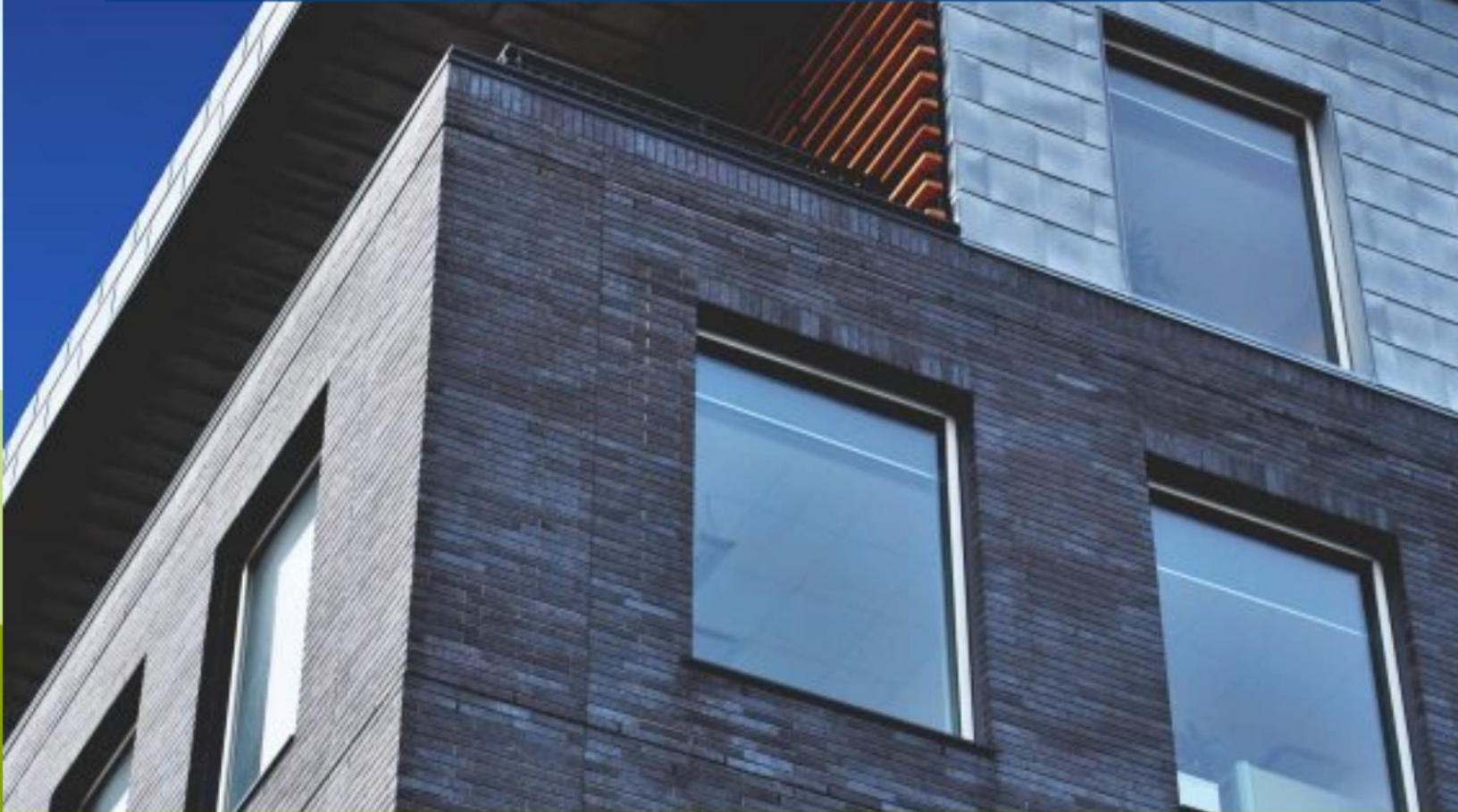




CENTER FOR ECONOMIC AND BUSINESS RESEARCH



HOA - ADU Study

Sarah Frahm
Tate Van Patten
Andy Dirks
Tai Starchman





Table of Contents

Overview	3
About the Authors	4
Executive Summary.....	5
Key Findings and Recommendations	5
Focus Groups.....	7
Executive Summary.....	7
Topic 1: Introductions	7
Topic 2: Current Perceptions	8
Topic 3: Barriers	9
Topic 4: Housing Types	11
Topic 5: Community Response.....	12
Section 6: Concluding Thoughts.....	14
Legal Feedback.....	15
Analysis of HOA Provisions.....	15
The Application of the Constitutional Contract Clause to HOA Convents Related to ADUs	17
Case Study- California Law on ADUs	23
Spatial Analysis of HOAs.....	25
HOA & Condo Density in WA	25
Distance from UGAs	26
Survey Results	27
Appendix A: Survey Free Response Questions (Verbatim)	45
Appendix B: Focus Group Notable Quotes	54
Appendix C: Literature Review.....	56

Overview

The 2023 Homeowners Association Study Survey (Survey) was written at the request of the Washington State Legislature to the Center for Economic and Business Research (The Center) as an effort to understand how existing homeowners' associations, condominium associations, associations of apartment owners, and common interest communities address accessory dwelling units.

The goal of this survey was to collect existing policies on accessory dwellings units from these associations and hear from property managers regarding their thoughts and their community's opinions on ADU's. These policies are a key insight on how the housing supply in Washington State may be affected by accessory dwelling unit availability. In addition to an online survey, CEER analyzed HOA CC&Rs and held multiple focus groups to discuss policies in detail.

The Washington State Legislature is interested in examining the existing policies for Accessory Dwelling Units (or ADUs) to gain information relevant to House Bill 1711. This bill concentrates on how ADU's provides a long-term solution for more affordable housing for very low, low, and moderate-income residents. According to RCW 36.70A.696 and 2021 c 306 s 2, an accessory dwelling unit is a living space provided within a single-family, duplex or triplex (multi-family), townhome, or other housing unit. This bill allows counties to provide incentives to building ADUs¹. The new section for this act regarding ADU's states:

Sec. 1. - *“Increasing the availability of accessory dwelling units, also referred to as “ADU’s”, may increase opportunities for people to age in their own home and increase multigenerational family ties along with offering opportunities to reduce intergenerational poverty by increasing home ownership.”²”*

The Center for Economic and Business Research was directed by the legislature to research how Homeowners Association policies affect the ability of owners to construct ADUs.

“Funding is provided for a review of how existing homeowners' associations, condominium associations, associations of apartment owners, and common interest communities address accessory dwelling units. A report must be submitted to the Legislature by June 30, 2023, including an examination of the governing documents of these associations and comm communities units to determine how accessory dwelling units are explicitly or implicitly restricted and what the overall impact is on the state's housing supply from such restrictions.”

Other relevant legislation includes ESHB 1660, which according to the Senate bill report *“Prohibits homeowners' associations, condominium associations, associations of apartment owners, common interest communities, and restrictive covenants from prohibiting ADUs within UGAs”*, among other things.³

¹ [1711 HBR LG 22 \(wa.gov\)](https://leg.wa.gov/bills/2022/1711)

² House Bill 1711, 2022 <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/House%20Bills/1711.pdf?q=202204291405>

³ <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/Senate/1660-S.E%20SBA%20HLG%2022.pdf>

About the Authors

The Center for Economic and Business Research is an outreach center at Western Washington University located within the College of Business and Economics. In addition to publishing the Puget Sound Economic Forecaster, the Center connects the resources found throughout the University to assist for-profit, non-profit, government agencies, quasi-government entities, and tribal communities in gathering and analyzing useful data to respond to specific questions. We use a number of collaborative approaches to help inform our clients so that they are better able to hold policy discussions and craft decisions.

The Center employs students, staff and faculty from across the University as well as outside resources to meet the individual needs of those we work with. Our work is based on academic approaches and rigor that not only provides a neutral analytical perspective but also provides applied learning opportunities. We focus on developing collaborative relationships with our clients and not simply delivering an end product.

The approaches we utilize are insightful, useful, and are all a part of the debate surrounding the topics we explore; however, none are absolutely fail-safe. Data, by nature, is challenged by how it is collected and how it is leveraged with other data sources. Following only one approach without deviation is ill-advised. We provide a variety of insights within our work – not only on the topic at hand but also the resources (data) that inform that topic.

We are always seeking opportunities to bring the strengths of Western Washington University to fruition within our region. If you have a need for analysis work or comments on this report, we encourage you to contact us at 360-650-3909 or by email at cebr@wwu.edu.

To learn more about CEBR visit us online at <https://cebr.wwu.edu> or follow us online.



[facebook.com/westerncebr](https://www.facebook.com/westerncebr)



twitter.com/PugetSoundEF



[instagram.com/wwucebr](https://www.instagram.com/wwucebr)



[linkedin.com/company/wwu-center-for-economic-and-business-research](https://www.linkedin.com/company/wwu-center-for-economic-and-business-research)

The Center for Economic and Business Research is directed by Hart Hodges, Ph.D. and James McCafferty

Executive Summary

Through this research, we found that the majority of HOA's did not have ADU's and/or disapprove of them. 85.5 percent of respondents out of a total of 83 said their community opposes ADU's (Q18). This common attitude towards ADU's suggests why the response rate for generating policies directly from the survey was low. Additionally, 74.7 percent of associations out of 99 explicitly did not have ADU's (Q11). Condominiums often did not have ADU's and multi-family identifying Homeowners Associations had zero ADUs.

The state may mandate that local zoning apply, but that application in some situations would likely result in litigation. The argument that the impairment of contract clauses prohibits an override by a zoning code when a private covenant prohibits increased density. We cannot accurately predict how much litigation would be initiated, what the outcome would be, nor how many property owners would be directly impacted, since the covenants vary widely in specific language. Interviews with property owners impacted by new zoning codes could occur to determine how likely owners would apply for increased density and how likely such an action would be opposed based on an impairment of contract argument.

Key Findings and Recommendations

Focus Group Findings

- Free standing ADUs are more likely to face political opposition from community members than internal units.
- Rural homeowners are more able to build ADUs due to larger lot sizes.
- Smaller and medium size homes are an important part of the housing supply for young people to get starter homes and for older people who wants smaller homes.
- One major barrier for ADU construction is sewer policy. One respondent said that state policies prohibit construction of ADUs on the same sewer line due to capacity issues, requiring a separate prohibitively costly hookup.

HOA Policy Analysis

- CEBR contracted with an external lawyer to analyze HOA policy documents collected from the survey and County Records' offices.
- State legislation being considered would require that more than one residence be allowed on each individual lot. This legislation may impact language within documents governing how lot owners may develop their lot.

Spatial Analysis Findings

- Most HOAs are within cities or UGAS.
- HOA density does not correlate well with population density. For example, there is higher density of HOAs near Vancouver, WA than near Seattle, WA based on our data.

Survey Findings

- About half of the responses said that their HOAs have policies restricting or banning the construction of ADUs. (Q5)
- Only about 20 percent of communities have had attempts to build ADUs (Q8). Of those, less than half were allowed to build. (Q9)
 - These denials were primarily caused due to conflicts with existing CC&Rs or city laws (Q10)
- About 20 percent of HOAs already have ADUs. (Q11)

Recommendations

- Building codes, requiring sprinklers for instance, for ADUs are a major cost hurdle which prevents further development. These building requirements should be re-evaluated to ensure that the regulation passes a cost-benefit test.
- Offer HOA's a 10-year grace period in which they can adjust their CC&R's to allow for ADU's and can receive grant money and technical assistance to mitigate infrastructure issues to help HOA's adapt to new ADU requirements.
- Policies which allow ADUs by right within HOAs should be thoughtful about how to protect residents who decide to build ADUs (and their renters) from hostile HOAs who could increase citations for parking or other pretextual grounds as retaliation.
- There is no uniform language within HOA CC&Rs for addressing ADUs. Acceptance of policy change depends on several different factors. A couple examples include the longevity of HOA residents and whether their residency is short-term or long term, what relationship that creates with administration and agreeing on CC&R policies, and the living style preference that different subdivisions of ADU's provide (attached, detached, free standing, multi-family, or single-family).

Focus Groups

Executive Summary

In support of this research The Center conducted multiple focus groups marketed state-wide via social media. The only requirement to participate was that the person must reside within an HOA in Washington. In addition to social media promotions, email invitations were sent to all known HOAs with an email address. Focus group participants were offered a \$50 incentive for their time.

Participants in the first group raised concerns about the infrastructure required to support the higher housing density created by ADUs. Transportation and availability of public transportation was a topic of importance. Other topics included lack of available space, lack of water infrastructure, and a reluctance for detached ADUs. There were also concerns about tenants' rights and the right of property owners to evict. Others in the group alluded to the above as well as how the policy should be accommodating to historic neighborhoods. Overall, the participants wanted more targeted policies and encouraged the legislature to look at how infrastructure and the historic character of a city intertwine when looking at policies to increase housing density.

Participants in the second group highlighted the cost-prohibitive nature of ADUs due to regulations on building and building management while also bringing up the lack of infrastructure to support the building of ADUs. Overall, they thought the building of ADUs would be one piece of a larger housing policy puzzle.

Only one person attended the third focus group. This person was overall supportive of ADU's, but stressed several times that some rules would need to be put in place to set some boundaries for the residents staying in them. Another major point of emphasis was seeing fewer large, expensive properties being built and instead seeing more starter homes built to increase affordability. They recognized that there may be little incentive for builders to do this which needs to be addressed.

Equity Statement

The Center acknowledges that the creation of HOAs were rooted in redlining and segregation in the 1950's to exclude minority communities of color from owning a home in white dominated neighborhoods.⁴ While the sample of focus group participants did include People of Color, The Center acknowledges that the sample of participants was not representative of Washington State's population, and therefore there are voices left unheard.

Topic 1: Introductions

The first group was made up of three administrators representing HOA's in northwestern Washington. The second group was made up of eight participants, representing various HOAs across Washington. Of the eight participants, five were renters and three owned their property in their HOA. The third group had one participant who provided valuable insights from a resident's perspective.

⁴ Presser, Rachel. "The Ugly History of Homeowners' Associations." *Home Stratosphere*, 26 Oct. 2022, www.homestratosphere.com/homeowners-associations-ugly-history/.

Topic 2: Current Perceptions

2.1: Rate your concerns (on a scale from 1-5, 1 being least concerned) for building more homes/tiny homes/Mother-in-law/or whatever term you prefer when thinking about ADU's.

Participants from the first group mentioned that parking was the biggest concern and that then number of cars permitted with each house has always been an issue. Another administrator mentioned that her HOA will not be affected by the new policies because her HOA has strict well agreements that would be hard to work around for adding new structures.

Many of the participants in the second group were relatively well informed about the policy being considered by the legislature, with the average being a rate of three. Some participants expressed concerns about the punitive nature of the policy. They thought that there should be more incentives to get HOAs to allow ADUs. One respondent said that clearer and more regulation regarding ADUs was welcome. Other concerns regarded density and sprawl, or the rapid extension of the geographic extent of cities and towns.

Echoing other focus groups, participants in the second group worried about the potential impact of higher housing density due to the policy. Many HOAs already have too many cars on their properties, making housing density higher without the requisite infrastructure may be infeasible since there isn't space for cars on some properties. Sprawl was also a concern expressed in the focus groups. Respondents stated that there needs to be more transportation infrastructure to handle both the sprawl and the density problems.

