



SPONSOR: Sen. Huxtable & Sen. Lockman & Sen. Sokola &
Sen. Townsend & Rep. Harris & Rep. K. Johnson
Sens. Hansen, Hoffner, Pinkney; Reps. Griffith, Lambert

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 23

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO HOUSING.

1 WHEREAS, accessory dwelling units are a valuable form of housing and can serve to increase the supply of an
2 affordable and diverse type of housing; and

3 WHEREAS, accessory dwelling units are also known as in-law units, secondary dwelling units, granny flats,
4 garage apartments, or carriage houses; and

5 WHEREAS, accessory dwelling units offer lower cost housing to meet the needs of existing and future residents
6 within existing neighborhoods, while respecting architectural character; and

7 WHEREAS, accessory dwelling units can create a convenient living arrangement that allows family members,
8 including seniors who would like to age in place in the community and students, or other persons to provide care and
9 support for someone in a semi-independent living arrangement while remaining in their community; and

10 WHEREAS, the creation of accessory dwelling units can promote more compact urban and suburban growth,
11 which reduces the loss of farm and forest lands, as well as natural areas and resources, while limiting increases in pollution
12 that contributes to climate instability; and

13 WHEREAS, the State can play an important role in reducing the barriers that prevent homeowners from building
14 ADUs; and

15 WHEREAS, Delaware is facing a severe housing crisis, with home prices and rents unaffordable to many
16 households of low and middle incomes; and

17 WHEREAS, the Delaware State Housing Authority's 2023 Housing Needs Assessment report finds that the State
18 is over 19,000 affordable units short to accommodate demand; and

19 WHEREAS, permitting the creation of accessory dwelling units will help diversify Delaware housing stock and
20 help alleviate Delaware's housing shortage.

21 NOW, THEREFORE:

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all
23 members elected to each house thereof concurring therein):

24 Section 1. Amend Title 25 of the Delaware Code by making deletions as shown by strike through and insertions
25 as shown by underline as follows:

26 § 1701 Purpose.

27 Accessory dwelling units are a valuable form of housing that can serve to increase Delaware’s supply of affordable
28 housing, promote compact urban and suburban growth, and provide the option for a convenient living arrangement for
29 seniors, students, and other residents. Through this chapter, local governments are required to permit the construction of
30 accessory dwelling units within their jurisdictions without prohibitive barriers or onerous application or zoning
31 requirements, with the goal of expanding affordable housing stock, diversity, and access.

32 § 1702. Definitions.

33 For the purposes of this chapter:

34 (1) “Accessory Dwelling Unit” (ADU) means a residential living unit on the same lot where the principal use is a
35 legally established single-dwelling unit. An ADU provides complete independent living facilities, including its own
36 cooking, sleeping, and sanitation facilities, for one or more individuals. It may take various forms, including a detached
37 unit, a unit that is part of an accessory structure such as a detached garage, or a unit that is part of an expanded or
38 remodeled primary dwelling.

39 (2) “By right” means the ability to be approved without requiring any of the following:

40 a. A public hearing.

41 b. A variance.

42 c. A conditional use permit, special permit, or special exemption.

43 d. Any other discretionary zoning action other than a determination that a site plan conforms with
44 applicable zoning regulations.

45 (3) “Local government” means a municipality, county, or other political subdivision of the State.

46 § 1703. Responsibilities of Local Governments.

47 (a) By [1 year after the effective date of this Act], each local government must adopt ordinances under this chapter
48 that do all of the following:

49 (1) Allow a minimum of one ADU by right on a lot or parcel that contains a single-family dwelling.

50 (2) Allow an ADU that is currently constructed or may be constructed and that is any of the following:

51 a. Attached to a single-family dwelling.

- 52 b. Detached from a single-family dwelling.
- 53 c. Contained within a single-family dwelling.
- 54 (3) Allow an ADU to be used as rental housing.
- 55 (b) A local government may not do any of the following:
- 56 (1) Require that a lot or parcel have additional parking to accommodate an ADU or require fees in lieu of
57 additional parking if the ADU meets any of the below requirements:
- 58 a. The ADU is located within 0.5 miles of a public bus stop or rail station.
- 59 b. The ADU is part of or within the primary residence or existing accessory building.
- 60 c. The ADU is located within a historic district, as designated by a federal, state, or local entity.
- 61 d. The ADU is located on a street with an availability of on-street parking.
- 62 (2) Require that an ADU match the exterior design, roof pitch, or finishing materials of the primary
63 dwelling, unless the primary dwelling is located within a historic district, as designated by a federal, state, or local
64 entity.
- 65 (3) Require a familial, marital, or employment relationship between the occupants of the single-family
66 dwelling and the occupants of the ADU.
- 67 (4) Assess impact fees on the construction of an ADU, except for water and sewer impact fees.
- 68 (5) Require improvements to public streets as a condition of permitting an ADU.
- 69 (6) Impose additional zoning regulations on an ADU on a parcel zoned for residential use by a single-family
70 dwelling.
- 71 (c) Local governments may adopt regulations consistent with their needs and capacity, so long as they are not
72 otherwise prohibited by this chapter and do not violate the purpose of this chapter.
- 73 (d) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument
74 affecting the transfer or sale of any interest in real property, or any covenant, restriction, or condition contained in a deed or
75 declaration under the Unit Property Act, or any rule based thereon that is not in effect on June 30, 2027, is created after
76 June 30, 2027, or is used as the basis for any rule that is created or takes effect after June 30, 2027, which effectively
77 prohibits or unreasonably restricts the construction or use of an ADU on a lot zoned for single-family residential use that
78 otherwise meets the requirement of this section is void and unenforceable.
- 79 (e) In adopting an ordinance under this chapter, a local government may establish an application and permitting
80 process for ADUs that does not do any of the following:
- 81 (1) Require planning board approval.

(2) Create additional restrictions that would run contrary to the purpose and intent of this chapter.

SYNOPSIS

Accessory dwelling units (ADUs), also known as in-law units or garage apartments, are valuable and convenient forms of housing that can help to increase Delaware's housing supply. In order to expand affordable housing opportunities, this Act requires local governments to permit the construction of ADUs within their jurisdictions without prohibitive barriers or onerous application or zoning requirements.

This substitute differs from the original by removing requirements related to the size of the single-family dwelling, clarifying requirements related to additional parking, making exceptions for aesthetic requirements within historic districts, allowing water and sewer impact fees, and allowing for local regulations that do not otherwise violate this Act.

This Act carries a 2/3 vote requirement as it may indirectly affect municipal charters.

Author: Senator Huxtable