

## Attachment II

### SENIORS/PEOPLE LIVING WITH DISABILITIES, No. 202000951

#### Section 3. Recommendation 1(A)

Motion 202000951 includes the following recommendation from the Property Tax Working Group (Section III, Recommendation 1):

*Change the Zoning Code to permit accessory dwellings/granny flats with stipulations that:*

- a. Either the larger or smaller residence must be occupied as the primary residence by the owner more than 75% of the year.*
- b. Require landlord training on fair housing, sample rental contracts, landlord best practices, and more.*

This report responds to the recommendation in the following sections. The information included in this report is based on a survey of case studies and review of existing ADU ordinances and manuals.

Section I	Definition of Accessory Dwelling Unit (ADU)
Section II	Benefits of ADUs
Section III	Challenges of ADUs
Section IV	Implementation Components
Section V	Economic Impact of ADU Policy
Section VI	Recommendation and Considerations
Appendix	Case Studies

#### **SECTION I: Definition of Accessory Dwelling Unit (ADU)**

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According to the U.S. Department of Housing and Urban Development (HUD), accessory dwelling units (ADUs) are “additional living quarters on single-family lots that are independent of the primary dwelling unit” (HUD 2008). ADUs are referred to by different names, including granny flats, as referenced in the Property Tax Working Group, accessory apartments, mother-in-law flats, and second units.

They are independent, self-contained units with their own kitchens or kitchenettes, bathrooms, and sleeping areas that are either attached to or detached from the primary residence, as seen in Figure A.

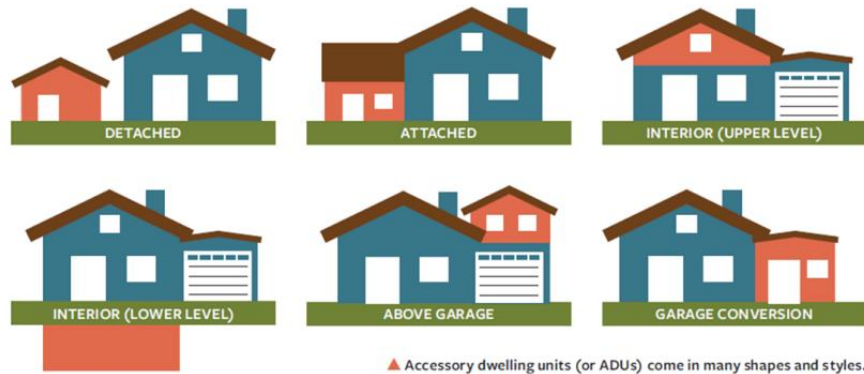


Figure A: Examples of accessory dwelling units (AARP 2019)

ADUs can be found in rural, urban, and suburban environments. Currently, the Cincinnati Zoning Code does not permit accessory dwelling units. Peer cities in Ohio, Columbus and Cleveland, do not have ADU regulations.

## SECTION II: Benefits of ADUs

Accessory dwelling units have the potential to offer many benefits for residents, both homeowners and renters, and neighborhoods.

Accessory dwellings units can:

- Facilitate multi-generational living, aging in place, and flexibility for families
- Increase the housing supply, providing another housing choice within the City of Cincinnati
- Efficiently make use of existing infrastructure by connecting to utilities of primary structure
- Provide an income stream to homeowners, making homeownership more affordable
- Provide affordable rental housing choice in single-family neighborhoods
- Increase property value
- Increase the socio-economic, racial, and age diversity within neighborhood populations
- Increase population density in residential areas without substantive change to neighborhood character
- Be environmentally friendly with smaller carbon footprints and by making efficient use of land
- Support neighborhood business districts through increased population density

## SECTION III: Challenges of ADUs

If permitted in residential zoning districts, ADUs could present the following challenges:

- Parking: If off-street or on-street parking is inadequate to accommodate an additional dwelling unit, neighbors could be adversely impacted.

