housing and anti-displacement strategies. Santa Cruz, California (see opposite), is among the cities with programs to help lower-income households build ADUs or reside in them at reliably affordable rents.

ADUs are able to house people of all ages

- An individual’s housing needs change over time, and an ADU’s use can be adapted for different household types, income levels, employment situations and stages of life.
- ADUs offer young people entry-level housing choices.
- ADUs enable families to expand beyond their primary home.
- ADUs provide empty nesters and others with the option of moving into a smaller space while renting out their larger house or letting an adult child and his or her family reside in it.

ADUs are just the right size

- Generally measuring between 600 and 1,000 square feet, ADUs work well for the one- and two-bedroom homes needed by today’s smaller, childless households, which now account for nearly two-thirds of all households in the United States.

ADUs are good for the environment

- ADUs require fewer resources to build and maintain than full-sized homes.
- ADUs use significantly less energy for heating and cooling. (Of all the ADU types, internal ones tend to have the lowest building and operating costs.)

ADUs are community-compatible

- ADUs offer a way to include smaller, relatively affordable homes in established neighborhoods with minimal visual impact and without adding to an area’s sprawl.
- ADUs provide a more dispersed and incremental way of adding homes to a neighborhood than other options, such as multistory apartment buildings. As a result, it’s often easier to get community support for ADUs than for other housing types.

Big houses are being built, small houses are needed

Do we really need more than three times as much living space per person as we did in 1950? Can we afford to buy or rent, heat, cool and care for such large homes?

YEAR	1950	2017
Average square footage of new single-family homes	983	2,571
Number of people per household	3.8	2.5
Square feet of living space per person	292	1,012

Fact: ADUs house more people per square foot of living area than single-family homes do.

SOURCE: NATIONAL ASSOCIATION OF HOME BUILDERS (AVERAGE HOME SIZES); U.S. CENSUS BUREAU (AVERAGE HOUSEHOLD SIZES)

HOME VISIT #1

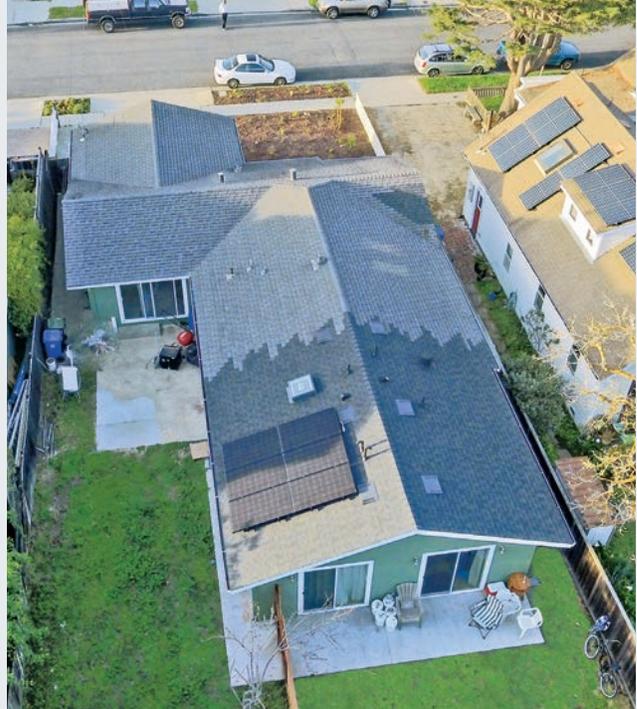
Attached ADU Addition

Santa Cruz, California

Size: 500 square feet



AARP



▲ The area with the darker roof shingles is the ADU that was added onto the home of Carrie and Sterling Whitley.

◀ ▼ The Whitleys' ADU (that's Carrie showing off the front yard's new paths and plantings) has its own entrance on the side of the home and is being rented to the couple's daughter so she can help her elderly parents when needed.

When Carrie and Sterling Whitley bought their house in 1971, they paid less than \$15,000. Nearly 50 years later, similar homes on their street have sold for more than \$1 million.

THE PROBLEM: The Whitleys, who are in their 80s, own the house outright and don't want to move. But the financial and physical demands involved in maintaining the house are a challenge.

A SOLUTION: To help low-income homeowners age 62 or older live independently and keep their homes, the Monterey Bay affiliate of Habitat for Humanity and the City of Santa Cruz launched My House My Home: A Partnership for Aging-in-Place. The pilot program builds accessory dwelling units so older homeowners can downsize into a new, aging-friendlier home and earn rental income from their original house. Or such homeowners can remain in their house and rent out the new, smaller residence. Participating homeowners are required to charge an affordable rental rate.

REALITY CHECK: When the Whitleys' project broke ground in April 2017, they were the first homeowners to receive an ADU through the program, which worked with them to design the ADU as an addition to their existing home. Since the dwelling was built with accessibility features, Carrie and Sterling know they can downsize into it if they ever need to. Until then, their daughter, Brenda, resides in the addition.

REAL LIFE: "I'm right next door to my parents in case they need me or need any help," Brenda says.

Design: Historic Sheds | Builder: Historic Sheds | Cost to build: \$158,000 in 2017 (not including volunteer labor) | Photos by Michael Daniel | Article adapted from Where We Live: Communities for All Ages (AARP 2018)



ADU ADVICE: With an attached ADU, privacy between the two residences can be achieved by locating the ADU bedroom(s) and bathroom(s) as far as possible from the main house. Providing the ADU with its own yard or outdoor space is helpful too.

ADUs Are an American Tradition

While today's interest in ADUs may be new, the housing type is centuries old

Early settlers often built a small home to live in while constructing their larger, primary house nearby.

When farming was a source of survival for most of the nation's households, families routinely constructed additional homes on their land when needed.

People with wealth and acreage regularly populated their lands with secondary mansions and ancillary buildings independent of the main estate house.

In fact, until the 20th century, people with land built as many homes as they wished. There were few or no zoning rules, municipal services or infrastructure (utilities, roads, schools, trash collection, first-responders) to consider.

A historic precedent for the modern day accessory dwelling unit is the "carriage house," or "coach house." Originally built for horse-drawn carriages, the structures associated with grander homes were frequently large enough to double as living quarters for workers and stable hands.

Decades later, in response to housing shortages and economic needs, many surviving carriage houses were

converted into rental homes. By becoming landlords, the owners gained income from their otherwise unused outbuildings.

Automobile garages have a similar history. Some were originally built with a housing unit upstairs. Over time, many garages were converted (often illegally or under zoning codes no longer applicable today) into small homes when the spaces became more valuable for housing people than vehicles.

With the rise of suburban single-family home developments following World War II, ADUs practically ceased to be built legally in the United States. Then as now, residential zoning codes typically allowed only one home per lot, regardless of the acreage and with no exceptions. Attached and detached garages occupied yard space that might otherwise have been available for ADUs.

Some cities, including Chicago, grandfathered in pre-existing ADUs — but only if the residences remained consistently occupied. In Houston's historic and trendy Heights neighborhood, old and new garage apartments are common and desired.

But elsewhere, even in rural areas with ample land, property owners are often prohibited from creating secondary dwellings. Many communities today don't allow new ADUs, even if they did in the past — and even if ADUs currently exist there. (Countless units in single-family homes or yards are technically illegal or are allowed simply because they were created when such residences had been legal.)

ADUs began making a comeback in the 1980s as cities explored ways to support smaller and more affordable housing options within single-dwelling neighborhoods. In 2000, in response to a growing demand for ADU-supportive guidelines, AARP and the American Planning Association partnered to release an influential model state act and local code for ADUs.

More recently, there's been renewed interest at the state and local levels (see page 8) in legalizing and encouraging the creation of ADUs, driven by the increasingly high cost of housing and, in some places, the belief that homeowners with suitable space shouldn't be so restricted in the use of their property.

▼ **This carriage house containing a one-bedroom, one-bath ADU above a two-car garage sits behind a six-level, Gilded Age, Hoboken, New Jersey, townhome that was built in 1883. The dual residence property was on the market in 2018 for \$5 million.**



HOME VISIT #2

Garage Apartment ADU

Denver, Colorado

Size: 360 square feet



▲ The apartment above the garage can be reached from inside the garage or from an exterior side entrance accessed from the yard it shares with the primary residence.

“I see our ADU as something very similar to a student loan,” says Mara Owen. “It’s something you invest in the future with. It was cheaper than buying a house for Mom, and it lets her have independence. It’s great knowing we can check in on her whenever.”

AH-HA MOMENT: Owen, her partner, Andrew, and their three dogs were sharing a one-bedroom, one-bath house with her mother, Diane. When Owen learned that ADUs were allowed in the city, she decided the best way to get more space for her small home’s many residents would be to remove their “leaky and defunct” garage and build a new two-car garage with an apartment above it.

WISE ADVICE: “Get a really great builder and architect,” says Owen. “Interviewing architects was similar to a first date. It’s not just who you feel connected with. That’s important, but get to the values. It’s a niche market, so see if you can find someone who has built ADUs before, because ADUs are a little different.”

FUTURE PLANS: The stairs to Diane’s apartment are wide enough for a stair lift, if it’s ever needed. The roof was built at the correct slope for the eventual installation of solar panels.

Design: Hive Architecture | Builder: Hive Architecture | Cost to build: \$167,000 in 2016 | Photo by Mara Owen | Article adapted from “ADU Case Studies” by Lina Menard on AccessoryDwellings.org. Visit the website to read about and see photographs of more ADU projects.

HOME VISIT #3

Basement ADU

Portland, Oregon

Size: 796 square feet

The transformation of this colorful Victorian was both a preservation and expansion project.

TEACHING MOMENT: “Here’s a very welcome breath of fresh air, especially in the face of so much gentrification that is going on in Portland!” declared Mark Lakeman, principal of Communitecture, an architectural, planning and design firm, about the pictured remodel. Writing on his company’s website, he says the project provides a lesson in how to “adapt and reuse our precious historic houses so they can accommodate more people while also providing more income to support the existing home.”

HOW’D THEY DO IT? To add a basement rental unit, engineers lifted the house. The resulting ADU is roughly four feet underground and four feet above.



▲ By lifting the house and digging beneath it, designers, engineers and builders turned a two-story, single-family home into a three-story, multifamily residence.

THE ACHIEVEMENT: Adds Lakeman: “Unlike the seemingly pervasive method of simply tearing down existing buildings so that new, giant ones can be built, this approach achieves upgrades in energy efficient living places and adds density while retaining the continuity of our beloved historical urban environment.”

Design: Communitecture | Home Lift: Emmert International | Builder: Tom Champion | Cost to build: \$125,000 in 2015 | Photos by Communitecture (before) and Chris Nascimento (after)

The Time Is Now

Rules for ADUs continue to evolve and frequently differ from one town to the next

Some communities allow almost any home to be set up with an ADU — so long as size limits, property line setbacks and placement caveats in relation to the primary dwelling are met.

Other communities start with those basic standards and then layer on extra requirements (see page 14) that can make it challenging to create an ADU.

Municipalities nationwide have been relaxing their restrictions against ADUs, and some states have been encouraging their creation by requiring communities to allow them.

- In 2017, California required all of its cities and counties to allow ADUs so long as the property owner secured a building permit. In Los Angeles, Mayor Eric Garcetti has said ADUs could provide the city with a needed 10,000 housing units. He's touted ADUs as a "way for homeowners to play a big part in expanding our city's housing stock and make some extra money while they're at it."
- That same year, a New Hampshire law established that local zoning codes had to allow ADUs nearly everywhere single-family housing was permitted. The change stemmed in large part from the frustration of builders who couldn't construct the type of amenities, such as backyard cottages and garage apartments, that their clients desired.
- Oregon requires cities and counties of certain sizes within urban growth boundaries to allow ADUs in all single-family neighborhoods.
- As of 2019, major cities that allow ADUs include Anchorage, Alaska; Atlanta, Georgia; Austin, Texas; Denver, Colorado; Honolulu, Hawaii; Houston, Texas; Philadelphia, Pennsylvania; Phoenix, Arizona; Seattle, Washington; and Washington, D.C. Communities in Massachusetts, Kentucky, Illinois, Indiana and Oregon have sought advice from AARP and Orange Spout about revising their zoning codes to allow ADUs.

► **The unique floor plan of this single-family Maryland farmhouse allows for a first floor residence (accessed through the door on the right) and an upper-level ADU that can be reached through the entrance at left.**

To Encourage ADUs

LOCAL OFFICIALS can ...

- allow all ADU types (detached, attached, interior)
- simplify the building permit process for ADUs
- waive or reduce permit and impact fees
- let garages be converted into ADUs without requiring replacement off-street parking
- allow a second ADU if one of the homes on the property meets accessibility standards

COMMUNITY PLANNERS can ...

- adopt simple, flexible but nondiscretionary ADU rules about setbacks, square footage and design compatibility with the primary dwelling

LENDERS can ...

- work with homeowners to finance the construction of ADUs by using renovation loans

ADVOCATES can ...

- organize tours of completed ADUs in order to inform and inspire the community
- educate homeowners, real estate agents, architects and builders about local zoning regulations and the permit process

REAL ESTATE AGENTS can ...

- educate themselves and their clients about rules for the construction of ADUs

LOCAL MEDIA can ...

- report on how and why homeowners build ADUs



PHOTO BY MELISSA STANTON, AARP

HOME VISIT #4

Internal ADU (Main Level)

Portland, Oregon

Size: 220 square feet

Even small homes can have enough space for an ADU. An underused main floor bedroom in this 1.5-story, 1,500-square-foot bungalow was transformed into a studio apartment.

AH-HA MOMENT: According to Joan Grimm, who owns the home with Rita Haberman: “What we were looking for in terms of a community and aging in place was right under our noses. Remove a fence and create a shared open space. Build a wall and create a second dwelling unit. It doesn’t have to be complicated.”

REAL LIFE: “Creatively carving out an ADU from the main floor of our house saved on design and construction costs,” Grimm adds. “It provides an opportunity for rental income, with no significant compromise to the livability of our home.”



▲ The steps and side entrance (top) lead to the studio apartment ADU, which was crafted out of an existing space. The covered porch to the right leads to the primary residence. The ADU contains a kitchen, small dining and living area, sleeping area, bathroom and laundry area.

*Design: Rita Haberman | Builder: RS Wallace Construction | Cost to build: \$55,000 in 2015 (with some work done by the homeowners)
Photos courtesy Billy Ulmer | Article adapted from “ADU Case Studies” by Lina Menard on AccessoryDwellings.org*

HOME VISIT #5

Internal ADU (Lower Level)

Portland, Oregon

Size: 795 square feet

“We were looking for a way to live in our house for the rest of our lives and to generate at least some income in the process,” Robert Mercer and Jim Heuer wrote for the program guide of the annual Portland ADU Tour when their home was part of the lineup. “An ADU offers the possibility of caregiver lodging in the future or even a place for us to live while we rent out the main house if we get to the point where we can’t handle the stairs any longer.”

THE SOUND OF SILENCE: Internal ADUs often require that soundproofing insulation be installed between the primary dwelling and the accessory unit that’s below, above or beside it. In Portland, the building code for duplex residences requires a sound insulation rating of at least STCC45. To property owners thinking about a similar ADU setup, the duo advise: “Think about how you live in your home and

▼ The door to the right of the garage leads to a ground-floor ADU with windows along the back and side walls. The upper-level windows seen below are part of the main residence.



how having downstairs neighbors will change what you can and can’t do with your space and what investment you are prepared to make in sound insulation.”

AN ADDED BONUS: “We are pleased that we have been able to provide more housing density on our property and still be in keeping with the historic character of our home.”

Design: DMS Architects | Builder: Weitzer Company | Cost to build: \$261,000 in 2016 | Photo by Melissa Stanton, AARP | Article adapted from the 2017 ADU Tour project profiles on AccessoryDwellings.org

Bringing Back ADUs

The reasons for creating or living in an ADU are as varied as the potential uses

ADUs are flexible. Over time, a single ADU might be used in many ways as an owner's needs and life circumstances change. Following are just a few reasons why ADUs are created and by whom:

EMPTY NESTERS can build an ADU and move into it, then rent out the main house for supplemental income or make it available to their adult children.

FAMILIES WITH YOUNG CHILDREN can use an ADU as housing for a nanny or au pair or even a grandparent or two, who can then help raise their grandkids and be assisted themselves as they age.

INDIVIDUALS IN NEED OF CARE can reside in an ADU to be near family members, or they can use the ADU to house a live-in aide. (In fact, ADUs can be an affordable and more comforting alternative to an assisted-living facility or nursing home.)

HOME BUYERS can look forward to the rental income from an ADU to help pay their mortgage or finance home improvements, especially in expensive housing markets.

HOME-BASED WORKERS can use an ADU as their office or workshop.

HOMEOWNERS can use an ADU for guests or as housing for friends or loved ones who:

- aren't yet financially independent, such as new high school or college graduates
- need temporary housing due to an emergency or while renovating their own home
- have disabilities but can live independently if family reside nearby



▲ The zoning code in Evanston, Illinois, permits accessory dwelling units, creating an opportunity for the owners of this 1911 home with an outbuilding in the backyard.

Planning and Paying for ADUs

Most new homes are built by developers, entire subdivisions at a time. Apartments are also built by pros.

But ADUs are different.

Although ADUs are occasionally designed into new residential developments, the vast majority are created by individual homeowners after they move in. In other words, ADUs are usually created by enthusiastic and motivated *amateurs*.

An ADU may present the ultimate chance for a do-it-yourselfer to build his or her small dream home. More often, homeowners bring in a combination of architects, designers and construction contractors to do the work, much as they would for a home addition or major kitchen remodeling. The local municipality's planning department can provide guidance on the rules for ADUs and information about what permits, utility connections and fees are involved.

ADUs aren't cheap, and they are often the most significant home improvement project a homeowner will undertake.

Although internal ADUs can sometimes be built for about \$50,000, new detached ADUs often exceed \$150,000. Most ADUs are financed through some combination of savings, second mortgages, home equity lines of credit and/or funds from family members (sometimes a relative who ends up living in it).

In some areas, the cost of building an ADU can be recouped after a few years of renting it. If that's the plan, it's worth estimating the expenses versus the potential income before undertaking an ADU project.

A few cities, nonprofits and start-ups are experimenting with creative financing options that could put ADUs within reach for more homeowners and their families, as well as prospective renters.



▲ Walt Drake’s Southern-style, one-bedroom ADU has an outdoor, wraparound porch that can be accessed without using steps. The design is in keeping with other buildings in the neighborhood.

HOME VISIT #6 Detached ADU (One-Story)

Decatur, Georgia
Size: 800 square feet

When Walt Drake decided to downsize, his son Scott purchased his dad’s house for himself and his family and built a detached ADU (or DADU) for Walt.

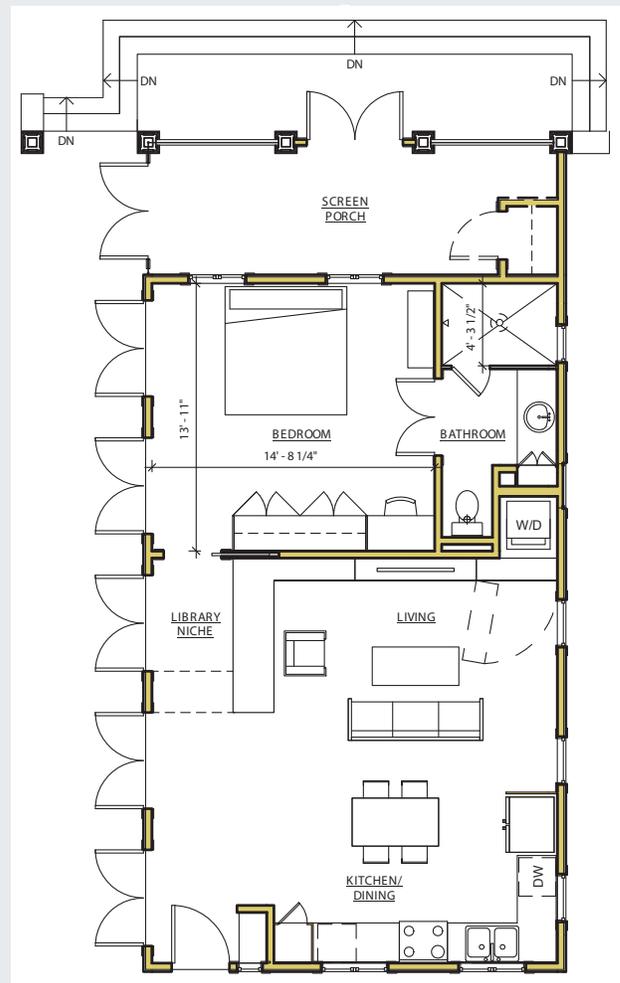
“From not finding what we wanted for Dad, we decided to create it,” says Scott. “Neighborhoods built in the 1920s have carriage houses. Building an ADU was a modern day version of something people have been doing on their property in this area for a hundred years.”

NEAR AND FAR: “We wanted the houses to be separate and to feel like we’re each on our own property, but we’re there for each other,” says Scott.

AGING-FRIENDLY: Building the ADU meant Walt didn’t have to sell his home and leave his neighborhood. “He was able to keep his own stuff and turn over what he didn’t need to us,” says Scott. “It kept my dad in place, which I think was important.”

FUTURE PLANS: Scott says the ADU is “serving its intended purpose” but that someday down the road it could be used as a long- or short-term rental. “The ADU could turn into lots of different things over the course of its lifetime.”

Design: Adam Wall, Kronberg Wall | Builder: Rob Morrell | Cost to build: \$350,000 in 2014 | Photo by Fredrik Brauer | Floor plan by Kronberg Wall Architects | Article adapted from “ADU Case Studies” by Lina Menard on AccessoryDwellings.org



ADUs Are Age-Friendly Housing

New-construction ADUs can be created with “universal design” features

An “age-friendly” home has a zero-step entrance and includes doorways, hallways and bathrooms that are accessible for people with mobility differences. Garage conversions (such as the one pictured on page 2) are among the easiest and least expensive ADU solutions for aging in place since they’re preexisting structures and generally have no-step entries. To learn more about making a home aging-friendly, download or order the *AARP HomeFit Guide* at AARP.org/HomeFit.

HOME VISIT #7

Detached ADU (Two-Story)

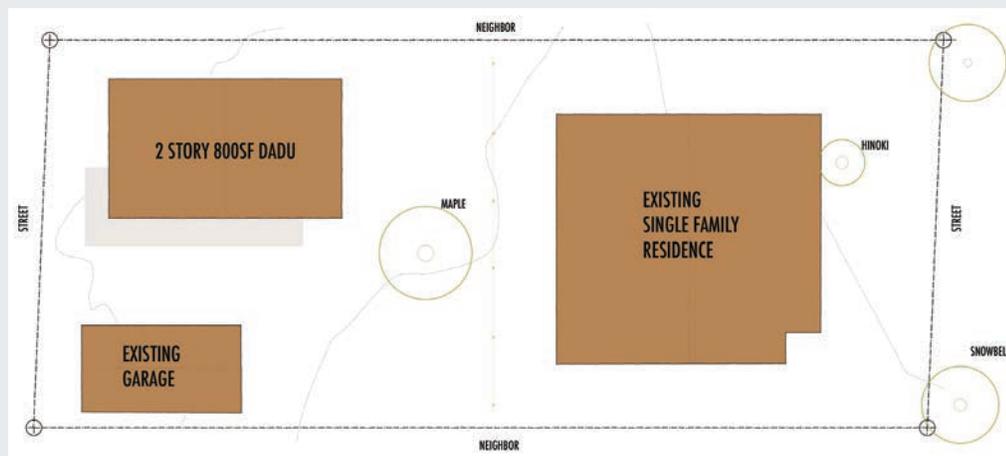
Seattle, Washington

Size: 800 square feet

Evelyn Brom’s plan was to build a backyard cottage and rent it out. She would keep living in her two-bedroom home.

AH-HA MOMENT: As the design developed, Brom realized that *she* wanted to live in the stunning wood-and-glass ADU. It was a good decision. A week before moving in, Brom was laid off from her job.

REAL LIFE: The \$3,000 a month Brom receives in rent for the main house (which is occupied by a three-generation family) provides a needed income. “Being laid off has made this arrangement a lifesaver,” Brom says. If the stairs in the cottage ever become too hard to navigate, she can move back into her original one-story house and rent out the cottage instead. “Now I have options,” she says.



▲ There’s a powder room, open kitchen and living room on the first floor, with a bedroom and bathroom upstairs.

◀ Although Brom’s property is only 0.13 acres, it’s large enough to accommodate two homes, a patio, a lawn and a garage. A slatted wood fence with a gate divides the space between the two houses and provides privacy.

Design: Chrystine Kim, NEST Architecture & Design | Builder: Ian Jones, Treebird Construction | Photo by Alex Hayden | Cost to build: \$250,000 in 2014
Article adapted from *Where We Live: Communities for All Ages* (AARP 2018)

HOME VISIT #8

Detached Bedroom

St. Petersburg, Florida

Size: 240 square feet

Bertha and her son John talked about someday buying a house with a mother-in-law suite. “Then one day someone came along and wanted my house, so I up and sold it,” she explains. “But that left me homeless. I asked John if I could build a small house in his backyard and he agreed.”

CREATIVE THINKING: A detached bedroom is a permanent, accessory structure that, unlike ADUs, lacks a kitchen. But that’s what makes these cabin-like homes more affordable to build than many ADUs and even tiny houses.

WHAT’S INSIDE: Bertha’s home contains a sleeping and living area and a full bathroom. “I paid for the little house and it’s on my son’s property. So I figured, if I’m cooking I can do it at my son’s house,” she says. (Her laundry is also done at his house.)



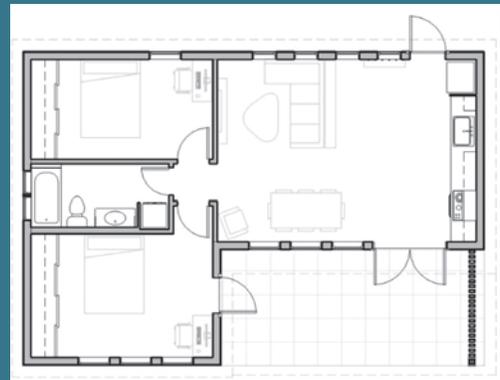
▲ A detached bedroom, which contains a bathroom but no kitchen, can provide housing for a loved one or serve as a home office or guest cottage.

REAL LIFE: “Having access to my son’s house makes it livable. Otherwise, I personally would not be happy. It’s very comforting to know that John is close by. Hopefully this will be my home forever.”

Design: Historic Sheds | Builder: Historic Sheds | Cost to Build: \$50,000 in 2017 | Photo by Historic Sheds | Article adapted from “ADU Case Studies” by Lina Menard on AccessoryDwellings.org

A Sustainable and Sunny ADU

Tired of living in a house with so many walled off and dark spaces that the sun couldn’t shine in, the home’s owners built and moved into the bright, airy, modern and very accessible ADU they created in their yard. (The original, larger home has become a rental.) The ADU is located within a conservation district and was constructed using sustainable materials and environmentally friendly techniques. One such feature is the deck trellis, which allows light in while diffusing the heat of the afternoon sun.



▲ Although this ADU has only 721 square feet of living space, there is room enough for two bedrooms.

Design: Propel Studio | Builder: JLTB Construction | Photo by Josh Partee | Cost to build: \$185,000 in 2017 | Article adapted from “ADU Case Studies” by Lina Menard on AccessoryDwellings.org

Practical Solutions for ADUs

Local laws can both allow and appropriately control the creation of accessory dwellings

There are more than 19,000 cities, 16,000 towns and 3,000 counties in the United States. Regulations about ADUs are typically written or adopted at the local government level.

Where it's legal to build ADUs, homeowners still need to follow rules about where it can be done, how tall they can be, how many square feet they can contain, what they can look like and how they can be used. These rules can be found in the local zoning code.

Over the past few decades it has become clear that there's a balance to strike between the strictness of ADU regulations and how often ADUs get built.

For instance, after Portland, Oregon, relaxed its ADU rules in 2010 and waived impact fees (a savings of up to \$12,000), the number of ADUs built there increased from about 30 per year between 2000 and 2009 to practically one ADU a day in 2015.

Changes in California's ADU laws allowed Los Angeles to achieve an even more dramatic increase, going from 80 permit applications in 2016 to nearly 2,000 in 2017. Allowing both an ADU and a "Junior ADU," or JADU — an interior ADU of 500 square feet or fewer — on properties in Sonoma County were among the urgent

policies adopted in the wake of Northern California's many devastating fires.

Meanwhile, in many jurisdictions, well-intentioned but burdensome rules can stymie the creation of ADUs. ADU-related zoning codes should be restrictive enough to prevent undesirable development but flexible enough that they actually get built.

When a community is worried about a potentially undesirable outcome, it can — and many do — craft regulations to prevent particular building types, locations or uses. A city concerned about the environmental impact of new structures might prohibit placing detached ADUs in precarious locations, such as on steeply sloping lots. Communities wary of ADUs becoming, for instance, off-campus student housing could establish occupancy rules.

Every community has its own priorities and concerns, and there's a wide enough range of regulatory controls that communities can write appropriate ADU rules.

This inherent flexibility in the form and function of ADUs allows them to pass political muster and get adopted in a wide range of places. (See page 16 for more about uses and rules.)

Rules that discourage ADUs

- ADU-specific regulations that don't also apply to primary dwellings (e.g., owner-occupancy requirements)
- complex design compatibility criteria and approval steps
- off-street parking requirements beyond those required for the primary dwelling
- restrictions that limit ADUs to certain geographic areas, particular zoning categories or to large lots
- caps on square footage relative to the primary house that make it easy to add an ADU to a large home but hard or impossible to add one to a small home

TRADING SPACES: An ADU is always the smaller of two dwellings on a property, but it's possible for an existing home to become the ADU when a larger house is built and becomes the primary dwelling.

Are ADUs allowed in your community?

Find out by calling the office in charge of land use and permits or stopping by in person. You can also search for and read the zoning code through the local government's website.

- If ADUs are allowed, ask what conditions, permit needs and impact fees apply.
- If ADUs are not allowed in your community and you want them to be, ask an elected official or the local department of zoning and planning for information about how the codes can be updated. Then get organized and start advocating!

Creating (or Understanding) an ADU Zoning Code

The ADU section of a community’s zoning code needn’t be overly complicated. It just needs to establish clear, objective and fair rules for the following:

1. A Definition: A good zoning code clearly defines its terminology. Here, for example, is a useful outline for what, in the real world, is a very fluid term: “An ADU is a smaller, secondary home on the same lot as a primary dwelling. ADUs are independently habitable and provide the basic requirements of shelter, heat, cooking and sanitation.”

2. The Purpose: This is where the code describes key reasons a community allows ADUs. They should:

- increase the number of housing units while respecting the style and scale of single-dwelling development
- bolster the efficient use of existing housing stock and infrastructure
- provide housing that’s affordable and respond to the needs of smaller, changing households
- serve as accessible housing for older adults and people with disabilities

3. Eligibility: Who can build an ADU and on what type of property? A statement in this part of the code clarifies that an ADU can be placed only on a “residentially zoned, single-family lot.” (Some communities provide lot size standards, but many don’t.)

4. Creation: This is where the code sets out how an ADU can be built. For instance: “An ADU may be created through new construction, the conversion of an existing structure, as an addition to an existing structure or as a conversion of a qualifying existing house during the construction of a new primary dwelling on the site.”

5. Quantity: Most municipalities that permit ADUs allow one per lot. Vancouver, British Columbia; Sonoma County, California; and Tigard, Oregon, are among the few that allow two per lot (typically one internal and one external). Some communities also allow duplexes or townhomes to have ADUs, either in the backyard or on the ground floor.

6. Occupancy and Use: A code should state that the use-and-safety standards for ADUs match those that apply to the primary dwelling on the same property. (See page 17 for more about ADU uses.)

7. Design Standards:

- **Size and height:** A zoning code might specify exactly how large and tall an ADU is allowed to be. For instance, “an ADU may not exceed 1,000 square feet

or the size of the primary dwelling, whichever is smaller.” Codes often limit detached ADUs to 1.5 or 2 stories in height. (An example of that language: “The maximum height allowed for a detached ADU is the lesser of 25 feet at the peak of the roof or the height of the primary dwelling.”)

- **Parking:** Most zoning codes address the amount and placement of parking. Some don’t require additional parking for ADUs, some do, and others find a middle ground — e.g., allowing tandem parking in the driveway and/or on-street parking. (See page 16 for more about parking.)
- **Appearance:** Standards can specify how an ADU’s roof shape, siding type and other features need to match the primary dwelling or neighborhood norms. Some codes exempt one-story and internal ADUs from such requirements. (See page 16 for more about making sure that ADUs fit into existing neighborhoods.)
- **Entrances and stairs:** Communities that want ADUs to blend into the background often require that an ADU’s entrance not face the street or appear on the same facade as the entrance to the primary dwelling (unless the home already had additional entrances before the ADU was created).

8. Additional Design Standards for Detached ADUs:

- **Building setbacks:** Many communities require detached ADUs to either be located behind the primary dwelling or far enough from the street to be discreet. (A code might exempt preexisting detached structures that don’t meet that standard.) Although this sort of rule can work well for neighborhoods of large properties with large rear yards, communities with smaller lot sizes may need to employ a more flexible setback-and-placement standard.
- **Building coverage:** A code will likely state that the building coverage of a detached ADU may not be larger than a certain percentage of the lot that is covered by the primary dwelling.
- **Yard setbacks:** Most communities have rules about minimum distances to property lines and between buildings on the same lot. ADUs are typically required to follow the same rules.

Visit [AARP.org/ADU](https://www.aarp.org/adu) to see examples of ADU zoning codes from selected cities.

ADU “Hot Topics”

As communities allow ADUs or update existing zoning codes and rules to be more ADU-friendly, they inevitably wrestle with some or all of the following issues:

Adding ADUs to neighborhoods

Recognizing that ADUs may represent a new housing type for existing neighborhoods, communities often write special rules to ensure they'll fit in well. These guidelines typically address visual compatibility with the primary dwelling, appearance from the street (if the ADU can be seen) and privacy for neighbors.

Rules that help achieve these goals include:

- height and size caps mandating that ADUs be shorter and smaller than the primary dwelling
- requirements that detached ADUs be behind the main house or a minimum distance from the street
- mandates that the design and location of detached ADUs be managed the same way as other detached structures (e.g., garages) on the lot
- design standards for larger or two-story ADUs so they architecturally match the primary dwelling or reflect and complement neighborhood aesthetics
- encouragement for the creation of internal ADUs, which are often unnoticed when looking at the house

Each community can strike its own unique balance between strict rules to ensure that ADUs have a minimal impact on neighborhoods and more flexible rules that make them easier to build.

▼ A top floor ADU can be a suitable rental for a student or someone who travels a lot for work. ADU expert Kol Peterson grew up in a home with an attic ADU that was usually rented to law school students. “They had to walk up the primary house’s interior stairs in order to access the affordable attic unit,” he writes in *Backdoor Revolution: The Definitive Guide to ADU Development*. “Over the years that each of them lived there, the tenants became parts of our family.”



Providing places to park

ADU regulations often include off-street-parking minimums on top of what’s already required for the primary dwelling. Such rules can prevent homeowners from building ADUs if there’s insufficient physical space to accommodate the parking. However, additional parking often isn’t needed.

Data from Portland, Oregon, shows that there are an average of 0.93 cars for each ADU, and that about half of all such cars are parked on the street. With fewer than 2 percent of Portland homes having ADUs (the highest percentage in the country), there is about one extra car parked on the street every six city blocks. This suggests that any impacts on street parking from ADUs are likely to be quite small and dispersed, even in booming ADU cities.

More-realistic parking rules might:

- require the creation of new parking only if the ADU displaces the primary dwelling’s existing parking
- waive off-street-parking requirements at locations within walking distance of transit
- allow parking requirements for the house and ADU to be met by using some combination of off-street parking, curb parking, and tandem (one car in front of the other) parking in a driveway

Dealing with unpermitted ADUs

It’s not uncommon for homeowners to convert a portion of their residence into an ADU in violation (knowingly or not) of zoning laws or without permits.

Such illegal ADUs are common in cities with tight housing markets and a history of ADU bans. One example is New York City, which gained 114,000 apartments between 1990 and 2000 that aren’t reflected in certificates of occupancy or by safety inspections.

Some cities have found that legalizing ADUs, simplifying ADU regulations and/or waiving fees can be effective at getting the owners of illegal ADUs to “go legit” — and address safety problems in the process.

Allowing and Restricting Uses

Communities get to decide whether to let ADUs be used just like any other housing type or to create special rules for them. Some municipalities take a simple approach, regulating ADUs just as they do other homes. So if a home-based childcare service is allowed to operate in the primary dwelling, it is also allowed in an ADU. Conversely, communities sometimes adopt ADU-specific regulations in order to avoid undesirable impacts on neighbors. Examples include:

Limiting short-term rentals

ADUs tend to work well as short-term rentals. They're small and the owner usually lives on-site, making it convenient to serve as host. However, if ADUs primarily serve as short-term rentals, such as for Airbnb and similar services, it undermines the objective of adding small homes to the local housing supply and creating housing that's affordable.

In popular markets, short-term rentals can be more profitable than long-term ones, allowing homeowners to recoup their ADU expenses more quickly. In addition, short-term rentals can provide owners with enough income that they can afford to occasionally use the ADU for friends and family.

A survey of ADU owners in three Pacific Northwest cities with mature ADU and short-term rental markets found that 60 percent of ADUs are used for long-term housing as compared with 12 percent for short-term rentals.

Respondents shared that they “greatly value the ability to use an

ADU flexibly.” For instance, an ADU can be rented nightly to tourists, then someday rented to a long-term tenant, then used to house an aging parent. ADUs intended primarily for visiting family are sometimes used as short-term rentals between visits.

Cities concerned about short-term rentals often regulate them across all housing types. If there are already rules like this, special ones might not be needed for ADUs. An approach employed in Portland, Oregon, is to treat ADUs the same except that any financial incentives (such as fee waivers) to create them are available only if the property owner agrees not to use the ADU as a short-term rental for at least 10 years.

Requiring owner-occupancy

Some jurisdictions require the property owner to live on-site, either in the primary house or its ADU. This is a common way of addressing concerns that absentee landlords and their tenants will allow homes and ADUs to fall into disrepair and negatively impact the neighborhood.

Owner-occupancy rules are usually implemented through a deed restriction and/or by filing an annual statement confirming residency. Some cities go further, saying ADUs can be occupied only by family members, child- or adult-care providers, or other employees in service of the family.

Owner-occupancy requirements make the financing of ADUs more difficult, just as they would if applied to single-family homes. But as ADUs have become more common, owner-occupancy restrictions have become less so, which is good. Such requirements limit the appraised value of properties with ADUs and reduce options for lenders should they need to foreclose.

Enforcing owner-occupancy laws can be tricky, and the rules have been challenged in courts, sometimes successfully. However, according to a study by the Oregon Department of Environmental Quality, more than two-thirds of properties with ADUs are owner-occupied even without an owner-occupancy mandate.

While not technically ADUs, tiny houses can serve a similar purpose

▶ Because tiny houses — such as the 100-square-foot “Lucky Penny,” pictured — are built on a trailer with wheels rather than on a fixed foundation, they are typically classified as recreational vehicles (RVs) rather than permanent residences. Although tiny homes are usually smaller than 400 square feet, many of them do contain a kitchen and bathroom.





ABOVE-GARAGE ADU



DETACHED-BEDROOM ADU



DETACHED ADU

- An accessory dwelling unit is a small residence that shares a single-family lot with a larger primary dwelling.
- As an independent living space, an ADU is self-contained, with its own kitchen or kitchenette, bathroom and living/sleeping area. (Garage apartments and backyard cottages are each a type of ADU.)
- ADUs can enable homeowners to provide needed housing for their parents, adult children, grandchildren or other loved ones.
- An ADU can provide older adults a way to downsize on their own property while a tenant or family member resides in the larger house.
- Since homeowners can legally rent out an ADU house or apartment, ADUs are an often-essential income source.
- ADUs help to improve housing affordability and diversify a community's housing stock without changing the physical character of a neighborhood.
- ADUs are a beneficial — and needed — housing option for people of all ages.

Learn more about ADUs and
order or download

The ABCs of ADUs

by visiting
AARP.org/ADU

Sign up for the free, weekly

AARP Livable Communities e-Newsletter

Be among the first to learn when
AARP releases more livability
guides and resources.

AARP.org/Livable-Subscribe

AARP[®]

Real Possibilities

HANSEN Alissa H

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Monday, May 20, 2019 8:44 PM
To: HANSEN Alissa H; *Eugene Mayor, City Council, and City Manager
Subject: For the record in "ADU Remand Ordinance"

For the record in "ADU Remand Ordinance."

The local Director of Advocacy and Outreach for the local chapter of AARP Oregon, Carmel Perz Snyder, FALSELY stated:

"We've updated the [ADU] report one more time. The 'ABC's of ADUs,' which is available on-line. Our [AARP] recommendations for best practices have also changed for several reasons. We support removing barriers, such as owner occupancy restrictions to allow ADUs in all neighborhoods."

In fact, the AARP has NOT changed it's recommendations, which remain in the "model code" which you've been provided previously. Ms. Snyder falsely represented a document by an individual, and NOT a report or policy of AARP as supporting the removal of owner occupancy.

In fact, the attached report includes such conclusions as:

"ADUs are typically owned and managed by homeowners who live on the premises. Such landlords are less likely to raise the rent once a valued tenant has moved in. Many ADUs are created for family members to reside in for free or at a discounted rate."

"Over time, a single ADU might be used in many ways as an owner's needs and life circumstances change."

The report DOES NOT recommend eliminating the requirement for the owner to reside on the property.

This is the kind of misinformation and outright false claims that the zealots striving to "stealth" upzone the R-1 district are stooping to.

Note that the later testimony from the state AARP organization DID NOT at all confirm the false statement by Ms. Snyder.

Please reject this type of misinformation from zealots.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402

[Accredited Earth Advantage](#)
[Sustainable Homes Professional](#)

HANSEN Alissa H

From: SELSER Lindsay R
Sent: Tuesday, May 21, 2019 1:28 PM
To: HANSEN Alissa H
Subject: FW: Please reconsider land use codes restricting ADUs

From: Matt McRae <trail_digger@yahoo.com>
Sent: Monday, May 20, 2019 7:44 PM
To: *Eugene Mayor, City Council, and City Manager <MayorCouncilandCityManager@eugene-or.gov>
Subject: Please reconsider land use codes restricting ADUs

Mayor Vinis and City Council,

As you know, first and foremost, [we are in a housing crisis that Council policies can help address](#)

(and smaller homes like ADUs [increase walkability and reduce auto dependency](#) - and [building smaller homes is one of the most effective strategies to reduce energy needed for heating and cooling](#))

As you weigh a list of changes that would enable more ADUs to be constructed in Eugene, I hope you will decide to broaden the list of policies to be removed and revised.

Yes, please remove the owner-occupancy requirement, and eliminate bedroom and occupancy maximums.

In addition, please:

- Reconsider or remove entirely the lot size minimums for ADUs
- Remove the density maximums.
- Remove prohibitions on alley access lots (a policy that prevents some 10,000 homeowners from being able to develop an ADU).
- Remove prohibitions on flag lots.
- Remove the separate size limitation based on lot size for ADUs.
- Remove special ADU regulations in the University areas, including separate lot coverage and area dimension requirements.
- Remove special requirements for sloped setbacks for ADUs - these simply hinder the ability to build ADUs
- Remove the Outdoor Storage/Trash Screening Requirement. This is simply another roadblock.
- Remove dog keeping limits (that are more restrictive than other housing)
- Remove bedroom limits

Please remove these constraints and then *please go the next step* and begin revising the dozen or so other policies that further inhibit construction of ADUs, as identified in the [Dwelling Unit Code comparative analysis completed in January of this year](#).

As always, thank you for the work you all do as Councilors. I know being a Councilor is time consuming and difficult and I have immense respect for the time and dedication you all commit to public service.

Regards, Matt McRae

-

HANSEN Alissa H

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Monday, May 20, 2019 5:22 PM
To: HANSEN Alissa H
Subject: For the record re "ADU Remand Ordinance"

May 20, 2019 5:16 p.m.

For the record re "ADU Remand Ordinance."

To preserve the issue on appeal:

If the ordinance does not provide a clear and objective definition of "Dwelling, Accessory," it would be facially nonconforming as to the requirements of ORS 197.307 and 197.831.

Accordingly, the ordinance would almost certainly be remanded by a likely LUBA appeal.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402
541.344.2552

Accredited Earth Advantage
Sustainable Homes Professional

HANSEN Alissa H

From: Nancy Meyer <nancydmeyer6@gmail.com>
Sent: Monday, May 20, 2019 4:31 PM
To: *Eugene Mayor, City Council, and City Manager
Subject: Homeowner Occupancy for ADU's
Attachments: Final talk to council.docx

Mayor and City Council -

Please enter the following attachment into the testimony for the public record for the ADU remand on May 20, 2019.

Thank you,
Nancy Meyer
541-342-1542

Council, 5/20/19
Nancy MeyerWard 3

Since I think many of us read Saturday's Guest Opinion piece in the RG, I would like to respond to some its assumptions.

First, it describes the important goals of increasing affordable housing and density throughout Eugene. But then it suggests that removing the requirement for homeowner occupancy from one of the properties with an Accessory Dwelling Unit - would actually move us in that direction.

Removing this requirement, according to the article, would make ADU's "easier to build" because then the land would already be "bought and paid for". That said, homeowners ALREADY own the land and can – and do – build ADUs on their property and rent them. This is not a reason to remove homeowner occupancy. Instead, this opportunity to increase density is already in place.

The article says that " Eugene residents who are struggling to find appropriate housing deserve the opportunity to thrive in ALL of Eugene's neighborhoods." I wish this were true. Instead, many of our neighborhoods have Homeowner Association codes which limit building. It's difficult for me to see how efforts to increase density will therefore be spread evenly across town. I think this is an important equity issue – and neighborhoods clearly have different challenges that need to be considered.

Indeed, density efforts will primarily impact our older, core neighborhoods with aging infrastructures – many of which are already the densest communities in town.

This article suggests that ADU's are more 'affordable'. However, the rents in the areas where these are most likely to be built are far from affordable since the core neighborhoods surrounding downtown and campus command high rents.

And, to the suggestion that the City Council is “dragging its feet” - I’d like to point out that Eugene is not alone in this requirement. Lawyers with the American Planning Association researched and then strongly recommended on-site property owners for ADUs. They concluded that absentee landlords and property managers aren’t as responsive to tenant needs as are owners on site, and that clearly, owners and tenants sharing the property are more likely to work together.

So what WOULD removing this homeowner occupancy requirement ACTUALLY do? According to the APA, it would incentivize speculators to buy properties, remove affordable family homes from the market, add a second dwelling (with no ‘accessory’ relationship), and then rent both units at market rates – thereby circumventing single-family zoning constraints.

I would conclude by suggesting that working together – and I do mean, working together - as a community - to increase affordable housing is a goal worth pursuing – especially with ideas that actually move us in that direction. Removing the owner occupancy requirement is not one of them.

HANSEN Alissa H

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Monday, May 20, 2019 3:23 PM
To: *Eugene Mayor, City Council, and City Manager
Cc: Eugene NLC
Subject: Request for disclosure of potential conflicts of interest re "ADU Remand Ordinance"

For the record.

Dear Mayor and City Councilors,

It appears from preliminary investigation that some of the nine elected officials may reside on or own a residentially-zoned lot (or lots) that is/are covered by legally-binding Covenants, Conditions and Restrictions ("CC&Rs") that prohibit the individual, adjacent property owner(s) and/or owners of other lots in the same subdivision, from having an Accessory Dwelling Unit ("ADU") on the affected property(ies).

As the City Attorney can confirm, no matter what Council may approve for "Dwelling, Accessory" criteria, an ADU would still not be allowed on a property if CC&Rs prohibit an ADU (or other second dwelling).

Accordingly, in the interest of transparency, the Mayor and each City Councilor should disclose if he or she resides on or owns any residentially-zoned lot(s) that is/are covered by CC&Rs that would prohibit ADU(s).

Obviously, an elected official who has property that would not be potentially affected by ADU regulations has a potential bias to support *minimal* restrictions on ADUs, regardless of the potential impacts on other property owners in residential areas that are not subject to CC&Rs.

In addition, any elected city official that owns an R-1 zoned lot, whether or not he or she resides on the lot) that may be affected by revising ADU criteria, such that the individual may benefit from less restrictive criteria or be disadvantaged from more restrictive criteria, should also disclose that fact.

Thank you for your commitment to "open government" and full transparency in your actions.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402

Accredited Earth Advantage
Sustainable Homes Professional

HANSEN Alissa H

From: Robert Illig <rillig@uoregon.edu>
Sent: Monday, May 20, 2019 3:17 PM
To: *Eugene Mayor, City Council, and City Manager
Cc: Laura Illig
Subject: Comments re Accessory Dwelling Uni

Dear Mayor Vinis and Eugene City Councilors,

I am writing regarding your discussion on tonight's City Council agenda about the ordinance defining Accessory Dwelling Units. In particular, I am concerned about the move towards removing an owner occupancy requirement from the ordinance. The very nature of the word "accessory" – synonyms being supplementary, auxiliary, in support of - implies that it is an add-on to a primary dwelling. If there is no primary dwelling, and no owner occupancy on the property, then we are instead talking about upzoning entire swathes of Eugene from R-1 to something higher. Removing owner occupancy only incentivizes speculators to buy neighborhood lots and convert them in order to maximize rental incomes.

