



Legalizing Accessory Dwelling Units at the State Level: A New Hampshire Case Study

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STATE LAW AND ACCESSORY DWELLING UNITS

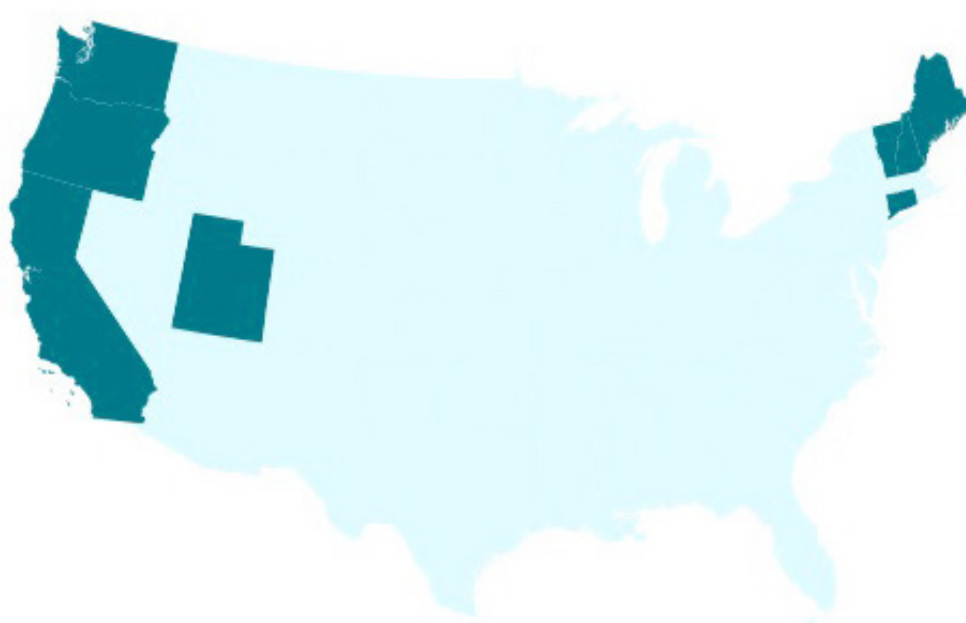
Amid increasing housing affordability problems, state policymakers are setting new limits on the extent to which localities can regulate housing construction. In this policy brief, we focus on New Hampshire's 2017 law that requires localities to permit accessory dwelling unit (ADU) construction.² ADUs are secondary, generally small units at the site of a primary dwelling unit, such as a basement apartment, a backyard cottage, a converted garage, or another structure that provides a housing unit.

Relative to the laws in other states where ADUs have been legalized statewide, the law in New Hampshire is one of the weakest in preempting potential local barriers to ADU construction. Nonetheless, some New Hampshire localities are seeing a surprisingly high permitting rate for ADUs. We explain the research on best practices for ADU rules relative to New Hampshire's law followed by the state's local ADU ordinances. We provide data on ADU permitting in New Hampshire localities. We explore potential reasons why homeowners are building ADUs at higher rates than we might expect given New Hampshire's policy environment. We then conclude with ideas for how policy could better support ADU feasibility in New Hampshire.

THE LANDSCAPE OF STATE ADU LAWS

Figure 1 shows the eight states that have adopted ADU laws intended to make ADUs feasible for homeowners to build.

Figure 1. States Where ADU Laws Have Been Adopted



Source: Map is created by Eli Kahn using a shapefile from IPUMS NHGIS, University of Minnesota, www.nhgis.org.

ADU expert and advocate Kol Peterson has identified three “poison-pill regulations” that present significant barriers to ADU construction, even in places where they are legalized.³ These poison pills include owner-occupancy requirements, off-street parking requirements, and conditional or discretionary reviews for ADU permits.

We summarize Peterson’s insights regarding each of these three barriers:

1. *Owner-occupancy requirements* thwart investments in ADUs, even for homeowners who want to add them to their primary residences, because building an ADU likely shrinks their pool of potential future buyers. Under these requirements, if the homeowner were to move, they would not have the option of leasing the ADU and their primary residence to separate tenants. Owner-occupancy requirements may lead appraisers to rely on comparable sales that likely do not include ADUs, rather than viewing the ADU as a potential income-generating unit. And, finally, owner-occupancy requirements may create financing challenges for ADUs because if a homeowner were to default, the ADU would not be a unit a bank could rent out were it to become a bank-owned property.
2. *Parking requirements* can make ADUs infeasible to build at many existing houses. A yard may present space for a backyard cottage within setback limits or an additional parking spot, but not both. Particularly at sites where a garage conversion is the natural place to put

ADUs, requiring parking replacement for the primary dwelling unit as well as additional parking for the ADU may prove prohibitive.

