



# Is Making a Difference Where You Live



*This white paper describes the benefits to homeowners and communities of allowing ADUs and offers a draft of legislation that will allow ADUs to blossom across Florida, drawing on the best practices from across the country.*

*AARP Florida thanks the many persons and organizations who have contributed to this document, including the national and state AARP staff, the builders, owners and residents of ADUs referenced in it and the local and state officials who have been leaders in the effort.*

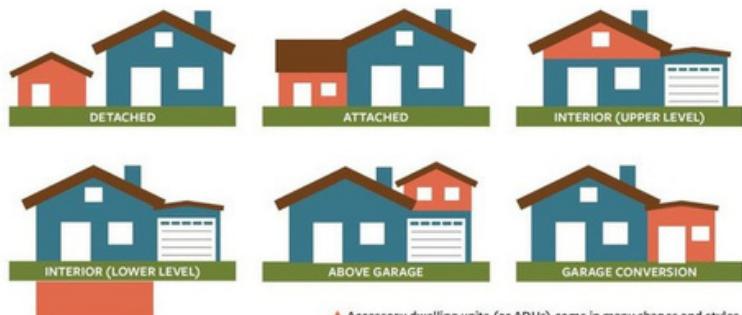
## What Are ADUs?



Accessory Dwelling Units (ADUs) are small homes that share the same property as a larger single-family dwelling, (often called the “primary dwelling”).

Florida’s laws define an ADU as “an ancillary or secondary living unit that has a separate kitchen, bathroom, and sleeping area existing either within the same structure, or the same lot, as the primary dwelling unit”<sup>1</sup>

They can take many forms – detached cottages, additions to the primary dwelling, remodeling of the upstairs or basement of a primary dwelling, an addition to a garage, or the conversion of a garage.



▲ Accessory dwelling units (or ADUs) come in many shapes and styles.

*Picture Source: The ABCs of ADU, AARP Livable Communities*

<sup>1</sup>Source: Florida Statutes (Section 163.31771(2), ADU Guidebook, Florida Housing Finance Corporation

# Why are ADUs Important?



## Too many Floridians can't afford a home.

According to a 2022 report by the Shimberg Center at the University of Florida:

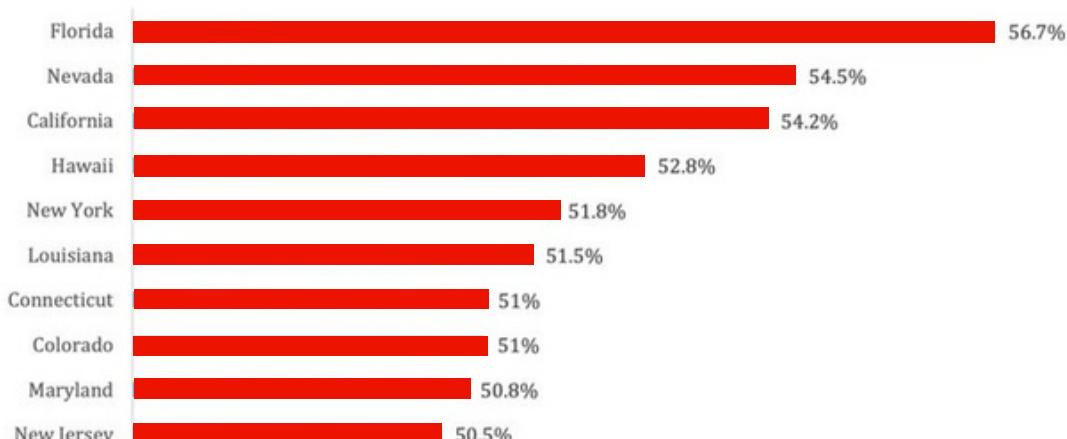
*“Since [2019], the shift to higher-priced rentals has dramatically accelerated...[P]rivate apartment listing services report sharp increases in Florida rents in the last year. Apartment List estimated a median rent of \$1,779 per month in Florida for March 2022. This amounts to an increase of \$400, or 29 percent, over the previous year, compared to historic increases of 2-4 percent annually.”<sup>2</sup>*

Apartment List reported rent increases of 30-47 percent in a number of Florida metropolitan areas, including the Naples, Sarasota-Bradenton, Fort Myers, Port St. Lucie, Miami-Fort Lauderdale, and Fort Walton Beach areas.

**\$1,779/month translates into \$21,348 per year, which leaves many households in the workforce or older adults living on a fixed income, cost-burdened.** For example, a single elementary school teacher in Jacksonville earning \$46,000 that would pay more than one half of his or her income after tax income (\$39,000) on rent. In addition, older Floridians relying on an average Social Security payments of \$1,907 would only have \$128 remaining for other expenses, after paying rent.

**One third of Floridians are renters and increasingly more of them are struggling to afford their rent.** As of 2021, Florida had the highest percentage of residents paying more than 30% of their gross (before tax) income on rent, the highest percentage of any state.

### Percentage of renters paying more than 30% of their gross income one rent.



Source: Joint Center for Housing Studies of Harvard University.

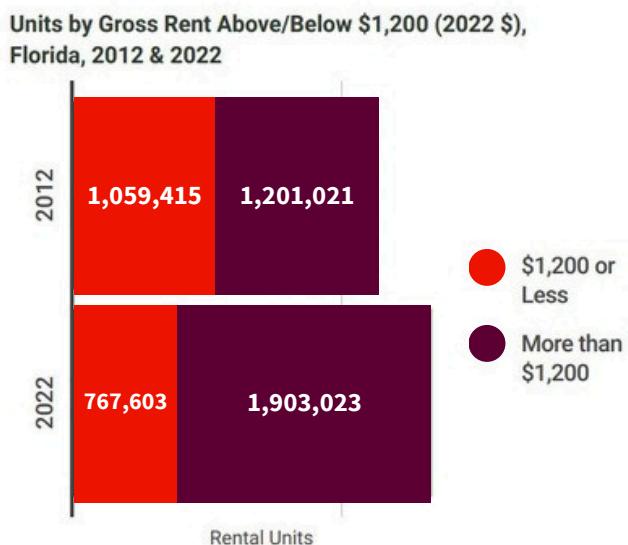
<sup>2</sup> Source: Shimberg Center for Housing Studies 2022 Rental Market Study June 2022 Prepared for Florida Housing Finance Corporation

**There are now more than 860,000 renters in Florida spending more than 40% of their income on rent.** 60% of these households live in Florida's seven large counties (Broward, Duval, Hillsborough, Miami-Dade, Orange, Palm Beach and Pinellas).<sup>3</sup>

Private developers are building new apartment buildings but despite these new units the supply of less expensive apartments has been shrinking.<sup>4</sup> The focus of new construction has been on high-end apartments which are more profitable.

