

## **Local Zoning & Regulations**

### **What should a city/town do if its zoning is not consistent with the ADU Law?**

As of February 2, 2025, any zoning provisions that are inconsistent with the [ADU Law](#) and [ADU Regulations](#) are unenforceable. A Protected Use ADU, as defined in the ADU Regulations, cannot be subjected to local regulations that are disallowed by state law. Therefore, local permitting decisions should not consider any local zoning rules that conflict with the ADU Law or ADU Regulations in general or when applied to a particular Protected Use ADU permit application.

### **Is there a requirement for EOHLC to review and approve ADU zoning?**

No, the statute does not require EOHLC to review or approve ADU zoning. Whenever a town amends its zoning or other by-laws, the Office of the Attorney General is required to review the changes and approve them or disapprove them if they are inconsistent with state law, including the ADU Law. The Attorney General's Office does not review amendments to zoning ordinances of cities. For more information on the Attorney General's Office review of by-law changes, you can visit the website of the Office's Municipal Law Unit at [Municipal Law Review | Mass.gov](#).

### **When a city/town is amending zoning to add the revised definition and process to allow ADUs as of right in single-family zoning districts, does it qualify for a simple majority to approve zoning at our legislative body or 2/3 super majority?**

The Zoning Act, (MGL c40A) requires a simple majority vote to amend zoning to allow for ADUs ([as defined in the Zoning Act](#)) as of right. If a city/town wishes to establish rules that are more permissible than those allowed by the law and statute there may be instances where the vote would have to be by super-majority (ex. Allow Protected Use ADUs larger than 900 square feet as of right), or they may wish to cast two votes, one

on the minimum standards and one of the expanded standards. Please consult with your town counsel or city/town solicitor for their legal advice. You can find Guidance on voting thresholds for zoning here: [Voting Threshold Guidance | Mass.gov](#).

**If the principal dwelling is a multi-unit structure (i.e., a condominium complex or multi-unit residential building), is the lot limited to one protected use ADU?**

Only one Protected Use ADU is allowed on a lot with a principal dwelling, regardless of whether the principal dwelling is a multi-unit structure and regardless of whether there are multiple principal dwellings on the same lot. The ADU regulations state that cities and towns may choose to allow multiple ADUs on a lot, however, cities and towns must require a Special Permit for the additional ADUs beyond the one Protected Use ADU allowed by-right.

**Can a city/town prohibit a Protected Use ADU from being permitted in property that has more than one unit such as a duplex, triple decker, or other multi-family home?**

No. A municipality cannot limit Protected Use ADUs to lots with only single-family homes on them. The Attorney General's Office has recently issued a decision that relates to this question, and we recommend cities and towns looking for answers to this question to carefully review this decision: [East Bridgewater Accessory Dwelling Unit AGO Decision - April 14, 2025](#).

**Can a city/town choose to permit Protected Use ADUs by right in some zoning districts but no other business or non-residential only districts that permit single-family homes?**

No. Protected Use ADUs are allowed by right in all zoning districts in a city/town that permit single-family homes to be built by right or special permit, subject to reasonable regulations.

### **Can a city/town restrict the size of a Protected Use ADU to less than 900sqft by zoning or another local by-law?**

A city/town cannot restrict the size of a Protected Use ADU below 900sqft but may allow for larger Protected Use ADUs.

### **Can a city/town set its own rules regarding Short-Term Rentals?**

Yes. Adding Short-term Rental restrictions for Protected Use ADUs is a local municipal choice. Carefully consider the community context and if allowing Short-Term Rentals for Protected Use ADUs meets local goals and priorities. The ADU Law provides that municipalities may restrict or prohibit the use of a Protected Use ADU as a Short-Term Rental, as defined in M.G.L. c. 64G, §1 (Room Occupancy Excise). Prior to the ADU provisions in the Zoning Act, it authorized municipalities to restrict or prohibit short-term rentals except there was no definition for the term “short-term rental.” The ADU provisions citation to the Room Occupancy Excise means that a Short-term Rental is the rental of a Protected Use ADU that is subject to the Room Occupancy Excise, **which applies only to stays of not more than 31 consecutive calendar days**. The Room Occupancy Excise provides other key exemptions such as (i) lodging accommodations provided to seasonal employees by employers and (ii) tenancies at will or month-to-month leases, among other exemptions provided under M.G.L. c. 64G, § 2.

