



Colorado Housing Affordability Project Issue Brief No. 2: Regulatory Strategies for Accessory Dwelling Units ("ADUs")

This paper is one in a series of Colorado Housing Affordability Project issue briefs summarizing the latest research on housing concerns statewide, from the origins of the affordability crisis to the best practices for addressing it. For every topic, CHAP's subject-matter-expert authors identify a component of that crisis, deliver the information essential to understanding the issue, and provide links or citations to further explore the supporting research. The entire CHAP issue brief series is available at <https://cohousingaffordabilityproject.org/the-research/> and continues to grow, so check back often.

The Issue: How are accessory dwelling units ("ADUs") regulated to promote housing affordability in major U.S. cities?

The Takeaway: To address housing affordability crises, cities are moving towards permitting ADUs in more areas and with greater ease. ADU-related municipal efforts to promote housing affordability include reducing administrative barriers to ADU construction, limiting the use of ADUs as short-term rentals ("STRs"), imposing owner-occupancy requirements, enabling homeowners to remove deed restrictions, relaxing parking space mandates, imposing rent controls, and providing financial incentives, in addition to limiting construction periods and where new construction may occur. Ultimately, there is no one-size-fits-all provision that ensures ADUs promote housing affordability in a particular municipality. Rather, cities tailor ADU regulations to meet their individual needs.

The Research: ADUs, also known as "granny flats" or "in-law units,"¹ are independent living facilities limited in size.² While ADUs continue to receive media coverage, they are not a new invention. Especially after WWII, many Americans moved out of cities and onto large lots in the suburbs.³ This demand for lower density housing, combined with the rise of Euclidian zoning, led many jurisdictions to ban ADUs.⁴ However, in places like the San Francisco Bay Area, housing demand exceeded housing availability, and many ADUs were built under the radar.⁵ By 1960 there were between 20,000 and 30,000 ADUs in and around San Francisco, 90 percent of which were not legally permitted.⁶ Consequently, modern ADU policies often include amnesty provisions that enable existing ADU owners to come into compliance without penalties.⁷

¹ *Accessory Dwelling Units*, LOS ANGELES COUNTY DEPARTMENT OF REGIONAL PLANNING, <https://planning.lacounty.gov/adu> (last visited June 24, 2021).

² *Accessory Dwelling Unit Handbook 3*, CALIFORNIA DEPT. OF HOUSING & COMMUNITY DEVELOPMENT https://www.hcd.ca.gov/policy-research/docs/adu_december_2020_handbook.pdf (last updated Dec. 2020).

³ *Accessory Dwelling Units: Case Study 1*, U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT (June 2008), <https://www.huduser.gov/portal/publications/adu.pdf>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Knowledge Center: Accessory Dwelling Units*, AMERICAN PLANNING ASSOCIATION, <https://www.planning.org/knowledgebase/accessorydwellings/> (last visited June 24, 2021).

There are two primary kinds of ADUs: detached and attached.⁸ Detached ADUs are additional structures built on the same lot as a primary residence. Frequently, homeowners opt to convert an existing building, such as a storage area, into a detached ADU.⁹ Other times, homeowners convert existing space located entirely within the existing primary dwelling into an *attached* ADU.¹⁰

In addition to individual municipalities, some states have opted to permit and regulate ADUs.¹¹ However, state-wide measures are few and far between, in part because of the long-standing belief that land use decisions are best left to local decision-makers.¹² Therefore, municipalities often bear the burden of addressing housing affordability concerns through ADU development themselves.¹³ ADUs allow for in-fill development, enable community members to age in place without being priced out of their neighborhoods, and provide rental units at accessible to low- and moderate-income tenants, among other things.¹⁴

Most U.S. Cities Allow ADUs. Most major cities allow for ADUs in at least some circumstances. However, New York, the heart of the largest metropolitan area in the U.S.,¹⁵ does not.¹⁶ At the state level Senate Bill S4547 – in committee as of July 2021 – would legalize ADUs for all of New York.¹⁷ In contrast, Los Angeles, the heart of the second largest U.S. metro area,¹⁸ permits ADUs¹⁹ in accordance with California state law.²⁰ Other major cities that have legalized ADUs have done so by modifying existing municipal or zoning codes in various ways. For example, while San Francisco passed sweeping reform allowing for ADUs in all districts that permit residential uses,²¹ Atlanta chose to only modify portions of its code pertaining to specific, named districts.²²

⁸ *Accessory Dwelling Unit Handbook*, *supra* note 2, at 3. In this memorandum “ADU” refers to both attached and detached ADUs, unless otherwise noted.

