



# A Taxonomy of State Accessory Dwelling Unit Laws 2024

*Emily Hamilton and Abigail Houseal*

August 2024

## **ADUs as One Piece of the Solution to the Housing Affordability Problem**

Over the past decade, the problem of insufficient housing construction has become increasingly apparent. More households are being forced either to make tough tradeoffs in order to afford housing in their preferred location or to move somewhere less expensive.<sup>1</sup> The COVID pandemic exacerbated the problem of insufficient housing supply and the difficulty of building new housing where it is needed. In response to this housing shortage and the accompanying affordability problems, state policymakers are increasingly setting limits on the extent to which local policymakers can block housing construction.<sup>2</sup>

Legalizing accessory dwelling units (ADUs) has been the most common way state policymakers have taken action to make more lower-cost housing feasible to build. ADUs are a secondary unit on a lot that includes a principal dwelling unit for one household. They can be a backyard cottage, a basement apartment, or a garage conversion, and most often they are added to single-family houses. To date, laws broadly allowing homeowners to build and rent out ADUs have passed in 14 states, and ADU bills have been introduced in several others.

In this policy brief, we explain the role of ADU legalization in the landscape of US land-use regulations, summarize research on rules that facilitate ADU construction in significant numbers, and categorize state ADU policy with respect to the rules proven to facilitate ADU construction.

## **Why ADUs?**

ADUs as a regulatory category exist due to the restrictions in US land-use regulations on the number of units permitted on a single lot. Most of the land zoned for residential use in the United States is limited to detached single units.<sup>3</sup> Within this framework, some jurisdictions have legalized a second unit that is an “accessory” to the primary use of the single-family house. While allowing a primary dwelling unit with an ADU on a single-family lot has some similarities with two-unit

zoning that permits duplexes or other configurations of two units on a single lot, ADUs usually have more limitations. Generally, ADUs cannot be owned separately from the principal dwelling unit whereas duplex units can be owned jointly or separately. Furthermore, many jurisdictions that permit ADUs only allow the unit to be rented to a tenant if the property owner lives on site. Typically, an ADU is also required to be smaller than the principal dwelling unit.

Permitting ADUs to be built is one of the smallest steps state policymakers can take to restrict local policymakers' authority to limit density. And, within state preemption of local zoning, ADUs may be the lowest-hanging fruit politically. Homeowners are often a key political constituency opposed to zoning reforms that allow more housing to be built. Legalizing ADUs gives homeowners a clear new right to build on their current property, and many may want an ADU at some point either for extra income or to house a family member. These political considerations may be the reason state policymakers have shown particular willingness to override local zoning restrictions with respect to ADUs.

### **Rules That Govern ADU Construction**

Kol Peterson, a prominent ADU advocate, identifies three “poison-pill regulations” that present significant barriers to ADU construction, even in places where they are legal.<sup>4</sup> These poison pills include owner-occupancy requirements, off-street parking requirements, and conditional or discretionary reviews for ADU permits.

We summarize Peterson's insights regarding each of these three barriers:

1. *Owner-occupancy requirements* thwart investments in ADUs, even for homeowners who want to add them to their primary residences, because building an ADU likely shrinks their pool of potential future buyers. Under these requirements, if the homeowner were to move, they would not have the option of leasing the ADU and their primary residence to separate tenants. New lending rules from the Federal Housing Administration allow mortgage borrowers to qualify in part based on income generated by renting out an ADU only if it can be rented without restriction.<sup>5</sup> Further, owner-occupancy requirements may contribute to appraisers relying only on comparable sales that likely do not include ADUs, rather than to view the ADU as a potential income-generating unit.
2. *Parking requirements* can make ADUs infeasible to build at many existing houses. A yard may present space for a backyard cottage within setback limits or an additional parking spot, but not both. Particularly on sites where the garage is the most natural place to put an ADU, requiring parking replacement for the primary dwelling unit as well as additional parking for the ADU may prove prohibitive.
3. *Discretionary reviews* for ADU permits can prevent many homeowners from building ADUs. Applying for a conditional use permit may require a time-consuming and intimidating public hearing with a nonrefundable fee as well as site-plan drawings that can

be expensive to commission. Many homeowners are understandably reluctant to spend thousands of dollars for the chance of receiving a permit.

