Planning Commission

Planning Commission Meeting - WORK SESSION ONLY Agenda
Hartland Township Hall
Thursday, March 14, 2024
7:00 PM

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of the Agenda
5. Approval of Meeting Minutes
    a. Planning Commission Meeting Minutes of February 22, 2024
6. Call to Public
7. Work Session
    a. Draft Ordinance Solar Energy Panels
    b. Accessory Dwelling Unit
8. Call to Public
9. Planner's Report
10. Committee Reports
11. Adjournment

HARTLAND TOWNSHIP PLANNING COMMISSION DRAFT MEETING MINUTES

February 22, 2024– 7:00 PM

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1. **Call to Order: Vice-Chair Mitchell called the meeting to order at 7:00 p.m.**

2. **Pledge of Allegiance:**

3. **Roll Call and Recognition of Visitors:**
   Present – Commissioners Eckman, Grissim, Mayer, McMullen, Mitchell, Murphy
   Absent – Fox

4. **Approval of the Meeting Agenda:**
   A Motion to approve the February 22, 2024, Planning Commission Meeting Agenda was made by Commissioner Grissim and seconded by Commissioner Murphy. Motion carried unanimously.

5. **Approval of Meeting Minutes:**
   a. Planning Commission Work Session Meeting Minutes of February 8, 2024
   A Motion to approve the Planning Commission Work Session Meeting Minutes of February 8, 2024, was made by Commissioner Grissim and seconded by Commissioner Eckman. Motion carried unanimously.

6. **Call to the Public:**
   None

7. **Old and New Business**
   a. Site Plan Application #24-002 Amend Façade of British Petroleum (BP) Convenience Store at 10440 Highland Road

   Director Langer gave an overview of the history of this application stating the following:
   - East of US 23 and south side of M-59.
   - Smoothie King on the east side of the building is not included in this request.
   - Upgrading BP portion with new façade materials.
   - Keeping existing rooftop units but new façade is higher.
   - Site Plan Approval is required to amend the existing site plan.

   The Applicants, Karam Bahnam, President of USA 2 Go Gas Stations and property owner; and John Bahnam, Management Team Member of USA 2 Go, introduced themselves stating the following:
   - Purchased last year.
   - Intention is to renovate and renew the fuel station to make it look better on the outside and inside.
   - Changing out the pumps for new pumps.
   - Will look like a new fuel station when completed.

Vice-Chair Mitchell referred to the staff memorandum dated February 15, 2024.

Architecture / Building Materials

Commissioner Murphy asked if the colors are changing. The Applicant stated it will still be a BP fuel station so the BP colors will remain.

Vice-Chair Mitchell called attention to a standing seam metal awning over the entrance door on the north elevation confirming the awning will not be used per the applicant's email dated February 14, 2024. The north elevation illustration and Material List (Sheet A03) will be revised to reflect this change on the Construction Plan set.

He also stated the proposed façade renovations do not all comply with the requirements, but this proposal will bring the building closer to compliance. Director Langer added the current materials do not comply which is why staff added the note. The Planning Commission has some discretionary authority with a commercial property that is trying to move closer to compliance and maintain the property.

Commissioner Grissim asked if the Applicant brought a materials board; photos often do not do a façade plan justice.

The Planning Commission reviewed the materials board provided.

Commissioner Murphy asked to view the other elevations. Director Langer complied.

The Planning Commission reviewed the façade drawings and the rooftop screening.

Commissioner Mayer asked about the percentage calculations and where the shortfall is occurring.

Commissioner Grissim offered the following Motion:

Move to recommend approval of Site Plan Application #24-002, request to renovate exterior façade of BP convenience store, 10440 Highland Road, as outlined in the staff memorandum dated February 15, 2024.

Approval is subject to the following conditions:

1. **The applicant shall adequately address the outstanding items noted in the Planning Department's memorandum, dated February 15, 2024, on the Construction Plan set, subject to an administrative review by the Planning staff prior to the issuance of a land use permit.**

2. **All mechanical equipment located on the roof shall be completely screened on all sides of the equipment.**

3. **A land use permit is required prior to commencement of the exterior façade renovations.**

4. **Applicant complies with any requirements of the Township Engineering Consultant, Department of Public Works Director, Hartland Deerfield Fire Authority, and all other government agencies, as applicable.**

Seconded by Commissioner Mayer. Motion carried unanimously.

8. **Call to the Public:**
None

9. **Planner Report:**
None

10. **Committee Reports:**
None

11. **Adjournment of Regular Meeting:**
A Motion to adjourn was made by Commissioner Eckman and seconded by Commissioner McMullen. Motion carried unanimously. The Regular Meeting was adjourned at approximately 7:21 PM.

[Brief Recess]

12. **Work Session**
    a. Draft Ordinance Solar Energy Panels
    The Planning Director discussed the draft ordinance, as presented by the Ordinance Review Committee:
    - Discussion on the location and system requirements for a soler energy system.
    - Discussion on required lot size requirements, setback requirements, lighting standards, screening requirements.
    - Discussion on storm water run-off requirements and have the Township Engineering Consultant review to provide comments.

13. **Adjournment of Work Session:**
A Motion to adjourn was made by Commissioner Grissim and seconded by Commissioner Mayer. Motion carried unanimously. The meeting was adjourned at approximately 8:11 PM.

Hartland Township Planning Commission Meeting Agenda Memorandum

Submitted By: Troy Langer, Planning Director

Subject: Draft Ordinance Solar Energy Panels

Date: March 7, 2024

Recommended Action
Move to Initiate Ordinance Amendment regarding Solar Energy Panels.

Discussion
This memorandum is intended to continue the discussion from the previous Work Session of the Planning Commission on February 22, 2022.

Since this is the continuation of several previous work sessions by the Planning Commission, this memorandum will be kept short. Also, only the Ordinance Review Committee (ORC) draft ordinance along with a guide from the MSU Extension are attached.

Attachments:
1. Ordinance Review Committee Template Solar Ordinance
2. MSU Extension Guide for Solar Energy Systems

12-07-2023 DRAFT_____ TOWNSHIP

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE ZONING ORDINANCE TO REGULATE SOLAR ENERGY SYSTEMS

The Township of _____ ordains:

Section 1. Add Definitions to Article X.

The following definitions are added to Article X, Section X of the Zoning Ordinance, and will be placed in the Zoning Ordinances so that all definitions are in alphabetical order:

A. Abandonment: A Solar Energy System is abandoned if it has not been in operation for a period of one (1) year. This includes a Solar Energy System that was never operational if construction has been halted for a period of one (1) year.

B. Building Integrated Photovoltaics (BIVPs): A small Solar Energy System that is integrated into the structure of a building, such as solar roof tiles and solar shingles.

C. Commercial Solar Energy System: A Solar Energy System in which the principal design, purpose, or use is to provide energy to off-site uses or the wholesale or retail sale of generated electricity to any person or entity.

D. Ground Mounted Solar Energy System: A Private or Commercial Solar Energy System that is not attached to or mounted to any roof or exterior wall of any principal or accessory building.

E. Private Solar Energy System: A Solar Energy System used exclusively for private purposes and not used for any commercial resale of any energy, except for the sale of surplus electrical energy back to the electrical grid.

F. Roof or Building Mounted Solar Energy System: A Private Solar Energy System attached to or mounted on any roof or exterior wall of any principal or accessory building; but excluding BIVPs.

G. Solar Energy System: Any part of a system that collects or stores solar radiation or energy for the purpose of transforming it into any other form of usable energy, including the collection and transfer of heat created by solar energy to any other medium by any means.

H. Surplus Electrical Energy: Any solar energy not used by a private solar energy system that is sent back into the energy grid.

Section 2. Add New Section XX, entitled "Solar Energy Systems"

Section XX, entitled "Solar Energy Systems," is added to Article X of the Township's Zoning Ordinance. The section reads in its entirety as follows:

Section XX. Solar Energy Systems.

A. General Provisions. All Solar Energy Systems are subject to the following requirements:

1. All Solar Energy Systems must conform to the provisions of this Ordinance and all county, state, and federal regulations and safety requirements, including applicable building codes and applicable industry standards, including those of the American National Standards Institute (ANSI).

2. The Township may revoke any approvals for, and require the removal of, any Solar Energy System that does not comply with this Ordinance, as amended.

3. Solar Energy Systems are permitted in the Township as follows, subject to this Section XX and other applicable provisions of the Zoning Ordinance:

Type of System	**Sub-Type of System**	**Zoning District**	**Special Use Permit**
Private Solar Energy System	Private BIVPs	All zoning districts	Not required
	Roof or Building Mounted Private Solar Energy System	All zoning districts as accessory use	Not required
	Ground Mounted Private Solar Energy Systems	All zoning districts as accessory use	Not Required
Commercial Solar Energy System	All Commercial Solar Energy Systems (Ground Mounted only)	CA (Conservation Agricultural)	Required

4. Private Solar Energy Systems that are two (2) square feet or less in area, are exempt from these regulations and a land use permit.

B. Private Solar Energy Systems.

1. Private Solar Energy System BIVPs. Private Solar Energy System BIVPs are permitted in all zoning districts. A land use permit is required for the installation of BIVPs.

2. Roof or Building Mounted Private Solar Energy Systems. Roof or Building Mounted Private Solar Energy Systems are permitted in all zoning districts as an accessory use, subject to the following requirements:

a. Roof or Building Mounted Private Solar Energy Systems are permitted on both principal structures and accessory structures.

b. No part of the Solar Energy System erected on a roof is permitted to extend beyond the peak of the roof or shall extend above the parapet wall. If the Solar Energy System is mounted on a building in an area other than the roof, no part of the Solar Energy System is permitted to extend beyond the wall on which it is mounted.

c. No part of a Solar Energy System mounted on a roof is to be installed closer than three (3) feet from the edge of the roof, eave or valley to maintain pathways of accessibility.

d. A land use permit is required for the installation of Roof or Building Mounted Private Solar Energy Systems.

3. Ground Mounted Private Solar Energy Systems. Ground Mounted Private Solar Energy Systems are allowed in all zoning districts and require a Land Use Permit. In addition to all requirements for a land use permit, Ground Mounted Private Solar Energy Systems are also subject to the following requirements:

a. *Site Plan.* Before installation of a Ground Mounted Private Solar Energy System, the property owner must submit a site plan to the Zoning Administrator. The site plan must be drawn to scale.

b. *Maximum Height.* A Ground Mounted Private Solar Energy System must not exceed the maximum height of twelve (12) feet above the ground when oriented at maximum tilt.

c. *Location.* A Ground Mounted Private Solar Energy System must be located in the side or rear yard and must comply with all required setback requirements applicable to a ground mounted private solar energy system.

d. *Underground Transmission.* All power transmission or other lines, wires, or conduits from a Ground Mounted Private Solar Energy System to any building or other structure must be located underground. If batteries are used as part of the Ground Mounted Private Solar Energy System, they must be placed in a secured container or enclosure.

e. *Lot Area Coverage.* Ground Mounted Private Solar Energy Systems shall not count toward the lot coverage requirements of the zoning district standards.

f. *Setbacks.* Ground Mounted Private Solar Energy Systems shall be located 50 feet from any rear property line; 40 feet from any side property line; and shall not maintain a required setback from another structure on the same property. Ground Mounted Private Solar Energy Systems shall not be permitted in the front yard area.

g. *Appearance.* The exterior surfaces of a Ground Mounted Private Solar Energy System must be generally neutral in color and substantially non-reflective of light.

h. *Remedies.* If an applicant or operator of a Ground Mounted Solar Energy System fails to comply with this Ordinance, the Township, in

addition to any other remedy under this Ordinance, may revoke the land use permit approval after giving the applicant notice and an opportunity to be heard. Additionally, the Township may pursue any legal or equitable action to abate a violation and recover any and all costs, including the Township's actual attorney fees and costs.

C. Commercial Solar Energy Systems. Commercial Solar Energy Systems are allowed only in the CA, Conservation Agricultural, zoning district and require a special land use permit and site plan review. In addition to all requirements for a special land use permit under Article X and site plan review and approval under Article X, Commercial Solar Energy Systems are also subject to the following requirements:

1. *Application Requirements.* The applicant for a Commercial Solar Energy System must provide the Township with all of the following:

a. Application fee in an amount set by resolution of the Township Board.

b. A list of all parcel numbers that will be used by the Commercial Solar Energy System; documentation establishing ownership of each parcel; and any lease agreements, or easements, for the subject parcels.

c. An operations agreement setting forth the operations parameters, the name and contact information of the certified operator, the applicant's inspection protocol, emergency procedures, and general safety documentation. ***(Maybe Eliminate this section).***

d. Property survey that depicts all easements and existing structures and equipment.

e. A site plan that includes all proposed structures and the location of all equipment, transformers, and substations, as well as all setbacks, panel sizes, and the location of property lines, signage, fences, greenbelts and screening, drain tiles, easements, floodplains, bodies of water, proposed access routes, and road right of ways. The site plan must be drawn to scale and must indicate how the Commercial Solar Energy System will be connected to the power grid.

f. A copy of the applicant's power purchase agreement or other written agreement with an electric utility showing approval of an interconnection with the proposed Commercial Solar Energy System. ***(Ask Attorney if we need this).***

g. A written plan for maintaining the subject property, including a plan for maintaining and addressing stormwater management, which is subject to the Township's review and approval.

h. A decommissioning and land reclamation plan describing the actions to be taken following the abandonment or discontinuation of the

Commercial Solar Energy System, including evidence of proposed commitments with property owners to ensure proper final reclamation, repairs to roads, and other steps necessary to fully remove the Commercial Solar Energy System and restore the subject parcels, which is subject to the Township's review and approval. ***(Ask Attorney if this is needed) (Also see page 8, Section 12).***

i. Financial security that meets the requirements of this Section, which is subject to the Township's review and approval. ***(Ask Attorney if this is needed). (Also see page 8, Section 13).***

j. A plan for resolving complaints from the public or other property owners concerning the construction and operation of the Commercial Solar Energy System, which is subject to the Township's review and approval. ***(Ask if this is needed).***

k. A plan for managing any hazardous waste, which is subject to the Township's review and approval.

l. A construction phasing or sequencing plan, a temporary storage plan, transportation plan for construction and operation phases, including any applicable agreements with the County Road Commission and Michigan Department of Transportation, which is subject to the Township's review and approval.

m. An attestation that the applicant will indemnify and hold the Township harmless from any costs or liability arising from the approval, installation, construction, maintenance, use, repair, or removal of the Solar Energy System, which is subject to the Township's review and approval. ***(Ask Attorney if this is needed).***

n. Proof of environmental compliance, including compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act; (MCL 324.3101 et. seq.; Part 91, Soil Erosion and Sedimentation Control (MCL 324.9101 et. seq.) and any corresponding County ordinances; Part 301, Inland Lakes and Streams, (MCL 324.30101 et. seq.); Part 303, Wetlands (MCL 324.30301 et. seq.); Part 365, Endangered Species Protection (MCL324.36501 et. seq.); and any other applicable laws and rules in force at the time the application is considered by the Township

o. Any additional information or documentation requested by the Planning Commission, Township Board, or other Township representative. ***(Ask Attorney if this can be removed).***

2. *System and Location Requirements.*

a. Commercial Solar Energy Systems must be ground mounted.

b. Commercial Solar Energy Systems must be located on parcels of land twenty (20) acres in size or larger. ***(Do we need a minimum size? Ask Attorney).***

c. Commercial Solar Energy Systems are not permitted on any properties enrolled in the PA 116 Farmland and Open Space Preservation Program. ***(Ask Attorney if this can be removed).***

d. Commercial Solar Energy Systems (including all solar panels, structures, equipment, and fencing) must be set back 500 feet from all lot lines, private road easements, shared driveway easements, and public road rights-of-way. If a single Commercial Solar Energy System is located on more than one lot, then the lot-line setbacks of this subsection do not apply to the lot lines shared by those lots.

e. The height of the Commercial Solar Energy System and any mounts, buildings, accessory structures, and related equipment must not exceed fifteen (15) feet when oriented at maximum tilt.

3. *Lot Area Coverage.* Shall comply with zoning district requirements; however, the free-standing solar panels shall not count toward the lot coverage requirements.

4. *Permits.* All required county, state, and federal permits must be obtained before the Commercial Solar Energy System begins any construction.

5. *Screening.* Greenbelt screening is required around any Commercial Solar Energy System and around any equipment associated with the system shall comply with the Greenbelt standards outlined in Section 5.11.2.B.C. of the Township Zoning Ordinance.

6. *Lighting.* Lighting of the Commercial Solar Energy System is limited to the minimum light necessary for safe operation. Illumination from any lighting must not extend beyond the perimeter of the lot(s) used for the Commercial Solar Energy System. The Commercial Solar Energy System must not produce any glare that is visible to neighboring lots or to persons traveling on public or private roads.

7. *Underground Transmission.* All power transmission or other lines, wires, or conduits from a Commercial Solar Energy System to any building or other structure must be located underground at a depth that complies with current National Electrical Code standards, except for power switchyards or the area within a substation. If batteries are used as part of the Ground Mounted Solar Energy System, they must be placed in a secured container or enclosure.

8. *Drain Tile Inspections.* The Commercial Solar Energy System must be maintained in working condition at all times while in operation. The applicant or operator must inspect all drain tile at least once every three years by means of robotic camera, with the first inspection occurring before the Commercial Solar Energy System is in operation. The applicant or operator must submit proof of the inspection to the Township. The owner or operator must repair any damage or failure of the drain tile within sixty (60) days after discovery and submit proof of the repair to the Township. The Township is entitled, but not required, to have a representative present

at each inspection or to conduct an independent inspection. ***(Get comments from Engineering Consultant on this).***

9. *Insurance.* The applicant or operator will maintain property/casualty insurance and general commercial liability insurance in an amount of at least $10 million per occurrence. ***(Get comments from Attorney if this is needed).***

10. *Decommissioning.* If a Commercial Solar Energy System is abandoned or otherwise nonoperational for a period of one year, the property owner or the operator must notify the Township and must remove the system within six (6) months after the date of abandonment. Removal requires receipt of a demolition permit from the Building Official and full restoration of the site to the satisfaction of the Zoning Administrator. The site must be filled and covered with topsoil and restored to a state compatible with the surrounding vegetation. The requirements of this subsection also apply to a Commercial Solar Energy System that is never fully completed or operational if construction has been halted for a period of one (1) year. ***(Get comments from Attorney if this is needed).***

11. *Financial Security.* To ensure proper decommissioning of a Commercial Solar Energy System upon abandonment, the applicant must post financial security in the form of a security bond, escrow payment, or irrevocable letter of credit in an amount equal to 125% of the total estimated cost of decommissioning, code enforcement, and reclamation, which cost estimate must be approved by the Township. The operator and the Township will review the amount of the financial security every two (2) years to ensure that the amount remains adequate. This financial security must be posted within fifteen (15) business days after approval of the special land use application. ***(Get comments from Attorney if this is needed).***

12. *Annual Report.* The applicant or operator must submit a report on or before January 1 of each year that includes all of the following:

a. Current proof of insurance;

b. Verification of financial security; and

c. A summary of all complaints, complaint resolutions, and extraordinary events. ***(Get Comments from Attorney if this is needed).***

13. *Inspections.* The Township may inspect a Commercial Solar Energy System at any time by providing 24 hours advance notice to the applicant or operator.

14. *Transferability.* A special use permit for a Commercial Solar Energy System is transferable to a new owner. The new owner must register its name and business address with the Township and must comply with this Ordinance and all approvals and conditions issued by the Township. ***(Ask Attorney if this is needed).***

15. *Remedies.* If an applicant or operator fails to comply with this Ordinance, the Township, in addition to any other remedy under this Ordinance, may revoke the special land use permit and site plan approval after giving the applicant or operator notice and an opportunity to be

heard. Additionally, the Township may pursue any legal or equitable action to abate a violation and recover any and all costs, including the Township's actual attorney fees and costs. ***(Ask Attorney if this is needed).***

Section 3. Amend Section XX.

Section XX of the Zoning Ordinance, entitled CA (Conservation Agricultural) Zoning District is amended to add the following uses permitted by special land use permit:

- Ground Mounted Private Solar Energy System
- Commercial Solar Energy System

Section 4. Validity and Severability.

If any portion of this Ordinance is found invalid for any reason, such holding will not affect the validity of the remaining portions of this Ordinance.

Section 5. Repealer.

All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

Section 6. Effective Date.

This Ordinance takes effect seven (7) days after publication as provided by law.

MICHIGAN STATE UNIVERSITY | Extension

GRAHAM SUSTAINABILITY INSTITUTE
UNIVERSITY OF MICHIGAN

PLANNING & ZONING FOR SOLAR ENERGY SYSTEMS

A GUIDE FOR MICHIGAN LOCAL GOVERNMENTS

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Michigan State University
MSU Extension

Harmony Fierke-Gmazel, *Educator*
M. Charles Gould, *Educator*
Bradley Neumann, *Senior Educator*
Mary Reilly, *Educator*

MSU School of Planning, Design and Construction

Wayne Beyea, *Senior Specialist*
Jason Derry, *Research Assistant*
Emma Gilbert, *Research Assistant*

University of Michigan
Graham Sustainability Institute

Sarah Mills, *Senior Project Manager*
Hannah Smith, *Research Assistant*

Cover image: Ground-mounted SES with pollinator garden. Photo by Rob Davis.

BACKGROUND & PURPOSE

Lapeer Solar Park. Photo by Bradley Neumann.

Michigan's diverse energy future is set in motion. Utility companies have bold plans to expand solar options and other forms of renewable energy over the next two decades and beyond. By 2040, DTE Energy[1] expects to have over 10 million solar panels generating power for its customers. Consumers Energy also announced[2] plans to build roughly 8,000MW of solar energy by 2040. Regional electric cooperatives and municipally owned utilities are following suit, with plans to expand solar energy production. Michigan has 65 utilities across two peninsulas.

The shift in the utility sector from centralized power generation (e.g., a large coal plant) to a higher number of accessory and principal use solar energy systems (SES[3]) means Michigan communities should plan for renewable energy development within their jurisdictions. According to a 2019 study of solar ordinances in Michigan, fewer than 20% of Michigan communities have zoning regulations in place to address all scales of SES.[4] These scales are defined further in Section 3 of this guide.

The purpose of this guide is to help Michigan communities meet the challenge of becoming solar-ready by addressing SES within their planning policies and zoning regulations. This document illustrates how various scales and configurations of photovoltaic SES fit into landscape patterns ranging between rural, suburban, and urban.

1 Our Bold Goal for Michigan's Clean Energy Future. DTE. (2020). https://dtecleanenergy.com/

2 Consumers Energy. Consumers Energy Announces Plan to End Coal Use by 2025; Lead Michigan's Clean Energy Transformation. (2021). https://www.consumersenergy.com/news-releases/news-release-details/2021/06/23/consumers-energy-announces-plan-to-end-coal-use-by-2025-lead-michigans-clean-energy-transformation

3 Michigan Office of Climate and Energy. (2019). Michigan Zoning Database. Available at https://www.michigan.gov/climateandenergy/0,4580,7-364-85453_85458-519951--,00.html

4 Ibid.

Planning and Zoning for Solar Energy Systems: A Guide for Local Governments in Michigan was developed by experts within Michigan State University Extension (MSUE) and Michigan State University's School of Planning, Design and Construction in partnership with faculty at the University of Michigan Graham Sustainability Institute. Further review of this document was completed by content experts from local units of government, legal counsel, energy-related non-profits, utility experts, and members of academia. Its intent is to help Michigan communities make public policy decisions related to solar energy development.

This guide is written for use by local planners, officials, legal counsel, and policymakers within the State of Michigan. It first presents the current context for solar in Michigan, describes the various components and configurations of SES, and provides principles for how SES might fit within various land-use patterns across the state. Then, starting on Page 22, the guide presents sample language for including SES into a community's zoning ordinance. The findings and recommendations in this document are based on university peer-reviewed research (whenever available and conclusive) and on the parameters of Michigan law as it relates to the topic(s) in Michigan. The zoning and regulatory rules and concepts discussed here may not apply in other states. This guide will be updated as solar technology evolves and as we learn more from the deployment of existing technology.

Preparing a zoning ordinance and master plan are only two aspects of being solar-ready. More information on how communities can plan for, regulate, and reduce barriers for SES—through meaningful public engagement, clarifying building/electrical permit processes, reducing permit fees, and evaluating placement of SES on or near municipal buildings, to name a few—is available through numerous Michigan agencies, universities, and organizations, and through the SolSmart[5] program. Additional resources on solar energy (and renewable energy) planning and zoning in Michigan are available from MSU Extension[6] and the Michigan Department of Environment, Great Lakes, and Energy[7] in partnership with University of Michigan Graham Sustainability Institute[8] faculty.

Ground-mounted SES, Grand Traverse waterfront. Photo by Mary Reilly.

5 SolSmart. (2021). Program Guide. Available at: https://solsmart.org/resources/solsmart-program-guide/
6 MSU Extension Outreach. Michigan Station University. https://www.canr.msu.edu/outreach/
7 Community Energy Management. Office of Climate and Energy. https://www.michigan.gov/climateandenergy/0,4580,7-364-85453_98214---,00.html
8 Graham Sustainability Institute. University of Michigan. http://graham.umich.edu/

SOLAR ENERGY IN MICHIGAN

O'Shea Solar Park, Detroit. Photo by DTE Energy.

While the solar resources in Michigan and other Midwestern states are not as abundant as in the Southwest,[9] over the course of one year, a solar panel in a typical Michigan location produces approximately 70% of the energy as the same solar panel in Phoenix, Arizona.[10] Furthermore, technology advancements have led to rapid cost reductions at all levels of solar development, making solar an increasingly cost-competitive option, both nationally and in Michigan specifically.[11] As a result, utility companies in Michigan have plans to significantly increase the amount of power generated from solar energy. This shift is evidenced by the amount of utility-scale solar energy development currently under construction or in the development queue,[12] along with expanding installations of smaller on-site solar energy systems.[13]

As the demand for clean energy sources continues to grow, Michigan communities are being approached with development proposals for new SES. It is vital that communities have planning and zoning in place to address these proposals. By doing so, communities have the opportunity to proactively determine how SES can fit into their landscape through master planning and zoning ordinance development.

MASTER PLANNING AND ZONING

Solar energy systems can serve as a method to help reach several different goals that a community may identify, including those focused on resiliency, economic development, farmland preservation, climate action, energy generation, and more.

A community's master plan sets the vision and high-level goals for the community. Local policy related to renewable energy generation is established first in the master plan, with an explanation of how SES could fit into the unique landscapes and character of the jurisdiction. In addition to the master plan, goals related to SES are established in other local plans, which could include district or sub-area plans, resiliency plans, climate action plans, or renewable energy plans. Here, specific geographical areas are designated as ideal for SES development. Including SES in local plans supports the establishment of related zoning regulations, consistent with the requirement of the Michigan Zoning Enabling Act (MZEA).[14] A community-supported vision, followed by the adoption of reasonable zoning standards, together establish a successful framework for SES in a community.

9 Solar Resource Data, Tools, and Maps. National Renewable Energy Laboratory. https://www.nrel.gov/gis/solar.html.

10 Solar Resource Data. NREL PVWatts Calculator. Available at: https://pvwatts.nrel.gov/pvwatts.php.

11 Lazard. (2020). Levelized Cost of Energy and Levelized Cost of Storage – 2020. Available at: https://www.lazard.com/perspective/levelized-cost-of-energy-and-levelized-cost-of-storage-2020/; Solar Technology Cost Analysis. NREL. https://www.nrel.gov/solar/solar-cost-analysis.html.

12 Midcontinent Independent System Operator, Inc. https://www.misoenergy.org/planning/generator-interconnection/GI_Queue/.

13 MPSC. (2020). Distributed Generation Program Report for Calendar Year 2019. https://www.michigan.gov/documents/mpsc/DG_and_LNM_Report_Calendar_Year_2019_711217_7.pdf

14 Michigan Zoning Enabling Act, Public Act (PA) 110 of 2006, as amended. http://legislature.mi.gov/doc.aspx?mcl-Act-110-of-2006.

Incorporating renewable energy into the master plan is a logical place to start before drafting zoning regulations. The MZEA requires that all zoning be based on a plan. The master plan therefore establishes the community's formal policy position on solar energy development. For example, the master plan might set a goal that permits accessory SES throughout the jurisdiction. For principal-use SES, it might define what scale is appropriate as a permitted use (i.e., use by right) or determine appropriateness based on the location of marginal lands, soil types, or steep slopes. It could document community attributes or characteristics that are important to consider and/or protect when siting solar energy development. A master plan ideally includes a spatial analysis of land-use suitability and incorporates community engagement to establish formal guidance for the zoning regulations.

Accessory ground-mounted SES powering remote meteorological and communications equipment. Photo by Bradley Neumann.

COMMENTARY: A request for solar energy development may land on the doorstep of a community that has no mention of solar in the zoning ordinance or master plan. While neither ideal nor recommended, communities sometimes zone first and plan second.[15] Amending the zoning ordinance first without planning for solar is a relatively common course of action, especially when there is a sense of urgency to the permit request. If a community cannot avoid amending the zoning ordinance without first amending the plan, they should work closely with a qualified planner or municipal attorney to perform a master plan review in order to find elements that support or contradict a solar energy zoning amendment. Master plan elements to consider in this review:

- **Vision statement:** How do these broad community statements align with or contradict the contemplated ordinance amendment? Does the vision include renewable energy?
- **Goals and objectives:** If the solar amendment includes multiple scales of SES, then review the goals, objectives, and policies for all relevant land-use classifications on the future land-use map, such as agricultural, residential, commercial, forestry, industrial, etc.
- **Brownfields or grayfields:** Review plans, policies, and maps for recommended zoning approaches.
- **Future land-use map:** Review the map for projected areas of growth (infrastructure extension, type of growth or change in land-use) or areas with goals, objectives, and policies to preserve or maintain a unique community asset.
- **Zoning plan:** While not required as a precursor to a zoning amendment, a statement in the zoning plan[16] affirming the preferred scope and/or location of SES relative to other land-use classifications and zoning districts may be sufficient to show the community anticipated the solar zoning amendment but had not yet taken action to amend the ordinance. [End of commentary]

15 All zoning must be based on a plan. MCL 125.3203(1). http://legislature.mi.gov/doc.aspx?mcl-125-3203

16 Michigan Planning Enabling Act, MCL 125.3833 (2.d)

After a community has incorporated solar development into its master plan, the zoning ordinance can be amended to include regulations for the various configurations and scales of SES. The zoning regulations protect the community's health, safety, and welfare, and are based on policies outlined in the master plan. Zoning regulations define the location, scale, and form or configuration of SES allowed in the community and establish the permits and processes by which solar energy is allowed and even incentivized.

COMMENTARY: According to a review of Michigan zoning ordinances,[17] large-scale solar energy systems (see Section 3) tend to be allowed as principal land uses of property and authorized by special land-use permit in certain zoning districts within a community. Accessory structures, where the electricity generated is used by the principal land use on the property, are generally allowed in more or all zoning districts as accessory uses by right. Furthermore, roof-mounted systems are generally permitted in more zoning districts within a community than ground-mounted systems. In fact, it is quite common to see roof-mounted systems allowed in all zoning districts.

