An Ordinance Amending the Text of the Moab Municipal Code (MMC) to allow ADUs in all residential Zones subject to a revised Section 17.70 Accessory Dwelling Units and Section 17.06.020 Definitions

REVISED DRAFT 10.20.2021

WHEREAS, the City has enacted Title 17 Zoning, of the Moab Municipal Code ("MMC") that governs land use and development within the City Limits.

WHEREAS, from time to time the City undertakes revisions of Title 17.00 to improve the quality of land development and align the Code with state law and contemporary planning concepts.

WHEREAS, the City finds that this Ordinance will serve the public health, safety, and welfare, and that adoption is in the best interests of the Moab community.

WHEREAS, the Utah State Legislature adopted House Bill 82 in the 2021 Legislative Session that requires communities to allow Indoor Accessory Dwelling Units as a permitted use.

WHEREAS, amendments to the MMC were necessary to comply with HB 82.

WHEREAS, at the same time, Moab is experiencing a critical shortage of employee and workforce housing.

WHEREAS, the city currently allows ADUs as a permitted use in all residential zones, but some of the requirements have become barriers to construction.

WHEREAS, it is better planning practice to encourage infill in order to reduce sprawl.

WHEREAS, since the City had to amend Chapter 17.70 to comply with the new state law, there was an opportunity to remove some of the barriers to encourage more ADUs for employees and the workforce.

WHEREAS, it is the intent of the City Council that ADUs be used for employee/workforce housing, a family member, or a full-time retiree. The intent is not for ADUs to be used as second homes.

NOW, THEREFORE BE IT ORDAINED that the Moab City Council hereby approves Text Amendments as follows:

SECTION 1. AMEND CHAPTER 17.70 ACCESSORY DWELLING UNITS AS FOLLOWS:
17.70.010 Purpose.
Accessory dwelling units are encouraged as dwellings for persons to increase affordable housing opportunities in the R-1, R-2, R-3, R-4, and RA-1 residential zones.

17.70.020 Types of ADUs
There are two types of ADUs permitted in Moab, Internal ADUs (IADU) and External ADUs (EADUs).

A. Internal Accessory Dwelling Units (IADUs) means an accessory dwelling unit created:
   1. within a primary dwelling;
   2. within the footprint of the primary dwelling; and
   3. The purpose of ADUs is to create units that are for Active employment households or family members.
   4. The intent of ADUs is not to provide additional second home opportunities.
   5. offering a long-term rental of 30 consecutive days or longer

B. External Accessory Dwelling Units (EADUs) means an accessory dwelling created:
   1. on the same parcel or lot that contains a single household dwelling;
   2. separate from the single household dwelling;
   3. The purpose of ADUs is to create units that are for Active employment households or family members.
   4. The intent of ADUs is not to provide additional second home opportunities.
   5. offering a long-term rental of 30 consecutive days or longer

C. Other Definitions
   1. Primary dwelling means a single Household unit that:
      a. is detached; and
      b. is occupied as the primary residence of the owner of record
   2. 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
      b. Available to be rented, loaned, leased or hired out for a period of one month or longer; or
      c. Arranged, designed, or built to be rented, loaned, leased, or hired out for a period of one month or longer.

17.70.030 Internal ADUs (IADUs)
A. Permitted Use. IADUs shall be considered a permitted use in the R-1 Single-Household Residential Zone, R-2 Single-Household and Two-Household
Residential Zone, R-3 Multi-Household Residential Zone, and R-4 Manufactured Housing Residential Zone.

B. Restrictions. The City 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.

C. IADU Requirements. The following requirements apply to all IADUs:

1. IADUs must include the code required bedroom window egress, installation of a separate water utility meter is prohibited,

2. IADUs must be designed to maintain the appearance of the primary dwelling,

3. IADUs require one additional on-site parking space,

4. IADUs require a Letter of Zoning Compliance prior to building permit issuance.

5. IADUs are not allowed if the primary dwelling is served by a failing septic tank,

6. IADUs cannot be rented for a period less than 30 consecutive days, and

7. IADUs are allowed only in owner-occupied primary dwellings.

8. No IADUs are allowed for lots containing an existing duplex.

D. Criteria for Approval. The following provisions are intended to facilitate accessory dwellings while minimizing land use conflicts and environmental degradation:

The following criteria must be established prior to building permit issuance:

1. Size. There is no maximum size for IADUs

2. Parking. One on-site parking space shall be provided in addition to the underlying parking requirement. The parking space may be provided in tandem if the existing driveway length exceeds thirty-five feet as measured from the property line.
3. **Accessory Dwellings Per Lot.** No more than one Internal accessory dwelling may be located within a Single Household Dwelling.

