Attachment C

III. Model Local ADU Ordinance

TABLE OF CONTENTS

Model Local ADU Ordinance

This Model Local ADU Ordinance is designed for communities in states where state law allows for local ordinances authorizing and governing ADUs but does not impose any constraints on local governments.

In states where local governments do not have the discretionary authority to approve ADUs (Dillon Rule states) state legislation giving them that authority must be adopted first. AARP's "Minimal Version" of the Model State ADU Act would give local governments that authority along with complete discretion over the content of their ADU ordinances. If there is a state ADU statute that limits local government discretion (as is proposed in the AARP Model State ADU Act) then the local ordinance will need to conform to those requirements.

Many provisions and notes related to standards and procedures for ADUs are duplicates, or near duplicates, of provisions and notes in the Model State ADU Act. Rather than referring readers back to those sections, which can be tiresome and confusing, this guide reproduces them as parts of the Model Local ADU Ordinance.

I. *General Provisions*

A. Purpose and Intent

In this section of the ordinance, a community states its purposes in adopting the ordinance. This information may help in defending the ordinance when informing residents of how the ordinance will benefit and protect their interests and in responding to legal challenges.

If a community has no purposes that differ from those of the Model State ADU Act, it may choose to reference that act's findings and its purposes and intent, but it is recommended that at a minimum the minutes of the meeting at which the ordinance is adopted include a discussion of those benefits and a statement that they are the basis for the local ordinance.

If a community has public purposes that are different from those in the Model State ADU Act, those purposes should be specified in the ordinance (after consulting legal counsel on whether they are inconsistent with any state ADU legislation).

(1) The [local governing body] finds and declares:

(a) Our community faces a severe housing crisis, with home prices and rents unaffordable by families and households of middle and moderate incomes.

(b) The community is falling far short of meeting current and future housing demand with serious consequences for the state's economy and the well-being of our residents, particularly lower-income and middle-income earners.

(c) The [local government] can play an important role in reducing the barriers that prevent homeowners from building accessory dwellings. →

(d) There are many benefits associated with the creation of legal accessory dwellings on lots in single-family zones and in other zoning districts. These include:

(i) Increasing the supply of a more affordable type of housing not requiring government subsidies;

(ii) Helping older homeowners, single parents, young home buyers, and renters seeking a wider range of homes, prices, rents and locations;

(iii) Increasing housing diversity and supply, providing opportunities to reduce the segregation of people by race, ethnicity and income that resulted from decades of exclusionary zoning;

(iv) Providing homeowners with extra income to help meet rising homeownership costs;

(v) Creating a convenient living arrangement that allows family members or other persons to provide care and support for someone in a semi-independent living situation without the latter leaving his or her community;

(vi) Providing an opportunity for increased security, home care and companionship for older and other homeowners;

(vii) Reducing burdens on taxpayers while enhancing the local property tax base by providing a cost-effective means of accommodating development without the cost of building, operating and maintaining new infrastructure;

(viii) Promoting more compact urban and suburban growth, a pattern that reduces the loss of farm and forest lands and natural areas and resources and limits increases in pollution that contributes to climate instability; and

(ix) Enhancing job opportunities for individuals by providing housing nearer to employment centers and public transportation.

(2) Accessory dwelling units are, therefore, an essential component of housing choices and supply in [local government name].

B. Definitions

Even if there are controlling definitions in state ADU legislation, it is preferable to incorporate them into a local ordinance for the convenience of the users, as has been done here. The same notes found in the Model State ADU Act are repeated here.

There are many alternative terms for "ADUs." Although the term "Accessory Dwelling Unit" may be awkward and technical, it is now in such widespread use that it would add to the confusion to propose a replacement term or terms. To further simplify the discussion, the Model State ADU Act and Model Local ADU Ordinance do not distinguish between the different forms and types of ADUs, such as detached "cottages" or "internal apartments," since the standards do not require that differentiation. The sole exception is the Junior Accessory Dwelling Unit, which is offered as an optional provision. →

Three alternative definitions of ADUs are presented with the numeral "1." Choose *one* of the following options:

Limiting ADUs to parcels that are already the site of a single-family dwelling

1. **"Accessory Dwelling Unit"** (ADU) means a residential living unit on the same parcel as a single-family dwelling. The ADU provides complete independent living facilities for one or more persons. It may take various forms: a detached unit; a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled dwelling.

The ADU to be built before or concurrently with a single-family home

1. **"Accessory Dwelling Unit"** (ADU) means a residential living unit on the same parcel as a single-family dwelling or a parcel on which a single-family dwelling is present or may be constructed. The ADU provides complete independent living facilities for one or more persons. It may take various forms: a detached unit, a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled dwelling.

The preceding definition allows for the construction of an ADU prior to or concurrent with that of the primary residence. Two common circumstances in which an ADU might be built before the primary residence are (1) when a homeowner wishes to stage construction expenses and living arrangements; and (2) when the homeowner owns an adjacent legal lot (typically used as a side or backyard) and prefers to site an ADU there rather than on the lot with the primary residence. Suppose an owner built a 600 square foot detached dwelling on her second lot to serve as an ADU. If that lot was separately sold and the home on it was not identified as an ADU, the new owner might find that regulations limiting the size of ADUs to 75% of the primary dwelling's size would treat the small home as the primary residence and limit the size of an official ADU to 400 square feet.

The ADU to be created on a lot with a multifamily dwelling

1. **"Accessory Dwelling Unit"** (ADU) means a residential living unit on the same parcel as a single-family dwelling or a multifamily structure. The ADU provides complete independent living facilities for one or more persons. It may take various forms: a detached unit; a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled single-family unit or a unit in a multifamily dwelling.

2. **"Junior Accessory Dwelling Unit"** (JADU) is a separate living unit of less than 500 square feet, with a separate entrance, that may share sanitation facilities with another dwelling unit other than an ADU.

The provision on junior accessory dwelling units is based on California's definition and authorization of this type of ADU. See California Government Code Section § 65852.22.

3. **"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.

4. **"Zoning Administrator"** means the local official who is responsible for processing and approving or denying applications to develop or legalize ADUs.

C. Authorization of ADUs by Zoning District

In the absence of state legislation addressing the issue, communities have wide discretion in permitting ADUs in many types of residential zoning districts. The merits of locating ADUs in the major types of residential zones is discussed below. As a general principle, in communities with high rents and home prices relative to incomes, the governing body should allow ADUs in the full range of zones where residences are authorized. Different zones and their suitability for ADUs are discussed below.

