

# Accessory Dwelling Units

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OLO Report 2024-4

Executive Summary

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Accessory Dwelling Unit (ADU) is a broad term used to describe a smaller, independent residential dwelling that shares the same lot as a detached single-family home. ADUs often go by other names, including granny flats, accessory apartments, and English basements. Interest in ADUs as a potential housing solution has grown over the last two decades and policymakers are increasingly adopting laws to encourage ADU development in their jurisdictions. This Office of Legislative Oversight (OLO) report responds to the County Council’s interest in understanding common barriers to building ADUs, how other localities have encouraged ADU development, and what strategies may be appropriate in Montgomery County.

Overall, OLO found jurisdictions that adopt policies that limit restrictions on ADU development have seen increases in ADU permitting and construction. While many of Montgomery County’s ADU policies align with strategies proven to encourage ADU construction, **there are two opportunities to further align the County’s ADU policies with recommended best practices: 1) by easing or eliminating owner occupancy requirements for ADUs; and 2) by creating financing options for ADUs.**

## ADUs: Benefits and Challenges

ADUs can take many shapes and styles, but generally come in three forms: 1) internal/interior (i.e., a converted portion of the primary home); 2) attached (i.e., an addition or extension to an existing dwelling); or 3) detached (i.e., a stand-alone external structure).

**Benefits.** According to housing stakeholders, ADUs can serve as a strategy to help jurisdictions increase the amount and affordability of housing. ADUs can help **increase density in predominantly single-family zoned areas** without significantly changing the character of those neighborhoods. They can **expand options for people seeking smaller, more affordable rentals in popular housing markets**, such as older adults or single-person households. ADUs can also **provide rental income to homeowners.**

**Challenges.** Stakeholders observe that ADUs are not a large-scale housing solution and pose their own set of challenges. The high costs of construction can make it **challenging for lower-income property owners to build ADUs.** ADUs in sought-after neighborhoods can demand high rents, making them **unaffordable for lower-income renters.** Also, research shows that without legislation that accounts for racial disparities in housing, **ADUs can perpetuate preexisting racial inequities in housing policy** because ADU policies mostly benefit wealthier, often white, homeowners.



Figure 1: Common Types of ADUs  
Source: [The ABCs of ADUs](#), AARP.

## Barriers to ADU Development and Recommended Policy Strategies

The following table summarizes the most common regulatory and financial barriers that hinder ADU development and potential policy strategies identified in best practice research.

### Common Barriers to ADU Development and Mitigating Policy Strategies

| Regulatory/Financial Barrier  | Policy Strategy   |
|---|---|
| <p><b>Discretionary review</b></p> <p>Discretionary review processes give localities broad authority to regulate each ADU proposal on a case-by-case basis. Obtaining conditional use permits can be a lengthy process, costly, and discouraging for applicants.</p>                    | <p><b>Adopting by-right processes</b></p> <p>By-right development processes approve ADU projects as long as they comply with all necessary zoning requirements. Jurisdictions with by-right instead of discretionary approvals have helped boost adoption of ADUs.</p>  |
| <p><b>Occupancy requirements</b></p> <p>Most commonly, owner occupancy requirements dictate that the homeowner live in either the primary dwelling or the ADU. Such restrictions diminish the financial viability of ADUs and limit the housing supply.</p>                             | <p><b>Ease or eliminate owner occupancy requirements</b></p> <p>Easing or eliminating owner occupancy requirements allows owners who move to another home to still rent out both dwellings on their property. This can build wealth for the homeowner and can expand the supply of rental housing in high-opportunity neighborhoods.</p>                            |
| <p><b>Parking requirements</b></p> <p>Parking mandates require one or more off-street parking spaces for an ADU. These rules are often too restrictive, particularly in transit-rich areas where actual demand for this type of parking is lower.</p>                                   | <p><b>Ease off-street parking mandates</b></p> <p>Adopting flexible parking rules for ADUs based on proximity to urban centers or public transit can incentivize ADU construction by reducing the costs associated with building additional parking.</p>  |
| <p><b>Dimensional requirements</b></p> <p>Dimensional requirements place caps on the height and size of ADUs and require ADUs be on certain sized lots with specific setbacks. Dimensional constraints often make the developable area for ADUs too small and therefore infeasible.</p> | <p><b>Ease excessive dimensional requirements</b></p> <p>Data show that jurisdictions who ease excessive dimensional requirements on ADUs make it easier for homeowners to build useable and marketable ADUs. For example, Los Angeles has achieved widespread ADU development in part because CA law requires localities to allow ADUs as small as 800 sq. ft.</p> |
| <p><b>Impact fees</b></p> <p>Localities charge homebuilders impact fees to pay for additional demands on and maintenance of public infrastructure and services. Impact fees can make up a prohibitively large percentage of the total cost to develop an ADU.</p>                       | <p><b>Limit or waive impact fees for ADUs</b></p> <p>Research shows that when jurisdictions reduce or eliminate ADU impact fees, permit applications go up. Since Portland, OR waived development impact fees on ADU projects, the city has seen a rise in both ADU permit applications and construction.</p>   |
| <p><b>Financing challenges</b></p> <p>Due to a scarcity of lending options, most homeowners rely on cash or home equity to finance ADU construction. This can be challenging for lower- and moderate-income homeowners.</p>   | <p><b>Develop ADU-specific financing mechanisms</b></p> <p>Some jurisdictions have developed lending programs designed specifically for ADUs. For example, the Boston Home Center’s ADU Home Loan Program and the City of Napa Junior Unit Initiative Program provide homeowners with deferred and/or no-interest loans to build ADUs.</p>                          |

## Overview of ADU Laws

Eight states currently have laws broadly allowing ADU construction: California, Connecticut, Maine, New Hampshire, Oregon, Utah, Vermont, and Washington. Maryland does not currently have a state ADU law but recently established an Accessory Dwelling Units Policy Task Force that will submit legislative and policy recommendations to the Governor and Maryland General Assembly by 2025. ADU ordinances in Maryland vary by city and county.

**Other Jurisdictions.** In the last five years, California, Oregon, and Washington, as well as the cities of Portland and Seattle, have passed some of the strongest ADU laws in the country. The following table displays the impact these reforms have had on the number of ADUs permitted and constructed in those jurisdictions.

### Change in Number of Accessory Dwelling Units (ADUs) and Regulation Components in California, Portland, OR, and Seattle, WA

|                              | California<br>2019-22                   | Portland, OR<br>2011-22 | Seattle, WA<br>2019-22                   |
|------------------------------|---|-------------------------|--|
| <b>% Increase</b>            |   |                         |  |
| ADU permits issued           | 88%                                     | 163%                    | 253%                                     |
| ADUs constructed             | 198%                                    | 641%                    | Not available                            |
| <b>Regulation components</b> |   |                         |  |
| By-right development         | Yes                                     | Yes                     | Yes                                      |
| Owner occupancy requirement  | No                                      | No                      | No                                       |
| Parking requirements         | Sometimes                               | No                      | Sometimes                                |
| Minimum lot size             | No                                      | No                      | Yes                                      |
| Maximum unit size            | Yes, for detached                       | Sometimes               | Sometimes                                |
| Maximum number of units      | 2 per lot                               | 2 per lot               | 2 per lot                                |
| Impact fee exemption         | Yes, for units smaller than 750 sq. ft. | Yes                     | Limited to 50% of principal dwelling fee |
| Short-term rentals allowance | Sometimes                               | Yes                     | Sometimes                                |

**Montgomery County.** The County loosened restrictions on ADU construction considerably in 2019, making it easier for more homeowners to build these units. Data from the Department of Permitting Services (DPS) show that since the County changed its zoning regulations, the number of new ADU permits issued has grown by 133%, from 27 in 2020 to 63 in 2023.

OLO found **many of the County’s ADU rules align with best practices for ADU development**, including:

- The County **eliminated the conditional use approval process for ADUs**. Now, DHCA issues licenses for ADUs if they meet certain minimum zoning standards.
- The new County regulations **repealed the requirement for additional on-site parking** if the property demonstrates it has adequate on-street parking or is within a walking mile of any Metrorail, Purple Line, or MARC Rail station.
- The County **removed minimum lot size requirements for ADUs and increased the maximum allowable size** to 1,200 square feet for attached ADUs and the lesser of 50% of the footprint of the principal dwelling, 10% of the lot area, or 1,200 square feet for detached ADUs.
- The County **does not charge a development impact tax for ADUs** because they are accessory to the primary use and are on the same lot.

OLO also found **there is opportunity to further align the County’s ADU policies with recommended practices**, specifically:

- Ease or waive owner occupancy requirements for renting ADUs; and
- Create lending products specifically tailored to ADU financing.

## Discussion Questions

### 1. Should the County ease or eliminate owner occupancy requirements for rental ADUs?

To obtain an ADU rental license, County law requires owners to occupy the principal dwelling or the ADU as their primary residence. By tying ADU rental licensing requirements to owner occupancy, the law prevents owners from renting out both units. Housing experts contend that owner occupancy mandates reduce the financial viability of ADUs and make building them less appealing. Moreover, jurisdictions are increasingly eliminating owner occupancy requirements from their ADU laws. Since 2019, California, Oregon, and Washington state have each passed laws barring owner occupancy rules for ADUs. OLO recommends that the Council discuss the merits of easing or eliminating owner occupancy requirements for rental ADUs to further encourage ADU development in the County.

### 2. Should the County explore innovative financing mechanisms and/or partnerships that can help homeowners of all income levels access financing for ADU construction?

Due to a scarcity in lending products tailored specifically to ADUs, most homeowners pay for construction using their personal savings or home equity. These options are often not accessible to lower- and moderate-income homeowners. OLO recommends the Council consider whether the types of programs adopted by other jurisdictions described in this report (or other mechanisms) could help more County homeowners access funding for ADU construction, and if so, which community and/or business groups might serve as partners in developing and implementing such programs.

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# Introduction

The availability of affordable housing is an ongoing challenge for residents of Montgomery County and nationwide. One way some local jurisdictions have attempted to deal with the issue is to encourage the building of Accessory Dwelling Units (ADUs). ADUs, or secondary housing units located on residential lots, have the potential to increase density, housing options, and affordability, especially for low-and moderate-income renters in high-cost neighborhoods. Interest in ADUs has grown steadily since the early 2000s, and policymakers are increasingly adopting laws and ordinances to encourage ADU development in their jurisdictions.<sup>1,2</sup>

This Office of Legislative Oversight (OLO) report responds to the County Council's interest in understanding how other localities have encouraged the creation of ADUs and what strategies may be appropriate in Montgomery County. It provides information on barriers homeowners face in building these units, financial incentives that encourage building, and examples of ADU ordinances in other jurisdictions that have had success in spurring this type of development.

**Summary of Key Findings:** OLO found that jurisdictions who adopt policies that limit restrictions on ADU development have seen increases in ADU permitting and construction. While many of Montgomery County's ADU policies align with strategies proven to encourage ADU construction, there are two opportunities to further align the County's ADU policies with recommended practices: 1) by easing or eliminating owner occupancy requirements for ADUs, and 2) by creating financing options specifically designed for ADUs.

This report is organized as follows:

- **Chapter 1** provides background information on ADUs, including a brief history of their development in the United States and their potential for increasing the country's housing supply;
- **Chapter 2** discusses regulatory, financial, and other common barriers to ADU development, and describes policy solutions identified in the research;
- **Chapter 3** presents an overview of ADU laws in Montgomery County and compares them to the legal landscape for ADUs in select Maryland localities and in jurisdictions on the West Coast; and
- **Chapter 4** presents OLO's findings and discussion questions for the County Council.

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<sup>1</sup> Stacy, Christina, et al., [Designing Accessory Dwelling Unit Regulations: Recommendations for the City of Alexandria, Virginia](#), Urban Institute (2020) [hereinafter "Urban Institute, *Designing Accessory Dwelling Unit Regulations*"].

<sup>2</sup> Abu-Khalaf, Ahmad. [Overcoming Barriers to Bringing Accessory Dwelling Unit Development to Scale](#), Enterprise Community Partners (Enterprise) (2020) [hereinafter "Enterprise, *Overcoming Barriers*"].

