

ORDINANCE NUMBER 3493

A city initiated ordinance to amend Chapter 20.45 “Accessory Uses and Structures” sections 20.45.060 (Accessory Dwelling Units) Title 20, City Zoning Ordinance of the Missoula Municipal Code, expanding the applicability to all single dwelling residential districts and revising the standards.

Be it ordained that section 20.45.060 is hereby amended as follows:

20.45.060 Accessory Dwelling Units (ADUs)

A. Purpose

1. Accessory dwelling units help advance the city’s growth and planning policies by:
 - a. accommodating new housing units while preserving the character of existing neighborhoods;
 - b. allowing efficient use of the city’s existing housing stock and infrastructure;
 - c. providing housing options and choices that respond to varying income levels, changing household sizes and lifestyle needs;
 - d. providing a means for residents—particularly seniors, single parents, and empty-nesters—to remain in their homes and neighborhoods, and obtain extra income, security, companionship and assistance; and
 - e. accommodating a broader range of accessible and more affordable housing.
2. The accessory dwelling unit regulations of this section are intended to help promote the benefits of accessory dwelling units, while also preserving neighborhood character and promoting predictability and certainty for established neighborhoods.
3. The accessory dwelling unit regulations are not intended to interfere with, abrogate, or annul any current applicable private homeowner association covenants that are in effect in any specific subdivision in accordance with section 20.01.080.C.

B. Regulations for all Accessory Dwelling Units

All accessory dwelling units must comply with the regulations of this subsection. When allowed as a conditional use, the regulations for Entrances (20.45.060.C.1), Exterior Finish Materials (20.45.060.B.1~~12~~), Roof Pitch 20.45.060.B.1~~23~~), and Trim (20.45.060.B.1~~34~~) may be used as additional “Factors to be Considered” (20.85.070.I) for City Council action and may not be required.

1. General Standards

Accessory dwelling units are subject to all applicable regulations of the zoning district in which they are located, except as otherwise expressly stated in this section. Lots that are non-conforming as to minimum parcel area are not eligible.

Where Allowed

Accessory dwelling units are allowed only on parcels occupied by a single detached house or lot line house.

- a. Internal accessory dwelling units are allowed in R215, R80, R40, R20, RT10, R8, R5.4 RT5.4, R3, RT2.7, RM2.7, RM1, RM1.5 RM0.5, RMH, B, C and M1R zoning districts.
- b. Detached accessory dwelling units and Internal Addition ADUs are allowed in RT5.4, RT2.7, RM2.7, RM1, RM1.5 RM0.5, RMH, B, C and M1R zoning districts. Detached accessory dwelling units and Internal Addition ADUs are allowed as a conditional use (See 20.85.070) in R215, R80, R40, R20, RT10, R8, R5.4 and R3 districts.
- c. For an accessory dwelling unit in zoning districts (R215, R80, R40, R20, RT10, R8, and R5.4), at the time of application submittal the applicant must provide evidence in the form of a notary statement that the proposal complies with current (latest version filed with the County Clerk and Recorder) applicable private covenants adopted prior to June 5, 2013 or that no such private covenants exist that restrict the proposed use.
- d. Accessory dwelling units are not allowed in Special Districts or Planned Unit Developments (PUDs) unless explicitly regulated within the Special District or PUD.

3. Permit Requirement

An Accessory Dwelling Unit Permit is required for all ADUs. The Accessory Dwelling Unit Permit expires December 31st of each year and can be renewed by completing the renewal form prescribed by the Zoning Officer. All accessory dwelling units shall also be subject to the condition that such a permit shall automatically expire whenever:

- a. The accessory dwelling unit is substantially altered and is thus no longer in conformance with the plans approved by the Development Services Director; or
- b. The subject lot ceases to maintain the required off-street parking spaces; or
- c. The applicant ceases to own or reside in either the principal or the accessory dwelling unit.

4. Owner Occupancy

- a. The principal or accessory dwelling unit must be occupied by the owner of the subject parcel. Before building permit approval of the accessory dwelling unit, the property owner must record an affidavit and deed restriction, in a form approved by the city attorney, stating that the property owner will reside on the property, in either the principal or accessory dwelling unit. The deed restriction shall be binding upon any successor in ownership of the property. Once recorded, the deed restriction (requiring owner occupancy) may not be removed or modified without City Council approval.
- b. With respect to accessory dwelling units, “owner occupancy” means a property owner, as reflected in real property records, who makes his or her legal residence at the site, as evidenced by voter registration or similar means and actually resides at the site more than six months out of any given year. Owner occupancy may also include a named natural person with an ownership or benefit in a private trust. The Development Services Director may waive this requirement for temporary absences of greater than six months for military service, employment sabbatical, or family medical leave qualified absences.

