

# Accessory Dwelling Units Lessons for Massachusetts from Around the Country

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# **Accessory Dwelling Units: Lessons for Massachusetts from Around the Country**

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## **Abstract**

Accessory Dwelling Units or ADUs – small, independent living units that are inside, attached to, or detached but on the same parcel as a primary residence – have the potential to address a variety of housing-related challenges like affordability, equity, and environmental issues. Moreover, because ADUs generally are small infill units, they can achieve these gains without significantly altering the character of existing residential neighborhoods.

Recognizing this potential, in the last two decades, many localities have tried to encourage the construction of more ADUs by changing their zoning codes to remove restrictions that limited homeowners' ability to build ADUs. More recently, several states have followed suit by changing state laws that govern local zoning to require that localities approve ADUs that meet state standards. These changes, in turn, have spurred efforts by a variety of public, private, and nonprofit actors to remove other barriers that have hindered construction such as limited public knowledge about ADUs, the unavailability of financing options for ADUs, and a lack of builders and workers with the skills and knowledge needed to construct ADUs.

While these changes are occurring across the country, to date, they have been slow to come to Massachusetts, where, since state law gives localities broad powers to regulate the construction of ADUs, most (but not all) of the state's cities and towns continue to greatly restrict the construction of ADUs. As a result, for several years, a broad coalition has been pushing for state legislation that would greatly constrain localities' ability to limit the creation of new ADUs. To help inform that discussion (and similar discussions in other states considering similar measures), this paper examines several notable efforts to encourage ADUs from around the country, with a particular focus on approaches taken in Portland, Oregon and the state of New Hampshire.

Three key insights emerge from this research. First, and most importantly, efforts to significantly increase the production of ADUs are most likely to succeed if they include state laws requiring by-right local approvals of ADUs that meet statewide standards for ADUs' size, massing, design, and use. Second, in establishing such requirements, policymakers must decide whether to pursue a more ambitious and politically controversial "comprehensive" approach that also limits localities' ability to impose restrictions on occupancy and require extensive new on-site parking or a less controversial "incremental" approach that requires by-right approvals but is silent on occupancy and parking. Finally, taking these steps will spur others to address the non-legal barriers that limit the construction of ADUs such as providing homeowner education programs and offering new ways to finance ADUs.

## **Overview**

By fostering low-rise infill development, accessory dwelling units (ADUs) – small, independent living units that are within, attached to, or detached but on the same parcel as a primary residence – can address a variety of housing-related challenges. By increasing supply, they could make housing more affordable. By providing affordable units in currently expensive locations and by providing cash-strapped homeowners with rental income that can offset their housing costs, ADUs can expand economic opportunities that would advance goals related to housing. By housing occupants who use less energy (not only for heating and cooling but often for transportation as well), ADUs also can provide significant environmental benefits. By creating distinct living quarters that remain connected to existing homes, they can foster multigenerational living that expands health and social well-being. Because of their flexible designs, ADUs can house many different types of people and have many uses across their lifespan.

Recognizing this potential, in the last two decades many localities have changed their land-use regulations to encourage the construction of more ADUs. Development of ADUs, for example, has greatly increased in Portland, Oregon and in Seattle, which both significantly liberalized their approaches to ADUs. However, in many other places, efforts to loosen regulations for ADUs have often been stymied by local opposition, particularly from homeowners concerned that ADUs will bring unwelcome outsiders and more traffic to their neighborhood and that the changes might reduce the value of their homes, which, in many cases, are their largest single financial asset. Some of these places allow ADUs, but only via a special permit issued by a local board (some of them elected and some appointed). Others explicitly ban ADUs, allowing them only if their owners get a zoning variance from public boards (again, some elected and some appointed).

Critically, all these processes provide opportunities for public input via both written comments and public hearings. These procedural requirements and the fact that the entities granting the permits and variances generally have great discretion tend to advantage small groups of highly motivated opponents, such as nearby homeowners, rather than members of the broader community, who may generally but less actively support new housing that can help address pressing challenges such as affordability and sustainability.<sup>1</sup>

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<sup>1</sup> See, for example, Katherine Levine Einstein, David Glick, and Maxwell Palmer, *Neighborhood Defenders: Participatory Politics and America's Housing Crisis*, 1st ed. (Cambridge: Cambridge University Press, 2020). See also

Recognizing such dynamics, some states have adopted laws that establish frameworks for local regulation of ADUs. In the 1980s and 1990s, Hawaii, California, and Washington state adopted laws mandating that local zoning allow for ADUs, but still allowed localities to do so via discretionary special permitting processes rather than requiring by-right approval. (Similar laws were adopted by Vermont in 2005 and by New Hampshire in 2016).<sup>2</sup> In 2016, California went further, passing a law requiring local approval of ADUs that met state-level standards.<sup>3</sup> Oregon followed suit in 2017<sup>4</sup> (and in 2019 both states further limited local discretion in reviewing ADUs). These more expansive laws seem to have had a noteworthy impact on production. Before statewide legislation passed in California, for example, localities issued around 1,200 ADU permits annually. In 2022, however, over 24,000 ADU permits were issued statewide.<sup>5</sup>

In recent years, changes have also come to other states, most of them in the West or in New England. In 2020, Vermont updated its earlier, less robust 2005 law so that the state now mandates local approval of ADUs that meet state criteria.<sup>6</sup> Similarly, in the spring of 2023, both Washington state and Montana passed expansive ADU law similar to those in Oregon and California.<sup>7</sup> (See Table 1)

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William A. Fischel, *The Homevoter Hypothesis: How Home Values Influence Local Government Taxation, School Finance, and Land-Use Policies* (Cambridge, MA: Harvard University Press, 2001).

<sup>2</sup> See Emily Hamilton and Abigail Houseal, “A Taxonomy of State Accessory Dwelling Unit Laws,” Policy Brief (Mercatus Center, George Mason University, March 2023), <https://www.mercatus.org/research/policy-briefs/state-accessory-dwelling-unit-laws>. See also Benjamin D. Frost, “Accessory Dwelling Units in New Hampshire: A Guide for Municipalities” (Manchester, NH: New Hampshire Housing Finance Authority, December 2017), [https://www.nhhfa.org/wp-content/uploads/2019/06/ADU\\_Guide\\_Municipalities.pdf](https://www.nhhfa.org/wp-content/uploads/2019/06/ADU_Guide_Municipalities.pdf); Leslie Black-Plumeau, “Vermont Legislature and Governor Expand Options for Accessory Dwelling Units,” Vermont Housing Finance Authority, October 15, 2020, <https://www.vhfa.org/news/blog/vermont-legislature-and-governor-expand-options-accessory-dwelling-units>.

<sup>3</sup> See California Department of Housing and Community Development, “Accessory Dwelling Units,” accessed October 4, 2023, <https://www.hcd.ca.gov/policy-and-research/accessory-dwelling-units#>.

<sup>4</sup> See Oregon Department of Land Conservation and Development, “Guidance on Implementing the Accessory Dwelling Units (ADU) Requirement Under Oregon Senate Bill 1051 Updated to Include HB 2001 (2019),” September 2019, [https://www.oregon.gov/lcd/Publications/ADU\\_Guidance\\_updatedSept2019.pdf](https://www.oregon.gov/lcd/Publications/ADU_Guidance_updatedSept2019.pdf).

<sup>5</sup> California Department of Housing and Community Development, “Annual Progress Reports – Data Dashboard and Downloads,” 8, accessed August 9, 2023, <https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-implementation-and-apr-dashboard>.

<sup>6</sup> Black-Plumeau, “Vermont Legislature and Governor Expand Options for Accessory Dwelling Units.”

<sup>7</sup> Karla Georges, “Five Key ADU State Bills,” *American Planning Association* (blog), May 31, 2023, <https://www.planning.org/blog/9270835/five-key-adu-state-bills/>.



**Table 1: Differences in State Laws for ADUs in 10 Western and New England States**

State	Year(s)	By-right permitting required?	Ban on Owner Occupancy Requirements?	Limits on Parking Requirements?
<b>WESTERN STATES</b>				
Hawaii	1981	No	Yes	No
California*	2016 2019	Yes	Yes	Yes
Washington*	2023	Yes	Yes	Yes
Oregon	2017 2019	Yes	Yes	Yes
Utah	2021	No	No	No
Montana	2023	Yes	Yes	Yes
<b>NEW ENGLAND STATES</b>				
Vermont*	2020	Yes	No	No
New Hampshire	2016	No	No	No
Connecticut	2021	Mixed**	No	Yes
Maine	2022	No	No	Yes
Rhode Island	2022	Mixed***	No	Yes
<p><b>Notes:</b>  <i>* Laws passed earlier in California, Washington, and Vermont had required that localities allow for ADUs but did not require by-right approvals.</i>  <i>** Connecticut’s law requires by-right approvals. However, it also allows localities to opt out of this provision with a two-thirds vote of both their planning board and legislative body.</i>  <i>***Rhode Island requires by right on owner occupied lots for family members, on large lots, for internal ADUs, or for an ADU within an existing accessory structure.</i></p> <p>Sources: Hamilton and Houseal. “A Taxonomy of State Accessory Dwelling Unit Laws” and Georges, “Five Key ADU State Bills.”</p>				

In the last three years, three other New England states (Maine, Connecticut, and Rhode Island) have adopted more modest ADU-related laws that, like the 2016 measure passed in New Hampshire, still give localities significant discretion in deciding whether to permit new ADUs. Connecticut, for example, requires by-right approval of ADUs but also allows localities to opt out of that law via two-thirds votes of both their local planning board and the local legislative body. In the two years since the

law passed, two-thirds of the state’s cities and towns have taken advantage of this provision.<sup>8</sup> And Rhode Island mandates by-right approvals – but only for ADUs occupied by a family member, on large lots, inside an existing home, or within an existing accessory structure.<sup>9</sup>

Massachusetts, however, has not followed suit, though the issue was discussed but not acted on at the end of the 2022 legislative session. As a result, with few exceptions, most of the state’s cities and towns place restrictions on ADUs and/or require discretionary reviews that greatly restrict their construction. However, there is growing interest in whether and how the state might alter its approaches to ADUs, as illustrated by the fact that ADU-related legislation, which was seriously considered in the 2022 legislative session, is a high priority for several housing-focused entities in the current session.<sup>10</sup> And just before this paper went to press, Massachusetts Governor Maura Healey proposed a major housing bill that included ADU-related provisions similar to those adopted in California, Oregon, Washington, Montana, and Vermont.<sup>11</sup>

This paper, which reviews the experiences of other states and localities – particularly Portland, Oregon and the state of New Hampshire – aims to help inform the discussions about ADUs in Massachusetts and other states and localities that are considering changes to their ADU-related laws and regulations. We conclude that efforts to significantly increase the production of ADUs require statewide legislation mandating local by-right approvals of applications to build new ADUs.

## **Structure of the Paper**

The paper begins with a brief definition of ADUs and then, drawing on a review of the literature on ADUs, discusses how they have been regulated since the onset of zoning about one hundred years ago. The paper continues by reviewing the potential benefits of ADUs and the major obstacles to their development – a review that concludes by noting that key obstacles have been restrictive land-use

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<sup>8</sup> Desegregate Connecticut, “Public Act 21-29 Initial Findings,” September 2023, <https://static1.squarespace.com/static/5ee8c6c9681b6f2799a4883a/t/650b21ebfb2659128ffa0fb5/1695228396368/Public+Act+21-29++Initial+Findings-DesegregateCT+%281%29.pdf>.

<sup>9</sup> State of Rhode Island, “An Act Relating to Towns and Cities -- Zoning Ordinances, Chapter 440, Sections 45-24-31 and 45-24-37,” June 30, 2022, <http://webserver.rilin.state.ri.us/PublicLaws/law22/law22440.htm>.

<sup>10</sup> See, for example, Abundant Housing Massachusetts, “2023-24 Priorities,” accessed August 9, 2023, <https://www.abundanthousingma.org/policy/2023-24-priorities/>.

<sup>11</sup> “Healey-Driscoll Administration Unveils \$4 Billion Affordable Homes Act to Increase Production and Lower Cost,” mass.gov, accessed October 24, 2023, <https://www.mass.gov/news/healey-driscoll-administration-unveils-4-billion-affordable-homes-act-to-increase-production-and-lower-costs>.

regulations, which, in turn, have fostered a cycle of other obstacles such as limited knowledge of and interest in ADUs among homeowners, a dearth of financial products for those who want to build ADUs, and lack of builders with the skills needed to construct ADUs. The paper goes on to note that many localities and a few states have revised their land-use policies to make it easier to build ADUs and notes that these actions have spurred others to address key, non-legal obstacles to ADUs.