4. **Property to Remain Undivided.** Properties with accessory dwelling permits shall remain recorded as one lot.

5. **Subdivision of Property.** The accessory dwelling shall not be sold.

6. **Deed Restriction.** A deed restriction must be filed with the county recorder which states:

   “A permit for an accessory dwelling was issued to __________, the current owner of this property on __________. The owner shall strictly adhere to the prohibition of the use of the accessory dwelling as nightly or short-term rental.” Modified deed restriction language may be proposed by the CityCity.

7. **Nightly Rentals.** Accessory dwellings are intended for long-term rental of 30 days or more, to the same individual, and may not be used for nightly rentals. (Ord. 18-20 (part), 2018; Ord. 18-01 (part), 2018; Ord. 12-05 (part), 2012. Formerly 17.69.030)

17.070.040 External ADUs (EADUs)

A. **Permitted Use.** EADUs shall be considered a permitted use in the R-1 Single-Household Residential Zone, R-2 Single-Household and Two-Household Residential Zone, R-3 Multi-Household Residential Zone, and R-4 Manufactured Housing Residential Zone.

B. **EADU Requirements**

1. EADUs shall not occupy more than twenty-five percent of any rear of side yard.

2. The setbacks for an accessory dwelling shall be what is allowed in the Zoning District within which the EADU is located. The side setback can be reduced to 5 feet, if the EADU does not exceed a building height of 20 feet. The rear setback can be reduced to 5 feet if the EADU does not exceed a building height of 20 feet. In addition, a minimum separation between and EADU and any adjacent structures must be 10 feet, even if that structure is on an adjoining lot. The Building Official may waive or
modify this requirement if adequate fire separation can be achieved by other means.

3. Where pre-existing structures meet the development standards of this chapter, the original structure may be designated as the accessory dwelling if a new main structure is constructed on site.

43. An accessory dwelling shall not be constructed prior to the principal structure, except in cases where new home construction has been permitted. An EADU may be permitted prior to construction of the single household dwelling for purposes of living on-site during the construction of the single household dwelling

54. An accessory dwelling may be constructed above a detached garage and consist of the same floor area; provided, that it shall not protrude beyond any ground floor wall and shall not consist of more than one story above the ground floor. The overall structure shall not exceed 30 feet if all zone required setbacks are met. If the structure encroaches into a side or rear setback, the maximum height shall be 20 feet.

65. Any request for Accessory Dwelling Units within residential zones shall be reviewed for compliance with the standards in this chapter and approved by city staff. A letter of compliance shall be issued to the applicant by the Zoning Administrator prior to issuance of a building permit.

7. One EADU is allowed if the main structure on the parcel is a duplex. One of the three (3) resulting units must be owner-occupied.

C. Criteria for Approval

The following criteria must be established prior to building permit issuance:

1. Size. The maximum size for accessory living quarters shall be no more than twelve hundred (1200) square feet. Lots larger than 20,000 square feet in size may increase the maximum to fifteen hundred (1500) square feet. The minimum size for an ADU is three hundred and fifty square feet. There is no minimum size for ADUs. All ADUs must meet minimum building code requirements.
2. **Parking.** One on-site parking space shall be provided in addition to the underlying parking requirement. The parking space may be provided in tandem if the existing driveway length exceeds thirty-five feet as measured from the property line.

3. **Accessory Dwellings Per Lot.** One (1) ADU may be permitted on a parcel up to 20,000 square feet. Parcels that are greater than 20,000 square feet may apply for a maximum of two (2) ADUs. All EADUs shall meet the requirements and standards outlined in this Chapter.

4. **Property to Remain Undivided.** Properties with accessory dwelling permits shall remain recorded as one lot.

5. **Subdivision of Property.** The accessory dwelling shall not be sold.

6. **Deed Restriction.** A deed restriction must be filed with the county recorder which states:

   “A permit for an accessory dwelling was issued to ________, the current owner of this property on ________. The owner shall strictly adhere to the prohibition of the use of the accessory dwelling as nightly or short-term rental. The lease period for an ADU shall be a minimum of three (3) months.”

7. **Nightly Rentals.** Accessory dwellings are intended for long-term rental of 30 days or more, to the same individual, and may not be used for nightly rentals.

