

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 871 (Senator Washington)
Education, Health, and Environmental Affairs

Accessory Dwelling Unit Authorization and Promotion Act

This bill requires each legislative body to adopt a local law authorizing the development of accessory dwelling units (ADUs) on land zoned for single-family residential use, as specified, by October 1, 2023. The bill specifies conditions and requirements relating to ADUs that local jurisdictions must, may, and may not adopt. The bill also establishes that a restriction on use regarding land use may not impose or act to impose an unreasonable limitation on the ability of a property owner to (1) develop an ADU on a property zoned for single-family residential use or (2) use an ADU as a rental unit, as specified.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: Local government expenditures are expected to increase, and revenues are expected to decrease, as discussed below. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Selected Definitions

“Accessory dwelling unit” means a secondary dwelling unit on the same lot, parcel, or tract as a primary dwelling unit that is constructed (1) attached to, or through the conversion of,

a portion of the primary dwelling unit; (2) attached to, or through the full or partial conversion of, an accessory structure located on the same lot, parcel, or tract as the primary dwelling unit; or (3) as a new building, detached from the primary dwelling unit and any existing accessory structures.

“Dwelling unit” means a single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. A dwelling unit does not include a unit in a multifamily residential building.

“Utility” means water or sewer disposal services provided by (1) a private company regulated under Division I of the Public Utilities Article; (2) the Washington Suburban Sanitary Commission; (3) a sanitary commission regulated under Title 9, Subtitle 6 of the Environment Article; or (4) a municipal authority regulated under Title 9, Subtitle 7 of the Environment Article.

Applicability

The bill only applies to the development of ADUs on land zoned for single-family residential use.

Statement of Policy

The bill expresses that (1) it is the policy of the State to promote and encourage the creation of ADUs on land zoned for single-family residential use in order to meet the housing needs of the citizens of Maryland; (2) except as provided, the bill does not alter or abrogate any zoning power or related authority granted to a local jurisdiction under Title 4 of the Land Use Article; and (3) local jurisdictions must establish policies that further the intent of the bill.

Local Laws Authorizing the Development of ADUs

A local law adopted under the bill must apply to all land in the local jurisdiction zoned for single-family residential use, provided that the party developing the ADU owns and has the exclusive right to use the lot, parcel, or tract on which the ADU is to be developed, and the development of new dwelling units on the lot, tract, or parcel is not otherwise prohibited due to (1) limitations on available safe drinking water; (2) the existence of public health risks due to limitations on sewage disposal; or (3) risks associated with fires, floods, or landslides.

A local law adopted under the bill *must* (1) require that the total square footage of the ADU be less than the total square footage of the primary dwelling unit; (2) require that the

final design for the ADU satisfy all relevant building code requirements; (3) authorize construction of an ADU before or during the construction of the primary dwelling unit, unless the construction of the ADU would result in the need for a variance from the local jurisdiction's zoning law in order to construct the primary dwelling unit; and (4) exclude the development of an ADU from the calculation of density and the application of any measures limiting residential growth that pertain to the lot, parcel, or tract proposed for the development of the ADU.

A local law adopted under the bill *may not* (1) require, as a condition to developing an ADU, that the lot, parcel, or tract exceed the minimum size required for a primary dwelling unit in the zone or district; (2) establish certain setback requirements, as specified; or (3) except as otherwise provided under the bill, require the creation of additional off-street parking as a condition to developing an ADU.

A local law adopted under the bill *may* (1) impose reasonable limitations on the maximum square footage of an ADU; (2) require that existing off-street parking that is lost to the development of an ADU be replaced with an equivalent amount of new off-street parking on the property; and (3) allow an equivalent amount of new on-street parking to be substituted for the new off-street parking, as specified.

Accessory Dwelling Unit Permit Applications

A local jurisdiction must approve or deny a complete application for a zoning use permit for an ADU within 90 days after receipt by the agency responsible for making zoning decisions. Approval of a complete application under the bill must be performed in a ministerial manner. If an applicant requests a delay in the review of an application, the 90-day review period required must be tolled for the duration of the delay.

The bill specifies that it may not be construed to alter the appellate or judicial review processes for a zoning use permit application for an ADU.

Development Impact Fees and Building Excise Taxes

A local jurisdiction may not charge a development impact fee or a building excise tax on an ADU with a total square footage less than 750 square feet. A development impact fee or a building excise tax charged for the development of an ADU that is at least 750 square feet must be assessed proportionately in relation to the square footage of the primary dwelling unit.