- Short-Term Rental Use: If used as short-term rental units, there could be potential noise and nuisance impacts.
- Quality of Life: The Cincinnati Zoning Code currently permits up to four unrelated individuals to live in a dwelling unit in a Single-family zoning district. If four unrelated individuals are permitted to live in an ADU, then eight unrelated individuals could live on one property. This could facilitate more single-family residential use for student housing, presenting concerns from neighbors. Additionally, neighbors may feel as though their privacy is diminished.
- Increased property taxes: While increased property values may be seen as a benefit to some, an increase in property taxes may cause some to struggle to stay in their homes.
- Effect on the built environment and neighborhood character: Community members may feel as though the allowance of ADUs could change the existing character of their neighborhoods.

#### **SECTION IV: Implementation Components**

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This section outlines components that must be included and/or considered if ADUs were to be added to the Zoning Code, and if the two situations as outlined in the recommendation were to be required.

##### **Adding ADUs to the Zoning Code**

Zoning Code text amendments are necessary to permit detached and attached ADUs in the following residential zoning districts: SF-2, SF-4, SF-6, SF-10, SF-20. Zoning Code text amendments would be necessary to permit attached ADUs in the following residential zoning districts: RMX, RM-2.0, RM-1.2, and RM-0.7.

The text amendment will need to address the following points:

##### **1. ADU Definition**

This section should define an accessory dwelling unit, specifically mentioning that an ADU has a separate entrance from the principal structure, kitchen/kitchenette, bedroom, and sanitation (bathroom) facility.

##### **2. Review and Approval Procedures**

If ADUs are to be permitted in residential districts by right, the approval process could involve an administrative review prior to permitting. Any other allowance of ADUs, such as through a conditional use permit, or a public hearing requirement may prove to be too burdensome for homeowners/developers. Some communities require notification to property owners within a certain proximity either before or after permits are issued. If notice is sent following the permit approval, the notice lets neighbors know what to expect and what their enforcement options are if there are any issues.

This section should also outline whether applicants seek variances or relief from the Zoning Code following the traditional process which is review by the Zoning Hearing Examiner or if there is a different process.

Some communities include automatic or periodic ADU ordinance reviews, such as reviews after a certain number of ADU permits have been issued citywide or within a Census tract. A review provision may reassure neighborhood groups that any problems related to ADUs will be reviewed and addressed.

### **3. Height**

### **4. Setbacks**

Many ADU ordinances state that ADUs should not encroach into the setbacks for the property required by the existing zoning regulations.

### **5. Location and Type - Detached, attached, or both**

Some communities only permit attached ADUs or only permit detached ADUs on larger lots. Others permit both attached and detached ADUs.

### **6. Number of ADUs**

Most ADU ordinances state that only one ADU is permitted per lot.

Some ADU ordinances limit the number of ADUs that may be located within a certain distance of one another or place a cap on the total number of ADUs that may be installed on a particular block. Some community members may find density controls to be reassuring if they are concerned about an abundance of ADUs occurring in their neighborhood. Communities without density limits find that the ADU installation and conversion rates are low and therefore a limit is not needed. A density requirement could be assessed after a few years and a review of installation and conversion rates.

### **7. Lot Size**

ADU ordinances offer a minimum lot size required for ADUs. It is recommended that this lot size is determined based on a study of single-family lot sizes in the City and the consideration of public input.

### **8. Square Footage or Lot Coverage**

A review of existing ADU ordinances illustrates a variety of mechanisms used to determine maximum square footage. These include square footage defined by a maximum allowable square footage of ADU, as variable maximum allowable square footage based on the lot size, as a percentage of the total square footage of the rear yard, as a percentage of the living area of the primary residence, or as a percentage of lot coverage of the primary residence or total area of the site. Maximum square footage allowable based on percentage of lot size or primary dwelling unit square footage ensures that the ADU is secondary in character but can limit their ability to be developed on smaller lots. To address this, the Zoning Code text could have a maximum

permitted square footage for ADUs and allowances for increased maximum square footage based on larger lot sizes.

Some ADU ordinances use Floor Area Ratios (FAR) to guide the square footage of the ADU. Some provide specific FAR requirements for the ADU, whereas others have requirements for the combined FAR of the ADUs and primary structure. For example, the square footage of the primary structure and the ADU combined cannot exceed a specified maximum floor area ratio for the lot.

In addition to maximum allowable square footage, other limiting requirements like a maximum number of bedrooms can be used to control size (and limit occupancy).

### **9. Density**

Most ADU ordinances exempt ADUs from residential density calculations.

