

HOUSE BILL REPORT

ESHB 1660

As Passed House:
February 14, 2022

Title: An act relating to accessory dwelling units.

Brief Description: Concerning accessory dwelling units.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Shewmake, Ryu, Fitzgibbon, Ramel, Bateman, Gregerson, Goodman, Macri, Peterson, Simmons, Bergquist, Tharinger, Kloba, Pollet and Ormsby).

Brief History:

Committee Activity:

Local Government: 1/12/22, 1/21/22 [DPS].

Floor Activity:

Passed House: 2/14/22, 50-48.

Brief Summary of Engrossed Substitute Bill

- Requires cities and counties to allow for the construction of accessory dwelling units within urban growth areas and requires the removal of barriers to such construction, including certain identified regulations, by the time of the city or county's next comprehensive plan update.
- Removes exemptions in current law that would allow cities to require off-street parking for accessory dwelling units within a quarter-mile of a major transit center under certain circumstances.
- Prohibits homeowners' associations, condominium associations, associations of apartment owners, common interest communities, and restrictive covenants from actively or effectively prohibiting accessory dwelling units within an urban growth area.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Pollet, Chair; Duerr, Vice Chair; Berg and Senn.

Minority Report: Do not pass. Signed by 1 member: Representative Goehner, Ranking Minority Member.

Minority Report: Without recommendation. Signed by 2 members: Representatives Griffey, Assistant Ranking Minority Member; Robertson.

Staff: Kellen Wright (786-7134).

Background:

Growth Management Act.

The Growth Management Act (GMA) requires that certain counties, and the cities within those counties, engage in planning for future population growth. Currently, 28 counties fully plan under the GMA, and 11 do not.

The centerpiece of the planning process is the comprehensive plan. The Legislature has established 14 goals to act as the basis of all comprehensive plans. The comprehensive plan must address these goals and set out policies and standards that are meant to guide the city or county's actions and decisions in the future. Comprehensive plans must be reviewed and, if necessary, revised every eight years to ensure that it complies with the GMA.

Urban Growth Areas.

An urban growth area is an area designated by a county within which urban growth is encouraged and outside of which urban growth cannot occur. Each city in a county must be included in an urban growth area. Cities and counties must include sufficient area and densities within an urban growth area to accommodate the growth that is projected to occur over the next 20 years. Urban growth must be initially located in areas already characterized by urban growth that have sufficient public service capabilities to serve the new growth, and only thereafter in areas that are characterized by urban growth but that will need additional public facilities and services, and finally in any remaining portion of the urban growth area.

Accessory Dwelling Units.

An accessory dwelling unit (ADU) is a residential living unit providing independent living facilities and permanent provisions for sleeping, cooking, sanitation, and living on the same lot as a single-family house, duplex, triplex, townhome, or other housing unit. As of July 1, 2021, cities are prohibited from requiring the provision of off-street parking for ADUs within a quarter of a mile of a major transit stop, unless the city determines that on-street parking is infeasible for the ADU or the city had updated its ADU regulations between June 11, 2016, and June 11, 2020. A major transit stop includes a stop on a high capacity transportation system such as a rail system or rapid transit bus service or stops for a bus or other mode of transportation that provide fixed route service of at least 15 minutes for at

least five hours a day during peak weekday operation.

By the end of 1994, cities with more than 20,000 people, and counties that were planning under the GMA or that had more than 125,000 people, were required to incorporate in their development and zoning regulations recommendations made by the then Department of Community, Trade, and Economic Development for encouraging the development of accessory apartments. These recommendations could be subject to regulations, conditions, and limitations as determined by the local government.

In the context of an ADU, an owner-occupancy requirement is a mandate that the property owner live on the property on which an ADU is located.

Short-Term Rental.

A short-term rental is a lodging use, outside of a hotel, motel, or bed and breakfast, in which a room is offered for a fee for fewer than 30 consecutive nights.

Restrictions on the Use of Property.

A condominium is real property with individual portions or units separately owned and the remainder owned in common. Owners can be required to contribute toward the upkeep of the common areas. Condominium associations or associations of apartment owners can oversee this upkeep, collect contributions from owners, and regulate the units in the association. This regulation can include restrictions or limitations on the use of the units.

A homeowners' association is a legal entity made up of members who are owners of residential real property located within the association's jurisdiction who are required to pay dues for the upkeep of the association and common areas. An association can also adopt rules and regulate or limit the use of residential property by its members.

A common interest community is made up of member-owners who are obligated to pay for the taxes, maintenance, or other costs of common areas. Like a homeowners' association or condominium association, a common interest community can also regulate or limit the use of residential property by its members, including by adopting rules to establish and enforce construction and design criteria as well as aesthetic standards. Generally, a common interest community may only be terminated by the agreement of at least 80 percent of its members.