The respondent of the third group did not have many concerns about the building of more ADU's. There one main concern was limiting the amount of them built so that it doesn't lead to a large population increase in the neighborhood. In addition, the respondent would want to make sure that those staying in an ADU would be subject to the same rules as everyone else. Since there is no fence in between their property and their neighbors they don't want to have to worry about strangers next door coming into their yard late at night. One small final concern was about how building more ADU's may affect the parking situation in their neighborhood.

2.2: How would you rate the likelihood of your HOA implementing policies concerning long-term or short-term rental like Airbnb's or VRBOs through existing homeowners?

Participants from the first group were against short-term rentals for the unnecessary hardships they experienced in their HOA.

Respondents in the second group rated it highly unlikely that their HOA would allow VRBOs or Airbnb's. Short-term rentals are generally frowned upon in their ADUs. Some HOAs allowed Airbnb's but they were selective with who they allowed, often applying rules based on a relationship rather than consistently applying them to all members of the HOA.

The respondent of the third group mentioned that they occasionally look on sites like Redfin or Zillow but wasn't quite sure of their HOA's policies concerning short term rentals. They believed that some people in their neighborhood may rent out their house but for longer periods of time instead of a short-term rental like Airbnb or VRBO.

2.3: Do you have any suggestions for other approaches that could be taken to make housing more affordable and available in your community?

From the first group, suggestions were made for more housing for people who are supporting tourism industry, an improved infrastructure where water systems already exist, more vocational training, and address current infrastructure problems.

One respondent from the second group was outspoken about the need for different regulations and, in some cases, a loosening of regulations surrounding ADUs. They highlighted that it cost them around \$500,000 to build a 600 square foot ADU since they use state money and must abide by regulations attached to that money. A private owner could make one much cheaper due to a lower regulation environment. They also underscored the fact that ADUs are treated equally to other types of multi-family housing and therefore have similar building code requirements which may not be truly necessary (for example, fire sprinkler systems).

Others in the second group highlighted tenants' rights, with some thinking that tenants' rights increases would lead to some landlords leaving the market and therefore reduce the number of rental properties on the market. Others pushed back, saying that an increase would help affordability and current tenants, since many poorer tenants do not have the resources to take their landlord to court. Implementing laws to help lower income people was also mentioned.

The respondent of the third group mentioned the idea of not tearing down bungalows that might be great starter homes for people, or at the very least livable spaces for them instead of putting in several in the same space that cost twice as much. They mentioned how unaffordable apartments are now and that these starter homes could be great options for younger, lower income people.

They also mentioned that builders have been developing large expensive homes that may not even be wanted by the aging population. Straying away from building these expensive large properties and not tearing down starter homes they believe will increase affordability in the area.

Topic 3: Barriers

3.1: What are the top three barriers that are commonly discussed within your HOA to allowing development of ADU's?

The administration group said that the top three barriers for them was too many parked cars and non-utilized public transit services, infrastructure issues, and the ability to evict a tenant.

The top barriers for ADUs in group two were lot size, worries about who lives in the HOA, and mentality of residents in HOAs. Worries about density and lot sizes were at the forefront of concerns. Others thought that barriers lay on the ambiguity of who may live in the ADU. Finally, respondents talked about the perspectives of HOA members citing a "not in my backyard" mentality when it comes to ADUs.

The respondent of the third group admitted to only attending a few board meetings, so they were not extremely knowledgeable on potential barriers. One that they did think of was the political split that exists within their HOA regarding allowing certain flags to be displayed on their property. That divide in ideology may transfer over into disagreements on ADU development. Furthermore, they believed that the older population may be concerned with the safety of the building of more ADU's with the potential of strangers as new neighbors. Finally, they mentioned how important the establishment of new rules

would be to maintain safety and well-being for everyone, including not allowing it to be rented out to someone new every single night.

3.2: Are you aware of any barriers that originate outside of your HOA but from your city or county?

One of the comments from the first group was that a statewide bill will work in some places but would negatively affect other places. Additionally, one of the other participants stated that House Bill 1110 is overwhelming for a smaller property with tiny lots.

Regarding group two's perceived city and county barriers, there were two distinct answers. One owner in Olympia stated that the city was very supportive of ADUs, so there were no barriers there. Another talked about their experience in Wenatchee, where there was a year-long moratorium on ADUs.

The respondent of the third group discussed the divide between rural and urban growth areas. There seems to be a partition between the two areas with regards to motivations for building ADU's.

3.3: Is there a difference between what residents of the HOA want for ADU policies versus what management or board members may want?

From one of the administrator's points of view, most of his/her residents are short-term and/or represent a vacation community, and there are only three long term residents. That said, there is naturally a gap of communication between the residents and the management. Another participant said there is a lack of respect for the management from tenants who are destructive and do not follow up-keep procedures.

For the second group, the differences were often between the board, which is usually made up of older residents, and the younger generation. The board is typically against ADUs, but many younger people see it as a way to make housing more affordable. They expressed that some HOAs are structured so that anyone not on the board has no power in the decision-making process.

The respondent of the third group discussed the turnover their board has experienced lately and how it no longer feels like a democratic organization because the board members are now chosen by the developer. This creates a divide between what the board wants versus what the other members of the HOA want. They mentioned that the neighborhood has gotten an influx of younger people which contrasts the older conservative nature of the board.

3.4: If you had a magic wand, what would be the perfect policy that you could come up with for alleviating barriers to affordable and available housing?

HOA's from group one did not apply.

Respondents in the second group had many ideas here. One respondent wanted to incentivize building starter homes, through the loosening of permit regulations and the approval period of permits. Other respondents concurred but cited problems related to profits and local government revenues, they feel that the incentives to build starter homes just are not there. One respondent mentioned rent control as a method of alleviating increasing prices. Still others cited the lack of income for many to be able to pay rents that are increasing faster than income.

The main policy that the respondent from the third group suggested was for the city to build more affordable multi-family housing instead of these extremely large expensive homes that very few people

want. They recognize that the builders may have little incentive to build these types of homes so developing some type of incentive would be a huge step to increase affordability. They believe that there is a market for people who want smaller, more modest homes, and that system developers may get greedy at times looking to build a more profitable home instead. While the respondent gave no clear policy, some type of incentive for the building of more modest homes was the main idea they gave.

Topic 4: Housing Types

4.1: Do you still have developable lots within your community?

For many of the respondents in group 1, the lots that they had on their property were no longer developable. There was one respondent that said her lots were still able to be developed. For some, adding more housing would result in unmanageable housing density.

Some respondents in the second group did not know, while others said there were no developable lots in their HOA. Still others said that lots were already predesigned and predetermined for other uses which wouldn't allow them to build other structures on those lots.

With regards to the third group there are quite a few developable lots in the respondent's community. In the new developing areas, they are plotting out a large amount of land for these lots as well.

4.2: Do you think your community would see a difference and would prefer free standing ADUs or ones contained within existing homes?

The first group's responses were varied. Some thought they would see a difference. For one respondent free-standing ADUs were fine, but only if they were in harmony with the existing structures they were next to. It depends on the character of the ADU. For many of the respondents they didn't think it would make a difference.

Respondents in the second group agreed that, from a living perspective, a freestanding unit would be better, but it may be cost-prohibitive to build in comparison to one in an already existing home. One respondent cited the high cost of adding a free-standing unit due to sprinkler and water regulations as a barrier to making free-standing units. Another thought that something like a detached unit would be wonderful for housing older relatives or temporary residents citing people coming to Olympia for legislative sessions as a prime tenant for detached housing units.

The third group respondent did believe that the community members may get a little more sideways about free standing ones, however they believe if rules are put in place that it should not be a huge issue.

4.3: What do you think the benefits or downsides are for this type of housing?

Group 1 had no comments.

For many of the respondents in the second group, free-standing units give privacy and separation, but they may not be as easy to build as already existing units. Free-standing units may not blend in well with the rest of the house.

The main benefit mentioned from the third group respondent was how helpful it could be for someone on a fixed income to have a small inexpensive space to live, such as an older person who is retired or

someone who is just in between places. In addition, it creates an easier opportunity for people to let family members or friends stay with them at any time while allowing for some privacy.

Some downsides are if the property turns into an Airbnb style where people come and stay to party. If this occurs some ground rules will need to be created. Once again, parking would become an issue with this style of renting.

4.4: Do you think your community would support allowing multi-family housing in your community?

For some members in the first group, their HOA already allowed duplexes. For the others, they did not think their community would like multifamily housing. Moving to the second group, one respondent said that their community would likely support it as they already have condos, but that people on their Facebook feed were not supportive of further increases in density. Other HOAs simply do not have enough space to support multifamily homes. In some cases, they would have to tear down relatively new structures to make way for a multifamily unit. Many of the second group's members thought there was a clear age difference in who supports ADUs and who does not. Even for those units in disrepair that could be sold to another party, there is still pushback in one of the respondents' communities regarding new ownership.

The third group respondent believes that most of the community members would have no issue with duplexes or three plexuses because it would allow for a better parking situation. However, bigger complexes like a six-plex, might draw some objections because it may create too much density. If that density was planned for it may be more acceptable.

4.5: Do you think your community would support lot-splitting in your community?

For both groups one and two, there were no lots that were able to be split.

The third group respondent believed that there would be support, however some people in the community may be a bit skeptical about how that would change the character of the neighborhood. Resistance could be minimized by clearly stating which size lots could be split, and which ones could not be split.

Topic 5: Community Response

5.1: If your HOA was required to allow ADUs, how do you think your community would respond?

Group one did not think that there would be any pushback from the community regarding ADUs.

Of the second group, those who lived in HOAs that permitted ADUs said that people would be happy with the new law. On the other hand, many respondents talked about how HOAs may respond with harsher rules related to appearance of the home. For example, there are restrictions in some HOAs about cutting the grass, or only having a certain number of cars parked in the driveway. Those rules, and others, may be more stringently enforced in an effort to deter ADUs, respondents said. Respondents also said that they wanted more transparency as to how those rules are enforced. They see a huge difference between enforcement for renters and owners, with renters being treated much more harshly than owners.

The third group respondent believes that the board would oppose the decision for them to be required to allow ADU's because it is run by the developer. They believe that this would run contrary to all the

plans they've had for the past few decades. With regards to the rest of the community, they believe that it would be split, with some newer people not wanting ADU's, while some wealthier people may not mind the additional density to an expensive home. The respondent expressed the importance of enabling a dialogue between the different opinions.

5.2: If ADU's were an option, do you think that your community members would build them?

For the respondents in group one, they did not think that their community would build any ADUs if given the chance. For one of them, it was the lack of water infrastructure that would stop them. For another, it was the lack of available space. They did not go into detail about whether there would be any pushback from the law change.

Many respondents in the second group didn't think they would be built because of the cost-prohibitive nature of ADUs due to regulations. One regulation that was especially prominent was the sprinkler regulation i.e. requiring a sprinkler to be installed in the ADU. This could lead to a large increase in building costs.

The third group respondent believed that some members of their community would build them to add some additional income or accommodate a family member. They mentioned that it depends on the area. Rural areas are more likely to because they have larger property spaces to work with, while urban areas may be more hesitant due to density concerns. The respondent also mentioned that investors may seek to add an ADU to increase the value of their property.

5.3: Who do you foresee living in ADU's?

Group one respondents said there was more of a potential for AirBnb rentals and more family members to move into ADU's.

The third respondent mentioned the need for single individuals or family members as options to live in the ADU's. The second group also echoed this sentiment. Once again, the third group's respondent stressed the need for putting good rules in place to properly integrate these ADU's within the community.

5.4: In your opinion, do you think that ADU's and middle housing development increase the affordability and availability of housing?

Group one all responded yes to this question but did not elaborate.

Respondents in the second group said that it might, but the effect would be small in their opinion. The more units there are, the more competition there is and prices drop. One respondent highlighted the need for more units across the state, but questioned who would be ultimately paying the costs of new housing developments.

The third group respondent believed that ADU's won't have much of an impact on the affordability and availability of housing. Most likely the rent will be less than an apartment, which would potentially decrease prices as more people are able to find cheaper housing off the market. If anything, it may slightly increase the affordability of housing.

Section 6: Concluding Thoughts

Respondents in the first group were concerned about ADUs not being in harmony with the historic nature of some of the neighborhoods they were allowed to be in. For example, one of Bellingham's historic neighborhoods, they said, was considering becoming an HOA before the law was in place to prevent ADUs from being built in that neighborhood. The participants in the first group underscored the underlying whole that needs to be fixed when discussing housing policy. Many of the constraints on building ADUs have to do with existing infrastructure. For them, there isn't enough water infrastructure and transportation infrastructure to support the building of ADUs. An increase in density must be met with a corresponding increase in transportation services. They thought the reliance on cars hampers efforts to decrease density.

The third group respondent mentioned a need for middle housing when asked for any closing thoughts. They explained that it may be difficult for older people to maintain a larger house, and they may just be looking for a smaller more affordable option. They mentioned how there may be incentive for builders to build apartments but not middle housing which is an issue.

Legal Feedback

The following section was prepared under contract with the Sound Law Center. It has been produced as informed research but should not be construed as legal advice.

Analysis of HOA Provisions

Introduction

This memorandum is supplemental to an analysis submitted previously that discussed the impairment of contract provisions in the state and federal constitutions. That analysis focuses generally on how state legislation that requires more than one residence on a lot may violate those constitutional provisions. That analysis was prepared prior to the collection of specific provisions in documents that may apply to a homeowner within specific subdivisions. The follow-up analysis below was prepared following a review of those specific provisions and provides an analysis of how state legislation that would require more than one residence on a lot may conflict with a specific provision in governing documents and suggests how a reviewing court might resolve any conflict.

Background

In Washington State, most housing is developed on individual lots as a result of subdivision of land or as a multi-family structure, such as a condominium complex, on an individual lot. The analysis of any impact of a state law requiring a lot to allow for more than one residence is limited to the impact on lots within a subdivision of land, where typically just one residence is constructed. State legislation being considered would require that more than one residence be allowed on each individual lot. This legislation may impact language within documents governing how lot owners may develop their lot. Documents that regulate what a lot of owners may and may not do are typically known as “Conditions, Covenants & Restrictions”, and are enforced by a homeowner’s association. In 1995 the Washington State Legislature adopted Chapter 64.38 RCW, known as the Homeowner’s Association Act. This law provides specific requirements that apply to the formation and operation of homeowner’s associations with the intent to provide a consistent approach to how they are formed and operate. This law essentially provides for a contract relationship between the initial developer of property and those who purchase individual lots, that is then transformed into a contract between a homeowner association and the individual lot owners. Thus, there exists a contract relationship that is protected by the prohibition against impairment of contracts in the state and federal constitutions. *See Discussion in Section XX*).

Over the years, the Homeowner Association Act has been amended with specific policy goals in mind, such as amendments requiring that solar panels be allowed (RCW 64.38.055, 1995), that drought resistant landscaping be allowed (RCW 64.38.057, 2020), and that electric vehicle charging stations be allowed (RCW 64.38.062, 2022). A separate law, adopted in 1969 and amended several times, prohibits discrimination in the conveyance or occupancy of any lot based on such characteristics as race, gender, or handicap, and declares void any provision within the governing documents of any homeowner association that prohibits the occupancy of real property “on the basis of race, creed, color, sex, national origin, citizenship or immigration status, sexual orientation, families with children status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled”. RCW 49.50.224.

