

# SUSTAINABLE LAND USE CODE PROJECT

## Capitol Region Council of Governments



## DRAFT MODEL REGULATIONS: HOUSING DIVERSITY AND AFFORDABILITY ACCESSORY DWELLING UNITS

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# ACCESSORY DWELLING UNITS

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## Introduction

Accessory dwelling units (ADUs) have become an important component of the housing stock in many communities in the United States, both large and small. Noted ADU programs include Portland, OR, Santa Cruz and Chula Vista, CA, Seattle, WA, and Lexington, MA. By providing housing on existing lots in developed neighborhoods, ADUs make good use of land and public infrastructure investment. When located near employment and retail centers, ADUs can help increase use of mass transit and contribute to reductions in greenhouse gas emissions and energy use. Additionally, ADUs help communities address the nation's changing demographics—an aging population, smaller households, and young professionals moving into urban areas. The number of senior citizens is growing dramatically and many are “empty nesters” who desire to down-size. Most want to stay in their current community. Moreover, single-person households are fueling a demand for smaller, affordable units. Accessory dwelling units can also simplify some of the challenges of caring for aging parents at one end of the spectrum, or provide an affordable, stable option for young adult children at the other. Nationally, the work force continues to be challenged to find affordable housing, and ADUs can help address that demand.

Many communities across the country are experiencing similar demographic shifts as those in the Capitol Region and Connecticut and are adapting their land use policies and regulations to address changing housing needs. The Capitol Region Council of Governments (CRCOG) has adopted a Regional Housing Policy that addresses the need for affordable housing, the use and improvement of existing housing, the selective use and demolition of deteriorated housing, and other related issues. Adopted implementation strategies include one to support land use policies that allow for a diversity of housing types and costs in all communities.

To address housing affordability, the Connecticut legislature adopted the Affordable Housing Land Use Appeals Act of 1990,<sup>1</sup> which expressly reverses the burden of proof when a municipality denies a developer's application to construct affordable housing. In such a case, the act requires the municipality to prove that the need for affordable housing is clearly outweighed by the need to protect the health or



Detached accessory dwelling unit



Attached accessory dwelling unit

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<sup>1</sup> Conn. Gen. Stat. § 30g.

safety of the community. Since few municipalities have sufficient affordable housing to be exempt from this requirement (i.e., where at least ten percent of the existing housing stock qualifies as affordable), the act has affected most municipalities in the state. It has been controversial, and its effect on the supply of affordable housing in the 20 years since enactment has been much debated.

One impact of the act is that it has placed many Connecticut municipalities in the position of reacting to a developer's sense of where and how affordable housing projects should be built to meet the community's affordable housing needs. Connecticut municipalities increasingly recognize they can act to accommodate and encourage affordable housing developments that meet not only the needs of the developer and the occupants, but also the needs of the community. One way to do so is to increase the range of options available to developers and property owners to provide affordable housing, including options such as accessory dwelling units.

A number of the municipalities in the region (e.g., Bloomfield, Ellington, Farmington, and Tolland), have adopted regulations to accommodate accessory dwelling units, although they tend to be quite restrictive. In some jurisdictions, ADUs are allowed only via a special permit process, and in others there are restrictions on who may occupy a unit (e.g., family members only), or ADUs must be within or attached to the principal dwelling unit.

ADUs can take a number of forms, including living units within an existing house (with or without a separate entry), in an attached structure, or in a structure separate from the main dwelling (e.g., above a detached garage). Clarion's approach to addressing ADUs is straight-forward and relatively simple. ADUs would be allowed in all residential zones, but subject to a number of design and use related standards that address neighborhood compatibility and a provision that requires that the principal unit on the property be owner-occupied.

The proposed regulations include: (1) a statement of purposes for the incorporation of accessory dwelling units into the permitted mix of housing, (2) a description of the zone districts in which ADUs will be applicable, (3) a definition of accessory dwelling unit, and (4) standards for the size, location, and design of the units.