Mixed-Use Zones: *In the last few decades, governments and planning advocacy groups (including AARP) have recognized the many adverse consequences of strict single-use zoning. Across the country, zoning has been reformed to allow a greater mixture of uses along with residential uses, such as institutional uses, professional services and retail commercial uses. Because of the success over the last century in reducing the pollution and noise impacts from many types of urban land uses, some communities have gone further and allowed residential uses intermingled within a wide range of nonretail commercial and light industrial zones. ADUs may not be appropriate on a variety of lots in these mixed-use zones, but they make sense on lots that are the site of a detached single-family dwelling.*

Multifamily Zones: *These zones are distinguished by apartments or condominiums with multiple dwellings on the same lot, typically in multiunit and/or multistory structures. In recent years some cities with high housing costs have approved or are considering the authorization of ADUs on lots with multifamily structures.*

California requires jurisdictions to allow new ADU units to be created out of existing parts of multifamily buildings if those parts are not currently used as livable space, such as storage rooms, garages, or basements or through an addition to the building.[35] *In May 2020 the Chicago City Council considered a draft ADU ordinance that would allow new ADUs equal in number to 33% of the existing units in a multifamily structure on the lot.*

Town House Zones: *These zones contain single-family dwelling units that have common walls but are not atop one another, typically one dwelling per lot. Siting ADUs in these zones can have its challenges, given building orientation and lot coverage. On the other hand, Washington, D.C., is an example of a city where many historic townhouses included an "English basement" on the lowest floors of the building. Ordinances addressing the creation of ADUs in these districts will need to provide more flexibility regarding both siting requirements and some building code standards (flexibility that does not compromise health and safety).*

Single-Family Zones: *These zones contain one single-family dwelling unit per lot and provide the greatest opportunities for siting all types of ADUs. Some jurisdictions also allow clusters of small single-family homes, each on their own small lot or as condominium units with common space. Single-family zones also include detached single-family homes on their own lot and can be treated the same way as those homes are treated in single-family zones. Even in these single-family zones, however, neighbors' concerns about property values, aesthetics and "neighborhood character" have often caused communities to ban detached ADUs or to allow them only on larger lots. Perversely, this can mean that ADUs are prohibited in single-family zones with large lots and bigger houses, where they can be more easily sited as detached units or created by remodeling existing space, but allowed on small lots where this is more challenging. This kind of policy choice reinforces rather than reduces the impact of exclusionary zoning.*

For reasons of equity and to realize the benefits described in the statement of purpose and intent, ADUs should be authorized in all single-family residential 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.

Accessory dwelling units are allowed in all zoning districts that allow residential use, subject to the requirements of this ordinance.

Optional Provision: Accessory Dwelling Units on Town House Lots

Definition: "Town house" is a single-family dwelling unit constructed in a group of three or more attached units, with each unit extending from foundation to roof and having a yard or public way on not fewer than two sides.

A town house structure may be constructed or remodeled as a group of two or more attached two-family dwellings under the following conditions: (1) one of the two-family dwelling units shall conform to the requirements of the accessory dwelling unit standards and (2) each two-family dwelling within the town house structure shall meet the definition of an attached house, including that it be located on its own lot.

D. Number of ADUs Allowed Per Lot in Single-Family Zones

In California (as of 2020) a single-family lot can have both an ADU and a junior accessory dwelling unit that is no larger than 500 square feet and is part of the primary residence. In 2019, Seattle authorized that one detached ADU and one internal ADU can be located per single-family lot. If green building or affordability requirements are met, a second detached unit could be allowed. In 2020, Portland, Oregon, decided to allow two ADUs in any configuration on each single-family zoned lot as part of a broad reform of residential zoning. Since 2016, the Canadian city of Vancouver, British Columbia, has allowed a "secondary suite" (internal ADU) and a "laneway home" (detached ADU with alley access) on single-family corner lots, double-fronted lots and lots with alleys.

There are many ways to accommodate more than one ADU while being sensitive to concerns about neighborhood appearance. For example, two internal ADUs can be accommodated by remodeling a large home without increasing height or bulk. An internal unit can be allowed along with an ADU over an attached garage without increasing the area of the lot occupied by structures.

Discussions about allowing more than one ADU per lot in single-family zones may result in a challenging but beneficial community discussion about the purposes of single-family zoning. Minneapolis, Minnesota; Portland, Oregon; and the State of Oregon have reformed their residential zoning.

The Model State ADU Act allows two ADUs per lot without specifying their form, leaving that to local government or homeowner discretion. This provision is written to allow for both concurrent and prior construction of ADUs. (The issue of the timing of ADU construction relative to construction of the primary dwelling is discussed in the alternate definitions of ADUs in I.C.1.)

Some ordinances, for example Seattle's, have made the creation of additional ADUs conditional on achieving other community goals, such as affordability, accessibility and green building performance standards. This follows the precedents created by inclusionary zoning ordinances that allow for additional units in multifamily developments if the rents for those units meet an affordability standard for a specified period. It is too soon to know whether these incentives will be effective in spurring the creation of additional ADUs. Provisions allowing these "Bonus ADUs" (BADUs) are presented here as options.

(1) Any lot with, or zoned for, a principal single-family dwelling unit may have up to two ADUs. →

Bonus ADU Provisions

(2) The Zoning Administrator may authorize an additional accessory dwelling if:

(a) The additional accessory dwelling unit is a rental unit affordable for and reserved solely for "income-eligible households," as defined in this ordinance. It is subject to an agreement specifying the affordability requirements under this subsection in order to ensure that the housing shall serve only income-eligible households for a minimum period of 50 years. The monthly rent, including basic utilities, shall not exceed 30% of the income limit for the unit, all as determined by the Director of Housing, and the housing owner shall submit a report to the office of housing annually that documents how the affordable housing meets the terms of the recorded agreement. Prior to issuance of the first building permit for a project, and as a condition of that issuance, the applicant shall execute and record a declaration in a form acceptable to the Director that shall commit the applicant to satisfying the conditions for establishing a second accessory dwelling unit as approved by the Director; or

(b) The applicant makes a commitment, in the manner required by this ordinance, that the new principal structure or the new accessory structure shall contain a detached accessory dwelling unit will meet a green building standard. A second accessory dwelling unit that is proposed within an existing structure does not require the structure to be updated to meet the green building standard; or

(c) The applicant designs at least one of the dwellings on the lot to meet visitability standards including a no-step entry, [36"] wide doors and hallways, a bathroom that can be used by someone in a wheelchair, and at least [300 square feet] of living space on the main level.

Based on Seattle Municipal Code 23.44.041.A.1.a.(2).

"Income eligible" is not defined in the Model Local ADU Ordinance, since that can be a matter left to local discretion. Seattle has chosen to link its definition to a percentage of the U.S. Housing and Urban Development's published Median Family Income data. See Seattle Municipal Code Section 23.84A.025.

This Model Local ADU Ordinance also does not incorporate a green building standard; a local government may rely on its existing standards or adopt new ones for this purpose. Seattle's green building standard is rigorous, referencing the standards in Leadership in Energy and Environment Design (LEED), passive house and living building design standards, and other standards. The green building standard was adopted by the Director of Seattle's Department of Construction as Rule 20-2017 and Inspections and can be found at Seattle.gov/dpd/codes/dr/DR2017-20.pdf.