Analysis of Restrictive Provisions

The project team reviewed approximately fifty specific examples of covenants within the Covenants, Conditions & Restrictions (CCRs) adopted by Homeowner Associations (HOAs) from King, Spokane, Pierce and Kitsap counties. The CCRs reviewed contain language that either explicitly limits development on lots within the HOA to one residence or has the effect of limiting lot development to one residence. The wordings of these provisions varies widely. Some state clearly that “all lots shall be used for single family residential purposes only”. Other provisions establish a minimum lot size that has the impact of restriction a lot to one single family residence. Some CCRs allow for subdivision of lots, while others expressly prohibit this. Some provisions limit use of a lot to “residential” use, without specifying that it is only single-family residential use. Other provisions require compliance with all governmental codes, including zoning codes, while some CCRs are silent on this topic. There is no uniform provision that limits a lot to one residence; the language in each CCR is unique.

The fact that each CCR is unique to the land to which it applies means that it is difficult to predict how a court would rule if a state statutory provision conflicted with the language of a CCR. While it seems clear that a provision within a CCR that requires compliance with all governmental regulations, including zoning codes, would allow a state statute to override any restriction on lot development to one residence, it is uncertain whether a state statute would override a CCR provision that limits lot development to one residence if the CCR does not also contain a provision requiring compliance with governmental regulation. Where there is an express provision requiring compliance with governmental regulation, a reviewing court would likely determine that the state statute controls since there is no CCR that is in direct conflict with the state statute. If a state statute, however, requires more than one residence on a lot, and the CCR expressly limits a lot development to one residence, it would be necessary for a reviewing court to determine if the conflict between state law and a CCR results in the impairment of a contract. As discussed above, there are both federal and state constitutional provisions that prohibit impairment of contracts, including those within CCRs adopted by HOAs.

Concluding Remarks

Even if a state statute required that all CCRs allow for more than one residence on each lot, it is highly speculative as to how many lot owners presently restricted to one residence per lot would attempt to construct additional residences on the lot they own. There may be pressure from neighbors to keep a lot to one residence, or there may be an interest of the lot owner to keep the lot restricted to one residence. It is likely that a state statute allowing for more than one residence on each lot would have a much greater impact on new subdivisions that might otherwise restrict a lot to one residence.

As to existing restrictions, the fact that specific provisions limiting development to one residence per lot within existing CCRs vary significantly makes it difficult to predict how a state statute attempting to prohibit a restriction to one residence on a lot might be analyzed by a reviewing court. Some restrictive covenants may be upheld, while others would likely fall, if *the state statute is applied retroactively*. If a state statute is adopted to impact only those CCRs that are prepared after passage of the state statute, by amending either Chapter 64.38 RCW or Chapter 49.50 RCW, it is highly likely that the statute would be upheld to prohibit any CCR from restricting lot development to one residence. That is because there would be no impairment of an existing contract, but merely a prohibition from inserting a restriction to one residence on a lot in any future CCR. There are several appellate court cases that offer guidance on when a law may be applied retroactively. That analysis is beyond the scope of this project but could be addressed if so desired.

The Application of the Constitutional Contract Clause to HOA Convents Related to ADUs

The Scope of Work specified in Contract No. 12792, between Sound Law Center and Western Washington University, requires a review of Homeowner Association (HOA) policy language related to Accessory Dwelling Units (ADUs) to assess and evaluate claims by HOAs that the contract clause of both the federal and state constitutions prohibits states from applying new ADU or other land use regulations to HOAs (such as upzones or other increased density requirements) because those regulations would interfere with HOA agreements and would therefore be void under the law prohibiting impairment of existing contracts.

To properly undertake this task, it is necessary for there to be an understanding of the contract clause, in both the United States and Washington State constitutions, and how it has been interpreted and applied by the courts. Following a brief review of the law, this paper will begin an assessment and evaluation of the application of the law to specific HOA language, as provided by others involved in this review.

Background of Federal Law

Article I, Section 10, Clause 1 of the United States Constitution provides that:

No state shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or *Law impairing the Obligation of Contracts*, or grant any Title of Nobility. [Emphasis added.]

This constitutional clause obviously does not directly address its applicability to HOA language and its potential conflict with state laws. The background leading to insertion of this clause into the constitution, however, is helpful to an understanding of how this clause might be applied to HOA agreements. After the American revolution, many citizens had difficulty repaying their debts, which motivated state legislatures to enact a number of laws to relieve them of their financial obligations. The intrusion of state legislatures into private agreements between lenders and borrowers was noted by the US Supreme Court in the 1934 case of *Home Bldg. & Loan Ass'n v. Blaisdell* (290 U.S. 398, 427, 54 S. Ct. 231, 78 L. Ed. 413 (1934).) The Court at that time stated its displeasure with these intrusions by noting that the “widespread distress following the revolutionary period, and the plight of debtors, had called forth in the States an ignoble array of legislative schemes for the defeat of creditors and the invasion of contractual obligations.” *Blaisdell*, 427. The characterization of legislative intrusions as an “ignoble array” is consistent with an explanation for insertion of the impairments clause given in Federalist Paper No. 44. In that document, often cited to help interpret the US Constitution, it was noted that at the time of drafting of the Constitution, legislative intervention into private contracts was so numerous that “the confidence essential to prosperous trade had been undermined and the utter destruction of credit was threatened” and “thorough reform’ was needed. *Blaisdell*, 427. Likewise, in *Ogden v. Saunders*, 25 U.S. 213, 355 (1827) the Court explained that interferences into contracts have “been used to such an excess by the state legislatures, as to break in upon the ordinary intercourse of society, and destroy all confidence between man and man.” It is important to note, therefore, that the federal courts have interpreted and applied the contract clause in a very liberal manner generally disfavoring any state legislative enactment that would interfere with a private contract such as an HOA covenant regarding land use.

The federal courts, however, are not always consistent in striking down state laws that interfere with private agreements. In *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 427 (1934), the US Supreme Court determined that a Minnesota law that granted relief from mortgage foreclosures and execution and sales of real property during the Depression was not a violation of the contract clause. The state law granted local courts authority to extend the period of redemption for foreclosure sales “for such additional time as the court may deem just and equitable” as well as providing other conditions before forgiving a loan including an order requiring the mortgagor to “pay all or a reasonable part” of the fair income of rental value of the property” toward the payment of “taxes, insurance, interest and indebtedness.” *Blaisdell*, 416-417. No deficiency judgment could be brought during such a court-extended period of redemption. The Defendants, the Blaisdells, obtained a court order under the Act extending the period of redemption on condition that they pay the Association \$40 per month. Thus, the court modified the lender’s contractual right to foreclose. The highest state court sustained the law as an “emergency” measure. *Blaisdell*, 422-423.

On review, the US Supreme Court agreed with the state court. The Supreme Court noted that the state law did not merely forgive loans, but retained some control over when that might happen. It held that the police power of the state may be exercised to directly prevent the immediate enforcement of contractual obligations where vital public interests would otherwise suffer. Here, the conditions upon which the period of redemption is extended do not appear unreasonable. Therefore, the Minnesota statute does not violate the contracts clause. In an especially relevant statement, the Court said:

It is manifest from this review of our decisions that there has been a growing appreciation of public needs and of the necessity of finding ground for a rational compromise between individual rights and public welfare. The settlement and consequent contraction of the public domain, *the pressure of a constantly increasing density of population*, the interrelation of the activities of our people and the complexity of our economic interests, have inevitably led to an increased use of the organization of society in order to protect the very bases of individual opportunity . . . The principle of this development is . . . that the reservation of the *reasonable exercise* of the protective power of the States is read into all contracts.”

Blaisdell, 444.

In effect, the Court held that any private contract may need to yield to an important public interest that may be defined by state legislatures. It remains unclear how far this public interest may extend, and particularly whether it extends to the adoption of land use laws that may interfere with HOA covenants, conditions or restrictions.

More recent decisions from the US Supreme Court and the Ninth Circuit Court of Appeals have clarified how the federal court may view a legislative enactment that may potentially interfere with a private agreement. In *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 98 S. Ct. 2716, 57 L. Ed. 2d 727 (1978), the US Supreme Court decided that a Minnesota law violated the contract clause and was therefore unenforceable because its impact on private pension plans was substantial and severe in that it retroactively modified compensation that the employer had promised to pay without any articulation in the law about why considerations of economic or social policies might require this. In the *Spannaus* case, the employer brought an action challenging the constitutionality of Minnesota's Private Pension Benefits Protection Act. The Court held, in part, that, “while the contract clause does not operate to obliterate the police power of the states, it does impose some limits on the power of state to abridge

existing contractual relationships, even in the exercise of its otherwise legitimate police power.” *Spannaus at 235*.

Different courts have varying approaches to application of the contracts clause, seemingly due to the unique sets of facts presented to it. Thus, in *Sveen v. Melin*, 584 U.S. 7 (2018), the Supreme Court upheld a retroactive application of a law that nullified an ex-spouse beneficiary designation in a life insurance policy, finding there would be a violation of the contract clause because there was no substantial impairment of a contractual relationship and the law was crafted in an appropriate and reasonable way to advance a significant and legitimate public interest. The court adopted a two-step inquiry to determine whether a law violates the contracts clause:

1. Whether the state law “operated as a substantial impairment of a contractual relationship.” To determine this, the court looks to what extent the law:
 - a. Undermines the contractual bargain,
 - b. Interferes with a party’s reasonable expectations, and
 - c. Prevents the party from safeguarding or reinstating his [or her] rights.
2. If the Court concludes that its review generates affirmative answers to the three review criteria above, the court must conclude that the law has been crafted in an “appropriate” and “reasonable” way to advance “a significant and legitimate public purpose” in order to protect the state law from an attach alleging a violation of the contract clause.

Sveen, 1822

The makeup of the US Supreme Court has significantly changed in recent years. The present Court has not been presented a case involving the contracts clause. Given the current makeup of the Court, and its indications that precedent will be less important to it, it is not possible to predict if a state law will pass the scrutiny of review by the present court.

Background of Washington State Law

Challenges to a state law that may impact an HOA clause restricting density may be filed in US District Court, if alleging a violation of the federal constitution, or in Washington Superior Court, if alleging a violation of either the federal or state constitutional clauses prohibiting the impairment of contracts. The Washington State prohibition against impairment of contracts is found in Section 23 of the Washington State Constitution, which provides that “No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.”

The Washington State Supreme Court has determined that the meaning of Section 23 of the Washington State Constitution is nearly identical to that of Article I, Section 10, Clause 1 of the United States Constitution because the language is also nearly identical. Thus, in *In re Est. of Hambleton*, 181 Wn.2d 802, 335 P.3d 398, 413 (2014), the court found that “Section 23 of the Washington State Constitution is substantially the same as Article 1, Section 10 of the U.S. Constitution and is to be given the same effect.” In addition, the court determined that the contract clause of the Washington State Constitution similarly was not absolute, and “its prohibition must be accommodated to the inherent police power of the State ‘to safeguard the vital interests of its people.’” *Hambleton*, 335 P.3d at 413, citing *Energy Reserves Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 410, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983).

This approach of the Washington State court has been fairly consistently applied to strike down state laws that may interfere with private contractual rights. For example, in *Tyrpak v. Daniels*, 124 Wn.2d

146, 156, 874 P.2d 1374 (1994), the court stated a principle that exemption of a contract from constitutional protection “demands significant justification.” In *Tyrpak*, the court found that a statute specifically permitting unilateral annexation of lands by the Port of Camas-Washougal was unconstitutional as a violation of contracts clauses in both state and federal constitutions because there was already a state law permitting interdistrict annexations with the unanimous consent of the commissioners of both districts. Similarly, in *Pierce Cnty. v. State*, 159 Wn.2d 16, 148 P.3d 1002 (2006), the court held that an initiative measure limiting government-imposed charges on motor vehicles unconstitutionally impaired contracts because “changes in tax policy” and the “power...to change tax policy” did not justify the impairment of bondholders’ security. *Pierce Cnty*, 37-38.

In cases specifically relevant to this review, the Washington State Supreme Court addressed how the contract clause interacts with restrictive covenants found in subdivision language or HOA agreements. It is especially noteworthy how the court reviews the specific language of the covenant with reference to the specific public policy that is intended to override that covenant. The outcome is not always the same. For example, in *Viking Properties, Inc. v. Holm*, 155 Wn.2d 112 (2005), a property owner who sought to redevelop property filed a declaratory judgment action against homeowners in a subdivision seeking both to invalidate a 60-year-old restrictive covenant that barred racial minorities from ownership of land and a restrictive covenant that imposed a density limitation of one dwelling unit per one-half acre. All parties in *Viking Properties* agreed that the covenant restricting racial minorities was unenforceable, but homeowners claimed that the density limitation had been continuously observed and that they purchased and developed their properties in reliance on the continued enforceability of the density limitation. *Viking Properties* argued that the density limitation violated public policy as articulated in the Growth Management Act (GMA), the City’s comprehensive plan, and the City’s zoning regulations, noting that the GMA’s “fundamental and overarching policy” is to concentrate development in urban growth areas. *Viking Properties*, 155 Wn.2d at 125. The court acknowledged this goal of the GMA and added that the GMA does not prescribe a single method to growth management and the legislature placed the ultimate burden and responsibility for planning on local governments through local development regulations, including zoning regulations. The court stated that “the test of whether a contractual provision violates public policy is ‘whether the contract as made has a ‘tendency to evil,’ to be against the public good, or to be injurious to the public.” *Viking Properties*, at 126, citing *Thayer v. Thompson*, 36 Wn. App. 794, 796, 677 P.2d 787 (1984) (quoting *Golberg v. Sanglier*, 27 Wn. App. 179, 191, 616 P.2d 1239 (1980)). The court further stated that, before the court can find a restrictive covenant to be in conflict with public policy, the “record must demonstrate ‘a legislative intent to declare a general public policy sufficient to override a contractual property right.’” *Viking Properties* 126, citing *Mains Farm*, 121 Wash.2d, 823, 854).

The ruling in *Viking Properties* suggests that the legislature could have the power to adopt a policy limiting homeowners’ association’s restrictions on density if it clearly articulates the importance of the public policy, and does not unreasonably interfere with private agreements. The court’s decision in *Washington Educ. Ass’n v. Washington Dep’t of Ret. Sys.*, 181 Wash. 2d 233, 332 P.3d 439 (2014) supports this idea, stating that “when a private contract is impaired, some deference to the legislature is warranted” (at 242).

In *Jones v. Town of Hunts Point*, 166 Wash.App. 452 (2012), Jones attempted to expand the holding in *Viking Properties* to a general holding that local governments lack authority to enforce density limitations that are specific to a plat. The court declined to expand *Viking Properties* in the way

proposed by Jones. In *Jones*, the Town of Hunts Point interpreted a restriction on the face of a 1951 plat to prevent Jones from subdividing his lot into two independent lots. The court found that the plat restriction prohibited Jones from subdividing his lot into two independent lots that would be smaller than the area shown on the face of the plat. Jones argued that the town did not have the authority to enforce the plat restriction under *Viking Properties*. The court determined that the town must enforce restrictions imposed upon a subdivision by a plat since the purpose of the Hunt Point Municipal Code was to ensure that subdivisions conform with all state statutes, and Chapter 58.17 of the Revised Code of Washington (RCW) states that a subdivision “shall be governed by the terms of approval of the final plat.” *Jones*, 166 Wn. App. at 457. The court found that, although a plat restriction “itself is not ‘a law,’” if the density restriction is not applied at the time of subdivision, it would not serve the purpose of maintain low density within the plat. *Jones* at 460-461. The court further found that the town had “not abandoned” the density restriction by “inconsistent application.” *Jones* at 461. As noted above, the court in *Jones* determined that the plat restriction was not a private covenant, but a subdivision restriction that the town was required to enforce by zoning statutes and Chapter 58.17. The court of appeals avoided having to determine if a subdivision restriction, incorporated into the subdivision at the time of approval, is prohibited by other public policies such as those encouraging greater density. The subdivision restriction is not a private contract, and therefore the prohibition against impairment of contracts does not apply. Notably, neither the *Jones* nor the *Viking Properties* decisions explicitly rely on any impairment of contracts analysis in reaching their conclusion.

