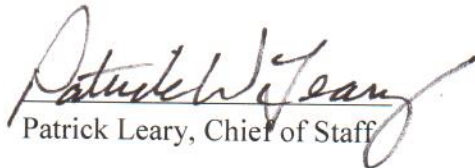




CITY COUNCIL TRANSMITTAL


Patrick Leary, Chief of Staff

Date Received: May 22, 2017

Date sent to Council: May 23, 2017

TO: Salt Lake City Council
Stan Penfold, Chair

DATE: _____

FROM: Mike Reberg, Community & Neighborhoods Director 

SUBJECT: Additional information on petition PLNPCM2014-00447 to amend City Code 21A.40.200 Accessory Dwelling Units.

STAFF CONTACT: Michael Maloy, AICP, Senior Planner, (801) 535-7118

DOCUMENT TYPE: Information only

RECOMMENDATION: That the City Council schedule a briefing and public hearing on Petition No. PLNPCM2014-00447 for the accessory dwelling unit ordinance amendment.

BUDGET IMPACT: None

BACKGROUND/DISCUSSION: On January 17, 2017, the City Council was briefed on petition PLNPCM2014-00447 to amend the accessory dwelling unit ordinance. During the work session, the City Council requested additional information on several issues relative to the proposal. As directed, staff conducted the additional research and prepared the following response for consideration.

Question How will Salt Lake City enforce ADU provisions such as owner occupancy, parking, and short term rentals?

Answer *Enforcement of the zoning ordinance is a responsibility of Civil Enforcement. Civil Enforcement is part of the Building Services Division, which is within the Department of Community & Neighborhoods. As a matter of city policy, a zoning enforcement action is initiated in response to a "complaint"—which may be submitted anonymously to the city. However, enforcement may be initiated by the city if there is a visible threat to life, health, or safety. Currently, there are seven (7) full-time civil enforcement officers that compass the city and enforce zoning ordinances.*

City Code specifies fines for violations. Chapter 21A.20 regulates enforcement of Zoning Title 21A. Within this chapter, the following provisions establish civil penalties for violation:

21A.20.040 Fines for Violations:

- A. Violations of the provisions of this (Zoning) title or failure to comply with any of its requirements shall be punishable as a class B misdemeanor upon conviction.
- B. This title may also be enforced by injunction, mandamus, abatement, civil fines or any other appropriate action in law or equity.
- C. Each day that any violation continues after the citation deadline shall be considered a separate offense for purposes of the fines and remedies available to the city.
- D. Accumulation of fines for violations, but not the obligation for payment of fines already accrued, shall stop upon correction of the violation.
- E. Any one or more of the fines and remedies identified herein may be used to enforce this title.

21A.20.050 Civil Fines. If the violations are not corrected by the citation deadline, civil fines shall accrue at twenty five dollars (\$25.00) a day per violation for properties in residential zoning districts and one hundred dollars (\$100.00) per day per violation for properties in nonresidential zoning districts.

21A.20.060 Daily Violations. Each day a violation continues after the citation deadline shall give rise to a separate civil fine.

21A.20.070: Compliance. The city may use such lawful means as are available to obtain compliance and to collect the amount of any fines accrued, including costs and attorney fees.

Enforcement begins with permitting. Whether a proposed ADU is located within an existing or new structure, the permitting process will require the following steps to ensure compliance with all applicable regulations, including building, fire, health, and zoning codes:

- A building permit application must be submitted, reviewed, and issued by the city—even if the proposed ADU has already been constructed. For example, if a property has a pre-existing but unlicensed accessory dwelling unit it must be *brought into compliance with all applicable regulations*, including current building code.
- The proposed ADU must pass all required building inspections to ensure compliance with *current* City Code and adopted regulations.
- The city will record with the Salt Lake County Recorder a “deed restriction” that states “the owner occupant must occupy the property as required” by City Code. Such deed restriction shall “run with the land” until the accessory dwelling unit is abandoned or revoked. When the property is sold, subsequent

owners will be notified of the owner occupancy requirement through the property title report.

- If a property owner intends to rent an ADU, the owner must obtain an annual Salt Lake City Business License, however participation in the “Good Landlord” program is optional.
- Once the property owner has complied with all applicable regulations, and the ADU has passed inspections, a “certificate of occupancy” will be issued by the city.

Owner occupancy is enforceable. Regarding enforcement of the “owner occupancy” requirement, which is part of the existing ordinance and proposed amendment, Planning Division staff is confident that the regulation is enforceable. The provision is derived from a regulation adopted by Provo City in April 2000, which was challenged in 2005 by property owners in *Anderson v Provo City*. The owner occupancy requirement was successfully upheld by the Supreme Court of Utah, which concluded:

“In allowing property owners in some single-family residential zones near BYU to rent accessory apartments on condition that the owner resides in the primary dwelling, Provo has struck a balance between providing more housing alternatives and availability in these neighborhoods and preserving their single-family residential character. The provision at issue here places no restriction on owners' right to rent their primary residence but merely regulates a secondary use that could otherwise not be available at all. We hold that the owner occupancy requirement for accessory apartment rental is within Provo's zoning power, does not violate owners' constitutional rights to the uniform operation of laws, to equal protection, or to travel, and is not an invalid restraint on alienation.”

If a complaint is received regarding compliance with the owner occupancy provision, the property owner of record will be required to produce documentation—specified in City Code—to verify occupancy. If the property owner no longer occupies the property, the ADU would be subject to enforcement procedures, which may include civil fines, permit revocation, and removal of the ADU.

Common but questionable. However, it should also be noted that some residents have questioned or criticized the owner occupancy provision, and several northwestern cities have recently removed or avoided owner occupancy requirements for ADUs, such as Vancouver, Richmond, and Victoria, BC; Portland, Bend, and Ashland, Oregon; Yakima, Washington; and Nampa, Idaho. According to a 2013 article published by Sightline Institute, an independent, nonprofit research and communications center, it concluded:

“This rule (owner occupancy) gives bankers the jitters, which prevents many homeowners from securing home loans to finance the ADU construction. Owner occupancy sharply limits the value appraisers can assign to a house and ADU and makes the property less valuable as loan collateral. If a bank forecloses on a house and suite covered by an owner-occupancy rule, it cannot rent out both units.