**Methodology and Acknowledgements.** Office of Legislative Oversight staff member Chitra Kalyandurg conducted this study, with assistance from Leslie Rubin and Karen Pecoraro. To prepare this report, OLO reviewed existing literature on ADUs, including selected state and local ADU legislation and ordinances, as well as County ADU policies, regulations, and building permit data. OLO also received guidance and assistance from staff in the County Council and the Department of Permitting Services.

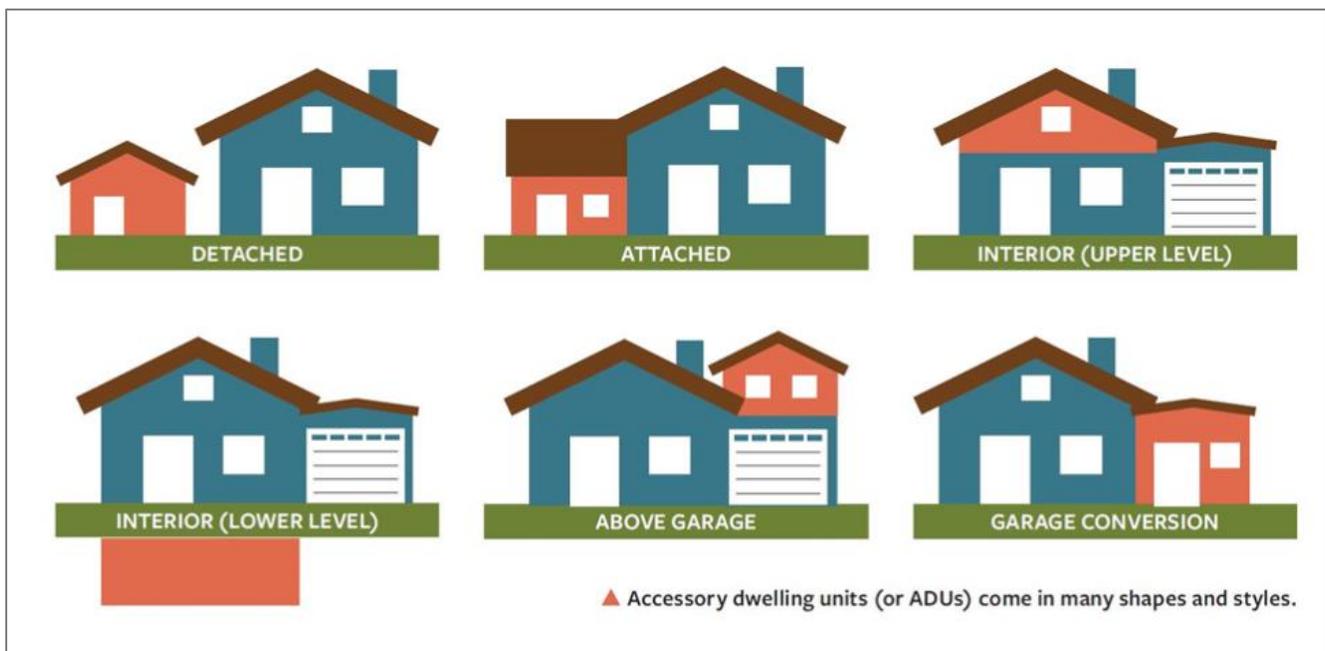
# Chapter 1. Accessory Dwelling Units

Accessory Dwelling Unit (ADU) is a broad term used to describe a smaller, independent residential dwelling that shares the same lot as a larger, stand-alone (i.e., detached) single-family home. ADUs often go by other names, including granny flats, in-law suites, accessory apartments, English basements, casitas, and carriage houses.<sup>3</sup>

ADU's generally come in three forms, described below, and illustrated in Figure 1:<sup>4</sup>

- **Internal/Interior** – an internal or interior ADU is a converted portion of a primary home, such as a basement, attic, or garage unit.
- **Attached** – an attached ADU is an addition to a new or existing home, sometimes called a “bump-out or “extension;” and
- **Detached** – a detached ADU is a new, stand-alone external structure or renovated existing stand-alone external structure typically built in a backyard but could also be in a side or front yard or atop an external garage.

**Figure 1. Common Types of Accessory Dwelling Units (ADUs)**



Source: Image from [The ABCs of ADUs](#), AARP.

<sup>3</sup> Enterprise, [Overcoming Barriers](#); [The ABCs of ADUs](#), AARP.

<sup>4</sup> “[Accessory Dwelling Units](#),” American Planning Association; Enterprise, [Overcoming Barriers](#).

**History of ADUs.** As described in the literature, ADUs have been part of the American housing landscape for decades. The Urban Institute notes that detached ADUs were relatively common in single-family homes built in the early twentieth century. After the first World War, various factors led to a boom in suburban, low-density residential development including increasingly restrictive zoning practices, disinvestment from urban centers, and the large-scale outmigration of White residents from cities. Local jurisdictions effectively banned new ADUs through the 1960s though people in many cities experiencing population booms built them illegally, particularly during World War II. Cities began allowing ADU development in the late twentieth century as the ethos around urban planning transitioned to more equitable, environmentally sustainable development that prioritized walkability and proximity to public transportation.<sup>5</sup>

Over the last two decades, changes in demographics (e.g., a growing elderly population, smaller household sizes, more single-person households) and insufficient construction of new housing has fueled housing shortages to crisis levels in many metropolitan regions. In response, local jurisdictions have begun to embrace ADUs as a potential way to increase housing, in particular affordable housing.<sup>6</sup> However, ADU adoption has been uneven due to local zoning ordinances that often restrict homeowners' options for home expansions or modifications.<sup>7</sup>

**Benefits of ADUs.** Many stakeholders, including policymakers, researchers, and housing advocates, see ADUs as a potential solution to increase the amount and affordability of housing across the country. According to AARP, ADUs offer many benefits, including:<sup>8</sup>

- ADUs can expand options for people seeking smaller, more affordable rental housing;
- ADUs can offer family members their own living spaces while residing on the same property;
- ADUs can help older residents age-in-place independently in a private residence;
- ADUs can provide housing for hired caregivers; and
- ADUs can provide rental income to homeowners.

Additionally, stakeholders contend ADUs enable jurisdictions to increase the “missing middle” housing. Also known as “gentle density,” missing middle housing is “attached, ground-oriented housing that’s more dense than a detached house, but with a similar scale and character.”<sup>9</sup> Examples of missing middle housing types include ADUs, duplexes, fourplexes, cottage courts, rowhouses, and townhouses.

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<sup>5</sup> Urban Institute, [Designing Accessory Dwelling Unit Regulations](#).

<sup>6</sup> Ibid.

<sup>7</sup> Cobb, Rodney, L. and Dvorak, Scott, [Accessory Dwelling Units: Model State Act and Local Ordinance](#), AARP and American Planning Association (APA), published by the Public Policy Institute (2000) [hereinafter “AARP & APA, *Accessory Dwelling Units: Model State Act and Local Ordinance*”].

<sup>8</sup> [The ABCs of ADUs](#), AARP.

<sup>9</sup> Enterprise, [Overcoming Barriers](#), pg. 7.

## Accessory Dwelling Units

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Most of the land zoned for residential use in the United States is for single-family detached homes, and as described later, there is strong interest among constituent groups (mainly homeowners) to shield single-family zoned neighborhoods from increased density.<sup>10</sup> Housing stakeholders argue, however, that missing middle housing like ADUs unlock underutilized land, thereby increasing density without significantly changing the character of single-family neighborhoods. Moreover, ADUs can increase the housing supply for low-and moderate-income households who struggle to find housing in high-opportunity, expensive housing markets dominated by single-family zoning.<sup>11</sup>

**Challenges with ADUs.** While ADUs can bring diversity to local housing markets, they also pose their own set of challenges. The following summarizes issues with ADUs described in the literature:

- **ADUs can be inaccessible to lower-income property owners.** As described in chapter 2, building an ADU can cost homeowners anywhere between \$20,000 to \$400,000. In addition to the cost of construction, homeowners must pay for architectural and legal services, permits and licenses, and be willing to bear future costs associated with maintaining a rental property. The high cost of ADU development frequently makes them inaccessible to lower-income property owners.<sup>12</sup>
- **ADUs can perpetuate preexisting racial inequities in housing policy.** Research shows that without legislation that accounts for racial disparities in housing, ADU policies mostly benefit wealthier, often white, homeowners. ADUs tend to be built in more affluent neighborhoods where owners with larger lots can more easily accommodate both local zoning conditions (e.g., setbacks and on-site parking requirements) and high construction costs. As a result, most rental ADUs build wealth for already affluent homeowners.<sup>13</sup>

Moreover, because the country's history of racially discriminatory housing policies has resulted in disparately lower property values for Black and other homeowners of color,<sup>14</sup> they have a harder time qualifying for the financing needed to build an ADU. As one housing expert points out, "if I'm a Black or BIPOC homeowner and I have a 1,250-square-foot house [...] getting valued for \$20,000 less than the same house in a neighborhood that's just up the road, [...] it's a double-whammy of not getting the value. [...] You can't increase potential wealth-building."<sup>15</sup>

- **ADUs are often unaffordable for lower-income renters.** Landlords can often charge high rents for ADUs, especially if they are in sought-after markets. For example, a 600 to 900 square foot ADU in Vancouver, British Columbia can rent for about \$3,000 a month, and a roughly 500

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<sup>10</sup> Hamilton, Emily and Houseal, Abigail, [Policy Brief: A Taxonomy of State Accessory Dwelling Unit Laws](#), Mercatus Center, George Mason University (2023) [hereinafter "Mercatus Center, A Taxonomy of State Accessory Dwelling Unit Laws"].

<sup>11</sup> Enterprise, [Overcoming Barriers](#), pg. 7; and ["Missing Middle Housing,"](#) Missing Middle Housing.

<sup>12</sup> ["What Your Community Needs to Know About Accessory Dwelling Units,"](#) Chicago Metropolitan Agency for Planning

<sup>13</sup> King, Shelby R., ["Why ADUs Can't Solve the Nation's Housing Crisis,"](#) Shelterforce.com (May 17, 2022).

<sup>14</sup> Kijakazi, Kilolo, et al., [The Color of Wealth in the Nation's Capital](#), Urban Institute (2016); Rothstein, Richard, [The Color of Law](#), Liveright (2017).

<sup>15</sup> ["Why ADUs Can't Solve the Nation's Housing Crisis,"](#) Shelterforce.com.

square foot ADU in San Diego, California can rent for \$2,000 a month. These high rents can price lower- to moderate-income renters out of the rental ADU market.<sup>16</sup>

- **Owners use ADUs as short-term rentals.** Notwithstanding local use restrictions, housing experts observe many property owners, particularly in gentrifying neighborhoods, break the rules and develop ADUs specifically for use as short-term vacation rentals.<sup>17</sup>
- **ADUs are not a large-scale housing solution.** Because of the conditions they must meet (e.g., being secondary to an existing dwelling, meeting certain lot size, height, and/or setback restrictions, having high development costs), ADU development can only occur at a modest rate.<sup>18</sup> The number of ADUs in a jurisdiction in any given year are small relative to other types of housing. For example, in Portland, Oregon, where ADU development is widespread, there were about 800 ADUs in 2013 compared to about 150,000 single-family homes in zones allowing ADUs.<sup>19</sup> In Montgomery County, the Department of Permitting Services issued 72 ADU permits in 2022<sup>20</sup> while Census data from the same year show there were about 180,000 detached single units in the County.<sup>21</sup>

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> ["What Your Community Needs to Know About Accessory Dwelling Units,"](#) Chicago Metropolitan Agency for Planning

<sup>19</sup> Peterson, Kol, ["Do ADUs cause neighborhood parking problems?,"](#) Accessory Dwellings (July 16, 2014).

<sup>20</sup> Data from Department of Permitting Services.

<sup>21</sup> *Physical Housing Characteristics for Occupied Housing Units*, [Table S2504](#), 2022 American Community Survey 1-Year Estimates, U.S. Census Bureau.