3. *Discretionary reviews* for ADU permits can prevent many homeowners from building them. Applying for a conditional use permit may require a time-consuming and intimidating public hearing with a nonrefundable fee as well as site plan drawings that can be expensive to commission. Many homeowners are understandably reluctant to spend thousands of dollars for the chance of receiving a permit.

Among the states with ADU laws, California has the longest history with statewide ADU policy, and it has also seen the most ADU construction. Policymakers passed the state's first law requiring localities to allow ADUs in 1982, but it left the door open for localities to implement rules that would make them unattractive to build. Then, a law that went into effect in 2017 limited local impact fees and parking requirements for ADUs in neighborhoods served by transit. This coincided with a sharp increase in ADU permitting across the state.⁴ More recently, the California legislature preempted owner-occupancy requirements. In contrast, New Hampshire's law does not preempt any of these poison pills.

Regulations affecting the size and location of potential ADUs are also important considerations when determining if they are feasible to build. New Hampshire's law does not go far here either. It only requires localities to permit attached ADUs and specifies that localities may require that attached ADUs include an interior door connecting the primary dwelling to the ADU.

NEW HAMPSHIRE'S LOCAL ADU ORDINANCES

In his analysis of how localities write their ADU ordinances under a state requirement, Peterson states, "These poison-pill regulations tend to be accidental regulations copied from adjacent towns without critical analysis of their impacts or deliberate regulatory approaches to dampen ADU development."⁵ This appears to be the case in New Hampshire, where many local ADU ordinances closely match each other as well as the minimally permissive requirements specified under the state law. The New Hampshire Municipal Association published suggestions for localities to create ADU ordinances compliant with the state law, which may have contributed to this uniformity.⁶

We analyzed the ADU ordinances in New Hampshire cities and towns with 10,000 or more residents (a total of 29 localities). We find that 16 of these 29 localities only allow attached ADUs, and of these 15 require an interior door connecting the ADU to the primary dwelling unit. According to New Hampshire local ordinances, 93 percent of the localities require additional parking for ADUs, 48 percent require a discretionary review process, and 86 percent have an owner-occupancy requirement.

ADU CONSTRUCTION IN NEW HAMPSHIRE

We attempted to gather data on ADU permitting in the 29 New Hampshire localities with at least 10,000 residents by contacting the planning staff in each locality. For some localities, we were not able to get in touch with anyone who had access to the data we were looking for. In other places, staff said that ADU permits were not tracked in a way that would make it feasible to quantify, or they gave us a rough estimate of the number of ADUs permitted since the 2017 state law went into effect.

We were able to obtain annual ADU permit numbers from 2017 to 2021 from eight localities. Table 1 shows the total number of ADUs permitted over this five-year period along with some of the characteristics of the ADU ordinances in each locality. The table also includes two localities—Durham and Hooksett—where we were unable to obtain annual permitting data. We do, however, have data on the total stock of ADUs for both localities, as discussed below.

Figure 2 shows the total annual ADU permits for the eight localities where annual permitting data is available over time. (Sources for each locality’s ADU ordinances are provided in the appendix below.) These permitting numbers are small in absolute terms. But relative to some of the prominent ADU success stories, they are impressively large in terms of the stock of single-family houses, given New Hampshire’s somewhat weak law.

Figure 3 shows each locality’s average annual ADU permits per 1,000 single-family houses. They range from less than 0.12 annual permits per 1,000 houses in Claremont to about 1.46 in Merrimack.