Our colleagues Salim Furth and Jess Remington have analyzed ADU ordinances that are successfully facilitating ADU construction in seven localities.<sup>6</sup> They have found that all the ordinances allow detached ADUs and for the principal dwelling unit and ADU to be rented separately without an owner-occupancy requirement. And most of these localities do not require single-family houses with ADUs to provide extra parking for the accessory unit.

Furth and Remington point out that while policies that support ADU construction are essential, market conditions are also important determinants. In some instances, ADUs have been built in significant numbers even when they are illegal and unpermitted.<sup>7</sup> Regardless of the policy environment, ADUs are unlikely to be built in large numbers in places where there is minimal renter demand for these small units. They are likely to be built where demand is high and where the existing housing stock supports ADU conversions, such as garages or basements that can be converted to apartments relatively easily. They explain:

ADUs may be the most context-dependent form of housing. The “Vancouver Special” basement apartment, Los Angeles garage conversion, and Fayetteville modular unit all depend on a preexisting development pattern with enough space to add an ADU.<sup>8</sup>

Demographic factors play a part in the market conditions that make ADUs an attractive option. Shrinking household sizes present a natural reason to adapt single-family houses to accommodate more than one household.<sup>9</sup> Some research indicates that senior citizens are particularly likely to build ADUs.<sup>10</sup> And communities with many students or a large immigrant population are likely places to have significant demand for ADUs, as they would be a solution for either intergenerational housing or relatively low-cost rental housing.<sup>11</sup>

While ADU advocates tend to focus on the general rules determining how ADUs may be used, permitted, and accessed, the dimensional standards for ADUs can also play an important role in determining their feasibility. A part of Los Angeles’s success in achieving widespread ADU construction is that California law requires all localities to allow ADUs of at least 800 square feet as long as they can be built within the envelope determined by 4-foot side and rear setbacks and a height of 16 feet. A study of ADU construction in Portland, Seattle, and Vancouver indicates that zoning reforms that allowed for larger ADUs to be built have been essential to their increased construction.<sup>12</sup>

## **State ADU Laws**

In 1982, California adopted an early ADU law that gave homeowners across the state a weak right to build an ADU.<sup>13</sup> This law left localities with broad authority to create a discretionary approval process for ADUs; to regulate the size, design, and placement of ADUs; and to require that ADUs

be limited to lots where the homeowner lives in either the primary dwelling unit or the ADU. Under this discretion, ADUs proved to be infeasible to build in many cases.

In 2003, a new California law required localities to permit ADUs through a by-right process rather than through conditional use permits or other discretionary processes that may involve public hearings. And, starting in 2016, California state policymakers adopted a series of laws that made ADUs much easier to build, including the following:

- Limiting parking requirements for ADUs
- Sharply limiting impact fees localities may charge for ADUs
- Requiring localities to permit both detached and attached ADUs
- Prohibiting owner-occupancy requirements for ADUs
- Requiring localities to permit second “junior” ADU units within the primary residence’s structure in some cases

See the appendix below for a list of some of the most important ADU laws in California and other states. ADU construction across California is uneven in part because some local governments are still finding ways to stall ADU construction, including with slow permitting processes. However, in some parts of the state, most notably Los Angeles, ADU construction drastically accelerated beginning in 2017. Today, one in four residential units in the city of Los Angeles is an ADU.<sup>14</sup> Following this series of reforms, ADU permits issued in California increased from less than 1,300 in 2016 to more than 23,000 in 2021.<sup>15</sup>

Outside of California, policymakers in 13 states have set limits on local policymakers’ authority to prevent owners of single-family houses from adding one or more ADUs. This may be in part due to changing demographics that are increasing the number of intergenerational households in the United States.<sup>16</sup> AARP is a leading advocate for state laws that legalize ADUs because of the potential for ADUs to benefit retirees either as a source of income or as an opportunity to set up intergenerational housing while maintaining privacy.