Portland repealed its owner occupancy provision in 1998, but most other communities retain the rule.”

In general, ADU proponents have accepted owner occupancy requirements as a distinguishing feature that separates ADUs from other land uses, such twin-homes or duplex dwellings. Owner occupancy provisions have also made ADUs generally more acceptable in existing single-family residential neighborhoods.

Off-street parking required. Regarding parking, the proposed amendment requires one off-street parking stall for an ADU. The location and dimensions of the stall must be shown on a site plan and constructed prior to occupancy. The parking requirement may be modified if the property is within ¼ mile of a fixed rail station.

On street parking regulated. On street parking is enforced by Parking Enforcement which is part of the Salt Lake City Public Services Compliance Division. If necessary, a Salt Lake City Police Officer may also enforce parking regulations, which includes the following City Code, which is applicable in all residential districts:

12.56.440 Stopping, Standing or Parking, Prohibited in Certain Areas.

- A. No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device, in any of the following places:
 - 1. On a sidewalk area;
 - 2. In front or within five feet (5') of a driveway;
 - 3. Within ten feet (10') of a driveway, on Mondays through Saturdays (except holidays) between seven o'clock (7:00) A.M. and six o'clock (6:00) P.M., when a mailbox is located within five feet (5') of such driveway;
 - 4. Within an intersection;
 - 5. Within five feet (5') of a fire hydrant, as measured in both directions along the street or highway curb line from the line extending from the center of the hydrant to the curb line at its nearest point;
 - 6. On a crosswalk;
 - 7. Within twenty feet (20') of a crosswalk at an intersection;
 - 8. Within thirty feet (30') upon the approach of any flashing beacon or traffic control device located at the side of a roadway;

With regard to “short term” rental of a dwelling, Salt Lake City Code 5.14.010 defines a “rental unit” as a building or portion of a building that is:

- A. Used or designated for use as a dwelling by one or more persons; and
- B.
 - 1. Available to be rented, loaned, leased, or hired out for a period of one month or longer; or
 - 2. Arranged, designed, or built to be rented, loaned, leased, or hired out for a period of one month or longer.

Through application of this definition, the Salt Lake City Business Licensing Division classifies any “business” that offers a rental agreement for less than 30 days as a type of

commercial lodging service. As such, a short term rental property may not be licensed in most residential zoning districts.

- Options*
1. To broaden applicability of ADU regulation, remove owner occupancy requirement.
 2. To increase off-street parking, require 1 parking stall for a 1 bedroom unit, and 2 parking stalls for a 2 bedroom unit, which is consistent with the existing ADU regulation.

Question. How does Utah Code impact or regulate short term rentals, like those advertised through Airbnb.com?

Answer. *Little or no impact.* During the 2017 General Session, the Utah State Legislature passed House Bill (HB) 253 entitled Short-Term Rental Amendments. HB 253 states that a municipality may not:

- a) Enact or enforce an ordinance that prohibits an individual from listing or offering a short-term rental on a short-term rental website; or
- b) Use an ordinance that prohibits the act of renting a short-term rental to fine, charge, prosecute, or otherwise punish an individual solely for the act of listing or offering a short-term rental on a short-term rental website.

Essentially, HB 253 prohibits a city from using a “short term rental website” as evidence for enforcement, and a city may not “fine, charge, prosecute, or otherwise punish” an individual for “listing” a short term rental. However, HB 253 does not prevent a city from prohibiting short term rentals. HB 253 was signed by Governor Herbert on March 24, 2017, and will be effective on May 8, 2017.

While the impact of short term rentals on long term or affordable housing is unknown, some preliminary research has been published by accessorydwelling.org, which is a proponent of ADU development. Within an online article entitled “Will Short Term Rentals Actually Reduce Long Term Housing in Granny Flats?” published in 2016, several observations were made:

- Based on research of listings on Airbnb, most short term rentals are “short lived” and listed for less than one year.
- How an ADU is used may change quickly and easily, but long term rental is generally the preferred or “fall back” option.
- In an Oregon survey, 90% of respondents who use their ADU for long term rental plan on maintaining that use.

Within this article, the author speculated that short term rental listings do not last because “operating a short term rental is a lot of work” or “there is no financial advantage to operating a short term rental when long term rental (rates) are fairly high.”

<p>Case Study. For more information on the impact of short term rental policies on long term use of dwelling units—including accessory dwelling units—in Santa Cruz, California, and Portland, Oregon, City Council members may review an online article</p>

at <https://accessorydwellings.org/2016/04/04/adustr/>, which was published in 2016 by accessorydwellings.org, a proponent of ADU development.

- Option* 3. To prohibit short term rental of ADUs and promote affordable housing, specify duration of a rental agreement for an ADU must be a minimum of 30 consecutive days within residential zoning districts that currently prohibit short term rentals.

Question. How will ADUs contribute to affordable housing stock?

Answer. *Smaller dwellings, smaller rents.* In response to this question, Planning Division staff offers the following information:

- In general, the average per square foot construction costs of a detached ADU are similar to a single-family home. However, an “internal” or “attached” ADU is generally less expensive to develop than a detached ADU.
- The primary “cost savings” associated with ADUs are “land costs” that have already been factored in the purchase price of a single-family home. A secondary cost savings may be derived from sharing utilities or other existing features, such as a driveway.
- While construction costs may be similar to other forms of residential construction, because ADUs are smaller than conventional dwelling units, ADU rental fees tend to be lower or more affordable than nearby dwelling units.
- “In general, due to their smaller unit sizes, ADUs should occupy the lower end of the rental spectrum. As an NYU Furman Center working paper noted: ‘Micro-units [ADUs and compact apartments] in many cities frequently rent at rather high rates per square foot, but at lower total monthly rent levels, than larger apartments.’ In this sense, ADUs remain a source of affordable housing. In supply-constrained housing markets, any production of additional dwelling space will help ease rental market pressure, and production of low total rent units is all the more welcome” (see Exhibit 1 – *R Street Policy Study No. 89 March 2017 Accessory Dwelling Units*, p.3).
- “Further, as Brown and Palmieri note, the zero and below-market rents that are presumably charged to family members or friends should not be dismissed. Voluntarily discounting rent to those with whom the property owner has pre-existing relationships is still a provision of affordable housing. Where the housing is provided to elderly relations who might otherwise require costly personal care, it also represents a potentially large government savings” (see Exhibit 1 – *R Street Policy Study No. 89 March 2017 Accessory Dwelling Units*, p.3).