### **Can a city/town restrict who lives in a Protected Use ADU such as prohibiting college students?**

No. The ADU law and regulations do not allow a municipality to regulate who can live in a Protected Use ADU.

### **Can a city/town establish rules that include definitions that are more permissive than the ADU law and regulations that allow for bigger Protected Use ADUs or other greater flexibilities?**

Yes. The ADU regulations clearly state that a city/town can be more permissive than the rules established by the ADU law and regulations. Local rules may be more permissive on rules such as but not limited to: **1)** maximum size, **2)** greater or no percentage of Gross Floor Area, **3)** reduced parking minimums for locations not considered within the law, **4)** allowing Protected Use ADUs in properties that are not located within an eligible zoning district, **5)** any and all of the standards that cities/towns can regulate where the local rules would be more permissive than the state law or regulations allow.

**Can a city/town require two entrances for a Protected Use ADU to be permitted by zoning or local by-law?**

A city or town cannot impose zoning rules for egress beyond what is required by state health and safety laws, including building codes. There may be instances where 1 entrance and 1 window will suffice to meet building code for egress, and other instances where building or safety codes require more than one egress, this should not be a zoning requirement for all Protected Use ADUs but addressed on a case-by-case basis by the building permit issuing authority.

**Does the rule prohibiting parking minimums near "bus stations" include all flag stops or the entirety of a flag-stop bus route?**

To establish minimum parking requirements for a Protected Use ADU, a "bus station" is a regular and specific location for pick-up and drop-off. Flag stops in between regular and specific pick-up/drop-off spots or flag stops along routes that lack regular and specific pick-up/drop-off spots are not considered "bus stations" for purposes of calculating parking requirements.

**Can a city/town restrict the number of bedrooms that can be allowed to be built in an ADU?**

No. A municipality may not limit the number of bedrooms beyond what is required by applicable state code, such as the state building, fire, and

sanitary code. The Attorney General's Office has issued a decision that relates to this question, and we recommend cities and towns looking for answers to this question to carefully review this decision: [Leicester Accessory Dwelling Unit AGO Decision - 5/27/2025](#).

**Can a city/town impose a minimum lot size requirement for an ADU?**

No. The ADU law and regulations do not allow for a city/town to require a minimum lot size for the permitting or construction of a protected use ADU. The Attorney General's Office has issued a decision that relates to this question, and we recommend cities and towns looking for answers to this question to carefully review this decision: [Canton Accessory Dwelling Unit AGO Decision - 6/4/2025](#).

**Can a city/town impose dimensional standards such as setback requirements for an ADU?**

Yes. However, any requirements concerning dimensional standards such as "setbacks, lot coverage, open space, bulk and height, and number of stories" for an ADU must be the most permissive standards required for the principal dwelling, or a single-family residential dwelling, or an accessory structure in the district where the ADU is intended to be located. For example, if the principal dwelling is a triple decker, then any requirements concerning dimensional standards for an ADU on that lot must be the most permissive standards required for a three-family residential dwelling, or a single-family residential dwelling, or an accessory structure in the zoning district where the lot is located. In addition, all dimensional standards are subject to the reasonableness test set forth in the ADU regulations at 760 CMR 71.03(3) and can be imposed only if they are reasonable when applied to the particular project.