Some other mechanisms to promote affordable ADUs are:

- *Letting the landlord charge market rate rent, but adopting no-fault eviction protection and/or a cap on the rate of rent increase over time.*
- *Requiring the landlord to accept Section 8 vouchers.*

Based on Philadelphia Fair Housing Ordinance [Chapter 9-800 of the Philadelphia Code]:

- *Adopting the Good Cause eviction regulations for short-term rental [less than 12 months].* →

Provisions like these require a commitment to enforcement that is often a challenge for local planning and building departments, which are frequently underfunded. One simple mechanism for enforcement is to send a letter to the landlord every year that must be signed and returned attesting to his or her adherence to the income limit, a practice Santa Cruz adopted.

II. *Standards*

A. Minimum Lot Size in Single-Family (and Town House) Zones

This section addresses the lot sizes required for ADU installation. Local governments have often imposed excessive minimum lot sizes for ADUs, which greatly restricts the number of ADUs in a community. In a survey of 50 ordinances for the 2000 edition of the Model State ADU Act and Local Ordinance, the minimum lot size requirement varied from 4,500 square feet to 1 acre (APA 1996). One community allowed detached ADUs only on lots that were 1.5 times the minimum lot size of the zoning district (Orange County, Florida, Zoning Code Sec. 38-1426 (f)(4). Some communities have the same minimum lot-size requirements for all ADUs.

As a policy matter, it should not be necessary to establish a separate qualifying lot size for ADUs if the purpose is to assure the retention of landscaping and privacy between homes, because the setback and lot coverage standards can achieve those objectives.

The language below requires that the minimum sized lot required for an ADU is the same as the minimum lot size for the primary dwelling.

There is one exception: ADUs may be created within or attached to an existing house on lots smaller than the minimum lot size if there is an existing house on the lot. It also allows ADUs to be built concurrently with or before the primary residence (for reasons discussed in notes to the alternative definitions for accessory dwelling units). This provision also addresses the issue of legally platted lots made nonconforming by the imposition of subsequent lower-density zoning, something that occurred in many cities in the middle of the 20th century.

Accessory Dwelling Units may be created on any lot that meets the minimum lot size required for a single-family dwelling (or town houses). Attached and internal accessory dwelling units may be built on any lot with a single-family dwelling (or town house) that is nonconforming solely because the lot is smaller than the minimum size, provided the accessory dwelling units would not increase the nonconformity of the residential use with respect to building height, bulk or lot coverage.

B. Types of Structures

Many off-site manufactured and modular ADUs have been and continue to be produced; old conceptions of what constitutes a manufactured or modular home have become outdated. The Model Local ADU Ordinance 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.

A manufactured or modular dwelling unit may be used as an accessory dwelling unit in any zone in which accessory dwelling units are permitted.

C. Size of ADUs

Many local governments have adopted minimum and maximum sizes for ADUs. The Model Local ADU Ordinance recommends eliminating minimum-size limits since the basic requirements for a living space (kitchen, bathroom, living/sleeping space) and the housing market will establish a minimum size. In expensive housing markets the success of micro-apartments of less than 300 square feet and the proliferation of tiny homes on wheels demonstrate that there is demand for very small units. At the other end of the scale, limits on the maximum size prevent the construction of ADUs that could be home for families of three or more persons.

An accessory dwelling unit may be any size, provided the proposed unit's total square footage is less than the primary dwelling's and other requirements are satisfied.

For situations in which the existing residence is very small, local governments might consider authorizing ADUs up to 800 square feet when the primary dwelling is smaller than that size. Burlington, Vermont, takes a different approach to this issue; it allows accessory dwelling units to be 30% of the gross square footage of the house or 800 square feet, whichever is greater. [36]

Introduction to Lot Coverage, Setbacks, Height, Bulk and Floor Area Ratios

Lot coverage, setbacks, height and bulk (floor area ratio) limits are adopted primarily to address the appearance (the "built character") of neighborhoods. (There are some fire safety aspects to setbacks.) Cities with steep terrain apply additional or modified requirements that address vertical proximity as well as structural safety.

Local governments use a number of methods to regulate the size and location of buildings (residences and other structures) to achieve aesthetic goals and assure a minimum amount of undeveloped land. These methods are limits on the proportion of a lot that is used as a site for permanent structures ("lot coverage"); the setback from the property lines; and height and floor area ratios that establish the maximum square footage of residential structures based on a percentage of the total lot area.

These limits are often used in various combinations, sometimes as alternative standards. For example, setbacks alone without a separate lot coverage limit can effectively create a lot coverage maximum. The failure of some ADU ordinances to result in the production of ADUs can be traced back, in part, to these requirements, especially the unintended interaction between those regulations.

Before adoption of these requirements for ADUs, local governments may benefit from analyzing the combined effect of these regulations on a representative set of lots in each zone. In addition to determining whether the effect is to make it physically impossible to build a detached (or attached) ADU on some lots, the local government should estimate the return on investment on that portion of the lots where ADU construction is allowed. This will provide some idea of the strength of the potential market incentive for ADU construction.

However, the analysis needs to reflect that the homeowners building ADUs are often considering both a market return and nonmarket returns. For example, assume the desired ADU is intended to meet the needs of an older relative with mobility limitations. A 500-square-foot structure would be small but sufficient. But if the overlapping regulations on lot coverage and setbacks mean the structure would need to have two stories in order to provide 500 square feet of living space, then this kind of structure might generate a good rental return but would not meet the needs of the intended resident.

D. Lot Coverage Limits

Coverage limits can be applied to all structures on a lot, combined (e.g., primary house, detached garage, garden shed, ADU); all accessory structures combined, including an ADU; or a separate lot coverage applicable just to detached ADUs that are not part of another accessory structure. Lot coverage allowances and limits intersect not only setbacks but floor area ratio limits and height limits. If detached or attached ADUs are significantly constrained by a lot coverage limit, then the possibility of having a two-story ADU may determine whether the investment in an ADU will generate a big enough return to justify its construction.

Steep slopes and impacts on stormwater runoff may require differences in lot coverage allowances for some sites.

Some communities are under consent decrees entered into with the U.S. Environmental Protection Agency to address stormwater discharges. These consent decrees, which set standards for the maximum proportion of a lot that can be covered with impermeable surfaces, must be incorporated into local standards. Requiring or allowing the use of permeable pavers, which can be exempted from lot coverage calculations, helps address those standards. These consent decrees are another good reason not to require on-site parking.

Whenever possible, limitations on lot coverage should be addressed at the planning stage (for example, through the use of overlay districts) rather than being determined and applied in the permitting process. Siting and design standards that help meet performance standards for building safety and stormwater runoff can be determined and adjusted at the permitting stage for these kinds of sites. That is preferable to a complete prohibition.

