

ACCESSORY DWELLING UNIT ORDINANCE

I. General Provisions

A. Purpose and Intent

1. The Common Council of the City of Kingston finds and declares:

a. Our community faces a severe housing crisis, with home prices and rents unaffordable by families and households of middle and low incomes.

b. The community is falling far short of meeting current and future housing demand with serious consequences for the well-being of our residents, particularly lower-income and middle-income earners.

c. The City of Kingston can play an important role in reducing the barriers that prevent homeowners from building accessory dwellings.

d. There are many benefits associated with the creation of legal accessory dwellings on lots. These include:

i. Increasing the supply of a more affordable type of housing not requiring government subsidies;

ii. Helping older homeowners, single parents, young home buyers, and renters seeking a wider range of homes, prices, rents and locations;

iii. Increasing housing diversity and supply, providing opportunities to reduce the segregation of people by race, ethnicity and income that resulted from decades of exclusionary zoning;

iv. Providing homeowners with extra income to help meet rising homeownership costs;

v. Creating a convenient living arrangement that allows family members or other persons to provide care and support for someone in a semi-independent living situation without the latter leaving his or her community;

vi. Providing an opportunity for increased security, home care and companionship for older and other homeowners;

vii. Reducing burdens on taxpayers while enhancing the local property tax base by providing a cost-effective means of accommodating development without the cost of building, operating and maintaining new infrastructure;

viii. Promoting more compact urban and suburban growth, a pattern that reduces the loss of farm and forest lands and natural areas and resources and limits increases in pollution that contributes to climate instability; and

ix. Enhancing job opportunities for individuals by providing housing nearer to employment centers and public transportation.

2. Accessory dwelling units are, therefore, an essential component of housing choices and supply in the City of Kingston.

3. In order to assess the intentions and progress, a report from pertinent staff, through the Mayor's office, will be given to the Common Council one year after passing this ordinance.

B. Definitions: As used in this article, unless the context otherwise requires, the following terms shall have the following meanings:

1. "*Accessory dwelling unit*" (ADU) shall mean a residential living unit on the same parcel as a single-family dwelling or a parcel on which a single-family dwelling may be constructed. It provides complete independent living facilities for one or more persons and may take various forms: a detached unit; a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled dwelling.

2. "*Dwelling Unit*" shall mean a residential living unit that provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking and sanitation, as well as a separate entrance.

3. "*Accessory structure*" shall mean a structure that is accessory and incidental to a dwelling located on the same lot.

4. "*Living area*" shall mean the interior habitable area of a dwelling unit, including basements, cellars, and attics but does not include a garage or any accessory structure.

5. "*Nonconforming zoning condition*" shall mean a physical improvement on a property that does not conform with current zoning standards.

6. "*Passageway*" shall mean a pathway that is unobstructed and extends from a street to one entrance of the accessory dwelling unit.

7. "*Proposed dwelling*" shall mean a dwelling unit that is the subject of a permit application and that meets the requirements for permitting.

8. "*Impact fees*" shall mean any payment imposed by a local agency for the purpose of providing new or expanded public capital facilities or infrastructure required to serve a new development.

C. Accessory Dwelling Unit Regulations: This ordinance shall facilitate and remove current barriers to the creation of accessory dwelling units by:

1. Designating areas within the jurisdiction of the local agency where ADUs shall be permitted. Designated areas shall include all areas zoned for single family residential use, and all lots with an existing residential use.

2. Authorizing the creation of one ADU per lot in designated areas.

3. Providing reasonable standards for ADUs that include, but are not limited to height, landscape, architectural review and maximum size of a unit.

4. In no case shall such standards unnecessarily impair the creation of ADUs.

5. ADUs shall be limited to individual homeowners and shall exclude LLCs and corporations.

D. Requirements for Accessory Dwelling Units: All Accessory Dwelling Units shall comply with the following.

1. Each unit must comply with all applicable New York State standards of habitability, including but not limited to square footage. ADUs shall comply in all respects with the New York State Building Code, Construction Code, Plumbing Code and other applicable Codes and Regulations.

2. Each unit may be rented separate from the primary residence, but shall not be sold or otherwise conveyed as separate from the primary residence.

3. Each unit shall be located on a lot that includes a proposed or existing residential dwelling.

4. Each unit shall not be rented for a term less than ninety days;

5. Each unit shall either be:

a. attached to, or located within, the proposed or existing primary dwelling, including but not limited to attached garages, storage areas, basements, cellars, similar spaces, or

b. 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.

II. Standards

A. Minimum Lot Size

1. ADUs may be created on any lot that meets the minimum lot size required for a single-family dwelling. Attached and internal ADUs may be built on any lot with a single-family dwelling that is non-conforming solely because the lot is smaller than the minimum size, provided the ADUs would not increase the nonconformity of the residential use with respect to building height, bulk, or lot coverage.

B. Size of Accessory Dwelling Unit

1. The total floor area of an ADU shall be at least 300 square feet and shall not exceed 50% of the gross square footage of the primary dwelling or 650 square feet, whichever is greater.