So let's instead be honest and transparent that what is really being proposed: forced upzoning for many Eugeneans who have invested time, money, and energy into their homes and neighborhoods.

This is inequitable, undemocratic, unlikely to actually solve Eugene's housing crisis, and likely to have other unintended consequences.

- It is **inequitable** to upzone only the neighborhoods that do not have CC&Rs (generally wealthier, whiter, and further from the urban core) while imposing significant negative impacts (infrastructure, parking, etc.) on only some parts of Eugene but not others.
- It is **undemocratic** because there have been no neighborhood planning processes, no substantial neighborhood engagement efforts, and no discussion about ways to mitigate the significant inequities referenced above.
- It is **unlikely to actually solve Eugene's housing challenges**. From all the statistics that I have seen, our community's greatest needs are in the areas of extremely low-income housing. There has been no convincing data shared to indicate that allowing R-1 properties to be upzoned to multi-use would create more rental units at rents affordable for those at the very lowest end of the income spectrum.
- It will likely have **other unintended consequences**. In addition to the increased stress on infrastructure (roads, sewers, parking, etc.), this will also mean directly contravening other Council priorities (livability, support for close-in living options for families, etc.)

Rushing these decisions without forethought, data, or neighborhood engagement will result in a city comprised of only two types of neighborhoods: ugly, crime-ridden West University or leafy, wealthy, distant suburbs. What a potential giveaway for out-of-area investors looking to profit off our short-sightedness but what a shame for Eugene and many of its citizens.

Thank you,

Laura Illig

HANSEN Alissa H

From: YEH Jennifer K
Sent: Monday, May 20, 2019 10:55 AM
To: tomhappy@aol.com; *Eugene Mayor, City Council, and City Manager
Subject: RE: Owner occupancy in ADU's

Tom,
I'm sorry to hear you have a problem property that is a rental, however problem behaviors whether they be by the landlord or the tenant should be addressed in different ways. If our city isn't doing a good job in that area that is something we should take a look at. (Actually it is my understanding that work is being done to look at problems associated with some absentee landlords.) If landlords find it too inconvenient to properly maintain their properties then we should focus our efforts on requiring them to do so not restricting renters from some properties.

However, in my experience renters care about their neighborhoods just as much as property owners. I find the requirement of owner-occupancy discriminatory and the idea that one type of person is a better neighbor than another something I can't support.

Jennifer Yeh
Eugene City Councilor, Ward 4
541.682.8344

From: tomhappy@aol.com [mailto:tomhappy@aol.com]
Sent: Monday, May 20, 2019 10:39 AM
To: *Eugene Mayor, City Council, and City Manager
Subject: Owner occupancy in ADU's

All,

I encourage you to require owner-occupancy for property with an ADU. Without it, ADU's become just an economic investment for an off-site (often out-of-community) property owner. The oversight of an on-site owner is crucial to maintaining "livability" in any neighborhood. In my experience, most off-site rentals are not well-managed, and concern for the impacts on the immediate neighbors and neighborhood in general are a low priority.

Effective management of properties where an owner does not reside takes a large amount of work and care. I know this from experience as both an on off-site rental owner myself, and as a neighbor to rentals with hands-off owners. I will be dealing with one such poorly-managed neighboring rental later this morning.

The upshot of dealing with this particular rental, and others like it very nearby, is that my family and I will be moving from our beloved house and neighborhood of 18 years. The when and where is not certain, but there is no "if" involved. It will take considerable effort to unwind ourselves from this house and neighborhood, as we also own the rental duplex next door. These two properties comprise the vast majority of our material assets, resulting in the reality that extricating ourselves from both properties will require time, careful planning, and forethought. This is not something we planned ever to do, as we hoped to live where we are until the end.

I caution you to be very deliberate in your consideration of this and similar issues. It serves no greater good if policy decisions lead to the abandonment of neighborhoods by the very people who've invested in them for decades and provide the fabric the binds the neighborhood into a healthy, functional whole. Thank you for taking my thoughts and ideas into consideration as you deliberate on the topic of owner-occupancy for ADU's.

On an unrelated topic, an elderly neighbor recently moved to assisted living. She lived in her home for 18 years, and usually had one or two housemates in her modest corner house, providing much needed "affordable housing" to individuals with minimal means. Her house was recently sold to owners who are planning to use it as an AirBnB

property. Our neighborhood will lose a relatively inexpensive house for 2-3 occupants and be replaced with what amounts to a hotel (or vacation rental, take you pick).

To me, this is a travesty when this town is in dire need for more affordable housing. I urge you to regulate AirBnB and similar programs. To me, renting an extra room in one's home for short-term renters is understandable and palatable. Or renting one's home when out-of-town on a vacation of your own might make sense, as when there is an event in town that requires more housing short-term (e.g. Olympic Trials, or the 2021 World Track & Field Championships). However, the complete conversion of a relatively inexpensive home to a full-time rental for short-term stays by visitors to Eugene is not a reasonable or ethical use of this resource. Please do the right thing and implement common-sense regulations for short-term rentals. Other communities have done so, successfully preserving the much-needed housing already in place.

Respectfully,
Tom Happy

HANSEN Alissa H

From: tomhappy@aol.com
Sent: Monday, May 20, 2019 10:39 AM
To: *Eugene Mayor, City Council, and City Manager
Subject: Owner occupancy in ADU's

All,

I encourage you to require owner-occupancy for property with an ADU. Without it, ADU's become just an economic investment for an off-site (often out-of-community) property owner. The oversight of an on-site owner is crucial to maintaining "livability" in any neighborhood. In my experience, most off-site rentals are not well-managed, and concern for the impacts on the immediate neighbors and neighborhood in general are a low priority.

Effective management of properties where an owner does not reside takes a large amount of work and care. I know this from experience as both an on off-site rental owner myself, and as a neighbor to rentals with hands-off owners. I will be dealing with one such poorly-managed neighboring rental later this morning.

The upshot of dealing with this particular rental, and others like it very nearby, is that my family and I will be moving from our beloved house and neighborhood of 18 years. The when and where is not certain, but there is no "if" involved. It will take considerable effort to unwind ourselves from this house and neighborhood, as we also own the rental duplex next door. These two properties comprise the vast majority of our material assets, resulting in the reality that extricating ourselves from both properties will require time, careful planning, and forethought. This is not something we planned ever to do, as we hoped to live where we are until the end.

I caution you to be very deliberate in your consideration of this and similar issues. It serves no greater good if policy decisions lead to the abandonment of neighborhoods by the very people who've invested in them for decades and provide the fabric the binds the neighborhood into a healthy, functional whole. Thank you for taking my thoughts and ideas into consideration as you deliberate on the topic of owner-occupancy for ADU's.

On an unrelated topic, an elderly neighbor recently moved to assisted living. She lived in her home for 18 years, and usually had one or two housemates in her modest corner house, providing much needed "affordable housing" to individuals with minimal means. Her house was recently sold to owners who are planning to use it as an AirBnB property. Our neighborhood will lose a relatively inexpensive house for 2-3 occupants and be replaced with what amounts to a hotel (or vacation rental, take your pick).

To me, this is a travesty when this town is in dire need for more affordable housing. I urge you to regulate AirBnB and similar programs. To me, renting an extra room in one's home for short-term renters is understandable and palatable. Or renting one's home when out-of-town on a vacation of your own might make sense, as when there is an event in town that requires more housing short-term (e.g. Olympic Trials, or the 2021 World Track & Field Championships). However, the complete conversion of a relatively inexpensive home to a full-time rental for short-term stays by visitors to Eugene is not a reasonable or ethical use of this resource. Please do the right thing and implement common-sense regulations for short-term rentals. Other communities have done so, successfully preserving the much-needed housing already in place.

Respectfully,
Tom Happy

HANSEN Alissa H

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Monday, May 20, 2019 3:48 PM
To: HANSEN Alissa H
Subject: Fwd: Request for disclosure of potential conflicts of interest re "ADU Remand Ordinance"

----- Forwarded message -----

From: **Paul Conte** <paul.t.conte@gmail.com>
Date: Mon, May 20, 2019, 3:22 PM
Subject: Request for disclosure of potential conflicts of interest re "ADU Remand Ordinance"
To: Mayor and Council <MayorAndCC@ci.eugene.or.us>
Cc: Eugene NLC <eugene-nlc@googlegroups.com>

For the record.

Dear Mayor and City Councilors,

It appears from preliminary investigation that some of the nine elected officials may reside on or own a residentially-zoned lot (or lots) that is/are covered by legally-binding Covenants, Conditions and Restrictions ("CC&Rs") that prohibit the individual, adjacent property owner(s) and/or owners of other lots in the same subdivision, from having an Accessory Dwelling Unit ("ADU") on the affected property(ies).

As the City Attorney can confirm, no matter what Council may approve for "Dwelling, Accessory" criteria, an ADU would still not be allowed on a property if CC&Rs prohibit an ADU (or other second dwelling).

Accordingly, in the interest of transparency, the Mayor and each City Councilor should disclose if he or she resides on or owns any residentially-zoned lot(s) that is/are covered by CC&Rs that would prohibit ADU(s).

Obviously, an elected official who has property that would not be potentially affected by ADU regulations has a potential bias to support *minimal* restrictions on ADUs, regardless of the potential impacts on other property owners in residential areas that are not subject to CC&Rs.

In addition, any elected city official that owns an R-1 zoned lot, whether or not he or she resides on the lot) that may be affected by revising ADU criteria, such that the individual may benefit from less restrictive criteria or be disadvantaged from more restrictive criteria, should also disclose that fact.

Thank you for your commitment to "open government" and full transparency in your actions.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402

**Accredited Earth Advantage
Sustainable Homes Professional**

HANSEN Alissa H

From: Bill Kloos <billkloos@landuseoregon.com>
Sent: Monday, May 20, 2019 8:29 AM
To: HANSEN Alissa H
Cc: KLOOS Bill (SMTP); MCMAHON Ed (SMTP)
Subject: HBA Testimony for City Council ADU Ordinance Hearing Tonight
Attachments: HBA Ltrr to City Council 5.20.2019.pdf

Alissa –

Please include in the record my attached letter on behalf of the HBA. Neither Ed McMahon nor I plan to testify in person.

Thanks.

Bill Kloos
Law Office of Bill Kloos PC
375 W. 4th Ave., Suite 204
Eugene, OR 97401
Phone: 541-343-8596
Email: Bill.Kloos@LandUseOregon.com
Web: www.LandUseOregon.com

CONFIDENTIALITY NOTICE: The information contained in this email communication may contain confidential information that is legally privileged. If you are not the intended recipient, or if you have reason to believe that this message has been addressed to you in error, you are hereby notified that your receipt of this email was not intended by the sender and any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information except its direct delivery to the intended recipient is strictly prohibited. If you have received this email in error, please notify me immediately by telephone at the numbers listed above or by email and then delete the e-mail from your computer and do not print, copy or disclose it to anyone else. Thank you.

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.343.8596
WEB: WWW.LANDUSEOREGON.COM

BILL KLOOS
BILLKLOOS@LANDUSEOREGON.COM

May 20, 2019

Eugene City Council
125 E. 8th Ave.
Eugene, OR 97401

Re: Remand of the ADU Ordinance

Dear Mayor and Councilors:

This letter is submitted on behalf of Home Builders Association of Lane County, which, along with 1000 Friends of Oregon, Housing Land Advocates, Eugene Area Chamber of Commerce, WECAN, and AARP of Oregon, filed the LUBA appeal of the 2018 ADU ordinance that lead to this proceeding.

Eugene's antipathy for meaningful measures to promote housing availability and affordability is making it the "Bad Boy" poster child for the state's housing problem and a catalyst for more directly effective state housing legislation.

While most other cities were able to implement the 2017 ADU statute in a competent fashion in their first try, Eugene is about to get it wrong again in its second try. This is no accident. Eugene has put its best legal minds at work to deny residents the statutory housing rights the legislature intends them to have.

1. Eugene should wait for LUBA's June 7 decision in *Kamps-Hughes v. City of Eugene* because that decision may explain what the ADU statute requires.

If Eugene wants to comply with the statute in this second try, it should wait for LUBA's decision in *Kamps-Hughes*. It is only a couple of weeks away.

Kamps-Hughes was an appeal of a denial of the owner's request to verify that the statute allows him to put an ADU on his undersized alley-access lot in the Fairmount neighborhood. The appeal raises the following issues:

1. Whether the City may prohibit ADUs on "alley access" lots?
2. Whether the City may prohibit ADUs on lots under a certain size?
3. Whether the City may prohibit ADUs on lots without owner-occupancy?
4. Whether in the three specially protected neighborhoods the City may limit the occupancy count of the ADU based on the number of bedrooms in the existing dwelling?

5. Whether in the three specially protected neighborhoods the City may deny the ADU for lack of a 45' by 45' square open space area on the lot?
6. Whether in the three specially protected neighborhoods the City may deny the ADU for exceeding the "total lot area" that can be "paved or unpaved vehicle use areas?"
7. Whether in the three specially protected neighborhoods the City may deny the ADU for having too many or too few parking spaces on the lot?
8. Whether in the three specially protected neighborhoods the City may deny the ADU for failure to comply with a list of 10 standards for parking and driveways for lots "where primary vehicle access is from an alley?"

Each of the items above is where a proposed ADU would run up against a prohibition in the existing code. This is just for one specific lot. There is no shortage of existing code provisions that would prohibit or frustrate siting of ADUs in Eugene. The City code now has a very robust defensive shield against ADUs.

If the City waits for LUBA's decision in this appeal it might get direction from LUBA on all of these issues. Or it might not get any direction at all. In defending its denial of Kamps-Hughes at LUBA, the City urged LUBA not to address any of the issues above.

In *Kamps-Hughes* the City argued that the applicant's proposal – for an 800-square foot detached dwelling on the same lot and with fewer bedrooms than the existing dwelling -- was not proven to be an ADU because it was not proven that it would be "used in connection with * * * or accessory to" the existing dwelling. However, the City did not say what it thought would be an ADU. The city's approach was like making Kamps-Hughes pick a number between 1 and 10 and then say that he had guessed wrong. Having told LUBA that Kamps-Hughes had guessed wrong, and that his proposal was not an ADU, the City urged LUBA to not address any of the issues listed above. "Given the City's correct determination that the proposed use is not an 'accessory dwelling' as that term is defined in ORS 197.312(5)(b), * * * LUBA should not reach the remainder of the City's brief, and should deny the entirety of Petitioner/s assignment of error." City LUBA brief at 15.

If LUBA honors the city's request in *Kamps-Hughes*, then the City will get no new direction from LUBA on June 7. However, if LUBA addresses one or more of the issues listed above, then the City will have some firm direction on whether the City is squashing owners' statutory housing rights. It is worth the wait, unless the City really does not want direction.

Mayor and City Council

May 20, 2019

Page 3

2. The City needs to articulate a working definition of “used in connection with * * * or accessory to” the existing dwelling.

The City has argued to LUBA that the City gets to determine in the first instance “what it means for one dwelling to be ‘used in connection with’ or ‘accessory to’ another single-family dwelling.” City *Kamps-Hughes* Brief at 12. The City has also argued to LUBA that the city’s ADU regulations implementing the statute must be clear and objective to comply with state housing law. The *Kamps-Hughes* City Brief at 18 said:

“In considering the "reasonableness" of the City's regulations, it is important for LUBA to keep in mind that the City's ADU regulations must be "clear and objective" to comply with the requirements of ORS 197.307.”

If the City is correct on both points above, then the City has an obligation now to adopt definitions of the operative phrases – “used in connection with” or “accessory to”—that are clear and objective. The current draft code does not do that. If the City adopts the current draft code, the City still will be able to deny any ADU application by saying the applicant did not prove that the ADU would be used in connection with or be accessory to the existing dwelling.

3. The city’s ADU code should comply with the issues raised by the Petitioners in the *HBA* and *Kamps-Hughes* appeals.

The LUBA briefs from all three LUBA appeals – the appeal by HBA *et al* and two *Kamps-Hughes* appeals – are in the record. The HBA relies on the positions taken in those briefs.

Thank you for your consideration.

Sincerely,

Bill Kloos

Bill Kloos

cc: Ed McMahon, HBA of Lane County

HANSEN Alissa H

From: Chris O'Neill <oneillchris@me.com>
Sent: Monday, May 20, 2019 6:55 AM
To: Dave Wilson
Cc: HANSEN Alissa H; Charles Kittleson; Phyllis Hockley; Katharine Hunt
Subject: Re: ADUs in Eugene

Dave says it best. Thanks. Chris

On May 19, 2019, at 8:17 PM, oakley wilson wilson <oakleywilson@yahoo.com> wrote:

I cannot make the May 20 meeting, but would like to add my voting weight to the comments received to the effect that incremental steps to improve the housing shortage in Eugene are more important than the underlying reasoning behind restrictions against ADU's. It is time to take substantive steps to alleviate an acute and festering problem.

Thank you

David O. Wilson
(3870 Ferry Street, Eugene Or, since at least 1984)

HANSEN Alissa H

From: Linda Lynch <lindalynch28@gmail.com>
Sent: Sunday, May 19, 2019 11:47 PM
To: *Eugene Mayor, City Council, and City Manager
Subject: League of Women Voters Comments on Accessory Dwelling Units
Attachments: LWV testimony ADU 0519.docx

Dear Mayor Vinis and City Councilors:

Attached is a letter of comments generally supporting proposed amendments to the accessory dwelling ordinance.

The League favors careful planning, high construction standards, and the development of design restrictions to allow the economical use of land while preserving privacy, quiet, and other amenities. We support a mix of housing types and hope to see the City move toward full compliance with state law regarding accessory dwelling units. If there are questions about the League's position on this issue, please do not hesitate to call me.

Linda Lynch, President
League of Women Voters of Lane County
338 W. 11th Av, Suite 101
Eugene, OR 97401
541-343-7917



May 19, 2019

Mayor Lucy Vinis and Members of the Eugene City Council:

The League of Women Voters of Lane County supports a mix of housing types in all neighborhoods to meet the needs of diverse community members and supports provisions to achieve greater density in the metropolitan area and to maintain the urban service area boundary. We believe accessory dwelling units (ADUs) should be an option—potentially increasing the number of affordable residential units. Eugene must come into compliance with state law regarding accessory dwelling units.

Eugene is considered to be one of the most cost-constrained housing markets in the country, for renters and homeowners. The average local family spends more than 60 percent of its income on housing and transportation costs.

Our housing crunch also has environmental implications. The availability of homes with smaller footprints can help us use less energy.

The League supports removing city regulations specific to ADUs that:

- Prohibit accessory dwellings on new flag or panhandle lots.
- Require owner occupancy of either the accessory or primary dwelling.
- Limit the maximum number of bedrooms in an accessory dwelling.
- Address dog keeping. (Other regulations limit the number of dogs per lot.)

Of the above potential changes, removing the owner occupancy requirement is the most critical because it tends to discriminate against renters.

In addition, we encourage the City Council to consider:

- Developing ADU templates to help reduce costs, improve design, and promote compliance.
- Reviewing systems development charges to ensure fees for ADUs and other small units reflect actual system impacts and do not unnecessarily disadvantage such housing.
- Revisiting a prohibition for ADUs on alley lots. Depending on access, location and size, such lots may be appropriate for ADUs.
- Considering legal and equity goals, reexamine the limit on the maximum number of occupants in an ADU based on the number of occupants in the primary dwelling, for properties within the boundaries of the Amazon, Fairmount, and South University neighborhood associations.

Sincerely,

Linda Lynch, President

HANSEN Alissa H

From: tiffanytelfer@gmail.com
Sent: Sunday, May 19, 2019 10:40 PM
To: *Eugene Mayor, City Council, and City Manager
Subject: Personal support for ADUs

Dear Mayor Vinis and members of Council,

Since tomorrow I will be dedicating my 2-minutes of prepared remarks to speak on behalf of my employer, I wanted to take the opportunity to weigh in just as myself, a private citizen of Ward 5, on the ordinance concerning accessory dwellings.

Quite simply, I am strongly in support of removing barriers to allow more housing types to be built more easily and more cost-effectively in Eugene. I strongly support removing owner-occupancy requirements for construction of ADUs and I find it rather discriminatory in nature, as a means to solve a problem that isn't really a problem. If limiting the number of short-term or vacation rentals is the goal, there are far more effective policies that Council can adopt to help preserve our long-term rental inventory and keep costs down.

I have read and listened to statements for many months now, from individuals and groups who simply cannot understand the challenges that many are facing in our community, to find stability in their housing. I'm disturbed when I hear those who comfortably own their homes in their "established neighborhoods", who are benefiting most by our housing shortage as their home and property values skyrocket, suggest that because someone is a renter, they should be limited in where they're allowed to live. It demonstrates a bias that should not be tolerated and we simply can't allow the voices of those who reject the idea of allowing renters in their neighborhoods to eclipse the voices of renters who just want to be good neighbors. I am 45-years old and the home that my husband and I have owned for the past 8 months is the first home that I have ever owned. More than half of our community is comprised of those who rent their housing.

This issue is also somewhat personal to me in that while we have no plans, constructing an ADU for our 17-year-old son with autism, has always been held as a possible cost-effective solution as a way to provide him with independence as a young adult, with the safety and security of his family nearby. But if we were to be restricted in having to live in our home indefinitely so he could legally occupy an ADU, I don't believe we would even consider it. It would restrict both our own use of our property and the resale and this is a barrier. We also know many families with similar circumstances who rent. Requiring owner-occupancy for an ADU would limit the options for RENTERS interested in leasing a property with an ADU, since one of the dwellings would need to house the property owner.

I appreciate your time in considering my ask on this topic and ask that you consider the voices that you might not be hearing so loudly on this issue. They're out there and they're counting on your leadership.

Thank you all for your service to our community.

Kind regards,
Tiffany

Tiffany Edwards

●●●●●

[m] 541-678-3370

[e] TiffanyTelfer@gmail.com

HANSEN Alissa H

From: Dennis Casady <dennis427@gmail.com>
Sent: Sunday, May 19, 2019 10:21 PM
To: HANSEN Alissa H
Cc: *Eugene Mayor, City Council, and City Manager
Subject: Accessory Dwelling Units

I wish to express my desire to see the City Council follow the FINE example of Springfield, OR in regards to Accessory Dwelling Units. In my opinion, Eugene is "playing second fiddle " to Springfield.

Eugene needs to follow the law of Senate Bill 1051 and remove the barriers that hinder the development of ADU's.

Eugene has the SECOND MOST-CONSTRAINED HOUSING MARKET IN THE NATION.
That is nothing to be proud of !!

SIX OUT OF 10 renters pay more than 30% of income for rent.

ADU's will be a "drop in the bucket" in easing the housing shortage, but every little bit helps.

Won't you please help?

Thank you,
Dennis Casady

HANSEN Alissa H

From: oakley wilson wilson <oakleywilson@yahoo.com>
Sent: Sunday, May 19, 2019 8:18 PM
To: HANSEN Alissa H
Cc: Chris O'Neill; Charles Kittleson; Phyllis Hockley; Katharine Hunt
Subject: ADUs in Eugene

I cannot make the May 20 meeting, but would like to add my voting weight to the comments received to the effect that incremental steps to improve the housing shortage in Eugene are more important than the underlying reasoning behind restrictions against ADU's. It is time to take substantive steps to alleviate an acute and festering problem.

Thank you

David O. Wilson
(3870 Ferry Street, Eugene Or, since at least 1984)

HANSEN Alissa H

From: Carolyn Jacobs <carolyn.i.jacobs@gmail.com>
Sent: Sunday, May 19, 2019 8:13 PM
To: *Eugene Mayor, City Council, and City Manager; HANSEN Alissa H
Subject: Testimony for ADU Remand Public Hearing May 20, 2019
Attachments: owner occupancy .odt

Please enter the attached testimony in the record for the Public Hearing of May 20, 2019.

-Carolyn Jacobs

The City of Eugene must adopt a clear and objective definition of “accessory dwelling unit.” Given that City Council chose to replace the word **secondary** (as in Secondary Dwelling Unit) with the word **accessory** only six months ago we must assume that something more was intended to be required by the inclusion of the word **accessory** than just a *second unit*.

It is well understood that a “*second unit*” alone would mean allowing two unrelated units on R1 lots... a straight forward change from a single family zone to a multi family (or medium density) zone – something we would all acknowledge as outright upzoning.

Searching for a definition of "accessory dwelling units" one finds in **ORS 197.312(5)(b)(A)** the following: “ "accessory dwelling unit" means an interior, attached or detached residential structure **that is used in connection with or that is accessory to a single-family dwelling.**”

With the adoption of the name Accessory Dwelling Unit City Council intended to merely replace the word *secondary* with *accessory* without any changes to the definition of secondary dwelling unit. According to the Eugene Code the *definition* of an SDU is: “A dwelling unit that is located on the same lot as a primary one-family dwelling that is clearly subordinate to the primary one-family dwelling, whether a part of the same structure as the primary one family dwelling or a detached dwelling unit on the some lot. **Either the secondary dwelling or the primary dwelling must be occupied by the property owner.**”

Alissa Hansen, Principal Planner for the City wrote on February 7, 2019 regarding ZVR 18-49: “**With respect to its relationship with/to another single-family dwelling . . . a new structure (merely) located on the same lot as another single-family dwelling. . . . is an insufficient "connection" or "accessory" relationship to give the words in ORS 197.312(5)(b)(A) any real meaning.**

In conclusion, City Council must adopt a clear and objective definition of Accessory Dwelling Unit that either confirms the obvious meaning of owner occupancy or remove the word *accessory* entirely which is of course what eliminating all meaning from the word effectively does. If the council chooses to go this route then it will have chosen to allow two unrelated units on targetted (i.e. those without CC&Rs) R1 low density, single family neighborhoods. The result of course will be all targetted neighborhoods suddenly reinvented as medium density, multi family neighborhoods.

A policy that targets the oldest, most dense neighborhoods with increased infrastructure stress, dwindling parking options, decreasing home owner options as out of area investors profit in the commercialization of residential neighborhoods etc etc is a policy that is elitist and inequitable at its core.

HANSEN Alissa H

From: Tom Bruno <brunoassoc@aol.com>
Sent: Sunday, May 19, 2019 11:10 AM
To: eugene-nlc@googlegroups.com; *Eugene Mayor, City Council, and City Manager; Eugene Planning Commission
Cc: Eugene Neighborhoods United; eugene-nlc@googlegroups.com; Rep.MartyWilde@oregonlegislature.gov
Subject: ADU Cost & Benefits - good article to read before Monday's meeting - cost is closer to \$115.00 per square foot

Money Crasher Magazine



[Search]

Advertiser Disclosure

What Is an Accessory Dwelling Unit (Granny Flat) – ADU Costs & Benefits



•
By



[Brian Martucci](#)

Views

2.2K

Shares

40

Share this Article

How's your appetite for a major [home improvement project](#)? What if that project could build equity, significantly boost your property's value, and generate income?

Most home improvement initiatives can't do that. In fact, the list of [home improvement projects that decrease resale value](#) and drain homeowners' personal savings is far too long. Accessory dwelling unit (ADU) additions are different. Whether you're looking to [renovate an older house](#) or build equity in a [new construction home](#), an accessory dwelling unit is highly likely to add value, versatility, and verve to your little patch of ground.

Adding an ADU is a major investment. According to the [Oregon Department of Environmental Quality](#), the median cost to build a detached ADU in [Portland, Oregon](#), is approximately \$90,000. The median cost to build an attached ADU is cheaper—between \$40,000 and \$50,000. Still, that's surely more than almost any other common home improvement project, save high-end kitchen or bathroom remodels.

ADUs may be easier for rank-and-file homeowners to finance than some other big-ticket purchases, too. If you have sufficient equity in your home, a cash-out refinance is a low-cost, reliable option. If not, consider a [home renovation loan](#) or unsecured personal loan.

No matter how its proponents choose to pay, the ADU movement is gaining momentum. Every year, thousands of homeowners across the United States calculate that the long-term benefits of accessory units, including substantial [renta income potential](#) and the flexibility to cheaply [house aging parents](#) or adult children, outweigh their steep upfront costs and ongoing maintenance requirements.

Read on to learn more about accessory dwelling units: their types, common uses, costs, procedures to build, financing options, general benefits, and potential drawbacks.

What Is an Accessory Dwelling Unit?

An accessory dwelling unit is a secondary housing unit that occupies the same structure or lot as a primary residential structure – usually a single-family home or [duplex](#).

Unlike condominiums and mobile homes, accessory dwelling units generally cannot be purchased separately from the main home. Moreover, the construction of an accessory dwelling unit does not require or result in the subdivision of the main home's lot.

ADUs' fortunes are therefore closely linked with those of their "parent" homes. In fact, many municipalities enforce restrictive covenants that require properties with ADUs to remain owner-occupied in perpetuity.

Where such covenants are enforced, you can't move off the property and rent out both the main house and ADU, nor can you sell the property to an absentee landlord who intends to do the same. You must remain on the property, living in either the ADU or main house, until you sell to another individual or family with the same plans.

Accessory Dwelling Unit Synonyms

Despite their novelty, accessory dwelling units are known by many names. Terms depend largely on geography and personal preference. Common synonyms include:

- Accessory apartment
- Granny flat
- Second suite
- Live-in garage
- Mother-in-law suite/apartment
- In-law suite/apartment
- Secondary unit
- Family unit
- Guest unit/apartment
- Carriage house
- Basement unit
- Attic unit

Types of Accessory Dwelling Units

Accessory dwelling units come in three basic configurations: detached structures (habitable outbuildings), attached external apartments with entrances separate from the main dwelling, and attached internal apartments with shared or separate entrances.

Let's take a closer look at each.

1. Detached Structures

The quintessential accessory unit is a detached structure located in the main home's back or side yard.

Detached ADUs are often miniature carriage houses or [tiny houses](#) that serve no purpose other than providing additional habitable space. They can also have dual purposes, such as a second-floor apartment above a garage or unfinished

storage area. They must rest on foundations – a requirement that excludes mobile dwellings such as RVs and wheeled tiny houses.

The main advantage of a detached ADU is independence. Because the entrance is separate and physically removed from the main house, occupants can come and go as they please with minimal disruption. This is useful for unrelated ADU tenants who want privacy from their landlords, for main house occupants who don't want to be woken up when their tenants arrive home late at night, and for older ADU tenants who want to remain active for longer.

The main drawback of a detached ADU is building and maintenance costs. Since the unit is entirely detached, it needs its own utility hookups and mechanical appliances (furnace, water heater), and likely requires more raw material to construct.

Minnesota architect [Christopher Strom](#), who helped the city of [Minneapolis](#) draft its ADU ordinance in 2014, says it comes down to who's going to live in the ADU (if anyone) and what they value most. "[Homeowners] need to consider the level of independence needed for the occupant of the ADU," he says. "The cost of a detached ADU is higher, but it also offers much more independence."

2. Attached External Apartments

Attached external apartments share at least one wall with the main house. However, they have separate entrances and share no internal connections with the main unit. They generally have separate utility hookups, though the cost to connect them to city services is manageable due to the small distances involved. They may or may not share mechanical appliances with the main unit, depending on the existing appliances' capacity.

3. Attached Internal Apartments

Attached internal apartments are fully integrated into the existing structure of the main house. To outside observers, it's not immediately obvious that the property contains two separate housing units.

They're most often located in a finished basement or attic. They may or may not have separate external entrances, though they invariably have separate, secured doors accessible from an internal foyer or hallway. In most cases, they share utility service and mechanical appliances with the main unit. Since they require little in the way of raw construction materials and fewer big-ticket appliance purchases, they're the cheapest of the three ADU options.

Potential Uses for Accessory Dwelling Units

Architect Christopher Strom says that most homeowners who build ADUs do so to accommodate elderly family members at a reasonable cost or earn extra income from short-term rentals.

"For the most part, [ADU owners] have elderly family members that want to live independently but nearby," he says. "The next [most common use is earning] extra money through Airbnb."

However, there are plenty of other uses for detached or attached accessory units. Here's a look at some common options, none of which are mutually exclusive:

- **Housing Grandparents and Older Parents Independently, but Nearby.** For many families, ADUs are affordable, humane alternatives to nursing homes and assisted-living facilities. According to the [U.S. Department of Health and Human Services](#), the cost of a semiprivate nursing home room approaches

\$7,000 per month. An entirely private nursing home room costs nearly \$8,000 per month. Even assisted-living facilities, with their more hands-off approach to care, cost more than \$3,500 per unit, per month. By contrast, median rents for attached and detached ADUs in Portland, Oregon, range from roughly \$750 to \$1,000 per month, per the [Oregon Department of Environmental Quality](#) – and that assumes you’d charge your elderly parent or grandparent market-rate rent to live on your property.

- **Long-Term Rental Income.** Another common use for ADUs is long-term rental income from tenants on monthly or yearly leases. Income potential obviously varies greatly by ADU size, amenities, location, and other factors, but this is a legitimate [passive income opportunity](#) for any homeowner who builds or buys into an accessory dwelling unit.
- **Short-Term Rental Income.** If you don’t want to give your accessory unit over to a single renter or couple for months or years at a time, turn it into a short-term rental instead. Whether you live in a big city or popular [vacation town](#), you can market your ADU to travelers on [Airbnb](#), [VRBO](#), [HomeAway](#), and other vacation rental sites. Keep in mind that short-term rental laws vary by jurisdiction, so make sure you’re allowed to go this route before creating a listing – and pay all applicable lodging taxes once you’re up and running.
- **Bonus Space for Older Kids.** As a parent, you’re probably leery about letting your adolescent or teen hang out with his or her friends (and potential love interests) in a separate apartment. That’s totally understandable. But, with proper ground rules and supervision, an ADU can be a great place for older kids to create some distance from their parents without venturing into completely unstructured environments.
- **Low-Cost Housing for Adult Children.** In high-cost areas, ADUs can serve as safety nets for low- and middle-income young people who can’t afford decent housing near work or school. They’re also useful for [adult children](#) who are capable of productive work, but have chronic health or developmental issues that prevent them from living independently.
- **Space for a Home Office or Studio.** If you’re an artist, craftsperson, or individual professional, adding an ADU is a great way to carve out space for your passion (or profit) without cluttering your main house or driving the rest of your family crazy. With a kitchen, bathroom, bed, and other housing necessities, you can toil indefinitely as you strive to meet deadlines or put the finishing touches on your next masterpiece.
- **Separate, Specialized Space.** Your property is unique. Depending on its amenities and configuration, your ADU could accentuate an existing function or create an entirely new one. For instance, if you have a backyard pool, your ADU can serve as a pool house, complete with equipment storage, private changing areas, and a shower. If you’re a frequent host, it could house party overflow or divert traffic from the main building. Or it could serve as the proverbial man (or woman) cave. The sky’s the limit.

- **Private Accommodations for Guests.** If you regularly host friends and family overnight, your ADU can serve as a super-private spare bedroom. That's a win-win for you and your guests, especially in older, smaller houses where every sticky door and creaky floorboard sounds like a cannon.
- **Efficient Quarters for Single and Empty Nester Homeowners.** If you're a younger, single individual with the means to purchase a house, consider buying one with an existing ADU or adding an ADU yourself. By living in your ADU and renting the main house to a larger family or group of roommates, you can maximize your investment's income potential without taking up more space than you need. The same principle applies for empty nesters: Once the kids are off on their own, why not move out of the main house and rent it to a group that can take full advantage of the space?

Life Cycle of an Accessory Dwelling Unit

Like any permanent housing unit, ADUs are designed to last for many decades. Given their longevity, they're likely to fill multiple roles during their lifespans, as the needs of their original and future owners change.

What you do with your accessory dwelling unit is ultimately up to you. You can use it as a [home office](#), give it over entirely to short-term rentals via Airbnb or VRBO, or simply maintain it as a bonus space that you can escape to when the main house gets claustrophobic.

However, many ADUs' life cycles follow a pattern that echoes their owners' changing needs over time. This is a summary of one possible life cycle, courtesy of [Second Suite](#):

1. **Year 0:** Homeowners purchase a home with an existing ADU or build one themselves. The homeowners then start a family.
2. **Year 1 – 18:** The ADU serves as extra living space for the growing family – a home office, pool house, play room, spare bedroom, or all of the above.
3. **Year 18 – 25:** When their oldest child graduates from high school, the homeowners convert the ADU into a rental space. If the child attends college or works close to the family home, the homeowners rent the ADU to him or her. Otherwise, they rent it to unrelated tenants to earn income (and subsidize their kids' education).
4. **Year 25 – 30:** Once the homeowners' kids have all left the house, they rent the ADU to *their* parents. This avoids the potentially exorbitant cost of assisted living or nursing home care while maintaining proximity and family connections.
5. **Year 30 – 35:** The homeowners [downsize](#) and move into the ADU. They rent the main house to their grown kids or an unrelated family.

6. **Year 35 and Beyond:** The original homeowners sell the property to one of their grown kids, who by this time has started a family. The original homeowners then remain in the ADU, paying rent to their kid.

This sequence makes a lot of assumptions – for instance, that one of the original homeowners’ kids will want to raise his or her own family in his or her childhood home. Still, it’s a useful illustration of ADUs’ versatility over time.



How to Add an Accessory Dwelling Unit to Your Property

Building a habitable structure, attachment, or internal unit is a complicated, potentially costly proposition that can’t be done overnight. “Building an ADU requires creativity in design, technical, and building code compliance,” says architect Christopher Strom. That means careful planning, disciplined budgeting, and professional help.

Let’s take a closer look at what it takes to add an ADU to your property without breaking your budget or running afoul of local regulations.

Construction Timeline and Financing Options

Before you can break ground, you need to figure out:

- How much your ADU is going to cost
- When to build it
- How to pay for it

How Much Do ADUs Cost to Build?

According to [Brown and Palmieri's report](#), the median cost to build an attached ADU in Portland is just over \$75 per square foot. That's \$37,500 for a 500-square-foot space and \$75,000 for a 1,000-square-foot unit. Costs for detached ADUs are roughly double: just under \$150 per square foot, or approximately \$150,000 for a 1,000-square-foot unit.

Portland is a relatively expensive housing market, so it's certainly possible that costs are marginally lower elsewhere, but the fact remains that building a habitable, up-to-code structure is a costly proposition anywhere. Geography aside, ADU construction costs may vary over time due to macroeconomic forces that affect input costs, chiefly raw materials and labor.

When Should You Build Your ADU

The precise timing of your ADU's construction will depend on your financial situation and family dynamics. For instance, if money is tight and you don't want to serve as a landlord or Airbnb host to people you don't know, you might wait to build your ADU until your kids are old enough to live in it.

Alternatively, if you're [buying a house instead of renting](#), with the goal of turning it into a passive income stream, you'll want to get started as soon as possible.

Assuming you're building your ADU from scratch, you can either build it simultaneously with or after your main house. For financing purposes, this is an important distinction.

How to Finance Your ADU

Most middle-class homeowners aren't in the position shell out tens or hundreds of thousands of dollars on a whim. Fortunately, those who can't afford to cover construction costs with cash on hand have a slew of legitimate financing options at their disposal. Some are appropriate for ADUs built simultaneously with the main house; others work for ADUs added after the fact.

- **Fannie Mae HomeStyle Rehabilitation Mortgage:** Designed to finance major home improvement work, this popular mortgage product lets you put as little as 5% down, though you'll need to pay [private mortgage insurance \(PMI\)](#) until you reach 80% LTV. However, unlike [FHA mortgage loans](#), there's no upfront mortgage insurance requirement – a potentially massive money-saver. Underwriting requirements can be strict – lenders like to see FICO scores north of 650.
- **FHA 203(k) Renovation Loan:** [FHA 203\(k\) renovation loans](#) are specifically designed for homebuyers looking to roll the cost of major home improvement projects into their purchase loans. With lax underwriting criteria, they're ideal for first-time homebuyers with less than perfect credit. The major drawback is a big upfront mortgage insurance hit: 1.75% of the loan value.
- **Construction-to-Permanent Loan (All-in-One Loan):** This is a turnkey loan that finances every step of the home construction process, from land acquisition to the finishing touches, and then converts into a long-term (or "permanent") mortgage with a term of up to 30 years. Just one closing is required.
- **Short-Term Construction Loan:** Short-term construction loans are meant to finance costs associated with new home construction – including, if necessary, ADU construction. They usually have one-year terms and

variable interest rates that tend to be higher than longer-term mortgage loans. Once construction is completed, you'll need to convert to a permanent mortgage, which requires a second closing.

- **Cash-Out Refinancing Loan:** If you're adding an ADU to an existing property in which you've built significant equity, you can use a cash-out refinancing loan to extract cash and finance construction. If rates have fallen since you took out your original mortgage, your new loan may have a lower interest rate as well.
- **Home Equity Line of Credit:** This is a revolving credit line secured by your home equity – often up to 90%. Since HELOCs are relatively low-risk for lenders, they typically have very low interest rates.
- **Unsecured Personal Loan:** If you lack sufficient equity in your home and prize flexibility, an unsecured personal loan may be your best bet. Unsecured personal loans generally have shorter terms than refinancing, renovation, and rehabilitation loans, so they're ideal for homeowners who expect to sell their homes soon after completing their ADUs.

For reference, the [Oregon Department of Environmental Quality](#) has a comprehensive guide with a representative lineup of Oregon-specific financing options. The loan types described in this guide are available nationwide, but the lenders mentioned in it may or may not operate outside Oregon. For more information about options that make the most sense for your situation, consult your local housing authority.

Construction Process

Just as every accessory dwelling unit is different, so too is every ADU construction process. That said, it's possible to break the ordeal into a logical, step-by-step process. Here's the sequence of events you'll need to follow to get your ADU up and running:

1. **Determine Whether Your Property can Support an ADU.** Before you can build, you need to determine whether your property is suitable for an accessory unit. First, make sure ADUs are legal in your municipality. If so, consult your ADU ordinance, which should spell out permitted square footage limits, height restrictions, floor area ratios, setbacks, and other metrics. If your property sits on a small lot, you may not have enough room to construct an ADU that meets minimum size and setback requirements.
2. **Determine the ADU's Intended Purpose.** Figure out how you intend to use your ADU after it's built. Try to look as far as possible into the future and anticipate potential life changes that could alter your ADU's purpose. For instance, while your children are young, you might use the space as a studio or short-term rental, then rent it to one of your adult children as they age out of the main home.
3. **Find an Architect or Designer Who Specializes in ADU Construction.** Find an architect or designer with ADU construction experience. (Or, better yet, an ADU specialist.) Though designing an ADU seems like a small, straightforward job, it's a different animal than large-scale residential projects. "The design of a very

small living space is actually more difficult than a large living space. It's a game of inches," says Strom. "So you need to hire an architect that can maximize the opportunities for space."

4. **Evaluate General Contractors With ADU Experience.** Once you have a finalized design, look for general contractors capable of managing your project. Bigger contractors may turn up their noses at ADU-only projects, but that won't be a problem if you're building the main house simultaneously. Smaller outfits will have no problem taking ADU-only jobs. In any case, thoroughly check provided references. Try to find and speak with non-provided references as well. Many homeowners are surprisingly happy to talk about their experiences.
5. **Solicit Bids From Multiple Contractors.** Narrow down your contractor options to a few top choices, then solicit bids from each. Your choice is up to you: You can go with the lowest or quickest bid, or choose the contractor that seems the most confident and capable. Keep in mind that if you're confident in your management skills, you can probably forgo a general contractor and work directly with your subcontractors. That saves money while substantially increasing the amount of time and effort you need to devote to the project. (Not to mention your direct responsibility for the project itself.)
6. **Secure Financing.** Next, evaluate your financing options and choose the loan that best fits your needs. Depending on your loan type, this may necessitate a lengthy underwriting period. If time is of the essence and you're confident that you're going to build your ADU no matter what obstacles you encounter in steps 2 through 5, you can begin soliciting financing as soon as you complete step 1.
7. **Secure the Appropriate Building Permits.** You'll almost certainly need to pull permits for your project. Many general contractors handle this part of the process, or at least walk clients through them. If you're managing subs on your own, you'll likely need to handle permitting yourself. That road usually leads through your municipal or county planning and zoning department. Check with your local permitting authority, and don't be shy about calling for hands-on guidance. It's important to do this part of the process correctly, as permitting problems can be expensive to correct.
8. **Remain Attentive and Compliant Throughout the Construction Process.** Even if you've retained a general contractor, you'll need to remain attentive throughout the construction process – and unafraid to step in if it looks like things aren't progressing as anticipated. You'll also need to comply with city or county inspection requests, which can occur periodically throughout the process. At minimum, you'll need to submit to a thorough inspection before your ADU can be certified for occupancy.



Benefits of Accessory Dwelling Units

ADUs have many benefits. Some are self-evident; others are less obvious. These are among the most commonly cited by homeowners, city planners, and ADU advocates:

1. **Additive to the Local Housing Supply.** When they're used as dwellings, as opposed to studios or bonus rooms, ADUs add to the local housing supply. This is critical in older cities, where the housing stock's average age is invariably older and therefore more prone to health and safety hazards, such as [radon](#), lead, and substandard electrical wiring.
2. **Lower Median Rents in High-Cost Neighborhoods.** By the law of supply and demand, more housing very often means lower rents. In high-cost neighborhoods, modestly sized ADUs provide low-cost alternatives to studio or one-bedroom apartments while reducing overall competition for housing. That's great news for low- and middle-income renters, who very often find themselves priced out of desirable neighborhoods. Over the years, I've been acquainted with several individuals or couples who've lived in affordable rented ADUs (usually carriage houses) in ritzy neighborhoods they'd otherwise be unable to afford.
3. **Passive Income Opportunities for Homeowners.** This is obviously a huge argument in favor of ADUs, particularly for budget-conscious homeowners keen on reducing their housing costs and [reaching financial independence](#) faster. If you live in a lively neighborhood popular with out-of-town visitors, your best financial bet might be soliciting short-term renters via Airbnb, VRBO, or another platform – provided short-

term rentals are legal in your area. In quieter parts of town, long-term rentals might make more sense. Either way, you can earn hundreds or even thousands of dollars per month this way, depending on prevailing rents in your area. That could be enough to offset, or at least deeply discount your monthly mortgage.

4. **More Housing Opportunities for One- and Two-Person Households.** ADUs present attractive, private housing opportunities for single individuals and couples who don't want to live with roommates in rented houses or cram into cramped studio apartments in multi-unit buildings. This is especially important if you prefer quiet residential neighborhoods, where single- and couple-friendly housing tends to be scarce. And, if you're a single person or childless couple fortunate enough to own your own home, you can avoid the "too much house" problem by living in the ADU and renting the main house to a larger family or group of roommates.
5. **Opportunities for Multi-Generational Housing.** ADUs create opportunities for flexible, long-term multi-generational housing arrangements. For instance, a nuclear family with small children might live in the main house, while the physically able parents (or aunts, uncles, or cousins) live in an attached or detached ADU. Or an older couple might live in the main house while their grown adult child lives in a space of his or her own. These arrangements are especially helpful in costly housing markets like [Seattle](#) and the [San Francisco Bay Area](#), where median rents are all but out of reach for most young people. They're also useful in cultures that prize close connections among extended family members and accordingly seek arrangements that allow cousins, grandparents, aunts, uncles, and others to live under the same roof (or two roofs).
6. **Opportunities for Aging in Place.** As Christopher Strom notes, one of the most common use cases for ADUs is also one of the most cost-effective: "granny flats," "mother-in-law apartments," whatever you want to call them. Inviting an elderly family member to live independently on your property is a great way to keep them active, healthy, happy, and busy for longer. ADU living stretches elderly relatives' retirement savings further too, even if they require part-time in-home care. Paying a part-time home health aide is almost always cheaper than springing for round-the-clock nursing home care.
7. **Accommodation for Domestic Help.** An ADU is a great place to put up a live-in housekeeper or au pair. With their own separate living space, rather than a spare bedroom, household employees are likely to feel less constrained by and less dependent on the family that employs them. That's important for both sides of the relationship.
8. **Potential for Multi-Use Spaces.** Few if any ADUs fulfill the same function forever. As their owners' needs change, most change their uses accordingly. At various times, your ADU could be an art studio, a bonus room, an Airbnb, a granny flat, and a long-term rental for an unrelated tenant. It could even fulfill multiple functions simultaneously – for instance, a studio that doubles as a man cave and moonlights as an Airbnb.

9. **Reduced Development Pressure.** ADUs can simultaneously reduce local development pressure *and* preserve neighborhood character – two imperatives that are frequently at odds. By increasing the number of housing units per acre and boosting property values, ADUs raise the political cost of large-scale development (by increasing the number of residents to be displaced) while increasing land acquisition and construction costs for developers. In rapidly gentrifying neighborhoods, ADUs alone aren't sufficient to curtail disruptive development. In marginal cases, permissive accessory unit regulations can make a real difference – not necessarily by halting development entirely, but by encouraging developers to invest in smaller-scale, people-friendly projects that add density without compromising neighborhood character.
10. **Denser, Smarter, More Efficient Development.** Just as they can't single-handedly neutralize development pressure in desirable neighborhoods, ADUs can't by themselves transform inefficient, car-oriented neighborhoods into paragons of [smart growth](#). However, by reducing the average size of housing units and adding population density, ADUs empower people – and, by extension, neighborhoods and cities – to use resources more efficiently. Smaller housing units require less energy to operate and fewer raw materials to construct and maintain. Denser neighborhoods encourage more walking and [bike commuting](#), and fewer car trips. The result: lower per-capita [carbon footprints](#).