⁹ *Id.*

¹⁰ *Id.*

¹¹ These states include Connecticut, Utah, and California. H.B. 6107, Gen. Assemb., Reg. Sess. (Conn. 2021); H.B. 82, Gen. Assemb., Reg. Sess. (Utah 2021); AB 881, 2019-20 Reg. Sess. (Cal. 2019).

¹² John Infranca, *The New State Zoning: Land Use Preemption Amid a Housing Crisis*, 60 B.C. L. REV. 823, 827-28 (2019).

¹³ Many municipalities have their own nomenclature for ADUs: additional dwelling units (Boston), ADU and ADU—Guest (Phoenix), coach houses and conversion units (Chicago), ADUs and Junior ADUs (Los Angeles).

¹⁴ *Knowledge Center: Accessory Dwelling Units*, *supra* note 7.

¹⁵ *The 200 Largest Cities in the United States by Population 2021*, WORLDPOPULATIONREVIEW.COM, <https://worldpopulationreview.com/us-cities> (last visited July 20, 2021).

¹⁶ Kathryn Brenzel, *Bill would legalize “granny flats” in New York*, THE REAL DEAL (Feb. 3, 2021), <https://therealdeal.com/2021/02/03/bill-would-legalize-granny-flats-in-new-york/>. Consequently, legalizing ADUs is a hot button issue in the upcoming New York City mayoral election, scheduled for November 2, 2021. Victoria Agosta et al., *NYC Mayoral Candidates Land Use Policy Recap*, CITYLAND: NEW YORK LAW SCHOOL (June 17, 2021), <https://www.citylandnyc.org/nyc-mayoral-candidates-land-use-policy-recap/>.

¹⁷ New York State Senate, Senate Bill S4547,

<https://www.nysenate.gov/legislation/bills/2021/S4547#:~:text=ADUs%20are%20smaller%2C%20secondary%20homes,apartment%2C%20or%20a%20converted%20attic> (last visited June 18, 2021).

¹⁸ *The 200 Largest Cities in the United States by Population 2021*, *supra* note 15.

¹⁹ *Accessory Dwelling Units*, LOS ANGELES, *supra* note 1.

²⁰ CAL. GOV’T CODE § 65852.22(h)(1).

²¹ *Accessory Dwelling Units (ADU) Program for Single-Family Homes that Do Not Need Waivers from the Planning Code 1*, SAN FRANCISCO PLANNING (Sept. 10, 2019), https://default.sfplanning.org/plans-and-programs/planning-for-the-city/accessory-dwelling-units/NoWaiver_ADUFactSheet.pdf; *see also* SAN FRANCISCO, CAL., CODE § 207(c)(4)(B).

²² *E.g.*, ATLANTA, GA., CODE § 16-20U.011(1), § 16-07.0004(12), § 16-06A.004(11).

Although San Francisco and Atlanta chose to update their codes in different ways, changes to both amount to permitting ADUs by right in most all residential areas.

Administrative Barriers to Construction. Some cities make ADU approval challenging. Chicago requires all homeowners to apply for permission to construct an ADU.²³ The city has five ADU “pilot areas,” and only homeowners located within those areas may apply.²⁴ Dallas also makes it difficult to get approval for an ADU.²⁵ The City requires a neighborhood committee to petition for an Accessory Dwelling Unit Overlay.²⁶ The Overlay “must contain at least 50 single family structures in a compact, contiguous area.”²⁷ Further, the committee petitioning for the Overlay must be composed of the owners of at least 10 of the requisite 50 properties in the Overlay area.²⁸ In contrast, other cities have opted to remove administrative hurdles to encourage more ADU construction. The City of San Francisco must “approve an application for a permit to construct an Accessory Dwelling Unit within 120 days from receipt of the complete application, without modification or disapproval, if the proposed construction fully complies with the requirements”²⁹ In effect, if an application meets certain objective criteria, the City must approve it within 120 days.