## **1.1. ACCESSORY DWELLING UNITS -- GENERAL**

### **1.1.1. PURPOSE STATEMENT**

The purposes of the proposed accessory dwelling unit regulations are to:

- A. Create new housing units while respecting the look and scale of single-family dwelling development;
- B. Increase the housing stock in existing neighborhoods in a manner that is less intense than alternatives;
- C. Allow more efficient use of existing housing stock, public infrastructure, and the embodied energy contained within existing structures;
- D. Provide a mix of housing options that responds to changing family needs and demands for smaller households;
- E. Offer a means for residents, particularly seniors, single parents, and families with grown children, to remain in their homes and neighborhoods, and obtain extra income, security, companionship, and services;
- F. Promote a broader range of affordable housing;

- G. Provide opportunities for workforce housing in developed and new neighborhoods that are close to places of work, which reduces fossil fuel consumption through less car commuting and thus reduces greenhouse gas emissions; and
- H. Support transit-oriented development and reduce auto usage by increasing density near transit stops.

#### 1.1.2. **APPLICABILITY**

##### A. **APPLICABILITY**

Accessory dwelling units are allowed in the following zone districts: (insert appropriate districts such as all residential zone districts, mixed-use districts, etc.), subject to the provisions of this section.

##### B. **PERMITTED ACCESSORY USE**

Accessory dwelling units shall be a permitted accessory use to a single-family dwelling in the zone districts specified in Section 2.2.1 above. They may be incorporated within or added onto an existing house, garage, or other accessory structure, or may be built as a separate, detached structure on a lot where a single-family dwelling exists.

OPTION: Detached accessory dwelling units that exceed 800 square feet or are located on lots smaller than 6,000 square feet shall be approved only through the special permit (or conditional use) process set forth in these regulations.<sup>2</sup>

OPTION: No more than 10 accessory dwelling units shall be allowed to be constructed in (insert name of jurisdiction) in any calendar year on a first-come, first-served basis.<sup>3</sup> Furthermore, no more than two accessory dwelling units may be constructed annually on any one block.<sup>4</sup>

##### C. **BUILDING CODES**

Accessory dwelling units are subject to the applicable state building code standards.

#### 1.2. **DEFINITION**

Accessory dwelling unit: A residential unit that is located on the same lot as a single family dwelling unit, either internal to or attached to the single family unit or in a detached structure. The accessory dwelling unit is a complete housekeeping unit with a shared or separate entrance, and separate kitchen, sleeping area, closet space, and bathroom facilities.

<sup>2</sup> We recommend against subjecting accessory dwelling units to any special permit or conditional use processes as this added approval step often discourages property owners from adding such a unit. However, because some jurisdictions may desire to subject accessory dwelling units to additional scrutiny, we have included an optional provisions providing for special permit/conditional use review for accessory units on very small lots or for larger units (note this assumes the local jurisdiction allows larger units than the 650 square feet specified in these model regulations).

<sup>3</sup> Such a numerical limit could result in a challenge on the ground that it violates the state zoning enabling legislation's uniformity requirement (Conn. Gen Stat. 8-124-8-2). Local officials should consult with legal counsel on this issue.

<sup>4</sup> In some communities where accessory dwelling units are a new use, there numbers are limited for a period until the local government can assess their impact and the effectiveness of their accessory dwelling unit regulations. The number of units allowed would be calibrated to the size of the community (e.g., a larger community like Hartford would allow more than a smaller one).

**1.3. DESIGN AND DEVELOPMENT STANDARDS****1.3.1. INTENT**

These design and development standards are intended to ensure that accessory dwelling units:

- A. Are compatible with the desired character and livability of the zone districts and neighborhoods within which they are located;
- B. Respect the general scale of buildings and placement of structures to allow sharing of common space on the lot, such as yards and driveways; and
- C. Are smaller in size than the principal dwelling on the site.

