

# SENATE BILL REPORT

## ESHB 1660

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As Reported by Senate Committee On:  
Housing & Local Government, February 24, 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:** Passed House: 2/14/22, 50-48.

**Committee Activity:** Housing & Local Government: 2/23/22, 2/24/22 [DPA, DNP].

### Brief Summary of Amended Bill

- Requires cities and counties fully planning under the Growth Management Act to allow for the construction of accessory dwelling units (ADUs) within urban growth areas (UGAs), and prohibits such cities and counties from imposing certain ADU regulations, by the time of their next comprehensive plan update.
- Removes the exemption allowing fully planning cities to require off-street parking for ADUs within a quarter-mile of a major transit stop under certain circumstances.
- Prohibits governing documents applicable to homeowners' associations, condominium associations, associations of apartment owners, common interest communities, and restrictive covenants created after the effective date of the act from prohibiting ADUs within UGAs.

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### SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

**Majority Report:** Do pass as amended.

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*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.*

Signed by Senators Kuderer, Chair; Das, Vice Chair; Cleveland, Lovelett, Salomon and Trudeau.

**Minority Report:** Do not pass.

Signed by Senators Fortunato, Ranking Member; Gildon, Assistant Ranking Member; Sefzik, Warnick and Wilson, J.

**Staff:** Brandon Popovac (786-7465)

**Background:** Growth Management Act. The Growth Management Act (GMA) is the comprehensive land-use planning framework for counties and cities in Washington. The GMA establishes land-use designation and environmental protection requirements for all Washington counties and cities. The GMA also establishes a significantly wider array of planning duties for 28 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA. These jurisdictions are sometimes said to be fully planning under the GMA.

Counties that fully plan under the GMA must designate urban growth areas (UGAs), within which urban growth must be encouraged and outside of which growth may occur only if it is not urban in nature. Each city in a county must be included in an urban growth area. Planning jurisdictions must include within their UGAs sufficient areas and densities to accommodate projected urban growth for the succeeding 20-year period.

The GMA also directs fully planning jurisdictions to adopt internally consistent comprehensive land use plans. Comprehensive plans are implemented through locally adopted development regulations, and both the plans and the local regulations are subject to review and revision requirements prescribed in the GMA. Comprehensive plans must be reviewed and, if necessary, revised every eight years to ensure that it complies with the GMA. When developing their comprehensive plans, counties and cities must consider various goals set forth in statute.

Each comprehensive plan must include a plan, scheme, or design for certain enumerated elements, including a mandatory housing element. The housing element must ensure the vitality and character of established residential neighborhoods and among other requirements consider the role of accessory dwelling units in meeting housing needs.

Accessory Dwelling Units. Any county fully planning under the GMA, city with a population of over 20,000, or county with a population of over 125,000 must have accessory dwelling unit (ADU) provisions incorporated in their development regulations, zoning regulations, or official controls. These provisions must be consistent with a 1993 report from the Department of Community, Trade, and Economic Development that provided recommendations to encourage the development and placement of ADUs in areas zoned for single-family residential use. However, local communities have some flexibility to adapt these recommendations to local needs and preferences.

As of July 1, 2021, fully planning cities under the GMA may not require the provision of off-street parking for ADUs within a quarter mile of a major transit stop, such as a high capacity transportation system stop, a rail stop, or certain bus stops, unless the city determines that on-street parking is infeasible for the ADU.

An 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 home, duplex, triplex, townhome, or other housing unit. 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.

**Summary of Amended Bill:** Cities and counties fully planning under the GMA must allow for the construction of ADUs within UGAs. When regulating ADUs, such cities and counties may not:

- impose a maximum floor area limit on an ADU that is less than:
  - 850 square feet on a lot with square footage of less than 4500 square feet; or
  - 1350 square feet combined between an attached and detached ADU on a lot over 4500 square feet, except that an attached ADU may be limited to half of the size of the principal unit, and any public health, safety, building code, and environmental permitting requirements applicable to the principal unit residence may also apply to the ADU;
- impose any impact fee imposed on the construction or development of an ADU that is greater than 50 percent of the fee that would be imposed on a principal unit of a similar size;
- impose a limit on ADUs that would allow fewer than one attached and one detached ADU on a lot over 4500 square feet in a residential zone, unless the lot is otherwise zoned for at least three dwelling units;
- impose a prohibition on the sale of a condominium unit independently of a principal unit based solely on the condominium unit initially being built as an ADU, as long as the condominium unit has independent utilities;
- impose any owner-occupancy requirements 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 accepts an offer from the city or county to reduce or waive costs or fees that would otherwise have been imposed 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 additional waiver for ADUs offered at or below 80 percent of area median income; and
- require the provision of off-street parking for an ADU within 0.25 miles of a major transit stop.