Some communities also permit ground-mounted systems in all districts, though this is less frequently the case than with roof-mounted systems. More specifically, ground-mounted systems tend to be allowed in lower-density districts where there is likely to be larger parcels with larger yards that can accommodate the accessory structure on-site. [End of commentary]

PUBLIC ACT 116—FARMLAND DEVELOPMENT RIGHTS PROGRAM

The Michigan Department of Agriculture and Rural Development (MDARD) administers the Michigan Farmland and Open Space Preservation Program, which includes the Farmland Development Rights Program, commonly referred to as PA 116 (Public Act 116 of 1974). The PA 116 program allows a landowner to voluntarily enter into an agreement with the State to retain their land in agriculture in exchange for certain tax benefits and exemptions from various special assessments.

Prior to 2019, principal-use solar was not permitted on land enrolled in the PA 116 Farmland Preservation Program. The policy has since changed to allow landowners to put their PA 116 agreements on hold to pursue solar development if specified conditions are met.[18] For example, among the conditions in PA 116 are those that require the developer to maintain existing field tile, plant a cover crop that includes pollinator habitat, and post a surety bond or letter of credit with the state to ensure that solar panels will be removed, and the land will be returned to a condition that enables farming at the end of the project life. This allows farmers to take advantage of the economic opportunity presented by solar development while preserving the long-term viability of growing crops or raising livestock on that land. Under the terms of the Farmland Development Rights Agreement, it is the landowner's responsibility to work with the solar energy developer to ensure that all conditions associated with PA 116 are satisfied. Therefore, a landowner will need to address such conditions in the solar energy lease, easement, or other agreement with the developer. In some counties, as much as 80% of farmland is enrolled in PA 116.[19] It is important for municipalities to understand the scope of PA 116 lands within their jurisdiction.

17 Derry, J., & Gilbert, E. (2020). Primary Research on Planning and Zoning for Solar Energy Systems in the State of Michigan. https://www.canr.msu.edu/resources/primary-research-on-planning-zoning-for-solar-energy-systems-in-the-state-of-michigan

18 The Farmland and Open Space Preservation Act, being PA 116 of 1974, now codified in Part 361 of the Natural Resources and Environmental Protection Act, PA 451 of 1994. http://legislature.mi.gov/doc.aspx?mcl-451-1994-III-1-LAND-HABITATS-361. Also see: https://www.michigan.gov/mdard/0,4610,7-125-1599_2558---,00.html

19 MDARD Farmland Preservation Program (PA116) Percentage of Farmland Enrolled by County. https://www.michigan.gov/documents/mdard/PA116_Enrollment_Map_531166_7.pdf

Rooftop SES, Petoskey, Michigan. Photo by Richard Neumann.

PRIVATE RESTRICTIONS

Private restrictions, such as homeowners' association (HOA) rules, deed restrictions, or architectural standards within a subdivision or condominium development, can limit the installation of SES regardless of local government plans and ordinances. Local governments can work with neighborhood associations, sharing sample rules that allow for SES on individual properties and attempting to align the goals of the association with existing local policy. An additional possibility would be to include a requirement in one's zoning ordinance that all new residential developments must allow rooftop solar as a permitted use in the development.

ZONING FEES AND ESCROW POLICY

The local resolution governing permit fees and review costs should be updated to include SES upon adoption of a zoning amendment regulating the use. The Michigan Zoning Enabling Act authorizes the legislative body to adopt reasonable fees for zoning permits.[20] The permit fee amount must be set by the legislative body to cover anticipated actual cost of the application review and not more.

To encourage the adoption of solar energy, some communities waive or reduce zoning fees for some types of systems. Within the SolSmart certification program, for example, communities can earn points toward certification by waiving or exempting fees for residential solar permit applications.

For large utility-scale SES, though, a community might consider using escrow funds deposited by the applicant to recover the expense of hiring outside reviewers, such as an attorney, engineer, or planning consultant. An escrow policy provides a mechanism for the community to anticipate the costs associated with reviewing a complex application. Prior to requiring escrow funds for a zoning application review, the legislative body must first adopt an escrow policy by resolution.[21,22] Among other things, an escrow policy establishes administrative guidelines for spending, replenishing the escrow below a certain balance, and returning remaining funds.

20 Michigan Zoning Enabling Act, Act 110 of 2006, MCL 125.3406, http://legislature.mi.gov/doc.aspx?mcl-125-3406

21 Forner v. Allendale Charter Twp. Court: Michigan Court of Appeals, 2019 Mich. App. LEXIS 576, 2019 WL 1302094 (March 21, 2019, Decided), Unpublished Opinion No. 339072, http://www.michbar.org/file/opinions/appeals/2019/032119/70094.pdf

22 Charter Township Act, PA 359 of 1947. http://legislature.mi.gov/doc.aspx?mcl-Act-359-of-1947. Revised Statutes of 1846. http://legislature.mi.gov/doc.aspx?mcl-R-S-1846-41-1-16

Langeland Farms SES. Photo by M. Charles Gould.

OTHER PERMIT PROCESSES

The planning commission can serve in a coordinating role to ensure additional required permits are obtained before planning commission review and approval. For example, the application may include mitigation measures to minimize potential impacts on the natural environment, including but not limited to wetlands and other fragile ecosystems, historical sites, and cultural sites. In addition to local zoning permits, solar energy developments may require permits from other agencies, including:

- **Department of Environment, Great Lakes, and Energy (EGLE)** if the project affects waters of the state, such as wetlands, streams, or rivers.[23]
- **U.S. Fish and Wildlife Service (USFWS)** for the Endangered Species Act or migratory flyways.[24]
- **Federal Aviation Administration (FAA)** for projects on or within the vicinity of an airport to determine if any safety or navigational problems are present.[25]
- **Municipal or County Soil Erosion Permitting Agency** if the project is one or more acres in size, or is within 500 feet of a lake or stream.[26]
- **Tax Assessor** or zoning administrator for land division approval if leasing less than 40 acres or the equivalent for more than one year.[27]
- **Building Department** for required building, electrical, and mechanical permits.[28]
- **Local Airport Zoning**, for projects within 10-miles of a local airport.[29,30]

23 Parts 301 and 303 of the Natural Resources and Environmental Protection Act, PA 451 of 1994. http://legislature.mi.gov/doc.aspx?mcl-451-1994-III-1-INLAND-WATERS

24 Federal laws administered by the USFWS: Endangered Species Act (ESA); Bald and Golden Eagle Protection Act (BGEPA); Fish and Wildlife Coordination Act (FWCA). See: https://www.fws.gov/ecological-services/energy-development/laws-policies.html

25 Part 77 (Airspace Review) of Title 14 of the Code of Federal Regulations. https://www.faa.gov/airports/environmental/policy_guidance/media/FAA-Airport-Solar-Guide-2018.pdf

26 Soil Erosion and Sedimentation Control. https://www.michigan.gov/egle/0,9429,7-135-3311_4113-8844--,00.html

27 Michigan Land Division Act, PA 288 of 1967, definition of 'Division' – MCL 560.102(d). http://legislature.mi.gov/doc.aspx?mcl-560-102

28 When a project is developed or owned by a private entity, local construction permits are required. If the project is owned by a regulated utility, then local building and electrical permits may not be required but projects are instead regulated by the Michigan Public Service Commission. See Stille-Derossett-Hale Single State Construction Code Act, PA 230 of 1972, MCL 125.1502a(1)(bb), http://legislature.mi.gov/doc.aspx?mcl-125-1502a; and 2015 Michigan Building Code, 1.105.2.3 Public Service Agencies, https://www.michigan.gov/lara/0,4601,7-154-89334_10575_17550-234789--,00.html

29 Airport Zoning Act, Act 23 of 1950. http://www.legislature.mi.gov/documents/mcl/pdf/mcl-act-23-of-1950-ex-sess-.pdf

30 Michigan Zoning Enabling Act, Act 110 of 2006, MCL 125.3203, http://legislature.mi.gov/doc.aspx?mcl-125-3203

SCALES & COMPONENTS

Ground-mounted monopole SES. Photo by Bradley Neumann.

This section discusses SES across a range of sizes, scales, configurations, and related components. SES cannot be treated uniformly by local governments because the scale of installations and energy generation capacity can vary dramatically. For example, a small solar panel powering a streetlight might be exempt from regulation, while a large-scale photovoltaic SES, providing power to the grid through a system of components, likely would require rigorous local review.

TYPES

Solar energy generation for distribution to the grid is a unique land use, at both the large and small scale. As such, these developments should be clearly defined as a separate land use within a zoning ordinance. Treating all scales of SES the same may unnecessarily restrict accessory and small scale installations. In addition, solar developments are scalable and can be sited across many zoning districts. Therefore, in zoning ordinances, SES should be expressly defined as distinct land uses at the different system scales that the community desires (e.g. accessory use vs. principal-use, small SES vs. large SES, ground-mounted SES vs. roof-mounted SES, etc.).

The first distinction to consider for SES is accessory use versus principal use.

Accessory: These SES are accessory to the primary use of a property, such as a residence or a commercial building, and provide electricity that is intended for use by a primary structure located on the same parcel as the SES. Accessory systems can range in size and configuration. They typically range from being small enough to power an exterior light fixture to being large enough to power electricity for multiple buildings, for instance livestock or equipment barns. On-site (or distributed-generation) systems can be affixed to the roof of a building or can be freestanding, ground-mounted structures.

Principal: Principal-use SES developments generate electricity distributed off-site through the grid and exported to a wholesale utility market. These projects occupy single or multiple large parcels of land and are typically the primary use on the site. These SES vary greatly in size, covering as little as an acre to thousands of acres. In addition, SES have two primary configurations: ground-mounted and roof-mounted.

Roof-Mounted: A roof-mounted SES has solar panels affixed to a racking system on the roof of a building, which may be a residential, agricultural, institutional, commercial, or industrial building. Roof-mounted panels can be installed parallel to the roof surface, like a solar shingle, or protrude from the roof at an angle, like an awning. A roof-mounted SES typically has fixed mounts that do not rotate throughout the day to track the sun. By definition, roof-mounted systems are accessory structures relative to the principal use of the building.

Ground-Mounted: A ground-mounted SES has solar panels affixed to a racking system on support posts. These posts are most commonly driven into the ground, without requiring excavation for a concrete foundation. However, in cases where the soil cannot be penetrated, such as with a brownfield or capped landfill, ground-mounted SES can also be designed with ballasted supports that sit atop the ground. A ground-mounted SES may be fixed (i.e., stationary) or have single- or double-axis trackers to follow the sun throughout the day. While nearly all principal-use SES are ground-mounted, some accessory SES may be ground-mounted, too. For example, solar parking canopies are becoming more common in Michigan and present unique characteristics as compared to a typical ground-mounted SES.

These characteristics include unique panel height, vehicle support-post collision mitigation, lighting, and site configurations. Ground-mounted SES can also be distinguished by scale, which we define in this guide to be 'large' or 'small'.

SCALES

As mentioned, even principal-use SES can vary greatly in size, covering as little as an acre to thousands of acres. Because of this variation in the size and impact on a site, many communities may choose to distinguish between small and large principal-use SES in their ordinances. To be sure, there is no established definition of "small" or "large," and for other industry or taxation purposes, large- and small-scale distinctions may differ.

In assisting a community in making a distinction between scales of SES based on size, Table 1 (below) illustrates common SES outputs measured in megawatts (MW) of direct current (DC)[31] and the average acreage of land required to host an SES of that output.[32] Larger projects have a higher variability in land required per megawatt (5-10 acres per MW DC)[33], depending on how many parcels are involved and the layout of solar panels within them.

Table 1. Comparison Chart: Megawatt Outputs to Acreage Needed

Megawatts (DC)	Acres
1 MW*	5-10
2 MW	10-20
20 MW	100-200
100 MW	500-1,000
200 MW	1,000-2,000

*The current national average (through 2018) number of homes powered by 1 MW of solar is 190. Since SEIA began calculating this number in 2012 it has ranged from 150 - 210 homes/MW.[34]

31 Solar output can also be measured in alternating current (AC), often for taxation or regulatory policies. An SES will have a higher MW DC rating than MW AC rating since there are some losses when inverting power from DC to AC to connect to the grid.

32 Ong, S., Campbell, C., Denholm, P., Margolis, R., and Heath, G. 2013. Land-Use Requirements for Solar Power Plants in the United States. National Renewal Energy Laboratory, Technical Report NREL/TP-6A20-56290. Table ES-1, Page v. Source: https://www.nrel.gov/docs/fy13osti/56290.pdf. Retrieved August 27, 2021.

33 Solar Energy Industries Association (SEIA). (2021). Siting, Permitting & Land Use for Utility-Scale Solar. https://www.seia.org/initiatives/siting-permitting-land-use-utility-scale-solar

34 SEIA. (2021). What's in a Megawatt? https://www.seia.org/initiatives/whats-megawatt

(Clockwise from top right) Ground-mounted SES with grazing (sheep) by Mary Reilly.; park outbuilding, rooftop SES in winter, demonstration array, all by Bradley Neumann.

In this guide, the scale threshold between small and large principal-use SES is 2MW (or approximately 20 acres). Currently, there are dozens of SES projects of 2MW and less being developed in the state.[35] These have largely been well-received by local communities, suggesting they fit within the character of the landscapes in which they are proposed. Small systems 2MW or under (or 20 acres) could be permitted by right after an administrative site plan review (see discussion below). Each community, though, should determine what the right demarcation of scale is between small and large principal-use SES given the community's context. In an urban environment, where parcels are smaller, the threshold to classify as a large principal-use SES may be smaller projects of fewer megawatts. In a community abundant with rural land or experience with expansive developments, a larger MW or acreage threshold for large projects may be more appropriate.

35 Most of these small projects are sized so that they can be considered "qualifying facilities" under PURPA, a federal law enacted in 1978, intended to diversify electricity generation. Specific capacity (MW) thresholds to receive the "standard offer tariff" vary from utility to utility. The current standard offer capacity threshold and more about PURPA can be found on the Michigan Public Service Commission's website: https://www.michigan.gov/mpsc/0,9535,7-395-93309_93439_93463_93723_93730-406273--,00.html

COMMON SOLAR COMPONENTS

All SES require equipment to operate properly, although this equipment may differ based on the scale and configuration of the system. Besides the solar array panels/modules themselves, four common types of equipment are included with an SES: an inverter, a battery system (if in use), racking, and wiring. There are also other 'balance of system' components that may or may not be present: combiner boxes, disconnect switches, a weather station, performance monitoring equipment, and transformers.

Solar Panels: Photovoltaic solar panels convert light (photons) to electricity (voltage). The vast majority of today's solar panels are made of silicon solar cells. An individual solar panel is typically assembled on racking to function with other panels as part of an array. Commercial solar panels are constructed with one or more anti-reflective coatings often made of magnesium fluoride (MgF_2). Anti-reflective coatings have been highly improved in the last 20-30 years to ensure that panels maximize how much light reaches the photovoltaic cells. Glare from modern solar panels is insignificant and local regulation, even adjacent to airports, is not always required.

Inverter: Inverters convert direct current (DC) electricity generated by photovoltaic modules into alternating current (AC) electricity that is compatible with batteries and the electrical grid.[36] Some inverters produce sound when in operation, which can often be managed with proper placement based on the sound pressure they produce. Communities may choose to adopt sound regulations to influence the placement and design of inverters within an SES.[37]

Battery: Some homeowners or solar developers include batteries in their solar installations, allowing the solar energy to be stored and used at later times when it is needed (such as at night). These on-site batteries make solar energy more accessible and reliable as an electricity source, and are becoming increasingly common for all scales of SES as per-unit costs of batteries decline. Batteries can vary in size depending on the level of storage needed and may also vary in their location on the site. For accessory systems, the batteries may be within the residence itself.

Racking: As described above, SES may be ground- or roof-mounted. The frames, support posts, foundations (if required), and hardware used to secure solar panels and other SES equipment is often collectively referred to as "racking."

Wiring: Solar panels are wired together to create an electrical circuit that allows current to flow through the component parts. Wiring extends beyond the panels to inverters, batteries, electronic devices, transformers, and/or distribution lines, depending on whether the SES generates electricity for use on-site or export to the electrical grid. Wiring between solar components may be underground.

Other components related to larger SES include transformers and substations for connecting to transmission lines that serve the electrical grid. Often solar developers connect to existing substations, but sometimes developers propose new or upgraded substations or transmission-line extensions as part of the SES. Transformers in substations increase voltage to higher levels for more efficient transmission over long distances. Transformers may produce low audible noise, so they may be subject to local government regulations applying to substations.

36 U.S. Department of Energy, Office of Energy Efficiency & Renewable Energy. Solar Integration: Inverters and Grid Services Basics. https://www.energy.gov/eere/solar/solar-integration-inverters-and-grid-services-basics

37 Kaliski, K., I. Old, and E. Duncan. An overview of sound from commercial photovoltaic facilities. June 29-July 1. NOISE-CON 2020. https://rsginc.com/wp-content/uploads/2021/04/Kaliski-et-al-2020-An-overview-of-sound-from-commercial-photovolteic-facilities.pdf

LAND-USE CONSIDERATIONS

Fig 1. Rural-to-Urban Transect. *Credit: DPZ CoDesign; MSU Extension*

From left to right in **Figure 1**, above, the landscape shifts from a natural zone (T1), which can be wilderness, woodlands, wetlands, or other naturally occurring habitats, gradually transitioning in intensity-of-use to the urban core where we find our large urban centers. The remaining transect zones depicted in Figure 1 include rural farmland and open space areas (T2), suburban developments (T3) and general urban zones (T4, T5, T6), including traditional walkable neighborhoods and smaller historic downtowns. By taking a transect-based view of a community, policymakers can consider SES scales and configurations relative to the development pattern(s) in a community to determine the most appropriate regulation of SES by landscape type (vs. specific individual land use).

Solar energy systems (SES) can be of different scales and configurations within a community. As used in this document, the four basic scales of SES are roof-mounted, accessory ground-mounted, small principal-use, and large principal-use. Ultimately, the compatibility of an SES at a given site depends on its scale relative to the pattern and density of the surrounding physical and built environment. Zoning, as a local regulatory mechanism, can mitigate the impacts of SES if standards are appropriately tailored to the various development patterns of a community.

To better understand how SES can be integrated into existing development patterns in a community, it is helpful to understand and apply the 'transect' to illuminate the multiple intersections of solar configurations and scales possible across a range of natural to urban landscapes. The Rural-to-Urban Transect, depicted in Figure 1, is an urban planning model that defines a series of zones that transition from natural and sparse rural farmhouses to the dense urban core of a large regional city.[38] In the figure, the dark gray boxes are built structures served by light gray roadways and surrounded by green natural open space or trees. There is an elevation or profile view across the top 'horizon' line of each transect and a plan or aerial view of the same landscape just below.

38 For more background on the Rural-to-Urban Transect, visit the Center for Applied Transect Studies website at: https://transect.org/.

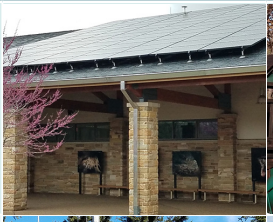
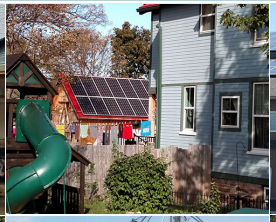
Solar Energy System Type	Natural	Rural	Urban	General Urban
Accessory Roof Mounted				
Accessory Ground Mounted				
Principal Use (Small)				
Principal Use (Large)				

Fig 2. Examples of Solar Energy System Types across the Transect

Figure 2 provides a visual depiction of the type and scale of SES that exhibit predominant factors for compatibility in a given setting. For example, while it's not generally appropriate to develop a large or small principal use SES in a natural wilderness area (T1), it may be more appropriate to allow roof-mounted SES in that transect to serve park structures and accessory equipment within this landscape. Similarly, compatible siting of SES can occur in the suburban transect zone (T3) with a full range of SES types and scales, such as a roof-mounted system on a hotel, an accessory ground-mounted SES carport, or a large or small principal use system at an office park. Regardless of whether a community uses transect-based zoning terminology in the master plan or zoning ordinance, the transect framework is helpful in developing community goals related to the logical placement and installation of SES across varying landscapes of a community.

Table 2 – SES Scale and Type as applied to Example Zoning Districts

Example Zoning District:	Resource Production / Agricultural	Low-Density Residential	Commercial / Office	Industrial	Medium-Density Residential	Mixed Use
Roof-Mounted	P	P	P	P	P	P
Accessory Ground-Mounted	P	P	P	P	P	P
Principal Use (Small)	SPR	SLU	SPR	SPR	SLU	SPR
Principal Use (Large)	SLU	X	SLU	SLU	X	X

P = Permitted Use (zoning standards apply); SPR = Site Plan Review; SLU = Special Land Use; X = Not Permitted

Understanding that various types of SES can exist (or not exist) compatibly within natural, rural, suburban, and urban land-use transects, communities with conventional, use-based zoning ordinances will need to determine the SES type and scale that best fits in each zoning district. This determination must include the approval mechanisms by which the types of SES will be allowed. See Table 2 for one approach to applying SES types and scales across a range of six common zoning districts and the zoning approval processes that might be used. Table 2 suggests permitting processes for the four main SES types. For instance, roof-mounted and accessory ground-mounted systems are likely appropriate across the transect and can be allowed as a use by right in all zoning districts. Small principal-use SES are similarly permitted across the transect, but the approval process varies depending on the context. In zoning districts where there is concern about compatibility with existing land uses, a special land-use (SLU) permit issued after planning commission review provides the most protection for existing and adjacent land uses. However, small principal-use SES might also fit within certain zoning districts without much concern and therefore can also be permitted through site plan review (SPR) performed by the zoning administrator. Lastly, large principal-use SES are permitted by SLU in many, but not all, zoning districts due to compatibility concerns with existing land uses and development patterns. For instance, it could be counter to the master plan and intent of the zoning district for a large principal-use SES to be sited in a walkable, mixed-use district. Each community, though, should tailor the SES type and scale to its own development patterns, transect zones, or zoning districts and assign the appropriate zoning approval process to each.

Overlay zoning is an optional approach to proactively establish the potential location of small or large principal-use SES.[39] Overlay zoning is often used to create a standard set of regulations to address unique needs of one type of land use by placing a second regulatory zoning district on top of the existing zoning map. This approach might be useful if the majority of the land in the community is under the same zoning designation (e.g., agricultural or ag-residential), and the community finds SES are appropriate in some, but not all, areas of that district. For example, the community may determine an SES overall to be most appropriate near existing electrical transmission lines or substations, or in sections of an ag-residential district without substantial residential development. In addition to defining the regulations for the overlay district within the zoning ordinance text, communities who opt to use overlay zoning to regulate SES should also proactively apply the overlay district to their zoning map. The boundaries of the overlay should be supported by the master plan with analysis of the solar resource, location of

39 American Planning Association. Property Topics and Concepts. https://www.planning.org/divisions/planningandlaw/propertytopics.htm

existing energy infrastructure, slopes, unique natural features, capabilities of the land/soil, current development patterns, and more.

COMMENTARY: Ethics and Conflict of Interest: Because large principal-use SES may cover hundreds of acres of land, it is not unusual for local elected officials or planning commission members' properties to be included in a project. The legislative body or planning commission may have existing rules or bylaws on what constitutes a conflict of interest for its members and how a conflict of interest is handled. Planning commissions are required to have bylaws with rules on handling conflict of interest.[40] If no such rules or bylaws are in place, they should be established and would apply to all matters before the board or commission. Involvement of the community's attorney that is experienced in municipal (planning and zoning) law is advised when a conflict of interest issue presents itself for one or more board members or planning commissioners. [End of commentary]

FARMLAND CONSIDERATIONS

When a large principal-use SES is proposed on agricultural land, there are sometimes concerns about whether the operation is a wise use of farmland and whether the land will be able to be farmed during or at the end of the solar project's life. While this question is rarely asked of other land uses in farming communities (for example, residential subdivisions are often allowed in agricultural districts and that land would not be readily farmed again), given the scale of solar projects on the horizon and that prime farmland and other important farmlands are a limited commodity,[41] it is a reasonable concern.

There is nothing inherent in solar development that would make the land unfarmable: the panels and support posts can all be removed. Driving paths between arrays or concrete pads on which the inverters sit will result in soil compaction and should be mitigated upon decommissioning, but these tend to be relatively small percentages of land area for an SES. A bigger concern for returning a solar site to crop production is site design standards, such as the choice of stormwater management practices, the extent and type of landscaping, and the use of berms as a screening mechanism. Movement of topsoil or planting of trees may jeopardize the ability to farm the land in the future. The guidelines outlined in this sample ordinance and also presented in PA 116—to maintain the field tile and plant pollinator habitat—help ensure that the land can be farmed again the future.

Some local governments have proposed going even further, prohibiting solar energy development on particular classes of farmland. The U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) uses eight categories to classify the suitability of soils to grow most kinds of field crops. In general, Class I through Class IV are suitable for cropland use while Class V through Class VIII are suitable for permanent vegetation (i.e., no tillage).[42] However, if land is predominantly Class III or higher, it might be considered marginal farmland, and therefore could be considered less valuable for long-term agricultural use—raising fewer concerns about the appropriateness of solar energy development. In communities where prohibitions based on soil classification extend to other land uses (e.g., residential developments, golf courses, airstrips), this may be reasonable based on a master plan that includes farmland preservation goals and recommends farmland protection zoning techniques and other farmland preservation tools, such as Michigan's farmland purchase of development rights program. However, if soil classification-based prohibitions only apply to large principal-use SES, this approach may be vulnerable to legal challenges.

40 MCL125.3815. http://legislature.mi.gov/doc.aspx?mcl-125-3815. Also see MSU Extension Sample Bylaws for a Planning Commission: https://www.canr.msu.edu/resources/sample_1e_bylaws_for_a_planning_commission

41 Other farmland classifications to consider include: farmland of statewide importance, farmland of local importance, unique farmland, and prime farmland if drained. https://websoilsurvey.sc.egov.usda.gov

42 USDA NRCS. Land Capability Class, by State. 1997. https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/nra/?cid=nrcs143_014040

AGRICULTURE DUAL USE

"Dual use" is the integration of solar panels in an agricultural system in a way that enhances a productive, multifunctional landscape.[43] Dual use can take many forms in agricultural areas, and while there are numerous examples of successful co-located projects, it isn't the default practice for every solar development, and may not always be possible or desired by property owners. Perhaps the most overt combination of solar and agriculture working together is through an "agrivoltaic" system that combines raising crops for food, fiber, or fuel, and generating electricity within the project area to maximize land use. Careful planning and evaluation is needed when designing the configuration of solar arrays for specialty crop production.

Grazing animals under and around solar arrays is another example of dual use. Grazing sheep is a practice that keeps land in active agricultural production and effectively manages vegetation.[44] A 2018 report from the David R. Atkinson Center for a Sustainable Future at Cornell University concluded that utilizing sheep for site vegetation management resulted in, "2.5 times fewer labor hours than mechanical and pesticide management on site."[45] Tampa Electric reported a 75% cost savings over traditional mowing at its solar sites.[46] However, grazing sheep requires careful site design (to ensure that livestock is compatible with project infrastructure), as well as vegetation planning (so that the right forages are planted and the proper rotational grazing system is implemented).[47,48,49] Done successfully, solar grazing can support the livelihoods of veterinarians, feed suppliers, and other parts of the rural agriculture economy.

Agrivoltaics and grazing are not the only ways that SES can support agricultural landscapes and economies.[50] Another dual use is planting groundcover that is compatible with solar panels and provides a variety of other ecosystem services of value. Examples include planting vegetation that provides food sources for pollinators or selecting plant species that provide ecological services, such as carbon sequestration, increased soil health, habitat preservation, or water quality improvements.[51] Though some existing solar projects may already provide stacked ecological services, research is just now underway to quantify some of these co-benefits. In the interim, SES systems that integrate plant species and practices compatible with conservation-cover standards should be treated as dual use, as they provide the ecological benefits of these farm management practices along with clean energy.

43 Low-Impact Solar Development Basics. Innovative Site Preparation and Impact Reductions on the Environment. https://openei.org/wiki/InSPIRE/Basics

44 Hartman, David. (2021). Sheep Grazing to Maintain Solar Energy Sites in Pennsylvania. Penn State Extension. https://extension.psu.edu/sheep-grazing-to-maintain-solar-energy-sites-in-pennsylvania

45 Kochendoerfer, N., Hain, L., and Thonney, M.L. (2018). The agricultural, economic and environmental potential of co-locating utility scale solar with grazing sheep. David R. Atkinson Center for a Sustainable Future, Cornell University. https://cpb-us-e1.wpmucdn.com/blogs.cornell.edu/dist/f/6685/files/2015/09/Atkinson-Center-report-2018_Final-22l3c5n.pdf

46 Utility Dive Does a Deep Dive on Solar Grazing. (2020). ASGA. https://solargrazing.org/utility-dive-does-a-deep-dive-on-solar-grazing/

47 Agricultural Integration Plan: Managed Sheep Grazing & Beekeeping. (2020). https://www.edf-re.com/wp-content/uploads/004C_Appendix-04-B.-Agricultural-Integration-Plan-and-Grazing-Plan.pdf

48 Cassida, K. and Kaatz, P. (2019). Recommended Hay and Pasture Forages for Michigan. Extension Bulletin E-3309. Michigan State University. https://forage.msu.edu/wp-content/uploads/2019/11/E3309-RecommendedHayPastureForagesForMichigan-2019.pdf

49 Undersander, D., Albert, B., Cosgrove, D., Johnson, D., and Peterson, P. (2002). Pastures for Profit: A Guide to Rotational Grazing. Extension bulletin A3529. University of Wisconsin-Extension and Minnesota Extension Service. https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1097378.pdf

50 A Guide to Solar Energy in Vermont's Working Landscape. (2020). The University of Vermont Extension. https://www.uvm.edu/sites/default/files/The-Center-for-Sustainable-Agriculture/resources/solar_energy_vt_working_landscape.pdf

51 Steinberger, K. (2021). Native Plant Installation and Maintenance for Solar Sites. The Nature Conservancy. https://www.nature.org/content/dam/tnc/nature/en/documents/Native-Plant-Management-at-Solar-Sites.pdf

Ground-mounted SES with grazing (sheep). Photo by M. Charles Gould.

COMMENTARY: As of January 1, 2021, the sheep and lamb inventory in Michigan was 87,000 head.[52] Of that 87,000 head, 47,000 are ewes.[53] By 2024, there will be a total of 1,188 megawatt (MW) of solar online.[54] Assuming a principal-use SES requires eight acres per MW of generating capacity, 9,504 acres could potentially be grazed.[55] At a stocking rate of three mature ewes per acre, 28,512 ewes would be needed to manage the vegetation of all solar projects currently online or going online through 2024.[56] While there are more than enough ewes to service these solar projects, the sheep inventory in the state is at grazing equilibrium. Solar projects that are suitable for grazing could spur an increase in the sheep and lamb inventory in Michigan. Because ewes can have multiple lambs, the state's sheep industry has the capacity to expand to meet this demand. Furthermore, over half of the lamb and mutton supply is currently imported[57], and with the largest livestock harvesting facility east of the Mississippi in the Detroit area, there are opportunities to replace imported meat with the increased lamb and sheep inventory. [End of commentary]

52 U.S. Department of Agriculture. Sheep and Goat Inventory News Release [NR-21-07]. (February 2021). https://www.nass.usda.gov/Statistics_by_State/Michigan/Publications/Current_News_Release/2021/nr2107mi.pdf

53 USDA NASS Great Lakes Region. 2021. News Release: Sheep and Goat Inventory NR-21-07. Found at https://www.nass.usda.gov/Statistics_by_State/Michigan/Publications/Current_News_Release/2021/nr2107mi.pdf. Retrieved July 28, 2021.