### **10. Parking**

Parking and traffic impacts are anticipated concerns from existing residents of single-family neighborhoods. Additional parking space requirements can be incorporated into the ADU regulations, but this may be cost prohibitive for property owners to accommodate. Other communities have addressed this through requiring parking only for ADUs greater than 500 square feet or requiring an analysis of on-street parking available with the application if dedicated off street parking is not available.

### **11. Utilities**

Will the Code require a connection with the primary dwelling's utilities or permit new and separate utilities? Some ADU ordinance prohibit the principal and accessory dwelling units from having separate utilities in order to reinforce the owner-occupancy requirements. ADU ordinances also state the need to have applicants prove adequacy of existing water and sewer service capacity. If separate utilities are not required for ADUs, then the ADU ordinance needs to address that an ADU cannot be split from the primary structure through a lot split in the future.

### **12. Design**

Do the regulations require a compatible design to the primary residence or not? Does this regulation change whether the ADU is attached or detached? ADU ordinances can include requirements regarding the location of entrances or exterior stairs or a stipulation that any modifications to the exterior of the home, for attached ADUs, should confirm to the original design characteristics and style of the principal structure. Maintaining the character of the neighborhood can also be addressed by the height, location, and setback requirements.

### **13. Number or Occupants**

Does the definition of family in single-family zoning districts apply to ADUs or is a revision needed? Note: Sec. 1401-01-F2 defines family as up to four unrelated to each other to live

together in a single dwelling unit. Some ADU ordinances place limits on occupants based on the size of the unit. For example: No more than two persons in a unit of 300-400 square feet, no more than three persons in a unit ranging from 401-600 square feet, and no more than four persons in a unit ranging from 601-800 square feet. In order to monitor this, ADU licensing and periodic inspections may be needed. A potential licensing program would require a legal review before its consideration.

**14. Occupancy** (see “Occupancy Stipulation Considerations” below)

**15. Home Occupation**

Some ADU ordinances address whether home occupations in ADUs are regulated in the same manner as in principal unit. Options include applying the existing home occupation regulations to ADUs, permitting a home occupation in either the ADU or the principal unit but not both, or prohibiting home occupations in ADUs.

**16. Other Components**

Such as short-term rental stipulations and deed restrictions stipulating that ADU cannot be conveyed separately from primary dwelling unit. Since the Property Tax Working Group aimed to write recommendation to keep seniors and people living with disabilities in their homes, it should be considered that short-term rentals only be permitted if the primary structure is owner occupied.

The regulations in the text amendment would need to supersede the existing requirements for residential accessory structures in Section 1421-01, Accessory Residential Structures which state the following requirements for residential accessory structures:

- (a) *Location.* Accessory structures are not permitted in a front yard or a side yard except for fences and walls, flagpoles, lamp posts, arbors, trellis, birdbaths, decorative fountains, or other similar structures as determined by the Zoning Administrator.
- (b) *Minimum Distance from Principal Structure:* One foot. Accessory structures, other than fences and walls, within one foot of the principal structure are considered part of the principal structure.
- (c) *Maximum Size:* 800 square feet for all structures other than fences and walls.
- (d) *Maximum Number of Accessory Buildings:* Two.
- (e) *Maximum Height:* 15 feet.
- (f) *Setbacks.* A minimum three-foot rear yard setback and three-foot side yard setback is required. Agricultural structures and animal keeping shelter structures shall conform to the provisions set forth in Chapter 1422.

**Occupancy Stipulation Considerations**

The recommendation includes two stipulations, along with the inclusion of ADUs in the Zoning Code. The first stipulation is: “Either the larger or smaller residence must be occupied as the primary residence by the owner more than 75% of the year.”

Requiring owner-occupancy has the potential to dis-incentivize ADU development because it may impact the homeowner's ability to rent and sell their property. Additionally, there may be some cases in which a relative owns the property and a senior or person living with a disability lives in the primary structure and a caretaker lives in the ADU, or a nonprofit owns the property and operates as an independent living quarter. However, some communities with ADUs require owner-occupancy in either the ADU or the primary dwelling and implement this through requiring the recording of deed restrictions to permit construction of an ADU. Enforcement of this stipulation could be difficult to monitor particularly as properties are sold or ownership changes. Some communities have ADU registers and terminate an ADU permit upon sale of the property. At that point, the new owners must re-register. An owner-occupancy requirement would require a legal review before its consideration.