**Can an ADU be a modular home, manufactured housing, or other prefabricated home?**

Cities and towns may not prohibit, regulate, or restrict a structure as being used as a protected use ADU that meets the definition of a Modular

Dwelling Unit in the [ADU regulations](#). Modular Dwelling Units may be transported in one or more sections, must be affixed to a foundation that meets the building code and connected to external utilities at the site. Whether a structure meets the definition of a Modular Dwelling Unit is fact dependent and must be analyzed by municipalities on a case-by-case basis and may include a variety of structures such as but not limited to modular homes, manufactured housing, or other prefabricated homes that can meet the standards explained above. In addition, any requirement that is more restrictive than the Building Code would be considered unreasonable, including the prohibition of foundation types that are permitted by and meet standards of the state building code. In all cases, cities and towns must apply the reasonableness test set forth in the ADU regulations at 760 CMR 71.03(3) when applying restrictions on the use of land and structures for protected use ADUs.

**What types of spaces—such as basements, attics, garages, or porches—are included in the gross floor area calculation for the principal dwelling and/or the Protected Use ADU?**

The ADU regulations define protected use ADUs as not larger in gross floor area than  $\frac{1}{2}$  the gross floor area of the principal dwelling, or 900 square feet, whichever is smaller. The types of spaces included in the square footage calculation for the principal dwelling and ADU are explained in the definition of gross floor area in the [ADU regulations](#). Gross floor area includes basements, lofts, and intermediate floor tiers. Gross floor area does not include crawl spaces, garages, attics, enclosed porches, and similar spaces. For internal ADUs, common areas should be included in the calculation of square footage for the principal dwelling, not the ADU.

**Are all basements included in the gross floor area calculation for the principal dwelling and/or the Protected Use ADU?**

Basements are included in the gross floor area calculation for the principal dwelling and/or protected use ADUs if they are compliant with ceiling height requirements pursuant to the state Building Code. This

includes basements that are unused and unfinished, so long as they are of compliant ceiling height.

### **Are all units of the principal dwelling included in gross floor area calculation to determine the maximum size of the Protected Use ADU?**

The gross floor area calculation of the principal dwelling must include the sum of the areas of all stories of compliant ceiling height pursuant to the building code. This includes for example all units in a two or three-family home, residential units in a mixed-use property, basements of compliant ceiling height, but not crawl spaces, garage parking areas, attics, enclosed porches, and similar spaces. Cities and town should closely review the definition of gross floor area in the [ADU regulations](#).

## **Permitting & Development Process**

### **Can EOHLC answer questions from property owners about whether they can build a Protected Use ADU on their property?**

EOHLC is not able to answer property specific questions about whether a Protected Use ADU is feasible to be built on a specific property. Please consult with your city or town to better understand your local rules, review the ADU regulations, and speak to a trusted legal, real estate, or building adviser to understand what options might be available to you.

### **How can a property owner get a permit to build a Protected Use ADU on a property they own?**

The law permitting Protected Use ADUs as of right took effect **February 2, 2025**. As local zoning and procedures for review will vary from municipality to municipality, contact your municipality's building department. They can share the status of local zoning rules, processes, and building standards that are specific to your city or town and to your property. As they work to implement this new law, please bear in mind that your municipality may not yet have all the answers as they work to implement this new law.

**What should a property owner do if their permit to build a Protected Use ADU was denied, but their credible advisers are informing them it should have been granted?**

EOHLC cannot answer questions on the specific circumstance surrounding a permit denial as there may be very specific, valid, or invalid reasons for a permit to be denied that we cannot determine. There are local appeal processes established by cities/towns. We encourage you to speak to a trusted legal, real estate, or building adviser and your city/town to discover what options might be available to you.

**What should a property owner do if they think that a municipality improperly denied a Protected Use ADU permit? Are there alternatives to bringing a challenge in Land Court?**

EOHLC cannot provide legal advice to property owners and if you were denied a permit for your Protected Use ADU you should contact an attorney. There may be avenues for appeal under MGL c. 40A.