### Chapter 2. ADU Development: Barriers and Policy Strategies

As discussed throughout this report, state and local policymakers are increasingly turning to accessory dwelling units (ADUs) as a way to build more, affordable housing. However, several regulatory and financial barriers stand in the way of bringing ADU development to scale. Table 2.1 summarizes the most common barriers to ADU development and potential policy strategies identified in best practice research.

**Table 2.1. Common Barriers to ADU Development and Mitigating Policy Strategies**

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**Discretionary review processes** - Give localities broad authority to regulate each ADU proposal on a case-by-case basis. Obtaining conditional use permits can be a lengthy process, costly, and discouraging for applicants.

*Policy strategy: Adopting by-right processes*

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**Occupancy requirements** - Restrict the number and/or type of occupants allowed to reside in an ADU, or more commonly, require that the homeowner live in either the primary dwelling or the ADU. Such restrictions diminish the financial viability of ADUs and limit the housing supply.

*Policy strategy: Ease or eliminate owner occupancy requirements*

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**Parking requirements** - Require one or more off-street (i.e., on-site) parking spaces for an ADU. These rules are often too restrictive, particularly in transit-rich areas where actual demand for this type of parking is lower.

*Policy strategy: Ease off-street parking mandates*

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**Dimensional requirements** - Place caps on the height and size of ADUs and require ADUs be on certain sized lots with specific setbacks. Dimensional constraints often make the developable area for ADUs too small and therefore infeasible.

*Policy strategy: Ease excessive dimensional requirements*

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**Impact fees** - Charged to homebuilders to pay for the additional demands on and maintenance of public infrastructure and services. Impact fees can make up a prohibitively large percentage of the total cost to develop an ADU.

*Policy strategy: Limit or waive impact fees for ADUs*

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**Financing challenges** - Traditional lending options are not well suited to ADUs, leading most homeowners to rely on cash or home equity to finance construction. This can be challenging for lower- and moderate-income homeowners.

*Policy strategy: Develop lending products specifically tailored to ADU financing*

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The remainder of this chapter discusses these barriers and strategies in more detail.

- **Section A** describes how U.S. land use policy and local ordinances privilege single-family zoned land, making it difficult to pursue higher density housing like ADUs;
- **Section B** presents common regulatory barriers that hinder ADU development in the U.S.;

- **Section C** describes challenges to seeking ADU financing;
- **Section D** provides an overview of policy strategies jurisdictions can adopt to facilitate ADU construction; and
- **Section E** discusses the market conditions that help spur ADU development.

## A. Land Use Barriers

Chief among the barriers to ADU development is land use regulation. As noted in the previous chapter, most land zoned for residential use in the United States is only for detached single units, otherwise known as single-family zoning. In some parts of the country, single-family zoning accounts for more than three-quarters of that area’s residential land (e.g., 75% in both Los Angeles and Chicago and 81% in Seattle) and between 1990 and 2016, 80% of all new housing units built in the largest 100 metropolitan areas were single-family homes.

Researchers argue this predominance of low-density zoned land has contributed to the nationwide shortage of housing and affordability challenges.<sup>22</sup> Moreover, scholars now recognize that the growth of single-family housing developments was born of exclusionary practices that created and maintained racially segregated communities.<sup>23,24</sup>

Researchers note zoning decisions are greatly influenced by local opposition, in particular opposition from homeowners, who are “primarily wealthy, and primarily [W]hite.”<sup>25</sup> For example, an analysis of over 2,000 people in Greater Boston who attended planning and zoning board meetings found that participants were predominantly wealthy, White homeowners who “are overwhelmingly – and disproportionately – opposed to the construction of new housing.”<sup>26</sup> Largely, homeowner opposition is motivated by anxiety over change, specifically, that new and/or denser housing in their predominantly single-family neighborhoods will lead to “towering apartment buildings, [...] high traffic, increases in demand for parking, drops in home value and changes in neighborhood character, among other concerns.”<sup>27</sup>

Local policymakers with authority over zoning decisions generally limit density in single-family zones by adopting regulations that disincentivize and sometimes even prohibit homeowners from building a

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<sup>22</sup> Enterprise, [Overcoming Barriers](#); Mercatus Center, [A Taxonomy of State Accessory Dwelling Unit Laws](#).

<sup>23</sup> Kijakazi, Kilolo, et al., [The Color of Wealth in the Nation’s Capital](#), Urban Institute (2016).

<sup>24</sup> Rothstein, Richard, [The Color of Law](#), Liveright (2017).

<sup>25</sup> Lo, Lydia, et al., [Land Use Reforms for Housing Supply](#), Urban Institute (2020), pg. 2.

<sup>26</sup> Einstein, K.L., et al., [Racial Disparities in Housing Politics: Evidence from Administrative Data](#), Boston University, (2018). The analysis, which examined data from over 2,000 community members participating in planning and zoning board meetings in Greater Boston between 2015 and 2017, found White community members accounted for 80% of the study area population but 95% of public meeting participants. By contrast, Black and Latinx community members each made up 4% and 8% of the study area population but only 2% and 1% of meeting participants.

<sup>27</sup> Enterprise, [Overcoming Barriers](#), pg. 8.

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second, “accessory” unit to their primary single-family house. But even in jurisdictions where accessory dwellings are legal, homeowners face numerous regulatory and financial hurdles that make it difficult to build an ADU. The next two sections discuss these barriers.

### B. Regulatory Barriers

Housing advocates point to three major regulatory barriers hindering ADU development: discretionary or conditional reviews, owner occupancy requirements, and parking requirements.<sup>28</sup> This section summarizes these common ADU regulations as well as additional barriers discussed in the literature such as dimensional requirements.

#### 1. Discretionary Review

A discretionary review process gives local governmental bodies (e.g., County or City Councils) the power to place specific requirements on each ADU development proposal on a case-by-case basis. In jurisdictions with discretionary review processes, homeowners must apply for a special exemption or conditional use permit, a process that is often complex, lengthy, and intimidating. Additionally, conditional use permit applications often come with high, non-refundable fees, require applicants to sit through a public hearing, and/or supply site plan drawings that can be expensive to commission. Ultimately, the local body has discretion over the approval of ADU permits, creating uncertainty for the homeowner and often discouraging them from pursuing ADUs at all.<sup>29</sup>

#### 2. Occupancy Requirements

Homeowners often choose not to build ADUs because local zoning ordinances generally limit the type or number of occupants allowed in them. The strictest of these restrictions is prohibiting homeowners from renting ADUs to non-family members, regardless of the length of the rental term (i.e., both long-term residential leases and short-term vacation rentals). From a policy standpoint, outright rental bans do nothing to increase the supply of badly needed rental housing, nor do they create more affordable housing options in sought-after neighborhoods. Additionally, ADU rental bans prevent homeowners, especially lower- and moderate-income homeowners, from generating additional wealth through rental income.<sup>30</sup>

Even when localities allow homeowners to rent their ADUs, it is common for jurisdictions to apply owner occupancy rules, which requires the homeowner to live in either the primary house or in the ADU. According to a study by the Urban Institute, these restrictions are often meant to “prevent speculation, limit absentee landlordism, and maintain the lot’s appearance.”<sup>31</sup> The study finds owner occupancy requirements are popular with homeowners: 59% of residents surveyed in Alexandria,

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<sup>28</sup> Mercatus Center, [A Taxonomy of State Accessory Dwelling Unit Laws](#), pg. 2.

<sup>29</sup> Enterprise, [Overcoming Barriers](#); Mercatus Center, [A Taxonomy of State Accessory Dwelling Unit Laws](#).

<sup>30</sup> Enterprise, [Overcoming Barriers](#).

<sup>31</sup> Urban Institute, [Designing Accessory Dwelling Unit Regulations](#), pg. 11.

Virginia supported an owner occupancy requirement, and many expressed fears that lax occupancy rules would lead to “homes and their associated ADUs becoming investment properties only owned by trusts or LLCs.”<sup>32</sup> In practice, owner occupancy requirements restrict housing options for property owners by preventing them from renting out both units if they want to move to a different house. Housing experts agree the restriction can also negatively impact appraised home values because appraisers do not account for the ADU as a potential income-generating unit.<sup>33</sup>

Finally, some jurisdictions limit the total number of occupants that can live either in the ADU or in both the ADU and the primary dwelling. For example, an ADU with a two-occupant limit would be inaccessible to small families such as a single parent with two children, or a couple living with an elderly parent. These occupancy requirements further restrict the use of ADUs and make building them less appealing to homeowners.<sup>34</sup>

### 3. Off-Street Parking Requirements

Many local ordinances require homeowners to provide one or more off-street, or on-site, parking spaces for an ADU. Based on a homeowner’s individual circumstances, parking requirements can make building an ADU impractical if not impossible. For example, some sites may have a topographical or physical barrier that makes it challenging and/or expensive to build a parking spot or some sites may be too small for both an ADU and a parking spot. In addition, homeowners wanting to convert an existing parking garage into an ADU may need to replace the converted garage with an additional parking space for the primary dwelling on top of providing off-street parking for the ADU. Finally, researchers observe that additional on-site parking requirements for ADUs are often excessive in areas that are close to public transit. Taken together, off-street parking requirements can be extremely costly for homeowners to meet and can discourage them from creating ADUs.<sup>35</sup>

### 4. Additional Regulatory Barriers

Research finds excessive dimensional requirements that result in units too small to serve and/or be marketable as a residential dwelling often deter homeowners from pursuing an ADU. These requirements include:<sup>36</sup>

- **Setbacks.** Local ordinances apply setback requirements to ensure neighboring properties have access to adequate privacy, light and air. Setbacks typically require a minimum distance between an external, attached and/or detached ADU and the property lines, and some regulations even specify setbacks between the primary dwelling and a detached ADU. Very

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<sup>32</sup> Ibid.

<sup>33</sup> Mercatus Center, [A Taxonomy of State Accessory Dwelling Unit Laws](#).

<sup>34</sup> Enterprise, [Overcoming Barriers](#).

<sup>35</sup> Enterprise, [Overcoming Barriers](#); Mercatus Center, [A Taxonomy of State Accessory Dwelling Unit Laws](#).

<sup>36</sup> Enterprise, [Overcoming Barriers](#).

## Accessory Dwelling Units

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large setbacks, especially on smaller lots, can reduce the developable area to where it becomes infeasible to build an adequately sized ADU.

- **Lot sizes.** Like with setbacks, excessive minimum lot size requirements may discourage homeowners with smaller- and moderately sized lots from building ADUs. Localities often impose lot size minimums to preserve the existing characteristics of low-density single-family zoned neighborhoods. However, studies observe these restrictions “often limit the number of ADUs that could be constructed in more dense single-family home zones with smaller lots, where there is likely higher demand for smaller rentals like rental ADUs.”<sup>37</sup>
- **Size, height, and number.** Most localities require ADUs to be smaller than the primary dwelling. As such, zoning codes often limit ADU size by either imposing a cap on square footage, or a floor-area-ratio (FAR) between the ADU and the total lot size or the ADU and the primary dwelling. While some jurisdictions may allow two-story ADUs by setting height maximums equal to the primary dwelling, some zoning codes impose specific height limits (e.g., 16, 20, or 25 feet). Finally, most zoning ordinances limit the total number of ADUs to one per lot, even on very large lots or those in multifamily zones. Taken together, these dimensional requirements can restrict the overall useability of an ADU.

### C. Financial Barriers

Housing analysts estimate building an ADU can cost homeowners anywhere between \$20,000 to \$400,000 depending on several “hard” and “soft” costs summarized below.<sup>38</sup> Researchers estimate a typical detached ADU costs around \$200,000, with soft costs accounting for nearly 20 to 30% of development expenses.<sup>39</sup>

#### Hard costs:

- The structure type (e.g., interior, attached, or detached);
- The builder; and
- Labor and materials.

#### Soft costs:

- Architectural design fees;
- Legal fees (i.e., land use attorneys); and
- Local permitting fees.

Studies find homeowners typically use personal savings or tap into home equity to pay for ADU construction, making building ADUs less feasible for lower- to moderate-income homeowners. Moreover, stakeholders observe some jurisdictions impose disproportionately high impact fees and/or taxes on ADUs, making the overall cost of development too high for many homeowners. Finally, housing analysts agree that traditional financing mechanisms for housing development are inadequate

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<sup>37</sup> Enterprise, [Overcoming Barriers](#), pg. 14.