Fully planning cities and counties must comply with these new ADU requirements by the time of their next comprehensive plan update after July 1, 2021. Such new requirements

apply and take effect, and any contrary development regulations are preempted and superseded, after this deadline. Cities and counties may otherwise apply generally applicable development regulations to ADU construction.

Governing documents of homeowners' associations, condominium associations, associations of apartment owners, and common interest communities created after the effective date of the act may not prohibit the construction, development, or use of an ADU within a UGA. A restrictive covenant or deed restriction applicable to real property within a UGA created after the effective date of the act may not prevent the construction, development, or use of an ADU in a UGA.

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 declarations or governing documents of a homeowners' association, condominium association, association of apartment owners, or common interest community, or violate a restrictive covenant or deed restriction.

**EFFECT OF HOUSING & LOCAL GOVERNMENT COMMITTEE AMENDMENT(S):**

- Clarifies that a city or county issuing a permit for ADU construction may not be held liable if the construction would violate any existing restrictive covenant or deed restriction, or governing documents of a homeowners' association, condominium association, association of apartment owners, or common interest community.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 17, 2022.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Engrossed Substitute House Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: An equilibrium does not occur if cities create lots of jobs without any additional housing. ADUs are a gentle way of increasing housing density. The bill removes an owner-occupancy requirement and provides other bare minimums for cities and counties to implement. The bill allows for lot splitting through the sale or conveyance of a condominium unit originally built as an ADU. Allowing local control of ADU policies is not sustainable; more of a state solution is required. More middle housing is needed, especially in urban environments. The bill creates a new level of affordability in urban cities. ADUs help younger persons and older persons with different housing needs and incomes. ADUs offer one of the pieces needed to achieve housing diversity. ADUs are

especially needed for older adults, allowing them to downsize and adjust for family size and live in desired communities. ADUs create less expensive homes and better housing choices. Cities would retain some local control on parking, including other permitting requirements. ADU reform is needed because of indiscriminatory renter bans and complex design ordinances. Housing has an impact on the environment, and middle housing policies help. ADUs are often energy efficient with a smaller carbon footprint, provide more affordable options near where people work, and ease the pressure on the need to build farther out in rural and farming areas, specifically preventing sprawl and a reduction in tree canopy. ADUs provide housing options that are closer to desired schools and transportation. ADUs are one of the least impactful ways of increasing housing, with very few resident complaints when added within existing neighborhoods. It is the responsibility of the state Legislature to provide ADU regulations due to lack of local uniformity.

CON: Some cities already allow ADUs in a majority of residential areas, except when infeasible to do so. Allowing three units on one lot takes away and compromises existing infrastructure. Applicable ADU definitions would allow lots to have a duplex and additional ADUs, potentially creating up to four units on each lot. There are concerns over some provisions implementing new barriers, which are burdensome for cities who have undergone recent, robust ADU ordinance changes. The bill will result in significant unintended consequences. Waiving impact fees for ADUs is an unfunded mandate, as some cities would be required to back-fill revenue expected from waived impact fees. The bill ties the hands of cities to address housing and ADU needs. Cities with ADU ordinances cover 90 percent of the livable area in the state. The provision authorizing triple density on lots needs to be removed, and the provision authorizing cities to require off-street parking when on-street parking is infeasible needs to be restored. There are too many local implications with the required adjustments of maximum floor areas for ADUs. Stormwater control issues remain for larger associations, especially if tree canopy is reduced. The bill will likely result in large association assessment increases and reallocation of dues.

OTHER: The property owner is erroneously given carte blanche to accept an impact fee waiver under owner-occupancy requirement prohibition provisions. The provision allowing a tripling of density on large lots, which represents over 90 percent of all lots within certain jurisdictions, needs to be removed.

**Persons Testifying:** PRO: Representative Sharon Shewmake, Prime Sponsor; Ryan Donohue, Habitat for Humanity Seattle-King & Kittitas Counties; Cathy MacCaul, AARP Washington State; Jesse Piedfort, Sierra Club WA; William Fenimore; Jennifer Gregerson; Cynthia Stewart, League of Women Voters of Washington; Bryce Yadon, Futurewise; Breean Beggs, Spokane City Council President; Calvin Jones, Tech 4 Housing; Kate Macfarlane, Sightline Institute; Mark Dorsey, Weber Thompson/AIA Washington Council; Aliesha Ruiz, Master Builders Association of King and Snohomish Counties; Alice Lockhart, 350 Seattle.

CON: Mary Lou Pauly, Mayor, City of Issaquah; Carl Schroeder, Association of

Washington Cities; Arne Woodard, Spokane Valley City Councilmember; Hilary Bublitz, WSCAI/Mill Creek Community Association; Briahna Murrery, City of Redmond.

OTHER: Katie Buchli-Morales, City of Renton - Associate Planner; Doug Levy, Outcomes By Levy, LLC - Cities of Lake Stevens & Fife.

**Persons Signed In To Testify But Not Testifying:** No one.