LOCALITY	YEAR ADU ORDINANCE ADOPTED	PERMITS ONLY ATTACHED ADUs WITH AN INTERIOR DOOR	ADDITIONAL PARKING REQUIRED	OWNER-OCCUPANCY REQUIREMENT	PERMITTED THROUGH A SUBJECTIVE REVIEW PROCESS	TOTAL ADU PERMITS, 2017-2021
Nashua	2017	Yes	Yes	Yes	Yes	46
Derry	2017	Yes	Yes	Yes	No	61
Dover	2012	Yes	Yes	Yes	No	35
Merrimack	2016	No	Yes	Yes	Yes	60
Hudson	1995	Yes	Yes	Yes	No	21
Portsmouth	2009	No	Yes	Yes	Yes	28
Hampton	2017	No	Yes	Yes	Yes	18
Durham	Unknown, precedes 2017 law by many years	Yes	Yes	No	No	Unknown
Hooksett	2017	No	Yes	Yes	Yes	Unknown
Claremont	2017	Yes	Yes	Yes	Yes	2

Figure 2. Total Annual ADU Permits in Eight Localities

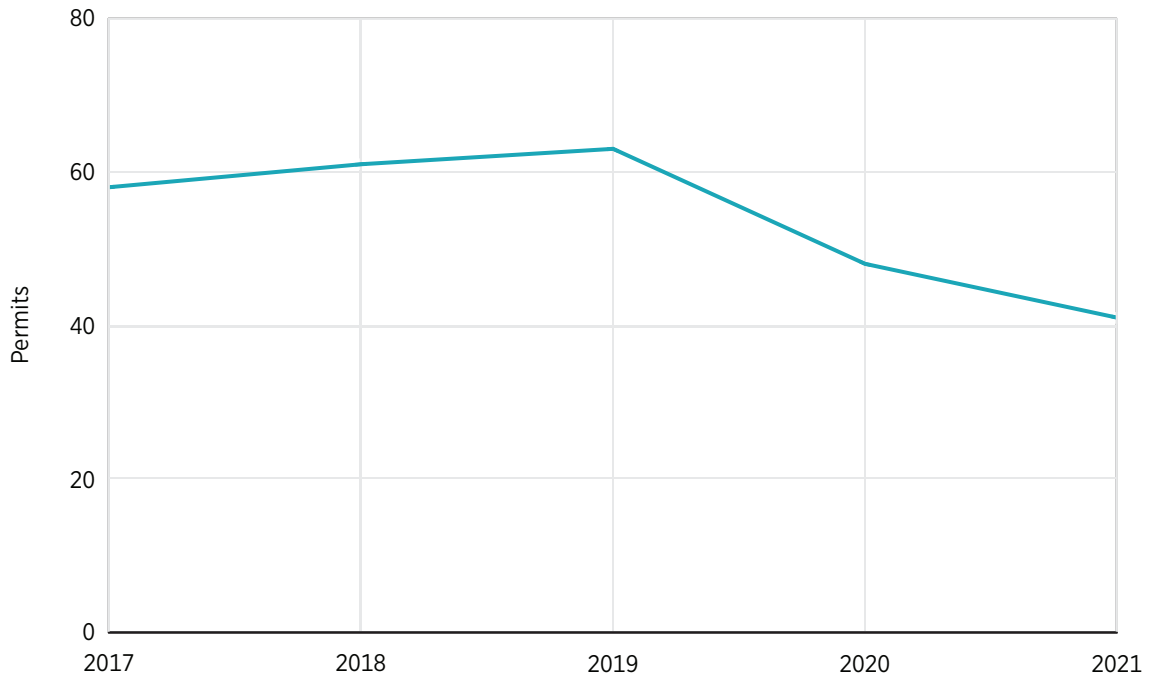


Figure 3. Average Annual ADU Permitting Across Eight New Hampshire Localities

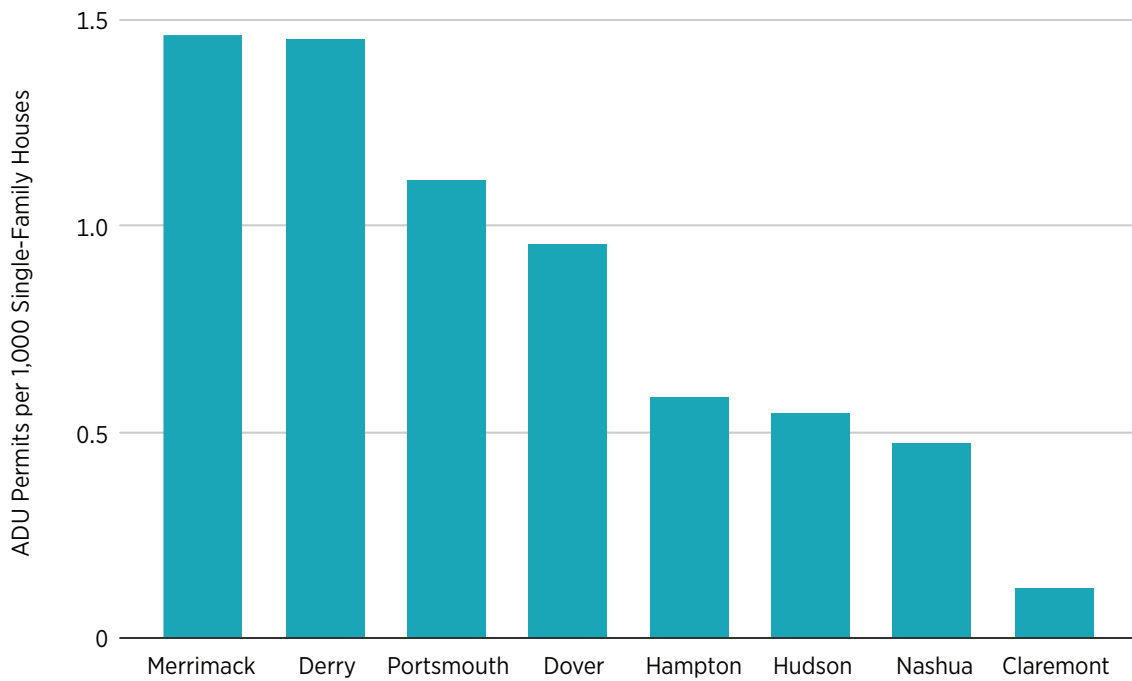
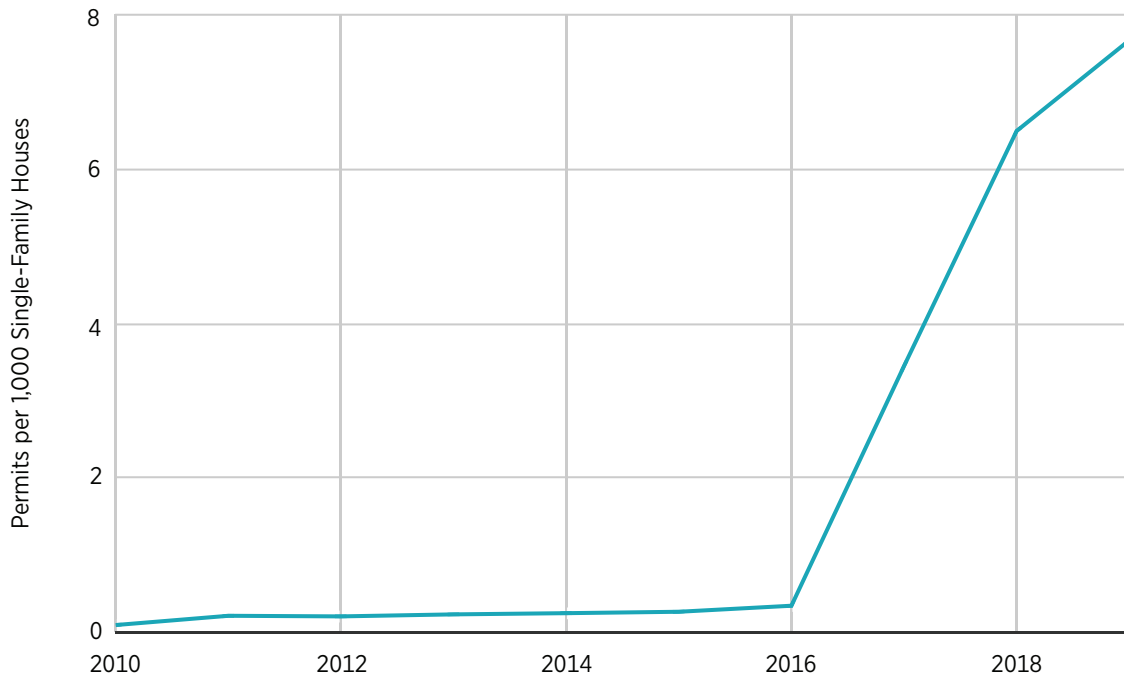


Figure 4. Annual ADU Permits in Los Angeles



Since Los Angeles is frequently cited as a national leader in ADU construction, figure 4 shows the state’s annual ADU permitting rates per capita over a period of time when policy reform at the state and local levels reduced important barriers to ADU construction.

