

**GUIDANCE ON IMPLEMENTING
THE ACCESSORY DWELLING UNITS (ADU) REQUIREMENT
UNDER OREGON SENATE BILL 1051
UPDATED TO INCLUDE HB 2001 (2019)**



*M. Klepinger's backyard detached ADU, Richmond neighborhood, Portland, Or.
(Photo courtesy of Ellen Bassett and accessorydwellings.org.)*

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

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Implementing these recommendations will likely need to be sequenced over more than one legislative cycle. To make near-term progress on their implementation, we recommend that the Legislature consider bills in the 2023 session that advance the goal of building more homes. DLCD and OHCS look forward to continuing conversations about solutions and refining these recommendations in advance of and during the 2023 legislative session.

A. Redefine Oregon's Planning Process for Housing

The Legislature should establish the OHNA as the foundation for Goal 10 planning processes in state statute, including directing cities to replace local projections of need in Housing Capacity Analyses (HCAs) with OHNA-generated 20-year need. It should strengthen HPSs by requiring actions that address housing barriers and advance fair housing outcomes, and by incorporating production targets based on the data provided in the OHNA. Additionally, the Legislature should make statutory changes necessary to make needed urban growth boundary (UGB) expansions³ more efficient and certain and support housing production within the UGB.

B. Coordinate State Response

The Legislature should establish a Housing Production Team and administrative leadership position. This team should be deployed as quickly as possible to achieve early housing production wins by helping cities build on challenging development sites, removing barriers, and focusing state resources. Additionally, this team should be charged with developing the first ever statewide Housing Production Strategy, which can shift the state's energy and efforts to this urgent challenge. The Legislature should direct staff at a broad cross-section of agencies, including DLCD, Oregon Housing and Community Services, Business Oregon, the Oregon Health Authority, the Bureau of Labor and Industries, and the Oregon Department of Transportation, to coordinate their activities and (as appropriate) available funding toward the goal of housing production in coordination with the new Housing Production Team.

C. Create Innovative Funding and Finance Solutions

In addition to funding affordable housing production through OHCS, the Legislature should establish new housing production funding mechanisms aimed at housing the market cannot produce on its own, including middle-income housing. Along with better coordination of existing funding sources, new sources for infrastructure funding, systems development charges, and pre-development activities are needed. Several formal and informal groups of stakeholders are considering innovative funding and financing mechanisms that are resonant with the recommended fund types in this report.

³ Each Oregon city is surrounded by an urban growth boundary (UGB); a line that designates where a city expects to grow over a 20-year period. Generally speaking, it's where the city ends, and the farms and forests begin.

Introduction

As housing prices in Oregon go up, outpacing employment and wage growth, the availability of affordable housing is decreasing in cities throughout the state. While Oregon's population continues to expand, the supply of housing, already impacted by less building during the recession, has not kept up. To address the lack of housing supply, House Speaker Tina Kotek introduced House Bill (HB) 2007 during the 2017 legislative session to, as she stated, "remove barriers to development." Through the legislative process, legislators placed much of the content of HB 2007 into Senate Bill (SB) 1051, which then passed, and was signed into law by Governor Brown on August 15, 2017 (codified in amendments to Oregon Revised Statute 197.312). In addition, a scrivener's error¹ was corrected through the passage of HB 4031 in 2018.

Among the provisions of SB 1051 and HB 4031 is the requirement that cities and counties of a certain population allow accessory dwelling units (ADUs) as described below:

- 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, "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 requirement became effective on July 1, 2018 and subject cities and counties must now accept applications for ADUs inside urban growth boundaries (UGBs).

On August 8, 2019, Governor Brown signed HB 2001, which established that off-street parking and owner-occupancy requirements are not "reasonable local regulations relating to siting and design." This means that, even if a local development code requires off-street parking and owner-occupancy, as of January 1, 2020, local jurisdictions may not mandate off-street parking spaces for ADUs nor require a property owner to live in either a primary or

¹ The scrivener's error in SB 1051 removed the words "within the urban growth boundary." HB 4031 added the words into statute and thus limited the siting of ADUs to within UGBs. As a result, land within a city with a population greater than 2,500 but that is not within a UGB is not required by this law to be zoned to allow accessory dwelling units. For counties with a population greater than 15,000, only those unincorporated areas within a UGB are required by this law to be zoned to allow accessory dwelling units.

accessory dwelling. The law provides an exception for ADUs that are used as vacation rentals, which may be mandated to provide off-street parking or have owner-occupancy requirements.

Some local governments in Oregon already have ADU regulations that meet the requirements of SB 1051 and HB 2001, however, many do not. Still others have regulations that, given the overall legislative direction to encourage the construction of ADUs to meet the housing needs of Oregon's cities, are not "reasonable." The Oregon Department of Land Conservation and Development (DLCD) is issuing this guidance and model code language to help local governments comply with the legislation. The model code language is included at the end of this document.

Guidance by Topic

The purpose of the following guidance is to help cities and counties implement the ADU requirement in a manner that meets the letter and spirit of the law: to create more housing in Oregon by removing barriers to development.

Number of Units

The law requires subject cities and counties to allow "at least one accessory dwelling unit for each detached single-family dwelling." While local governments must allow one ADU where required, DLCD encourages them to consider allowing two units. For example, a city or county could allow one detached ADU and allow another as an attached or interior unit (such as a basement conversion). Because ADUs blend in well with single-family neighborhoods, allowing two units can help increase housing supply while not having a significant visual impact. Vancouver, BC is a successful example of such an approach.