**1.3.2. PROPERTY OWNERSHIP AND OCCUPANCY****A. Owner-Occupied Property Required<sup>5</sup>**

Accessory dwelling units shall only be permitted when the property owner or a member of his/her immediate family lives on the property, within either the principal dwelling or accessory dwelling unit. Before issuance of a (insert name of approval permit or certificate of occupancy), the owner shall submit a notarized letter stating that he/she or a member of his/her immediate family will occupy one of the dwelling units on the premises as a primary residence except for:

- 1. A bona fide, temporary absence of three years or less for activities such as temporary job assignments, sabbaticals, or voluntary service (indefinite periods of absence from the dwelling shall not qualify for this exception); or
- 2. Admittance to a hospital, nursing home, assisted living facility or other similar facility.

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<sup>5</sup> Proof of residency is addressed below in Section 2.4.8, Registration.

## Scale-Up Option—Ownership Deed Restrictions

To ensure that the principal residence on the property is owner-occupied, which can help ensure greater day-to-day management control of the accessory unit and enhance neighborhood compatibility, some communities require filing of a formal deed restriction requiring the principal or accessory unit to be occupied by the owner of the property.

### 1.3.2 PROPERTY OWNERSHIP AND OCCUPANCY

#### A. Owner-Occupied Property Required (See above.)

#### B. Deed Restriction

Before obtaining a (insert name of approval permit or certificate of occupancy) for an accessory dwelling unit, the property owner shall file with the (insert appropriate agency for deed recordation) in a form acceptable to the (insert local government name), a declaration of restrictions in reference to the deed under which the property was acquired by the present owner stating:

1. That either the principal or accessory dwelling unit on the property shall be occupied by the owner of the property or a member of his/her immediate family.
2. The accessory dwelling unit shall not be sold separately from the principal dwelling unit, nor shall the lot be subdivided to provide a separate lot for the accessory dwelling unit.
3. The above restrictions shall run with the land and are binding upon any successor owner of the property.
4. The deed restrictions shall lapse upon removal of the accessory dwelling unit. Upon verification of such removal, the [insert local government name] shall record appropriate documentation releasing such encumbrance. Any fees associated with such release shall be borne by the property owner.

#### B. Number of Residents

The total number of residents that may reside in an accessory dwelling unit may not exceed the number that is allowed for a family as defined in the (insert name of local land use regulatory document).

### 1.3.3. UNDERLYING ZONING AND DENSITY

Unless specifically addressed in this section, accessory dwelling units are subject to the regulations for a principal building of the underlying zone district with regard to lot and bulk standards (e.g., height, setback/yard requirements, building coverage).

OPTION (Note: If zoning regulations for the principal building are more stringent than those for accessory buildings (e.g., setbacks), the local government may opt to apply the accessory building standards to facilitate construction of ADUs): Unless specifically addressed in this section, accessory dwelling units are subject to the regulations for an accessory building of

the underlying zone district with regard to lot and bulk standards (e.g., height, setback/yard requirements, building coverage).

- A. Where permitted pursuant to this Section (reference this new regulatory section), one accessory dwelling unit may be permitted on a lot in addition to the principal single-family dwelling. Other permitted accessory buildings or uses, as defined herein, may be allowed in addition to the principal single-family dwelling.
- B. Accessory dwelling units shall be subject to the same zone district height limitations and setbacks as applicable to the principal dwelling on the property. An existing accessory structure whose height or setback(s) does not meet the requirements for a dwelling in the zone district may be converted into an accessory dwelling unit, but the structure may not be altered in any manner that would increase the degree of non-compliance.

OPTION (if regulations for the principal building are more stringent than those for accessory buildings): Accessory dwelling units shall be subject to the same zone district height limitations and setbacks as applicable to accessory buildings on the property. An existing accessory structure whose height or setback(s) does not meet the requirements for accessory buildings in the zone district may be converted into an accessory dwelling unit, but the building may not be altered in any manner that would increase the degree of non-compliance.