Prior to California’s ADU laws that went into effect in 2017 that eliminated owner-occupancy requirements, Los Angeles was permitting ADUs at a rate of about 0.34 per 1,000 single-family houses annually. This rate is lower than any of the New Hampshire localities for which we have annual ADU permitting data, except for Claremont, despite New Hampshire having a *de jure* policy environment similar to Los Angeles prior to 2017. Relative to the other localities, Claremont has by far the lowest median house price and the weakest housing market. Derry and Merrimack were each permitting ADUs at a rate more than four times that of Los Angeles prior to 2017. Each locality has a more liberal ADU ordinance than required by state law. For example, Merrimack’s ordinance permits detached ADUs and Derry’s ordinance approves ADUs through a by-right process. But as table 1 shows, both ordinances include two or three of Peterson’s poison pills.

Los Angeles is of course different from these New Hampshire towns in countless ways. But it is difficult to find fair comparisons due to the scarcity of data on permitting and building ADUs outside of the West Coast. Salim Furth and Jess Remington provide evidence from Durham, North Carolina—which has an ADU ordinance that follows best practices for facilitating construction—

that there is at least one detached ADU for every 490 single-family homes.⁷ All the localities in our sample, except for Claremont, have permitted enough ADUs between 2017 and 2021 to have more than one ADU for every 490 single-family homes. Merrimack has permitted the highest rate at one ADU for every 137 single-family houses.

For Durham and Hooksett, we were not able to obtain specific annual data on ADU permitting from planning staff. We did, however, obtain the total number of ADUs that have been built or permitted. In Durham, where the University of New Hampshire is located and where there are many student renters, 266 ADUs have been built for a saturation rate of 1 for every 9 single-family houses. In Hooksett, there were 130 permits issued, which would lead to a saturation rate of about 1 for every 30 single-family houses, assuming all permitted ADUs are built. Both localities have achieved a saturation of ADUs well above what the West Coast cities, typically cited as ADU success stories, have achieved.⁸

Durham and Hooksett permitted ADUs prior to the 2017 state law. Both cities permit only attached ADUs and require an additional parking spot for houses that include ADUs. Durham does not have an owner-occupancy requirement whereas Hooksett does. And Durham issues ADU permits by-right whereas Hooksett requires a conditional use permit.

POTENTIAL EXPLANATIONS FOR NEW HAMPSHIRE'S RELATIVELY HIGH ADU CONSTRUCTION RATES

What is behind New Hampshire's relatively high rates of ADU permitting in a legal environment that has led to lower rates elsewhere? The state's median house price is about \$440,000 relative to the US median of \$360,000.⁹ Demand for housing is particularly high in southern New Hampshire towns that are part of the Boston suburbs. Rules that legalized ADUs, even weak rules, presented an important new opportunity to build housing in an expensive, supply-constrained state.

But prior to recent reforms, West Coast cities like Los Angeles were under weak ADU rules and suffered from even more severe housing supply constraints; nonetheless, they saw rates of permitting much lower than some New Hampshire cities. One potential reason for New Hampshire's high rate of ADU permitting despite its weak law is that the state has a housing stock that is dominated by large lot, single-family houses. These houses are particularly well-suited to accommodate ADU additions. Parking requirements that might stand in the way of ADU construction on a 5,000-square-foot lot in a West Coast city may not be a problem on the large lots typical of New England.

