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GRANNY FLATS: AN IDEA WHOSE TIME HAS COME, OR YET ANOTHER INCURSION INTO THE PEACE AND QUIET OF A NEIGHBORHOOD?

By Paul Weinberg and Ann Tran*

Cities, communities, and neighborhoods all across the United States are coming to grips with an enormous change in how people live now. The change in the number of people living in a typical structure and its proximity to other buildings is unquestionably the result of the change in our nation's economy and the skyrocketing costs of education. It also is reflective of a lack of progress in finding jobs, especially ones that pay a decent living wage, for recent college graduates. This change in how people live necessarily affects the kind of housing they build; the kind of housing cities and states permit, encourage, or allow; and all of the density, noise, parking, and other problems that come with changes like this.

An excellent recent study conducted by the Pew Research Center summarized the problem beautifully:

> *"If there's supposed to be a stigma attached to living with mom and dad through one's late twenties or early thirties, today's 'boomerang generation' didn't get that memo. Among the three-in-ten young adults ages 25 to 34 (29%) who've been in that situation during the rough economy of recent years, large majorities say they're satisfied with their living arrangements (78%) and upbeat about their future finances (77%).*
>
> *"The sharing of family finances appears to have benefited some young adults as well as their parents; 48% of boomerang children report that they have paid rent to their parents and 89% say they have helped with household expenses. As for the effect on family dynamics, about a quarter (25%) say the living arrangement has been bad for their relationship with their parents, while a quarter (24%) say it's been good and nearly half (48%) say it hasn't made a difference.*
>
> *"To be sure, most young adults who find themselves under the same roof with mom and dad aren't exactly living the high life. Nearly eight-in-ten (78%) of these 25- to 34-year-olds say they don't currently*

have enough money to lead the kind of life they want, compared with 55% of their same-aged peers who aren't living with their parents. . .

"One reason young adults who are living with their parents may be relatively upbeat about their situation is that this has become such a widespread phenomenon. Among adults ages 25 to 34, 61% say they have friends or family members who have moved back in with their parents over the past few years because of economic conditions. Furthermore, three-in-ten parents of adult children (29%) report that a child of theirs has moved back in with them in the past few years because of the economy." [1]

In one sense, this new set of facts upends the notion that "granny flats" (more precisely termed "accessory dwelling units," or ADUs), are aimed at and constructed only for seniors and the elderly. In essence, *the market for accessory dwelling units now has expanded*: what once was a place to put grandma and grandpa has now become a place for a family's children to come back to during difficult economic times in their lives and a potential income generator.

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Cultural changes in the nation's population and makeup have accelerated the shift:

"As households grow smaller and more individuals live alone, a different phenomenon is also changing household compositions. A recent report by the Pew Research Center found a 'revival since 1980 of the multi-generational family household.' After reaching a low point in 1980 of 12.1% of the population, the number of people in multigenerational households increased to 15.1% in 2000, and 16.1% in 2018. This reversed a decline—between 1940 and 1980—by more than half of the share of Americans living in these households. This growth is attributed to the rising immigrant share of the population, which is more likely than native-born Americans to live in a multi-generational household, as well as an increase in the median age of first marriage, which is associated with more adult children living in their parents' homes." [2]

The Pew Research Center study on the "Boomerang Generation" also makes the point that:

"While multi-generational households may not provide higher incomes, they do appear to serve as an economic safety net. Americans who live in multi-generational households are less likely than those who live in other households to live in poverty. According to Census Bureau data, in 2010, 12.6% of those living in multi-generational households lived in poverty. This compares with 15.7% of those living in other households.

"The gap is especially wide among young adults, suggesting that living in a multi-generational household may be particularly beneficial for this age group. Fewer than one-in-ten 25- to 34-year-olds (9.8%) who resided in a multi-generational household in 2010 lived below the poverty line. By contrast, 17.4% of those who lived in another type of household lived in poverty." [3]

So how is the change in the market and the sociological changes in society affecting how communities look at, and regulate, these types of housing? And how are the denizens of the community, many of whom have lived a great length of time under one paradigm, coming to grips with this change in their neighborhoods?

This shift in the likely market for and users of ADUs contributes to the need to find a rational, balanced approval process that allows this housing to be built; takes into account the concerns of the neighborhoods and local government; and at the same time encourages them as potential solution, or at least a palliative, to the problems of urban sprawl and lack of affordable housing.