54 Correspondence on March 5, 2021 with Julie Baldwin, Manager, Renewable Energy Section of the Michigan Public Service Commission.

55 SEIA. Siting, Permitting & Land Use for Utility-Scale Solar. https://www.seia.org/initiatives/siting-permitting-land-use-utility-scale-solar.

56 U.S. Department of Agriculture. Grazier's Math, With Apologies. https://app.box.com/s/x9zv3yvili2w0l7xbh8lcl2cgn71meh6

57 USDA Economic Research Service. https://www.ers.usda.gov/topics/animal-products/sheep-lamb-mutton/sector-at-a-glance/. Retrieved July 28, 2021.

SOLAR ON BROWNFIELDS AND GRAYFIELDS

A recommended practice is to use regulation to encourage the siting of SES on land that is difficult to develop or marginal for other uses. Examples of marginal land include brownfield sites, capped landfills, grayfield sites (previously developed property), and required safety buffer areas around industrial sites. On brownfields or capped landfills, solar development can allow productive use of land that might be compromised or have other development challenges. Solar arrays can be designed to avoid penetrating the ground and don't require as much remediation as other kinds of development. In a similar vein, development of solar on grayfield sites can provide an economic development opportunity for land that is otherwise disadvantaged from a redevelopment perspective.

While the use of marginal land for solar energy development is recommended, it is not a common practice, particularly among large SES, for a range of reasons.[58] One reason is that most of these marginal lands are smaller than the preferred 100+ acres for a more typical SES, and these smaller sites typically do not allow for achieving economies of scale. Even when solar developers are building a smaller-scale project, developing on a brownfield site may require using ballasted support structures (rather than driven posts), which can be more expensive, or may require a less-than-ideal panel layout. Communities wanting to attract solar development to marginal lands may need to reduce other costs or barriers to development, such as expediting review and permitting, providing land at low or no cost, decreasing required setbacks, or providing other incentives, including offering property tax incentives where that is allowed. While Michigan has seen modest development of solar on brownfields to date, other states (for example, Massachusetts and New York) are purposely targeting such development as a land-use and local economic development strategy.[59]

CO-LOCATION WITH OTHER LAND USES

When evaluating how SES might fit into a community, one important consideration is how compatible an SES would be with the surrounding landscape and existing land use. Solar co-location is a signature concept for local regulation. The notion of co-location allows for solar energy production to be in parallel with another use.

For example, parking lots may be outfitted with solar carports as accessory structures (see extended commentary for some case studies). Other examples of co-location of SES include siting solar arrays at public school sites or other institutional grounds and in highway rights-of-way and the open space at airports. With the road network, an SES within a highway or freeway right-of-way might be deployed to power a specific piece of equipment, such as a sign, light, or meteorological station. Given their ample landholdings, airports may be ideally poised for solar installation, and have successfully installed SES as both ground-mounted and roof-mounted systems. The three primary issues regulated by the Federal Aviation Administration (FAA) are reflectivity and glare, radar interference, and the physical penetration of panels into airspace. Guidance provided by the FAA helps airport operators understand the considerations they should make in deploying solar, including when glare studies are required.[60]

Coldwater Solar Field Park.
Image courtesy of City of Coldwater, MI.

58 Schaap, B., Dodinval, C., Husak, K., & Sertic, G. (2019). Reducing Barrier to Solar Development on Brownfields. Retrieved from: http://graham.umich.edu/product/reducing-barriers-solar-development-brownfields.

59 See: Solar Massachusetts Smart Target Program. https://www.mass.gov/info-details/solar-massachusetts-renewable-target-smart-program and NYSERDA Solar Guidebook for Local Governments.

60 Federal Aviation Administration. (2018). Technical Guidance for Evaluating Selected Solar Technologies on Airports. https://www.faa.gov/airports/environmental/policy_guidance/media/FAA-Airport-Solar-Guide-2018.pdf

COMMENTARY: The use of parking lots for co-location of solar energy systems is a growing trend around the country. These dual-use situations provide unique opportunities and challenges to local governments interested in encouraging their installation.

In many situations, regulations are silent on co-location opportunities. Communities sometimes struggle to identify the land-use regulations that should apply. The following examples, which come from three different underlying land uses, show how co-location opportunities can be encouraged on surface parking infrastructure for existing uses. These summaries are based on personal interviews related to MSU research.

Case Study—Michigan State University (MSU), East Lansing, MI | Michigan State University (49,000 students) has the largest solar carport development project in the state (2020). Over 5,000 parking spaces across five large commuter parking lots (34 acres total) are fitted with ground-mounted solar carports. These lots provide students, faculty, and visitors with covered space to leave their cars as they walk, bike, or use public transit to traverse the campus.

The project can generate up to 10MW—nearly 20% of total campus electricity generation. It is a key part of the university's Energy Transition Plan, a process by which MSU reduces its dependency on fossil fuels and expands its renewable energy portfolio. According to MSU director of Planning, Design, and Construction John LeFevre, preserving green space was a large selling point for the project.

The solar carports advance land-use and energy goals by increasing the utility of existing developed sites with enough structural repetition to allow for an efficient solar-panel layout. This approach to SES development applies to universities, as well as to other larger commuter parking lots and developed grayfield sites present in many communities.

Case Study—USA Hauling & Recycling, East Windsor, CT | East Windsor, a town in northern Connecticut with 11,375 residents, is home to USA Hauling & Recycling, a local waste management firm. In 2018, the company requested and received permission to enact a site-plan change for their industrial property, whereby they installed two solar carports of 25,000 and 45,000 square feet. They now operate their large compressors and recycling processes through 743kW of solar energy and protect their truck fleet with carport canopies.

The company received a prompt review from the town after amending their site plan, gaining final approval in just months. East Windsor town planner and consultant Mike D'Amato, AICP, CZEO, attributes the town's efficient approval process to how they regulate carports—as a class of accessory structures. Within this framework, solar carports are permitted in all zoning districts that allow accessory structures. A key provision of carports is that they are exempt from setbacks and lot coverage. The net result is an abundance of community locations where solar carports are now permitted.

Case Study—Fairbanks Museum & Planetarium, St. Johnsbury, VT | St. Johnsbury is a town of 5,685 residents in northeastern Vermont, home to the Fairbanks Museum & Planetarium. The museum undertook an energy efficiency campaign in 2015, resulting in the installation of a 27.36kW solar car-port over an auxiliary parking lot, connected to underground batteries, in December of 2020. The project marks the end of their renewable energy transformation. According to museum director Adam Kane, energy costs have decreased from around $15,000 per year in 2010 to $0 in 2020.

Both Kane and St. Johnsbury zoning administrator Paul Berlejung make special mention of the town's flexible solar regulations. There are no "restricted" or specifically permitted zoning districts in the town's section on solar collectors. Instead, solar collectors are defined as accessory uses, with a few clearly defined provisions pertaining to setbacks, build heights, and burial of utility lines. Kane and Berlejung both noted that interactions between solar suppliers and the town are remarkably smooth, concluding that municipalities looking to incentivize solar carport construction should consider reducing the barriers to entry at the local level. [End of commentary]

SOLAR AND HISTORIC OR CULTURALLY SIGNIFICANT SITES

Solar panels can have a variety of impacts on character-defining features of historic or culturally significant structures or sites. Solar collectors can obscure character-defining features of a structure, or be incompatible with a structure's roofline, exterior color, and the texture or shape of building materials. Despite these potential impacts, many Michigan communities allow for and regulate SES in historic districts and on other significant sites. It is important to allow SES on historic sites and structures in a context-sensitive way, granting the use while preserving the integrity of site aspects deemed historic or culturally significant.

Newer photovoltaic systems, including building-integrated SES, may be appropriate on the street-facing side, even in historic districts. New technology such as solar shingles can be designed and mounted to match the shape, materials, and proportions of a structure. For ground-mounted SES at a historic or culturally significant site, placement of the SES should be context-sensitive with respect to significant areas of the property.

Communities with historic district ordinances should update their ordinance to address roof and ground-mounted SES. The cities of Grand Rapids, Ypsilanti, and Manchester are a few examples that provide for regulations that address these issues. For state or federally designated historic structures, applicants should review the U.S. Secretary of the Interior's Standards for Rehabilitation.

DECOMMISSIONING AND REPOWERING

A question that commonly arises when communities are considering solar as a primary land use is what happens at the end of the solar project's life. Most solar panels are designed to operate for 25-40 years, so it is not uncommon for solar developers to have a lease or easement of roughly this length with a landowner. However, many landowner agreements include the option to extend, sometimes because there is still life left in the original panels and sometimes because the developer hopes to repower the project.

It's important to note the distinction between the two primary options at the end of a solar project's life: decommissioning and repowering. Decommissioning is the process of removing the equipment and other infrastructure associated with the project. While decommissioning is commonly a provision in a landowner's agreement with a solar developer, many communities also require review of a decommissioning plan that includes a financial commitment as part of the approval process. The decommissioning plan

Rooftop SES, Petoskey, Michigan. Photo by Richard Neumann.

details how the project equipment will be removed and the land restored when the contract for the SES expires, and the financial commitment guarantees there will be funding to implement the plan.

Before reaching the end of its useful life, sometimes a solar project is repowered. Repowering an SES involves refurbishing or replacing system components to allow the SES to continue operation. The expectation associated with repowering is that much of the original infrastructure (e.g., racking, access roads, wiring, etc.) may still have useful life and may be reused, even if other components have reached the end of their useful life.

COMMENTARY: Fundamentally, zoning approvals and permits are permanent and run with the land. A solar power project could be a temporary land use decommissioned at the end of the solar project's life, or it could be repowered through maintenance and installation of new technology. Generally, maintenance of real property is allowed within the terms of a zoning permit. What constitutes system maintenance versus work that triggers a new permit might vary from community to community. Advances in technology will certainly create circumstances in which the SES owner will be compelled to replace equipment in order to continue to efficiently produce electricity relative to project costs. Therefore, the zoning ordinance should specify if repowering triggers a review. A municipal attorney with experience in planning and zoning can help define a process to repower an SES to extend the life of the project. [End of commentary]

MICHIGAN EXAMPLE: Gaines Charter Township requires the following of a decommissioning plan:

"**Decommissioning:** A decommissioning plan signed by the responsible party and the landowner (if different) addressing the following shall be submitted prior to approval:

1. Defined conditions upon which decommissioning will be initiated (i.e. end of land lease, no power production for 12 months, abandonment, etc.)
2. Removal of all non-utility owned equipment, conduit, structures, fencing, roads, solar panels, and foundations.
3. Restoration of property to condition prior to development of the system.
4. The timeframe for completion of decommissioning activities.
5. Description of any agreement (e.g. lease) with landowner regarding decommissioning, if applicable.
6. The entity or individual responsible for decommissioning.
7. Plans for updating the decommissioning plan.
8. A performance guarantee shall be posted in the form of a bond, letter of credit, cash, or other form acceptable to the township to ensure removal upon abandonment. As a part of the decommissioning plan, the responsible party shall provide at least two (2) cost estimates from qualified contractors for full removal of the equipment, foundations, and structures associated with the facility. These amounts will assist the township when setting the performance guarantee valid throughout the lifetime of the facility. Bonds and letters of credit shall be extended on a bi-annual basis from the date of special use permit approval."

– *Gaines Charter Township Zoning Ordinance (Kent Co.), Section 4.18 [End of example]*

SAMPLE ZONING FOR SOLAR ENERGY SYSTEMS

The proposed sample zoning language is meant to be a starting point for dialogue between officials, staff, and residents before or during a zoning amendment process related to SES. Communities can (and should) work with their municipal attorney and a knowledgeable planner to modify the proposed sample zoning language in this document to further refine and develop regulations that fit identified community goals and are tied to master plan objectives, upon which zoning must be based.[61]

DEFINITIONS

Add to the Definitions article of the ordinance the following terms and definitions, or modify existing related definitions for consistency. Not all ordinances will require all of the following terms. Municipalities should tailor definitions to terms used in their ordinance.

Accessory Ground-Mounted Solar Energy System: A ground-mounted solar energy system with the purpose primarily of generating electricity for the principal use on the site.

Building-Integrated Solar Energy System: A solar energy system that is an integral part of a primary or accessory building or structure (rather than a separate mechanical device), replacing or substituting for an architectural or structural component of the building or structure. Building-integrated systems include, but are not limited to, photovoltaic or hot water solar energy systems that are contained within roofing materials, windows, skylights, and awnings.

Dual Use: A solar energy system that employs one or more of the following land management and conservation practices throughout the project site:

- Pollinator Habitat: Solar sites designed to meet a score of 76 or more on the Michigan Pollinator Habitat Planning Scorecard for Solar Sites.[62]
- Conservation Cover: Solar sites designed in consultation with conservation organizations that focus on restoring native plants, grasses, and prairie with the aim of protecting specific species (e.g., bird habitat) or providing specific ecosystem services (e.g., carbon sequestration, soil health).
- Forage: Solar sites that incorporate rotational livestock grazing and forage production as part of an overall vegetative maintenance plan.
- Agrivoltaics: Solar sites that combine raising crops for food, fiber, or fuel, and generating electricity within the project area to maximize land use.

Ground-Mounted Solar Energy System: A solar energy system mounted on support posts, like a rack or pole, that are attached to or rest on the ground.

Invasive Plant: Non-native (or alien) to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.[63]

Maximum Tilt: The maximum angle of a solar array (i.e., most vertical position) for capturing solar radiation as compared to the horizon line.

61 MCL 125.3203(1) of the Michigan Zoning Enabling Act, PA 110 of 2006, as amended.

62 Michigan State University Department of Entomology. Michigan Pollinator Habitat Planning Scorecard for Solar Sites. https://www.canr.msu.edu/home_gardening/uploads/files/MSU_Solar_Pollinators_Scorecard_2018_October.pdf

63 USDA U.S. Forest Service. What is an Invasive Plant Species. https://www.fs.fed.us/wildflowers/invasives/index.shtml

Minimum Tilt: The minimal angle of a solar array (i.e., most horizontal position) for capturing solar radiation as compared to the horizon line.

Non-Participating Lot(s): One or more lots for which there is not a signed lease or easement for development of a principal-use SES associated with the applicant project.

Participating Lot(s): One or more lots under a signed lease or easement for development of a principal-use SES associated with the applicant project.

Photovoltaic (PV) System: A semiconductor material that generates electricity from sunlight.

Principal-Use Solar Energy System: A commercial, ground-mounted solar energy system that converts sunlight into electricity for the primary purpose of off-site use through the electrical grid or export to the wholesale market.

Principal-Use (Large) Solar Energy System: A Principal-Use SES generating more than ___ [e.g., 2] MW DC for the primary purpose of off-site use through the electrical grid or export to the wholesale market [see discussion in "Land-Use Considerations" on why this number is suggested, and why it might warrant tailoring to your community's land-use typologies].

Principal-Use (Small) Solar Energy System: A Principal-Use SES generating up to and including ___ [e.g., 2] MW DC for the primary purpose of off-site use through the electrical grid or export to the wholesale market.

Repowering: Reconfiguring, renovating, or replacing an SES to maintain or increase the power rating of the SES within the existing project footprint.

Roof-Mounted Solar Energy System: A solar energy system mounted on racking that is attached to or ballasted on the roof of a building or structure.

Solar Array: A photovoltaic panel, solar thermal collector, or collection of panels or collectors in a solar energy system that collects solar radiation.

Solar Carport: A solar energy system of any size that is installed on a structure that is accessory to a parking area, and which may include electric vehicle supply equipment or energy storage facilities. Solar panels affixed on the roof of an existing carport structure are considered a Roof-Mounted SES.

Solar Energy System (SES): A photovoltaic system or solar thermal system for generating and/or storing electricity or heat, including all above and below ground equipment or components required for the system to operate properly and to be secured to a roof surface or the ground. This includes any necessary operations and maintenance building(s), but does not include any temporary construction offices, substation(s) or other transmission facilities between the SES and the point of interconnection to the electric grid.

Solar Thermal System: A system of equipment that converts sunlight into heat.

Wildlife-Friendly Fencing: A fencing system with openings that allow wildlife to traverse over or through a fenced area.

GENERAL PROVISIONS

Add to the General Provisions article of the ordinance, as a separate section, the following provisions for Roof-Mounted SES, Accessory Ground-Mounted SES, and Building-Integrated SES as permitted by right in all districts and do not require a special use permit.

Roof-Mounted SES, Accessory Ground-Mounted SES, and Building-Integrated SES are permitted in all zoning districts where structures of any sort are allowed, and shall meet the following requirements:

A. ROOF-MOUNTED SES

1. **Height:** Roof-Mounted SES shall not exceed __ [e.g. 5-10] feet above the finished roof and are exempt from any rooftop equipment or mechanical system screening.
2. **Nonconformities:** A Roof-Mounted SES or Building-Integrated SES installed on a nonconforming building, structure, or use shall not be considered an expansion of the nonconformity.
3. **Application:** All SES applications must include ___ plan [e.g., plot or site, whichever is required for a zoning compliance review]. Applications for Roof-Mounted SES must include horizontal and vertical elevation drawings that show the location and height of the SES on the building and dimensions of the SES.

MICHIGAN EXAMPLES:

"**Solar Energy System:** An aggregation of parts including any base, mounts, tower, solar collectors, and accessory equipment such as utility interconnections and solar storage batteries, etc., in such configuration as necessary to convert solar radiation into thermal, chemical or electrical energy."

– *Royal Oak Zoning Ordinance (Oakland Co.), Section 770-8*

"**Solar Energy System (SES):** A system consisting of a device or combination of devices, structures or parts thereof, that collect, transfer or transform solar radiant energy into thermal, chemical or electrical energy. An SES may be mounted on a roof (roof-mounted SES) or be supported by posts or other support structures extending into the ground (ground-mounted SES)."

– *Greater Thompsonville Area Zoning Ordinance (Benzie Co.), Section 18.23*

"**Solar Energy System:** A passive design using natural and architectural components to collect and store solar energy without using any external mechanical power or an active mechanical assembly that may include a solar collector, storage facility, and any other components needed to transform solar energy for thermal, chemical, or electrical energy. Examples include a solar greenhouse, solar panels, solar hot water heater, photovoltaic panels, passive solar panels, and a large, clear south-facing expanse of windows."

– *Bessemer Township Zoning Ordinance (Gogebic Co.), Section 15.22 [End of examples]*

COMMENTARY: Because of concerns over wind load, most roof-mounted systems are not the same dimensions as ground-mounted SES. Given current SES design considerations, 10 feet is sufficient to accommodate most roof-mounted systems.

If a zoning ordinance has height exceptions for other mechanical equipment, it might alternatively just include roof-mounted SES in this exception. In addition to listing this in the section of your ordinance with those exceptions, you could also use the following language in this section of the solar provisions:

A Roof-Mounted SES, other than building-integrated systems, shall be given an equivalent exception to height standards as building- or roof-mounted mechanical devices, chimneys, antennae, or similar equipment, as specified in Section __ [height exceptions] of the ___ [municipality name] Zoning Ordinance. [End of commentary]

Ground-mounted SES feedlot. Photo by M.Charles Gould.

B. ACCESSORY GROUND-MOUNTED SES

1. **Height:** Ground-Mounted SES shall not exceed __ [e.g. 20] feet measured from the ground to the top of the system when oriented at maximum tilt.

COMMENTARY: Height of a Ground-Mounted SES can vary from four to 15 feet, depending on how many rows of panels are installed and the maximum tilt height, if applicable. If the SES is co-located with an active agricultural operation, such as livestock grazing and crop production, it may need as much as eight feet of clearance, which can increase the overall height to up to roughly 20 feet. Similarly, a solar carport would need additional clearance to accommodate vehicle access. The carports at Michigan State University are 14'6" to accommodate snow removal and paving trucks. A relatively straightforward way to regulate the height of SES and account for this range of applications is to apply the same height standard as other accessory buildings or structures within the zoning district. [End of commentary]

2. **Setbacks:** A Ground-Mounted SES must be a minimum of __ [e.g., 5] feet from the property line or __ [e.g., ½] the required setback that would apply to accessory structures in the side or rear yard in the respective zoning district, whichever is greater. Setback distance is measured from the property line to the closest point of the SES at minimum tilt.
3. **Lot Coverage:** The area of the solar array shall not exceed __ [e.g., 50] % of the square footage of the primary building of the property unless it is sited over required parking (i.e. solar carport), in which case there is no maximum lot coverage for the Ground-Mounted SES. A Ground-Mounted SES shall not count towards the maximum number or square footage of accessory structures allowed on site or maximum impervious surface area limits if the ground under the array is pervious.

4. **Visibility** (Residential)**:** A Ground-Mounted SES in residential districts [list districts here] shall be located in the side or rear yard to minimize visual impacts from the public right-of-way(s).
   a. Ground-Mounted SES may be placed in the front yard with administrative approval, where the applicant can demonstrate that placement of the SES in the rear or side yard will:
      i. Decrease the efficiency of the SES due to topography, accessory structures, or vegetative shading from the subject lot or adjoining lots;
      ii. Interfere with septic system, accessory structures, or accessory uses; or
      iii. Require the SES to be placed on the waterfront side of the building housing the primary use [where applicable].

MICHIGAN EXAMPLES: Some communities apply screening standards to Accessory Ground-Mounted SES. Here is an example:

Ground Mounted SES shall be reasonably screened from the view of the surrounding streets and roads to the maximum extent practicable by garden walls, fences, hedges, landscaping, earth berms, or other means, except to the extent that such screening is either impracticable or would result in ineffective solar access on the lot in question. Ground Mounted SES that are visible from a road or adjacent properties shall, to the maximum extent feasible, and without compromising the ability to effectively use solar collectors on the lot in question, use materials, textures, screening, and landscaping that will screen the Ground Mounted SES from view, and blend with the natural setting, existing environment, and neighborhood character. All Ground Mounted SES that rely on landscaping or a vegetative buffer for screening shall maintain a minimum opacity of at least eighty percent (80%), and a mature height of not less than the greater of (x) six (6) feet or (y) sixty percent (60%) of the height of the Ground Mounted Solar Energy System when oriented to maximum tilt.

– *Webster Township Zoning Ordinance (Washtenaw Co.), Section 12.110 [End of example]*

5. **Exemptions:** A SES used to power a single device or specific piece of equipment such as a lawn ornament, lights, weather station, thermometer, clock, well pump or other similar singular device is exempt from Section ____ [Ground-Mounted SES provisions].
6. **Nonconformities:** A Ground-Mounted SES installed on a nonconforming lot or use shall not be considered an expansion of the nonconformity.
7. **Application:** All SES applications must include a ___ plan [e.g., plot or site, whichever is required for a zoning compliance review]. Applications for Ground-Mounted SES must include drawings that show the location of the system on the property, height, tilt features (if applicable), the primary structure, accessory structures, and setbacks to property lines. Accessory use applications that meet the ordinance requirements shall be granted administrative approval.

Off-grid device power. Photo by Bradley Neumann

Dual-use ground-mounted SES and blueberry farm. Photo by Mary Reilly.

MICHIGAN EXAMPLES: Many Michigan communities with both small-scale and large-scale solar regulations have zoned on-site solar energy systems as accessory uses. The City of Bay City (Bay Co.), Lyon Charter Township (Oakland Co.), and Almont Township (Lapeer Co.) all permit roof-mounted systems as an accessory use in all districts. Van Buren Charter Township (Wayne Co.), Albert Township (Montmorency Co.), and Chester Township (Ottawa Co.) all expand this provision (e.g. permitting roof-mounted systems as an accessory use in all districts) by permitting both on-site roof-mounted and ground-mounted systems in all districts as an accessory use. [End of example]

C. BUILDING-INTEGRATED SES

1. Building-Integrated SES are subject only to zoning regulations applicable to the structure or building and not subject to accessory ground or roof-mounted SES permits.

In addition to the General Provisions (above), also add the following standards for Small Principal-Use SES to the General Provisions article of the zoning ordinance. Also add 'Small Principal-Use SES' to the list of permitted uses in all zoning districts (or where desired). A community will need to decide whether a Small Principal-Use SES application is reviewed solely by the zoning administrator, reviewed and approved by the planning commission, or a hybrid, wherein the zoning administrator has the option to review/approve or advance the application to the planning commission for review/approval.

D. SMALL PRINCIPAL-USE SES: A Small Principal-Use SES is a permitted use in ____ [e.g., all, non-residential] zoning districts subject to site plan review and shall meet all of the following requirements:

1. **Height:** Total height shall not exceed __ [e.g. 20] feet measured from the ground to the top of the system when oriented at maximum tilt.
2. **Setbacks:** Setback distance shall be measured from the property line or road right-of-way to the closest point of the solar array at minimum tilt or any SES components and as follows:
   a. A Ground-Mounted SES shall follow the setback distance for primary buildings or structures for the district in which it is sited.
   b. A Ground-Mounted SES is not subject to property line setbacks for common property lines of two or more participating lots, except road right-of-way setbacks shall apply.
3. **Fencing:** A Small Principal-Use SES may [shall] be secured with perimeter fencing to restrict unauthorized access. If installed, perimeter fencing shall be a maximum of __ [e.g. something greater than or equal to 7] feet in height.____ [Barbed wire is prohibited.] Fencing is not subject to setbacks.

Ground-mounted SES in rural setting. Photo by Bradley Neumann.

COMMENTARY: Principal-Use SES may be subject to regulations, such as those of the National Electrical Code (NEC), that require a perimeter fence. The current NEC standards call for a 6-foot fence with three lines of barbed wire, or a 7-foot fence with no barbed wire. A community could ban the use of barbed wire at an SES and still allow for compliance with the NEC, so long as the fencing is allowed to be at least 7 feet. If an SES is not subject to the NEC, wildlife-friendly fencing, commonly made of smooth wiring to prevent injury with openings that allow wildlife to move through, should be used where appropriate. A community may choose to be less prescriptive in fencing requirements so long as the requirements do not conflict with NEC requirements (e.g. by limiting fence height to 5 feet). [End of commentary]

4. **Screening/Landscaping:** A Small Principal-Use SES shall be designed to follow the screening and/or landscaping standards for the zoning district of the project site. Any required screening and landscaping shall be placed outside the perimeter fencing.
    a. In districts that call for screening or landscaping along rear or side property lines, these shall only be required where an adjoining non-participating lot has an existing residential or public use.
    b. When current zoning district screening and landscaping standards are determined to be inadequate based on a legitimate community purpose consistent with local government planning documents, the Zoning Administrator [or Planning Commission] may require substitute screening consisting of native deciduous trees planted __ [e.g. 30] feet on center, and native evergreen trees planted __ [e.g. 15] feet on center along existing non-participating residential uses.
    c. The Zoning Administrator [or Planning Commission] may reduce or waive screening requirements provided that any such adjustment is in keeping with the intent of the Ordinance and is appropriately documented (e.g. abutting participating lots; existing vegetation).
    d. Screening/landscaping detail shall be submitted as part of the site plan that identifies the type and extent of screening for a Small Principal-Use SES, which may include plantings, strategic use of berms, and/or fencing.
5. **Ground Cover:** A Small Principal-Use SES shall include the installation of perennial ground cover vegetation maintained for the duration of operation until the site is decommissioned. The applicant shall include a ground cover vegetation establishment and management plan as part of the site plan.

a. An SES utilizing agrivoltaics is exempt from perennial ground cover requirements for the portion of the site employing the dual-use practice.

b. Project sites with majority existing impervious surface or those that are included in a brownfield plan adopted under the Brownfield Redevelopment Financing Act, PA 381 of 1996, as amended, are exempt from ground cover requirements. These sites must comply with the on-site stormwater requirements of the ordinance.

6. **Lot Coverage:** A Small Principal-Use SES shall not count towards the maximum lot coverage or impervious surface standards for the district.

COMMENTARY: One of the reasons to exempt large and small principle-use SES from maximum lot coverage or impervious surface standards is because there are practical challenges to measuring the overall footprint of principal-use systems, since they may include tilting panels and access drives. Communities who choose not to include this exemption must decide which elements of an SES count/do not count toward lot coverage and make clear how lot coverage should be calculated for co-located systems. If the community's intent is to minimize a development's impervious surface area, consider using the ground cover provisions within this sample language instead. They serve the same purpose and avoid unnecessary limitations and ambiguities. [End of commentary]

7. **Land Clearing:** Land disturbance or clearing shall be limited to what is minimally necessary for the installation and operation of the system and to ensure sufficient all-season access to the solar resource given the topography of the land. Topsoil distributed during site preparation (grading) on the property shall be retained on site.

8. **Access Drives:** New access drives within the SES shall be designed to minimize the extent of soil disturbance, water runoff, and soil compaction on the premises. The use of geotextile fabrics and gravel placed on the surface of the existing soil for temporary roadways during the construction of the SES is permitted, provided that the geotextile fabrics and gravel are removed once the SES is in operation.

9. **Wiring:** SES wiring (including communication lines) may be buried underground. Any above-ground wiring within the footprint of the SES shall not exceed the height of the solar array at maximum tilt.

10. **Lighting:** Lighting shall be limited to inverter and/or substation locations only. Light fixtures shall have downlit shielding and be placed to keep light on-site and glare away from adjacent properties, bodies of water, and adjacent roadways. Flashing or intermittent lights are prohibited.

11. **Signage:** An area up to ___ square feet [should be consistent with the district or sign type standard] may be used for signage at the project site. Any signage shall meet the setback, illumination, and materials/construction requirements of the zoning district for the project site.

12. **Sound:** The sound pressure level of a Small Principal-Use SES and all ancillary solar equipment shall not exceed __ [e.g. 45] dBA (Leq (1-hour)) at the property line of an adjoining non-participating lot. The site plan shall include modeled sound isolines extending from the sound source to the property lines to demonstrate compliance with this standard.

13. **Repowering:** In addition to repairing or replacing SES components to maintain the system, a Small Principal-Use SES may at any time be repowered by reconfiguring, renovating, or replacing the SES to increase the power rating within the existing project footprint.

a. A proposal to change the project footprint of an existing SES shall be considered a new application, subject to the ordinance standards at the time of the request.

COMMENTARY: The goal of the above sample sound regulation for both small and large principal-use SES is to determine compliance with the sound standard during site plan review, as opposed to long-term monitoring or enforcement by staff. Predicting noise levels and mitigating through site design is more efficient and cost-effective than mitigating an issue after the project is complete. During the site plan phase, applicants have more options to reduce noise impacts on adjoining property owners, such as by placing inverters closer to the center of the project or covering axis motors. Sound isolines on a site plan would show predicted sound levels, typically in 5 decibel increments, starting at the sound source and extending to or beyond the property line. Sound isolines are similar to contour lines on a topographical map and provide helpful information to the approving body and adjoining property owners. [End of commentary]

14. **Decommissioning:** Upon application, a decommissioning plan shall be submitted indicating the anticipated manner in which the project will be decommissioned, including a description of which above-grade and below-grade improvements will be removed, retained (e.g. access drive, fencing), or restored for viable reuse of the property consistent with the zoning district.
    a. An SES owner may at any time:
        i. Proceed with the decommissioning plan approved by the Zoning Administrator [or Planning Commission] under Section ___ [of local government ordinance] and remove the system as indicated in the most recent approved plan; or
        ii. Amend the decommissioning plan with Zoning Administrator [or Planning Commission] approval and proceed according to the revised plan.
    b. Decommissioning an SES must commence when the soil is dry to prevent soil compaction[64] and must be complete within __ [e.g., 18 months] after abandonment. An SES that has not produced electrical energy for __ [e.g., 12] consecutive months shall prompt an abandonment hearing.