### **Landlord Training Stipulation**

The second stipulation in the recommendation is, "Require landlord training on fair housing, sample rental contracts, landlord best practices, and more."

This could be implemented by requiring landlord training prior to permitting the construction of the ADU, issuing an ADU license, or obtaining a Certificate of Occupancy. A certificate of attendance, or affidavit certifying landlord training attendance could be a Zoning Code requirement. If the ADU is not to be rented, a waiver would be given to the property owner.

However, this requirement could also be difficult to enforce if it is an ongoing requirement as property ownership changes. Monitoring both the landlord training and owner occupancy requirements long-term as ownership changes could be achieved easier if there is a requirement that rental ADUs register with the City.

### **Incentives and Education**

Many communities introduced ADU policy through regulatory amendments (changes to the zoning code) and by providing incentives for the construction of ADUs. Additionally, some communities focused on educational outreach both to potential owners of ADUs and to neighborhood groups regarding the process, regulations, and benefits of ADUs.

If there is a desire to promote ADU construction, the financial incentives and waived fees can be considered. Traditional financing is a barrier to the construction of ADUs. Many banks will only finance an ADU if an owner has sufficient equity in their property.

Some communities publish ADU manuals for homeowners in order to help applicants navigate the development, design, and operation of ADUs.

## **SECTION VI: Economic Impact of ADU Policy**

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The Department of Community and Economic Development provided insight on the potential economic impact of an ADU policy.

When governments restrict housing supply beyond where it naturally would be absent of those policies, housing prices increase at a faster rate than they should. This maxim has been empirically studied extensively by economists (Gyourko & Molloy, 2015; Gyourko, Saiz & Summers, 2008; Schuetz, 2009). In fact, housing regulation “appears to be the single most important influence on the supply of homes,” resulting in larger housing price increases, and slower growth in the quality of housing as demand increases.<sup>1</sup> To put it simply, housing is like a city-wide game of musical chairs. “If there aren’t enough chairs when the music stops, someone is left out. When there aren’t enough homes for people who live and work in a city, everybody has to compete for what’s available, and rents go up until people get priced out. **In the housing market, instead of being fast, you just need to be rich to stay in the game.**”<sup>2</sup> A real-life example of this was recently documented by the *Wall Street Journal* who look abroad for an example of what happens when we “add more chairs” to the housing market. Around the turn of the century “the Japanese government began relaxing regulations that had restricted [housing] supply, allowing taller and denser buildings in Japan’s capital.”<sup>3</sup> Housing prices in Tokyo have flatlined while housing prices in American cities have skyrocketed. In this vein, allowing for ADUs in highly demanded areas will result in downward pressures on housing price, contributing to increased neighborhood affordability.

It is possible that adding a new ADU to a property can result in increased property taxes if it increases the livable square footage of a property; however, the new property taxes will be significantly less than the additional potential income received by the ADU.<sup>4</sup> In the case of adding an ADU to the existing basement of a house, an ADU would not be increasing the livable square footage; therefore, it should not be expected that the property taxes of the property owner would increase by much, if at all. In this instance, the property owner would receive the income benefits of an ADU with little to no property tax increase. Additionally, the neighborhood receives the benefit of increased housing supply, reducing rent throughout the neighborhood. For property owners that choose to not add an ADU, it is unlikely that the ability to add an ADU alone would increase their property value, so they would not see an increase in their taxes. Ultimately, it should not be expected that allowing for ADUs alone will increase the price/square foot of a house, and any gross increase in property value from the addition of an ADU will be more than offset by the rental income from the ADU.