Large developers clearly see the profit potential. Lennar Homes, in particular, has begun building ADUs into their tract homes:

> *"In some cases, it may be Grandma moving in with the family. Other times, it may be a recent college graduate returning to the nest. For all sorts of reasons—financial, medical, personal—a rising number of Americans are moving into extended family households.*
>
> *"Spotting a niche in the growing trend, Lennar Corp. has launched a new concept tailor-made for multigenerational family living. It's basically a house within a house: a smaller living unit next to the main home designed to provide independence but also access to the rest of the family household. 'People are really loving the whole concept,' said Carlos Gonzalez, president of the southeast Florida division of Lennar, a Miami-based home-building giant. 'We adapted to the market from a design standpoint.' In Miami-Dade County, Lennar is selling various versions of multigenerational homes in three new developments in Doral, Kendall and Homestead. . .. Some multigenerational models have suites as small as 489 square feet, but all have a separate entrance, a bedroom, a bathroom and some sort of kitchen space. The idea takes various shapes. One option at the Kendall Square development at 16950 SW 90th St. is a Granny unit above a detached garage. 'Independence is the key word,' said Frank Fernandez, director of sales and marketing for the southeast Florida division."* [4]

This shift is not making everyone happy, though. Homeowners who have moved into a neighborhood of a given density, with all of the attendant parking rights, privacy and quality of life expectations that came with the purchase, are, in a sense, seeing the rug pulled out from under them. The "buffer zone" that many homeowners relied upon between their parcel and that of the neighbor is suddenly abbreviated when the neighbor constructs an ADU very close to the homeowner's property line. The American Planning Association's 2009 brief study on ADUs summarizes, in essentially neutral language, the opponent's concerns:

> *"Despite the benefits, some communities resist allowing ADUs, or allow them only after time-consuming and costly review procedures and requirements. Public resistance to ADUs usually takes the form of a perceived concern that they might transform the character of the neighborhood, increase density, add to traffic, make parking on the street more difficult, increase school enrollment, and put additional pressure on fire and police service, parks, or water and waste water."* [5]

These concerns cause the collision between local jurisdictions and states, because the state's articulated policy of creating more housing comes into conflict with essentially local concerns that homeowners, neighborhood associations and local legislators have about how this use is going to integrate into the fabric of the municipality's life.

Nowhere has that collision between the local and the state aims and goals been more pronounced (and caused more conflict, and eventually, state-wide legislation) than California. California has been perennially known as the jurisdiction that deals with land use planning and other legislative problems as a "cutting edge" incubator of new ideas and new trends. In particular, California's labor laws and its environmental protection laws are known nationwide as "cutting edge" in coming to grips with mounting social and environmental problems. [6]

In point of fact, nine states have passed legislation enabling reform measures, making it easier for applicants to obtain approvals to build ADUs. Three states have enacted legislation mandating them.[7]

The flip side of this point, though, is that, for whatever reason, most states have not felt the need to enact mandatory legislation requiring municipalities to allow ADUs and regulating what obstacles and requirements they can put up against them. Those three states that have, in essence, taken this land use decision away from local authorities are led by California and its most recent statewide mandate contained in California Senate Bill 1069 (Wieckowski), enacted at the end of 2016 and signed into law by Governor Edmund G. Brown, Jr.

The Wieckowski bill merits close analysis because it has encapsulated all of the institutional reactions to the complaints made at the local level and, in a sense, overridden them.

Not surprisingly, the primary objection that the opponents had to this bill was the loss of local control. On April 15, 2016, The League of California Cities, an organization comprised of most of the State of California's 482 cities, and a powerful, well-funded entity (the League gave $15,811,922 to various political candidates and other political organizations over the prior eight years) [8], came out swinging in opposition to the bill, and by inference, refusing to encourage the statewide control of encouraging ADUs. [9]

A one-page letter of April 15, 2016, written by the League's political director, summarized, at least publicly, the League's objections to that bill:

"This measure removes local authority to prohibit second units. Under existing law, a local government can prohibit them if they make very strict findings. This is a significant change in the law. Secondly, this measure requires that cities approve second units in a single-family home. Lastly, the bill prohibits cities from requiring parking for a second unit in an historic district or within 1/2 mile of shopping. All these provisions remove local control over the approval of secondary units." [10]