- C. Accessory dwelling units shall not be considered a unit of density and therefore are not included in the density calculation for a single-family residential property.

#### **1.3.4. HOME OCCUPATIONS**

Home occupations are (OPTION: are not) allowed to be conducted in an accessory dwelling unit, subject to the standards for home occupations in (reference standards for home occupations).

#### **1.3.5. DESIGN STANDARDS**

##### **A. Lot Standards**

- 1. The minimum lot size for a lot that has both a primary dwelling unit and an accessory dwelling unit is 4,500 square feet.<sup>6</sup>
- 2. One accessory dwelling unit is permitted per residential lot. The accessory unit shall be located on the same lot as the principal unit.

##### **B. Methods of Creation**

An accessory dwelling unit may only be created through the following methods, provided creation of the accessory dwelling unit complies with applicable lot coverage, setback, and height standards and does not eliminate required parking for the principal dwelling:

- 1. Converting existing living area within a principal dwelling, such as a basement or attic space;
- 2. Adding floor area;

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<sup>6</sup> Our research indicates the minimum lot size in most local ordinances is at least 4,000 square feet.



3. Constructing a new principal dwelling with an internal or detached accessory dwelling unit;
4. Converting or adding onto an existing accessory structure on a lot, such as to a garage or other outbuilding; or
5. Constructing a new accessory dwelling unit within a separate detached structure.

**C. Size**

1. The maximum floor area of an accessory dwelling unit may be no more than 50 percent of the total floor area of the principal dwelling unit or 650 square feet whichever is less.<sup>7</sup>
2. The minimum living space of an accessory dwelling unit, not including bathrooms and closets, is 220 square feet.

**D. Location of Entrances and Access**

**1. Internal or Attached Units**

Accessory dwelling units that are internal to or attached to a principal dwelling may take access from an existing entrance on a street-facing front façade of the principal dwelling. No new entrances for an accessory dwelling unit may be added to the front façade of a principal dwelling unless such entrance is recessed at least 10 feet behind the wall plane of the front façade of the principal dwelling.<sup>8</sup>

**2. Detached Units**

Accessory dwelling units that are detached from the principal dwelling:

- a. May utilize an existing street-facing front façade entrance as long as the entrance is located a minimum of 20 feet behind the wall plane of the front façade of the principal dwelling, or install a new entrance to the existing or new detached structure for the purpose of serving the accessory dwelling unit as long as the entrance is facing the side, rear, or interior of the lot .
- b. Shall be located no closer than 30 feet from the front property line and shall take access from an alley when one is present.

**3. Corner Lots**

On corner lots, existing entrances on the street-facing sides may be used for an accessory dwelling unit, but any new entrance shall be located facing toward the rear or internal lot line or toward the back of the principal dwelling.

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<sup>7</sup> This is on the low end of what many communities allow regarding accessory dwelling unit size. Some communities allow accessory units as large as 1,500 square feet. Some have tiered maximums, permitting larger ADUs with larger principal dwellings. The typical size is usually 500-800 square feet. This number should be discussed with the project communities to see what is appropriate for the region.

<sup>8</sup> In suburban and rural areas with larger lots, this setback requirement may not be necessary.

**E. Exterior Design**

An accessory dwelling unit shall be designed to maintain the architectural design, style, appearance, and character of the principal dwelling. If an attached accessory dwelling unit extends beyond the current footprint or existing height of the principal dwelling, such an addition must be compatible with the existing facade, roof pitch, siding materials, and windows as approved by the (insert name of appropriate official).

## Scale-Up Option—Design Standards

Some communities have enacted enhanced design standards to ensure that accessory dwelling units are architecturally compatible with the primary dwelling unit, thus enhancing neighborhood compatibility. Set forth below are possible standards to consider:

**E. Exterior Design**

Proposals for attached or detached accessory dwelling units that would increase floor area through new construction shall meet the following standards.

