

Accessory Dwelling Unit Model Legislation

Section 1. Title

- (a) This Act shall be known and may be cited as the "Accessory Dwelling Unit Act".

Section 2. Purpose and Intent

- (a) To address shortages in housing supply and expand housing affordability, it is the policy of [state] to promote and encourage the creation of accessory dwelling units (ADUs).
- (b) It is the intent of [state] that homeowners will be authorized to create and maintain ADUs as either personal residences or rental units in areas zoned for residential and mixed uses; and to do so without arbitrary, excessive, or burdensome standards relating to unit size, parking, fees, utilities connections, or other requirements.

Section 3. Definitions

For purposes of this Section:

- (a) "Accessory dwelling unit" means an attached or detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as an existing or proposed single-family or multifamily dwelling. An accessory dwelling unit also includes the following:
 - (1) An efficiency unit.
 - (2) A manufactured home.
- (b) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
- (c) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

- (d) “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.
- (e) “Local agency” means a town, city, county, or city and county.
- (f) “Nonconforming zoning condition” means a physical improvement on a property that does not conform to current zoning standards.
- (g) “Objective standards” means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.
- (h) “Permitting agency” means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.
- (i) “Underlying zoning” means the height, setback, and other dimensional or design standards that would apply development on a parcel under a local agency’s zoning code.

Section 4. Eligibility

- (a) An ADU or JADU may be built on any lot zoned to permit residential uses.
- (b) The use of an ADU and/or JADU unit is a permitted accessory use on any lot where residential uses are permitted.
- (c) The construction and use of an ADU or JADU shall comply with all applicable health and safety codes.

Section 5. Preemption

- (a) A municipality may not establish any restriction or requirement for the construction or use of an ADU or JADU with respect to:
 - (1) total lot size;
 - (2) street frontage; or
 - (3) connectivity between the ADU/JADU and the primary dwelling;

- (b) A municipality may not require that a primary dwelling, accessory dwelling unit, or junior accessory dwelling unit be occupied by the owner.
- (c) A municipality's regulation of architectural elements for ADUs and/or JADUs shall be limited to objective standards that are consistent with the regulation of single-family units, including single-family units located in historic districts.
- (d) A municipality may not require the installation of a separate utility meter or utility connection for an ADU or JADU.
- (e) A municipality may not restrict the occupancy of an ADU or JADU based on income, family relationship, age, or any other personal characteristic.
- (f) A municipality may:
 - (1) prohibit the installation of a separate utility meter for an ADU and/or JADU;
 - (2) require the owner of a primary dwelling to abide by local regulations applicable to rentals/landlords for renting an ADU and/or JADU provided that such regulations are consistent with similar regulations for rental property generally;
 - (3) prohibit the creation of an ADU and/or JADU if the primary dwelling is served by a failing septic tank;
 - (4) hold a lien against a property that contains an ADU and/or JADU.
- (g) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for residential use that meets the requirements of Section 5 of this bill is void and unenforceable.
- (h) This article does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit or junior accessory dwelling unit.

Section 6. Design

- (a) Default design standards for ADUs and JADUs are stated in this section. If not addressed in this section, notwithstanding any local rules or standards, [municipality] must issue a permit if the proposed ADU is in footprint of existing structure; in an existing structure; or is eight hundred fifty square feet or smaller, with four foot side and

rear setbacks.

- (b) **Parking.** No additional parking is required for an ADU or JADU. When garage, carport, covered, or uncovered parking is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.
- (c) **Setbacks.** No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure. Front setbacks shall be consistent with the underlying zoning.
- (d) **Height.** Height limits shall be set at the greater of:
 - (1) 25 feet for an attached ADU.
 - (2) 20 feet for a detached ADU, plus up to 5 additional feet to match the roof pitch of the primary dwelling.
 - (3) 25 feet for a detached ADU with parking on the ground floor (carriage house), plus up to 5 additional feet to match the roof pitch of the primary dwelling.
 - (4) The height and bulk limits in the underlying zoning.
- (e) **Size.** A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.
- (f) **Size.** A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. The local agency shall not establish:
 - (1) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.
 - (2) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:
 - (a) Eight hundred fifty square feet.
 - (b) One thousand square feet for an accessory dwelling unit that provides more than one bedroom.
 - (3) Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot

coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 850 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

- (g) Junior ADUs must meet the following additional requirements:
 - (1) Size. A JADU shall not expand the footprint of the structure of which it is part by more than 150 square feet for the purposes of ingress and egress.
- (h) Nonconformity. An ADU shall not be penalized for pre-existing nonconforming zoning conditions on the lot, nor shall the issuance of an ADU permit trigger a requirement to correct nonconforming zoning conditions elsewhere on the lot.