Siting Standards

In order to simplify standards and not create barriers to development of ADUs, DLCD recommends applying the same or less restrictive development standards to ADUs as those for other accessory buildings. Typically that would mean that an ADU could be developed on any legal lot or parcel as long as it met the required setbacks and lot coverage limits; local governments should not mandate a minimum lot size for ADUs. So that lot coverage requirements do not preclude ADUs from being built on smaller lots, local governments should review their lot coverage standards to make sure they don't create a barrier to development. Additionally, some jurisdictions allow greater lot coverage for two ADUs. To address storm water concerns, consider limits to impermeable surfaces rather than simply coverage by structures.

Any legal nonconforming structure (such as a house or outbuilding

that doesn't meet current setback requirements) should be allowed to contain, or be converted to, an ADU as long as the development does not increase the nonconformity and it meets building and fire code.

Design Standards

Any design standards required of ADUs must be clear and objective (ORS 197.307[4]). Clear and objective standards do not contain words like "compatible" or "character." With the exception of ADUs that are in historic districts and must follow the historic district regulations, DLCD does not recommend any special design standards for ADUs. Requirements that ADUs match the materials, roof pitch, windows, etc. of the primary dwelling can create additional barriers to development and sometimes backfire if the design and materials of the proposed ADU would have been of superior quality to those of the primary dwelling, had they been allowed. Other standards, such as those that regulate where entrances can be located or require porches and covered entrances, can impose logistical and financial barriers to ADU construction.

Public Utilities

Development codes that require ADUs to have separate sewer and water connections create barriers to building ADUs. In some cases, a property owner may want to provide separate connections, but in other cases doing so may be prohibitively expensive.

System Development Charges (SDCs)

Local governments should consider revising their SDC ordinances to match the true impact of ADUs in order to remove barriers to their development. In fact, HB 2001, passed by the Oregon Legislature in 2019, requires local governments to consider ways to increase the affordability of middle housing types through ordinances and policies, including waiving or deferring system development charges. ADUs are not a middle housing type, but if a local government is reviewing its SDCs for middle housing, that would be a good time to review ADU SDCs as well. ADUs are generally able to house fewer people than average single-family dwellings, so their fiscal impact would be expected to be less than a single-family dwelling. Accordingly, it makes sense that they should be charged lower SDCs than primary detached single-family dwellings. Waiving SDCs for ADUs has been used by some jurisdictions to stimulate the production of more housing units.

Accessory Dwellings (model code)

Note: ORS 197.312 requires that at least one accessory dwelling be allowed per detached single-family dwelling in every zone within an urban growth boundary that allows detached single-family dwellings. The statute does not allow local jurisdictions to include off-street parking nor owner-occupancy requirements. Accessory dwellings are an economical way to provide additional housing choices, particularly in communities with high land prices or a lack of investment in affordable housing. They provide an opportunity to increase housing supply in developed neighborhoods and can blend in well with single-family detached dwellings. Requirements that accessory dwellings have separate connections to and pay system development charges for water and sewer services can pose barriers to development. Concerns about neighborhood compatibility and other factors should be considered and balanced against the need to address Oregon's housing shortage by removing barriers to development.

The model development code language below provides recommended language for accessory dwellings. The italicized sections in brackets indicate options to be selected or suggested numerical standards that communities can adjust to meet their needs. Local housing providers should be consulted when drafting standards for accessory dwellings, and the following standards should be tailored to fit the needs of your community.

Accessory dwellings, where allowed, are subject to review and approval through a Type I procedure[, pursuant to Section _____] and shall conform to all of the following standards:

A. One Unit. A maximum of one Accessory Dwelling is allowed per legal single-family dwelling. The unit may be a detached building, in a portion of a detached accessory building (e.g., above a garage or workshop), or a unit attached or interior to the primary dwelling (e.g., an addition or the conversion of an existing floor).

A. Two Units. A maximum of two Accessory Dwellings are allowed per legal single-family dwelling. One unit must be a detached Accessory Dwelling, or in a portion of a detached accessory building (e.g., above a garage or workshop), and one unit must be attached or interior to the primary dwelling (e.g., an addition or the conversion of an existing floor).

B. Floor Area

1. A detached Accessory Dwelling shall not exceed [800-900] square feet of floor area, or [75-85] percent of the primary dwelling's floor area, whichever is smaller.
2. An attached or interior Accessory Dwelling shall not exceed [800-900] square feet of floor area, or [75-85] percent of the primary dwelling's floor area, whichever is smaller. However, Accessory Dwellings that result from the conversion of a level or floor (e.g., basement, attic, or second story) of the primary dwelling may occupy the entire level or floor, even if the floor area of the Accessory Dwelling would be more than [800-900] square feet.

C. Other Development Standards. Accessory Dwellings shall meet all other development standards (e.g., height, setbacks, lot coverage, etc.) for buildings in the zoning district, except that:

1. Conversion of an existing legal non-conforming structure to an Accessory Dwelling is allowed, provided that the conversion does not increase the non-conformity;

2. No off-street parking is required for an Accessory Dwelling;
3. Properties with two Accessory Dwellings are allowed [10-20%] greater lot coverage than that allowed by the zone in which they are located; and
4. Accessory dwellings are not included in density calculations.

Definition (This should be included in the "definitions" section of the zoning ordinance. It matches the definition for Accessory Dwelling found in ORS 197.312)

Accessory Dwelling – An interior, attached, or detached residential structure that is used in connection with, or that is accessory to, a single-family dwelling.