In an interview with the author on March 6, 2017, Kendra Harris, the legislative analyst employed by the League of California Cities and tasked to represent its interests regarding California Senate Bill 1069, indicated the following:

"The year of 2016 and, in fact, the end of that year, was the 'housing and land use year.' Many bills had been proposed about housing, easing restrictions on building density, and homeless shelter and housing. The League of California Cities was representing the Cities' municipal interest. The League's position was that the legislature and the State were 'overstepping their bounds'—they were interfering with matters best left to local jurisdictions. There were three areas not address by the bill or, for that matter, in committee:

1. *Growth in the Community;*
2. *Community Needs;*
3. *Input of Residents. . ..*

"The Bill had the apparently unintended consequence of 'tying the hands of cities.' The State was taking away local land use authority. The cities see the need and should regulate it on their own."

Perhaps most relevant to the League's concerns was Ms. Harris' final comment to the bill:

"The biggest insult was tying the hands of government. We understand the cost of housing and local law matters. You will see cities pay the price with hasty approval. Local communities will vote out their city council when development takes place that, because of the new law, the city council could not stop or modify." [11]

The Wieckowski bill was actually one of two that were offered for passage on this topic in the California legislature in 2016; Assemblyman Richard Bloom, representing the Santa Monica, California district in the State Legislature, brought up a companion bill that was eventually reconciled with the Wieckowski bill and signed into law. The *San Jose Mercury News*, a newspaper extensively covering legislative matters in Sacramento, California, summarizes the effect of the bills:

"Under the new law, which takes effect in January, water and sewer agencies would be pre-

vented from charging hookup fees for ADUs built within an existing house or an existing detached unit on the same lot. Local agencies also cannot impose parking rules for certain ADUs, including those located within a half mile from public transit, or units that are part of an existing primary residence." [12]

The bill itself required the 'ministerial' (if the requirements are satisfied, there is no discretion at the local level to deny) approval of an application for a building permit to create an ADU. It also prohibited any local agency from requiring an applicant to install a new or separate utility connection or impose a related connection fee or capacity charge. The bill itself created an amendment to an existing Government Code Section (65582.1). It also struck out the requirement that many cities imposed on applicants to apply for and obtain a conditional use permit (Government Code Section 65589.4a).

The Senate Rules Committee's Office of Senate Floor Analyses, in its review of the bill, summarized what the bill's point was:

"This bill: . . .

2) Requires a local agency, in its ADU ordinance, to do the following:

a) *Designate areas within the jurisdiction where ADUs may be permitted, which may be based upon criteria including but not limited to the adequacy of water and sewer services and the impact of ADUs on traffic flow and public safety.*
b) *Impose standards on ADUs including but not limited to parking, height, setback, lot coverage, architectural review, and maximum size of the unit. Notwithstanding parking restrictions under this chapter, a local agency may not impose parking standards in the following instances:*
   i) *The ADU is located within 1/2 mile of public transit or shopping*
   ii) *The ADU is located within an architecturally and historically significant historic district*
   iii) *The ADU is part of an existing primary residence*
   iv) *When on-street parking permits are required, but not offered to the occupant of the ADU*
   v) *When there is a car-share vehicle located within one block of the ADU*
c) *Provide that second units to not exceed the allowable density for the lot upon which the second unit is located. . ..*

5) Requires a local agency that has not adopted an ADU ordinance to approve the creation of an ADU if the ADU meets the following requirements:

a) *The unit is not intended for sale separate from the primary residence and may be rented.*
b) *The lot is zoned for single-family or multifamily use.*
c) *The lot contains an existing single-family dwelling.*
d) *The ADU is either attached to the existing dwelling and located within the living area of the existing dwelling or detached and located on the same lot as the existing dwelling.*
e) *The increased floor area of an attached ADU shall not exceed 50% of the existing living area.*
f) *The total area floor space of the ADU shall not exceed 1,200 square feet. . .."* [13]