Drawbacks of Accessory Dwelling Units

For many smart development advocates, the case for ADUs is truly open-and-shut. Alas, the granny flat movement isn't without controversy, particularly in suburban communities where orderly development and property value preservation are overriding concerns.

Here's a look at some common arguments against ADUs in general and pesky drawbacks for homeowners considering adding ADUs where permitted:

1. **Significant Upfront and Ongoing Cost.** A detached ADU can easily cost more than \$100,000 to build and outfit. An attached ADU is liable to cost upwards of \$40,000. Sure, it's possible to finance these costs with a secured loan, but that requires you to shell out several hundred extra dollars per month – on top of your existing mortgage, most likely. If you don't have the cash to pay for your ADU's construction upfront, or even to cover your construction loan's [closing costs](#) (if they can't be rolled into the loan), you may need to save for a while before getting started. Likewise, if you're not planning to rent out your ADU or sell your property soon after construction is complete, your household's cash flow needs to be sufficient to absorb your monthly payment.
2. **Potential Covenants and Restrictions on Sale.** In some jurisdictions, ADU-endowed properties must be owner-occupied. This restriction is typically written into the property's deed, so you can't just pretend that your garage apartment isn't an accessory unit. It can be a deal-breaker. Here in Minneapolis, the otherwise

permissive ADU ordinance's owner-occupancy requirement is pretty much the only thing stopping us from turning our backyard shed into a carriage house. That's a shame because we have plenty of friends who'd pay good money to live behind us.

3. **Higher Property Taxes.** Building equity is usually couched as a good thing, but there's a downside for homeowners on tight budgets: higher property taxes. When you construct an ADU on your property, you implicitly assent to a steep rise in the property's assessed value. Depending on the type of ADU, its amenities, your property's location, and other factors, that increase could equal or even exceed the cost to construct the unit – potentially adding a high-three or low-four-figure sum to your annual property tax bill. Detached ADUs are particularly vulnerable. According to [Oregon Live](#), quirks in Multnomah County's tax code produced serious sticker shock for thousands of homeowners back in the early to mid-2010s. A “granny flat depression” endured until Oregon's state government stepped in with a fix, per [Miller Nash Graham & Dunn](#).
4. **Regulatory Red Tape.** Like most building and zoning codes, ordinances governing accessory dwelling units are long, dense, and dry. Sure, you can probably condense the important points – square footage limits, floor area, setbacks, permitting requirements – into a single-sided page, but you'll likely need professional help to avoid any devils in the details. “[ADU] codes are very complicated, so make sure you know that your design complies with building code before spending a lot of money,” says Christopher Strom.
5. **Greater Maintenance Load.** Every homeowner knows that more square footage means more maintenance. That's true even if you don't truly occupy that extra square footage. Whether you rent out your ADU to a long-term tenant, list it on Airbnb or HomeAway, or keep it as a studio or bonus space, it's your property. And that means you're responsible for keeping it in good (or at least acceptable) shape. Home maintenance costs vary significantly depending on a home's age, size, configuration, location, and other factors, and it's true that newly constructed accessory units are likely to be cheaper to maintain than sprawling older homes. Still, maintenance costs can add up over time: [The Balance](#) estimates that over long periods, homeowners should budget roughly 1% of the value of their home for maintenance and upkeep. That's \$1,000 for a \$100,000 ADU.
6. **Potential for Vandalism.** In some neighborhoods, ADUs are easy targets for vandalism. Detached ADUs that sit vacant for long periods are particularly vulnerable. At minimum, you'll want to install motion-activated floodlights. External cameras aren't a bad idea either. For true peace of mind, a proper security system is probably essential. That can cost anywhere from \$15 to \$60 per month, depending on its features and whether your main house already has a security setup.
7. **Potential for Less Usable Outdoor Space.** On modestly sized lots, ADUs can eat into usable outdoor space. Again, detached ADUs are especially problematic on this point. Though the restrictive covenant is the

biggest issue for us, my wife and I are also concerned about a detached ADU chewing up much of our small backyard, which we use heavily when the weather is nice, and eating into our garden plots.

8. **Potential for Conflict With Neighbors.** ADUs can upset neighborly relations, especially in smaller towns and quieter neighborhoods where they're more likely to be a novelty. Case in point: this [Greenfield \(Massachusetts\) Recorder](#) story about the conflict provoked by that town's first approved accessory dwelling unit. Even if you're not required to do so by law, it's not a bad idea to keep your neighbors looped into your ADU plans before and during the construction process.

Final Word

In this guide, we've examined at length the upfront costs of building an ADU. If you're still reeling from sticker shock, but intrigued by the income potential of an attached or detached accessory unit, you might be moving away from building one yourself and toward buying a property with an existing ADU.

That could be a good thing for your sanity. Buying an existing ADU eliminates all the headaches associated with overseeing a complicated construction project – a job for which most already-busy homeowners have little appetite.

Just don't expect it to reduce the upfront cost of your ADU. Building an accessory dwelling is a near-certain way to boost resale value, sometimes by an amount greater than the builder's total initial investment. Whether you build or buy, you'll pay for your ADU one way or another.

Does your property have an accessory dwelling unit on it? Are you thinking about adding one?

Tom Bruno

Co-Chair LHVC

Sent from my iPhone

On May 18, 2019, at 2:44 PM, Paul Conte <paul.t.conte@gmail.com> wrote:

Plenty of time for letters. They don't have to be published before the hearing.

On Sat, May 18, 2019, 1:56 PM Eben Fodor <eben@fodorandassociates.com> wrote:

That's a hilarious pack of lies. Too bad we don't have a counterpoint in the RG. Not sure if there is still time for letters to get published.

From: eugene-neighborhoods-united@googlegroups.com [mailto:eugene-neighborhoods-united@googlegroups.com] **On Behalf Of** Paul Conte

Sent: Saturday, May 18, 2019 10:41 AM
To: Eugene Neighborhoods United
Subject: Please post responses to zealots drivell on R-G.

Two of the worst anti-neighborhood zealots -- Sadosky and Kashinsky -- have a Guest Viewpoint in the R-G opposing "owner-occupancy" for ADUs.

<https://www.registerguard.com/opinion/20190518/sadofsky-and-kashinsky-let-accessory-dwelling-units-thrive-in-eugene>

Please post on-line responses and also send Letters to the Editor. (You can see my response at that link.)

-- Paul

Accredited Earth Advantage

Sustainable Homes Professional

--

You received this message because you are subscribed to the Google Groups "Eugene Neighborhoods United" group.

To unsubscribe from this group and stop receiving emails from it, send an email to eugene-neighborhoods-united+unsubscribe@googlegroups.com.

To post to this group, send email to eugene-neighborhoods-united@googlegroups.com.

To view this discussion on the web visit <https://groups.google.com/d/msgid/eugene-neighborhoods-united/CANFo4-hLQv1P22etOo0jBPxHVbOwT7gCS-JKbvPXmaNTgQ%2Bs%3DA%40mail.gmail.com>.

For more options, visit <https://groups.google.com/d/optout>.

--

You received this message because you are subscribed to the Google Groups "Eugene Neighborhoods United" group.

To unsubscribe from this group and stop receiving emails from it, send an email to eugene-neighborhoods-united+unsubscribe@googlegroups.com.

To post to this group, send email to eugene-neighborhoods-united@googlegroups.com.

To view this discussion on the web visit <https://groups.google.com/d/msgid/eugene-neighborhoods-united/CANFo4-hXKVgkfwbH4L2%3D0nE65Nz2tevRDhgqFSWE%2BHxwhjs3OA%40mail.gmail.com>.

For more options, visit <https://groups.google.com/d/optout>.

HANSEN Alissa H

From: CYNA Neighborhood Email <cynagroup@gmail.com>
Sent: Sunday, May 19, 2019 10:39 AM
To: HANSEN Alissa H
Subject: ADU Code Changes

Hi Alissa,

Thanks for your work on the ADU code changes required to assure Eugene (finally) conforms to new state laws.

The changes proposed all appear appropriate, and will, I hope and expect, bring Eugene into compliance, and provide more opportunities to increase housing without over expanding the UGB. It is time for Oregon, and Eugene to face the need for increased density of population to reduce sprawl.

One question I hope will be resolved. Will all parts of the city follow the new rules, or will areas with currently disallowing ADU's on some lots - under 7,500 sq ft- , or in some areas stay in effect. And if not, will other areas of the city be able to institute exceptions too.

Thanks,

John Fischer 2197 Jeppesen Acres Rd Eugene OR 97401

HANSEN Alissa H

From: Kari Parsons <parsons.kari@gmail.com>
Sent: Sunday, May 19, 2019 9:58 AM
To: *Eugene Mayor, City Council, and City Manager
Cc: ZELENKA Alan
Subject: Support for ADU occupancy requirements

Dear Mayor, Council Members, and City Manager,

As a resident of Ward 3, I wholeheartedly support retaining owner-occupancy requirements for ADUs. It is both legal and important for our city's livability, particularly in parts of the city with university rental market pressures.

Scattershot "planning" tactics like this move to end owner-occupancy cause substantially more harm than good. Instead, we should be thoughtfully and intentionally upzoning key transportation corridors, including in Ward 3, rather than incentivizing the dismantling of our historic neighborhoods.

I ask you to soundly reject any action that turns our neighborhoods into lucrative feeding frenzies for out-of-town speculators -- and some bad local ones -- who bear no responsibility to the community. It is we, the long-term owner occupants, who will be left to babysit their retirement accounts.

Sincerely,

Kari Parsons
2215 University St

HANSEN Alissa H

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Sunday, May 19, 2019 6:41 AM
To: *Eugene Mayor, City Council, and City Manager
Cc: Eugene Planning Commission; Eugene NLC
Subject: MIT Analysis of Vehicle Owership and Use Debunks myths, supports transit-oriented planning

Here's another credible analysis that should further motivate councilors who make decisions based on evidence, rather than succumbing to the "bumper sticker" claims of a few YIMBY zealots' --

From an in-depth MIT study: "*We find little difference in preferences for vehicle ownership between Millennials and prior generations once we control for confounding variables. In contrast to the anecdotes, we find higher usage in terms of vehicle miles traveled (VMT) compared to Baby Boomers.*" See:

<http://ceepr.mit.edu/files/papers/2019-006.pdf>

Read "[Turns out, millennials love cars as much as anyone else](#)" by Christopher Knittel, who is the George P. Shultz Professor of Applied Economics at the **MIT Sloan School of Management**.

The most important implication is that if the City Council goes along with the misguided attempts by the Mayor and City Manager to upzone all single-family areas not covered by CC&Rs to allow *fake* "ADUs" (two rental dwellings on a lot) and so-called "Missing Middle Housing" plexes to be scattered in an unplanned manner, dispersing increased density across wide areas that are poorly served by transit or local stores and services, *the result will be continued need for residents' car ownership and use.*

One more time: The Council needs to put a halt to all the wasted time, money and political capital and get behind an evidence-based, rational strategy that all citizens can support: Market and subsidized housing on EmX corridors, particularly the W. 6th and 7th Aves. couplet.

Also importantly, this evidence shows how foolish it would be to further reduce off-street parking, specifically for ADUs, unless there is an enforceable covenant limiting total vehicle ownership by residents on a property without sufficient on-site parking.

Paul Conte

Accredited Earth Advantage
Sustainable Homes Professional

HANSEN Alissa H

From: ZELENKA Alan
Sent: Saturday, May 18, 2019 10:45 PM
To: JACOBS Carolyn (SMTP)
Cc: *Eugene Mayor, City Council, and City Manager; HANSEN Alissa H
Subject: Re: Testimony for the record regarding ADU Remand

Carolyn - Just to let you know Rep. Wilde is working to have the owner occupancy requirement added back in, unfortunately because the Council chose to not allow our lobbyist to seek any amendments the City of Eugene is not participating in this effort. Let's hope for the best.

Alan Zelenka
Eugene City Council

Sent from my iPad

On May 16, 2019, at 10:06 AM, Carolyn Jacobs <carolyn.i.jacobs@gmail.com> wrote:

"The ADU owner-occupancy requirement is akin to the now-outlawed practice of prohibiting "negroes" in neighborhoods It is a form of redlining against renters that has no place in our society."

-- Richie Weinman testimony on ADU Remand Ordinance

The inflammatory language quoted above equating the owner occupancy requirement for ADUs to prohibitions against members of certain racial (and presumably ethnic or religious) groups is an extremely disturbing comment. Obviously intended to shock, it instead reveals how apparently desperate the author must have felt when composing his testimony previously submitted for this record.

Most everyone else understands that all the lobbying back and forth has nothing to do with renters but rather with the extraordinarily simple fact that removing the owner occupancy requirement for ADUs means that all R1 properties will be permitted to have two unrelated units. Or, in other words R1 will become R2.

It is nothing more and nothing less than unacknowledged, behind (barely) closed doors.... upzoning.

In fact, the outrage was misplaced. If only it had as its focus the built-in inequity of eliminating owner occupancy! Not included of course are all the areas covered by CC&Rs. The targeting of only certain neighborhoods has no place in our city and in our code. The City Council must see this for what it is. A vote to eliminate only certain R1 neighborhoods will not soon be forgotten.

-Carolyn Jacobs

HANSEN Alissa H

From: Sacred Medicine <drkellyf58@gmail.com>
Sent: Saturday, May 18, 2019 11:15 AM
To: HANSEN Alissa H
Subject: Fwd: ADUs

----- Forwarded message -----

From: **Sacred Medicine** <drkellyf58@gmail.com>
Date: Sat, May 18, 2019 at 11:14 AM
Subject: ADUs
To: <mayorcouncilandcitymanager@ci.eugene.or.us>

Dear Mayor, City Manager, and Council,

Please amend the coding restrictions for Accessory Dwelling Units in Lane County. Lane County is the most restrictive and non-progressive with regard to these coding applications. Also, lift the seriously restrictive codes in neighborhoods like Laurelwood and Fairmount. By revising these restrictions, Lane County offers an opportunity for community members to increase local density, help retirees earn additional income and provide small housing options for individuals and small families.

Ward 3 resident.

Sincerely,

Kelly Fitzpatrick

--

Dr Kelly M Fitzpatrick, BSN, MPS, ND
1695 Jefferson St
Eugene, OR 97402

--

Dr Kelly M Fitzpatrick, BSN, MPS, ND
1695 Jefferson St
Eugene, OR 97402

HANSEN Alissa H

From: JACOBS Carolyn (SMTP)
Sent: Friday, May 17, 2019 4:26 PM
To: *Eugene Mayor, City Council, and City Manager
Subject: Can Eugene even Solve a Housing Crisis: how Eugene reflects a national situation

Mayor, City Manager and Councilors:

To understand the **national** housing crisis and why Eugene's situation is anything but an isolated example, I urge to read the short, well balanced article linked below. It will help you to understand why it is perhaps ludicrous to expect the Eugene City Council to "solve" the local housing problems. You can certainly choose to sacrifice some viable neighborhoods and you can gift a lot of investors and developers but for solutions beyond that it's necessary to recognize that the forces at play here are so vastly complex and inter woven that what is needed is a realistic look at the much greater economic picture.

-Carolyn Jacobs

<https://www.curbed.com/2019/5/15/18617763/affordable-housing-policy-rent-real-estate-apartment>

HANSEN Alissa H

From: Bill Aspegren <aspegren@comcast.net>
Sent: Thursday, May 16, 2019 11:10 AM
To: HANSEN Alissa H
Cc: JACOBS Carolyn (SMTP); nancydmeyer6@gmail.com
Subject: Testimony on Retaining Owner Occupancy for ADUs
Attachments: Testimony to Retain Owner Occupancy for ADUs.docx; APA Model ADU code.pdf; APA Model Code for ADUs excerpts.pdf; Utah Supreme Court Anderson v Provo.docx; ZVR 18-49 Decision 2 (002).pdf

Alissa, please enter this testimony into the record and provide it to the Mayor, City Council and City Manager prior to the May 20, 2019 public hearing on ADUs.

The various attachments are referenced in the testimony letter and should be treated as attachments. I don't know how you handle that, but basically they go together.

Thanks,

Bill Aspegren

May 15, 2019

To: Mayor and City Council
From: Bill Aspegren
Re: Testimony to retain owner occupancy for Accessory Dwelling Units (ADUs)
Cc: City Manager
Alissa Hansen

The City Council voted 4 to 3 to remove the owner occupancy requirement as a condition for building an ADU. Owner occupancy of either the ADU or primary residence is critical to maintaining livability in the low-density residential zones.

Owner occupancy must be retained.

Owner-occupancy is the key to “accessory” in “accessory dwelling units”. Granny flats, in-law cottages, aging-in-place, multi-generational housing, supplemental income, and caregiver housing are all valuable benefits of ADUs and arise from the owner(s) of the lot residing in the primary or accessory dwelling.

ADUs are a special use of a second dwelling on a single-family lot that serves a very clear purpose of providing benefit(s) to the resident property owners. An ADU, by its very name provides an “accessory” use to the primary use of the property as the property owner’s residence.

When the owner doesn’t reside on the property, and both the primary dwelling and ADU are rentals, there is no “accessory” relationship. The use of the property is essentially treated the same as if it were in a “two-family” (or “two-dwelling”) zone. **Consequently, allowing ADUs without any owner residing on the property would be a “stealth” tactic of up zoning the R-1 Low-Density Residential district to a new zone that would potentially have significant impacts on some long-standing single-family neighborhoods.**

The definition and design of ADUs requires owner occupancy or they are merely one unit in a multi-unit development.

The American Planning Association has put together a model code for ADUs that supports owner occupancy. The complete code is attached (Accessory Dwelling Units Model State Act and Local Ordinance).

Also attached is a document with excerpts from the Model Act, dealing specifically with owner occupancy. This is a four-page document that explains the logic and benefits behind requiring owner occupancy. It also notes a California appeals court case affirming owner occupancy.

The Utah supreme court has also affirmed owner occupancy (ruling attached).

A final attachment is a response by staff to ZRV 18-49 confirming owner occupancy and accessory are tied together and required. (This decision is current being appealed.)

Owner occupancy for ADUs is critical for livability in our community. The evidence and benefits support the case for requiring this regulation in Eugene.

Please reinstate owner occupancy in the proposed ordinance.

Accessory Dwelling Units

Model State Act and
Local Ordinance



A Publication of the
Public Policy Institute

Rodney L. Cobb and Scott Dvorak
American Planning Association

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

by

Rodney L. Cobb, Staff Attorney

and

Scott Dvorak, Research Associate

American Planning Association

George Gaberlavage, PPI Project Manager

The Public Policy Institute, formed in 1985, is part of the Research Group at AARP. One of the missions of the Institute is to foster research and analysis on public policy issues of interest to older Americans. This publication represents part of that effort.

The views expressed herein are for information, debate, and discussion and do not necessarily represent the formal policies of AARP.

©2000, AARP
Reprinting with permission only.
AARP 601 E Street, NW, Washington, DC 20049

ACKNOWLEDGMENTS

The authors would like to acknowledge fellow members of the American Planning Association staff who worked on this project. William R. Klein, Director of Research, supervised the project, and Stuart Meck and Jim Hecimovich provided valuable comments and editing on early drafts. We acknowledge the substantial information contributed to the development of this publication by Patrick H. Hare, whose planning firm has played a key role in developing accessory dwelling units in the United States, and by Leo Baldwin, former housing coordinator for AARP.

We are grateful for the assistance provided by state and local officials who gave us important comments on drafts, particularly Barbara Foresti, Program Specialist, Department of Housing and Community Affairs, Montgomery County, Maryland; Terry Sedik, Planning Director, Daly City, California; Holly Gadbow, Senior Planner, Department of Community, Trade, and Economic Development, State of Washington; and Camilla Cleary, Housing Analyst, Department of Housing and Community Development, State of California.

Thanks are also extended to the internal reviewers at AARP: DaCosta Mason, Roy Green, and Don Redfoot. Monique Einhorn, Research Analyst with the Public Policy Institute, took over editorial coordination from Kristin Moag, formerly with the Public Policy Institute. Finally, the authors would like to express their appreciation for the constructive comments and guidance provided throughout this project by George Gaberlavage of the Public Policy Institute.

TABLE OF CONTENTS

Foreword	5
Executive Summary	6
Introduction	8
Model State Act on Accessory Dwelling Units	15
1. General Provisions.....	15
A. Findings.....	15
B. Purposes and Intent.....	16
C. Definitions	16
2. General Regulatory Authority	17
A. Ordinance Adoption.....	18
B. Criteria for Determining Areas	18
C. Approval Process.....	18
D. Imposing Standards.....	18
E. Requiring Owner Occupancy.....	18
F. Less Restrictive Provisions.....	19
G. Maximum or Minimum Size	19
H. Use, Density, and Plan Consistency Rules	20
3. Limiting Regulatory Authority	20
A. Noninterference by Other Law	20
B. Exemption from Growth-Limitation Measures	20
C. Prohibiting ADUs	21
D. Parking Requirements	21
E. Fees.....	22
4. Default Provisions	22
A. Only Basis for Denial	22
B. Maximum Without Local Ordinance.....	22
C. No Changes Necessary.....	23
D. Accommodating Units.....	23
E. Public Notice of Public Official	23
F. Standards.....	23
5. State’s Role In ADU Policies.....	25
A. Required Municipal Ordinance Submission.....	25
B. State Certification of ADU Ordinances.....	25
C. Municipal Annual Reports to State.....	26
D. State Annual Report.....	26
E. State Advisory Board on ADU Policies.....	26

Model Local Ordinance on Accessory Dwelling Units	28
I. General Provisions.....	28
1. Purpose & Intent.....	28
2. Definitions	29
II. Permits: Eligibility and Application	29
3. Authorization for ADUs by Zoning District.....	29
4. Approval Process.....	32
5. Application Fees and Information.....	33
6. Permit Renewal (Monitoring).....	34
III. Standards.....	35
7. Lot Standards - Occupied by Dwelling Unit	35
8. Lot Standards - Minimum Size.....	36
9. Lot Standards - Setback and Lot Coverage	37
10. Occupancy Standards - Owner of Premises	37
11. Occupancy Standards for ADUs.....	39
12. Principal Dwelling Unit Building Standards - Minimum Floor Area	40
13. Principal Dwelling Unit Building Standards - Age	40
14. Principal Dwelling Unit Building Standards - Term of Ownership.....	41
15. ADU Building Standards - Architectural Design and Types of Structures	42
16. ADU Building Standards - Orientation of Entrance	42
17. ADU Building Standards - Size.....	43
18. ADU Building Standards - Not Intended for Sale	44
19. ADU Building Standards - Screening and Orientation	45
20. Parking and Traffic	45
21. Public Health	47
22. Density Limits.....	48
23. Legalizing ADUs	49
References	52
Resource Guide	54

FOREWORD

Accessory dwelling units (ADUs) are independent housing units created within single-family homes or on their lots. These units can be a valuable addition to a community's housing stock. ADUs have the potential to assist older homeowners in maintaining their independence by providing additional income to offset property taxes and the costs of home maintenance and repair. Other potential benefits include companionship, the opportunity to negotiate for home maintenance or personal services in return for reduced rents, and increased personal security. ADUs also offer a cost-effective means of increasing the supply of affordable rental housing in a community without changing the character of a neighborhood or requiring construction of new infrastructure such as roads, sewers, and schools. Zoning ordinances that prohibit ADUs or make it extremely difficult for homeowners to create them are the principal obstacle to the wider availability of this housing option.

The Public Policy Institute of AARP asked the American Planning Association (APA) to develop model legislation (a state statute and a local ordinance) that would assist AARP volunteer leaders and other interested citizens, planners, and government officials in evaluating potential changes to state laws and local zoning ordinances to encourage the wider availability of ADUs. The APA is the nation's leading source of information on planning and zoning practices. Rodney L. Cobb, APA's Staff Attorney and Editor of *Land Use Law* and *Zoning Digest*, was the principal investigator for this project. He was assisted by Scott Dvorak, Research Associate, and other members of APA's research department. The authors have drawn heavily from the experiences of states and localities in developing the model legislation. As a result, many of the provisions incorporated in the model legislation have been tested in different communities and proven successful in actual practice.

The model legislation is intended to serve as a guide for communities that want to make the benefits of ADUs available to households of all ages, not just older persons. It has been drafted to meet the needs of a wide variety of communities. Optional provisions, including those that are attractive even to very cautious communities, are incorporated in the model local zoning ordinance to provide as many choices as possible for jurisdictions to consider. The materials presented here indicate that ADUs can be a cost-effective solution for meeting myriad housing needs without engendering the negative impacts sometimes associated with other forms of affordable housing development. It is our hope that the model legislation will prove to be a valuable reference for communities seeking to increase the housing choices available to their residents.

George J. Gaberlavage
Associate Director/Consumer Team
Public Policy Institute

EXECUTIVE SUMMARY

Background

Accessory dwelling units (ADUs) are independent housing units created within single-family homes or on their lots. They have the potential to assist older homeowners in maintaining their independence by providing additional income to offset property taxes and maintenance and repair costs. Other potential benefits to older homeowners include companionship, the opportunity to negotiate for home maintenance or personal services in return for reduced rents, and increased personal security. ADUs also offer a cost-effective means of increasing the supply of affordable rental housing in a community without changing the character of a neighborhood or requiring construction of new infrastructure (roads, sewers, schools, etc.) to serve development. Zoning ordinances that prohibit ADUs or make it extremely difficult for homeowners to create them are the principal obstacles to the wider availability of this housing option.

Purpose

The purpose of this report is to present model legislation for both states and local jurisdictions to use to develop their own regulations on creating ADUs. Drawing on the experience of communities that have incorporated ADUs into their zoning practices, the report reviews and evaluates potential options for changes in state laws and local zoning ordinances to increase the availability of ADUs.

Methodology

A search was conducted to collect and review existing literature on ADUs, including all state ADU legislation, local ADU ordinances, and ADU court cases. In addition, a mailing went out to some 1,600 planning agencies and consultants who subscribe to the American Planning Association's *Zoning News*, requesting copies of local ADU ordinances and information on ADU policies and regulations. (These activities took place in 1996 and 1997, with an additional review conducted in 1999 of ADU state legislation and court cases.) The researchers then analyzed the 50 local ADU ordinances and other materials collected in response to the mailing. A series of follow-up interviews with state and local officials and ADU experts were then conducted to develop further information on the key ADU issues raised by the analysis. To obtain a broad national perspective, these interviews were conducted with officials in a variety of regions and states. The Model State Accessory Dwelling Unit Act and the Model Accessory Dwelling Unit Ordinance were then drafted. Several state and local officials interviewed earlier subsequently reviewed the draft model legislation to assess its utility and feasibility in light of actual administrative practice and community experience.

Principal Findings

Regulatory barriers can be most effectively removed by adoption of a state ADU act and by encouraging localities to adopt ADU ordinances. Many communities that initially allowed limited ADU development found the experience positive enough to broaden the scope for ADUs.

Conclusion

Reductions in the size of American households, along with changes in their composition and economic circumstances, warrant consideration of zoning policies that encourage the more efficient use of the nation's infrastructure and supply of single-family homes to meet current and future housing needs. States and localities are also seeking ways to assure the independence and security of older residents with a minimum of public investment. ADUs provide a potential resource for addressing these issues by making more effective use of existing housing stock and providing older homeowners with a potential source of income to maintain their independence.

INTRODUCTION

Across the United States, communities are struggling to meet the nation's growing and changing housing needs. Three factors — changing demographics, changing economics, and changing community goals — have converged to make innovative solutions to housing issues a policy necessity.

- **Changing demographics.**
American families are growing in number but shrinking in size. People are living longer, more people are staying single longer, and married couples are having fewer children. The housing stock has not kept up with this change in family demographics. In some communities, the need for housing, especially for people with special physical and financial needs, has become acute. Underused space in single-family houses is one of the nation's largest untapped housing resources.
- **Changing economics.**
Not only is family size changing, but so are the economic circumstances of families. As the population ages, many older people find themselves living in their family homes alone. They may need additional income to pay for health care services, cover home maintenance costs, or make mortgage payments. Others may want a family member or a caretaker to live nearby, while maintaining privacy for both parties.
- **Changing community goals.**
Many communities have recognized the need to stabilize or increase population densities in certain areas in order to maintain the existing public infrastructure, services, and tax base. In addition, many communities have sought to concentrate population density in specific areas in order to encourage public transit service and reduce urban sprawl. These communities do not, however, necessarily want their single-family neighborhoods to become structurally more dense.

One approach to meeting these needs is to allow or even encourage the development of accessory dwelling units (ADUs). ADUs are constructed as either apartments or cottages, and the term "ADU" is used in this publication to include both types of accessory units. The relationship of the ADU to the single-family home, or "the principal dwelling unit," determines the type of ADU. An *accessory apartment* is built within the principal dwelling unit, whereas an *attached accessory cottage* is physically connected to that dwelling unit. A *detached accessory cottage* is located on the same lot as the principal dwelling unit but is not physically connected.

ADUs offer the potential for assisting older homeowners and others in maintaining their independence while increasing the supply of affordable rental housing within a community. Income from an ADU can offset rising property taxes, maintenance and repair costs, and other housing expenses that are often a burden for older homeowners. ADUs can also make it easier for households with children to afford the housing they need. In some situations, an ADU may

provide enough additional income so that a family can afford to buy a house in a preferred neighborhood that is safer, has better schools, or is closer to work.

Currently, ADUs are not a widely available housing option in the United States. Local zoning ordinances that prohibit ADUs or make it difficult for homeowners to create them are the principal obstacle. Although the impacts on neighborhoods from developing ADUs are minimal compared to those of other types of affordable housing, residents are often concerned about ADUs' compatibility with neighborhood character and design, the impact on parking, and the effects on property values and community services (see Sidebar A).

Yet, what today is called an accessory dwelling unit was once a rather typical housing arrangement. ADUs were relatively common before World War II. Many accessory units were created by middle-aged and older persons, often widows, seeking to take in roomers or boarders after their children moved out. Following the war, however, the explosive growth of the suburbs was guided by zoning ordinances that focused almost exclusively on the housing needs of the traditional nuclear family, and most communities prohibited ADUs.

Ironically, those same suburban homes were frequently constructed with unfinished space, so that homeowners could modify their living space as their needs changed. Many of these suburban homes have had additions and modifications — bedrooms, finished basements, and recreation rooms to accommodate growing families — over the past 50 years.

Current zoning ordinances, however, often maintain rigid prohibitions against ADUs. These ordinances now limit the expansion and modification options of homeowners and prevent communities from making effective use of their current housing stock to meet the changing needs of families. For older persons living in the suburbs today, the inability to continue to adapt their homes to suit their needs may mean they cannot “age in place.” Yet, consumer preference surveys conducted by AARP consistently indicate that 80 percent or more of older households would like to remain in their current homes.

In addition, a recent AARP housing preference survey of persons 50 and older indicated that over one-third of the respondents (36 percent) would consider modifying their home to include an ADU in the event they needed assistance as they grew older. The potential for construction of ADUs by older homeowners is significant. The latest American Housing Survey (1997) revealed that some 16.5 million older households (age 65 and older) own their homes, and single-family detached homes make up 88 percent of these units. This survey indicates that these homes could accommodate accessory units. Single-family detached dwellings among homeowners age 65 and older (including mobile homes) had a median area of 1,665 square feet.

In fact, though ADUs are illegal in many U.S. communities, some homeowners create them anyway. Since creating an accessory apartment does not require any changes to the outside of the dwelling, an illegal unit is not likely to draw the attention of local officials. Overall, ADUs are an important part of annual additions to the nation's housing stock; it is estimated that between 65,000 and 300,000 such units are created each year (Howe 1990, 70).

Sidebar A. DALY CITY, CALIFORNIA

In 1979, Daly City officials, like many civic leaders in the San Francisco Bay area, were concerned about the lack of affordable housing. To help remedy the problem, city officials offered to acquire land and build a public housing project. After a hearing with 400 residents, many of them protesters, the project did not go forward. City officials were still searching for answers to the affordable housing problem when the California legislature passed a law in 1982 pushing local governments to adopt ADU regulations. In 1983, Daly City passed its own ADU ordinance, citing three reasons: to help meet housing needs, to conform to the state legislation, and to legalize illegal ADUs that posed health and safety hazards to residents.

Before launching its ADU program, Daly City officials were worried that too many ADUs might cause nuisances, parking problems, and demands too great for existing community services. The city established a number of requirements to meet these concerns. Because small lots dominate the city's neighborhoods, only accessory apartments, not detached units, were allowed in residential zones. Four parking spaces were required on premises with an ADU, with two being for the principal unit. These spaces, however, could be accommodated with tandem parking (one car in front of another in driveways) and could be located in any area of the yard. Daly City also limited the maximum size of an accessory apartment to 25 percent of the living area of the principal dwelling unit.

A further city requirement that owners occupy the premises has proven critical to preventing nuisances. Officials reasoned that with the ADU owners on the premises, many nuisances that tenants might otherwise create would not be tolerated. Although realtors have tried to repeal the owner-occupancy requirement, Daly City officials have made it clear that an owner's presence on premises with an ADU is a must.

A cornerstone of Daly City's ADU program is its Project Homesafe, which received an award from the California League of Cities as an innovative community development program. This project was initiated by the city in 1992 to rid neighborhoods of fire and structural risks posed by illegal ADUs that did not conform to building and electrical codes. Out of an estimated 5,000 illegal units, 1,055 have been legalized, meaning that many safety hazards have been eliminated.

In addition to legalizing existing ADUs, the city's efforts have led to the creation of 288 new legal units. Early in its ADU program, the city sowed the seeds of success in fostering new units by minimizing applicant fees and red tape. It charges only \$100 for ADU application fees, which is even less than the fee required to add a bedroom to a house. To cut red tape, the city designed a process that takes about 20 minutes. An applicant describes the particulars of his proposal and may then obtain a preliminary approval. A hearing is not required. Permits are permanent, and conditions (like the owner-occupancy requirement) are recorded in the title to the property in order to notify subsequent owners of the conditions. The city also promotes new ADUs with a low-interest loan program for low-income owners who agree to install ADUs and to lease the units only to other low-income persons for a period of at least five years.

Other advantages of Daly City's ADU program are at the human level — in its social benefits. Many senior citizens who were empty nesters living on fixed incomes were able to create accessory apartments, live in them, and rent out the remainder of their homes to persons who often became part of their extended family. One homeowner with Alzheimer's was able to trade ADU quarters for medical services from an ADU tenant, a nurse, who was also delighted by the arrangement. The city's young citizens have gained from ADUs because Bay Area housing costs are quite high and one viable option for them is to rent an ADU. For some laid-off blue-collar residents, ADU rental income has actually allowed them to keep their homes.

The model legislation contained in this publication authorizes and provides guidelines for all forms of accessory units. The *model state act* provides the justification and authorization for ADUs and establishes rules that local officials must follow in adopting a local ADU ordinance. The *model local ordinance* offers provisions that local officials can include in their existing zoning ordinance to specify what a homeowner must do to obtain a permit to build an ADU. The model local ordinance is intended to be implemented in tandem with the model state act.

Resources searched or consulted to develop the model acts include all existing American state ADU legislation, model ADU ordinances, and ADU court cases. These sources are noted in parentheses in the text of the model legislation, and a complete reference list appears at the end of the document.

The Model State Act on Accessory Dwelling Units

The model state act sets the terms for what communities can and cannot do in regulating ADUs via local ordinances. It consists of five sections:

1. General Provisions

Section 1 establishes as state policy the encouragement of ADUs in a manner that enhances residential neighborhoods. This section incorporates the act's findings, purposes, and definitions of terms.

2. Regulatory Authority

Section 2 authorizes localities to adopt ADU ordinances and specifies the powers they may exercise in regulating ADUs. This section authorizes local governments to allow ADUs in single-family or multi-family zoning districts; to require that either the ADU or the principal dwelling unit be owner-occupied; to impose standards with regard to parking, height, setback, lot coverage, architectural review, and other considerations; to define the application procedure for creating ADUs; and to set maximum and minimum sizes for attached and detached ADUs.

3. Limiting Regulatory Authority

Section 3 prohibits localities from regulating ADUs in ways that violate the intent of the act. This section requires localities to justify bans on ADUs, exempts ADUs from growth-limitation measures, and establishes guidelines for parking requirements and fees that localities may impose.

4. Default Provisions

Section 4 establishes procedures and standards for obtaining a permit to create an ADU if a locality does not adopt an ADU ordinance. This section prohibits localities that do not have an ordinance in place from imposing standards beyond those in the state law. Section 4 also requires publication of a quarterly notice indicating the availability of the public official responsible for processing ADU permits.

5. State’s Role in ADU Policies

Section 5 presents the option of giving the state a stronger role in encouraging ADUs. This section authorizes state review and certification of local ADU ordinances, collection of data on local ADU efforts, preparations of a State Annual Report that would make recommendations to the legislature and governor for improving the ADU act, and creation of a State Advisory Board on ADU policies.

Italicized notes are included in the text to assist readers in understanding various provisions of the act. Some of the explanations refer to the related model ADU local ordinance, which is designed to complement the model state act.

The Model Local Ordinance on Accessory Dwelling Units

The model local ordinance is designed to implement the policies of the model state ADU act. It will also help guide communities in drafting their ADU ordinances, even if the state does not have legislation governing ADUs. It attempts to balance the need to specify clear, rigorous standards that protect the community with the need to avoid requirements so onerous that no one will apply to install an ADU.

The ADU ordinance specifies what a homeowner must do to get a permit to build or create an ADU. Typically, a community adopts an ADU ordinance as an amendment to its zoning ordinance. (Some local governments refer to zoning regulations as “codes” or “bylaws” or “unified development regulations.”)

The provisions of the model local ADU ordinance are organized into the following three categories:

1. General Provisions

Section 1 establishes that the purpose of the ordinance is to promote and encourage the creation of legal ADUs in a manner that enhances residential neighborhoods. Section 2 provides a definition of terms.

2. Permits: Eligibility and Application

Sections 3 through 6 inform homeowners of the steps they must take to obtain, keep valid, and renew an ADU permit. In addition, these sections specify what types of proposed ADUs (apartments, attached or detached cottages) are eligible for permits in various zoning districts.

3. Standards

Sections 7 through 23 specify standards that a homeowner’s application must meet before a permit to build or create an ADU is approved. These standards address the issues of lots (Sections 7 through 9), occupants (Sections 10 and 11), building standards (Sections 12 through 19), parking and traffic (Section 20), public health (Section 21), density limits (Section 22), and legalizing illegal and nonconforming ADUs (Section 23).

In the model local ordinance, the duplication of general zoning provisions is avoided because communities typically adopt an ADU ordinance as part of their general zoning ordinance or code. For this reason, the model local ADU ordinance does not contain provisions setting up zones or laying out application and enforcement procedures, and it does not provide routine definitions of basic zoning ordinances (such as definitions of “permit” or “lot”). It is assumed that the general zoning ordinance of which this model local ordinance will become part provides that all building construction is subject to the range of other typical community laws — e.g., building codes, fire codes, electrical codes, and housing codes.

The model local ADU ordinance presents options for dealing with key ADU issues. These options acknowledge that conditions vary in different communities. They are evaluated as “optimal,” “favorable,” or “minimal” (see below), based on their potential to increase the availability of ADUs in a community. For each option, a commentary is provided about the issues involved. Some comments are predicated on the assumption that the model local ordinance is adopted in a state that has already enacted a state accessory dwelling unit law.

1. Optimal

Provisions labeled “optimal” provide the fewest restrictions on the development of ADUs;

2. Favorable

Provisions labeled “favorable” address the concerns of the legislative body and neighbors while imposing relatively modest requirements for the installation of ADUs;

3. Minimal

Provisions labeled minimal address the concerns of the legislative body and neighbors but in a manner that is likely to reduce the potential incentives for homeowners to create ADUs.

Sorting among these provisions will allow policymakers and community members to draft ordinances that reflect their desires and concerns. Historically, communities have tended to adopt somewhat strict standards in the beginning and then to amend their ordinances with standards that more readily encourage homeowners to develop ADUs (Hare 1989, 17-18). The research conducted for this report indicates that the fear of negative impacts is greatly diminished as local officials and neighbors have the opportunity to see firsthand the benefits of ADUs for citizens. Given this experience, many communities may become interested in increasing the number of ADUs (see Sidebar B).

Sidebar B. MONTGOMERY COUNTY, MARYLAND

Like many rapidly developing suburban counties, this area outside of Washington, DC has experienced a tremendous increase in the cost of housing. With this increase in cost comes more restricted access to housing for people of low and moderate incomes. To address this problem, the county established a committee in 1983 to study how to use the existing housing stock more efficiently. One of the study results was the adoption of an accessory apartment ordinance in 1984. Since then, more than 600 special-exception applications have been submitted for accessory apartments. By 1996, the county had about 400 legal accessory apartments; since 1989, more than 360 affidavits of compliance for registered units have been filed for rent-free units used by relatives or in-home workers.

To ensure acceptance of the original ordinance, the county was very careful about establishing the criteria under which it would allow accessory apartments. The ordinance has since been amended seven times for various reasons, including allowing ADUs in cellars, reducing lot-size minimums, requiring the posting of signs when a house with an accessory apartment has been sold and the new owner intends to maintain the accessory apartment, and eliminating the requirement for an annual status report to the county council. The county found that requiring a minimum lot size is a good idea; however, the minimum lot did not need to be as large as officials initially thought.

As in any community, residents were concerned with neighborhood quality, particularly property values and parking. Montgomery County addresses these issues by requiring two off-street parking spaces or proof of adequate on-street parking and by limiting the number of accessory apartments approved in any one neighborhood. Officials have not established a hard-and-fast rule for accessory apartment spacing, but it has used a guide of no more than two units on any one block. The county also requires that owners occupy the premises.

In order to ensure the success of its accessory unit program, the county published a guidebook in 1991 designed to assist applicants seeking permits for accessory apartments. The book details who is allowed to construct an accessory apartment, the information needed to obtain a permit, and what to expect during the application process. The Montgomery County accessory apartment program started with thorough research backing up the need for this type of housing, followed by an ordinance that addressed the main concerns of residents but could be amended as needed. The county government supported the ordinance by publishing guides to getting accessory apartments approved and by maintaining on staff a program specialist responsible for coordinating the program and assisting the public.

MODEL STATE ACT ON ACCESSORY DWELLING UNITS

1. General Provisions.

A. Findings.

The Legislature finds and declares that:

- i. There is a large and growing unmet need for affordable housing to shelter the State's population. (Cal. Stats. 1982, ch. 1440 Section 1);
- ii. The State's existing housing resources, particularly single-family dwelling units, are vastly underutilized due in large part to the changes in social patterns. The improved use of this state's existing housing resources offers an innovative and cost-effective solution to the State's housing crisis (Cal. Stats. 1982, ch. 1440 Section 1);
- iii. The State can play an important role in increasing the use of existing housing resources and in reducing the barriers to the provision of affordable housing (Cal. Stats. 1982, ch. 1440 Section 1);
- iv. Typical installation rates of accessory dwelling units (ADUs) are low, rarely exceeding one ADU per 1,000 single-family homes per year (Hare 1989, 1); and
- v. There are many benefits associated with the creation of legal ADUs on single-family lots (Cal. Stats. 1982, ch. 1440 Section 1). These benefits include:
 - (1) Providing a cost-effective means of accommodating development by making better use of existing infrastructure and reducing the need to provide new infrastructure (Cal. Stats. 1982, ch. 1440 Section 1);
 - (2) Increasing the supply of affordable housing without government subsidies (MRSCW 1995, 9);
 - (3) Benefiting older homeowners, single parents, young home buyers, and the disabled (Hare 1989, Report I, 3);
 - (4) Integrating affordable housing more uniformly in the community (MRSCW 1995, 9);
 - (5) Providing homeowners with extra income to help meet rising home ownership costs (MRSCW 1995, 12);
 - (6) Providing a means for adult children to give care and support to a parent in a semi-independent living arrangement (MRSCW 1995, 12);
 - (7) Reducing the incidence of housing deterioration and community blight by preventing absentee ownership of properties (Verrips 1983, 70);
 - (8) ADUs in owner occupied single-family homes foster better housing maintenance and neighborhood stability (MRSCW 1995, 12; ERA 1987, 30);
 - (9) Residential neighborhoods can accommodate a meaningful number of ADUs without significant negative impacts because these areas were typically designed for households with more persons than are occupying these areas (Verrips 1983, iv);

- (10) ADUs provide the opportunity for increased security and companionship for older and other homeowners who fear crime and personal accidents (MRSCW 1995, 13; Cal. Stats. 1982, ch. 1440 Section 1);
- (11) ADUs help meet growth management goals by creating more housing opportunities within existing urban areas (MRSCW 1995, 12);
- (12) ADUs enhance job opportunities for individuals by providing housing nearer to employment centers and public transportation; and ADUs can enhance the local property tax base (Goldman and Hodges 1983, 7).

B. Purposes and Intent.

It is the policy of the State to promote and encourage the creation of ADUs in a manner that enhances residential neighborhoods in order for the people of the State to meet their housing needs and to realize the benefits of ADUs.

C. Definitions.

Note: We have defined both accessory apartments and cottages to guide communities in adopting ADU ordinances and because this model state act (Section 5.C.) requires municipalities to give the state statistics that distinguish between accessory apartments and accessory cottages. If a state is adopting a statute that does not require this distinction and record keeping, the state may use “second unit,” as in the California statutes. We prefer the wording of “accessory” over “second” relative to these units in this model statute because the word “second” may unnecessarily have negative connotations for adjacent single-family homeowners.

- i. “Accessory” means that the ADU serves single-family dwelling purposes, rather than meaning that an ADU must necessarily be subordinate to or smaller than the principal dwelling unit on a single-family lot.

Note: The traditional legal meaning for “accessory” is that an accessory use of any type must be subordinate to a principal use. Because of this traditional meaning, we have defined “accessory” relative to ADUs to ensure that, if a community so desires, the ADU may be larger than the principal unit and the owner may live in either unit. In other words, this definition helps avoid a court ruling that the “accessory” dwelling unit must be smaller than the principal unit and must be occupied by a tenant rather than the owner of the principal unit. Letting the owner live in either unit is important because a major benefit of ADUs is income for homeowners, allowing them to maintain their homes or to “age in place.” Some homeowners prefer to live in the smaller unit, usually the ADU, in order to maximize their income from the rent-producing unit. In addition, this definition supports Section 10 of the model local ordinance, which permits the owner-resident to live in either the principal dwelling unit or the ADU.

- ii. “Accessory cottage” means a type of ADU that is a house built or placed permanently on the same lot as a single-family house. An accessory cottage may be attached or detached from the house but is not built within the existing house.
- iii. “Accessory apartment” is a type of ADU that is created by converting part of, or adding on to an existing detached single-family home or row house, or by building a separate unit into a new single-family home.
- iv. “Accessory dwelling unit” (ADU) is the general term for accessory apartments and cottages. It 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 on the same parcel as the single-family dwelling it accompanies (adapted from Cal. Gov’t Code Section 65852.2(I)(4)).
- v. “Default provisions” means the standards of Section 4 of this Act that a community must apply if it has no local ADU ordinance.
- vi. “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.
- vii. “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 (Cal. Gov’t Code Section 65852.2(I)(1)).

Note: This definition is used in a default-provision standard of this model state act (Section 4.F.v.) that limits the floor area of an ADU to not more than 40 percent of the living area of the existing residence.

- viii. “Municipality” means a general-purpose local government created by general law or a charter, including a city, county, or village.

Note: In some states, this definition should include towns, townships, and boroughs.

- ix. “Owner-occupant” means an owner who has legal residency on the premises of a dwelling unit that contains an ADU, who resides in the home at least six months of the year, and whose portion of the dwelling is not occupied when the owner is not present.

2. General Regulatory Authority.

Municipalities may, by adopting a municipal ordinance, exercise the authorities granted in this Section of the Act.

Note: The major issue in this section is whether local governments will be mandated to adopt an ADU ordinance. As discussed in the introduction, this model state act does not mandate adoption of an ordinance by a municipality. However, section A below is recommended because it, along with the remainder of the act, strongly encourages communities to adopt ADU regulations.

A. Ordinance Adoption.

Any municipality may, by ordinance certified by the State pursuant to this Act, provide for the creation of ADUs in single-family and multi-family residential zones (see similar provisions in Cal. Gov't Code Section 65852.2(a) and Haw. Rev. Stat. Section 46-4(c)).

B. Criteria for Determining Areas.

Municipalities may designate areas within the jurisdiction where accessory units may be permitted. The designation of areas may be based on criteria that may include, but are not limited to, the adequacy of water and sewer services and the impact of ADUs on traffic flow (adapted from Cal. Gov't Code Section 65852.2(a)(1)).

Note: At times, communities exclude ADUs from various neighborhoods without a reason related to the physical community, such as adequacy of certain services. Section 2.B. of the model state act guides local governments to consider these service factors as a basis for determining the appropriate areas for ADUs.

C. Approval Process.

Municipalities may establish a process for the issuance of a permit or a conditional use permit for ADUs (adapted from Cal. Gov't Code Section 65852.2(a)(4)).

Note: Section C deals with whether a community must allow ADUs by right, simply by making application, or must go through a conditional use permit process that often involves a hearing. Adopting a conditional permit process typically gives communities more control over ADUs than if the units are allowed by right. For more discussion of the issues related to the approval process, see the note in Section 4 of the model local ordinance.