To explore and illustrate these themes, the paper then turns to a detailed examination of two notable efforts to create more ADUs. The first is the work done in Portland, Oregon, which has been a nationally recognized leader in expanding the supply of ADUs. The second is in New Hampshire, which has taken a more measured approach that has received little attention outside of the state, in part because it has yet to result in dramatic changes in the production of ADUs similar to those in Portland (and in California). Nevertheless, because it is located in New England and because, like Massachusetts, it has many smaller localities and a tradition of local control over land use policies, New Hampshire's experience may offer important insights for policymakers and advocates in Massachusetts.

Building on lessons from the case studies, the next section provides an overview of the current ADU landscape in Massachusetts, where, in the absence of statewide mandates, some cities and towns have in recent years made it easier to build ADUs. We conclude by using the literature review and case studies to highlight strategic choices that policymakers, advocates, and others must make as they consider statewide and local efforts to promote the development of ADUs.

## **Key Findings**

Three key findings emerge from this research. First, significantly increasing the production of ADUs almost certainly requires the passage of statewide legislation mandating by-right, local approval of ADUs that meet meaningful state standards related to their size, design, and use. Getting legislatures to pass such measures is a complicated and difficult undertaking that requires the active support of a broad and diverse statewide coalition. Second, in establishing such requirements, policymakers must decide whether to pursue a "comprehensive" approach likely to produce both more ADUs and greater controversy or a more "incremental" approach that will produce somewhat fewer ADUs but that may also be more politically palatable. Decisions in two areas are especially critical: whether localities can require that owners live in the primary unit or in the new ADU, and whether localities can require that some or all ADUs have on-site parking, and if so, how many spaces can be required. Policymakers will also have to address several other notable questions including whether by-right requirements should apply only to attached ADUs; whether to allow restrictions on short-term rentals of ADUs; and whether to allow localities to restrict rents on ADUs. Finally, taking these steps will spur others to address the



non-legal barriers that limit the construction of ADUs such as providing homeowner education programs and offering new ways to finance ADUs.

## **Background**

### **What Are ADUs?**

In this paper, the term “Accessory Dwelling Unit” (ADU) refers to a permanent, functionally independent living unit that is “subordinate” to (and usually smaller than) the primary residence on a site: that is, ADUs generally do not have a separate land title and typically are owned by the same entity that owns the primary residence. Some ADUs are located inside the main residence (internal ADUs); some are separate but share a wall or a walkway (attached ADUs); and some are structurally separate but on the same parcel (detached ADUs). Regardless of their form, ADUs are fully independent living facilities with provisions for sleeping, cooking, and sanitation.

Such units go by a variety of names. Common terms for ADUs include garage apartments, backyard cottages, laneway houses, and guest quarters. The Multiple Listing Service (MLS) database, for example, includes units registered as guest/in-law houses, suites, guest quarters, garage apartments, carriage houses, alley flats, and casitas. While ADUs are common, it is hard to obtain an accurate count of them because of their varying names and definitions. For example, while the United States Census Bureau provides a definition of ADUs for its annual Building Permit Survey, it does not clearly delineate ADUs as a housing category or specify whether ADUs should be categorized as one- or two-family units.<sup>12</sup> One commonly cited estimate is a 2020 analysis of MLS listings over a ten-year period, which found at least 1.4 million units.<sup>13</sup>

### **Zoning and ADUs**

ADU-like structures predate the introduction of zoning in the 1920s and 1930s. Many large farm estates and urban mansions had ancillary buildings or carriage houses that housed workers. However, in the mid-20th century, as Euclidean (or use-based) zoning became more common in the United States, most

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<sup>12</sup> US Census Bureau, “Building Permits Survey (BPS),” accessed September 6, 2023, <https://www.census.gov/construction/bps/index.html>.

<sup>13</sup> Sam Khater and Kristine Yao, “Granny Flats, Garage Apartments, In-Law Suites: Identifying Accessory Dwelling Units from Real Estate Listing Descriptions Using Text Mining” (Washington, DC: Freddie Mac, July 2020), <https://www.freddie.com/research/insight/20200716-identifying-accessory-dwelling-units-from-real-estate>.

zoning codes prohibited or heavily regulated the construction of new ADUs in districts reserved for single-family homes. Consequently, few new “legal” ADUs were built, and in many locales existing ADUs were demolished or converted to other purposes.<sup>14</sup> These restrictive approaches to ADUs and multi-unit housing more broadly, it bears mention, were consistent with state laws that established the frameworks for local zoning, many of them based on model legislation developed by the US Department of Commerce in the 1920s.<sup>15</sup>

In the 1980s, growing interest in smaller-scale infill housing sparked renewed interest in ADUs, which, in turn, led some states to change ADU-related laws and regulations.<sup>16</sup> However, these laws still gave localities significant control over the design and use of proposed ADUs. Hawaii, for example, adopted state-level legislation in 1981 that allowed (but did not require) counties to permit two dwellings on all single-family lots.<sup>17</sup> Similarly, California’s first statewide ADU bill, which was enacted in 1982, required that localities permit ADUs but allowed them to do so via discretionary permitting processes.<sup>18</sup> With the exception of Washington state, which in 1993 passed a law similar to the ones enacted in California and Hawaii, no other states took up the issue as the century drew to a close.<sup>19</sup>

Acknowledging the growing interest in both housing options for older adults and infill development, in 2000, AARP (formerly called the American Association of Retired Persons) partnered with the American Planning Association (APA) to produce a model for state and local ADU laws. However, substantial changes in state laws were still relatively rare and modest until the mid-2010s.<sup>20</sup>

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<sup>14</sup> Eli Spevak, email to authors, August 31, 2023.

<sup>15</sup> American Planning Association, “Standard State Zoning Enabling Act and Standard City Planning Enabling Act,” accessed September 20, 2023, <https://www.planning.org/growingsmart/enablingacts.htm>.

<sup>16</sup> Sage Computing, Inc., “Accessory Dwelling Units: Case Study” (Office of Policy Development and Research, US Department of Housing and Urban Development, June 2008), <https://www.huduser.gov/portal/publications/adu.pdf>.

<sup>17</sup> AARP, “ADU Model State Act and Local Ordinance,” 2021, 6, <https://www.aarp.org/livable-communities/housing/info-2021/adu-model-state-act-and-local-ordinance.html>.

<sup>18</sup> Nicholas J. Marantz, Christopher S. Elmendorf, and Youjin B. Kim, “Evaluating California’s Accessory Dwelling Unit Reforms: Preliminary Evidence and Lessons for State Governments” (New York: NYU Furman Center, 2022), [https://furmancenter.org/files/Evaluating\\_California’s\\_Accessory\\_Dwelling\\_Unit\\_Reforms\\_508.pdf](https://furmancenter.org/files/Evaluating_California’s_Accessory_Dwelling_Unit_Reforms_508.pdf).

<sup>19</sup> Kol Peterson, “ADU Legislative Initiatives – History in the Making (Part IV).” *Accessory Dwellings* (blog), April 24, 2023. <https://accessorydwellings.org/2023/04/24/adu-legislative-initiatives-history-in-the-making-part-iv-2/>.

<sup>20</sup> Vermont is also considered an early adopter of statewide ADU legislation. Under its 2005 law, the state required municipalities to allow ADUs up to 30 percent of the size of the home but did not prohibit municipalities from requiring owner occupancy. This provision, among others, was updated in 2020 and now caps the size of ADUs to

As the effects of the Great Recession began to wane and housing prices began to rise, a growing number of states started to pass laws that chipped “away at the various local regulatory barriers to ADU construction.”<sup>21</sup> As noted above, these include measures passed in California, Oregon and, more recently, a host of New England states. State-level changes, and the growing interest in ADUs, seem to have led to meaningful increases in ADUs in the last ten to fifteen years. A 2020 review of MLS listings, for example, found that between 2010 and 2019 the percentages of ADUs in active MLS listings increased in Sunbelt states from 4.3 percent to 9.2 percent. However, in northern states the percentage of total active listings with ADUs grew only from 2.7 to 4.1 percent.<sup>22</sup>

ADUs have also become part of the national dialogue on housing affordability. The Biden-Harris administration’s 2022 Housing Supply Action Plan, for example, calls for scaling-up ADUs and piloting more federal ADU loan options. The plan cites an Urban Institute analysis to demonstrate how zoning and financing reform have the potential to produce an additional one million ADUs over the next five years.<sup>23</sup>

### **Why Are ADUs Appealing?**

According to their advocates, if built at a sufficiently significant scale, ADUs can provide a wide array of economic, environmental, social, and health benefits for occupants, homeowners, and cities.<sup>24</sup>

### ***Economic Benefits***

The primary economic benefits for individuals owning ADUs come from the income they generate (including imputed rents if they are occupied by family members who would otherwise have lived elsewhere) and by the value they add to the primary residence when it goes on the market. For example, Abdur Abdul-Malik, an appraiser in Oregon and Washington who specializes in ADUs, found

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the greater of 30 percent or 900 square feet. See Black-Plumeau, “Vermont Legislature and Governor Expand Options for Accessory Dwelling Units.”

<sup>21</sup> AARP, “ADU Model State Act and Local Ordinance,” 5.

<sup>22</sup> Khater and Yao, “Granny Flats, Garage Apartments, In-Law Suites,” 7.

<sup>23</sup> The White House, “President Biden Announces New Actions to Ease the Burden of Housing Costs,” press release, May 16, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/16/president-biden-announces-new-actions-to-ease-the-burden-of-housing-costs/>.

<sup>24</sup> This section draws extensively on a framework presented by Kol Peterson, *Backdoor Revolution: The Definitive Guide to ADU Development* (Portland, OR: Accessory Dwelling Strategies, LLC, 2018).

that adding a detached ADU has increased the value of some properties by almost 25 percent.<sup>25</sup> One recent study also noted that “ADUs can provide income diversification,” which might help homeowners experiencing an “income shock, such as loss of employment.” The study also noted that the presence of an ADU may make it possible for some households to buy a higher-priced home than they could otherwise afford.<sup>26</sup> Kol Peterson, a well-known advocate of ADUs who wrote *Backdoor Revolution: The Definitive Guide to ADU Development*, estimates that ADU owners receive an average return on investment of about 10 percent.<sup>27</sup>

ADUs can provide other economic benefits. If developed at more significant scales, ADUs have the potential to curb housing cost inflation by increasing housing supply in expensive markets and providing rental housing at more affordable levels. Peterson, for example, contends that even without regulatory restrictions on rents, ADUs can serve as naturally occurring affordable housing. That view was supported by a 2013 survey done by Oregon’s Department of Environmental Quality (DEQ) which found that 20 percent of ADUs were being rented out “at less than half of their market value.”<sup>28</sup> Moreover, because a large share of that housing often is located in more affluent (and expensive) communities, ADUs may also provide opportunities for lower-income households to access housing in those places. Illustratively, 57 percent of ADUs constructed in California between 2016 and 2019 were built in census tracts where household incomes were above the statewide median.<sup>29</sup>

In addition, ADUs can lead to more efficient use of existing infrastructure and increased property tax revenues that local governments can use to improve services. Moreover, to the extent that they hold down housing costs, ADUs may also help localities be more economically competitive.

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<sup>25</sup> Kol Peterson, “The ADU Hour w/Guest Abdur Abdul-Malik,” *Building an ADU* (podcast), June 1, 2021, <https://www.buildinganadu.com/the-adu-hour-podcast/bkhpsb2gy2wmzz3ecw5cjecaymttf6>.

<sup>26</sup> Richard K. Green et al., “ADU Construction Financing: Opportunities to Expand Access for Homeowners” (Lusk Center for Real Estate, USC and Terner Center for Housing Innovation, UC Berkeley), 6, accessed August 8, 2023, <https://ternercenter.berkeley.edu/wp-content/uploads/2022/07/ADU-Paper-FINAL-July-7th.pdf>.

<sup>27</sup> Peterson, *Backdoor Revolution*, 123.

<sup>28</sup> *Ibid.*, 181.

<sup>29</sup> Karen Chapple et al., “Reaching California’s ADU Potential: Progress to Date and the Need for ADU Finance” (Berkeley: Terner Center for Housing Innovation, UC Berkeley and UC Berkeley Center for Community Innovation, 2020), 9, <https://ternercenter.berkeley.edu/wp-content/uploads/2020/12/ADU-Brief-2020.pdf>.