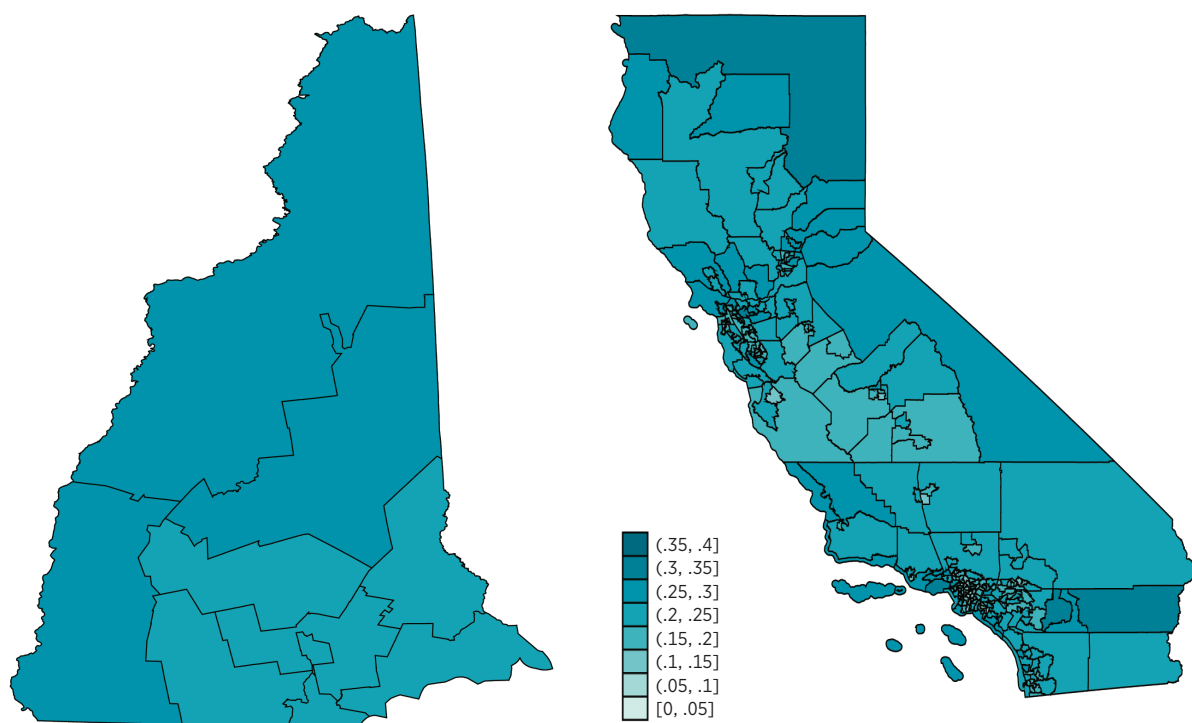
Outreach efforts in New Hampshire to teach homeowners about the option of building an ADU may also play a part in their successful rate of construction.¹⁰ Research on ADU construction in Portland, Seattle, and Vancouver finds that 15 percent of ADUs were initiated after homeowners learned about the opportunity to build them from public outreach programs.¹¹

Restricting ADU construction to attached units may not be as limiting as it seems, because compared to California, New Hampshire houses are large relative to the number of people per household, making it easier to build an ADU within the existing structure of a house than in some other high-cost areas. In California, 34 percent of households live in houses where there is at least one more bedroom than the number of people in the household.¹² In New Hampshire, the rate is 41 percent.¹³

Figure 5 illustrates the percentage of bedrooms that are “extra”—defined as bedrooms in a house above the number of people living in the house—in New Hampshire and California at the level of Public Use Microdata Areas (PUMAs). PUMAs are geographies, defined by the Census Bureau, that divide states into areas with at least 100,000 people.¹⁴

Houses in New Hampshire tend to have more “extra” bedrooms than in California, where relatively few houses in the major metro areas have more bedrooms than people. In addition to having more lightly used indoor spaces, as captured by Census data, old farmstead houses in New Hampshire may have walkout basements or additions that may be particularly well-suited to converting to ADUs.

Figure 5. Percent of “Extra” Bedrooms in New Hampshire and California



Furthermore, New Hampshire’s demographics likely support ADU construction. As indicated by AARP’s interest in ADUs, these units may be of particular appeal to senior citizens as a way to facilitate intergenerational living, earn retirement income, or build a new unit that meets individual accessibility requirements. New Hampshire’s median age of 43.1 is second only to Maine’s, which has a median age of 44.8.¹⁵ New Hampshire planner James Vayo has studied ADU production in Manchester and has also conducted extensive outreach to homeowners on the opportunity to add ADUs to their properties. In his assessment, the majority of New Hampshire ADUs are built when an elderly resident sells their house and uses the proceeds to build an ADU at a family member’s property where they will live.