C. Accessory Dwelling Unit Setbacks

1. A setback of no more than 4 feet from the side and rear lot lines shall be required for an ADU that is not converted from an existing structure or a new structure constructed in the same location and with the same dimensions as an existing structure.

2. No setback shall be required for an existing garage living area or accessory structure or a structure constructed in the same location and with the same dimensions as an existing structure and converted to an ADU or to a portion of an ADU.

3. An ADU is not permitted on the front half of a lot, except when located a minimum of 30 feet from the front line or if it falls within the provision of subsection (2).

D. Accessory Dwelling Unit Height Limit

1. The maximum height of the ADU shall be 25 feet or the height of the primary residence, based on the highest point of its roof compared with the lowest point of ground level at the foundation, whichever is less.

E. Parking

1. No additional off-street parking is required for construction of an ADU. If the construction of the ADU necessitates the removal of an existing off-street parking space, it must be replaced on-site if required by the underlying zoning. In lieu of an on-site parking space, an additional on-street parking space may be substituted if there is already sufficient curb area available along the frontage for a parking space or by removing the parking space access ramp and reinstalling the curb.

F. Owner Occupancy

1. The lawful occupancy of an ADU shall occur when a unit in the primary dwelling is owner occupied.
2. Owner occupancy shall be verified by the Building Safety Division at the time of the permit being issued and shall be forwarded internally to all pertinent departments.

G. Pre-existing Zoning Regulations

1. Any pre-existing provision of the City Code that imposes any of the following shall be unenforceable and are, as of the effective date of this ordinance, declared null and void:
 - a. Limits on lot coverage, floor area ratio, open space, and minimum lot size, for either an attached or detached dwelling that do not permit at least an eight hundred square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with other local development standards;
 - b. A ceiling height requirement greater than seven feet;
 - c. If an ADU or a portion thereof is below curb level, a requirement that more than two feet of such unit's height be above curb level;
 - d. Any additional or different setback requirements for an existing living area or accessory structure or a structure constructed in the

same location and to the same dimensions as an existing structure that is converted to an ADU or to a portion of an ADU;

e. Any setback requirement of more than four feet from the side and rear lot lines for an ADU 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;

f. Any requirement of more than one point of exterior access by door from the proposed or existing residential dwelling.

III. Utility Connections - Impact Fees

1. Applicants may choose to use a shared water meter for the primary structure and the ADU or have a separate water meter installed for each.
2. Where an ADU requires a new or separate utility connection directly between the ADU and the utility, the connection shall be subject to a connection fee and an excavation permit from the City of Kingston. A local agency shall not impose any other impact fee in connection with an ADU.

IV. Administrative Review

1. Notwithstanding any existent local ordinance regulating the issuance of variances or special use permits, a permit application to create an ADU in conformance with the local ordinance shall be considered ministerially without discretionary review or a hearing.
2. In the case of a property subject to the jurisdiction of the Historic Landmarks Preservation Commission, an initial ministerial determination shall be made by the Building Safety Division as to whether the ADU will result in a substantial material alteration to the external appearance of the primary dwelling.
 - a. In the event that no substantial material alteration will result, a building permit will be granted without the need for a preservation notice of action.
 - b. If it is determined to have substantial material alterations, the Building Safety Division shall refer the application to the Historic Landmarks Preservation Commission for their review.
3. If there is an existing single family on the lot, the Building Safety Division shall act on the application to create an ADU within sixty days from the date the local agency receives a completed application.

4. If the permit application to create an ADU is submitted with a permit application to create a new residential dwelling on the lot, the Building Safety Division may delay acting on the permit application for the ADU until the permitting agency acts on the permit application to create the new dwelling, but the application to create the ADU shall be considered without discretionary review or hearing.
5. If the applicant requests a delay, the sixty-day time period shall be tolled for the period of the delay.

V. Health and Safety Requirements

1. A local agency shall not impose any health or safety requirement on ADUs that is not necessary to protect the health and safety of the occupants of such a dwelling.

VI. Certificate of Occupancy

1. A local agency shall not issue a certificate of occupancy or its equivalent for an ADU before the local agency issues a certificate of occupancy or its equivalent for the primary dwelling.

VII. Multiple Residence Law

1. No provision of the multiple residence law shall apply to an ADU, irrespective to whether such provisions of such law apply to the primary dwelling, and a dwelling otherwise exempt from the provisions of the multiple residence law shall not fall under the provisions of such law as a result of the addition of an ADU.

VIII. Appeals

1. When a permit to create an ADU pursuant to an ordinance adopted pursuant to this section is denied, the Building Safety Division shall issue a notice of denial, which shall contain the reason such permit application was denied and instructions on how the applicant may appeal such denial.
2. The denial of an application for a permit to construct an ADU shall be heard by the Zoning Board of Appeals.
3. All appeals shall be submitted in writing within thirty days of such denial.

