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### Micro-Housing in Seattle Update: Combating "Seattle-ization"

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# Micro-Housing in Seattle Update: Combating “Seattle-ization”

*Taylor Haines\**

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## INTRODUCTION

Since 2010, Seattle’s burgeoning technology industry and booming population have transformed the city and most of the Puget Sound region. In ten years, the city’s population increased twenty-two percent, earning Seattle the title of “the fastest-growing big city of the 2010 decade.”<sup>1</sup> However, rapid changes are inevitably accompanied by growing pains. In 2018, Seattle’s homeless population was the third largest in the nation.<sup>2</sup> That same year, a New York Times reporter coined the negative term “seattle-ization” to describe the transformation of cities or neighborhoods by “tech richies,” who drive up housing costs at a “startling speed.”<sup>3</sup>

\* J.D. Candidate class of 2021, Seattle University School of Law. I would like to thank Alexandra Yerigan, my law review mentor who continuously provides me with valuable guidance. I’d also like to thank my family and friends for their unconditional love and support throughout my law school career. I’m so grateful for their constant encouragement and motivation.

1. Gene Balk, *Big-City Growth Slows Across U.S.—but Seattle Still Ranks No. 2 in 2018*, SEATTLE TIMES (May 23, 2019), <https://www.seattletimes.com/seattle-news/data/big-city-growth-slows-across-u-s-but-seattle-still-ranks-no-2-in-2018/> [https://perma.cc/GW2K-XLTM].

2. Kate Walters, *Seattle Homeless Population is Third Largest in U.S., After LA and NYC*, KUOW (Dec. 18, 2018), <https://www.kuow.org/stories/here-s-how-seattle-and-washington-compare-to-national-homeless-trends> [https://perma.cc/U845-JLQ9].

3. Emily Badger, *Happy New Year! May Your City Never Become San Francisco, New York or Seattle*, N.Y. TIMES: THE UPSHOT, (Dec. 26, 2018), <https://www.nytimes.com/2018/12/26/upshot/>

Seattle has seen a number of methods used to combat this housing crisis, but ultimately, it appears that the authorization of Accessory Dwelling Units (ADUs) on private property provides a viable way to create more affordable housing.<sup>4</sup> This Comment discusses Seattle's efforts to address its affordable housing shortage, the role of ADUs in this endeavor, and related attempts at the state level.

## I. SEATTLE'S EFFORTS

### a. Micro-Units

The evolution of micro-units, a niche form of affordable housing, began in 2009 at the early stage of Seattle's population boom.<sup>5</sup> Developers capitalized on the demand for cost-conscious rental options by charging low rental rates for micro-units,<sup>6</sup> which are typically around 150 square feet or smaller.<sup>7</sup> In micro-unit buildings, residents live in individual units with their own kitchenettes and bathrooms, but share a full kitchen with the rest of their "suite."<sup>8</sup> "Supporters champion micro-units as a way of providing affordable housing . . . ."<sup>9</sup> However, classifying up to eight individual units as one "suite" exploited a loophole in the Seattle Municipal Code.<sup>10</sup> This loophole allowed developers to bypass important design and environmental review processes that are typically required before constructing large projects.<sup>11</sup> Additionally, micro-units effectively "upzone[d] without any process," putting a strain on neighborhood resources.<sup>12</sup> By the end of 2014, Seattle recognized these issues and implemented code changes that effectively quashed any continued micro-unit development.<sup>13</sup>

happy-new-year-may-your-city-never-become-san-francisco-new-york-or-seattle.html [https://perma.cc/Q69H-3FQ5].

4. In Seattle, an ADU is defined as a "separate living space within a house or on the same property as an existing house." *Accessory Dwelling Unit*, SEATTLE DEP'T OF CONSTR. & INSPECTIONS, <http://www.seattle.gov/sdci/permits/common-projects/accessory-dwelling-units> [https://perma.cc/D7PA-R6Q8].

5. Patrick Carter, *Micro-Housing in Seattle: A Case for Community Participation in Novel Land Use Decisions*, 39 SEATTLE U. L. REV. 1031, 1033–34 (2016).