Section 7. Number of allowed ADUs

- (a) One ADU and one JADU are permitted per lot.

Section 8. Creation

- (a) An ADU or JADU may be created through new construction, conversion of an existing structure, addition to an existing structure, or conversion of a qualifying existing house to an ADU while simultaneously constructing a new primary dwelling on the site.
- (b) ADUs and JADUs may be prefabricated or otherwise constructed offsite.

Section 9. Density and Growth Control

- (a) ADUs and JADUs are exempt from the residential density standards and are not considered to increase or exceed the density on a lot.
- (b) ADUs and JADUs are exempt from all local growth-control laws and shall not be counted toward any annual limits on new housing construction under such laws.

Section 10. Approval

- (a) A permit application for an ADU and/or JADU that meets the relevant building code and design standards and fire safety codes shall be approved or denied ministerially without discretionary review or a hearing within 30 days after receipt of a completed application.
- (b) Denial of an application shall be accompanied by written findings detailing the reason for denial and return in writing a full set of comments to the applicant with a list of items

that are defective or deficient and a description of how the application can be remedied by the applicant.

- (c) If the local agency has not approved or denied the completed application within 30 days, the application shall be deemed approved.

Section 11. Occupancy and Use

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

Section 12. Existing Units

- (a) ADUs and JADUs created prior to [date] may be permitted by registering the unit with the (building official) for inclusion into the [Certificate of Occupancy Program]. Application for registration will follow the same ministerial process as an application to build a new ADU and must contain the name of the owner, the address of the unit, the floor area of the two dwelling units, a plot plan of the property, evidence of the date of establishment of the unit, and a signature of the owner. Existing non-conforming ADUs/JADUs shall be permitted irrespective of building code violations unless those violations present a significant threat to occupants' health and safety. Units permitted before [date 2] shall be exempted from impact fees.
- (b) A [municipality] may only initiate a code enforcement action on an unpermitted ADU or JADU based on the code governing at the time of construction. If [municipality] initiates code enforcement it must notify the owner of the process for legalizing the unit and delay the enforcement action to allow the owner to register the unit for inclusion into the [Certificate of Occupancy Program].

Section 13. Historic Designation

- (a) ADUs and JADUs are authorized on properties containing structures subject to historic preservation laws, as long as such units do not affect the primary facade as visible from the right-of-way. Homes on corner lots shall not be considered to have two primary facades.
- (b) An historic district or designation shall not preclude the permitting and construction of an 850 square foot ADU with four foot side and rear setbacks.

Section 14. Impact Fees

- (a) ADU and JADUs of 750 square feet or less are exempt from all impact fees, utility capacity charges, and school fees. Fees applied to larger ADUs and JADUs must be scaled by unit size.
- (b) No municipality or school district shall set an impact fee or school fee for an ADU or JADU that is larger than the impact fee for a single-family house.

Section 15. Enforcement

- (a) All incorporated cities in [state] must pass an ADU ordinance incorporating the provisions of this law and stating any compliant local requirements, processes or procedures for ADU construction or permitting. These ordinances must be filed with [State housing authority or agency].
- (b) No additional state-level commission approval shall be required to implement this law and allow the permitting of ADUs or JADUs.
- (c) The [State housing authority or agency] shall refer instances of non-compliance to the Attorney General who is empowered to take action to ensure compliance.

Section 16. Severability

- (a) If any provision of this Act or its application is held invalid, the remainder of the Act shall not be affected and shall continue in full force and effect.

Section 17. Effective Date

- (a) This act is ordered to take effect on January 1st of the subsequent year of when the act is established.