An accessory dwelling unit (detached, attached or built by expanding the footprint of an existing dwelling) on a lot of 4,000 square feet or larger shall not occupy more than 15% of the total lot area. For single family lots of less than 4,000 square feet, the combined lot coverage of the primary dwelling and the accessory dwelling shall not exceed 60%. Accessory dwelling units built within the footprint of existing, legal accessory structures are considered not to have changed existing lot coverage.

E. ADU Setbacks

(1) A setback of no more than 4 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 with the same dimensions as an existing structure.

(2) No setback shall be required for an existing garage living area or accessory structure or a structure constructed in the same location and with the same dimensions as an existing structure and converted to an accessory dwelling unit or to a portion of an accessory dwelling unit.

(3) A detached accessory dwelling unit is not permitted on the front half of a lot, except when located a minimum of 30 feet from the front line or if it falls within the provision of subsection (2).

Adapted from California Government Code 65852.2(a)(D)(vii) and Los Angeles Metropolitan Code 12.22 A.33(d)(3).

F. Floor Area Ratios

Floor area ratios (FARs) qualify the relationship between the size of a lot and the maximum square footage that can be built on the lot. A FAR can be written as, for instance, 0:75 to 1, 0.75 or 75. FARs are commonly used in commercial districts, like downtowns, but sometimes are applied to residential zones. For example, a FAR of 0.75 applied to a 5,000-square-foot lot would allow for a maximum of 3,750 square feet of residential living space. The most common substitute for FARs is a zonewide maximum square footage for homes.

FARs have advantages as a method for regulating ADUs because they provide more flexibility about the size of the ADU, whether internal, attached or detached. They also lend themselves to bonus provisions that allow for ADUs or types of ADUs that achieve goals concerning housing production, affordability and the like.

Many local governments do not include the area of a below ground basement in the FAR limitation. This exclusion makes sense when applied to basement ADUs. In the absence of this kind of provision, the design of basement ADUs can include strange elements, like a small storage area usable only by the upstairs primary dwelling, in order to reduce the square footage of the ADU in an effort to conform to the maximum-size regulation.

The Model Local ADU Ordinance does not propose provisions on the topic because of the wide variety of variations possible and potential complexity when combined with other siting standards. But readers interested in how FARs can be tailored to accommodate and promote a variety of housing types, may wish to consider the application of FARs developed through the residential infill project in Portland, Oregon (2016–2020). Portland sharply reduced the maximum size of single-family dwellings but allowed additional FAR for additional units.[37]

G. ADU Height Limit

The maximum height of an Accessory Dwelling Unit is 25 feet or the height of the primary residence, based on the highest point of its roof compared with the lowest point of ground level at the foundation, whichever is less.

Adapted from Charlottesville, Virginia, Municipal Code Sec. 34-1171.(3).

H. Architectural Consistency and Design Review

Concern about the consistency of detached ADUs with the design of residential architecture in the neighborhood has translated into a variety of standards and procedures. Highly discretionary standards based on neighborhood "character" or "quality" can be serious obstacles to the construction of ADUs. Vague standards of that sort hamper homeowners and decisions-makers alike. They can become an avenue for channeling neighborhood objections to ADUs in general.

In some cases, the prescriptions for particular designs and materials can also add considerably to the cost of an ADU. A better approach is to reduce key design elements to a set of objective standards governing roof pitch, window orientation and siding. In some cases, design standards only apply in certain districts or when the ADU is larger than a specified height or taller than one story.

Some cities are experimenting with standardized, preapproved designs for ADUs that do not require the same level of regulatory review. This approach can be used to encourage the use of designs that fit comfortably within the prevailing aesthetic of neighborhoods.

As has been noted in other parts of the Model Local ADU Ordinance, with regard to design standards ADUs →

should be held to the same standards as primary dwellings. If bold new architectural designs are allowed for primary residences, then it does not make sense to require an ADU to look like a craftsman bungalow.

For this reason, the Model Local ADU Ordinance recommends against establishing separate architectural or design standards for ADUs.

I. Orientation of Entrance

Many ADU regulations limit the location and design of the entrance to the ADU.

While presented as a matter of aesthetics, an ADU entrance on the same side of the house as the main entrance may be considered objectionable because it advertises the existence of a second dwelling, which is taken as detrimental to the single-family-dwelling "character" of the neighborhood. This is evident in communities that allow direct access into different levels of the house (daylight basement or French doors for a bedroom) or stairs to outside decks but prohibit entrance doors and stairways accessing ADUs. Ironically, some of these places have policies promoting ADUs and requiring notice to the neighbors before an ADU can be built, yet also have a code provision intended to hide the entrance to the ADU. These requirements can compromise the design and increase the cost of the ADU, substituting a more awkward and expensive entrance.

Following the general principal of treating ADUs like the primary dwelling, the authorization and location of access doors and stairs for detached and attached ADUs should be the same as for primary dwellings.

Regulations governing the location, type and number of entrances into primary dwellings apply to ADUs.

J. ADU Screening, Landscaping and Orientation

Privacy is a major concern of neighbors, but ADU regulations addressing privacy were/are relatively rare. In some cases, the loss of privacy caused by an ADU is identical to the loss of privacy that would result from the construction or remodeling of an adjacent home. Sometimes the loss of privacy is caused by the removal of trees or shrubbery necessitated by the construction of the ADU. Again, this loss of screening vegetation for the primary dwelling is often not regulated. Thus, it should not be regulated with ADUs.

K. Parking Requirements

Many local governments require one or more off-street parking spaces for each ADU. This is a serious inhibition to the construction of ADUs for two reasons. First, the cost of creating off-street parking spaces.[38] *Second, the lot size, location of the primary residence and topography may make the creation of a parking space impossible.*[39]

The impact of parking requirements on ADU production is suggested by the results of a 2018 survey of California cities with ADU regulations. Out of the 168 cities, 68% reported having minimum off-street parking requirements for ADUs. Prior to the 2017 California legislation that eliminated off-street parking within a half-mile of transit, localities receiving frequent ADU applications were much more likely to lack off-street parking requirements (31% versus 13%).[40]

Given the general oversupply of parking[41] *and its impacts on home prices and rents (and more generally urban development and redevelopment) minimum parking requirements are being reconsidered and reduced. Hartford, Connecticut;*[42] *Buffalo, New York;*[43] *and Edmonton, Alberta,*[44] *are among the cities that have eliminated most or all minimum parking requirements. Other cities have reduced or eliminated parking requirements for different types of housing.*[45] →

No additional off-street parking is required for construction of an ADU. If the construction of the ADU necessitates the removal of an existing off-street parking space, it must be replaced on-site if required by the underlying zoning. In lieu of an on-site parking space, an additional on-street parking space may be substituted if there's already sufficient curb area available along the frontage for a parking space or by removing the parking space access ramp and reinstalling the curb.

Based on Seattle Land Use Code 23.44.041 A.5.

