

CONTENTS

PAGE

Montana Accessory Dwelling Units _____	1
What Will Be Considered an ADU? _____	2
2021 IECC Residential ADU Code Provisions _____	3
Reference _____	3

Montana Accessory Dwelling Units

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Accessory Dwelling Units (ADUs) are secondary housing units that are typically located on the same property as a primary residence. They can be attached or detached from the main house and are often used to provide additional living space for family members or to generate rental income. ADUs have become increasingly popular in recent years to address the housing shortage in many cities. Some cities have even eased zoning restrictions to encourage the construction of ADUs.

In this year's legislative session, the Montana legislature passed, and the governor signed into law **SB 528: Revise zoning laws related to ADUs**, one of several pieces of legislation meant to tackle the current housing shortage in Montana. This law, which will take effect January 1, 2024, requires municipalities to adopt regulations that allow a minimum of one ADU on a lot or parcel that contains a single-family dwelling. After the law takes effect homeowners will, by state law, have the right to build ADUs on their property. ADUs are defined in the law as, "... a self-contained living unit on the same parcel as a single-family dwelling of greater square footage that includes its own cooking, sleeping, and sanitation facilities and complies with or is otherwise exempt from any applicable building code, fire code, and public health and safety regulations..." The ADU may be attached, detached, or internal to the single-family dwelling on a lot or parcel. Additionally, if the accessory dwelling unit is detached from or attached to the single-family dwelling, it may not be more than 75% of the gross floor area of the single-family dwelling or 1,000 square feet, whichever is less.

Municipalities may not:

- Require that a lot or parcel have additional parking to accommodate an ADU or require fees in lieu of additional parking;
- Require that an ADU match the exterior design, roof pitch, or finishing materials of the single-family dwelling;
- Require that the single-family dwelling or the ADU unit be occupied by the owner;
- Require a familial, marital, or employment relationship between the occupants of the single-family dwelling and the occupants of the ADU;
- Assess impact fees on the construction of an ADU;

- Require improvements to public streets as a condition of permitting an ADU, except as necessary to reconstruct or repair a public street that is disturbed as a result of the construction of the ADU;
- Set maximum building heights, minimum setback requirements, minimum lot sizes, maximum lot coverages, or minimum building frontages for accessory dwelling units that are more restrictive than those for the single-family dwelling on the lot;
- Impose more onerous development standards on an ADU beyond those set forth in this section; or
- Require a restrictive covenant concerning an ADU on a parcel zoned for residential use by a single-family dwelling. This subsection may not be construed to prohibit restrictive covenants concerning ADUs entered into between private parties, but the municipality may not condition a permit, license, or use of an ADU on the adoption or implementation of a restrictive covenant entered into between private parties.

What will be considered an ADU?

One of the challenges facing municipalities is determining what will be considered an ADU within the confines of the law. Will tiny houses on wheels be considered an ADU, or perhaps a mobile home or camper? The definition in the law is broad, but municipalities will have some opportunity to define these details. Most municipalities across the country that have allowed ADUs require them to meet all building codes setbacks, and other requirements of any other home. Since tiny homes on wheels do not have permanent foundations and often do not meet the existing building and energy codes, they might not qualify as ADUs unless specifically allowed by a local municipality. The advantage of tiny homes on wheels and other mobile housing solutions, however, is the ease in separating the living unit from the real property if a situation changes and the homeowner no longer wishes to have an ADU.

In general, ADUs and other small, independent structures cost more per square foot to build than other structures. CNBC found in 2021 that tiny homes cost as much as 62% more per square foot than the average cost of a conventional home. The added cost is due to smaller structures requiring more custom or specialty sizing for fixtures. The CNBC article also mentioned Montana as one of the least affordable places for tiny homes. While the article focused on tiny homes, many of the same dynamics will apply to ADUs.

The 2023 Montana legislature also passed several other pieces of legislation designed to alleviate the current housing shortage.