### ***Environmental Benefits***

ADUs can also produce significant environmental benefits. Because they are relatively small (and relatively new) living spaces, their residents will generally use less energy than their counterparts in older and larger buildings. Illustratively, the 2013 Oregon DEQ study found that an ADU's median living area per person is 44 percent lower than newly constructed single-family residences.<sup>30</sup>

Furthermore, ADUs in quasi-urban neighborhoods provide important infill opportunities that can reduce car travel and take advantage of transit-rich and walkable neighborhoods. The Oregon DEQ's 2013 study on Portland ADUs, for example, reported an average of .93 cars for each ADU, somewhat less than the 1.31 cars for all new rentals and much less than the 1.53 cars for all households in that city.<sup>31</sup>

### ***Social and Health Benefits***

As Peterson notes, because ADUs can create "spaces for groups and individuals to live in close proximity" but "maintain their own distinct, private living quarters" they are likely to foster healthy owner-tenant dynamics and help build stronger local communities.<sup>32</sup> For example, the social interactions spurred by ADUs can have significant health impacts, particularly for older adults, who can live near to but separate from their adult children and their grandchildren. Moreover, ADUs can provide settings that make it easier to provide care for older adults who may need help with activities of daily living. A 2021 AARP national study, for example, found that 70 percent of respondents age 65 or older would consider living in an ADU should they need assistance for daily activities, and another 62 percent would consider building one for a loved one or friend irrespective of a particular care need.<sup>33</sup> Similarly, a 2020 AARP survey of New Hampshire adults older than 45 found that while only 7 percent reported having an ADU on their property, nearly half of those who did (49 percent) had built an ADU to house an

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<sup>30</sup> Martin J. Brown and Jordan Palmeri, "Accessory Dwelling Units in Portland, Oregon: Evaluation and Interpretation of a Survey of ADU Owners" (Portland, OR: State of Oregon, Department of Environmental Quality, June 1, 2014), 2, <https://www.oregon.gov/deq/FilterDocs/ADU-surveyinterpret.pdf>.

<sup>31</sup> *Ibid.*, 2.

<sup>32</sup> Peterson, *Backdoor Revolution*, 18.

<sup>33</sup> Joanne Binette and Fanni Farago, "Where We Live, Where We Age: Trends in Home and Community Preferences; 2021 AARP Home and Community Preferences Survey," AARP, November 18, 2021, <https://doi.org/10.26419/res.00479.001>.

older family or friend and about a quarter (23 percent) built their ADU for a younger family member.<sup>34</sup> Thus, ADUs can provide a unique opportunity for multi-generational living, both within and beyond nuclear families, while maintaining a desired degree of privacy. In our off-the-record conversations with many ADU owners, we found that this is one of the most attractive reasons for constructing an ADU.

In addition to the economic benefits detailed above, ADUs located in generally affluent areas may help lower-income households who rent them access the employment, educational, and amenity opportunities located in those areas. Moreover, they can do so without substantially changing the physical character of those neighborhoods.

### **What Generally Limits ADUs?**

In the absence of state mandates, localities often use a host of tools to limit the development of ADUs, such as requiring that proposed ADUs be approved via special or conditional use permits issued at the discretion of a public body, which, depending on the locality, might consist of elected or appointed officials. For example, a 2004 study of 187 Massachusetts cities and towns surrounding Boston found that only 107 communities allowed ADUs and of these, 90 required special use permits for ADUs.<sup>35</sup>

Typically, the review processes for these applications allow the public to comment both in writing and at public hearings. As noted above, such processes tend to advantage small but vocal groups of opponents, typically nearby homeowners, whose views may not represent members of the broader community who may support ADUs generally but have less reason to become actively involved when one homeowner seeks a permit or variance for a single ADU. In such situations, the officials who must approve such permits often support the opponents and deny the permits or issue them with highly restrictive, sometimes infeasible, conditions. Such dynamics often disadvantage homeowners who want to build an ADU because they must invest significant time and money in processes whose outcomes are uncertain.

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<sup>34</sup> Aisha Bonner Cozad, Kate Bridges, and Cassandra Cantave, “Vital Voices: 2020 AARP Survey of New Hampshire Adults Ages 45 and Older: Chartbook” (Washington, DC: AARP Research, April 14, 2021), 27–28, <https://doi.org/10.26419/res.00351.099>.

<sup>35</sup> Amy Dain, “Residential Land Use in Eastern Massachusetts: A Study of 187 Communities” (Pioneer Institute for Public Policy Research and Rappaport Institute for Greater Boston at the Harvard Kennedy School, December 2005), <https://pioneerinstitute.org/pioneer-research/housing-pioneer-research/residential-land-use-regulation-in-eastern-massachusetts/>.



Many localities technically allow ADUs but only if they meet a host of onerous requirements. Notably, many localities frequently require that ADUs include off-street parking, a condition that can make it impossible to develop some sites and drive up the cost of developing other sites. Those seeking to develop an ADU usually can request a variance from parking and other requirements, but this can be a time-consuming and unpredictable process that can dramatically affect the production of new ADUs. Illustratively, until 2019, Seattle imposed parking and owner-occupancy requirements. During this time, the city issued substantially fewer ADU permits than Portland, which did not have parking requirements.<sup>36</sup> Noting such differences, ADU advocates, such as Peterson, have challenged policymakers to question whether the added off-street parking spaces are “serving a higher purpose” than the additional unit of housing that could be created by the ADUs.<sup>37</sup>

Some localities also allow ADUs but require that they be occupied by members of the owners’ family or that the owner must live in the primary residence or the new ADU. Advocates of owner-occupancy provisions believe resident owners are more likely to take good care of their properties. Those who support ADUs often respond that occupancy provisions are fundamentally unfair because zoning cannot (and does not) impose a similar requirement on the owners of either single-family houses or small, multi-family properties. Advocates of the owner-occupancy provisions also argue that the restrictions will deter speculative development. Opponents of such provisions respond that ADUs have high owner occupancy regardless of whether it is required by zoning. Illustratively, 70-90 percent of ADUs in Portland (which does not have an owner occupancy requirement) are still built by homeowner developers and over almost two-thirds of the owners live on site.<sup>38</sup> Moreover, those who oppose the owner-occupancy requirements also assert that investors are often dissuaded by the fact that compared to other types of residential construction, ADUs often have relatively high per-square foot construction costs (because ADUs not only have the same fixed costs as much larger residential units but also often require unique design configurations).<sup>39</sup>

While parking requirements and occupancy restrictions are particularly significant obstacles, localities that technically seem to allow ADUs also stymie their development through a host of other

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<sup>36</sup> Peterson, *Backdoor Revolution*, 153.

<sup>37</sup> *Ibid.*, 158.

<sup>38</sup> *Ibid.*, 202.

<sup>39</sup> *Ibid.*, 51. See also Peterson, “The ADU Hour w/Guest Abdur Abdul-Malik.”

requirements. These include unusually large minimum lot sizes, especially large (or small) dimensional requirements, and ambiguous and subjective design review guidelines. As with parking requirements, ADU developers can petition for relief from these requirements but doing so is time-consuming and unpredictable.

### **The Cycle of ADU Barriers**

Restrictive local zoning also reinforces several other key obstacles to increased development of ADUs. And taken together, these obstacles can create a self-reinforcing system of barriers. First, when few ADUs exist, only a handful of homeowners will know about the opportunities they present and, therefore, do not try to build them, especially if they have heard that the approval process can be cumbersome and unpredictable. Second, if few ADUs are built, then there may be a dearth of opportunities to finance new ADUs, particularly for homeowners who do not have significant equity in their homes or access to other funds. Finally, if few ADUs are being built, only a handful of builders and designers will have the skills needed to overcome the challenges of building units inside of existing structures or on parcels with existing and usually occupied homes.

### **Homeowner Interest**

Even if zoning is liberalized and financing options are expanded, ADU construction might not increase significantly if homeowners do not know that the approval system has been changed or if they still cannot easily navigate the revised approval system. And even if they are aware of the regulatory changes, homeowners might be wary of becoming landlords. For example, while Minneapolis significantly liberalized its ADU regulations in 2015, four years later only 137 ADUs had been built in the city, which has almost 200,000 housing units and more than 400,000 residents.<sup>40</sup> Similarly, while Seattle allowed for ADUs in all single-family zones in 2010, over the next five years only 221 ADUs were constructed on the roughly 75,000 residential lots that could accommodate one under the new zoning.<sup>41</sup>

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<sup>40</sup> Jessica Lee and Greta Kaul, "Accessory Dwelling Units Were Supposed to Help Ease the Twin Cities' Housing Crunch. How's That Working Out?" MinnPost, May 1, 2019, <https://www.minnpost.com/metro/2019/05/accessory-dwelling-units-were-supposed-to-help-ease-the-twin-cities-housing-crunch-hows-that-working-out/>.

<sup>41</sup> City of Seattle, Office of Planning and Community Development, "Removing Barriers to Backyard Cottages & Accessory Dwelling Units," May 2016, 3, [https://www.seattle.gov/documents/Departments/Council/Members/OBrien/2016\\_05-ADU-DADU-Director's-Report.pdf](https://www.seattle.gov/documents/Departments/Council/Members/OBrien/2016_05-ADU-DADU-Director's-Report.pdf).

In 2019, Seattle not only liberalized its ADU zoning code but also launched a broader effort to increase awareness of ADUs. Less than three years later there were more than 4,500 ADUs in the city.<sup>42</sup>

### ***Lack of Financial Products***

The lack of financing options is another particularly significant obstacle to the creation of ADUs. The problem is that if few ADUs are permitted and the permitting process is uncertain, lenders will have had little incentive to create attractive products that facilitate the development of ADUs. A 2020 survey of California homeowners, for example, found that financing was “the number one barrier to more widespread ADU construction” across the state.<sup>43</sup>

The lack of loan products is illustrated by data on how ADUs generally are financed. For instance, in 2021 researchers at the Lusk Center for Real Estate at USC and the Turner Center for Housing Innovation at UC Berkeley surveyed about 800 California homeowners who added an ADU. They found that 62 percent used personal savings to finance some or all of the cost of their ADU projects, while 43 percent sourced funds from some sort of mortgage on their primary property. Over 90 percent of those who used a mortgage did so via a cash-out refinance of an existing mortgage, a home equity loan, or a home equity line of credit.<sup>44</sup> Somewhat surprisingly, less than 7 percent of those who funded their ADU with a loan secured by the property did so via a “renovation loan,” an instrument that would provide enough money to both refinance an existing mortgage and also to build the ADU.

In theory, because renovation loans are based on the estimated contributory value of the property from the construction of the ADU, they could be appealing to homeowners who do not have enough savings or existing equity in their home to cover the up-front construction costs. However, while several government entities make such loans available in the market, the Lusk/Turner study highlights three aspects of those loans that “impede” their use by homeowners: “First, while an ADU generates rental income,” key entities, such as Fannie Mae and the Federal Housing Administration (FHA), “generally do not allow ADU rental income to count towards a borrower’s [prospective] income,

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<sup>42</sup> City of Seattle, Open Data Portal, “Attached Accessory Dwelling Units (AADUs),” accessed August 18, 2023, <https://data.seattle.gov/dataset/Attached-Accessory-Dwelling-Units-AADUs-/9yp6-pbce>; City of Seattle, Open Data Portal, “Detached Accessory Dwelling Units (DADUs),” accessed August 18, 2023, <https://data.seattle.gov/dataset/Detached-Accessory-Dwelling-Units-DADUs-/psix-5ku2>.

<sup>43</sup> Chapple et al., “Reaching California’s ADU Potential,” 5.

<sup>44</sup> Green et al., “ADU Construction Financing,” 7. Note that numbers do not add up to 100 percent because some homeowners used both savings and some sort of mortgage.

therefore limiting the amount of [money] they can borrow. Second, appraisals often undervalue the ADU, again limiting the amount of the loan. Finally, lenders often limit the types of properties on which an ADU can be built, what the ADU looks like, and the characteristics of the borrower.” For example, as of mid 2023, the FHA’s 203(k) guidelines (which were being reexamined) stipulated that an ADU must be “attached to an existing housing unit, which meant that detached ADUs and certain garage conversion ADUs are not financeable under the 203(k) program.”<sup>45</sup> Additionally, the report notes, nearly half of renovation loans are denied, and those that are approved “are often more costly than other forms of debt,” and “are administratively burdensome for lenders and contractors.”<sup>46</sup>

However, there are signs that the financing problems are abating. In particular, and as discussed in more detail below, some lenders are starting to provide more attractive loan products in places that have loosened their ADU regulations. Because they account for future income from ADUs, these offerings could be especially appealing for low- and moderate-income homeowners who do not have the equity or other resources needed to fund a new ADU. Similarly, while a lack of skilled designers and builders can also limit the creation of ADUs in places where it is hard to get an ADU approved, it appears that they often enter the market as it becomes easier to get needed approvals and financing and homeowners become more aware about those opportunities.