Case Study. For information on the impact of accessory dwelling units on affordable housing, City Council members may review an online article at <https://accessorydwellings.org/2014/08/07/do-adus-provide-affordable-housing/>, which was published in 2014 by accessorydwellings.org, a proponent of ADU development.

Question. Does the City of Durango, Colorado have a “good feedback loop” between the city and the public regarding ADUs?

Answer. *Public notice required.* Planning Division staff spoke with Heather Bailey, a planner for the City of Durango, Colorado, about Durango’s accessory dwelling unit regulation, which was adopted in 2014. To educate residences on ADUs, the City of Durango produced a 6 minute video called “Know Your ADUs” and a two page “Land Use & Development Guidebook” (see Exhibit 2 – Development Guidebook).

Durango requires a property owner obtain a “limited use permit” prior to building an ADU. The limited use permit (LUP) process requires the city to mail a public notice to all property owners within 300 feet of the proposed ADU prior to making an administrative decision by staff. No public meeting is held for the administrative process. The purpose of the LUP process is to (1) notify neighbors of the proposal, and (2) discover relative information that may be unknown to the applicant or staff. If the proposal is deemed compliant, the *ADU must be approved regardless of public concern or opposition*. According to Ms. Bailey, Durango is pleased with the LUP process and results.

Durango’s LUP process is similar to the “special exception” process used by Salt Lake City for legalization of excess dwelling units” currently authorized in section 21A.52.030 of City Code. For reference, staff has summarized and compared both processes in the following table:

Process	City of Durango Limited Use	Salt Lake City Special Exception
Pre-application	Required	Optional
Notice	Public notice required within 300 feet	Public notice required for abutting residents and property owners
Authority	Staff will approve, approve with conditions, refer to the Planning Commission, or deny the application	Administrative review by staff, but refer to Planning Commission if reasonable objection is received. May be denied for failure to comply with standards
Appeal	Administrative decisions may be appealed to the Planning Commission. All Planning Commission decisions may be appealed to the City Council	Administrative decisions may be appealed to the Planning Commission. Planning Commission decisions may be appealed to an Appeals Hearing Officer. Any subsequent appeal is to 3 rd District Court

Regarding special exceptions, Salt Lake City Code provides the following purpose statement and definition:

21A.52.010 Purpose Statement. The planning commission or historic landmark commission may delegate its authority as necessary to the planning director to make a determination regarding special exceptions. The planning director may approve the special exceptions authorized by this title in accordance with the procedures

and standards set out in this chapter and other regulations applicable to the district in which the subject property is located.

21A.52.020 Definition. A "special exception" is an activity or use incidental to or in addition to the principal use(s) permitted in a zoning district or an adjustment to a fixed dimension standard permitted as exceptions to the requirements of this title of less potential impact than a conditional use but which requires a careful review of such factors as location, design, configuration and/or impacts to determine the desirability of authorizing its establishment on any given site.

However, based on research and recommended best practices, the Planning Division has advocated ADUs be classified as permitted uses, which means that a permit to build an ADU relies solely on compliance with established City Code and applicable regulations, such as the Uniform Building Code and the International Fire Code. This approach is also consistent with the existing “detached dwelling unit” regulation in Form Based Urban Neighborhood zoning districts (see section 21A.27.030 of City Code).

- Option* 4. To notify neighbors of a pending ADU development, amend the proposal to incorporate *one* of the following options:
- Specify an application and administrative review process that includes notification of abutting property owners and residents, *or*
 - Specify an application and administrative review process that includes notification of property owners and residents within 300 feet, *or*
 - Reclassify ADUs as a special exception, which would require amendment of section 21A.52.030, entitled Special Exceptions Authorized.

PUBLIC PROCESS: A detailed history of the public process for the proposed accessory dwelling units ordinance amendment is attached to the January 17, 2017, City Council Staff Report.

EXHIBITS:

1. R STREET POLICY STUDY NO. 89 ACCESSORY DWELLING UNITS
2. DEVELOPMENT GUIDEBOOK

1. R STREET POLICY STUDY NO. 89 ACCESSORY DWELLING UNITS



Free markets. Real solutions.

R STREET POLICY STUDY NO. 89
March 2017

ACCESSORY DWELLING UNITS: A FLEXIBLE FREE-MARKET HOUSING SOLUTION

Jonathan Copping

INTRODUCTION

Much of the American built environment was constructed in the post-World War II era, when government policy and planning fashion favored a highly dispersed development model centered on the primacy of the single-family detached home. Subsequent developments in zoning law tended to further privilege and protect the single-family detached home from any neighboring diversity of land use or building form.

As a pattern popularized at the peak of American nuclear family formation, such models initially met consumer preferences and served the needs of many. As the 20th century progressed, however, American demographic patterns and housing needs dramatically changed. The built environment was, by this point, too calcified by accumulated land-use regulations to adapt to these changes, producing significant distortion in high-demand housing markets and unresponsive legal environments across the country.

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As housing supply constraints choke productivity in hot economic regions, and household structure and demographics continue to shift nationally, significant public-policy debates have been opened about the appropriate responses to these developments. These range from debates over national entitlement programs like Social Security and Medicare to battles over gentrification in urban centers. The political disputes often are characterized by high tempers and little perceptible progress.

While these important, high-intensity debates continue, there is opportunity simultaneously to pursue lower-profile solutions that could alleviate pressure on the market, even if they cannot provide complete resolution to all of its problems. One supplemental policy priority would be to ease significantly existing obstacles to the construction and permitting of accessory dwelling units in single-family residential zones.

ACCESSORY DWELLING UNITS

An accessory dwelling unit (ADU) is defined as “a secondary dwelling unit with complete independent living facilities for one or more persons” on a single-family lot, whether attached to the primary structure, detached from it or contained within it.¹ ADUs commonly are referred to by a wide variety of less formal names, including “granny flat,” “mother-in-law suite,” “carriage house,” “secondary unit” and “backyard cottage.”