<sup>38</sup> [“Calculating The Costs of Building an ADU,”](#) Buildinganadu.com; Urban Institute, [Designing Accessory Dwelling Unit Regulations](#).

<sup>39</sup> Urban Institute, [Designing Accessory Dwelling Unit Regulations](#).

for ADU construction. This section further explores challenges associated with ADU impact fees and traditional financing.

## 1. Impact fees

Local governments impose impact fees, or impact taxes, on homebuilders to account for the additional demands on public services and infrastructure created by a new housing development. Localities use these one-time fees to pay for maintaining infrastructure like roads, sidewalks, parks, sewage and water systems, schools, and police and fire stations.<sup>40</sup> Real estate developers typically pass on impact fees to homebuyers at the time of sale but with ADU's, the burden of paying impact fees falls on the homeowner.<sup>41</sup>

Studies find impact fees can add significantly to the total cost of an ADU project. For example, in Washington state, "depending on what city you live in, so-called impact fees alone might total as much as \$9,000."<sup>42</sup> Impact fee totals vary by jurisdiction and specific zoning rules, but many localities impose a fixed rate fee on ADUs regardless of their size or projected impact on public services, creating a substantial disincentive for homeowners on a budget who want to build a small ADU that will have minimal impact on public infrastructure.<sup>43</sup>

## 2. Financing challenges

Studies on ADU development observe that there is a general lack of familiarity with ADUs within the lending industry. Compared to traditional home construction, many lenders consider ADU development an unconventional, and therefore risky, investment.<sup>44</sup> Additionally, traditional lenders often fail to include the projected ADU rental income when calculating the loan value for borrowers. When lenders do not include the estimated monthly rental income that a long-term rental ADU will generate in their appraisal, they offer less financing based on the inaccurate property value estimate. Homeowners in this situation usually seek additional gap loans to make up the difference in needed financing.<sup>45</sup>

Because of the overall scarcity of lending products designed for ADU construction, homeowners tend to rely on the following financing options to pay for building ADUs, each presenting its own challenges:<sup>46</sup>

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<sup>40</sup> Enterprise, [Overcoming Barriers](#).

<sup>41</sup> Bertolet, Dan, "[Impact Fees are ADU Busters](#)," Sightline Institute (February 15, 2019).

<sup>42</sup> Ibid.

<sup>43</sup> Enterprise, [Overcoming Barriers](#).

<sup>44</sup> Ibid., pgs. 20-25.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

## Accessory Dwelling Units

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- **Cash savings:** The most common path to paying for ADU construction is using cash savings or other liquid assets (e.g., stocks). Stakeholders emphasize this option is often not feasible for lower- to moderate-income homeowners.
- **Home equity lines of credit:** Eligible homeowners can also access a home equity line of credit to pay for ADU development. Borrowers may have to pay variable interest rates, however, and homeowners who default on a home equity line of credit run the risk of losing their home equity.
- **First mortgage cash-out refinance:** In basic terms, this option gives homeowners a new, higher-value home mortgage and lets them tap into their home equity in one lump sum payment. Cash-out refinancing can be risky, however, as the homeowner will have a new mortgage with more debt and higher loan payments.
- **Renovation loans:** Renovation loans are typically fixed-rate, higher-interest loans that cover a portion of the projected costs of ADU construction. However, the covered share is based on an appraisal of the total projected home value after adding the ADU. However, studies find appraisers may not be familiar with ADUs' property values, resulting in undervalued appraisals and lower access to renovation financing. These loans also often require high credit scores, making them inaccessible to many homeowners.
- **Construction loans:** Construction loans are high-interest, short-term financing mechanisms that expire upon completion of the project. When construction is complete, the homeowner can pay off the loan balance or restructure it into a permanent loan.

### D. Policy Strategies

Research on best practices for ADU development identifies several policies designed to ease barriers to ADU construction. This research finds that in the last five years jurisdictions that have implemented such pro-ADU reforms have seen ADU permitting and construction increase.<sup>47</sup> While a discussion of specific legal changes in select states and localities appears in the next chapter, this section presents an overview of policy strategies local jurisdictions can adopt to make it easier for homeowners to build ADUs on their properties.

#### 1. Adopt By-Right Processes

Several jurisdictions maintain discretionary review over ADU development, requiring homeowners to navigate lengthy, costly, and often discouraging processes to obtain conditional use permits. Studies point out that discretionary review processes give localities broad authority to regulate the size,

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<sup>47</sup> Mercatus Center, [A Taxonomy of State Accessory Dwelling Unit Laws](#), pgs. 3-5.

design, placement, and occupancy of every proposed ADU project, making building an ADU infeasible in many cases.<sup>48</sup>

Instead, best practice research advocates for local governments to adopt by-right development processes for ADUs. Under a by-right process, “an ADU development proposal would receive a permit as long as it complies with the current underlying zoning requirements for the single-family zoned lot where it will be constructed.”<sup>49</sup> By-right processes streamline ADU approvals and allow for quicker construction.<sup>50</sup> As discussed in the next chapter, many jurisdictions, including Montgomery County, have already moved to by-right processes for ADUs, and some states have even strengthened their state laws to ease ADU development by banning discretionary review statewide.

## 2. Ease or Eliminate Owner Occupancy Requirements

It is common to see owner occupancy requirements on ADUs and/or main dwellings in local ordinances. As a report by Urban Institute points out, mandating that the homeowner continue to live in either the ADU or the primary home can limit investment. The report argues, “allowing both units to be rented out improves the financial viability of ADUs and expands the housing supply.”<sup>51</sup>

Housing researchers generally agree that easing or eliminating owner occupancy requirements can help localities work toward affordable housing goals. Occupancy restrictions on ADUs not only limit the supply of affordable rental housing in single-family zoned areas, but they also suppress the amount of wealth lower- and moderate-income homeowners can potentially generate from developing and renting out an ADU and/or the main unit.<sup>52</sup>

Moreover, policy researchers have found owner occupancy requirements can be ineffective. A study by Urban Institute mentions “[o]ne neighborhood in Portland that required owner occupancy had fewer owners who lived on the property (35 percent) than the rest of the city (90 percent).”<sup>53</sup> The report describes how Portland ultimately overturned the owner occupancy policy because it was difficult to enforce and in fact discouraged ADU development by homeowners.<sup>54</sup> Data presented in the next chapter show how changes to owner occupancy rules have helped boost ADU construction in some West Coast jurisdictions.

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<sup>48</sup> Mercatus Center, [A Taxonomy of State Accessory Dwelling Unit Laws](#), pg. 4.

<sup>49</sup> Enterprise, [Overcoming Barriers](#), pg. 12.

<sup>50</sup> Freemark, Yonah and Velasco, Gabi, [Keys to Successful ADU Rollout in Louisville: Accessory Dwelling Unit Strategies to Build Better Communities for All](#), Urban Institute (2021).

<sup>51</sup> Ibid.

<sup>52</sup> Enterprise, [Overcoming Barriers](#), pg. 13.

<sup>53</sup> Urban Institute, [Designing Accessory Dwelling Unit Regulations](#), pg. 11.

<sup>54</sup> Ibid.

### 3. Ease Off-Street Parking Mandates

Local opposition to ADU development often centers around concerns that denser single-family neighborhoods will lead to a range of issues including more traffic and increased demand for parking. Many local ADU ordinances attempt to solve for the parking issue by requiring homeowners to provide a minimum number of off-street, or on-site, parking spaces. However, researchers find these regulations are often too far-reaching and fail to “take into consideration factors that shape on ground (actual) demand for this type of parking,”<sup>55</sup> such as:<sup>56</sup>

- The additional parking space(s) may go unused because not all ADU residents own private vehicles; and
- ADU residents living in neighborhoods that are transit-rich or close to urban centers may choose alternate modes of transportation such as bicycles, buses, ride-share services, or walking.

There is also little evidence showing ADUs lead to parking issues. While this is largely due to a dearth of research on ADUs overall, one analysis estimates ADUs in Portland had an average of 0.93 cars per dwelling, compared to the city average of 1.31 for all new rentals, and the national average of 1.88 for all U.S. households. The analysis concludes that ADUs are likely to have a negligible effect on parking conditions since ADU households have fewer cars than other households and because ADUs make up a very small percentage of housing overall.<sup>57</sup>

Best practices recommend localities at a minimum relax or waive parking requirements for ADUs in areas that are close to transit hubs or easily accessible by public transportation. Studies find doing so incentivizes homeowners to build ADUs by reducing the costs associated with building additional parking.<sup>58</sup>

### 4. Ease Excessive Dimensional Requirements

Municipalities that impose excessive dimensional requirements on ADUs such as lot size and setback minimums and size and height maximums, prevent homeowners with smaller lots from building additional units that are feasible or desirable to live in. According to best practice research, jurisdictions wanting to increase ADU development should ease dimensional requirements that make the developable area for ADUs too small.<sup>59</sup> For example, California law requires all localities to allow ADUs of at least 800 square feet if they remain within certain setbacks and under 16 feet high.

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<sup>55</sup> Enterprise, [Overcoming Barriers](#), pgs. 13-14.

<sup>56</sup> Ibid.

<sup>57</sup> Peterson, Kol, ["Do ADUs cause neighborhood parking problems?"](#) Accessory Dwellings (July 16, 2014); Palmeri, Jordan, [Accessory dwelling units in Portland, Oregon: evaluation and interpretation of a survey of ADU owners](#). Materials Management, State of Oregon Department of Environmental Quality (2014).

<sup>58</sup> Enterprise, [Overcoming Barriers](#), pgs. 13-14.

<sup>59</sup> Ibid., pgs. 14-15.

According to researchers at George Mason University, this requirement in state law has helped Los Angeles achieve widespread ADU construction.<sup>60</sup>

## 5. Limit or Waive Impact Fees

As discussed earlier in this chapter, development impact fees can hinder ADU construction, particularly of smaller ADU projects where the fees make up a larger percentage of the total development cost relative to a more expensive ADU project. To spur development, ADU advocates recommend localities limit or even waive impact fees for ADUs.

Policymakers are increasingly adopting this strategy to encourage construction of ADUs. For example, Washington passed statewide legislation in 2023 that now requires localities to limit ADU impact fees to 50% of the fees for the principal unit.<sup>61</sup> Research shows that when jurisdictions reduce or eliminate ADU impact fees altogether, permit applications increase.<sup>62</sup> In 2010, Portland, Oregon waived development fees that charged every ADU project with an up-front fee of up to \$15,000.<sup>63</sup> Since the change, the city has seen a dramatic increase in both ADU permit applications and construction (see Chapter 3, Figure 3.2). Renton, Washington also saw increases in the number of ADU permit applications after it cut its ADU permitting and impact fees by half in 2017, saving homeowners about \$11,000 in total charges.<sup>64</sup>

Some jurisdictions have implemented a variable impact fee structure that accounts for the demands placed on public services by different types of ADUs. ADUs built in compact neighborhoods already served by existing public infrastructure do not place the same development demands as ADUs built in less connected regions that require new infrastructure and services. For example, Spokane, Washington charges ADUs built in its high-density core \$106, but ADUs built farther away from its core are charged up to \$1,000.<sup>65</sup> As the Urban Institute observes, “ADUs increase density in neighborhoods and there-fore cost the city less to service than infrastructure expansion for suburban construction, so the higher density can help recoup some costs of waiving the fees.”<sup>66</sup>

## 6. Expand Financing Options

As discussed earlier, financing mechanisms available to homeowners are not well suited to ADUs. Because traditional lenders are unfamiliar with ADUs and find them higher risk investments, available lending products often come with high borrowing costs. As such, most homeowners resort to using

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<sup>60</sup> Mercatus Center, [A Taxonomy of State Accessory Dwelling Unit Laws](#), pg. 3.

<sup>61</sup> Peterson, Kol, ["ADU Legislative Initiatives - History in the Making \(Part IV\),"](#) Accessory Dwellings (April 24, 2023).

