

6.29.2021

ADU Land Use Code changes necessary due to HB 82

Utah League of Cities and Town's advice:

By October 1, 2021, a municipality should review those zones that are primarily residential and adopt an ordinance permitting IADUs if they are not permitted already. However, if the municipality chooses to, the municipality should also identify a zoning district covering, as applicable, an area equivalent to 25% or less, or 67% or less, of the total area in the municipality that is zoned primarily residential and exclude IADUs in those areas. The IADU ordinance should also adopt any restrictions that the municipality finds necessary and appropriate under HB 82. A municipality should also amend an ordinance setting a single-family limit based on whether individuals are related to each other and note the changes in the building code for IADUs.

Code Changes Necessary:

Definitions

- Add "Internal ADU" to the definitions as follows:
"Internal accessory dwelling unit" means an accessory dwelling unit created:
 - (i) within a primary dwelling;
 - (ii) within the footprint of the primary dwelling and
 - (iii) for the purpose of offering a long-term rental of 30 consecutive days or longer.

- Add "Primary Dwelling"
"Primary dwelling" means a single-family dwelling that:
 - (i) is detached; and
 - (ii) is occupied as the primary residence of the owner of record.

- Add "Rental dwelling":
"rental dwelling" means a building or portion of a building that is:
 - (a) used or designated for use as a residence by one or more persons; and
 - (i) is available to be rented, loaned, leased, or hired out for a period of one month or longer; or
 - (ii) is arranged, designed, or built to be rented, loaned, leased, or hired out for a period of one month or longer.

- Add "Primary Dwelling"
"Primary dwelling" means a single family that:
 - i. Is detached; and
 - ii. Is occupied as the primary residence of the owner of record.

ADU code changes

- In areas zoned primarily for residential use (a determination up to the municipality), IADUs are permitted uses. However, a municipality may prohibit IADUs in 25% or less of the total area in the municipality zoned for primarily residential
- A municipality may not establish restrictions on the construction or use of an IADU, including IADU size within the primary dwelling, total lot size, or street frontage.
- HB 82 allows a municipality to adopt the following IADU restrictions and requirements:
 - i. require bedroom window egress, prohibit installation of a separate utility meter
 - ii. require that the IADU design not change the appearance of the primary dwelling,
 - iii. require one additional on-site parking space and replace any garage or carport parking spaces if the IADU is created in the garage or carport,
 - iv. prohibit an IADU in a mobile home,
 - v. require an IADU permit or license,
 - vi. prohibit an IADU if the primary dwelling is served by a failing septic tank,
 - vii. prohibit an IADU if the lot is 6,000 sq. ft. or less,
 - viii. prohibit the renting of the IADU for less than 30 consecutive days, and
 - ix. prohibit renting an IADU that is not in an owner-occupied primary dwelling.
 - x. Hold a lien against a property that contains an internal accessory dwelling unit if the owner of the property violates any of the provisions of State Code or Local Codes
- A municipality that issues, on or after October 1, 2021, a permit or license to an owner of a primary dwelling to rent an internal accessory dwelling unit, or a building permit to an owner of a primary dwelling to create an internal accessory dwelling unit, may record a notice in the office of the recorder of the county in which the primary dwelling is located.
 - i. The notice shall include: a description of the primary dwelling; a statement that the primary dwelling contains an internal accessory dwelling unit; and a statement that the internal accessory dwelling unit may only be used in accordance with the municipality's land use regulations.
 - ii. The municipality shall, upon recording the notice deliver a copy of the notice to the owner of the internal accessory dwelling unit.
- Add a process for violations
 - i. The municipality provides a written notice of violation
 - ii. The municipality holds a hearing and determines that the violation has occurred
 - iii. If the owner files a written objection

- iv. The owner fails to cure the violation within the time period prescribed
- v. The municipality records a copy of the written notice of lien with the county recorder
- vi. The written notice of violation shall
 - ✓ Describe the specific violation
 - ✓ Provide the owner of the internal accessory dwelling unit a reasonable opportunity to cure the violation no less than 14 days after the day on which the municipality notice of violation, if the violation results from the owner renting or offering to rent the internal accessory dwelling unit for a period of less than 30 consecutive days
 - ✓ State that if the owner of the property fails to cure the violation within the time period, the municipality may hold a lien against the property in an amount of up to \$100 for each day of violation after the day on which the opportunity to cure the violation expires
 - ✓ Notify the owner of the property that the owner may file a written objection to the violation within 14 days after the day on which the written notice of violation is post-marked or posted on the property; and of the name and address of the municipal office where the owner may file the written objection to be mailed to the property's owner of record; any other individuals designated to receive notice in the owner's license or permit records.
 - ✓ Posted on the property
- vii. The written notice of lien shall state that the property is subject to a lien, specify the lien amount, in an amount of up to \$100 for each day of violation after the day on which the property's owner of record; and any other individual designated to receive notice in the owner's license or permit record and be posted on the property.
- viii. If an owner of property files a written objection in accordance with Subsection the municipality shall:
 - ✓ hold a hearing in accordance with Title 52, Chapter 4, Open and Public Meetings Act, to conduct a review and determine whether the specific violation described in the written notice of violation under has occurred; and
 - ✓ notify the owner in writing of the date, time, and location of the hearing. The hearing notice shall be send no less than 14 days before the day on which the hearing is held.
- ix. If an owner of property files a written objection a municipality may not record a lien until the municipality holds a hearing and determines that the specific violation has occurred.
- x. If the municipality determines at the hearing that the specific violation has occurred, the municipality may impose a lien in an amount of up to \$100 for each day of violation after the day on which the opportunity to cure the violation expires, regardless of whether the hearing is held after the day on which the opportunity to cure the violation has expired.

- xi. If an owner cures a violation within the time period prescribed in the written notice of violation the municipality may not hold a lien against the property, or impose any penalty or fee on the owner, in relation to the specific violation described in the written notice of violation.