



# THE UTAH LAND USE INSTITUTE

## Accessory Dwelling Units

*Utah Land Use Regulation Topical Series*

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## ACCESSORY DWELLING UNITS

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### **Introduction**

Allowing property owners to provide a second living unit on the lot now occupied by a single family home is nothing new, but the details of how this is to be done has become a vital topic in current land use regulation. The chronic shortage of housing units for middle income individuals and families is causing many conversations about the options to address that shortage. Using existing lots for more housing solves a number of issues, and avoids the new streets, sewers, water lines and power sources that new subdivisions require.

The Utah Legislature has recently stepped in to encourage more use of “ADU’s”. This outline is meant to inform local decision makers as well as land use applicants and neighbors about the laws related to ADU’s. This outline concludes with considerations in making decisions related to ADU’s and tips for implementing ADU regulations.

Those reviewing this may also be interested to read Todd Sheeran’s summary of the law related to Short Term Rentals, found in this same series of topical summaries at the Land Use Library at [utahlanduse.org](http://utahlanduse.org). A video of a presentation of both subjects is also available there.

This summary includes changes made to the code by the 2023 General Session of the Utah State Legislature.

### **I. Relevant Law**

#### **a. Background.**

- i. New governing statutes were adopted in 2021. There is not yet any published case law interpreting these statutes.
- ii. Statutory limitations primarily relate to the way a municipality or county can regulate, restrict, or prohibit *internal* accessory dwelling units.<sup>3</sup>

#### **b. Definitions.**

- i. An “accessory dwelling unit” (frequently referred to as an “ADU”) is a livable unit that could be:

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<sup>2</sup> The Office of the Property Rights Ombudsman has provided funding for this update from the 1% surcharge on all building permits in the State of Utah. Appreciation is also expressed to the Division of Housing and Community Development of the Department of Workforce Services for funding the project which produces these topical summaries of land use regulations. The Utah Land Use Institute also expresses continuing appreciation for the ongoing funding provided by the S. J. and Jessie E. Quinney Foundation and the Dentons Law Firm.

<sup>3</sup> Utah Code Ann. §§ 10-9a-530 and 17-27a-526.

1. converted from existing space within a single-family home (e.g., a basement apartment),
  2. an addition to a single-family home (typically on the side or back),
  3. part of a separate building on the same lot as a single-family home (e.g., above a detached garage), or
  4. a stand-alone building on the same lot as a single-family home (e.g., a tiny home in the backyard).<sup>4</sup>
- ii. An “internal accessory dwelling unit” is an accessory dwelling unit that is within the footprint of the primary detached dwelling unit (occupied as the primary residence of the owner) and created for the purpose of being offered for rent for 30 consecutive days or longer.<sup>5</sup>
- c. Moderate Income Housing. Only a couple of statutes apply broadly to all ADUs, these include:
- i. The general plan for a county or municipality must include a moderate income housing element.<sup>6</sup> The statute lists 24 different potential recommendations on implementing moderate income housing strategies. Two of these recommendations that *could* be included in the general plan are:
    1. allowing or reducing regulations for accessory dwelling units in residential zones and
    2. eliminating impact fees for non-internal accessory dwelling units.
  - ii. Municipalities and counties must submit annual moderate income housing reports. Starting in calendar year 2023 the report must include information on the number of accessory dwelling units for which a building permit or business license was issued.<sup>7</sup>
- d. Limitations on Regulation of Internal Accessory Dwelling Units.
- i. In 2021 the State legislature imposed limits on how a municipality or county may regulate internal accessory dwelling units in residential zones. Any regulations adopted or contained in existing ordinances must be within the statutory allowances.
  - ii. One internal ADU in a primary detached dwelling generally must be a permitted use in any area zoned primarily for residential use and may not be restricted except as provide below.<sup>8</sup>
  - iii. A municipality or county may not impose a requirement governing:
    1. the size of the internal ADU in relation to the primary dwelling;
    2. the total lot size (except requiring a minimum lot of 6,000 square feet); or
    3. street frontage.
- e. Permitted Restrictions on Internal Accessory Dwelling Units.<sup>9</sup>
- i. A municipality or county may:

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<sup>4</sup> Utah Code Ann. §§ 10-9a-103 and 17-27a-103.

<sup>5</sup> Utah Code Ann. §§ 10-9a-511.5, 10-9a-530, 17-27a-510.5, and 17-27a-526.

<sup>6</sup> Utah Code Ann. §§ 10-9a-403 and 17-27a-403.

<sup>7</sup> Utah Code Ann. §§ 10-9a-408 and 17-27a-408.

<sup>8</sup> Utah Code Ann. §§ 10-9a-530(2) and 17-27a-526(2).

<sup>9</sup> Utah Code Ann. §§ 10-9a-530(4) and 17-27a-526(4).

1. prohibit installation of a separate utility meter for the internal ADU;
  2. require that the ADU be designed so that the appearance of the primary dwelling unit doesn't change.
  3. Require one additional on-site parking space for the ADU, unless four or more spaces are already required.
  4. Require replacement of any parking spaces lost if an ADU is constructed in what was previously a garage or carport.
  5. Require the owner to obtain a license for renting the ADU.
  6. Prohibit renting the ADU for fewer than 30 consecutive days.
  7. Prohibit rental if the primary dwelling unit is not occupied as the owner's primary residence.
- ii. A municipality or county may prohibit creation of internal accessory dwelling units altogether:
1. In zoning districts that are not primarily for residential use (in other words, zones where the primary use is commercial, industrial, or agricultural);
  2. In primary dwellings already containing an internal ADU;
  3. In attached homes, mobile homes, and within detached garages;
  4. Within a zoning district that:<sup>10</sup>
    - a. Geographically covers 25% or less than the total area zoned primarily for residential use.<sup>11</sup>
    - b. Geographically covers 67% or less than the total area zoned primarily for residential use if the main campus of a state or private university with a student population of 10,000 or more is located within the county or municipality.<sup>12</sup>
  5. In primary dwelling units with failing septic tanks.
  6. On lots with 6,000 or fewer square feet.
- f. Rights of Municipalities and Counties.
- i. If a municipality or county adopts permitted regulations and those regulations are violated, the municipality or county may hold a lien against the property after going through the following procedure:<sup>13</sup>