<sup>62</sup> Sightline Institute, ["Impact Fees are ADU Busters."](#)

<sup>63</sup> Morales, Margaret, ["Two Cascadian Cities Extend Greater Welcome to ADUs,"](#) Sightline Institute (May 14, 2018).

<sup>64</sup> Sightline Institute, ["Impact Fees are ADU Busters."](#)

<sup>65</sup> Ibid.

<sup>66</sup> Urban Institute, [Designing Accessory Dwelling Unit Regulations.](#)

## Accessory Dwelling Units

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their personal savings or home equity to pay for ADU construction, which can be a challenge for lower- and moderate-income households.<sup>67</sup>

The research points to examples of housing groups, community lenders, and local governments who are meeting this need at the local level with financing programs designed specifically to make ADUs more accessible to homeowners of varying income levels, including<sup>68</sup>:

- **The Boston Home Center's ADU Home Loan Program** offers Boston homeowners of one-to-three-unit properties, whose annual household incomes do not exceed 135% of area median income (AMI), with a zero percent interest, deferred loan of up to \$50,000 for an ADU project. The loan has no monthly payment and does not become due for repayment until the owner sells, transfers ownership, or undertakes a cash-out refinance of the home. Homeowners with incomes between 120 and 135% of AMI are required to match the entire loan amount with their own funds or an additional loan.<sup>69</sup>
- **The City of Napa Junior Unit Initiative Program** provides homeowners with forgivable loans of up to \$50,000 to create a Junior Unit (a flexible, independent apartment created from one or more bedrooms in an existing single-family home) or a Conversion ADU (ADUs created from attached or detached accessory structures). Homeowners receive technical assistance and are also eligible for grants up to \$5,000 if they include Americans with Disabilities Act (ADA) improvements in the ADU.<sup>70</sup>
- **Affordable housing programs** like a partnership between Los Angeles and housing developers to finance ADUs for owners who agree to rent to people using housing vouchers,<sup>71</sup> and Washington, DC's Residential Accessory Apartment Program (RAAP)<sup>72</sup> that requires residents with incomes above 120% of the Median Family Income (MFI) to rent their ADU to households with incomes below 60% of the MFI.
- **Cost-sharing schemes** like in Portland, OR, where a nonprofit organization purchases and pays for the installation of a prefabricated ADU in return for half of the owner's rent revenue.<sup>73</sup>

However, to bring ADU construction to scale, housing advocates call on governments and government-sponsored enterprises (i.e., Fannie Mae and Freddie Mac, who guarantee around 70% of all

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<sup>67</sup> Soloman, Adina, [What's Blocking an ADU Boom?](#), Planning Magazine, American Planning Association (APA) (2021).

<sup>68</sup> Goodman, Laurie and Greene, Solomon, ["To Unleash Housing Supply, Allow and Finance Accessory Dwelling Units,"](#) Urban Institute (February 3, 2020).

<sup>69</sup> [Additional Dwelling Unit Loan Program Fact Sheet](#), The Boston Home Center.

<sup>70</sup> ["Junior Unit Initiative Program,"](#) City of Napa.

<sup>71</sup> ["LA ADU Accelerator Program,"](#) City of Los Angeles.

<sup>72</sup> ["Residential Accessory Apartment Program \(RAAP\),"](#) District of Columbia Department of Housing and Community Development.

<sup>73</sup> [Dweller.com.](#)

outstanding mortgages<sup>74</sup>) to develop mortgage products specifically tailored toward ADU financing and accessible to lower- and moderate-income borrowers.<sup>75</sup>

The Federal Housing Administration (FHA) recently announced a policy change in this direction. The new policy allows mortgage lenders to include projected future income from a rental ADU in the borrower's qualifying income. This change will allow more borrowers wanting to build an ADU to qualify for FHA financing, including 203(k) Rehabilitation mortgages.<sup>76</sup>

## E. Market Conditions

Housing research also notes the importance of market conditions in supporting ADU construction. One study of local ADU ordinances points out that even if a locality adopts many of the pro-ADU policies described in the previous section, ADUs are unlikely to be built in large numbers if there is minimal renter demand for such units. Conversely, ADUs are likely to be built in large numbers where preexisting housing conditions either provide enough space to build an additional unit or allow for an easy ADU conversion.<sup>77</sup> For example, the authors explain how the market conditions in three cities influenced the specific types of ADUs that developed there:

“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>78</sup>

The study authors also note how a region's demographics can influence the market for ADUs, for example:

- Older people seeking to age safely in place are likely to build ADUs;
- As household sizes in the U.S. shrink, smaller rental ADUs in single-family zoned areas are becoming more desirable; and
- Communities with lower-income residents or multigenerational families will likely have significant demand for single-family homes that can affordably accommodate more than one household.

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<sup>74</sup> ["To Unleash Housing Supply, Allow and Finance Accessory Dwelling Units,"](#) Urban Institute; Dehan, Andrew, ["Fannie Mae vs. Freddie Mac: What's the difference?"](#), Bankrate (January 9, 2024).

<sup>75</sup> ["What's Blocking an ADU Boom?"](#), APA.

<sup>76</sup> ["Federal Housing Administration Expands Access to Mortgage Financing for Homes That Have or Will Include Accessory Dwelling Units,"](#) Press Release, U.S Department of Housing and Urban Development (October 16, 2023); FHA 203(k) Rehabilitation mortgages enable homebuyers and homeowners to finance both the purchase (or refinancing) of a house and the cost of its rehabilitation through a single mortgage or to finance the rehabilitation of their existing home. ["203\(K\) Rehabilitation Mortgage Insurance Program"](#), U.S Department of Housing and Urban Development.

<sup>77</sup> Mercatus Center, [A Taxonomy of State Accessory Dwelling Unit Laws](#), pg. 3.

<sup>78</sup> Ibid.

## Chapter 3. Overview of ADU Laws

As introduced in the previous chapter, researchers and housing practitioners agree that a major barrier to ADU adoption are weak state laws that give localities far-reaching authority to restrict ADU development. Eight states currently have laws broadly allowing ADU construction: California, Connecticut, Maine, New Hampshire, Oregon, Utah, Vermont, and Washington.<sup>79</sup> Table 3.1 lists the most recent ADU laws passed in these states. These laws vary in how much discretion they give local jurisdictions to approve, regulate, and/or otherwise limit homeowners from adding ADUs to their property.<sup>80</sup>

**Table 3.1. State ADU Laws**

| State         | Most Recent Statewide ADU Law  | Year         |
|---------------|--|--------------|
| California    | Accessory Dwelling Units, Senate Bill 13 ( <a href="#">link</a> )  | 2019         |
| Connecticut   | 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 ( <a href="#">link</a> ) | 2021         |
| Maine         | An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions, House Paper 1489, 130th Maine Legislature ( <a href="#">link</a> )                                      | 2022         |
| New Hampshire | 2022 New Hampshire Revised Statutes; Title LXIV - Planning and Zoning; Title 674 - Local Land Use Planning and Regulatory Powers; Section 674:72 - Accessory Dwelling Units ( <a href="#">link</a> )   | 2022         |
| Oregon        | House Bill 2001, 80 <sup>th</sup> Oregon Legislative Assembly ( <a href="#">link</a> )<br>Senate Bill 391, 81 <sup>st</sup> Oregon Legislative Assembly ( <a href="#">link</a> )   | 2019<br>2021 |
| Utah          | Title 10: Utah Municipal Code; Chapter 9a: Municipal Land Use, Development, and Management Act; Part 5: Land Use Regulations; Section 530: Internal Accessory Dwelling Units ( <a href="#">link</a> )  | 2021         |
| Vermont       | Title 24: Municipal and County Government; Chapter 117: Municipal and Regional Planning and Development; Subchapter 007: Bylaws; § 4412: Required Provisions and Prohibited Effects ( <a href="#">link</a> )   | 2023         |
| Washington    | House Bill 1337, 68th Legislature ( <a href="#">link</a> )   | 2023         |

Source: Table adapted from *A Taxonomy of State Accessory Dwelling Unit Laws*, Mercatus Center, George Mason University.

<sup>79</sup> While other states have also passed ADU legislation, scholars agree these eight have passed the strongest state ADU legislation to date, i.e., laws that will increase the number of ADUs built in those states. In many states, ADU legislation remains so limiting that researchers argue it is not worth considering as actual ADU legislation.

Peterson, Kol, "[ADU Legislative Initiatives - History in the Making \(Part IV\).](#)"

<sup>80</sup> Mercatus Center, [A Taxonomy of State Accessory Dwelling Unit Laws](#).

**ADU Laws in Maryland.** ADU ordinances in Maryland vary by city and county. Maryland does not currently have a state ADU law but has recently laid the groundwork for statewide legislation. During its 2023 regular session, the Maryland General Assembly adopted Senate Bill 382 establishing the Accessory Dwelling Units Policy Task Force. Led by the Maryland Planning Department (MPD), the Task Force will: 1) document state and local codes, laws, ordinances, and policies about developing ADUs in single-family residential zones; 2) study best practices to standardize the local ADU review process; and 3) submit legislative and policy recommendations to Governor Wes Moore and the Maryland General Assembly by June 30, 2025.<sup>81</sup>

Montgomery County loosened restrictions on ADU construction considerably in 2019, making it much easier for homeowners to build these units. The table on page 21 compares components of the County’s ADU regulations with policies designed to encourage ADU construction described in the research and with ADU regulations in three other Maryland jurisdictions and jurisdictions on the West Coast. It reveals three main takeaways:

- Unlike other Maryland jurisdictions, many of the County’s ADU rules align with best practices, including allowing by-right development, waiving off-street parking requirements for some units (i.e., those with enough on-street parking or close to public transit), and exempting ADUs from development impact taxes;
- There is opportunity to further align the County’s ADU policies with recommended practices, specifically by easing or waiving owner occupancy requirements for renting ADUs; and
- Loosening ADU restrictions has resulted in increased ADU development in jurisdictions on the West Coast.

The remainder of this chapter explores the regulatory landscape for ADUs in Montgomery County, Anne Arundel County, and the cities of Annapolis and Rockville. It then describes the long history of ADU reforms on the west coast and the impact they have had on ADU development in the region.

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<sup>81</sup> [Senate Bill 382](#), *Accessory Dwelling Unit Policy Task Force*, Maryland General Assembly, 2023 Regular Session; [Report on Activities to Governor Wes Moore and the Maryland General Assembly](#), Accessory Dwelling Unit Policy Task Force, Maryland Department of Planning (2023).

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**Table 3.2. ADU Regulation Components in Montgomery County, MD and in Selected Counties, Cities, and States**

| Regulation Components        | Montgomery County, MD               | Anne Arundel County, MD | Annapolis, MD                       | Rockville, MD               | California                              | Oregon/Portland, OR | Washington/Seattle, WA |
|------------------------------|-------------------------------------|-------------------------|-------------------------------------|-----------------------------|---|---------------------|------------------------|
| By-right development         | Yes                                 | No                      | Sometimes                           | No***                       | Yes                                     | Yes                 | Yes                    |
| Owner occupancy requirement  | Yes*                                | Yes                     | Yes                                 | Yes, for at least 6 mo./yr. | No                                      | No                  | No                     |
| Parking requirements         | Sometimes                           | No                      | No                                  | Sometimes                   | Sometimes                               | No                  | Sometimes              |
| Minimum lot size             | No                                  | No                      | No                                  | Yes                         | No                                      | No                  | Yes                    |
| Maximum unit size            | Yes, for detached and some attached | Yes, for detached       | Yes, for detached and some attached | Yes, for some attached      | Yes, for detached                       | Sometimes           | Sometimes              |
| Maximum number of units      | 1 per lot                           | 1 per lot               | 1 per lot                           | 1 per lot                   | 2 per lot                               | 2 per lot           | 2 per lot              |
| Impact fee exemption         | Yes                                 | Yes                     | No                                  | No                          | Yes, for units smaller than 750 sq. ft. | Yes                 | No****                 |
| Short-term rentals allowance | No                                  | No**                    | Yes                                 | No                          | Sometimes                               | Yes                 | Sometimes              |

Table adapted from *Designing Accessory Dwelling Unit Regulations: Recommendations for the City of Alexandria, Virginia*, Urban Institute.