64 The "ribbon test" is a simple in-field test that can be used to make a rough determination if the soil is too wet to work without a high risk of compaction. Conducting the ribbon test involves digging down four inches into the soil, grasping a handful of soil, and squeezing it tightly in your hand. If the soil forms a "ribbon" when squeezed between the thumb and forefinger, it is in a condition for compaction to occur. See Iowa State University Extension & Outreach article Soil compaction may be cutting into your yield (https://crops.extension.iastate.edu/encyclopedia/soil-compaction-may-be-cutting-your-yield) and Colorado State University Cooperative Extension Bulletin Estimating Soil Texture: Sandy, Loamy or Clayey? (https://culter.colorado.edu/~kittel/SoilChar(&RibbonTest)_handout.pdf).

SPECIAL LAND-USE STANDARDS

Add to the Special Land Uses article of the ordinance, as a separate section, the following provisions for large principal-use SES. Also add 'large principal-use SES' to the list of special land uses in the zoning districts where appropriate. See discussion on the Rural-to-Urban Transect above.

A. LARGE PRINCIPAL-USE SES: A large principal-use SES is a special land use in the zoning districts specified and shall meet the following requirements:

1. **Height:** Total height for a large principal-use SES shall not exceed the maximum allowed height in the district in which the system is located [or a lesser height, such as __ [e.g., 20] feet].
2. **Setbacks:** Setback distance shall be measured from the property line or road right-of-way to the closest point of the solar array at minimum tilt or any SES components and as follows:
   a. In accordance with the setbacks for principal buildings or structures for the zoning district of the project site [or __ [e.g. 50] feet from the property line of a non-participating lot].
   b. __ [e.g., 100] feet from any existing dwelling unit on a non-participating lot.
   c. A Ground-Mounted SES is not subject to property line setbacks for common property lines of two or more participating lots, except road right-of-way setbacks shall apply.
3. **Fencing:** A large principal-use SES may [shall] be secured with perimeter fencing to restrict unauthorized access. If installed, perimeter fencing shall be a maximum of __ [e.g. something greater than or equal to 7] feet in height. [Barbed wire is prohibited.] Fencing is not subject to setbacks.
4. **Screening/Landscaping:** A large principal-use SES shall follow the screening and/or landscaping standards for the zoning district of the project site. Any required screening and landscaping shall be placed outside the perimeter fencing.
   a. In districts that call for screening or landscaping along rear or side property lines, these shall only be required where an adjoining non-participating lot has an existing residential or public use.

Lapeer Solar Park. Photo by Bradley Neumann.

b. When current zoning district screening and landscaping standards are determined to be inadequate based on a legitimate community purpose consistent with local government planning documents, the Planning Commission may require substitute screening consisting of native deciduous trees planted __ [e.g. 30] feet on center, and native evergreen trees planted __ [e.g. 15] feet on center along existing non-participating residential uses.

c. The Planning Commission may reduce or waive screening requirements provided that any such adjustment is in keeping with the intent of the Ordinance.

d. Screening/landscaping detail shall be submitted as part of the site plan that identifies the type and extent of screening for a large principal-use SES, which may include plantings, strategic use of berms, and/or fencing.

COMMENTARY: Zoning requirements may impact the ability for the land to be returned to its original use. For example, required berming, substantial vegetative screening, or on-site stormwater detention/retention (which may be regulated by the Drain Commissioner, for example) may need to be removed or altered in order to return the land to its previous use. In considering whether to reduce, waive, or expand vegetation and screening standards, communities should take landowner considerations relating to reuse into account. [End of commentary]

5. **Ground Cover:** A large principal-use SES shall include the installation of ground cover vegetation maintained for the duration of operation until the site is decommissioned. The applicant shall include a ground cover vegetation establishment and management plan as part of the site plan. Vegetation establishment must include invasive plant species [and noxious weed, if local regulation applies] control. The following standards apply:

   a. Sites bound by a Farmland Development Rights (PA 116) Agreement must follow the Michigan Department of Agriculture and Rural Development's Policy for Allowing Commercial Solar Panel Development on PA 116 Lands.

   b. Ground cover at sites not enrolled in PA 116 must meet one or more of the four types of Dual Use defined in this ordinance.

      i. Pollinator Habitat: Solar sites designed to meet a score of 76 or more on the Michigan Pollinator Habitat Planning Scorecard for Solar Sites.

      ii. Conservation Cover: Solar sites designed in consultation with conservation organizations that focus on restoring native plants, grasses, and prairie with the aim of protecting specific species (e.g., bird habitat) or providing specific ecosystem services (e.g., carbon sequestration, soil health).

      iii. Forage: Solar sites that incorporate rotational livestock grazing and forage production as part of an overall vegetative maintenance plan.

      iv. Agrivoltaics: Solar sites that combine raising crops for food, fiber, or fuel, and generating electricity within the project area to maximize land use.Project sites that are included in a brownfield plan adopted under the Brownfield Redevelopment Financing Act, PA 381 of 1996, as amended, that contain impervious surface at the time of construction or soils that cannot be disturbed, are exempt from ground cover requirements

   c. Project sites that are included in a brownfield plan adopted under the Brownfield Redevelopment Financing Act, PA 381 of 1996, as amended, that contain impervious surface at the time of construction or soils that cannot be disturbed, are exempt from ground cover requirements.

COMMENTARY: The Michigan Department of Agriculture and Rural Development policy for allowing commercial solar energy development on PA 116 lands requires that any portion of the site not included in pollinator plantings must maintain U.S. Department of Agriculture, Natural Resources Conservation Service Conservation Cover Standard 327. Standard 327 reduces erosion, enhances wildlife, pollinator, and beneficial organism habitat, and improves soil health. Standard 327 can be implemented to support grazing animals with the right mix of forage crops. However, if grazing is the primary forage management practice, Prescribed Grazing Standard 528 may be a more useful standard to follow. Standard 528, however, does not apply to solar projects on land enrolled in PA 116 because the policy specifically recommends using Standard 327. There is flexibility within each standard to develop site-specific seed mixes. Private consultants as well as local NRCS staff can help develop a plan to implement these standards in a solar project. [End of commentary]

COMMENTARY: As discussed on Page 15, if a community's existing master plan and ordinance include farmland preservation provisions, it may make sense to extend them to large principal-use SES. In that case, signal your community's desire for development that minimizes impacts to locally important soil classifications through language such as:

Agricultural Protection: For sites where agriculture is a permitted use in a district, a large principal-use SES may be sited to minimize impacts to agricultural production through site design and accommodations including [select those most applicable to your community]:

a. The ground mounting of panels by screw, piling, or a similar system that does not require a footing, concrete, or other permanent mounting in order to minimize soil compaction, [and/or]
b. Siting panels to avoid disturbance and compaction of farmland by siting panels along field edges and in nonproduction areas to the maximum extent practicable and financially feasible, [and/or]
c. Maintaining all drainage infrastructure on site, including drain tile and ditches, during the operation of the SES, [and/or]
d. Siting the SES to avoid isolating areas of the farm operation such that they are no longer viable or efficient for agricultural production, including, but not limited to, restricting the movement of agricultural vehicles/equipment for planting, cultivation, and harvesting of crops, and creating negative impacts on support infrastructure such as irrigation systems or drains, or
e. Voluntarily purchasing agricultural conservation easements from an equivalent number of prime farmland acres consistent with a purchase of development rights ordinance adopted under state law in ____ [local unit of government].

The above list is presented as a menu of sample standards and is neither a comprehensive list nor intended to be adopted in its entirety or verbatim. A local government that wishes to protect agricultural land from future development should work with a qualified planner and attorney to develop a comprehensive approach in the master plan and zoning ordinance that addresses threats to farmland from all types of development pressure. [End of commentary]

Aerial view of Tecumseh solar farm. Photo by Harvest Solar.

MICHIGAN EXAMPLES: Communities in Michigan have differing approaches to the compatibility of solar energy and agriculture. Here are some examples:

"Solar energy equipment shall only be located in an area determined to be "not prime farmland" by the U.S. Department of Agriculture (USDA), per the USDA's Farmland Classification Map as of the date of Special Use Application for a Utility-Scale Solar Energy Collector System."

– *Chester Township Zoning Ordinance (Ottawa Co.), Section 1912*

"All solar arrays greater than ten (10) acres in area must include one or more of the following amongst the panels of the solar array: Crop cultivation; Livestock grazing, with the panels raised to allow an eight (8) foot clearance for animals to pass underneath; or Pollinator fields, including milkweed and other native plantings."

– *Grand Haven Charter Township Zoning Ordinance 2020 (Ottawa Co.), Section 3.03*

"Solar energy systems in Oliver Township are considered a compatible use in the Agricultural Preservation District. The siting of a ground mounted solar energy system is permitted in the Agricultural Preservation District (Chapter 5) and must conform to the front, rear, and side yard setback requirements described in Section 504."

– *Oliver Township Zoning Ordinance (Huron Co.), Section 1305 [End of example]*

COMMENTARY: Some communities require a performance guarantee for small and large principal-use SES for the cost of grading and on-site ground cover establishment in the form of a bond, letter of credit, or establishment of an escrow account. The rationale is that if a site is cleared of vegetation and graded, but the project is not completed, there is a financial guarantee that the site will be stabilized. Such a provision may be redundant with Soil Erosion and Sedimentation Control (SESC) bonding requirements for projects larger than one acre, or for land enrolled in the Michigan Department of Agriculture of Rural Development's (MDARD) PA 116 Farmland and Open Space Preservation Program.

Regarding decommissioning guarantees, MDARD, as mentioned above, requires a surety bond or irrevocable letter of credit for solar development on PA 116 land to cover the cost of the removal of the solar facility and the restoration of the land to agricultural use. A community may wish to tailor the sample standard below based on this requirement by MDARD or provide an exception from the local government decommissioning guarantee for land enrolled in PA 116.

A periodic review (such as every 3-5 years) of the decommissioning guarantee will ensure adequate funds are available to cover decommissioning costs 20-30 years down the road. A review might also be triggered if there is a change of ownership. The ordinance should specify which body is responsible for approving the amount of the performance guarantee; the planning commission could recommend an amount, but the legislative body should make the final decision. When considering this language, a community could review how performance guarantees are handled for other types of developments, such as landscaping guarantees, and discuss how this could be the same or different. The amount of the guarantee for an SES may prompt a different level of review. [End of commentary]

6. **Lot Coverage:** A large principal-use SES shall not count towards the maximum lot coverage or impervious surface standards for the district.
7. **Land Clearing:** Land disturbance or clearing shall be limited to what is minimally necessary for the installation and operation of the system and to ensure sufficient all-season access to the solar resource given the topography of the land. Topsoil distributed during site preparation (grading) on the property shall be retained on site.
8. **Access Drives:** New access drives within the SES shall be designed to minimize the extent of soil disturbance, water runoff, and soil compaction on the premises. The use of geotextile fabrics and gravel placed on the surface of the existing soil for the construction of temporary drives during the construction of the SES is permitted, provided that the geotextile fabrics and gravel are removed once the SES is in operation.
9. **Wiring:** SES wiring (including communication lines) may be buried underground. Any above-ground wiring within the footprint of the SES shall not exceed the height of the solar array at maximum tilt.
10. **Lighting:** Large principal-use SES lighting shall be limited to inverter and/or substation locations only. Light fixtures shall have downlit shielding and be placed to keep light on-site and glare away from adjacent properties, bodies of water, and adjacent roadways. Flashing or intermittent lights are prohibited.
11. **Signage:** An area up to ___ square feet [should be consistent with the district or sign type standard] may be used for signage at the project site. Any signage shall meet the setback, illumination, and materials/construction requirements of the zoning district for the project site.
12. **Sound:** The sound pressure level of a large principal-use SES and all ancillary solar equipment shall not exceed __ [e.g. 45] dBA (Leq (1-hour)) at the property line of an adjoining non-participating lot. The site plan shall include modeled sound isolines extending from the sound source to the property lines to demonstrate compliance with this standard.

13. **Repowering:** In addition to repairing or replacing SES components to maintain the system, a large principal-use SES may at any time be repowered, without the need to apply for a new special land-use permit, by reconfiguring, renovating, or replacing the SES to increase the power rating within the existing project footprint.
    a. A proposal to change the project footprint of an existing SES shall be considered a new application, subject to the ordinance standards at the time of the request. [Expenses for legal services and other studies resulting from an application to modify an SES will be reimbursed to the ____ [local unit of government] by the SES owner in compliance with established escrow policy.]

COMMENTARY: A fundamental zoning concept is that a zoning ordinance must allow for nonconformities—that is, the continuation of a land use or structure that was legally established before a change in zoning that no longer permits the use or structure location. Zoning ordinances have standards for replacement, reconstruction, and expansion of nonconformities. For example, the decision could be centered around the replacement components' monetary value—a new investment of 50% or more of the value of the project is a typical threshold for nonconformities. The zoning board of appeals or the planning commission, whichever is charged with making decisions on nonconformities, would decide the fate of the project based on the nonconforming standards in the ordinance, rather than following the original special land-use permit review process. A proposal to expand the footprint of the system could be at odds with ordinance rules for enlarging nonconformities. In that case, the ordinance may dictate that the proposal must be scaled back to meet the rules for replacing nonconformities, otherwise decommissioning may be the only option. If decommissioning is not the intended or desired outcome, a community has the option to amend the ordinance to allow for SES again, thereby releasing the project from nonconforming status. Communities should work with a municipal attorney to explore preferred options for the SES and how SES will be treated under an application to repower the system. [End of commentary]

14. **Decommissioning:** A decommissioning plan is required at the time of application.
    a. The decommission plan shall include:
        i. The anticipated manner in which the project will be decommissioned, including a description of which above-grade and below-grade improvements will be removed, retained (e.g. access drive, fencing), or restored for viable reuse of the property consistent with the zoning district,
        ii. The projected decommissioning costs for removal of the SES (net of salvage value in current dollars) and soil stabilization, less the amount of the surety bond posted with the State of Michigan for decommissioning of panels installed on PA 116 lands,
        iii. The method of ensuring that funds will be available for site decommissioning and stabilization (in the form of surety bond, irrevocable letter of credit, or cash deposit), and
    b. A review of the amount of the performance guarantee based on inflation, salvage value, and current removal costs shall be completed every __ [e.g., 3 or 5] years, for the life of the project, and approved by the _____ [legislative body] board. An SES owner may at any time:
        i. Proceed with the decommissioning plan approved by the Zoning Administrator [or Planning Commission] under Section ___ [of local government ordinance] and remove the system as indicated in the most recent approved plan; or
        ii. Amend the decommissioning plan with Zoning Administrator [or Planning Commission] approval and proceed according to the revised plan.
    c. Decommissioning an SES must commence when the soil is dry to prevent soil compaction and must be complete within __ [e.g., 18 months] after abandonment. An SES that has not produced electrical energy for __ [e.g., 12] consecutive months shall prompt an abandonment hearing.

Consumers Energy - Western Michigan University, Business Technology and Research Park solar garden. Photo by Mary Reilly.

SITE PLAN REVIEW

Add to the Site Plan Review article of the zoning ordinance, as a separate section (or to the section of the ordinance with site plan requirements), the following provisions for Principal-Use SES. Consider using the following checklist to determine if the application is complete. In this sample, a large principal-use SES is proposed to be reviewed as special land use. A Small Principal-Use SES is proposed to be reviewed as a permitted use with a required site plan. When reviewing a Small Principal-Use SES, a community will need to choose one of the following approaches:

- **Administrative:** *The Zoning Administrator reviews and approves or denies a Small Principal-Use SES when following the site plan review requirements below.*
- **Administrative/Planning Commission:** *The Zoning Administrator could perform site plan review with the option to send the application to the Planning Commission for site plan review. This option could be utilized to provide greater public input and shared responsibility, such as for a high-interest or high-visibility application.*

Site Plans and supporting application materials for a Principal-Use SES shall include a detailed site plan including all applicable requirements found in Article XX, Section XX [the section of the ordinance with general site plan standards] of this ordinance, except that site plans for large principal-use SES shall be submitted at a scale of 1" = ___ [e.g., 200] feet, plus the following site plan requirements:

SITE PLAN REQUIREMENT (X = Required, NA = Not Applicable)	Small Principal-Use	Large Principal-Use
The location of all solar arrays, including setbacks, the width of arrays and distance between arrays plus total height and height to the lowest edge above grade, ancillary structures and electric equipment, utility connections, and dwellings on the property and within __ [e.g. 150] feet of the property lines, participating and non-participating lots, existing and proposed structures, buried or above ground wiring, temporary and permanent access drives, fencing detail, screening/landscape detail, berm detail, and signs.	X	X
Plans for land clearing and/or grading required for the installation and operation of the system, and plans for ground cover establishment and management.	X	X
Sound modeling study including sound isolines extending from the sound source(s) to the property lines of adjoining non-participating lots.	X	X
A Decommissioning Plan as applicable: • For a Small Principal-Use SES, a decommissioning plan including a description of which above-grade and below-grade improvements will be removed, retained, or restored for viable reuse of the property consistent with the zoning district.	X	N/A
• For a large principal-use SES, 1) a decommissioning plan including a description of which above-grade and below-grade improvements will be removed, retained, or restored for viable reuse of the property consistent with the zoning district, 2) the projected decommissioning costs for SES removal (net of salvage value in current dollars) and soil stabilization, less the amount of the surety bond posted with the State of Michigan for decommissioning of panels installed on PA 116 lands, and 3) the method of ensuring that funds will be available for site decommissioning and stabilization (in the form of surety bond, irrevocable letter of credit, cash deposit).	N/A	X
The location of prime farmland [and/or farmland of statewide importance, farmland of local importance, unique farmland, and prime farmland if drained] as defined in the U.S. Department of Agriculture, Natural Resources Conservation Service - Web Soil Survey.	N/A	X [only if Ag Protection is part of the ordinance]
Completed copy of Michigan Pollinator Habitat Planning Scorecard for Solar Sites (when applicable).	N/A	X

SITE PLAN REQUIREMENT (X = Required, NA = Not Applicable)	Small Principal-Use	Large Principal-Use
Additional studies may be required by the Planning Commission if reasonably related to the standards of this ordinance as applied to the application site, including but not limited to [*select those most applicable to your community; these do not directly link to standards in the sample language, but may be helpful in evaluating conformance with other ordinance standards*]: • Visual Impact Assessment: A technical analysis by a third party qualified professional of the visual impacts of the proposed project, including a description of the project, the existing visual landscape, and important scenic resources, plus visual simulations that show what the project will look like (including proposed landscape and other screening measures) a description of potential project impacts, and mitigation measures that would help to reduce the visual impacts created by the project and documented on the site plan. • Environmental Analysis: An analysis by a third-party qualified professional to identify and assess any potential impacts on the natural environment including, but not limited to wetlands and other fragile ecosystems, wildlife, endangered and threatened species, historical and cultural sites, and antiquities. If required, the analysis shall identify all appropriate measures to minimize, eliminate or mitigate adverse impacts identified and show those measures on the site plan, where applicable. • Stormwater Study: An analysis by a third-party qualified professional that takes into account the proposed layout of the SES and how the spacing, row separation, and slope affects stormwater infiltration, including calculations for a 100-year rain event (storm). Percolation tests or site-specific soil information shall be provided to demonstrate infiltration on-site without the use of engineered solutions. • Glare Study: An analysis by a third-party qualified professional to determine if glare from the SES will be visible from nearby residents and roadways. If required, the analysis shall consider the changing position of the sun throughout the day and year, and its influence on the SES.	N/A	X

Dual-use ground-mounted SES with conservation plantings. Photo by M. Charles Gould.

AUTHORS

This publication was developed collaboratively by:

- **Wayne Beyea,** JD, AICP, Senior Specialist, Michigan State University School of Planning, Design and Construction *(beyea@msu.edu)*
- **Harmony Fierke-Gmazel**, AICP, Educator, Michigan State University Extension, Government and Community Vitality *(gmazelh@msu.edu)*
- **M. Charles Gould**, Educator, Michigan State University Extension, Bioenergy *(gouldm@msu.edu)*
- **Sarah Mills**, PhD, Senior Project Manager, University of Michigan, Graham Sustainability Institute *(sbmills@umich.edu)*
- **Bradley Neumann**, AICP, Senior Educator, Michigan State University Extension, Government and Community Vitality *(neuman36@msu.edu)*
- **Mary Reilly**, AICP, Educator, Michigan State University Extension, Government and Community Vitality *(reillym8@msu.edu)*

Students:

- **Jason Derry**, Bachelor of Urban and Regional Planning, Michigan State University
- **Emma Gilbert**, Bachelor of Urban and Regional Planning, Michigan State University
- **Hannah Smith**, Master of Urban and Regional Planning, University of Michigan

Reviewers include:

- **Doug Bessette**, Michigan State University
- **Janine Crane**, NextEra Energy
- **Rob Davis**, Fresh Energy
- **John Freeman**, Great Lakes Renewable Energy Association
- **Lexi Hain**, American Solar Grazing Association
- **Albert Jongewaard**, Apex Clean Energy
- **Matt Kapp**, Michigan Farm Bureau
- **Catherine Kaufman**, Bauckham, Sparks, Thall, Seeber & Kaufman, P.C.
- **John Kinch**, Michigan Energy Options
- **Chip Kraus**, Michigan Department of Agriculture and Rural Development
- **Samantha Ludlam**, Michigan Sheep Producers Association
- **Emily Palacios**, Miller Canfield
- **Andrea Polverento**, Watertown Charter Township
- **Brenda Reau**, Michigan Sheep Producers Association
- **Brian Ross**, Great Plains Institute
- **John Sarver**, Great Lakes Renewable Energy Association
- **Laura Sherman**, Michigan Energy Innovation Business Council
- **Jarrod Thelen**, Michigan Department of Agriculture and Rural Development
- **Claudine Williams**, Eaton County Community Development and Housing
- **Andrea Zamansky**, Webster Township

COLLABORATORS

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Hartland Township Planning Commission Meeting Agenda Memorandum

Submitted By: Troy Langer, Planning Director

Subject: Accessory Dwelling Unit

Date: March 7, 2024

Recommended Action
Move to Initiate Ordinance Amendment regarding Accessory Dwelling Units.

Discussion
This memorandum is intended to outline the topic of Accessory Dwelling Units (ADU) as a potential Zoning Amendment.

In February of 2024, the Livingston County Planning Commission sent out an email to provide some preliminary background information on ADU's. This email was passed along to the Planning Commission. It appears that there is some interest to discuss this topic, so this staff memorandum and attachments are being provided to help further that discussion.

Current Regulations
As background, an ADU would essentially be a second dwelling unit on a parcel. In general, single family residential zoning districts, only permit one (1) dwelling unit, per parcel. Although this is similar to a duplex or two (2) dwelling unit structure, in theory the ADU is thought of more as an accessory structure (or part of) in comparison to the principal structure. Whereas a duplex or two (2) dwelling unit structure, the dwelling units are very similar in size and appearance. Although legally, it may be very difficult to distinguish an ADU from a duplex, in practice, the principal structure is typically much larger than the ADU.

Hartland Township Zoning Regulations do permit something similar to an ADU in the CA (Conservation Agricultural) zoning district. However, it is limited to farming purposes. The property must be a farm and the second dwelling unit must be related to that farming operation. This is outlined in Section 3.1.1.D.v. and it reads "duplex or two dwelling for farm family only, in conjunction with a farm operation."

To understand the definition of a Dwelling Unit and two (2) family dwelling unit, the definitions are attached. In general, if an area of the principal structure, or a separate structure, has these elements, it will likely be considered a dwelling unit:

1) Bedroom or sleeping place
2) Bathroom facilities
3) Kitchen or Cooking facilities

Please review the definitions for Dwelling Unit, Single Family Dwelling, and two (2) family Dwelling to see in more detail.

Discussion
The State of California was probably one of the first areas of the Country to permit ADU's. The primary goal of ADU's was to help establish affordable housing. This is accomplished in two (2) ways. The first way is to establish an apartment on the property that can be rented by someone, a couple, or family; or

maybe as an “in-law” apartment to help other family members with a place to reside. The second way is to potentially generate income for the owner of the principal structure.

There are many factors to consider with regulations on ADU’s, such as outlined below:

-Attached or Detached ADU’s
-Minimum size of ADU
-Maximum size of ADU
-If Detached – Setbacks from property lines, and other structures on same parcel
-Architectural Standards
-Parking Concerns and Access Concerns
-Can both Principal Dwelling Unit (PDU) and ADU be rented, or shall owner reside at PDU.
-Utilities
-Rental Term Lengths

Since this is the initial discussion of this topic by the Planning Commission, this memorandum will be kept short. Instead, there will be a number of attachments and reference materials. These are being sent as general background information.

Attachments:
1. Article Accessory Dwelling Unit
2. Article ADU Laws and Regulations in Michigan
3. Article Liz Weston (Detroit Free Press)
4. CA Zoning District Uses
5. Section 2 Definitions Dwelling Units
6. Section 4.51 Dwelling Unit
7. Sample Rural ADU Ordinance
8. Ann Arbor ADU Guidebook
9. California ADU Handbook

Accessory dwelling units – Coming to a neighborhood near you?

Brad Neumann<neuman36@msu.edu>, Michigan State University Extension - September 09, 2022

With interest in urban living on the rise, more communities are considering amending local regulations to allow accessory dwelling units in traditional neighborhoods.

Accessory dwelling unit above a detached garage. Photo Credit: Radcliffe Dacanay

Nationwide, cities and small towns are experiencing housing affordability and attainability challenges. According to the Joint Center for Housing Studies of Harvard University's The State Of the Nation's Housing 2022 these challenges are driven by many factors such as rising costs and limited housing stock alongside increasing demand from homebuyers report. More communities are addressing the increased demand for housing in traditional neighborhoods by amending regulations to allow accessory dwelling units.

Accessory dwelling units (ADUs) are also known as granny flats, mother-in-law apartments or carriage houses. Regardless of the name, this definition from the Village of Beulah, Michigan zoning ordinance gets at the key concept – "An incidental and subordinate dwelling unit which provides living quarters for one (1) individual or a family that is on the same lot, but is separate from the primary dwelling unit…." Some communities include standard for accessory dwellings that requires one of the two dwelling units – either the principal dwelling or the accessory dwelling – to be occupied by the property owner in order to avoid an absentee landlord situation in which structures may sometimes fall into disrepair. Accessory dwelling units might be in an accessory building, such as a converted garage or new construction, or the accessory dwelling might be attached or part of the principal dwelling, such as a converted living space, attached garage, or an addition. The later may be called something else, like in the Village of Beulah ordinance that refers to them as accessory apartments.

Accessory dwelling units have been touted as an affordable housing strategy in communities where a brisk real estate market is driving families and talented workers out of the community. The relatively smaller size of such units makes them more affordable. What's more, such dwellings also provide additional income for property owners, making the principal residence also more affordable. Although, it is important to note that accessory dwellings will not solve the affordable housing problem alone.

In addition to making housing more affordable, communities have looked to ADUs as a way to increase density in neighborhoods as a counter measure to changing household and family structures. In order to improve business for local establishments in and around traditional neighborhoods, ADUs not only subtly increase population density; they increase the customer base near a community business district.

Any community that has considered changes to zoning to allow accessory dwelling units knows the topic is not without objection. Resistance to accessory dwelling units often relate to concerns about overcrowding, declining structural conditions, and increasing traffic. In practice, communities can offset these concerns with reasonable regulations and a robust planning process that includes public participation.

For instance, accessory dwellings may not be appropriate on every residential parcel. Sometimes local regulations include a minimum parcel size to be permitted (although, if this minimum size is too big it may defeat the purpose of increasing density in a traditional neighborhood). Also, regulations may require provision of one additional off-street parking space accessible from the existing driveway or alley. To help preserve neighborhood character, entry doors may be required to be screened from the street or off the side of a structure. So, depending on the size of the parcel, the size and orientation of the existing, principal dwelling, the driveway or alley configuration, and other special circumstances, accessory dwellings may not be appropriate on every single-family residential lot in a community.

There are numerous resources on ADUs for communities considering this housing option, some of those include:

- ABCs of ADUs: A Guide to Accessory Dwelling Units and How They Expand Housing Options for People of All Ages by AARP
- Accessory Dwelling Units: A Step by Step Guide to Design and Development by AARP
- Accessory Dwelling Units: Model State Act and Local Ordinance by the AARP
- Accessory Dwelling Unit (ADUs) Case Study by the U.S. Department of Housing and Urban Development
- Accessory Dwelling Units – Knowledgebase Collection by the American Planning Association
- Accessory Dwelling Units – Quick Notes by the American Planning Association
- A Guide to Building a Backyard Cottage by the City of Seattle
- AccessoryDwellings.Org

Additionally, example zoning regulations from Michigan communities that allow ADUs include:

- Clark Township (Mackinac County) allows as a permitted use in any zoning district that permits single family dwellings

- Hamburg Township (Livingston County) allows as a permitted use across several districts (see Sec. 36.239)
- Village of Beulah (Benzie County) allows as a permitted use with special conditions across residential and some commercial
- City of Traverse City requires registration and allows up to 15 new per year in its Single-Family Dwelling Districts
- City of Niles allows as a special land use in its Low-Density and Medium-Density Residential districts
- City of Manistee allows as a special use in its Medium-Density and High-Density Residential districts and by right in the Central Business District
- City of Grand Rapids allows as a special land use in all residential districts

If interested in learning more about accessory dwelling units, contact a Michigan State University Extension land use educator.

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LAWS

ADU Laws and Regulations in Michigan

Jimmy Singh
Marketing

As the housing landscape evolves, Michigan has been proactive in addressing the rising demand for affordable living spaces. With the apparent challenges discussed in The State

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Of the Nation's Housing 2022 report from the Joint Center for Housing Studies of Harvard University, there's been an uptick in communities revising **Michigan ADU rules**. These strategic changes aim to integrate **Accessory Dwelling Unit regulations in Michigan** within established neighborhoods, creating opportunities for more sustainable urban growth and meeting the **legal requirements for ADUs in Michigan**. Assess the potential advantages of obtaining **landlord insurance in Michigan** before entering into the rental agreement, providing a safety net for unexpected damages.

Key Takeaways

- Amendments to local rulings are making it possible to establish ADUs in Michigan neighborhoods, promoting affordable housing.
- ADUs, including granny flats and carriage houses, provide both housing solutions and financial benefits to property owners.
- Owner-occupancy regulations are enforced to ensure proper maintenance and community integration of ADUs.
- Michigan's approach to ADU incorporation addresses concerns about neighborhood character and potential congestion.
- Communities in Michigan employ a variety of tailor-made zoning laws to allow ADUs, reflecting location-specific needs and preferences.
- Understanding the diverse **Michigan ADU rules** and compliance requirements is crucial for the legal establishment of ADUs.
- ADUs contribute to local economic vitality by increasing resident density and supporting nearby businesses.