Review of Specific HOA Contract Provisions That May Restrict Density

Although it is never possible to accurately predict what holding a reviewing court may determine appropriate given the unique facts presented to it, it is possible to discern some principles from court decisions as to how a reviewing court may approach a case which challenges the constitutionality of a state law that impacts an HOA covenant that restricts density within a zoning area, subdivision, or condominium. It is likely that a state law would attempt to override any private restriction greater density in the following ways:

3. A state law could declare as invalid any existing or newly adopted local law or private agreement that would have the impact of limiting density in any manner, by zoning law or HOA covenant;
4. A state law could declare as invalid any *newly adopted* any local law or private agreement that would have the impact of limiting density in any manner, by zoning law or HOA covenant;
5. A state law could declare as invalid any local law that seeks to restrict housing density in any way;
6. A state law could declare as invalid any local law or private agreement that seeks to restrict housing density in any way.

It is likely that a reviewing court would approach a retroactive law differently than it would a prospective law, and would approach a law that addresses the authority of a municipality than to a law that addresses private agreements. Below are some principles that may guide the court, given federal and state law cases interpreting and applying the constitutional prohibitions against impairment of contracts:

7. No city or county can override density requirements in HOA contract clauses without action by the state legislature.

8. A prospective state law that seeks to limit what local government can do to restrict housing density has the greatest chance of surviving an attack of being unconstitutional, especially if the legislature clearly identifies specific reasons why increased density in housing is in the best interest of the public.
9. A retroactive state law that seeks to invalidate existing local laws or HOA clauses that may restrict housing density has the least chance of surviving an attack of being unconstitutional.

10. A state law that addresses both local laws and HOA contract clauses that impact the degree of housing density allowed has little chance of being upheld in its entirety in an attack on the constitutionality of the law, especially as applied to HOA clauses

As noted, these principles are based upon a review of existing state and federal cases that have reviewed the constitutionality of laws and HOA contract clauses. Some of these cases, most notably in Washington State, address the issue directly of whether a law can override an HOA clause that restricts density. Since these cases address the question directly, they are most relevant to determine the potential outcome of any challenge to a state law. A very close reading of those cases may assist the drafters of any proposed language that may wish to address this issue in the proposed statute. Those drafters, if any there be, should heed a warning that their task will not be easy.

Case Study- California Law on ADUs

The State of California is well-known as the state that has the most aggressive legislation regarding approval of ADUs. The California legislature adopted laws from 2020 through 2023 that not only invalidate restrictions on building ADUs, but that require cities and counties to approve applications to construct ADUs within 60 days or give detailed reasons why the application cannot be approved. The current law in California is captured primarily in two legislative acts.

California Civil Code Section 65852.2 (3), effective January 1, 2023, requires cities and counties to approve building permit applications for ADUs within 60 days of receipt of an application regardless of the existence of an ordinance that might otherwise limit or restrict ADUs. If the application is not acted on within 60 days, it is deemed approved. If the city or county has concerns about the application, it must return the application to the applicant with specific instructions of what additional information or corrections are necessary in order to receive approval. Owner occupancy cannot be required nor can an application be denied for exceeding maximum lot coverage. No parking requirements may be imposed, but some development regulations such as setback or height regulations may be imposed as long as they do not unreasonably restrict the development of the ADU.

California Civil Code § 4751, effective on January 1, 2020, provides that covenants, conditions, and restrictions (CCRs) that either prohibit or unreasonably restrict an accessory dwelling unit on a lot zoned for single-family residential use are void and unenforceable. Any lot owner who desires to construct an ADU may file a request for invalidation of a CCR with the property records office, which must invalidate any restriction on construction of an ADU found in initial documents filed, with some limitations.

California Civil Code § 714.6.

The laws impacting ADUs in California are very recent, so there are no reported or published decisions that can be cited as precedent. There have been, however, several lawsuits challenging the ADU law reported in the press. To uncover these, we focused on news reports that are relevant to challenges of the current statute. Although we found no reported cases, likely because the statute in its current iteration was just recently adopted, we did find news reports of lawsuits recently filed challenging the statutes cited above. The outcome of these cases has no value as precedent in this state, but may be of interest for other reasons. Some of these cases will likely become reported cases in the next few years.

It's important to point out that every challenge to a state law that relates to any attempt to override an existing HOA covenant is likely a unique challenge involving the specific language of that covenant and would not result in invalidation of the entire statute. A successful challenge would allow enforcement of a specific covenant but would not likely invalidate the law as to its application to other covenants that do not have identical language. We found three cases reported in local newspapers that pertain to the existing California statutes encouraging the construction of ADUs.

In 2020, the Riddicks submitted an application to construct an accessory dwelling unit (ADU) attached to their residence.⁵ The City of Malibu sent a "letter of incompleteness" to the applicant stating that the application did not comply with setback and square footage requirements under the City's Local Coastal

⁵ *Jason Riddick v. City of Malibu*, Superior Court of California, County of Los Angeles (2022)
<https://pacificlegal.org/wp-content/uploads/2021/09/2022.07.26-Riddick-v.-Malibu-Final-Ruling-on-the-Merits.pdf>

Zoning Program. The Riddicks challenged this determination. In July of 2022 the Los Angeles County Superior Court held that the City could not use its coastal policies to deny the application to construct an ADU. The Court did not require that the application be approved, only that the application be processed under state law standards. The City stated in the press that it would appeal this decision so it is likely the case is still active, though we could find no updates on it.

In 2021, a group called Californians for Homeownership (CHO) filed a lawsuit against the City of Coronado, arguing that Coronado officials unlawfully denied applications for ADUs from several property owners who applied for building permits for a single-family house and ADU at the same time.⁶ In response to the combined applications, City staff allegedly informed the applicants that they would need an occupancy permit for a single-family house before an application for an ADU could be filed. CHO argued that this unreasonably raised costs for an ADU and was, therefore, contrary to state law encouraging ADUs. The city, however, argued that it acted in a manner that was proper, reasonable, lawful, and in the exercise of good faith. The case, filed in 2021, was decided in favor of the city in 2023. In this case as well as the case above, it was stated in the press that an appeal would be filed, but we could find no update on this case.

In March of 2023, the State of California initiated litigation challenging a ban on processing applications for ADUs adopted by Huntington Beach.⁷ In a City Council meeting in February, the council directed its City Manager to cease the processing of all applications/permits brought to the city by developers under state laws related ADU projects. This is under challenge by the state. We could find no update on the status of this case.

The California statutes encouraging construction of ADUs are the most aggressive in the country. They not only require cities and counties to approve ADU applications, they also attempt to invalidate existing restrictions on ADUs found in private covenants. There are a few challenges to those statutes, but none that invalidate the law. It is too early, however, to predict what the California courts might ultimately conclude when reviewing these statutes since the laws were only recently adopted.

⁶ Megan Kitt, Court Rules in Favor of Coronado in ADU Lawsuit; Nonprofit Files Appeal, The Coronado Times (Apr. 6, 2023) <https://coronadotimes.com/news/2023/04/06/court-rules-in-favor-of-coronado-in-adu-lawsuit-nonprofit-files-appeal/>

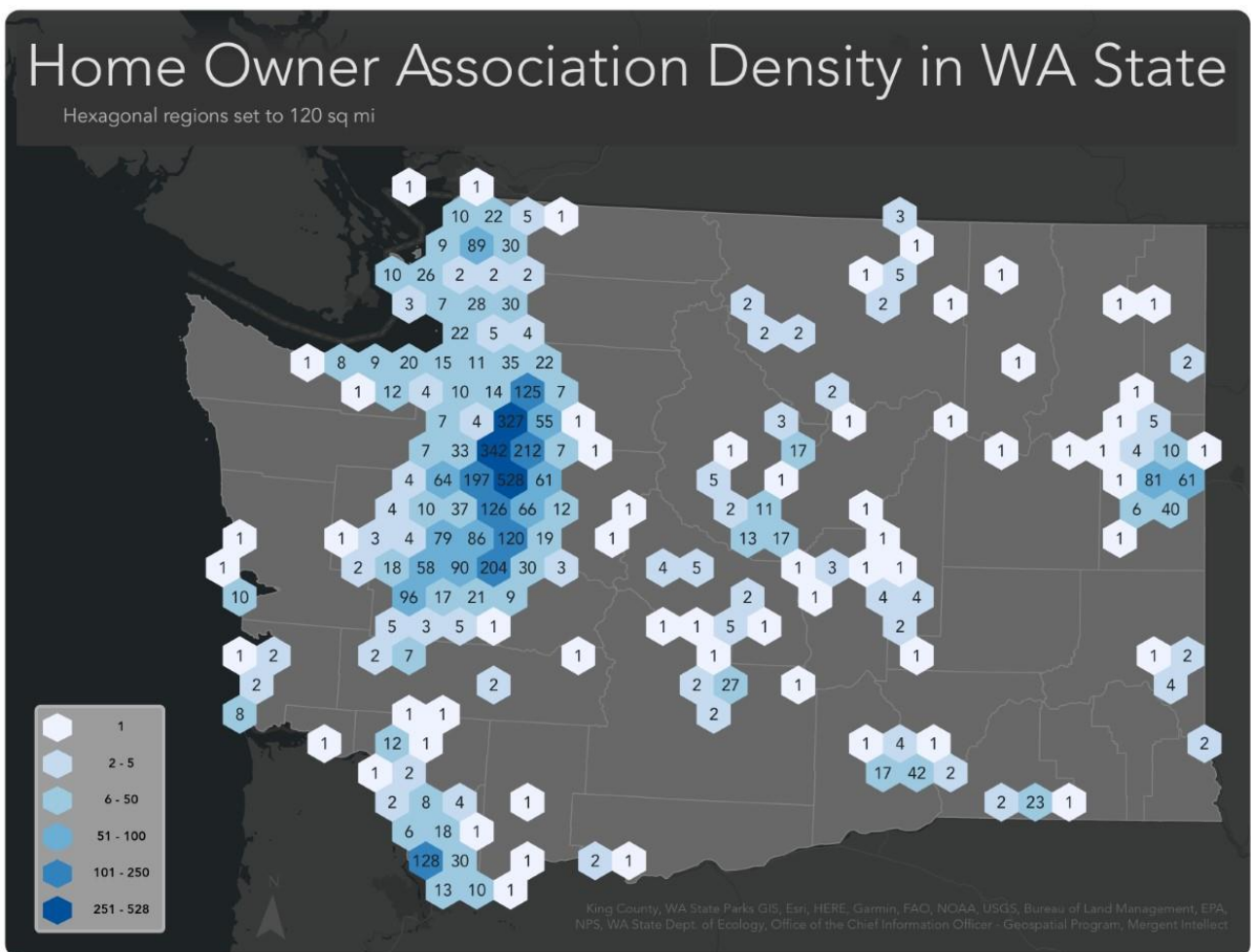
⁷ Complaint, People of California v. City of Huntington Beach, Superior Court of California, County of Orange (Mar. 8, 2023) <https://oag.ca.gov/system/files/attachments/press-docs/36993343.pdf>

Spatial Analysis of HOAs

The following spatial analysis of HOAs and Condos is inherently limited by data available. There may be gaps in our data which result in some HOAs not being included in our analysis. However, we do not expect a systemic bias in our data which leads to underreporting of HOAs in certain regions compared to others.

HOA & Condo Density in WA

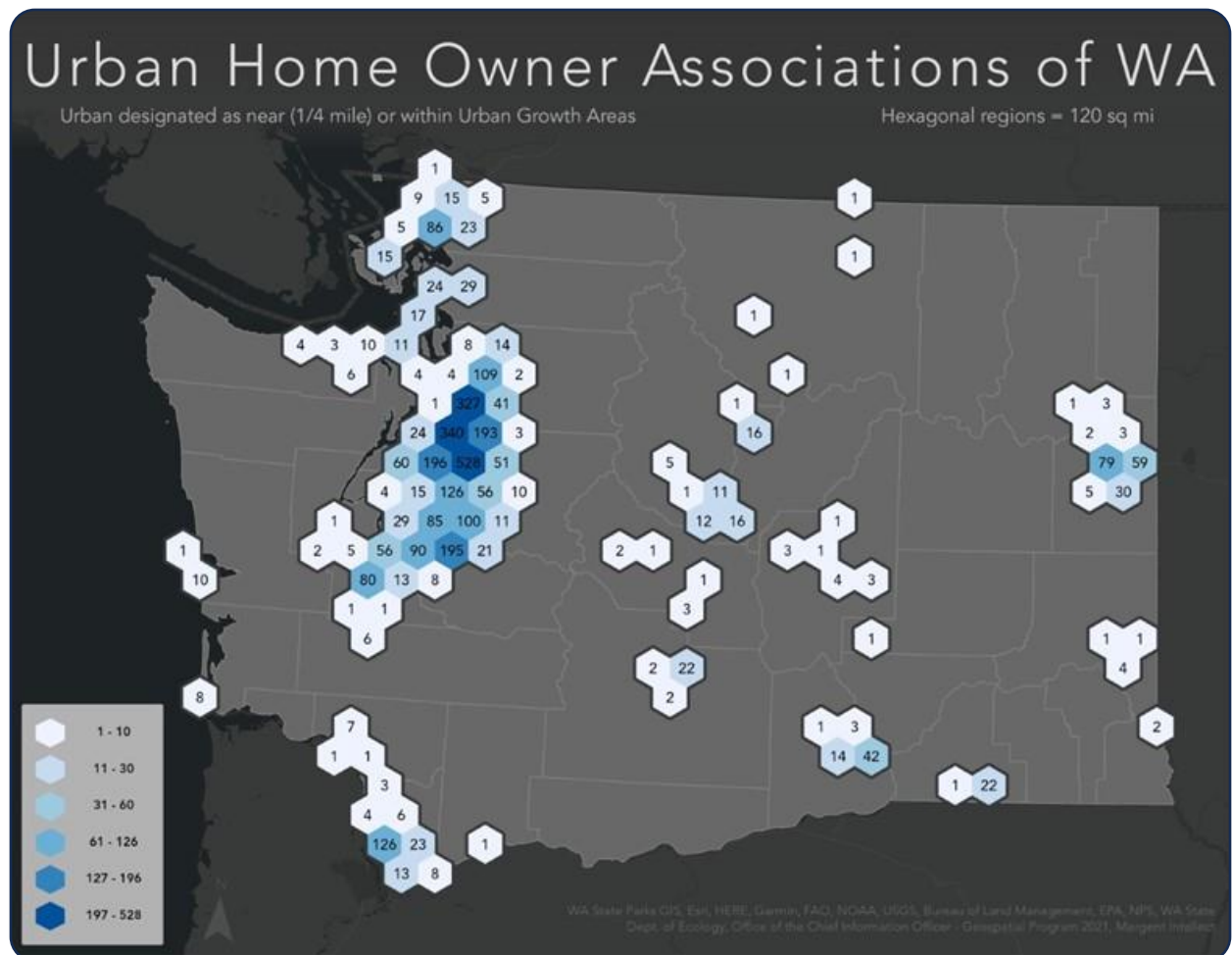
As shown in the figure below, HOAs exist in most major population centers in Washington State. In the map, white hexes indicate lower HOA density, while dark blue hexes indicate high HOA density. Also note, areas with no HOAs in our dataset are recorded with no hex on the map, so all filled hexes contain at least one HOA.



