ACCESSORY DWELLING UNIT (ADU) ORDINANCE

Planning Commission December 11, 2024

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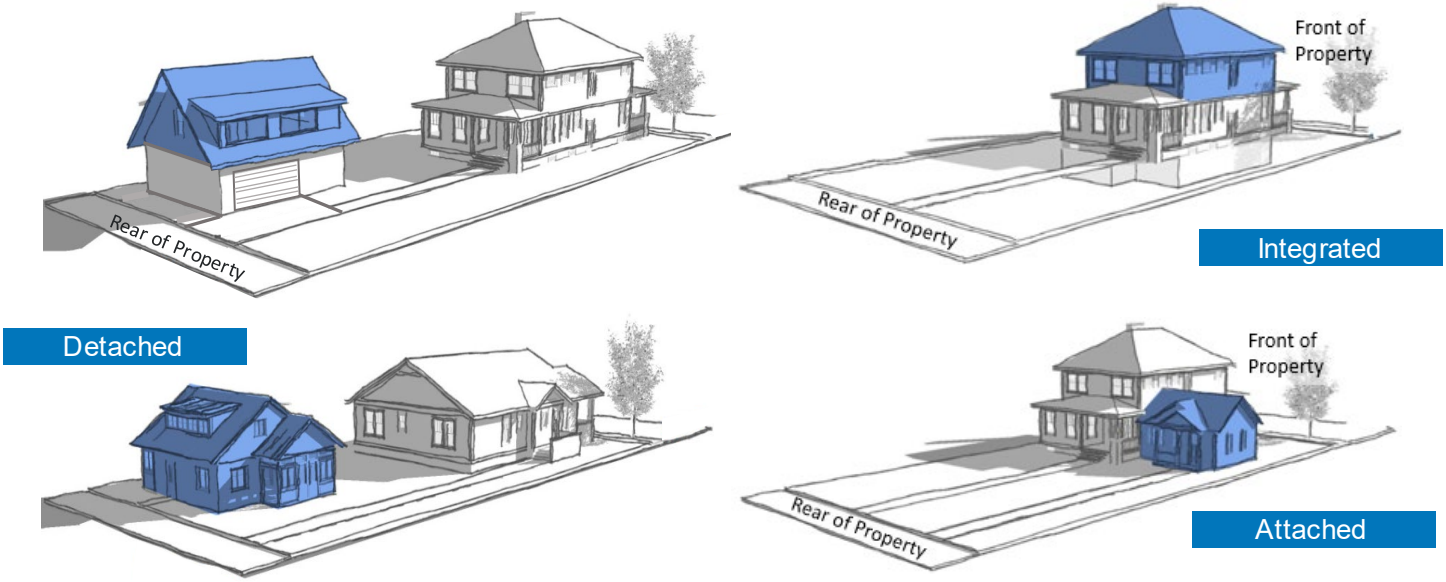

Quick Facts

Guiding Legislation

House Bills

HB-24-1007

HB-24-1152

Senate Bill

SB-24-174

Impact

City-wide

Initiating Entity

City Administration

Applicable Code

UDC provisions affected by the ordinance include: 7.2.101, 7.2.204, 7.2.205, 7.2.206, 7.2.207, 7.2.307, 7.2.605, 7.2.704, 7.3.201, 7.3.202, 7.3.304, 7.4.201, 7.4.203, 7.4.1003, 7.4.1006, 7.4.1011, 7.4.1404, 7.5.515, 7.6.206, and 7.6.301

Project Summary

The City of Colorado Springs' Accessory Dwelling Unit (ADU) Ordinance (See Attachment 1 – Draft Accessory Dwelling Unit Ordinance) is part of the city's effort to ensure smart, equitable, and diversified housing solutions that allow our neighborhoods to grow in a way that is appropriate. Recent state legislation recommends the City allow ADUs in any location where a single-family detached home is permitted, and prohibits the City from enacting or enforcing local laws that would unduly restrict ADUs. As such, the City's ADU Ordinance proposes updates to the Unified Development Code (UDC) based on state-mandated legislation as well as to support the citywide strategic priorities of housing availability and choice for city residents.