## **Learning from Portland and New Hampshire**

To further explore and illustrate these themes, we conducted more in-depth research on two distinct approaches to ADUs. Specifically, we examined efforts in two places:

- **Portland, Oregon**, which removed many key restrictions that limited the development of ADUs and made sure that homeowners were aware of those changes – efforts that resulted in significant increases in ADU construction.
- **New Hampshire**, which was one of the first states to adopt a law requiring localities to permit ADUs but had weak mandates for what had to be allowed – mandates that did not result in significant increases in ADU construction.

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<sup>45</sup> Ibid., 13.

<sup>46</sup> Ibid., 9.

## **Portland’s Comprehensive Approach to ADUs**

A city of about 640,000, Portland has almost 4,000 ADUs, which means that ADUs make up less than 1.5 percent of the city’s housing stock. However, ADUs represent about 15 percent of all new housing units added since 2010, and, on a per capita basis, Portland is a national leader (if not the national leader) in permitting ADUs.<sup>47</sup> The city’s well-known and often-studied efforts to encourage the development of ADUs represent what might be called a “gold-standard” comprehensive approach to ADUs. The history of ADUs in Portland also shows how changes in land-use policies coupled with concerted outreach can foster a strong ADU ecosystem that includes advocates and ADU owners who can educate homeowners interested in building ADUs, a growing network of builders who specialize in ADUs, and expanded options for financing those ADUs.

### ***Liberalized Land-Use Regulations***

To a certain extent, Portland’s acceptance of ADUs can be traced to a 1973 state law requiring that each of the state’s cities and metro areas establish an Urban Growth Boundary (UGB). The UGBs identified areas where new development (including infill development) would be appropriate and non-residential areas reserved for farming and timber. In the early 1980s, the city of Portland, which is inside the region’s growth boundary, made interior “Accessory Rental Units” an allowable use provided they were rented only to immediate family members. At this time, the city also required new ADU developers, like all other housing developers, to pay substantial impact fees, officially known as System Development Charges (SDCs). These provisions, along with a relatively tepid housing market, meant that comparatively few ADUs were permitted in the city in the 1980s and 1990s. In 1998, growing interest in ADUs, as well as a stronger real estate market, led the city to allow detached ADUs and drop the occupancy restrictions.<sup>48</sup>

Nevertheless, ADUs continued to be relatively uncommon. For example, the city permitted only 25 units in 2009. In 2010, as part of a more concerted effort to encourage ADUs, the city dropped the SDC requirement, which at that time was costing prospective ADU homeowners anywhere between

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<sup>47</sup> Authors’ estimates are based on data from 2021 American Community Survey (5-Year Estimate), “Table A10055. Occupied Housing Units by Year Structure Built,” accessed June 14, 2023, [https://www.socialexplorer.com/tables/ACS2021\\_5yr](https://www.socialexplorer.com/tables/ACS2021_5yr) and City of Portland, OR, “Residential Building Permits,” Portland Maps - Open Data, accessed August 18, 2023, <https://gis-pdx.opendata.arcgis.com/datasets/residential-building-permits>.

<sup>48</sup> Peterson, *Backdoor Revolution*, 197.

\$7,000 to \$12,000 in permit costs. This change involved and encouraged a small but growing network of ADU advocates and others who generally saw small infill development as an environmentally responsible way for the city to grow. After the SDC waiver change, the city began issuing 100 to 200 ADU permits per year.<sup>49</sup> In 2014, Portland also became one of the first (if not the first) locality to allow ADUs to be separately deeded, bought, and sold – changes that made ADUs similar to condominium units. This modification, which has since been adopted as a statewide law, was promoted as a way to make it easier to secure financing for ADUs and to provide more opportunities for affordable homeownership. Despite these changes, many ADUs still required special permits or variances. One year later, the city modified special permit and variance provisions to make ADU applications subject to administrative, by-right review. The city also created specific design standards to provide more guidance and legal clarity for staff who review ADU applications. After this change, permitting of ADUs in Portland increased significantly, rising to almost 500 units a year between 2016 and 2018.

The city has continued to regularly assess and update its ADU policies to provide incentives and well-defined guidelines. For example, as of 2021 the city changed its zoning to allow up to two ADUs on most residential lots, and in June 2022 the city revised its regulations to increase the allowable size and siting of ADUs.<sup>50</sup> Portland has also promoted ADU development through broader city-wide strategies such as its “Get Legal” program, which, since 2004, has focused on working with owners of unpermitted ADUs to bring them into compliance with the city’s zoning and building codes rather than fining those owners and/or requiring demolition of the illegal units.<sup>51</sup> The city also launched the Residential Infill Project (RIP), a long-range planning effort focused on strategies for providing more housing within existing neighborhoods via a variety of strategies, including ADUs. RIP, which applies to most residential lots in Portland, implements the city’s broad infill efforts and housing strategies by increasing the number of units that can be built on residential lots; expanding the allowable configurations allowed on

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<sup>49</sup> Local Housing Solutions, “Facilitating the Development of Accessory Dwelling Units in Portland, OR,” accessed August 9, 2023, <https://localhousingsolutions.org/housing-policy-case-studies/facilitating-the-development-of-accessory-dwelling-units-in-portland-or/>.

<sup>50</sup> City of Portland, “Title 33, Planning and Zoning Code, Section 33.205 Accessory Dwelling Units,” June 30, 2022, [https://www.portland.gov/sites/default/files/code/205-acc-dwelling-unit\\_0.pdf](https://www.portland.gov/sites/default/files/code/205-acc-dwelling-unit_0.pdf).

<sup>51</sup> City of Portland, Bureau of Development Services, “Get Legal Program,” February 27, 2004, <https://www.portlandonline.com/shared/cfm/image.cfm?id=53728>.



those lots; and removing off-street parking requirements in areas where most structures are single-family homes.<sup>52</sup>

Even with the liberalization of ADU policies, permitting does not appear to have significantly increased in recent years. Rather, Portland has been issuing about 300 new ADU permits a year.<sup>53</sup> Those familiar with the city say the decline is due in part to other changes in state and local land-use laws that make it much easier to develop up to four units on sites previously reserved only for single family homes and ADUs.<sup>54</sup>

### ***Advocates' Efforts to Let Homeowners Know About ADUs***

The growing network of ADU advocates who supported policy changes also worked to educate homeowners in Portland. Notably, when the city eliminated the impact fee requirement in 2010, three local ADU advocates – Eli Spevak, Kol Peterson, and Martin John Brown – launched [accessorydwellings.org](https://accessorydwellings.org) to be a one-stop source of information about ADUs. The website, which initially focused on sharing information about real-life projects, generated strong national readership, so its backers have expanded their work to include webinars, podcasts, professional certifications, and walking and biking ADU tours.<sup>55</sup> Portland's advocates' national prominence in online ADU forums has also fueled interest in ADUs in other places. For example, Peterson and Spevak often consult with other localities and states on possible changes to laws and regulations for ADUs. Locally, the ADU tours inform interested owners about the process and potential costs of development and promote connections between prospective and experienced ADU homeowners. According to Peterson, “thanks in part to these events and to ongoing, positive local media coverage of ADU stories and issues, there is now a

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<sup>52</sup> City of Portland, Bureau of Development Service, “Residential Infill Project (RIP and RIP2) and New Development Projects,” Portland.gov, July 5, 2023, <https://www.portland.gov/bds/zoning-land-use/residential-infill-project>.

<sup>53</sup> Authors' calculations from City of Portland, “Accessory Dwelling Unit Report,” Portland Maps, accessed August 9, 2023, [https://www.portlandmaps.com/reports/index.cfm?&action=accessory%2Ddwelling%2Dunit&sort\\_field=CREATED%5FFISCAL%5FYEAR&sort\\_order=asc&page=1](https://www.portlandmaps.com/reports/index.cfm?&action=accessory%2Ddwelling%2Dunit&sort_field=CREATED%5FFISCAL%5FYEAR&sort_order=asc&page=1).

<sup>54</sup> Morgan Tracy, Senior Planner, Bureau of Development Services, Portland, Oregon, interview via Zoom, August 8, 2022.

<sup>55</sup> See “Accessory Dwellings,” accessed August 18, 2023, <https://accessorydwellings.org/>.

sense of community and cultural awareness around small housing concepts in Portland.”<sup>56</sup> In interviews, five Portland residents who owned an ADU echoed these sentiments.<sup>57</sup>

### ***Lenders Becoming More Comfortable with ADUs***

As ADUs have become easier to permit and to build in Portland and other localities in Oregon, some regional banks have begun to offer a wider range of products that can be used to finance the new units. Notably, Umpqua Bank, which is the largest bank headquartered in the Northwest, has made it easier to finance ADUs. According to Susan Brown, former senior vice president at the bank, like many lenders, Umpqua has funded ADUs via cash-out refinances of existing mortgages, home equity loans, and home equity lines of credit. Unlike many lenders, however, Umpqua has also provided hundreds of renovation loans for ADU products.

Four factors have made it possible for the bank to offer such loans, according to Brown. The first is that loan officers are familiar with Portland’s regulatory process and can be reasonably confident that most proposed projects will not be denied, delayed, or approved with expensive and unexpected provisions. Second, loan officers can also have more confidence in construction pricing estimates because a growing number of builders and contractors have expertise in building ADUs. Third, the appraisal process is more accurate because the city now has enough ADUs to use as “comps” to estimate the value added by an ADU project. Finally, as appraisals become more accurate, lenders have become more willing to provide loans with higher loan-to-value ratios.<sup>58</sup>

### ***A Growing Network of Builders Who Specialize in ADUs***

The growth of ADUs has facilitated – and been facilitated by – an increasing number of builders and other professionals who specialize in ADUs. In separate interviews, Joe Robertson, founder of Shelter Solutions, which is now one of the most established ADU companies in the country, and Lauren Shumaker, director of operations and sustainability at TaylorSmith Sustainable Construction, a relatively new design-build company in Portland, both highlighted the value and importance of the city’s easy and

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<sup>56</sup> Peterson, *Backdoor Revolution*, 209.

<sup>57</sup> Interviews with Portland, Oregon ADU Homeowners, in person, August 8-9, 2022. Their names are omitted for privacy reasons.

<sup>58</sup> Kol Peterson, “The ADU Hour w/Guest Susan Brown,” *Building an ADU* (podcast), June 29, 2021, <https://www.buildinganadu.com/the-adu-hour-podcast/pym13tkwamtna2f23ymgr7ectb8e99>; Susan Geddes Brown, in-person interview, August 7, 2022.

flexible entitlement and construction processes. Moreover, both said they appreciate that city officials have been open to their suggestions on how to improve the process of permitting ADUs.

Robertson and Shumaker also said that ADUs can provide a unique business opportunity because they seem to be more resistant to economic downturns than other forms of housing. Robertson, for example, used to focus on developing single-family homes. While that work dried up during the Great Recession in the late 2000s, ADU development began to grow after the city eliminated the impact fees in 2010. As a result, Robertson pivoted his single-family development business to focus on the construction of ADUs. In a somewhat similar vein, Shumaker noted how the pandemic did not dampen homeowner demand for new ADUs. At the same time, however, both firms have been intentional about not over-expanding their business so that they are better positioned to weather any future economic downturns.<sup>59</sup>

The proliferation of ADUs in Portland has also created a network of people who can help both homeowners and builders navigate the ADU process. Advocates like Peterson and Spevak, for example, sometimes work as consultants for prospective ADU developers, industry professionals, and homeowners. Once they conduct a preliminary feasibility assessment for the homeowner, Peterson and Spevak often then help connect them with builders who specialize in ADUs. Peterson also organizes annual conferences and teaches day-long ADU certification classes where participants and real estate professionals can earn an “ADU specialist designation.”<sup>60</sup>

### ***Key Takeaways from Portland***

As the discussion above shows, Portland’s local zoning code has evolved beyond simply eliminating what Peterson calls “poison-pill” regulations: instead, it now incentivizes ADU production through strategic efforts like waiving impact fees.<sup>61</sup> These efforts were fostered by – and fueled the growth of – a growing network of ADU supporters that includes advocates, homeowners, builders, and lenders. The relationships and dynamics among these actors help sustain a thriving ADU ecosystem where new units are regularly being built and the city is exploring ways to encourage even greater production.

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<sup>59</sup> In-person interviews with Joe Robertson, former owner, Shelter Solutions, LLC, August 9, 2022, and Lauren Shumaker, director of operations and sustainability, TaylorSmith Sustainable Construction, August 8, 2022.

<sup>60</sup> Eli Spevak and Kol Peterson, in-person interview, August 7, 2022.

<sup>61</sup> Ibid.

