

A Taxonomy of State Accessory Dwelling Unit Laws

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March 2023

THE HOUSING AFFORDABILITY PROBLEM AND ADUs AS ONE PIECE OF THE SOLUTION

Over the past decade, the problem of insufficient housing construction has become increasingly apparent as more households are forced to make tough tradeoffs to either afford housing in their preferred location or move somewhere less expensive.² The COVID-19 pandemic has only exacerbated the problem of insufficient housing supply and the difficulty of building new housing where it is needed. Amid this housing shortage and accompanying affordability problems, state policymakers are increasingly setting limits on the extent to which local policymakers can block housing construction.³

Legalizing accessory dwelling units (ADUs) has been the most common way state policymakers have taken action to make more, lower-cost housing feasible to build. ADUs are a secondary unit on a lot that includes a principal dwelling unit for one household. They can be a backyard cottage, a basement apartment, or a garage conversion, and most often they are added to single-family houses. To date, laws broadly allowing homeowners to build ADUs have passed in eight states, and ADU bills have been introduced in several others.

In this policy brief, we explain the role of ADU legalization in the landscape of US land use regulations, summarize research on rules that facilitate ADU construction in significant numbers, and categorize state ADU policy with respect to the rules proven to facilitate ADU construction.

WHY ADUs?

ADUs as a regulatory category exist due to the restrictions on the number of units permitted on a single lot in US land use regulation. The majority of land zoned for residential use in the United

States is limited to detached single units.⁴ Within this framework, some jurisdictions have legalized a second unit that is an “accessory” to the primary use of the single-family house. While allowing a primary dwelling unit with an ADU on a single-family lot has some similarities with two-unit zoning that permits duplexes or other configurations of two units on a single lot, ADUs usually have more limitations. Generally, ADUs cannot be owned separately from the principal dwelling unit whereas duplex units can be owned jointly or separately. Furthermore, many jurisdictions that permit ADUs only allow the unit to be rented to a tenant if the property owner lives on site. Typically, an ADU is also required to be smaller than the principal dwelling unit.

Permitting ADUs to be built is one of the smallest steps state policymakers can take to restrict local policymakers’ authority to limit density. And, within state preemption of local zoning, ADUs may be the lowest-hanging fruit politically. Homeowners are often the key political constituency opposed to zoning reforms that allow more housing to be built. Legalizing ADUs gives homeowners a clear new right to build on their current property, and many may feel they might want an ADU at some point either for extra income or to house a family member. These political considerations may be the reason that state policymakers have shown particular willingness to override local zoning restrictions with respect to ADUs.

RULES THAT GOVERN ADU CONSTRUCTION

Kol Peterson, a prominent ADU advocate, identifies three “poison-pill regulations” that present significant barriers to ADU construction, even in places where they are legalized.⁵ These poison pills include owner-occupancy requirements, off-street parking requirements, and conditional or discretionary reviews for ADU permits.

We summarize Peterson’s insights regarding each of these three barriers:

1. *Owner-occupancy requirements* thwart investments in ADUs, even for homeowners who want to add them to their primary residences, because building an ADU likely shrinks their pool of potential future buyers. Under these requirements, if the homeowner were to move, they would not have the option of leasing the ADU and their primary residence to separate tenants. Owner-occupancy requirements may lead appraisers to rely only on comparable sales that likely do not include ADUs, rather than viewing the ADU as a potential income-generating unit. And, finally, owner-occupancy requirements may create financing challenges for ADUs because if a homeowner were to default, the ADU would not be a unit a bank could rent out were it to become a bank-owned property.
2. *Parking requirements* can make ADUs infeasible to build at many existing houses. A yard may present space for a backyard cottage within setback limits or an additional parking spot, but not both. Particularly at sites where a garage conversion is the natural place to put

ADUs, requiring parking replacement for the primary dwelling unit as well as additional parking for the ADU may prove prohibitive.

3. *Discretionary reviews* for ADU permits can prevent many homeowners from building ADUs. Applying for a conditional use permit may require a time-consuming and intimidating public hearing with a nonrefundable fee as well as site plan drawings that can be expensive to commission. Many homeowners are understandably reluctant to spend thousands of dollars for the chance of receiving a permit.

Our colleagues Salim Furth and Jess Remington have analyzed ADU ordinances that are successfully facilitating ADU construction in seven localities.⁶ They find that all of the ordinances allow detached ADUs and for the principal dwelling unit and ADU to be rented separately without an owner-occupancy requirement. And most of these localities do not require single-family houses with ADUs to provide extra parking for the accessory unit.