The Growing Interest in Urban ADUs

Michigan, embracing the need for diverse housing solutions, has seen a burgeoning interest in Accessory Dwelling Units (ADUs) within urban localities. With an increasing inclination towards urban living, the integration of ADUs into existing neighborhoods presents a sustainable approach to accommodate the affordable housing demand. The *Michigan ADU permitting process* plays a pivotal role in this transition, facilitating the transformation of single-family zones into inclusive spaces enriched by diverse living options.

As the need for affordable housing amplifies, the flexibility of ADUs stands out, with options ranging from internal modifications to "granny flats" and other forms of secondary dwellings. This versatility is reshaping Michigan's urban residential landscapes and concurrently adhering to the *zoning laws for ADUs in Michigan* that promote livability and maintain community cohesion. A distinctive feature of these regulations is the owner-occupancy requirement, a provision that seeks to uphold the quality and upkeep of properties while fostering a vested interest in local development.

> The Village of Beulah's ordinance is emblematic, stipulating that, "An incidental and subordinate dwelling unit...on the same lot, separate from the primary residence, enhances the traditional fabric of the community."

This growth in ADU establishment goes hand in hand with progressive changes in Michigan's zoning laws. These modifications are carefully crafted to incorporate ADUs seamlessly, aiming for a delicate balance between increased urban density and sustained neighborhood character. Such strategic zoning decisions bolster the provision of affordable living spaces, invigorating local economies by amplifying the consumer base to support nearby businesses. The expansion of ADUs hence serves a dual purpose, simultaneously addressing housing affordability concerns and nurturing the urban economic vitality.

- The surge in consideration of ADUs reflects Michigan's commitment to innovative housing strategies.

- Standalone structures and converted living spaces within primary residences are supporting examples of functional ADUs.
- Owner-occupancy clauses in ADU regulations underscore efforts to maintain well-kept neighborhoods and dwellings.
- Michigan communities, such as the Village of Beulah, exemplify the pragmatic application of ADU ordinances.
- By fostering higher housing density, ADUs indirectly contribute to the flourishing of local commerce and businesses.

Zoning Laws for ADUs in Michigan

The landscape of Accessory Dwelling Units (ADUs) in Michigan is a tapestry of varying municipal ordinances, each carefully stitched to address local housing needs while retaining the essence of neighborhood identity. Understanding the *Michigan ADU guidelines* is essential for homeowners and developers to navigate and take advantage of the housing opportunities provided by the inclusion of ADUs in urban and suburban environments. The *zoning laws for ADUs in Michigan* are not

monolithic; they shift and adapt across the geographic and jurisdictional spectrum, reshaping the state's commitment to diversity in housing solutions.

In certain municipalities, ADUs symbolize a welcomed solution to the pressing need for additional housing. For instance, Clark Township embraces ADUs across all residential districts that allow single-family homes, providing broader opportunities for homeowners to create secondary living spaces. Similarly, the City of Grand Rapids champions the ADU concept, offering them as a special land use across residential zones. These inclusive strategies are informed by a broader understanding of land use and are sympathetic to the demands of modern living.

- Clark Township, known for embracing wide-open spaces and rural charm, now extends this openness to its residential zoning, welcoming ADUs as a permitted use.
- The bustling urban energy of the City of Grand Rapids is channeled into progressive housing policies, allowing ADUs to proliferate as a response to the need for affordable urban living options.

Contrastingly, the Village of Beulah and the City of Traverse City implement ADU ordinances with more stringent conditions. Both areas illustrate a delicate maneuvering of policy to uphold the intrinsic qualities of their respective communities, imposing specific conditions or limiting the number of ADUs. This careful calibration ensures that while developing new housing avenues, the traditional neighborhood conduct is preserved, mitigating concerns regarding traffic and overstretched resources.

> Each Michigan municipality tailors its approach to ADUs to retain the unique character of its neighborhoods, thereby shaping policies that are as distinctive as the communities themselves.

Realizing the full potential of ADUs in Michigan means recognizing the diversity of **zoning laws for ADUs in Michigan** and how these regulations can serve as bridges connecting

housing innovation with preserving the features that make each Michigan community special. It's about understanding the nuanced policy-making that allows ADUs to flourish in Michigan's varied living landscapes, making them integral to the state's vision of a dynamic and responsive housing ecosystem.

ADU Permitting in Michigan

Embarking on an Accessory Dwelling Unit (ADU) project in Michigan requires a clear understanding of the state's permitting process. While it's crucial to adhere to the *legal requirements for ADUs in Michigan*, one must also consider local mandates that could influence the project's success. The *Michigan ADU permitting process* is designed to be fluid, accommodating a variety of community plans and resident needs through its flexible zoning laws.

The Permitting Process Overview

Michigan's journey towards increased housing options through ADUs includes diverse permit requirements adapted to each community's unique context. For example, the City of Traverse City allows ADUs by requiring registration and establishing a limited number per year, ensuring a controlled and measured growth. Potential ADU owners should prepare to engage with a multi-layered process that could range from a straightforward application to a more complex review, contingent on the specific guidelines of the locality.

Key Documents and Resources for Permit Applicants

Aspiring ADU owners and builders can access a wealth of information to aid them through the permitting phase. Insightful guidebooks like "ABCs of ADUs" by AARP and detailed case studies from the U.S. Department of Housing and Urban Development offer step-by-step support. Furthermore, municipalities across Michigan, such as Ann Arbor, provide enriching resources like FAQs, planning commission recordings, and proposals for zoning ordinance amendments. These materials are essential tools, crafted to simplify participation in the *Michigan ADU permitting process* and ensure compliance with the pivotal *legal requirements for ADUs in Michigan*.

Michigan ADU Code Compliance and Requirements

As Michigan embraces the growing popularity of Accessory Dwelling Units (ADUs), it's essential for residents and builders to understand and comply with the specific *Michigan ADU code* and *ADU construction regulations in Michigan*. The size of the unit is a primary consideration, with the state's building

codes requiring that ADUs for couples must be no less than 350 square feet, and those intended for families of four should be a minimum of 450 square feet.

But compliance extends beyond mere size specifications. Local ordinances in Michigan meticulously outline necessary building amenities to ensure that ADUs provide safe and comfortable living conditions. These include necessities such as flush toilets and running water, which are non-negotiable for legal habitation. Prospective ADU owners must navigate these codes with precision to ensure that their units meet every requirement set forth by local jurisdictions.

> Fulfilling these stipulations not only adheres to **Michigan ADU code** but also upholds the integrity and safety of Michigan's richly diverse neighborhoods.

Finding the appropriate land for ADU construction presents another layer of complexity due to varied zoning laws. Securing a location that allows for ADUs within its planning framework is critical, making thorough research and understanding of local zoning regulations an indispensable part of the planning process. By matching the *ADU construction regulations in Michigan* to each unique setting, builders and homeowners can anticipate a successful addition to the community's housing options.

- Prospective ADU builders must account for minimum square footage requirements as part of their compliance checklist.
- Regulations around building amenities such as sanitation and utilities are strict to ensure habitability.
- Navigating local zoning laws is a crucial step in identifying suitable land for ADU placement.

Laying the groundwork for an ADU in Michigan is a collaborative effort between prospective owners, community planners, and builders. Knowledge and compliance with both state and local codes are not only a legal mandate but a commitment to fostering a thriving, resilient, and sustainable housing environment across the state.

Accessory Dwelling Unit Regulations in Michigan

In the landscape of Michigan's housing solutions, Accessory Dwelling Units (ADUs) are emerging as a versatile and necessary part of urban development. **Michigan ADU guidelines** reflect the state's commitment to cultivable housing schemes that cater to the needs of its residents while ensuring smart growth within its communities. The *Accessory Dwelling Unit regulations in Michigan* are designed to regulate development in a way that maintains quality of life and ensures the effective use of space.

Minimum Size and Occupancy Standards

When considering the establishment of an ADU in Michigan, size and occupancy play crucial roles in ensuring that these structures are in harmony with existing housing. State laws require that ADUs accommodate their inhabitants comfortably. Therefore, for couples, an ADU must be at least 250 square feet, while families of four are recommended to have units that measure a minimum of 450 square feet. These measurements ensure that ADUs balance between optimizing space and maintaining living standards.

Owner Occupancy and Avoiding Absentee Landlord Issues

Integral to the **Accessory Dwelling Unit regulations in Michigan** is the stipulation for owner occupancy. This provision serves multiple functions, such as preventing the deterioration of properties and preserving neighborhood integrity by

avoiding absentee landlord situations. Such regulation ensures someone who is directly invested in the property's maintenance and the wellbeing of the community remains an active part of its daily life. The result is a shared environment where both ADUs and main residences are responsibly managed and cared for, fostering positive relationships among residents.

- Ensuring tiny homes and ADUs meet Michigan's size and occupancy standards for a healthy living environment is key.
- Michigan's ADU regulations frequently include clauses that require one of the dwelling units to be owner-occupied.
- Invoking these **legal requirements for ADUs in Michigan** aims at enhancing community wellbeing and property upkeep.

Types and Examples of ADUs in Michigan Zoning Ordinances

The versatility of Accessory Dwelling Units (ADUs) in Michigan is significantly influenced by local **Michigan ADU rules**. Different communities within the state have adopted unique standards that manifest in various applications of ADUs, tailoring solutions to their distinct housing needs. These community-specific ordinances illustrate how zoning laws are pivotal to the effective administration and integration of ADUs into Michigan's housing framework.

For example, *Clark Township* illustrates a broad acceptance of ADUs, extending their availability across all residential zones that permit single-family homes. This liberal approach helps meet the increasing demand for diverse housing options in the township. On the other hand, *Hamburg Township* demonstrates

a more selective deployment, allowing ADUs in specific zoning districts as detailed in their Section 36.23a.

> Reflecting the necessities of each community, Michigan's ADU ordinances cater to both expanding housing opportunities and maintaining the localities' unique characteristics.

In the context of *Niles*, ADUs are addressed as special land uses within specific residential districts, spotlighting a bespoke strategy tailored to the city's urban planning objectives. This special categorization allows the City of Niles to control the integration of ADUs, ensuring compatibility with existing structures and community goals.

- **Clark Township:** Permits ADUs in all residential districts.
- **Hamburg Township:** Includes ADUs as a permitted use across designated districts.
- **Village of Beulah:** Authorizes ADUs under special conditions within both residential and some commercial zoning areas.
- **City of Traverse City:** Sets a limit on the number of ADUs per year, promoting a gradual but proactive accommodation of housing needs.
- **City of Niles:** Approves ADUs as a special land use, illustrating a controlled and bespoke urban development plan.

These examples underscore how **ADU construction regulations in Michigan** are not a one-size-fits-all prescription but rather a collection of locally attuned policies. Through such an approach, Michigan optimizes ADUs' benefits, from elevating the housing stock to enhancing community makeup with thoughtful, place-based solutions.

ADU Construction Regulations in Michigan

The process of erecting Accessory Dwelling Units (ADUs) in Michigan is subject to a framework of stringent **ADU construction regulations in Michigan**, affirming the state's dedication to the safety and welfare of its residents. These construction guidelines are designed to parallel the trusted and established standards applied to conventional home building, emphasizing the need for quality and durability in ADU development.

To align with the *Michigan ADU code*, any new ADU must be securely anchored to a foundation that is at least 24 inches above the ground level, providing a solid base to support the structure. The integrity of the walls is equally critical; hence the mandate for either solid wood or robust metal composition, ensuring lasting stability and resistance to the elements.

> By imposing rigorous construction requirements, Michigan stands committed to harmonizing the innovative appeal of tiny home living with unwavering quality and safety measures.

The importance of climate control and energy conservation is acknowledged through the enforcement of double-paned windows, thereby enhancing insulation and efficiency. To cap off the dwelling, metal roofs are specified within the ADU regulations, offering robustness and longevity to protect against the diverse Michigan weather patterns.

- Foundations must meet a specified height criteria of no less than 24 inches off the ground.
- ADU walls must be constructed using either solid wood or metal, ensuring structural soundness.
- Rooftops are to be composed of metal materials for sustained durability.
- Double-paned windows are mandated for energy efficiency and climate control within the ADU.
- Installation of smoke and carbon monoxide detectors is a mandatory safety provision.

Health and safety considerations are paramount within the **Michigan ADU code**. Mandatory installations of smoke and carbon monoxide detectors ensure that ADUs are not only safe sanctuaries from environmental adversities but are also equipped to alert occupants of internal risks, aligning these diminutive dwellings with the protective standards expected in full-sized homes.

Adherence to these rigorous *ADU construction regulations in Michigan* not only preserves the homeowner's investment but also fortifies the fabric of Michigan communities with quality housing options that stand the test of time.

Michigan ADU Guidelines: Increasing Density and Business Potential

The implementation of **Michigan ADU guidelines** has brought with it a significant shift in the urban landscape, attracting attention for more than just affordability. These guidelines pave the way for increased population density within

neighborhoods, a change that holds remarkable potential for boosting business. A by-product of the strategic modification of traditional neighborhoods to accommodate *Accessory Dwelling Units* (ADUs) is the marked expansion of the consumer base for surrounding businesses.

As city planners and policymakers delve deeper into **ADU Laws and Regulations in Michigan**, there's an emergent recognition of the symbiotic relationship between housing and economic development. ADUs are celebrated not only as a response to the pressing need for affordable housing but also as engines of economic growth. Their small footprint and rapid implementation affirm their role in providing durable housing solutions and, equally importantly, in bolstering the vitality of community commerce.

> **By nurturing urban density, ADUs contribute not only to the diversity of housing options but also to the vivacity of Michigan's urban centers.**

- ADUs serve as a catalyst for local economic development, inviting a fresh wave of consumers to shop, dine, and engage with local establishments.
- The increased density provided by ADUs is in alignment with Michigan's goal to encourage urban revitalization and sustainability.
- Pursuant to *Michigan ADU guidelines*, these units are integral to creating vibrant, walkable communities, boosting foot traffic to local businesses.

Recognizing the powerful impact of *ADU Laws and Regulations in Michigan* on community development, municipalities are incentivized to further refine and adapt their guidelines. In doing so, they not only meet the immediate need for additional housing but also set the stage for an enriched economic landscape. ADUs, therefore, emerge as a thoughtful approach to reshaping the future of Michigan's urban neighborhoods, one dwelling at a time.

Conclusion

In the constellation of housing strategies, Accessory Dwelling Units (ADUs) shine brightly as a pragmatic and multifaceted solution for Michigan's urban and suburban landscapes. Essaying roles that range from offering economic relief to property owners to invigorating local businesses, ADUs capture the essence of innovative and sustainable living. The transformative impact of ADUs in Michigan is palpable—not only do they alleviate the affordable housing quandary, but they also embolden the fabric of communities with additional residential amenities and sprawling homeliness on existing lots.

Summarizing the Importance of ADU Development in Michigan

The **Accessory Dwelling Unit regulations in Michigan** stand as a testament to the state's strategic move towards embracing urban density and the ever-evolving needs of its populace. ADUs serve an integral role in community development, providing a versatile housing avenue while benefitting local economies and laying the groundwork for diverse living situations. With a narrative punctuated by thoughtful planning and nuanced regulation adjustments, Michigan illustrates its dedication to crafting spaces that are not only affordable but are also ripe with potential for personal and communal growth.

Future Prospects for ADU Laws and Regulations in Michigan

The future contours of **ADU Laws and Regulations in Michigan** are charting towards a more inclusive and adaptable housing blueprint. In a steady pivot to embrace the influx of growing

urban populations, municipalities are recalibrating their zoning ordinances and permitting processes to keep pace with the demand for housing solutions such as ADUs. This forward-thinking agenda presages a future where ADUs play a pivotal role in shaping resilient, economically vibrant, and community-oriented urbanization in Michigan. Visionary urban planning and responsive legal frameworks underpin this trajectory, positioning ADUs at the forefront of Michigan's housing innovation.

FAQ

What are the basic legal requirements for constructing an ADU in Michigan?

Michigan's requirements for ADUs include adherence to local zoning laws, building codes, and often an owner-occupancy clause. The specific regulations can vary significantly depending on the municipality where the ADU will be located.

Can I build an ADU in any Michigan neighborhood?

The ability to build an ADU depends on local zoning laws which differ from one municipality to another. Some areas may allow ADUs across residential districts, while others may restrict them or implement caps on the number of ADUs.

Are there standards for the size and occupancy of ADUs in

Michigan?

Yes, Michigan enforces size standards such as minimum square footage to ensure livability. Occupancy standards are also in place, with common requirements stating that an ADU must be the primary residence of the owner or a close family member.

What is the permitting process for ADUs in Michigan?

The permitting process for ADUs varies widely across Michigan's jurisdictions. It usually involves a detailed application to ensure compliance with local zoning and building codes, site plans, and sometimes a registration process.

Are there resources available to help navigate the ADU permitting process in Michigan?

Yes, multiple resources are available, such as guidebooks from AARP and the American Planning Association, and local municipal planning commission recordings and documents, which can provide assistance through the ADU permitting process.

How do Michigan ADU codes ensure the safety and quality of construction?

ADU codes in Michigan specify construction requirements that include foundation integrity, wall and roof material, window specifications, and the installation of smoke and carbon monoxide detectors, mirroring those for traditional homes.

How do ADUs benefit local businesses in Michigan?

By increasing the housing density within neighborhoods, ADUs add to the local population base, which can potentially increase the customer base for nearby businesses, contributing to the local economy.

What is the future outlook for ADU regulations in Michigan?

ADU regulations in Michigan are expected to become more inclusive and diverse in the future as municipalities continue to adapt their ordinances to meet the growing need for affordable housing and sustainable urban living solutions.

Source Links

- https://www.a2gov.org/departments/planning/Pages/Acce Dwelling-Units.aspx
- https://www.canr.msu.edu/news/accessory_dwelling_units
- https://www.tinyhouse.com/post/michigans-tiny-home-rules-and-regulations

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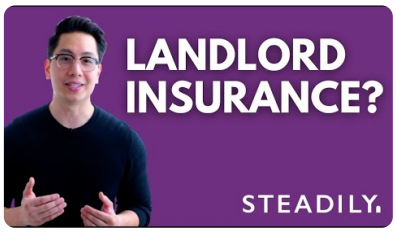

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PERSONAL FINANCE

Liz Weston: Will adding an accessory dwelling unit pay off?

Liz Weston NerdWallet

Published 7:01 a.m. ET Nov. 20, 2022

Accessory dwelling units, or ADUs, are separate living spaces added to an existing home — typically on a single-family residential lot. That addition could include a converted basement or backyard cottage. ADUs can house older family members, provide lodging for young adult family members or serve as a source of rental income. Despite their utility, ADUs aren't allowed in many areas. Even where ADUs are legal, construction costs and higher property taxes can make them a costly investment. Before you build an ADU, weigh the pros and cons and look around your city to see what your neighbors are doing.

Accessory dwelling units are known by many names: in-law suites, guest houses, backyard cottages, or basement or garage conversions, among others. What all ADUs have in common is that they're a separate living space typically added to a single-family residential lot, and they're having a moment.

Constructing an ADU could increase your property value while providing rental income or extra living space for a family member. Then again, adding an ADU could be an expensive hassle you live to regret.

If you're thinking about an ADU, here's what to consider before you commit.

WHY ADUS ARE INCREASINGLY POPULAR

In recent years, several cities and some states — including California, Oregon and New Hampshire — have passed laws making it easier for homeowners to create ADUs, in part to address housing shortages and rising costs that have led to an affordability crisis in many communities. ADUs are seen as a relatively inexpensive way to increase the supply of more affordable housing without drastically changing the character of residential neighborhoods.

Demand is also being fueled by the aging of the U.S. population, says Rodney Harrell, vice president of family, home and community for AARP, which publishes a guide called "The ABCs of ADUs." People are considering adding space for older family members or caretakers. The pandemic may have accelerated that trend, as people looked for alternatives to the nursing homes where at least 175,000 Americans died from COVID-19, Harrell says. ADUs also can provide independent living spaces for families' young adult members, who might not be able to afford their own apartments.

"It's a housing solution that doesn't solve every problem, but it helps address several problems at one time," Harrell says.

COSTS — AND ACCEPTANCE — VARY WIDELY

Converting existing space, such as a garage, attic or basement, into an ADU can cost about $50,000, while a new detached ADU often exceeds $150,000, Harrell says. And depending on where you live, getting permits to create your ADU can be a relative breeze, an extended fight or flat-out impossible.

In California, homeowners have a legal right to build ADUs, and local governments aren't supposed to create barriers to getting permits. Some cities have streamlined the permitting process, and a few, including Los Angeles and San Jose , have preapproved building plans that can further reduce delays.

Some California cities are fighting the trend, however, by delaying or denying permits. Most U.S. cities either do not allow ADUs or have strict regulations that inhibit their development, says Kol Peterson, an ADU consultant and the author of "Backdoor Revolution: The Definitive Guide to ADU Development." Even where ADUs are legal, cities may require zoning exceptions called variances, demand expensive upgrades or impose fees that can add substantially to the cost, Peterson says.

Tempted to skip the permits? That's probably not smart. Unpermitted construction could make your home tough to sell or refinance and leave you vulnerable to enforcement actions from your area's zoning department, says real estate appraiser Jody Bishop , president of the Appraisal Institute, a trade group. All it takes is one disgruntled neighbor to turn you in.

HOW ADUS ARE LIKE SWIMMING POOLS

If you're building an ADU primarily for the extra income, recognize that any rent you charge could be at least partially offset by increased costs, such as higher property taxes , larger homeowners insurance premiums and payments on loans used to construct the unit, among other expenses.

As with any home improvement project, there's no guarantee you'll get your money back from an ADU when you're ready to sell the home, Bishop says.

ADUs have a lot in common with swimming pools, he adds. In-ground pools are an accepted and even expected feature in some neighborhoods, so you may recoup at least some of the cost of building one when you sell your home. In other areas, pools are uncommon and could detract from a home's value if buyers are concerned about maintenance hassles or drowning risks, Bishop says.

Similarly, ADUs may not add much value in areas where they're unusual, he points out. Some people may prize the ability to rent out the ADU for extra income, while others won't want to be landlords. And converting an existing attic, basement or garage might deter buyers who would rather have those spaces untouched.

Perhaps the best indication an ADU will add value is if your neighbors are building them, Bishop says. And if that's the case, a properly permitted and thoughtfully designed ADU could be worth the investment.

"If it's well done, it's well thought out and functional, then you probably got something that the market would embrace and not mind paying for," Bishop says.

This column was provided to The Associated Press by the personal finance website NerdWallet. Liz Weston is a columnist at NerdWallet, a certified financial planner and author of "Your Credit Score." Email: lweston@nerdwallet.com. Twitter: @lizweston.nerdwallet-how-to-finance-a-home-remodel

3.1.1 CA Conservation Agriculture

A. INTENT

The intent of the "CA" Conservation Agricultural District is broad in scope but specific in purpose: to protect vital natural resources (for example, high quality water supplies, flood-prone areas, stable soils, significant stands of vegetative cover, substantial wetlands) and to protect lands best suited to agricultural use from the encroachment of incompatible uses which would cause such land to be taken out of production prematurely, while designating an area appropriate to low density single family residential development that does not alter the general rural character of the District.

The standards in this district are intended to assure that permitted uses peacefully coexist in a low density setting, while preserving the rural-like features and character of certain portions of the Township. Low density residential development is further intended to protect the public health in areas where it is not likely that public water and sewer services will be provided.

It is further the intent of this District to permit a limited range of residentially-related uses, and to prohibit multiple family, office, business, commercial, industrial and other uses that would interfere with the quality of residential life in this district. This District is intended to correspond to the Estate Residential future land use category of the Comprehensive Plan

User Note: For uses listed in **bold blue**, refer to Article 4, or click on use, for use-specific standards

B. PRINCIPAL PERMITTED USES

i. Agriculture and farming
ii. **Essential public services, provided there is no building or outdoor storage yard** §4.26
iii. **Forests, forestry** §5.17
iv. **Single family detached dwellings** §4.1
v. Township owned and operated water, sewer and storm drain systems
vi. **Public park and recreation areas** §4.40
vii. State licensed residential facilities that provide care for up to six (6) individuals, including child day care and adult foster care
viii. **Private stables when located on a site of not less than five (5) acres** §4.43

C. ACCESSORY USES

i. **Accessory uses, buildings and structures customarily incidental to any of the above-named permitted uses** §5.14
ii. **Home occupations** §4.2
iii. Living quarters for persons employed on the premises and not rented or used for some other purpose
iv. **Temporary or seasonal roadside stand** §4.41
v. Seed and feed dealership provided there is no showroom or other commercial activities included
vi. Land extensive recreation activities

D. SPECIAL LAND USES

i. **Cemeteries** §4.19
ii. **Adult care and child care facilities that provide care for seven (7) to twelve (12) individuals** §4.12
iii. **Churches and religious institutions** §4.20
iv. **Nursing or convalescent homes, or child caring institution** §4.23
v. Duplex or two dwelling for farm family only, in conjunction with a farm operation.
vi. **Essential public service buildings, structures and equipment, excluding storage yards** §4.26
vii. Forestry clearcut operation which encompasses thirty (30) or more acres over a three (3) year period or ten (10) or more acres during one year.
viii. **Golf courses and country clubs** §4.30
ix. **Kennels** §4.33
x. **Sand, gravel or mineral extraction** §4.5
xi. **Public & private elementary, intermediate or high schools** §4.42
xii. **Specialized animal raising and care, when located on at least five (5) acres** §4.10
xiii. **Public stables or riding arenas** §4.43
xiv. **Radio, telephone and television transmitting and receiving towers** §4.39
xv. **Landscape nursery, if located on at least ten (10) acres** §4.38
xvi. **Veterinary offices/clinics (large animal)** §4.45
xvii. **Private recreation areas** §4.40
xviii. **Bed and breakfast facilities** §4.18
xix. Farm markets, cider mills, and you-pick operations on a farm
xx. Wildlife refuges
xxi. Game preserves

68. **DOCK, DOCKED or DOCKING**: The mooring of a boat directly to a pier or other structure, including but not limited to a platform, hoist, ramp, or other permanent or seasonal fixture or structure extending from the shore or placed in the water off the shore, and directly accessible to water frontage; and shall also mean the regular anchoring of a boat adjacent to water frontage; and shall also mean the placement or storage of a boat, temporarily or permanently, upon the water frontage or shoreline.

69. **DRAINAGE:** The removal of surface water or ground water from land by drains, grading, or other means. Drainage includes the control of runoff to minimize erosion and sedimentation during and after development and includes the means necessary for water-supply preservation or prevention or alleviation of flooding.

70. **DRIVE-THRU FACILITY:** Any building and/or structure constructed and/or operated for the purpose of providing goods or services to customers who remain in a motor vehicle during the course of the transaction.

71. **DRIVEWAY:** A private way intended to provide access to no more than one (1) parcel or dwelling unit.

72. **DRIVEWAY, COMMERCIAL**: The point of access to a single commercial, industrial or institutional use, lot, parcel or yard that provides a means of ingress, egress, and circulation for vehicles and traffic to, from, and between the road, and the principal or accessory building, use, or structure.

73. **DRIVEWAY, SHARED**: A private way intended to provide access to no more than two (2) parcels or single family dwelling units. Shared driveways shall be subject to easement and maintenance agreements.

74. **DRIVEWAY, SHARED COMMERCIAL**: A commercial driveway not otherwise designated as a private road designed to provide shared access to two or more uses, lots, parcels, or yards.

75. **DRIVING RANGE**: A facility equipped with distance markers, clubs, balls, and tees for practicing golf drives.

76. **DWELLING, MULTIPLE FAMILY:** A building used or designed as a residence for three or more families for residential purposes living independently of one another, with separate housekeeping, cooking and bathroom facilities for each. Multiple family dwellings include the following:

    A. **Apartment:** An apartment is an attached dwelling unit with party walls, contained in a building with other apartment units which are commonly reached off of a common stair landing or walkway. Apartments are typically rented by the occupants. Apartment buildings often may have a central heating system and other central utility connections. Apartments typically do not have their own yard space. Apartments are also commonly known as garden apartments or flats.

    B. **Efficiency Unit:** An efficiency unit is a type of multiple-family or apartment unit consisting of one (1) principal room, plus bathroom and kitchen facilities, hallways, closets, and/or a dining alcove located directly off the principal room.

77. **DWELLING, ROW:** Any one of three or more attached dwellings in a continuous row, each such dwelling being designed and erected as a unit on a separate lot and separated from one another by an approved wall or walls.

78. **DWELLING, SINGLE-FAMILY:** A detached building designed for or occupied exclusively by one (1) family for residential purposes.

79. **DWELLING, TWO-FAMILY:** A detached building designed for or occupied exclusively by two (2) families for residential purposes living independently of each other, with separate housekeeping, cooking, and bathroom facilities for each. Also known as a duplex.

80. **DWELLING UNIT:** Any house, apartment, condominium unit, building or any portion thereof which is occupied or intended to be occupied as a home, residence, or sleeping place of or by a family or unrelated persons either permanently or transiently.

81. **EARTH-SHELTERED HOME:** A complete building partially below grade that is designed to conserve energy and is intended to be used as a single-family dwelling.

82. **EASEMENT:** A grant by the property owner of the limited use of private land by the public, a corporation, or private person or persons for a specific public or quasi-public purpose or purposes.

4.51 LAWFUL USE OF A STRUCTURE AS A DWELLING UNIT

1. Incompletely Constructed Structures. Any incompletely constructed structure which does not meet the requirements of the Livingston County Building Code or this Ordinance shall not be used as a dwelling. For the purposes of this Section, a basement which does not have a residential structure constructed above it shall be considered an incompletely constructed structure. The restrictions shall not prevent temporary use of a structure as a residence in accordance with Section 4.3, Temporary Structures Used for Dwelling Purposes.
2. Caretaker Residence. Except as otherwise specifically provided herein, no dwelling shall be erected in a commercial or industrial district, except for the living quarters of a watchman or caretaker. Any such living quarters shall consist of a structure which is permanently affixed to the ground, constructed in accordance with the adopted building code, and provided with plumbing, heating, bathroom, and kitchen facilities. In no case shall such living quarters be used as a permanent single-family residence by anyone other than a watchman or caretaker and one other person.

4.52 RESERVED

4.53 INSTITUTIONS OF HIGHER LEARNING

In the MR District, such institutions are subject to a minimum site size of forty (40) acres, and minimum building setback of eighty (80) feet.