Portland’s successes have encouraged other cities to adopt liberalized ADU regulations. They also laid the groundwork for the passage of a 2017 state law requiring most of Oregon’s cities and counties to allow ADUs that met “reasonable” standards for design and siting. As updated in 2019, state law explicitly mandates that “reasonable” regulations cannot include parking requirements or owner-occupancy. Design standards, moreover, must be “clear and objective.”<sup>62</sup> The approach taken in Portland and then in the state as a whole has made Portland and Oregon models for other states that seek to encourage and support the development of ADUs (though, as of mid 2023, only California, Washington, and Montana, have come close to Oregon’s policy of banning owner-occupancy requirements and most parking requirements).<sup>63</sup>

### **New Hampshire’s More Limited Approach to ADUs**

In contrast to Portland, which get mentioned in virtually any discussion about policies related to ADUs, New Hampshire’s efforts have garnered very little attention, largely because the state’s ADU law, which gives localities much more discretion than statewide measures in Oregon and California, has produced modest results at best.

However, for several reasons, the state’s efforts are noteworthy and merit closer attention. First, the state law setting requirements for local regulation of ADUs passed in 2016, several years before many other states addressed the issue. Moreover, New Hampshire, which has 234 cities and towns, has a long history of granting localities significant discretion over zoning and other land use policies (as well as funding and policymaking in a host of other areas). Its experiences, therefore, could be particularly instructive for policymakers, advocates, and others in states that are considering changes to their ADU policies, particularly states such as Massachusetts that also have many local governments, each with its own zoning code and other land-use regulations.

As in Portland, we did extensive research on the state’s approaches to ADUs, ultimately interviewing about two dozen researchers, planners, policymakers, state and local officials and some ADU owners in four of the state’s major municipalities (Concord, Manchester, Portsmouth, and Dover).

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<sup>62</sup> Oregon Department of Land Conservation and Development, “Guidance on Implementing the Accessory Dwelling Units (ADU) Requirement Under Oregon Senate Bill 1051 Updated to Include HB 2001 (2019),” 4.

<sup>63</sup> Hamilton and Houseal, “A Taxonomy of State Accessory Dwelling Unit Laws,” 5. See also Georges, “Five Key ADU State Bills.”

Working with a key state official, Ellie also conducted a two-hour roundtable discussion with fifteen planners and researchers, most of them from the greater Manchester-Concord area.

The interviews, along with an extensive review of the limited literature on ADUs in New Hampshire, indicate that the state’s approach – requiring localities to allow at least some (but not all) types of ADUs while still giving them significant (but not unfettered) power to regulate ADUs – has spurred some changes in local zoning for ADUs. However, the limited reach of the state law also lessened the likelihood of fostering vibrant advocacy groups, creating significant networks of builders focused on ADUs, or spurring the development of financing mechanisms that fully support the construction of ADUs. The consequence, of course, is that the tempered approach to regulation did not produce dramatic results. For example, data recently collected by the Mercatus Institute, a research center at George Mason University, indicate that since the law went into effect, the eight localities with over ten thousand residents that track ADU permits had issued less than 1.5 ADU permits per one thousand single-family homes a year – roughly the same rate as in California before 2017 when that state adopted a much more permissive approach to ADUs.<sup>64</sup> Recognizing this slow progress, ADU supporters in New Hampshire have been pressing for legislation that would eliminate many current provisions that allow localities to limit the production of ADUs, an approach that reportedly will be supported by the House’s Special Committee on Housing when the legislature reconvenes in 2024.<sup>65</sup> A closer examination of what the state has – and has not – been able to accomplish is therefore merited.

### ***A Statewide Framework for Local Regulation of ADUs***

Before 2015, ADUs were relatively uncommon in most of the state’s cities and towns. But there was budding interest and a few localities had adopted more permissive ADU regulations. Fueled by these changes, a group of ADU supporters – including Benjamin Frost, deputy executive director and chief legal officer for New Hampshire Housing Finance Authority – began to consider statewide legislation that would open the door to more ADUs, particularly in localities that to date had resisted them. In 2015, supportive legislators filed a bill with an expansive approach that was drafted by the New Hampshire Home Builders Association and had the support of a broad range of stakeholders from “real

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<sup>64</sup> Emily Hamilton and Abigail Houseal, “Legalizing Accessory Dwelling Units at the State Level: A New Hampshire Case Study” (Arlington, VA: Mercatus Center, George Mason University, March 30, 2023), 6, <https://www.mercatus.org/research/policy-briefs/new-hampshire-adu>.

<sup>65</sup> Benjamin D. Frost, interview by telephone, October 2, 2023.

estate professionals, [the] AARP, disability advocates, young professionals, and housing advocates.”<sup>66</sup>

The measure, however, was strongly opposed by many of the state’s local officials and, according to Frost, had several “near death” experiences in the legislature’s Municipal and County Government Committee. Recognizing they could not pass such expansive legislation, Frost and other advocates focused on compromises needed to secure “the best we could have gotten under the circumstances.”<sup>67</sup>

The revised measure, which passed in 2016 and took effect in 2017, has several noteworthy provisions. To begin with, all jurisdictions are required to allow attached ADUs in all zoning districts where single-family dwellings are allowed. Additionally, there must be an interior door connecting the ADU and the primary residence, a provision that was included not only to create an additional egress for fire safety but also to make it easier for homeowners to re-convert the house into a single-family dwelling. Localities can, but are not required to, allow detached ADUs. The law also states that localities cannot impose provisions related to lot size, coverage, frontage, or space limitations beyond what would be required for a single-family dwelling without an ADU.<sup>68</sup>

The new state law gave significant leeway to localities in how they reviewed and regulated ADUs. Most notably, while localities can choose to allow ADUs by right they also can opt to require either a conditional use permit (usually issued by a planning board) or even special exception (usually issued by the local zoning board of adjustment). Moreover, the law gives localities significant discretion in a variety of areas. For example, they can establish design standards to ensure that the new units are compatible with the existing homes. They can require that the owner live in either the primary residence or the ADU (but they cannot require that ADUs be occupied only by the owner’s relatives). They also can require off-street parking or some other demonstration of parking adequacy for an ADU and, in certain circumstances, they can impose reasonable impact fees. Moreover, they can establish minimum and maximum ADU sizes (so long as they do not require that ADUs be less than 750 square feet).<sup>69</sup>

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<sup>66</sup> Opticos Design, Inc., “Diversifying Housing Options with Smaller Lots and Smaller Homes” (Washington, DC: National Association of Homebuilders, June 2019), 38, <https://www.nahb.org/-/media/NAHB/advocacy/docs/top-priorities/housing-affordability/nahb-2019-small-homes-research-report.pdf>.

<sup>67</sup> Benjamin D. Frost, interview via Zoom, June 21, 2022.

<sup>68</sup> Much of this summary is drawn from Frost, “Accessory Dwelling Units in New Hampshire,” 10–12. In many respects, these are similar to the provisions adopted by California in 1982 and by the state of Washington in 1993.

<sup>69</sup> Ibid. See also National Association of Homebuilders, “ADU Ordinance and Code Analysis by Jurisdiction,” n.d., 39, <https://www.nahb.org/-/media/NAHB/advocacy/docs/top-priorities/housing-affordability/ordinances-and-built-examples-of-adus.pdf>.



### ***Local Responses to the State Law***

In a roundtable discussion that was part of our research, local planners reported that while their jurisdictions complied with the law’s requirement to allow ADUs in areas where single-family homes are permitted, they generally adopted only what was required by state law. Few (if any) localities have opted to allow ADUs by right; only a handful elected to allow detached ADUs; and many have adopted stringent requirements related to parking, design, and owner occupancy. Illustratively, the recently developed New Hampshire Zoning Atlas found that the majority of the state’s buildable land requires at least two parking spaces for ADUs.<sup>70</sup>

During the roundtable, local planners also said that while locally imposed parking, design, and owner-occupancy requirements all seemed to limit the development of ADUs, the state’s unique requirement for the interior connecting door was often a significant obstacle to building more ADUs.<sup>71</sup> The problem is that many homeowners are put off by this regulation, not only because it can significantly increase the cost of the ADU but also because the door (even if locked) might wrongly suggest that the homeowner wanted a stronger connection with their tenants.

### ***Three Local Responses to the State’s Mandate***

Not surprisingly, there has been some variation in how different localities responded to the state’s 2016 ADU law. Illustratively, Manchester, the state’s largest city, began to allow ADUs only after the state law went into effect and until recently required that all of those units receive a special permit. As of late 2022 Manchester had only permitted 24 ADUs, which comprise less than 2 percent of all housing units built in the city since 2010. In contrast, Portsmouth and Dover, which had both allowed ADUs before the state mandate, have both permitted more ADUs than Manchester even though they have substantially fewer residents and housing units (see Table 2).<sup>72</sup> Given these differences, it is instructive to look at how each of these localities has – and has not – promoted ADUs.

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<sup>70</sup> “New Hampshire Zoning Atlas,” May 7, 2023, <https://storymaps.arcgis.com/stories/410e9b3e818344d7858a043b9a5fe8c7>.

<sup>71</sup> Frost, interview, June 21, 2022.

<sup>72</sup> Authors’ calculations from 2021 American Community Survey (5-Year Estimate), “Table A10055. Occupied Housing Units by Year Structure Built”; 2021 American Community Survey (5-Year Estimate), “Table A10001. Housing Units,” accessed August 17, 2023, [https://www.socialexplorer.com/tables/ACS2021\\_5yr/R13427999](https://www.socialexplorer.com/tables/ACS2021_5yr/R13427999); 2021 American Community Survey (5-Year Estimate), “Table SE:A00001. Total Population,” accessed August 17, 2023, [https://www.socialexplorer.com/tables/ACS2021\\_5yr/R13428003](https://www.socialexplorer.com/tables/ACS2021_5yr/R13428003).

**Table 2: ADU Permitting in Three New Hampshire Cities**

	<b>Manchester</b>	<b>Portsmouth</b>	<b>Dover</b>
<b>Population</b>	114,730	21,897	32,599
<b>Housing Units</b>	51,121	11,093	15,353
<b>Housing Units Built Since 2010</b>	1,410	612	791
<b>ADUs Permitted (as of July 2022)</b>	24	35	61
<b>ADU Share of Permits Since 2010</b>	2%	6%	8%
<b>Year ADUs first allowed</b>	2017	2009	2012
<b>Review Type</b>	Conditional Use (until 2023); Both (2023-)	Conditional Use	By-Right
<i>Sources: Authors' calculations from ACS 2021 (5-Year Estimate); zoning ordinances and permit data provided by city officials in Manchester, Portsmouth, and Dover<sup>73</sup></i>			

***A Restricted Approach in Manchester***

Manchester is a one-time manufacturing hub that has seen some significant redevelopment. Median household incomes are about \$67,000, well below the statewide figure of about \$83,000, while the poverty rate is about 9.3 percent, almost twice the state average of 4.7 percent.<sup>74</sup> After the state's ADU law took effect in 2017, Manchester, as required, revised its zoning code to permit ADUs but, as allowed by the new state law, also put many restrictions on those units. Until recently, the city required that the property's owner occupy one of the units and that ADUs not exceed the state minimum of 750 square feet, have two additional off-street parking spaces, and be "architecturally consistent" with the primary unit.<sup>75</sup> Moreover, Manchester's per unit fee schedule meant that property owners with ADUs paid more,

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<sup>73</sup> City of Manchester, "Zoning Ordinance," June 6, 2023, <https://www.manchesternh.gov/pcd/Regulations/ZoningOrdinance.pdf>; City of Portsmouth, "Zoning Ordinance," accessed July 5, 2022, <https://files.cityofportsmouth.com/files/planning/zoning/ZoningOrd-210111.pdf>; City of Dover, "Zoning Ordinance," accessed August 18, 2023, <https://www.dover.nh.gov/Assets/government/city-operations/2document/planning/Regulations/Zoning%202018.pdf>.

<sup>74</sup> 2021 American Community Survey (5-Year Estimate), "Table SE:A14006. Median Household Income (In 2021 Inflation Adjusted Dollars)," accessed August 17, 2023, [https://www.sociaexplorer.com/tables/ACS2021\\_5yr/R13428012](https://www.sociaexplorer.com/tables/ACS2021_5yr/R13428012); 2021 American Community Survey (5-Year Estimate), "Table SE:A13002. Poverty Status in of Families by Family Type by Presence of Children Under 18 Years," accessed August 17, 2023, [https://www.sociaexplorer.com/tables/ACS2021\\_5yr/R13428015](https://www.sociaexplorer.com/tables/ACS2021_5yr/R13428015).

<sup>75</sup> City of Manchester, "Zoning Ordinance," Section 8.26.

on a square-foot basis, than homeowners who built a non-ADU addition to their house. In addition, city officials interpreted state fire code to require two points of egress, even for attached ADUs.