File Number	Application Type	Decision Type
CODE-24-0006	UDC Text Amendment	Legislative

Background

History

Over the years, the City's zoning and subdivision codes, including the Unified Development Code, have contained iterations of regulations that govern the development of Accessory Dwelling Units (ADU). The most recent iteration of ADU regulations were adopted by City Council in June 2020 (See Attachment 2 - Ordinance No. 20-39), which was accompanied by regulations for Accessory Family Suites (AFS) (See Attachment 3 - Ordinance No. 20-37). Both secondary residential unit options were envisioned to enhance housing flexibility and opportunity throughout the city, although limited by zone district. The utilization and development of these accessory residential options have been minimal, averaging less than 30 ADU/AFSs annually for the past 4 years since adoption.

Legislative Guidance

During the Seventy-Fourth Session of the Colorado General Assembly, amongst the many legislative priorities, legislation was passed that sought to affect change in residential occupancy limits (See Attachment 4 – House Bill 24-1007), increase the number of accessory dwelling units (See Attachment 5 – House Bill 24-1152), and support affordable housing (See Attachment 6 – Senate Bill 24-174). Within the legislation direction was provided to communities which is best summarized by the following:

- Modifies the definition of "family" used to regulate residential occupancy.
- Requires allowing one (1) accessory dwelling unit as an accessory use to a single-unit detached dwelling where a single-unit detached dwelling is permitted.
- Cannot require construction of a new off-street parking space in connection with an accessory dwelling unit.
- Cannot require owner occupancy on the property.
- May not apply a restrictive design or dimensional standard to an accessory dwelling unit.
- Prevents unit owners' associations or common interest communities from prohibiting or unreasonably restricting the construction of accessory dwelling units.

To better understand the legislative declaration or intent, one doesn't have to go far from the purpose statements of the bills. The following are excerpts from HB-24-1152:

> **"*Accessory Dwelling units offer a way to provide compact, relatively affordable housing in established neighborhoods with minimal impacts to infrastructure and to supply housing opportunities without added dispersed low-density housing.*"**
>
> **"*Accessory Dwelling Units generate rental income to help homeowners cover mortgage payments or others costs, can be important for a variety of residents, such as older homeowners on fixed incomes and low- and moderate-income homeowners.*"**
>
> **"*Accessory Dwelling Units provide families with options for intergenerational living…*"**

In general, and as discussed later in this report, the state-mandated legislation gives limited opportunities for communities to deviate from the declared directives. As a "home rule city" the City of Colorado Springs is more able to control matters of local significance, which these legislative measures do not change. Alternatively, the City sees the state-mandated legislation as an opportunity to rethink the shortcomings within current city code and to better align with the direction of the housing market while encouraging affordability in the markets, housing choice and opportunity for residents.

Applicable Code

The subject Amendment to UDC Text application was initiated by the City of Colorado Springs Planning Department at the request of the City Administration and City Council after the implementation date (06/05/2023) of the City's Unified Development Code. All subsequent references within this report that are made to "the Code", "UDC" and related sections

are references to the Unified Development Code. Per UDC Section 7.5.702 Amendment to UDC Text, this section establishes standards and provide a mechanism for the City to review and decide on an application to amend the text of this UDC.

Project Timeline

Community/Stakeholder Engagement	On-going
Open House Meeting	November 20, 2024
City Planning Commission	December 11, 2024
City Council	January/February 2025
Implementation	June 2025 *(tentative)*

Stakeholder Involvement

Public Notice

Community Meeting	An “open house” meeting was held November 2024 to obtain ideas and experiences from residents regarding the proposed ordinance
Community Meeting Participation	Approximately 60+ residents attended
City Survey	City Planning is hosting a community survey to help inform the ordinance development process, which runs from November to December 2024

Public Engagement

The City Planning Department undertook a stakeholder process responsive to the necessary timeline for development, adoption and implementation of the proposed ADU ordinance. This was undertaken prior to bringing the proposed ADU ordinance to the City Planning Commission for consideration. The engagement efforts included: press releases, news articles, meetings with various stakeholder groups (i.e. Pikes Peak Housing Network, Colorado Springs Home Builders Association, HPN, etc.), and information sessions with City Councilors. Where applicable the comments, ideas and recommendations made by interested parties have been carried forward under the ordinance. The recommendations of the City Planning Commission will be included in the reports to City Council for their consideration.