L. Short-Term Rentals

Many cities and residents are concerned about the use of homes, apartments and ADUs for short-term rentals, especially in regions, cities or districts that are tourist destinations. Use of these dwellings for short-term rentals can remove existing housing from the supply available for residents, worsening affordability and introducing commercial-use types of impacts in residential areas. Short-term rentals are often a major subject of debate in high-amenity areas where the return on investment in an ADU used for short-term rentals is much higher than from those used for long-term housing.

But the exact the same concerns apply to the short-term rental use of primary dwellings. If short-term rental regulations or prohibitions are adopted they should apply to all housing in the jurisdiction or zone, not just ADUs. Many ordinances already have such limitations or prohibitions on the use of homes as transient lodging in their land use regulations, and those could be extended to ADUs. However, the following are examples of counterarguments in support of the short-term rental use of ADUs (and primary dwellings):

- *The high return from short-term rentals spurs the construction of more ADUs than would otherwise occur, and these ADUs will, over time, convert into long-term rentals or other uses.*
- *The goals of ADU authorization are wealth creation and allowing seniors to stay in their homes, and the high return from short-term rentals helps realize those objectives.*
- *Survey research shows that ADU owners value the flexibility of ADUs. If the owner loses a job, she may cope by turning her home office in the ADU into a short-term rental. If an elderly parent living in an ADU moves to a nursing home, the owners can then rent out the ADU as a short-term rental to pay the nursing home costs.*

M. Separate Sale of ADUs

Most accessory dwelling unit ordinances are silent on the separate sale of the units as condominiums. A few prohibit this practice. The policy basis for these restrictions seems to be a concern that allowing ADUs to be sold as condos will fuel speculative redevelopment of existing housing in high-cost neighborhoods.

In addition, neighbors and local officials fear the prospect of both units being rental units, which is the basis for the owner occupancy requirement. On the other hand, neighbors who have concerns about having rental units nearby might logically prefer an owned ADU to a rented ADU.

Property owners and developers in Austin, Texas, determined that state law authorizes the separate sale of ADUs as condominiums. Developers subsequently began to purchase single-family homes, build ADUs (called Auxiliary Dwelling Units) on the lots, then sell the ADU condominiums and primary residences separately. Only some lots and homes are appropriate, however — typically those with alley access, because of the requirements for separate access and parking. As of the writing of the second edition of the Model Local ADU Ordinance, builders in Austin are contacting homeowners about forming a condo association with them and buying backyards as sites for the second homes. →

Vancouver, British Columbia, allows the separate sale as "strata" (condominium) units alley-fronting "coach houses" on lots with "character" homes (certain ones built before 1940 that are not on a historic register) as a financial incentive to carry out major upgrades needed to bring homes up to current building codes.[46]

"Condominium" refers not to a type of structure but a form of ownership in which an agreement among the parties defines separate and common areas and establishes standards and procedures governing the common areas. Allowing ADUs to become separately owned condominium units avoids the political reaction of authorizing land divisions to create separate lots for ADUs. But fee simple ownership is less complicated and easier to finance and sell than condominiums. As a matter of terminology and logic, it would be confusing to call a detached dwelling "accessory" to a principal dwelling if that dwelling is on a separate lot with separate ownership.

The Model Local ADU Ordinance leaves this policy question open, providing as alternatives the allowance of and prohibition of the separate sale of ADUs.

N. Owner Occupancy (Residency) Standards

Requirements that the owner live on the same property (whether in the primary dwellings or the ADU) are pervasive. The 2000 edition of the AARP Model Local ADU Ordinance noted: "Many communities monitor ADUs to ensure that the owner still lives on the premises. A variety of methods are used to do this monitoring 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."

Owner occupancy covenants or conditions give pause to homeowners or institutions financing home purchases because of the limits they place on successive owners who will not be able to rent out or lease their main house, which might be necessary as a result of a divorce, job transfer or death. They can also make financial institutions reluctant to provide financing for construction of the ADU. Finally, because a covenant or condition serves as a restriction on a mortgage lender's security interest in the property, the mortgage lender can withhold consent to any requirement that takes the form of a covenant, which means the local government would be required to deny the application to build an ADU.[47]

The practical impact of the occupancy requirement is to inhibit construction of most ADUs. That conclusion is reflected in amendments to California's and Oregon's ADU legislation and in Seattle's 2019 local code revisions.

Aside from its effect on ADU production, there is a problem with the logic and fairness of applying an occupancy standard to ADUs if there is no such requirement for single-family homes generally. If single-family homes can be rented out (by a nonresident owner), then what is the policy basis for requiring occupancy when there is an ADU on the property?

One of the justifications for the owner occupancy requirement is the assertion that owners take better care of their property than nonresident owners. But there are certainly resident homeowners who do not take care of their property and nonresident owners who keep their property in excellent condition.

The 2020 Model State ADU Act treats ADUs as an equal and important type of housing that, in general, should be subject to the same set of rules that governs the use of other housing. ADUs should not be treated as an inferior form of housing that requires additional restrictions and policing. Authorizations of or prohibitions on renting out →

dwellings should be applied consistently to ADUs and other homes; if there is no owner occupancy requirement for primary residences, there should be none for ADUs.

O. Other Common Standards Not Recommended for Application to ADUs

The following commonly used standards are no longer recommended for inclusion in ADU ordinances:

- *Density of ADUs in a zone or district*
- *Age of principal dwelling*
- *Size of principal dwelling*
- *Tenure of current owner*
- *Number, age, relationship and physical condition of persons who can live in the ADU*
- *Annual renewal and monitoring of permits*
- *Owner occupancy/residency on the same property*

III. *Utility Connections and Building Codes*

A. Utility Connections

New or separate water and sewer lines directly between the accessory dwelling unit and the trunk lines are not required unless the accessory dwelling unit is constructed before or in conjunction with a new single-family dwelling. Applicants may choose to use a shared water meter for the primary structure and the ADU or have a separate water meter installed for each.

A best practice for municipalities is to not require new, dedicated lateral services from the utility/right-of-way to the property. These utilities include water, sewer, electric, and gas connections.

Commonly, water and sewer services are provided in part by governmental agencies, whereas electric and gas utilities are commonly provided by private energy providers.

Ideally, energy providers do not require ADUs to have a dedicated lateral service connection from the right-of-way to an ADU, as new connections often cost several thousand dollars. However, when energy utilities are publicly owned, then the same principle should apply.

B. Local Building Codes

Since many garages and basements weren't built to today's earthquake or frost line standards, requiring that a structure meet current code may effectively require demolition and new construction, thereby eliminating a realistic or feasible option for a structural conversion.

Permitted, nonconforming structures should be allowed to change their use from a nonhabitable use to a habitable use without a conditional use permit or special exception from the building code, even if the structure does not meet current structural standards. This is commonly referred to as "grandfathering in" existing structures. This policy is critical in enabling structural conversions.