**Florida added hundreds of thousands of rental units between 2012 and 2022 but lost units renting for \$1,200 or less (2022 \$).**

- Florida added over 700,000 units with rents above \$1,200 from 2012 to 2022.
- The state lost nearly 292,000 units renting for \$1,200 or less.
- In 2012, 47% units rented for \$1,200 or less. In 2022, only 29% did.



Source: Shimberg Center analysis of U.S. Census Bureau, 2012 and 2022 American Community Survey. 2012 rents adjusted for inflation using Consumer Price Index.

Just like rents, home prices have become unaffordable to many Floridians. The median sale price for a home in Florida in June 2024 was \$581,000, according to Redfin. A family would need to earn at least \$136,000 to afford a \$581,000 home, assuming they were able to pay 30% of their pre-tax income on home payments. But the median household income in Florida in 2022 was \$69,303 according to the American Community Survey; less than that of the household income needed by a Florida household to afford the typical home price.

ADUs can help both renters and homeowners find a place to live they can afford and remain in when they retire.

<sup>3</sup> Source: Shimberg Center for Housing Studies Florida Rental Market Study Winter 2024 Update This brief updates key findings from the Shimberg Center's 2022 Rental Market Study based on the latest available data. For more information, see the full report.

<sup>4</sup> Shimberg Center 2024, see footnote 3.

# The Many Benefits of ADUs



1

**Smaller homes, like ADUs, are a better fit that meet the needs of smaller household sizes for many Floridians today.**

In Florida, 29% of households consist of just one person, and 38% are just two-people; two-thirds of Florida households are just one or two persons but the average size of a single family home in Florida is 1,960 square feet,<sup>5</sup> and only 11% of all types of housing are studios or one-bedroom units.<sup>6</sup>

## **Big houses are being built, small houses are needed.**

Do we really need more than three times as much living space per person as we did in 1950? Can we afford to buy or rent, heat, cool, and care for such large homes?

YEAR	1950	2020
Median square footage of new single-family homes	983	2261
Number of people per household	3.8	2.5
Square feet of living space per person	292	904

## **Household size versus home size in the United States 1950 -2020**

**FACT:** ADUs house more people per square foot of living area than single-family homes do.

<sup>5</sup> Source: American Home Shield, *The 2022 American Home Size Index*. The average size was calculated based on “a review of American Home Shield reviewed 506,374 listings of houses and condos for sale from Zillow. After processing, our data set was left with 474,157 houses.”

<sup>6</sup> Source: US Census Bureau Profile for Florida accessed July 2024.

2

## **ADUs provide rental housing that would otherwise be unavailable in many neighborhoods and towns.**

Although market-rate rents for ADUs tend to be slightly more expensive than similarly sized non-ADU rentals, they are often the only affordable rental choice in single-family neighborhoods, where multifamily housing is prohibited. Moreover, in neighborhoods where multifamily homes may be built, many such buildings are located along busy streets with no yards or greenspace and limited privacy. Many renters, like homeowners, would prefer to live somewhere quieter, more private and with some greenery around them.

3

## **ADUs are owned and managed by homeowners who often have interests other than maximum profit.**

ADUs are typically owned and managed by homeowners who live on the premises. Such proprietors are less likely to raise the rent once a valued tenant has moved in. Many ADUs are created for family members or caregivers to reside in for free or at a steeply discounted rate.

4

## **ADUs are flexible, meeting many different needs for people with different incomes and during different phases of life.**

Over time, a single ADU might be used in many ways as an owner's needs and life circumstances change. Following are just a few reasons why ADUs are created and by whom:

**EMPTY NESTERS AND RETIREES** can build an ADU and move into it, then rent out the main house for supplemental income or make it available to their adult children.

**FAMILIES WITH YOUNG CHILDREN** can use an ADU as housing for a nanny or au pair or even a grandparent or two, who can then help raise their grandkids and be assisted themselves as they age.

**INDIVIDUALS IN NEED OF CARE** can reside in an ADU to be near family members, or they can use the ADU to house a live-in aide. ADUs can be an affordable and more comforting alternative to an assisted-living facility or nursing home.

**HOME BUYERS** can use the rental income from an ADU to help pay their mortgage or finance home improvements, especially in expensive housing markets.

**COMMUTERS** can save money by having more choices of housing they can afford closer to their jobs.

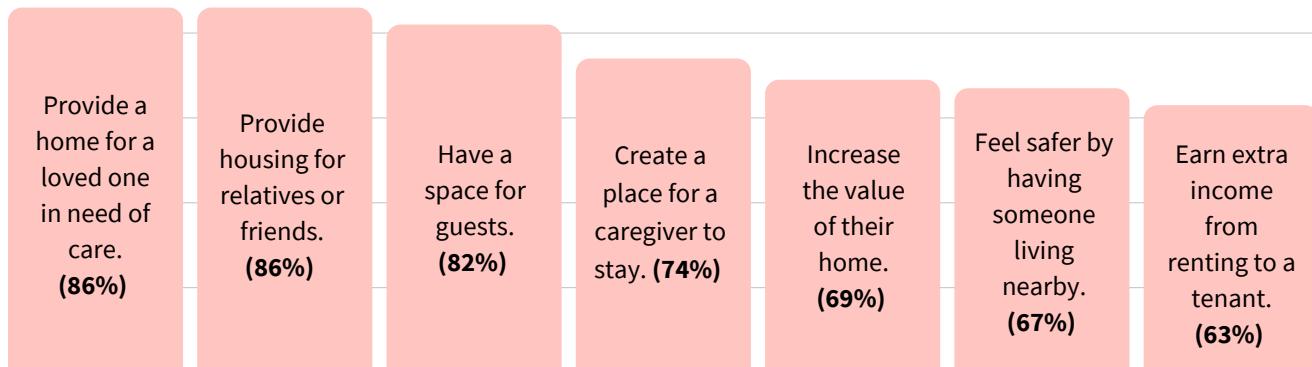
**EMPLOYERS** can find more employees who can afford to live in the community where they work.