One public ‘open house’ meeting was held on November 20, 2024, at the Cyber Security Center. Approximately 60+ citizens attended the open house. While some questions were taken at the meeting, the format allowed for residents to visit with City Planning staff to discuss the proposed ordinance. Written comments focusing on any questions, concerns, or thoughts were also accepted for Staff's attention. A community survey, which runs from November 20 to December 20, 2024, was also released as an opportunity to gather valuable input and perspectives. Preliminary results from the survey will be tabulated and presented during the City Planning Commission (CPC) hearing scheduled for December 11, 2024.

Input was received in favor and opposition to the proposed ADU ordinance throughout the public engagement efforts. Of those comments in support of the ordinance, most focused on the need for additional housing options and the role ADUs could play in lessening house affordability. Others saw the development of ADUs as an opportunity for “gentle density” in established neighborhoods with minimal impact on existing infrastructure. Those opposing residents providing comments in opposition to the proposed ADU ordinance generally focused on the maximum number of allowed ADUs, the maximum height and size, and the lack of off-street parking requirements. Some residents also raised concerns regarding the availability of utility services or the impact ADUs may have on emergency response within the City’s Wildland Urban

Interface Overlay (WUI-O) zone district. Copies of all public comments received prior to publishing this report are attached. (See Attachment 7 – Public Comments)

Agency Coordination

In preparing the proposed ADU Ordinance, City Planning staff coordinated with our respective agency partners. Based on the limited number of secondary residential units built to-date, most agencies had little concern or objection.

School District

Under the current and proposed ADU regulations, ADUs are required to comply with UDC Section 7.4.308 *School Site Dedication*, which is anticipated to be covered by fees in lieu of land dedication.

Parks

Under the current and proposed ADU regulations, ADUs are required to comply with UDC Section 7.4.307 *Park Land Dedication,* which is anticipated to be covered by fees in lieu of land dedication.

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No comments or concerns were raised.

Colorado Springs Utilities (CSU)

CSU representatives did raise questions regarding the infrastructure impact allowing two (2) versus the current one (1) allowed ADU. This concern did not focus on the ability to serve, but revolved around the standards that would have to be met for a property or owner to develop separated utility services for one primary and two secondary residential units on a single property. In alignment with the state-mandated legislation, City Planning staff have incorporated a regulatory provision requiring any respective individual or entity seeking to develop an ADU to obtain a statement of capacity to serve.

Amendment to UDC Text

Summary of Application

This Amendment to UDC Text application proposes new regulations and development standards that will govern the establishment of ADUs city-wide. (See Attachment 1 – ADU Ordinance) The proposed ADU ordinance as drafted is in alignment with the recent state-mandated legislation, which prohibits the City from enacting or enforcing local laws that would unduly restrict ADUs and establishes a regulatory environment were ADUs must be allowed as an accessory use to a single-unit detached dwelling where a single-unit detached dwelling is permitted. The proposed ADU ordinance is also an opportunity for the City to rethink the shortcomings within current city code and better align with the direction of the housing market, all the while ensuring housing choice and opportunity for residents. In short, the proposed ordinance would create a regulatory environment where the development of ADUs can occur in a manner that may aid in the City's efforts to address the current housing affordability and attainability crises while also support housing solutions that allow our neighborhoods to grow in a way that is appropriate.

Ordinance Changes

The proposed ADU ordinance adds and adjusts language in multiple sections of the UDC related to accessory dwelling units. All proposed changes have been structured to ensure the City is not establishing a more restrictive design or dimensional standard to an accessory dwelling unit than what current exists for a single-family detached unit or similar accessory structure of the same building type, which is a requirement of the state legislation. Within the proposed ADU ordinance, the convention for changes is indicated by the following rules: added language is **BOLD** and language to be removed from city code is indicated by a ~~STRIKETHROUGH~~.