In some ways, what's more interesting about this bill is what's not in it than what is in it. Cities are allowed to set up their own ordinances for ADUs, and they are not required to police or monitor what the owners do with them. In that sense, if these units are used, for example, as an "Airbnb" unit, there is little that the city, or for that matter the State, can do about it. While there is a 1200 square foot floor space limitation, issues of mass, bulk, and density really are not treated. If cities do not aggressively regulate the planning of these units, then the constructs under which the adjacent homeowners bought their properties and their expectations will be frustrated because their degree of privacy, parking and density will clearly be abridged. Some cities are already starting to do this; the City of Newport Beach, in its Municipal Code, is requiring:

- owner occupancy (Newport Beach Municipal Code Section 20.48.200 C 5),
- limiting the setbacks to require the same

setbacks that the original unit would have to comply with (20.48.200 C 2),

- with the same for height limits (20.48.200 C 1) and,
- a "verification of occupancy" requirement that allows, essentially, only seniors to live in it (20.48.200 D). The "teeth" of the ordinance lies in the requirement for the recording of a deed restriction. [14]

The City of Santa Monica's local ordinance is in accord: *either the primary single unit dwelling or the second dwelling has to be owner occupied*. Either can be rented out, but both cannot be rented at the same time. No age-related restriction is imposed and no deed restriction is required. [15] Parking limitations are contained in this statute as well, notwithstanding the State law. [16]

The drive for ADUs to have a statewide model ordinance or code is not new; in point of fact, the American Association of Retired Persons ("AARP") commissioned the American Planning Association recently to write one, and they did. The AARP's model ordinance, interestingly, took its cue from California's prior law requiring municipal ordinance submission to the State's Office of Housing and State certification of ADU ordinances.[17]

Many of California's restrictions were integrated into it: restrictions on separate sale of the ADU; floor area restrictions; total area floor space not exceeding 1,200 square feet; lot containing zoning for single family or multifamily use and the lot containing an existing single family dwelling.[18]

All of these requirements were integrated into the current legislation, Senate Bill 1069.

Therefore, in essence, California is acting as a template and a blueprint for the rest of the country, basing, to some extent, its laws reciprocally on the AARP's model ordinance.

So, given that fact, how is the rest of the country reacting to this trend? Are states mandating ADUs and lifting restrictions on allowing them to be constructed and occupied? Is there any kind of a pattern, and how aggressively and forcefully have cities and municipalities elected to enact their own comprehensive plans to encourage the construction and occupancy of ADUs? And how are neighborhoods (and neighbors) around the country reacting to the proliferation of these housing units and the burden they place on parking, noise, density, and municipal services?

In light of California's new law, do other states, whether taking the lead from California or not, try to handle the issue of statewide regulation of ADUs? In a word, they do not. Almost all of them defer to local jurisdictions, and there are a lot of interesting reasons why.

The State of Washington, for example, passed Housing Policy Act of 1993 requiring counties and cities with populations over 20,000 to encourage ADU development in single family zones. A Washington non-profit, The Municipal Research and Services Center ("MRSC"), contains an excellent summary of the divergence in local ordinances that treat ADUs:

> *"In theory, an ADU may be created as a separate unit within an existing home (such as in an attic or basement), an addition to the home (such as a separate apartment unit with separate entrance) or in a separate structure on the lot (such as a converted garage). Some communities, however, only allow ADUs that are within or attached to the main residence, and may define ADU to exclude an ADU housed in a separate structure. Whether attached or detached from the main residence, most codes require that the main residence and the ADU are owned by the same person, and may not be sold separately."* [19]

The MRSC White Paper references the State of Washington's two statutory schemes on point, RCW 43.63A.215 and RCW 36.70A.400. Both were adopted as part of the 1993 Wash-

ington Housing Policy Act but, in essence, they simply defer back to the local jurisdiction. The obligation that the state law imposes is simply to "incorporate in their development regulations, zoning regulations, or official controls and recommendations contained [for] the development and placement of accessory apartments. . ." [20]

Seattle's Office of Planning and Community Development has actively encouraged easing restrictions on and permitting construction of ADUs. In a somewhat quaint renaming of the housing type as "backyard cottages," the Seattle Planning Commission wrote to its own City Council on March 31, 2016, to implement proposed specifics to foster this type of housing. The Planning Commission split the definition of ADUs into two: one is the traditional "accessory dwelling unit" and the other is a "detached accessory dwelling unit," or DADU. The suggestions, actually, were pretty radical, though:

1. Modify the existing code to allow both types of ADUs on suitable lots with a single-family home as the primary unit. (In point of fact, that means that multiple ADUs would be allowed on one lot.)