Distance from UGAs

Urban Growth Areas (UGAs) are regions designated by each county outside of which new urban growth is not permitted. It is important to analyze HOAs in the context of UGAs since most population and housing growth is limited to UGA boundaries. As can be seen in the table and chart below, most (2983) HOAs are within city limits, while 697 are in (597) or near (100) UGA boundaries, but not in cities. There are 674 HOAs and condo associations far outside of UGAs. These are designated “Outside Cities or Growth Areas” in the table and chart below. They tend to be located in more rural areas.

1/4 mile from UGA	Within City	Within UGA Not City	Outside Cities or Growth Areas
100	2983	597	674



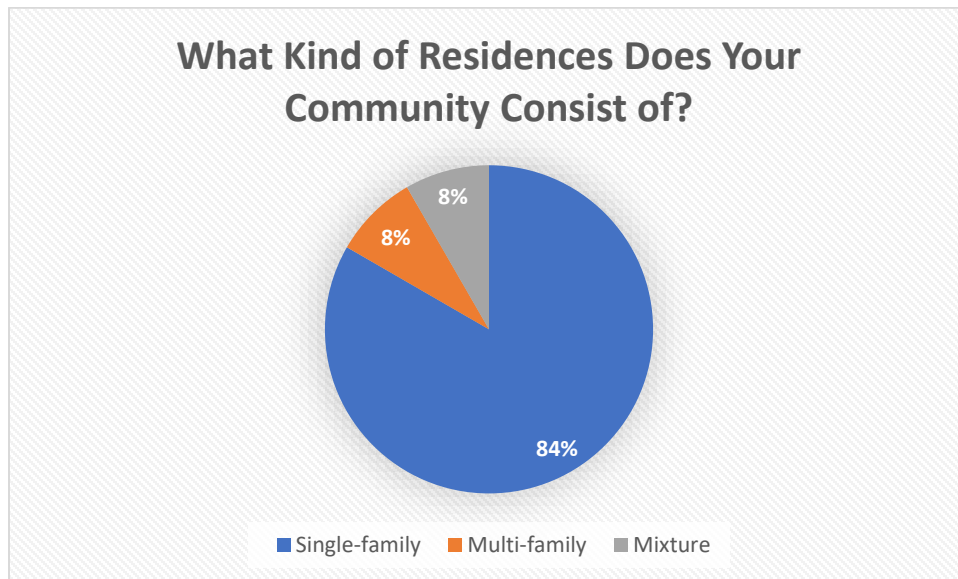
Survey Results

Note, questions 24-26 and 28-30 are not be included in this report because they contained personal information that cannot be shared. Free response questions 10, 19,20, and 27 can found in Appendix A as verbatim text.

Q1: Does your community consist of single-family home residence, multi-family home residences or a mixture of both? (n=96)

Answer	Results	Count
Single-family	83.33%	80
Multi-family	8.32%	8
Mixture of both	8.33%	8
Total	100.00%	96

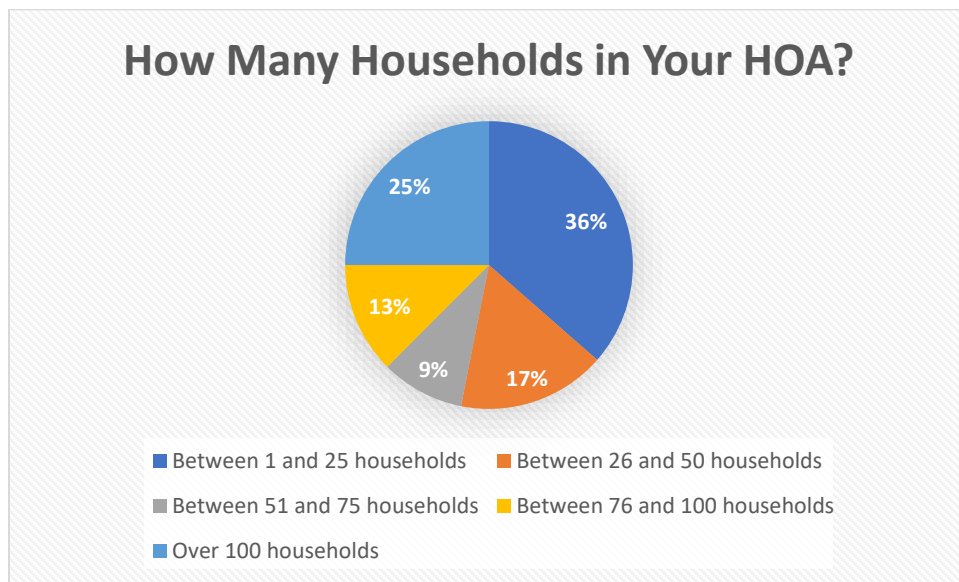
Most of the communities that responded to the survey were comprised of single families, with 83% consisting of single families. The remaining 17% of communities are split evenly between multi-family or a mixture of both at 8.5% each.



Q2: To estimate how large your HOA is, how many households are in your HOA? (n=96)

Answer	Results	Count
Between 1 and 25 households	36.46%	35
Between 26 and 50 households	16.67%	16
Between 51 and 75 households	9.38%	9
Between 76 and 100 households	12.50%	12
Over 100 households	25.00%	24
Total	100.00%	96

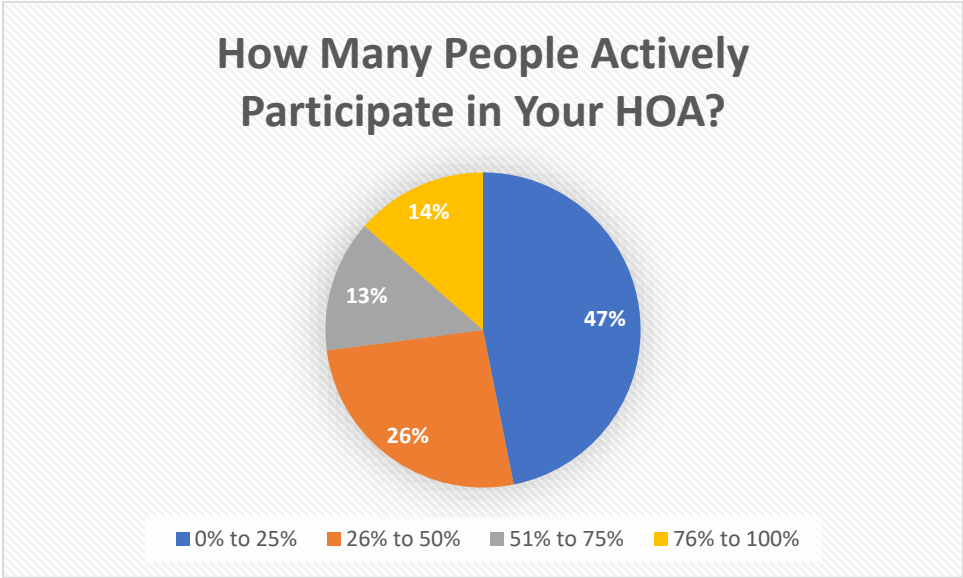
Most of the communities that responded to the survey were comprised of single families, with 83% consisting of single families. The remaining 17% of communities are split evenly between multi-family or a mixture of both at 8.5 % each.



Q3: In thinking about general membership involvement, to the best of your knowledge, how many people actively participate in your HOA via meetings or decision-making activities within a typical year? (n=96)

Answer	Results	Count
25% or less	46.88%	45
26% to 50%	26.04%	25
51% to 75%	13.54%	13
76% to 100%	13.54%	13
Total	100.00%	96

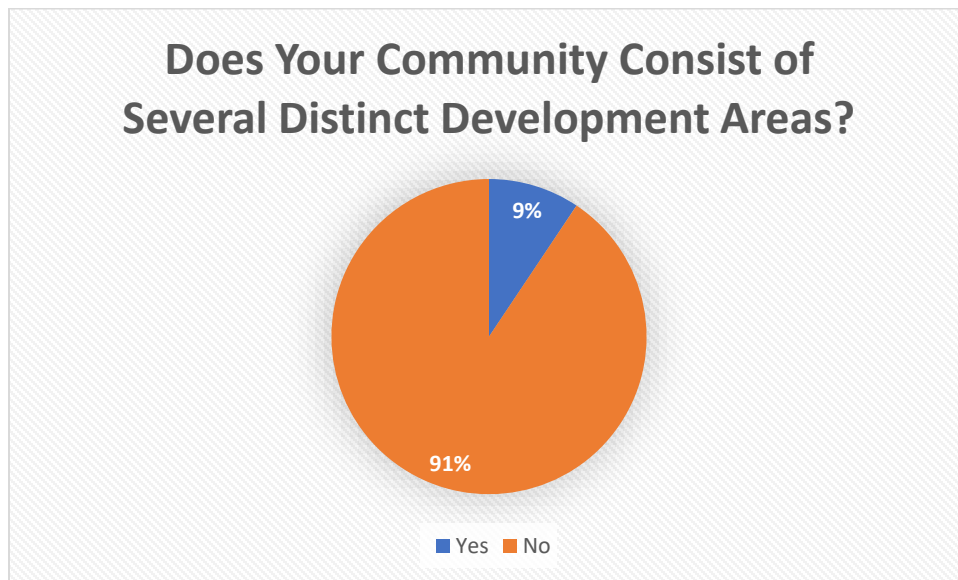
A little less than half of the HOA’s show low participation rates with regards to meetings or decision-making activities within a typical year. 47 percent of HOA’s experience participation rates of 25 percent or less, and 73 percent experience participation rates of 50 percent or less. 13.5 percent of HOA’s see participation rates between 51-75%, and the remaining 13.5 percent see participation rates upwards of 76 percent.



Q4: Some communities may consist of several distinct development areas. To help us better ask you a few questions, does your community consist of several distinct development areas? (n=96)

Answer	Results	Count
Yes	9.38%	9
No	90.63%	87
Total	100.00%	96

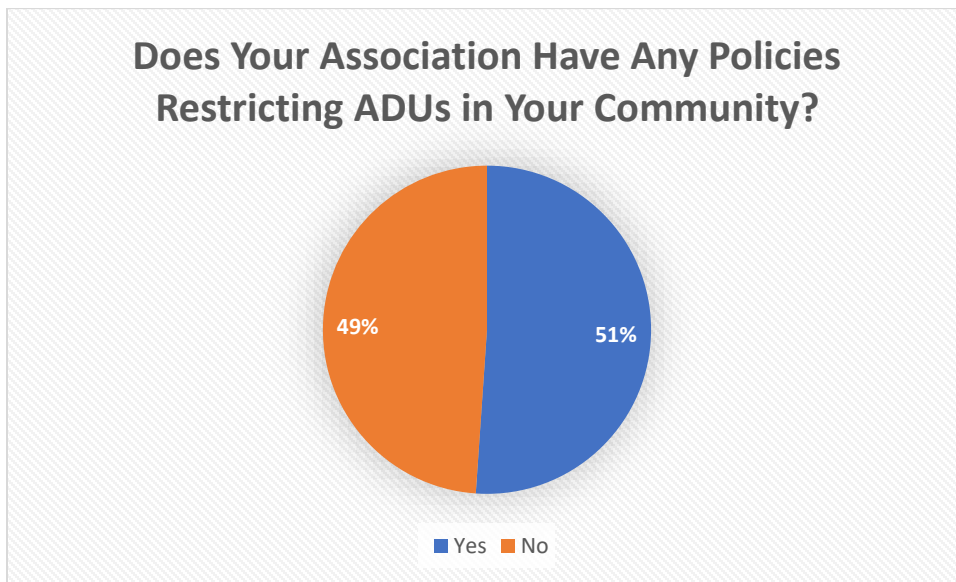
Almost all the HOA's responding to this survey reported that their community does not consist of several distinct development areas (91 percent), while the remaining 9 percent reporting that their community does consist of several distinct development areas.



Q5: Does your association currently have any policies restricting Accessory Dwelling Units (ADUs) in your community? (n=92)

Answer	Results	Count
Yes	51.09%	47
No	48.91%	45
Total	100.00%	92

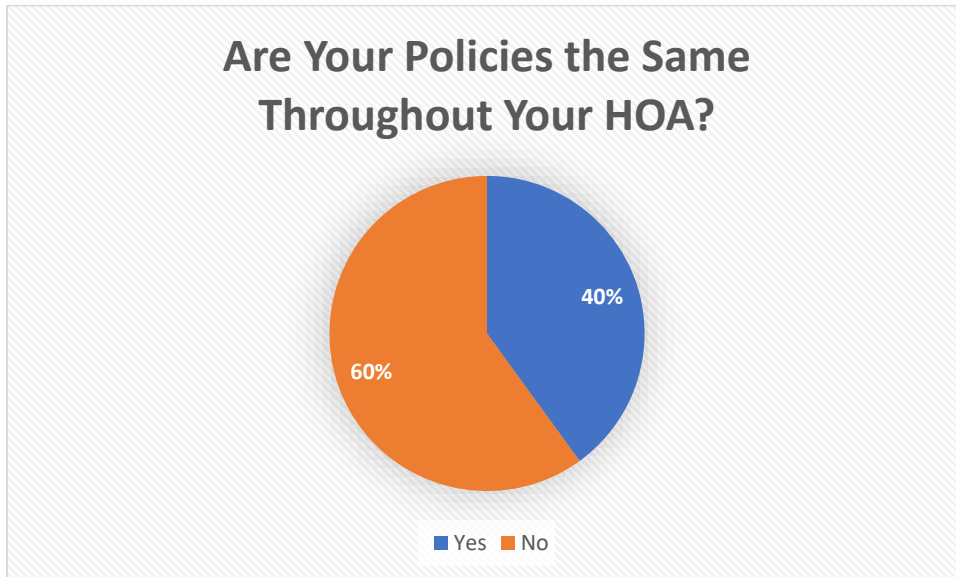
A little more than half of the HOA's currently have policies restricting Accessory Dwelling Units in their community (51%), while a little less than half do not currently have policies restricting Accessory Dwelling Units (49%).