The New Hampshire experience of ADU permitting and construction shows that there is not always a clear connection between ADU policy and ADU construction. Market conditions—house prices and the cost of converting the existing housing stock to include ADUs—are also essential determinants of ADU construction. While regulatory reforms that make ADUs easier to build have proven to be an important factor in cities on the West Coast, in some regions secondary units have been an important source of housing even when they were built in violation of zoning rules. This has been the case from Vancouver, British Columbia,¹⁶ to parts of Southern California.¹⁷

In some localities in New Hampshire, unpermitted ADUs were being built before the 2017 law went into effect. According to the Community Development Director of Merrimack Timothy J. Thompson, about 10 percent of their post-2017 ADU permits were to legalize previously built ADUs. Before 2017, the town permitted only attached ADUs and only for members of the same family to live in the ADU and the principal dwelling unit. In some cases, homeowners built ADUs to meet their own needs that did not comply with the previous ordinance.¹⁸

FURTHER IMPROVEMENTS TO ADU FEASIBILITY

The relatively high rate of ADU construction in New Hampshire despite weak protections for ADUs suggests that reforms that have increased ADU permitting in other contexts might be particularly effective in the Granite State. Based on experiences on the West Coast, a state law preempting local poison-pill regulations in particular could make more ADUs feasible to build. Further, research on the barriers to ADU construction in New Hampshire indicates that permitting detached ADUs in the localities where they are currently banned would lead many more homeowners to consider building them.¹⁹

The New Hampshire experience also offers lessons to state and local policymakers designing ADU rules elsewhere. It demonstrates that the extent to which new housing construction policy will lead to legalized housing being built depends greatly on what is happening on the ground and the market conditions. Factors outside of policy that would make ADUs attractive to build include:

- High rental rates
- Binding supply constraints on other types of housing

- Existing stock of large, relatively lightly occupied single-family houses
- Large lots
- Demographics that support housing construction, including people with funds to build them, families looking for intergenerational housing solutions, and student renters

Policy plays a crucial role in facilitating the construction of all housing. But other factors matter too. From the perspective of making more lower-cost housing feasible to build, the relative importance of legalizing ADUs depends on the suitability of existing single-family houses and lots to accommodate extra units.

APPENDIX: LOCAL ORDINANCES

LOCALITY	SOURCE
Nashua	Part II: General Legislation; Land Use; Zoning Districts and Supplemental Use Regulation; § 190-32: Accessory Dwelling Units, amended August 8, 2017, https://ecode360.com/8731206 .
Derry	<i>Zoning Ordinance</i> , “Section 165-25: Accessory Dwelling Units,” May 7, 2020, 50, https://www.derrynh.org/sites/g/files/vyhlf3026/f/uploads/zo_05.07.2020_1.pdf .
Durham	<i>Chapter 175 Zoning</i> , accessed February 23, 2023, https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning/page/21491/zoning_ordinance_-_february_2023_updated_spacing.pdf .
Dover	Application for Accessory Dwelling Unit Certificate of Use, revised October 25, 2021, https://www.dover.nh.gov/Assets/government/city-operations/1form/planning/ADU%20Application%20Form%202022.pdf .
Merrimack	<i>Zoning Ordinance & Building Code</i> , revised January 14, 2021, https://www.merrimacknh.gov/sites/g/files/vyhlf3456/f/uploads/2021fullzoningordinance.pdf .
Hudson	The Code; Part II: General Legislation; Zoning; Article XIII A: Accessory Dwelling Units, accessed February 23, 2023, https://ecode360.com/14358794 .
Portsmouth	<i>Zoning Ordinance</i> , “Article 8: Supplemental Use Standards; Section 10.814: Accessory Dwelling Units,” amended through January 11, 2021, https://files.cityofportsmouth.com/files/planning/zoning/ZoningOrd-210111.pdf .
Hampton	<i>2022 Zoning Ordinance, Building Codes, and Impact Fee Ordinance</i> , “Article III-A: Accessory Dwelling Units to Single-Family Dwellings,” amended March 8, 2022, https://www.hamptonnh.gov/DocumentCenter/View/455/2022-Zoning-Ordinance-PDF?bidId= .
Hooksett	<i>Zoning Ordinance of the Town of Hooksett, NH</i> , “Article 27: Accessory Dwelling Units,” amended March 14, 2018, https://www.hooksett.org/sites/g/files/vyhlf4541/f/uploads/zoning_ordinance_2021_revised.pdf .
Claremont	Code of Ordinances; Chapter 22: Zoning; Article V: Supplementary District Regulations; Division 1: Generally; Sec. 22-513: Accessory Dwelling Units,” August 18, 2021, https://library.municode.com/nh/claremont/codes/code_of_ordinances?nodeId=PTIICLCO_CH22ZO_ARTVSUDIRE_DIV5SEORBU_SS22-563--22-570RE .

