

# ADU | *California Laws affect* **ACCESSORY DWELLING UNITS**

*California's legislature recently passed several laws which, among other things, promote Accessory Dwelling Units (ADU or ADUs) in lieu of the previously statutory concept known as the "secondary unit" (i.e. in-law units or granny flats).*

One of the stated purposes of the laws is to provide a statutory scheme that enables local government to increase the number of rental housing units as part of the solution to address the acute housing shortage in the State of California. Historically, "secondary unit" may have had a different definition, depending upon what city or county the property was located in.

The current legal definition of an ADU is described as, "an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated" (CA Government Code § 65852.2(i)(4)). It also includes efficiency units (as defined by CA Health and Safety Code § 17958.1) and manufactured homes (as defined by CA Health and Safety Code § 18007).

The legislative framework is intended to provide local government with greater flexibility to regulate ADUs. Counties and cities must adopt an ADU ordinance consistent with the state requirements, which are operative as of January 1, 2017. While local governments may enact a specific ADU ordinance, such an ordinance may not be enforceable if that ordinance imposes requirements inconsistent with the state laws. [Note: These laws regulate planning and zoning issues, and do not address issues with building codes, proper municipality, the Fire Marshall and Department of Environmental Health (if applicable). Any and all of these entities may need to be contacted to confirm an accessory structure can be built on the property].

**Below is a general overview of California's ADU statutory scheme:**

1. ADU applications must be approved or disapproved within 120 days of receipt, subject to a ministerial/clerical review;
2. ADU applicants must be owners/occupants of the property and ADU rental terms must exceed 30 days;

3. Permitted size of an ADU attached to an existing dwelling has been increased to 50% of an existing living area (up from 30%), with a maximum permitted increase in floor area of 1,200 square feet; ADUs in a detached building may not exceed 1,200 square feet of floor space;
4. ADUs must not conflict with existing zoning laws and general plans regulating the density of lot development.
5. State law authorizes an approval of ADUs in existing structures provided that certain requirements are met, such as an ADU must be contained within an existing space of a single-family residence or accessory structure; the property is zoned for single-family residential; that there is an exterior access that is independent from the existing residence; and there are sufficient side and rear setbacks from a fire safety standpoint.
6. The laws state that only one parking space per ADU or bedroom may be required, and the requirement under certain circumstances may be satisfied by utilizing setback space or as a result of tandem parking; and
7. ADUs contained within an existing structure are not considered as a new residential use for purposes of calculating utility connection fees or capacity charges. If an ADU is not located within an existing structure, a local government may require new or separate utility connections, but those charges are to be proportionate to the burden of the proposed ADU as to water and sewage systems.

As with any other issue to be investigated by either a seller or buyer, it is always important to find qualified individuals to assist you. You may need to inquire with your licensed general contractor, architect, and/or engineer, as well as local government offices. Please refer to the PDF link included below for reference:

<http://hcd.ca.gov/policy-research/docs/2016-12-12-ADU-TA-Memo.docx.pdf>

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