Sources: Montgomery County - [Zoning Ordinance § 59-3](#) and [Code § 29-19\(b\)](#); Anne Arundel County - [Bill No. 6-23](#); Annapolis - [Ordinance § 21.64](#); Rockville - [ZTA No. TXT2023-00263](#); California - [Senate Bill 13](#); Oregon - [Senate Bill 391](#); Washington - [House Bill 1337](#).

\*Complies with Montgomery County ADU rental licensing requirements.

\*\*Anne Arundel County prohibits the individual short-term rental of the principal single-family detached dwelling or ADU but allows the short-term rental of the property as a whole.<sup>82</sup>

\*\*\*Currently, Rockville only allows attached ADUs as a conditional use in residential zones.

\*\*\*\*Washington state limits ADU impact fees to 50% of the fee for the principal dwelling.

<sup>82</sup> Legislative Summary, [Bill No. 6-23 - Subdivision and Development - Zoning - Accessory Dwelling Units](#), County Council of Anne Arundel County (2023).

## A. Montgomery County

Article 59, Section 3 of the Montgomery County Zoning Ordinance outlines the County's ADU requirements. In 2019, the County Council amended the zoning rules and passed companion legislation to make it easier for homeowners in residential detached zones R-200, R-90, and R-60 to build ADUs.<sup>83</sup> Prior to the changes, the County required a special exception (i.e., conditional use) approval for ADUs. Now, the County's Department of Housing and Community Affairs (DHCA) issues licenses for ADUs if they meet the zoning requirements described below and do not have a special exception approved before May 20, 2013.<sup>84</sup>

**Zoning Requirements.** The County's zoning ordinance requires all ADUs meet certain minimum standards to qualify for a license. Required standards that were in place prior to 2019 and not affected by the amendments include:<sup>85</sup>

- **Entrance:** The ADU must have a separate entrance;
- **Height:** The maximum structure height for a detached ADU depends on the residential zone where the property is located;
- **Number of units:** Only one ADU is permitted for each lot;
- **Rental:** The ADU must be for long-term residential rentals, not for short-term rentals (e.g., AirBnB);<sup>86</sup> and
- **Total occupancy:** The maximum number of occupants is limited by space, use, and location requirements provided for in Chapter 26 of the County Code. However, the total number of occupants who are 18 years or older is limited to two (2).

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<sup>83</sup> Montgomery County Zoning Ordinance § 59-4.4 states that zone R-200 is predominantly for residential detached houses with a minimum lot size of 20,000 square feet. Zones R-90 and R-60 are for moderate density residential use with minimum lot sizes of 9,000 square feet and 6,000 square feet, respectively. Zones R-90 and R-60 are predominantly for residential detached houses, though a limited number of other building types may be allowed under the optional method of development.; Zoning Text Amendment 19-01, [Accessory Residential Uses – Accessory Apartments](#), Montgomery County, Maryland, July 23, 2019.

<sup>84</sup> ["Accessory Dwelling Unit Licenses & Waivers,"](#) Office of Zoning and Administrative Hearings, Montgomery County Council.

<sup>85</sup> Montgomery County Zoning Ordinance § 59-3.3.3(A-C).; Montgomery County Code § 29-19(b).; [Zoning and Permitting Requirements for Accessory Dwelling Units \(ADUs\)](#), Montgomery County Department of Permitting Services; Schinder, Ileana, ["Montgomery County just made it easier to build an accessory apartment,"](#) Greater Greater Washington (July 25, 2019).

<sup>86</sup> The County Code allows either an ADU or a short-term rental on a single property, but not both. To convert an ADU into a short-term rental, the structure would have to be fundamentally changed so that it is not a complete dwelling unit, and a short-term rental license must be procured. (Staff Report – [Bill 22-19, Accessory Dwelling Unit – Licensing – Requirements – Amendments](#), Montgomery County, Maryland, September 24, 2019.).

## Accessory Dwelling Units

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The new zoning regulations made the following significant changes:<sup>87</sup>

- **Age of the building:** Now, new homes can be built with ADUs already in the building plans. Previously, primary dwellings had to be at least five years old to qualify for an ADU license;
- **Distance:** There is no minimum distance required between ADUs under the new regulations. ADUs were previously restricted to one every 300 feet;
- **Lot size:** The new regulations removed the requirement for detached ADUs to be on lots that were at least one acre. Now, detached ADUs can be on lots as small as 6,000 square feet (0.137 acres) if they meet all other zoning rules, making them an option in higher-density areas of the County and on small lots in single family zones.
- **Maximum size:** Before the amendment, the size of an ADU was restricted to the lesser of 50% of the primary dwelling or 800 square feet. After the amendment, attached ADUs can be a maximum of 1,200 square feet, unless it is in a basement or cellar, in which case the ADU can match the footprint of the primary dwelling, and detached ADUs can be 50% of the footprint of the principal dwelling, 10% of the lot area, or 1,200 square feet, whichever is less; and
- **Parking:** The requirement for additional on-site parking for the ADU is repealed if the property demonstrates it has adequate on-street parking or is within one (1) walking mile of any Metrorail, Purple Line, or MARC Rail station. If the ADU requires the construction of a new driveway, then at least two (2) on-site parking spaces are required.
- **Residency:** To obtain an ADU rental license, an owner's primary residence must be the principal dwelling or the accessory dwelling; both units may not be rented out;

**Permits and Fees.** The construction or modification of any accessory structure or building requires a building permit from the Department of Permitting Services (DPS). Based on the type of structure, ADUs may also require electrical, fire protection, mechanical, right-of-way, and drainage permits. Applicants must pay a building permit fee and any additional fees based on other required permits. Additionally, detached ADUs are subject to Residential Use and Occupancy Certificate fees. According to DPS, the permitting process and associated fees for a new detached ADU is the same as for a new single-family home. For an attached ADU, or an internal/interior ADU, the permitting process is the same as that for an addition to a home. The final fees are calculated by DPS when the permit is issued.<sup>88</sup>

According to data from DPS displayed in Table 3.3, the number of ADU permits issued yearly has increased since the County changed its zoning regulations. Over the last four years, the number of new ADU permits issued in the County has grown by 133%, from 27 in 2020 to 63 in 2023. The most significant growth came in the first year after the County adopted ADU reforms: the number of ADU

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<sup>87</sup> ["Montgomery County just made it easier to build an accessory apartment,"](#) Greater Greater Washington; ["County ReMARC's – Accessory Dwelling Units \(ADU\),"](#) Newsletter, Office of the County Executive (May 2019).

<sup>88</sup> [Guidelines for Accessory Dwelling Units](#), Montgomery County Department of Permitting Services.

permits issued jumped to 74 in 2021, an increase of 174% from the previous year. Since then, the number of new ADU permits issued has decreased each year.<sup>89</sup>

**Table 3.3. The number of new ADU permits issued in Montgomery County, MD, 2020-2023**

| Year | Permits Issued |
|------|----------------|
| 2020 | 27             |
| 2021 | 74             |
| 2022 | 72             |
| 2023 | 63             |

Source: Montgomery County Department of Permitting Services

**County Development Impact Taxes.** The County assesses a development impact tax on new residential and commercial buildings and additions to commercial buildings. The County has development impact taxes for transportation (assessed on both residential and commercial projects) and schools (assessed on residential projects only).<sup>90</sup> The intent of these taxes is to fund, in part, “the improvements necessary to increase the transportation or public-school systems capacity, thereby allowing development to proceed.”<sup>91</sup>

Generally, new residential development projects must pay development impact taxes to receive a building permit from DPS. However, DPS does not charge a development impact tax for ADUs because they are accessory to the primary use and on the same lot.<sup>92</sup>

## B. Other Maryland Jurisdictions

This section describes recent ADU reforms adopted by three jurisdictions in Maryland: Anne Arundel County, Annapolis, and Rockville.

### 1. Anne Arundel County, MD

Anne Arundel County passed legislation in April of 2023 that loosened several restrictions to align their ADU regulations more closely with best practices. Notably, the new legislation exempts ADUs from

<sup>89</sup> Data from Montgomery County Department of Permitting Services.

<sup>90</sup> Office of Legislative Oversight, [Economic Impact Statement, Expedited Bill 25-23, Taxation – Development Impact Taxes for Transportation and Public School Improvements – Amendments](#), Montgomery County, Maryland, June 13, 2023.; See Montgomery County Code, Article IV and Article V.

<sup>91</sup> [“Development Impact Taxes,”](#) Montgomery County Department of Permitting Services.

<sup>92</sup> OLO consulted with the Council’s Legislative Attorney who confirmed with both the Department of Permitting Services (DPS) and Montgomery Planning that ADUs are exempt from development impact taxes because they fit within the exception stated in Section 52-41(h) of the County Code. The Council’s Legislative Attorney reasons this is because adding an ADU does not turn the single-family home into a multi-unit property and a homeowner cannot sell the ADU without selling the primary residence. (Montgomery County Code § 52-41(h)).

## Accessory Dwelling Units

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development impact fees.<sup>93</sup> Additionally, the new rules repeal requirements for ADUs to have additional parking, to be built on a minimum lot size, and to be attached to or within the principal structure.<sup>94</sup>

The regulations retain both discretionary review for ADUs (in all but one of Anne Arundel County's residential districts) and the requirement for the property owner to live in either the primary or accessory dwelling. Compared to Montgomery County's recent reforms, Anne Arundel's ordinance places stricter size requirements on detached units, restricting them to the lesser of 800 square feet or 50% of the floor area of the primary dwelling. Anne Arundel County allows short-term rental of the entire property but restricts the individual short-term rental of the ADU or primary dwelling.<sup>95</sup>

### 2. Annapolis, MD

The City of Annapolis passed legislation in October of 2021 that allows homeowners to build a maximum of one ADU on most residentially zoned lots but has retained discretionary authority over permitting ADUs in select residential zones. As in both Montgomery and Anne Arundel counties, Annapolis requires property owners to live in either the main home or in the ADU. Like in Montgomery County, the footprint of the ADU can match the primary dwelling if it is an internal unit, such as the basement. If not, Annapolis limits the size of any ADU to 850 square feet. ADUs in Annapolis do not require additional parking, and the city allows for both short- and long-term rentals of ADUs.<sup>96</sup>

### 3. Rockville, MD

Rockville passed zoning amendments in October of 2023 that allow attached ADUs as a conditional use in residential zones.<sup>97</sup> Under the new regulations, the property owner must occupy either the main dwelling or the ADU for at least six months out of the year. As in other jurisdictions, size requirements apply to attached ADUs if they are an addition to an existing dwelling. In these cases, attached ADUs must be equal to or less than 50% of the total floor area of the main house.

Parking requirements depend on the type of attached ADU and its proximity to public transit, specifically.<sup>98</sup>

- No off-street parking is required if an attached ADU does not require modifications to the exterior of the existing home (e.g., an interior/internal unit);
- Two (2) off-street parking spaces are required if an ADU requires modifications to the exterior of the existing dwelling (e.g., a bump out);

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<sup>93</sup> [Legislative Summary, Bill No. 6-23 – Subdivision and Development – Zoning, Accessory Dwelling Units](#), Anne Arundel County, Maryland, January 23, 2023.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> ["Accessory Dwelling Unit Guide,"](#) City of Annapolis, Maryland; [Annapolis, Maryland Code of Ordinances § 21.64.010.](#)

<sup>97</sup> [Zoning Text Amendment No. TXT2023-00263](#), City of Rockville, Maryland, October 9, 2023.

<sup>98</sup> ["Accessory Buildings, Structures, and Dwellings,"](#) City of Rockville.

- Only one (1) off-street parking space is required if an attached ADU is located within 7/10<sup>th</sup> of a mile walking distance of a Metro station.

Rockville does not allow detached ADUs but is currently seeking public comment on proposed regulatory changes that would also allow detached ADUs as a conditional use in residential zones.<sup>99</sup>

## C. West Coast Jurisdictions

State and local governments along the west coast have had long histories with ADU reform. In the last five years, California, Oregon, and Washington, as well as the cities of Portland and Seattle, have passed some of the strongest ADU laws in the country. This section describes the ADU laws in these states and localities and presents data showing how recent reforms have impacted ADU development in this region.