## 5

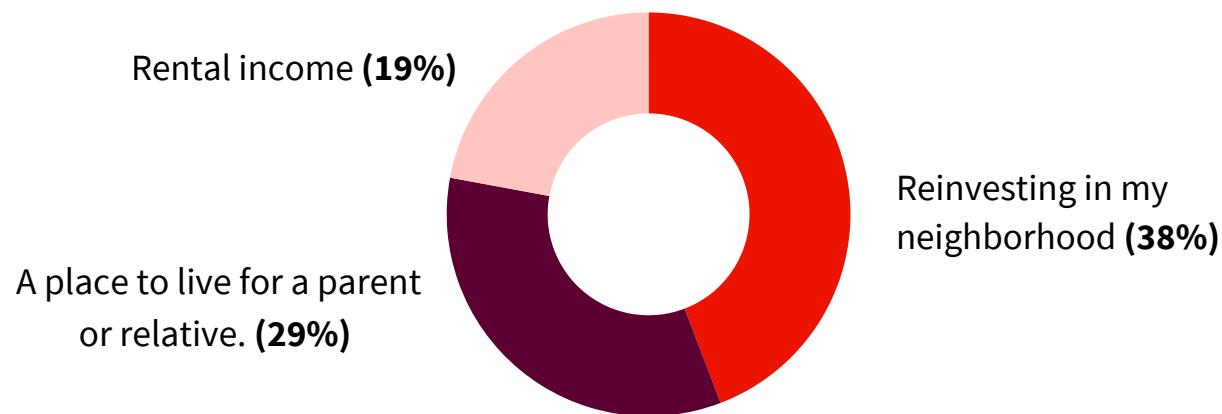
### The benefits homeowners consider when deciding whether to build an ADU on their property.

There are many reasons homeowners choose to build an ADU on their property or buy a home with an ADU already on the property:

In the 2021 AARP Home and Community Preferences Survey, respondents who said they would consider creating an ADU said they'd do so in order to:



The City of Tampa conducted an online survey on the topic of Accessory Dwelling Units in the Spring of 2022 and found the top three benefits of ADUs identified by the survey respondents were:



## 6

### Businesses, local governments, taxpayers and the environment benefit from ADUs.

The construction of ADUs is a business opportunity for Florida's home builders, architects and realtors.

ADUs allow cities and towns to grow without requiring building new water and sewer lines, roads, parks and schools, a saving for taxpayers. This means the tax base can grow faster than the tax burden. Adding housing in established communities avoids the need to develop farmland, wetlands and natural resources and reduces air pollution caused by driving to get to work, school or shopping from ever more distant suburbs.

**Legislation to remove barriers to ADUs will allow ADUs to become part of the solution to Florida's housing crisis.**



**If regulatory burdens are removed, Floridians would choose to build enough ADUs to help meet our housing needs.**

AARP's 2021 housing preference survey showed that people wanted to remain in their home and neighborhood as they aged but were uncertain whether they would be able to do so.

Given those findings it was not surprising that 26% of the 1000 survey respondents would consider building an ADU on their property if they had the space, and 4% already had one. The city of Tampa conducted an online survey of public opinion about ADUs during the Spring of 2022; 82% of the respondents said they were "interested in learning how to build an ADU on your property."

In places where state laws or local regulations have been adjusted to welcome ADUs, they can become a significant source of new housing. In 2018, Orlando amended its Land Development Code to reduce parking standards and allow more site plan flexibility, making ADUs and other "missing middle housing," feasible. In the 11 years prior to its amendment to its ADU regulations, 321 ADUs were built in Orlando. In the five years following those amendments, 362 ADUs were built, which means the rate of ADU construction almost tripled.

In 2022, Saint Petersburg revised its ADU regulations to allow ADUs on about 70% of the City's single family residential lots. Those changes also waived onsite parking requirements for ADUs within an eighth of a mile of a high-frequency transit route, and adjacent to an alley and the ADU is 600 square feet or less in size, and existing parking is accessed from the alley. ADUs are part of the City's goals to retain and increase 7,800 units of affordable and workforce housing in the city between 2020 and 2030; about 5% of that total (400 units) are to be ADUs.

As of the first quarter of 2024, 131 ADUs had been built and 32 more are in development, putting the city one-third of the way to its goal.

## **Most local governments in Florida either do not allow ADUs or impose requirements that make it difficult or impractical to build an ADU.**

According to the Florida Housing Coalition's *ADU Guidebook*, of the 67 Florida Counties, 16 did not address the topics of ADU and “*the remainder of counties that did address some type of ADU, most of them had onerous use restrictions*” ... *at least 25 of them explicitly bar their use for long-term rental purposes and all but a few counties require the owner to occupy the principal dwelling if the ADU is used.*

**“**....*Further, at least 12 counties explicitly do not allow ADUs to be built in single-family zoning districts. .... These types of barriers have the effect of restricting the ADU as a tool for affordable housing development.”*

The ADU Guidebook concludes: “*Although Florida cities allow ADUs more broadly, issues exist regarding minimum lot size, ADU size, parking, owner-occupancy, and other standards. ADU regulations should be as flexible and open as possible to give landowners the freedom to utilize their property as a site for affordable housing development. If restrictions are too burdensome, landowners will be deterred from building ADUs to the community’s detriment.*<sup>7</sup>

**”**

**State legislation is needed to reduce unnecessary regulations and red tape to help homeowners who want to build ADUs, while respecting neighbors' concerns, and allowing for flexibility to reflect local conditions.**

**That legislation can include tax relief and incentives to spur construction.**

The draft legislation has these key features that experience elsewhere has shown make it possible for homeowners who want to build an ADU, to build one.

### **1 Not requiring the property owner to live on the property with the ADU.**

Requiring the property owner to live on the property with the ADU is unnecessary and unfair. Many Florida homeowners rent out their homes – they are not required to live in the home. The owners of apartment buildings are not required to live in the apartment buildings. It isn't fair to single out homeowners who want to build an ADU and make them live on the property. In addition, occupancy requirements can be an obstacle to financing the construction of ADUs because a bank cannot occupy or reside as an “owner-occupant” in the event of a foreclosure.

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<sup>7</sup> Source: Florida Housing Finance Corporation, Sponsor & Florida Housing Coalition, *Producer Accessory Dwelling Units Guidebook* page 17.