Q6: Thank you for identifying that your HOA consists of several distinct development areas, or do the distinct development areas within the HOA have different policies? (n=5)

Answer	Results	Count
The policies are the same throughout the HOA, regardless of development areas	40.00%	2
The policies are different depending on the distinct development areas	60.00%	3
Total	100.00%	5

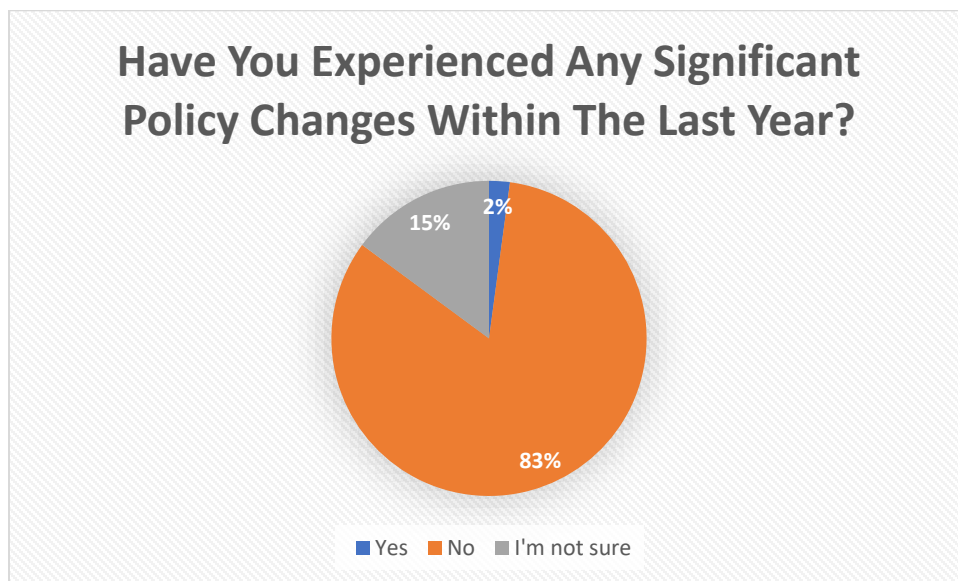
This question was prompted to the HOA's who reported having several distinct development areas, which was a total of nine. Of those nine, five of them responded to this question. Three of these HOA's reported that the policies differ depending on the distinct development area (60 percent), while the other two reported not having distinct development areas within their HOA's (40 percent).



Q7: Have you experienced any significant policy changes within the last year regarding ADUs? (n=94)

Answer	Results	Count
Yes	2.13%	2
No	82.98%	78
I'm not sure	14.89%	14
Total	100.00%	94

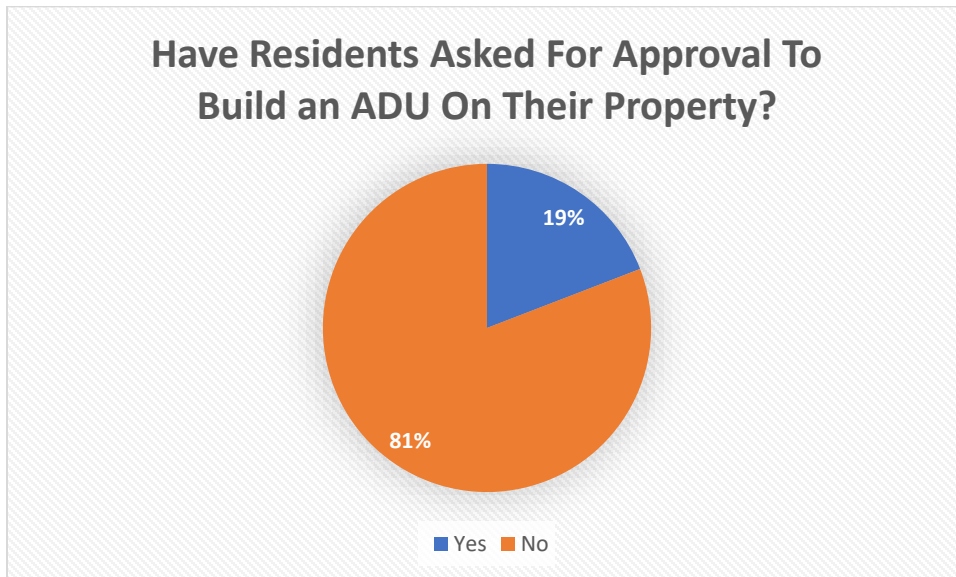
Almost no HOA's have experienced significant policy changes within the last year regarding ADU's (2 percent), while 83 percent have not experienced any significant policy changes within the last year. The final 15 percent reported being not sure whether they experienced any significant policy changes.



Q8: Within your community and to the best of your knowledge, have residents asked for approval to build an ADU on their property in the past? (n=94)

Answer	Results	Count
Yes	19.15%	18
No	80.85%	76
Total	100.00%	94

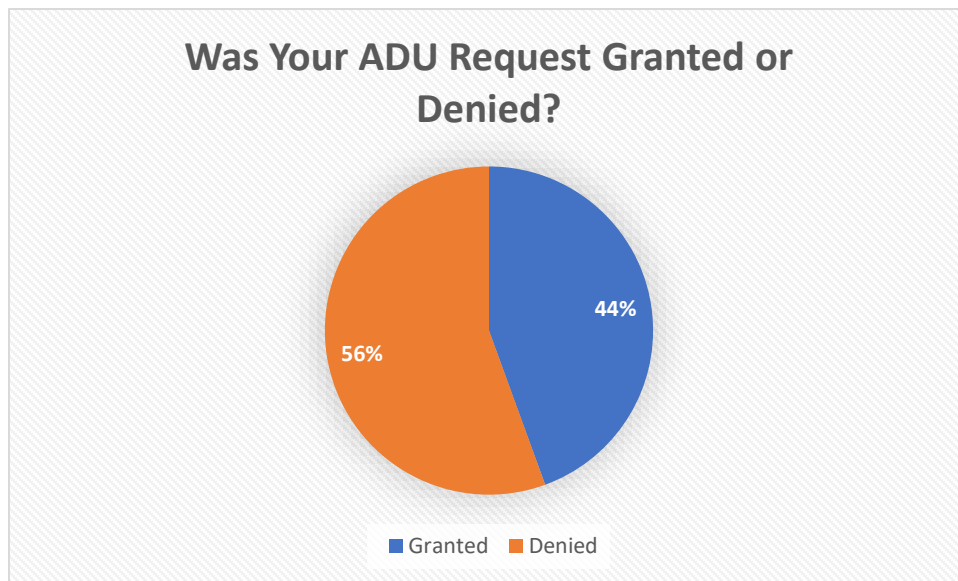
81 percent of HOAs have not experienced residents asking for approval to build an ADU on there property in the past, while the remaining 19 percent have.



Q9: Was it granted or denied? (n=18)

Answer	Results	Count
Granted	44.44%	8
Denied	55.56%	10
Total	100.00%	18

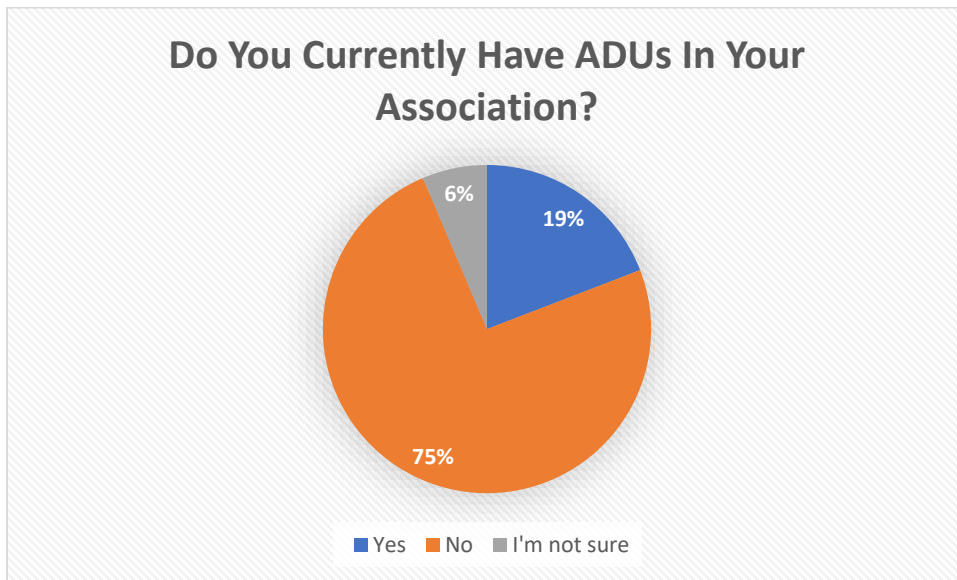
This question was prompted to the HOA's who reported having community members ask for approval to build an HOA, which was 18 of them. All 18 of these HOA's responded to this question, where 56% reported denying their community members request, and the remaining 44 percent granting their community members' request.



Q11: To the best of your knowledge, do you currently have any ADUs in your association? These units may be occupied by either family members or tenants. (n=94)

Answer	Results	Count
Yes	19.15%	18
No	74.47%	70
I'm not sure	6.38%	6
Totals	100.00%	94

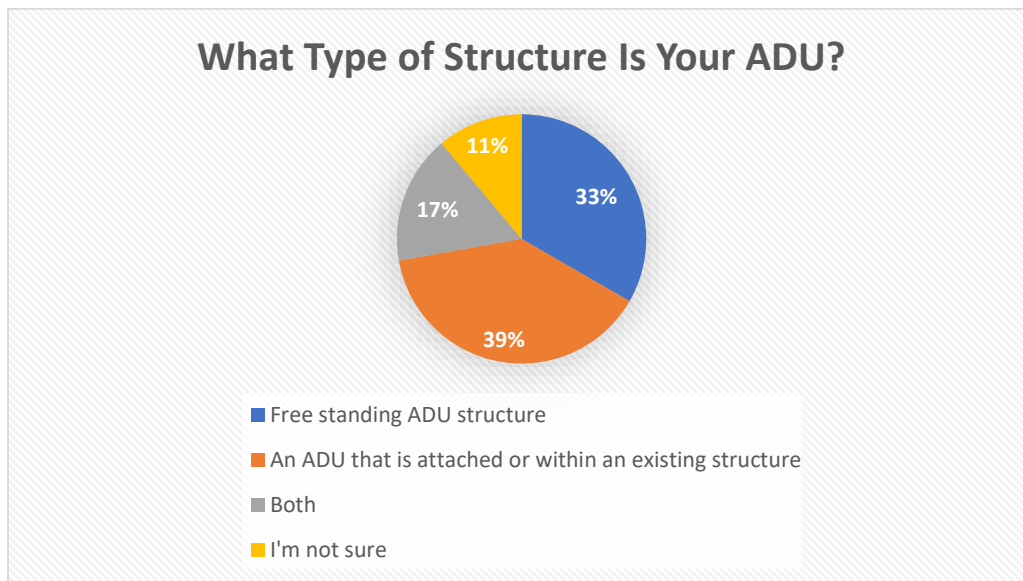
Most of the HOA's currently do not have any ADU's in their association (75%), while 19 percent do. The Remaining 6% are not sure whether they currently have any ADUs.



Q12: Of the currently built ADUs in your association, are they free standing structures, part of or within an existing structure, or both? (n=18)

Answer	Results	Count
Free standing ADU structure	33.33%	6
An ADU that is attached or within an existing structure	38.89%	7
Both	16.67%	3
I'm not sure	11.11%	2
Total	100.00%	18

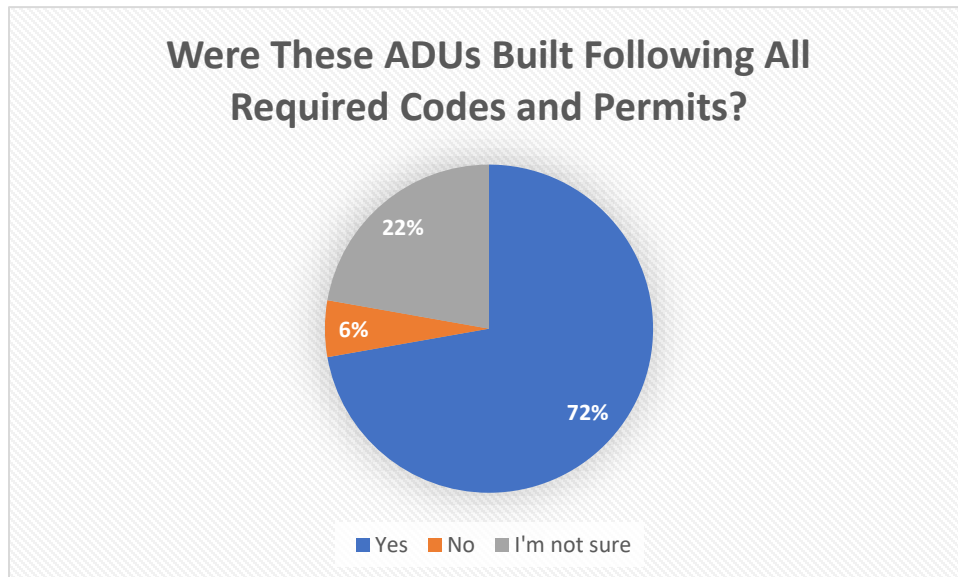
This question was prompted to the HOA's who responded to the previous question that they had ADU's. Of those 18 who responded that they had ADU's, all of them took the time to respond to this question, with 33 percent being free standing structure, 39 percent being attached or within an existing structure, and 17 percent being both. The remaining 11 percent reported not being sure whether their ADU is free standing or attached.



Q13: Of these units, is it your opinion that these were built following all required city/county/state codes and permits? (n=18)

Answer	Results	Count
Yes	72.22%	13
No	5.56%	1
I'm not sure	22.22%	4
Total	100.00%	18

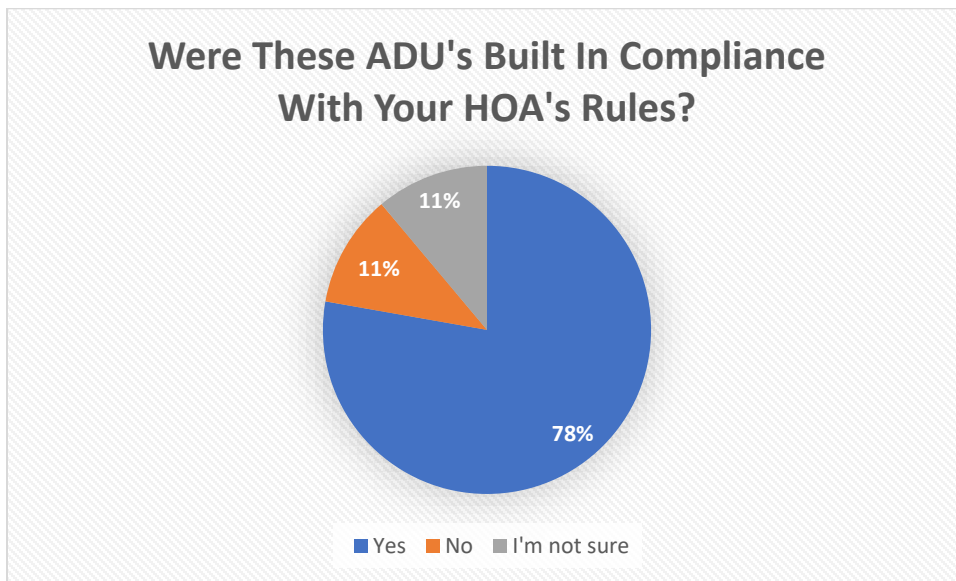
This question once again was prompted to the HOA's who reported having an existing ADU. Most of them believed that they were built following all codes and permits (72 percent), while only 6 percent believed that they weren't. The remaining 22 percent were not sure.