### 1. California

In 1982, California banned local jurisdictions from explicitly prohibiting ADU development but did not curtail their authority over enacting discretionary approval procedures, including regulating the size and placement of ADUs and requiring homeowners to live in either the primary dwelling or the ADU. While building ADUs was technically legal, these local constraints made doing so practically infeasible for California homeowners. The state changed the law in 2002 to require a non-discretionary, or “by-right,” approval process for ADUs but localities continued to limit development by imposing costly fees on ADU construction.<sup>100</sup> In 2019, California enacted several regulatory changes aligned with best practices for making it easier to build ADUs, including:<sup>101</sup>

- Allowing ADUs on land zoned for single or multi-family homes;
- Requiring localities to approve ADUs through a non-discretionary, or “by-right,” process within 60 days;
- Eliminating minimum lot size requirements;
- Eliminating impact fees for ADUs smaller than 750 square feet;
- Barring owner occupancy rules for five years; and
- Preventing homeowners’ associations from banning ADUs.

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<sup>99</sup> Ibid.

<sup>100</sup> Mercatus Center, [A Taxonomy of State Accessory Dwelling Unit Laws](#); Calder, Vanessa Brown, and Gygi, Jordan, [“The Promising Results of Accessory Dwelling Unit Reform,”](#) Cato Institute (June 28, 2023).

<sup>101</sup> Peterson, Kol, [“ADU Legislative Initiatives - History in the Making \(Part III\),”](#) Accessory Dwellings (September 18, 2019); [“The Promising Results of Accessory Dwelling Unit Reform,”](#) Cato Institute.

## Accessory Dwelling Units

Data show these legislative changes led to a significant increase in both the number of ADU permits granted and the number of ADUs constructed in California. As Figure 3.1 shows, between 2019 and 2022, ADU permitting grew by 88% and construction by nearly 200%.<sup>102</sup>

**Figure 3.1. The number of ADUs permitted and constructed in California, 2018-2022**

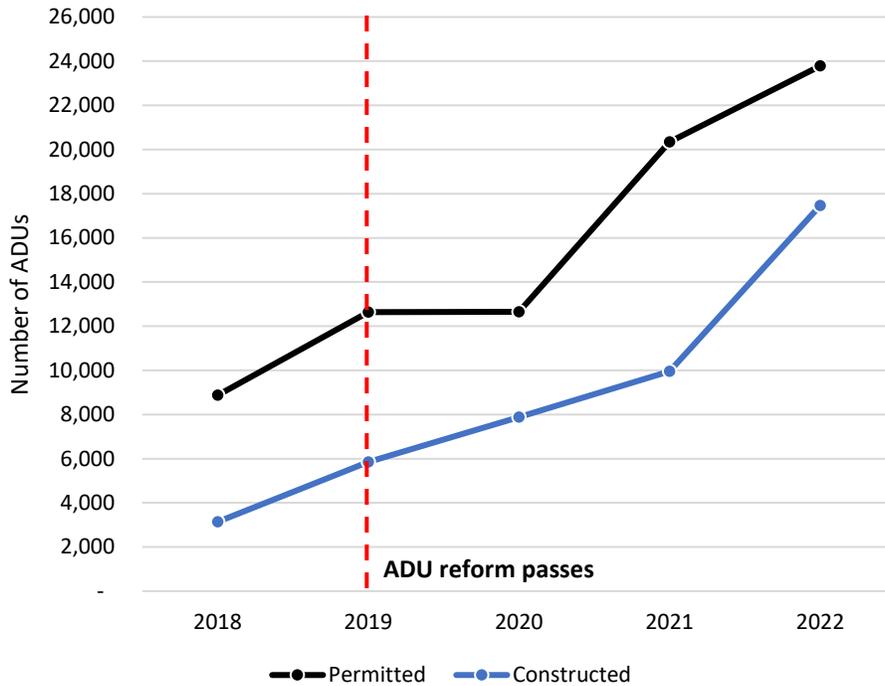


Chart reproduced from "[The Promising Results of Accessory Dwelling Unit Reform](#)," Cato Institute.  
Data source: "[Annual Progress Reports - Data Dashboard and Downloads](#)," California Department of Housing and Community Development.

<sup>102</sup> "[The Promising Results of Accessory Dwelling Unit Reform](#)," Cato Institute.

## 2. Oregon and Portland, OR

In 2019, Oregon passed pro-ADU legislation making it the first state to eliminate owner occupancy restrictions and off-street parking requirements for ADUs statewide. Oregon's legislation also effectively ended exclusive single-family zoning in the state by allowing duplexes in every low-density residential area in cities with more than 10,000 residents and in all urban lots in the Portland metro area. In many cases, the legislation also allowed triplexes, fourplexes, attached townhomes, and cottage clusters in cities with more than 25,000 residents within the Portland metro area.<sup>103</sup>

In 2021, Oregon's legislature passed a bill that allows counties to permit ADUs in rural residential zoned areas, provided:<sup>104</sup>

- The lot is at least two acres in size;
- There is one existing single-family dwelling on the lot;
- The ADU has a maximum of 900 square feet useable floor space;
- The ADU is located within 100 feet of the existing single-family dwelling; and
- The ADU cannot be used for overnight rental purposes (the minimum rental period must be 45 days).

The state legislation drew in part from the city of Portland's long history of policies facilitating ADU development. Starting in 1998, Portland began relaxing restrictions on ADU construction, including eliminating the requirement for homeowners to live on the property to get an ADU permitted. In 2010, Portland did away with costly development fees that inhibited ADU construction and adopted additional ADU reforms in 2020 (which went into effect in 2021) allowing construction of up to two ADUs and removing off-street parking requirements.<sup>105</sup>

As in California, preliminary data from Portland suggests these regulatory changes are stimulating ADU development. Figure 2.2 on the next page shows increases in both ADU permitting and construction after both the 2010 and 2020 reforms.

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<sup>103</sup> Peterson, Kol, "[ADU Legislative Initiatives - History in the Making \(Part I\)](#)," Accessory Dwellings (July 8, 2019); Enterprise, [Overcoming Barriers](#).

<sup>104</sup> [Senate Bill 391](#), 81<sup>st</sup> Oregon Legislative Assembly, June 9, 2021

<sup>105</sup> "[Facilitating the development of accessory dwelling units in Portland, OR](#)," Local Housing Solutions; "[The Promising Results of Accessory Dwelling Unit Reform](#)," Cato Institute.

## Accessory Dwelling Units

Figure 3.2. The number of ADUs permitted and constructed in Portland, OR, 2006-2022

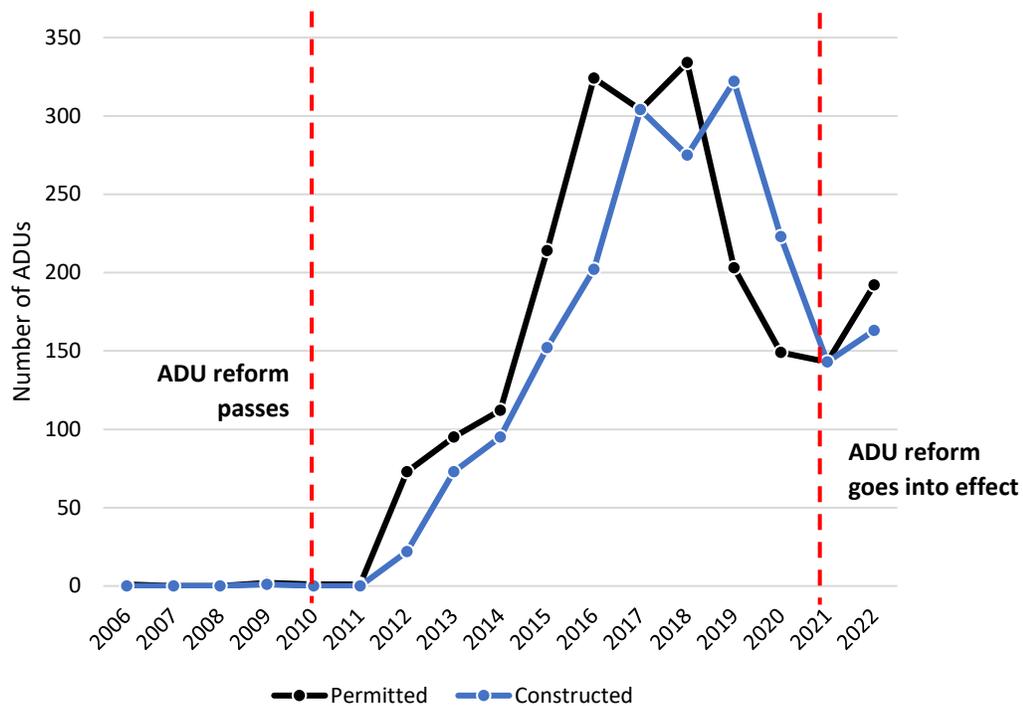


Chart reproduced from ["The Promising Results of Accessory Dwelling Unit Reform,"](#) Cato Institute.

Data source: ["Facilitating the development of accessory dwelling units in Portland, OR,"](#) Local Housing Solutions; ["Residential Infill Options in R2.5-R20 Zones,"](#) City of Portland.

### 3. State of Washington and Seattle, WA

In 2023, Washington passed legislation that goes even further than California and Oregon in removing regulatory barriers to ADU development. The state legislation specifies that localities in Washington:<sup>106</sup>

- Cannot require owner occupancy;
- Must permit both detached and attached ADUs;
- Must allow at least two ADUs in all urban growth areas zoned for single-family housing;
- Must allow two story ADUs of up to 24 feet;
- Must limit ADU impact fees to 50% of the fees for the principal unit;
- Cannot impose stricter limitations on ADUs compared to principal units;
- Cannot require off-street parking for ADUs within walking distance of major transit;
- Cannot require more than one off-street parking space per ADU on lots smaller than 6,000 sq ft or more than two spaces on larger lots;
- Cannot prohibit homeowners from selling a condo unit independently of a principal unit if it was originally built as an ADU; and

<sup>106</sup> Peterson, Kol, ["ADU Legislative Initiatives - History in the Making \(Part IV\),"](#) Accessory Dwellings (April 24, 2023).

- Cannot require public street improvements as a condition for permitting ADUs.

Washington modeled its state legislation after legislation the Seattle City Council passed in 2019 which authorized two ADUs per lot, did away with owner occupancy and parking space requirements, and reduced minimum lot sizes.<sup>107</sup> Figure 3.3 shows that ADU permits in Seattle have skyrocketed since regulations went into effect, increasing by 253% between 2019 and 2022.

**Figure 3.3 The number of ADUs permitted in Seattle, WA, 2016-2022**

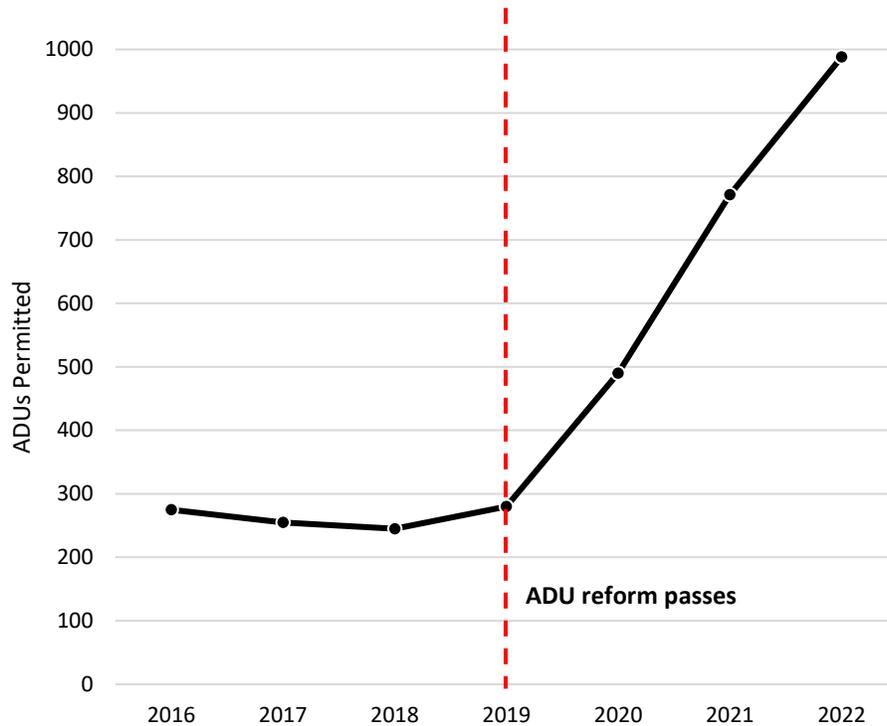


Chart reproduced from "[The Promising Results of Accessory Dwelling Unit Reform](#)," Cato Institute.

