



COMMUNITY DEVELOPMENT AGENCY

## HOUSING AND FEDERAL GRANTS DIVISION



### **Accessory Dwelling Units (ADU)**

#### Affordability Fee Waiver Frequently Asked Questions (FAQs)

#### **1. What is an ADU? What about a JADU?**

An Accessory Dwelling Unit (ADU), also known as an in-law unit, second unit, or cottage, is an additional residential dwelling unit on a single-family or multi-family residentially zoned property. An ADU can be an attached or detached dwelling unit, providing independent living facilities for one or more persons that has a full, separate kitchen (including stove, refrigerator, and sink), separate bathroom and separate entrance.

A Junior Accessory Dwelling Unit (JADU) is an additional, independent living unit generally created through the conversion of an existing bedroom in a single-family residentially zoned residence, and also has a separate entrance. A JADU does not need to have all the same features as an ADU, such as a separate bathroom. However, per the Marin County Development Code 22.130.030, the unit should have a wet bar (but not a full kitchen) and must be certified as a JADU by the Community Development Agency Director.

#### **2. What permits and fees are required to build an ADU?**

In Marin County, there are various permits and fees required to build an ADU. View the table below for the most common Building & Safety Division fees associated with ADUs. New California state law, effective January 1, 2020, prohibits charging impact fees for ADUs smaller than 750 square feet. Contact Building & Safety for a complete list of fees for your specific project.

The Department of Public Works also has fees in identified areas. Contact this department directly for more specifics related to your project: (415) 473-6528.

Fee	County Department	Fee Range	Fee Notes
Planning ADU Permit Fee	Community Development Agency	\$515	Only required if ADU is not exempt from Permit
Planning Coastal Permit Fee	Community Development Agency	\$5,641-\$8,633	Only required if ADU is in coastal zone
Building & Safety Permit Fee	Community Development Agency	\$6,500-\$10,000+	Depends on square footage of ADU
EHS Water & Septic Permit Fee	Community Development Agency	\$3,500-\$8,000+	Only required if a new or modifications to system needed

### **3. What is the maximum floor area of an ADU and a JADU?**

In Marin, the maximum floor area of an ADU in a proposed primary residence or an existing or proposed detached accessory building is 1,200 square feet. The maximum floor area of an ADU attached to an existing primary residence is not to exceed 50% of the existing residence's floor area. Any ADU exceeding 1,000 square feet will be required to provide at least two bedrooms.

The maximum floor area for a JADU is 500 square feet, and the unit must be within the proposed space of a single family dwelling or existing space of a single family dwelling or accessory structure, and may include an expansion of not more than 150 square feet beyond the same physical dimensions of the existing accessory structure.

### **4. Will the ADU count towards the density/floor area ratio of my property?**

Per Marin County Development Code 22.32.130, both ADUs and JADUs are accessory uses and do not count towards the allowable density for the lot upon which the accessory dwelling unit is located.

A detached residential accessory structure shall be subject to the floor area ratio<sup>1</sup> (FAR) requirements of the applicable zoning districts. However, new California state law holds that this FAR limitation must allow for the development of at least one 800 sq. ft. attached or detached ADU on every lot.

### **5. Can I use this fee waiver to build or convert a JADU?**

No. This fee waiver program is only limited to ADUs. The County has a fee waiver program for JADUs in place, that began in early 2018. Applicants can receive a waiver of up to \$1,500 for the creation of a JADU at any income level. See the County's press release ["More Enticements for Accessory Dwelling Units"](#), published January 14, 2020, for a comprehensive understanding of all the fee waivers offered for ADUs and JADUs in Marin.

### **6. What is the difference between building a new ADU and converting an existing structure, in terms of fees?**

The fees associated with an ADU are related to the scope of work of the specific project, square footage and location. For a list of common fees and their requirements, view the table in response to question 2.

### **7. There is an existing unit on my property that was built without permits. Can it be legalized? Can I use the fee waiver to legalize it?**

To legalize an existing unit, you will need to apply for a building permit with the Building & Safety Division of the Community Development Agency, and ensure the unit is brought up to current building, health and safety codes. The fee waiver may be applied to the cost associated with acquiring these permits and meeting these codes, in addition to construction costs as long as the unit is rented affordably.

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<sup>1</sup> FAR is defined as the total floor area of all buildings on a lot, divided by the area of that lot.