**2**

## **Allowing ADUs to be rented out.**

ADUs are an important way of increasing affordable rental options across wider parts of a city or region. Homeowners can rent out all or parts of their homes now, so it doesn't make sense to prohibit homeowners from renting out their ADUs. The assumptions that all renters are sources of problems and friction is an unfair and inaccurate characterization of the one-third of Florida households that are renters.

**3**

## **The legislation exempts ADUs from conditional use permits and public hearings, treating them like all other homes.**

Someone who wants to build a new home in an area zoned for homes is not required to go through a conditional use permit procedure, which includes a review process, notice to the neighbors and sometimes a public hearing. The prospect of having your neighbors testify against your ADU at a public hearing is enough to discourage many people from even applying. Homeowners who want to remodel their house to add a new bedroom and bathroom are not required to get a conditional use permit.

ADUs should be treated the same way as a home or a major remodeling, which are approved without conditional use permits and public hearings.

**4**

## **The regulation and review of the appearance of ADUs should be treated the same way as other homes; objective design standards can assure that ADUs are gentle density .**

ADUs should not be subjected to special or additional design and design review requirements that are more stringent than the design standards applied to new homes and remodeling of homes. This is important because vague, discretionary standards about appearance mean having government employees or neighbors arguing over what they personally find attractive. Some people prefer traditional designs, others like modern designs, and still others prefer community-specific designs and materials. These subjective discussions result in delays, uncertainty, higher costs, and friction with neighbors, all of which can discourage ADU construction.

Because many ADUs are custom designed and created, they're able to fit discreetly into all sorts of locations, including suburban subdivisions, walkable towns, urban neighborhoods — and, of course, large lots and rural regions.

Clear and objective standards about the scale, location and form of ADUs can help ensure consistency with the appearance of nearby homes. Clear and objective standards also increase the fairness of land use proceedings for the applicant and the neighbors because everyone can understand the criteria. They decrease the burden on local government staff and the applicants, which otherwise would be required to apply vague standards like “preserves neighborhood quality of life.”



*Picture Source: City of Orlando, <https://www.orlando.gov/Building-Development/Permits-Inspections/Other/Accessory-Dwelling-Units>*

## 5

## **Not requiring additional on-site parking to build an ADU.**

When a senior living in a four-bedroom home sells her house to a young couple with three teenage children, local regulations do not require the home buyers to build additional onsite parking. When a homeowner remodels a home to add two bedrooms for their teenage children, they are not required to build another parking space.

ADUs should be treated the same way.

Requiring an additional parking space on a property when an ADU is built can often be spatially or financially impossible. There are options possible in the legislation to require additional parking in some circumstances (for example, for large lots, bigger ADUs and when construction cost is low) and waive it in other circumstances (for example for small lots in areas with frequent transit service.) Some of those options are presented in the draft legislation.

# Florida Property Tax Considerations Related to ADUs



## Assessment of ADUs

Based on a review of the Florida constitution and statutes on property taxes as well as the Real Property Appraisal Guidelines promulgated for the county assessors by the Florida Department of Revenue, when an ADU is created it will be subject to the same assessment and valuation processes and procedures as any other real property. This includes having ADUs that are constructed as rental property being classified as non-homestead property. No adjustments to state law are needed.

## Property Tax Relief Programs

Florida has five important property tax relief programs for residents who occupy their home as their principal residence.

### 1 Homestead Exemption

Taxpayers who own their home and use it as their permanent residence are eligible for the program which exempts the first \$25k of property value from all property taxes and an additional exemption for \$25k exemption for non-school taxes.

### 2 Save Our Homes (SOH) Assessment Cap

Recipients of the homestead exemption receive an additional benefit in the form of a cap on assessment increases. SOH limits the increase in assessed value to 3% or the change in the CPI, whichever is less. The benefit of the SOH is also portable, so property owners can transfer the benefit of the exemption if they move to another property in Florida.

### 3 Exemption for Older Adults

People age 65 or older with an income below the limit (\$35k in 2023) can also qualify for an additional exemption. The amount of the exemption is set by the local governing body up to an amount of \$50k in assessed value.

**4**

## **Tax Deferral**

This exemption is also available to homestead exemption recipients. Anyone can defer payment of their property taxes that exceed 5% of their household income. Older adults can defer taxes that exceed 3% of their household income or, if the senior's household income is less than \$20k, all of the taxes can be deferred. Deferred taxes accrue interest (at a competitive rate) and constitute a lien on the property and must be repaid when the property transfers.

**5**

## **Reduction in Assessment for Living Area of Parents or Grandparents (Granny Flat)**

Another program offered to owners of homestead properties provides for an exemption for the construction or reconstruction of a property used to provide living quarters for parents or grandparents. The exemption, which is provided at local option, is the lesser of the increased assessed value resulting from the addition to the property or 20% of the property's total assessed value.

## **Other Issues Related to Homestead-Type Exemptions**

**1**

### **Homestead Exemptions and Rental ADUs**

An ADU that is used for rental purposes should not impact the homestead exemption of the existing property. When an assessor inspects an ADU and determines that the unit will be used as a rental, the ADU will be separately assessed as a non-homestead. As a result, the homestead status of the existing property should remain.

**2**

### **Proposed Constitutional Amendment to Increase the Homestead Exemption**

House Bill 7017 provides for a state constitutional amendment that will increase the Homestead Exemption by adjusting the \$25k additional exemption for inflation. The inflation adjustment will begin for the 2025 tax roll provided it is approved by voters in the 2024 general election. Since the amendment revises the existing constitutional language that provides for the homestead exemption, it will be available to ADU owners where the use is consistent with the homestead requirements.

The draft legislation has language providing that the homestead status for a parcel with an ADU remains intact if the homeowner does not rent the ADU. This ensures that the homeowner still can benefit from the SOH assessment cap, tax deferral and the Granny Flat program. The below example illustrates how this would work with the SOH assessment cap:

ADU is Used by Owner	ADU is Rented by Owner
<b>Home Market Value</b> \$300K	<b>Home Market Value</b> \$300K
<b>ADU+</b> \$100K	<b>Homestead-SOH-Cap</b> (\$50,000) (\$50,000)
<b>Homestead-SOH-Cap</b> (\$50,000) (\$50,000)	<b>Assessed Value - Home</b> \$200K
<b>Assessed Value</b> \$300K	<b>ADU+</b> \$100K
	<b>Assessed Value - ADU</b> \$100K
	<b>Total Value - Both</b> \$300K

In the above example an owner of an existing \$300k home is receiving a homestead exemption (\$50k) and has benefitted from the SOH assessment cap over several years, which further reduces the assessment by \$50k. The owner then builds a \$100k ADU on the property.