A restrictive covenant, or a restrictive deed, is a restriction or limitation on the use of the property that encumbers the property and runs with the land and binds subsequent owners.

Summary of Engrossed Substitute Bill:

Cities and counties planning under the GMA must allow for the construction of ADUs within urban growth areas. When regulating ADUs, these cities and counties may not:

- impose any maximum floor area limit on an ADU that would require the ADU to be

- less than 850 square feet on a lot with square footage of less than 4,500 square feet;
- impose any maximum floor limits on an ADU that would require the ADU to be less than 1,350 square feet combined between an attached and detached ADU on a lot 4,500 square feet or larger, except that an attached ADU may be limited to half of the size of the principal unit, and public health, safety, building code, and environmental permitting requirements applicable to the principal unit residence may also be required of the ADU;
- impose any impact fee imposed on the development of an ADU that is greater than 50 percent of the fee that would be imposed on a principle unit of a similar size;
- impose a limit on ADUs that would allow fewer than one attached and one detached accessory dwelling units on a lot of 4,500 or more square feet in a zone that allows for single-family homes, unless the lot is otherwise zoned for at least three housing units;
- impose a prohibition on the sale of a condominium unit independently of a principle unit that is solely based on the condominium unit initially being built as an ADU, as long as the ADU has independent utilities;
- impose any owner-occupancy restrictions on a lot containing an ADU, unless:
 - an ADU on the lot is offered or used for short-term rental; or
 - the owner of the ADU accepted an offer from the city or county to reduce or waive costs or fees that would otherwise have been required on the construction of the ADU, and the city or county has a general program to reduce or waive fees and costs associated with ADU construction, with a specific program for waiving costs and fees on ADUs offered at or below 80 percent of the median income; and
- require the off-street provision of parking for an ADU within a quarter of a mile of a major transit stop.

Cities and counties must comply with these requirements by the time of their next comprehensive plan update after July 1, 2021. Any contrary regulations are preempted and superseded after this deadline.

Homeowners' associations, condominium associations, associations of apartment owners, and common interest communities created after the effective date of the act may not actively or effectively prohibit the construction and use of an ADU within an urban growth area. A city or county that issues a permit for the construction of an ADU may not be held civilly liable on the basis that the construction would violate the regulations of an association created after the effective date of the act that would actively or effectively prohibit the construction or use of an ADU.

Cities and counties may apply generally applicable development regulations to ADU construction.

No restrictive covenant or deed created after the effective date of the act can prevent the development or use of an ADU in an urban growth area. A city or county that issues a

permit for the construction of an ADU may not be held civilly liable on the basis that the construction would violate the a restrictive covenant or deed created after the effective date of the act that would actively or effectively prohibit the construction or use of an ADU.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Accessory dwelling units help many people throughout the State of Washington, including young people looking to get started in homeownership or an older person hoping to age in place. The ADUs are good for affordable housing, and the rules around ADUs would mean reasonably priced housing options, where otherwise there would only be expensive single-family homes. This would help put home ownership in reach for many, and would help to address the racial housing gap. Land use and zoning policies are embedded in a legacy of injustice. This bill would be a step in favor of equity. Removing restrictions on ADUs would provide a wider range of housing choices and improve affordability.

(Opposed) Eliminating local government control will not result in affordable housing. Owner-occupancy restrictions should be allowed if local government ensures that housing is rented at an affordable rate. There should be a funding mechanism for this. This preempts local control, and the underlying premise that local regulations are the primary barrier to construction is wrong. This bill would not require the ADUs to be affordable. Owner-occupancy is a tool to ensure that developers don't buy up homes just to turn them into rentals, which would make the current shortage of single-family housing worse.

(Other) There are some concerns over reducing local control, but an amendment could make the bill more workable. Affordability can be a trade-off with owner-occupancy, as the requirement can be waived if a certain percentage of the ADUs will be affordable. There is a massive shortage of affordable housing units in the state, and ADUs can help to address this. The ADUs won't solve all issues, but they can help, and will offer opportunities for entry into home ownership. Accessory dwelling units are not disruptive and are acceptable in neighborhoods. The ADUs allow families to remain together. Owner-occupancy requirements may still be needed because it can make accessory dwelling units more acceptable in neighborhoods.

Persons Testifying: (In support) Representative Sharon Shewmake, prime sponsor; Greg Hansen, City of Ferndale; and Dan Bertolet, Sightline Institute.

(Opposed) Mary Lou Pauly, City of Issaquah; and Shelly Helder, Cities of Issaquah, Lake Forest Park & Mountlake Terrace.

(Other) Cynthia Stewart, League of Women Voters of Washington; and Ruth Perez, City of Renton.

Persons Signed In To Testify But Not Testifying: None.