ADUs, then, are dependent apartments built onto otherwise typical single-family homes. They are often created by means of garage conversion, basement finishing, wing addition or even as free-standing construction behind a house. A fully independent ADU will contain its own entrance and full kitchen and bathroom facilities; it may even have separate

1. California Department Housing and Community Development, “Accessory Dwelling Unit Memorandum,” December 2016. <http://www.hcd.ca.gov/policy-research/docs/2016-12-12-ADU-TA-Memo.docx.pdf>

and independent utility metering. While there was significant scholarly interest in ADUs in the 1980s, it waned until recent years, leaving a relative shortage of studies of and data on the current state of secondary units. Filling the informational gap could prove especially difficult, given the large proportion of secondary units that exist as illegal conversions, without permits or official recognition in government databases. One 2001 study estimated that fully one in five San Francisco residential buildings included an illegal secondary unit² and that supply-constrained coastal cities could expect 2 to 10 percent of their housing stock to be illegal secondary units.

The ADU is starting to recover attention, as demographic shifts also lead many groups to revisit accessory dwelling units as an option for the increasing number of multigenerational households. There are any number of causes of this trend, including the aging of the baby boomer generation, a persistent “boomerang” young adult cohort, and growth in the Hispanic and Asian populations. Moreover, housing shortages in hot urban markets have raised interest in creative means to expand supply.

Before accessory dwelling units can be brought to bear on those challenges, however, there is a need to popularize and pass significant reforms to accommodate this flexible, free-market solution.

BRIEF HISTORY OF ZONING

The basic tenets of American zoning were set by the mid-1930s, which is also when the federal government began to provide assistance to the detached single-family house as an ideal base for American life.³ In the postwar period, the relatively simple and compact single-family zoning pattern—originally designed to protect residential neighborhoods from noxious industrial activity—was expanded and complicated, with explicit federal housing policies that reinforced single-family housing on ever larger lots with rapidly diminishing tolerance of diversity. Zoning shifted from prohibiting industrial and commercial development in residential zones to prescribing the shape and structure that residential housing could take within those already protected neighborhoods.

As University of Chicago’s Emily Talen wrote in her book *City Rules*: “The zoning changes of one small town in central Illinois, Urbana, home of the University of Illinois, illustrate

the traditional progression.”⁴ As she recounts, Urbana’s first zoning ordinance was passed in 1936, but there were no minimum lot widths and no lot areas were required per unit until 1950. In 1950, six zones were introduced, two each for residential, commercial and industrial uses. By 1979, however, 16 districts and two overlay zones had been introduced, apartments in single-family areas were banned, and minimum lot sizes and floor-area ratio rules were brought into effect.

The introduction of a few zoning regulations metastasized into a narrowly prescriptive regime that, as Sonia Hirt described in *Zoned in the USA*, “has exceeded historic and international precedent to build what may well be the lowest-density settlements in the history of the world [emphasis original].”⁵

America’s hyperdispersed, land-use-segregated settlement pattern is functional for adults who drive cars but the carless are significantly inhibited from accessing any activities or areas other than the ones in their immediate neighborhood. Functionally, this prevents nondriving children from contributing to the household by running errands to a corner store, for instance, in addition to placing severe limits on the independence of elderly adults who no longer drive.⁶

The recently observed recovery of multigenerational households and parallel decline of intact nuclear families takes place, then, in a regulatory environment rigidly designed for a very different population. As Reihan Salam has written:

Since the initial rise of the suburbs, families have changed. Married couples with children have fallen from 42.9 percent of all households in 1940 to 20.2 percent of all households in 2010, while married couples without children have fallen from 33.4 to 28.2 percent of all households. Single-parent families have also increased, of course, from 4.3 percent to 9.6 percent. The most dramatic change has been the steep increase in one-person households, from 7.8 to 26.7 percent of the total. Families have also been transformed by rising female labor force participation, with women now serving as the sole or primary wage earner in four in 10 U.S. households with children. ...

Viewed through this lens, the problem we face is clear: Much of our built environment still bears the imprint of the postwar era, despite the fact that the families that were characteristic of that era are no longer dominant.⁷

2. George Williams, “Secondary Units: A Painless Way to Increase the Supply of Housing,” San Francisco Planning and Urban Research Association, August 2001. <https://sfpa.org/0110williams.html>

3. Sonia Hirt, *Zoned in the USA: The Origins and Implications of American Land-Use Regulation*, Cornell University Press, p. 32, 2014.

4. Emily Talen, *City Rules*, Island Press, pp. 120–2, 2012.

5. Hirt, p. 28.

6. Andres Duany, Elizabeth Plater-Zyberk, and Jeff Speck, *Suburban Nation: The Rise of sprawl and the Decline of the American Dream*, North Point Press, p. 115, 2000.

7. Reihan Salam, “How the Suburbs Got Poor,” *Slate*, Sept. 4, 2014. http://www.slate.com/articles/news_and_politics/politics/2014/09/poverty_in_the_suburbs_places_that_thrived_in_the_era_of_two_parent_families.html

BENEFITS OF ADUS

Rental income

According to a recent Oregon study of Portland ADUs, the largest primary motivation among ADU developers was additional income.⁸ By converting part of a house, building an addition or constructing a free-standing unit, homeowners were able to create a supplementary stream of income for themselves, while adding housing to the constrained market.

The great majority of this additional income comes via long-term rentals: Atlanta architect Eric Kronberg estimates that, when he constructs ADUs for his market under current regulatory conditions, they can reasonably command rents of \$950 to \$1400 a month. By contrast, “you have an all-in cost of \$550-\$715 a month. The two bedroom unit would range \$700-\$900 all-in,” both of which are estimated very conservatively assuming entirely home equity financed, no cash projects. This means Atlanta ADUs could pay for their own financing while providing a homeowner with hundreds of dollars in additional income per month. Most impressively, Kronberg’s projections are for detached ADU prototypes, which are much more expensive to produce than attached ADUs that come from conversions or additions on an existing building.⁹

In the Portland study, 80 percent of ADUs rented for market rates comparable to those in multifamily development. However, between 13 and 18 percent of Portland ADUs go for zero or very low rents. In a separate study, University of California researchers Jake Wegmann and Karen Chapple likewise found 17 percent of San Francisco Bay Area ADUs were occupied for zero rent.¹⁰ As Martin J. Brown and Jordan Palmeri note in the Portland study, this pattern “suggests some unique phenomenon is occurring in ADU developments.” Indeed, in that same survey, “owners reported that 26 percent of ADU tenants were family or friends when they moved in.” This would indicate that a small but significant fraction of ADU development is, indeed, intended for personal relationships, as planners and advocates have traditionally assumed.