D. Imposing Standards.

Municipalities may impose standards on ADUs that include, but are not limited to, parking, height, setback, lot coverage, architectural review, and maximum size of unit (adapted from Cal. Gov't Code Section 65852.2(a)(2)).

Note: This section clarifies that a municipality, in approving an application to create a legal ADU, may impose conditions related to the factors discussed above.

E. Requiring Owner Occupancy.

Based on the finding of this act, that premises with owner-occupants are better maintained, the legislature declares that a municipal regulation requiring properties with ADUs to be owner occupied, either in the accessory unit or the principal unit, prevents deterioration of neighborhoods and is a regulation substantially related to land-use impact. Such a requirement is, therefore, a regulation of land use rather than a regulation of the user of land.

Note: Courts may rule that a community has no zoning authority to require that a site with an ADU be occupied by the owner, on the basis that this regulates the land user rather than the land use (Ziegler 1995, 56A-8). However, on July 29, 1996, a California appeals court issued the only published court decision (issued by a court higher than a trial court) addressing the owner-occupancy requirement in the context of ADUs. In the case of Sounhein v. City of San Dimas, 55 Cal. Rptr. 2d 290, the court heard a claim by homeowners that the city's owner-occupancy requirement imposed on their ADU permit was invalid; even if it were not invalid, it applied only to the "applicant" and not subsequent owners. But the court upheld the owner occupancy requirement as a "character of the property as owner-occupied" and further ruled that the requirement applies to all subsequent owners of the premises. Id. at 296. Such a condition attaches to the land, the court explained, in order to fulfill the legislative purposes in imposing the condition. Id. The purposes of the owner-occupancy requirement, the court noted, are to discourage speculation in residential properties that can make housing less affordable, to prevent the disadvantages of absentee ownership, and to preserve residential neighborhood character. The Sounhein case means that the owner-occupancy requirement for ADUs has now been directly addressed and upheld by a state court.

In Section 2.E., the state legislature gives municipalities the specific authority to require owner occupancy on the basis that it encourages maintenance of the dwellings and premises.

F. Less Restrictive Provisions.

This Act does not limit the authority of municipalities to adopt less restrictive requirements for the creation of ADUs (adapted from Cal. Gov't Code Section 65852.2(e)).

Note: This section clarifies that the model state act generally does not cut back on a community's power to adopt provisions that are less restrictive than those in the model state act. For example, Section 3.D. of the model state act limits how many parking spaces may be required for each ADU. However, section 2.F. allows a community to be less restrictive if it so desires. For example, it may not require any parking spaces to be provided for a new ADU. Emphasizing that local ordinances may be less restrictive than the model state act allows communities to be less restrictive on ADUs if they witness their benefits and become more comfortable with the idea of ADUs in single-family zoning districts.

G. Maximum or Minimum Size.

A municipality may establish minimum and maximum unit size requirements for both attached and detached ADUs (adapted from Cal. Gov't Code Section 65852.2(d)).

Note: The size of ADUs can raise the concerns of neighbors that the units are either too large or too small (see the model local ordinance, Section 17, for more on these issues). This section of the model state act makes it clear that a community adopting its own ADU ordinance may set limits on how large or small an ADU can be. Communities not adopting their own ordinances cannot set maximum or minimum size on attached or detached ADUs. (Maximum size limits are set by the default provisions.) In other words, for communities that want to set their own standards on ADU sizes, this section gives them incentives to adopt their own ordinances.

H. Use, Density, and Plan Consistency Rules.

Municipalities may provide that ADUs do not exceed the allowable density for the lot upon which the ADU is located, and that ADUs are a residential use that is consistent with the existing community plan and zoning designation for the lot (adapted from Cal. Gov't Code Section 65852.2(a)(3)).

Note: An issue for ADUs is whether they are inconsistent with existing residential zoning, zoning density standards, and community plans. Section 2.H. authorizes communities to accommodate ADUs by stating — in the appropriate local documents (ordinances, or plans) — that the units are harmonious with local plan policies and density concerns. This is a perfectly reasonable assumption, since family size is shrinking in the U.S. and much of the space in homes and infrastructure in residential neighborhoods was originally designed for larger families and is now underused.

3. Limiting Regulatory Authority.

A. Noninterference by Other Law.

No municipality 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.

Note: At times, neighbors' 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. While it is likely that only a small percentage of municipalities would misuse their powers against ADUs, this section makes it illegal for them to do so.

B. Exemption from Growth-Limitation Measures.

ADUs shall not be considered in the application of any local ordinance, policy, or program to limit residential growth (adapted from Cal. Gov't Code Section 65852.2(a)(5)).

Note: If this provision is not included in a statute, a community could adopt an ordinance allowing the creation of ADUs only to have the units banned because of existing growth limit measures, such as moratoria or quotas on

building permits. These latter growth control measures should not apply to ADUs because they can be accommodated within the present infrastructure capacities of existing residential neighborhoods.

C. Prohibiting ADUs.

No municipality shall adopt an ordinance that totally prohibits ADUs within single-family or multi-family zoned areas unless the same:

- i. Contains findings acknowledging that it may limit housing opportunities of the region;
- ii. Contains findings that the ban is justified because of specific adverse impacts on the public health, safety, and welfare that would result from allowing ADUs within single-family and multi-family zoned areas;
- iii. Bases the latter findings on technical reports of studies of the municipality;
- iv. Explains why such units cannot be accommodated within the present utility and service capacities of existing single-family neighborhoods; and
- v. Is certified by the State Housing Office as conforming to this Act, in the same procedure defined in Section 5. Until certification of any such ordinance, applications for approval shall be subject to the default provisions of this Act. (adapted from Cal. Gov't Code Section 65852.2(c)).

Note: Because the general policy of the statute is to encourage the development of ADUs, this section requires communities to justify any ban on them. Few communities in California banned these units following adoption of its ADU law in 1982 (CDHCD 1987, VIII-13). However, this section is stronger than the California law and makes it more difficult for a community to ban ADUs. Although, under California law, a ban on ADUs must be accompanied by specific findings, it does not have to be based on a technical report of a study of the community, as is required by this section. In addition, unlike the California law, this section requires that the state Office of Housing must certify an ordinance banning ADUs.

D. Parking Requirements.

Parking requirements for ADUs shall not exceed one parking space per unit or per bedroom, whichever is greater. Additional parking may be required, provided that a finding is made that the additional parking requirements are directly related to the use of the ADU and are consistent with existing neighborhood standards applicable to existing dwellings. Off-street parking shall be permitted in required residential yards, setback areas, or through tandem parking (adapted from Cal. Gov't Code Section 65852.2(e)).

Note: This section prevents communities from requiring more parking than is reasonable, and it applies to communities with and without ADU ordinances (see Section 20 of the model local ordinance for more discussion on parking).

E. Fees.

Fees for permitting construction of ADUs shall not exceed 30 percent of the fees that would be charged for creation of a single-family home in areas with similar zoning.

Note: This provision addresses the fact that high fees can be major disincentives to homeowners seeking to develop ADUs (see the note in Section 5 of the model local ordinance).

4. Default Provisions.

A municipality without an adopted state-certified ADU ordinance that receives an application for a permit for an ADU on or after [the effective date of the Act] shall accept the application and approve or disapprove the application pursuant to the default provisions of this Section 4 of the Act, unless it adopts a certified ordinance in accordance with this Act within [120] days after receiving the application.

Note: This provision tells municipalities how to process their first application to create an ADU if they do not have an ordinance that conforms to this model state act. It also gives communities the option of quickly adopting their own ordinance and getting state certification if the community prefers its own provisions rather than the model state act's default provisions. This will encourage communities to adopt their own ADU rules.

A. Only Basis for Denial.

No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under Section 4 of the Act (Cal. Gov't Code Section 65852.2(b)(2)).

Note: This provision prevents a community without an ADU ordinance from excluding an ADU on the basis of any other measure. While this section says that no other rules shall be applied (except those that apply to other residences), the next section prevents a local government from applying the default provision's standards in a stricter fashion.

B. Maximum Without Local Ordinance.

The default provisions of this Section 4 establish the maximum standards that municipalities shall use to evaluate proposed ADUs on lots zoned for residential use that contain an existing single-family dwelling. No additional standards, other than those provided in this section, shall be used or imposed, except that a municipality may require lots or parcels of land with an ADU to be owner occupied (adapted from Cal. Gov't Code Section 65852.2(b)(2)).

C. No Changes Necessary.

No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement the default provisions of this Act. Any municipality 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 Cal. Gov't Code Section 65852.2(b)(4)).

Note: A community is subject to the default provisions of this model state 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.

D. Accommodating Units.

An ADU that conforms to the requirements of the default provisions 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. ADUs shall not be considered in the application of any local ordinance, policy, or program to limit residential growth (adapted from Cal. Gov't Code Section 65852.2(b)(5)).

Note: This provision is designed to protect ADUs from other local laws. If a community adopts its own ordinance, it may require more land area for an ADU. But if the community has no ADU ordinance and is therefore subject to the default provisions of this model state act, it cannot require an ADU to be on a lot larger than the minimum lot size for the zoning district. This is another example of how a community may gain more control over ADUs by adopting its own ADU regulations.

E. Public Notice of Public Official.

On the first Monday of each yearly quarter, each municipality of the state that has not adopted state-certified ADU regulations shall publish in the general newspaper of greatest frequency and circulation the name, title, address, and hours of availability of the public official who is responsible for processing applications for permission to develop ADUs under the default provisions of this Act.

F. Standards.

Every municipality shall grant a permit or special use or a conditional use permit for the creation of an ADU if the unit complies with all provisions of this Section 4, including the following standards (adapted from Cal. Gov't Code Section 65852.2(b)(1)):

- i. The proposed ADU is not intended for sale and may be rented (adapted from Cal. Gov't Code Section 65852.2(b)(1)(A));

Note: The issue that this standard addresses is whether the homeowner can sell only the ADU to another person while still owning the principal home and lot. By preventing the sale of the ADU, this standard is designed to prevent the creation of dual ownership of two buildings on, or from, one single-family lot (see the discussion of this issue in Section 18 of the model local ordinance).

- ii. The lot proposed to contain the ADU is zoned for single-family or multi-family use (adapted from Cal. Gov't Code Section 65852.2(b)(1)(B));

Note: This standard addresses the issue of whether ADUs will be built in commercial and industrial land zoning districts. Essentially, this standard, by allowing ADUs only on land zoned for residential uses, prevents occupants of ADUs from suffering the impacts of commercial and industrial land uses.

- iii. The lot proposed for an ADU contains an existing single-family dwelling (adapted from Cal. Gov't Code Section 65852.2(b)(1)(C));

Note: In dealing with ADUs, communities must decide if they will be allowed in new units or only in existing ones. This standard clarifies that under the default provisions, ADUs cannot be built simultaneously with, or before, a new dwelling unit (see also the discussion of similar issues in the model local ordinance, Sections 7, 13, and 14).

- iv. The ADU is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling (adapted from Cal. Gov't Code Section 65852.2(b)(1)(D));

Note: This section allows unattached ADUs. Many communities do not want such ADUs in their residential neighborhoods (see the discussion in the model local ordinance, Section 3, Authorization for ADUs by Zoning District). For that reason, this provision may encourage some local governments to push for adoption of a local ADU ordinance that leaves out this provision.

- v. The floor area of an attached ADU shall not exceed 40 percent of the living area of the existing residence (adapted from Cal. Gov't Code Section 65852.2(b)(1)(E));

Note: In the California default provisions, the increase in floor area was limited to 30 percent. For the issues related to this provision, see the model local ordinance, Section 17.

- vi. The total area of floor space for a detached ADU shall not exceed 1,200 square feet (Cal. Gov't Code Section 65852.2(b)(1)(F));

Note: See the discussion of maximum ADU size in the model local ordinance, Section 17.

- vii. Requirements relating to height, setback, lot coverage, architectural review, 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 (Cal. Gov't Code Section 65852.2 (b)(1)(G));

Note: This section allows a local government to apply other residential construction rules to ADUs. Politics as well as practicality justifies this section — that is, exempting ADUs from standards applied to residential construction could create opposition from neighbors and local elected officials. Although the model state act limits the laws that can be applied to ADUs, this section clarifies that residential construction standards do apply to ADUs.

- viii. Local building code requirements that apply to detached dwellings, as appropriate, are to be applied to an ADU; and
- ix. Approval by the local health officer where a private sewage disposal system is being used, if required (Cal. Gov't Code Section 65852.2(b)(1)(I)).

Note: For a discussion of the public health issues related to this provision, see the model local ordinance, Section 21.

5. State's Role in ADU Policies.

A. Required Municipal Ordinance Submission.

A municipality shall submit a copy of the ordinances adopted pursuant to Section 2 or Section 3.C. to the Office of Housing within 60 days after adoption (adapted from Cal. Gov't Code Section 65852.2(h)).

Note: This section is optional for states that do not want to give themselves a strong role related to ADUs. In this section, communities are required to submit their ADU ordinances to the state whether they are regulating (Section 2) or banning ADUs (Section 3.C.).

In addition to submitting ordinances after they are adopted, municipalities are required (under Section 5.B.) to present proposed ADU ordinances prior to adoption for the state's review. Submitting the ADU ordinance is the initial step that allows the state to play its role in the remaining sections of this model state act.

B. State Certification of ADU Ordinances.

A municipality shall submit the zoning ordinance, amendments to a certified ordinance, or an ordinance banning ADUs 30 days prior to final approval of such ordinance or amendment to the State Office of Housing for an opinion on whether the ordinance conforms to this statute. This submission must include the municipality's date of planned final approval. The Office of Housing may notify other relevant agencies so that they may also comment on whether or not the municipality's draft ordinance conforms to the statute. The Office of Housing shall notify the municipality prior to its planned date of final approval of its opinion as to conformity of the ordinance to this statute. If, in the opinion of the Office of Housing, the ordinance and/or amendments reviewed do not conform to this statute, the Office of Housing shall notify the local jurisdiction of actions that must be taken to bring the ordinance(s) and/or amendments into conformity.

The jurisdiction must bring its ordinance into conformity, as recommended by the Office of Housing pursuant to the prior section, within 90 days of notification of nonconformance by the Office. If the municipality has not brought its ordinance into conformity within the 90-day period, the Office of Housing 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 Office of Housing. Prior to any certification by the Office of Housing, any applications submitted under the default regulations of this Act shall be processed fully and solely under those regulations.

Amendments to a municipality's ordinance certified by the Office must be submitted and certified in the same manner and procedure as the initial proposed ordinance pursuant to this section.

C. Municipal Annual Reports to State.

Each municipality shall report annually to the Office of Housing the following statistics, on a form to be provided by the Office of Housing, the number of:

- i. Single-family structures in the jurisdiction;
- ii. Single-family structures in single-family residential zones and in multi-family residential zones in which accessory units are permitted;
- iii. Illegal accessory apartments or accessory cottages, attached and unattached, known or estimated to be in the jurisdiction;
- iv. Applications to legalize illegal accessory apartments submitted to the jurisdiction and the results of processing these applications;
- v. Legal accessory apartments and accessory cottages, attached and unattached, in the jurisdiction;
- vi. Applications for new accessory units accepted for processing;
- vii. Applications approved and/or permits issued by size, number of bedrooms, and area location;
- viii. Applications disapproved, with reasons categorized by requirements not met; and
- ix. Complaints against legal ADUs, with the complaints categorized by the perceived impacts, such as parking, aesthetics, or traffic.

D. State Annual Report.

The Office of Housing shall prepare an annual report to the Governor and the legislature from the annual reports from the municipalities, including the installation rates of ADUs and recommendations, if any, for amending the Act or other implementation measures necessary for developing ADUs as affordable housing. The annual report shall include any recommendations from the State Advisory Board on ADU policies.

E. State Advisory Board on ADU Policies.

i. Creation.

The Office of Housing shall establish an Advisory Board to monitor implementation of

the Act and to recommend amendments to the Act or model local ordinance provisions to the Office of Housing.

ii. Composition.

The Advisory Board shall be appointed by the Director of the Office of Housing in consultation with the legislature and Governor and shall include one representative from each of the following groups: remodelers, mortgage bankers, real estate agents, new home builders, first-time home buyers, home health care agencies, local permitting agencies, and organizations for the disabled, older persons, and neighborhoods.

iii. Duties.

The Advisory Board's duties shall include, but not be limited to, preparing an annual commentary on the report prepared by the Office of Housing on accessory units. The Board's commentary shall contain recommendations for furthering the purposes of the legislation and will be published and circulated with the Office of Housing's annual report.

Note: This section of the model state act is optional. It gives the state the role of encouraging ADUs and reviewing local efforts to accommodate them. This role includes action by a state agency — the Office of Housing. The model state act recommends that state Offices of Housing certify local ordinances as conforming to the statute, analyze data from annual municipal reports (Section 5.C.), and provide recommendations to the legislature and Governor for promoting ADUs.

One shortcoming of Washington State's ADU statute was that it did not provide a way for the state to assess how the statute was working at the local level (Hope 1996). This shortcoming is typical of existing ADU legislation. The optional monitoring provision here would require communities to report specific ADU data to the State Housing Office (Section 5.C., which applies to all communities within a state) and to obtain ADU policy recommendations from a State Advisory Board (Section 5.E.). With the benefit of the community data and the advisory board recommendations, the Office of Housing would prepare an annual report proposing new or amended policies to the state legislature and Governor (Section 5.D.). This optional monitoring mechanism would assist the state in assessing the law's success. Because it allows well-informed policy adjustment to be made, it should help ensure the ultimate success of the state ADU policies. The authors, however, recognize that some states would be unwilling or unable to afford such a monitoring program. Omission of these provisions, giving the state this monitoring role, would not be fatal to the purposes of the model state act.

MODEL LOCAL ORDINANCE ON ACCESSORY DWELLING UNITS

I. General Provisions.

1. Purpose and Intent.

Note: In this section of the ordinance, a community makes clear what it is trying to achieve in adopting the ordinance. This information may help in defending the ordinance in a court case or in informing citizens as to how the ordinance will benefit and protect their interests. In spite of the advantages this section can provide, communities have typically omitted it in their ADU ordinances.

If a community has no purposes that are different from those of the model state act, it may simply want to reference that act's findings (Section 1) and its purposes and intent (Section 2). We highly recommend that a community adopting an ADU ordinance copy the information in Section 1 of the model state act and present these findings (particularly the benefits of ADUs) to citizens at public hearings. In addition, the local legislative body would be wise to adopt, if this is not part of its ordinance, Section 1 of the model state act, including the benefits, into the record of its minutes when it adopts the ADU ordinance. Afterward, the public official administering the ADU ordinance can make this information available to persons inquiring about ADU permits.

If a community has public purposes that are different from those in the model state act, those purposes should be specified in the ordinance (after consulting legal counsel that they are not inconsistent with the purpose of state ADU legislation). For example, some communities use ADUs to help rehabilitate rundown areas containing large older houses; others intend for only certain groups to benefit from ADUs, such as the disabled, older persons, or family members. The model local ADU ordinance presents options (optimal, favorable, or minimal) to meet varying conditions and concerns in different communities. (See Introduction to Model State Act on Accessory Dwelling Units and the Model Local Ordinance on Accessory Dwelling Units.) We have provided a minimal option that targets only certain populations as beneficiaries of ADUs. (See the note accompanying Section 11 below related to limiting the occupants of ADUs.)

[Optimal provision] It is the policy of [name of local government] to promote and encourage the creation of legal ADUs in a manner that enhances residential neighborhoods and helps residents meet their housing needs and realize the benefits of ADUs.

[Favorable provision] None

[Minimal provision] It is the policy of [name of local government] to promote and encourage the creation of legal ADUs in a manner that enhances residential neighborhoods in order that persons [name target groups, such as older persons] can meet their housing needs and realize the benefits of ADUs.

2. Definitions.

Note: Terms in an ordinance that should be defined are those that the public may not be familiar with and those that vary from the ordinary definitions in Webster's dictionary. Since the model local ordinance must be consistent with the model state act, the latter's definitions of accessory, accessory dwelling unit, accessory apartment, accessory cottage, living area, and owner-occupant should be included in this model local ordinance. A community may simply incorporate these definitions by reference to the model state act, as we have done here to save space. However, users of an ordinance (e.g., applicants for a permit) are inconvenienced by such a practice since most do not have easy access to state laws. Therefore, it is better to repeat the model state act's definitions in the ordinance. In addition to the definitions in the model state act, the ordinance adds a definition for Zoning Administrator. Note that, because the ADU ordinance is part of a local zoning ordinance, the definitions of the zoning ordinance will apply to the ADU ordinance.

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

Note: As discussed in Section 4 below, this model local ordinance assumes that the community Zoning Administrator has the authority to act on applications for ADUs. However, if the approval process, as discussed in Section 4 below, is the one used for a conditional use permit, the planning commission, a board of zoning adjustment, or another local body may be responsible for acting on ADU applications.

II. Permits: Eligibility and Application.

3. Authorization for ADUs by Zoning District.

Note: This section addresses allowing ADUs in specific types of zoning districts (or zones). Neighbors' fears about harmful impacts of ADUs result in some communities banning ADUs or only allowing them in one zone, while other communities are more liberal. In a 1995 survey of 150 communities in the Province of British Columbia, for example, 46 allowed ADUs only in two-family zones, 41 allowed them in single- and two-family zones, 10 allowed them only in single-family zones, and 42 prohibited ADUs (BCMHRSC 1995, 5).

The model state act allows communities to designate areas where ADUs are permitted and sets out the types of criteria for determining those areas (See sections 2A and 2B). In addition, the Act allows communities to locate ADUs in any single-family or multi-family zones.

These statutory provisions give communities wide discretion in permitting ADUs in many types of residential zoning districts. But in using this discretion, communities must make some key decisions about the capacities of various types of residential zones to absorb ADUs. Certainly, not all types of residential zones are equal in this regard. The desirability of locating ADUs in the major types of residential zones is discussed below.

Multi-family zones. These zones are distinguished by multi-family structures that not only have common walls between dwelling units but also are atop one another. The typical principal units are apartments or condominiums in multi-story structures. ADUs are seldom, if ever, allowed in these zones because they tend to have less potential than do single-family zones for accommodating ADUs in terms of available parking, infrastructure, and unused housing space.

Clustered single-family zones. These zones contain single-family dwelling units that have common walls but are not atop one another. These zones may be called low-density, multi-family zones or higher density, single-family zones, and they have as principal units row houses, townhouses, or clustered single-family dwelling units. Siting ADUs in these zones is also difficult for several reasons. Parking is often inadequate in areas with townhouses, row houses, or clustered single-family units. In addition, building and fire codes often require bedrooms to have a window for exterior emergency exits by occupants. For this reason, common walls shared by dwelling units greatly reduce the potential to locate accessory apartments in zones with these types of principal units.

Single-family zones. These zones contain one single-family dwelling unit per lot and provide the greatest opportunities for siting all types of ADUs. Even in these zones, however, neighbors' concerns about property values and aesthetics often cause communities to ban detached accessory cottages or to allow them only on larger lots. Detached units are more expensive to build (MRSCW 1995, 34) and are usually a relatively small portion of the total number of ADUs in a community. One of the reasons that accessory apartments outnumber detached units is because illegal detached ADUs are impossible to hide. In towns with a preponderance of small lots (such as Daly City, California), not allowing detached ADUs is appropriate (MRSCW 1995, 34). Attached cottages are allowed in more communities than are detached cottages.

None of the three model provisions allow ADUs in multi-family zones as described above. The optimal provision allows all types of ADUs in single-family zones with one principal unit per lot, but only accessory apartments in zones with single-family units sharing common walls. In the latter zones, apartments are allowed only if the applicant provides proof that the ADU conforms to fire and building code requirements. The favorable provision does not permit ADUs in zones with dwelling units that have walls in common, but in other single-family zones (districts with one dwelling unit per lot), accessory apartments and attached cottages may be built.

The favorable provision also allows detached accessory cottages in the one-unit-per-lot zones if a specified minimum lot size is met. (This authority is not extended in the favorable provision to other types of residential zones, even if that minimum lot size happens to be met by an individual applicant, because the parking problems in those zones would not strike a balance between the neighbors' concerns and those of ADU developers.) In the minimal provision, accessory apartments are authorized only in zones with one home per lot, and accessory cottages are not allowed in any zones.

In adapting the model provisions to a local zoning ordinance, a community will substitute its zoning district names (or abbreviations) for the model provisions' descriptions of zoning districts. For example, a community labeling its one-unit-per-lot zone as "Single-Family Residential Zone (SFR)" will substitute that for "zoning districts designed primarily to permit single-family homes on individual lots" in these model provisions. Similarly, "Townhouse Residential Zone (TR)" may be substituted for "zoning districts designed primarily for single-family homes with walls attached to other single family homes."

[Optimal provision] ADUs are allowed in zoning districts designed primarily to permit single-family dwelling units on individual lots. Accessory apartments may be located in zoning districts designed primarily for single-family dwelling units with walls attached to other single family homes when applicants provide written evidence from the proper fire and building officials that the proposed ADU conforms to building and fire code regulations.

[Favorable provision] An accessory apartment or an attached accessory cottage may be permitted in any residential zone designed primarily to permit single-family dwelling units on individual lots. A detached accessory cottage may be located in this same zone on a lot with a minimum lot size of [specify minimum size].

[Minimal provision] An accessory apartment may be allowed in zoning districts designed primarily to permit single-family dwelling units on individual lots.

4. Approval Process.

Note: A lengthy and burdensome application process will discourage homeowners from developing ADUs (Gellen 1985, 185; MRSCW 1995, 28). An application procedure that involves a public hearing means a loss of privacy (Gellen 1985, 185) and added time to reach a final decision on the permit (Hare 1989, 20). One study noted that application periods ranged from one day to six months (CSS 1991, 22). Advocates of ADUs argue that requiring a conditional use permit for an ADU is unfair when ADUs typically have less impact than single-family residences that are allowed by right. Neighbors, on the other hand, may prefer the conditional use permit process so they can collectively voice their concerns before local decision makers.

The two basic options available to a community are to allow ADUs through the conditional use permit (sometimes called special exception, special permit, or special land use) or to allow them by right in the zoning district. "By right" means that the process involves filling out an application and presenting it to a local building official or Zoning Administrator, who will check to see that it meets the requirements of the ordinance. No hearing or discretionary decision is involved. The conditional use permit process, however, involves a hearing preceded by public notice. The "by right" approach has the advantage of being fast and less public for ADU applicants. Of course, if there is a great deal of political resistance to adopting an ADU ordinance, the reassurance that ADUs will be subject to the conditional use process, with hearings, can persuade law makers to adopt an ordinance. Communities that are new to the process may choose the latter approach.

This model local ordinance is written with a Zoning Administrator making the decision to issue an ADU permit. If a community wants to use a conditional use approach, the provisions of this ordinance are easily convertible by substituting, in the place of the Zoning Administrator, the name of the local body that makes decisions on conditional use permits. The type of local body varies but is often a planning commission, a zoning commission, or a zoning board of appeals.

The favorable provision below is designed to speed up permit processing. A hearing will not be necessary in every case. A neighbor can choose to meet with an applicant and the building official to review the application. However, if a neighbor has serious concerns, a hearing can be conducted after the neighbor requests one in writing. Several sources have recommended this provision, which can eliminate the need for a public hearing (Hare 1989, 21; CSS 1991, 55). Another option would be to notify at least 10 adjacent property owners to check for possible objections. If none were raised, the application would not be processed via the conditional use permit procedure (CSS 1991, 55).

The optimal provision allows ADUs by right without a hearing, and the minimal provision is to make ADU applicants go through the conditional use permit process with a hearing. The full procedure for a conditional use process is not given in this section because the local zoning ordinance (of which the ADU is a part) will provide those procedures, which are often specified in the state zoning enabling act.

In choosing a procedure for ADUs, it is important to keep in mind that even ADUs allowed by right are subject to standards in the ordinance. The trend in Washington State communities that have recently adopted ADU ordinances is to allow them by right, subject to ordinance criteria (MRSCW 1995, 27).

[Optimal provision] One ADU is permitted per residentially zoned lot, provided the Zoning Administrator first approves the proposed ADU as complying with the standards of this ordinance.

[Favorable provision] One ADU is permitted per residentially zoned lot, provided the Zoning Administrator first approves the proposed ADU as complying with the standards of this ordinance, unless a property owner requests in writing that the application be processed via a conditional use permit procedure. Within five days after receiving a completed application for approval of an ADU, the Zoning Administrator shall notify by mail all property owners within 300 feet of the property proposed for an ADU. The notice to the property owners shall inform the owners that they may, at any time within 30 days of the date of mailing of the notice, in writing to the Zoning Administrator either demand and have a meeting with the applicant and the Zoning Administrator to review the application, or can cause the application to be processed with conditional use permit procedures. Within the same 30-day period, the Zoning Administrator shall meet simultaneously with an applicant and owners who have properly demanded meetings to review the application. If either the applicant or the Zoning Administrator fails to meet with such an owner, the owner may demand in writing to the Zoning Administrator that the application be processed via the conditional use permit procedure.

[Minimal provision] One ADU is permitted per residentially zoned lot by conditional use permit if the proposed ADU conforms to the standards of this ordinance.

5. Application Fees and Information.

Note: Other difficulties for homeowners contemplating installing an ADU are permit fees, complicated applications, and multiple-stop approval processes. Application fees associated with a hearing can also be much higher than are application fees unrelated to hearings. A 1989 study of 47 communities found that in the 10 communities with the greatest installation rates for ADUs, none had fees higher than \$2,000 (Hare 1989, 15). The same study revealed that in the County of Los Angeles, an applicant paid a \$3,000 fee that was nonrefundable for an ADU, and the permit was denied (Hare 1989, 21).

The model state act (Section 3.E.) does not allow the fees for ADUs to be higher than 30 percent of the application fee for a single-family residence. This section levels the playing field for ADUs. The optimal provision is consistent with the model state act, limiting the ADU fees to 30 percent of the fees for a house, but the favorable provision does not conform to the act because it allows communities to charge equal fees for ADUs and other dwelling units.

[Optimal provision] Application fees for ADUs shall not be more than 30 percent of the application fees for a single-family dwelling unit. The information required on applications for creating or legalizing ADUs shall be the same information that is required to construct a single-family dwelling unit.

[Favorable provision] Application fees and application information required for ADUs shall be less than or equal to those required to construct a single-family dwelling unit.

[Minimal provision] None

6. Permit Renewal (Monitoring).

Note: In order to make sure that an ADU continues to comply with the conditions that were a part of the permit as originally issued, some communities issue temporary permits and require periodic permit renewal. For example, in a survey of 50 communities with ADU ordinances, 14 percent issued temporary permits (APA 1996). While requiring permit renewal and inspections has the advantage of making neighbors feel more comfortable with ADUs, it increases administrative costs related to an ordinance. More significantly, this requirement discourages the creation of ADUs for reasons similar to those of limiting groups of eligible occupants, as discussed in the introduction to the model state act ("Avoiding Policies that Deter New ADUs"). Bankers and the homeowners who actually have a financial stake are more nervous about temporary permits.

For this reason, we have written optimal and favorable provisions to provide permanent permits. The optimal provision requires the ADU owner to file an annual statement that the ADU complies with the local ordinance. The favorable provision states that the permit expires if the ADU no longer conforms to the ordinance and that a complaint by a neighbor can cause a hearing to determine conformance to the ordinance. But the permit issued for an ADU under the minimal provision is only a temporary one and must be renewed. This provision is waived, however, if there are no complaints of violations made to the Zoning Administrator. Communities that want to apply a more strict provision can remove that portion of the provision that allows the ADU owner to have the permit renewal waived if no complaints are filed.

[Optimal provision] The owner of an ADU shall, on the first day of every year [or specify intervals in number of years], sign and file written statements with the Zoning Administrator that the ADU complies with the municipal zoning code.

[Favorable provision] A certificate of occupancy [or permit] issued for an ADU shall expire if the ADU does not conform to the municipal zoning code. If a complaint is made to the Zoning Administrator by a landowner within 300 feet of the ADU, the Zoning Administrator shall cause a hearing to be held within 60 days after the date of the complaint to determine if the ADU violates the municipal zoning code. Fifteen days prior to the public hearing, the Zoning Administrator shall notify all property owners within 300 feet of the site of the ADU of the hearing. Revocation of a permit by the Zoning Administrator must be based on an inspection of the ADU premises and a written record of the Zoning Administrator's findings at the hearing.

[Minimal provision] Permits for ADUs shall be issued for a period not longer than five years and must be renewed at the end of the first term of issuance and every such period thereafter. Temporary permits for ADUs do not have to be renewed if, during the time period since the date of the last renewal or waived renewal date, no complaints of violations of the municipal zoning code by the ADU are filed with the Zoning Administrator. Renewal of temporary permits requires inspection of the ADU premises by the Zoning Administrator.

III. Standards.

7. Lot Standards - Occupied by Dwelling Unit.

Note: Can a permit be issued for developing an ADU on a lot that is not already occupied by a dwelling unit? This section addresses whether an ADU can be designed and built simultaneously with the construction of a new residence. This question springs from a community's general reluctance to convert a single-family zone into a duplex zone. Many local ordinances, such as the default provisions of the model state act (Section 4.F. iii.), allow ADUs only on lots that already have dwellings. This is common (APA 1996). Some local governments, however, have begun to allow new houses to be constructed with ADUs (MRSCW 1995, 47). Communities adopting their own ordinance under the model state act can allow ADUs in, or with, new residences. Proponents of ADUs have emphasized that ADUs built in new houses are less expensive "with designs that more effectively address exterior appearance and parking issues" (MRSCW 1995, 47).

For the latter reason, our optimal provision allows ADUs to be designed and built in or related to new dwellings. The optimal option allows all types of ADUs to be developed related to new homes.

Accessory apartments, rather than either attached or detached accessory cottages, are generally more acceptable as a type of ADU built in relation to

new residences. Consequently, in the favorable provision only accessory apartments are allowed to be built related to new homes. The minimal provision requires lots to have an existing dwelling in order to be eligible for an ADU permit.

If a community does allow ADUs in new houses, as per Section 7, it would be contradictory to base eligibility for an ADU on the age of the principal dwelling or how long it has been owned. (See Sections 13 and 14 concerning standards for principal dwelling units.)

[Optimal provision] An ADU may be incorporated in either an existing or a new dwelling unit (W OCD 1994, Section A.7.).

[Favorable provision] An accessory apartment may be incorporated in either an existing or a new dwelling unit.

[Minimal provision] The lot proposed for an ADU shall contain an existing single-family dwelling unit (adapted from Cal. Gov't Code Section 65852.2(b)(1)(C)).

8. Lot Standards - Minimum Size.

Note: This section addresses the lot sizes required for ADU installation. This requirement is often excessive and can greatly diminish the number of ADUs in a community. In a survey of 50 ordinances, the minimum lot size requirement varied from 4,500 square feet to one acre (APA 1996). One community allows detached ADUs only on lots that are 1.5 times the minimum lot size of the zoning district (Orange County, Fla., Zoning Code Sec. 38-1426 (f)(4)). Some communities have the same minimum lot-size requirements for all ADUs. When the requirements are not the same, greater lot sizes are required for detached units than for accessory apartments. The model state act (Section 2.H.) allows communities to exempt ADUs from lot density requirements.

The provisions below require the minimum lot size of the underlying zoning district for all types of ADUs, with two exceptions. First, the optimal provision allows ADU apartments to be on lots that are a specified number of square feet — presumably smaller than the zoning district's minimum lot size. One proponent of ADUs argues that minimum lot sizes may disqualify older homeowners, and others with homes on small lots, from installing ADUs and receiving their benefits (MRSCW 1995, 45). For this reason, the optimal provision below requires that the minimum lot size be met only for accessory cottages, while lots that are a specified size may contain dwellings with accessory apartments.

Second, in the minimal provision, communities must specify the minimum number of square feet of lot size that is eligible for detached ADUs. Some

communities may want this minimum lot size to be more than the minimum lot area required in the zoning district because neighbors are sometimes concerned about overcrowding and the impact of detached ADUs on property values and aesthetics.

Other approaches to dealing with the density of ADUs per land area are mentioned in the note to Section 22 below.

[Optimal provision] ADUs may be developed on lots meeting the minimum lot size for the respective zoning district, except that accessory apartments may be on lots that are [specify number of square feet].

[Favorable provision] ADUs may be developed on lots meeting the minimum lot size for the respective zoning district.

[Minimal provision] ADUs may be developed on lots meeting the minimum lot size for the respective zoning district, except that detached accessory cottages may be developed only if the lot size is [specify number of square feet] or more.

9. Lot Standards - Setback and Lot Coverage.

Note: ADUs are generally subject to setback and coverage requirements of zoning ordinances. For this reason, this model ADU ordinance, similar to the Washington model (W OCD 1994), does not separately address this issue. These issues are highly related to aesthetic concerns covered in sections below.

10. Occupancy Standards - Owner of Premises.

Note: Some neighbors are concerned that allowing ADUs will cause deterioration of neighborhood properties because landlord speculators will buy up houses with ADUs and rent out both units (MRSCW 1995, 28). The fear is that tenants will not maintain the units. A popular way to allay these fears is to require the owner of the lot to reside on the premises — the majority of ADU ordinances contain this requirement (APA 1996). There is evidence that owner occupancy does lead to better maintenance of the premises (Verrips 1983, 70). Not surprisingly, neighbors tend to want the adjacent premises with ADUs to be owner occupied (Town of Babylon, New York 1979, 2). In order for owner occupancy to be most effective in fulfilling the purposes of ADUs, it is important to allow the owner to live in either unit (see the discussion in Section 1.C i. of the model state act, the definition of “Accessory”). Communities often allow homeowners to reside in either the principal unit or the ADU (APA 1996).

The optimal option includes both aspects of owner occupancy — requiring owner occupancy and allowing it in either unit — because both tend to

facilitate the development of new ADUs. For communities that may not feel comfortable allowing the owner to live in either unit, the minimal provision requires the owner to reside in the principal dwelling unit. No favorable provision is recommended.

Many communities monitor ADUs to ensure that the owner still lives on the premises. A variety of methods are used to do this monitoring (see Section 6), 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. Both the optimal and favorable provisions below require this registration.

Various provisions of the model also address the issue of owner occupancy. Those provisions allow and support the requirement that the owner live in the larger or smaller unit (see the discussion in Section 2.E. of the model state act; also see Section 1.A.v. (7) — findings about benefits of owner occupancy — and the definitions of “Accessory” and “Owner-Occupant”). If a community adopts this ordinance but does not have a statute echoing these provisions of the model state act, it may want, with the advice of counsel, to include versions of those provisions in its zoning ordinance.

[Optimal provision] A lot or parcel of land containing an ADU shall be occupied by the owner of the premises, and the owner may live in either the ADU or the principal dwelling unit. Within 30 days of securing approval for construction of an ADU, the owner shall record against the deed to the subject property, a deed restriction running in favor of the municipality limiting occupancy of either the principal dwelling unit or the ADU to the owner of the property. Proof that such a restriction has been recorded shall be provided to the Zoning Administrator prior to issuance of the occupancy permit for the ADU (adapted from WOCD 1994, Application Procedures).

[Favorable provision] None

[Minimal provision] A principal dwelling unit on a lot or parcel of land containing an ADU shall be occupied by the owner of the premises. Within 30 days of securing approval for construction of an ADU, the owner shall record against the deed to the subject property, a deed restriction running in favor of the municipality limiting occupancy of either the principal dwelling unit or the ADU to the owner of the property. Proof that such a restriction has been recorded shall be provided to the Zoning Administrator prior to issuance of the occupancy permit for the ADU (adapted from WOCD 1994, Application Procedures).

11. Occupancy Standards for ADUs.

Note: Limiting eligible occupants of ADUs can keep the number of installations of ADUs down. In a 1996 survey of 50 ADU regulations, 18 percent of the communities limited occupancy of ADUs to persons who were elderly, disabled, or related to the owner (APA 1996). Requiring the occupant to be a relative of homeowner is the most frequent limitation.

Although these policies can have good intentions (e.g., to provide care for the special needs of the owner or occupant), the limitations can discourage investors in ADUs and can cause enforcement problems for communities. In fact, the trend in ADU regulations is away from these types of regulations (MRSCW 1995, 35). A more reasonable and legally defensible approach to occupancy limitations may be requiring a minimum number of square feet of living area of the ADU per person. But in our view, the optimal option is not to have an occupancy standard.

Some communities, however, may insist on this type of limitation; we have provided a favorable provision that, like one county ordinance, limits occupancy only during the ADU's first three years (Orange County, Fla., Zoning Code Section 38-1426 C (2) a). The community may define the number of persons and characteristics of persons who are eligible occupants (e.g., relatives, older persons, or disabled persons). The three-year limit may serve to encourage investments in ADUs since the owner will be certain of a greater pool of potential occupants after that time.

Finally, we have provided a minimal option that allows the locality to limit the occupancy of an ADU to a specified group. While we do not recommend adoption of such a provision, its inclusion may be the only way to obtain passage of an ordinance. In these cases, it should be viewed as a transitional phase allowing the locality to gain experience with ADUs and leading to further liberalization of the ordinance.

Prior to adopting a provision limiting the occupancy of ADUs, a community should obtain a legal opinion as to whether such a restriction violates the federal Fair Housing Act (42 U.S.C.A. Sec. 3601). Among the groups protected from housing discrimination by this federal law are families with children under 18 years of age.

As previously mentioned, the favorable and minimal options limit the number of occupants. In a recent survey of ADU ordinances, the limitations on the number of persons ranged from two to five, with some communities requiring occupancy by families (APA 1996). The most common limitation on the number of persons occupying an ADU was less than three.

[Optimal provision] None

[Favorable provision] During the first three years after the issuance of a permit for an ADU, the occupants of the ADU shall be limited to [specify] in number and persons who are [specify eligibility criteria].

[Minimal provision] The occupants of the ADU shall be limited to [specify] in number and persons who are [specify eligibility criteria].

12. Principal Dwelling Unit Building Standards - Minimum Floor Area.

Note: Some communities do not want smaller houses to have a related ADU because the ADU may be dominant and inconsistent with the single-family character of a neighborhood. Communities sometimes set a minimum size for the principal dwelling unit as an eligibility requirement for constructing an ADU. While a recent survey of 50 ordinances did not reveal any communities that took this approach (APA 1996), the survey did find that communities often regulate the relative sizes of the ADU and the principal unit by setting maximums on ADUs in terms of percentage of the living space of the principal dwelling or a maximum floor area size for the ADU, or both. Setting a minimum size on principal units as an eligibility requirement for an ADU is not recommended; it is better to deal with the issue of consistency with single-family character by limiting the size of the ADU in terms of a percentage of the principal dwelling unit (See Section 17 below.)

13. Principal Dwelling Unit Building Standards - Age.

Note: This section addresses the question of how soon an ADU can be installed after the principal dwelling is constructed. The discussion assumes that the ADU being built is an accessory apartment. Accessory cottages built with new houses would create the greatest amount of political resistance (more than accessory apartments), raising concerns about the single-family zone being converted to a duplex zone.

Regulations that require houses to be a certain age before becoming eligible for an ADU are adopted out of homeowners' concern that too many ADUs will overwhelm the neighborhood. The specific concern is that houses will be designed and marketed with ADUs if new houses can have them. ADUs should not be allowed in new houses, opponents say, because the intent behind them is to use the existing housing stock (MRSCW 1995, 47). To address this issue, communities sometimes set limits on how quickly ADUs can be built, based on the age of the principal dwelling units. (Even more rarely, communities use ADUs to revitalize only older neighborhoods and require the principal dwelling to be built before a certain date, such as 1976. (See Hamden, Conn., Zoning Regulations (1996) and Hare 1981, 14).

An age limitation on the principal dwelling unit will reduce the number of ADUs developed, and the optimal provision allows buildings of any age to be eligible for an ADU. The favorable provision would not permit ADUs in buildings completed in the last three years. As a minimal provision, the principal dwelling unit is eligible for an ADU after it is a specified number of years old. The age required for the principal dwelling unit is generally from two to five years (APA 1996). If a community does allow ADUs in new houses, as in Section 7, it would, of course, be contradictory to base eligibility for an ADU on the age of the principal dwelling or how long it has been owned, as in some provisions in Sections 13 and 14.

[Optimal provision] An ADU may be developed in either an existing or a new dwelling unit (WOCDC 1994, Sec. A.7.).

[Favorable provision] An ADU may be developed in a dwelling unit that has been completed for at least three years.

[Minimal provision] An ADU may be developed in a dwelling unit that has been completed for at least [specify] years.

14. Principal Dwelling Unit Building Standards - Term of Ownership.

Note: Requirements concerning the term of ownership are similar to those regarding the age of the principal dwelling. They deal with the question of how long the principal dwelling must be owned by the current owner before an ADU can be constructed. Neighbors can raise the concern that speculators will buy houses simply to install an ADU. Advocates for ADUs point out that term of ownership requirements bar first-time buyers from using ADU rental income to defray house mortgage or maintenance costs (MRSCW 1995, 48). Also, requiring that the principal dwelling or the ADU be owner occupied is an effective protection against speculation. As with restrictions on the age of the principal dwelling, we do not recommend term-of-ownership requirements. Requiring home ownership for a specified number of years is the minimal provision.

[Optimal provision] An ADU may be developed in either an existing or a new dwelling unit (WOCDC 1994, Sec. A.7.).

[Favorable provision] None

[Minimal provision] An ADU may be developed in a dwelling unit that has been owned at least [specify] years by its current owner.

15. ADU Building Standards - Architectural Design and Types of Structures.

Note: This section and the remaining sections on building standards govern the appearance of accessory cottages. Homeowners adjacent to ADUs are sometimes concerned that ADUs will erode the single-family charm of their neighborhood, and ADU ordinances commonly address many appearance issues (APA 1996), such as type of structure, architectural design, maximum size, minimum size, and whether the ADU is subordinate to the principal unit.

This section specifically deals with the type of structure (mobile home, site-built dwelling, or manufactured housing) that can be used as an ADU. It also addresses whether the ADU must be architecturally consistent with the principal unit and whether it must be consistent in appearance with a site-built single-family residence. The optimal 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. No other appearance requirements are placed on ADUs in the optimal provision. The favorable provision is more restrictive by allowing manufactured houses to be ADUs only if they are allowed in the zone and are consistent with the appearance of a single-family residence. The minimal provision adds to the favorable provision the requirement that the ADU must be consistent with the building type of the principal dwelling unit.

[Optimal provision] A mobile home or manufactured dwelling unit may be used as an ADU in any zone in which dwelling units are permitted (adapted from WOCD 1994, Section 9).

[Favorable provision] A manufactured dwelling unit may be used as an ADU in any zone where that type of structure is permitted if the appearance of the same remains that of a site-built, single-family dwelling unit (WOCD 1994, Section 9).

[Minimal provision] A manufactured dwelling unit may be used as an ADU in any zone where that type of structure is permitted if the proposed ADU is consistent with the building type of the principal unit and the appearance of the ADU remains that of a site-built, single-family dwelling unit (WOCD 1994, Section 9).

16. ADU Building Standards - Orientation of Entrance.

Note: Many ADU regulations focus on the entrance of the ADU as an aesthetic concern. Most communities discourage or prohibit entrances from being constructed on the front of principal buildings. Thus, entrances and particularly stairways are limited to side or rear yards. When a front entrance is required for physical or cost reasons, communities often demand that the front entrance to the principal dwelling must double as the entrance to both units. The options below vary in how strictly entrances and stairways are regulated. The optimal provision requires ADU entrances to be less visible than principal dwelling unit entrances, and stairways may not be on the front

of the principal dwelling unit. The favorable and minimal provisions are similar, in that both require ADU entrances not to be visible from the street view and limit ADU stairways to the rear of principal dwelling units. While the favorable provision allows ADUs to share a front entryway with the principal dwelling unit, the minimal provision does not.

[Optimal provision] If the ADU's primary entrance is not the same as that for the principal dwelling unit, it shall be less visible from the street view of the principal dwelling than the main entrance of the principal dwelling unit (adapted from WOCD 1994, Section A.10.), and the ADU's stairways may not be constructed on the front of the principal dwelling unit.

[Favorable provision] The ADU's primary entrance shall be not visible from the street view of the principal dwelling, and the ADU's stairways may not be constructed on the front or side of a principal dwelling unit.

[Minimal provision] No entrance for an ADU shall be permitted on, or, from the front of a principal dwelling unit; the ADU's primary entrance shall be not be visible from the street view of the principal dwelling unit; and the ADU's stairways may not be constructed on the front or side of a principal dwelling unit.

17. ADU Building Standards - Size.

Note: This section deals with a number of issues related to the size of the ADU. The intentions of communities in setting size limitations are commonly to require the ADU to be subordinate to the principal dwelling unit, to control neighborhood density, and to control visual impacts.

The standards of this section set minimums on the ADU square footage and maximums on the total square footage and number of bedrooms of the ADU. A common minimum size requirement for an ADU is 300 square feet; a frequent maximum on number of bedrooms is two; and the maximum size for ADUs falls in the range of 600 to 1,200 square feet, with 800 square feet occurring most often as a maximum size (APA 1996).