4.54 RESERVED

4.55 MOBILE HOME PARKS

1. Site Plan Review. Pursuant to Section 11 of Michigan Public Act 96 of 1987, as amended, a preliminary plan shall be submitted to the Township for review by the Planning Commission, pursuant to Section 6.1, except where said procedures and requirements are superseded by requirements in Public Act 96 of 1987, as amended, or the Mobile Home Commission Rules. Pursuant to Section 11 of Public Act 96 of 1987, as amended, the Planning Commission shall take action on the preliminary plan within sixty (60) days after the Township officially receives the plan
2. Compliance with applicable laws. Mobile home parks shall be subject to all the rules and requirements as established and regulated by Michigan law including, by the way of example, Act 96 of 1987, as amended, and the Mobile Home Commission Rules. All structures and utilities to be constructed, altered, or repaired in a mobile home park shall comply with all applicable codes of the Township, the State of Michigan, the U.S. Department of Housing and Urban Development and the Mobile Home Commission, including building, electrical, plumbing, liquefied petroleum gases and similar codes, and shall require permits issued therefore by the appropriate offices. However, a mobile home built prior to June 15, 1976 shall have been constructed to the State of Michigan Standards in effect at that time. All structures and improvements to be constructed or made under the County Building Code shall have a building permit issued therefore by the County Building Inspector
3. Dimensional Requirements. Mobile homes shall comply with the following minimum distances and setbacks:
   A. Twenty (20) feet from any part of an adjacent mobile home.
   B. Ten (10) feet from any on-site parking space of an adjacent mobile home site.
   C. Ten (10) feet from any accessory attached or detached structure of an adjacent mobile home.
   D. Fifty (50) feet from any permanent building.
   E. One hundred (100) feet from any baseball, softball, or similar recreational field.
   F. Ten (10) feet from the edge of an internal road, provided that such road is not dedicated to the public. Mobile homes and other structures in the MR-2 District shall be set back at least twenty (20) feet from the right-of-way line of a dedicated public road with the mobile home park.
   G. Seven (7) feet from any parking bay.
   H. Seven (7) feet from a common pedestrian walkway.
   I. All mobile homes and accessory buildings shall be set back not less than fifty (50) feet from any park boundary line, including the future right-of-way line of abutting streets and highways.

Sample Accessory Dwelling Unit Ordinance
RURAL (Minimum 1 acre)

All language is modifiable and should be reviewed by your Municipal Planner or Attorney

Modifications that may be unique to your community's zoning ordinance noted in RED.

Intent: By permitting Accessory Dwelling Units the Township seeks to achieve several goals:

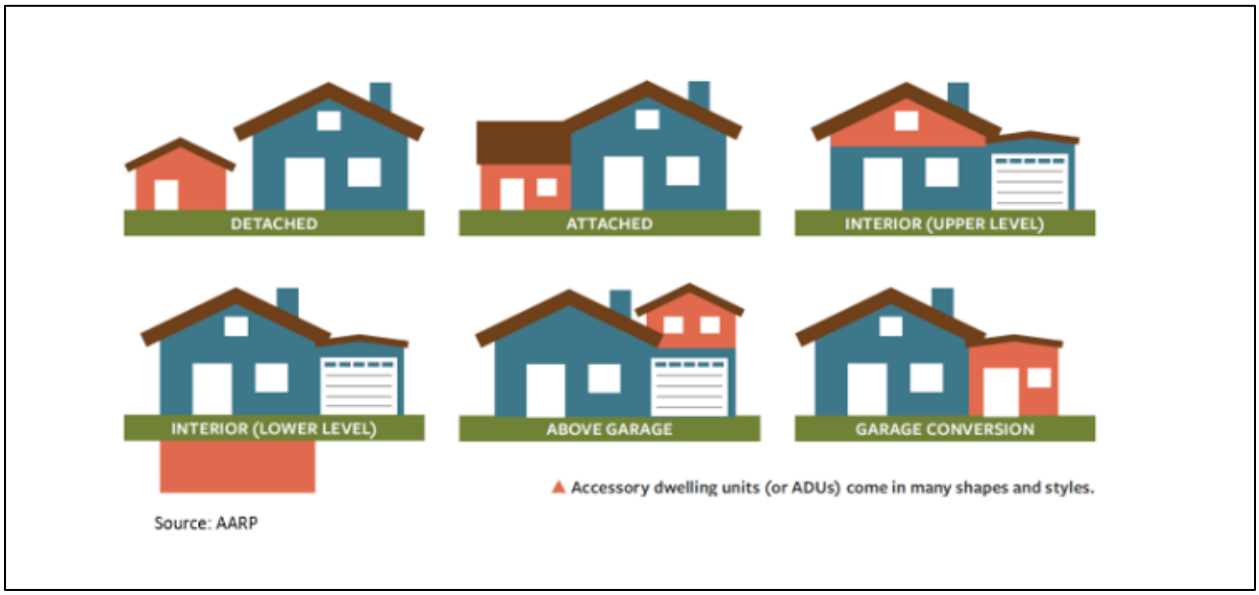
1. Increase flexibility for homeowners to meet the needs of their family including multigenerational members.
2. Create more housing options for smaller households including single professionals or empty nesters.
3. Maintain compatibility with existing housing types.
4. Increase affordable housing options.
5. Provide homeowner with potential extra income to meet rising homeownership costs.

Definitions:

Accessory Dwelling Unit (ADU): is a second, smaller dwelling unit either developed within an existing single-family house (such as a basement, attic or addition) or as a smaller detached accessory building. An attached ADU also shares at least a ___15____feet wall with the Principal Dwelling Unit.

Principal Dwelling Unit (PDU): The single-family dwelling located on the parcel with an Accessory Dwelling Unit.

Figure 0.00 Reference Image for types of ADUs



Accessory Dwelling Units are a permitted use within the __Agricultural (AG) & Single Family Residential (SFR) ___ District/s with a minimum lot size of ____1_____acre.

Attached ADU: shall be between _400-800___ square feet or _40%_ of the gross floor area of the PDU whichever is less. Gross floor area of PDU not to include three-season rooms or garages.

Detached ADUs shall be between _500-900___square feet or_40%_ of the gross floor area of the PDU whichever is less. Gross floor area of PDU not to include three-season rooms or garages.

Option 1)

Dimensions & Setbacks: ADUs must meet the lot dimensions and setbacks requirements in _Table 0.00__.

Table 0.00 Dimensional Requirements for ADUs

Zone	Minimum Lot Size (Feet)	Minimum Lot Width (Feet)	Minimum Front Setback (Feet)	Minimum Side Setback (Feet)	Minimum Rear Setback	Maximum Height (Attached)
AG	1 acre	150	50	30	50	30 ft
SFR	1 acre	100	50	30	40	30 ft

Option 2)

Dimensions & Setbacks: ADU's must meet lot dimension and setbacks of the corresponding zoning district.

Lot Coverage: ADUs shall adhere to the lot coverage requirements of the corresponding zoning district.

Principal Dwelling Unit

1. Must be owner occupied.

2. The minimum floor area of the principal dwelling unit may not decrease the minimum floor area requirements of a single family, ___960____ square feet, with at least ____600____ square feet on the ground floor.

3. The PDU and the ADU must share common water, septic, and electric facilities, in compliance with state and county codes.

Detached ADU

1. Are permitted in the rear yard with a minimum ____10_____feet behind the Principal Dwelling Unit.

2. Are permitted in the side yard provided:
    a. The ADU is a minimum 10 feet away from principal structure.
    b. Meets all the required setbacks.
3. Must have a foundation in compliance with Michigan Residential Code and Approved by the Livingston County Building Department.

4. Placement of an ADU in the front setback are prohibited.

Other Requirements

1. **Amount of ADUs per Parcel:** No more than 1 ADU per parcel shall be constructed. ADUs are only permitted on lots with a single-family dwelling. ADUs are not permitted on parcels with existing duplexes/apartments.

2. **Utilities:**

    a. An ADU shall be connected to potable water and sanitary facilities in compliance with the County Health Department.
    b. Utility service to an ADU shall rely on the same metering and service panel as those that serve the PDU except as may be otherwise required by the building inspector.
        i. Utility Service to be installed according to the State Electrical and Mechanical Code.
    c. Separate utility billings for an ADU by the utility provider are prohibited.

3. **Design Character:** The ADU shall be designed so the appearance of the building will remain that of a single-family dwelling. Further, it shall not detract from the appearance of the lot as a place of one (1) residence and shall be aesthetically compatible in appearance with other single-family dwellings in the immediate area based on architectural design and exterior materials.

4. **Access: Attached ADUs** are permitted to have up to two access points:
    a. Access located in a common entrance foyer.
    b. exterior entrance to be located on the side or rear of the ADU.

5. **Access: Detached ADUs** a main entrance to be located on the front and an additional side/rear yard access are permitted.

6. **Occupancy/Bedroom Requirements:** An ADU shall have no more than __4__ individuals including those less than 18 years of age. More than ____2_____ bedrooms is prohibited.

7. **Renting an ADU:** Leasing or renting a ADU for shorter than ____30_____ days is prohibited. The ADU shall not otherwise be made available to any one (1) or more persons for periods less than _____thirty (30)_____ days.

8. **Driveway and Parking:** Shall provide a combined off-street parking for a minimum of __four___ automobiles for PDU and ADU.
    a. In no case shall an ADU be permitted to have a separate driveway.

9. **Garage**: A garage may be erected to serve an ADU subject to the following requirements:
    a. An ADU garage shall be part of the same structure as the ADU.
    b. An ADU garage shall be no greater than 450 square feet in gross floor area.
    c. An ADU garage shall be no higher than 17 feet as measured to the highest point of the roof. Shall be maximum one (1) story and at no time taller than the PDU.
    d. An ADU garage shall comply with the same setback standards as required for an ADU in the corresponding zoning district.
    e. No more than one (1) ADU garage shall be erected on a lot.
    f. At no time shall the garage be used as a dwelling.

10. **Authorization**:
    a. No ADU shall be established prior to the issuance of a land use permit for the ADU.

    b. The applicant shall submit the following information for review to the Zoning Administrator:
        i. A plat plan showing the location of the proposed accessory dwelling unit, lot identification (address and property number), size of lot, dimension of lot lines, existing improvements on the lot, location of structures on adjacent lots, abutting streets, driveways, and parking areas.
        ii. Sufficient architectural drawings or clear photographs to show the exterior building alterations proposed.
        iii. Interior floor plans showing the floor area of the proposed accessory dwelling unit and the primary dwelling.

    c. No construction of an ADU, including excavation and clearing, shall be initiated prior to Land Use and Building Permit Issuance.

Sources

AARP Graphic

Ann Arbor Development Code: Section: 5.16.6 (D) Accessory Dwelling Unit

Ann Arbor Accessory Dwelling Unit Guide & Website

American Planning Association: Accessory Dwelling Units

Deerfield Township Zoning Ordinance: Section 17.29: Accessory Dwelling Units, ADU Garages

Hamburg Township Zoning Ordinance: Section 36.238, 339, 240: Accessory Dwelling Units, Accessory dwelling unit regulations, Application Procedure

Handy Township Zoning Ordinance: Section 2.2 (F): Family Accessory Apartment

Marion Township Zoning Ordinance: Section 6:30 Family Accessory Apartment

Accessory Dwelling Unit Process

Townships may have unique procedures to process ADUs but the generally it is the same process as building a house or addition to a home.

General Process to Construct ADU:

1. *Applicant Submits Land Use Application to Township Zoning Administrator*
2. *Zoning Administrator reviews application and if satisfactory issues-Land Use Permit*
3. *Livingston County Building Department:*
    a. *Inspections*
    b. *Directs applicant to Health Department to review Well & Septic connections.*
    c. *Directs Applicant to Drain Commission: Soil Erosion Permit*
4. *Zoning Administrator: Final Zoning Certificate meets the setbacks.*

Other Considerations that may be applicable:

- *Relation of the ADU Occupant to the Homeowner of the PDU.*
- *Permit/prohibit renting of ADU.*
- *Special Use Permit requirement near certain features like wetlands, lakes or rivers.*

Accessory Dwelling Unit Guidebook

City of Ann Arbor Planning Services

City of Ann Arbor Planning Services
301 E. Huron St. Ann Arbor
planning@a2gov.org
734-794-6265

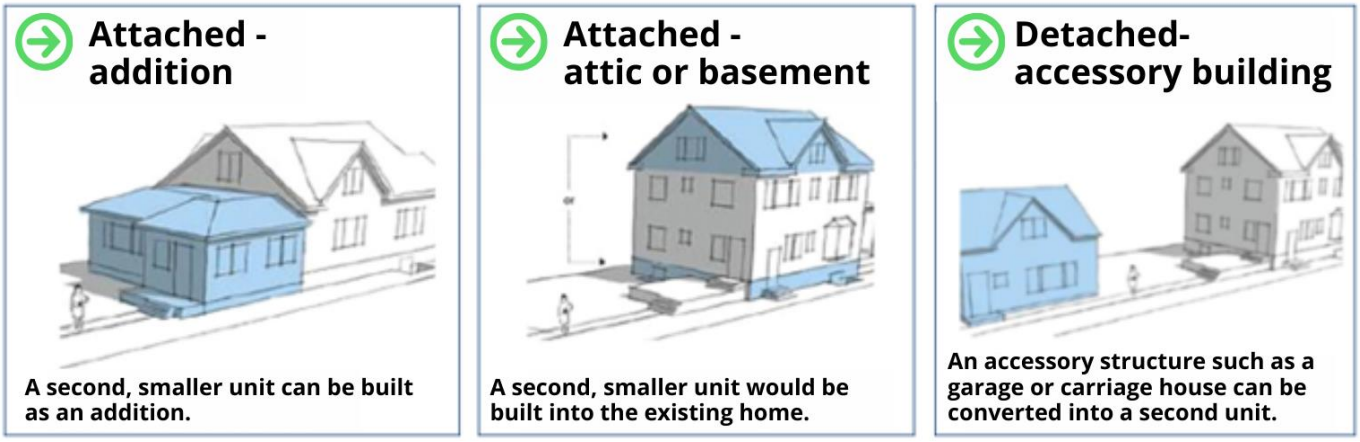
TABLE OF CONTENTS

I. OVERVIEW

The purpose of this guide is to assist homeowners, contractors, builders, and developers with the consideration, design, and construction of Accessory Dwelling Units (ADUs). This manual will give an overview of the design requirements per the City of Ann Arbor Unified Development Code. Consult with the Building Department for questions on applicable building codes that may additionally apply.

What is an Accessory Dwelling Unit (ADU)?

An Accessory Dwelling Unit is a second, smaller dwelling unit either developed within an existing single-family house (such as in a basement, attic, or addition) or part of an accessory building (such as a converted garage or carriage house).



Drawings courtesy of the City of Minneapolis

What are the advantages of ADUs?

The recent changes to the ADU policy in the City of Ann Arbor reflect efforts to increase the diversity of housing options within the city by introducing a new housing prototype that respects the look and scale of single-family neighborhoods. Accessory dwelling units are also a strategy for affordability in Ann Arbor in two ways—for the renter and the homeowner. ADUs can be more affordable than other new dwelling units because infrastructure (i.e., existing utilities, roads) and land costs have already been absorbed by the main dwelling unit, and because they are typically smaller in size. Conversely, the supplemental income a homeowner can receive from renting out an ADU on their property can offset their own expenses. In the case of seniors and others on fixed incomes, rental income can offset mortgage, tax or other costs allowing individuals to age in place. Such units also provide the potential for a homeowner to negotiate assistance in household maintenance in exchange for rent.

You may be familiar with the term “granny flat” or “mother-in-law suite” to describe these units and indeed, that describes one of their potential uses—as a way for a homeowner to care for their aging parents in a secondary dwelling on their property. Additionally, accessory dwelling units are a way to address declining household size. For example, the average household size

in Washtenaw County decreased from 3.3 people in 1960 to 2.43 people in 2015 (U.S. Census Bureau, American Community Survey 5-Year Estimate). ADUs can allow for reutilization of some of that space, without considerably expanding the existing footprint of a building. Furthermore, ADUs support more efficient and sustainable use of existing housing stock and infrastructure.

II. ZONING REQUIREMENTS

Permitted Districts

- ADUs are permissible in any R1, R2, R3 or R4 zoning districts.
    - You can view the Ann Arbor Zoning map here.

Eligible Lots

- An ADU is permitted **only** on a lot in single-family zoning districts above with a single-family dwelling. If the lot contains a duplex or other multiple-family residence, an ADU is not permitted.
- Only one accessory dwelling unit is permitted per single-family detached dwelling.

Where can I locate an ADU on my property?

- ADUs can be located inside of an existing house on any of its floors, or all or part of a side or rear addition. This type is referred to as an *attached ADU*.
- Alternatively, an ADU can be part of garage, carriage house, or other legal, conforming detached accessory structure

Design Specifications

How big can an ADU be?

- For lots up to 7,199 sq-ft, the maximum size of an ADU is 600 sq-ft or the same size as the ground floor of the main dwelling, whichever is less.
- For lots 7,200 sq-ft or greater, the maximum size of an ADU is 800 sq-ft or the same size as the ground floor of the main dwelling, whichever is less.

How tall can an ADU be?

- The standard height restrictions of the zoning district apply, meaning that:
    - An ADU within an accessory building cannot exceed 21 feet.
    - An ADU that is part of the main dwelling structure cannot exceed 30 feet.

What are required setbacks?

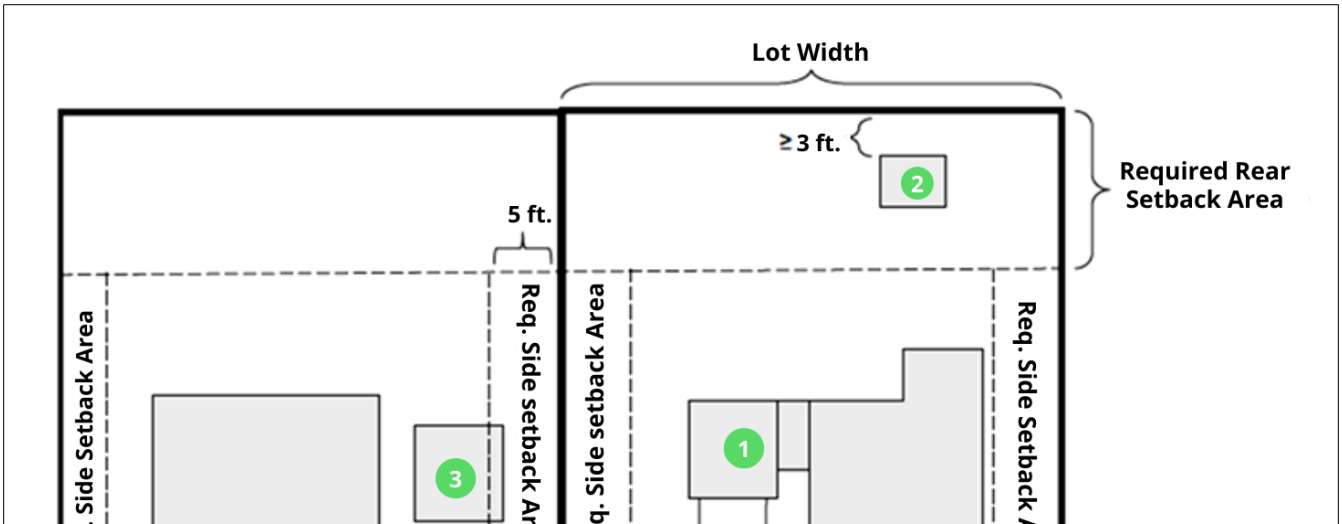
- *Definitions:*
    - **Front Setback Area** – The portion of a lot between the required front setback line and the lot line.

- **Side Setback Area –** The portion of a lot between the required side setback line and the lot line.
- **Rear Setback Area** – The portion of a lot between the required rear setback line and the lot line.

- *In General:*
  - Setback requirements for front, side, and rear setback area are determined by zoning district. Refer to the Unified Development Code for specific details.
  - Setbacks are always measured from the lot line, not the curb or center of the street. Usually, the house-side of the sidewalk edge is also the front lot line. A survey may be required to determine setbacks.
  - In established neighborhoods, the minimum required front setback is the average setback established by buildings within 100 feet on either side of the lot, up to 40 feet maximum.
  - The minimum front setback applies to every lot line that abuts a public street. Corner lots have two front lot lines, one side and one rear lot line. Thru-lots have two front lot lines, two side setbacks and no rear lot line.

- *Detached ADUs:*
  - **Required Front Setback Area:** Detached accessory dwelling units may not be located within the Required Front Setback Area.
  - **Side Setback Area :** A detached ADU may be located in the required in the Side Setback Area if:
    - It is farther from the street than the main building;
    - It is farther from the street than any part of main buildings on abutting lots;
    - It is at least 3 feet from any lot line.
    - If between 3 and 5 feet from a lot line, the ADU must contain fire-rated walls.
  - **Required Rear Setback Area:** A detached ADU may be located in the Rear Setback Area if:
    - The sum of all structures on the lot, including accessory buildings and parts of the main building that encroach upon the rear setback area, do not occupy more than 35% of the rear setback; and
    - It is at least 3 feet from any lot line.
    - If between 3 and 5 feet from a lot line, the ADU most contain fire-rated walls.

- *Attached ADUs:*
  - Attached ADUs are not permitted within the Required Side Setback Area.



Occupancy Requirements

Who and how many people can live in an ADU?

- Occupancy in the accessory dwelling unit is limited to two persons and their offspring living as a single housekeeping unit, except in the case of a special exception use, following Section 5.16.1 of the Unified Development Code.
- Additionally, the total number of persons residing in the main dwelling unit and the ADU combined cannot not exceed four persons plus their offspring, For example, if there are four people plus their offspring living in the main dwelling unit, they could not have an ADU because they are already at the maximum occupancy for the lot.

Are there other occupancy or rental restrictions?

- Leasing or rental of the ADU for less than 30 days is prohibited.
- Rental housing requirements will apply for any main dwelling unit or accessory dwelling unit that is rented out to another person. See the City's Rental Housing Services webpage for more information.

Legal tandem parking space for ADU

Does NOT meet parking requirement, as located in required front yard

III. APPLICATION PROCESS

1. Determine if your property qualifies for an ADU.
    a. Verify that your property is in an R1 zoning district by checking the City of Ann Arbor zoning map.
    b. Verify zoning compliance for required setbacks and minimum lot size by checking the Unified Development Code.
2. If your lot is located in a Historic District, you must apply for and receive a Certificate of Appropriateness from the Historic District Commission before your building permit will be reviewed.
3. Request deed restriction with the Planning Department. This will be executed with proof of recording with the Washtenaw County Register of Deeds prior to issuance of certificate of occupancy (Step 8).
4. Apply for a Building Permit. Submit building plans, including plans for mechanical, plumbing, and electrical work as needed. New houses will require a Michigan Energy

Code Compliance form. Zoning compliance is reviewed as a part of building permitting process. The following permits applications can be found online here.

   a. Trade Permit Application (for plumbing, electrical, and mechanical)
   b. Grading Application and Impervious Area Checklist
   c. Demolition Permit, if applicable
   d. Fire Suppression and Alarm Permit.

5. Start construction and building/trade inspections.
6. Housing Inspection Program registration. Contact Rental Housing Services at 734-794-6264 or rentalhousing@a2gov.org for more information.
7. Submit Address Request Form for new rental address.
8. Apply for Certificate of Occupancy.




CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

ACCESSORY DWELLING UNIT HANDBOOK

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Understanding Accessory Dwelling Units (ADUs) and Their Importance

California's housing production is not keeping pace with demand. In the last decade, fewer than half of the homes needed to keep up with the population growth were built. Additionally, new homes are often constructed away from job-rich areas. This lack of housing that meets people's needs is impacting affordability and causing average housing costs, particularly for renters in California, to rise significantly. As affordable housing becomes less accessible, people drive longer distances between housing they can afford and their workplace or pack themselves into smaller shared spaces, both of which reduce quality of life and produce negative environmental impacts.

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Beyond traditional construction, widening the range of housing types can increase the housing supply and help more low-income Californians thrive. Examples of some of these housing types are accessory dwelling units (ADUs – also referred to as second units, in-law units, casitas, or granny flats) and junior accessory dwelling units (JADUs).

What is an ADU?

An ADU is accessory to a primary residence and has complete independent living facilities for one or more persons and has a few variations:

- Detached: The unit is separated from the primary structure.
- Attached: The unit is attached to the primary structure.
- Converted Existing Space: Space (e.g., master bedroom, attached garage, storage area, or similaruse, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.
- JADU: A specific type of conversion of existing space that iscontained entirely within an existing or proposed single-family residence.

ADUs tend to be significantly less expensive to build than new detached single-family homes and offer benefits that address common development barriers, such as environmental quality. Because ADUs must be built on lots with existing or proposed housing, they do not require paying for new land or other costly infrastructure often required to build a new single-family home. Because they are contained inside existing or proposed single-family homes, JADUs require relatively modest renovations and are much more affordable to complete. ADUs are often built with cost-effective one- or two-story wood frames, which are also less expensive than other construction types. Additionally, prefabricated ADUs (e.g., manufactured housing and factory-built housing) can be directly purchased and can further reduce construction time and cost. ADUs can provide as much living space as apartments and condominiums and work well for couples, small families, friends, young people, and seniors.

Much of California's housing crisis comes from job-rich, high-opportunity areas where the total housing stock is insufficient to meet demand and exclusionary practices have limited housing choice and inclusion. Professionals and students often prefer living closer to jobs and amenities rather than spending hours commuting. Parents oftenwant better access to schools and do not necessarily require single-family homes to meet their housing needs. There is a shortage of affordable units, and the units that are available can be out of reach for many people. Homeowners can construct an ADU on their lot or convert an underutilized part of their home into a JADU. This flexibility benefits both renters and homeowners, who can receive extra monthly rental income while also contributing to meeting state housing production goals.

ADUs also give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place, even if they require more care, thus helping extended families stay together while maintaining privacy. ADUs provide housing for family members, students, the elderly, in-home health care providers, individuals with disabilities, and others at below market prices within existing neighborhoods.

New policies are making ADUs even more affordable to build, in part by limiting the development impact fees that local jurisdictions may charge for ADU construction and relaxing local zoning requirements. ADUs and JADUs can often be built at a fraction of the price of a new single-family home, and homeowners may use their existing lot to create additional housing. Often the rent generated from the ADU can pay for the entire project in a matter of years.

ADUs and JADUs are a flexible form of housing that can help Californians more easily access job-rich, high-opportunity areas. By design, ADUs are more affordable to renters and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education, and services for many Californians.

Summary of Recent Changes to ADU Laws

In Government Code Section 65852.150, the California Legislature found and declared that, among other things, allowing ADUs in zones that allow single-family and multifamily uses provides additional rental housing and is an essential component in addressing California's housing needs. Over the years, State ADU Law has been revised to improve its effectiveness at creating more housing units. Changes to State ADU Law effective January 1, 2021, further reduce barriers, streamline approval processes, and expand capacity to accommodate the development of ADUs and JADUs. Within this context, the California Department of Housing and Community Development (HCD) developed – and continues to update – this handbook to assist local governments, homeowners, architects, and the general public in encouraging the development of ADUs. Below is a summary of recent legislation that amended State ADU Law. Please see Attachment 1 for the complete statutory changes.

AB 345 (Chapter 343, Statutes of 2021)

AB 345 (Chapter 343, Statutes of 2021) builds upon recent changes to State ADU Law, particularly Government Code sections 65852.2 and 65852.26, to require the allowance of the separate conveyance of ADUs from the primary dwelling in certain circumstances, provided they meet certain conditions, including those listed below, found in Government Code section 65852.26, subdivisions (a)(1-5):

- The ADU or primary dwelling was built or developed by a qualified nonprofit. (Gov. Code, § 65852.26, subd. (a).)
- There is an enforceable restriction on the use of the property between the low-income buyer and nonprofit that satisfies the requirements of Section 402.1 of the Revenue and Taxation Code. (Gov. Code, § 65852.26, subd. (a)(2).)
- The entire property is subject to the affordability restrictions to assure that the ADU and primary dwelling are preserved for owner-occupied, low-income housing for 45 years and are sold or resold only to a qualified buyer. (Gov. Code, § 65852.26, subd. (a)(3)(D).)
- The property is held in a recorded tenancy in common agreement that meets certain requirements. (Gov. Code, § 65852.26, subd. (a)(3).)

AB 345 does not apply to JADUs, and local ordinances must continue to prohibit JADUs from being sold separately from the primary residence.

AB 3182 (Chapter 198, Statutes of 2020)

AB 3182 (Chapter 198, Statutes of 2020) builds upon recent changes to State ADU Law, specifically Government Code section 65852.2 and Civil Code Sections 4740 and 4741, to further address barriers to the development and use of ADUs and JADUs.

This legislation, among other changes, addresses the following:

- States that an application for the creation of an ADU or JADU shall be *deemed approved* (not just subject to ministerial approval) if the local agency has not acted on the completed application within 60 days. (Gov. Code, § 65852.2, subd. (a)(3).)
- Requires ministerial approval of an application for a building permit within a residential or mixed-use zone to create one ADU *and* one JADU per lot (not one or the other), within the proposed or existing single-family dwelling, if certain conditions are met. (Gov. Code, § 65852.2, subd. (e)(1)(A).)
- Provides for the rental or leasing of a separate interest ADU or JADU in a common interest development, notwithstanding governing documents that otherwise appear to prohibit renting or leasing of a unit, and without regard to the date of the governing documents. (Civ. Code, § 4740, subd. (a), and Civ. Code, § 4741, subd. (a).)
- Provides that not less than 25 percent of the separate interest units within a common interest development be allowed as rental or leasable units. (Civ. Code, § 4740, subd. (b).)

AB 68 (Chapter 655, Statutes of 2019), AB 881 (Chapter 659, Statutes of 2019), and SB 13 (Chapter 653, Statutes of 2019)

AB 68 (Chapter 655, Statutes of 2019), AB 881 (Chapter 659, Statutes of 2019), and SB 13 (Chapter 653, Statutes of 2019) build upon recent changes to ADU and JADU Law, specifically Government Code sections 65852.2 and 65852.22, and further address barriers to the development of ADUs and JADUs.

This legislation, among other changes, addresses the following:

- Prohibits local agencies from including in development standards for ADUs requirements on minimum lot size. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).)
- Clarifies that areas designated by local agencies for ADUs may be based on the adequacy of water and sewer services, as well as on impacts on traffic flow and public safety. (Gov. Code, § 65852.2, subd. (a)(1)(A).)
- Eliminates all owner-occupancy requirements by local agencies for ADUs approved between January 1, 2020, and January 1, 2025. (Gov. Code, § 65852.2, subd. (a)(6).)
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom and

requires approval of a permit to build an ADU of up to 800 square feet. (Gov. Code, § 65852.2, subds. (c)(2)(B) and (C).)

- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement of off-street parking spaces cannot be required by the local agency. (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi).)
- Reduces the maximum ADU and JADU application review time from 120 days to 60 days. (Gov. Code, § 65852.2, subd. (a)(3) and (b).)
- Clarifies that "public transit" includes various means of transportation that charge set fees, run on fixed routes, and are available to the public. (Gov. Code, § 65852.2, subd. (j)(9).)
- Establishes impact fee exemptions and limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees, and ADUs that are 750 square feet or larger may be charged impact fees but only such fees that are proportional in size (by square foot) to those for the primary dwelling unit. (Gov. Code, § 65852.2, subd. (f)(3).)
- Defines an "accessory structure" to mean a structure that is accessory and incidental to a dwelling on the same lot. (Gov. Code, § 65852.2, subd. (j)(2).)
- Authorizes HCD to notify the local agency if HCD finds that the local ADU ordinance is not in compliance with state law. (Gov. Code, § 65852.2, subd. (h)(2).)
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy its Regional Housing Needs Allocation (RHNA). (Gov. Code, §§ 65583.1, subd. (a), and 65852.2, subd. (m).)
- Permits JADUs even where a local agency has not adopted an ordinance expressly authorizing them. (Gov. Code, § 65852.2, subds. (b) and (e).)
- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom and an interior entry into the single-family residence. (Gov. Code, § 65852.22, subd. (a)(4-5).)
- Requires, upon application and approval, a local agency to delay enforcement against a qualifying substandard ADU for five years to allow the owner to correct the violation, so long as the violation is not a health and safety issue, as determined by the enforcement agency. (Gov. Code, § 65852.2, subd. (n); Health & Safety Code, § 17980.12).)