There are several other key considerations for internal conversions related to existing ceiling heights and →

existing stairwells. In general, the goals should be to allow existing spaces to have reduced building code thresholds for numerous building code standards.[48]

The Portland, Oregon, guide to "Converting Attics, Basements and Garages to Living Space" makes internal conversions of living space to create ADUs more feasible by adjusting several elements of building codes:

- *Ceiling heights*
- *Exceptions to ceiling heights for beams, heating ducts, pipes*
- *Sloped ceilings*
- *Existing stairs*
- *Noncompliant stairs*
- *Stair landings*
- *Firewall separation*

Achieving higher energy efficiency in buildings is a critical strategy for reducing greenhouse gases. But it can increase the cost or reduce the design feasibility of ADUs created by conversions of existing space.

Conversions of basements and garages to ADUs are typically the most common type of ADU conversion. In the past, homes and garages were built with 2"x 4" stud walls versus the 2"x 6" framing used today, which accommodates much thicker insulation.

Requiring a conversion to meet today's energy standards may require the replacement of all of the existing stud walls to provide sufficient wall cavity space to accommodate sufficient insulation and meet modern energy code. This interior stud wall or additional 2" wall furring or exterior rigid foam insulation can add substantially ($5,000 to $20,000 in the Portland market in 2020) to construction costs and reduce the interior size of the living space of an already small dwelling.

If the effect of these energy standards is that more large homes or new apartments are constructed the net effect might be to increase energy consumption in order to heat and cool the larger spaces and because of the embedded energy in the materials used for new construction.

IV. *ADU Application and Review Procedures*

There are many potential procedural challenges facing ADU applicants: complex regulations, complicated application forms and procedures, vague and discretionary standards that must be addressed by the applications, the length and complexity of the procedures for acting upon an application, and appeals from the initial decision on the application.

A. Application Process

Zoning regulations, even in small jurisdictions, are almost inevitably complicated. Even in mid-sized cities they can run to hundreds of pages. Unlike developers and homebuilders, many applicants for ADUs don't have the resources to hire an attorney or consulting planner for more than a few hours to help them navigate the regulations and application process. In response, many local governments have developed simplified application forms, guidebooks, and online tools to determine whether and how an ADU can be sited on a property. This is a best practice recommended by AARP. See the Resources section for links to some examples. With the authorization and construction of more ADUs, more private sector specialists in ADU permitting are helping to fill this need.

B. Clear and Objective Versus Discretionary Standards

Vaguely worded standards contribute to the difficulty of securing ADU permits and may even inhibit homeowners from applying for a permit. Particularly problematic are standards that leave a great deal of discretion to the zoning administrator or require extensive interpretation. Even an apparently objective standard such as a 25-foot height limit requires the exercise of considerable discretion if the ADU roof has different elevations and the ground slopes in different directions.

AARP recommends using only clear and objective standards to govern ADUs.[49] *A best practice is to use expert advice to prepare and test language to ensure that it is clear enough to be administered fairly and easily.*

C. Review Procedures

The two basic options available to a community are to allow ADUs "by right" or to allow ADUs through conditional use permits (sometimes called special exception, special permit, or special land use).

"By right" means that the process involves filling out an application and presenting it to a local building official or zoning administrator, then checks to see that it meets the requirements of the ordinance. If the standards are clear and objective, no discretionary decision-making is involved and thus no hearing is necessary. This is also called a "ministerial" review.

This is the way building or remodeling a home or building an accessory structure is typically treated. By contrast a conditional use permit process typically involves the application of discretionary standards, public notice of the application and a public hearing.

Discretionary standards combined with a public hearing process create opportunities for obstruction by neighbors or organizations opposed to new housing in an established neighborhood. The cost of hiring attorneys or other experts and the delays associated with hearings and appeals can easily exhaust the budget and patience of even an affluent ADU applicant.

These obstacles have led many local and state governments to decide that ADUs should be a use allowed by right and subject only to ministerial review. Some have also imposed time limits for decisions on ADUs. (Some governments apply these requirements to other types of housing.)

The Model Local ADU Ordinance takes the position that building an ADU should be treated the same way as building or remodeling a home or building any accessory structure — it is a ministerial matter decided by a zoning administrator without notice or opportunity for a hearing.

D. Appeals of ADU Decisions

Many local zoning ordinances allow for initial decisions on ADU applications by a zoning administrator to be subject to internal appeals — to a hearing officer, the planning commission or a local governing body. Some local governments allow up to two internal appeals.

The final local government decision on an ADU, or other land use matter, may be followed by an appeal to the judicial system. There are many variations on internal appeal procedures, for example whether the scope of review is limited and who qualifies as a party to such an appeal. →

The Model Local ADU Ordinance obviates the need for detailing these provisions by making the ministerial decision the final local government decision, reviewable by the courts subject to the standards and procedures generally applicable to judicial review of local government decisions. This is consistent with the default procedural provisions in the Model State ADU Act.

The zoning administrator's decision on an application for an Accessory Dwelling Unit constitutes the final decision of [name of local government].

V. *Fees*

In addition to construction cost, regulatory standards and procedures, homeowners interested in building an ADU must consider permit processing fees, system development charges (to fund a share of capital improvements, such as water lines, sewage treatment capacity, schools and parks), and utility connection upgrades and charges.

The average local government fee for development of an ADU in California in the late 2010s was $9,250.[50] *In established neighborhoods where ADUs are being added, system development charges designed to pay for capital improvements may not be as appropriate if existing capital improvements are already adequate to handle a modest increase in residential population. Many older neighborhoods have a lower population density than when they were built and household sizes were larger.*

Another approach is to offer fee processing waivers for homeowners who use preapproved ADU designs.

Waiving or reducing fees can incentivize ADU construction. Portland, Oregon, saw a surge in ADU applications when it offered to temporarily waive up to $15,000 in system development charges that would have applied to ADUs; ADU permits tripled from about 200 per year to 600 per year.[51]

The Model Local ADU Ordinance follows the Model State ADU Act in limiting charges for ADUs to 30% of the charges applied to a single-family residence.

Permit application and review fees, utility hook-up fees and charges for public improvements for accessory dwelling units shall not be more than 30% of the application fees for a typical single-family dwelling unit of 2,000 square feet or greater than 10% of the estimated construction costs for the ADU, whichever is less. Additional amounts may be charged for a variance but subject to the overall maximum fee limit of 30% of the fees charged for a typical single-family residence of 2,000 square feet. The information required on applications for creating or legalizing ADUs shall be the same information required to construct a single-family-dwelling unit.

VI. *Legalizing ADUs*

An illegal ADU is one installed without obtaining the required permits from the local government.

Some ADUs existed prior to any ordinance that made them illegal. Local governments generally have the discretion to certify those ADUs as legal, nonconforming ADUs if they conformed to building codes in effect at the time of their construction. To this end, California has adopted legislation allowing that "the appropriate enforcement official may make a determination of when a residential unit was constructed and then apply the California Building Standards Code and other specified rules and regulations in effect when the residential unit was determined to be constructed for purposes of issuing a building permit for the residential unit." →

Other ADUs that were nonconforming may be made conforming by subsequent code revisions, such as those proposed in the Model Local ADU Ordinance, and an application and receipt of a permit.