Rent Controls and Restrictions on STR Use. To promote affordability Chicago mandates that for properties with two or more attached, or “conversion,” ADUs, “every other unit must be legally restricted affordable at 60 percent Area Median Income (AMI) for 30 years after its construction. Properties with two or three conversion units must have one affordable unit, properties with four or five conversion units must have two affordable units, and so on.”³⁰ Other cities like San Francisco have rent controls in place that apply to all leased properties, meaning that rental ADUs are subject to these broadly applicable rules too.³¹ San Francisco limits landlords’ rent increases to no more than “60% of said published increase [in the CPI for the preceding 12 months, as made available by the U.S. Department of Labor].” Further, “[i]n no event, however, shall the allowable annual increase be greater than 7%.”³²

In addition, many locales have banned or limited the use of ADUs as STRs.³³ This strategy aims to ensure ADUs house longer-term tenants, thereby addressing housing shortages. Cities that have

²³ *Additional Dwelling Units (ADU) Ordinance*, CITY OF CHICAGO, <https://www.chicago.gov/city/en/depts/doh/provdrs/homeowners/svcs/adu-ordinance.html> (last visited June 24, 2021).

²⁴ *Id.*

²⁵ *Current Planning: Accessory Dwelling Units*, CITY OF DALLAS, https://dallascityhall.com/departments/sustainabledevelopment/planning/Pages/Accessory_Dwelling_Units.aspx (last visited July 20, 2021).

²⁶ DALLAS, TEX., CODE § 51A-4.510.

²⁷ *Id.* § 51A-4.510(b).

²⁸ *Id.* § 51A-4.510(a)(2).

²⁹ SAN FRANCISCO, CAL., CODE § 207(c)(4)(I)(6)(C).

³⁰ *Additional Dwelling Units (ADU) Ordinance*, *supra* note 23; *see also* CHICAGO, ILL., CODE 2-44-106.

³¹ *Accessory Dwelling Units (ADU) Program for Single-Family Homes that Do Not Need Waivers from the Planning Code*, *supra* note 21, at 2.

³² Rent Board, *Section 37.3 Rent Limitations*, CITY AND COUNTY OF SAN FRANCISCO, <https://sfrb.org/section-373-rent-limitations> (last visited July 20, 2021).

³³ For the purposes of this memorandum, an STR is a rental of 31 days or fewer.

banned the use of ADUs as STR properties altogether include Chicago,³⁴ San Francisco,³⁵ and San Diego.³⁶ Other cities have taken innovative approaches that include limiting the number of days an ADU may be used as an STR each year and combining STR use with an owner-occupancy requirement. In Austin a homeowner may only use their ADU as a STR for a maximum of thirty days each year if it was constructed after October 1, 2015.³⁷ Further, when used as STR, an Austin ADU may not be a “Type 2 STR.”³⁸ In effect, this means that only ADUs that are associated with an owner-occupied principal dwelling (Type 1 STRs)³⁹ or part of a multifamily residential use (Type 3 STRs)⁴⁰ may be rented out as STRs. Denver has also taken an innovative approach, allowing ADUs to be used as STRs when the owner lives in the primary dwelling unit.⁴¹ However, a Denver property owner may *not* live in the ADU and rent out the primary dwelling unit as an STR.⁴²

Owner-Occupancy Requirements and the Effect of Deed Restrictions. Owner-occupancy requirements are more common in the case of attached, or internal, ADUs. Cities requiring owner-occupancy of the primary dwelling only for attached ADUs include Los Angeles,⁴³ Minneapolis,⁴⁴ and San Diego.⁴⁵ However, other cities require owner occupancy of the primary dwelling for *all* ADUs (both attached and detached). These cities include Philadelphia⁴⁶ and Boston.⁴⁷ In addition, despite cities’ efforts to expand ADUs, many private landowners recorded deed restrictions before ADUs were allowed. These restrictions oftentimes prevent ADUs from being rented out.⁴⁸ However, municipalities are finding ways to address this issue. In one such municipality, Minneapolis, the owner of an attached or detached ADU that is subject to old owner-occupancy requirements may request that the zoning administrator “release” the covenant.⁴⁹

Parking Requirements. Some municipalities explicitly provide that ADUs do not require any additional parking. Eliminating parking requirements removes a substantial barrier to new ADU construction. In contrast, other municipalities make clear that a parking space is required for each

³⁴ CHICAGO, ILL., CODE §17-9-0131(9); *Id.* § 17-9-0201-F(17).

³⁵ *Accessory Dwelling Units (ADU) Program for Single-Family Homes that Do Not Need Waivers from the Planning Code*, *supra* note 21, at 2; *see also* SAN FRANCISCO, CAL., CODE §207(c)(4)(D).