**8. Does my ADU need separate utilities (water meter, electricity or septic connection)? Can the fee waiver be used for this?**

Consult your local utility service providers for their ADU guidelines, requirements, and any applicable fees prior to submitting a permit application. Many water and sewer districts do not require a separate meter but have connection and service fees for an ADU. Consult your water and sanitary districts prior to submitting a permit application. All utility configurations should provide the tenant with unobstructed access to shut-off valves and circuit breakers. For questions about the need to modify or expand your septic system, contact the Environmental Health Services Division at (415) 473-6907.

**9. Can I build more than one ADU on my property?**

A single-family zoned property in Marin County is limited to one ADU. However, you can build an ADU in addition to creating a JADU within the floor area of the primary residence. Multi-family zoned properties can have up to two detached ADUs (up to 800 square feet) or multiple converted ADUs, depending on the number of existing units. If you are interested in developing on your multi-family zoned property, contact the Planning Counter at (415) 473-6269, or in Suite 308 at the Civic Center, located at 3501 Civic Center Drive, San Rafael, CA 94903.

**10. How many ADU fee waivers can I apply for?**

A property owner may apply for fee waivers to develop the maximum allowable ADU units on their property. See the response to the previous question for more details.

**11. Will adding an ADU raise my property taxes?**

Property taxes are assessed by the County of Marin Assessor's Office. Building an ADU will not cause the basis of your property taxes to be reassessed, but an increment representing the added value of the new structure will be added. Further information is available by contacting the County's Assessor at (415) 473-7215 or by email at [Assessor@marincounty.org](mailto:Assessor@marincounty.org).

**12. Can my ADU be sold separately from my property?**

At this time in unincorporated Marin County, an ADU can be rented but cannot be sold or otherwise conveyed separately from the primary residence as it is classified as an accessory building. If the property is sold, all permits and approved uses will transfer with the sale.

**13. Can I rent out my ADU as a short-term rental?**

No, an ADU created or legalized through a building permit application may not be rented as a short-term rental (i.e: AirBnb, VRBO, etc.) defined as rented for a term of 30 days or less.

**14. Do I need to provide parking for my ADU? What about a JADU?**

Per the Marin County Development Code Chapter 22.23.120, the lot on which the ADU is located should have a minimum of one off-street parking space assigned to a studio or one-bedroom ADU or

two off-street parking spaces assigned to a two-or-more bedroom ADU. The parking space(s) assigned to the ADU are in addition to those required of the primary residence.

Parking is **not** required for the following:

- A garage converted to an ADU
- The ADU is located within one half mile of a public transit stop (considered any bus stop)
- The ADU is located within an architecturally and historically significant historic district
- There is a car-share vehicle pick-up and drop-off site located within one block of the ADU
- On-street parking permits are required but not offered to the occupant of the ADU
- A JADU, where the unit is no more than 500 square feet in floor area and contained entirely within the same building as the primary residence
- A parking exception has been approved by the Department of Public Works

### **15. At what income levels can I rent my ADU to qualify for the fee waiver program? How much can I receive in waivers?**

There are three options to receive waivers for your ADU.

1. If rented at market rate, there are no income restrictions placed on the unit. In this scenario, you can receive up to \$2,500 in waivers.
2. If rented to a moderate-income household, the income restriction for the unit is set between 80 and 120% of the area median income. In this scenario, you can receive up to \$5,000 in waivers. Examples of maximum income levels of the renters are as follows:
  - Studio: \$112,900
  - 1-bedroom: \$129,000
  - 2-bedroom: \$145,100
  - 3-bedroom: \$161,200
3. If rented to a low-income household, the income restriction for the unit is set up to 80% of the area median income. In this scenario, you can receive up to \$10,000 in waivers. Examples of maximum income levels of the renters are as follows:
  - Studio: \$90,320
  - 1-bedroom: \$103,200
  - 2-bedroom: \$116,080
  - 3-bedroom: \$128,960

For rent limitations, see tables 4 and 5 of the ADU Fee Waiver Affordability packet.

## **16. How does the fee waiver work?**

**At Market-Rate Level:** To receive a fee waiver for the creation of an ADU at market rate, the property owner will need to follow these steps:

1. Fill out and submit the ADU Fee Waiver Application
2. Receive notification of approval from the County
3. Once an application has been approved by County staff, the owner will consult with Building & Safety Division and the Department of Public Works to determine all the fees and permits needed for their specific project. Once a total cost for the project has been established, the owner will pay all fees.
4. The owner will be reimbursed up to \$2,500 for the creation of a market-rate ADU.

