

TINY HOMES: LAND USE CONTROLS

Fact Sheet

Spring 2019

Introduction

Tiny homes have been difficult to define over the years. However the International Code Council recently developed a definition under Appendix Q of the International Residential Code for tiny homes as “a dwelling that is 400 square feet or less in floor area excluding lofts.”

As the number of tiny homes continues to increase, developers, residents, and local governments may wonder how to regulate these small living spaces. For example, how do land use controls, such as zoning ordinances, floodplain ordinances, and the building code apply? Tiny homes exist in a number of forms, making the concept difficult to define and difficult to address. Tiny homes may be subject to land use controls applying to a variety of permanent or temporary housing: single-family residences, recreational vehicles, factory-built homes, and accessory dwelling units (ADUs), to name a few. Further complicating local regulation of tiny homes, preemption by and application of state and federal law change as the form of the tiny home changes.

For these reasons, tiny homes are best addressed within existing land use definitions. Local governments must become familiar with the various forms of tiny homes and understand the application of land use controls and other state and federal laws to address the entry of tiny homes into a community. Also see the Tiny Homes: Issues factsheet for a further discussion of the issues surrounding tiny homes.

Laws that Interact with Tiny Homes

* Zoning

Regardless of the form of tiny home, zoning laws can affect where tiny homes are permitted within a community and set specifications for tiny homes. Zoning laws can set minimum square footage requirements; require certain forms of homes to be on permanent foundations; limit the types of homes permitted in certain areas; and limit the use and placement of recreational vehicles, which may include some tiny homes.¹

* Building Code

Like all other residential dwellings, tiny homes on a permanent foundation are required to comply with local building code regulations. The current version of the West Virginia state building code does not provide any special provisions or exceptions for tiny homes.² However, the 2018 International Residential Code (IRC) added “Appendix Q-Tiny Houses,” which relaxes several requirements in the IRC for homes that are 400 square feet or less. In order for this provision to apply, West Virginia must first adopt the 2018 IRC, and the local government must then specifically reference Appendix Q in the adopting ordinance.³

* Other Land Use Controls

Subdivision and Land Development Ordinances (SALDOs) can limit the placement and density of tiny home development and ensure that adequate infrastructure and utilities are available before placement of the tiny home. Local floodplain ordinances have anchoring and siting requirements for certain types of tiny homes placed in the floodplain. When tiny homes are transported on roads certain state dimensional requirements ensure that the transport is done legally and safely.

Tiny Home Forms



- Tiny homes can be temporarily or permanently occupied.
- Tiny homes can exist on a mobile chassis or trailer, or on a permanent foundation.
- Tiny homes range in size from approximately 100 square feet to 400 square feet, or larger.
- Tiny homes can be owned or rented and placed on land that is owned or rented, including in the backyard of a residence.
- Tiny homes can be stick built or factory built.



¹Tiny House Friendly Framework for Zoning, AMERICAN TINY HOUSE ASSOC. (2015).

²W. Va. Code R. § 87-4-4 (2017).

³Id. § 87-4-7.

Ways Tiny Homes Enter Communities

* **Camping Trailer/Recreational Vehicle**

Many tiny homes exist on a mobile chassis and can be used similar to a camping trailer or recreational vehicle. A tiny home on wheels (THOW) can be towed behind a vehicle, subject to certain size, weight, and load restrictions, but must first be titled, inspected, licensed, and registered by the state's Department of Motor Vehicles.⁶

A community's zoning laws largely determine where THOWs can be located within a community, specifically by limiting their parking, storage, or occupancy, whether in a residential neighborhood or campground.

* **Accessory Dwelling Units (ADUs)**

ADUs are often tiny homes, though not all tiny homes are ADUs. Despite the form an ADU takes (backyard cottage, garage apartment, granny flat, etc.), ADUs can be rented, but cannot typically be sold separately from the primary home. ADUs are typically used to provide a private dwelling area for family members, such as an elderly parent, or rented out to provide additional income for the property owner.

Zoning laws can restrict or prohibit the construction of ADUs. For instance, a municipality's zoning ordinance might allow ADUs only if the occupant is a family member of the occupant of the primary home, or the zoning ordinance may prohibit ADUs entirely.

* **Condominium Legal Structure (CLS)**

ADUs in the form of tiny homes on permanent foundations can be sold separately from the primary home by using the condominium legal structure.⁵ The primary home, possibly a single-family home in a traditional neighborhood, and the ADU can be organized into a condominium "development." Under this structure, the ownership of the property beneath the primary home and the ADU is shared between the primary home owner and the ADU owner, while the primary home and ADU are owned separately.

Although this method of bringing tiny homes into a community is uncommon in West Virginia, it is nevertheless enabled and should be considered by communities as a way tiny homes may enter the community. Zoning laws can permit condominiums as a use permitted by right or conditional use, or not permit condominiums at all in certain districts.

Accessory Dwelling Units (ADUs)

ADUs are small, secondary dwelling units that sit on the same property as the primary home. ADUs have a private kitchen, bathroom, and sleeping area and can be attached or detached to the primary home.⁴



Tiny Home Land Use Controls

- *Zoning
- *Building Code
- *Flood Plain Ordinance
- *Subdivision and Land Development

Tiny Homes on Wheels (THOWs)

THOWs are tiny homes that can be towed behind a vehicle via bumper hitch, frame-towing hitch, or fifth-wheel connection.



⁴ OFFICE OF POLICY DEV. & RESEARCH, HOUSING AND URBAN DEV., ACCESSORY DWELLING UNITS: CASE STUDY 1 (2008).

⁵ ADUs and Condos: Separating Ownership, ACCESSORY DWELLINGS, <https://accessorydwellings.org/2014/10/07/adus-and-condos-separating-ownership/> (last visited Mar. 5, 2018).

⁶ Vehicles, WEST VIRGINIA DMV, <https://transportation.wv.gov/DMV/Vehicle-Services/Pages/default.aspx> (last visited Mar. 5, 2018).