AB 587 (Chapter 657, Statutes of 2019), AB 670 (Chapter 178, Statutes of 2019), and AB 671 (Chapter 658, Statutes of 2019)

In addition to the legislation listed above, AB 587 (Chapter 657, Statutes of 2019), AB 670 (Chapter 178, Statutesof 2019), and AB 671 (Chapter 658, Statutes of 2019) also have an

impact on State ADU Law, particularly through Health and Safety Code Section 17980.12. These pieces of legislation, among other changes, address the following:

- AB 587 creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separately from the primary dwelling by allowing deed-restricted sales to occur if the local agency adopts an ordinance. To qualify, the primary dwelling and the ADU are to be built by a qualified nonprofit corporation whose mission is to provide units to low-income households. (Gov. Code, § 65852.26).)
- AB 670 provides that covenants, conditions and restrictions that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable. (Civ. Code, § 4751).)
- AB 671 requires local agencies' housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low-, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction, and operation of affordable ADUs. (Gov. Code, § 65583; Health & Safety Code, § 50504.5).)

Frequently Asked Questions

1. Legislative Intent

- **Should a local ordinance encourage the development of ADUs?**

Yes. Pursuant to Government Code section 65852.150, the California Legislature found and declared that, among other things, California is facing a severe housing crisis and ADUs are a valuable form of housing that meets the needs of family members, students, the elderly, in-home health care providers, people with disabilities, and others. Therefore, ADUs are an essential component of California's housing supply.

State ADU Law and recent changes intend to address barriers, streamline approval, and expand potential capacity for ADUs, recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment, and implementation of local ADU ordinances must be carried out consistent with Government Code section 65852.150 and must not unduly constrain the creation of ADUs. Local governments adopting ADU ordinances should carefully weigh the adoption of zoning, development standards, and other provisions for impacts on the development of ADUs.

ADU Law is the statutory minimum requirement. Local governments may elect to go beyond this statutory minimum and further the creation of ADUs. (Gov. Code, § 65852.2, subd. (g).) Many local governments have embraced the importance of ADUs as an important part of their overall housing policies and have pursued innovative strategies.

Government Code section 65852.150:

(a) The Legislature finds and declares all of the following:

(1) Accessory dwelling units are a valuable form of housing in California.

(2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

(3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.

(4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.

(5) California faces a severe housing crisis.

(6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.

(7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.

(8) Accessory dwelling units are, therefore, an essential component of California's housing supply.

(b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.

2. Zoning, Development and Other Standards

A) Zoning and Development Standards

- **Are ADUs required jurisdiction-wide?**

  No. ADUs proposed pursuant to subdivision (e) of Government Code section 65852.2 must be permitted in any residential or mixed-use zone, which should be construed broadly to mean any zone where residential uses are permitted by-right or by conditional use. For other ADUs, local governments may, by ordinance, designate areas in zones where residential uses are permitted that will also permit ADUs. However, any limits on where ADUs are permitted may only be based on the adequacy of water and sewer service and on the impacts on traffic flow and public safety.

  Further, local governments may not preclude the creation of ADUs altogether, and any limitation should be accompanied by detailed findings of fact explaining why ADU limitations are required and consistent with these factors. If a lot with a residence has been rezoned to a use that does not allow for residential uses, that lot is no longer eligible to create an ADU. (Gov. Code § 65852.2 subd. (a)(1) and (e)(1).)

  Impacts on traffic flow should consider factors like lower car ownership rates for ADUs. Finally, local governments may develop alternative procedures, standards, or special conditions with mitigations for allowing ADUs in areas with potential health and safety concerns.

- **Can ADUs exceed general plan and zoning densities?**

  Yes. An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning and does not count toward the allowable density. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Further, local governments could elect to allow more than one ADU on a lot, and ADUs are automatically a residential use deemed consistent with the general plan and zoning. (Gov. Code, § 65852.2, subd. (a)(1)(C).)

- **Can a local government apply design and development standards?**

  Yes. With an adopted ADU ordinance in compliance with State ADU Law, a local government may apply development and design standards that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. **However, these standards should be objective to allow ministerial review of an ADU**. (Gov. Code, § 65852.2, subds. (a)(1)(B)(i) and (a)(4).)

  ADUs created under subdivision (e) of Government Code section 65852.2 shall not be subject to design and development standards except for those that are noted in the subdivision.

ADUs that do not meet objective and ministerial development and design standards may still be permitted through an ancillary discretionary process if the applicant chooses to pursue this route. In this scenario, the applicant assumes time and monetary costs associated with a discretionary approval process. Some jurisdictions with compliant ADU ordinances apply additional processes to further the creation of ADUs that do not otherwise comply with the minimum standards necessary for ministerial review. Importantly, these processes are intended to provide additional opportunities to create ADUs that would not otherwise be permitted, and a discretionary process may not be used to review ADUs that are fully compliant with State ADU Law.

- **Are ADUs permitted ministerially?**

  Yes. ADUs subject to State ADU Law must be considered, approved, and permitted ministerially, without discretionary action. Development and other decision-making standards must be sufficiently objective to allow for ministerial review. Examples include numeric and fixed standards such as heights or setbacks, or design standards such as colors or materials. Subjective standards require judgement and can be interpreted in multiple ways, such as privacy, compatibility with neighboring properties, or promoting harmony and balance in the community; subjective standards must not be imposed on ADU development. Further, ADUs must not be subject to hearing requirements or any ordinance regulating the issuance of variances or special use permits and must be considered ministerially. (Gov. Code § 65852.2, subds. (a)(3) and (a)(4).)

- **Is there a streamlined permitting process for ADU and JADU applications?**

  Yes. Whether or not a local agency has adopted an ordinance, applications to create an ADU or JADU shall be considered and approved ministerially within 60 days from the date the local agency receives a completed application. Although the allowed 60-day review period may be interrupted due to an applicant addressing comments generated by a local agency during the permitting process, additional 60-day time periods may not be required by the local agency for minor revisions to the application. (Gov. Code § 65852.2, subds. (a)(3) and (b).)

- **Can I create an ADU if I have multiple detached dwellings on a lot?**

  Yes. A lot where there are currently multiple detached single-family dwellings is eligible for creation of one ADU per lot by converting space within the proposed or existing space of a single-family dwelling or existing structure and by building a new detached ADU subject to certain development standards. (Gov. Code § 65852.2, subds. (e)(1)(A) and (B).)

- **What is considered a multifamily dwelling under ADU Law?**

  For the purposes of State ADU Law, a structure with two or more attached dwellings on

a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of State ADU Law.

- **Can I build an ADU in a historic district or if the primary residence is subject to historic preservation?**

  Yes. ADUs are allowed within a historic district and on lots where the primary residence is subject to historic preservation. State ADU Law allows for a local agency to impose standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources. However, these standards do not apply to ADUs proposed pursuant to Government Code section 65852.2, subdivision (e).

  As with non-historic resources, a jurisdiction may impose objective and ministerial standards that are sufficiently objective to be reviewed ministerially and do not unduly burden the creation of ADUs. Jurisdictions are encouraged to incorporate these standards into their ordinances and to submit these standards along with their ordinances to HCD. (Gov. Code, § 65852.2, subds. (a)(1)(B)(i) and (a)(5).)

B) Size Requirements

- **Can minimum lot size requirements be imposed on ADUs? What about lot coverage, floor area ratio, or open space requirements?**

  No. While local governments may impose certain development standards on ADUs, these standards shall not include minimum lot size requirements. Further, lot coverage requirements cannot preclude the creation of a statewide exemption ADU (see below). If lot coverage requirements do not allow such an ADU, an automatic exception or waiver should be given to appropriate development standards such as lot coverage, floor area, or open space requirements. Local governments may continue to enforce building and health and safety standards and may consider design, landscape, and other standards to facilitate compatibility. (Gov. Code, § 65852.2, subds. (c)(2)(C).)

What is a statewide exemption ADU?

A statewide exemption ADU, found in Government Code section 65852, subdivision (e), is an ADU of up to 800 square feet, 16 feet in height, as potentially limited by a local agency, and with four-foot side and rear yard setbacks. State ADU Law requires that no lot coverage, floor area ratio, open space, or minimum lot size will preclude the construction of a statewide exemption ADU. Further, State ADU Law allows the construction of a detached new construction statewide exemption ADU to be combined on the same lot with a JADU in a single-family residential zone. In addition, ADUs are allowed in any residential or mixed uses regardless of zoning and development standards imposed in an ordinance. See more discussion below.

- **Can minimum and maximum unit sizes be established for ADUs?**

  Yes. A local government may, by ordinance, establish minimum and maximum unit size requirements for both attached and detached ADUs; however, maximum unit size requirements must allow an ADU of at least 850 square feet, or 1,000 square feet for ADUs with more than one bedroom. For local agencies without an ADU ordinance, maximum unit sizes are 1,200 square feet for a new detached ADU and up to 50 percent of the floor area of the existing primary dwelling for an attached ADU (at least 800 square feet). Finally, the local agency must not establish by ordinance a minimum square footage requirement that prohibits the development of an efficiency unit as defined in Health and Safety Code section 17958.1.

  The conversion of an existing accessory structure or a portion of the existing primary residence to an ADU is not subject to unit size requirements. For example, an existing 3,000 square-foot barn converted to an ADU would not be subject to the local unit size requirements, regardless of whether a local government has an adopted ADU ordinance. Should an applicant want to expand an accessory structure to create an ADU beyond 150 square feet, this ADU would be subject to the size maximums outlined in State ADU Law or in the local agency's adopted ordinance.

- **Can a percentage of the primary dwelling be used to limit the maximum size of an ADU?**

  Yes. Local agencies may utilize a percentage (e.g., 50 percent) of the primary dwelling as a maximum unitsize for attached ADUs, but only if it does not restrict an ADU's size to less than the standard of at least 850 square feet (or at least 1,000 square feet for ADUs with more than one bedroom). Local agencies shall not, by ordinance, establish any other minimum or maximum unit sizes, including limits based on a percentage of the area of the primary dwelling, that precludes an 800 square-foot ADU. (Gov. Code, § 65852.2, subd. (c)(2)(C).) Local agencies utilizing percentages of the primary dwelling as maximum unit sizes can consider multi-pronged standards to help navigate these requirements (e.g., shall not exceed 50 percent of the dwelling or 1,000 square feet, whichever is greater).

- **Can maximum unit sizes exceed 1,200 square feet for ADUs?**

  Yes. Maximum unit sizes can exceed 1,200 square feet for ADUs through the adoption of a local ADU ordinance. State ADU Law does not limit the authority of local agencies to adopt *less* restrictive requirements for the creation of ADUs. (Gov. Code, § 65852.2, subd. (g).)

C) Parking Requirements

- **Are certain ADUs exempt from parking requirements?**

  Yes. A local agency shall not impose ADU parking standards for any of the following ADUs, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10):

  (1) ADUs located within one-half mile walking distance of public transit.
  (2) ADUs located within an architecturally and historically significant historic district.
  (3) ADUs that are part of the proposed or existing primary residence or an accessory structure.
  (4) When on-street parking permits are required but not offered to the occupant of the ADU.
  (5) When there is a car share vehicle located within one block of the ADU.

  Note: For the purposes of State ADU Law, a jurisdiction may use the designated areas where a car share vehicle may be accessed. Public transit is any location where an individual may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the general public. Walking distance is defined as the pedestrian shed to reach public transit. Additional parking requirements to avoid impacts to public access may be required in the Coastal Zone.

- **Can ADU parking requirements exceed one space per unit or bedroom?**

  No. Parking requirements for ADUs shall not exceed one parking space per unit or bedroom, whichever isless. These spaces may be provided as tandem parking on a driveway. Guest parking spaces shall not berequired for ADUs under any circumstances. For certain ADUs, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10), a local agency may not impose any ADU parking standards (see above question).

  What is Tandem Parking?

  Tandem parking means two or more automobiles that are parked on a driveway or in any other location ona lot, lined up behind one another. (Gov. Code, § 65852.2, subds. (a)(1)(D)(x)(I) and (j)(11).)

  Local agencies may choose to eliminate or reduce parking requirements for ADUs, such as requiring zero or half a parking space per each ADU, to remove barriers to ADU construction and to facilitate development.

- **Is flexibility for siting ADU parking recommended?**

  Yes. Local agencies should be flexible when siting parking for ADUs. Off-street parking spaces for the ADU shall be permitted in setback areas in locations determined by the local agency or through tandem parking unless specific findings are made. Specific findings must be based on specific site or regional topographical or fire and life safety conditions.

  When a garage, carport, or covered parking structure is demolished in conjunction with the construction ofan ADU, or converted to an ADU, the local agency shall not require that those off-street parking spaces for the primary unit be replaced. (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi).)

D) Setbacks

- **Can setbacks be required for ADUs?**

  Yes. A local agency may impose development standards, such as setbacks, for the creation of ADUs. However, setbacks should not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to subdivision (e). Further, a setback of no more than four feet from the side and rear lot lines shall be required for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).) Additional setback requirements may be required in the Coastal Zone if required by a local Coastal Program. Setback requirements must also comply with any recorded utility easements or other previously recorded setback restrictions.

  No setback shall be required for an ADU created within an existing living area or accessory structure or an ADU created in a new structure in the same location as an existing structure, while not exceeding the existing dimensions, including height. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).)

  A local agency may also allow the expansion of a detached structure being converted into an ADU when the existing structure does not have four-foot rear and side setbacks. A local agency may also allow the expansion area of a detached structure being converted into an ADU to have no setbacks, or setbacks ofless than four feet, if the existing structure has no setbacks, or has setbacks of less than four feet, respectively. A local agency shall not require setbacks of more than four feet for the expanded area of a detached structure being converted into an ADU.

  A local agency may still apply front yard setbacks for ADUs, but front yard setbacks cannot preclude an ADU of at least 800 square feet and must not unduly constrain the creation of all types of ADUs. (Gov. Code, §65852.2, subd. (c) and (e).)

- **Is there a distance requirement between an ADU and other structures on the lot?**

  State ADU Law does not address the distance between an ADU and other structures on a lot. A local agency may impose development standards for the creation of ADUs, and ADUs shall comply with local building codes. However, development standards should not unduly constrain the creation of ADUs, cannot preclude a statewide exemption ADU (an ADU of up to 800 square feet, 16 feet in height, as potentially limited by a local agency, and with four-foot side and rear yard setbacks), and should not unduly constrain the creation of all types of ADUs, where feasible. (Gov. Code, § 65852.2, subd. (c).)

E) Height Requirements

- **Is there a limit on the height or number of stories of an ADU?**

  There is no height limit contained in State ADU Law, but local agencies may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).) For a local agency to impose a height limit, it must do so through the adoption of a compliant ADU ordinance.

F) Bedrooms

- **Can a limit on the number of bedrooms in an ADU be imposed?**

  A limit on the number of bedrooms could be construed as a discriminatory practice towards protected classes, such as familial status, and would be considered a constraint on the development of ADUs. Building code standards for minimum bedroom size still apply.

G) Impact Fees

- **Can impact fees be charged for an ADU less than 750 square feet?**

  No. An ADU is exempt from incurring impact fees from local agencies, special districts, and water corporations if less than 750 square feet. If an ADU is 750 square feet or larger, impact fees shall be charged proportionately in relation to the square footage of the ADU to the square footage of the primary dwelling unit.

  What is "Proportionately"?

  "Proportionately" is some amount in relation to a total amount, in this case, an impact fee for a single-family dwelling. For example, a 2,000 square-foot primary dwelling with a proposed 1,000 square-foot ADU could result in 50 percent of the impact fee that would be charged for a new primary dwelling on the same site. In all cases, the impact fee for the ADU must be less than the primary dwelling. Otherwise, the fee is not calculated proportionately. When utilizing proportions, careful consideration should be given to the impacts on costs, feasibility, and, ultimately, the creation of ADUs. In the case of the example above,anything greater than 50 percent of the primary dwelling could be considered a constraint on the development of ADUs. A proportional fee shall not be greater than 100 percent, as when a proposed ADU exceeds the size of the existing primary dwelling.

  For purposes of calculating the fees for an ADU on a lot with a multifamily dwelling, the proportionality shall be based on the average square footage of the units within that multifamily dwelling structure. For ADUs converting existing space with a 150 square-foot expansion, a total ADU square footage over 750square feet could trigger the proportionate fee requirement. (Gov. Code, § 65852.2, subd. (f)(3)(A).)

- **Can local agencies, special districts, or water corporations waive impact fees?**

  Yes. Agencies can waive impact and any other fees for ADUs. Also, local agencies may use fee deferrals for applicants.

- **Can school districts charge impact fees?**

  Yes. School districts are authorized to, but do not have to, levy impact fees for ADUs greater than 500 square feet pursuant to Section 17620 of the Education Code. ADUs less than 500 square feet are not subject to school impact fees. Local agencies are encouraged to coordinate with school districts to carefully weigh the importance of promoting ADUs, ensuring appropriate nexus studies and appropriate fees to facilitate construction or reconstruction of adequate school facilities.

- **What types of fees are considered impact fees?**

  Impact fees charged for the construction of ADUs must be determined in accordance with the Mitigation Fee Act and generally include any monetary exaction that is charged by a local agency in connection with the approval of an ADU, including impact fees, for the purpose of defraying all or a portion of the cost of public facilities relating to the ADU. A local agency, special district, or water corporation shall not consider ADUs as a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer services. However, these provisions do not apply to ADUs that are constructed concurrently with a new single-family home. (Gov. Code, §§ 65852.2, subd. (f), and 66000.)

- **Can I still be charged water and sewer connection fees?**

  ADUs converted from existing space and JADUs shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, unless constructed with a new single-family dwelling. The connection fee or capacity charge shall be proportionate to the burden of the proposed ADU, based on its square footage or plumbing fixtures as compared to the primary dwelling. ADU Law does not cover monthly charge fees. (Gov. Code, § 65852.2, subd. (f)(2).)

H) Ministerially Approved ADUs and Junior ADUs (JADUs) Not Subject to Local Standards

- **Are local agencies required to comply with Government Code section 65852.2, subdivision (e)?**

  Yes. All local agencies must comply with subdivision (e). This subdivision requires the ministerial approval of ADUs within a residential or mixed-use zone. The subdivision creates four categories of ADUs that should not be subject to other specified areas of State ADU Law, most notably zoning and development standards. For example, ADUs under this subdivision should not have to comply with lot coverage, setbacks, heights, and unit sizes. However, ADUs under this subdivision must meet the building code and health and safety requirements. The four categories of ADUs under subdivision (e)(1) are:

  (A) One ADU and one JADU are permitted per lot within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure that meets specified requirements such as exterior access and setbacks for fire and safety.

  (B) One detached new construction ADU that does not exceed four-foot side and rear yard setbacks. This ADU may be combined on the same lot with a JADU, and may be required to meet a maximum unit size requirement of 800 square feet and a height limitation of 16 feet.

(C) Multiple ADUs within the portions of multifamily structures that are not used as livable space. Local agencies must allow at least one of these types of ADUs and up to 25 percent of the existing multifamily structures.

(D) Up to two detached ADUs on a lot that has existing multifamily dwellings that are subject to height limits of 16 feet and four-foot rear and side yard setbacks.

The above four categories may be combined. For example, local governments must allow (A) and (B) together or (C) and (D) together.

The most common ADU that can be created under subdivision (e) is a conversion of proposed or existing space of a single-family dwelling or accessory structure into an ADU, without any prescribed size limitations, height, setback, lot coverage, architectural review, landscape, or other development standards.This would enable the conversion of an accessory structure, such as a 2,000 square-foot garage, to an ADU without any additional requirements other than compliance with building standards for dwellings.

These types of ADUs are also eligible for a 150 square-foot expansion (see discussion below).

ADUs created under subdivision (e) shall not be required to provide parking if the ADU qualifies for one of the five exemptions listed under subdivision (d). Moreover, these units shall not, as a condition for ministerial approval, be required to correct any existing or created nonconformity. Subdivision (e) ADUs shall be required to be rented for terms longer than 30 days and only require fire sprinklers if fire sprinklers are required for the primary residence. These ADUs shall not be counted as units when calculating density for the general plan and are not subject to owner occupancy.

- **How many ADUs are allowed on a multifamily site under subdivision (e)?**

Under subdivision (e), an applicant may apply to build up to two detached ADUs and at least one interior ADU up to 25 percent of the number of units in the proposed or existing multifamily dwelling. All interior ADUs, however, must be converted from non-livable space, which is not a requirement under subdivision (a) for ADUs associated with single-family sites. It should also be noted that if there is no existing non-livable space within a multifamily structure, an applicant would not be able to build an interior ADU under subdivision (e). Attached ADUs are also prohibited under this subdivision.

By contrast, under subdivision (a), an applicant may choose to build one attached, detached, or conversion ADU on a site with a proposed or existing multifamily dwelling, with local objective development standards applied in the same manner as they would be applied to an ADU proposed on a single-family site under subdivision (a). JADUs can only be constructed on a site with a proposed or existing single-family dwelling; however, a JADU cannot be constructed on a multifamily site concurrently with an ADU under subdivision (a).

- **Can I convert my accessory structure into an ADU?**

  Yes. The conversion of garages, sheds, barns, and other existing accessory structures, either attached or detached from the primary dwelling, into ADUs is permitted and promoted through State ADU Law.

  These conversions of accessory structures are not subject to any additional development standards, such as unit size, height, and lot coverage requirements, and shall be from existing space that can be made safe under building and safety codes. A local agency should not set limits based on when the structure was created, and the structure must meet standards for health and safety.

  Additionally, the two ADUs allowed on each multifamily site under subdivision (e) may be converted from existing detached structures on the site. Existing, detached accessory structures on a lot with an existing multifamily dwelling that are converted to ADUs cannot be required to be modified to correct for a non-conforming use. Both structures must be accessory structures detached from the primary residence, and because they are conversions of existing structures, these ADUs would not have to comply with the four-foot setback requirements under subdivision (e) if the existing structures are closer than four feet to the property line. This would also mean that the 16-foot height limitation would not apply if the existing structure were taller than 16 feet. Conversion ADUs in this scenario would not be subject to any square footage restrictions as long as they are built within the footprint of the previous structure.

- **Can an ADU created by converting existing space be expanded?**

  Yes. An ADU created within the existing or proposed space of a single-family dwelling or accessory structure can be expanded beyond the physical dimensions of the structure. Per State ADU Law, only an ADU created within an existing accessory structure may be expanded up to 150 square feet without application of local development standards, but this expansion shall be limited to accommodating ingress and egress. An ADU created within the space of an existing or proposed single-family dwelling is subject to local development standards. An example of where this expansion could be applicable is for the creation of a staircase to reach a second story ADU. These types of ADUs shall conform to setbacks sufficient for fire and safety.

  A local agency may allow for an expansion beyond 150 square feet, though the ADU would have to comply with the size maximums as per State ADU Law or per a local agency's adopted ordinance. (Gov. Code, § 65852.2, subd. (e)(1)(i).)

  As a JADU is limited to being created within the walls of a primary residence and not an accessory structure, this expansion of up to 150 square feet does not pertain to JADUs.

- **Can an ADU be constructed in the non-livable spaces of the non-residential portions of a mixed-use development?**

  No. The non-livable space used to create an ADU or ADUs under Government Code section 65852.2, subdivision (e)(1)(C), should be limited to the residential areas of a mixed-use development, and not the areas used for commercial or other activities. The parking and storage areas for these non-residential uses would also be excluded from potential ADU development.

I) Nonconforming Zoning Standards

- **Does the creation of an ADU require the applicant to carry out public improvements?**

  No physical improvements shall be required for the creation or conversion of an ADU. Any requirement to carry out public improvements is beyond what is required for the creation of an ADU, as per State ADU Law. For example, an applicant shall not be required to improve sidewalks or carry out street or access improvements to create an ADU. Additionally, as a condition for ministerial approval of an ADU, anapplicant shall not be required to correct nonconforming zoning conditions. (Gov. Code, § 65852.2, subd. (e)(2).)

J) Renter- and Owner-Occupancy

- **Are rental terms allowed?**

  Yes. Local agencies may require that the property be used for rentals of terms longer than 30 days. ADUs permitted ministerially, under subdivision (e), shall be rented for terms longer than 30 days. (Gov. Code, §65852.2, subds. (a)(6) and (e)(4).)

- **Are there any owner-occupancy requirements for ADUs?**

  No. Prior to recent legislation, ADU laws allowed local agencies to elect whether the primary dwelling orADU was required to be occupied by an owner. The updates to State ADU Law removed the owner-occupancy requirement for newly created ADUs effective January 1, 2020. The new owner-occupancy exclusion is set to expire on December 31, 2024; however, local agencies may not retroactively require owner-occupancy for ADUs permitted between January 1, 2020, and December 31, 2024.

  However, should a property have both an ADU and JADU, JADU law requires owner-occupancy of either the newly created JADU or the single-family residence. Under this specific circumstance, a lot with an ADU would be subject to owner-occupancy requirements. (Gov. Code, § 65852.22, subd. (a)(2).)

K) Fire Sprinkler Requirements

- **Can fire sprinklers be required for ADUs?**

  Installation of fire sprinklers may not be required in ADUs (attached, detached, or conversion) where sprinklers were not required by building codes for the existing primary residence. For example, a detached single-family home designed and constructed decades ago would not have been required to have fire sprinklers installed under the applicable building code at the time. However, if the same primary dwelling recently underwent significant alteration and is now required to have fire sprinklers, any ADU created after that alteration must be provided with fire sprinklers. (Gov. Code, § 65852.2, subds. (a)(1)(D)(xii) and (e)(3).)

  Please note, for ADUs created on lots with multifamily residential structures, the entire residential structure shall serve as the "primary residence" for the purposes of this analysis. Therefore, if the multifamily structure is served by fire sprinklers, the ADU can be required to install fire sprinklers.

  For additional guidance on ADUs and fire sprinkler system requirements, please consult the Office of the State Fire Marshal.

L) Solar System Requirements

- **Are solar systems required for newly constructed ADUs?**

  Yes, newly constructed ADUs are subject to the California Energy Code requirement (excluding manufactured homes) to provide solar systems if the unit(s) is a newly constructed, non-manufactured, detached ADU (though some exceptions apply). Per the California Energy Commission (CEC), the solar systems can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed within existing space, or as an addition to existing homes, including detached additions where an existing detached building is converted from non-residential to residential space, are not subject to the Energy Code requirement to provide solar systems.

  Please refer to the CEC on this matter. For more information, see the CEC's website at www.energy.ca.gov. You may email your questions to title24@energy.ca.gov, or contact the Energy Standards Hotline at 800-772-3300. CEC memos can also be found on HCD's website at https://www.hcd.ca.gov/policy-research/AccessoryDwellingUnits.shtml.

  See HCD's Information Bulletin 2020-10 for information on the applicability of California solar requirements to manufactured housing.

3. JADUs – Government Code Section 65852.22

- **What is a JADU?**

  A "junior accessory dwelling unit" or JADU is a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A JADU may include separate sanitation facilities or may share sanitation facilities with the existing structure. (Gov. Code, § 65852.22, subd. (h)(1).)

- **Are two JADUs allowed on a lot?**

  No. A JADU may be created on a lot zoned for single-family residences with one primary dwelling. The JADU may be created within the walls of the proposed or existing single-family residence, including attached garages, as attached garages are considered within the walls of the existing single-family residence. Please note that JADUs created in the attached garage are not subject to the same parking protections as ADUs and could be required by the local agency to provide replacement parking.

  JADUs are limited to one per residential lot with a single-family residence. Lots with multiple detached single-family dwellings are not eligible to have JADUs. (Gov. Code, § 65852.22, subd. (a)(1).)

- **Are JADUs required to have an interior connection to the primary dwelling?**

  No. Although JADUs are required to be within the walls of the primary dwelling, they are not required to have an interior connection to the primary dwelling. That said, JADUs may share a significant interior connection to the primary dwelling, as they are allowed to share bathroom facilities with the primary dwelling.

- **Are JADUs allowed in detached accessory structures?**

  No, JADUs are not allowed in accessory structures. The creation of a JADU must be within the single- family residence. As noted above, attached garages are eligible for JADU creation. (Gov. Code, § 65852.22, subds. (a)(1) and (a)(4).)

- **Are JADUs allowed to be increased up to 150 square feet when created within an existingstructure?**

  No. Only ADUs are allowed to add up to 150 square feet "beyond the physical dimensions of the existing accessory structure" to provide for ingress. (Gov. Code, § 65852.2, subd. (e)(1)(A)(i).)

  This provision extends only to ADUs and excludes JADUs. A JADU is required to be created within the single-family residence.

- **Are there any owner-occupancy requirements for JADUs?**

  Yes. The owner must reside in either the remaining portion of the primary residence or in the newly created JADU. (Gov. Code, § 65852.22, subd. (a)(2).)

4. Manufactured Homes

- **Are manufactured homes considered to be an ADU?**

  Yes. An ADU is any residential dwelling unit with independent living facilities and permanent provisions for living,sleeping, eating, cooking and sanitation. An ADU includes a manufactured home. (Health & Saf. Code, § 18007.)

  > Health and Safety Code section 18007, subdivision (a): **"Manufactured home,"** for the purposesof this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. "Manufactured home" includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

5. Regional Housing Needs Allocation (RHNA) and the Housing Element

- **Do ADUs and JADUs count toward a local agency's RHNA?**

  Yes. Pursuant to Government Code section 65852.2 subdivision (m), and section 65583.1, ADUs and JADUs may be utilized towards the RHNA and Housing Element Annual Progress Report (APR) pursuant to Government Code section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, an ADU, and a JADU with shared sanitation facilities, and any other unit that meets the census definition and is reported to DOF as part of the DOF annual City and County Housing Unit Change Survey can be credited toward the RHNA based on the appropriate income level. The housing element or APR must include a reasonable methodology to demonstrate the level of affordability. Local governments can track actual or anticipated affordability to assure ADUs and JADUs are

counted towards the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit or other local applications. For more information, please contact HousingElements@hcd.ca.gov.

- **What analysis is required to count ADUs toward the RHNA in the housing element?**

  To count ADUs towards the RHNA in the housing element, local agencies must generally use a three-part approach: (1) development trends, (2) anticipated affordability, and (3) resources and incentives. Development trends must consider ADUs permitted in the prior planning period and may also consider more recent trends. Anticipated affordability can use a variety of methods to estimate the affordability by income group. Common approaches include rent surveys of ADUs, using rent surveys and square footage assumptions and data available through the APR pursuant to Government Code section 65400. Resources and incentives include policies and programs to encourage ADUs, such as prototype plans, fee waivers, expedited procedures, and affordability monitoring programs.

- **Are ADUs required to be addressed in the housing element?**

  Yes. The housing element must include a description of zoning available to permit ADUs, including development standards and analysis of potential constraints on the development of ADUs. The element must include programs as appropriate to address identified constraints. In addition, housing elements must include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low-, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction, and operation of affordable ADUs. (Gov. Code, § 65583 and Health & Saf. Code, § 50504.5.) This list is available on HCD's ADU webpage.