The Portland study also marked an interesting departure from earlier studies when it came to its findings on affordability. According to Brown and Palmeri, Portland ADU rents were market competitive with comparable rental apartments

only if zero-rent units were included; they actually rented for a premium if those outliers were excluded. Previous studies had indicated that ADUs were cheaper than comparable rentals. Brown and Palmieri tried to adjust market comparables by unit size via the number of bedrooms. In their report on the Bay Area, Wegman and Chapman did not attempt to adjust for unit sizes, but noted that the ADUs were smaller than their market comparables, as well as often being unpermitted.

Taken at face value, the Portland results could undermine the perception of ADUs as an inherently affordable housing solution. Although the results certainly indicate a need for further study, such reasoning should be tempered by a robust understanding of the ADU context. ADUs are more expensive to build per-square-foot, which could partially explain why owners would demand higher rents per-square-foot.

In general, due to their smaller unit sizes, ADUs should occupy the lower end of the rental spectrum. As an NYU Furman Center working paper noted: “Micro-units [ADUs and compact apartments] in many cities frequently rent at rather high rates per square foot, but at lower total monthly rent levels, than larger apartments.”¹¹ In this sense, ADUs remain a source of affordable housing. In supply-constrained housing markets, any production of additional dwelling space will help ease rental market pressure, and production of low total rent units is all the more welcome.

Further, as Brown and Palmieri note, the zero and below-market rents that are presumably charged to family members or friends should not be dismissed. Voluntarily discounting rent to those with whom the property owner has pre-existing relationships is still a provision of affordable housing. Where the housing is provided to elderly relations who might otherwise require costly personal care, it also represents a potentially large government savings. Rejoining multiple generations in close living arrangements allows for child care or eldercare to be provided by the family, instead of relying on expensive market services. Such arrangements can benefit the whole family by strengthening their relationships and shared experiences. Anecdotally, children can benefit from the experience of elders in quilting, crafting or carpentry. Elders, meanwhile, sometimes can benefit from younger generations’ greater familiarity with maintaining and navigating each new wave of domestic technology.

Further study of ADU rents would bring welcome clarity. For the great majority of homeowners who plan to rent their ADU at market-competitive rents, ADUs can provide a

8. Martin J. Brown and Jordan Palmeri, “Accessory Dwelling Units in Portland, Oregon: Evaluation and Interpretation of a Survey of ADU Owners,” Oregon Department of Environmental Quality, June 1, 2014. <https://accessorydwellings.files.wordpress.com/2014/06/adusurveyinterpret.pdf>

9. Eric Kronberg, “ADU Math,” Kronberg Wall, Feb. 24, 2017. <http://kronbergwall.com/adu-math/>

10. Jake Wegmann and Karen Chapple, “Understanding the Market for Secondary Units in the East Bay,” IURD Working Paper Series, October 2012. <http://escholarship.org/uc/item/9932417c>

11. Vicki Been, Benjamin Gross, and John Infranca, “Responding to Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units,” NYU Furman Center, January 2014. http://furmancenter.org/files/NYUFurmanCenter_RespondingtoChangingHouseholds_2014_1.pdf

reliable stream of additional income which should, in most circumstances, pay for itself.

Multigenerational housing

Almost one-in-five Americans now live in a multigenerational household, according to a recent Pew analysis of U.S. Census Bureau data.¹² That is a record absolute number and the highest proportion of the American population since 1950. Once a near-universal feature of the American lifecycle in the mid-19th century, the proportion of households living with multiple adult generations had been declining since 1860, with more than half the collapse in multigenerational living occurring between 1940 and 1980.¹³

ADUs are often preferred for multigenerational living arrangements because they allow family members to share a residence, assist each other in day-to-day tasks and share a life without erasing all boundaries between the primary household and the additional generation. When equipped with independent entrances and kitchen units, residents of ADUs are able to maintain a modicum of independence, coming and going as they please and entertaining their own guests, while still remaining tightly bound to their family.

The AARP has advocated for relaxation of rules around accessory dwelling units in order to accommodate a desire among its members (current and prospective) to “age in place” whenever possible. Expanded ADU capability allows older Americans either to move into their children’s homes or to construct a more modest apartment that suits their needs. Toward that end, the AARP in 2000 commissioned the American Planning Association to draft an ADU “model state act and local ordinance.”¹⁴

Older Americans are not, however, the largest consumer of multigenerational housing today. In 2014, more 18-to-34-year-olds lived with their parents than in other arrangements for the first time in 130 years,¹⁵ and 31 percent of 25-to-29-year-olds lived in multigenerational households. The persistence of the millennial generation living at home, even as the economy emerged from the Great Recession, has been a topic of great concern and headlines. For the pur-

poses of this paper, it is enough to note simply that the trend exists and seems likely to continue, thus further adding to the number of multigenerational homes and potential demand for ADUs.

Finally, ethnic demographic patterns also suggest that multigenerational housing will continue to grow in the United States. As Pew found, Asian and Hispanic households both are significantly more likely to be multigenerational than non-Hispanic white households. Both of those subgroups are experiencing significant population growth.

Flexibility

In Brown and Palmeri’s study, only about 80 percent of Portland ADUs were occupied as independent housing. The rest served as some combination of extra space, home offices or other nonresidential use: 11 percent of units were used as a work or living space, while 5 percent were used for short-term rentals.¹⁶

Short-term rentals are one of the most interesting alternative uses for ADUs going forward, as the recent explosion of room and homesharing services like Airbnb and VRBO make it easier for homeowners to find short-term tenants for their properties, and the independence of ADUs make them particularly well-suited for such service. The Portland study was conducted in 2013, relatively early in the growth of such services. It would be interesting to update the survey to see how short-term-rental use has grown.

OBSTACLES TO ADU DEVELOPMENT

The single biggest obstacle to ADU development is their widespread illegality. Burdensome regulatory requirements often will depress ADU production, even where zoning codes theoretically allow them. In order to allow ADUs to serve as a flexible, free-market solution to ease pressures in supply-constrained housing markets, such regulatory burdens need to be lifted. Such regulations fall into two broad categories: structural and occupancy.