The continued existence of illegal ADUs may actually be encouraged by harsh regulations, excessive fees and tedious application procedures.

Many ADU owners strongly resist legalization out of a fear of higher (and possibly unaffordable) property taxes, fines, 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.

For these reasons, programs to accommodate illegal ADUs have not been very successful. 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.

Especially challenging are the large numbers of unpermitted units in working class and poor neighborhoods with high housing costs. The number of unpermitted units can be so great that they cannot be treated as a minor compliance problem that can be remedied quickly.

In these places, unlike in many other neighborhoods, water and sewer systems are overtaxed due to high population densities and low revenue from system development charges over time (given that most of the added units are unpermitted). A grant program or long-term investment strategy is needed to allow for infrastructure capacity and state-of-good-repair upgrades.

Regulations imposed on units applying for amnesty in these areas need to distinguish between matters of true health and safety (adequate egress, electrical wiring, light, ventilation, etc.) and other concerns (parking, setbacks, building heights, etc.).

Amnesty should not be an all-or-nothing process. There should be some sort of mechanism for graduated compliance over time (perhaps several years), with the most urgent life-and-death conditions being fixed first and others later.

Onerous utility-related requirements (such as fully separate water and sewer main connections) may be counterproductive. Many or most homeowners going through amnesty will need technical assistance and perhaps grant funding. Grant funding should be justified on the basis of an amnestied ADU typically costing far less than the city subsidies needed for a below market new construction housing unit.

There are many entities, such as nonprofits and university planning and architecture departments, with which a city can partner for technical assistance.

A city can also require affordable rent concessions as a condition of amnesty, at least for middle- and higher-income homeowners.

Some benefits accrue to communities that legalize illegal ADUs. If illegal units are tolerated, the risk increases 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 ADU regulation that they are committed to the public interest, as demonstrated by requirements that owners of illegal ADUs come forward and legalize their units, coupled with a commitment to the kinds of funding and assistance programs for moderate- and low-income homeowners →

of the type described previously. Legalizing illegal ADUs provides the opportunity to correct safety hazards, such as inadequate electrical wiring.

We recommend against harsh regulations, lengthy application processes and high fees, which will lead to even more illegal ADUs. We recommend publicizing the opportunity for amnesty for ADUs made compliant as a result of amendments to local ordinances, nonpunitive safety inspections when public health is threatened, amnesty periods from enforcement, extended periods to comply with regulations, exemption from all but safety regulations, a comprehensive long-term approach to code compliance in moderate-income neighborhoods, and reliance on the threat of stiff penalties only after all else has failed.

Endnotes

1 See *MissingMiddleHousing.org*.

2 Find the average size of a single-family home, the square footage per person, the number of new homes that began construction and gross domestic product per person, starting in 1920. "Size of a Home the Year You Were Born," Evan Comen, Michael B. Sauter, April 5, 2019, *247wallst.com*

3 "California ADU Growth by City from 2012–2019, Charted," August 22, 2020, *BuildingAnADU.com.*.

4 Kol Peterson, *AccessoryDwellings.org.*

5 "Housing Vancouver," City of Vancouver, Progress Report and Data Book to Council (June 2020), pages 7, 8, 25. *Vancouver.ca.*

6 Jessica Lee, Greta Kaul, "ADUs Were Supposed to Help Minneapolis' Housing Crunch. How's That Working Out?" May 1, 2019, *MinnPost.com.*

7 Revised Code of Washington 43.63A.215.

8 California Government Code 65852.150.

9 New Hampshire RSA 674:71-73.

10 Oregon Revised Statutes 197.312(5).

11 § 45-24-37 (limited to use by persons over 62 or with disabilities).

12 24 Vermont Statutes Annotated Section 4412 (E).

13 The revisions made as the result of passage of one Senate and five Assembly bills are summarized in the California Department of Housing and Community Development's *Accessory Dwelling Unit Handbook*, pages 4–7 (September 2020).

14 Oregon Revised Statutes 197.312(5)(b)(B), 455.610(8), (9) as amended or added by Oregon House Bill 2001 (2019), *HCD.ca.gov.*

15 Vermont Senate Bill 237 signed by the Governor and effective October 12, 2020, amending 24 Vermont Statutes Annotated §4412(1)(E), 24 Vermont Statutes Annotated § 2291(29) and 27 Vermont Statues Annotated §545.

16 2019 Florida Statutes online §163.31771.

17 30-A Maine Revised Statues Annotated §4301, sub-§1-B.

18 Hawai'i Revised Statutes §46-4(c).

19 *Accessory Dwelling Unit Legislation: An Overview of State Policy*, American Planning Association (APA) and AARP, 2021.

20 ADU Program Guide, City of Portland, Oregon, March 2019, *Portland.gov.*.

21 City of Portland, Oregon, "Converting Attics, Basements and Garages to Living Space," February 2019, *Portland.gov*

22 Here is an excerpt from a 2018 letter sent from a bank to a prospective borrower. It discusses an owner occupancy covenant on the property that would be required as a condition of approval for construction of an ADU: *"I have reviewed the Accessory Dwelling Unit Covenant and as a lender I have a number of concerns: 1. The covenant does not provide the lender with protections in the case of a foreclosure or deed in lieu of foreclosure as the restriction will affect marketability of the property. The covenant requires at least one of the units be owner-occupied. In a market where there is a demand for investment property, this limits the pool of potential buyers thus affecting the sales price and marketability of the property. A potential homeowner or home purchaser may have a difficult time obtaining conventional financing with this deed restriction; 2. Your covenant states that the owner needs to occupy the residence, if the lender forecloses the lender can clearly not occupy the property and will be in violation of your proposed covenant."* Another example is provided by a reply to a request from homeowners asking their mortgage lender to consent to an owner occupancy covenant, which was required by the local government as a condition of approval of an ADU that the homeowners hoped to build. The mortgage lender replied: *"The proposed Accessory Dwelling Unit Covenant would place certain limitations on this property, and as such could be construed as a transfer of interest in the property. [The bank] is not able to provide consent to such transfer at this time."*

23 24 Vermont Statutes Annotated § 4412 (1)(F)(2) and 24 Vermont Statutes Annotated § 2291(29) as amended by Sections 1 and 3 of Vermont Senate Bill 237, signed by the Governor and effective October 12, 2020.