³⁶ SAN DIEGO, CAL., CODE § 141.0302(a)(1)(B).

³⁷ *Accessory Dwelling Units*, AUSTINTEXAS.GOV, <https://www.austintexas.gov/page/accessory-dwelling-units> (last visited July 20, 2021).

³⁸ *Id.*

³⁹ AUSTIN, TEX., CODE § 25-2-788(A).

⁴⁰ AUSTIN, TEX., CODE § 25-2-790(A).

⁴¹ Matthew Seubert, *Memorandum Regarding Denver Zoning Code Interpretation – Short-term Rental (STR) Accessory Use 1*, DENVER.GOV (Dec. 27, 2019); *see also* DENVER, COLO., ZONING CODE §11.8.10.

⁴² Matthew Seubert, *supra* note 41, at 1.

⁴³ *Accessory Dwelling Units*, LOS ANGELES, *supra* note 1.

⁴⁴ *Cities in the Twin Cities Metro Area with an ADU Policy*, FAMILY HOUSING FUND (updated Feb. 2019), https://www.fhfund.org/wp-content/uploads/2019/07/FHF_ADU-Info-by-City.pdf.

⁴⁵ SAN DIEGO, CAL., CODE § 141.0302(c)(1)(A).

⁴⁶ PHILADELPHIA, PA., CODE § 14-604(11)(e).

⁴⁷ BOSTON, MASS., CODE § 53-8, § 54-9, § 69-8, § 51-8, § 50-28; § 68-7.

⁴⁸ Howard Maple, *Garage apartments in Houston*, ACCESSORYDWELLINGS.ORG (Oct. 2014), <https://accessorydwellings.org/2014/11/19/garage-apartments-in-houston/>.

⁴⁹ MINNEAPOLIS, MINN., CODE § 537.110(7)(e).

ADU unless an exception, such as close proximity to public transit, applies. The chart below provides an overview of several major cities’ ADU parking requirements.

City	Detached ADU Requires a Parking Space	Attached ADU Requires a Parking Space
Los Angeles	Yes. ⁵⁰ Exceptions include close proximity to public transit or a car share. ⁵¹	No ⁵²
Dallas	Yes. ⁵³ Exceptions include close proximity to public transit and 75% of property owners in the proposed overlay agree to a parking reduction. ⁵⁴	Yes, ⁵⁵ subject to the same exceptions that apply to detached ADUs.
Houston	Yes ⁵⁶	Yes ⁵⁷
Seattle	No ⁵⁸	No
Minneapolis	No ⁵⁹	No ⁶⁰
San Diego	No ⁶¹	No ⁶²
Austin	Yes, ⁶³ unless “within 1/4 mile of an activity corridor as identified in the Imagine Austin Comprehensive Plan that is also served by transit.” ⁶⁴	Yes, ⁶⁵ subject to the same exceptions that apply to detached ADUs.

Financial Incentives for Property Owners. Municipalities recognize the substantial impact ADUs could make on addressing affordable housing needs. Thus, many cities have initiatives aimed at making the construction of ADUs more feasible for property owners. In Chicago the ADU Neighborhood Lending Program provides forgivable loans to low- and moderate-income homeowners when they undertake ADU construction.⁶⁶ Additionally, Boston offers “zero-

⁵⁰ *Accessory Dwelling Unit (ADU) Ordinance Summary 2*, Los Angeles County Department of Regional Planning (last revised Dec.22, 2020), https://planning.lacounty.gov/assets/upl/project/adu_ordinance-summary.pdf.

⁵¹ *Id.*

⁵² *Id.*

⁵³ DALLAS, TEX., CODE § 51A-4.510(c)(2)(F).

⁵⁴ *Id.* § 51A-4.510(c)(2)(F).

⁵⁵ *Id.*

⁵⁶ *Construct Six Projects*, RICE (2018), <https://arch.rice.edu/projects/construct/six-projects> (last visited July 20, 2021).

⁵⁷ *Id.*

⁵⁸ Seattle Department of Construction & Inspections, *Accessory Dwelling Unit*, <https://www.seattle.gov/sdci/permits/common-projects/accessory-dwelling-units> (last visited July 19, 2021).

⁵⁹ *Cities in the Twin Cities Metro Area with an ADU Policy*, *supra* note 44.

⁶⁰ *Id.*

⁶¹ SAN DIEGO, CAL., CODE § 141.0302(a)(3)(A).