Structural regulations

Structural regulations regulate the size, shape and facilities of an ADU, as well as its connection to the broader city utility networks.

As with many other forms of housing production, minimum parking requirements can be a significant obstacle to ADU production. While competition for on-street parking is one of the most frequently cited concerns and complaints about

12. D’Vera Cohn and Jeffrey S. Passel, “A Record 60.6 Americans Live in Multigenerational Households,” Pew Research Center, Aug. 11, 2016. <http://www.pewresearch.org/fact-tank/2016/08/11/a-record-60-6-million-americans-live-in-multigenerational-households/>

13. Steven Ruggles, “Multigenerational Families in Nineteenth Century America,” *Continuity and Change*, 18: 139-165, 2003. <http://users.hist.umn.edu/~ruggles/multigenerational.pdf>

14. Rodney L. Cobb and Scott Dvorak, “Accessory Dwelling Units: Model State Act and Local Ordinance,” AARP, April 2000. http://www.aarp.org/home-garden/housing/info-2000/accessory_dwelling_units_model_state_act_and_local_ordinance.html

15. Richard Fry, “For First Time in Modern Era, Living With Parents Edges out Other Living Arrangements for 18- to 34-Year-Olds,” Pew Research Center, May 24, 2016. <http://www.pewsocialtrends.org/2016/05/24/for-first-time-in-modern-era-living-with-parents-edges-out-other-living-arrangements-for-18-to-34-year-olds/>

16. Brown and Palmeri, 2014.

ADUs, imposed off-street requirements are often excessive and counterproductive.

Until 2015, for instance, Austin, Texas combined onerous parking requirements (two spots each for both the main dwelling and the accessory unit) and an impervious surface cap. If the main dwelling was built before off-street parking requirements, the construction of an ADU would cost the property its grandfathered status, meaning four parking spots would have to be built for one accessory unit to be constructed. As the Furman Center noted, “built structures may not cover more than 40 percent of a lot, and the combination of structures and any other impervious surfaces may not exceed 45 percent of the lot.” Since any parking space is counted as impervious surface regardless of its construction material, Austin homeowners could easily have a hard time fitting everything onto their lots even if they were willing to comply.¹⁷ Encouragingly, the Austin City Council adopted a much liberalized ADU system in November 2015, with very light parking requirements, a standard minimum lot size and nearly citywide applicability.¹⁸

Portland does not require any off-street parking for ADUs, so it should be most vulnerable to street parking overcrowding. Yet the city’s 2013 survey found that one in five ADUs had no cars associated with it whatsoever, and 63 percent had no cars parked on the street. The mean number of cars parked on the street associated with ADUs was a mere 0.46. These findings are similar to results of the Bay Area study in 2012. While these are necessarily limited results, they should encourage cities to loosen or relieve their own parking requirements in the service of ADU production.

ADUs are also subject to a variety of size regulations: minimum and maximum unit sizes; minimum and maximum ratio of unit-to-main-dwellings; minimum and maximum ratio of unit-to-lot-size. All of these can vary by whether the ADU is attached or detached. Attempts to build ADUs can be subject to regulations that bar the construction of kitchen facilities in secondary units, as well as restrictions on independent entrances. Some governments restrict where ADUs can be placed on a lot, whether it or its entrance can be visible from the street and whether the unit’s architectural design is required to match the main dwelling. While reasonable regulations can be inoffensive, cities should take care to set their minimum or maximum levels within the bounds of normal ADU production, and to give homeowners as much flexibility as possible.¹⁹

17. Been, Gross and Infranca, 2014.

18. Jennifer Curington, “Austin City Council lessens restrictions on accessory dwelling units,” *Community Impact*, Nov. 19, 2015. <https://communityimpact.com/austin/city-county/2015/11/19/city-council-lessens-restrictions-on-accessory-dwelling-units/>

19. California Department of Housing and Community Development, 2016.

Finally, city services fees and regulations can pose an overwhelming and unreasonable burden to the development of accessory units where they are not tailored appropriately. Portland chose to give financial relief to ADU construction by waiving the systems development charges (SDCs) usually imposed to pay for utility and other public-service impacts. Such charges average around \$8,000 for ADUs, which explains why the city’s reprieve began a significant ADU boom. Ultimately, the waiver was extended. Even without opting for a full waiver, cities can adjust their SDCs for the true impact of accessory units, which will be dramatically less than other new construction.

Under normal conditions, extending utility services like water, sewer, electricity and gas should be relatively painless for accessory unit construction, as most of the fixed costs have already been built for the main dwelling. Cities that require separate utility metering can quickly undermine this advantage and even make ADUs outright uneconomical. *Architects Newspaper* reports that, in Austin, separate water metering alone can cost a builder \$20,000.²⁰

Local governments often discourage ADU production by prohibiting qualities that would make them attractive and usable as an independent dwelling unit. This can include restrictions on independent entrances and the visibility of those entrances from the street. Often, they will include prohibitions on kitchen facilities. In Atlanta, for instance, ADUs are permitted but they cannot possess a stove, oven or similar cooking appliance. The most cooking capability occupants can hope for under code is a hot plate they can plug in. These barriers are best removed whenever possible, as they give homeowners more flexibility in how they can use their ADU over its life span, and so will make their production more attractive.

Occupancy restrictions

Occupancy regulations regulate who may stay in ADUs and what their relationship to the property’s owner may be.

A frequent and significant ADU regulation requires owner occupancy of the property. ADU construction is, in fact, usually undertaken by homeowners occupying the property, so this requirement often is presented as bearing limited negative consequences. According to the NYU Furman Center report, owner occupancy is seen by advocates as a shortcut to prevent more detailed and onerous restrictions and inspections from being imposed on ADU development. In this reasoning, an owner-occupant’s presence assures against ADU tenants inflicting nuisances on the surrounding neighborhood. Because the owner-occupant is a neighbor, he or she

20. Jack Murphy, “As housing costs and economic segregation increase, Austin’s granny flats proliferate,” *The Architects Newspaper*, Sept. 12, 2016. <https://archpaper.com/2016/09/austin-granny-flats-affordability/#gallery-0-slide-0>

would be more likely to supervise and head off any nuisances than an absentee landlord would. Those building ADUs in order to accommodate family or friends would seem to have even less reason to object to such laws.