If the ADU is **used by the owner** (i.e., occupied by a family member, caregiver, etc.) **and not rented out**, the value of the ADU (\$100k) will be added to the assessment of home (\$300k) in a single tax bill. The homestead exemption (\$50k) is deducted from the combined value, and the accrued benefits from the SOH (\$50k) from the existing home are deducted. Both the existing home and ADU will benefit from the SOH limit in future years.

If the ADU is **rented by the owner**, then there will be two tax bills for the owner. The existing home will be assessed at \$200k (the market value reduced by homestead and SOH exemptions). The ADU be assessed to the owner on a separate tax bill for its market value of \$100k. The combined assessment for the two bills is \$300k.

In the first year, the total assessment is the same under both scenarios. However, going forward, only the main home will receive the benefit of the SOH cap in the rental scenario. The assessment of the ADU will be higher if rented to the extent its market value grows by more than the 3% annual assessment cap.

### 3

## ADUs Used as Rental Property

ADUs that are used as rental units are more problematic when it comes to providing exemption benefits. In Florida rental properties automatically are classified as *non-homestead* properties, which immediately disqualifies them from the benefits of the homestead programs listed above. The only benefit non-homestead properties receive is the 10% cap on annual assessment increases.

Currently there is no tax incentive or exemption program in Florida that is focused on rental housing. As a result, providing one for ADU rental units would raise equity concerns (i.e., ADU owners receiving an exemption not available to other owners of rental property).

## Conclusion



In 2025 Florida's state legislators have an opportunity to address the housing affordability crisis in a way that benefits renters, homeowners, seniors, young families, taxpayers and local homebuilders. It can be accomplished without requiring new taxes, simply by removing unnecessary regulations and red tape, by adopting the **Florida Model State ADU Act (Model Act)**.

In December 2023, OPPAGA (Office of Program Policy Analysis and Government Accountability), a research arm of the Florida Legislature, issued a report on 1,046 housing programs and its survey of housing agencies in all 50 states and identified three innovative affordable housing programs that may have high potential for implementation in Florida, including the Plus One Accessory Dwelling Units Program in New York.

# Appendix: Florida Model State ADU Act

## Table of Contents

<b>Florida Model State ADU Act .....</b>	<b>17</b>
<i>Purpose .....</i>	<i>17</i>
<i>Definitions .....</i>	<i>19</i>
<i>Model Act Applicability Options .....</i>	<i>19</i>
<i>Exemptions .....</i>	<i>19</i>
<i>Number of Units Allowed Options .....</i>	<i>20</i>
<i>Bonus ADUs for Affordability, Sustainability and Accessibility .....</i>	<i>20</i>
<i>Minimum Lot Size .....</i>	<i>20</i>
<i>Size of ADUs Options .....</i>	<i>21</i>
<i>Setbacks .....</i>	<i>21</i>
<i>Options for On-Site Parking Requirements .....</i>	<i>22</i>
<i>Options for Occupancy Requirements .....</i>	<i>23</i>
<i>Utility Connection Fees .....</i>	<i>24</i>
<i>ADUs Satisfy Affordable Housing Component Element in Comprehensive Plans .....</i>	<i>25</i>
<i>Local Government Review of Applications for ADUs .....</i>	<i>25</i>
<i>Property Tax Exemptions and Incentive .....</i>	<i>25</i>
<i>Default Provisions Governing Applications for Accessory Dwelling Units in the Absence of a Certified Local Ordinance .....</i>	<i>26</i>
<i>Limited Bases for Denial .....</i>	<i>26</i>
<i>Maximum Standards in Absence of Local Ordinance .....</i>	<i>26</i>
<i>No Changes to Local Ordinances Necessary .....</i>	<i>26</i>
<i>Default Standards .....</i>	<i>27</i>
<i>State Certification of ADU Ordinances .....</i>	<i>27</i>
<i>Local Government Annual Reports to State .....</i>	<i>28</i>
<i>State Annual Report .....</i>	<i>28</i>
<b>Appendix: Florida Statutes Annotated (Current) ADU Statute .....</b>	<b>29</b>

# Florida Model State ADU Act

## Purpose

(1) The Legislature finds that the median price of homes in this state has increased steadily over the last decade and at a greater rate of increase than the median income in many urban areas. The Legislature finds that the cost of rental housing has also increased steadily, and the cost often exceeds an amount that is affordable to extremely-low-income, very-low-income, low-income, or moderate-income persons and has resulted in a critical shortage of affordable rentals in many urban areas in the state. This shortage of affordable rentals constitutes a threat to the health, safety, and welfare of the residents of the state.

The Legislature further finds there are many benefits associated with the creation of legal accessory dwelling units on lots in single-family zones and other zoning districts. These benefits include:

- (a)** Increasing the supply of a more affordable and diverse type of housing not requiring government subsidies;
- (b)** Helping older homeowners, single parents, young home buyers, and renters seeking a wider range of homes, prices, rents and locations;
- (c)** Providing opportunities to reduce segregation of people by race, ethnicity, and income that resulted from decades of exclusionary zoning;
- (d)** Providing homeowners with extra income to help meet rising ownership costs;
- (e)** Creating a convenient living arrangement that allows family members or other persons to provide care and support for someone in a semi-independent living arrangement while remaining in his or her community;
- (f)** Increased security, home care and companionship for older or other homeowners;
- (g)** Reducing burdens on taxpayers while enhancing the local property tax base by providing a cost-effective means of accommodating development without the cost of building, operating and maintaining new infrastructure;
- (h)** Promoting more compact urban and suburban growth, which reduces the loss of farm and forest lands, as well as natural areas and resources, while limiting increases in pollution that contributes to climate instability; and
- (i)** Enhancing job opportunities for individuals by providing housing nearer to employment centers and public transportation. Therefore, the Legislature finds that it serves an important public purpose to allow the permitting of accessory dwelling units in single-family residential areas in order to increase the availability of affordable housing.