6. *Id.* at 1032.

7. *Id.* at 1035.

8. *Id.* at 1033.

9. *Id.* at 1032.

10. *Id.* at 1033.

11. *Id.* at 1033–34.

12. *Id.* at 1034, 1042–43.

13. See David Neiman, *How Seattle Killed Micro-Housing*, SIGHTLINE INSTITUTE, (Sep. 6, 2016), <https://www.sightline.org/2016/09/06/how-seattle-killed-micro-housing/> [https://perma.cc/9A NU-KJ4J].

*b. Seattle's New Approach*

Next, acknowledging its housing crisis, Seattle formed a twenty-eight member task force (the Housing Affordability and Living Agenda (HALA)) and charged it with generating 50,000 new units of housing, including 20,000 affordable units.<sup>14</sup> In 2015, HALA published a report with sixty-five policy recommendations for addressing “a housing affordability crisis unlike any Seattle has experienced since the Second World War.”<sup>15</sup> In March 2019, the City Council unanimously approved two of HALA’s recommendations: it enacted a citywide mandatory housing affordability requirement and upzoned<sup>16</sup> twenty-seven neighborhoods.<sup>17</sup>

*c. Accessory Dwelling Units*

Finally, although the Seattle City Council soundly rejected micro-housing as a means to remedy the affordable housing crisis, pursuant to another recommendation from HALA, Seattle Councilman Mike O’Brien introduced legislation to loosen regulations on a similar form of housing—ADUs.<sup>18</sup> ADUs are independent secondary housing units on a single-family lot that can take the form of either a mother-in-law apartment, a backyard cottage, or even a basement apartment.<sup>19</sup> Homeowners may build ADUs on their property and rent them out at a cheap price without significantly changing the character of a neighborhood. Therefore, ADUs offer a cost-effective method for supplying affordable rental housing without straining resources to the extent that micro-unit buildings do. Although ADUs may be less demanding on resources as a function of their role in the housing market—they increase density at a substantially smaller scale than micro-units—it is important to note that ADUs still have some impact on resources. Thus, ADUs provide one but not the exclusive remedy for the affordable housing crisis and density issues.

14. HOUSING AFFORDABILITY AND LIVING AGENDA COMMITTEE, FINAL ADVISORY COMMITTEE RECOMMENDATIONS TO MAYOR EDWARD B. MURRAY AND THE SEATTLE CITY COUNCIL 3 (2015).

15. *Id.*

16. Upzoning occurs when areas are rezoned to allow for higher use, such as changing a residential zone to a commercial one or a commercial zone to an industrial one. *See* 3 RATHKOPF’S THE LAW OF ZONING AND PLANNING, UPZONING AND DOWNZONING—UPZONING AMENDMENTS § 38:12 (4th ed.).

17. *See* SEATTLE, WASH., ORDINANCE NO. 125791 (June 29, 2019).

18. Josh Cohen, *After Density Win, Seattle Eyes Future Housing Fights*, CROSSCUT (Mar. 21, 2019), <https://crosscut.com/2019/03/after-density-win-seattle-eyes-future-housing-fights> [<https://perma.cc/XL4V-JVTA>].

19. John Infranca, *Housing Changing Households: Regulatory Challenges for Micro-Unit and Accessory Dwelling Units*, 25 STAN. L. & POL’Y REV. 53, 54 n.3, 65 n.46, 75 n.127 (2014).

In Washington, land use and density issues are generally regulated at the local, rather than the state, level.<sup>20</sup> Cities have the discretion to impose restrictions on the physical forms of housing in order to preserve the character of certain communities.<sup>21</sup> Thus, ADUs must comply with regulations of height, floor-area ratio, and identity of occupants in the principal home on the property. Because cities are free to impose heavy regulations on the character of ADUs, they may effectively restrict development.<sup>22</sup>

Seattle's regulations do not create excessive barriers for the construction and operation of ADUs, but instead, encourage them.<sup>23</sup> For example, Seattle eliminated the potentially strenuous and costly requirement that homeowners must provide one off-street parking spot for every ADU built.<sup>24</sup> Additionally, homeowners are no longer required to live on the property in order to rent out an ADU.<sup>25</sup> Finally, Seattle expanded the minimum and maximum lot requirements and now permits up to two dwellings per lot, which creates more flexibility for homeowners looking to build ADUs.<sup>26</sup> Loosening restrictions on ADUs makes it easier to provide more affordable units on private property.