Homeowners interested in building ADUs found these requirements unreasonable and, in some cases, infeasible. One ADU homeowner interviewed for this project, for example, reported that she had to build two external doors for her attached ADU (as well as the state-required internal door to the primary unit). A second homeowner wanted to build an internal ADU for his aging parent. However, he abandoned the plan because of the limited size, fireproofing, and additional entrance requirements. The combined impact of safety requirements and discretionary reviews, noted one ADU homeowner, took “what was supposed to be a six-to-eight week process and turned it into an eight-month process.”<sup>76</sup> As a result of these lengthy and cumbersome requirements, Manchester, with a population of over 100,000, issued only 24 ADU permits between 2017 and 2022. Moreover, several homeowners who received permits did not go ahead with the proposed project.<sup>77</sup>

Despite Manchester’s restrictive ordinances and regulations, James Vayo, a local ADU enthusiast, founded MHTforADUs, which seeks to educate homeowners on the regulatory framework and approval process for ADUs, provide public forums, and help homeowners navigate the planning board’s review process.<sup>78</sup> A 2018 survey conducted by Vayo found that nearly half of the city’s homeowners did not know that ADUs were allowed. However, more than three-quarters of respondents said that they would not attend a city hearing to oppose a proposed ADU.<sup>79</sup> Inspired by this survey and other research, Vayo began working with the city to improve its ADU permitting process by moving to by-right approvals, allowing for detached ADUs, and easing size and parking restrictions. Such efforts, he believes, could help “eliminate the housing shortage in the city” if one in every ten homes were to have an ADU.<sup>80</sup> In June 2023, after several years of debate, the city did change its approach to ADUs. Its zoning code now allows internal ADUs by right. Detached ADUs also are allowed but require a

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<sup>76</sup> Interviews with New Hampshire ADU Homeowners, by telephone and in person, July 21, 2022. Names are omitted for privacy reasons.

<sup>77</sup> Data provided by Manchester NH Senior Planner Jonathan Golden, in-person Interview, July 21, 2022.

<sup>78</sup> James Vayo, in-person Interview, July 21, 2022.

<sup>79</sup> James Vayo, "2018 Homeowner Survey Results," MHT for ADUs, February 23, 2019, accessed August 22, 2023, <https://jamesvayo.wixsite.com/mhtforadus/forum/survey-results/2018-homeowner-survey-results>.

<sup>80</sup> Manchester Ink Link. “Accessory Dwelling Units: How ADUs Can Solve Manchester’s Housing Shortage,” May 18, 2019. <https://manchesterinklink.com/accessory-dwelling-units-how-adus-can-solve-manchesters-housing-shortage/>.

conditional use permit. Manchester also lowered the parking requirement and eased some of the dimensional standards for ADUs.<sup>81</sup> Vayo seems content that progress has been made, but notes that these efforts not only took many years of research and advocacy, but also were subject to many political concessions that only incrementally changed the ADU landscape in Manchester.<sup>82</sup>

### ***Trying to Find Middle Ground in Portsmouth***

Portsmouth, a coastal city of almost 22,000 residents, is an historic seaport and popular tourist destination. At almost \$92,000, median household incomes are slightly above the state average and the poverty rate is just below the state average. The city, which first began allowing ADUs in 2009, significantly revised its regulations in 2017, and has made minor revisions since then.

Portsmouth does allow for detached ADUs. However, like Manchester, ADUs in Portsmouth are subject to a discretionary review process and must comply with provisions related to size, owner occupancy, parking, and design. Not surprisingly, ADU permitting in Portsmouth has been relatively modest, totaling 31 units as of July 2022.<sup>83</sup> This figure, however, is greater than the total number of permits in Manchester, which has more than five times as many residents (and almost five times as many housing units). Moreover, if all those units have been built, ADUs would make up about five percent of all units built in the city since 2010.<sup>84</sup>

Rick Taintor, a planning consultant and former planning director in Portsmouth, believes that the major problem is that the conditional review process makes homeowners interested in ADUs hesitant to move forward with the process. He says, for example, that one local architect told him that “the approval process ... can add \$10,000 to \$20,000” in development costs to projects that already are quite challenging due to lot constraints. Other staff and planning board members also have expressed frustration with the process. One member was recently quoted as saying that an ADU permit should not be “so complicated it has to be filled out by a lawyer.”<sup>85</sup> Another board member, concerned with

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<sup>81</sup> City of Manchester, “Zoning Ordinance,” 8–26.

<sup>82</sup> James Vayo, interview via Zoom, July 6, 2023.

<sup>83</sup> Data provided by former Portsmouth Planning Director Rick Taintor, in-person Interview, July 22, 2022.

<sup>84</sup> Authors’ calculations from 2021 American Community Survey (5-Year Estimate), “Table A10055. Occupied Housing Units by Year Structure Built.”

<sup>85</sup> Jeff McMenemy, “As Popularity of Accessory Dwelling Units Grows, Portsmouth Looks to Simplify Permitting,” Seacoast Online, July 26, 2022, <https://www.seacoastonline.com/story/news/local/2022/07/26/portsmouth-nh-looks-easier-process-building-accessory-dwelling-unit/10143651002/>.

property rights, questioned why the city’s zoning ordinance permits large single-family homes by right while requiring discretionary review for much smaller ADUs.<sup>86</sup>

The frustrations have led to efforts to change the city’s approach to ADUs. Taintor, for example, helped create an ADU focus group of local architects, engineers, planners, and ADU homeowners. ADU advocates have proposed changes in the zoning ordinance such as eliminating the cap on size and requiring conditional approvals only for ADUs greater than 750 square feet.<sup>87</sup> Under these changes, internal and small ADUs would have been allowed by right, and larger or detached ADUs would have been subject to a discretionary review process guided by specific guidelines that would reduce uncertainties about whether applications would be denied or approved with onerous or unworkable conditions. For over a year, proponents, opponents, and officials informally discussed and modified these proposals, ultimately reviewing thirteen different, and increasingly stringent, versions. Despite these efforts, as of this writing in mid-2023, the city had yet to approve any significant changes to its zoning and other guidelines for ADUs.<sup>88</sup>

### ***A More Liberal Approach in Dover***

Dover is a city of about 33,000 people located roughly thirteen miles inland from Portsmouth. Once home to many mills, Dover has grown rapidly in recent decades (at rates that exceed statewide averages). Median incomes are just below the statewide figures and its poverty rate (of 5.3 percent) is slightly higher than the statewide rate. Moreover, it is New Hampshire’s youngest community, with an average age of 36. Long-time City Manager Chris Parker views Dover’s community as a “welcoming and inclusive place.”<sup>89</sup>

According to Parker, who has been a key proponent of ADUs in the city, Dover first began allowing ADUs in 2012 (well before passage of the statewide ADU law) because residents recognized that ADUs would be attractive to the city’s growing number of empty nesters and millennials. Because the 2012 provisions went beyond the minimums established by the state in 2016, they did not need to be updated after the state law took effect in 2017. Instead, for several years, the city continued to apply its existing ordinances, which allowed attached ADUs, enabled administrative approval of at least some

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<sup>86</sup> Rick Taintor, interview via Zoom, July 5, 2023.

<sup>87</sup> McMenemy, “As Popularity of Accessory Dwelling Units Grows.”

<sup>88</sup> Taintor, interview, July 5, 2023.

<sup>89</sup> Chris Parker, in-person Interview, July 22, 2022.

ADUs, and included requirements for off-street parking, owner occupancy, and size limits. This approach, says Parker, reflects a belief that “the goal of a zoning ordinance should not be oppressive.”<sup>90</sup>

In 2021, the city went further and adopted two significant changes to its zoning for ADUs. First, it allowed for fully detached ADUs, which previously had been limited to accessory garages. Second, it allowed for up to two ADUs per lot, provided that rent in one unit was restricted to a level that made that unit permanently affordable. Dover also took steps to help owners of previously unpermitted ADUs get permits for those units. As a result of these efforts, as of July 2022, the city had permitted 61 ADUs, more than any other locality in the state that tracks ADU permits. Moreover, the ADUs represent about 8 percent of all units built in the city since 2010.<sup>91</sup>

### ***Key Takeaways from New Hampshire***

New Hampshire’s 2017 ADU act is noteworthy because it was an early example of comprehensive state-level action related to ADUs. However, the law also demonstrates the limits of statewide approaches that still give the state’s many localities significant discretion over the design, size, and use of ADUs. As a result, many localities have placed significant restrictions on ADUs (and the state law itself contains an important restriction as well). In some places, such as Dover, concerted activity by key public officials has led to the passage of less restrictive local approaches, and in other locales, such as Manchester, grassroots activity led by community members finally led to somewhat less restrictive approaches. However, as the ongoing debates in Portsmouth show, even when local planning officials and some advocates strongly support ADUs, securing needed changes at the local level is usually a long and uphill battle at best. Additionally, the absence of consistent standards for ADUs in New Hampshire has stymied the growth of a network of builders and developers who specialize in ADUs and forestalled the emergence of innovative ways to fund ADUs.

In sum, New Hampshire’s experience with ADUs shows that state legislation is unlikely to spur significantly more ADUs unless it requires by-right approvals of ADUs that meet reasonable, statewide standards for their design and use. In fact, ADU supporters in New Hampshire have been pressing for legislation that would mandate more by-right approvals of ADUs and limit localities’ ability to impose significant restrictions on those units. According to Frost, thanks in part to the statewide data collected

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<sup>90</sup> Ibid.

<sup>91</sup> 2021 American Community Survey (5-Year Estimate), “Table A10055. Occupied Housing Units by Year Structure Built.”

for and visualized by the New Hampshire Zoning Atlas, the House’s Special Committee on Housing seems likely to support these changes when the legislature reconvenes in 2024.<sup>92</sup>

## **An Overview of ADUs in Massachusetts**

In contrast to New Hampshire, Massachusetts state law provides almost no framework for the local regulation of ADUs. Rather, each of the state’s 351 cities and towns has significant autonomy in crafting its approach to ADUs. Consequently, and not surprisingly, the state’s cities and towns generally do not allow ADUs, or allow them only with significant restrictions. However, growing interest and awareness of ADUs has produced small but notable changes in the state. In recent years, several localities have liberalized their ADU regulations, with a handful now allowing by-right ADUs. Additionally, a few leading places are offering financial assistance to either create affordable ADUs or make it easier for households of moderate means to build an ADU. These changes, in turn, have created a nascent ADU ecosystem. Some builders and designers have begun to focus on ADUs and some banks on Cape Cod are now offering loan products for those who want to build ADUs. And there is a growing network of ADU supporters pushing for the adoption of statewide standards for ADUs similar to those adopted by states not only in the West but, increasingly, in New England as well.

Despite these changes, many localities have rejected plans to liberalize their zoning for ADUs. Moreover, as of this writing in mid 2023, efforts to change state law had not succeeded, in part because of continued opposition from local officials. Consequently, relatively few ADUs have been built in the state, particularly in metropolitan Boston, where more than 60 percent of the state’s residents live and where housing costs are quite high.

### **The Generally Restrictive Local Landscape**

A 2018 study examining ADU regulations in one hundred cities and towns that surround the city of Boston made it clear that about two-thirds of the localities in greater Boston allow but severely limit ADUs, while a third expressly prohibit them. Written by Amy Dain, a local consultant who specializes in housing-related planning in greater Boston, the study found that only 68 of the one hundred had provisions in their zoning code allowing for ADUs and that of these, 31 allowed only ADUs that would be occupied by a family member or a caregiver. Furthermore, Dain found, while the remaining 37 did not impose restrictions concerning owner occupancy, their zoning had other significant restrictions on

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<sup>92</sup> Frost, interview, October 2, 2023.

ADUs. Notably, ADUs were allowed by right under at least some circumstances in only 10 localities: Acton, Bolton, Burlington, Lexington, Littleton, Newton, Reading, Stow, Wilmington, and Bedford. Moreover, only 16 localities allowed ADUs in detached structures, and virtually all required off-street parking. Additionally, 14 of the 37 localities that allowed ADUs without restrictions concerning owner occupancy imposed other restrictions such as allowing ADUs only for older, larger houses, or houses on larger lots. Seven localities also capped the number of ADUs that can be permitted (either in total or annually or both).<sup>93</sup> Dain did note that nearly 20 percent of localities had revised their zoning for ADUs in the previous decade, often removing restrictions on occupancy.<sup>94</sup>

In 2017, Boston, which was not part of Dain’s study, launched an 18-month pilot program in three neighborhoods that allowed some owners to create ADUs within their buildings. Boston has subsequently expanded the program city-wide.<sup>95</sup> Although exact figures are unavailable because there was (and still is) no statewide reporting requirement for local permitting of ADUs, the stringent local permitting requirements in the Boston metropolitan area appear to have resulted in low levels of ADU production. Notably, Dain, who surveyed local officials about ADU production in their communities, estimated that localities without occupancy restrictions had been granting about 1.8 ADU permits for every 1,000 single-family residences annually, while those without such restrictions were granting about 1.4 permits for every 1,000 single-family homes.<sup>96</sup>

### ***Some Local Changes in the Past Few Years***

In the five years since Dain’s report was released, a few localities have liberalized their ADU-related land-use regulations. In 2021, Arlington, an affluent town of about 46,000 people near Boston, amended its zoning to allow by-right attached and detached ADUs so long as the new structures complied with existing setback, height, and other dimensional requirements and as long as the owner lived in the

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<sup>93</sup> Amy Dain, “The State of Zoning for Accessory Dwelling Units” (Boston, MA: Pioneer Institute for Public Policy Research, July 2018), 7–11, <https://ma-smartgrowth.org/wp-content/uploads/2019/01/ADU-MSGA-Pioneer-paper-2018.pdf>.

