



To: Emigration Canyon Planning Commission and Township Council

From: Adam S. Long and Jay L. Springer

Re: Legislative Update on Accessory Dwelling Units

Date: July 16, 2021

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The Greater Salt Lake Municipal Services District (“MSD”) has prepared a proposed accessory dwelling unit (“ADU”) ordinance for consideration by Emigration Canyon. We have reviewed the proposed ordinance and related legislative updates and requirements. This memorandum (1) outlines the mandatory substantive requirements to comply with state law, (2) identifies areas where Emigration Canyon retains discretion, and (3) describes the process to follow in enacting the ADU ordinance.

The proposed ADU ordinance satisfies the minimum statutory requirements while allowing Emigration Canyon to retain as much regulatory authority as permitted under the new state law.

Generally speaking, any ordinance that conflicts with state law would be deemed invalid and no effect. Taking no action therefore could result in vacuum of regulation where property owners have more freedom with respect to ADUs than Emigration Canyon may desire.

### 2021 Mandatory Requirements – Allowing Certain ADUs and Prohibiting Certain Municipal Regulation

2021 House Bill 82 (the “Bill”) was passed by the legislature and signed by the Governor in 2021. The effective date is May 5, 2021, and the deadline for establishing conforming ordinances under UCA 10-9a-530 is October 1, 2021.

The Bill requires “internal” ADUs (“**IADUs**”) to be permitted in any residential zone.<sup>1</sup> An internal ADU is defined as an *accessory dwelling unit created (i) within a primary dwelling, (ii) within the footprint of the primary dwelling ... at the time the internal accessory dwelling unit is created, and (iii) for the purpose of offering a long-term rental of 30 consecutive days or longer* in UCA Section 10-9a-530(1)(a).

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<sup>1</sup> Internal ADUs are generally more common and less intrusive than external ADUs. The Legislature has not required external ADUs to be permitted in any zone, so Emigration Canyon may enact or retain regulations pertaining to those ADUs.

The Bill allows Emigration Canyon to regulate all ADUs (including IADUs) to the extent that:

- Emigration Canyon may identify up to 25% of the area of its residential zones where internal ADUs are prohibited.
- Emigration Canyon may prohibit the installation of a separate utility meter.
- Emigration Canyon may require that IADUs be designed in a manner that does not change the appearance of the primary dwelling as a single-family dwelling.
- Emigration Canyon may require one additional on-site parking for an IADU – regardless of whether the primary dwelling is existing or newly-constructed.
- Emigration Canyon may prohibit creation of IADUs if:
  - The property is served by a failing septic tank; and/or
  - The lot is 6,000 square feet or less.
- Emigration Canyon may prohibit the rental of an IADU:
  - For a period of less than 30 consecutive days; and/or
  - If the primary dwelling is not occupied as the owner’s primary residence.

The proposed ordinance also requires:

- The applicant to provide written confirmation from the applicable water supplier that the IADU will comply.
- IADUs shall not be occupied by more than four persons.
- IADUs shall have a separate address marking for emergency services and mailing.
- Property owners must obtain a business license prior to renting an IADU.

### ADU Ordinance Adoption

The adoption process is governed by Utah law (LUDMA) and Emigration Canyon’s own ordinances. The ADU ordinance is a land use ordinance, so it must comply with UCA Section 10-9a-502 and related law. The general process and order is identified below.

1. Drafting of proposed ordinance (MSD) – Complete.
2. Notice of Land Use Ordinance Hearing – 10 days prior to planning commission hearing.
3. Recommendation from planning commission to Emigration Canyon Council.
4. Public Meeting (hearing optional) for Council to act on planning commission recommendation.
  - a. The Council may make any changes to the proposed ordinance after the planning commission’s recommendation. A second hearing is not required.
5. Enactment and effective date (posting) – This must be effective no later than October 1, 2021.

Closing

Emigration Canyon may consider designated IADU restricted areas, which is not currently incorporated into the ordinance. This may be done by modifying the zoning code and/or zoning map.