

**Midway City Council
3 August 2021
Work Meeting**

**Ordinance 2021-17 /
Accessory Dwelling Units**



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W W W . G O R D O N L A W G R O U P U T A H . C O M

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UPDATED

MEMORANDUM

TO: Mayor Celeste Johnson
FROM: Corbin Gordon
DATE: July 30, 2021
RE: HB 82 – Internal Accessory Dwelling Unit

I have been asked to outline HB 82 that requires Internal Accessory Dwelling Units be allowed in all residential zones within Midway City.

HB 82 – Signed into law on March 16, 2021

The main operative provisions of this bill are contained in Utah Code Ann. §10-9a-530, which becomes effective on October 1, 2021.

Utah Code Ann. § 10-9a-530 dictates that Internal Accessory Dwelling Units (IADUs) are now a permitted use in all residential zones throughout the state of Utah.

Requirements:

1. Must be within a primary dwelling;
2. Must be within existing footprint of primary dwelling;
3. Cannot rent for anything less than 30 days;
4. There can only be one IADU within a primary dwelling;
5. Must comply with building, health and fire codes (except for egress windows);
 - a. Unclear what these may be;

- b. Can be separated by $\frac{1}{2}$ inch gypsum board;
- c. Discharge of return air flow from one unit to another is not prohibited;
- d. IADU does not have to have access to the disconnect serving the unit.

City CANNOT restrict based on the following:

1. Municipality cannot establish restrictions or requirements for construction or use of one IADU within a primary dwelling including:
 - a. The size of the IADU (could be a 5,000 square foot basement or a 200 square foot room);
 - b. Lot size (not allowed in anything less than 6,000 square feet);
 - c. Frontage
2. Cannot require alteration to egress windows if it would cause a structural change.

City CAN regulate the following:

1. Can prohibit a second water meter;
2. Require that the IADU does not alter the appearance of the primary dwelling as a single family dwelling;
3. Require an additional on-site parking space;
4. Require replacement of parking if IADU is put into a garage or carport;
5. Prohibit motor homes;
6. Require permits or licenses to rent;
7. Prohibit IADU's in zoning district comprising 25% or less of the residential zoning in the City (protects the rich);
8. Prohibit if septic tank is failing.

Can punish violators of primary dwelling and 30-days rule as follows:

1. May hold a lien against a property that contains an IADU in an amount of up to \$100 for each day of violation after the day on which the opportunity to cure the violation expires
 - a. Provide written notice of violation;
 - b. Hold a hearing to determine if violation has occurred
2. If City issues a permit or license to an owner of a primary dwelling to rent an IADU, the City may record a notice in the office of the County recorder.

PITFALLS

1. Cannot prohibit listing home on VRBO;
2. Can rent for certain portion of the month and have people sign a 30-day lease;

3. Page 26 line 695 – It appears that if enrolled as a long-term rental we can prohibit listing the unit as a short-term rental.
4. Page 31 through 33 line 887 – overrides CC&R restrictions. HOAs cannot restrict IADUs.

A similar statute has been passed requiring identical provisions for Counties (Utah Code Ann. §17-27a-526).

Two additional questions have been raised:

1. **Can the homeowner expand or alter the home to allow for the creation of the IADU?**

Answer: The answer appears to be a qualified “Yes”. The only limitations expressly contained in the Statute state that:

- a. The home must be a primary dwelling (as opposed to a secondary dwelling);
- b. The IADU must be within the footprint of the primary dwelling at the time the internal accessory dwelling unit is created.
- c. The City may require that the IADU be designed in a manner “that does not change the appearance of the primary dwelling as a single-family dwelling.”

The Statute does not say that the single-family dwelling cannot be changed to accommodate the IADU. It only states that the home must still retain the appearance of a single-family dwelling.

Therefore, it appears that an owner of an existing single family home could apply for a building permit to add to his or her home, or convert the carport to a room, etc. If the application meets the requirements of the City code, it would have to be approved. Once the add-on or expansion is completed, the homeowner could then apply for an IADU permit. With the add-on completed, the IADU would technically “fit within the footprint of the primary dwelling at the time the internal accessory dwelling unit is created.”

2. **Can the City charge an additional impact fee, or require that additional water be turned in to the City to offset the increased use of municipal services?**

Answer: The answer appears to be a soft “Yes”. The Statute is mostly silent on the issue of additional impacts, except for parking. However, according to the Utah Code, the City can:

- a. Prohibit the installation of a separate utility meter for an IADU; and
- b. Prohibit an IADU if the existing septic system is already failing.

The Statute does not require the City to prohibit the installation of a separate utility meter. So in theory, the City could do the opposite. It appears the City could require a separate meter for utilities, which may include meter and connection fees. Whether the City would want to do so is a different question that needs more study to answer.

The City could also require any home using a septic system to provide an engineer's or technical study showing that the septic system is functioning properly and can handle the additional wastewater appropriately.

Impact fees are supposed to be firmly based upon actual impact. If the IADU creates an impact beyond a normal single family primary dwelling, the City can probably require that impact to be mitigated. So the City may be able to require a second water meter for an IADU, and, if the usage is significant, require additional water rights or impact fees.

Please note that this memo is preliminary only. Also, note that the City needs to enact an ordinance dealing with IADUs prior to the effective date of the State Statute, which is October 1, 2021. Many of the allowed prohibitions or limitations require affirmative action on the part of the City.