Furth and Remington point out that while policies that support ADU construction are essential, market conditions are also important determinants. ADUs are unlikely to be built in large numbers in places where there is minimal renter demand for these small units, and they are likely to be built in large numbers where the existing housing stock supports ADU conversions, such as garages or basements that can be converted to apartments relatively easily. They explain:

ADUs may be the most context-dependent form of housing. The “Vancouver Special” basement apartment, Los Angeles garage conversion, and Fayetteville modular unit all depend on a preexisting development pattern with enough space to add an ADU.⁷

In some instances, ADUs have been built in significant numbers even when they are illegal and unpermitted.⁸ While ADU advocates tend to focus on the general rules determining how ADUs may be used, permitted, and accessed, the dimensional standards for ADUs can also play an important role in determining their feasibility. A part of Los Angeles’s success in achieving widespread ADU construction is that California law requires all localities to allow ADUs of at least 800 square feet as long as they can be built within the envelope determined by 4-foot side and rear setbacks and a height of 16 feet. A study of ADU construction in Portland, Seattle, and Vancouver indicates that zoning reforms that have allowed for larger ADUs to be built have been essential to their increased construction.⁹

Demographic factors play a part in the market conditions that make ADUs an attractive option. Shrinking household sizes present a natural reason to adapt single-family houses to accommodate more than one household.¹⁰ Some research indicates that senior citizens are likely to build ADUs.¹¹ And communities with many students or a large immigrant population are likely places to have significant demand for ADUs, as they would be a solution for either intergenerational housing or relatively low-cost rental housing.¹²

STATE ADU LAWS

In 1982, California adopted an early ADU law that gave homeowners across the state a weak right to build an ADU.¹³ This law left localities with broad authority to create a discretionary approval process for ADUs; to regulate the size, design, and placement of ADUs; and to require that ADUs be limited to lots where the homeowner lives in either the primary dwelling unit or the ADU. Under this discretion, ADUs proved to be infeasible to build in many cases.

In 2003, a new California law required localities to permit ADUs through a by-right process rather than through conditional use permits or other discretionary processes that may involve public hearings. And, starting in 2016, California state policymakers adopted a series of laws that made ADUs much easier to build, including:

- Limiting parking requirements for ADUs
- Sharply limiting impact fees localities may charge for ADUs
- Requiring localities to permit both detached and attached ADUs
- Prohibiting owner-occupancy requirements for ADUs
- Requiring localities to permit second “junior” ADU units within the primary residence’s structure in some cases

See the appendix below for a list of some of the most important ADU laws in California and other states.¹⁴ ADU construction across California is uneven in part because some local governments are still finding ways to stall ADU construction, including with slow permitting processes. However, in some parts of the state, most notably Los Angeles, ADU construction drastically accelerated beginning in 2017. Today, one in four residential units in the city of Los Angeles is an ADU.¹⁵ Following this series of reforms, ADU permits issued in California increased from less than 1,300 in 2016 to more than 23,000 in 2021.¹⁶

Outside of California, policymakers in seven states have set limits on local policymakers’ authority to prevent owners of single-family houses from adding ADUs. This may be in part due to changing demographics that are increasing the number of intergenerational households in the United States.¹⁷ AARP is a leading advocate for state laws that legalize ADUs because of the potential for ADUs to benefit retirees either as a source of income or as an opportunity to set up intergenerational housing while maintaining privacy.¹⁸

Table 1 describes ADU laws in the eight states that have broadly legalized ADU construction. Three of the columns reflect the ADU barriers that Peterson emphasizes: (1) whether localities may adopt owner-occupancy requirements, (2) whether localities may require more parking for a lot with an ADU than for a lot with a single-family house alone, and (3) whether localities may approve ADUs through a discretionary review process rather than by-right. California and Oregon are set

STATE	YEAR OF FIRST STATEWIDE ADU LAW	BANS OWNER-OCCUPANCY REQUIREMENTS?	PARKING REQUIREMENT FOR ADU PROHIBITED?	REQUIRED TO BE PERMITTED BY-RIGHT?	ATTACHED AND DETACHED ADUs REQUIRED TO BE PERMITTED?
California	1982	Yes	Sometimes*	Yes	Yes
Connecticut	2022	No	No	Yes	Yes
Maine	2022	No	Yes	No	Yes
New Hampshire	2017	No	No	No	No
Oregon	2017	Yes	Yes	Yes**	Yes
Utah	2021	No	No	No	No
Vermont	2020	No	No	Yes***	Yes
Washington	1993	Yes	Yes	No	Yes

*California law preempts parking requirements only for ADUs near transit and limits them to one per unit or bedroom in an ADU.