Water and Sewer Disposal Services

A utility may not require the use of a separate connection between an ADU and the water or sewer main if the existing connection between the primary dwelling unit and the water or sewer main is determined to be sufficient to support the addition of the ADU. If an ADU is integrated into the existing connection between the primary dwelling unit and the water or sewer main, a utility may not charge a connection fee associated with the integration of the ADU. In addition, a person developing an ADU may elect to use a meter that is shared with the primary dwelling unit to track the delivery of water from a utility.

The provisions described above relating to water and sewer services do not apply to an ADU that is developed in conjunction with a new or substantially renovated primary dwelling unit.

Annual Reporting Requirements

By September 30, 2023, and each September 30 thereafter, each local jurisdiction must report to the Maryland Department of Planning (MDP) for the previous fiscal year (1) the number of primary, single-family dwelling units in the local jurisdiction, with the zoning designation for the dwelling units; (2) a list of all zoning designations in the local jurisdiction in which ADUs are permitted; (3) the number of illegal ADUs known to be in the local jurisdiction; (4) the number of applications to legalize an illegal ADU submitted to the local jurisdiction and the results of processing the applications; (5) the number of legal ADUs in the local jurisdiction; (6) the number of applications for new ADUs accepted for processing; (7) the number of ADU applications that were approved and that received all required permits; (8) for each ADU application that was approved and received all required permits, a statement on whether the ADU is attached to, converted from, or detached from the primary dwelling unit and other accessory structures, as specified, and the ADU's size, number of bedrooms, and level of accessibility; (9) the number of ADU applications that were denied; and (10) the reason that each application was denied.

MDP must establish the methods used by the local jurisdictions to report the required information described above.

By December 31, 2023, and each December 31 thereafter, MDP must report to the Governor and the General Assembly on the development of ADUs throughout the State. The information in the report must be disaggregated by local jurisdiction, and the report must contain recommendations to further the goals of the bill.

Restrictions on Use/Unreasonable Limitations on ADUs

The bill establishes, under the Real Property Article, that if a property owner has the exclusive right to use the property and abides by all applicable laws and regulations, a restriction on use regarding land use may not impose or act to impose an unreasonable limitation on the ability of the property owner to (1) develop an ADU on a property zoned for single-family residential use or (2) use an ADU as a rental unit.

A “restriction on use” includes any covenant, restriction, or condition contained in (1) a deed; (2) a declaration; (3) a contract; (4) the bylaws or rules of a condominium or homeowners association; (5) a security instrument; or (6) any other instrument affecting the transfer or sale of real property, or any other interest in real property.

An unreasonable limitation includes a limitation that (1) significantly increases the cost of developing an ADU or the cost of operating the ADU as a rental unit or (2) prohibits, either explicitly or by effect of the restrictions, the development of an ADU or the use of an ADU as a rental unit. However, the bill specifies that it may not be construed to prohibit a restriction on use from including reasonable design and aesthetic guidelines for ADUs, nor does it apply to a restriction on use of historic property that is listed in, or determined by the Director of the Maryland Historical Trust to be eligible for inclusion in, the Maryland Register of Historic Properties.

Current Law: There are no statewide requirements governing ADUs. Statute specifies that it is the policy of the State that (1) the orderly development and use of land and structures requires comprehensive regulation through implementation of planning and zoning controls and (2) planning and zoning controls must be implemented by local government.

Local Expenditures: Local expenditures are expected to increase for legal and other costs associated with updating zoning regulations, programming and/or personnel costs associated with fulfilling the bill’s reporting requirements, and any increased costs associated with permitting ADUs under the bill. Carroll County, for example, expects to incur \$25,000 in programming costs to update a tracking system in fiscal 2023 and costs of approximately \$180,000 annually beginning in fiscal 2024 for additional zoning, permitting, and planning staff. The Town of Leonardtown expects to incur costs of \$1,300 in fiscal 2023 for advertising and legal fees associated with amending the town’s zoning ordinance and costs of approximately \$14,000 annually beginning in fiscal 2024 for an additional part-time permits clerk.

Local Revenues: Local revenues are expected to decrease due to the bill’s limitations on a jurisdiction’s ability to collect development impact fees, building excise taxes, and water

or sewer connection fees. Queen Anne’s County, for example, based on recent permitting for ADUs, estimates revenues will decrease by \$8,500 annually.

Small Business Effect: Small businesses engaged in construction likely benefit meaningfully from any increase in demand relating to ADU construction or renovation. In addition, small business property owners or landlords benefit if properties have additional units that can be rented.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1259 (Delegate Belcastro) - Environment and Transportation.

Information Source(s): Maryland Association of County Health Officers; Maryland Environmental Service; Carroll, Harford, Montgomery, Queen Anne’s, and St. Mary’s counties; Maryland Association of Counties; City of Salisbury; Maryland Municipal League; towns of Bel Air and Leonardtown; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Maryland Department of Planning; Public Service Commission; Department of Legislative Services

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