ABOUT THE AUTHORS

Emily Hamilton is a research fellow at the Mercatus Center at George Mason University. Her research focuses on urban economics and land use policy. Hamilton has authored numerous academic articles and policy papers, and her writing has appeared in *USA Today*, *Christian Science Monitor*, *Economic Affairs*, and *Philadelphia Inquirer*. She also contributes to the blog *Market Urbanism*.

Abigail Houseal is an MA fellow at the Mercatus Center and a second-year MA student in the Department of Economics at George Mason University. Houseal graduated summa cum laude from Belmont Abbey College with a BA in economics and business management. She previously interned for the Delaware Prosperity Partnership.

NOTES

1. Thank you to Kelcie McKinley for providing research assistance. Thank you to Ben Frost and James Vayo for providing insights about ADU policy and construction in New Hampshire.
2. In another policy brief, we examine laws that have broadly legalized ADUs in eight states so far, including New Hampshire. Emily Hamilton and Abigail Houseal, “A Taxonomy of State Accessory Dwelling Unit Laws” (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, March 2023).
3. Kol Peterson, *Backdoor Revolution: The Definitive Guide to ADU Development* (Portland, OR: Accessory Dwelling Strategies, 2018).
4. Hamilton and Houseal, “A Taxonomy of State Accessory Dwelling Unit Laws.”
5. Peterson, *Backdoor Revolution*, 137.
6. Cordell A. Johnston, “Make Room for Daddy: The New Law on Accessory Dwelling Units,” New Hampshire Municipal Association, accessed February 15, 2023, <https://www.nhmunicipal.org/town-city-article/make-room-daddy-new-law-accessory-dwelling-units>.
7. Salim Furth and Jess Remington, “Ordinances at Work: Seven Communities That Welcome Accessory Dwelling Units” (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, April 2021).
8. Edward Pinto, Tobias Peter, and Emily Hamilton, *Light Touch Density: A Series of Policy Briefs on Zoning, Land Use, and a Solution to Help Alleviate the Nation’s Housing Shortage* (Washington, DC: American Enterprise Institute, 2022), 45.
9. Zillow, “Housing Data” (dataset), accessed February 17, 2023, <https://www.zillow.com/research/data/>.
10. The New Hampshire Housing Finance Authority has conducted extensive outreach to inform homeowners about their right to build ADUs. New Hampshire Housing, “Accessory Dwelling Units,” accessed February 17, 2023, <https://www.nhhfa.org/housing-challenges-solutions/accessory-dwelling-units/>. James Vayo, for his MA in Development and Planning at the University of New Hampshire, completed a capstone project on ADU construction in Manchester and carried out extensive community outreach about ADUs there. James Vayo, “Manchester’s Housing Opportunity: Understanding the Low Rates of Accessory Dwelling Unit Development by Manchester Homeowners” (master’s capstone, University of New, July 2019).
11. Karen Chapple, Jake Wegmann, Farzad Mashhood, and Rebecca Coleman, *Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle, and Vancouver* (Oakland, CA: Turner Center for Housing Innovation at UC Berkeley, July 2017), 19.
12. IPUMS USA, University of Minnesota, www.ipums.org.

13. IPUMS USA.
14. IPUMS USA.
15. Kate Poirier, a zoning coordinator in Nashua, speculated that demand for building ADUs in that city is driven by people providing aging relatives a place to stay or creating options for aging in place for seniors who want to stay in their neighborhoods. Authors' correspondence with Kate Poirier, July 15, 2022.
16. Authors' correspondence with Kate Poirier.
17. Jacob Wegmann, "We Just Built It': Code Enforcement, Local Politics, and the Informal Housing Market in Southeast Los Angeles County" (PhD diss., University of California, Berkeley, 2014); and Jake Wegmann and Sarah Mawhorter, "Measuring Informal Housing Production in California Cities," *Journal of the American Planning Association* 83, no. 2 (2017).
18. Authors' correspondence with Timothy J. Thompson, July 25, 2022.
19. Vayo, "Manchester's Housing Opportunity."