Q14: Based on your knowledge of the current ADUs in your association, were they built in compliance with rules in your HOA? (n=18)

Answer	Results	Count
Yes	77.78%	14
No	11.11%	2
I'm not sure	11.11%	2
Totals	100.00%	18

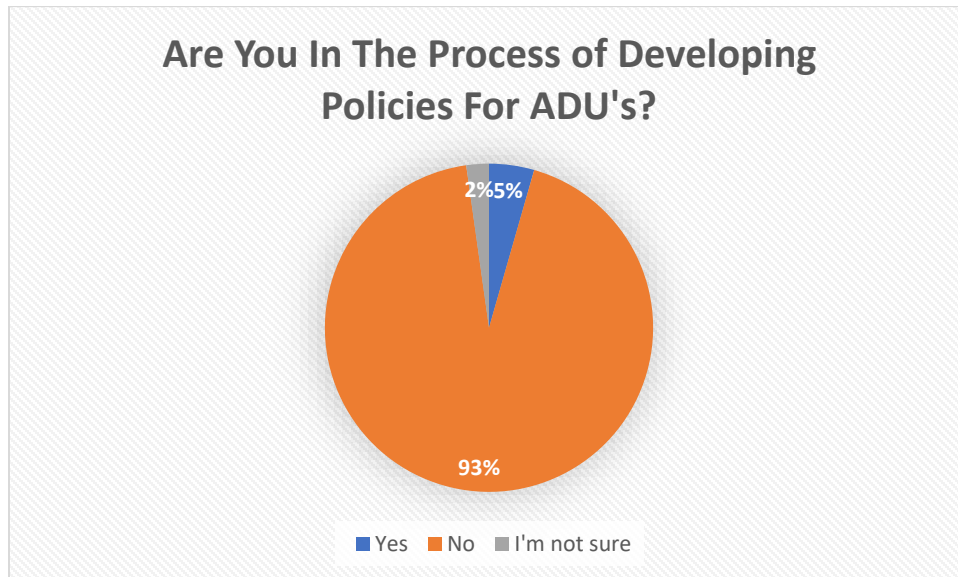
Of these HOA's who reported having currently existing ADU's, 78 percent of them were built in compliance with the rules of their HOA, while 11 percent were not. The remaining 11 percent were not sure whether they were built in compliance with the rules of the HOA or not.



Q15: Are you in the process of developing policies regarding ADU's? (n=45)

Answer	Results	Count
Yes	4.44%	2
No	93.33%	42
I'm not sure	2.22%	1
Totals	100.00%	45

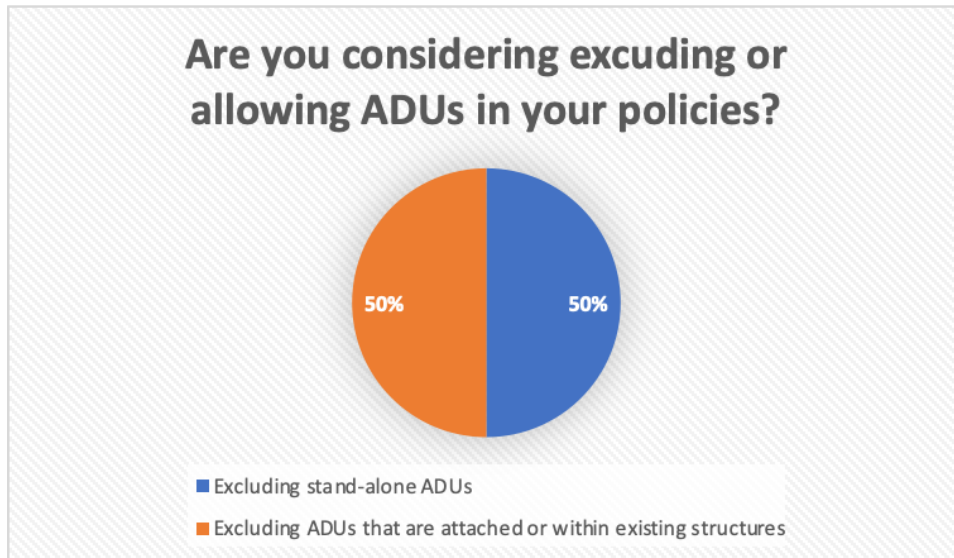
Almost no HOA's are in the process of developing policies regarding ADU's (93 percent), while 5 percent reported being in the process of developing something. The remaining 2 percent are not sure.



Q16: Within your development of policies regarding ADUs, are you considering allowing or excluding ADUs in your community? (n=4)

Answer	Results	Count
Allowing stand-alone ADUs	0.00%	0
Allowing ADUs that are attached or within existing structures	0.00%	0
Excluding stand-alone ADUs	50.00%	2
Excluding ADUs that are attached or within existing structures	50.00%	2
Total	100.00%	4

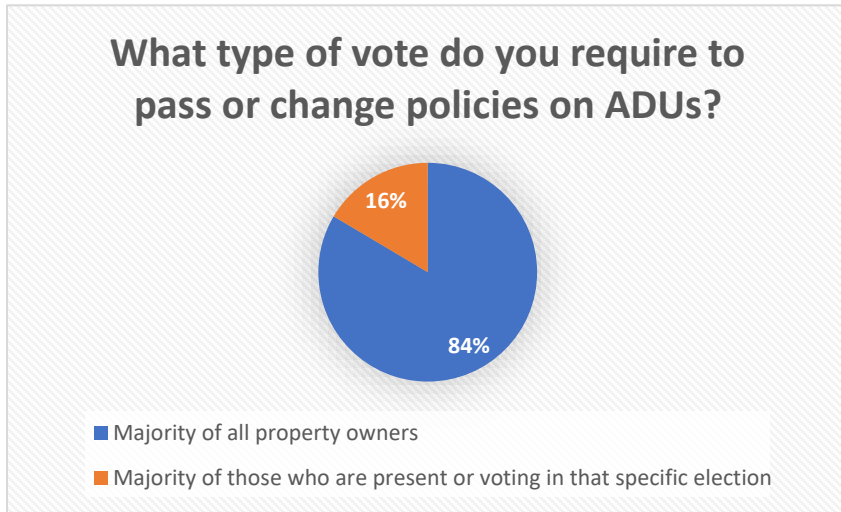
Of the respondents who were developing policies on ADUs both respondents said they were going to develop policies excluding stand-alone and attached ADUs.



Q17: In your HOA by-laws, what type of majority vote do you require to pass or change policies related to ADUs? (n=85)

Answer	Results	Count
Majority of all property owners	83.53%	71
Majority of those who are present or voting in that specific election	16.47%	14
Total	100.00%	85

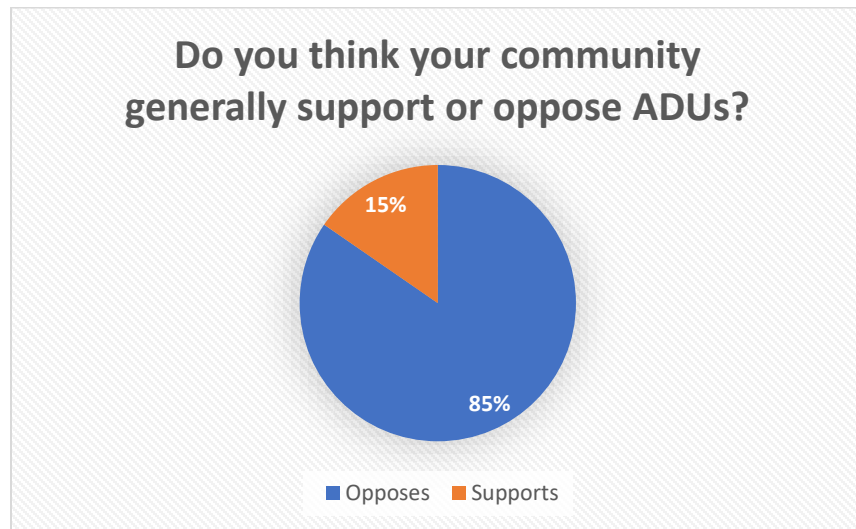
The voting policies in HOAs consist mostly of majority of property owners in that HOA (83.53%). The other respondents had a majority rule but only applicable to those present at the time of the vote (16.47%).



Q18: From conversations within your community, would you say that your board, in general, opposes or supports ADUs? (n=78)

Answer	Results	Count
Opposes	84.62%	66
Supports	15.38%	12
Total	100.00%	78

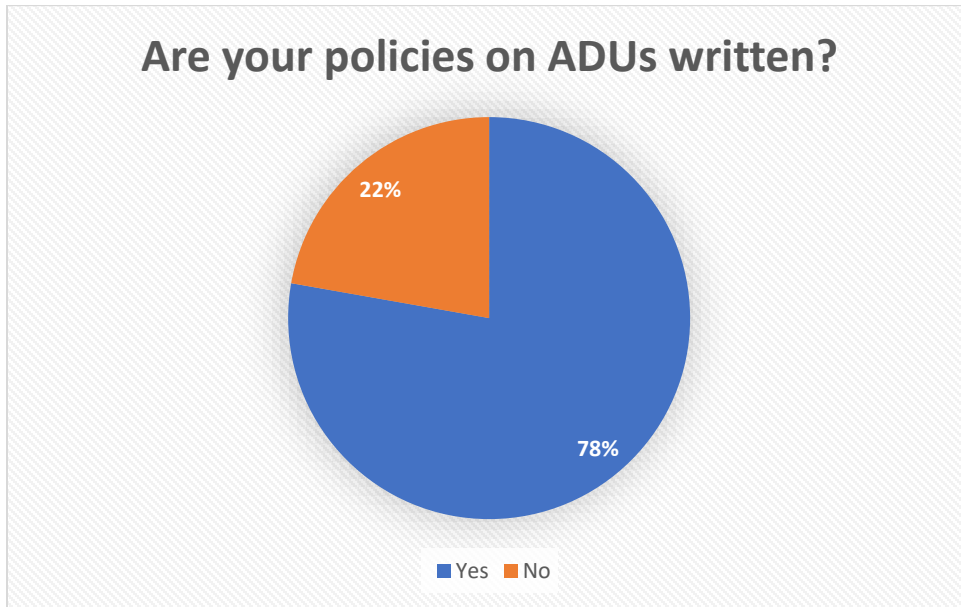
The respondents who answered this question had perceptions within their community of a general opposition against ADUs with around 84.62% of respondents saying they were opposed. The remaining 15.38% were in support.



Q21: Are your policies on ADUs written? (n=45)

Answer	Results	Count
Yes	77.78%	35
No	22.22%	10
Total	100.00%	45

Many of our respondents had written ADU policies (77.78%) but some did not have any written policies (22.25%).



Appendix A: Survey Free Response Questions (Verbatim)

Q10: We are interested in why it was denied. Using the box below can you tell us about the process or rationale that was provided. (n=9)



- We are a zero lit line community so homeowners only own two feet from their walls. All other open space is owned by the HOA and we don't allow structures on community property
- violation of the covenants
- First off we are not an HOA, we are a voluntary neighborhood association. That being said, all the homes are subject to CCR's which state that all homes are to be SFR. The denials have come from the city codes and neighbor objections.
- Restricted by Covenants
- Most lots are around .25 acres. We do not allow tiny homes less than 400 square feet. There is little room to place both a primary residence and an ADU on the same lot.
- It went against our governing documents
- Our covenants only allow one residential dwelling per lot and those who wanted an ADU were requesting separate buildings. Not sure what would happen if they wanted an ADU attached to their current home.
- Consistency within the current HOA standards.
- The ADUs were not connected to the existing house which is in violation of our restrictive covenants.

Q19: If we were having a conversation, how would you quickly summarize the general rules and regulations surrounding ADUs in your HOA? (n=40)



- Although there are no specific rules prohibiting an ADU in our community, out lots are small and not conducive to creating an ADU within our homes, attached or detached. It's just not practical.
- General Rules and Regulations are silent.
- Our bylaws prohibit additional living units beyond the primary residence.
- We have none.
- CC&RS currently restrict separate buildings, units, or tents on any property for habitation. Construction to make additions on the single-family residence itself must be approved by the board of directors after reviewing architecture plans.
- The HOA has no specific requirements beyond compliance with King County code.
- I don't recall seeing anything about that in by-laws.
- It has not come up in our meetings VRBOs are a more charged than ADUs. Many homes have attached "mother-in-law" suites already, homes also do not have space on lots to build additional structures so renting existing space within homes is possible.
- There are no promulgated rules or regulations
- We do not restrict based on my knowledge however I'm not versed with county regulations as this has not been brought up in past meeting conversations.

- I don't think ADUs are covered in our CCRRs because it is a concept that was developed after our HOA was formed.
- Not allowed
- We, unfortunately, do not have rules and/or regulations relating to ADUs in our HOA. Some ADUs have been built in our community after being represented as "a dwelling for our elderly parents to use soon." They are now being used as Airbnb rental units.
- In a multi-family housing community (condo), the owner of each unit typically only owns the interior, so they are not allowed to make modifications to the exterior or any common areas around the buildings.
- We would bring our bylaws into effect
- It's not allowed
- There are currently no rules in place for ADU'S. This is a land tight HOA and HOA building, where there is no room to install/build an ADU without removing available parking slots which would never be approved(loss of parking slots).
- Our situation is unique. Our properties were sold with ADUs and then condominiums that the SFR and the ADU could be sold separately. They are air space condos and have their own tax id no. The yards needs to keep tidy, nothing over 10' in the yards allows, current law needs to be followed, no changes to the exterior facade.
- The Wood Trails HOA board allows and welcomes attached ADUs. To keep our neighborhood residential feel, we are in the process of getting a 2/3 homeowner vote to amend our bylaws so we do not allow leases under 30 days in our association, thus preventing VRBOs and AirBnBs.
- We have never addressed ADUs as they are not allowed in our County and this is an area of retirement, short-term rentals, and second homes and no one would want to have an ADU.
- We have 8 units with no physical space for days.
- We are in a densely populated downtown core. With concrete construction. Adu are not feasible
- Early community development was hardly policed and as occupation increased it has become an issue. We do allow what we call "Granny apartments" which are within single family rules.
- Our HOA Infrastructure was built for the 62 single family homes here and will not accommodate others using that infrastructure.
- The subject has not come up.
- Primary residences only
- The county zoning, and the HOA codes have designated this as a neighborhood of single-family homes.
- must have enough property. must be able to maintain parking on property to accommodate extra occupants (w/o spilling into street parking) and maintain neat & tidy appearance.
- I don't know them in any detail
- Must be attached to existing house, must be occupied by same family, cannot exceed property line setbacks, cannot be separate address, must be approved by committee.
- ADUs are not allowed.
- Our current bylaws do not address ADU's but I don't believe they would be a concern, since it's typically a family member who they would be accommodating.
- We want this neighborhood to be close knit and don't want extra tenants. Having an attached ADU would help individual homeowners who need extra help house caretakers. Many of the people in our neighborhood are older.
- We follow whatever San Juan County regulations are.