This model local ordinance does not directly require the ADU to be subordinate to the principal unit but does so indirectly by setting the maximum floor space of the ADU as a percentage of the living area of the principal unit. Advocates for ADUs point out that less affluent homeowners in smaller houses may not qualify to build an ADU if their house is too small (MRSCW 1995, 30). For example, if the ADU may not be larger than 30 percent of the living area of the principal unit but may not be smaller than 300 square feet, a homeowner with a living area of only 900 square feet could not have an ADU (270 square feet is 30 percent of 900 square feet and less than the minimum required size of 300 square feet). For this reason, the favorable and minimal provisions below raise the maximum percentage to 40 percent of the living space of the principal unit. Such a maximum percentage

is not unusual (APA 1996). Communities wanting to be more strict than the minimal option can change the percentage after determining that greater limitations are needed to protect the public interest. The maximum size of an ADU in the optimal provision is 1,200 square feet and 800 square feet in the minimal provision. (The maximum ADU size allowed in a recent survey of 50 ADU ordinances was 1,200 square feet [APA 1996].)

No alternative is listed as the optimal option. Size can be limited by other regulations. The Uniform Building Code (Sections 1207 and 1208), for example, contains a minimum size for efficiency units. Similarly, lot coverage maximums and minimum lot sizes limit the size of accessory cottages. Health codes can also limit the number of bedrooms in an ADU.

[Optimal provision] None

[Favorable provision] In no case shall an ADU be more than 40 percent of the living area of a principal dwelling unit, nor more than 1,200 square feet, nor less than 300 square feet, nor have more than two bedrooms (adapted from WOCD 1994, Section A.8.).

[Minimal provision] In no case shall an ADU be more than 40 percent of the living area of a principal dwelling unit, nor more than 800 square feet, nor less than 300 square feet, nor have more than two bedrooms (adapted from WOCD 1994, Section A.8.).

18. ADU Building Standards - Not Intended for Sale.

Note: An argument of opponents to ADUs is that the owners will eventually sell them off as condominiums. While this can create double owner occupancy of the premises, it can also result in the premises being occupied only by tenants. Thus, the opponents are concerned that the premises will not be as well maintained as owner-occupied premises. Opponents also warn that turning some ADUs into condominiums makes their fear of a neighborhood of duplexes a reality. The California ADU statute has a “not intended for sale” standard (Cal. Gov’t Code Section 65852.2(b)(1)(A)), and communities occasionally impose similar requirements (APA 1996).

One concern, however, is that if a community voids an ADU permit because the ADU has been sold for a condominium, a court may reverse the community action on the basis that zoning can regulate land use but not types of land ownership (Ziegler 1995, 56A-11 and 56A-12). Before adopting this standard, legal counsel should be consulted because courts are also reluctant to uphold regulations that may limit property owners’ ability to sell their land. Since this standard basically addresses the concerns of neighbors, it is listed below as a minimal option.

[Optimal provision] None

[Favorable provision] None

[Minimal provision] The ADU shall not be intended for sale and may be rented (adapted from Cal. Gov't Code Section 65852.2(b)(1)(A)).

19. ADU Building Standards - Screening and Orientation.

Note: Privacy is at the heart of neighbors' fears about being overrun by ADUs. This standard protects neighbors' privacy by giving the permit issuer a number of factors to consider, and the ADU homeowner a variety of options, that can be used to honor any adjacent landowner's privacy. While it could be argued that this standard balances the neighbors' and the ADU owners' interests, many owners are likely to view it as inconvenient or even onerous. Such a standard is relatively rare and is listed as a minimal option because it focuses more on the neighbors' concern over the visual or privacy impacts of ADUs.

[Optimal provision] None

[Favorable provision] None

[Minimal provision] The orientation of the proposed ADU shall, to the maximum extent practical, maintain the privacy of residents in adjoining dwellings as determined by the physical characteristics surrounding the ADU, including landscape screening, fencing, and window and door placement (adapted from City of Olympia, Washington, Unified Development Code, Section 18.04.060 1.b. 1995).

20. Parking and Traffic.

Note: Because of the average drop in household size, traffic is not generally a problem with ADUs. Most neighborhoods that house ADUs were designed for families that would generate more traffic than today's actual occupancy levels (Verrips 1983, iv; Gellen 1985, 151-152). For this reason, we recommend no standards for controlling traffic. Communities that are concerned about traffic may want to deal with it under density controls, as discussed in Section 22 below.

The issue of parking, however, is more complicated. Parking standards are one of the most frequent concerns (Hope 1996), and one expert views parking as the most difficult issue (Hare 1989, 24). Not surprisingly, communities tend to require too many parking spaces, making parking requirements one of the major obstacles to increasing the number of new ADUs (CHCD 1989, VIII-13). For example, in a 1996 survey of local ADU ordinances (APA 1996), 4 of the 50 surveyed communities required up to three spaces per ADU. But in

suburban communities where hilly terrain does not limit parking on sites or streets, ADUs will not cause parking problems (Verrips 1983, 83).

In addition, there is a reluctance in many communities to allow tandem parking (one vehicle in front of the other in a driveway) and to allow parking in setback areas even when that is a normal practice in a neighborhood. Advocates of ADUs emphasize that single-family homes with teenagers can generate as much or more traffic, and the need for parking is often minimal as ADUs are frequently occupied by “empty nesters” and single persons who have fewer cars or no car (MRSCW 1995, 38 and 39).

The controversy over parking illustrates that communities vary tremendously in terms of physical conditions and parking norms. These norms vary from cars being invisible to cars being ubiquitous, including tandem parking, parking on sideyard parking pads, and curb parking (Gellen 1989, 172). Neighbors often vary in how much curb parking they think can be allowed before they see the neighborhood streets as overcrowded. Because neighborhoods have different standards, a performance approach is needed, allowing flexibility rather than a set rule that ignores the variety of circumstances (Gellen 1989, 172).

The optimal provision limits the number of spaces that can be required, while the favorable provision allows a flexible approach because more than one parking space may be required under certain conditions. Both of these options are consistent with the model state act, whereas the minimal provision is not. The minimal option is required by some communities. However, it focuses on neighbors’ concerns and creates difficulties for owners of ADUs because it does not allow parking in setbacks, tandem parking, or on-street parking. In addition, this requirement may be more onerous than parking requirements for the principal dwelling unit. (An assumption related to these standards is that there is only one ADU per principal dwelling unit.)

[Optimal provision] One parking space is required per ADU if:

- a. the same requirement exists for the principal dwelling unit;
- b. no other parking spaces are available in side or rear yards, by tandem parking, or on-street parking; or
- c. the use of the ADU will create the need for an additional parking space.

[Favorable provision] One parking space is required per ADU.

- a. Additional parking may be required, provided that:
 1. the Zoning Administrator finds that the additional parking requirements are directly related to the use of the ADU; and
 2. the total number of parking spaces required for an ADU does not exceed the number of spaces required for a principal dwelling unit.

- b. The Zoning Administrator may permit off-street parking in setback areas or through tandem parking if the off-street parking:
1. would not block access by emergency vehicles to the principal dwelling unit or ADU; and
 2. is permitted and occurs in the neighborhood (adapted from Cal. Gov't Code Section 65852.2(e)).

[Minimal provision] Two off-street parking spaces are required for each ADU.

21. Public Health.

Note: The adequacy of water and sewer service to ADUs is generally not an issue because ADUs, rather than creating undue burdens, usually result in more efficient use of these services (MRSCW 1995, 50). Nevertheless, an ADU ordinance standard for water and sewer services should exist if current services are near capacity or ADUs add more bedrooms to the principal dwelling unit. Public health issues are generally addressed through regulations other than zoning, but an ordinance standard can require the homeowner developing the ADU to provide proof of conformance to public health regulations. We consider this standard to be necessary for the benefit of ADU owners and the neighbors. All three options contain this requirement.

The minimal option contains an additional requirement. Because of aesthetic concerns, communities sometimes require only one electrical and one water meter per principal dwelling unit. Three communities were found to have this requirement in a recent study of 50 ADU ordinances (APA 1996). Minimizing the meters on the exterior of a building is designed to support the owner-occupancy requirement and to maintain the appearance of single-family rather than two-family houses (MRCSW 1995, 50).

[Optimal provision] Applicants for ADU permits must supply the Zoning Administrator with certification by the municipal health official that the water supply and sewage disposal facilities are adequate for the projected number of residents (adapted from WOOD 1994, Section A. 2.).

[Favorable provision] [Same as optimal provision]

[Minimal provision] Applicants for ADU permits must supply the Zoning Administrator with certification by the municipal health official that the water supply and sewage disposal facilities are adequate for the projected number of residents. In addition, only one electrical and one water meter shall be allowed to serve the principal dwelling unit and the ADU (latter sentence adapted from Edmonds, Washington, Community Development Code, Section 20.21.030 C. 1996).

22. Density Limits.

Note: Restrictions on density are designed to reduce the number of ADUs in order to minimize their projected effects on the neighborhood. Density controls may also be put in place to avoid an accumulation of ADUs in the same area or to distribute ADUs evenly through an area (MRSCW 1995, 46).

A wide range of methods are used to limit density of ADUs, including:

- *quotas on the total number of ADU permits before an ADU ordinance is repealed;*
- *quotas on the number of permits issued before an ADU ordinance is reviewed;*
- *periodic reviews of ADU ordinances to evaluate the number of permits issued;*
- *limitations on the number of ADUs per area (e.g., by block or census tract);*
- *restrictions on the number of ADUs as a percentage of the residences in an area;*
and
- *spacing requirements between ADUs.*

Advocates of ADUs may argue, however, that density rules reduce the number of ADUs unjustifiably. When the infrastructure in single-family neighborhoods is underutilized, why is it fair to say “no” to one homeowner applying to create an ADU simply because another homeowner in the area has already installed an one? Justifying the density control may be even harder if the homeowner with the ADU permit originally installed it illegally and now is issued the permit to legalize wrongdoing.

But density controls may be an essential political tool in some communities. Guarantees that neighborhoods will not be overrun by ADUs may increase support for an ADU ordinance in a community. For this reason, density controls are suggested as the minimal provision. Density limits for ADUs are not recommended as optimal options because the controls are hard to justify.

The favorable provision calls for annual reporting. This reporting can trigger a reconsideration of the ordinance if density thresholds are exceeded. This option is considered favorable because its effect, rather than vetoing an application for an ADU, is to cause a review of the ordinance for amendments to the ADU ordinance. We want to emphasize that this review calls for “amendments” rather than repeal of the ordinance.

[Optimal provision] None

[Favorable provision] The Zoning Administrator shall report annually to the municipal legislative body the number of units established, the geographic distribution of the units, the average size of the units, the number and type of complaints, and completed enforcement actions. The municipal legislative body shall reassess this ordinance for amendments every [specify number] years or sooner if records show that 20 percent of the single-family

structures within any census tract or citywide have ADUs (adapted from Tacoma, Wash., Municipal Code, Section 13.06(B)(8) (1996) in MRSCW 1995, 58).

[*Minimal provision* - choose one of the following four options] No applications for ADUs may be accepted in census tracts or areas if granting the permit would cause the percentage of single-family units with ADUs of any single-family zone in one census tract to exceed 20 percent (adapted from Seattle, Washington, Section 23.44.025, Seattle Municipal Code in MRSCW 1995, 46).

[or]

A permit for an ADU may be issued if not more than 10 percent of the existing single-family units within 1,000 feet of the proposed ADU contain existing ADUs (adapted from South Windsor, Connecticut, Section 4.7.1.g., Zoning Ordinance 1990).

[or]

A permit for an ADU may be issued if not more than [specify number] permits have been issued for ADUs over the three-year period since the adoption of these regulations (adapted from Hamden, Connecticut, Section 701 m., Zoning Regulations 1996).

[or]

The Zoning Administrator may issue a permit for an ADU if the total number of permits has not exceeded [specify number]. When this number is exceeded, the Zoning Administrator shall report to the municipal legislative body that the number is exceeded, and that body shall review the ADU ordinance for its continuance, amendment, or repeal.

23. Legalizing ADUs.

Note: An illegal ADU is one that was installed without obtaining the required permits from the local government. Some ADUs may have existed prior to any ordinance making them illegal. Those ADUs can become legal, nonconforming ADUs if they initially conformed to all public laws. However, ADUs installed after zoning regulations were adopted are illegal unless permits were obtained from the local government. After permits are available for ADUs, illegal ADUs may actually be encouraged by harsh regulations, excessive fees, and tedious application procedures. Illegal ADUs are quite common because of the pressure for affordable housing and the reluctance of many communities to legalize ADUs.

A goal of some communities that are more familiar with these issues is to legalize the illegal ADUs for safety reasons. But many ADU owners strongly resist legalization out of their fear of higher property taxes, 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

(Gellen 1985, 187-191). For these reasons, programs to accommodate illegal ADUs have not been very successful (Gellen 1985, 188). 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.

A variety of approaches, however, are available to deal with illegal ADUs. First, we recommend not having harsh regulations, lengthy application processes, or high fees that will create even more illegal ADUs. In addition, the model ordinance includes the following approaches: amnesty periods from enforcement, long time periods to comply with regulations, an exemption from all but safety regulations, and the threat of stiff penalties after all else has failed. While there appears to be no optimal or even favorable provision for a community living with numerous illegal ADUs, we do suggest a minimal provision below that includes several of the above options.

Some benefits accrue to communities that legalize illegal ADUs. If illegal units are tolerated, the risk is increased 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 their ADU regulation that they are committed to the public interest by requiring owners of illegal ADUs to come forward and legalize their units. Furthermore, legalizing the illegal ADUs provides the opportunity to correct dangerous safety hazards (such as inadequate electrical wiring). With these benefits in mind, we suggest the minimal provision for legalizing ADUs below.

[Optimal provision] None

[Favorable provision] None

[Minimal provision] Any existing illegal ADU will not be subject to any enforcement action if an application to legalize the ADU is submitted within [specify number] months of the adoption of these regulations (adapted from a 1995 draft of Village of Scarsdale, New York, Zoning Code 1995).

[or]

Owners of illegal ADUs shall be guilty of a misdemeanor and subject to a penalty of [specify the maximum allowed by law]. Any existing illegal ADU will not be subject to any enforcement action if:

1. The ADU owner applies for a permit to legalize the illegal ADU permit within [specify] months of the adoption of these regulations;
2. The ADU complies with the minimum requirements of the Uniform Building Code, Section 1208, within [specify] months of the date of applying for a permit under this Section (adapted from Mercer Island, Washington, Section 19.04.0607(D); MRSCW 1995, 45);
3. The ADU complies with the minimum housing code standards within [specify] months of the date of applying for a permit under this Section of the ordinance (adapted from Tacoma, Washington, Section 13.06.196(C)(11) Code, MRSCW 1995, 44); and
4. The ADU owner supplies the Zoning Administrator with certification by the municipal health official that the water supply and sewage disposal facilities are adequate for the ADU (adapted from WOCD 1994, Section A.2.).

REFERENCES

1. APA (American Planning Association) 1947. *Conversions of Large Single-family Dwellings to Multiple-family Dwellings*, Planning Advisory Service Report No. 461. Chicago: American Planning Association.
2. APA (American Planning Association) 1996. *Accessory Dwelling Unit Survey*. Chicago: American Planning Association.
3. BCMHRCS (Ministry of Housing, Recreation and Consumer Services, Province of British Columbia) 1995. *Secondary Suites, An Affordable Housing Choice for British Columbians: A Summary of Local Government Practices*. Vancouver: Ministry of Housing, Recreation and Consumer Services, Province of British Columbia.
4. Brewitt, Jeff 1987. *Residential Conversions and Parking in Sydenhan Ward* (a report submitted in partial fulfillment of the requirements for the degree of Master of Urban and Regional Planning, School of Urban and Regional Planning, Queen's University at Kingston, Kingston, Ontario).
5. CDHCD (Department of Housing and Community Development, State of California) 1987. *California Affordable Housing Legislation: A Study of Local Implementation, Volume 1*. Sacramento: Department of Housing and Community Development.
6. CDHCD (Department of Housing and Community Development, State of California) 1990. *Second Units*. Sacramento: Department of Housing and Community Development.
7. CSS (Community Systems and Services, Inc.) 1991. *Accessory Dwelling Units: An Evaluation of the Fairfax County Program and Recommendations for Change*. Fairfax County, Virginia: Department of Housing and Community Development.
8. DPDL (Department of Planning and Development, Planning Division, City of London, Province of Ontario) 1995. *Intensification and Bill 120, Impacts on the North London and Broughdale Communities*. City of London, Ontario: Department of Planning and Development, Planning Division.
9. ERA (Ekos Research Associates Inc.) 1987. *The Impact of Conversions on Neighborhoods: Property Values and Perceptions* (a report submitted to Susan Corke, Manager, The Ministry of Housing, Province of Ontario, Toronto, Ontario).
10. Filson, Lawrence E. 1992. *The Legislative Drafter's Desk Reference*. Washington D.C.: Congressional Quarterly, Inc.
11. Gellen, Martin 1985. *Accessory Apartments in Single-Family Housing*. New Brunswick, N.J.: Center for Urban Policy Research, Rutgers, The State University of New Jersey.
12. Goldman, Ellis G. and Hodges, Samuel J. III 1983. *Allowing Accessory Apartments, Key Issues for Local Officials*. Washington, D.C.: Office of Policy Development and Research, U.S. Department of Housing and Urban Development.

13. Hare, Patrick H. 1981. *Accessory Apartments, Using Surplus Space in Single Family Houses*. Planning Advisory Service Report No. 365. Chicago: American Planning Association.
14. Hare, Patrick H., Linda E. Hollis, and David Guttman 1984. *Accessory Apartments: A New Housing Option for the Elderly Homeowner* (a study funded by the AARP Foundation).
15. Hare, Patrick 1989. *Accessory Units: The State of the Art, Report I, Summary of Experience With Accessory Units in the US and Canada*. Washington, D.C.: Patrick H. Hare Planning and Design.
16. Hare, Patrick 1989. *Accessory Units: The State of the Art, Report IV, Survey of Installations of Accessory Units In Communities Where They Are Legal*. Washington D.C.: Patrick H. Hare Planning and Design.
17. HLSB (Legislative Service Bureau, State of Hawaii) 1988. *Ohana Zoning: A Five-Year Review*. Honolulu: Legislative Service Bureau.
18. Hope, Shane 1996. Telephone Interview by APA. Chicago, Ill., 30 August.
19. Knudsen, Corine 1996. Telephone Interview by APA. Chicago, Ill., 30 August.
20. Merriam, Dwight 1983. *Accessory Apartments. Zoning and Planning Law Report 6, No. 5: 121-126*.
21. MRSCW (Municipal Research and Services Center of Washington) 1995. *Accessory Dwelling Units, Issues and Options*. Report No. 33, October 1995. Seattle: Municipal Research and Services Center of Washington.
22. Town of Babylon, New York 1979. *Summary Report of Report on Illegal Two-Family Dwellings in the Town of Babylon*.
23. TSRPC (Tri-State Regional Planning Commission) 1981. *Single-Family Conversions, A Survey of Local Officials in the Tri-State Region*. Interim Technical Report No. 3112. New York: Tri-State Regional Planning Commission.
24. Verrips, Bert 1983. *Second Units: An Emerging Housing Resource*. People for Open Space Housing/Greenbelt Program, Technical Report No. 2-E. San Francisco: People for Open Space.
25. WOCD (Department of Community Development, State of Washington) 1994. *Accessory Dwelling Unit Ordinance Study and Recommendations*. Olympia: Department of Community Development.
26. WFBS& AA (Weir & Foulds, Barristers & Solicitors, and Allan E. Brass Associates, Inc.) 1987. *Portable Living Units for Seniors, Evaluation Part 4: Planning/Regulatory and Legal Assessment*. Toronto: Ministry of Housing.
27. Ziegler, Edward 1995. *Rathkopf's The Law of Zoning and Planning*. Deerfield, Illinois: Clark Boardman Callaghan.

RESOURCE GUIDE

Overviews

Hare, Patrick H. *Accessory Units: The State of the Art; Report I, Summary of Experience With Accessory Units in the U.S. and Canada*. 1989. (53 pages)

AVAILABLE FROM: Patrick H. Hare Planning and Design, 1246 Monroe St., NE, Washington, DC 20017. 202-269-9334. Price: \$15.

Municipal Research Services Center of Washington. *Accessory Dwelling Units: Issues and Options*. 1995.

AVAILABLE FROM: Municipal Research Services Center of Washington, 1200 5th Ave., Suite 1300, Seattle, WA 98101-1159. 206-625-1300. Price: \$18.

“How-To” Guides for Homeowners

Town of Babylon, New York. *Accessory Apartment Application*.

AVAILABLE FROM: Planning Department, Town of Babylon. 200 East Sunrise Highway, Lindenhurst, NY 11757. 516-957-3102. Free.

Fairfax, Virginia, County Government. *Developing an Accessory Dwelling Unit: A Resource Kit (for homeowners)*. 1991.

AVAILABLE FROM: Jeremy Novak, Program Manager, Home Improvement Loan Program, Department of Housing and Community Development, 3700 Pender Drive, Suite 300, Fairfax, VA 22030. 703-246-5152. Free.

Ontario Ministry of Municipal Affairs and Housing. *How to Create An Accessory Apartment*. 1988. (20 pages)

Ontario Ministry of Municipal Affairs and Housing. *Step-by-Step Guide To Adding A Rental Apartment In Your Home*. 1990. (32 pages)

AVAILABLE FROM: Ministry of Municipal Affairs and Housing, 777 Bay St., 2nd Floor, Toronto, Ontario M5G 2E5. 416-585-7041. Free.

Parking Studies and Approaches

Brewitt, Jeff. *Residential Conversions and Parking in Sydenham Ward*. Kingston, Ontario: Queen's University at Kingston, School of Urban and Regional Planning. 1987.
(Report: 100 pages)

AVAILABLE FROM: School of Urban and Regional Planning, Queen's University at Kingston, Kingston, Ontario. In case of difficulty in obtaining this document, it may be available on loan from Patrick H. Hare Planning and Design. 202-269-9334.

Marshall Macklin Monaghan Limited, in association with McNair and Marshall. *Parking and Accessory Apartments - A Metro Toronto Case Study*. (66 pages)

AVAILABLE FROM: Ministry of Municipal Affairs and Housing, 777 Bay St., 2nd Floor, Toronto, Ontario M5G 2E5. 416-585-7041. Free.

Neighborhood Impact

Ontario Ministry of Municipal Affairs and Housing in association with Ekos Research Associates, Inc. *The Impact of Conversions on Neighborhoods: Property Values and Perceptions*. June 15, 1987.

AVAILABLE FROM: Ministry of Municipal Affairs and Housing, 777 Bay St., 2nd Floor, Toronto, Ontario M5G 2E5. 416-585-7041. Free.

Studies of Homeowners and Tenants

AARP. *Understanding Senior Housing: Into the Next Century*. D13899. Washington, D.C.: AARP, 1996 (Report: 48 pages)

AVAILABLE FROM: AARP Fulfillment, 601 E St., NW, Washington, DC 20049. Free.

Installation Rates

Hare, Patrick H. *Accessory Units: The State Of The Art; Report IV Survey of Installations of Accessory Units in Communities Where They Are Legal*. 1989. (30 pages)

AVAILABLE FROM: Patrick H. Hare Planning and Design, 1246 Monroe St., NE, Washington, DC 20017. 202-269-9334. Price: \$15.

Starr Group, in association with Richard Drdla Associates and Jerome Markson Architects. *Flexible Use and Tenure Study*. December 1986. (200+ pages)

AVAILABLE FROM: Canada Mortgage and Housing Corporation, 650 Lawrence Avenue West, Toronto, Ontario M6A 1B2. 416-781-2451. Free.

Counseling and Marketing

Ontario Ministry of Municipal Affairs and Housing. *Neighbours Pilot Project*. June 1991. (48 pages, plus appendices)

AVAILABLE FROM: Ministry of Municipal Affairs and Housing, 777 Bay St., 2nd Floor, Toronto, Ontario M5G 2E5. 416-585-7041. Free.

Politics of Zoning Approval

Berridge Lewinberg Greenberg Ltd. *Evaluation of Scarborough Intensification Study*. April 1990. (14 pages)

AVAILABLE FROM: Ministry of Municipal Affairs and Housing, 777 Bay St., 2nd Floor, Toronto, Ontario M5G 2E5. 416-585-7041. Free.

Merriam, Dwight H. *Accessory Apartments*. *Zoning and Planning Law Report* 6, No. 5 (May 1983): 123-26.

AVAILABLE FROM: Municipal or university libraries.

Accessory Apartments and Home Buyers

Clayton Research Associates. *Analysis of Economics of Residential Conversion*. 1987. (28 pages, plus appendices)

AVAILABLE FROM: Ministry of Municipal Affairs and Housing, 777 Bay St., 2nd Floor, Toronto, Ontario M5G 2E5. 416-585-7041. Free.

Accessory Apartments and New Homes

Bradford, Susan. "Making Room for Granddaddy" *Builder*. January 1991, p. 54

Bradford, Susan. "The New American Home." *Builder*. August 1991, pp. 179-99.

AVAILABLE FROM: Municipal or university libraries.

Howe, Deborah A. "The Flexible House - Designing for Changing Needs." *Journal of the American Planning Association* 56, No. 1 (Winter 1990): 69-77.

AVAILABLE FROM: American Planning Association, Planners Book Service, 122 S. Michigan Avenue, Suite 1600, Chicago, IL 60603. 312-431-9100. Price \$48.

Starr Group, in association with Richard Drdla Associates and Jerome Markson Architects. *New Made-to-Convert Housing*. Ottawa, Ontario: Canada Mortgage and Housing Corporation, 1988. (33 pages)

AVAILABLE FROM: Canadian Housing Information Centre, Canada Mortgage and Housing Corporation. 1-800-668-2642. \$5.95 plus tax and shipping.

Detailed Zoning Studies

Babcock, Richard F. "The Egregious Invalidity of the Exclusive Single-Family Zone." *Land Use Law and Zoning Digest* 35, No. 7 at 3 (July 1983):

AVAILABLE FROM: Municipal or university libraries.

Hare, Patrick H. *Accessory Units: The State of the Art; Report III Model Zoning*. Washington, D.C.: 1992. (50 pages of model provisions and discussion and 30 pages of sample ordinances from a variety of communities)

AVAILABLE FROM: Patrick H. Hare Planning and Design, 1246 Monroe St., NE, Washington, DC 20017. 202-269-9334. Price: \$45, add \$5 if the order must be invoiced.

Liebmann, George W. "Suburban Zoning - Two Modest Proposals." *Real Property Probate and Trust Journal* 25, no. 1 (Spring 1990).

AVAILABLE FROM: Municipal or university libraries.

Using Accessory Apartments to Increase Density Near Transit

Archer, Paula and Jill McFarlane. *Accessory Apartments: Characteristics, Issues, Opportunities*. 1990. (48 pages)

AVAILABLE FROM: Canadian Housing Information Centre, Canada Mortgage and Housing Corporation, Building C-200, 700 Montreal Road, Ottawa, Ontario K1A 0P7. 613-748-2367. Free.

Borooah, Ann. *Achieving Housing and Environmental Objectives Through Residential Intensification: A Potential Partnership*. 1992. (21 pages)

AVAILABLE FROM: Ministry of Municipal Affairs and Housing, 777 Bay St., 2nd Floor,
Toronto, Ontario M5G 2E5. 416-585-7041. Free.

The prices provided above are correct to our best available information at the time of printing.
You will note that most documents available through public agencies are free, while those
available from private sources reflect the time and effort in preparing those documents.



**Public Policy Institute
601 E Street, NW
Washington, DC 20049
www.aarp.org**

PPI 5703(0300) . D17158

Excerpts from **American Planning Association** publication
ACCESSORY DWELLING UNITS MODEL STATE ACT AND LOCAL ORDINANCE

Foreword

“Accessory dwelling units (ADUs) are independent housing units created within single-family homes or on their lots. These units can be a valuable addition to a community’s housing stock. ADUs have the potential to assist older homeowners in maintaining their independence by providing additional income to offset property taxes and the costs of home maintenance and repair. Other potential benefits include companionship, the opportunity to negotiate for home maintenance or personal services in return for reduced rents, and increased personal security. ADUs also offer a cost-effective means of increasing the supply of affordable rental housing in a community without changing the character of a neighborhood or requiring construction of new infrastructure such as roads, sewers, and schools. Zoning ordinances that prohibit ADUs or make it extremely difficult for homeowners to create them are the principal obstacle to the wider availability of this housing option.

“The **Public Policy Institute of AARP** asked the **American Planning Association (APA)** to develop model legislation (a state statute and a local ordinance) that would assist AARP volunteer leaders and other interested citizens, planners, and government officials in evaluating potential changes to state laws and local zoning ordinances to encourage the wider availability of ADUs. The APA is the nation’s leading source of information on planning and zoning practices. Rodney L. Cobb, APA’s Staff Attorney and Editor of *Land Use Law and Zoning Digest*, was the principal investigator for this project. He was assisted by Scott Dvorak, Research Associate, and other members of APA’s research department. The authors have drawn heavily from the experiences of states and localities in developing the model legislation. As a result, many of the provisions incorporated in the model legislation have been tested in different communities and proven successful in actual practice.

“The model legislation is intended to serve as a guide for communities that want to make the benefits of ADUs available to households of all ages, not just older persons. It has been drafted to meet the needs of a wide variety of communities. Optional provisions, including those that are attractive even to very cautious communities, are incorporated in the model local zoning ordinance to provide as many choices as possible for jurisdictions to consider. The materials presented here indicate that ADUs can be a cost-effective solution for meeting myriad housing needs without engendering the negative impacts sometimes associated with other forms of affordable housing development. It is our hope that the model legislation will prove to be a valuable reference for communities seeking to increase the housing choices available to their residents.”

* * * *

From Daly City, California report

“A further city requirement that owners occupy the premises has proven critical to preventing nuisances. Officials reasoned that with the ADU owners on the premises, many nuisances that tenants might otherwise create ‘would not be tolerated. Although realtors have tried to repeal the owner-occupancy requirement, Daly City officials have made it clear that an owner’s presence on premises with an ADU is a must.”

* * * * *

From the APA Model State Legislation

“**2. Regulatory Authority** ... Section 2 authorizes localities to adopt ADU ordinances and specifies the powers they may exercise in regulating ADUs. This section authorizes local governments to allow ADUs in single-family or multi-family zoning districts: to require that either the ADU or the principal dwelling unit be owner-occupied; to impose standards with regard to parking, height, setback, lot coverage, architectural review, and other considerations; to define the application procedure for creating ADUs; and to set maximum and minimum sizes for attached and detached ADUs.”

* * * * *

“There are many benefits associated with the creation of legal ADUs on single-family lots (Cal. Stats. 1982, eli. 1440 Section 1). These benefits include:

- (1) Providing a cost-effective means of accommodating development by making better use of existing infrastructure and reducing the need to provide new infrastructure (Cal. Stats. 1982. ch, 1440 Section 1);
- (2) Increasing the supply of affordable housing without government subsidies (MRSCW 1995, 9);
- (3) Benefiting older homeowners, single parents, young home buyers, and the disabled (Hare 1989. Report I, 3);
- (4) Integrating affordable housing more uniformly in the community (MRSCW 1995, 9);
- (5) Providing homeowners with extra income to help meet rising home ownership costs (MRSCW 1995, 12);
- (6) Providing a means for adult children to give care and support to a parent in a semi-independent living arrangement (MRSCW 1995, 12);
- (7) Reducing the incidence of housing deterioration and community blight by preventing absentee ownership of properties (Verrips 1983,70);
- (8) ADUs in owner occupied single-family homes foster better housing maintenance and neighborhood stability (MRSCW 1995, 12: ERA 1987, 30);
- (9) Residential neighborhoods can accommodate a meaningful number of ADUs without significant negative impacts because these areas were typically designed for households with more persons than are occupying these areas (Verrips 1983, iv);

- (10) ADUs provide the opportunity for increased security and companionship for older and other homeowners who fear crime and personal accidents (MRSCW 1995, 13; Cal. Stat. 1982, ch. 1440 Section 1);
- (11) ADUs help meet growth management goals by creating more housing opportunities within existing urban areas (MRSCW 1995, 12);
- (12) ADDs enhance job opportunities for individuals by providing housing nearer to employment centers and public transportation; and ADUs can enhance the local property tax base (Goldman and Hodges 1983, 7)."

* * * * *

"Letting the owner live in either unit is important because a major benefit of ADUs is income for homeowners, allowing them to maintain their homes or to "age in place." Some homeowners prefer to live in the smaller unit, usually the ADU, in order to maximize their income from the rent-producing unit.

* * * * *

"[Section 2.]E. Requiring Owner Occupancy.

"Based on the finding of this act, that premises with owner-occupants are better maintained, the legislature declares that a municipal regulation requiring properties with ADUs to be owner occupied, either in the accessory unit or the principal unit, prevents deterioration of neighborhoods and is a regulation substantially related to land-use impact. Such a requirement is, therefore, a regulation of land use rather than a regulation of the user of land."

*"Note: Courts may rule that a community has no zoning authority to require that a site with an ADU be occupied by the owner, on the basis that this regulates the land user rather than the land use (Ziegler 1995, 56A-8). However, on July 29, 1996, a California appeals court issued the only published court decision (issued by a court higher than a trial court) addressing the owner-occupancy requirement in the context of ADUs. In the case of Sounhein v. City of San Dimas, 55 Cal. Rptr. 2d 290, the court heard a claim by homeowners that the city's owner-occupancy requirement imposed on their ADU permit was invalid; even if it were not invalid, it applied only to the "applicant" and not subsequent owners. But the court upheld the owner occupancy requirement as a "character of the property as owner-occupied" and further ruled that the requirement applies to all subsequent owners of the premises. *Id.* at 296. Such a condition attaches to the land, the court explained, in order to fulfill the legislative purposes in imposing the condition. *Id.* The purposes of the owner-occupancy requirement, the court noted, are to discourage speculation in residential properties that can make housing less affordable, to prevent the disadvantages of absentee ownership, and to preserve residential neighborhood character. The Sounhein case means that the owner-occupancy requirement for ADUs has now been directly addressed and upheld by a state court.*

"In Section 2.E.[above], the state legislature gives municipalities the specific authority to require owner occupancy on the basis that it encourages maintenance of the dwellings and premises."

* * * * *

From the Model Local Ordinance on ADUs

“10. Occupancy Standards - Owner of Premises.

“Note: Some neighbors are concerned that allowing ADUs will cause deterioration of neighborhood properties because landlord speculators will buy up houses with ADUs and rent out both units (MRSCW 1995, 28). The fear is that tenants will not maintain the units. A popular way to allay these fears is to require the owner of the lot to reside on the premises - the majority of ADU ordinances contain this requirement (APA 1996). There is evidence that owner occupancy does lead to better maintenance of the premises (Verrips 1983, 70). Not surprisingly, neighbors tend to want the adjacent premises with ADUs to be owner occupied (Town of Babylon, New York 1979, 2). In order for owner occupancy to be most effective in fulfilling the purposes of ADUs, it is important to allow the owner to live in either unit (see the discussion in Section 1. C i. of the model state act, the definition of “Accessory”). Communities often allow homeowners to reside in either the principal unit or the ADU (APA 1996).

“The optimal option includes both aspects of owner occupancy - requiring owner occupancy and allowing it in either unit - because both tend to facilitate the development of new ADUs. For communities that may not feel comfortable allowing the owner to live in either unit, the minimal provision requires the owner to reside in the principal dwelling unit. No favorable provision is recommended.

“Many communities monitor ADUs to ensure that the owner still lives on the premises. A variety of methods are used to do this monitoring (see Section 6), 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. Both the optimal and favorable provisions below require this registration.

“Various provisions of the model also address the issue of owner occupancy. Those provisions allow and support the requirement that the owner live in the larger or smaller unit (see the discussion in Section 2.E. of the model state act; also see Section 1.A.v. (7) – findings about benefits of owner occupancy - and the definitions of “Accessory” and “Owner-Occupant”). If a community adopts this ordinance but does not have a statute echoing these provisions of the model state act, it may want, with the advice of counsel, to include versions of those provisions in its zoning ordinance.

“Optimal provision. A lot or parcel of land containing an ADU shall be occupied by the owner of the premises, and the owner may live in either the ADU or the principal dwelling unit. Within 30 days of securing approval for construction of an ADU, the owner shall record against the deed to the subject property, a deed restriction running in favor of the municipality limiting occupancy of either the principal dwelling unit or the ADU to the owner of the property. Proof that such a restriction has been recorded shall be provided to the Zoning Administrator prior to issuance of the occupancy permit for the ADU (adapted from WOCD 1994, Application Procedures).”

* * * * *

“Also, requiring that the principal dwelling or the ADU be owner occupied is an effective protection against speculation.”

IN THE SUPREME COURT OF THE STATE OF UTAH

Jerald and Bonnie Anderson,
Michael Johnston, Sheila Johnston,
Jonathan Myres, Jim Tills, Gigi Tills
Plaintiffs and Appellants,

v.

Provo City Corp.,
Defendant and Appellee.

No. 20030679

F I L E D

January 21, 2005

2005 UT 5

Fourth District, Provo

The Honorable Gary D. Stott

Attorneys: Bruce R. Baird, Salt Lake, for plaintiffs

David C. Dixon, Provo, Jody K. Burnett, Salt Lake,
for defendants

DURHAM, Chief Justice:

¶1 The City of Provo amended a zoning ordinance governing residential neighborhoods near Brigham Young University to allow only those homeowners who reside in their homes to rent out "accessory" apartments. A group of homeowners brought suit challenging the amendment, and the district court granted summary judgment to Provo. In this appeal of that decision, the homeowners argue that the amended ordinance (1) exceeds Provo's legislative authority by regulating land ownership rather than land use, (2) violates the equal protection guarantees of the United States and Utah Constitutions, (3) is an invalid restraint on the alienation of property, and (4) unconstitutionally burdens the right to travel. **We affirm.** [*Homeowners appeal DENIED.* -- ptc]

REGULATORY AND PROCEDURAL BACKGROUND

¶2 The history of zoning regulations in the area around Brigham Young University (BYU), located in Provo, reveals the city's longstanding concern with accommodating the university's need for student housing while maintaining the character of residential neighborhoods.(1) The earliest regulation described in the record, dating back to at least 1959, allowed up to four boarders in a single-family dwelling as long as the house's construction did not reveal the boarders' presence or provide them with separate cooking facilities.

¶3 In 1974, the general structure of the current zoning scheme was put into place. Under this scheme, portions of the Wasatch and Pleasant View neighborhoods near BYU are zoned as single-family

neighborhoods,(2) but supplementary residential overlay (S Overlay) provisions allow residents in these neighborhoods to construct accessory apartments in their basements or upper floors and rent these apartments to up to four occupants, often students.(3) The Provo City Code describes the purpose of the S Overlay provisions thus:

to recognize the unique character of Provo City as a "university community" and to accommodate supplementary living accommodations in some appropriate single family residential areas of the community. The[] [S Overlay] provisions are intended to meet community demands for residential accommodations for semitransient residents in areas of the community adjacent to major educational and institutional uses. This overlay zone is designed to provide an alternative living environment for said semi-transient residents to that normally found within the higher density multiple residential zones. The (S) overlay zone will therefore protect and enhance the desirable aesthetic characteristics of the underlying single family residential zone. . . . The sole function of the overlay is to permit alternate methods of housing the occupancy otherwise permitted in an R1 [single-family residential] zone.

Provo City Code § 14.30.010.

¶4 Until the 2000 amendment under review in this case, owners with accessory apartments were not required to live in the primary residence in order to rent the apartment. Thus, owners could have two sets of tenants in such a dwelling: one, meeting the definition of "family" under the Provo zoning laws, occupying the primary residence; and another, whose identity the zoning laws did not restrict but who were likely to be university students, occupying the accessory apartment. In addition, there was no limit on how many such dwellings a single owner could possess.

¶5 In 1997, some owners in the Wasatch and Pleasant View neighborhoods began an effort to replace the S Overlay with an accessory apartment overlay (A Overlay), which would restrict the ability to rent out accessory apartments to those owners who occupy the primary residence. See Provo City Code § 14.46.030(2)(d)(i). However, the petition requesting adoption of the A Overlay failed to garner the signatures necessary to bring the proposal before the city planning commission. See id. § 14.46.060(1)(c) (requiring seventy percent of property owners within the affected area to sign such a petition). In 1999, these owners decided to pursue an alternative means of establishing an owner occupancy requirement in their neighborhoods, bypassing the signature requirement by proposing a textual amendment to the S Overlay provision itself. See id. § 14.02.020.

¶6 Following neighborhood meetings and a public hearing, the Provo City Planning Commission staff issued a report on January 26, 2000 recommending that the owner occupancy requirement be approved. The report suggested that limiting accessory apartment rental to owner occupants would promote the original purpose of the S Overlay, which, since its establishment, had been undermined by difficulties in enforcing congestion and nuisance problems. Although accessory apartments attached to owner occupied residences also contributed to these problems, the report noted that "as a general trend there seems to be a higher rate of violations at property where the owner does not reside." The report also indicated the neighborhood residents' feeling "that the[ir] stability is disintegrating one home at a time from what was once a predominantly affordable family owner occupied neighborhood." The proposed amendment was thus intended to "prohibit[] outside investors from targeting these neighborhoods[,] buying up homes and essentially creating duplexes that do not contribute to overall stability of the neighborhood."

¶7 An ad hoc technical committee was then appointed, and an independent consultant retained, to consider the length of the transition period, after which those currently not in compliance with the proposed owner occupancy requirement would have to comply. The commission staff subsequently revised its report to recommend that the period be at least five years. On April 4, 2000, the Provo City

Municipal Council held a public hearing and, following extensive public comment and discussion, voted unanimously to adopt a modified version of the commission's proposal. The approved amendment was put into effect by ordinance 2000-15. The ordinance amended the S Overlay provisions in Provo City Code section 14.30, giving nonconforming owners until at least April 4, 2003 to comply with the revised occupancy requirements, which now read as follows with subsections (c) and (d) added by ordinance 2000-15:

Occupancy: For purposes of a one family dwelling with an accessory dwelling unit, . . . the following occupancy rules shall apply:

(a) One of the dwelling units within the structure shall be occupied by:

(i) One (1) person living alone; or

(ii) The head of household and all persons related to the head of household by marriage or adoption as a parent, child, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent or great-grandchild. For purposes of this paragraph, two (2) or more of these persons must share the legal relationship of husband and wife, or parent and child or grandparent and child. Such parent or grandparent must actually reside in the subject dwelling.

(b) The remaining dwelling unit within the structure shall be occupied by no more than four (4) related or unrelated persons.

(c) One of the dwelling units within the structure shall be occupied by the owner of the property. Owner occupancy shall not be required when:

(i) The owner has a bona fide, temporary absence of three (3) years or less for activities such as temporary job assignments, sabbaticals, or voluntary service. Indefinite periods of absence from the home shall not qualify for this exception.

(ii) The owner is placed in a hospital, nursing home, assisted living facility or other similar facility.

(d) Owner occupancy as defined in this section shall mean:

(i) a human being who possesses more than fifty (50) percent ownership in the dwelling and said dwelling is the primary residence of the owner; or

(ii) a family trust whose primary purpose is for estate planning by one or more trustors who create the trust, place the dwelling in such trust and whose primary residence is such dwelling.

Provo City Code § 14.30.030(2).

¶18 A group of homeowners (Owners) affected by the amendment brought suit against Provo on April 4, 2001, seeking either to overturn ordinance 2000-15 as facially invalid or to obtain compensation for their investment losses through as-applied claims. The Owners and Provo filed cross-motions for partial summary judgment on the Owners' facial challenges. On July 14, 2003, following a hearing, the district court granted Provo's motion and denied the Owners' motion. Pursuant to the stipulation of the parties, the court then dismissed the Owners' as-applied challenges without prejudice, thus rendering its summary judgment a final order in the case, and stayed the effective date of ordinance 2000-15 pending a decision on appeal.

¶19 The Owners filed a direct appeal in this court. We have jurisdiction pursuant to Utah Code section 78-2-2. Utah Code Ann. § 78-2-2(3)(j) (2002); *Bradley v. Payson City Corp.*, 2003 UT 16, ¶ 35, 70 P.3d 47 (holding the supreme court has original appellate jurisdiction "over district court review of land use decisions by local governmental entities").

STANDARD OF REVIEW

¶10 Summary judgment is appropriate only where there are no genuine issues of material fact. *Sandy City v. Salt Lake County*, 827 P.2d 212, 217 (Utah 1992). "Because summary judgment is granted as a matter of law rather than fact, we are free to reappraise the trial court's legal conclusions," reviewing them for correctness. *Id.* at 218. In doing so, "we view the [undisputed] facts in a light most favorable to the party against which the motion was granted." *Id.* at 215.

ANALYSIS

I. PROVO'S AUTHORITY TO ISSUE ORDINANCE 2000-15

¶11 The Owners first argue that Provo exceeded its statutory authority in issuing ordinance 2000-15. Specifically, they maintain that an owner occupancy prerequisite to accessory apartment rental restricts who may own houses located within the S Overlay zone and thus impermissibly transforms the ordinance into a regulation of land ownership rather than land use. This issue is one of statutory interpretation, which we consider *de novo*. *Green v. Turner*, 2000 UT 54, ¶ 5, 4 P.3d 789 (stating that whether a county commission acted within its statutory authority was a matter of statutory interpretation); *Sandy City*, 827 P.2d at 218 (stating that whether a county "overstepped the bounds of its legislatively delegated authority" was a "pure question[] of law" that depends on statutory interpretation).

¶12 We have long recognized that a city's zoning power "is of necessity confined by the limitations fixed in the grant by the state, and to accomplishment of the purposes for which the state authorized the city to zone." *Marshall v. Salt Lake City*, 141 P.2d 704, 708 (Utah 1943); see *Hatch v. Boulder Town Council*, 2001 UT App 55, ¶ 7, 21 P.3d 245 ("The authority to regulate land use through zoning ordinances is conferred on municipalities by the state through enabling statutes."); see also *Provo City v. Ivie*, 2004 UT 30, ¶ 12, 94 P.3d 206 (recognizing that Provo "was created and functions pursuant to the laws enacted by the legislature in the Utah Municipal Code"). Our state legislature has granted a city's legislative body the power to "enact a zoning ordinance establishing regulations for land use and development that furthers the intent of [The Municipal Land Use Development and Management Act, Utah Code Ann. §§ 10-9-101 to -1003 (2003 & Supp. 2004)]." Utah Code Ann. § 10-9-401 (2003). This statutory language forms the basis for the Owners' argument that the zoning ordinance at issue here, by regulating land "ownership," goes beyond the power conferred on cities by the state to regulate land "use."

¶13 We reject the proposition that placing an owner occupancy condition on a supplementary accessory dwelling use constitutes an impermissible regulation of "ownership." Such a condition is not the type of ownership restriction that other courts have disapproved. "[A]s a practical matter, many zoning laws extend beyond the mere regulation of property to affect the owners and users thereof." *Kasper v. Town of Brookhaven*, 535 N.Y.S.2d 621, 626 (N.Y. App. Div. 1988). However, only those laws that "single[] out [an identifiable individual] for special treatment," *Village of Vilatie v. Smith*, 632 N.E.2d 1264, 1268 (N.Y. 1994), or otherwise "place the emphasis on the regulation of the person rather than the land," *Vlahos Realty Co. v. Little Boar's Head Dist.*, 146 A.2d 257, 260 (N.H. 1958) (emphasis added), qualify as *per se ad hominem* restrictions that exceed a local government's zoning power. See *Anza Parking Corp. v. City of Burlingame*, 241 Cal. Rptr. 175, 177 (Cal. Ct. App. 1987) (holding invalid a nontransferability condition on a use permit because it made the permit a "mere license or privilege to an individual [which did] not relate in its proper sense to the use of the property").

¶14 As the Owners point out, one treatise has suggested that a zoning law that "distinguish[es] between owner-occupied and rental housing" may be considered an invalid *ad hominem* restriction. 5 Edward H. Ziegler, Jr., *Rathkopf's The Law of Zoning and Planning* § 81.7 (4th ed. 2002). However, the

treatise clarifies that this suggestion does not necessarily apply to an owner occupancy restriction on "specially permitted" uses, such as those granted to individuals under a variance or conditional use permit, as long as the restriction is "reasonably related to the purposes underlying the zoning code." *Id.* (quoting *Finger v. Levensen*, 558 N.Y.S.2d 163, 165 (N.Y. App. Div. 1990)).

¶15 For purposes of our analysis here, we believe the generally-applicable owner occupancy restriction imposed by the S Overlay amendment is equivalent to an individually-applicable owner occupancy restriction on a variance or conditional use permit that allows an otherwise prohibited use. Like the latter, the restriction here does not prevent nonoccupying owners from renting their houses for single-family residential use; it merely prevents such owners from engaging in the supplemental activity of renting accessory dwellings—an activity that would not be permitted at all in the absence of the S Overlay provisions. Because the restriction serves to control only this supplemental use while not interfering with any owner's use of his primary residence, we believe the restriction is reasonably related to the underlying purposes of Provo's land use regulation. Cf. *Sounhein v. City of San Dimas*, 55 Cal. Rptr. 2d 290, 296 (Cal. Ct. App. 1996) (recognizing an owner occupancy requirement on a conditional use permit for construction of a second unit "as a strategy to minimize the adverse effects" of granting the permit while promoting its primary purpose "to create more affordable housing in existing neighborhoods").