Table 1 describes ADU laws in the 14 states that have broadly legalized ADU construction. Three of the columns reflect the ADU barriers that Peterson emphasizes: (1) whether localities may adopt owner-occupancy requirements, (2) whether localities may require more parking for a lot with an ADU than for a lot with a single-family house alone, and (3) whether localities may approve ADUs through a discretionary review process rather than by-right.

The last column indicates whether states require localities to permit both attached ADUs (e.g., basement apartments or another part of the primary structure that serves as a separate unit) and detached ADUs (e.g., backyard cottages). California, Washington, Oregon, Montana, Arizona, and Colorado are set in boldface because they prevent localities from adopting all three of these key

**TABLE 1.** ADU policy in states that broadly preempt local ADU bans

State	First statewide ADU law	Owner-occupancy requirements banned?	Parking requirement prohibited?	By-right permit required?	Attached and detached ADUs permit required?
<b>California*</b>	<b>1982</b>	<b>Yes</b>	<b>Sometimes</b>	<b>Yes</b>	<b>Yes</b>
<b>Washington*</b>	<b>1993</b>	<b>Yes</b>	<b>Sometimes</b>	<b>Yes</b>	<b>Yes</b>
New Hampshire	2017	No	No	No	No
<b>Oregon**</b>	<b>2017</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
Vermont***	2020	No	No	Yes	Yes
Utah	2021	No	No	No	No
Connecticut	2022	No	No	Yes	Yes
Maine	2022	No	Yes	No	Yes
Rhode Island†	2022	No	No	Yes	No
<b>Montana</b>	<b>2023</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Arizona</b>	<b>2024</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Colorado**††</b>	<b>2024</b>	<b>Sometimes</b>	<b>Sometimes</b>	<b>Yes</b>	<b>Yes</b>
Hawaii†††	2024	Yes	No	No	No
Massachusetts*	2024	Yes	Sometimes	Yes	No

Note: See the appendix for the state laws that inform this table.

\*Some states only preempt parking requirements when certain conditions are met, such as proximity to transit.

\*\*Oregon law limits localities to adopting clear and objective standards, conditions, and procedures regulating the development of housing, requiring localities to permit ADUs by-right.

\*\*\*In Vermont, localities are required to apply the same permitting process to single-family houses and ADUs. So, if single-family houses are permitted by-right, ADUs must be as well.

†Rhode Island localities must allow attached ADUs on all lots with single-family houses, but detached ADUs are only required to be permitted on lots that are at least 20,000 square feet. Localities only need to allow ADUs that do not expand the footprint of a house or any accessory structures on smaller lots.

††Colorado localities may enforce owner-occupancy requirements only at the time of permit application for adding an ADU to an existing house.

†††Hawaii localities may adopt owner-occupancy requirements for ADUs if the ADU is used as a short-term rental.

ADU obstructions and require localities to allow both attached and detached ADUs (although California, Colorado, and Washington do allow for ADU parking requirements at sites that do not meet certain conditions, including proximity to transit). Some of these state laws only apply to localities that meet population thresholds. These thresholds have a wide range; for example, Oregon requires ADUs to be allowed within the state’s urban growth boundaries in cities with at least 2,500 people and counties with at least 15,000 people, while Arizona’s law only applies to municipalities with at least 75,000 people.

As described above, California has gone even further in legalizing ADU construction in areas outside the poison-pill rules. While there are no systematic efforts to collect data on ADUs nation-

wide, no other states appear to be permitting as much ADU construction. The rate of increase in the number of ADU permits in California starting in 2017 makes it clear that state preemption of local owner-occupancy requirements and other local barriers are pivotal to ADU construction.