## Definitions

(2) As used in this section, the term:

**(a)** “Accessory dwelling unit” means an ancillary or secondary living unit, that has a separate kitchen, bathroom, and sleeping area, existing either within the same structure, or on the same lot, as the primary dwelling unit.

**(b)** “Affordable rental” means that monthly rent and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for extremely-low-income, very-low-income, low-income, or moderate-income persons.

***Option: Include and allow for Junior ADUs or not.***

**(c)** “Junior accessory dwelling unit” means a separate living unit, with a separate entrance. It may share sanitation facilities or such other facilities with another dwelling unit other than an ADU.

**(d)** “Local government” means a county or municipality.

**(e)** “Low-income persons” has the same meaning as in s. 420.0004(11).

**(f)** “Moderate-income persons” has the same meaning as in s. 420.0004(12).

**(g)** “Very-low-income persons” has the same meaning as in s. 420.0004(17).

**(h)** “Extremely-low-income persons” has the same meaning as in s. 420.0004(9).

**(i)** “Reasonable Local Regulations” means regulations that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct an accessory dwelling unit [or junior accessory dwelling unit] consistently with the provisions of this Model Act. “Reasonable local regulations” do not include owner occupancy requirements applied to either the primary or accessory dwelling unit; requirements to construct off-street parking beyond what is required by this Model Act; restrictions on the terms of rentals that do not apply generally to other housing in the same district or zone and discretionary conditional use permit procedures or standards that do not apply generally to other housing in the same district or zone.

**(j)** “Cost-burdened” means homeowners or renters are paying more than 30% of their gross income on rent or on their mortgage, and utilities.

## Model Act Applicability Options

### ***Option 1: Every parcel on which single family dwelling is authorized, as in Model Act***

(3) Local governments shall adopt ordinances, in conformity with this Model Act, authorizing accessory dwelling units and their use as rental housing in single-family zones or districts and on appropriate lots in other zones that allow housing, except as specifically exempted in subsection 4.

### ***Option 2: On all parcels where zoning allows single-family (same as Option 1) but limited to cities and metro areas above a certain population threshold.***

(3) Cities and counties with populations in excess of [XXX,000] as of the most recent US decennial Census, and all cities and counties or parts of counties in the Miami, Tampa-St. Petersburg, Tallahassee and Orlando metropolitan statistical areas, shall adopt ordinances, in conformity with this Model Act, authorizing accessory dwelling units and their use as rental housing in single-family zones or districts and on appropriate lots in other zones that allow housing, except as specifically exempted in subsection 4.

## Exemptions

(4) The [Housing Finance Corporation] may grant an exemption from these provisions for those properties where new single-family homes have been prohibited because of limitations on safe drinking water or because of risks to public health due to limits on sewage disposal or because of the risk of fires, floods or landslides.

(5) Local governments may adopt only reasonable regulations to govern the review and operation of accessory dwelling units. No local government may develop, amend or interpret other codes or regulations, such as building codes or special taxing district provisions, in ways that interfere with the intent of this Model Act.

(6) An accessory dwelling unit authorized under this Model Act shall not be considered to exceed the allowable density for the lot upon which it is located and shall be deemed a residential use consistent with the existing general plan and zoning designations for the lot.

(7) Accessory dwelling units shall not be restricted by any local government ordinance, policy or program intended to limit residential growth in residential zones or residential planning districts or mixed commercial and residential zones.

## **Number of Units Allowed Options**

**Option 1:** *Authorize two accessory dwelling units regardless of form they take (detached, internal, attached, over garage, etc.)*

(8) Any lot with, or zoned for, a principal single-family-dwelling unit may have up to two accessory dwelling units.

**Option 2:** *Authorize one detached and one attached or junior accessory dwelling units.*

(8) Any lot with, or zoned for, a principle single-family dwelling unit may have up to one attached or internal accessory dwelling unit and one junior accessory dwelling unit.

## **Bonus ADUs for Affordability, Sustainability and Accessibility**

(9) The Zoning Administrator may authorize an additional accessory dwelling if:

- (a)** The additional accessory dwelling unit is a rental unit affordable to and reserved solely for moderate, low, very-low and extremely low-income persons as defined in this Model Act, and is subject to an agreement specifying the affordable housing requirements under this subsection to ensure that the housing shall serve only moderate, low, very-low or households for a minimum of 50 years. The housing owner shall submit a report to the Planning Director annually that documents how the affordable housing meets the terms of the recorded agreement. Prior to issuance, and as a condition of issuance, of the first building permit for a project, the applicant shall execute and record a declaration in a form acceptable to the Planning Director that shall commit the applicant to satisfying the conditions for establishing a second accessory dwelling unit as approved by the Planning Director; or
- (b)** The applicant designs at least one of the dwellings on the lot to meet universal design standards, including a no-step entry, [36"] wide doors and hallways, a bathroom that incorporates universal design, and at least [300 square feet] of living space on the main level.

## **Minimum Lot Size**

(10) A local government may not require a minimum lot size for accessory dwelling units that is larger than the minimum lot size for single-family houses [or town houses] in the same zone or district.

## Size of ADU Options

**Option 1: *Square footage of accessory dwelling units must be less than primary dwelling.***

(11) Accessory dwelling units may be any size, provided that the proposed accessory dwelling units total square footage is less than that of the primary dwelling's and other requirements are satisfied.

**Option 2: *Accessory dwelling units square footage size limit***

(11) Unless otherwise authorized by the local government, an accessory dwelling unit may not exceed 800/1,000/1,200 square feet.

**Option 3: *ADU maximum square footage increases with the lot size, up to a maximum size.***

(11) Unless otherwise authorized by the local government, the maximum [square footage/additional lot coverage] of accessory dwelling units is [600] square feet for [lots/parcels/contiguous owners [800] ships] of less than 6,000 square feet, [800] square feet for [lots/parcels/contiguous ownerships] of 6,000 to less than 8,000 square feet, and [1,200] square feet for [lots/parcels/contiguous ownerships] of 8,000 square feet or larger.

## Setbacks

(12)(a) No setback shall be required for an existing garage living area or accessory structure or for a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or for a portion of an accessory dwelling unit.

(b) A setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or for a new structure constructed in the same location and to the same dimensions as an existing structure.

## Options for On-Site Parking Requirements

Please note that the original text, through the definition of “*reasonable local requirements*” prohibits requiring additional on-site parking. If any of the following options are included, then the definition sections will need to be revised accordingly.