¶16 We therefore hold that the S Overlay amendments effected by ordinance 2000-15 constitute land use regulations within the zoning power of the Provo City Municipal Council. Our further review of the ordinance is governed by Utah Code section 10-9-1001, which requires courts to "presume that land use . . . regulations are valid" and to "determine only whether or not the [regulation] is arbitrary, capricious, or illegal." Utah Code Ann. § 10-9-1001(3); see *Springville Citizens for a Better Cmty. v. City of Springville*, 1999 UT 25, ¶ 22, 979 P.2d 332. The Owners do not argue that the ordinance is arbitrary or capricious.⁽⁴⁾ However, they do argue that the ordinance is illegal because it violates their rights to equal protection and uniform operation of the law, the public policy against restraints on the alienation of property, and their right to travel. We thus turn to consider whether the ordinance is illegal for any of these reasons.

II. EQUAL PROTECTION AND UNIFORM OPERATION OF LAWS

¶17 The Owners contend that the owner occupancy prerequisite to accessory dwelling rental impermissibly distinguishes between occupying and nonoccupying owners in the Wasatch and Pleasant View neighborhoods, in violation of the uniform operation of laws provision of article I, section 24 of the Utah Constitution and the equal protection provision of the Fourteenth Amendment to the United States Constitution. These two provisions "embody the same general principle." *Gallivan v. Walker*, 2002 UT 89, ¶ 31, 54 P.3d 1069 (internal quotation omitted). However, "'our construction and application of [our state constitutional provision] are not controlled by the federal courts' construction and application of the Equal Protection Clause.'" *Id.* at ¶ 33 (quoting *Malan v. Lewis*, 693 P.2d 661, 670 (Utah 1984)). We have previously observed that "Utah's uniform operation of laws provision is 'at least as exacting and, in some circumstances, more rigorous than the standard applied under the federal constitution.'" *Id.* (quoting *Mountain Fuel Supply Co. v. Salt Lake City Corp.*, 752 P.2d 884, 889 (Utah 1988)). Since, as discussed below, we hold that the Provo ordinance's owner occupancy requirement does not violate the uniform operation of laws provision, we analyze the Owners' claim with regard to that provision only and need not conduct a separate analysis under the federal equal protection provision. See *State v. Schofield*, 2002 UT 132, ¶ 18 n.3, 63 P.3d 667.

¶18 The "essence" of the uniform operation of laws provision⁽⁵⁾ of the Utah Constitution is that a legislative body must not "classify[] persons in such a manner that those who are similarly situated with respect to the purpose of the law are treated differently by that law, to the detriment of some of those

so classified." Gallivan, 2002 UT 89 at ¶ 36 (internal quotation omitted). The provision forbids "singl[ing] out one person or group of persons from among the larger class [of those similarly situated] on the basis of a tenuous justification that has little or no merit." Id. at ¶ 37 (internal quotation omitted). We review the constitutionality under the uniform operation of laws provision of, in this case, a city ordinance to determine, first, "what classifications . . . are created by the [ordinance]"; second, whether the different classes "are treated disparately"; and third, whether the municipal council "had any reasonable objective that warrants the disparity." Schofield, 2002 UT 132 at ¶ 12 (quoting *State v. Mohi*, 901 P.2d 991, 997 (Utah 1995)).(6)

¶19 The S Overlay amendment does distinguish between homeowners on the basis of whether they occupy their residence or not. See Provo City Code § 14.30.030(2)(c). The resulting two classes--occupying and nonoccupying owners--are treated differently, the former allowed to engage in the supplementary use of renting accessory dwellings and the latter prohibited from doing so unless one of the stated exceptions applies. Id. Nevertheless, we uphold the amendment because we conclude that the disparity in treatment is reasonably justified by the Provo City Municipal Council's stated objective of balancing the city's competing interests in accommodating student housing needs and in preserving the character of single-family residential neighborhoods.

¶20 As described above, the record before us indicates that the Provo City Planning Commission recommended amending the S Overlay provisions to include the owner occupancy requirement because the provisions in their previous form were not adequately serving their stated goals. The planning commission concluded that preventing absentee landlords from dominating the Wasatch and Pleasant View neighborhoods would help to retain the neighborhoods' single-family character rather than converting them, in effect, to duplexes with both units often occupied by semitransient residents.

¶21 The objective of preserving the character of single-family residential neighborhoods is, we think, a legitimate one. See *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 732-33 (1995) (referring to the benefits of such neighborhoods for purposes of "family values, youth values, and the blessings of quiet seclusion and clean air"). Moreover, we believe the municipal council could reasonably conclude that limiting accessory apartment rental to occupying owners would further this objective. The Owners have failed to persuade us that the distinction between an occupying owner who rents an accessory apartment to boarders, on the one hand, and an absentee owner who rents both the main dwelling and the accessory apartment, on the other, is meritless. Rather, the latter situation does appear, in effect, to transform a single-family residence into a duplex. In contrast, the presence on the property of the owner, who would maintain closer control over both the primary and the accessory dwelling units, would more likely mitigate this effect and tend to preserve the neighborhood's single-family residential character.

¶22 The cases cited by the Owners in support of their argument on this point are inapposite. In *College Area Renters & Landlord Ass'n v. City of San Diego*, 50 Cal. Rptr. 2d 515 (Cal. Ct. App. 1996), a California court invalidated on state equal protection grounds a zoning ordinance that limited the number of occupants in non-owner-occupied residences while placing no occupancy limit on owner-occupied residences in the same neighborhood, where the asserted goal was to reduce overcrowding. Id. at 521. The court concluded that there was not "a sufficient relationship between the non-owner-occupied classification and the overcrowding problem" because owner occupants were just as likely as renters to contribute to overcrowding. Id. Similarly, in *Kirsch v. Prince George's County*, 626 A.2d 372 (Md. 1993), the Maryland Court of Appeals held invalid, under state and federal equal protection law, a zoning ordinance that imposed special restrictions, with the stated aim of reducing noise, litter, and parking congestion, only where the occupying renters were university students. Id. at 380 (holding that "[t]o differentiate between permissible residential tenant classes by creating more strenuous zoning

requirements for some and less for others based solely on the occupation which the tenant pursues away from that residence is that sort of arbitrary classification forbidden under our constitutions"). Both of these cases involved disparate burdens on the primary use of a residence based on arbitrary distinctions between owners and renters or between categories of renters.

¶23 Here, however, as indicated above, the S Overlay amendment places no burden on the primary use of Wasatch and Pleasant View houses as single-family residences, regardless of whether the occupying families are owners or renters. The amendment merely restricts who may engage in the secondary use of renting an accessory apartment. Moreover, unlike in *College Area Renters and Kirsch*, the distinction between occupying and nonoccupying owners for that purpose is, we have concluded, reasonably related to Provo's stated objective. See *Kasper*, 535 N.Y.S.2d at 624 (upholding against an equal protection challenge a zoning ordinance requiring owner occupancy as a prerequisite to renting an accessory apartment because the requirement furthered the goals of supplying affordable housing to renters and providing owners of limited means with rental income).

¶24 The Owners suggest that the amendment's definition of "owner occupancy," which requires an owner to be either a human being or a family trust, Provo City Code § 14.30.030(2)(d), unlawfully discriminates by excluding partnership or corporate forms of ownership. However, we believe such an exclusion is a legitimate means of preventing circumvention of the owner occupancy requirement. The Owners also suggest that the stated exception to the owner occupancy requirement for those owners who have "a bona fide, temporary absence of three years or less for activities such as temporary job assignments, sabbaticals, or voluntary service," *id.* § 14.30.030(c), amounts to discriminatory "religious tailoring." Regardless of whether Provo had in mind the maximum three-year missionary service of members of the Church of Jesus Christ of Latter-day Saints when formulating this exception, however, the exception by its plain language is not limited to LDS Church missionaries. It clearly applies to anyone who is away for vocational or voluntary service purposes, secular or religious, for three years or less. We thus perceive no basis in this language for holding the amendment invalid.

¶25 We therefore hold the amendment does not violate the Utah Constitution's uniform operation of laws provision.

III. RESTRAINT ON ALIENATION

¶26 The Owners also argue that the S Overlay amendment places an invalid restraint on alienation of properties located in the S Overlay zone because the restriction on accessory apartment rental will make it more difficult for owners of these properties to find willing purchasers. There is clearly no direct restraint on alienation here. See *Redd v. W. Sav. & Loan Co.*, 646 P.2d 761, 763 (Utah 1982) (explaining that direct restraints involve restraints contained in property conveyances or contracts). However, we have previously recognized that an indirect restraint on alienation "arises when an attempt is made to accomplish some purpose other than the restraint of alienability, but with the incidental result that the instrument, if valid, would restrain practical alienability." *Id.* at 764 (quoting *L. Simes & A. Smith, Law of Future Interest* § 1112 (2d ed. 1956)). Arguably, a zoning ordinance may result in such an indirect restraint. See *Gangemi v. Zoning Bd. of Appeals*, 763 A.2d 1011, 1015 (Conn. 2001) (invalidating a no-rental condition in a zoning ordinance as against the public policy favoring free alienability of property). As Provo points out, the ordinance at issue in *Gangemi* placed a total prohibition on renting and thus stripped single-family residential property owners "of essentially one-third of their bundle of economically productive rights constituting ownership." *Id.* at 1016 (recognizing in note 13 that "an owner's economic choices boil down to occupying, renting or selling" a residence). The Connecticut Supreme Court understandably considered this "a very significant restriction on the [] right of ownership" and thus a significant encumbrance on alienability. *Id.*

¶27 Here, however, as we have already emphasized, owners in the Wasatch and Pleasant View neighborhoods retain the right to rent their primary residence. While restricting accessory apartment rental may impact property values, it is unclear whether this would be sufficient to consider the restriction a restraint on alienation. We need not decide this issue at this time, however, because even assuming the S Overlay amendment places an indirect restraint on alienation of property, we uphold the amendment as reasonably necessary to protect Provo City's justifiable and legitimate interest in preserving the single-family residential character of the affected neighborhoods. See *Redd*, 646 P.2d at 764.

IV. RIGHT TO TRAVEL

¶28 The Owners further argue that the S Overlay amendment violates the constitutional right to travel that the United States Supreme Court recognized in *Saenz v. Roe*, 526 U.S. 489 (1999). The Court in *Saenz* invalidated a California law creating classifications based on state citizens' duration of residency in the state, reasoning that such restrictions interfered with the right of every state's citizens to travel to and become a citizen of another state. *Id.* at 510. Based on this, the Owners claim that, because "[a] property owner who does not live in Provo and in the home may not rent the accessory unit/s[,] . . . the owner may never move out of his or her home, whether it is down the block or out-of-state unless the [o]wner can find someone in the limited pool of buyers who wishes t[o] purchase the home and live in the home and rent the accessory unit/s." We are unpersuaded that the S Overlay amendment has any impact at all on the movements of citizens from one state to another and decline to invalidate the amendment on this basis.

CONCLUSION

¶29 In allowing property owners in some single-family residential zones near BYU to rent accessory apartments on condition that the owner resides in the primary dwelling, Provo has struck a balance between providing more housing alternatives and availability in these neighborhoods and preserving their single-family residential character. The provision at issue here places no restriction on owners' right to rent their primary residence but merely regulates a secondary use that could otherwise not be available at all. We hold that the owner occupancy requirement for accessory apartment rental is within Provo's zoning power, does not violate owners' constitutional rights to the uniform operation of laws, to equal protection, or to travel, and is not an invalid restraint on alienation. The district court's order of partial summary judgment and dismissal is therefore affirmed.

¶30 Associate Chief Justice Wilkins, Justice Parrish, Justice Nehring, and Judge Lubeck concur in Chief Justice Durham's opinion.

¶31 Having disqualified himself, Justice Durrant does not participate herein; District Court Judge Bruce Lubeck sat.

1. After BYU established an off-campus housing program in 1951, the university's enrollment rose from 5000 to 21,000 by 1966, with most of the additional students finding off-campus accommodation. As of 1999, the off-campus housing office listed 4629 approved off-campus apartments, most of which were then occupied by students of BYU and other area colleges and universities.
2. The rules governing these single-family residential (R1) zones are laid out in Provo City Code sections 14.10.010 to .150 (2004).
3. In its earliest form, the S Overlay allowed owners to request a conditional use permit in order to use their houses as duplexes. The permit requirement was eventually replaced with the generally applicable

accessory apartment allowance. See Provo City Code §§ 14.30.010 -.090 (2004). The Wasatch and Pleasant View neighborhoods are the only areas in Provo where the S Overlay provisions apply. The S Overlay applies to seventy-five percent of the Pleasant View neighborhood and approximately half of the Wasatch neighborhood.

4. We therefore need not address the ordinance's validity under the framework laid out in *Bradley*, 2003 UT 16 at ¶¶ 14-15 (describing our application of the arbitrary and capricious standard to municipal land use disputes). Provo City urges us to apply a "reasonably debatable" standard when reviewing the constitutionality of the ordinance. We again clarify, however, as we previously clarified in *Bradley*, that we apply the "reasonably debatable" standard when determining whether a municipality's legislative decision is arbitrary and capricious. *Id.* at ¶ 10. When determining whether a municipal action is otherwise illegal, we apply the standard appropriate to the particular claim of illegality. See *Gardner v. Perry City*, 2000 UT App 1, ¶ 9 & n.3, 994 P.2d 811 (recognizing the distinction between arguing illegality and arguing arbitrariness and capriciousness).

5. Utah Const. art. I, § 24 ("All laws of a general nature shall have uniform operation.").

6. We need not consider whether we should apply heightened scrutiny in our analysis because the Owners concede, and we think it is clear, that the ordinance does not implicate a fundamental right or create a classification that is "considered impermissible or suspect in the abstract." *Gallivan*, 2002 UT 89 at ¶ 41 (internal quotation omitted).



February 7, 2019

Bill Kloos
Law Office of Bill Kloos PC
375 W. 4th Ave. #204
Eugene, OR 97401

RE: Zone Verification – City File ZVR 18-49
1515 Orchard Alley/Map & Tax Lot #17-03-33-33-03000

Dear Mr. Kloos,

I am writing in response to your request for a Zone Verification dated December 10, 2018, regarding the above referenced property. As described in Eugene Code (EC) 9.1080, a zone verification is used by the city to evaluate whether a proposed building or land use activity would be a permitted use or be subject to land use application approval or special standards applicable to the category of use and the zone of the subject property (EC 9.1080).

The subject lot is zoned R-1 Low-Density Residential and is developed with a one-family dwelling. The development proposal you describe would add another detached one-family dwelling on the lot.

As you know, this property was the subject of a 2018 Zone Verification request (City file ZVR 18-27) in which the applicant proposed an “ADU (secondary dwelling)” on the lot. The City’s 2018 decision explained that the City code prohibited ADUs on alley-access lots. The City’s decision on that request was issued during the short period of time during which the City’s code used the term “accessory dwelling unit” / “ADU.” It was just prior to the 2018 Zone Verification decision that the City had passed ordinances to replace the code’s “secondary dwelling unit” terminology/definition with the State’s “accessory dwelling unit” terminology/definition. As a result of an appeal filed by you, however, those ordinances have since been rendered ineffective by LUBA Nos. 2018-063 and 2018-064. In addition, you appealed to LUBA the City’s 2018 Zone Verification decision which had informed the applicant that the code prohibited ADUs on alley access lots. LUBA remanded that decision back to the City without analysis because the City had not considered the effect, if any, that ORS 197.312(5) would have on its Zone Verification decision.

In your new request for Zone Verification, under the “proposal” heading of your December 10, 2018 letter, you provide more / different information about the proposed use. You assert that the proposed use is “an Accessory Dwelling Unit, as defined in the Eugene Code and ORS 197.312(5).” However, the use you describe cannot be an “Accessory Dwelling Unit, as defined in the Eugene Code” because, as explained above, the term “Accessory Dwelling Unit” is not used or defined in the Eugene Code.

The Eugene Code uses and defines the similar term, “secondary dwelling unit,” but your described use does not meet the Code’s definition of a “secondary dwelling unit” as that term is defined in the Eugene Code:

Dwelling, Secondary. A dwelling unit that is located on the same lot as a primary one-family dwelling that is clearly subordinate to the primary one-family dwelling, whether a

part of the same structure as the primary one-family dwelling or a detached dwelling unit on the same lot. Either the secondary dwelling or the primary dwelling must be occupied by the property owner.

Your letter states that the owner of the lot would live out of state and that the existing and the proposed dwellings would both be rental units. For the proposed dwelling to meet the definition of a "secondary dwelling," which can be sited on some R-1 lots, the owner would need to occupy either the existing or the proposed dwelling. For these reasons, your proposed use is not a "secondary dwelling" unit as that term is defined in the Eugene code.

Instead, the use you describe would simply be a second one-family dwelling on the subject lot. Per Table 9.2740, that use is prohibited in the R-1 zone. The list of uses allowed in the R-1 zone specifically states, with respect to one-family dwellings: "1 Per Lot in R-1." Therefore, the use you propose is prohibited on the subject lot, located in the R-1 zone.

Similarly, the description you provide of the proposed use demonstrates that it is not an Accessory Dwelling Unit, as defined in ORS 197.312(5). ORS 197.312(5)(a) imposes requirements for local government regulation of "accessory dwelling units." ORS 197.312(5)(b) provides:

As used in this subsection, "accessory dwelling unit" means an interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.

This definition makes it clear that ORS 197.312(5) does not pertain to every residential structure that would be placed on the same lot as another single-family dwelling. It is more specific. By its own terms, the statute pertains to a residential structure that is "used in connection with" or "accessory to" another single-family dwelling. Your proposed use does not appear to be a residential structure of that nature. Your application materials do not specify any way in which the proposed detached residential structure would be "used in connection with" or "accessory to" another single-family dwelling. With respect to its relationship with / to another single-family dwelling, you assert only that the new structure would be located on the same lot as another single-family dwelling. This is an insufficient "connection" or "accessory" relationship to give the words in ORS 197.312(5)(b) any real meaning. Further, you take issue with City standards that may demonstrate such a "connection" or "accessory" relationship between the proposed structure and the existing single-family dwelling; you assert that the lot has insufficient area for a shared open space and that there would be no owner/renter relationship between the two dwellings. There is nothing in your request that explains why the provisions of ORS 197.312 would apply to your proposed use. With that in mind, no further analysis under ORS 197.312(5) is needed.

Sincerely,



Alissa Hansen
Principal Planner

HANSEN Alissa H

From: Bill Aspegren <aspegren@comcast.net>
Sent: Thursday, May 16, 2019 10:48 AM
To: HANSEN Alissa H
Cc: JACOBS Carolyn (SMTP); Steven Asbury; Helen Buzenberg; Rachael Latimer
Subject: Testimony for the May 29, 2019 Public Hearing on the Proposed ADU Ordinance
Attachments: Testimony to City Council on ADU Matrix Changes.docx; ADU Matrix Recommendations.docx

Alissa, please enter this testimony into the record and provide it to the Mayor, City Council and City Manger prior to the May 20, 2019 public hearing on ADUs.

The matrix changes are referenced in the testimony letter and should be treated as an attachment. I don't know how you handle that, but basically they go together.

Thanks,

Bill Aspegren

May 16, 2019

To: Mayor and City Council

From: Bill Aspegren – South University Neighborhood

Cc: City Manager
Alissa Hansen
Carolyn Jacobs – South University Neighborhood
Steven Asbury – Fairmont Neighborhood
Helen Buzenberg – Fairmont Neighborhood
Rachael Latimer – Amazon Neighborhood

Re: Testimony for the May 20, 2019 Public Hearing on the Proposed ADU Ordinance

When SB 1051 was first discussed the public was told the project would be handled in two phases. The first would extend ADUs to all zones allowing single-family homes. The second phase would review the existing ADU regulations used in the R1 Low Density Residential zone.

The second phase was to include a robust community discussion. Unfortunately, the remand killed phase 2. No community discussion, specific to R1 regulations, ever happened. Instead staff developed a matrix for Council's review, recommending which regulations should be retained, evaluated or removed.

Lacking a community discussion Carolyn Jacobs and I decided to review the Staff's matrix and see if some regulations unique to the University Area could be brought more in line with the overall City regulations. After coming up with possible changes we reviewed the recommendations with people from the Amazon and Fairmont neighborhoods. Over a month ago I presented the changes to Alissa Hansen and she suggested submitting them as testimony.

Attached to this letter is a matrix that corresponds to the one reviewed by Council. Recommended changes to university area regulations are highlighted. These changes should be integrated into the new ordinance even if it delays the implementation date and requires another public hearing.

A critical regulation was dropped by Council, Owner Occupancy. Retaining the owner occupancy requirement is essential to maintaining livability, especially in neighborhoods near the university. I will submit separate testimony justifying owner occupancy.

Several other regulations relating to ADUs were not covered on the matrix. They are:

- Flag lot access requirements
- Maximum wall length
- Conversion of an existing structure to an ADU
- Allowance for unheated garage space
- Covered entrance requirements
- Exemption from underground utility standards

- Applicability of R1 standards in other zones – Many R1 standards do not make sense in R2, 3 & 4, yet the original ordinance carried over these standards, which resulted in the remand and this concept is still in the new ordinance- further evaluation is needed

There are currently two efforts to rollback ADU regulations.

- First, almost all R1 ADU regulations are being appealed as part of ZRV-18-49
- Second, the State has proposed HB 2001 which will prohibit requiring owner occupancy and parking for ADUs

The City must proactively and aggressively fight these two efforts and make sure they fail.

The proposed ordinance needs additional work, before it is ready for a public hearing. Putting aside the above two efforts to undermine neighborhoods, the new ordinance needs revision and better community engagement.

Please review the attached matrix and integrate the changes into the proposed ordinance.

UO Area ADU Matrix Recommendations

Color/#	Retain/Remove	Vote	Topic	Description	UO Area Recommendation
Green/1	Retain	-	Maximum Lot Coverage	University Area: The lot shall meet the lot coverage requirements for R-1, except that all roofed areas shall be included as part of the calculation of lot coverage. All Other Lots: In R-1 and R-2, coverage of building footprints is limited 50% of lot	Change so the UO area is the same as the City
Green/2	Retain	-	Outdoor Living Area	All Lots: In R-2, R-3 & R-4, a minimum of 20 percent of the development site is required to be open space.	R1 should be the same as all other areas
Green/3	Retain	-	Building Size	University Area: For lots at least 7,500 square feet and less than 9,000 square feet in area, the SDU shall not exceed 600 square feet. For lots at least 9,000 square feet in area, the SDU shall not exceed 800 square feet. All Other Lots: Building square footage is limited to 10 percent of the total lot area or 800 square feet, whichever is smaller. In addition, for detached SDUs, up to 300 square feet of un-heated garage or storage space attached to the SDU is allowed and is not counted in the allowable building square footage	Change so the UO area is the same as the City
Green/4	Retain	-	Outdoor Storage/Trash	All Lots: Outdoor storage and garbage areas are required to be screened from view from adjacent properties and those across the street or alley with a minimum 42-inch tall 100-percent site obscuring fence or enclosure on at least three sides	Fine as is
Green/5	Retain	-	Pedestrian Access	University Area: For attached and detached SDUs, same as for all other lots, except that if the primary vehicle access for the required parking is from an alley, the path must be provided from the alley. All Other Lots: Detached SDUs are required to provide a pedestrian walkway from the street or alley to the primary entrance of the secondary dwelling. The pedestrian walkway shall be a hard surface (concrete, asphalt or pavers) and shall be a minimum of 3 feet in width	Change so UO area is the same as the City-If there is no on-site parking a walk way from the street is needed
Green/6	Retain	-	Minimum Attachment	All Lots: To be considered attached, requires the SDU and the primary dwellings must share a common wall or ceiling for a minimum of 8 feet.	Fine as is
Green/7	Retain	-	Prohibition on Alley Access Lots	All Lots: SDUs are prohibited on alley access lots. (An alley access lot is a lot that abutting an alley and not abutting a street and created from the rear portion of an existing lot or parcel.)	Fine as is-Alley traffic would be a problem
Yellow/1	Retain	6-1	Minimum Lot Sizes	Minimum lot size required for a secondary dwelling unit (SDU): University Area: 7,500 square feet Flag Lots: 12,500 square feet All Other Lots: 6,100 square feet	Change so UO area is the same as the City-this is a critical regulation to keep

Color/#	Retain/Remove	Vote	Topic	Description	UO Area Recommendation
Yellow/2	Retain	6-1	Maximum Density	<p>All Lots: Minimum and Maximum net density per acre is as follows: R-1: No minimum to 14 units R-2: 13 to 28 units R-3: 20 to 56 units R-4: 20 to 112 units Critical to count ADUs in density</p>	<p>Fine for R1, this is a critical regulation to keep. If minimum lot size in other zones is 4,500 sq. ft. does a new single-family dwelling on a legal lot meet minimum density? If not, single-family dwellings should not be permitted in these zones. Therefore, permitting ADUs is not required.</p>
Yellow/3	Retain	5-2	Lot Dimensions	<p>University Area: To allow for an SDU, requires that the boundaries of the lot be sufficient to fully encompass an area with minimum dimensions of 45 feet by 45 feet</p>	Drop
Yellow/4	Retain	5-2	Parking Requirement	<p>University Area: Limits the primary dwelling to a minimum of one and a maximum of two parking spaces on the lot and requires one additional parking space on the lot for the SDU. All Other Lots: Requires one additional space for the SDU</p>	Change so UO is the same as the City for ADUs (Is at least one space required for both the primary and accessory dwellings?)
Yellow/5	Retain	5-2	Alley Access Parking Driveway	<p>University Area: Where primary vehicle access for the required parking for the SDU is from an alley, the following standards apply:</p> <ul style="list-style-type: none"> • Only one covered or enclosed parking space may be provided (carport or garage). The covered or enclosed parking space shall be counted towards the total number of parking spaces. • The maximum dimensions for a garage shall be 16 feet by 24 feet, with a maximum garage door width of 9 feet. • The minimum setback for a garage shall be 5 feet from the alley. If the garage is setback greater than 5 feet from the alley, it must be setback a minimum of 15 feet and the area between the garage and the alley shall be counted towards one parking space. • The maximum width for a driveway accessing a garage or carport shall be 12 feet. • The maximum dimensions for one parking space located perpendicular to the alley shall be 12 feet in width by 20 feet in depth. • The maximum dimensions for two side by side parking spaces perpendicular to the alley shall be 20 feet in width by 20 feet in depth. • The maximum dimensions for tandem parking spaces shall be 12 feet in width by 33 feet in depth. • Only one parking space parallel to the alley shall be allowed, and such space shall not exceed 10 feet in width and 20 feet in length along the length of alley. • The total vehicle use area, including but not limited to driveways and on-site parking, but not including parking space in garage, shall not exceed 400 square feet. 	Point 1 Fine as is, point 2 is inconsistent with green 3, not needed, other points are they the same as standard city off street parking regulations?

Color/#	Retain/Remove	Vote	Topic	Description	UO Area Recommendation
				<ul style="list-style-type: none"> • No parking shall occur outside of the vehicle use area. 	
Yellow/6	Retain	6-1	Building Height/sloped setback	<p>University Area: For detached secondary dwellings, the interior yard setback shall be at least 5 feet from the interior lot line. In addition, at a point that is 8 feet above grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally (approximately 40 degrees from horizontal) away from the lot line until a point not to exceed a maximum building height of 18 feet. The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback, except that eaves, chimneys and gables are allowed to project into this setback no more than 2 feet.</p> <p>Flag Lots: Interior yard setbacks shall be at least 10 feet. In addition, at a point that is 8 feet above finished grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally away from the property line until a point not to exceed a maximum building height of 18 feet for detached secondary dwellings and the maximum building height of the primary dwelling for attached secondary dwellings. The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback, except that eaves and chimneys are allowed to project into this setback no more than 2 feet. This standard may be adjusted to allow for a secondary dwelling over an accessory building in accordance with EC 9.8030(34).</p> <p>All Other Lots: For attached secondary dwellings located within 60 feet of a front lot line, interior yard setbacks shall be at least 5 feet, and maximum building height shall be limited to that of the main building as per Table 9.2750.</p> <p>For attached secondary dwellings located greater than 60 feet of a front lot line, interior yard setbacks shall be at least 5 feet. In addition, at a point that is 8 feet above finished grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally away from the property line to a maximum building height of 18 feet. The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback, except that eaves and chimneys are allowed to project into this setback no more than 2 feet.</p>	Fine as is-needed for privacy issues

Color/#	Retain/Remove	Vote	Topic	Description	UO Area Recommendation
				For detached: Interior yard setbacks shall be at least 5 feet. In addition, at a point that is 8 feet above finished grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally away from the property line until a point not to exceed a maximum building height of 18 feet. The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback, except that eaves and chimneys are allowed to project into this setback no more than 2 feet. This standard may be adjusted to allow for a secondary dwelling over an accessory building in accordance with EC 9.8030(34)	
Red/1	Remove	4-3	Prohibition on New Flag Lots	All Lots: SDUs are not allowed on flag lots that did not exist or were not approved prior to August 29, 2014.	No opinion
Red/2	Retain	6-1	Vehicle Use Area	University Area: Limits the maximum area covered by paved and unpaved vehicle use areas including but not limited to driveways, on-site parking and turnarounds, to 20 percent of the total lot area	What is in the rest of the City? Not about ADUs
Red/3	Remove	4-3	Owner Occupancy	All Lots: Requires that either the SDU or the primary dwelling be occupied by the owner of the property. Includes requirement for deed restriction and verification, and allowance for temporary one-year leave.	Retain-Critical, relates to being designed as an accessory to the primary dwelling.
Red/4	Remove	4-3	Maximum Bedrooms	University Area: For lots with a primary dwelling containing 3 or fewer bedrooms, the SDU is limited to 2 bedrooms. For lots with a primary dwelling containing 4 or more bedrooms, the SDU is limited to 1 bedroom. All Other Lots: Limits the SDU to no more than 2 bedrooms.	Retain and Change so UO area is the same as the City
Red/5	Remove	4-3	Maximum Occupancy	University Area: For lots with a primary dwelling containing 3 or fewer bedrooms, limits the SDU to 3 occupants. For lots with a primary dwelling containing 4 or more bedrooms, limits the SDU to 2 occupants	Fine to remove. The Limit of two bedrooms should minimize the number of occupants. Could limit the site to five unrelated occupants, rather than five per dwelling
Red/6	Remove	5-2	Dog Keeping	All Lots: Limits properties with an SDU to no more than 3 dogs on the lot.	Remove

HANSEN Alissa H

From: Carolyn Jacobs <carolyn.i.jacobs@gmail.com>
Sent: Thursday, May 16, 2019 10:06 AM
To: *Eugene Mayor, City Council, and City Manager
Cc: HANSEN Alissa H
Subject: Testimony for the record regarding ADU Remand

"The ADU owner-occupancy requirement is akin to the now-outlawed practice of prohibiting "negroes" in neighborhoods It is a form of redlining against renters that has no place in our society."

-- Richie Weinman testimony on ADU Remand Ordinance

The inflammatory language quoted above equating the owner occupancy requirement for ADUs to prohibitions against members of certain racial (and presumably ethnic or religious) groups is an extremely disturbing comment. Obviously intended to shock, it instead reveals how apparently desperate the author must have felt when composing his testimony previously submitted for this record.

Most everyone else understands that all the lobbying back and forth has nothing to do with renters but rather with the extraordinarily simple fact that removing the owner occupancy requirement for ADUs means that all R1 properties will be permitted to have two unrelated units. Or, in other words R1 will become R2.

It is nothing more and nothing less than unacknowledged, behind (barely) closed doors... upzoning.

In fact, the outrage was misplaced. If only it had as its focus the built-in inequity of eliminating owner occupancy! Not included of course are all the areas covered by CC&Rs. The targeting of only certain neighborhoods has no place in our city and in our code. The City Council must see this for what it is. A vote to eliminate only certain R1 neighborhoods will not soon be forgotten.

-Carolyn Jacobs

HANSEN Alissa H

From: Eliza Kashinsky <eliza@tastypie.org>
Sent: Wednesday, May 15, 2019 7:11 AM
To: HANSEN Alissa H; *Eugene Mayor, City Council, and City Manager
Subject: Comment re: ADUs (CA18-1)
Attachments: EKashinskyADUComment51519.pdf; EKADUCodeAnalysis.pdf

Dear Mayor, City Councilors, City Manager, and Alissa:

Good morning! Please see attached testimony regarding proposed changes to the Accessory Dwelling Unit regulations in Eugene. I have also attached previously submitted analysis of Eugene's ADU code compared to other Oregon Cities, as it is referenced in the testimony. In summary, while the proposed changes are appreciated, additional sections of the code should be modified/removed in order to both achieve compliance with SB 1051 and to help accomplish the City's own stated goals of identifying and removing barriers to housing affordability, availability, and diversity of type. Thank you.

Eliza Kashinsky

Wednesday, May 15th, 2019

DELIVERED VIA EMAIL

Eugene Mayor, City Council, and City Manager
City Manager's Office
125 East 8th Ave
Eugene, OR 97401

Re: CA 18-1, Accessory Dwelling Units

Dear Mayor, City Councilors, and City Manager:

I appreciate the efforts of the City to revise its code as relates to Accessory Dwelling Units. However, the draft ordinance and code changes proposed do not go nearly far enough to ensure that we are removing the unnecessary barriers to ADUs that we have put in place, both to help promote desperately needed moderately priced/sized housing in our city, and to ensure that we are in compliance with ORS 197.312(5). While the current proposed code modifications improve upon the first attempt, by removing the owner-occupancy requirement and several other items, it leaves in place many other elements that are neither necessary, reasonable, nor related to siting and design. It is my sincere hope that the City Council can make the necessary modifications to this ordinance prior to passage.

In order to ensure that this attempt is successful both at bringing us in compliance and accomplishing the city goals of removing land use barriers that reduce housing affordability, availability, and diversity of type, the following changes should be requested to the ordinance and code:

- a) **Remove Lot Size Minimums for ADUs** (Strike sections 9.2751(17)(a)1 and 9.2751(17)(c)5)
- b) **Exempt ADUs from Density Calculations** (From table 9.2740 in Residential Dwelling text, strike the words "including secondary dwellings". Strike 9.2751(1)(a)1 and add 9.2751(1)(f) "Accessory Dwelling Units are exempt from the minimum and maximum residential density standards set forth in Table 9.2750.")
- c) **Remove Alley Access Lot Prohibition** (Strike the words "except that new secondary dwellings are prohibited on alley access lots" from 9.2741(2) and the words "except that there is no allowance for a secondary dwelling" from 9.2751(18)(a)2.)
- d) **Limit Building Size to 800 square feet, regardless of lot size or location in the city** (Strike the words "10 percent of the total area" from section 9.2751(17)(a)2 and strike 9.2751(17)(c)5)
- e) **Remove Parking Minimums** (Strike 9.2751(17)(c)15 and strike from table 9.6410 the 1 per dwelling minimum number of required off street parking spaces for accessory dwelling units.)
- f) **Remove Outdoor Storage/Trash Screening Requirement** (Strike 9.2751(17)(b)4 and section 9.2751(17)(c)19)
- g) **Don't reimplement renaming of ADUs in Special Area Zones** (Remove section 10 and section 17 from the proposed ordinance)
- h) **Remove Separate Standards for Lot Coverage Calculations in the University Areas** (Strike section 9.2751(17)(c)3 from the code.)
- i) **Remove Separate University Area Lot Dimension Requirements** (Strike 9.2751(17)(c)2)
- j) **Remove Sloped Setback requirements**; retain 5 foot setback and height limit to match main building (Strike the words "located within 60 feet of a front lot line" from section 9.2751(17)(a)3a, and strike sections 9.2751(17)(a)3b, 9.2751(17)(a)3c, 9.2751(17)(b)5, and 9.2751(17)(c)9. Strike the words "In addition" through "attached secondary dwelling" in section 9.2775(5)(e)3a. Strike 9.2775(5)(e)3b.)

The findings presented for these areas fail to demonstrate that these regulations on ADUs are reasonable regulations related to siting and design, or that these regulations are so necessary to achieve a city goal that they outweigh the barriers they create. In addition, the City has expressed a commitment to remove barriers to housing in Eugene; even if a particular regulation is technically permissible under ORS 197.312(5), that doesn't mandate that the City retain that regulation if it is otherwise ill-advised or ineffective.

Livability and Overcrowding

For many of these findings, the City cites "preserving livability" and "preventing overcrowding" as the compelling reason to retain these regulations. The City does not define "livability" or "overcrowding," much less provide information to support the idea that a failure to regulate ADUs in the manner proposed will result in decreased livability or overcrowding, or that the regulations are so necessary to address these issues that they justify the limitations on Accessory Dwelling Units, and thus on housing availability and affordability.

"Livability" is a term that is used to refer to so many different, and sometimes competing, concepts that without further definition and context it is completely meaningless. From the Eugene Springfield Metro Plan, "Perceptions of livability greatly differ between individuals; so generalizations concerning this element need to be carefully drawn."

For some, important components of livability include quiet, physical separation or buffers from neighbors, and ample private open space. For others, livability is defined by things such as vibrancy and walkability, both of which go hand in hand with compact urban development and increased infill. Affordability is an important component of livability—paying more than one can afford for housing has a substantial impact on quality of life. Without providing more details on what, specifically, the City is trying to accomplish when it is "protecting livability" there is no way to judge if the regulations in question are protecting livability, or diminishing it.

By the same token, "preventing overcrowding" is used repeatedly as a justification with no definition. There is no indication that "overcrowding" in the sense of having "too many" housing units or "too many" people in a given neighborhood is a serious threat that needs to be protected against by implementing regulations that discourage or prevent ADUs. Most R-1 neighborhoods in Eugene are developed at housing densities significantly less than what is permitted by the code, and even new ADU construction at a rate far in excess of what could be expected even with massive incentives or deregulation would not bring them up to 14 housing units per acre. Much like livability, what is "overcrowded" in the sense of when a neighborhood has too many people or housing units is entirely in the eye of the beholder—one person's crowd is another person's community, and there are too many jurisdictions to list that have much higher housing densities than Eugene's neighborhoods that are considered very "livable" and not overcrowded.

Given the lack of definitions and the subjectivity of the terms used, ultimately, when the City claims that a regulation in question serves the compelling governmental interest of "preventing overcrowding" or "preserving livability," what is really being served is preventing some residents from feeling like there are too many people living in their neighborhood and preserving some citizens definition of livability, at the expense of other citizens ability to acquire housing in the neighborhood. By its mere existence, ORS 197.312(5) is prioritizing the compelling governmental need to ensure that we have enough housing in our communities over vague and unsubstantiated concerns surrounding overcrowding and perceived livability. Merely saying that a regulation is intended to "preserves livability" does not justify it.

History:

The vast majority of these regulations were either added or expanded as part of Ordinance 20541 (Single-Family Code Amendments), passed on July 28th, 2014, or as part of Ordinance 20526 (University Neighborhood Protection Measure), passed on March 12th, 2014. These amendments came out of a process that had, as a primary goal “Promoting [accessory] dwelling units.” However, the vast majority of the changes increased the limitations and prohibitions on Accessory Dwelling Units. Since these code amendments were passed, the number of permitted accessory dwelling units has decreased notably. Between 2009 and 2014, the City issued an average of 4.8 ADU permits per year; since 2014, the average has dropped to 2.8 ADU permits per year.

1) Lot Size Minimums/Density (recommendation a and b)

- a) **Lot size minimums and density are not related to siting or design.** The City, in their findings, claims that “regulations related to siting’ include both: (1) regulations that specify the necessary lot characteristics for the siting of an accessory dwelling; and (2) regulations that specify where, on such a lot, an accessory dwelling may be sited.” Lot size minimums and density are claimed to be “siting” regulations under the first interpretation of siting; however, the first interpretation of “siting” is not supported by the text of ORS 197.312(5). In ORS 197.312(5), the legislature provided clear direction as to the necessary lot characteristics of a lot that should permit an ADU. The language states that cities “shall allow in areas zoned for detached single family dwellings the development of at least one accessory dwelling unit for each detached single family home” The local position of the building in connection with its surroundings is specified as “areas zoned for detached single family dwellings” and “at least one accessory dwelling unit for each detached single family home.” The necessary characteristics for a lot to permit an accessory dwelling is that it has a detached single-family home, and that it is in an area zoned for detached single family homes. The City may subject ADUs to requirements about where on lot the ADU is located, and they may choose not to permit an ADU on a lot that doesn’t contain a detached single-family home or that isn’t in an area zoned for detached single family housing. These regulations do neither; instead, they prohibit 10,000 Eugene homeowners from being permitted to build at least one ADU for their single-family home, no matter how they position the ADU on the lot or how it is designed.
- b) The lot size minimums and density requirements in Eugene are not reasonable. Eugene is alone among 16 comparable cities in Oregon in subjecting ADUs to the density minimum and maximums of the zones, and is alone in requiring a lot size larger than the legal lot size in the zone in question. (*See attached analysis.*) If these tools were truly so essential for preserving livability and preventing overcrowding as to outweigh the impact they have on housing availability and affordability, it seems reasonable that other cities would have also found them necessary.
- c) **History:** Prior to the 2014 Single-Family Code Amendments, Eugene did not subject ADUs to density minimums and maximums. While detached ADUs required a lot of at least 6,000 square feet, a resident of any lot that met the overall minimum legal lot size of 4,500 square feet could build an interior/attached ADU.

2) Alley Access Lots (recommendation c)

- a) **The prohibition on Alley Access Lots is not related to siting or design.** See above section 1.a regarding interpretation of “siting.” This standard regulates ADUs based on the characteristics of the lot, not the location of the ADU on the lot.
- b) A primary justification for prohibiting ADUs on alley access lots was the traffic that would be created by the additional dwellings and the impact on alley surfaces created. The City does not require development that is expected to produce less than 100 vehicle trips during a peak hour to account for traffic impacts, as the impacts of smaller developments are considered to be minimal enough to not justify the analysis. There is no practical scenario where ADUs on alley access lots will produce enough traffic to be considered significant. The number of trips likely to be generated

is more in line with a teenaged resident receiving their drivers license or a partner or roommate moving in with a resident. In addition, the City's findings specifically mentioned unimproved alleys; liability and maintenance for unimproved alleys as well as the cost for improvements are the responsibilities of the property owners, and thus the impacts of additional wear on unimproved alleys with ADUs would not be born by the City. Finally, the concern of traffic on alleys could be addressed in a manner that does not reduce the availability of ADUs, for example by limiting the amount of parking allowed on alley access lots.

- c) In the City's findings regarding alley access lots, they cited the livability and overcrowding concerns of "unregulated" infill. See above regarding livability and overcrowding. In addition, no legal dwelling on an alley access lot would be "unregulated infill;" it would be subject the regulations related to height, setbacks, etc. and thus be regulated infill.
- d) **History:** Prohibition of ADUs on alley access lots was included as part of the 2014 code amendments.

3) Lot-Size Based Size Limitation (recommendation d)

- a) **Limiting the size of an ADU based on the size of a lot is duplicative and not reasonable.** While building size is a design regulation, and it reasonable to place some sort of size limitation on ADUs, having that size limitation vary based on the size of the lot serves no unique purpose other than to make it more difficult for owners of smaller lots to build ADUs. The City justifies this regulation on the basis that development on smaller lots can have greater impacts on overcrowding and livability, and says that it ensures that there is room for both the ADU and the primary dwelling with room left over for open space and parking. The size of an ADU on a small lot (and thus its impact) is already limited by the lot coverage maximums, setback requirements, open space requirements and other such regulations, which ensure that the need for open space will be met without this restriction. It is unclear how the impact of an 800 square foot ADU sharing a 6000 square foot lot with a 1,200 square foot primary dwelling is somehow greater than the impact of 600 square foot ADU with a 1,400 square foot primary dwelling. In both cases, the percentage of lot covered by building is the same, as is the number of units on the lot.
- b) **History:** Prior to 2014, ADUs were subject to an 800 square foot maximum size, with no separate maximums based on lot size.

4) Outdoor Storage/Trash Screening (recommendation f)

- a) **This requirement is unreasonable and conflicts with other areas of the code.** The City, in section 9.6740 of the code, imposes outdoor storage/trash screening requirements on dwellings in the City. However, it specifically exempts both one and two family dwellings from this requirement. It is unclear why it is reasonable to exempt two dwellings on a lot from the screening requirement when the two dwellings take the form of a duplex, but not when two dwellings take the form of a single-family home and an ADU. As the City has already determined that it is reasonable to exempt two dwellings on a lot from the screening requirement, this regulation serves only to add to the cost and logistical complexity of creating an ADU.
- b) **History:** A less detailed trash screening requirement existed for ADUs at least since 2001. However, prior to 2014 it was an adjustable standard and could be waived via an adjustment review process. Section 9.6740, exempting two family dwellings from screening requirements, was passed in 2012.

5) S-JW and S-C Terminology (recommendation g)

- a) While LUBA indicated that this language was permissible, it is ill-advised. These changes have been presented as merely semantics with no real impact. The underlying rationale was to alleviate the fears of some individuals that changes to ADUs regulations would prevent the S-JW and S-C zones from prohibiting additional dwellings on smaller lots, as they currently do. (Lots under 4,500 square feet only permit one dwelling in the S-JW zone; approximately 40% of the residential lots in the S-JW containing detached single-family homes are under 4,500 square feet and are not permitted either an ADU or a second dwelling.)

- b) The language provides no additional protections to the S-JW and S-C zones. LUBA found that, for the purposes of ORS 197.312(5) compliance, a “second dwelling” in the S-JW and S-C zone “counts” as an accessory dwelling. If the City does not modify its zoning to comply with state law, the statute may be applied directly. Regardless of if you call them ADUs or “second dwellings”, S-JW and S-C still are required to allow each detached single family home owner the ability to add an accessory unit. By re-instituting this change and not ensuring that the S-JW and S-C code is in compliance with ORS 197.312(5), Council puts the City in the difficult position of potentially have greater restrictions on housing types, form, and density in a Metro Plan designated medium density area than in the designated low-density areas of the City. By permitting ADUs subject to the ADU standards as a housing type in S-JW and S-C through the inclusion of ADUs as a permitted housing type in the R-2 use table, the City alleviates the need to review/revise the S-JW and S-C code directly.
 - c) Calling ADUs different things in different areas of the city, though in some ways merely semantics, is not a no-impact accommodation. Lack of clarity can create confusion; in the short time this language was in effect, between the passage of ordinance last summer and the remand, there was at least one example of where notable staff time was spent trying to accommodate the difficulty presented by this terminology, when trying to craft SDC regulations that would incorporate both Accessory Dwelling Units in other zones, as well as small second dwellings in the S-JW and S-C zones. (See Eugene City Council 10/15/18 work session.)
 - d) A detailed critique of this proposal was submitted when this change was originally proposed. While staff’s revision of the draft language alleviated some of the concerns discussed, the core remains.
- 6) University Area Requirements (recommendations h and i)**
- a) **The University Lot Dimensions requirements are not related to siting.** As discussed in section 1(a) above, siting should be interpreted to include where an ADU is placed on a lot, not the characteristics required for a lot to permit an ADU.
 - b) All of the unique University Area ADU requirements are attempted to be justified by a desire protect from “unforeseen” housing development in the University areas. In fact, the development in these areas was not unforeseen. The development in question was all development that was legally permitted and zoned for. The 2004 Metro Plan includes policies such as A.11 *“Generally locate higher density residential development near employment or commercial services...”* (the University of Oregon is one of Eugene’s largest employers, and has roughly 20,000 students;) A.13 *“Increase overall residential density in the metropolitan area by creating more opportunities for effectively designed in-fill, redevelopment, and mixed use...;”* and A.19 *“Encourage residential developments in or near the downtown core areas...”* (the University areas are adjacent to the downtown core.) As the code is one of the methodologies by which the Metro Plan is implemented, the development that occurred in the University Areas was not only foreseen, but planned for. The desire of some residents of the University Neighborhoods to discourage housing targeted at students and young adults from locating near the University does not outweigh the need to provide housing for those students and young adults, including in the form of Accessory Dwelling Units. Using land use code to attempt to exclude particular classes of citizens from neighborhoods based on fears that they will reduce the “livability” of the neighborhood has a particularly ugly history in this country. While neither “students” nor “renters” are a protected class for housing in Eugene, discrimination based on age over 18 is prohibited, and I’m disappointed to see the City allow such arguments to influence its land use code.
 - c) These regulations, which have been in place for more than 5 years, are characterized as “interim,” and intended to be changed as part of some future process. However, intent to change regulations on ADUs at some point in the future does not alleviate the need for the regulations applied to ADUs to be reasonable and related to siting and design now. Future plans to amend the code are irrelevant.

d) **History:** Prior to the 2014 University Protection Measures (City Ordinance 20526) Accessory Dwelling Units in the University Neighborhoods were not regulated separately.

7) Sloped Setbacks (recommendation j)

a) While height limitations are undisputedly design regulations, **the specific height regulations on ADUs in Eugene are not reasonable.**

b) The height requirements for ADUs are complex, and draw no distinction between detached ADUs and interior/attached ADUs. The primary rationale is to reduce impacts on neighboring properties; however, they also prevent ADUs that would have no impact on neighboring properties. For example, these regulations would appear to prevent the conversion of an attic/second story space on the back half of an existing building into an ADU, despite the fact that this configuration would create no additional impacts on neighboring properties.

c) Eugene doesn't regulate the height of other dwelling types based on position on the lot. A two-story detached single-family home could be built with a second story more than 60 feet from the front of the lot line without sloped setback, which presumably would have the same impact as an ADU at that location. It is unclear why a dwelling type of an ADU would require additional height regulation that single-family dwellings, duplexes, etc. wouldn't.

d) 18 feet with a sloped setback is an atypically small height limit—it limits ADUs to 1 to 1.5 stories, as opposed to most other cities, where height limits are sufficient to allow two-story ADUs.

e) **History:** Prior to the 2014 code amendments, attached/interior ADUs had no separate height requirement. Detached ADUs were limited to 15 feet within 20 feet of a property line. No sloped setback requirements existed prior to 2014.