## II. WASHINGTON LEGISLATION

Although Seattle successfully expanded opportunities for the construction of ADUs, other municipalities have not done so. Washington state law currently prohibits municipalities from banning ADUs but does not mandate them to loosen restrictions or encourage development.<sup>27</sup> In 2019, the Washington State Legislature considered a comprehensive bill requiring municipalities to eliminate substantial restrictions on ADU development, but the bill died in the House.<sup>28</sup> In February 2020 the House

20. Carter, *supra* note 5, at 1037.

21. 2 RATHKOPF'S THE LAW OF ZONING AND PLANNING, REGULATION OF SHARED RESIDENTIAL USES § 23:6 (4th ed.).

22. RODNEY L. COBB & SCOTT DVORAK, AARP, ACCESSORY DWELLING UNITS: MODEL STATE ACT AND LOCAL ORDINANCE 9 (2000) ("Current zoning ordinances, however, often maintain rigid prohibitions against ADUs. These ordinances now limit the expansion and modification options of homeowners and prevent communities from making effective use of their current housing stock to meet the changing needs of families.").

23. Sarah Anne Lloyd, *Seattle City Council Votes to Reduce Barriers to Building ADUs*, CURBED SEATTLE, (July 1, 2019), <https://seattle.curbed.com/2019/7/1/20677616/backyard-cottage-mother-in-law-apartment-zoning> [<https://perma.cc/A26E-EYMH>].

24. *See* SEATTLE, WASH., ORDINANCE. NO. 125854 (July 1, 2019).

25. *Id.*

26. *Id.*

27. WASH. REV. CODE § 43.63A.215 (3) (1993).

28. Margaret Morales, *Washington's Progressive ADU Bill Died This week*, SIGHTLINE INSTITUTE (Apr. 18, 2019), <https://www.sightline.org/2019/04/18/washingtons-progressive-adu-bill-died-this-week/> [<https://perma.cc/P49U-AJNV>].

sent a second substitute bill to the Rules Committee for a second reading.<sup>29</sup> Thus, the State of Washington has not yet embraced ADUs in the same manner as the city of Seattle.

#### CONCLUSION

The Washington State Legislature should adopt legislation that incentivizes removing regulatory barriers for ADU construction in municipalities because ADUs are an appealing method to help combat the affordable housing crisis. Thus, as the legislature attempts to pass a new ADU bill in 2020, it should bear in mind the following guidelines and policies.<sup>30</sup> First, as recommended by the AARP Public Policy Institute in *Accessory Dwelling Unit Model State Act and Local Ordinance*, the legislature should expressly encourage communities to adopt ADU regulations, but not mandate them to do so.<sup>31</sup> Second, it should ban the use of ADUs in the consideration of an application of any local ordinance, policy, or program to limit residential growth. This recommendation was in Washington's original Bill, is in California's code, and is recommended by the AARP Public Policy Institute.<sup>32</sup> Finally, to ensure that the Bill passes, the legislature should resist the temptation to address issues historically reserved for local zoning, such as restrictions on the physical form of homes and the identity of occupants. As Washington state grows, so does the need for affordable housing. Prohibiting heavy regulations of ADU construction at the state level will contribute, hopefully, to easing the housing crisis in cities beyond Seattle.

29. 2SH.R. 2570, 66th Leg., Reg. Sess. (2020).

30. Some of the suggestions in this section are implicated by S.H.B. 1797, 66th Leg., Reg. Sess. (2019). The bill was not enacted at the time of this Comment's publication.

31. COBB & DVORAK, *supra* note 22, at 17.

32. CAL. GOV'T CODE § 65852.2(a)(5) (West 2020); H.R. 1797, 66th Leg., Reg. Sess. (2019); COBB & DVORAK, *supra* note 22, at 20.