In other research, one of us (Hamilton along with Ed Pinto and Tobias Peter) found that in three cities often held up as ADU models—Los Angeles, Portland, and Seattle—changes to long-standing ADU ordinances led to significant increases in ADU construction. In the cases of Los Angeles and Seattle, the repeal of owner-occupancy requirements coincided with big uptakes in ADU construction, whereas in Portland construction ticked up after the city reduced impact fees.<sup>17</sup>

Peterson argues that, following 2023 reforms to their ADU law, Washington has the strongest state-wide accessory dwelling unit framework.<sup>18</sup> Beyond preempting the poison-pill rules and legalizing both attached and detached ADUs, Washington law requires localities to allow at least two ADUs per lot, limits impact fees for ADUs to half of the fees that would be required for a single-family house, and allows for the condoization of ADUs, creating an opportunity for a principal dwelling unit and ADU to have separate owners.

## **Conclusion**

While state policymakers are increasingly adopting ADU laws in response to their constituents' housing affordability challenges, many of these laws do not follow what have emerged as best practices for facilitating ADU construction. And much remains to be learned about policy environments that facilitate ADU construction under different market conditions. Here, we lay some groundwork for analysis under a variety of legal environments. In a separate policy brief, we examine ADU policy and construction in New Hampshire where ADUs are being built at relatively high rates in some localities despite a weak state law and local ordinances with limitations that have stood in the way of ADU construction elsewhere.<sup>19</sup>

## Appendix

**TABLE A1.** State ADU laws

State	Law
Arizona	State of Arizona House of Representatives, House Bill 2720, 56th Legislature (2024).
California	California Legislature, <i>Statutes of California and Digests of Measures</i> , vol. 4, 1982, "Chapter 1440," 5500–05.
	State of California Business, Transportation and Housing Agency, Second Unit Law as Amended by Chapter 1062, Statutes of 2002, (August 6, 2003).
	California Legislature, Senate Bill 1069 (2016).
	California Legislature, Assembly Bill 2299 (2016).
	California Legislature, Senate Bill 13 (2019).
	California Legislature, Assembly Bill 976 (2024).
Colorado	Colorado General Assembly, House Bill 24-1152, 74th General Assembly (2024).
Connecticut	Connecticut Office of Legislative Research, Public Act Summary: An Act Concerning the Zoning Enabling Act, Accessory Apartments, Training for Certain Land Use Officials, Municipal Affordable Housing Plans and a Commission on Connecticut's Development and Future, Substitute House Bill 6107 (2021).
Hawaii	Hawaii State Legislature, Senate Bill 3202, 32nd Legislature (2024).
Maine	Maine Legislature, House Paper 1489, 130th Session (2022).
Massachusetts	General Court of the Commonwealth of Massachusetts, House Bill 4138, 193rd General Court (2024).
Montana	Montana Legislature, Senate Bill 528, 68th Legislature (2023).
New Hampshire	Accessory Dwelling Units, NH Rev Stat § 674:72 (2022).
Oregon	Oregon State Legislature, Senate Bill 1051, 79th Oregon Legislative Assembly (2017).
Rhode Island	Rhode Island State Legislature, Senate Bill 2630 (2024).
Utah	Utah State Legislature, § 530: Internal Accessory Dwelling Units (2021).
Vermont	Vermont General Assembly, 24 V.S.A. § 4412 (2020).
Washington	Washington State House Bill 1056, 53rd Legislature (1993).
	Washington State House Bill 1337, 68th Legislature (2023).
	Washington State Department of Commerce, "Guidance for Accessory Dwelling Units in Washington State," (2023).

## About the Authors

Emily Hamilton is a senior research fellow and director of the Urbanity Project at the Mercatus Center at George Mason University. Her research focuses on urban economics and land use policy. She has testified before several state legislatures as well as the US House of Representatives. Hamilton serves on the advisory boards of Up for Growth and Cityscape, a journal published by the Department of Housing and Urban Development.

Abigail Houseal is a project manager at Stand Together for Music, Sports, and Entertainment. She is an alumnae of the MA fellowship at the Mercatus Center at George Mason University and previously worked as a research manager at the Center for Growth and Opportunity at Utah State University.

## Notes

Thank you to Eli Kahn and Kelcie McKinley for providing research assistance. Thank you to Kol Peterson for developing this framework for understanding ADU policy and for consulting on the categorization of state laws. Thank you to Ben Frost and James Vayo for providing insights about ADU policy and construction in New Hampshire.