Temporary leave waivers for other reasons must be reviewed and approved by the City Council.

c. Owner occupancy does not extend to corporate trusts.

5. Number

No more than one accessory dwelling unit is allowed per parcel.

6. Methods of Creation

An accessory dwelling unit may be created only through the following methods:

- a. Converting existing living area within a detached house (e.g., attic or basement);
- b. Adding floor area to an existing detached house;
- c. Constructing a detached accessory dwelling unit on a parcel with an existing detached house;
- d. Converting space within detached accessory buildings; or
- e. Constructing a new detached house with an internal or detached accessory dwelling unit.

7. Density (Minimum Parcel Area per Unit)

Accessory dwelling units are not included in minimum parcel area per unit calculations, meaning no additional land area is required for the accessory dwelling unit beyond the minimum parcel size required for a detached house in the subject zoning district.

8. Wastewater Service

Accessory dwelling units are allowed only if the principal dwelling unit and accessory dwelling unit are connected to city sewer.

9. Location of Entrances

Only one entrance to a detached house containing an accessory dwelling unit may be located on a façade that fronts a street, unless the house contained an additional street-facing entrance before the accessory dwelling unit was created.

10. Parking

At least one paved off-street parking space must be provided for an accessory dwelling unit, in addition to the required off-street parking for the principal dwelling unit. If the parcel abuts an alley, access to the parking for the accessory dwelling unit must come from the alley.

11. Size

a. Detached ADU

The floor area of a new detached accessory dwelling unit may not exceed the maximum of 600 square feet or be less than 350 square feet. When a detached accessory dwelling unit is created within an existing detached accessory structure there is no limit to the floor area unless the conversion adds to the floor area of the existing detached accessory structure in which case the maximum size is 600 square feet.

b. Internal ADU

The floor area of an internal accessory dwelling unit that does not increase the floor area or footprint of the primary dwelling unit may not exceed 40% of the gross floor area, excluding an attached garage, of the primary dwelling unit and may not be more than 600 square feet, or be less than 350 square feet.

c. Internal addition ADU

The floor area of an internal addition accessory dwelling unit shall not increase the footprint or floor area of the existing primary dwelling unit by more than 600 square feet or exceed 40% of the gross floor area, excluding an attached garage, of the primary dwelling unit including the addition.

Commentary: With respect to accessory dwelling units, gross floor area is the gross horizontal area of the subject space, measured from the exterior faces of any exterior walls or from the center line of joint partitions including the basement and excluding the garage.

12. Exterior Finish Materials

The exterior finish material must be the same or visually match in type, size and placement, the exterior finish material of the detached house.

13. Roof Pitch

The roof pitch must be the same as the predominant roof pitch of the house.

14. Trim

Trim on edges of elements on any addition to the detached house or accessory structure occupied by an accessory dwelling unit must be the same in type, size and location as the trim used on the detached house.

15. Building Approval

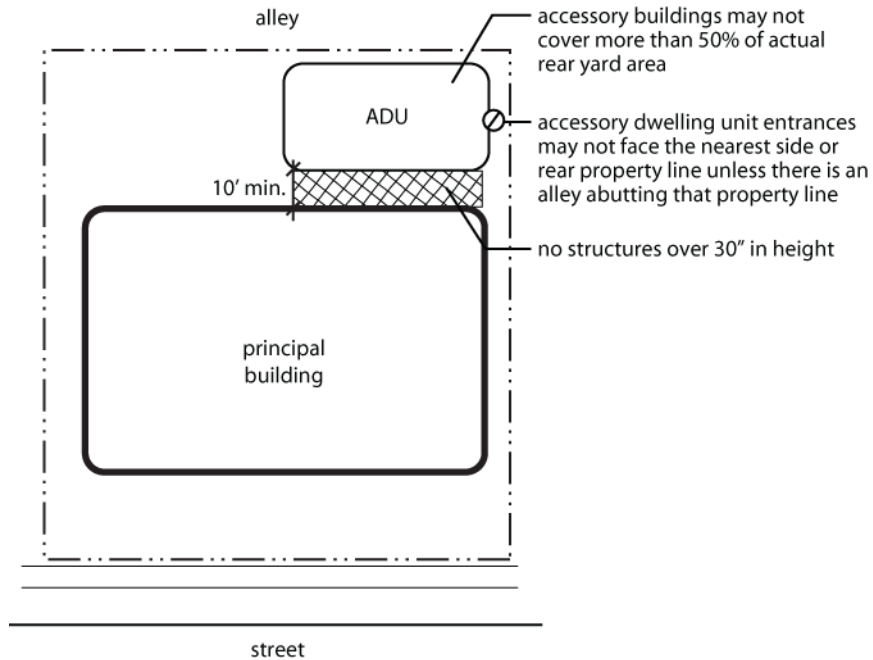
Before the issuance of a building permit for the construction of a new accessory dwelling unit, plans must be reviewed and approved by the building inspector to determine compliance with applicable building and fire codes.