I could provide much additional feedback to how the ADU standards in Eugene could be improved—for example, by returning the ability to adjust ADU standards through an Adjustment Review Process as necessary to make them feasible on particular lots (the 2014 code amendments eliminated the ability for almost all of the ADU standards to be adjusted) or by examining section 9.8030(34)(b) in the code, which appears to limit ADUs that are created by converting an existing structure to 600 square feet as opposed to the 800 square feet allowed when building a new structure. But I will limit myself to the specific topics raised by the city in their findings.

The above described regulations either are not related to siting and design, or are not reasonable. They also do not serve the City's goal of increasing housing affordability, availability, and diversity. The City is currently undergoing a code audit to identify barriers within its code; many of these standards have been identified in that process as creating substantial barriers to ADUs. Given that the City has been unable to provide substantive, objective justification as to why these barriers must remain, I respectfully request that the Council request that staff revise the proposed ordinance to remove these additional restrictions.

Thank you.

Eliza Kashinsky
eliza@tastypie.org
541-799-7102

Eugene's Accessory Dwelling Unit Code
A Comparative Analysis for Reasonableness
And Design and Siting
in light of ORS 197.312(5)

Eliza Kashinsky
January 27th, 2019

Introduction

The City of Eugene is embarking on a project to ensure that, in light of ORS 197.312(5), the regulations it applies to Accessory Dwelling Units in the city are reasonable and related to siting and design. Eugene faces a particular challenge in this project, because over the years, and in particular as a result of code amendments passed in 2014, its regulations related to ADUs are substantially more complex and restrictive than those of other cities—23 separate types of restrictions or regulations are placed on ADUs in Eugene, many of them reference in multiple places in the code, or differing somewhat in different areas of the city.

An additional challenge is that “reasonableness” is to some degree in the eye of the beholder; what is reasonable for one person may not be reasonable for another. This document attempts to identify and analysis Eugene’s code in light of some sort of measure of “reasonableness”—namely, how other cities have addressed the same issues (a “reasonable cities” standard) and a consistency standard (is it consistent with how Eugene addresses other housing/building types and is it consistent with other regulations on housing, such as anti-discrimination and fair housing statutes.)

By evaluating all segments of Eugene’s code that relate to ADUs in this way, the hope is that Eugene will be able to modify its regulations related to ADUs so that will be in compliance with ORS 197.312(5), and remove barriers to ADUs to make it easier to provide additional housing that our city desperately needs.

A summary of the analysis can be found on page 6 of this document, breaking down each area of regulation and indicating if it is related to siting and design, if it reasonable, if it is clear and objective, and if it is a useful regulation. For each area, a recommendation is provided to retain, remove, or revise relevant provisions.

Overall, Eugene needs to substantially revise its code related to ADUs in order to meet minimum requirements of state law. Over half of the provisions examined are recommended to be removed or substantially rewritten. An additional quarter need to be revised in some fashion. There are very few areas where code language could be left as is without some concern.

While Eugene is embarking on this project in response to a remand from the Land Use Board of Appeals, and therefore must of course consider what changes are defensible given LUBA’s finding and ORS 197.312(5), it should also be remembered that Eugene is facing a substantial housing crisis. Eugene has included as a goal in various plans and documents to remove barriers to housing. When examining the barriers to dwelling units in Eugene’s code, the question should not be can we defend leaving it in, but rather, does this regulation ensure such a universal good that it outweighs any negative impacts to provide housing for our residents?

During the course of this analysis, several provisions in other cities were identified that went “above and beyond” and addressed issues that would not be specifically required under ORS 197.312(5). Notes on those solutions are also included, in case Eugene also has an interest in doing more than the bare minimum required by law.

Contents

Introduction	2
Definitions	4
Analysis Summary	6
Analysis	7
Owner Occupancy Requirements	7
Lot Size Minimums	9
Density Requirements.....	11
Prohibition on Alley Access and Flag Lots.....	13
Flag Lot Access Requirements.....	14
Bedroom Limits.....	15
Maximum Occupancy Limits.....	17
Outdoor Trash Screening Requirements	18
Dog Keeping Limits.....	19
Maximum Wall Length.....	20
Conversion of an Existing Structure.....	22
Flat Square Footage Limits.....	23
Square-Footage Limits Based on Lot Size	24
Allowance for Unheated Garage Space	25
Height Limits	26
Setback Requirements	28
Setback Intrusions Limitations	29
Attached ADU Connection Standards.....	30
University Lot Dimension and Coverage Requirements	31
University Parking Requirements	32
Applicability of Standards in Other Zones	33
S-C and S-JW Terminology	34
Pedestrian Access Requirements.....	35
Covered Entrance Requirements.....	36
Minimum Off-Street Parking Spaces.....	37
Exemption from Underground Utility Standards.....	38
A Note on Accessory Buildings.....	39
Comparable Cities.....	40
Summary of Analysis.....	40
Additional Provisions from Other Cities	41
Comparative Code Chart.....	43
Appendix A: A Modern Home	44
Appendix B: Sources and Links to Text	45

Definitions

Definitions

In this document, each segment of code related to ADUs in Eugene will be evaluated based on four criteria—is it related to siting and design, is it reasonable, is able to be applied in a clear and objective fashion, and is it useful and effective.

- **Siting and design:** ORS 197.312(5) states that cities can subject ADUs to “reasonable local regulations related to siting and design.”
 - **Siting** is dictionary-defined as “fixing or building something in a particular place.” In the context of land use planning, “siting” is used both to refer to where something is fixed in the city as a whole, and as well where a particular structure is fixed its lot and in relation to other buildings on the lot.

In the context of ORS 197.312(5), the state regulation provides clear guidance regarding the first meaning of siting—ADUs must be permitted in all zones where detached single-family homes are allowed. Therefore, local regulations related to siting are referring to the siting of the ADU on the lot. This would include regulations related to setbacks from the lot line and distance between the ADU and other buildings.
 - **Design** is dictionary-defined as “the arrangement of elements or details in a product.” This is referring to the look and function of an ADU. This would mean that cities could have regulations related to how ADUs look (height, size, color, style, etc.) They could also ensure that ADUs meet with building codes related to safety.
- **Reasonable:** Reasonable is a term that is not legally defined in this context, but is legally defined in other contexts. The Legal Information Institute at Cornell Law School defines it as “just, rational, appropriate, ordinary, or usual in the circumstances.” For example, in the context of negligence law, the actions of a “reasonable” person is considered what averagely prudent person would observe under a given set of circumstances.

For the purposes of this analysis, “reasonableness” will be based on two factors.

- *Is it ordinary or usual in the circumstances?* To determine this, we’ll look at how other mid-size cities in Oregon and other cities in Lane County have addressed the question. In some sense, we will be using a “reasonable cities” standard, on the assumption that other cities who have modified and reviewed their code in light of ORS 197.312(5) are under similar circumstances to Eugene, in as much as they are cities in Oregon with similar sized populations and/or location and subject to the same state level regulations and land use requirements, and are at least averagely prudent.
 - *Is it appropriate and just?* To determine this we will look at if, in Eugene’s code, other dwellings are subject to similar requirements. If a provision of the code is truly necessary to ensure the welfare of the public and community, then it should be evenly applied to similar structures and uses. In addition, code provisions that have discriminatory effect or disparate impact on protected classes are not just.
- **Clear and Objective:** Clear and Objective is a term of art in Oregon’s Land Use laws and processes, referring to the fact that for housing, cities can only apply standards and regulations that aren’t discretionary or subjective or discourages housing through unreasonable cost or

delay (ORS 197.307(4)). While housing is allowed to go through a discretionary track, a developer or homeowner must also have the option to build a home that meets the code without the need for interpretation. In addition, regulations must be able to be enforced consistently, without relying on the judgement of the City about when and where to enforce particular regulations. In their November 28th, 2018 decision in Home Builders Association v. City of Eugene, the Land Use Board of Appeals specifically suggested that Eugene review its ADU code to ensure that it could be applied in a Clear and Objective manner.

- **Useful and Effective:** While ORS 197.312(5) and LUBA didn't require that regulations related to ADUs actually be crafted in such a way as to accomplish their intent, when reviewing our code for the benefit of our city, it seems reasonable to ensure that the regulations in place are actually producing the results they were intended to. The purpose of Eugene's land use code is to "protect and promote health, safety, and the general welfare of the public, and to preserve and enhance the economic, social, and environmental qualities of the community." If the provision of the code in question is not effective at achieving that purpose, it is not useful.

Unless an element of the zoning code related to ADUs can pass all these tests, it should be removed from the Eugene Zoning Code, or revised so that it can pass all the above tests.

Analysis Summary

Provisions	Siting & Design?	Reasonable?	Clear and Objective?	Useful and Effective?	Recommendation
Owner Occupancy Requirements	No	No	No	No	Remove
Lot Size Minimums	No	No	Yes	No	Remove
Density Requirements	No	No	Yes	No	Remove
Prohibition on Alley Access and Flag Lots	No	No	Yes	No	Remove
Flag Lot Access Requirements	No	No	No	No	Remove
Bedroom Limits	Yes	No	No	No	Remove
Maximum Occupancy Limits	No	No	No	No	Remove
Outdoor Trash Screening Requirements	Yes	No	Yes	No	Remove
Dog Keeping Limits	No	No	No	No	Remove
Maximum Wall Length	Yes	No	Yes	No	Remove/Revise
Conversion of an Existing Structure	Yes	No	No	No	Remove/Revise
Flat Square Footage Limits	Yes	Yes	Yes	Yes	Retain
Square-Footage Limits Based on Lot Size	Yes	No	Yes	No	Remove
Allowance for Unheated Garage Space	Yes	Yes	No	No	<i>Revise</i>
Height Limits	Yes	No	No	No	<i>Revise</i>
Setback Requirements	Yes	Yes	No	No	<i>Revise</i>
Setback Intrusions Limitations	Yes	No	Yes	No	Remove
Attached ADU Connection Standards	Yes	Yes	Yes	Yes*	Retain
University Lot Dimension and Coverage Requirements	No	No	Yes	No	Remove
University Parking Requirements	Yes	Yes	Mixed	Mixed	<i>Revise</i>
Applicability of Standards in Other Zones	N/A	N/A	No	No	<i>Revise</i>
S-C and S-JW Terminology	N/A	No	N/A	No	<i>Revise</i>
Pedestrian Access Requirements	Yes	Yes*	Yes	Yes*	Retain/Revise
Covered Entrance Requirements	Yes	Yes*	Yes	Yes*	Retain/Revise
Minimum Off-Street Parking Spaces	Yes*	Yes*	Yes	No	No Recommendation
Exemption from Underground Utility Standards	N/A	Yes	N/A	Yes	Retain

Assessments of “reasonable” and “useful and effective” are based on the specifics of Eugene’s code. In some cases, while a general concept, such as height limits, are reasonable and useful, the manner in which they are presented in Eugene’s code are not. See detailed analysis before for more information.

Analysis

Owner Occupancy Requirements

Description: Eugene requires that the owner of the property have their principle residence on the property, they must occupy the property for at least 6 months out of every year, and that the principle residence can't be leased or rented when not occupied by the property owner. It goes into great detail about how this is verified, the types of documentation required, and how the property owner is determined. It requires that a deed restriction be placed on the property stating this. It provides an allowance for a longer absence (up to a year, or two years after going through an adjustment review process) during which both units may be rented, provided that the property owner provide a notarized statement of their intent to return as well as documentation from their employer, educational facility, volunteer organization or medical provider. It requires that the owner re-verify their residence with the city every two years.

Where in the code: 9.2751 (17)(a)(7), 9.2751 (17)(a)(8), 9.2751 (17)(a)(9), 9.2751 (17)(c)(11), 9.2751 (17)(c)(12), 9.2751 (17)(c)(13), 9.2751 (17)(c)(14), 9.3811(b), 9.8030(34)(a)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
No	No	No	No

Explanation:

- *Siting and Design:* The rental or ownership status of the residents of a dwelling is not related to either the location of the building on a lot, nor the design of that building.
- *Reasonableness:* All other housing types in the Eugene code are completely agnostic as to ownership status. A single-family home can be either owner or renter occupied; a multi-family dwelling could be either renter occupied (apartment) or owner-occupied (condo). Singling out ADUs as the lone housing type where ownership status of the resident is relevant is inconsistent with how Eugene treats all other housing types in the code.
- *Reasonableness:* It is outside of the scope of this project to do a full analysis of the intersection of city-mandated owner-occupancy requirements and Fair Housing and anti-discriminatory requirements. However, given the frequent justification, including by members of the Eugene City Council, that owner-occupancy requirements are necessary because homes resided in by renters are less desirable in the neighborhood, and recent cases regarding disparate impact of housing decisions, owner-occupancy requirements should be examined for disparate impact and discriminatory intent in that light. See below regarding Useful and Effectiveness.
- *Reasonableness:* Prior to final occupancy, owners of properties where ADUs and primary dwellings are being built simultaneously, the owner must submit proof of occupancy prior to final occupancy. This is likely an impossible standard to meet, since until someone is living at a property, they are unlikely to have income tax filings or other documentation of residency. For developers who are hoping to sell the buildings, they are less likely to find a purchaser to move into the property prior to issuance of a final occupancy permit. This creates an unreasonable catch-22 situation—they can't occupy the building until they have proved that they occupy the building.
- *Clear and Objective:* While the length and specificity of these provisions are clearly an attempt to develop an owner occupancy requirement that can be maintained over time in a consistent and enforceable fashion, in the end, it still relies on the discretion of City Staff, working under a complaint-based system, to enforce the provisions.

- *Useful and Effective:* Proponents of the owner occupancy provision frequently cite an opinion that a home will be better maintained and neighbors will be less disruptive if the property owner lives on site. Both renters and property owners can be bad neighbors; both renters and property owners can be good neighbors. Demographically, property owners tend to be higher income and older than renters, though renters span the age and income spectrum. More than half of Eugene’s population rents their home. The implication of this argument—that in order to be desirable neighbors, renters need the supervision of a property owner—is troubling to say the least.
- *Useful and Effective:* Owner occupancy provisions are extremely difficult to enforce, as discussed in the Guidance on Implementing the Accessory Dwelling Unit Requirement document provided by the Department of Land Conservation and Development. Eugene has attempted to address this enforcement difficulty by adding additional requirements (deed restrictions, documentation requirements, etc.) to their code. However, at the end of the day, enforcement remains a concern with this provision—after all, few homeowners read the zoning code in depth before they purchase a home, and are unlikely to realize that they are required to provide the city with a doctor’s note, a notarized document of intent and go through an adjustment review process if they wish to rent out their home while they care for a sick family member. On the other side, the City is unlikely to know that a homeowner has temporarily relocated unless someone complains. Given the equity and reasonableness concerns described above, it seems unlikely that owner-occupancy requirements serve such a public good as to justify the extreme efforts and invasion of personal privacy required to enforce them.

Other Cities: No other city reviewed had an owner-occupancy requirement as detailed or restrictive as Eugene. Of the 16 cities review, four had owner occupancy requirements for ADUs in their code at the time of the review. All of these requirements pre-date SB 1051. Junction City and Albany both included removal of their owner-occupancy requirements in proposed or pending adjustments for compliance with SB 1051. Corvallis postponed discussion of owner-occupancy to a yet-to-be-completed “Phase II.” Oakridge has not yet updated their code.

Cities that had owner occupancy requirements and have completed their SB 1051 related revisions have consistently removed those provisions.

Recommendation: Remove the owner-occupancy requirement, and all related language from the code.

Lot Size Minimums

Description: Eugene prohibits ADUs of any type on lots that are smaller than 6,100. In some cases, larger lots are required: Eugene only allows ADUs on flag lots that are over 12,500 square feet in size, and in the University Neighborhoods (Fairmont, Amazon and South University) lots with ADUs must be at least 7,500 square feet. A few special area zones allow ADUs on smaller lots-- the S-C/R-1 subarea allows for attached accessory dwellings on lots of 4,500 square feet and detached ADUs on lots of 6,000 square feet. In the S-JW, two dwellings are prohibited on lots under 4,500, thus creating a lot size minimum of 4,5000 square feet for additional one family dwellings that meet the definition of ADUs.

Where in the code: 9.2751 (17) (a)(1), 9.2751 (17)(c)(1), 9.2775 (4)(b), 9.3065 (2)(a), Table 9.3625

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
No	No	Yes	No

Explanation:

- *Siting and Design:* The size of the lot is not related to the placement of the ADU on the lot, nor the design of the ADU.
- *Reasonableness:* While Eugene has definitions for what constitutes a legal lot and restricts new development on non-legal lots, only two housing types have lot-size minimums separate from legal lot size and lot coverage requirements—ADUs and duplexes in R-1. It is presumed that if a lot is legally sized, a single-family home, multi-family dwelling, rowhouse, etc. is permitted to be built on it provided it could meet all other requirements. While the determination of lot size minimum for ADUs for a typical R-1 lot seems to be based on a maximum density of 14 units per acre (see below re: density), the lot size minimums in the university neighborhoods and flag lots seem arbitrary. No other cities had similar lot size minimums.
- *Useful and Effective:* An interior/attached ADU or a conversion of an existing permitted structure into an ADU would have no impact on what “fits” on a particular lot. Particularly for these types of ADUs, the impact of lot size minimums is not to reduce the impact of additional buildings on a lot, but rather to limit the number of people who can live on a lot.
- *Useful and Effective:* Lot size minimums prohibit a substantial percentage of detached single-family homes from being able to develop an ADU. In the R-1 zones and university area, the lot size minimum preclude ADUs on 10,606 lots, or about 24% of all R-1 lots. In zones R-2 and R-3, out of about 3,516 total lots, 2,353 are less than 6,100 square feet (67%), and thus would not be allowed to construct an ADU. While not all of those lots have detached single family homes on them and would not be entitled to an ADU, the majority of single-family homes in the R-2 and R-3 zones are prohibited from building an ADU based on lot size.
- *Useful and Effective:* Given the minimum size of 6,100 square feet, which is almost precisely the size an R-1 lot would have to be to allow two units under Eugene’s standard density calculations, it is clear that the lot size minimums are intended to reinforce density requirements. See below for discussion of density requirements; however, this is clearly not useful or effective in zones other than R-1, which have higher density minimums and maximums.

Other Cities: No other cities reviewed had lot size prohibitions like Eugene’s. Creswell requires a slightly larger lot for single family homes with ADUs (5000 square feet minimum lot size for single family homes vs. 6000 square feet for single family homes and an ADU; Creswell also is one of the few cities to allow more than one ADU per single family dwelling.) Corvallis, which used a two-phase process like Eugene, removed pre-existing lot size minimums as part of their Phase I process.

Five cities stipulated that ADUs could only be built on lots that met the legal lot minimum lot size for the zone.

Recommendation: All lot size minimums specific to ADUs should be removed from the code.

Sample Code: Springfield

5.5-110 Applicability

A. Accessory dwelling units are permitted on LDR properties with a primary dwelling.

....

5.5-140 Non-Conforming Lot/Parcel Sizes

Accessory dwelling units shall not be permitted on lots/parcels that do not meet the applicable minimum lot/parcel size stated in Section 3.2-215.

....

3.2-215 Base Zone Development Standards

The following base zone development standards are established.

Development Standard	Residential Zoning District			
	Low Density Residential (LDR)	Small Lot Residential (SLR)	Medium Density Residential (MDR)	High Density Residential (HDR)
<i>Standard Lots/Parcels</i>				
<i>Minimum Area</i>				
East-West Streets	4,500 sq. ft.	3,000 sq. ft.	4,500 sq. ft. (15)	4,500 sq. ft. (15)
North-South Streets	5,000 sq. ft.	3,000 sq. ft.	5,000 sq. ft. (15)	5,000 sq. ft. (15)

Density Requirements

Description: Accessory Dwelling Units in Eugene must meet both the minimum and maximum density requirements for the base zone. The one exception is that in R-1, attached ADUs do not need to meet the minimum density requirement.

Where in the code: Table 9.2740, 9.2751 (1)(a), Table 9.3115, 9.3811(1)(e)(1), 9.3911(2)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
No	No	Yes	No

Explanation:

- *Siting and Design:* Density requirements do not determine where on a lot a structure is located, nor what that structure looks like or how it functions.
- *Reasonableness:* While most other dwelling types are subject to density requirements, ADUs are not typically considered to apply to density requirements in other cities. All other examined cities have either explicitly exempted ADUs from their density requirements or have remained silent on the subject and instead permitted ADUs on a per lot or per dwelling basis similar to how accessory uses/buildings are addressed—none specifically included ADUs in calculations of minimum and maximum density in the manner of Eugene.
- *Reasonableness:* Prior to 2014, ADUs were not explicitly subject to density regulations in Eugene. During the process of the 2014 Single Family Code Amendments, there was much discussion as to if ADUs should be subject to density limitations. These arguments primarily centered upon Metro Plan Policy A.9, which states that “local jurisdictions should establish density ranges which are consistent with the broad density categories of this plan.” This was argued at the time to be a flat prohibition upon allowing any housing above 10 units per gross acre on land designated as low-density by the Metro Plan. The City both has the authority to interpret the Metro Plan, and the responsibility to balance the various provisions of the Metro Plan to develop reasonable interpretations. The Metro Plan overall indicates a preference for increasing density of residential development—for example, Metro Plan Finding 16, 17, and 18 discusses that residential density targets are not being achieved at the time of the writing of the Metro Plan. Policies A.10, A.12, A.13, A.14, and A.16 all focus on ways to increase density of housing development. In particular, policy A.14 requires that Eugene review local regulations and remove barriers to higher density housing and to make provisions for a fuller range of housing options, and policy A.16 requires for that Eugene allow for the development of zoning districts which allow the overlap of established density ranges—and creates a flat prohibition upon allowing densities *below* existing Metro Plan density ranges, but does not provide a similar prohibition about allowing densities *above* existing Metro Plan density ranges. An interpretation of the Metro Plan that looks only at the text of policy A.9 without the context of other policies related to density is not reasonable.
- *Reasonableness:* Eugene interprets the Metro Plan requirements through its land use code. In the 2014 debate, it was argued that because Table 9.2740 stated that “all dwellings shall meet the minimum and maximum density requirements in accordance with Table 9.2750 Residential Zone Development Standards unless specifically exempted elsewhere in this land use code” this meant that ADUs must be subject to the density standards, and the clarification that was added in to the code in 2014 to include them in density calculations. However, another solution to that problem is not to explicitly *subject* ADUs to density standards, but rather to explicitly *exempt* ADUs from density standards. Many cities in Oregon have done just that (see sample

code below.) Springfield, who until recently shared a Metro Plan with Eugene, also does not count ADUs towards density. Eugene also exempts other forms of housing from density standards, for example by providing “density bonuses” for Affordable Housing and allowing this housing to develop at levels higher than what is allowed by the underlying plan.

- *Reasonableness*: Just as if Eugene code is determined to be inconsistent with the Metro Plan, the Metro Plan prevails, if the Metro Plan is inconstant with state statute, the state statute prevails. This is highlighted in numerous places through state law, including 197.646 and 197.829(d). As a result of SB 1051, state law now provides that each detached single-family home is permitted to develop at least one Accessory Dwelling Unit. Given that density regulations on ADUs are not design and siting, nor reasonable, if Eugene choses to interpret its Metro Plan density policies in a manner that does not permit the development of at least one accessory dwelling unit for each detached single-family dwelling, this interpretation would be inconsistent with state statute, and invalid.
- *Useful and Effective*: Subjecting ADUs to minimum density requirements is contrary to their intended purpose as a form of infill development—their intended purpose is to add a small amount of housing where a detached single-family home already exists. Given the current difference between permitted density and actual density in Eugene, and the relatively small number of ADUs permitted, exempting ADUs from density requirements would be unlikely to bring the actual density above the 10 units per gross acre range articulated in A.9, but would facilitate policy A.10, A.12, A.13, A.14 and A.16.
- *Useful and Effective*: When the City permitted ADUs in R-2, R-3, and R-4, it did not exempt ADUs from the minimum and maximum density requirements of those zones. Very few lots with single family homes would be able to add a unit and meet minimum density standards in zones with minimum density standards. So, for example, in an R-2 zone under density requirements, ADUs would be allowed where a single dwelling existed on a lot that was sized between 3,100 square feet and 6,700 square feet... the maximum density in R-2 is 28 units per acre and the minimum density is 13 units per acre. On a lot larger than 6700 square feet, 3 units of housing would be needed to meet the minimum density, and on a lot smaller than 3,100 square feet, two units would exceed the maximum density.
- *Useful and Effective*: Exempting Attached ADUs from minimum density in R-1 doesn’t make any sense since R-1 has no minimum density. This provision appears to be a hold-over from a previous version of code.

Other Cities: Half of the cities reviewed explicitly exempt ADUs from both minimum and maximum density calculations. The remaining cities do not mention density in the context of ADUs, but instead explicitly permit an ADU per lot or per dwelling basis.

Recommendation: **Either remove all references to ADUs as being subject to minimum and maximum density requirements, or explicitly state that ADUs are not subject to minimum and maximum density requirements.**

Sample Language: Cottage Grove

14.22.200 (B) (2) Exempt from Density. Accessory dwellings are exempt from the housing density standards of the Residential District, due to their small size and low occupancy levels.

Prohibition on Alley Access and Flag Lots

Description: The Eugene Code prohibits new ADUs on alley access lots. ADUs are prohibited on flag lots created after August 29th, 2014. The S-C allows for detached (but not attached) ADUs in the R-1 subarea on alley access and flag lots. In the S-JW, only one dwelling is allowed on alley access lots, thus prohibiting additional one family dwellings that meet the definition of an ADU.

Where in the code: 9.2741(2), 9.2751(18)(a)(2), 9.2775 (4)(c), 9.3065 (2)(b)(1), Table 9.3625, 9.3811(1)(d)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
No	No	Yes	No

Explanation:

- *Siting and Design:* The position of the lot and the street access to the lot is not connected to the siting and design of the units on the lot.
- *Reasonableness:* No other cities had explicit prohibitions on ADUs for any lots, excepting lots that were below the legal minimum lot size. Eugene has extensive regulations related to dwellings on alley access and flag lots, many added at the same time as the 2014 ADU restrictions.
- *Useful and Effective:* The primary purpose for limiting ADUs on lots accessed by an alley or a flag lot would be to ensure that those dwellings could be served effectively by fire trucks. This is presumably why alley access dwellings further than a particular distance from the main street are required to have sprinklers in section 9.2751 (18)(a)(12) of the Eugene Code. If the primary motivation of prohibiting ADUs on alley access lots is indeed fire safety, a similar provision could be added for ADUs on alley access lots. This would be a less restrictive way to meet a public safety need than an outright ban. See below regarding flag pole access for ADUs on flag lots.

Other Cities: No other cities reviewed drew a distinction between alley access lots or flag lots and any other type of lot for the purposes ADUs.

Recommendation: Blanket alley access lot and flag lot prohibitions should be removed. If fire safety is a concern, then a sprinkler requirement for ADUs on flag/alley access lot that are not easily accessible by fire trucks could be added as exists in 9.2751 (18)(a)(12).

Flag Lot Access Requirements

Description: To allow for ADUs on flag lots, the minimum width of the pole must be at least 25 feet, and the no more than 4 dwellings (including primary and accessory) can take access off of the pole.

Where in the code: 9.2775 (5)(e)(1), 9.2775 (5)(e)(2)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
No	No	No	No

Explanation:

- *Siting and Design:* The geometric shape of the lot and the street access to the lot is not connected to the siting and design of the unit on the lot. The number of dwellings on adjacent lots are not siting and design.
- *Reasonableness:* Eugene bases its requirement for flag lot pole-width on the number of lots accessed from the same pole. It is feasible that lots with duplexes or other housing types with multiple dwellings on a single lot could be accessed by a single pole 15 foot pole. It is unclear why building a duplex on a flag lot would require an access pole of 15 feet, but a primary dwelling and an ADU would require a flag lot pole of 25 feet.
- *Clear and Objective:* In many places, standards are applied to particular lots and buildings. For example, when determine how many units are allowed on a lot under density standards, Eugene looks at the specific lot as opposed to attempting to determine the density of a neighborhood or block based on what has previously been built. In the case of section 9.2775 (5)(e)(2), whether or not an ADU is permitted on an individual lot is dependent on how a neighboring lot has developed. It is questionable as to if this can be applied in a clear and objective fashion.

Other Cities: Only two other cities specifically included ADUs in their limits on the number of dwellings that could be accessed off a single flag lot pole. Cottage Grove and Springfield both had limits on the number of dwellings (including ADUs) that could take access of one pole for a flag lot—Cottage Grove’s limit was four like Eugene; Springfield’s was 8 including ADUs. However, they did not limit ADUs based on the pole width of the flag lot. No other city required a larger pole width to permit an ADU.

Recommendation: Remove restrictions on ADUs on flag-lots based on pole-width.

Bedroom Limits

Description: In most areas, ADUs are limited to two bedrooms. In the University area, if the primary dwelling has 4 or more bedrooms, the ADU is limited to 1 bedroom.

Where in the code: 9.2751 (17)(a)(5), 9.2751 (17)(c)(7)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
Yes	No	No	No

Explanation:

- *Siting and Design:* The number of bedrooms a building has could be considered part of the design of the building.
- *Reasonableness:* While some parking standards for multi-unit buildings are based on the number of bedrooms in the apartments, no other housing type in Eugene, nor ADUs in other cities, had limits on the number of bedrooms permitted. In addition, no other housing type in Eugene nor ADUs in other cities have the number of bedrooms permitted based on the number of bedrooms in a different dwelling.
- *Reasonableness:* Based on testimony at the time, the bedroom limits were put in place in part to prevent ADUs from being used as student housing and to facilitate limiting the number of residents living an ADU. Eugene already has occupancy limits for housing that limit the number of unrelated people who can live in a dwelling to 5; the bedroom limit is redundant.
- *Reasonableness:* According to Louise Dix, a AFFH Specialist from the Fair Housing Council of Oregon during Fair Housing training provided to the Eugene Planning Commission, bedroom limits can have a disparate impact on larger families and be considered discrimination based on family status (10/9/18 Planning Commission Meeting, minute 36), and a violation of the Fair Housing Act. In addition, Eugene prevents housing discrimination based on age (over 18) and if in fact the intent of this regulation was to discourage young adults from residing in particular units or areas, it would be in conflict with of Eugene’s anti-discrimination measures. (Eugene Code 4.630) (page 2 of May 14th, 2014 city council meeting materials: “Those code amendments apply to the existing single-family neighborhoods surrounding the University of Oregon (Amazon, Fairmount and South University), which have experienced a substantial increase in unintended housing development associated with the demand for student housing and the proximity of the university. As adopted, they prohibit certain dwelling types and land divisions, and limit certain uses...” Intended purpose of these amendments was to limit housing development for housing for a particular class of citizens—i.e. students, who are disproportionately younger.)
- *Clear and Objective:* While Eugene includes a definition of a “bedroom” in the code, this definition is not able to be applied in a clear and objective fashion. The number of bedrooms in a home could be based not on any measurable quality of the building, but rather, the discretion of the real estate agent listing the house at any point in time. Interpretation would needed to determine, in the case of conflicting documents, which prevails. In addition, for some homes almost any room could be considered a bedroom based on the definition provided in part C. (see Appendix A sample floor plan from Sears, Roebuck catalog—in this case, the kitchen, living room, parlor, and dining room all meet the definition in section C of a bedroom, but presumably the City is not routinely counting what is clearly a kitchen as a bedroom, nor would it interpret this design to be an eight bedroom home.)

- *Useful and Effective:* From a practical perspective, a size limit of 800 square feet functionally limits the number of bedrooms that an ADU can have. Having a separate “bedroom” limit adds complexity and risk without providing much additional benefit beyond the square footage limit.

Other Cities: No other cities had specific limits on the number of bedrooms in ADUs.

Recommendation: Remove bedroom limits on ADUs.

Maximum Occupancy Limits

Description: The number of people allowed to live in an ADU in the University Neighborhoods is based on the number of bedrooms in the main house—if the main house has 3 or fewer bedrooms, three people are permitted to live in the ADU; 4 or more bedrooms limits the ADU to being occupied by 2 individuals.

Where in the code: 9.2751 (17)(c)(8)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
No	No	No	No

Explanation:

- *Siting and Design:* The number of people living in a building is not related to the siting or design of the building.
- *Reasonableness:* No other housing type in Eugene, nor ADUs in other parts of Eugene, has an occupancy limit for housing separate from the overall occupancy limit for dwellings in the city. No other housing type bases its occupancy limit on the number of bedrooms in a different dwelling. Only one other city had a separate occupancy limit for ADUs. No other city based occupancy limits, definition of a family, or other similar restrictions on the characteristics of a different dwelling.
- *Reasonableness:* Occupancy limits placed on the number of people, regardless of familial relationships, creates a great risk of family status discrimination. Would a couple with a child living in an ADU be required to move if they had a second child?
- *Reasonableness:* This requirement puts landlords who own ADUs in the position to have to choose between complying with City Code or State Law. ORS 90.262, which outlines the types of rules and regulations landlords may adopt regarding use and occupancy of a premises, states: “If adopted, an occupancy guideline for a dwelling unit shall not be more restrictive than two people per bedroom.” A landlord with a two-bedroom ADU in the University Neighborhoods would be required to place a more restrictive standard—1.5 people per bedroom—in place or else be in violation of city code.
- *Clear and Objective:* Enforcement of this requirement would be complaint based, and influenced by the conflict with anti-discrimination law. For example, would the city act against a couple who lived in an ADU and had a baby the same way they would react to a couple who lived in an ADU and had a friend move in with them? In addition, see above regarding bedroom limits. It is unlikely that this provision could be enforced in a clear and objective fashion.
- *Useful and Effective:* The City of Eugene already limits the residents of a dwelling to the definition of a “family” in the code, which includes a limit that no more than 5 unrelated persons can live in a single dwelling, and given their size, ADUs are unlikely to attract many larger households.

Other Cities: Only one other city- Hillsboro- had an occupancy limit for ADUs separate from occupancy limits in the overall code. Their limit is three persons. It is unclear when Hillsboro last updated their code surrounding this. No other city based occupancy limits on the number of bedrooms in a different dwelling.

Recommendation: Separate occupancy limits for ADUs should be removed.

Outdoor Trash Screening Requirements

Description: Owners of ADUs have to build a fence around their outdoor storage/garbage areas.

Where in the code: 9.2751 (17)(b)(4), 9.2751 (17)(c)(19), 9.3811(1)(e)(4)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
Yes	No	Yes	No

Explanation:

- *Reasonableness/Useful and Effective:* While in general Eugene requires screening of outdoor storage areas and garbage areas, it exempts one and two family dwellings from these requirements (9.6740). It is unclear why a one family dwelling plus an ADU has a requirement that two-family dwellings are exempt from. Fencing costs money, and since the City has already determined that exempting one and two family dwellings from garbage screening requirements is reasonable, it is unclear why properties with ADUs should be the exception to that.

Other Cities: Springfield has a trash screening requirement similar to Eugene's. All other cities had no separate trash screening requirements for ADUs.

Recommendation: **Remove.**

Dog Keeping Limits

Description: No more than three dogs are permitted on a lot with an ADU, though an additional dog can come visit for up to six months.

Where in the code: 9.2751 (17)(a)(6), 9.2751 (17)(c)(10)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
No	No	No	No

Explanation:

- *Siting and Design:* How many dogs are allowed on a lot is not related to the siting or design of a structure.
- *Reasonableness:* ADUs are the only type of dwelling in Eugene that has specific limits on the number of dogs permitted on the lot, separate from regulations regarding kennels.
- *Clear and Objective:* The number of dogs living on a lot at any given time is changeable, and not able to be enforced or applied in a clear and objective fashion. The City would likely need to be responding to a complaint and would otherwise be exercising discretion as to when and where to enforce this provision.
- *Useful and Effective:* There is some implication, by the definition and language surrounding “kennels,” that any lot that has more than four dogs might be considered a kennel and thus only permitted with specific requirements. If so, and a dog limit of four exists overall, then it is unclear why a lot with an ADU would be permitted fewer dogs than a lot with a single-family home or a duplex.

Other Cities: No other city had ADU-specific dog limits.

Recommendation: Remove ADU specific dog limit. If desired, draft different language to limit the number of dogs permitted on residential properties in, for example, section 6.005 of the Eugene City Code.

Maximum Wall Length

Description: Detached ADUs are required to have recesses or extensions of at least 2 feet deep by five feet wide, for the full height of the building, at least every 25 feet.

Where in the code: 9.2751 (17)(b)(6), 9.2751 (17)(c)(20)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
Yes	No	Yes	No

Explanation:

- *Reasonableness:* While articulation standards exist for other types of buildings in Eugene, notably for multi-family buildings, they do not exist for single family homes or other buildings that are typically as small as ADUs, and usually provide options and adjustment criteria. For example, the multi-family standards (9.5500(7)) have an articulation requirement, but it provides multiple options including offsets, entries, etc. and is adjustable.
- *Useful and Effective:* The Articulation Requirement is not one that can be adjusted. Given that the intent is to ensure that the building holds some points of interest, and there are multiple ways to do that other than recesses or extensions, this is a standard that should be adjustable.
- *Useful and Effective:* Given the small size of ADUs, and the additional cost of adding recesses and extensions to a structure, a recess might not even be the most effective way to add interest to an ADU. This provision adds to the cost of an ADU without necessarily accomplishing the intended goal.
- *Useful and Effective:* This is one of the only design standards applied to ADUs (perhaps with the covered entry provision) that attempts to ensure that ADUs are not just boxes. There is a whole menu of methodologies to prevent that; it is unclear why this is the singular methodology encoded.

Other Cities: While many cities had design standards to attempt to ensure that ADUs were visually interesting or “matched” the primary dwelling, this primarily addressed items like building materials, windows, or roof pitch. Only Springfield had a maximum wall length standard similar to Eugene’s, and that standard was explicitly adjustable.

Recommendation: Remove maximum wall length standard. Alternately, revise the standard to better accomplish the goal of avoiding blank walls and make it an adjustable standard.

Sample Code: Eugene 9.5500

(7) Building Articulation.

(a) Articulation Requirement. To preclude large expanses of uninterrupted wall surfaces, exterior elevations of buildings shall incorporate design features such as offsets, projections, balconies, bays, windows, entries, porches, porticos, or similar elements.

1. Horizontal Surface. At least 2 of the design features outlined above shall be incorporated along the horizontal face (side to side) of the structure, to be repeated at intervals of no more than 40 feet.

2. Vertical Surface. At least 2 of the design features outlined above shall be incorporated along the vertical face (top to bottom) of the structure, to be repeated at intervals of no more than 25 feet.

(b) When offsets and projections are used to fulfill articulation requirements, the offset or projection shall vary from other wall surfaces by a minimum of 2 feet. Such changes in plane shall have a minimum width of 6 feet.

(c) Individual and common entry ways shall be articulated by roofs, awnings, or porticos.

(d) Criteria for Adjustment. Adjustments to the standards in this subsection may be made, based on the criteria of EC 9.8030(4) Building Orientation and Entrance Standards Adjustment.

Conversion of an Existing Structure

Description: Existing buildings may be converted to ADUs through an adjustment review process provided they are at least 5 feet from the interior property line (or there is a note from the adjacent property owner), the building satisfies all accessory dwelling standards except for the slopped setback requirements, and the ADU is limited to 600 square feet and 15 feet in height. The adjustment review process to convert an existing dwelling into an ADU is not permitted in the University Neighborhoods.

Where in the code: 9.8030(34)(b), 9.2751 (17)(d)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
Yes*	No	No	No

Explanation:

- *Siting and Design:* While all of the specific requirements are related to siting and design, the application to existing buildings only is questionable—see below regarding clear and objective.
- *Reasonable:* The height and square footage standards for a legally established building to be converted into an ADU are less than the standards that are applied to new construction of a building. No other type of housing in Eugene requires different standards for remodeling or conversion, nor do any other cities require that other buildings being converted into ADUs be smaller or shorter than new construction.
- *Clear and Objective:* While adjustment review is a discretionary process, and thus doesn't have to be clear and objective, it is questionable as to if all conversion of an existing structure into an ADU should be required to go through a discretionary process, particularly as to conversions of portions of existing structures (i.e. turning part of an existing single-family home into an ADU.) If an existing structure meets the clear and objective standards to be permitted as an ADU, it should not be required to go through an adjustment process. In addition, the provision for written consent from an adjacent property owner puts the discretion in the hands of the next door neighbor.
- *Useful and Effective:* One of the advantages to ADUs as a housing type is that they can often be constructed with less expense than other newly constructed dwelling types, and thus rented at a lower rate. Converting an existing structure into a dwelling is also frequently less expensive than building an entirely new structure. The impact of this standard is to require conversions to go through a more expensive and time-consuming process, and to limit the existing building that could be converted beyond the overall requirements for ADUs. It is unclear how the impact of a converted ADU would exceed that of a newly constructed ADU enough to justify smaller requirements.

Other Cities: Medford outlined a process to convert “illegal” ADUs into legal ADUs. Other than that, no other discussion of conversion of existing buildings to ADUs was found in other city’s code. No other city required that existing buildings that were being converted to ADUs be smaller than newly-constructed ADUs.

Recommendation: **Revise to clarify that existing buildings only need to go through this process if they require an adjustment to ADU standards. Revise to clarify that ADU conversions can be the same size as a newly built ADU. Revise to allow additional adjustments.**

Flat Square Footage Limits

Description: In almost all zones, the total building square footage of an ADU shall not exceed 800 square feet. In the S-RN, they may exceed the 800 square foot limit if they are the full story of a multi-story residential structure.

Where in the code: 9.2751 (17)(a)(2), 9.3811 (1)(a)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
Yes	Yes	Yes	Yes

Explanation:

- The size of a building is an element of the design of the building.
- Given that ADUs are, by definition, “accessory” to single family homes, it is reasonable that they be smaller than the primary dwelling.

Other Cities: Square-footage based size limits are universal in other cities’ ADU code. 800 square feet is a common size, with the range being between 600-1000 square feet. Some cities had separate (smaller) size limitations for detached ADUs vs. attached/interior ADUs. Creswell allows ADUs that are the entire story of another building (basement, attic, etc.) to exceed 800 square feet.

10 cities, in addition to have a flat square footage maximum for the ADU as described above, limited the size of the ADU to a percentage of the size of the primary dwelling (ranging from 40% to 100%), presumably with the intent of ensuring that ADUs were in fact smaller than the primary dwelling.

Verdict: An 800 square foot size limit for ADUs should be retained. Language similar to that in the S-RN regarding exceeding the 800 square foot limit if they are the full story of a multi-story structure may want to be considered to be applied elsewhere.

Square-Footage Limits Based on Lot Size

Description: The square footage of an ADU is limited to 10% of the lot area. In the University areas, for lots between 7,500 and 9,000 square feet, ADUs are limited to 600 square feet.

Where in the code: 9.2751 (17)(a)(2), 9.2751 (17)(c)(5)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
Yes	No	Yes	No

Explanation:

- *Siting and Design:* The size of a structure is related to the design of the structure.
- *Reasonableness:* No other housing type (with the exception of any dwellings on alley access lots, a requirement implemented at the same time as this one) is limited in square footage based on the lot size separately from lot coverage minimums.
- *Useful and Effective:* Particularly for conversions of existing structures, attached ADUs, or interior ADUs, regulating the size of the ADU based on the size of the lot can create substantial complexities and barriers. Given that roughly 47% of residentially zoned lots in Eugene are under 8,000 square feet, it effectively applies a smaller square footage maximum for ADUs on many properties, determined on a property-by-property basis. It would also make very difficult to implement programs such as “pre-approved” ADU designs (suggested by the Housing Tools and Strategies working group) as the pre-approved designs may not be allowed on many lots.
- *Useful and Effective:* ADUs are already limited to 800 square feet, and lot coverage also is limited to 50% of the lot in R-1. It is unclear what benefit is provided by requiring that an ADU on a 7,500 square foot lot be 750 square feet instead of 800.

Other Cities: No other city reviewed limited the size of ADUs to a percentage of the lot size. Bend had separate building square footage limits for lots under 6000 square feet (600 square foot ADU maximum) and lots over 6000 square feet (800 square foot maximum.)

Recommendation: Size limit based on a percentage of lot size should be removed.

Allowance for Unheated Garage Space

Description: Detached ADUs are allowed to have up to 300 square feet of garage or storage space attached, in addition to the 800 square foot size limit.

Where in the code: 9.2751 (17)(b)(1)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
Yes	Yes	No	No

Explanation:

- While the idea of allowing a detached ADU to have a one-car garage or a storage space that doesn't count towards the square footage limit is reasonable, the phrasing of this provision creates substantial confusion as to if above-garage apartments are allowed. Some sort of rephrasing to clarify if an ADU can be built above a two-car detached garage used by the primary house would be helpful. Prohibiting above-garage ADUs may have been an unintended consequence of this provision.

Other Cities: Similar code provisions were not found in other cities' code. Tigard had code that provided clarity about the interaction between an ADU and an connected, non-ADU accessory structure such as a garage.

Recommendation: Rewrite this provision to clarify applicability to above-garage ADUs.

Sample Code: Tigard

18.40.120 (A)

If an accessory dwelling unit is located above a detached accessory structure, such as a garage, the floor area of the portion of the building utilized as an accessory structure is not included in the calculation of square footage for the accessory dwelling unit. The square footage limits for accessory structures and for accessory dwelling units remain in effect.

Height Limits

Description: Attached ADUs that are located more than 60 feet from the front of the lot are limited to a total of 18 feet in height, with a requirement for a sloped setback. Attached ADUs within 60 feet of the front of the lot are limited to the height of the main building. ADUs do not received the additional height allowance for sloped roofs that other buildings receive. Detached ADUs have the requirement for sloped setback regardless of where on the lot they are placed. The height limit for detached ADUs in the S-C/R-1 subarea is 20 feet, with no requirement for sloped setbacks. Detached ADUs in S-RN are limited to 25 feet. Adjustment Review allows ADUs that are 20 feet from all interior property lines and within the sloped setback to be up to 24 feet tall, to allow for accessory dwellings over accessory buildings.

Where in the code: 9.2751 (3)(d), 9.2751 (17)(a)(3)(b), 9.2751 (17)(a)(3)(a), 9.2751 (17)(b)(5)(a), 9.2751 (17)(c)(9)(a), 9.2775 (5)(e)(3)(a), 9.3065 (2)(b)(2), Table 9.3815(3)(n), 9.8030(34)(c), 9.2775(5)(e)(3)(c), 9.2751 (17)(b)(5)(c)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
Yes	No	No	No

Explanation:

- *Reasonableness:* Eugene’s ADU height limitations are complex, and don’t recognize the distinction between attached/interior ADUs, over-garage ADUs, and detached ADUs—for example, would converting the back-half of the second story of an existing single-family home be subject to the ADU height limit?
- *Reasonableness:* Eugene doesn’t regulate the height of other dwelling types based on position on the lot. A two-story detached single-family home could be built with a second story more than 60 feet from the front of the lot line without sloped setback, which presumably would have the same impact as an ADU at that location. It is unclear why a dwelling type of an ADU would require additional height regulation that single-family dwellings, duplexes, etc. wouldn’t.
- *Reasonableness:* 18 feet with a sloped setback is an atypically small height limit—it limits ADUs to 1 to 1.5 stories, as opposed to most other cities, where height limits are sufficient to allow two story ADUs.
- *Clear and Objective:* It is unclear if the height limit for ADUs in the front part of the lot are limited to the height of the primary dwelling on the lot, or the main building height as listed in table 9.2750. In addition, it is unclear what the height limit is for ADUs that have a portion of the building more than 60 feet from the front of the lot line and a portion of the building less than 60 feet from the front of the lot line.
- *Useful and Effective:* It is presumed that the intent of this regulation is to limit ADUs to one story. However, as it applies to both detached and attached ADUs, it effectively limits ADUs places on the second story of a building. While 9.2751(17)(b)(5)(c) allows for the standard be adjusted to allow an ADU to be constructed over a garage or other accessory building, this effectively prohibits a backroom or an attic of an existing single-family home from being converted to an ADU.
- *Useful and Effective:* Given standard lot-sizes in Eugene and the fact that by definition an ADU is on a property with at least one other building, the ability to adjust the height limit only if the building is at least 20 feet from interior lot lines creates a substantial barrier to creating ADUs over accessory buildings.

Other Cities: Most other cities either have no separate height limit for ADUs, or limit ADUs to between 24-28 feet (2 stories). No city had a height limit as low as 18 feet (the only city with a height limit less than 24 feet was Oakridge, with a height limit of 20 feet.) No city had height standards as complex as Eugene's, or based height limits on where the ADU was located on the lot.

Recommendation: ADUs should be subject to the height limit of the base zone. Slope requirements and separate height requirements based on position on the lot should be removed.

Sample Code: Gresham

10.0120 (D)

Accessory Dwellings shall be consistent with the applicable setback, height and lot coverage standards of the land use district; in the case of non-conforming single-family homes, the LDR-7 setbacks and height requirements shall apply to the proposed Accessory Dwelling.