2. Remove the requirement for an off-street parking space.

3. Remove the owner occupancy requirement.

4. Encourage flexibility in the allowed household size on lots with an ADU or DADU. (In essence, expand the number of permitted occupants beyond what current zoning restrictions allowed, or "occupancy limits.")

5. Reduce minimum lot size from 4,000 square feet. (Already a very small lot.)

6. Modify how maximum floor area is calculated for DADU use and modify maximum square footage to allow for potential two bedroom DADU.

7. Slightly increase height limits for DADUs on certain lots.

8. Increase the rear yard coverage limit.

Nearly all of these suggestions should resort in a firestorm of criticism and opposition from neighbors directly impacted by them, but the March 31, 2016 letter does not treat the potential issues that, for example, the League of California Cities brought up and have been further enumerated in this article: increased load on municipal services; increased density; further lack of parking and attendant density issues with noise and loss of privacy. . .[21]

One of the preparers of that letter, Nick Welch, a Senior Planner for the City of Seattle, and one of the prime authors of the proposed revised standards, spoke with the author about the issue. Some of his comments were quite telling:

> *"Temporary versus long term stay? When the State legislation passed in the 90's, the State wanted to require cities to have ADUs only because of concerns of rising housing costs. For Seattle, there is a similar focus on addressing affordability of housing but also to provide more flexibility for renters and property owners. There was lots of discussion on long versus short term rental as an issue that supersedes ADUs that's going on for all housing (not just ADUs). The City Council has been talking about this and potential legislation to regulate short term rentals sometime in the future."* [22]

Welch went on to talk about who the owner occupant would be:

> *"The property owner has to live in the main house or the ADU permanently. They are technically only allowed to be absent for up to six months of the year. This is one of the most contentious issues for ADUs. This requirement has been in place to address the concern that if the owner isn't on site, it wouldn't preserve the single family residential nature of the neighborhood. When ADUs were first allowed, the biggest concern was, without this requirement, the new law would be making a single family residential zone into a "multifamily"*

zone (two units, neither occupied by the owner). Most everyone agrees that this is one of the biggest barriers to getting more ADUs created in Seattle.

"This also becomes a barrier because banks don't like it; the lender will look at the potential source of income and if the property owner loses their job and has to repay the loan for the ADU, and can't rent out both units, then the lender is more wary of lending money for an ADU." [23]

This is one of the very issues that others around the country are also grappling with: *the idea that lenders don't like to lend for ADUs*. Susan Thering, the Director of the Design Coalition Institute, a non-profit organization in Madison, Wisconsin that is urging broader use of ADUs, has pointed out in a white paper of March 18, 2017, that homeowners that want to borrow money to build an ADU, particularly with a loan that is guaranteed by the United States Government, run into significant regulatory barriers:

"Government sponsored enterprises (GSEs) purchase most of the single-family mortgage loans written by local lenders in the U.S. All of the GSEs (Fanny Mae, Freddie Mac, and the Federal Home Loan Banks) require a licensed appraiser to establish the fair market value of those properties. Those appraisers are required to follow specific protocols for establishing fair market value. A research team from Portland, Oregon, Brown & Watkins (2012), recently published an article that traces some of the difficulty of financing ADUs to these GSE protocols. The difficulties include:

1. *The different and often conflicting, terms and descriptions of ADUs in the different GSE handbooks.*

2. *The existence of an ADU may disqualify the property for a single-family mortgage.*

3. *GSE protocols allow appraisers to assign only an "incidental" value of an ADU to the value of the property, regardless of the size or cost of construction. This excludes homeowners in modest homes from building an ADU for themselves or for vulnerable family members.*

4. *GSE protocols require valuation based on the "sales comparison" method of property appraisal and prohibit the use of a "rental income method" of property evaluation. The sales comparison method requires the appraiser to calculate the value of a property by analyzing recent sale prices of comparable nearby properties. Because most new codes that incentivize ADUs are specific to single family neighborhoods, where up until recently ADUs were prohibited, comparable properties are largely non-existent. . ..*

"As a result of these difficulties, estimates of the contributory value of ADUs vary wildly, lenders are uncertain about security, loans are denied, and the multiple benefits of ADUs are lost." [24]

So here, both Seattle, WA and Madison, WI are reporting that they want to encourage these types of dwellings, but no one is addressing the fact that the people who want to build them can not get money for them. The concern here, clearly, is that the ordinance becomes a bit utopian; a wonderful idea in theory but no one can build them because they can not afford them.