City Department Heads input on Accessory Dwelling Unit (ADU) Legislation

Assessor:

- Owner occupancy is currently verified by the assessor's office. Instead it should be written into the resolution that this would be verified by the Building's Dept. at the time of the permit being issued and forwarded internally to all pertinent departments.
- he thinks the resolution should specify that owner occupancy should be limited to individual homeowners and exclude LLCs and Corporations similarly to how the STAR tax rebate statutes are written.
- Kingston is short by about 2,000 units in order to have a healthy vacancy rate, this includes rental units and owner occupied homes.
- There should be reciprocity language that requires existing non code conforming units to be brought up to code and can't be grandfathered in.
- ADUs should not be permitted in non residential zones according to the zoning code.
- There should be a clearly delineated standard of habitability in regards to zoning.

Water Department

- Our code specifies that each building within a parcel has to have it's own service line from the street. So it should be specified that an ADU that is detached from the existing structure will need to have its own service lateral from the street.

Fire Department

- No concerns in terms of the building as long as Fire Code is adhered to.
- How the address of a new detached ADU will be determined. For example, if the main structure is #19, will the ADU be 19 1/2 or 19B, etc? The Assessor's department already works with the Engineering Dept. on this, the Engineer has the authority to assign a new address to units within a parcel and each parcel has a range of addresses, this might mean that every subsequent address on a block will be bumped up by one number.
- The official address of detached ADUs is a big concern to the Fire Dept. and 911 since in some cases the few extra seconds it might take to locate the site of an emergency can make a difference.

DPW

- As mentioned by Judy of the Water Dept. the city doesn't allow siamese connections for utilities, this means each ADU that is not attached to the main building on a parcel will need to have its own utility laterals (gas, water and sewer) connected from the street. This could become an issue if the street has been paved within the previous 5 years since the city has a 5 year moratorium where excavating is not permitted on newly paved streets.
- Garbage disposal is another concern, each dwelling only gets one garbage tote and one of each of the recycling totes. This means that if a new unit is created and more garbage is generated, the homeowner might need to get additional totes at a yearly cost of \$450 per tote.
- There needs to be mechanisms in place for applicants to be informed of all of this when they apply for a permit to build an ADU.

Building Safety Department

- Some of the language on the proposed legislation needs to be clarified further and they will e-mail a detailed list of suggestions prior to the Laws & Rules meeting.
- One example is: the proposal talks about Multiple Dwellings Law of NYS, this law only applies to New York City; instead it should read Multiple Residence Law.
- The proposal lumps together single family and multi-family units into the same category. He believes this is a mistake and ADUs should only be permitted to be added to single family homes and not allowed on a 2 or more family home. Multi-family (3 or more) buildings have

- to adhere to a different State Building code and follow more strict standards than single and 2 family buildings.
- The proposal should allow for discretionary review of things like parking, architectural features and landscaping and these should be referred to the Planning board and HLPC for review when appropriate.
 - Specific size limitations should be in place (other municipalities have a 600 - 650 square foot limit for ADUs). We should similarly include a specific square footage limit, once you build a structure that exceeds 50% of the size of a single family building, it is no longer classified as a single family, it then becomes a 2 family which is classified very differently on the zoning and the tax code and the legislation should reflect that by having clearly delineated size limits.
 - The 4ft set back on the rear of an existing structure is also of concern as it would limit the amount of play areas and open space for families with children.
 - We will need to address the capacity of the Building department to enforce not only this proposed change but other code changes that have taken place recently. The department is very short staffed, so the need to enforce new legislation will result in the need to hire new full time inspectors, purchase vehicles for the inspectors and adding clerical staff to the department in order to process the additional paperwork.

Planning Department

- Will forward detailed notes with their concerns to the Common Council prior to the Laws & Rules meeting.
- They believe it should be clarified that while ADUs should be allowed in any residential zones, we should limit them to only be added to single family residences. An ADU should not be a way to convert a 2 family rental into a 3 family, the legislation should be specific that ADUs are intended to help a home owner stay in place and retain their home while providing supplemental income and creating housing for another family.
- The current language states that “at least one ADU can be built per lot” they would like clarification on whether that means 2 or more ADUs can be built within one parcel. If not, language should be clarified and more specific, their suggested edit is to instead say “limited to one ADU per lot.”
- The Planning Board and HLPC have not had a chance to officially review the current proposed language, their comments were based on the previous iteration of the proposal. The staff believes they should be given a chance to offer their input on the current legislation by referring the new language to both boards.
- When an ADU is being built in a historic district, the HLPC should have discretionary review authority. The current language as it is written only addresses the appearance of the existing structure. Staff believes it should also specify building and appearance standards for detached structures, either conversion of a detached garage for example or newly built structures within a historic district and they should be referred to the HLPC for review.
- Parking is a concern, maybe the ADU doesn't need to provide additional parking, but the primary structure could be required to have some available off street parking so as to not create additional burdens on city services.
- Will newly built ADUs have to pay Recreation Fees? staff believes this should be specified in the legislation.
- Staff doesn't think removing all restrictions and parameters without oversight by a board is a good idea.

Housing Department

- Kevin Corte created a powerpoint presentation that he will forward to the Council.