

# Local Law 1 of 2022

## Accessory Dwelling Units Amending Chapter 140, Zoning of the Code of the Town of Rochester

Presented, Local Law 1-2022, Amending Chapter 140 of the Code of the Town of Rochester as follows:

Be it enacted by the Town Board of the Town of Rochester as follows:

### Section 1.

Pursuant to, and in accordance with, the provisions of the New York State Municipal Home Rule Law and the NYS General Municipal Law, Article 18, §808, the Town of Rochester Town Board amends Chapter 140, Zoning, to add a new section 140-13.1, Accessory Dwelling Units, of the Code of the Town of Rochester as follows.

### §140-13.1 Accessory Dwelling Units

#### A. Purpose and intent.

It is the specific purpose of this law to aid the general welfare of the Town by providing a variety of housing opportunities; particularly:

- a. for our aging population to “age in place.”
- b. to create housing expansion for our local workforce.
- c. to provide options for young and older families.
- d. to allow the more efficient use of the town’s existing stock of dwellings and accessory structures.
- e. to provide economic support for resident families of limited income; and
- f. to protect and preserve property values while preserving the rural character of the town.

#### B. Definitions.

As specifically apply to this subsection

**ACCESSORY DWELLING UNIT** -- A subordinate dwelling unit having its own kitchen and bathroom facilities located either within the principal residence unit, (inclusive of garage if attached thereto), or within an approved detached accessory structure and meeting the requirements of habitable space as defined by the New York State Uniform Fire Prevention and Building Code. For the purposes of this code, accessory dwelling units shall have a maximum number of one bedroom.

**FLOOR AREA, GROSS** — The sum of the gross horizontal areas of the several floors of the building or buildings on a lot measured from the exterior faces of exterior walls or from the centerline of party walls separating two buildings, excluding cellar and basement areas used only for storage or for the operation and maintenance of the building

**PRIMARY DOMICILE** — A resident's true, principal, and permanent home and a legal construct used to determine where a resident votes, files lawsuits, pays taxes, claims benefits, and obliges governmental authority.

**PRINCIPAL DWELLING UNIT** — A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entrance or other hallways or porches) or cooking or sanitary facilities in common with any other dwelling unit.

**HABITABLE SPACE** — Space occupied within a dwelling unit for the purposes of living as defined by requirements of the NYS Building Code

**C. Authorization.**

The Town Board authorizes the Code Enforcement Officer to issue a zoning determination to property owners per the provisions of this local law. All accessory dwelling units are subject to requirements for Residential Building Permits.

**D. Zoning Districts.**

Accessory Dwelling Units as defined herein shall be permitted in the AR-3, AB-3, R-1, R-2, R-5, H, and B zoning districts as a permitted accessory use. To apply for a permit, the accessory dwelling unit shall be located on the same parcel as the primary residential dwelling unit. In the determination of permitting, the construction or conversion intended to create an accessory dwelling unit shall demonstrate that is clearly incidental and secondary to the primary residential dwelling unit so as to preserve the appearance of the primary dwelling and the single-family character of the primary residential dwelling unit and of its neighborhood. The accessory dwelling unit shall always be considered an accessory use and subordinate to the primary residential dwelling unit.

**E. Lot requirements.**

the following lot requirements shall apply:

1. An accessory dwelling unit located in the principal dwelling unit, having a common foundation with the principal dwelling unit, or connected to the principal structure shall not be included in the density calculation as permitted under the schedule of district regulations.
2. An accessory dwelling unit located in a legally built detached structure, preexisting or new construction, shall require a 50% additional density calculation as permitted under the schedule of district regulations.
3. A detached structure where an accessory dwelling unit is proposed shall meet the setbacks for the zoning district in which it is located or be granted an area variance.
4. All other standards of the schedule of district regulations shall apply

**F. Prohibitions.**

Accessory dwelling units shall be prohibited:

1. On parcels utilized for two family or multifamily dwelling units.
2. On parcels where the principal use is commercial or industrial.
3. On parcels with an existing or proposed primary dwelling unit that are non-conforming with regards to lot size, unless located in the R-1 or H zoning districts.
4. Accessory dwelling units shall not be permitted as a Short-Term Transient Rental Use.

**G. Owner Occupancy.**

The owner of the parcel on which an Accessory Dwelling Unit is located shall maintain their primary domicile in either the principal or the accessory dwelling unit. The owner of the parcel shall file with the Code Enforcement Officer on or before July 1 of each year an Affidavit in the form prescribed by the Town Attorney certifying that the primary and accessory units are in compliance with the occupancy standards and the other requirements of this Section.

**H. Certificate of Occupancy.**

An accessory dwelling unit may not be located on a parcel where a current building violation exists unless the legalization or creation of the Accessory Dwelling Unit will cure the violation. All Accessory Dwelling Units shall be on a permanent foundation.

**I. Maximum gross floor area.**

1. An Accessory Dwelling Unit shall contain a minimum of 350 sq. ft and shall not exceed a maximum of 900 sq. feet.
2. The Accessory Dwelling Unit shall be subordinate to the principal dwelling unit and shall not exceed 40% of the gross floor area of the principal dwelling unit or 900 square feet, whichever is more restrictive (lesser), subject to the minimum square footage.

**J. Number of Accessory Apartments.**

A maximum of one accessory dwelling unit shall be permitted on each qualifying parcel.

**K. Construction.**

Both the accessory dwelling unit and the principal dwelling unit shall meet the requirements of New York State Uniform Fire Prevention and Building Code and New York Department of Health Code.

**L. National or State Register Designated Historic District Properties.**

Upon establishment of the accessory dwelling unit, the building shall be referred to the TOR Historic Preservation Commission prior to the issuance of a building permit for review and commentary, if within a National or State Register Historic District, Site or Structure.

**M. Septic.**

Accessory dwelling units shall require Ulster County Department of Health approval for septic, prior to issuance of Building Permit(s) Certificate of Occupancy.

**N. Parking.**

No additional driveway (curb cut) shall be created for the primary purpose of serving the accessory dwelling unit. Adequate off -street parking as required by Chapter §140-17 shall be provided for both uses and such parking shall not be located in the front yard setback.

**O. Fire and Safety Inspection**

Accessory dwelling units shall require a biennial fire and safety inspection.

**P. Removal of Accessory Apartment.**

When an owner wishes to eliminate an accessory dwelling unit proof of the removal of the second kitchen and the restoration to the status before the conversion shall be submitted to the satisfaction of the Code Enforcement Officer.

**Section 2. Schedule of District Regulations Amendment**

Chapter 140, Attachment 1, of the Code of the Town of Rochester entitled "Schedule of District Regulations" shall be amended to add in the column labeled Accessory Uses the use "Accessory Dwelling Units" in the following zoning districts.

AR-3, AB-3, R-1, R-2, R-5, H, and B zoning districts

**Section 3. Severability**

If any part or provision of this local law is judged invalid by any court of competent jurisdiction, such judgment shall be confined in application to the part or provision directly on which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Law or the application thereof to other persons or circumstances. The Town hereby declares that it would have enacted the remainder of this Law even without such part or provision or application.

**Section 4. Effective Date**

This local law shall become effective immediately upon the filing in the office of the New York Secretary of State pursuant to Section 27 of the Municipal Home Rule Law.

**History**

Presented:	1/19/2022
Discussion:	2/3/2022, 2/16/2022
Amendments:	2/3/2922, 2/16/2022
SEQRA:	_____
Referrals:	UCPB, TORPB 2/18/2022
Public Hearing:	3/31/2022
Vote:	_____