Within the "ADU Ordinance – Table of Proposed Changes" document (See Attachment 8 – ADU Ordinance – Table of Proposed Changes) a comparison of current and proposed regulations has been provided. Below are highlights of the proposed ordinance:

What is new:

1. The elimination of Accessory Family Suites (AFSs);
2. Detached and attached (includes "integrated") ADUs are permitted in all zone districts where a single-family detached unit is permits;
3. Owner occupancy is no longer required;
4. No more than two (2) ADUs may be located on any lot;
5. The size of the ADU is limited to that of the primary structure;
6. The minimum front and side setbacks are the same as the primary structure or five (5) feet for side and rear setbacks for a detached ADU;
7. The maximum height of an ADU shall not exceed the maximum building height for the principal building in the zone district;
8. No off-street parking for the ADU shall be required;
9. Decision-making procedures; and
10. ADUs and properties containing ADUs are not permitted to be used as Short-Term Rentals (STRs).

What is not changing or has been carried forward from the current ordinance:

1. The prohibited separate sale and/or subdivision of an ADU from the primary structure;
2. Detached ADUs are not allowed forward of the primary structure;
3. Exterior access for the ADU may not be gained from the front; and
4. A 36" wide access path from the front property line is required.

According to the legislation, there are regulatory parameters that the proposed ADU ordinance must follow. Those regulatory parameters that cannot be modified including prohibition of owner occupancy; establish more restrictive setback standards than that of the single-family detached dwelling or other accessory buildings of a similar building type; unnecessarily restrict aesthetic design and dimensional standards; and requires an architectural style, building material or type, or landscaping that is more restrictive for the ADU than for the single-family detached dwelling.

Other regulatory measures under the state-mandated legislation are more generically stated thus affording opportunity for modification. Before leaning into those aspects of the proposed ADU ordinance which have the most potential for change, it is important to recognize that the City may concurrently seek to be certified under the legislation as an "Accessory Dwelling Unit Supportive Jurisdiction". As such, certain regulatory requirements that seem to have flexible "guardrail" become firmer. The following sections of the report discuss in greater detail those regulatory measures which exhibit the greatest opportunity for modification:

Maximum Number of Allowable ADUs: Each community, under HB-24-1152, is required to allow for the development of one (1) accessory dwelling unit where a single-family detached unit is permitted. The proposed ADU ordinance sets a maximum of two (2) ADUs per lot. The UDC currently limits one (1) ADU per lot where permitted. While forward thinking from a gentle density perspective, the reality of developing one principal unit and two secondary residential units may often be unrealistic given the compounding factors of site constraints, layered dimensional standards and the financial flexibility of an owner or builder to create three units in total. There are, however, a number of large-lot residential neighborhoods (i.e. Falcon Estates, Columbine, Rustic Hills, etc.) scattered throughout the city which may be good candidates for developing additional ADUs.

Maximum Allowable ADU Size: Under HB-24-1152, a community may choose to set a maximum size which is 100% of the primary structure but many not set an unreasonably restrictive size constraint such as not allow an ADU between the sizes of 500 and 700 square feet. The UDC today limits the maximum allowable size of an ADU to 50% of the primary structure or 1,250 square feet. If the primary structure is less than 1,500 square feet, the ADU may be 750 square feet. The proposed ADU ordinance includes a maximum allowable size for ADUs at 100% of the principal building. This standard reinforces the

City's ambitions under PlanCOS to eliminate barriers and support gentle intensity within the existing built environment of the city. Taking a more permissive stance on ADU size also is supportive of the City's plan to become a supportive jurisdiction as well as to allow for housing flexibility.

Maximum Height Standard: Under the proposed ordinance, the maximum height standard of an ADU shall not exceed the maximum building height for the principal building in the zone district. Per the UDC, there is a cumbersome calculation of the structure's roof pitch to determine the maximum allowable height (i.e. 25' if the roof pitch of less than 6:12. 28' if the roof pitch is 6:12 or greater). While HB-24-1152 is silent on setting a maximum building height standard, City Planning staff have interpreted the broader prohibition of setting a more restrictive dimensional standard for an ADU than that of a single-family detached unit to also apply to a maximum height standard.

Minimum Off-Street Parking Requirements: The proposed ADU ordinance does not set a minimum off-street parking requirement for ADUs. This standard was arrived at after speaking with agency representatives in the City's Public Works Department regarding the improved status and capacity of public rights-of-way. Specifically, it was explained to staff that most public streets, regardless of off-street parking accommodations, have been built to a cross-section that easily supports two-way vehicle travel with parallel on-street parking on either side. While the lack of off-street parking may result in additional vehicles parked along public streets, this should not diminish the capacity or limit traffic circulation.