⁶² *Id.*

⁶³ *Accessory Dwelling Units*, AUSTINTEXAS.GOV, *supra* note 37.

⁶⁴ *Id.*

⁶⁵ AUSTIN, TEX., CODE § 25-2-900(C).

⁶⁶ *Additional Dwelling Units (ADU) Ordinance*, *supra* note 23.

interest, deferred equity loan[s] up to \$30,000” to some qualifying homeowners through the Boston Home Center's Additional Dwelling Unit Loan Program.⁶⁷

San Diego took a different approach, offering an ADU “bonus.”⁶⁸ For every ADU set aside as “affordable to very low income, low income, and moderate income households for a period of not less than 15 years,” the City permits one additional ADU on the property.⁶⁹ There is no limit on the number of bonus ADUs within a “transit priority area,” but bonus ADUs outside of priority areas are limited to one per property.⁷⁰ Other locales like Washington, D.C. provide incentives like “zoning relief, public financing, and/or the right to purchase or lease District-owned land” when the ADU owner constructs an ADU as an *affordable* dwelling unit, meaning that it is income-restricted.⁷¹ Also of note, some cities like Minneapolis expressly provide that ADUs do not constitute separate tax parcels,⁷² thereby reducing the amount of property tax a property owner must pay.

Limits on Construction Periods and Where New Construction May Occur. Some cities have capped the time frame in which property owners may build new ADUs. For example, following a successful pilot program, Boston passed a city-wide zoning amendment allowing for ADUs.⁷³ However, authorization for ADUs was time-limited in some areas. The Boston Code reads, “[a]n Additional Dwelling Unit may be established in the East Boston Neighborhood District for a time period not to exceed eighteen (18) months from the effective date of this Section”⁷⁴ The same time limitation applied to Boston’s Hyde Park Neighborhood District.⁷⁵

Separately, Philadelphia permits ADUs “within any building or structure that . . . has been designated as historic; or that is located in a district that has been designated as historic.”⁷⁶ In creating this regulation, the City aimed to revitalize historic buildings and provide additional housing, all while preserving the existing character of neighborhoods.⁷⁷ Apart from existing historic structures, Philadelphia also allows ADUs in the RSA-5 Districts (Residential Single-Family Attached)⁷⁸ and CMX-1 Districts (Neighborhood Commercial Mixed-Use).⁷⁹ However, Philadelphia provides a caveat: all ADUs must be located in structures that were in existence at the time of the zoning code update’s effective date (January 1, 2020).⁸⁰ This provision of the municipal code appears to prohibit new construction altogether.

⁶⁷ *Additional Dwelling Units*, CITY OF BOSTON, <https://www.boston.gov/departments/neighborhood-development/addition-dwelling-units> (last visited July 19, 2021).

⁶⁸ SAN DIEGO, CAL., CODE § 141.0302(b)(2)(G).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Department of Housing and Community Development, *Affordable Dwelling Units*, DC.GOV, <https://dhcd.dc.gov/service/affordable-dwelling-units> (last visited July 20, 2021).

⁷² MINNEAPOLIS, MINN., CODE § 537.110(3).

⁷³ *Additional Dwelling Units*, CITY OF BOSTON, *supra* note 67.

⁷⁴ BOSTON, MASS., CODE § 53-8. The effective date was May 8, 2019, meaning that ADU construction is no longer permitted (in July 2021) in the East Boston Neighborhood District.

⁷⁵ *Id.* § 69-8.

⁷⁶ PHILADELPHIA, PA., CODE § 14-604(11)(d)(1).

⁷⁷ *Id.*

⁷⁸ *Id.* § 14-401, Table 14-401-1.

⁷⁹ *Id.* § 14-402(1)(c)(1).

⁸⁰ *Id.* § 14-604(11)(c).

Conclusion. As housing becomes less affordable for the average American, major U.S. cities are allowing for ADU construction in more areas and with greater ease. To promote housing affordability, municipalities are reducing administrative barriers to ADU construction, limiting the use of ADUs as STRs, imposing owner-occupancy requirements, enabling homeowners to remove deed restrictions, relaxing parking mandates, imposing rent controls, and providing financial incentives, in addition to limiting construction periods and where new construction may occur, among other measures. ADUs have the potential to alleviate affordable housing demand, but ultimately, each city must tailor ADU regulations to meet its particularized needs.