Interestingly, the City of Minneapolis, MN has also become a leader in promoting and reforming the permitting and development of ADUs. Council Member Lisa Bender of the City of Minneapolis introduced and had passed a new, comprehensive ADU ordinance that was adopted on December 5, 2014. The ordinance had some interesting aspects of both design and building envelope restrictions as well as in other areas:

1. Either the ADU or the main unit has to be owner occupied for the entire calendar year and this restriction has to be recorded on the deed. No more than one ADU is allowed per lot.

2. Maximum floor area is 800 square feet for an attached or internal ADU and

1,000 square feet for a detached unit. The maximum height is 20 feet and, as the ordinance points out, in no case shall the highest point of the ADU exceed the highest point of the principal residential structure.

3. As for internal and attached ADUs, the design district setback requirements apply. Detached ADUs get abbreviated setback; the interior side yard is only three feet; the rear yard is three feet if the garage doors face the side or front and five feet if the garage doors face the rear lot line and the distance to the house must be 20 feet between the detached ADU and the habitable portion of the house.

4. No additional parking spaces are required for the ADU but the property itself has to contain a minimum of one off street parking space per dwelling unit.

5. As to design, the primary exterior materials of an attached ADU must match those of the principal structure; rooftop decks are prohibited and not less than 10% of the entire elevation facing an alley or public street shall be windows. [25]

In an interview by the author with Shanna Sether, the senior City Planner at the Community Planning and Economic Development Department for the City of Minneapolis, she articulated some of the mechanics of administering as well as challenges of enforcing the ordinance:

"The process begins with the applicant meeting with the zoning staff and covenant is recorded. . .. A rental license for the dwelling is required and is verified annually for the first three years. There is a little more flexibility for aesthetics than you might think in the ordinance; there is mini-design form. More durable materials and windows are very important to us. Typically, these are a little more expensive to build because they use better materials. We looked at other ordinances from Vancouver, British Colombia that were similar to Minneapolis.

"The parking issues are very important—the owner occupancy is based on research that no more parking is needed. Only one off street parking is required except for university overflow zones.

"We've gotten 55 of these built and inspected and 200 have zoning approval. They are only for single and two-family. Additional sound and fire separation materials are required between the floors for internal ADUs. We allow reduced off-street parking requirements if the units are within one quarter of a mile of high speed transit. We believe that these will make a vast improvement; there is a great deal of development of them. Let the market drive the process. We are seeing a span of generations becoming more urban now than in many years.

"Airbnb's and BRBOs are not allowed; they are deemed a hotel, not permitted as a land use. We can't police them, though, we have no people for that. Many in Minneapolis are on the internet. We used to have more nuisance complaints about them but a lot of progressive things are happening here. Restaurant and food uses are being approved in these neighborhoods. This was a staff-led ordinance. We approached Councilwoman Bender; she is a planner by background." [26]

Clearly, the urban problems that Minneapolis has are going to be different than the ones in California and, perhaps, a different viewpoint and attitude exist with regard to local control in the Midwest. At the local level, the urban problems that have led Minneapolis, Seattle, and Madison to approach this problem are all different, primarily because each urban area and the fabric of society of each of them is different.

The degree of independence and promotion of ADUs at the municipal level in these three metropolitan areas, as well as a number of others treated in this article (Austin, Texas; Denver, Colorado; and Portland, Oregon) stand in sharp contrast to that of California cities; many of California's cities, including Los An-

geles, made significant efforts to frustrate or place administrative barriers to the permitting and development of ADUs. [27] The 1992 California Appellate case of *Wilson V. Laguna Beach* (1992) 6 Cal.Ap.4th 443, details at some length the administrative obstacles that the City of Laguna Beach, an oceanside hamlet south of Los Angeles, placed in the way of permitting an ADU. The acid comments of the appellate justice writing the opinion detailed the City's conduct:

"One of California's more innovative efforts is Section 65852.2 of the Government Code—sometimes referred to as the 'granny flat' statute. That statute encourages local governments to enact their own ordinances allowing and regulating 'second units' in single family and multi-family zones where they otherwise would be prohibited. If the local governments do not enact such an ordinance, then they must grant a 'conditional use' permit for any second units which meet the requirements enumerated in the statute. (Citation) It is what those requirements do not include that prompted numerous local governments to oppose the granny flats statute prior to its being signed into law by Governor Brown in September 1982. Specifically, they do not include assurance of adequate parking. As the statute is worded, if an existing second unit meets the requirements, the local government must grant the permit even if parking for the unit is inadequate.