Setback Requirements

Description: ADUs are required to be set back five feet from the interior lot line. This requirement is repeated separately for ADUs that are within 60 feet of the front of the lot and ADUs are that are more than 60 feet from the front of lot. For ADUs on flag lots, the setback requirement is 10 feet, which is consistent with other new buildings on flag lots.

Where in the code: 9.2751 (17)(a)(3)(a), 9.2751 (17) (a)(3)(b), 9.2751 (17)(b)(5)(a), 9.2751 (17)(c)(9)(a), 9.2775 (5)(e)(3)(a)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
Yes	Yes	No	No

Explanation:

- *Siting and Design:* Setbacks govern where a building is placed on a lot, and are siting requirements. A five-foot setback from the lot line is fairly standard, and consistent with other structures in Eugene.
- *Clear and Objective:* See above regarding clear and objective application of within 60 feet/greater than 60 feet language.
- *Useful and Effective:* Given that the overall requirement for setbacks in R-1 is 5 feet, and that the setback back is the same no matter where the ADU is sited on the lot, the language surrounding this is redundant. While having a setback for ADUs is useful, including it the particular location and manner that it is confusing.

Other Cities: All cities reviewed had setback requirements for ADUs that were the same as the base zone.

Recommendation: Retain 5 foot setback, but revise language to decrease redundancy/increase clarity.

Setback Intrusions Limitations

Description: While most buildings are allowed to have particular architectural features intrude into the setback, such as eaves, bay windows, porches, and awnings, ADUs are limited to having eaves and chimneys that project into the setback for no more than two feet.

Where in the code: 9.2751 (17)(a)(3)(c), 9.2751 (17)(b)(5)(b), 9.2751 (17)(c)(9)(b), 9.2775 (5)(e)(3)(b)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
Yes	No	Yes	No

Explanation:

- *Reasonable:* It is unclear why ADUs, unlike any other dwelling structure has a more limited requirement for setback intrusions. It is inconsistent with how Eugene treats other types of residential structures.
- *Useful and Effective:* The presumed intent of this regulation is to prevent porches, bay windows, and other features which may impact the privacy of a neighbor. As described elsewhere, if a particular element is a concern for an ADU, it should also be a concern for a single-family home, and revised overall. However, in conjunction with the wall length requirement, it is clear one overall goal is to create architectural interesting ADUs; providing additional restrictions on eaves, cornices and other architectural features seems to serve merely to require an increased setback for interesting ADUs, and reward ADUs that have fewer features of interest with a decreased setback requirement.

Other Cities: Hillsboro had a requirement ADU requirement that eaves be at least two feet away from the property line; otherwise, no other city had special mention of setback intrusions as relates to ADUs.

Recommendation: Remove the extra limitations on setback intrusions for ADUs.

Attached ADU Connection Standards

Description: To be considered an attached ADU, an ADU must share a common wall or ceiling for at least 8 feet.

Where in the code: 9.2751 (17)(a)(4), 9.2751 (17)(c)(6)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
Yes	Yes	Yes	Yes

Explanation:

- *Useful and Effective:* It makes sense to have a standard for what constitutes an attached vs. detached ADU only if different standards apply to detached vs. attached ADUs. If the same standards are applied to both attached and detached ADUs, then the standard is not necessary.

Other Cities: No definition of “attachment” with any more detail than Eugene’s was found in any other city’s code. Most did not define a minimum amount of connection for “attached” ADUs at all.

Recommendation: Remove if different standards don’t exist for attached/interior ADUs vs. detached ADUs. Otherwise retain.

University Lot Dimension and Coverage Requirements

Description: In addition to the lot size minimum, the boundaries of a lot with an ADU must be sufficient to fully encompass an area with a minimum dimension of 45 feet by 45 feet. In addition, unlike other R-1 areas, all roofed areas are included as part of the calculations for lot coverage.

Where in the code: 9.2751 (17)(c)(2), 9.2751 (17)(c)(3)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
No	No	Yes	No

Explanation:

- *Siting and Design:* As discussed previously with flag lots, the geometric shape of a lot itself is not siting and design.
- *Reasonable:* Eugene excludes roofed eaves and covered porches/balconies/carports that are open on at least 50% of their perimeter from lot coverage calculations for all other housing types and for ADUs in other neighborhoods.
- *Useful and Effective:* It is unclear what purpose the regulations serve, particularly in conjunction with other regulations such as maximum size for ADUs, overall lot coverage standards, and setback requirements.

Other Cities: No other city had similar requirements.

Recommendation: Remove these requirements.

University Parking Requirements

Description: Driveways and parking areas in the University Areas are limited to 20% of the total lot area. The lot is required to have at least two but no more than three parking spaces. For lots where the primary vehicle access to the ADU is via the alley, standards for alley access lots located at 9.2751(18)(a)11 are applied, which includes size restrictions on garages and parking areas.

Where in the code: 9.2751 (17)(c)(4), 9.2751 (17)(c)(15), 9.2751 (17)(c)(16)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
Yes	Yes	Mixed	Mixed

Explanation:

- *Clear and Objective/Useful and Effective:* While overall providing limits on the parking areas and number of parking spaces on a lot is useful, particularly in areas where active transportation is encouraged, the cross-reference to section 9.2751(18)(a)(11) creates some amount of conflict—most notably, for a lot with an ADU that takes parking access from an alley, it is unclear if the total vehicle use area is limited to 400 square feet or 20% of the lot area; if the parking requirements apply only to alley access parking or if they would extend to a separate parking area accessed by the front of the lot, or if it is even physically possible to construct the number of parking spaces required under the alley access parking rules.

Other Cities: Overall parking requirements for other cities were not reviewed; however, it appeared that parking for ADUs was governed by overall code requirements for parking, as opposed to being specific to ADUs. The primary difference was to exempt ADUs from parking requirements in some cases.

Recommendation: Retain the majority of this code, but resolve conflict between ADU and alley access code.

Applicability of Standards in Other Zones

Description: In some special area zones, the standards for ADUs contained in sections 9.2751(17) are applicable; in others they are not. In addition, the summary for 9.2751(17) specifically refers to ADUs in R-1, leaving it unclear as to if the standards are intended to apply to ADUs in other zones (R-2, etc.)

Where in the code: 9.2751(17), Table 9.3115, Table 9.3210, 9.3215(2), Table 9.3310, 9.3510 (1)(b), Table 9.3810, Table 9.3910, 9.3915(13)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
N/A	N/A	No	No

Explanation:

- **Clear and Objective:** In some special area zones (S-CN, S-E, S-HB) ADUs are a permitted use, with no reference to additional standards. S-DW specifically exempts the ADUs in that zone from the standards in 9.2751(17), while 9.3915(13) specifically applies the standards to the S-W. S-RN has a separate set of ADU standards, which are the same as those which previously existed in the R-1 zone prior to the 2014 update and contain overlapping provisions. This leaves it open to interpretation as to which standards apply to ADUs in which zones.
- **Useful and Effective:** The intent of the S-C and S-JW revision below was to ensure that SAZs didn't have new regulations applied that were inconsistent with SAZ code. However, by applying the regulations in 9.2751(17) specifically to the S-W zone without analysis as to the compatibility of the standards with the S-W zone or SB 1051 overall, the city applied new standards to a Special Area Zone without review specific to that Special Area Zone. Either SAZ zones can/should be modified in conjunction with the base code without special consideration (in which case S-JW and S-C should permit ADUs) or they shouldn't be (in which case the standards in 9.2751(17) should not apply in S-W.) In addition, as an explicitly mixed-use zone that allows for multi-unit and higher density development, it is unclear why the restrictive standards applied to ADUs in R-1 should be continued, and why they were not for any other SAZ.
- **Useful and Effective:** The S-RN zone retains the ADU standards that existed in the Eugene code prior to the revisions of 2014. While phrased differently than the code provisions analyzed about, they contain many of the same concepts such as owner-occupancy. These standards will also need to be reviewed and adjusted in light of ORS 197.312.

Other Cities: Most cities had far fewer or no "special" zones that are comparable to Eugene's. Detailed analysis of how ADUs were handled in the special zones that did exist was not done.

Recommendation: **Revise language so that applicability of ADU standards in Special Area Zones and non-R-1 zones is clear. Remove impermissible legacy ADU regulations (such as owner occupancy.)**

S-C and S-JW Terminology

Description: In the S-C and S-JW special area zones, buildings that meet the definition of ADUs are to be referred to as “one-family dwellings” as opposed to “Accessory Dwellings”

Where in the code: 9.3060(2), 9.3615(2)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
N/A	N/A	N/A	No

Explanation:

- This is a terminology question, as opposed to a question of standards or regulations, so it is not evaluated for siting and design, reasonableness, or clear and objective application. LUBA found that referring to ADU like structures as “additional one family dwellings” is permissible.
- *Useful and Effective:* It appears that the idea behind this phrasing is that even if at a future date the City modified the regulations surrounding ADUs, it would not affect the S-JW and S-C areas. For example, the S-JW permits additional single-family dwellings on lots over 4,500. By not calling them ADUs, the terminology change attempts to ensure that even if lot size minimums are removed for ADUs, S-JW can still disallow ADU like structures on lots under 4,500 square feet. However, LUBA has also held that the city may limit access to accessory dwelling units only pursuant to “reasonable local regulations related to siting and design.” As according to LUBA, “additional one family dwellings” are ADUs for the purposes of ORS 197.312(5), the S-C and S-JW zones cannot avoid compliance with the law by simply calling the structures something else. The intent of ensuring that ADUs or ADU-like-dwellings would be prohibited for particular single-family home owners in those neighborhoods was not achieved by changing what they were called. Instead, it has created confusion and the necessity of creating work-arounds in other processes. (See: allowance for Transportation SDCs to be reduced for homes under 800 square feet rather than ADUs in order to ensure that ADU-like buildings in these zones would be eligible for the SDC reduction.)

Other Cities: This is a unique situation and comparison to other cities is difficult. However, no other information was found indicating that other cities used a different term to refer to ADU-like structures in select zones.

Recommendation: Remove the additional language and permit ADUs called ADUs outright in the S-JW and S-C zones; alternately, ensure that the S-JW and S-C zones do not disallow additional one family dwellings based on anything other than reasonable regulations related to siting and design (i.e. lot size.)

Pedestrian Access Requirements

Description: Detached ADUs are required to have a hard-surface pedestrian walkway from the street/alley to the entrance. The pedestrian walkway is not required in the S-C/R-1 subarea.

Where in the code: 9.2751 (17)(b)(2), 9.2751 (17)(c)(17), 9.3065 (2)(b)(3), 9.3811(1)(e)(2)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
Yes	Yes*	Yes	Yes*

Explanation:

- *Reasonableness:* While pedestrian walkways are not called out to be hard surface in this manner for single family home, duplexes, etc. the requirement for pedestrian walkways is common in other areas of the code, and driveway standards also exist for other housing types.
- *Useful and Effective:* The requirement for a hard surface walkway does add to the cost of developing a dwelling. Less expensive hard surface materials tend to be impermeable; specific recommendations for permeable surfaces that allow groundwater absorption might be useful. In particular, this should be an adjustable standard.

Other Cities: Springfield and Florence had pedestrian access requirements similar to Eugene's, and Corvallis required space between pedestrian access for ADUs and adjacent properties; otherwise, no other city had unique pedestrian access standards for ADUs.

Recommendation: Retain. Should be made adjustable. Could be revised to more explicitly promote permeable surfaces, or removed as unnecessary restrictive, but it complies with all of the review standards requirements as is.

Covered Entrance Requirements

Description: Detached ADUs are required to have a primary entrance with a covered area at least 3 feet by 3 feet.

Where in the code: 9.2751 (17)(b)(3), 9.2751 (17)(c)(18), 9.3811(1)(e)(3)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
Yes	Yes*	Yes	Yes*

Explanation:

- *Reasonableness:* While most dwelling types do not have a similar requirement for covered entry ways in the base zone, requirements for covered entryways or porches are included in several special area zones.
- *Useful and Effective:* Requiring covered entry ways adds to the cost of a development, but it is also an effective and useful way to ensure architectural interest in a building. However, it should be an adjustable standard to allow for other methodologies, particularly for existing structures.

Other Cities: While several other cities had design requirements for ADUs, and Springfield had a similar covered entrance requirement to Eugene's, most other cities did not specifically require covered entrances for ADUs.

Recommendation: **Retain. Allow this to be an adjustable standard.**

Minimum Off-Street Parking Spaces

Description: ADUs are required to have one off street parking space.

Where in the code: 9.3811(1)(c), Table 9.6410

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
Yes*	Yes*	Yes	No

Explanation:

- Most cities reviewed retained a parking requirement of some sort for ADUs, even after updating other elements of their ADU code. Eugene consistently requires parking for most buildings in most areas. However, proposed HB 2001 specifically indicates that requiring additional parking shouldn't be considered a regulation related to siting and design, in a section providing legislative clarification for SB 1051. Parking requirements meet the "reasonableness" standards outlined in this document, and it is unclear how much preemptive weight should be given to a proposed (as opposed to passed) legislative measure.
- Creating additional parking is an expensive proposition, and according to DLCD, it is not recommended that jurisdictions include an off-street parking requirement in their ADU standards. As small accessory units, sometimes occupied by family members, sometimes in areas with access to non-car transportation, additional parking may not be necessary.

Other Cities: Four cities required no additional parking for ADUs (Salem, Medford, Corvallis, and Creswell); most others required at least one parking space per ADU.

Recommendation: No recommendation made. While in the opinion of this writer, requiring additional parking for ADUs can create a substantial barrier and the parking requirement should be removed, by the criteria used for this analysis it is a "reasonable" local regulation.

Exemption from Underground Utility Standards

Description: ADUs are exempt from having to construct underground utility infrastructure if they can be served by legally established above ground utility service to the primary dwelling.

Where in the code: 9.6775(c)

Siting and Design	Reasonable	Clear and Objective	Useful and Effective
N/A	Yes	N/A	Yes

Explanation:

- *Reasonableness:* Other new connections to structures or buildings with legal existing above ground utility service are also exempt from the requirement to place utilities underground.
- *Useful and Effective:* Undergrounding utilities requires substantial money and time. Allowing ADUs to use existing utility infrastructure reduces barriers to ADU development.

Other Cities: Detailed analysis of other cities' utility standards was not completed; however, at least one other city (Cottage Grove) had ADU standards that allowed for use of existing utility connections.

Recommendation: Retain.

A Note on Accessory Buildings

While SB 1051 makes no requirements on accessory buildings that are not used for dwellings, it is relevant to note that the majority of the code related to Accessory Buildings in R-1 (9.2751 (16)) was passed at the same time as the update to the code surround Accessory Dwelling Units. It contains many provisions that are similar to those for Accessory Dwelling Units in Eugene, including square footage limits based on the size of the lot, sloped-setback height limits, and deed restrictions. The clear intent of this code was to regulate structures that would have the potential to be converted into ADUs at a future date.

While not required by SB 1051 or LUBA, it may not be out of line to review this section of the code as well for objectivity, feasibility, and reasonableness.

Comparable Cities

Summary of Analysis

For the purpose of this analysis, the zoning code of 16 cities that could be considered comparable to Eugene was examined—all 10 other cities in Oregon with a population between 50,000 and 200,000 (mid-size cities), and the 6 additional cities in Lane County with populations between 2,500 and 50,000 (Lane cities.)

The most recent versions of the zoning code that were able to be examined via the internet were used, and were examined as fully as possible for comparison with elements of the Eugene code; however, given the variances in overall structure of the code, terminology and robustness of website tools, it is conceivable that elements of code that may affect ADUs, particularly if located outside of ADU standards, may have been missed. Where necessary, additional sources (city council minutes and passed ordinances, news reports, informational fliers) were used to verify interpretations and status.

The majority of the cities (at least 7 of the mid-sized cities, and 3 of the Lane cities) made updates to their code in 2017 or 2018 that affected ADUs. Two other cities began a process to update their ADU code that was not completed as of this writing, and at least one other identified only one change needed and instructed staff to fold it into a future code update. All told, at least 14 of the 16 cities attempted to address the requirements of SB 1051 in some form or another. Some notes:

- It is unclear when **Hillsboro** last made updates to the ADU code; however, with the exception of the three-person occupancy limit for ADUs, they appear to be substantively in compliance with SB 1051.
- **Beaverton** code reviewed was dated in 2002, and a more recent version was not found. In a memo, Beaverton indicated that they would approve one ADU per single family home as opposed to one per lot as indicated in their code, and would update their code at a later date. Other than this, they appeared to be in compliance with SB 1051.
- **Corvallis** updated their ADU code in 2018; however, like Eugene they are explicitly using a “two-phase” process to address SB 1051 compliance. In phase 1, completed in 2018, they removed lot size minimums that previously existed for ADUs. They have stated that owner-occupancy requirements are among the elements to be examined in Phase II.
- **Albany’s** ADU code was last updated in 2007; in 2018, the Albany City Council twice approved ADU code modifications that would have increased the maximum square footage of ADUs and removed the owner occupancy requirements; both times it was vetoed by the Albany Mayor and the final outcome of the process is still pending.
- **Junction City** identified owner occupancy requirements in their code as an element of their code in need of revision in light of SB 1051, and included modifying it in a list of future code amendments to be completed as time allows.
- **Veneta** proposed modifications to their ADU amendments in December of 2018; however, the vote on these amendments was delayed and was still pending as of the writing of this report.
- **Oakridge** appears to have not updated their code related to ADUs since it was originally passed in 2004, and no information was found about plans to do so. Oakridge was also the smallest city reviewed in the process.

Additional Provisions from Other Cities

Several cities had ADU provisions that touched on topics not addressed in Eugene’s code, but may be of interest. This is not necessarily a recommendation that similar provisions be applied in Eugene, but rather examples of how other cities have gone beyond the minimums required by state law.

Medford- CC&Rs

In Eugene, there has been some conversation about how some CC&Rs restrict the ability of property owners to build ADUs, and the impacts of this on neighborhoods that do not have CC&Rs. Medford has specifically limited CC&Rs from prohibiting ADUs.

Medford Section 10.821 (9)

A development’s Conditions, Covenants, and Restrictions (CC&Rs) or similar legal instrument recorded subsequent to the effective date of this ordinance [December 16, 2004] shall not prohibit or limit the construction and use of ADUs meeting the standards and requirements of the City of Medford.

Medford and Junction City- Lot Coverage Bonus

While in most cities lot coverage standards remain the same regardless of if there is an ADU on the lot, both Medford and Junction City allow for a “coverage bonus” when an ADU is constructed, and allow greater lot coverage for lots with ADUs.

Junction City Section 14. Lot Coverage.

In a R1 zone, buildings shall not occupy more than 40 percent of the lot area except where an accessory dwelling unit is constructed, and then buildings shall not occupy more than 50 percent of the lot area.

Springfield and Florence– Standards for Manufactured Homes or Towable Structures (i.e. tiny homes on wheels)

The permissibility of Tiny Homes on Wheels in residential zones and their status under the code is a separate but related discussion to the ADU question. Both Springfield and Florence have created standards for the use or conversion of Wheeled Homes as ADUs.

Springfield:

If a Type 2 manufactured home or a towable structure (that is permitted, inspected and approved by the local authority having jurisdiction) is brought to the site as an accessory dwelling unit, it shall have its tongue and towing apparatus removed. It shall be placed on an excavated and back-filled foundation, enclosed at the perimeter with stone, brick or other concrete or masonry materials approved by the Building Official and with no more than 24 inches of the enclosing material exposed above grade. Where the building site has a sloped grade, no more than 24 inches of the enclosing material shall be exposed on the uphill side of the home (if the dwelling is placed on a basement, the 24-inch limitation will not apply). (6384; 6376)

Mobile homes, recreational vehicles, motor vehicles, and travel trailers shall not be used as an accessory dwelling unit. Type 2 Manufactured Homes and towable structures that are permitted, inspected and approved by the local authority having jurisdiction are allowed. (6376)

Florence, 10-10-6:

i. Dwellings built on an axled frame designed for transportation on streets and highways do not qualify as ADUs unless made permanent through the payment of System Development Charges.

ii. ADUs built on an axled frame may be considered a permanent dwelling through the removal of tongue and running gear, addition of blocking, and the addition of skirting.

Tigard, Springfield, and Creswell- Multiple ADUs per Lot

While SB 1051 only required that each detached single family home be allowed one ADU, Tigard, Springfield and Creswell allowed additional ADUs on the same lot. In Springfield's case, this was only in higher density zones. Tigard allowed multiple ADUs in all zones. This was limited to either two attached or one attached and one detached ADU.

Tigard 18.220.040 A

- 1. A maximum of 2 accessory dwelling units are allowed per single detached house*
- 2. A maximum of 1 detached accessory dwelling unit is allowed per single detached house A second accessory dwelling unit must be attached to the primary unit.*

Medford- Illegal ADU Conversion Standards

While an exact count is impossible, it is known that there are some number of structures that are being used as ADUs but that are unpermitted and likely have not been inspected for safety. Owners of such structures have sometimes asked how to make them "legal." Medford recently implement a process for exactly that.

Medford 10.821

(D) Illegal ADUs

It is the intent of subsection 10.821(D) to offer a land use review process to convert illegal ADUs to a nonconforming structure or use. Any such ADU shall adhere to the following:

- (1) Illegal ADUs seeking conversion to a nonconforming structure or use shall have been constructed prior to January 1, 2019. The owner, not the City, has the burden of proving that any illegal ADU structure or use was occupied, constructed and/or used prior to January 1, 2019.*
- (2) All applicable permits and utility connections required by Medford Municipal Code for the illegal ADU shall be obtained prior to the issuance of any Certificate of Occupancy or other required licensed for occupancy of the ADU.*
- (3) All building, fire, life and safety codes shall be met.*
- (4) If the standards of Article V of the Medford Land Development Code otherwise cannot be met, the land use approval for an illegal ADU shall be subject to the land use review procedures of the Type III, Exception land use review (Section 10.186). The applicable Exception criteria for converting an illegal ADU shall be 10.186(B)(1-3).*
- (5) An illegal ADU converted to a legal structure or use per 10.821(D)(4) in this subsection shall be considered a nonconforming ADU once all standards of 10.821(D)(1-4) have been met.*

Comparative Code Chart

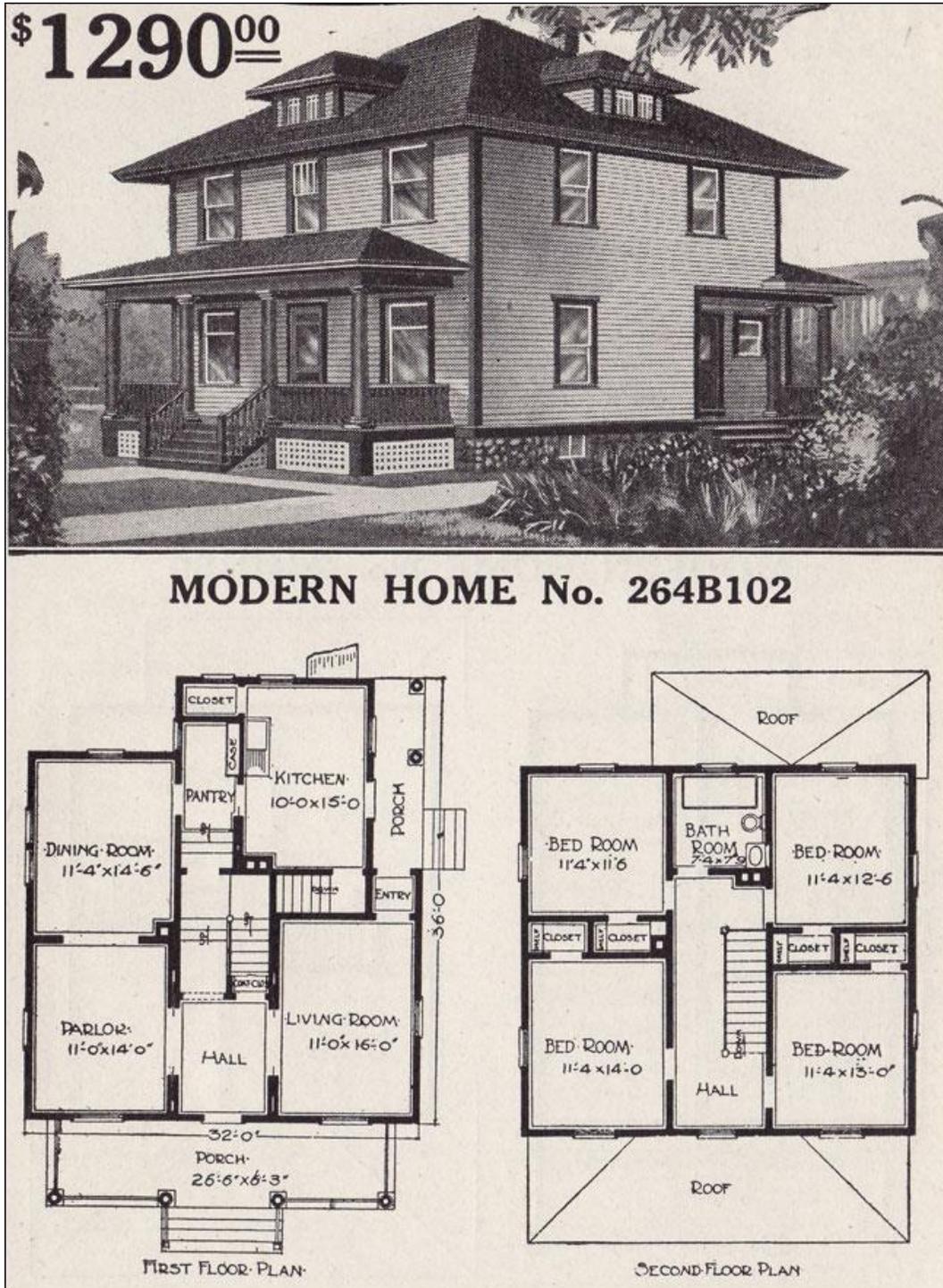
For the purposes of this analysis, the zoning code as relates to ADUs for 16 other cities in Oregon were examined. The Cities selected were either comparable to Eugene in population (between 50,000 and 200,000 population) or location (cities with populations over 2,500 in Lane County.) A brief summary of these city's codes is below.

City	Population	Last Update	Owner Occupancy	Lot Size Minimum	Density	Square Footage	Height Limit	Parking Required
Salem	165,265	2017	No	No	Exempt	900/75%	25 feet	0
Gresham	110,505	2018	No	No	Exempt	750*/50%	Base	1
Hillsboro	101,920	Unclear	No	Legal Lot	Silent	750	Base	1
Beaverton	97,000	2002	No	No	Silent	800/50%	Base	1
Bend	89,505	2018	No	No	Exempt	600*	25 feet	1
Medford	80,375	2018	No	No	Exempt	900/75%	Base	0
Springfield	60,865	2018	No	Legal Lot	Silent	800/100%	Base	1
Corvallis	59,280	2018	Yes	Legal Lot	Silent	900/40%	Base	0
Albany	53,145	2007	Yes	Legal Lot	Silent	750/50%	24 feet	3*
Tigard	52,785	2018	No	No	Silent	800/100%	25 feet	1
Cottage Grove	10,005	2018	No	No	Exempt	800	28 feet	1
Florence	8,795	2018	No	Legal Lot	Exempt	1000/75%	Base	1
Junction City	6,125	2003	Yes	No	Silent	800	25 feet	1
Creswell	5,455	2018	No	No	Exempt	800**	110% of primary	0
Veneta	4,790	2017	No	No	Silent	600/50%	28 feet	3*
Oakridge	3,280	2004	Yes	No	Exempt	800	20 feet	2

- **Lot Size:** “No”- City permits ADU on lot with no reference to lot size. “Legal Lot”- City permits ADUs on lots that meet legal lot requirements elsewhere in the code.
- **Density:** “Exempt”- City explicitly exempts ADUs from residential density minimums and maximums/requirements. “Silent”- The City does not explicitly apply or exempt residential density requirements to ADUs. In most cases, this is in conjunction with language that indicates that density doesn’t need to be considered when permitted ADUs—for example, Section 3.080(4) of the Albany Code: *“One accessory apartment is permitted per primary single-family residence called the ‘primary residence.’”*
- **Square Footage:** Percentages refer to the percentage size in relation to the primary dwelling; no city regulated ADU size based on percentage of the lot other than Eugene. If a different requirement existed for attached and detached ADUs, the detached ADU size is listed, and it is marked with a star.
- **Height:** “Base” means that the code either explicitly or implicitly limited ADU height based on the maximum height of the underlying zone.
- **Parking:** Both Veneta and Albany required a particular number of parking spaces for the property if it included an ADU, as opposed to explicitly requiring an additional space for the ADU. Neither of their codes have yet been updated in light of SB 1051.

Appendix A: A Modern Home

The attached graphic is a floorplan for a 1916 Sears Roebuck Home Design. Depending on how the definition of a “bedroom” in the Eugene code is interpreted, this home design could have between four and eight bedrooms.



Appendix B: Sources and Links to Text

Salem:

- Zoning Code: https://library.municode.com/or/salem/codes/code_of_ordinances?nodeId=TITXUNDECO_UDC_CH700SPUSPR_S700.007ACDWUN

Gresham:

- Zoning Code: <https://greshamoregon.gov/Development-Code/>

Hillsboro:

- Zoning Code: <http://qcode.us/codes/hillsboro/view.php?version=beta&view=desktop&topic=12>
- Secondary Dwelling Unit City Flyer: <http://www.hillsboro-oregon.gov/Home/ShowDocument?id=5485>

Beaverton:

- Zoning Code: <https://www.beavertonoregon.gov/DocumentCenter/View/4970/Chapter-60---Special-Requirements?bidId=>
- 7/1/18 “Interested Parties” Memo regarding ADUs: <https://www.beavertonoregon.gov/DocumentCenter/View/23266/ADUs-memo-7-1-18?bidId=>
- Building Code Considerations for Accessory Dwelling Units: <https://www.beavertonoregon.gov/DocumentCenter/View/20534/Accessory-Dwelling-Units-Code-Considerations?bidId=>

Bend:

- Zoning Code: <https://www.codepublishing.com/OR/Bend/html/BendDC03/BendDC0306.html#3.6.200>

Medford:

- Zoning Code: <http://www.ci.medford.or.us/code.asp?codeid=3805>
- ADU Specific Code: <https://www.ci.medford.or.us/files/accessory%20dwelling%20units.pdf>

Springfield:

- Zoning Code: http://qcode.us/codes/springfield-development/view.php?topic=5-5_5_100&showAll=1&frames=on

Corvallis:

- Zoning Code: <https://archives.corvallisoregon.gov/public/0/edoc/1105293/COMPLETE%20LDC%20-%20Amended%2011.05.2018.pdf>
- Ordinance 2018-16: <https://archives.corvallisoregon.gov/public/ElectronicFile.aspx?dbid=0&docid=1036430>
- Corvallis Gazette-Times Article on Phased Approach: https://www.gazettetimes.com/news/housingthemidvalley/an-adu-in-every-backyard-city-tries-to-align-code/article_57833021-4c0f-5d75-a82e-ae6486a5b04e.html
- Prior version of zoning code with lot size minimums for ADUs, removed in Ordinance 2018-16: <https://archives.corvallisoregon.gov/public/0/edoc/1042207/COMPLETE%20LDC%20-%20Amended%20January%2026,%202018.pdf> (p878)

Albany:

- Zoning Code: https://www.cityofalbany.net/images/stories/cd/planning/development_code/03-Article%203-Residential%20Zoning%20Districts.pdf
- 12/5/18 Council Agenda packet and minutes, including draft ADU ordinance:
https://www.cityofalbany.net/images/stories/citycouncil/archive/2018/cc_20181205_agd.pdf
https://www.cityofalbany.net/images/stories/citycouncil/archive/2018/cc_20181205_min.pdf
- 11/8/19 Council Agenda packet, ADU Public Hearing materials and minutes:
https://www.cityofalbany.net/images/stories/citycouncil/archive/2018/cc_20181107_agd.pdf
https://www.cityofalbany.net/images/stories/citycouncil/archive/2018/cc_20181107_min.pdf
- 11/9/19 Albany Democrat-Herald article regarding ADU veto in Albany:
https://democratherald.com/news/local/albany-mayor-again-vetoes-adu-proposal/article_1165d30b-df52-5fd8-ac5c-a221f7946559.html
- 12/6/18 Corvallis Gazette-Times article regarding ADUs in Albany:
https://www.gazettetimes.com/news/local/council-holds-off-on-adu-plan/article_81eb472e-2295-52a2-98e2-0e2e827c9502.html

Tigard:

- Zoning Code: http://www.tigard-or.gov/business/title_18.php
- Ordinance 18-23 amending zoning code: http://www.tigard-or.gov/DevelopmentCode/Ordinance18-23_updates.pdf

Cottage Grove:

- Zoning Code: <https://www.cottagegrove.org/cd/page/cottage-grove-development-code>
- ADU Ordinance:
http://www.cottagegrove.org/sites/default/files/fileattachments/mayor_amp_city_council/meeting/packets/7711/8a.pdf

Florence:

- Zoning Code:
http://www.ci.florence.or.us/sites/default/files/fileattachments/mayor_and_council/page/961/chapter_10_-_restricted_residential.pdf <https://www.ci.florence.or.us/council/title-10-zoning-regulations>

Junction City:

- Zoning Code: http://www.ci.junction-city.or.us/ord/title10/10_11pt4.html
<https://www.codepublishing.com/OR/JunctionCity>
- 2003 ADU Ordinance: <https://www.codepublishing.com/OR/JunctionCity/html/pdfs/1116.pdf>
- 5/2/18 Community Development Committee Minutes, containing SB 1051 recommendation:
https://www.junctioncityoregon.gov/vertical/sites/%7BE865F063-52B6-4191-89A3-FB88287BBBED%7D/uploads/05-02-18_CDC_Minutes_-_Approved.pdf

Creswell:

- Zoning Code:
http://www.ci.creswell.or.us/sites/default/files/fileattachments/planning/page/731/c_art2_creswell_preview_052306.pdf
- 7/9/18 City Council Meeting Minutes, approving Ordinance No. 514:
http://www.ci.creswell.or.us/sites/default/files/fileattachments/mayor_amp_council/meeting/4192/2018-07-09_city_council_minutes.pdf
- Creswell Chronicle article related to ADUs:
<https://www.thecreswellchronicle.com/story/2018/07/19/news/city-adus-will-help-alleviate-housing-burdens/785.html>
- Ordinance No 514: Copy provided by Creswell City Recorder

Veneta:

- Zoning Code:
https://www.venetaoregon.gov/sites/default/files/fileattachments/planning/page/1252/land_development_ordinance_493_effective_may_11_2017.pdf
- 12/10/18 City Council Agenda/Packet and minutes w/ ADU recommendations (not yet passed):
https://www.venetaoregon.gov/sites/default/files/fileattachments/city_council/meeting/3801/12-10_cc_packet.pdf
https://www.venetaoregon.gov/sites/default/files/fileattachments/city_council/meeting/3801/12-10_cc.pdf

Oakridge:

- Zoning Code:
https://www.ci.oakridge.or.us/sites/default/files/fileattachments/general/page/15001/ord874_land_uses_and_development.pdf

Other:

- ORS 197.312: <https://www.oregonlaws.org/ors/197.312>
- DLCADU Guidance:
https://www.oregon.gov/lcd/Publications/ADU_Guidance_SB1051_2018.pdf
- LUBA: Homebuilders Association of Lane County v. City of Eugene (11/29/18)
<https://www.oregon.gov/LUBA/docs/Opinions/2018/11-18/18063-064.pdf>
- LUBA: Kamps-Hughes v. City of Eugene (11/29/18)
<https://www.oregon.gov/LUBA/docs/Opinions/2018/11-18/18091.pdf>
- Single Family Code Amendments/University Protection Measures- 2013 Public Comments to Planning Commission: <https://www.eugene-or.gov/documentcenter/view/13115>
- City Council Meeting Materials, May 14th 2014 <https://www.eugene-or.gov/documentcenter/view/16216>

HANSEN Alissa H

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Tuesday, May 14, 2019 11:50 AM
To: *Eugene Mayor, City Council, and City Manager
Cc: Eugene NLC
Subject: Typo Correction: HB 2001 has provision that State Representatives have already voted makes a false claim re "owner occupancy"

Typo corrected below: Bill is HB 2469 (not 2479).
=====

Please enter this message into the record for the "ADU remand" ordinance.

The "takeaway" here is that the Oregon House of Representatives has already adopted a bill (unanimous less two), HB 2469, with a very strict "owner-occupancy" criterion for a second dwelling that is essentially and "Accessory" Dwelling.

There is no question now that under current statutes, "owner-occupancy" can be successfully defended as a "reasonable siting regulation."

Obviously, unscrupulous rental investors and YIMBY zealots hope to change that with a "sleeper" provision in HB 2001. But the outcome of that bill is not certain, especially since it has been strongly opposed by League of Oregon Cities (including Eugene), League of Voters Oregon, Oregon Planning Association and numerous others.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402
541.344.2552

**Accredited Earth Advantage
Sustainable Homes Professional**

----- Forwarded message -----

From: Paul Conte <paul.t.conte@gmail.com>
Date: Tue, May 14, 2019 at 11:43 AM
Subject: Typo Correction: HB 2001 has provision that State Representatives have already voted makes a false claim re "owner occupancy"
To: [Oregon Representatives]

Typo corrected below: Bill is HB 2469 (not 2479).
=====

May 14, 2019

Honorable Representatives,

Although we seem to be living in an era where "truth isn't truth," as Rudy Giuliani asserted, I'm hoping the Oregon Legislature will not succumb to that means of justifying legislation that would have sweeping effects on home owners in Oregon's major cities.

HB 2001 would amend the recently adopted statutes (SB 1051) that require jurisdictions to allow Accessory Dwelling Units (ADUs). **HB 2001 would make into law a claim that is patently not true**, as you yourselves have explicit determined by your respective votes to overwhelmingly approve the closely related "accessory" housing legislation in HB 2469.

- **HB 2001 claims:** " 'Reasonable local regulations relating to siting and design' **does not include owner-occupancy requirements** of either the primary or accessory structure ..."
- **HB 2469 requires for the second dwelling that:** "The existing single-family dwelling unit **is occupied by the owner or a relative**" and "[t]he new single-family dwelling unit **will be occupied by the owner or a relative.**"

To adopt the provision in HB 2001, you would each have to either: a) Adopt a legally-binding assertion that you know is *false*; or b) Adopt a legally-binding assertion that your prior adoption of HB 2469 included owner-occupancy regulations that were *not reasonable*.

Now, as Giuliani has so often done, an individual might try to finesse voting for both of these inherently conflicting provisions by arguing that what is clearly an "Accessory" dwelling on a farm (HB 2469 requires the second dwelling occupants to "assist" the principal dwelling occupants) is different than an "Accessory" dwelling that's not on a farm. But that dodges the fact that HB 2469 irreducibly establishes that owner-occupancy can be a reasonable siting criterion, based on context and use of a second dwelling on a lot that is zoned for one dwelling; and requiring owner-occupancy is *a decision that should be determined and justified by local jurisdictions*. However, there is no avoiding the fact that, if the claim in HB 2001 *were* true, the requirements of HB 2469 would have to be considered unreasonable.

This isn't an academic point. In Eugene, the older, close-in "single-family" neighborhoods immediately surrounding the University of Oregon have a well-documented history of intense pressure by investors in student rentals to maximize their rental income by converting and often enlarging single-family dwellings. Forcing the City to allow a second dwelling on all lots (I.e., all "sites") and renting both dwellings would have tremendous destabilizing impact on the balance between owner residents and student rentals. The existing Eugene Code requirement that an owner occupy either the principal dwelling or ADU plays a critical role in mitigating the wholesale conversion of the neighborhood to another "student ghetto" adjacent to UO.

In contrast, the **Jefferson-Westside Special Area Zone** in which I live allows two dwellings on standard lots -- *without any owner-occupancy requirement*. We residents of this area were the ones who actually wrote the zoning criteria, and -- based on the context of our older neighborhood -- we expressly included provisions to allow both *true* ADUs (accessory to the owners' residences) and second modest-scale rental dwellings without regard to owner-occupancy, because our neighborhood is far enough away from the UO that there is only modest pressure from student rental demand. Our determination was that allowing additional modest rental dwellings would provide affordable "on-ramps" for young families and "age in place" rentals for older, single individuals. The context in which second dwellings are allowed is essential in determining the siting of ADUs or second rental dwellings.

Finally, despite the developer and "YIMBY" attempts to hide their true intent, it's obvious that their goal with HB 2001 is nothing short of upzoning all "one-dwelling" zones to "two-plus-dwelling zones," at least doubling the density in all formerly "single-family" neighborhoods. If the Legislature believes that would be sound and fair "one-size fits all" planning to dictate across the state, then you should be transparent and adopt a "clear and objective" bill that states the intent and effects outright.

But please don't pull a "Giuliani" on Oregon homeowners by adopting HB 2001 without striking the provision that falsely asserts it's *never* reasonable to require owner-occupancy for true Accessory Dwelling Units.

Thank you.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402
541.344.2552

**Accredited Earth Advantage
Sustainable Homes Professional**

EXCERPTS FROM HOUSE BILLS 2001 and 2469

HB 2001

SECTION 7. ORS 197.312, as amended by section 7, chapter 15, Oregon Laws 2018, is amended to read:

* * * * *

(5)(a) A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas within the urban growth boundary that are zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single family dwelling, subject to reasonable local regulations relating to siting and design.

(b) As used in this subsection:

(A) "Accessory dwelling unit" means an interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.

(B) "Reasonable local regulations relating to siting and design" does not include owner-occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking

HB 2469

SECTION 2.

* * * * *

(2) A county may approve a new single-family dwelling unit on a lot or parcel zoned for forest use provided:

* * * * *

(b) The new single-family dwelling unit will be on a lot or parcel that contains exactly one existing single-family dwelling unit * * * * *.

* * * * *

(f) As a condition of approval of the new single-family dwelling unit, in addition to the requirements of ORS 215.293, the property owner agrees to acknowledge and record in the deed records for the county in which the lot or parcel is located, one or more instruments containing irrevocable deed restrictions that:

(A) Prohibit the owner and the owner's successors from partitioning the property to separate the new single-family dwelling unit from the lot or parcel containing the existing (B) Require that the owner and the owner's successors manage the lot or parcel as a working forest under a written forest management plan, as defined in ORS 526.455, that is attached to the instrument;

(g) The existing single-family dwelling unit is occupied by the owner or a relative;

(h) The new single-family dwelling unit will be occupied by the owner or a relative;
and

(i) The owner or a relative occupies the new single-family dwelling unit to allow the relative to assist in the harvesting, processing or replanting of forest products or in the management, operation, planning, acquisition or supervision of forest lots or parcels of the owner.

HANSEN Alissa H

From: Sue Wolling <sue.wolling@gmail.com>
Sent: Tuesday, May 14, 2019 11:16 AM
To: HANSEN Alissa H
Subject: Testimony for ADU Hearing
Attachments: Comments for ADU Hearing May 2019.pdf

Alissa,

Please include the following as testimony for the public hearing on Accessory Dwelling Units.

Thanks,
Sue

Dear City Council,

I urge you to support the creation of Accessory Dwelling Units in residential zones in Eugene, by removing such zoning barriers as owner-occupancy requirements, lot size minimums, density limits restricting ADU's, on-site parking requirements, and flag-lot restrictions.

Eugene should make these changes not only because state law requires it and because people like me are tired of the City wasting time, money and talent in fighting land use appeals—but also because it's the first and easiest step toward addressing a housing crisis that threatens the future of our community.

ADU's will never be "the answer" to our housing crisis, because creating one is typically an expensive and difficult project that most property owners will not want to take on. Still, we should encourage ADU's as the least intrusive way possible to make housing more available and more affordable in all of Eugene's neighborhoods.

ADU's also allow residents options for responding to changing life circumstances, whether it's an aging parent, a young person saddled with college debt, a friend who needs a place to stay, a homeowner who is frequently out of town, or some other changing situation. In addition, having a bigger range of ages and abilities within our neighborhoods helps those neighborhoods respond to crisis, whether from storms, crime or climate-related problems.

Many of Eugene's community priorities—from achieving climate recovery goals, to reducing reliance on automobiles, to protecting natural resources, to enhancing livable, walkable neighborhoods—would be served by having options for people to live in small homes that are close to the places they need to go. ADU's are an important tool toward reaching these goals.

Eugene has changed, and will continue to change. Our land use code must allow us to respond in creative ways to the pressures of a growing and aging population, smaller household size, climate change, economic pressures, and inequality. A livable community is a living community, which meets the needs of those who are here now as well as those who will create Eugene's future. ADU's are an easy way to build more resilience into existing neighborhoods so that they will remain great places to live.

Please embrace ADU's by eliminating the barriers to their construction—particularly owner-occupancy, lot size minimums, density restrictions, on-site parking requirements and flag-lot restrictions.

Thanks for your attention and your service to Eugene.

Sue Wolling
108 High Street
Eugene OR 97401
sue.wolling@gmail.com

Dear City Council,

I urge you to support the creation of Accessory Dwelling Units in residential zones in Eugene, by removing such zoning barriers as owner-occupancy requirements, lot size minimums, density limits restricting ADU's, on-site parking requirements, and flag-lot restrictions.

Eugene should make these changes not only because state law requires it and because people like me are tired of the City wasting time, money and talent in fighting land use appeals—but also because it's the first and easiest step toward addressing a housing crisis that threatens the future of our community.

ADU's will never be “the answer” to our housing crisis, because creating one is typically an expensive and difficult project that most property owners will not want to take on. Still, we should encourage ADU's as the least intrusive way possible to make housing more available and more affordable in all of Eugene's neighborhoods.

ADU's also allow residents options for responding to changing life circumstances, whether it's an aging parent, a young person saddled with college debt, a friend who needs a place to stay, a homeowner who is frequently out of town, or some other changing situation. In addition, having a bigger range of ages and abilities within our neighborhoods helps those neighborhoods respond to crisis, whether from storms, crime or climate-related problems.

Many of Eugene's community priorities—from achieving climate recovery goals, to reducing reliance on automobiles, to protecting natural resources, to enhancing livable, walkable neighborhoods—would be served by having options for people to live in small homes that are close to the places they need to go . ADU's are an important tool toward reaching these goals.

Eugene has changed, and will continue to change. Our land use code must allow us to respond in creative ways to the pressures of a growing and aging population, smaller household size, climate change, economic pressures, and inequality. A livable community is a living community, which meets the needs of those who are here now as well as those who will create Eugene's future. ADU's are an easy way to build more resilience into existing neighborhoods so that they will remain great places to live.

Please embrace ADU's by eliminating the barriers to their construction—particularly owner-occupancy, lot size minimums, density restrictions, on-site parking requirements and flag-lot restrictions.

Thanks for your attention and your service to Eugene.

Sue Wolling
108 High Street
Eugene OR 97401
sue.wolling@gmail.com

HANSEN Alissa H

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Tuesday, May 14, 2019 9:21 AM
To: *Eugene Mayor, City Council, and City Manager
Cc: HANSEN Alissa H; Eugene NLC
Subject: Fwd: HB 2001 has provision that State Representatives have already voted makes a false claim re "owner occupancy"

Please enter this message into the record for the "ADU remand" ordinance.

The "takeaway" here is that the Oregon House of Representatives has already adopted a bill (unanimous less two), HB 2479, with a very strict "owner-occupancy" criterion for a second dwelling that is essentially and "Accessory" Dwelling.

There is no question now that under current statutes, "owner-occupancy" can be successfully defended as a "reasonable siting regulation."

Obviously, unscrupulous rental investors and YIMBY zealots hope to change that with a "sleeper" provision in HB 2001. But the outcome of that bill is not certain, especially since it has been strongly opposed by League of Oregon Cities (including Eugene), League of Voters Oregon, Oregon Planning Association and numerous others.

Paul Conte
1461 W. 10th Ave.
Eugene, OR 97402
541.344.2552

**Accredited Earth Advantage
Sustainable Homes Professional**

----- Forwarded message -----

From: **Paul Conte** <paul.t.conte@gmail.com>
Date: Tue, May 14, 2019 at 9:07 AM
Subject: HB 2001 has provision that State Representatives have already voted makes a false claim re "owner occupancy"
To: [All Oregon House Representatives]

HANSEN Alissa H

From: kim otomo <otomokim@gmail.com>
Sent: Sunday, May 12, 2019 4:45 PM
To: HANSEN Alissa H
Subject: May 20th: ADU Public Hearing

Dear Eugene City Council,

We all agree there needs to be more housing at an affordable price for citizens of our community. The question keeps being "how do we get there?"

I would propose that more options are preferable to any policy that would offer less.

My opinion is that any property which has .05 acres of yard, etc should be suitable for building a small house with a footprint of 500sf or less, while still accommodating set back requirements and affording the citizen living there a bit of yard or garden.

ADU are only a small part of the larger possible solution.

What you really should be working on, are more policy for the city to get out of the way, or even incentivize builders/developers/individuals to build smaller 500sf or less houses for owner occupancy by waiving or reducing government fees and regulations.

Aside from cost of land itself in this area, the highest cost for building a house is government fees and regulations.

If you want something, remove the fees and taxes from it, and people will do it. Until then, this is all just talk.

Thank you for your time,

Kim Buckmaster
entrepreneur, economist, sociologist