It is likely that most ADUs would be alterations from existing structures, but it is possible to imagine that there will be some new-build ADUs constructed. In either instance, in highly demanded areas, the cost of construction would be recovered in the long run via rental income like any other housing development. If demand to live in a neighborhood as reflected in rental rates is high enough to offset

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<sup>1</sup> Joseph Gyourko, Raven Molloy, “Regulation and Housing Supply,” *National Bureau of Economic Research*, (2015): 1 <https://www.nber.org/papers/w20536.pdf>

<sup>2</sup> Dan Bertolet, “Infographic: The Mean Musical Chairs of Rising Rent and Home Prices,” Sightline Institute, March 14, 2018, <https://www.sightline.org/2018/03/14/infographic-the-mean-musical-chairs-of-rising-rent-and-home-prices/>

<sup>3</sup> River Davis, “What Housing Crisis? In Japan, Home Prices Stay Flat,” *The Wall Street Journal*, April 2, 2019, <https://www.wsj.com/articles/what-housing-crisis-in-japan-home-prices-stay-flat-11554210002>

<sup>4</sup> In DCED’s experience, property taxes are approximately 30% of NOI.



the cost of construction, the ADU would be built; however, if demand to live in that neighborhood is not high enough, then the upward pricing pressures that ADUs seek to relieve would not exist.

Cities that are serious about relieving upward pricing pressures in their heavily demanded neighborhoods ought to seriously consider removing zoning restrictions that limit housing supply. Typically known as “up-zoning,” initiatives that remove these barriers to housing can be controversial because there is a concern that the fundamental “character” of a neighborhood may be altered. ADUs are a great way to increasing housing supply in neighborhoods that are traditionally characterized by single family homes without altering that fundamental character. This change to the zoning code is a good compromise between preserving neighborhood character while addressing neighborhood affordability.

## **SECTION VI: Recommendation and Considerations**

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It is staff’s recommendation that the City of Cincinnati pursue the inclusion of ADUs in the Zoning Code. It addresses the intentions of the Property Tax Working Group and addresses additional housing needs.

The intent of the Property Tax Working Group recommendation was to help seniors and people living with disabilities remain in their homes. As outlined in Sections II and V, permitting Accessory Dwelling Units in the Zoning Code would address the Working Group’s primary intention, while preserving the built character of neighborhoods, a strategy within the Sustain Initiative Area of *Plan Cincinnati* (2012). It is also consistent with the Live Initiative Area of *Plan Cincinnati* (2012), specifically the goal to “Provide a full spectrum of housing options, and improve housing quality and affordability” and the strategies to “Provide quality healthy housing for all income levels” and “Offer housing options at varied sizes and types for residents at all stages of life.” ADUs have the potential to provide housing for different family sizes and configurations and people with varying income and needs. ADUs would also introduce additional housing stock, relieving upward pricing pressure in high-demand neighborhoods, as noted in Section V by the Department of Community and Economic Development.

In addition, the City of Cincinnati is committed to being a livable community for people of all ages. The City is actively working to improve its AARP Livability Index score. The City’s current score can be found here: <https://livabilityindex.aarp.org/search#Cincinnati+OH+45202+USA>. ADUs would specifically increase the City’s score in the Housing Category by improving housing options and affordability. The Age Friendly Cincinnati Advisory Group, consisting of stakeholders and community members working on aging in place issues, has also identified the need for more senior-friendly housing options in Cincinnati.

Staff’s recommendation is to pursue an ADU policy. However, there are specific considerations that should inform the ordinance. As referenced in Section IV, clear guidelines and consistent enforcement of rules governing ADUs is critical to ensure they blend seamlessly into the fabric of the City’s neighborhoods.

In addition, the following should be considered:

### **1. Purpose of Recommendation**

The Property Tax Working Group created recommendations to help seniors and people living with disabilities remain in their homes. The potential outcomes of the ADU ordinance must be analyzed to see if the purpose behind the recommendation is being met. This can also be addressed by a review of ADU permits on an annual basis.

### **2. Community Engagement**

A text amendment to the Zoning Code will require a public staff conference, and review by City Planning Commission and City Council. In addition to these opportunities for public input, it is recommended that further community engagement occurs during the development of an ADU ordinance, such as night meetings and a survey. Based on feedback, a notification policy should be crafted to include in the ADU ordinance.

### **3. Further Legal Review**

A legal review of components of an ADU ordinance would be required, especially regarding owner-occupancy stipulations and licensing requirements.

## **APPENDIX: Case Studies**

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Please see attached chart of ADU ordinances from various cities.

## **REFERENCES**

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AARP Livable Communities. *All About Accessory Dwelling Units*. Accessed October 22, 2020.

<https://www.aarp.org/livable-communities/housing/info-2019/accessory-dwelling-units-adus.html>

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