**At Affordable-Income Level:** To receive a fee waiver for the creation of an ADU intended to be occupied by a moderate-income or low-income household, the property owner will need to follow these steps:

1. Fill out and submit the following:
  - ADU Fee Waiver Application,
  - Notarized Deed of Trust and Assignment of Rents, and
  - Secured Promissory Note

The latter two will outline the provisions required to receive the waiver from the Community Development Agency.

2. Receive notification of approval from the County
3. Once an application has been approved by County staff, the owner will consult with Building & Safety Division and the Department of Public Works to determine all the fees and permits needed for their specific project. Once a total cost for the project has been established, the owner will pay all fees.
4. The owner will be reimbursed up to \$5,000 for the creation of a moderate-income level ADU and up to \$10,000 for the creation of a low-income level ADU.
5. The reimbursement will be structured as a lien placed on the property, to ensure that the ADU is rented at the income level specified. If the unit is no longer rented at the income restricted in the lien for 60 days or longer, the property owner may be required to pay back the difference between the affordable housing and general fee waiver, with 5% simple interest accrued over time.

## **17. What documentation do I need to provide to show that I am renting to a tenant at the required income level? How often do I need to submit this documentation?**

To receive a fee waiver for the creation of an ADU for a moderate-income or low-income household, the property owner will need to submit tenant income documentation to demonstrate that the household meets the income limitations annually or if there is a change in tenants, as noted in the response to question 15.

**18. What happens if I no longer rent my ADU to a low-income or moderate-income tenant?**

If the unit is no longer rented at the income restricted in the lien for 60 days or longer, the property owner will be required to pay back the difference between the affordable housing and general fee waiver, with 5% simple interest accrued over time. The details on this will be made available prior to signing the Deed of Trust and Assignment of Rents and Secured Promissory Note documents.

**19. Can I rent the affordable ADU to a family member or employee?’**

The affordable unit may be rented to anyone who meets the income limitations agreed to. However, state law prohibits ADUs from owner occupancy until January 1, 2025. If the family member is part of the owner household, then they cannot live in the second unit and qualify for this program. The household must be able to show documentation to illustrate compliance with the income limitations set by the California Tax Credit Allocation Committee (TCAC) by the size of the ADU. Review tables 4 and 5 of the ADU Affordability Fee Waiver Information and Application packet.

**20. Can I build an ADU if my property is part of an HOA?**

California state law AB 670 limits private restrictions, such as HOA Covenant, Conditions & Restrictions, or CC&Rs. AB 670 makes any governing HOA document void and unenforceable to the extent that it prohibits, or effectively prohibits, the construction of use of ADUs or JADUs. AB 670 does permit an HOA to place “reasonable restrictions” on ADUs and JADUs in common interest developments, as long as the restrictions do not discourage ADU or JADU construction or unreasonably increase the cost to construct them.

**21. Does the property need to be owner-occupied?**

Owner-occupancy will not be required for ADUs built between 1/1/2020 and 1/1/2025. Owner-occupancy would continue to be required where JADUs are permitted.

**22. Can I rent to a Section 8 voucher holder? How will their income be considered?**

Section 8 voucher holders are encouraged to apply for an ADU made affordable through the ADU Affordability Fee Waiver program. In fact, the County, and most recently the state, passed a Source of Income Protection ordinance, which bars landlords from discriminating a tenant or prospective tenants’ use of third-party rental subsidies, such as Section 8/Housing Choice vouchers in California.

While Section 8 vouchers typically subsidize the difference between the tenants’ payment (30% of their income) and market rate rents, these units would constitute a low-income households, and may receive waivers at this income threshold. Contact County staff directly for more information. Property owners with current Housing Assistance Payments (“HAP”) contracts will not be required to submit annual documentation.

### **23. Where can I find more information about ADU policies in the County?**

More information about Marin County's ADU policies can be found through Make Room for Marin, a countywide resource for converting, reconfiguring or constructing ADUs and JADUs, at [www.marincounty.org/MakeRoomForMarin](http://www.marincounty.org/MakeRoomForMarin). Additionally, specific details around ADU requirements can be found in chapters 22.32.120, 22.56 and 22.130 of the Marin County Development Code, available on the County's Planning webpage.

Contact the Housing and Federal Grants Division for more information: (415) 473-7549 or [affordablehousing@marincounty.org](mailto:affordablehousing@marincounty.org).