

County of Santa Clara

Department of Planning and Development
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ACCESSORY DWELLING UNITS (ADUs)

Information and Frequently Asked Questions Regarding
New State Laws Governing Secondary Dwelling Units

What are ADUs?

Accessory dwelling unit (ADU) is the new term by which state law refers to secondary dwellings or second units. Terms such as 'granny unit' or 'in-law unit' have always been colloquial ways of referring to such uses. For continuity, the County may still refer to such units as secondary dwellings or ADUs, acknowledging the state terminology and definitions in future regulatory updates.

ADUs are defined in state law as either standard ADUs or Junior Accessory Dwelling Units (JADUs). JADUs are entirely optional at this time, meaning cities and counties do not have to make provision for them. JADUs are an alternative form of ADU housing that cannot exceed 500 sq. ft. and must be completely contained within the space of an existing residence. Kitchen facilities are limited, and the JADU may or may not have a bathroom solely devoted to it. In most respects, it differs little from the renting of a room in a private residence. At present, the County is not intending to allow JADUs.

How Do the New State Laws Relate to the County's Existing Secondary Dwelling Regulations?

The state laws adopted September 2016 require that local ordinances be updated to conform to the new state regulations by January 1, 2017, or they are superseded by state laws (null and void provision). At this time, and until the County amends its Zoning Ordinance regulations for secondary dwellings to conform to state law, state law governs the approval process for ADUs.

What are the Major Provisions of State Laws for ADUs?

The state law defines ADUs to include attached or detached ADUs, with a third category referred to as units created within the existing living area of a single family residence or within an existing accessory structure. This third category has a number of special provisions intended to facilitate such units without many of the typical local agency requirements. (See Parking). In other respects, whether an ADU is created from within existing space or by means of an addition to a residence, it is considered an attached ADU.

There are also special provisions for converting existing garages (attached to a residence or detached) and other types of accessory buildings to ADUs, along with certain parking exemptions, setback exemptions, and a number of other provisions relating to fees, sprinkler requirements, utility connections, and passageways. Each of the major components will be addressed further under the individual topics that follow. For the entire state law section of Government Code 65852.2, please refer to the Department's web page:

<https://www.sccgov.org/sites/dpd/PlansOrdinances/Studies/Pages/ADUUpdate.aspx>

Detached Accessory Building Conversions

Detached accessory buildings such as garages, pool cabanas, and similar structures are eligible to be converted to ADUs, without conformance to normal residential setbacks, provided that:

- the building and its configuration meet fire and safety codes, local sewage disposal requirements, and building codes (including a building permit);
- the parking space(s), if any, that are eliminated and required for the primary residence are accounted for elsewhere on the property in some manner (unless a statutory exemption applies).

Attached ADUs/ADUs within Existing Space of a Residence

Attached ADUs are subject to the following requirements:

- the increased floor of an attached accessory dwelling unit shall not exceed 50% of the living area (habitable space) of the existing residence, with a maximum increase in floor area of 1,200 sq. ft.
- if created from within a single family residence or accessory structure (without increased floor area by means of an addition), it must be approved ministerially if it has independent exterior access, and side and rear setbacks are sufficient for fire safety.

Fire sprinklers are not required if not required for the primary residence. No parking standards or requirements apply.

Parking Requirement Exemptions

Parking requirements for ADUs are generally one space per bedroom or unit. No parking requirements are applied when the proposed ADU is:

- within one-half mile of public transit;
- within an architecturally and historically significant historic district (applies only to the County's -h1, New Almaden Historic Preservation District);
- part of the existing primary residence or existing accessory building/structure; and

- within a zone or area where the local jurisdiction requires on-street parking permits for residents but such permits are not offered or available to occupants of an ADU (note: the County applies no such requirements);
- when there is a car-share vehicle located within one block of the ADU.

The applicant will need to provide evidence to support any of the above exemptions.

New Detached ADUs

New detached ADUs are permitted at this time while state law governs without regard to minimum lot sizes in either urban or rural zoning districts. The maximum allowed floorspace of a detached ADU is 1,200 sq. ft., as determined by the County's existing floor area definition.

In rural zones where existing height and story limits permit them, ADUs constructed above another detached accessory use, such as a barn, garage, or storage building, may be built with minimum five foot side and rear setbacks. However, the County encourages greater setbacks where possible to adhere to the intent and purpose of the Zoning Ordinance to reduce privacy, shading, and noise impacts upon neighboring properties, and to maintain rural community character. Maintaining a 30 foot setback in such situations is desirable.

Standard setbacks, story, floor area ratio (-n1 and -n2), and height limits of each base and/or combining district applicable to all residences and buildings still apply to new proposed detached ADUs. These are defined separately in the base district or combining zone regulations and are not affected by new state ADU laws.

Owner-Occupancy Requirements

State law allows the County to require an applicant for a permit for an ADU to be an owner-occupant, or that the property be used for rentals of terms longer than 30 days. The County will continue to require that an owner-occupancy deed restriction is recorded prior to building permit issuance ensuring that at least one of the two units on a lot is owner-occupied.

Discretionary Approval Requirements and Site Approval

State law generally requires that no discretionary land use approvals may apply to the creation of ADUs. Consequently, no discretionary special permit or design review requirements stipulated in certain situations in the County Zoning Ordinance will apply until such time as the regulations are amended, if such provisions are included. But the County may incorporate applicable standards that must be met in its ministerial approvals of ADUs.

Furthermore, until the County adopts a new ADU ordinance, single building site approval will not be required as a prerequisite to the creation of an ADU on an existing lot where there is an existing, legally established primary dwelling, although the County may incorporate applicable standards that must be met in its ministerial approvals of ADUs. ADUs are defined as and must be accessory uses to an existing primary dwelling. If a residence intended to be a future ADU is the first residential use to be established on an undeveloped lot that is not an approved site, it is not considered an ADU and single building site approval and any other County requirements applicable to primary dwellings will be required.

Other Requirements

ADUs will not be permitted in zones where no primary residential use or secondary dwelling is allowed by the use regulations of the base zoning district. Where allowed, only one ADU per legal lot will be permitted.

The County's building codes and any other applicable provisions of the County Ordinance Code regulating residential development will apply. Building permit applications must be reviewed and either approved or disapproved by the applicable planning review agency(s) within 120 days. This time period does not include or govern the permit review and issuance procedures for building permits issued by the Building Inspection Office.

What is the County's Process and Timeline for Updating the County's Secondary Dwelling Regulations?

Work is underway presently to develop proposed Zoning Ordinance amendments to achieve consistency with state ADU laws. The future regulatory framework for ADUs will be largely based on the current provisions for both urban and rural zoning districts, with special provisions and allowances as needed to conform to state law. Review and approval by the Planning Commission and Board of Supervisors will be sought as soon as possible, with new regulations in effect, if possible, by mid-2017.

For Further Information and Assistance

Staff is endeavoring to apply and interpret the state ADU laws in a manner consistent with their general intent. For further information and assistance, please contact:

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