**Can a Protected Use ADU be turned into a condo and sold separately from the Principal Dwelling?**

Condominium conversions are governed by MGL c. 183A, which is not regulated or amended by the ADU law. We therefore recommend that municipalities speak with their legal counsel and that property owners speak to a trusted legal or real estate expert to discuss what options might be available. The Attorney General's Office has issued a decision that relates to this question, and we recommend cities and towns looking for answers to this question to carefully review this decision: [Georgetown Accessory Dwelling Unit AGO Decision - 6/16/2025](#).

**If a principal dwelling was not built by-right, or through the underlying zone, but through a zoning overlay district, but the lot is in a district that allows single-family by-right or special permit, should a Protected Use ADU be permitted by-right?**



Yes. If a lot and principal dwellings are located within an underlying or overlay zoning district that allows single-family homes by right or special permit, that lot / principal dwelling is eligible to receive a permit for a Protected Use ADU regardless of the permitting mechanism that was used to permit the principal dwelling to be built.

**Does the ADU Law supersede or require the permitting of Protected Use ADUs on all lots regardless of other state or federal laws that establish what can be built on a specific lot?**

No. The statement of purpose in the ADU regulations says that “Nothing in [these regulations] is intended to supersede state health and safety laws and regulations, such as, but not limited to the Building Code, Fire Code, M.G.L. c. 111, § 189A: Massachusetts Lead Law, or any federal laws.” The intention of this statement is to ensure that any other applicable state or federal laws are followed.

**Can Protected Use ADUs be detached from the primary dwelling in a single-family zoning district?**

Yes. Detached Protected Use ADUs must be permitted without requiring a special permit or other discretionary zoning approval as long as they meet the definition in the Zoning Act. Cities and towns may establish reasonable regulations that are applicable to detached Protected Use ADUs.

**Does the fact that a Protected Use ADU is by-right mean property owners can do anything to build a Protected Use ADU in their property?**

No. All construction of Protected Use ADUs need to comply with local rules and codes and need a building permit. A Protected Use ADU must also be built in a legally permitted structure. For property owners interested in building a Protected Use ADU as a DIY project, we encourage you to speak to a trusted legal, real estate, or building adviser and your city/town to discover what options might be available to you.

## **Can a city/town impose fees on the development of an ADU?**

Cities and towns may have reasonable fees for ADU development, but they must apply the reasonableness test set forth in the ADU regulations at 760 CMR 71.03(3) to determine if any fees such as building permit fees, site plan review fees, and water, sewer, utility connection fees are reasonable.

## **Can a city/town require a separate or common water, sewer, or electric connection for ADU construction?**

While a municipality may not require a separate or common utility connection beyond what is required by state or federal law, the ADU regulations allow that a separate connection may be required if imposed by a Municipal or regional utility, investor-owned utility, by local, regional, or state board or commission, or by court order. This does not include local departments. In all cases, the entity requiring the separate connection must apply the reasonableness test set forth in the ADU regulations at 760 CMR 71.03(3) and a separate connection can only be required if that requirement is reasonable when applied to the particular project. For example, a homeowner may face the choice of upgrading an existing sewer connection or providing a separate connection for their Protected Use ADU if the flow rate does not provide sufficient capacity for the ADU. This choice amounts to a possible requirement for a separate connection that could be reasonably required to meet minimum state environmental and sanitation laws. The Attorney General's Office has issued a decision that relates to this question, and we recommend cities and towns looking for answers to this question to carefully review this decision: [Merrimac Accessory Dwelling Unit AGO Decision – 6/2/2025](#).

## **Can a city/town require additional septic capacity or separate septic systems to build a Protected Use ADU?**

Municipalities must comply with applicable Title 5 requirements when they issue permits for Protected Use ADUs. A homeowner may be required to upgrade their septic system to comply with both Title 5 and

local regulations. Note that local septic regulations are issued by Municipalities through their local boards, departments, and commissions and are not Title 5 regulations, so they do not fall under the Title 5 provision in 760 CMR 71.03(3)(b)(4). All local regulations are governed strictly by the reasonableness test in 760 CMR 71.03(3)(a).