But owner-occupancy restrictions have the potential to impede ADU financing and homeowner flexibility significantly. As the NYU Furman Center report notes: “Lenders may fear that, if they foreclose on the property, they will be unable to rent both the primary residence and the ADU,” resulting in less favorable financing or outright opposition. Homeowners may also face difficulty selling their own home, as the house and ADU bear restrictions lacked by competitive properties, such as duplexes. They would thus be unable to recoup the full value of their property should a nonresidential buyer be interested. This comes on top of what Brown and Watkins identify as an already significant gap in appraisal practices that often prevents ADUs from being measured appropriately in home valuation.²¹

Furthermore, while ADUs are usually constructed by owner-occupants with owner occupancy in mind, they are most attractive when they can accommodate a variety of contingencies. Young retirees who build an ADU intending to live with family or move into the smaller unit and rent out the bigger house may find themselves in need of more professionalized care than is available in most home settings. The family they were planning to live with may need to move. In any of these conditions, the house would shift from an asset to a liability, as the property owner would be precluded by the owner-occupancy restrictions from renting out both the main house and the accessory unit. They would be forced to either leave the house vacant and unattended, or to sell it.

Furthermore, as the NYU Furman Center roundtable participants noted, ADU owner-occupancy would, in many cases, introduce a unique restriction to properties. There generally are no such restrictions banning owners of a single-family home from renting it to others, and duplex units rarely come so bound either.²² Portland, Oregon, has one of the strongest ADU development markets in the country, and notably lacks an owner-occupancy requirement. Such liberalization is fairly rare, however, as owner-occupant requirements are widespread.

In some cases, governments considering ADU legalization want to go even further, and restrict to whom the property can be rented, or whether it can be rented at all. Most often, these restrictions come in the form of requiring ADU occupants to be related to the homeowner for the unit to be used

as a residence. Total or near-total rental bans are likely to chill the construction of ADUs significantly and foreclose any of the benefits they provide.

SHORT-TERM RENTALS

ADUs are interesting platforms to evaluate with regard to short-term rentals, both because of their natural suitability to the use and because even ADU advocates sometimes are made uncomfortable by the use. Because ADUs are independent dwelling units, they have the potential to be more appealing to some renters and homeowners who prefer not to live quite as intimately with visiting strangers. Because ADUs are dependent, they share any neighborhood attractiveness equally with their primary dwellings. ADUs equipped with kitchens allow renters to cook for themselves, which may be a particular advantage in the eyes of short-term renters, who are more likely than hotel guests to stay for multiple days.²³

For advocates who see ADU growth as a provision of affordable housing and a relief valve on constrained regional supply, the seeming diversion of ADU stock into short-term rentals is feared to be a distraction, or even counterproductive. In tourism-heavy cities, some voice concerns about residential neighborhoods hollowing out in community and character as owner-occupied residences convert into short-term rental pads with a constantly rotating cast of characters.²⁴ Santa Cruz, California, which has been one of the most aggressive cities in liberalizing its ADU regulations and promoting ADU production recently revised its laws specifically to outlaw ADU short-term rentals going forward.²⁵ Austin’s new, more liberal ADU law restricts short-term rental of ADUs to 30 nights a year, and prohibits it on properties that aren’t occupied by the owners.²⁶

Survey respondents have said that one of the central appeals of ADU construction is their flexibility.²⁷ Though the upfront costs are considerable for a homeowner, they can justify that investment by the ADU’s potential to bring in additional income; to use as a home office or extra living space for a growing family; or to be used by adult family members as needed. Short-term rental services can expand that flexibility further by not requiring homeowners to lock their ADU

21. Martin John Brown and Taylor Watkins, “Understanding and Appraising Properties with Accessory Dwelling Units,” *The Appraisal Journal*, Fall 2012. <https://accessorydwellings.files.wordpress.com/2012/12/appraisingpropertieswithadusbrownwatkins-nov2012.pdf>

22. Been, Gross and Infranca, 2014.

23. Andrew Moylan, “Roomscore 2016: Short-term-rental regulation in U.S. cities,” R Street Institute, March 16, 2016. <http://www.rstreet.org/policy-study/roomscore-2016-short-term-rental-regulation-in-u-s-cities/>

24. Martin John Brown provides one of the best detailed considerations of these claims: <https://accessorydwellings.org/2016/04/04/adustr/>

25. City of Santa Cruz, Ordinance No. 2015-15, Nov. 10, 2015. <http://www.cityofsanta-cruz.com/home/showdocument?id=46552>

26. Jennifer Curington, 2015.

27. Brown and Palmeri, 2014.

into a long-term lease, but rather to use it for income purposes on an as-needed basis.

SPECIAL CHALLENGES

In contrast to almost all other housing production and construction, ADUs are primarily built by homeowners, not professional developers. While professionals generally regard regulatory compliance costs to be expected, if often frustrating, homeowners trying to build accessory units are unlikely to have much familiarity with the permitting and compliance process. Cities looking to take advantage of accessory dwelling unit production will need to make their process as transparent and easily navigable as possible.

Toward this end, Santa Cruz, California produced an “ADU Manual” that offers step-by-step instructions to complete the ADU permitting and construction process successfully. Santa Cruz also maintains a set of draft architectural plans to get interested homeowners started, and even goes so far as to offer financing assistance for those willing to commit to renting the unit at affordable rates for 15 to 20 years.

Portland, Oregon, meanwhile, has maintained a relatively libertarian regulatory environment, relieving homeowners from having to forecast for and navigate parking requirements, owner occupancy rules, or many other often-imposed constraints. It allows widespread building of ADUs by right, so homeowners are not required to convene public hearings on the subject of planned construction on their property.

Local governments that desire to take advantage of accessory dwelling units should take care to write their codes and policies into as easily accessible a format as possible, and make that information widely available.

CONCLUSION

At a time when many housing markets are experiencing severe supply constraints and housing affordability is under stress nationwide, accessory dwelling unit legalization represents a low-profile free-market solution that requires little from government actors beyond getting out of the way. Production is undertaken by private actors on their own property, and diversifies a local housing stock without introducing large potentially contentious or character-transforming multifamily buildings to a single family neighborhood. This incremental infill further empowers homeowners by allowing them to increase the value of their property and receive an additional income stream. It offers renters more neighborhood options and cheaper rents.