Short-Term Rental of ADUs: HB-24-1152 allows and even supports the use of ADUs as Short-Term Rentals (STRs). Given the community's known position regarding STRs and enforcement challenges that City has experienced regulating them the decision was made to prohibit the use of ADUs and their principal structures as STRs. City Planning staff anticipate revisiting the current STR regulations in 2025.

Under HB-24-1152, there are very specific regulatory structures that mandate all decisions pertaining to ADUs remain at the administrative level with no opportunity for appeal. In the case of Colorado Springs, the decision was made to place the approval sequence for ADU under the Building Permit application. Unfortunately, this decision-making procedure is not as clear as it sounds, an ADU proposed on a historic property, listed in the National Register of Historic Places, the Colorado State Register of Historic Properties, or as a contributing structure or historic landmark by the City, shall be allowed only in accord with the design standards and procedures. Therefore, ADUs on historic properties, may need to still go through the City's Historic Preservation Board review and approval processes. Furthermore, ADUs proposed on properties with justifiable constraints may seek an application for Administrative Adjustment which, if approved, would allow for an adjustment of any numerical dimensional standard by up to 15 percent. Leaning into the previously stated prohibition of appeals, limiting a party's ability to seek redress is not ideal or the norm; however, this is a specification not chosen by City Planning staff.

Application Review Criteria

UCD Section 7.5.702 Amendments to UDC Text

An application for an Amendment to UDC Text shall be subject to the following criteria for approval:

1. *The Colorado Springs Comprehensive Plan and other plans adopted by City Council.*

   The current Colorado Springs Comprehensive Plan (herein "PlanCOS") provides extensive guidance surrounding the establishment of more permissive development regulations and design standard, which is supported under the proposed ADU ordinance. PlanCOS further seeks out opportunities for infill development, attainable and affordable housing solutions, and economic resiliency. These objectives are reinforced by the proposed ADU ordinance which creates an accommodating and inclusive regulatory environment for ADUs. Overall, the proposed ADU ordinance is favorably responsive to the established goals and values of PlanCOS, as well as the citywide strategic priorities of housing availability and choice for city residents.

2. *The current conditions and character of current structures and uses in each zone district.*

   Under the UDC's current ADU regulations, the utilization and development of these accessory residential options have not be widely used, averaging less than 30 ADU/AFSs annually since 2020. As a matter of fact, the zone district specific use limitations in the UDC for ADUs include the prohibition of detached ADUs in R-E, R-1 9, and R-1 6 zone districts and the prohibition of attached (aka, "integrated") ADUs in R-2, R-4, and R-5 zone districts. Given

that much of the City has been zoned with the above referenced zone districts, the most developed residential properties are either prohibited or significantly limited when it comes to ADU development options. In short, the state-mandated legislation may create a transformative environment for ADUs as secondary residential units anywhere that a single-family detached unit is permitted.

3. *The most desirable use of land in each zone district.*

   Given the known limitations of the UDC's current ADU regulations, City Planning staff, along with our agency, industry and stakeholder partners had already identified these regulatory measures needing or ready for update, even without the State's legislative mandate. The legislation, however, gave the City little choice or time to determine how best to evaluate and structure changes to current ADU regulations. Furthermore, it is difficult to determine if an alternative regulatory stance regarding secondary residential units would make for a more desirable use of land in each zone district. The development of more ADUs is, however, one of many mechanisms the City is considering to address the housing affordability and attainability crisis.

4. *The conservation of sensitive environmental features.*

   Under the proposed ordinance, City Planning staff's ability to consider the protection of sensitive environmental features remains unchanged. Given the regulatory approach of the proposed ADU ordinance, staff remain able to discuss and implement reasonable restrictions on private property that allow for the development of ADUs.

5. *Promotion of responsible development and growth.*

   The development of secondary residential units is often seen to encourage gentle density or intensity within existing communities with established residential neighborhoods. While change in established neighborhoods can be hard to accept or see as possible, the regulatory parameters of the proposed ADU ordinance do not limit the ability of our neighborhoods to change in a way that is appropriate.

Statement of Compliance

CODE-24-0006

After evaluation of the UDC Text Amendment application for the Accessory Dwelling Unit Ordinance the application meets the approval criteria as set forth under City Code Section 7.5.702.D *Approval Considerations*.