- We have a copy of the CC&RS that we email to residents when they move in. They just email the board - which is three or four elected neighbors - to ask further questions.
- They read the CC&Rs.
- It has never come up in meetings, my guess is members are not focused on the issue.
- All members have received and/or have access to annual membership and board meeting minutes.
- Each homeowner within our community in part of the HOA committee and since we are a newer neighborhood, this has not been brought up.
- We are given copies of the CCRRs, etc. when the purchase of the property is made or they are requested by the buyer. I really cannot say what % of owners actually read and understand them.
- Consult the covenants
- We have no strategies
- Reading the governing documents, attending meetings to ask questions, or reaching out between meetings to ask.
- Bylaw book that each household received as they purchased their home
- Nothing having to do with ADU's, but people do reach out from time to time to ask questions regarding our CCR's
- I suspect none. This isn't a topic of interest presently within the HOA.
- They have to refer to the Declaration. Some have read it more thoroughly than others, which can lead to problems.
- Positive. Residents have consulted our covenants, the county, and sought counsel from our Architectural Control Committee.
- They receive the Bylaws when they purchase the property and information during the annual meetings. In addition, anyone can ask a question at any time. ADUs have never been mentioned.
- None
- Newsletter articles, special flyer detailing ADUs, conversation at our Annual Meeting, neighbor conversations, and conversations with Board members.
- They talk to a board member
- Reading CCRs and bylaws
- Contact and discuss with the ACC and Board members.
- they usually email questions to the board or attend a meeting.
- read the covenants
- They submit plans to committee and find out restrictions when plans are rejected; they search county permitting rules.
- Personal research and community discussions.
- Members would either attend a meeting or ask one of the board members.
- Website, Facebook site, newsletters, meetings, calling the office, gossip
- On our website: <https://carlyonbeachhoa.com/Home> we list our by-laws and rules and regulations.
- Information shared via email and website and USPS.
- Read HOA policy
- ADUs haven't been addressed or discussed in any HOA meetings. Small size of our HOA and limited amount of turnover of residents tend to result in no change to the status quo.
- Board meetings and newsletters provide any change in policies and activities of the HOA

- Available on our website.
- Quarterly Newsletter
- Contact the City
- Homeowners know that the CCRs are posted to our website and can refer to them at any time.
- you make me laugh!! It's a WTF version of WTF!!
- They contact our County Government.
- CC&Rs and Rules and Regulations documents are given to buyer at time of purchase. Communication from the HOA Board occur for monthly dues, annual architectural reviews and annual meeting with financial reports and budgets.
- They all get copies of the CC&R's and By Laws prior to purchasing a home.
- Follow local planning board actions.
- Each homeowner signs and receives a copy of the Rules and Regulations when they sign their lease.
- There was one incident of a member trying to convert garage to office space that was stopped. Interest in ADU policies have been initiated by management.
- Can not say.
- All our legal documents, bylaws and CCRs, are posted in our online archive. All members have open access to them.
- Residents direct their questions and concerns to the HOA Architectural Committee.
- It would be a topic discussed on our website, at our annual meeting, and monthly BOD's meetings
- Check our website _
- Generally people will ask the board and we inform them of city zoning codes. We will also refer them to code compliance, if they have further questions.
- Contact either the Board or management.
- Website
- They read the covenants/charter
- Read our Governing Documents, all of which are severely outdated. We plan to update them over the next 1-2 years.
- Covenants are presented to all homeowners upon purchase of property/house
- See above response
- We would refer to existing covenants to see if ADU's could be allowed.
- All residents have a copy of the by-laws and are encouraged to attend the annual meeting. ADU's have not been asked for in the past, I truly suspect homeowners are not desiring to add them.
- Reading our Covenants and By-Laws which are posted on our website
- Participate in monthly board meetings (currently remote via Zoom software)
- That's funny. "Strategies used by residents" Like, you mean they're begging for information. _We, the board, do whatever we can do to get people involved.
- They would read the CC&Rs which restrict further subdivision.
- Contacting HOA via email, phone, USPS
- Our By-Laws and CC&Rs are published on our website and copies are available for any HOA member who requests them. _ _At this point in time, short-term rentals such as Airbnb are a much greater concern / problem for our HOA members.
- we try to get ahead of it by informing the listing real estate agent about when a house goes on the market. Covenants are provided to the new owners at the time of sale.

voting within the HOA? The total still has to add up to 100% so if theirs went up then other owners' ownership % would go down, which I assume many would be opposed to. Just something to think about!

- no
- Nope
- Most HOA's especially, centrally located in cities, will not have the land mass to even consider ADU's. So in that sense, this type of condo building would not be suitable for ADU consideration.
- Our City has unsuccessfully tried to outlaw the practice of condominiumizing ADU for individual ownership. They will try again. However we see it as a way to promote more affordable housing and thus it should be allowed. See RoostBainbridge.com for an idea of what it looks like.
- This 11 lot development is not an area that would be interested in ADUs. However, Pacific County should look at them as a method to get more affordable housing.
- No
- ADUs are not appropriate for every community association as each community has its own size limitations and infrastructure. This should not be a "one size fits all" topic.
- We had an issue with an unpermitted ALQ, and have a letter from a lawyer with the stance of the HOA and County requirements summarized.
- no
- No
- Not at this time
- I think that allowing ADUs in our HOA would benefit this community. Housing here and elsewhere is expensive and in short supply.
- no
- No
- No
- I neglected to scan Article 7.17 of the CC&Rs. It reads as follows: 7.17. SINGLE FAMILY RESIDENTIAL USE: All lots within this subdivision shall be limited to single family residential uses only. No lot within Riedel II Subdivision shall be developed with a duplex or other multi-family residence. No group care homes, day care facilities, bed and breakfast inns or homes, or any other temporary or permanent live-in use shall be allowed in the Riedel II Subdivision other than a single family residence as provided herein.
- This is a subject that will involve HOA's soon as population densities increase and places to build decline. I would like to be informed of your findings.
- No
- Nothing else comes to mind.
- There has been no inquiry for possible ADU's from any of our current or previous homeowners, so the subject has not yet been discussed by the Board.
- Our neighborhood is just one development of a larger "planned" community, within a smaller size city. The "planned" community would have to approve or promote ADU's before our HOA would consider them.
- Many residents were opposed to changes in ADU rules at first. Since then, nearly all residents have lost interest in supporting or opposing new ADUs.
- No. We have over 100 houses and they all are single-family homes in style. I know of a few which have rooms rented to other people, but no secondary structures.

- I think most of our residents would be in favor of ADUs due to the shortage of affordable housing on Whidbey, but our particular development has 21 very small lots.
- ADUs are a non-issue for our HOA because covenants prohibit their construction. It's not something the HOA has authority to control or regulate.
- ADUs are not specifically addressed in our By-Laws and CC&Rs, but it is my belief that in aggregate our CC&Rs make an ADU either a disallowed feature or a nearly-impossible to construct feature of any given lot. __Our By-Laws and CC&Rs were originally written by the company that developed our community in 1988. Our board is comprised of unpaid/volunteer members such as myself who are not necessarily attorneys or experts in law. We do the best that we can to interpret our governing documents and abide by those rules. __As I mentioned in a previous comment, short-term rentals such as Airbnb have been a much bigger source of friction within our HOA community than ADUs. __One minor nitpick -- I noticed on, I believe it was the introduction page of this survey, the use of an apostrophe in "homeowners' association". It is my belief that we are an association of homeowners and therefore the use of an apostrophe in "homeowners association" is not appropriate.

Appendix B: Focus Group Notable Quotes

“My HOA is on a group B well, so I don’t know how much this is actually going to affect our HOA. Frankly we have a severe shortage of housing over in that area for employees and so there are a number of businesses that are suffering as a result of not having affordable housing. Furthermore, the HOA that I represent was actually developed as a resort community. And so most of our houses over there are designated as vacation rentals, and as a homeowner, I can only [have one vacation rental in my] county, and so that would actually allow me to have both a vacation rental and possibly a long term rental on the same property. So as an investor, I like this idea, and I think it could solve a local problem.”

- First group, well-water and housing shortage in resort communities

“If you want to build a house, you could be three years out because you don’t have the people there to help you build. It’s a catch-22 because you can’t build more to house people [to work at the resort]. More vocational training would be key I think, and would be really key for a number of just the general building situations in our state right now, and really encouraging more of that trade education as opposed to a four year college.”

- First group, solution for lack of human capital for building

“If there were better transit options, that, and we didn't have the parking to worry about, then I wouldn't be as concerned about density.”

- First group, improved transit links to decrease parking barriers

“The [legislature is] going to pass something that's statewide that's going to fit in one area, but cost tons of problems in another is what I see happening.”

- First group, not one size fits all

“If I had a magic wand. What I’d love to see is more density in targeted areas while keeping the character of those neighborhoods that are special, special because they're historic.”

- First group, encouraging multi-generational family living and protecting historic neighborhoods

“It isn’t fair that primary occupant buyers don’t get some kind of priority when they purchase. If I were to create a law it would be some kind of two week or thirty-day policy where primary occupants get the first shot at buying something and then after that time investors can purchase.”

- First group, alleviating bidding wars

“A single accessory dwelling unit is treated the same way as a 200 multi-family apartment complex in downtown Seattle.”

- Second group, policy issue

“I would love to be able to build an accessory dwelling unit on the back of my property where my wife and I can live, and my children can own a home on the front property, because that’s the only way we think our kids are ever going to be able to afford a home.”

- Second group, housing affordability for future generations

"It's long-time owners. They've been there for 30, 40, 50 years. They do not want change. That's what I think a lot of this. They do not want change. You start even talking about it, and they show up at planning permissions. And you know, focus groups and city council, and they are furious."

- Second group, evolving values

"They [the HOA] will go around, and they know the units where people are renting, and they will go and enforce those other measures that they can get them on and noise ordinances and things having to do with what you could have on the outside of your door. So, I think that they would react in a similar way. If ADUs were added or allowed."

- Second group, HOA retaliation

"I guess the only concern I would have would be about the same concern I would have about short-term rentals like, okay, if you're going to rent it out maybe that it needs to be limited to like everybody can't have one in their yard because then we have like just huge population pressure. Or, you know, they have to be subject to the same rules as everyone else. Like, you can't have a party till 3 am and this is a pretty quiet neighborhood. There's a lot of retirees, so you can't like change the rules or maybe we would need some new rules."

- Third group, concerns with building more ADU's

"So I'm not sure the builders have really gotten the message as far as there's an older aging population here and we might want smaller homes"

- Third group, suggestions for making housing more affordable

"I think builders seem to have a lot of the cards and if they're putting up new houses, not everybody wants/can afford a \$700,000 home."

- Third group, alleviating barriers to affordable housing

"I guess a benefit is if somebody was on a fixed income like our next-door neighbor is 96 years old and if she found herself you know suddenly struggling If it was something that she could handle with the help of neighbors or family to have an additional source of income, I could see that would be a benefit for somebody on a fixed income."

- Third group, respondent on benefits of ADU's

"If we really wanted to think it through and have everybody involved in the discussion, the legislature should enable that kind of dialogue."

- Third group, creating discussion with the legislature on policies

"I think the builders get incentives for you know building apartment buildings but is there any incentive for middle I don't know... I listened to some of the legislative hearing, and it sounded like they were up for building whatever but I don't know."

- Third group, respondent on a need for incentives to build more middle housing

Appendix C: Literature Review

<https://www.neobuildersadu.com/post/what-are-the-homeowner-s-association-rules-for-my-new-adu-1#:~:text=Under%20this%20law%2C%20homeowners%20can,to%20community%20apartments%20or%20condominiums>

Precedent exists that States may allow ADUs even if local HOA laws do not permit them. California's Accessory Dwelling Unit Law (Assembly Bill No. 68) took effect on January 1, 2020 and states "homeowners can add an ADU to their property, even if the HOA's governing documents state otherwise," according to the article. Despite this, HOA's may still be able to regulate the architectural style of built ADU's, which can complicate the building process.

<https://www.capitolhillseattle.com/2016/06/queen-anne-appeal-delays-seattle-backyard-cottage-plan/>

Previous city level efforts to allow Accessory Dwelling Units (ADUs) have met some legal challenges in Washington State. The City of Seattle passed a law which permitted ADUs to be built more easily without the typical environmental review process. The City of Seattle had Previously issued a determination of non significance (DNS), which means they did not have to conduct an environmental impact statement (EIS) on the effects of the policy. The Queen Anne Community Council, a group of neighborhood stakeholders appealed the new policy on environmental impact concerns. They argued that an EIS was necessary due to potential impacts on tree canopy and sewer loads. They submitted this appeal to the city Hearing Examiner in June 2016. Queen Anne Community Council is not an HOA.

<https://www.theurbanist.org/2019/05/14/hearing-examiner-squashes-appeal-clearing-way-for-more-backyard-cottages/>

In 2016, The Seattle hearing examiner approved the Queen Anne Community council's appeal of a new city ADU law. This forced the city of Seattle to conduct a full environmental impact statement. When the final environmental impact statement was submitted, the Queen and Community Council appealed the EIS, claiming it was incomplete. It was not until May of 2019 that the second appeal was overruled and the Final EIS was adopted. This was a blanket EIS for all Seattle ADUs. This shows how lengthy legal battles between community can drag out the time until ADU reform can become law. Legal fights could be longer when HOA's oppose policies since HOA's are legal entities whose contracts are protected by state law.

<https://independentamericancommunities.com/2021/12/21/state-level-affordable-housing-legislation-aims-to-override-local-control/>

In September 2021, California passed a law to disallow HOAs and common interest organizations and local governments to restrict the building of ADUs or the number of people living in a unit. This legislation could encourage 'missing middle housing', such as tiny homes and ADUs.

<https://www.planetizen.com/news/2021/08/114266-washington-city-quietly-eliminated-single-family-zoning>

<https://independentamericancommunities.com/2020/01/09/opinion-u-s-housing-market-long-overdue-for-shift-away-from-mass-produced-hoa-governed-housing/>

According to census data, around 70% of new homes are governed by HOAs or similar condo associations.

<https://www.sightline.org/2019/02/28/washington-just-advanced-the-nations-best-adu-reform-heres-why-itll-help/>

In this op-ed, the author argues Washington State is one of the few states addressing and advancing legislation regarding ADU reform with HB 1797. They argued for ADUs on equity grounds and said that it would benefit seniors who would be able to rent out ADUs as a source of passive income. They also argued that allowing ADUs can aid neighborhood preservation since it increases the capacity of a given lot without requiring neighborhood-character-altering teardowns

<https://clarksimsonmiller.com/accessory-dwelling-unit-law-california/#:~:text=While%20HOAs%20may%20not%20prohibit,design%20and%20development%20of%20ADUs.>

California HOAs must be compliant with Government Code 65852.2 in order to add an ADU to a property. HOAs cannot prohibit the addition of an ADU on a property, but the policy leaves room for reasonable restrictions to be exacted. HOAs have 60 days to approve or deny a submitted permit for an ADU. Reasonable restrictions are not standard across all HOAs, causing ambiguity in the use of the law. Ordinances vary according to state law.

RICHARDSON, KELLY G. "Proposed Law Would Override HOA Self-Determination." Public Record (0744205X), vol. 46, no. 63, 11 Aug. 2020, p. 9. *EBSCOhost*, <https://search-ebSCOhost-com.ezproxy.library.wvu.edu/login.aspx?direct=true&db=n5h&AN=145334788&site=ehost-live>

This op-ed discusses the possible drawbacks of a proposed California bill which would allow by right ADU rentals regardless of HOA bylaws. The author is a community association lawyer. The author notes these changes will reduce the ability of the HOA to preserve "a higher quality of resident" and that owners generally "behave better than tenants". They also note that since renters are not included in common interest agreements, HOAs could not compel the tenant to share their contact info with the HOA.

"Santa Rosa-Area HOA's 'Granny Unit' Ban Makes Wildfire Survivor Consider Lawsuit." *North Bay Business Journal*, 2019, perma.cc/X6NW-9UUQ.

This article covers a conflict between and HOA in Larkfield California and an owner who wishes to build an ADU after his house burned down. Within California, "court rulings have established their authority to establish rules governing land-use within their boundaries, provided they don't conflict with state or federal law." However, the state of California has been pushing for more ADU development and an HOAs ban on ADUs may be seen as unreasonable given that ADUs typically do not have large aesthetic effects on the neighborhood and the rebuilt must be rebuilt after it burned down anyways.