While there are federal-level financing reforms that could further ease ADU development, local governments usually have all the tools they need to take advantage of ADU con-

struction without asking permission or seeking assistance from any higher bureaucracy. Reforming outdated zoning systems to accommodate the changing needs of American households, including the return of multigenerational living arrangements, should be an urgent priority. Such reforms should take care not to introduce new and unnecessary regulations, such as owner-occupancy requirements and short-term rental bans. These could chill the market’s response to ADU legalization.

Accessory dwelling units will not solve housing affordability crises by themselves, nor will they be suited to widespread adoption in every market. But there is little reason for towns and cities to persist in outlawing a flexible housing form that was widespread in the first half of the 20th century, just because it fell afoul of trendy regulations in the second half. The American built environment was notably adaptable throughout the growing country’s many changes up until the postwar land use codes were imposed and accumulated. Given the significant national changes still unfolding, land-use and building regulations need to provide as much adaptability and flexibility as cities can provide. Legalizing accessory dwelling units should be a simple way to engage that process.

ABOUT THE AUTHOR

Jonathan Coppage is a visiting senior fellow with the R Street Institute, focused on regulatory obstacles to the traditional, walkable development patterns that strengthen communities socially and fiscally.

Jonathan was a 2016 Publius Fellow at the Claremont Institute and a 2012 fellow in the Hertog Political Studies Program.

A graduate of North Carolina State University, Jonathan previously studied in the fundamentals program at University of Chicago. He is a contributing editor to *The American Conservative* and has also been published in *The Washington Post* and *First Things*.

2. DEVELOPMENT GUIDEBOOK

Accessory Dwelling Units (LIMITED USE PERMIT)

Summary

Accessory Dwelling Units (ADUs) may be allowed as a major accessory use to single-family detached dwelling units by limited use review according to the standards of Section 2-3-2-3. ADUs may be allowed in EN-1, EN-2, EN-MF, RA, RL, RM and MU-N zones, if the property meets the minimum lot size as indicated in Table 2-3-2-3A.

ADUs must meet the following standards:

- ADU cannot exceed 550 sq. ft. in size.
- Owner must live on-site in one of the two units.
- One additional parking space must be provided on-site for the ADU, two parking spaces must be provided if no parking currently exists on the property.
- Design must meet the standards for dormers, window placement, stairs and decks/balconies, as outlined in Section 2-3-2-3I.
- Additional standards as outlined in Section 2-3-2-3.

ADUs cannot obtain any variances from the standards of the LUDC. ADUs are an accessory use to a single-family residence and cannot be used for other purposes such as a vacation rental.

ADUs must obtain a Limited Use Permit (LUP) prior to initiating construction. The limited use review is an administrative process to ensure that a proposed use is compatible with surrounding uses, will not cause negative impacts and meets all of the standards of the code. The LUP will only be granted if all of the standards of Section 2-3-2-3, Accessory Dwelling Units, are met, in addition to the applicable standards listed in Section 2-2-2-1 and the other applicable sections of the City of Durango's [Land Use and Development Code](#).

The applicant must clearly demonstrate that the use will comply with the applicable standards by submitting a complete application that includes all of the required materials listed below. City staff will follow the applicable procedures and notify the applicant when a decision has been made regarding the proposed use.

Applicable Sections of Code

[Division 2-1-3, Use/Zone Matrices](#)

[Section 2-2-2-1, Standards for All Limited Uses](#)

[Section 2-3-2-3, Accessory Dwelling Units](#)

[Section 4-5-2-2, Required Off-Street Parking Spaces \(Parking Table 4-5-2-2A\) and Section 2-3-2-3J.](#)

[Division 6-3-3, Standard Development Approval Procedures](#)

Note: A limited use must meet all applicable LUDC requirements. The LUDC sections listed above are the primary sections concerning ADUs, but other requirements may apply.

Accessory Dwelling Units *(LIMITED USE PERMIT)*

Fee & Required Materials

The application fee for an Accessory Dwelling Unit Limited Use Permit is \$550.

The following materials are required as part of a complete application for an LUP.

- A completed [Land Use Application](#).
- Fee.
- Names and addresses of all property owners within 300 feet of the property boundaries.
- A notarized affidavit attesting to owner occupancy.
- A written Narrative describing the proposed use, proposed site or building improvements, and existing conditions.
- A site plan including existing and proposed parking and useable outdoor area
- Scaled elevations of existing and/or proposed structures.
- Floor plans of existing and proposed structures.
- Site calculations including lot coverage, floor area ratio, useable outdoor area, etc.
- Any additional materials, which in the opinion of the Administrator, are necessary to adequately review the application as determined by the Staff within five (5) working days following the application filing date.

Procedural Summary

Within five (5) days of receiving a complete LUP application, City staff will post a notice on the property for fourteen (14) days containing information about the proposed use. Staff will also send letters to property owners within 300 feet of the lot for which application is being made. During this posting time, City staff will conduct a site visit and building inspection of the property. City staff will approve, approve with conditions, refer to the Planning Commission, or deny the application, within thirty (30) calendar days of the date that the application is filed, unless a longer period is agreed to by the applicant.

If the application is denied by City staff, the applicant may appeal the denial to the City's Planning Commission. If the application is referred to the Planning Commission, and the Planning Commission denies the application, the applicant may appeal the Planning Commission's denial to City Council.

Additional Information

An applicant may appeal the Administrator's decision within seven (7) days of the decision as set forth in [Division 6-3-17](#).

Developments and uses granted by a limited use permit shall be developed or established in accordance with an approved development schedule, or within one (1) year of the date of approval if no development schedule is established. Failure to develop or establish such development or uses in accordance with the time period approved on the permit shall cause the Administrator to revoke the permit.

An LUP is valid as long as conditions of approval are maintained by the applicant, unless a specific time limit for the use is set forth as part of the approval. If the conditions of the permit are not met, the LUP can be revoked.

Purchasers of homes with an accessory dwelling unit must register with the Department within 60 days of purchase by submitting a notarized owner-occupancy affidavit.

Contact Information

Questions and other inquiries can be directed to the City of Durango Community Development Department—Planning Division at (970) 375-4850 or by visiting River City Hall at 1235 Camino Del Rio (Durango, CO) during normal business hours.