The text does not state it but if the accessory dwelling unit removes one of the existing off-street parking spaces, the local government may require that the space be replaced on site if required by the underlying zoning.

***Option 1: Require one additional off-street/on-site parking space but provide a generous list of waivers.***

(13)(a) Except as provided in subsection (b), one new off-street on-site parking space may be required per new accessory dwelling unit. The additional parking may be located within required setbacks.

(b) Additional off-street parking is not required for an accessory dwelling unit in any of the following instances:

- (i) When the applicant demonstrates adequate parking if cars are stacked in the existing on-site parking space.
- (ii) When an applicant provides evidence of adequate on-street parking.
- (iii) When an applicant provides evidence that an alternate off-street parking space is provided for the resident.
- (iv) The accessory dwelling unit is located within one-half mile walking distance of public transit.
- (v) The accessory dwelling unit is located within an architecturally and historically significant historic district.
- (vi) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
- (vii) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (viii) When there is a car share vehicle located within one block of the accessory dwelling unit.
- (ix) If parking spaces are not required for all or any multifamily housing permitted in the same zone or district.
- (x) When an applicant demonstrates that because of the site configuration, slope, cost or other factors, ADU construction would be precluded by the provision of required onsite parking.

***Require onsite parking only for accessory dwelling units with***

***Option 2: more than one bedroom subject to a waiver based on  
infeasibility if the parking space is required.***

(13) One new off-street on-site parking space may be required only for new accessory dwelling units with two or more bedrooms or if the total number of bedrooms in the primary residence and accessory dwelling unit is five or more, unless the applicant can show that because of the site configuration, slope, cost or other factors, ADU construction would be precluded by the provision of required onsite parking.

***Option 3: Require onsite parking only on larger parcels.***

(13) One new off-street on-site parking space may be required only for new accessory dwelling units on lots/parcels containing the primary residence of [7,500] square feet or larger.

***Option 4: Map or areas where on-site parking may be required based on  
a high level of use of on-street parking.***

(13) Additional on-site parking shall not be required for accessory dwelling units except for those streets for which the local government has conducted a parking study showing that during weekday evenings more than 20% of the residents will be required to park more than 100 feet from their residence.

## **Options for Occupancy Requirements**

Please note that the original text, through the definition of “*reasonable local requirements*” prohibits requiring owner occupancy requirements. If any of the following options are included, then the definition sections will need to be revised accordingly.

***Option 1: Test Period***

Recommend that the local government allow ADUs to be built without owner occupancy requirements and monitor the results of any ADUs that are built to determine whether they result in problems with the residents that are worse than with the primary dwellings. If not, then there will be no need to impose the requirement.

### ***Option 2: One-Year Initial Owner Occupancy Requirement***

Although it does not seem particularly logical considered in the light of the presumed purpose for the owner occupancy requirement, an alternative is an initial one-year owner occupancy requirement.

### ***Option 3: Monitoring and Performance Bond or Deposit***

Rather than a restriction on a deed, a state or local government could require the homeowner to provide a bond covering the cost for monitoring and enforcing any nuisance standards generally applicable in the residential zoning in which the ADU is located. If the cost of the bond was high or bond provision was not possible then this requirement could be as inhibiting as a deed restriction.

### ***Option 4: Occupancy requirements permitted only near public universities.***

Local governments may require on-site occupancy by the property owner or the owner's family member, only in areas within one mile of the borders of public university.

### ***Option 5: Occupancy required but may be fulfilled by close relatives and by living on adjoining property.***

As a condition of approval, the homeowner, or the homeowner's family member shall reside on the same property as the accessory dwelling unit, either in the primary dwelling or the accessory dwelling unit, or on an adjoining lot.

## **Utility Connection Fees**

(14) (a) An accessory dwelling unit shall not be considered by a local government or agency, special district or water corporation to be a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service.

(b) A local government or agency, special district or water corporation, or homeowner association, shall not impose any impact fee upon the development of an accessory dwelling unit with less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

**(c)** A local government or agency, special district or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. The connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square footage or its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

## **ADUs Satisfy Affordable Housing Component Element in Comprehensive Plans**

(15) Each accessory dwelling unit allowed by an ordinance adopted under this section shall apply toward satisfying the affordable housing component of the housing element in the local government's comprehensive plan under s. 163.3177(6)(f).

## **Local Government Review of Applications for ADUs**

(16) A permit application for an accessory dwelling unit shall be approved or denied ministerially without discretionary review or a hearing, notwithstanding any local ordinance regulating the issuance of variances or special use permits, within 60 days after receipt of a completed application.

If the permit application to create an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or a junior accessory dwelling unit until the permitting agency acts on the application to create the new single-family dwelling, but the application to create the accessory dwelling unit shall be considered without discretionary review or hearing.

If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. The ministerial decision on the accessory dwelling unit application shall be the final decision of the local government for purposes of judicial review.

## **Property Tax Exemptions and Incentive**

(17) **(a)** Owners of properties with accessory dwelling units shall be eligible for all exemptions, including but not limited to those provided under s. 3, s. 4 (d) and s. 6 of Art. VII of the Florida State Constitution and Chapter 196 [of the Florida Statutes].

**(b)** For purposes of the exemptions provided by s. 6 and s. 4 (d) of Article VII of the Florida State Constitution the assessment of the accessory dwelling unit shall be considered a part of the permanent residence provided that such unit is not rented by the owner.

## **Default Provisions Governing Applications for Accessory Dwelling Units in the Absence of a Certified Local Ordinance**

(18) If a local government without an adopted state-certified accessory dwelling unit ordinance receives an application for a permit for an accessory dwelling unit on or after [the effective date of the Model Act], it shall accept the application and approve or disapprove the application pursuant to the default provisions of this section of the Model Act unless it adopts a certified ordinance in accordance with this Model Act within 120 days after receiving the application. This provision governs how local governments are to process their applications to create an accessory dwelling unit if they do not have an ordinance that conforms to the Model Act. It also incentivizes local governments to adopt their own ordinance and secure state certification promptly rather than apply the Model Act's default provisions.

## **Limited Bases for Denial**

(19) No local ordinance, policy or regulation shall be the basis for the denial of a building permit or a use permit under the default provisions of the Model Act

## **Maximum Standards in Absence of Local Ordinance**

(20) The default provisions of this section establish the maximum standards that municipalities shall use to evaluate proposed accessory dwelling units on lots that are zoned for residential use and contain an existing single-family dwelling. No additional standards, other than those provided in this section, shall be used or imposed.