**Oregon law limits localities to adopting clear and objective standards, conditions and procedures regulating the development of housing, requiring localities to permit ADUs by-right.

***In Vermont, localities are required to apply the same permitting process to single-family houses and ADUs. So if single-family houses are permitted by-right, ADUs must be as well.

Note: See the appendix for the state laws that inform this table.

in boldface because they prevent localities from adopting all three of these key ADU obstructions (although California does allow for ADU parking requirements for those that are not near transit). The last column indicates whether states require localities to permit both attached ADUs (e.g., basement apartments or another part of the primary structure that serves as a separate unit) and detached ADUs (e.g., backyard cottages).

As described above, California has gone even further in legalizing ADU construction in areas outside the poison-pill rules. While there are no systematic efforts to collect data on ADUs nationwide, no other states appear to be permitting as much ADU construction. The rate of increase in the number of ADU permits in California starting in 2017 makes it clear that state preemption of local owner-occupancy requirements and other local barriers are pivotal to ADU construction.

In other research, one of us (Hamilton along with Ed Pinto and Tobias Peter) found that in three cities often held up as ADU models—Los Angeles, Portland, and Seattle—changes to long-standing ADU ordinances led to significant increases in ADU construction. In the cases of Los Angeles and Seattle, the repeal of owner-occupancy requirements coincided with big uptakes in ADU construction, whereas in Portland construction ticked up after the city reduced impact fees.¹⁹

CONCLUSION

While state policymakers are increasingly adopting ADU laws in response to their constituents' housing affordability challenges, many of these laws do not follow what have emerged as best

practices for facilitating ADU construction. And much remains to be learned about policy environments that facilitate ADU construction under different market conditions. Here, we lay some groundwork for analysis under a variety of legal environments. In a separate policy brief, we examine ADU policy and construction in New Hampshire where ADUs are being built at relatively high rates in some localities despite a weak state law and local ordinances with limitations that have stood in the way of ADU construction elsewhere.²⁰

APPENDIX: STATE ADU LAWS

STATE	SOURCE
California	<i>Statutes of California and Digests of Measures</i> , vol. 4, 1982, “Chapter 1440,” 5500-5505, https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1982/82Vol4.PDF ; Second Unit Law as Amended by Chapter 1062, Statutes of 2002, Assembly Bill 1866 (August 6, 2003), https://www.apacalifornia.org/wp-content/uploads/2013/02/Second-Unit_Ordinance_Legislation_Effective_January_1_2003_and_July_1_2003.pdf ; Land Use: Zoning, Senate Bill 1069 (September 27, 2016), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB1069 ; Land Use: Housing: 2nd Units, Assembly Bill 2299 (September 27, 2016), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB2299 ; and Accessory Dwelling Units, Senate Bill 13 (October 10, 2019), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB13 .
Connecticut	An Act Concerning the Zoning Enabling Act, Accessory Apartments, Training for Certain Land Use Officials, Municipal Affordable Housing Plans and a Commission on Connecticut’s Development and Future, Substitute House Bill 6107, accessed February 28, 2023, https://www.cga.ct.gov/2021/SUM/PDF/2021SUM00029-R02HB-06107-SUM.PDF
Maine	An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions, House Paper 1489, 130th Maine Legislature (March 2, 2022), http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1489&item=1&snm=130 .
New Hampshire	2022 New Hampshire Revised Statutes; Title LXIV: Planning and Zoning; Title 674: Local Land Use Planning and Regulatory Powers; Section 674:72: Accessory Dwelling Units, NH Rev Stat § 674:72 (2022), https://law.justia.com/codes/new-hampshire/2022/title-lxiv/title-674/section-674-72/ .
Oregon	Senate Bill 1051, 79th Oregon Legislative Assembly (2017), https://olis.oregonlegislature.gov/liz/2017R1/Downloads/MeasureDocument/SB1051 .
Utah	Title 10: Utah Municipal Code; Chapter 9a: Municipal Land Use, Development, and Management Act; Part 5: Land Use Regulations; Section 530: Internal Accessory Dwelling Units, October 1, 2021, https://le.utah.gov/xcode/Title10/Chapter9A/10-9a-S530.html?v=C10-9a-S530_2021050520211001 .
Vermont	Title 24: Municipal and County Government; Chapter 117: Municipal and Regional Planning and Development; Subchapter 007: Bylaws; § 4412: Required Provisions and Prohibited Effects, 24 V.S.A. § 4412, accessed February 28, 2023, https://legislature.vermont.gov/statutes/section/24/117/04412 .
Washington	House Bill 1056, 53rd Legislature (1993), https://lawfilesexternal.wa.gov/biennium/1993-94/Pdf/Bills/House%20Bills/1056.pdf?q=20220627073057 .