17.70.050 Enforcement--Revocation of permit.

   A. Process for Revocation: If the owner of the property violates any of the provisions of this Chapter, the City may revoke the accessory dwelling permit for noncompliance. In addition to any other legal or equitable remedies, Moab City may hold a lien against a property that contains an internal accessory dwelling unit if: as follows:

   1. The City provides a written notice of violation
   2. The City holds a hearing and determines that the violation has occurred. If the owner files a written objection
3. The owner fails to cure the violation within the time period prescribed in the written notice of violation.

4. The City provides a written notice of lien with the county recorder. The written notice of violation shall
   a. Describe the specific violation
   b. Provide the owner of the accessory dwelling unit a reasonable opportunity to cure the violation no less than 14 days after the day on which the City 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 or no less than 30 days after the day on which the City sends the written notice of violation, for any other violation
   c. State that if the owner of the property fails to cure the violation within the time period, the City 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
   d. 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
   e. Posted on the property
   f. 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.

5. If an owner of property files a written objection in accordance with Subsection the City shall:
a. 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
b. notify the owner in writing of the date, time, and location of the hearing. The hearing notice shall be sent no less than 14 days before the day on which the hearing is held.

6. If an owner of property files a written objection the City may not record a lien until the City holds a hearing and determines that the specific violation has occurred.

7. If the City determines at the hearing that the specific violation has occurred, the City 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.

8. If an owner cures a violation within the time period prescribed in the written notice of violation the City 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.

SECTION 2. AMENDMENTS TO MMC CHAPTER 17.06 DEFINITIONS ADDING OR MODIFYING DEFINITIONS OF:

A. Internal Accessory Dwelling Units (IADUs) means an accessory dwelling unit created:
   1. within an existing single household dwelling-primary dwelling;
   2. within the footprint of the primary-existing dwelling; and
   3. for the purpose of offering a long-term rental (30 consecutive 3-month minimum lease term, days or longer) for Active employment households, or family members or retirees. The intent of ADUs is not to provide additional second home opportunities.

B. External Accessory Dwelling Units (EADUs) means an accessory dwelling created:
1. on the same parcel or lot that contains a single household dwelling;
2. separate from the single household dwelling;
3. The purpose of ADUs is to create units that are for Active employment households, or family members or retirees—
4. The intent of ADUs is not to provide additional second home opportunities.
5. offering a long-term rental with a three (3) month minimum lease of 30 consecutive days or longer

C. Primary dwelling means a single Household unit that:
   1. is detached; and
   2. is occupied as the primary residence of the owner of record

D. Rental Dwelling means a building or portion of a building that is:
   1. Used or designated for use as a residence by one or more persons; and
   2. Available to be rented, loaned, leased or hired out for a period of one month or longer; or
   3. Arranged, designed, or built to be rented, loaned, leased, or hired out for a period of one three (3) months or longer.

E. “Accessory dwelling unit” (ADU, granny-flat, mother-in-law apartment) means a habitable living unit added to, created within, or detached from a primary one-unit single-household dwelling and, in some cases duplexes, and includes separate cooking, sleeping, and bathroom facilities. An ADU does not constitute a two-household dwelling.

F. “Active employment household” or “actively employed household” means a household with at least one adult who meets one of the following criteria; provided, however, where there are unrelated individuals living together in one household, at least 50 percent of all the adults comprising the household shall meet one of the following criteria:
   1. A full-time (aggregate of 30 hours of employment per week) employee of an entity or entities located within Grand County; or
   2. An owner or owner’s representative of a business or entity with a primary place of business within Grand County; or
   3. A full-time (aggregate of 30 hours of employment per week for nine months out of each calendar year) worker who is self-employed or works out of their home must provide their entire list of clients/workload so that it can be verified
that a minimum of 75 percent of their work/clients are based within Grand County.

4. A person who is unable to work or does not have a work history required under subsections A.1 through 3 of this section due to a disability; or

5. A family member of the owner of the property

6. A retiree with a work history required under subsections A.1 through 3 of this section for the five years prior to retirement that intends to make the ADU their full-time place of residence.

SECTION 3: MODIFY LANGUAGE IN ALL RESIDENTIAL ZONES as follows:

A. Permitted uses

1. Accessory dwelling units as per Chapter 17.70. Both External and Internal ADUs are permitted

PASSED by the City Council in a public meeting on _____________ by the following vote:

MOAB CITY COUNCIL:

Those voting aye:_____________________________________

Those voting nay:_____________________________________

Those abstaining:_____________________________________

Those absent:_______________________________________

________________________________________________________

Emily Niehaus, Mayor Date

ATTEST:_______________________________________________

Sommar Johnson, Clerk/Recorder