1. Kevin Erdmann, *Shut Out: How a Housing Shortage Caused the Great Recession and Crippled Our Economy* (Lanham, MD: Rowman and Littlefield, 2019).
2. John Infranca, "The New State Zoning: Land Use Preemption Amid a Housing Crisis," *Boston College Law Review* 60, no. 3 (2019).
3. The framework of single-family zoning is uniquely limiting in the United States relative to other countries. Sonia Hirt, *Zoned in the USA: The Origins and Implications of American Land-Use Regulations* (Ithaca, NY: Cornell University Press, 2015).
4. Kol Peterson, *Backdoor Revolution: The Definitive Guide to ADU Development* (Portland, OR: Accessory Dwelling Strategies, 2018).
5. US Department of Housing and Urban Development, Mortgagee Letter 2023-17, "Revisions to Rental Income Policies, Property Eligibility, and Appraisal Protocols for Accessory Dwelling Units," October 16, 2023.
6. Salim Furth and Jess Remington, "Ordinances at Work: Seven Communities That Welcome Accessory Dwelling Units" (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, April 2021).
7. Places where illegal ADUs have been built in large numbers include southeast Los Angeles County and Vancouver, British Columbia. Jacob Wegmann, "'We Just Built It': Code Enforcement, Local Politics, and the Informal Housing Market in Southeast Los Angeles County" (PhD diss., University of California, Berkeley, 2014); Jake Wegmann and Sarah Mawhorter, "Measuring Informal Housing Production in California Cities," *Journal of the American Planning Association* 83, no. 2 (2017); and Andrew, "Why Does the City of Vancouver Shut Down Brand New Basement Suites and Evict Renters?" *City Hall Watch*, April 9, 2021. The website has omitted the contributor's last name for privacy reasons.
8. Furth and Remington, "Ordinances at Work."
9. Vicki Been, Benjamin Gross, and John Infranca, "Responding to Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units" (Working Paper, NYU Furman Center, New York, NY, January 2014).
10. Karen Chapple, Jake Wegmann, Farzad Mashhood, and Rebecca Coleman, *Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle, and Vancouver* (Oakland, CA: Turner Center for Housing Innovation at UC Berkeley, July 2017), 23.



11. Chapple et al., *Jumpstarting the Market for Accessory Dwelling Units*.
12. Chapple et al., *Jumpstarting the Market for Accessory Dwelling Units*.
13. For a detailed account of the legislative history of ADUs in California, see Max Dubler, “California Senate Bill 9: An Important Symbolic Victory That Is Unlikely to Produce Meaningful Amounts of New Housing in Single-Family Neighborhoods” (master’s thesis; University of California, Los Angeles, 2022), appendix 1.
14. M. Nolan Gray, “The Housing Revolution Is Coming,” *The Atlantic*, October 5, 2022.
15. David Garcia, Muhammad Alameldin, Ben Metcalf, and William Fulton, “Unlocking the Potential of Missing Middle Housing” (Terner Center Brief, Terner Center for Housing Innovation at UC Berkeley, Oakland, CA, December 2022).
16. AARP Livable Communities, “All about Accessory Dwelling Units,” accessed February 28, 2023, <https://www.aarp.org/livable-communities/housing/info-2019/accessory-dwelling-units-adus.html>.
17. Edward Pinto, Tobias Peter, and Emily Hamilton, *Light Touch Density: A Series of Policy Briefs on Zoning, Land Use, and a Solution to Help Alleviate the Nation’s Housing Shortage* (Washington, DC: American Enterprise Institute, 2022).
18. Kol Peterson, “ADU Legislative Initiatives—History in the Making (Part IV),” Accessory Dwellings, accessed July 1, 2024, <https://accessorydwellings.org/2023/04/24/adu-legislative-initiatives-history-in-the-making-part-iv-2/>.
19. Emily Hamilton and Abigail Houseal, “Legalizing Accessory Dwelling Units at the State Level: A New Hampshire Case Study” (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, March 2023).