Data source: "[Accessory Dwelling Units: 2022 Annual Report](#)," Seattle Office of Planning and Community Development and Seattle Department of Construction and Inspections.

<sup>107</sup> ["The Promising Results of Accessory Dwelling Unit Reform,"](#) Cato Institute.

### Chapter 4. Findings and Discussion Questions

This Office of Legislative Oversight (OLO) report responds to the County Council’s interest in understanding common barriers to Accessory Dwelling Unit (ADU) development, how other localities have encouraged the construction of ADUs, and what strategies may be appropriate in Montgomery County. This section summarizes OLO’s findings and presents two discussion questions for the Council’s consideration.

#### Findings

- 1. According to housing experts, ADUs can serve as a strategy to help jurisdictions increase the amount and affordability of housing and can offer several benefits to both homeowners and to individuals seeking housing. However, stakeholders also observe that ADUs are not a large-scale housing solution and pose their own set of challenges.**

According to housing stakeholders ADUs can offer the following benefits and can pose the following challenges:

##### Benefits:

- ADUs increase density in predominantly single-family zoned areas without significantly changing the character of those neighborhoods;
- ADUs expand options for people seeking smaller, more affordable rental housing in high-opportunity housing markets dominated by single-family zoning;
- ADUs can help older people age-in-place in a private residence;
- ADUs can offer family members their own living spaces while residing on the same property;
- ADUs can provide housing for hired caregivers; and
- ADUs can help homeowners build wealth through rental income.

##### Challenges:

- The high costs construction can make it challenging for lower-income property owners to build ADUs;
- ADU’s in sought-after neighborhoods can demand high rents, making them unaffordable for lower-income renters;
- Some property owners break local use restrictions and develop ADUs specifically for use as short-term vacation rentals; and
- Without legislation that accounts for racial disparities in housing, ADUs can perpetuate preexisting racial inequities in housing policy because ADU policies mostly benefit wealthier, often white, homeowners.

**2. Housing experts agree the most common regulatory and financial barriers to bringing ADU development to scale include discretionary review processes, owner occupancy requirements, parking requirements, and a scarcity of ADU-specific financing.**

- **Discretionary review processes** – Discretionary review gives localities broad authority to regulate each ADU proposal on a case-by-case basis. Applicants must navigate lengthy and often costly conditional use permit processes that create uncertainty and can discourage them from pursuing an ADU.
- **Owner occupancy requirements** – Owner occupancy restrictions mandate that the homeowner live in either the primary dwelling or the ADU. While such requirements are popular within communities, studies show they can be ineffective, can diminish the financial viability of ADUs, and can limit the housing supply.
- **Parking requirements** – Many jurisdictions require one or more off-street (i.e., on-site) parking spaces for an ADU. These rules are often too restrictive, particularly in transit-rich areas where actual demand for this type of parking is lower.
- **Financing challenges** – Cost can be one of the biggest barriers to building an ADU. Traditional lending options are not well suited to ADUs, leading most homeowners to rely on cash or home equity to finance construction. This can be challenging or prohibitive for lower- and moderate-income homeowners.

**3. In 2019, the County Council amended the zoning rules and passed companion legislation that aligns many of the County’s ADU policies with strategies proven to encourage ADU construction.**

The table on the next page summarizes best practices for ADU development and how the County’s ADU policies align with these strategies:

## Accessory Dwelling Units

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### Best Practices for ADU Development and Montgomery County ADU Regulations

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#### ADU Best Practice

##### **Adopting by-right processes**

By-right development processes approve ADU projects as long as they comply with all necessary zoning requirements. Jurisdictions with by-right instead of conditional use approvals have helped boost adoption of ADUs.

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#### Montgomery County Regulation

The County **eliminated the conditional use approval process** for ADUs. Now, DHCA issues licenses for ADUs if they meet certain minimum zoning standards.

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##### **Easing off-street parking mandates**

Localities often impose overly restrictive parking mandates on ADUs that fail to consider the actual demand for off-street parking. For example, not all ADU residents own private vehicles, and those living in transit-rich neighborhoods may choose alternate modes of transportation. Adopting flexible parking rules for ADUs based on proximity to urban centers or public transit can incentivize ADU construction by reducing the costs associated with building additional parking.

The new County regulations **repealed the requirement for additional on-site parking** if the property demonstrates it has adequate on-street parking or is within a walking mile of any Metrorail, Purple Line, or MARC Rail station.

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##### **Easing excessive dimensional requirements**

Data show that jurisdictions who ease excessive dimensional requirements on ADUs (such as lot size and setback minimums, and unit size maximums) make it easier for homeowners to build useable and marketable ADUs. For example, Los Angeles has achieved widespread ADU development in part because California law requires localities to allow ADUs as small as 800 square feet.

The amendments **removed minimum lot size requirements** for ADUs and **increased the maximum allowable size** to 1,200 square feet for attached ADUs and the lesser of 50% of the footprint of the principal dwelling, 10% of the lot area, or 1,200 square feet for detached ADUs.

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##### **Limiting or waiving impact fees for ADUs**

Costly development impact fees can hinder ADU construction. Research shows that when jurisdictions reduce or eliminate ADU impact fees, permit applications go up. Since Portland, OR waived development impact fees on ADU projects, the city has seen a rise in both ADU permit applications and construction (see table in Finding #4).

The Department of Permitting Services (DPS) **does not charge a development impact tax for ADUs** because they are accessory to the primary use and are on the same lot.

**4. There are two opportunities to further align the County’s ADU policies with recommended best practices: 1) by easing or eliminating owner occupancy requirements for ADUs, and 2) by creating financing options for ADUs.**

The research on ADU development identifies two additional strategies, summarized below, that make it easier for homeowners to build ADUs. The County has an opportunity to further align its ADU policies with these recommended practices:

- **Ease or eliminate owner occupancy requirements** - Housing experts generally agree that easing or eliminating owner occupancy requirements can increase the financial viability of ADUs. Without such restrictions, owners who move to another home can still rent out both dwellings on their property. This not only builds wealth for the homeowner, but it also expands the supply of affordable rental housing in high-opportunity neighborhoods. Since 2019, California, Oregon, and Washington have each passed state laws barring owner occupancy rules for ADUs.
- **Develop lending products specifically tailored to ADU financing** – Some local governments and housing groups are meeting the need for more financing options by developing lending programs designed specifically for ADUs. For example, the Boston Home Center’s ADU Home Loan Program and the City of Napa Junior Unit Initiative Program provide homeowners with deferred and/or no-interest loans to build ADUs.

**5. Data show that jurisdictions with policies that limit restrictions on ADUs, including the County, have seen increases in ADU permitting and construction.**

The table on the next page displays selected ADU regulations adopted by Montgomery County, California, Portland, OR, and Seattle, WA, and the impact the changes have had on the number of ADUs permitted and constructed in those jurisdictions.

## Accessory Dwelling Units

### Change in Number of Accessory Dwelling Units (ADUs) and Regulation Components in Selected Jurisdictions

|                                | Montgomery<br>County, MD<br>2020-23    | California<br>2019-22                      | Portland, OR<br>2011-22 | Seattle, WA<br>2019-22                         |
|--------------------------------|--|--|-------------------------|--|
| <b>% Increase</b>              |  |  |                         |  |
| ADU permits issued             | 133%                                   | 88%  | 163%                    | 253%   |
| ADUs constructed               | Not available                          | 198%                                       | 641%                    | Not available                                  |
| <b>Regulation components</b>   |  |  |                         |  |
| By-right development           | Yes                                    | Yes  | Yes                     | Yes  |
| Owner occupancy<br>requirement | Yes                                    | No   | No                      | No   |
| Parking requirements           | Sometimes                              | Sometimes                                  | No                      | Sometimes                                      |
| Minimum lot size               | No                                     | No   | No                      | Yes  |
| Maximum unit size              | Yes, for detached<br>and some attached | Yes, for detached                          | Sometimes               | Sometimes                                      |
| Impact fee exemption           | Yes                                    | Yes, for units smaller<br>than 750 sq. ft. | Yes                     | Limited to 50% of<br>principal dwelling<br>fee |

## Discussion Questions

If the Council wishes to encourage ADU development in the County, OLO recommends it consider the following discussion questions:

### 1. Should the County ease or eliminate owner occupancy requirements for rental ADUs?

In 2019, the Council adopted Zoning Text Amendment (ZTA) 19-01, which generally amended the provisions for ADUs. That same year, the Council passed Bill 22-19 to align the County Code with the ZTA's new requirements. Among other changes, the Bill amended the ADU licensing procedures concerning ownership, specifically:

- Allowing the property owner to either live in or to rent the ADU as long they obtain the proper license; and
- Requiring the owner to occupy the principal dwelling or the ADU as their primary residence in order to obtain an ADU rental license.

These changes give owners greater housing flexibility by allowing them to reside in the ADU and rent out the principal unit, or vice versa. However, by tying ADU rental licensing requirements to owner occupancy, the law prevents owners from renting out both units.

Housing experts contend that requiring the owner to continue to live in either the ADU or the primary dwelling makes it less appealing to build an ADU. Some scenarios described in the research include:

- The owner cannot move without selling their property;
- A person who inherits a single-family home with an ADU cannot rent both units while living in a different home;
- An owner cannot rent one unit to a non-family member while also allowing a relative (e.g., an aging parent) to live in the other rent free without putting the family member's name on the property deed.

Jurisdictions are increasingly eliminating owner occupancy requirements from their ADU laws. Since 2019, California, Oregon, and Washington State have each passed laws barring owner occupancy rules for ADUs. Data from jurisdictions in these states show that ADU development increased dramatically after removing owner occupancy requirements. For example, after Seattle did away with owner occupancy requirements in 2019, the number of annual ADU permits grew from 280 in 2019 to 988 in 2022.

With this context in mind, OLO recommends that the Council discuss the merits of easing or eliminating owner occupancy requirements for rental ADUs to further encourage ADU development in the County.

## Accessory Dwelling Units

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### 2. Should the County explore innovative financing mechanisms and/or partnerships that can help homeowners of all income levels access financing for ADU construction?

Research on ADUs finds one of the biggest barriers to ADU construction is the cost. Building an ADU can cost homeowners anywhere from \$20,000 to \$400,000, and because of a scarcity in lending products tailored specifically to ADUs, most homeowners pay for construction using their personal savings or home equity. These options are often not accessible to lower- and moderate-income homeowners.

Jurisdictions can and have met the need for more ADU-specific financing for homeowners at all income levels by creating innovative lending programs and partnerships, including:

- **Low- to no-interest and/or forgivable loans**, such as the Boston Home Center's ADU Home Loan Program that provides zero percent, deferred loans, and the city of Napa's Junior Unit Initiative Program that provides forgivable loans of up to \$50,000;
- **Gap loans** that can cover the difference between the amount a borrower can get from a traditional lender versus the amount needed to complete an ADU project;
- **Affordable housing programs** like a partnership between Los Angeles and housing developers to finance ADUs for owners who agree to rent to people using housing vouchers; and
- **Cost-sharing schemes** like in Portland, OR, where a nonprofit organization pays for the installation of a prefabricated ADU and gets half of the owner's rent revenue.

OLO recommends the Council consider whether the types of programs listed above (or any other mechanisms) could help more County homeowners access funding for ADU construction, and if so, which community and/or business groups might serve as partners in developing and implementing such programs.