Senate Bill 382: Create the Montana Land Use Planning Act applies to towns and cities in counties of at least 70,000 people. Signed by the governor on May 17, 2023, this bill requires municipalities of 5,000 residents or more in the state's urban counties to plan for the housing they need to accommodate population growth. The new law will shift public participation in land-use planning earlier in the process by inviting more public input as growth plans are developed and then limits the ability to stop housing developments later in the process at the permitting level. It also requires that local zoning codes treat manufactured homes like site-built houses, allowing greater utilization of less expensive manufactured housing.

HB 819: Create Montana community reinvestment act to fund workforce housing is a spending package that allocates \$175 million toward housing initiatives and authorizes an additional \$50 million for low-interest loans to developers who build rent-restricted apartments.

SB 245: Revise municipal zoning to allow multifamily and mixed-use development requires that cities of 7,000 or more residents allow apartment-style housing in most areas set aside as a commercial zone.

SB 323: Allow for duplex, triplex, and fourplex housing in city zoning makes multifamily housing allowable on any home lot in cities with 5,000 or more residents, preempting regulations that currently set aside some areas for single-family homes only.

2021 IECC Residential ADU Code Provisions

On June 11, 2022, Montana adopted the 2021 International Energy Conservation Code (IECC) with amendments. The code contains all the provisions a residential building must comply with to conserve energy at the minimum level required by the state of Montana. Chapter 5 contains provisions for alterations, repairs, and additions that apply to ADUs.

When altering an unconditioned or low-energy space into a conditioned space, such as turning a garage into an apartment, the altered space must comply with the entire code, except if:

- The simulated annual energy cost of the altered space is less than 110% of the energy cost of the standard reference design.
- The total thermal envelope of the altered space and altered existing building is less than or equal to the original existing building's total thermal envelope.
- The simulated annual energy cost of the altered space and altered existing building is less than the simulated annual energy cost of the original existing building.

If these exceptions are not met, then the ADU is required to follow the energy code compliance pathways detailed in Chapter 4 of the IECC. Additions to an existing building are not required to be tested for air leakage. When ducting from the existing building is extended into the addition, it is not required to comply with the ducting provisions in the 2021 IECC.

Compliance with the air tightness (blower door test) requirement has been a challenge for smaller homes. The energy code now has a provision that makes it easier for a smaller dwelling, such as an ADU, to comply with the blower testing requirement of the code. For dwelling units of 1,500 sq. ft. or less, a blower door test measurement showing .30 cfm per sq. ft. of air leakage rate at a pressure test of 0.2 inches of water gauge (50 PA) of their surface area or less is an option for code compliance. The surface area would be classified as the air barrier of the unit. Unlike the code requirement of 4 air changes per hour (ACH 50) or less, this option considers the air leakage of the building envelope's surface area, where the air leakage is coming from. This removes the volumeter bias that is causing small-volume units to fail the blower door test. If required by the code official, the test must be conducted by an approved third party.

ADUs are becoming more common in urban areas across the country. They have become increasingly popular in recent years to address the housing shortage in many cities. The Montana state government has passed laws that aim to ease restrictions on ADUs. The lifted restrictions make it easier for a homeowner to build an ADU on their primary home property and use their ADU as an income-generating property. The legislature is attempting to alleviate the housing affordability crisis that Montana currently faces by encouraging ADU development. The approach will hopefully increase housing availability by increasing housing stocks with incentives and less regulation and will also hopefully result in reduced rental prices. If this approach is successful, look for other states to adopt such measures in the future..

Reference

CNBC, Tiny Homes Can Mean Big Costs

<https://www.cnb.com/2021/08/18/tiny-homes-can-mean-big-costs-especially-depending-on-where-you-live.html>



For questions, suggestions, or to be removed from the newsletter distribution list, email: carl.little@littlewise.net



Residential Energy Code and Energy Efficiency Website:
<https://deq.mt.gov/energy/Programs/code>