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<sup>10</sup> The wording in this section of the statute allows a municipality or county to "prohibit the creation" of an internal ADU in these districts. This is not written as an exception to the requirement that the use of an internal accessory dwelling unit is a permitted use in any area zoned primarily for residential use. This could be interpreted to mean that the use must be permitted, but the municipality or county could prohibit creating **new** internal ADUs in the described districts.

<sup>11</sup> As drafted, each zoning district is evaluated separately and there is no cumulative limitation. In other words, technically if a municipality had 1,000 acres zoned primarily for residential use, split evenly among 4 residential zoning districts (each with 250) acres, the municipality could prohibit the creation of internal accessory dwelling units in all of those zoning districts. However, the intent may have been that the creation of internal accessory dwelling units may only be prohibited in 25% (or 67%) of the total residential areas within the municipality or county.

<sup>12</sup> Right now this would likely apply to Orem (Utah Valley University), Provo (Brigham Young University), Salt Lake City (University of Utah), Ogden (Weber State University), Logan (Utah State University), Cedar City (Southern Utah University), and St. George (Utah Tech University).

<sup>13</sup> Utah Code Ann. §§ 10-9a-530(5) and 17-27a-526(5).

1. Written notice of violation to the owner (mailed and posted on the property);
  2. Hearing regarding the violation (only if owner files a written objection within 14 days of the notice being postmarked or posted on the property);
  3. Owner fails to cure (14-day cure period for violating a 30-day rental requirement; 30-day cure period for all other violations);
  4. Written notice of lien to owner (mailed and posted on the property); and
  5. Record lien in county records in the amount up to \$100 for each day the violation continues after the cure period.
- ii. If a municipality or county issues a rental license or building permit for an internal ADU, the municipality or county may record a notice in the county records with a description of the primary dwelling, a statement that it contains an internal ADU, and a statement that the internal ADU may be used only in accordance with applicable land use regulations. If such a notice is recorded, a copy must be sent to the property owner.<sup>14</sup>
- g. Emergency Egress Windows.
- i. One other statute addresses internal accessory dwelling units. Generally a municipality or county may require installation of an emergency egress window in a bedroom. There are a few instances in which adding the window cannot be required, but these exceptions do not apply to internal accessory dwelling units.<sup>15</sup>
  - ii. In other words, a municipality or county may require installation of an emergency egress window in the bedroom of an internal ADU.

## **II. Considerations for Making Decisions**

- a. The above described statutes were adopted in the context of a state-wide housing shortage and escalating home prices. In adopting any regulations on ADUs the legislative body should consider how the proposed regulation will affect the availability of housing, particularly moderate income and affordable housing.
- b. While internal ADUs generally may not be prohibited in residential zones and may be prohibited in non-residential zones, the legislative body should consider where additional housing may be needed and would fit with the character of existing neighborhoods. A zone with primarily commercial uses, but with mixed-use projects that include residential units may be a good place to have accessory dwelling units.
- c. There are some inverse implications in the general requirement that one internal ADU in a primary detached dwelling must be a permitted use in a residential zone.
  - i. By stating that internal ADUs must be a permitted use in areas zoned primarily for residential use the following is implied:
    1. external/detached ADUs do not need to be a permitted use in any zone.

<sup>14</sup> Utah Code Ann. §§ 10-9a-530(6) and 17-27a-526(6).

<sup>15</sup> Utah Code Ann. §§ 10-9a-511.5 and 17-27a-510.5.

2. internal ADUs may be a conditional or prohibited use in non-residential zones.
- ii. By defining an internal ADU as being within a primary dwelling, and defining a primary dwelling as a single-family detached dwelling that is owner occupied, the following is implied:
  1. internal ADUs may be prohibited in, and the statutory limitations do not otherwise apply to multi-family or attached dwellings.<sup>16</sup>
  2. internal ADUs may be prohibited in vacation homes or dwellings occupied by renters.

### **III. Tips for Implementing Local Regulations**

- a. Requiring a rental license, which is expressly permitted by the statute, will allow municipalities and counties to identify where ADUs are located, making it easier to enforce any restrictions. Also, part of the license process could include verifying that the applicant owns and occupies the home as a primary residence.
- b. Municipalities and counties should be consistent in how and when they enforce any restrictions. As in all regulations, no special treatment should be given to certain neighborhoods or higher-income areas.
- c. As these statutes were newly adopted in 2021, municipalities and counties should watch for legislative amendments and court cases interpreting the statutes and implementing ordinances.

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<sup>16</sup> Unfortunately, the term “attached dwelling” is never defined by statute, but is used in the Community Association Act, Utah Code Title 57, Chapter 8a, to refer to dwellings that are physically connected to another dwelling. The only statutory definition of a “detached dwelling” is found in the Community Association Act, in the context of solar energy systems, where it is defined as a dwelling where the owners association does not have an ownership interest in the roof. In common usage a “detached” home refers to a stand-alone single-family home where no part of the building is connected to another home or building and an “attached” home would include any home where there was a shared wall or ceiling/floor connecting one home to another home or unit.