Municipalities requiring anything above the standards set by Title 5, such as additional septic system capacity or separate septic systems to serve Protected Use ADUs must apply the reasonableness test set forth in the ADU regulations at 760 CMR 71.03(3)(a) to determine whether that additional requirement can legally be applied to Protected Use ADUs. As an example, any city or town requiring an entirely new septic system for the development of a protected use ADU must show that the requirement “serve[s] a legitimate Municipal interest” and that it does not “impose excessive costs on the use or development of a Protected Use ADU without significantly advancing the Municipality’s legitimate interest.” The reasonableness test also requires that a separate septic system requirement not “substantially diminish or interfere with the use or development of a Protected Use ADU without appreciably advancing the Municipality’s legitimate interest” pursuant to 760 CMR 71.03(3)(a). A separate septic system requirement may impose excessive costs without significantly advancing the Municipality’s legitimate interest where an existing septic system may already have sufficient capacity or can be upgraded more cheaply to achieve the same goal.

A separate septic system requirement may also require more lot area than would be needed to upgrade and connect into an existing system, which when combined with the excessive costs, tends to diminish or interfere with the development of Protected Use ADUs. Some lots may also be too small to accommodate an additional septic system, which would tend to create a de facto prohibition on Protected Use ADU development, in violation of M.G.L. c. 40A, §3. A city/town would need to carefully consider their interest in requiring a separate system and whether that requirement is reasonable under this test.

## **Other Impacts & Related Policies**

### **Where can property owners find information about financial resources such as loans and financing to build a Protected Use ADU?**

Talk to trusted advisors and experts such as local banks or other financial institutions, and/or a building contractor. EOHLC will work with partner agencies, programs, and banking industry professionals to provide an overview of various ways in which property owners can finance the construction of Protected Use ADUs.

### **Will Protected Use ADUs count as units in the 2030 U.S. Census Year-Round Housing Unit count?**

EOHLC anticipates that Protected Use ADUs that are built between now and the 2030 census, given an address, and receive a Census form, will likely count as year-round-housing after the 2030 census.

### **Is a Protected Use ADU eligible to count as a unit in the Subsidized Housing Inventory (SHI)?**

There may be narrow circumstances where a Protected Use ADU (PUADU) may meet all of the [SHI eligibility requirements](#) and thus qualify for inclusion on the SHI. Consultation with municipal council may be useful, as qualification is not a simple process. SHI eligibility requirements include (a) Eligible Subsidy Program and (b) Affordability - Household Income. One Eligible Subsidy Program is the [Local Initiative Program](#) (LIP). Where a municipality either provides substantial financial assistance or donates municipal land for the creation of the PUADU, that PUADU may qualify as a "Local Action Unit" under LIP. Use and Occupancy Restrictions imposed by municipalities through zoning, general ordinances/bylaws, or other municipal regulations, including those based on income, are Prohibited Regulations with respect to PUADUs. However, the voluntary application of an affordability restriction by the property owner (e.g., in a deed) as a condition of receiving

substantial financial assistance or land to create an ADU may satisfy LIP “Local Action Unit” requirements.

**The ADU law applies to 350 cities and towns, why is that not 351 since that is how many cities and towns there are in Massachusetts?**

All cities and towns in Massachusetts, except for the City of Boston, are subject to the ADU law because Boston is not subject to the specific General Law (c40A) that the ADU law was written under. Boston residents can learn more about Boston’s ADU rules at [Accessory Dwelling Units \(ADUs\) in Boston | Boston.gov](#).

**Can a Homeowners' Association restrict property owners from building an ADU?**

The ADU law does not address Homeowners’ Associations (HOAs). An HOA may allow or restrict development of an ADU so long as it follows all rules and regulations established within its rules. However, this is a location, property, and fact specific matter and we encourage you to speak to a credible legal, real estate, or building adviser and your city/town to discover what options might be available to you.