<sup>94</sup> *Ibid.*, 7.

<sup>95</sup> City of Boston, Boston Inspectional Services Department; Boston Planning and Development Agency; and Boston Department of Neighborhood Development, “Additional Dwelling Unit Pilot Program Report,” 2019, <https://docs.google.com/document/d/14DTrBoW2CGSiCclLGGnwhRXujCzVHbVineBIIKPRvHE/edit>.

<sup>96</sup> Dain, “The State of Zoning for Accessory Dwelling Units,” 11.



primary residence or the ADU.<sup>97</sup> Similarly, in 2021, after three years of discussions, Salem, a city of about 45,000 people north of Boston where median incomes are below the statewide median, changed its zoning to allow ADUs by-right in single-family, two-family and three-family houses, so long as those units are attached or within an existing detached building and they rent for no more than 70 percent of HUD's Fair Market Rent (FMR) limit for Salem.<sup>98</sup> In 2022, Wellesley, an affluent Boston suburb with about 30,000 residents, amended its zoning to allow for by-right approval of attached ADUs that met a variety of other conditions, including owner occupancy.<sup>99</sup> That same year, Newton, a Boston suburb that already allowed for by-right approvals for owner-occupied attached ADUs that met certain conditions, amended its zoning code to allow for approvals of detached structures that met certain conditions, also including owner occupancy.<sup>100</sup> Several localities outside of Greater Boston – particularly on Cape Cod, in the Berkshires, and in the Pioneer Valley – also allow at least some by-right ADUs.<sup>101</sup>

Some localities – many of them places that still put other restrictions on ADUs – have also begun to provide financial assistance for new ADU construction. Indeed, one of those programs goes back to 2000, when the town of Barnstable on Cape Cod launched an Accessory Affordable Apartment Program (AAP) in response to growing unaffordability in the area, particularly for seasonal workers, as well as limited long-term rental stocks and the presence of many illegal ADUs. Under that program (which also included an amnesty for owners of unpermitted ADUs), the town offers a zero percent interest loan that covers up to \$20,000 in eligible expenses incurred by homeowners who commit to limiting the rents for

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<sup>97</sup> Town of Arlington, "Accessory Dwelling Units (ADUs)," accessed September 27, 2023, <https://www.arlingtonma.gov/departments/inspectional-services/accessory-dwelling-units-adus>.

<sup>98</sup> City of Salem, Department of Planning and Community Development, "Frequently Asked Questions about ADUs in Salem," Imagine Salem, accessed September 21, 2023, <https://imaginesalem.org/salem-faq-adus>.

<sup>99</sup> Town of Wellesley, "Zoning Bylaws, Section 5.13: Accessory Dwelling Units," accessed September 27, 2023, <https://wellesleyma.gov/DocumentCenter/View/30044/Section-513-Accessory-Dwelling-Units>.

<sup>100</sup> City of Newton, "Accessory Apartments," accessed September 27, 2023, <https://www.newtonma.gov/government/planning/development-review/accessory-apartments>. See also Annie Sandoli, "Newton City Council Amends Accessory Apartment Ordinance," Newton, MA Patch, October 31, 2022, <https://patch.com/massachusetts/newton/newton-city-council-amends-accessory-apartment-ordinance>.

<sup>101</sup> Illustratively, in 2021, Backyard ADU, one of New England's largest and most established ADU builders, posted information about ADU zoning in 38 of the state's cities and towns. Of these, 11 allowed both attached and detached ADUs by right in a least some significant part of the community. Six of these were in western Massachusetts (Great Barrington and Plainfield in the Berkshires; Easthampton, Greenfield, Northampton, and Shutesbury in the Pioneer Valley); four were on Cape Cod (Brewster, Eastham, Mashpee, and Provincetown); and only one (Concord) was in greater Boston. See Backyard ADUs, "ADUs and Small Home Regulations in Massachusetts," accessed August 16, 2023, <https://backyardadus.com/adu-rules-in-ma>.

those ADUs.<sup>102</sup> By 2008, the town, which has almost 50,000 residents, had approved 160 ADUs.<sup>103</sup> Moreover, the town has approved more than 60 AAAP loans since 2021, when it changed its zoning to provide for by-right approvals of ADUs that met certain standards.<sup>104</sup>

Salem has taken a slightly different approach to achieve the same goal of creating affordable units. Under a September 2022 local law that required special state legislation, the city will not collect property taxes on ADUs that are being rented to households making less than 70 percent of the Area Median Income (AMI). The city also offers grants up to \$2,500 for design costs and \$45,000 for construction costs to each homeowner who participates in the affordable ADU program.<sup>105</sup> In contrast, Boston provides up to \$50,000 in zero-interest, deferred loans to homeowners who want to create an ADU and whose incomes are less than 135 percent of the AMI.<sup>106</sup>

### **An Emerging ADU Ecosystem**

In addition to the changes in local regulations, a growing network of ADU supporters has begun to emerge in the state, which includes housing advocates, funders, builders, environmental groups, and others. Furthermore, a few regional banks on Cape Cod offer more extensive financing options for ADU homeowners, including loans that take future rental income into account. The Cape Cod 5, for example, offers an ADU mortgage program as well as an ADU home equity loan (HELOC) to “support the creation of ADUs ... while also addressing the demand for diverse local housing options.” For the Cape Cod 5 ADU mortgage program, a 30-year term loan can be up to \$1 million and the borrower “may use up to 75 percent of the documented, expected rental income to qualify.”<sup>107</sup> Similarly, in 2021 the Cooperative

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<sup>102</sup> Town of Barnstable, “Community Preservation Act: Accessory Affordable Apartment Loan Program Guidelines,” November 26, 2022, [https://www.town.barnstable.ma.us/BoardsCommittees/AccessoryApartment/Program\\_Resources/-Program-Guide.pdf](https://www.town.barnstable.ma.us/BoardsCommittees/AccessoryApartment/Program_Resources/-Program-Guide.pdf).

<sup>103</sup> Sage Computing, Inc., “Accessory Dwelling Units: Case Study,” 5.

<sup>104</sup> Barnstable Principal Planner Anna Brigham, email to authors, July 3, 2022.

<sup>105</sup> City of Salem, Department of Planning and Community Development, “Frequently Asked Questions about ADUs in Salem.”

<sup>106</sup> City of Boston, The Boston Home Center, “Financial Assistance Additional Dwelling Unit Loan Program Fact Sheet,” Google Document, accessed September 26, 2023, [https://docs.google.com/document/d/1nkmQ3FhMLGAXr-51U9GrO0mzZ2q7Q\\_G-3UJY9Z7twgY/edit](https://docs.google.com/document/d/1nkmQ3FhMLGAXr-51U9GrO0mzZ2q7Q_G-3UJY9Z7twgY/edit).

<sup>107</sup> Cape Cod 5, “Accessory Dwelling Unit (ADU) Loans,” accessed August 18, 2023, <https://www.capecodfive.com/adu>.

Bank of Cape Cod (Coop) initiated a loan program “to provide homeowners capital to create ADUs.”<sup>108</sup> The Coop’s home equity loans, HELOCS, and mortgage refinance options for new ADU construction have flexible qualifying guidelines and can provide up to \$250,000. These offerings not only streamline the qualification process but also allow for projected rental income to supplement existing income, a provision that could greatly aid homeowners of more modest means.<sup>109</sup> And a few builders specializing in ADUs have begun to operate in the state, including Backyard ADUs, which is active in both Massachusetts and Maine.<sup>110</sup>

### ***Local Resistance Continues***

In contrast, many other localities have not changed their regulations governing ADUs or provided financing for those that are being developed as affordable housing. For example, Dedham, a town of about 25,000 residents southwest of Boston, was receiving few ADU applications, in part because it permitted ADUs only on lots that were at least 10 percent larger than the minimum lot size required by the underlying zoning district. Working with AARP, a longtime advocate of ADUs, officials in Dedham updated the town’s comprehensive plans to include language more supportive of ADUs, which, the town’s website notes, can support older residents, provide homeowners with “supplemental revenue sources” and create “long-term rental housing opportunities while balancing potential impacts to existing neighborhoods.”<sup>111</sup> However, as of July 2023, the town had not changed any of its actual regulations for ADUs. Similarly, as of this writing, some officials in Lowell, a working-class city of about 111,000 people northwest of Boston, had spent over a year considering changing to its zoning for ADUs to be closer to the provisions adopted in Salem. However, many residents opposed the proposal largely because they felt that it would increase density in a city that already was denser than surrounding

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<sup>108</sup> Carol K. Dumas, “The Coop Launches Loan Program For Accessory Dwelling Units.” Cape & Plymouth Business Media, February 16, 2022, <https://capeplymouthbusiness.com/the-coop-launches-loan-program-for-accessory-dwelling-units/>. See also Housing Assistance Corporation Cape Cod, “My Home Plus One ADU,” accessed August 17, 2023, <https://haconcapecod.org/adu/>.

<sup>109</sup> Cooperative Bank of Cape Cod, “Accessory Dwelling Units,” accessed November 26, 2022, <https://www.thecooperativebankofcapecod.com/personal/personal-home-loans/accessory-dwelling-unit/>.

<sup>110</sup> Backyard ADUs, “Build Smart. Build Small. Build ADUs,” accessed September 26, 2023, <https://backyardadus.com>.

<sup>111</sup> Town of Dedham, Planning and Zoning Department, “Accessory Dwelling Units | Town of Dedham,” accessed August 17, 2023, <https://www.dedham-ma.gov/departments/planning-zoning/studies-reports/accessory-dwelling-units>.

communities, and the city’s planning board came out against it as well.<sup>112</sup> As a result of such opposition, as of July 2023, the plans had been put on hold.

The net result across the state is that most localities still restrict or ban ADUs. Of the 52 local officials from across the state who responded to a 2022 survey conducted for the state’s Department of Housing and Community Development (which has been subsumed into the state’s Executive Office of Housing and Livable Communities), 18 percent said their community expressly prohibits ADUs and most others reported that their communities either permit ADUs via special permits or some mix of by-right and special permits.<sup>113</sup>

### ***Pushing, So Far Unsuccessfully, for Statewide ADU Laws***

There also is growing interest in passing statewide legislation related to ADUs. This effort is backed by a coalition that includes pro-housing organizations like the Citizens’ Housing and Planning Association (CHAPA), Abundant Housing Massachusetts, and others. Three notable ADU-related bills were proposed in the 2021-2022 legislative session. The first would have created pathways for ADU adoption in more communities but did not ensure administrative or by-right approval processes.<sup>114</sup> The second would have ensured by-right ADU approvals but only for units that housed seniors or persons with disabilities.<sup>115</sup> The third would have defined ADUs, capped their size to 900 square feet, and prevented municipalities from prohibiting ADUs outright or requiring a special permit for them on lots larger than 5,000 square feet in single-family residential zoning districts. The third, which was the most comprehensive proposed law, still would have allowed localities to impose “reasonable regulations concerning dimensional setbacks and the bulk and height of structures.”<sup>116</sup> All three measures received favorable reports from the legislature’s Joint Committee on Housing, and the third initially was included in a major economic development bill that was being considered as the legislative session drew to a

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<sup>112</sup> Christina Mehan, “Stop the Current Accessory Dwelling Unit Ordinance in Lowell,” Change.org, August 1, 2023, <https://www.change.org/p/stop-the-current-accessory-dwelling-unit-ordinance-in-lowell>.

<sup>113</sup> Ellie Sheild, “Accessory Dwelling Units (ADUs) | Strategies for State-Wide Inventorying,” unpublished report prepared for the MA Department of Housing and Community Development, May 2, 2023.

<sup>114</sup> 193rd General Court of the Commonwealth of Massachusetts, “Bill H.1413: An Act Promoting Accessory Dwelling Units,” 2021, <https://malegislature.gov/Bills/192/H1413>.

<sup>115</sup> 193rd General Court of the Commonwealth of Massachusetts, “Bill H.1370: An Act Relative to Accessory Dwelling Units,” 2021, <https://malegislature.gov/Bills/192/H1370>.