6. Homeowners Associations

- **Can my local Homeowners Association (HOA) prohibit the construction of an ADU orJADU?**

  No. Assembly Bill 670 (2019) and AB 3182 (2020) amended Section 4751, 4740, and 4741 of the Civil Code to preclude common interest developments from prohibiting or unreasonably restricting the construction or use, including the renting or leasing of, an ADU on a lot zoned for single-family residential use. Covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on such lots are void and unenforceable or may be liable for actual damages and payment of a civil penalty. Applicants who encounter issues with creating ADUs or JADUs within CC&Rs are encouraged to reach out to HCD for additional guidance. Refer to Section 4100 of the Civil Code for the meaning of a common interest development.

7. ADU Ordinances and Local Agencies

- **Are ADU ordinances existing prior to new 2020 laws null and void?**

  Maybe. ADU ordinances existing prior to the new 2020 laws, as well as newly adopted ordinances, are null and void when they conflict with State ADU Law. Subdivision (a)(4) of Government Code section 65852.2 states that an ordinance that fails to meet the requirements of subdivision (a) shall be null and void, and the local agency shall apply the state standards until a compliant ordinance is adopted. See the question on Enforcement below for more detail.

- **Do local agencies have to adopt an ADU ordinance?**

  No. Local governments may choose not to adopt an ADU ordinance. Should a local government choose not to adopt an ADU ordinance, any proposed ADU development would be subject only to standards set in State ADU Law. If a local agency adopts an ADU ordinance, it may impose zoning, development, design, and other standards in compliance with State ADU Law.

- **Is a local government required to send an ADU ordinance to HCD?**

  Yes. A local government, upon adoption of an ADU ordinance, must submit a copy of the adopted ordinance to HCD within 60 days after adoption. After the adoption of an ordinance, HCD may review and submit written findings to the local agency as to whether the ordinance complies with State ADU Law. (Gov. Code, § 65852.2, subd. (h)(1).)

  Local governments may also submit a draft ADU ordinance for preliminary review by HCD. HCD recommends that local agencies do so, as this provides local agencies the opportunity to receive feedback on their ordinance and helps to ensure compliance with State ADU Law prior to adoption.

- **Are charter cities and counties subject to the new ADU laws?**

  Yes. State ADU Law applies to a local agency, which is defined as a city, county, or city and county, whether general law or chartered. (Gov. Code, § 65852.2, subd. (j)(5)).

  Further, pursuant to Chapter 659, Statutes of 2019 (AB 881), the Legislature found and declared State ADU Law addresses *"…a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution*" and concluded that State ADU Law applies to all cities, including charter cities.

- **Do the new ADU laws apply to jurisdictions located in the California Coastal Zone?**

  Yes. ADU laws apply to jurisdictions in the California Coastal Zone, but do not

necessarily alter or lessen the effect or application of Coastal Act resource protection policies. (Gov. Code, § 65852.22, subd. (l).) Coastal localities should seek to harmonize the goals of protecting coastal resources and addressing housing needs of Californians. For example, where appropriate, localities should amend Local Coastal Programs for California Coastal Commission review to comply with the California Coastal Act and new ADU laws. For more information, see the California Coastal Commission 2020 Memo and reach out to thelocality's local Coastal Commission district office.

- **Do the new ADU laws apply to areas governed by the Tahoe Regional Planning Agency (TRPA)?**

  Possibly. The TRPA was formed through a bistate compact between California and Nevada. Under the compact, TRPA has authority to adopt ordinances, rules, and regulations, and those ordinances, rules, and regulations are considered federal law. Under this authority, TRPA has adopted certain restrictions that effectively limit lot coverage on developed land. State ADU Law may conflict to a degree with the TRPA standards, and to the extent that it does, the TRPA law likely preempts or overrides State ADU Law.

8. Enforcement

- **Does HCD have enforcement authority over ADU ordinances?**

  Yes. Pursuant to Government Code section 65852.2, subdivision (h), local agencies are required to submit a copy of newly adopted ADU ordinances within 60 days of adoption. HCD may thereafter provide written findings to the local agency as to whether the ordinance complies with State ADU Law. If HCD finds that the local agency's ADU ordinance does not comply with State ADU Law, HCD must provide a reasonable time, no longer than 30 days, for the local agency to respond. The local agency shall either amend its ordinance in accordance with HCD's written findings or adopt the ordinance without changes but include findings in its resolution explaining why the ordinance complies with State ADU Law despite HCD's findings. If the local agency does not amend its ordinance in accordance with HCD's findings or adopt a resolution explaining why the ordinance is compliant, HCD shall notify the local agency that it is in violation of State ADU Law. HCD may also notify the Attorney General of the local agency's violation. While an ordinance is non-compliant, the local agency shall apply state standards.

  In addition, HCD may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify State ADU Law.

9. Senate Bill (SB) 9 (2021)

- **Does SB 9 have any impact on ADUs?**

  SB 9 (Gov. Code Sections 66452.6, 65852.21 and 66411.7) contains some overlaps with State ADU Law, but only on a relatively small number of topics. Please note that although HCD does not administer or enforce SB 9, violations of SB 9 may concurrently violate other housing laws that HCD does enforce, including, but not limited to, State ADU Law and State Housing Element Law. As local jurisdictions implement SB 9, including adopting local

ordinances, it is important to keep these and other housing laws in mind. For details regarding SB 9, please see HCD's SB 9 Factsheet.

10. Funding

- **Is there financial assistance or funding available for ADUs?**
  Effective September 20, 2021, the California Housing Finance Agency's (CalHFA) ADU Grant Program provides up to $40,000 in assistance to reimburse qualifying homeowners for predevelopment costs necessary to build and occupy an ADU or JADU on a lot with a single-family dwelling unit. The ADU Grant Program is intended to create more housing units in California by providing a grant to reimburse qualifying homeowners for predevelopment costs. Predevelopment costs include, but are not limited to, architectural designs, permits, soil tests, impact fees, property surveys, and energy reports. For additional information or questions, please see CalHFA's ADU Grant Program at https://www.calhfa.ca.gov/adu or contact the CalHFA Single Family Lending Division at (916) 326-8033 or SFLending@calhfa.ca.gov.

Resources

Attachment 1: Statutory Changes (Strikeout/Italics and Underline)

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2

Combined changes from AB 345, AB 3182, AB 881, AB 68, and SB 13 (Changes noted in strikeout, underline/italics)

Effective January 1, 2022, Section 65852.2 of the Government Code is amended to read:

65852.2.

(a)(1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned toallow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A)Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B)(i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback,landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any realproperty that is listed in the California Register of ~~Historic~~ *Historical* Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessorydwelling unit located within its jurisdiction.

(C)Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessorydwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D)Require the accessory dwelling units to comply with all of the following:

(i) ~~The~~ *Except as provided in Section 65852.26, the* accessory dwelling unit may be rented separate from the primary residence, but may not be sold orotherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existingdwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling,including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall notexceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in thesame location and to the same dimensions as an existing structure that is

converted to an accessory dwelling unitor to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(1) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(2) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. *If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.* A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(3) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an

ordinance that complies with this section.
(4) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.
(5) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.
(6) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.
(7) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.
(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.
(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:
(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.
(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:
(i) 850 square feet.
(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.
(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local

development standards.
(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:
(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.
(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
(5) When there is a car share vehicle located within one block of the accessory dwelling unit.
(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:
(A) One accessory dwelling unit ~~or~~ *and* one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:
(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.
(ii) The space has exterior access from the proposed or existing single-family dwelling.
(iii) The side and rear setbacks are sufficient for fire and safety.
(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.
(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:
(i) A total floor area limitation of not more than 800 square feet.
(ii) A height limitation of 16 feet.
(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.
(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.
(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.
(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.
(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.
(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.
(5) A local agency may require, as part of the application for a permit to create an accessory

dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, ifthe percolation test has been recertified, within the last 10 years.
(6)Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.
(f)(1) Fees charged for the construction of accessory dwelling units shall be determined in accordance withChapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).
(2)An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to bea new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.
(3)(A) A local agency, special district, or water corporation shall not impose any impact fee upon the developmentof an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.
(B) For purposes of this paragraph, “impact fee” has the same meaning as the term “fee” is defined in subdivision
(b) of Section 66000, except that it also includes fees specified in Section 66477. “Impact fee” does not include anyconnection fee or capacity charge charged by a local agency, special district, or water corporation.
(4)For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a localagency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee orcapacity charge, unless the accessory dwelling unit was constructed with a new single-family home.
(5)For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwellingunit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
(g)This section does not limit the authority of local agencies to adopt less restrictive requirements for the creationof an accessory dwelling unit.
(h)(1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.
(2)(A) If the department finds that the local agency’s ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other

action authorized by this section.
(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:
(i) Amend the ordinance to comply with this section.
(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.
(3)(A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.
(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.
(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.
(j) As used in this section, the following terms mean:
(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:
(A) An efficiency unit.
(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.
(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.
(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
(5) "Local agency" means a city, county, or city and county, whether general law or chartered.
(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.
(7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
(8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
(9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
(10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.
(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the

effect or application ofthe California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code),except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.
(m)A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, asspecified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with thisdivision.
(n)In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:
(1)The accessory dwelling unit was built before January 1, 2020.
(2)The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time theaccessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
(o)This section shall remain in effect only until January 1, 2025, and as of that date is repealed.
(Becomes operative on January 1, 2025)

Section 65852.2 of the Government Code is amended to read (changes from January 1, 2021 statute noted inunderline/italic):

65852.2.
(a)(1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned toallow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
(A)Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
(B)(i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback,landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any realproperty that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
(C)Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.
(D)Require the accessory dwelling units to comply with all of the following:
(i)The accessory dwelling unit may be rented separate from the primary residence, but may not be sold orotherwise conveyed separate from the primary residence.
(ii)The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
(iii)The accessory dwelling unit is either attached to, or located within, the proposed or

existing primary dwelling,including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in thesame location and to the same dimensions as an existing structure that is converted to an accessory dwelling unitor to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasiblebased upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of anaccessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primaryresidence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limitresidential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on theapplication to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date thelocal agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. *If the local agency hasnot acted upon the completed application within 60 days, the application shall be deemed approved.* A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs

of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) *(A)* This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or ~~imposed, including any owner-occupant requirement, except that~~ *imposed except that, subject to subparagraph (B),* a local agency may require *an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or* that the property be used for rentals of terms longer than 30 days.

(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If

the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c)(1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements forboth attached and detached accessory dwelling units.

(2)Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A)A minimum square footage requirement for either an attached or detached accessory dwelling unit thatprohibits an efficiency unit.

(B)A maximum square footage requirement for either an attached or detached accessory dwelling unit that is lessthan either of the following:

(i)850 square feet.

(ii)1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C)Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size,for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d)Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessorydwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1)The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2)The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3)The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4)When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5)When there is a car share vehicle located within one block of the accessory dwelling unit.

(e)(1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an applicationfor a building permit within a residential or mixed-use zone to create any of the following:

(A)One accessory dwelling unit ~~or~~ *and* one junior accessory dwelling unit per lot with a proposed or existingsingle-family dwelling if all of the following apply:

(i)The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii)The space has exterior access from the proposed or existing single-family dwelling.

(iii)The side and rear setbacks are sufficient for fire and safety.

(iv)The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B)One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combinedwith a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i)A total floor area limitation of not more than 800 square feet.

(ii)A height limitation of 16 feet.

(C)(i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements,or garages, if each unit complies with state building standards for dwellings.
(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shallallow up to 25 percent of the existing multifamily dwelling units.
(D)Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.
(2)A local agency shall not require, as a condition for ministerial approval of a permit application for the creation ofan accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.
(3)The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not requiredfor the primary residence.
(4)A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on asingle-family lot, subject to the requirements of paragraph (6) of subdivision (a).
~~(4)~~ *(5)* A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivisionbe for a term longer than 30 days.
~~(5)~~ *(6)* A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, ifthe percolation test has been recertified, within the last 10 years.
~~(6)~~ *(7)* Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1,2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.
(f)(1) Fees charged for the construction of accessory dwelling units shall be determined in accordance withChapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).
(2)An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to bea new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.
(3)(A) A local agency, special district, or water corporation shall not impose any impact fee upon the developmentof an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.
(B) For purposes of this paragraph, “impact fee” has the same meaning as the term “fee” is defined in subdivision
(b) of Section 66000, except that it also includes fees specified in Section 66477. “Impact fee” does not include anyconnection fee or capacity charge charged by a local agency, special district, or water corporation.
(4)For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory

dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family ~~home.~~ *dwelling*.
(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.
(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.
(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.
(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:
(i) Amend the ordinance to comply with this section.
(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.
(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.
(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.
(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.
(j) As used in this section, the following terms mean:
(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:
(A) An efficiency unit.
(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.
(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located

on the same lot.
(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.
(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
(5) "Local agency" means a city, county, or city and county, whether general law or chartered.
(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.
(7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
(8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
(9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
(10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.
(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.
(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.
(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:
(1) The accessory dwelling unit was built before January 1, 2020.
(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
(o) This section shall ~~remain in effect only until January 1, 2025, and as of that date is repealed.~~ *become operative on January 1, 2025.*

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2
AB 345 (Accessory Dwelling Units)

Effective January 1, 2022, Section 65852.26 is amended to read:

65852.26.

(a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency ~~may, by ordinance~~, *shall* allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

(1) The ~~property~~ *accessory dwelling unit or the primary dwelling* was built or developed by a qualified nonprofit corporation.

(2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

(3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

(A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each *that* qualified buyer occupies.

(B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the~~property~~ *accessory dwelling unit or primary dwelling* if the buyer desires to sell or convey the property.

(C) A requirement that the qualified buyer occupy the ~~property~~ *accessory dwelling unit or primary dwelling* as the buyer's principal residence.

(D) Affordability restrictions on the sale and conveyance of the ~~property~~ *accessory dwelling unit or primary dwelling* that ensure the ~~property~~ *accessory dwelling unit and primary dwelling* will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.

(E) *If the tenancy in common agreement is recorded after December 31, 2021, it shall also include all of the following*

(i) Delineation of all areas of the property that are for the exclusive use of a cotenant. Each cotenant shall agree not to claim a right of occupancy to an area delineated for the exclusive use of another cotenant, provided that the latter cotenant's obligations to each of the other cotenants have been satisfied.

(ii) Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property. This delineation shall only be binding on the parties to the agreement, and shall not supersede or obviated the liability, whether joint and several or otherwise, of the parties for any cost, obligation, or liability associated with the property where such liability is otherwise established by law or by agreement with a third party.

(iii) Procedures for dispute resolution among the parties before resorting to legal action.

(4)A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

(5)Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utilityproviding service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.

(b)For purposes of this section, the following definitions apply:

(1)"Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section50093 of the Health and Safety Code.

(2)"Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and TaxationCode for properties intended to be sold to low-income families who participate in a special no-interest loan program.

Effective January 1, 2021, Section 4740 of the Civil Code is amended to read (changes noted in strikeout,underline/italics) (AB 3182 (Ting)):

4740.

(a)An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in that common interest development to a renter, lessee, or tenant unless that governing document, or amendment thereto, was effective prior to the date the owner acquired title to ~~his or her~~ *their* separate interest.

(b)~~Notwithstanding the provisions of this section, an owner of a separate interest in a common interest development may expressly consent to be subject to a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant.~~

(c)*(b)* For purposes of this section, the right to rent or lease the separate interest of an owner shall not be deemed to have terminated if the transfer by the owner of all or part of the separate interest meets at least one of the following conditions:

(1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation Code, the transfer is exempt, for purposes ofreassessment by the county tax assessor.

(2) Pursuant to subdivision (b) of, solely with respect to probate transfers, or subdivision (e), (f), or (g) of, Section1102.2, the transfer is exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement, as set forth in Section 1102.6.

(d)*(c)* Prior to renting or leasing ~~his or her~~ *their* separate interest as provided by this section, an owner shall provide the association verification of the date the owner acquired title to the separate interest and the name andcontact information of the prospective tenant or lessee or the prospective tenant's or lessee's representative.

(e)*(d)* Nothing in this section shall be deemed to revise, alter, or otherwise affect the voting process by which acommon interest development adopts or amends its governing documents.

(f) ~~This section shall apply only to a provision in a governing document or a provision in an amendment to a governing document that becomes effective on or after January 1, 2012.~~

Effective January 1, 2021 of the Section 4741 was added to the Civil Code, to read:

4741.
(a)An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development to a renter, lessee, or tenant.
(b)A common interest development shall not adopt or enforce a provision in a governing document or amendment to a governing document that restricts the rental or lease of separate interests within a common interest to less than 25 percent of the separate interests. Nothing in this subdivision prohibits a common interest development from adopting or enforcing a provision authorizing a higher percentage of separate interests to be rented or leased.(c) This section does not prohibit a common interest development from adopting and enforcing a provision in a governing document that prohibits transient or short-term rental of a separate property interest for a period of 30 days or less.
(d)For purposes of this section, an accessory dwelling unit or junior accessory dwelling unit shall not be construed as a separate interest.
(e)For purposes of this section, a separate interest shall not be counted as occupied by a renter if the separate interest, or the accessory dwelling unit or junior accessory dwelling unit of the separate interest, is occupied by the owner.
(f)A common interest development shall comply with the prohibition on rental restrictions specified in this section on and after January 1, 2021, regardless of whether the common interest development has revised their governingdocuments to comply with this section. However, a common interest development shall amend their governing documents to conform to the requirements of this section no later than December 31, 2021.
(g)A common interest development that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars ($1,000).
(h)In accordance with Section 4740, this section does not change the right of an owner of a separate interest who acquired title to their separate interest before the effective date of this section to rent or lease their property.

Effective January 1, 2020, Section 65852.22 of the Government Code was amended to read:

65852.22.
(a)Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:
(1)Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residenceswith a single-family residence built, or proposed to be built, on the lot.
(2)Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the

structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, landtrust, or housing organization.
(3)Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permittingagency, and shall include both of the following:
(A)A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-familyresidence, including a statement that the deed restriction may be enforced against future purchasers.
(B)A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.
(4)Require a permitted junior accessory dwelling unit to be constructed within the walls of proposed or existing single-family residence.
(5)Require a permitted junior accessory dwelling to include a separate entrance from the main entrance tothe proposed or existing single-family residence.
(6)Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:
(A) A cooking facility with appliances.
(B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.
(b)(1) An ordinance shall not require additional parking as a condition to grant a permit.
(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine if the junior accessory dwelling unit complies with applicable building standards.
(c)An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. The permitting agency shall act on the application to create a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create a junior accessory dwelling unit is submitted witha permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.
(d)For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not beconsidered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city andcounty, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether thesingle-family residence includes a junior accessory dwelling unit or not.
(e)For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessorydwelling unit shall not be considered a separate or new dwelling unit.
(f)This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as

that ordinance or regulation applies uniformly to all single- family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.
(g) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.
(h) For purposes of this section, the following terms have the following meanings:
(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.
(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Effective January 1, 2020 Section 17980.12 was added to the Health and Safety Code, immediately following Section 17980.11, to read:

17980.12.
(a)(1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:
(A) The accessory dwelling unit was built before January 1, 2020.
(B) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
(2) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.
(3) The enforcement agency shall grant an application described in paragraph (2) if the enforcement determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.
(4) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).
(b) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2.
(c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

CIVIL CODE: DIVISION 4, PART 5, CHAPTER 5, ARTICLE 1
AB 670 Accessory Dwelling Units

Effective January 1, 2020, Section 4751 was added to the Civil Code, to read (AB 670 (Friedman)):

4751.
(a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code, is void and unenforceable.
(b) This section does not apply to provisions that impose reasonable restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, "reasonable restrictions" means restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with the provisions of Section 65852.2 or 65852.22 of the Government Code.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 3, ARTICLE 10.6
AB 671 Accessory Dwelling Units

Effective January 1, 2020, Section 65583(c)(7) of the Government Code was added to read (sections of housing element law omitted for conciseness) (AB 671 (Friedman)):

65583(c)(7).
Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "accessory dwelling units" has the same meaning as "accessory dwelling unit" as defined in paragraph (4) of subdivision (i) of Section 65852.2.

Effective January 1, 2020, Section 50504.5 was added to the Health and Safety Code, to read (AB 671 (Friedman)):

50504.5.
(a) The department shall develop by December 31, 2020, a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning, construction, and operation of an accessory dwelling unit with affordable rent, as defined in Section 50053, for very low, low-, and moderate-income households.
(b) The list shall be posted on the department's internet website by December 31, 2020.
(c) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in paragraph (4) of subdivision (i) of Section 65852.2 of the Government Code.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2 & TITLE 7, DIVISION 2, CHAPTER 1, ARTICLE 1
SB 9 Housing development: approvals

Effective January 1, 2022, Section 65852.21 was added to the Government Code, to read:

65852.21. *(a) A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the following requirements:*
(1) The parcel subject to the proposed housing development is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.
(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.
(3) Notwithstanding any provision of this section or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:
(A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
(C) Housing that has been occupied by a tenant in the last three years.
(4) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application. 94 — 3 — Ch. 162
(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the housing development meets at least one of the following conditions:
(A) If a local ordinance so allows.
(B) The site has not been occupied by a tenant in the last three years.
(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.
(b)(1) Notwithstanding any local law and except as provided in paragraph (2), a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this section.
(2)(A) The local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area. (B)(i) Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.
(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), a local agency may require a setback of up to four feet from the side and rear lot lines.

(c) In addition to any conditions established in accordance with subdivision (b), a local agency may require any of the following conditions when considering an application for two residential units as provided for in this section:
(1) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:
(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.
(B) There is a car share vehicle located within one block of the parcel. (2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.
(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is 94 Ch. 162 — 4 — no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.
(e) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.
(f) Notwithstanding Section 65852.2 or 65852.22, a local agency shall not be required to permit an accessory dwelling unit or a junior accessory dwelling unit on parcels that use both the authority contained within this section and the authority contained in Section 66411.7.
(g) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.
(h) Local agencies shall include units constructed pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.
(i) For purposes of this section, all of the following apply:
(1) A housing development contains two residential units if the development proposes no more than two new units or if it proposes to add one new unit to one existing unit.
(2) The terms "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.
(3) "Local agency" means a city, county, or city and county, whether general law or chartered.
(j) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.
(k) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for a housing development pursuant to this section.

Section 66411.7 is added to the Government Code, to read:

66411.7. *(a) Notwithstanding any other provision of this division and any local law, a local agency shall ministerially approve, as set forth in this section, a parcel map for an urban lot split only if the local agency determines that the parcel map for the urban lot split meets all the following requirements:*

(1) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

(2) (A) Except as provided in subparagraph (B), both newly created parcels are no smaller than 1,200 square feet. (B) A local agency may by ordinance adopt a smaller minimum lot size subject to ministerial approval under this subdivision.

(3) The parcel being subdivided meets all the following requirements:

(A) The parcel is located within a single-family residential zone.

(B) The parcel subject to the proposed urban lot split is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(C) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(D) The proposed urban lot split would not require demolition or alteration of any of the following types of housing: (i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power. (iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(iv) Housing that has been occupied by a tenant in the last three years.

(E) The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(F) The parcel has not been established through prior exercise of an urban lot split as provided for in this section. (G) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this section.

(b) An application for a parcel map for an urban lot split shall be approved in accordance with the following requirements:

(1) A local agency shall approve or deny an application for a parcel map for an urban lot split ministerially without discretionary review.

(2) A local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(3) Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the parcels being created as a condition of issuing a parcel map for an urban lot split pursuant to this section.

(c) (1) Except as provided in paragraph (2), notwithstanding any local law, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to a parcel created by an urban lot split that do not conflict with this section.
(2) A local agency shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.
(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.
(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), a local agency may require a setback of up to four feet from the side and rear lot lines.
(d) Notwithstanding subdivision (a), a local agency may deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.
(e) In addition to any conditions established in accordance with this section, a local agency may require any of the following conditions when considering an application for a parcel map for an urban lot split:
(1) Easements required for the provision of public services and facilities.
(2) A requirement that the parcels have access to, provide access to, or adjoin the public right-of-way. (3) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:
(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code.
(B) There is a car share vehicle located within one block of the parcel.
(f) A local agency shall require that the uses allowed on a lot created by this section be limited to residential uses. (g) (1) A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.
(2) This subdivision shall not apply to an applicant that is a "community land trust," as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code.
(3) A local agency shall not impose additional owner occupancy standards, other than provided for in this subdivision, on an urban lot split pursuant to this section.
(h) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.
(i) A local agency shall not require, as a condition for ministerial approval of a parcel map application for the creation of an urban lot split, the correction of nonconforming zoning conditions.
(j) (1) Notwithstanding any provision of Section 65852.2, 65852.21, 65852.22, 65915, or this section, a local agency shall not be required to permit more than two units on a parcel created through the exercise of the authority contained within this section.
(2) For the purposes of this section, "unit" means any dwelling unit, including, but not limited to, a unit or units created pursuant to Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Section 65852.2, or a junior accessory dwelling unit as defined in Section 65852.22.

(k) Notwithstanding paragraph (3) of subdivision (c), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(l) Local agencies shall include the number of applications for parcel maps for urban lot splits pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(m) For purposes of this section, both of the following shall apply:

(1) "Objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(n) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(o) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for urban lot splits pursuant to this section.

Attachment 2: ADU Resources

ACCESSORY DWELLING UNITS: CASE STUDY

By the United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats— are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

ADU UPDATE: EARLY LESSONS AND IMPACTS OF CALIFORNIA'S STATE AND LOCAL POLICY CHANGES

By David Garcia (2017)
Terner Center for Housing and Innovation, UC Berkeley

As California's housing crisis deepens, innovative strategies for creating new housing units for all income levels are needed. One such strategy is building Accessory Dwelling Units (ADUs) by private homeowners. While large scale construction of new market rate and affordable homes is needed to alleviate demand-driven rent increases and displacement pressures, ADUs present a unique opportunity for individual homeowners to create more housing as well. In particular, ADUs can increase the supply of housing in areas where there are fewer opportunities for larger-scale developments, such as neighborhoods that are predominantly zoned for and occupied by single-family homes.

In two of California's major metropolitan areas -- Los Angeles and San Francisco -- well over three quarters of the total land area is comprised of neighborhoods where single-family homes make up at least 60 percent of the community's housing stock. Across the state, single-family detached units make up 56.4 percent of the overall housing stock. Given their prevalence in the state's residential land use patterns, increasing the number of single- family homes that have an ADU could contribute meaningfully to California's housing shortage.

ACCESSORY DWELLING UNITS AS LOW-INCOME HOUSING: CALIFORNIA' FAUSTIAN BARGAIN

By Darrel Ramsey-Musolf (2018)
University of Massachusetts Amherst, ScholarWorks@UMass Amherst

In 2003, California allowed cities to count accessory dwelling units (ADU) towards low-income housing needs. Unless a city's zoning code regulates the ADU's maximum rent, occupancy income, and/or effective period, then the city may be unable to enforce low-income occupancy. After examining a stratified random sample of 57 low-, moderate-, and high-income cities, the high-income cities must proportionately accommodate more low-income needs than low-income cities. By contrast, low-income cities must quantitatively accommodate three times the low- income needs of high-income cities. The sample counted 750 potential ADUs as low-income housing. Even though 759 were constructed, no units were identified as available low-income housing. In addition, none of the cities' zoning codes enforced low-income occupancy. Inferential tests determined that cities with colleges and high incomes were more probable to count ADUs towards overall and low-income housing needs. Furthermore, a city's count of potential ADUs and cities with high proportions of renters maintained positive associations with ADU production, whereas a city's density and prior compliance with state housing laws maintained negative associations. In summary, ADUs did increase local housing inventory and potential ADUs were positively associated with ADU production, but ADUs as low-income housing remained a paper calculation.

IMPLEMENTING THE BACKYARD REVOLUTION: PERSPECTIVES OF CALIFORNIA'S ADU OWNERS (2022)

By Karen Chapple, Dori Ganetsos, and Emmanuel Lopez (2022)
UC Berkeley Center for Community Innovation

The report presents the findings from the first-ever statewide ADU owner survey in California.

JUMPSTARTING THE MARKET FOR ACCESSORY DWELLING UNITS: LESSONS LEARNED FROM PORTLAND, SEATTLE AND VANCOUVER

By Karen Chapple et al (2017)
Terner Center for Housing and Innovation, UC Berkeley

Despite government attempts to reduce barriers, a widespread surge of ADU construction has not materialized. The ADU market remains stalled. To find out why, this study looks at three cities in the Pacific Northwest of the United States and Canada that have seen a spike in construction in recent years: Portland, Seattle, and Vancouver. Each city has adopted a set of zoning reforms, sometimes in combination with financial incentives and outreach programs, to spur ADU construction. Due to these changes, as well as the acceleration of the housing crisis in each city, ADUs have begun blossoming.

THE MACRO VIEW ON MICRO UNITS

By Bill Whitlow, et al. – Urban Land Institute
(2014)Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

REACHING CALIFORNIA'S ADU POTENTIAL: PROGRESS TO DATE AND THE NEED FOR ADU FINANCE

Karen Chapple, et al. – Terner Center (2020)

To build upon the early success of ADU legislation, the study argues that more financial tools are needed to facilitate greater ADU development amongst low to moderate income homeowners who do not have access to cash saving and cannot leverage home equity. The study recommends that the federal government create ADU-specific construction lending programs. In addition, California could lead this effort by creating a program to assist homeowners in qualifying for ADU construction loans.

RETHINKING PRIVATE ACCESSORY DWELLINGS

By William P. Macht. Urbanland online. (March 6, 2015)
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

One of the large impacts of single-use, single-family detached zoning has been to severely shrink the supply of accessory dwellings, which often were created in or near primary houses. Detached single-family dwelling zones—the largest housing zoning category—typically preclude more than one dwelling per lot except under stringent regulation, and then only in some jurisdictions. Bureaucratically termed "accessory dwelling units" that are allowed by some jurisdictions may encompass market-derived names such as granny flats, granny cottages, mother-in-lawsuites, secondary suites, backyard cottages, casitas, carriage flats, sidekick houses, basement apartments, attic apartments, laneway houses, multigenerational homes, or home-within-a-home.

REGULATION ADUS IN CALIFORNIA: LOCAL APPROACHES & OUTCOMES

By Deidra Pfeiffer (May 16, 2019)
Terner Center for Housing and Innovation, UC Berkeley

Accessory dwelling units (ADU) are often mentioned as a key strategy in solving the nation's housing problems, including housing affordability and challenges associated with aging in place. However, we know little about whether formal ADU practices—such as adopting an ordinance, establishing regulations, and permitting— contribute to these goals. This research helps to fill this gap by using data from the Terner California Residential Land Use Survey and the U.S. Census Bureau to understand the types of communities engaging in different kinds of formal ADU practices in California, and whether localities with adopted ordinances and less restrictive regulations have more frequent applications to build ADUs and increasing housing affordability and aging in place. Findings suggest that three distinct approaches to ADUs are occurring in California: 1) a more restrictive approach in disadvantaged communities of color, 2)

a moderately restrictive approach in highly advantaged, predominately White and Asian communities, and 3) a less restrictive approach in diverse and moderately advantaged communities. Communities with adopted ordinances and less restrictive regulations receive more frequent applications to build ADUs but have not yet experienced greater improvements in housing affordability and aging inplace. Overall, these findings imply that 1) context-specific technical support and advocacy may be needed to helpalign formal ADU practices with statewide goals, and 2) ADUs should be treated as one tool among many to manage local housing problems.

SECONDARY UNITS AND URBAN INFILL: A LITERATURE REVIEW

By Jake Wegmann and Alison Nemirow (2011)
UC Berkeley: IURD
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.