24 "Regulating ADUs in California: Local Approaches & Outcomes," Deirdre Pfeiffer, University of California, Berkeley, Terner Center for Housing Innovation (2018), *CaliforniaLandUse.org*

25 "Accessory Dwelling Units," City of Burlington, Vermont, *BurlingtonVT.gov.*

26 The cost to put in a new driveway averages $4,421, with a typical range between $2,379 and $6,472. A customer can expect to pay $2 to $15 per square foot for materials and installation. ("How Much Does a Driveway Cost?" *HomeAdvisor.com*, checked December 21, 2020). A 10-foot-wide driveway 60 feet in length would cost between $1,200 and $9,000, using these cost-per-square-foot numbers. | Kol Peterson, author of *Backdoor Revolution: The Definitive Guide to Accessory Dwelling Unit Development*, estimates the cost range as $2,500 to $15,000, depending on whether the additional driveway requires excavating and pouring a new pad on a flat surface next to the street or if it calls for a new curb cut and new landscaping.

27 Research conducted for Oregon's House Bill 2001 (2019), which mandates the authorization of middle housing in single-family-residential zones), found*"[o]n small lots, even requiring more than 1 parking space per development creates feasibility issues because it limits the potential building footprint." EcoNorthwest (2020), Summary of Triplex/Fourplex Financial Feasibility Sensitivity Testing for Middle Housing Model Code, Oregon.gov.*

28 "Regulating ADUs in California: Local Approaches & Outcomes," Deirdre Pfeiffer, University of California, Berkeley, Terner Center for Housing Innovation (2018), *CaliforniaLandUse.org.*

29 Professor Donald Shoup of the University of California, Los Angeles (UCLA), calculates that the U.S. has 2 billion parking spaces for 250 million cars and light trucks and that more land has been set aside for housing cars than housing people. "Parking Is Sexy Now. Thank Donald Shoup," Bloomberg News CityLab, May 20, 2018, *Bloomberg.com.*

30 City of Hartford, Connecticut, "Zone Hartford: Hartford Zoning Regulations," Section 7.2 Parking Requirements, effective January 16, 2016, as amended June 5, 2020.

31 Daniel Baldwin Hess (2017) "Repealing Minimum Parking Requirements in Buffalo: New Directions for Land Use and Development," *Journal of Urbanism: International Research on Placemaking and Urban Sustainability*, 10:4, 442-467.

32 Edmonton City Council Votes to Remove Minimum Parking Requirements: With the Change, Edmonton Becomes First Major City in Canada to Drop Parking Minimum,"CBC News, June 23, 2020, *CBC.ca*.

33 For example, City of Oakland, California, Oakland Planning Code (as amended through June 2020), 17.116.060, "Off-Street Parking: Residential Activities" (no parking required for single family and multifamily residences in many zones): City of Portland, for sites within 1,500 feet of a transit stop, "The minimum number of required parking spaces for a site with a Household Living use is: (1) Where there are up to 30 dwelling units on the site, no parking is required; (2) Where there are 31 to 40 dwelling units on the site, the minimum number of required parking spaces is 0.20 spaces per dwelling unit"; Portland City Code, Title 33, Planning and Zoning 33.266.110, "Minimum Required Parking Spaces," as of October 2020.

34 Oregon Revised Statutes 197.805 – 197.860.

35 California Government Code 65852.2.(e)(1)(C), (D).

36 "Accessory Dwelling Units," City of Burlington, Vermont, *BurlingtonVT.gov*.

37 As of November 2020, the City of Portland's website includes links to Ordinance 190093 as amended to accommodate the reforms in single-family zoning, adopted August 12, 2020, and resulting from the residential infill document and various supporting documents, including staff reports and research that addresses height, bulk, set backs and floor area ratios, *Portland.gov.*

38 The cost to put in a new driveway averages $4,421, with a typical range between $2,379 and $6,472. A customer can expect to pay $2 to $15 per square foot for materials and installation. ("How Much Does a Driveway Cost?" *HomeAdvisor.com*, checked December 21, 2020). A 10-foot-wide driveway 60 feet in length would cost between $1,200 and $9,000 using these cost-per-square-foot numbers. | Kol Peterson, author of *Backdoor Revolution: The Definitive Guide to Accessory Dwelling Unit Development*, estimates the cost range as $2,500 to $15,000, depending on whether the additional driveway requires excavating and pouring a new pad on a flat surface next to the street or if it calls for a new curb cut and new landscaping.

39 Research conducted for Oregon's House Bill 2001 (2019), which mandates the authorization of missing middle housing in single-family residential zones, found "[o]n small lots, even requiring more than 1 parking space per development creates feasibility issues because it limits the potential building footprint." *EcoNorthwest* (2020), "Summary of Triplex/Fourplex Financial Feasibility Sensitivity Testing for Middle Housing Model Code," *Oregon.gov.*

40 "Regulating ADUs in California: Local Approaches & Outcomes," Deirdre Pfeiffer, University of California, Berkeley, Terner Center for Housing Innovation (2018), *CaliforniaLandUse.org.*

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44 "Edmonton City Council Votes to Remove Minimum Parking Requirements: With the Change, Edmonton Becomes First Major City in Canada to Drop Parking Minimum," CBC News, June 23, 2020, *CBC.ca*.

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46 Details can be found at *Vancouver.ca/home-property-development/retain-your-character-house.aspx.*

47 Here is an excerpt from a 2018 letter sent from a bank to a prospective borrower. It discusses an owner occupancy covenant on the property that would be required as a condition of approval for construction of an ADU: *"I have reviewed the Accessory Dwelling Unit Covenant and as a lender I have a number of concerns: 1. The covenant does not provide the lender with protections in the case of a foreclosure or deed in lieu of foreclosure as the restriction will affect marketability of the property. The covenant requires at least one of the units be owner-occupied. In a market where there is a demand for investment property, this limits the pool of potential buyers thus affecting the sales price and marketability of the property. A potential homeowner or home purchaser may have a difficult time obtaining conventional financing with this deed restriction; 2. Your covenant states that the owner needs to occupy the residence, if the lender forecloses the lender can clearly not occupy the property and will be in violation of your proposed covenant."* Another example is provided by a reply to a request from homeowners asking their mortgage lender to consent to an owner occupancy covenant, which was required by the local government as a condition of approval of an ADU that the homeowners hoped to build. The mortgage lender replied: "The proposed Accessory Dwelling Unit Covenant would place certain limitations on this property, and as such could be construed as a transfer of interest in the property. [The bank] is not able to provide consent to such transfer at this time."

48 Converting Attics, Basements and Garages to Living Space," City of Portland, 2019, *Portland.gov.*

49 Because of the uncertainties created for approval of housing, Oregon has, since the 1980s, required local governments to use only clear and objective standards to review needed housing. Oregon Revised Statutes 197.307(4).

50 "Regulating ADUs in California: Local Approaches and Outcomes," Deirdre Pfeiffer (2018), University of California, Berkeley, Terner Center for Housing Innovation, *CaliforniaLandUse.org.*

51 *When the waiver was made permanent for ADUs that were subject to a prohibition on short-term rentals the volume declined as the deadline was removed, but remained at more than 300 per year.*