ABOUT THE AUTHORS

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NOTES

1. Thank you to Kelcie McKinley for providing research assistance. Thank you to Ben Frost and James Vayo for providing insights about ADU policy and construction in New Hampshire.
2. Kevin Erdmann, *Shut Out: How a Housing Shortage Caused the Great Recession and Crippled Our Economy* (Lanham, MD: Rowman & Littlefield, 2019).
3. John Infranca, "The New State Zoning: Land Use Preemption Amid a Housing Crisis," *Boston College Law Review* 60, no. 3 (2019).
4. The framework of single-family zoning is uniquely limiting in the United States relative to other countries. Sonia Hirt, *Zoned in the USA: The Origins and Implications of American Land-Use Regulations* (Ithaca, NY: Cornell University Press, 2015).
5. Kol Peterson, *Backdoor Revolution: The Definitive Guide to ADU Development* (Portland, OR: Accessory Dwelling Strategies, 2018).
6. Salim Furth and Jess Remington, "Ordinances at Work: Seven Communities That Welcome Accessory Dwelling Units" (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, April 2021).
7. Furth and Remington, "Ordinances at Work."
8. Places where illegal ADUs have been built in large numbers include southeast Los Angeles County and Vancouver, British Columbia. Jacob Wegmann, "'We Just Built It': Code Enforcement, Local Politics, and the Informal Housing Market in Southeast Los Angeles County" (PhD diss., University of California, Berkeley, 2014); Jake Wegmann and Sarah Mawhorter, "Measuring Informal Housing Production in California Cities," *Journal of the American Planning Association* 83, no. 2 (2017); and Andrew, "Why Does the City of Vancouver Shut Down Brand New Basement Suites and Evict Renters?" City Hall Watch, April 9, 2021. The website has omitted the contributor's last name for privacy reasons.
9. Karen Chapple, Jake Wegmann, Farzad Mashhood, and Rebecca Coleman, *Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle, and Vancouver* (Oakland, CA: Turner Center for Housing Innovation at UC Berkeley, July 2017), 23.
10. Vicki Been, Benjamin Gross, and John Infranca, "Responding to Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units" (Working Paper, NYU Furman Center, New York, NY, January 2014).
11. Chapple et al., *Jumpstarting the Market for Accessory Dwelling Units*, 9.
12. Chapple et al., *Jumpstarting the Market for Accessory Dwelling Units*, 9.
13. Chapple et al., *Jumpstarting the Market for Accessory Dwelling Units*, 9.

14. For a detailed account of the legislative history of ADUs in California, see Max Dubler, “California Senate Bill 9: An Important Symbolic Victory That Is Unlikely to Produce Meaningful Amounts of New Housing in Single-Family Neighborhoods” (master’s thesis; University of California, Los Angeles, 2022), appendix 1.
15. M. Nolan Gray, “The Housing Revolution Is Coming,” *The Atlantic*, October 5, 2022.
16. David Garcia, Muhammad Alameldin, Ben Metcalf, and William Fulton, “Unlocking the Potential of Missing Middle Housing” (Turner Center Brief, Turner Center for Housing Innovation at UC Berkeley, Oakland, CA, December 2022).
17. Garcia et al., “Unlocking the Potential of Missing Middle Housing.”
18. AARP Livable Communities, “All about Accessory Dwelling Units,” accessed February 28, 2023, <https://www.aarp.org/livable-communities/housing/info-2019/accessory-dwelling-units-adus.html>.
19. Edward Pinto, Tobias Peter, and Emily Hamilton, *Light Touch Density: A Series of Policy Briefs on Zoning, Land Use, and a Solution to Help Alleviate the Nation’s Housing Shortage* (Washington, DC: American Enterprise Institute, 2022).
20. Emily Hamilton and Abigail Houseal, “Legalizing Accessory Dwelling Units at the State Level: A New Hampshire Case Study” (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, March 2023).