1. The exterior finish on the addition shall match the exterior finish material of the principal dwelling in type, size, and placement.
2. Trim shall be of the same type, size, and location as trim used on the principal dwelling.
3. Windows on street-facing facades shall match those on the principal dwelling in terms of proportion (relationship of width to height) and orientation (horizontal or vertical).
4. Eaves shall project from the building walls in the same proportion as the eaves on the principal dwelling or project at least one foot from all elevations. If the principal dwelling has no eaves, no eaves are required.
5. The roof pitch shall be the same as the predominant roof pitch of the principal dwelling.
6. Windows that face an adjoining residential property shall be designed and located to protect the privacy of neighbors unless fencing or landscaping is provided that adequately provides such privacy.
7. Stairways to a second floor accessory dwelling unit shall not be visible from a public street.

**F. Bulk Limitation**

The building coverage for the detached accessory dwelling unit may not be larger than the building coverage of the principal dwelling and shall not exceed ten percent of the total area of the lot.

**F. Prohibited Structures**

Mobile homes, manufactured housing, industrialized housing, recreational vehicles, travel trailers, and any other wheeled or transportable structure shall not be used as accessory dwelling units.

**1.3.6. PARKING**

One additional on-site parking space shall be provided for an accessory dwelling unit.<sup>9</sup> The (insert name of appropriate official) may reduce this requirement upon a finding that the parking requirement for the principal dwelling is met and:

- A. Adequate on-street parking in the immediate vicinity is available to serve the accessory dwelling unit and will not cause congestion in the area; or
- B. The accessory dwelling unit is located within ¼ mile of a fixed transit line or an arterial street or road with a designated bus route.

**1.3.7. UTILITY SERVICE REQUIREMENT**

Accessory dwelling units may be connected to the water, wastewater, electric, gas, and other utilities of the principal dwelling or may have separate services.<sup>10</sup>

OPTION: An accessory dwelling unit shall be connected to the same utilities (except telephone and television) as the principal dwelling and shall not have separate services.

**1.3.8. REGISTRATION<sup>11</sup>**

- A. Accessory dwelling units are required to be registered with the (insert name of local government) to ensure compliance with applicable regulations, to assist the community in assessing housing supply and demand, and to fulfill the purposes in Section 2.1, Purpose Statement.
- B. No accessory dwelling unit shall be occupied until the owner obtains an occupancy permit for the dwelling unit from the (insert name of local government). The requirement for permitting is to ensure that:
  - 1. The applicant is aware of all (insert name of local government) regulations governing accessory dwelling units;

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<sup>9</sup> Some communities do not require any additional parking for accessory dwelling units, because requiring an additional off-street space can be very difficult in areas with smaller lots and can amount to a de facto prohibition.

<sup>10</sup> Some local governments do not allow separate utility services so that the owner of the primary unit maintains tighter control over the accessory unit. However, such a restriction can reduce the attractiveness of the accessory unit to both the owner and a potential tenant/occupant.

<sup>11</sup> Enforcement of the owner occupancy requirement is a key issue in most municipalities. Some communities, such as Boulder, Colorado, establish an accessory dwelling unit permit system that requires the owner to obtain an administrative permit that checks owner-occupancy before renting the accessory unit. Other communities, including many in Washington State, establish a quasi-permit system through the use of affidavits where the owner affirms owner-occupancy of either the main building or the accessory unit. A new affidavit is required if the property is sold. In both cases, violation on the part of the owner, typically identified by a complaint but also subject to inspection by the jurisdiction, is subject to enforcement through a fine and, depending on the circumstances, may be punishable by requiring the owner to remove the accessory dwelling unit. The other option is recordation of an enforceable deed restriction.

2. The (insert name of local government) has all information necessary to evaluate whether the accessory dwelling unit initially meets and continues to comply with applicable requirements;
3. The accessory dwelling unit meets health and safety requirements; and
4. The distribution and location of accessory dwelling units is known.