C. Special Regulations for Detached Accessory Dwelling Units

Detached accessory dwelling units must comply with the regulations of this subsection.

1. Entrances

Building entrances to detached accessory dwelling units may not face the nearest side or rear property line unless there is an alley abutting that property line.



Setbacks

A detached accessory dwelling unit must be located at least 10 feet behind the detached house. This required 10-foot separation distance must be open from the ground to the sky except that it may include walkways, patios, decks and similar structures that do not exceed 30 inches in height above finished grade.

3. Height

The maximum height allowed for a detached accessory dwelling unit is 22 feet or the height of the primary (detached house) building, whichever is less.

4. Building Coverage

The building coverage for the detached accessory dwelling unit may not exceed the building coverage of the detached house. The combined building coverage of all detached accessory buildings may not exceed 50% of the actual rear yard area.

5. Conversion of Existing Detached Accessory Structures

a. Existing Detached Accessory Structure May Not Be Altered

An existing detached accessory structure that complies with any of the standards of [20.45.060B.12](#) through [20.45.060B.14](#) or [20.45.060C.3](#) through [20.45.060C.4](#) may not be altered in a way that will move the structure out of conformance with the standards that are met.

b. Existing Detached Accessory Dwelling Unit Structures Permitted By-Right

If the accessory dwelling unit is permitted by right and proposed to be located within an existing detached accessory structure that does not meet one or more of the standards of [20.45.060B.12](#) through [20.45.060B.14](#), the structure is exempt from the standard it does not meet. If any floor area is added to the detached accessory structure, the entire structure must meet the standards of [20.45.060B.12](#) through [20.45.060B.14](#).

D. Existing Illegal Accessory Dwelling Units

1. It is recognized that although unlawfully occupied, currently utilized accessory dwelling units are filling a market demand for housing. A grace period is established to promote conversion of illegal units to lawful ADUs, for the purpose of protecting and promoting the public health, safety and general welfare of the community.

An accessory dwelling unit created prior to June 5, 2013 may be recognized as lawful upon review and approval of a zoning compliance application and issuance of a zoning and building permit.
3. Criteria for accessory dwelling units being considered as potentially eligible for a grace period:
 - a. A parcel of land containing a dwelling unit for which there does not exist a validly issued variance, conditional use approval or zoning compliance permit and that was in existence on a parcel of record as of June 5, 2013;
 - b. A parcel of land containing a dwelling unit that does not qualify as a non-conforming use or structure and that was in existence on a parcel of record as of June 5, 2013; or
 - c. A parcel of land containing a dwelling unit which was in existence as of June 5, 2013, and which has been cited by Development Services as being in violation of the Zoning Ordinance.
4. Beginning on the effective date of this ordinance, a grace period of 12 months is established for the submission of applications for existing illegal accessory dwelling units. Property owners who submit an application for consideration during this 12-month grace period shall not be subject to any applicable fines or enforcement action, after which time the City of Missoula will pursue action on confirmed illegal accessory dwelling units.
5. Existing illegal accessory dwelling units, which do not apply for and/or do not receive zoning compliance permit approval for an ADU use, are subject to all applicable fines and/or enforcement actions as outlined in Chapter 20.95 Violations, Penalties, and Enforcement.

Effective Date. The provisions of the ordinance shall be effective in 30 days.

Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

First reading and preliminary adoption on the 22nd day of April, 2013, by a vote of 6 Ayes, 4 Nays, 0 Abstain and 2 Absent

Second and final reading and adoption on the 6th day of May, 2013, by a vote of 7 Ayes, 5 Nays, 0 Abstain and 0 Absent.

ATTEST:

APPROVED:

/s/ Martha L. Rehbein
Martha L. Rehbein, CMC
City Clerk

/s/ John Engen
John Engen
Mayor

(SEAL)