<sup>116</sup> 193rd General Court of the Commonwealth of Massachusetts, “Bill S.871: An Act Relative to Housing Production,” 2021, <https://malegislature.gov/Bills/192/S871>.

close in mid-2022.<sup>117</sup> However, the Massachusetts Municipal Association (MMA), which represents the state's 351 cities and towns and the officials who run them, successfully argued that while ADUs can provide needed affordable housing, a state-imposed mandate would undermine community-based efforts to develop ADU regulations that respond to local conditions and desires.<sup>118</sup> Faced with such opposition, the ADU provisions were dropped from that economic development bill (which passed) and none of the three proposals came to the floor for a vote before the legislature adjourned.

When the next session began in early 2023, ADU advocates focused on a more comprehensive housing reform measure that included statewide, as-of-right standards for ADUs. As of this writing in August 2023, that bill, which the MMA has opposed, was still being reviewed by the Joint Committee on Housing.<sup>119</sup> Moreover, in October 2023, just before this paper went to press, Massachusetts Governor Maura Healey released a proposed "Affordable Homes Act," which included provisions similar to those put forward by ADU advocates, such as requiring by-right local approval of both attached and detached ADUs, as well as bans on owner-occupancy requirements, bans on parking requirements for ADUs within a half-mile of public transit, and a one-parking-space limit for other ADUs.<sup>120</sup> Not surprisingly, the MMA is opposed to these provisions.<sup>121</sup>

### **The Key Choice: No Change, Incremental Change, or Comprehensive Change?**

We believe the experiences in places like Portland and New Hampshire, as well as other states and localities that have changed their approaches to ADUs, offer several valuable insights for state and local policymakers in Massachusetts (and elsewhere) who are considering changes in how they regulate ADUs. In particular, the experiences indicate that significantly increasing the production of ADUs almost

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<sup>117</sup> Jesse Kanson-Benanav and Kassie Infante, interview via Zoom, August 2, 2022.

<sup>118</sup> Massachusetts Municipal Association, "MMA Asks Senators to Support and Build on Impressive Investments in Senate Budget Bill," May 18, 2023, <https://www.mma.org/advocacy/mma-asks-senators-to-support-and-build-on-impressive-investments-in-senate-budget-bill-2/>.

<sup>119</sup> 193rd General Court of the Commonwealth of Massachusetts, "Bill H.1379: An Act to Promote Yes in My Backyard," 2023, <https://malegislature.gov/Bills/193/H1379/BillHistory>. See also Abundant Housing Massachusetts, "2023-24 Priorities"; Massachusetts Municipal Association, "MMA Asks Senators."

<sup>120</sup> "Healey-Driscoll Administration Unveils \$4 Billion Affordable Homes Act to Increase Production and Lower Cost."

<sup>121</sup> Massachusetts Municipal Association, "Administration Unveils \$4B Housing Bond Bill," MMA (blog), October 18, 2023, <https://www.mma.org/administration-unveils-4b-housing-bond-bill/>.

certainly requires the passage of statewide legislation mandating by-right, local approval of ADUs that meet meaningful state standards related to their size, design, and use.

As experiences in Massachusetts and elsewhere show, securing such legislation is a complicated and difficult undertaking. The primary reason is that many homeowners do not want to allow significant production of ADUs in their neighborhoods. And, as noted above, homeowner opposition tends to play an outsized role in local politics, particularly local decisions about zoning and other land-use regulations. Consequently, elected officials – not only those serving in city or town government but also state legislators, who are, after all, elected from districts – tend to be very responsive to the concerns of homeowners in their communities and districts.

However, there is growing concern – in Massachusetts and elsewhere – about a host of housing-related problems, such as affordability, livability, and sustainability. This concern has led to growing and diverse statewide coalitions focused on requiring localities to allow for a broader range of housing options, such as ADUs, in areas where they currently allow only single-family homes, particularly when those areas are well-served by transit and are in existing walkable neighborhoods. To succeed, such coalitions need to include not only housing advocates but also environmentalists, planners, urbanists, and others, such as groups that represent older individuals who would benefit from increased construction of ADUs.

The research strongly suggests that in pursuing these changes, ADU supporters should strive for policies that go beyond New Hampshire's approach, which requires localities to adopt zoning that allows for ADUs, to require localities to provide by-right ADU approvals that meet state standards. The importance of this more comprehensive approach is strongly suggested by experiences in Oregon (which grew out of Portland's policies) and in other states, notably California. As is discussed below, states that choose this approach still must make key decisions about exactly what those standards will require and what will still be left to the discretion of local officials.

Establishing meaningful, statewide ADU standards will make it easier to overcome other significant obstacles to their creation. Notably, such standards will make it easier to let homeowners learn about ADUs. They also are likely to spur the development of financial products that will make it possible for moderate-income homeowners to build ADUs. And they will help ensure that a growing number of builders and designers are familiar with and can address the particular challenges posed by the fact that ADUs are either constructed within existing, currently used structures or have to be carefully sited, often on smaller parcels with existing, usually occupied homes.

Together, these changes can result in significantly more ADUs. Consider, for example, what happened in California in the three years after substantial ADU reform. The 2016 measure, the first of several ADU-forward state laws, not only required by-right local approval of ADUs that met state standards for size, massing, and design but also banned the imposition of owner-occupancy requirements as well as parking requirements for ADUs on sites served by public transit. With these provisions, the number of ADUs permitted in the state rose elevenfold in six years, increasing from 1,269 in 2016 (when new ADUs accounted for about one percent of all new housing built in the state) to over 24,000 in 2022 (when new ADUs accounted for about 18 percent of all new housing in the state).<sup>122</sup>

### ***Comprehensive or Incremental Change?***

The research also makes it clear that those interested in using state legislation to catalyze a robust increase in the development of ADUs must decide whether to pursue “comprehensive” approaches that include additional restraints on local decision-making or “incremental” approaches that allow for more local discretion. The former approach is likely to produce more housing but also may generate so much opposition that it could imperil any meaningful changes in the ways ADUs are regulated. In contrast, the latter approach almost certainly will not result in the creation of as many ADUs but might be the only politically feasible way to move forward. Such was the case in New Hampshire, where a bill with several concessions limiting the law’s scope and authority also became the only version likely to pass the state legislature.

Decisions in three areas are especially critical.

- **By-right approvals:** As noted above, the first and most important decision is whether or not the state will require by-right approval of ADUs that meet state standards for size, massing, and design. (As New Hampshire’s experience with its internal door requirement suggests, it is important that these state standards facilitate, rather than hinder, ADU development.)
- **Owner-occupancy:** Should the state allow localities to require that ADU owners live in either the primary residence or the ADU? As noted above, doing so can limit the creation of ADUs. But such requirements can assuage some concerns that ADUs will lead to an influx of renters and/or speculative development.

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<sup>122</sup> Authors’ calculations from California Department of Housing and Community Development, “Annual Progress Reports - Data Dashboard and Downloads.”

- **Parking requirements:** Should the state prevent localities from requiring that those building an ADU also provide an on-site parking space? Again, as discussed above, parking provisions often dampen ADU production by increasing costs for homeowners who want to build an ADU, and, in some cases, by making it impossible to build an ADU on an existing parcel. On the other hand, parking is one of the key concerns that residents often express about any proposals to build new housing in their neighborhood.

The handful of states that have established uniform standards for local reviews of ADUs have differed in how they addressed these questions. Illustratively, California, Oregon, Washington, Montana, and Vermont essentially require that local governments approve ADUs in most areas zoned for single-family homes so long as those ADUs meet minimum state standards for size and massing. While Connecticut’s ADU law requires by-right approval of ADUs, it also allows localities to opt out of that law via two-thirds votes of both their local planning board and the local legislative body. In the two years since the law passed, two-thirds of the state’s cities and towns have taken advantage of this provision. Rhode Island does require by-right permits for ADUs occupied by a family member or a relative but otherwise allows localities to use special permit processes for ADUs. And, as discussed earlier, Maine and New Hampshire do not require by-right permitting.<sup>123</sup>

Turning to owner-occupancy and parking, California, Oregon, and Washington do not allow localities to require the property owner to live on site (either in the primary or accessory unit). Oregon, Washington, and Maine additionally prohibit the imposition of parking requirements, while California preempts parking requirements only for ADUs near transit stops. In contrast, Connecticut, Maine, New Hampshire, Rhode Island, and Vermont all allow localities to require owner occupancy and to impose parking requirements.<sup>124</sup>

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<sup>123</sup> See Hamilton and Houseal, “A Taxonomy of State Accessory Dwelling Unit Laws;” Georges, “Five Key ADU State Bills;” Peterson, “ADU Legislative Initiatives – History in the Making (Part IV);” Desegregate Connecticut, “Public Act 21-29 Initial Findings;” and State of Rhode Island, “An Act Relating to Towns and Cities – Zoning Ordinances, Chapter 440, Sections 45-24-31 and 45-24-37.”

<sup>124</sup> See Hamilton and Houseal, “A Taxonomy of State Accessory Dwelling Unit Laws;” Georges, “Five Key ADU State Bills;” and Peterson, “ADU Legislative Initiatives – History in the Making (Part IV).”



While these are the most critical considerations, efforts to develop state policies will often touch on several secondary but still important questions. These include:

- **Detached ADUs:** Should the state require by-right approvals of internal, attached, and detached ADUs or should the by-right requirement apply only to internal and attached units?
- **Short-term rentals:** Should localities be allowed to impose restrictions on short-term rentals?
- **Affordability:** Should the state let localities encourage the development of “affordable” ADUs by providing (or allowing localities to provide) financial incentives, such as property tax abatements, for owners who agree to rent ADUs to low-income households at rents consistent with HUD’s FMR standards?
- **Financial assistance:** Should the state provide financial assistance to low- and moderate-income homeowners who want to build an ADU? And if so, should it limit the rents that those homeowners can charge?
- **Monitoring and compliance:** How should the state monitor and enforce local compliance with statewide mandates?

While decisions in all the areas listed above are important, we agree with Peterson, a leading proponent of lessening ADU restrictions, who believes that by-right provisions are, by far, the most critical. Indeed, he believes that strict, predictable, by-right ADU regulations are better than more flexible, discretionary regulatory regimes because predictability is a prerequisite for any effort to create significantly more ADUs.<sup>125</sup>

## **Conclusion**

ADUs can play an important but limited role in efforts to address a variety of key housing-related challenges. Notably, they can help provide affordable housing options without exacerbating sprawl, while also promoting energy efficiency and expanding economic opportunities. Moreover, ADUs can offer opportunities for older individuals to age in place, often with the help of extended family members. And they can provide economic benefits for homeowners, including those who might otherwise face financial challenges.

However, because local zoning can often advantage small groups of highly motivated homeowners, most localities will impose significant restrictions on ADUs even though members of the

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<sup>125</sup> Peterson, *Backdoor Revolution*, 162; Spevak and Peterson, interview.

wider community might support ADUs as part of broader efforts to create livable, sustainable, and affordable communities. New Hampshire and several other New England states have attempted to encourage local ADU progress by adopting state laws that require local zoning codes to allow for ADUs that meet state minimum standards for size, massing, design, and use. These laws, however, still give localities significant discretion in deciding whether to approve individual proposals for ADUs and, if so, what further conditions to impose. Consequently, while we believe these laws are a step in the right direction, our research makes it clear that such laws alone will not result in significant increases in ADU production.

Rather, the research indicates that by-right approval processes are a necessary but not sufficient piece of any effort to significantly increase the production of ADUs. As we have noted, at the local level, concerted efforts can change zoning to provide for meaningful by-right review processes for ADUs. However, as we have also shown, such efforts are often time-consuming and do not always succeed. Moreover, at the regional and statewide levels, they are likely to result in a patchwork of regulations that make it harder to mount efforts to address other factors like education and financing that limit the production of ADUs.

Consequently, any effort to significantly increase the production of ADUs requires that states – which establish the frameworks for local zoning – mandate by-right local approval processes for new ADUs that meet meaningful state standards for size, massing, design, and use. These provisions and approaches can provide the foundation for other measures needed to increase production of ADUs, notably public outreach efforts that will ensure that homeowners know about ADUs, the development and marketing of loan products making it possible for low- and moderate-income homeowners to build ADUs, and the emergence of a network of affordable and skilled builders and designers familiar with the particular challenges related to building ADUs.

We believe such changes would lead to the construction of more ADUs not only in Massachusetts but also in other states considering changes to the ways localities regulate ADUs. On its own, the increased production of ADUs would not fully address a host of housing-related problems, in Massachusetts or any other state. However, increased ADU production could help alleviate those problems, particularly if it is a part of larger, more comprehensive efforts to provide more affordable, accessible, and sustainable housing.

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