## **No Changes to Local Ordinances Necessary**

(21) No changes to zoning ordinances or other ordinances or any changes to the general plan shall be required to implement the default provisions of this Model Act. Any local government may amend its zoning ordinance or general plan to incorporate the policies, procedures or other provisions applicable to the creation of accessory dwelling units if these provisions are consistent with the limitations of the default provisions.

## **Default Standards**

**Note: These default provisions could be adjusted and reconciled with the choice among options from the other provisions or left to be more rigorous to encourage local ordinance adoption.**

(22) **Zones Where ADUs Are Authorized:** The lot proposed to contain the accessory dwelling unit is in a zone in which single-family residences are authorized and is the current site of a primary dwelling or qualifies as the site for a future primary residence.

(23) **Time of Construction:** Accessory dwelling unit may be built concurrently with or before the primary residence.

(24) **Detached accessory dwelling units:** Detached accessory dwelling units (including accessory dwelling units built as part of a garage or another accessory building) may be built before the primary residence. The location, scale, and other aspects of the accessory dwelling unit must not preclude or constrain the construction of a primary dwelling in conformity with regulations governing those dwellings.

(25) **Unit Size:** The living area of an ADU shall be smaller than the living area of the primary residence. There is no minimum size, provided code requirements governing kitchen, sanitation and other relevant provisions are satisfied.

(26) **Other Matters:** Requirements related to height, setback, lot coverage, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located are applicable to any accessory dwelling unit, except when the provisions of this Model Act specify otherwise.

## **State Certification of ADU Ordinances**

(27) **Submission for Certification:**

A local government shall submit the zoning ordinance provisions implementing this Model Act 90 days prior to final approval of such an ordinance or amendment, seeking an opinion from the Attorney General on whether the ordinance conforms to this statute. This submission must include the local government's date of planned final approval. The Attorney General may notify other relevant agencies so that they may also comment on whether the municipality's draft ordinance conforms to the statute. The Attorney General shall notify the local government prior to the planned date of final approval of its opinion as to the conformity of the ordinance to this statute. If, in the opinion of the Attorney General the ordinance and/or amendments reviewed do not conform to this statute, the Attorney General shall notify the local jurisdiction of actions that must be taken to bring the ordinance(s) and/or amendments into conformity.

(28) Local Government Action on Deficiencies:

- (a)** The local government shall bring its ordinance into conformity, as recommended by the Attorney General within 90 days of notification of nonconformance pursuant to the prior section.
- (b)** If the municipality has not brought its ordinance into conformity within the 90-day period, the [state agency] will notify the jurisdiction that it must automatically accept and process applications for ADUs under the default regulations of this Act until conformity is certified by the Attorney General.
- (c)** Prior to any certification by the Attorney General any applications submitted under the default regulations of this Act shall be processed fully and solely under those regulations.
- (d)** Changes to a municipality's ordinance certified by the [state agency] must be submitted and certified in the same manner and procedure as the initial proposed ordinance pursuant to this section.

## **Local Government Annual Reports to State**

(29) Local governments shall report annually to the Housing Finance Corporation the number of:

- (a)** Single-family structures in the jurisdiction;
- (b)** Single-family structures in single-family-residential zones and in multifamily residential zones in which accessory dwelling units are permitted;
- (c)** Illegal accessory dwelling units, attached and unattached, and known or estimated to be in the jurisdiction;
- (d)** Legal accessory dwelling units in the jurisdiction;
- (e)** Applications for new accessory dwelling units accepted for processing;
- (f)** New accessory dwelling units approved and permits issued by type of unit (internal, attached, detached integrated with another accessory structure and detached stand alone), size, number of bedrooms, location and level of accessibility; and
- (g)** Applications disapproved, with reasons categorized by requirements not met.

## **State Annual Report**

(30) The Housing Finance Corporation shall prepare an annual report to the Governor and the Legislature from the annual reports from local governments, including the installation rates of accessory dwelling units and recommendations, if any, for amending the Act or other implementation measures necessary for promoting the development of accessory dwelling units to increase housing supply generally or for particular residents or communities. The annual report shall include any recommendations on accessory dwelling unit policies from the State Advisory Board.

## **Appendix: Florida Statutes Annotated (Current) ADU Statute**

### **163.31771 Accessory dwelling units.—**

(1) The Legislature finds that the median price of homes in this state has increased steadily over the last decade and at a greater rate of increase than the median income in many urban areas. The Legislature finds that the cost of rental housing has also increased steadily and the cost often exceeds an amount that is affordable to extremely-low-income, very-low-income, low-income, or moderate-income persons and has resulted in a critical shortage of affordable rentals in many urban areas in the state. This shortage of affordable rentals constitutes a threat to the health, safety, and welfare of the residents of the state. Therefore, the Legislature finds that it serves an important public purpose to encourage the permitting of accessory dwelling units in single-family residential areas in order to increase the availability of affordable rentals for extremely-low-income, very-low-income, low-income, or moderate-income persons.

(2) As used in this section, the term:

**(a)** “Accessory dwelling unit” means an ancillary or secondary living unit, that has a separate kitchen, bathroom, and sleeping area, existing either within the same structure, or on the same lot, as the primary dwelling unit.

**(b)** “Affordable rental” means that monthly rent and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for extremely-low-income, very-low-income, low-income, or moderate-income persons.

**(c)** “Local government” means a county or municipality.

**(d)** “Low-income persons” has the same meaning as in s. 420.0004(11).

**(e)** “Moderate-income persons” has the same meaning as in s. 420.0004(12).

**(f)** “Very-low-income persons” has the same meaning as in s. 420.0004(17).

**(g)** “Extremely-low-income persons” has the same meaning as in s. 420.0004(9).

(3) A local government may adopt an ordinance to allow accessory dwelling units in any area zoned for single-family residential use.

(4) An application for a building permit to construct an accessory dwelling unit must include an affidavit from the applicant which attests that the unit will be rented at an affordable rate to an extremely-low-income, very-low-income, low-income, or moderate-income person or persons.

(5) Each accessory dwelling unit allowed by an ordinance adopted under this section shall apply toward satisfying the affordable housing component of the housing element in the local government’s comprehensive plan under s. 163.3177(6)(f).



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