"It is thus not surprising that cities where finding a parking space can be the highlight of one's day were less than enthusiastic about implementing the granny flat statute. This case arises out of the efforts of one such city, Laguna Beach, which, as the record shows, employed a number of artful bureaucratic devices to circumvent this statute in the time period before the adoption of its own (and, of course, somewhat stricter) ordinance—the interval when the City was required to process the requested permits under the statute.

"During that period of time, in the words of the trial judge, the city 'actively discouraged' and 'misled' potential applicants. Nevertheless, the trial court did not grant the plaintiffs, the class of similarly situated owners of second units, what they requested—a writ of mandate ordering the city to review applications under the criteria proscribed by the statute rather than the new ordinance. The trial court reasoned that a city official cannot, in effect, repeal a zoning ordinance by administrative action, i.e., by granting approval for a project otherwise prohibited by that ordinance. The judge reasoned that constituents should not have to suffer crowded streets because of the mistakes of city officials.

"But the fundamental value judgment at stake here—the choice between housing and parking—was made by the legislature in favor of housing. It decided the benefits of the additional housing provided by second units outweighed the costs of exacerbating local parking problems. Accordingly, we must reverse and order the trial court to grant the writ." [28]

And so, the different philosophies now come into high relief. Parking is a high priority in California; there never seems to be enough of it, particularly in the coastal zones, and, for that reason, cities do not want the State to tell them how to, or whether they should, permit ADUs that would clearly interfere with the supply of available parking. Elsewhere in the country, though, ADUs are encouraged at a local level, at least partly because parking is not such an issue, given the cost of land and the existing density.

Parking was clearly at the top of the list of objections California cities had to the ADU legislation. As the City of Los Angeles' Legislative Analyst wrote to the city Council in a public report dated July 20, 2016, (and previously referred to in this article):

In two letters dated May 10, 2016 and April 15, 2016, the League of California Cities recommends opposition to SB1069 (Wieckowski), because it will undermine local land use control, and for the following reasons:

1. *The legislation goes beyond the AB 1866 which prescribes the minimum standards of a local ADU ordinance and instead proscribes the maximum standards of an*

ADU, inasmuch as it proposes to relax parking standards.

2. *Enactment into law of SB 1069 could result in rate hikes to existing private and public utility customers, inasmuch as under SB 1069, an ADU cannot be considered a new residential unit for the purpose of calculating utility connecting fees, thereby potentially increasing rate hikes on existing utility customers, and increasing demand for these services.*

3. *Removes language from existing law that disallows local agencies to adopt an ordinance that prohibits second units, unless the ordinance contains a specified finding.*

4. *Prohibits cities from requiring parking for a second unit in a historic district or within one half mile of shopping.*[29]

California has a big problem with parking, particularly in coastal communities. What the City of Laguna Beach (and for that matter, the City of Los Angeles, as both had a long-standing antipathy to ADUs and a streamlining of their permit process) could not accomplish overtly, they did so by creating an onerous permitting process. [30] Clearly, that pattern of behavior is what motivated the state legislature to take away local control of the permitting process.

Elsewhere in the country, Portland, Oregon, long considered a progressive city in planning and zoning, aggressively encourages ADUs. In a February 22, 2017 interview with the author, Phil Nameny, a city planner with the city of Portland, talked about the city's posture towards ADUs:

"Our city's policy over the last twenty years has been to encourage them, both from a regulatory aspect and from a cost aspect. A wide range of people inhabit ADUs; many folks may build an ADU for aging family members but rent it short term as an interim measure. We recently expanded our short-term rental provisions to allow a resident to rent up to two bedrooms through a separate permit process that lasts two years. These regulations were created to try and get ahead of the curve, as short term rentals were required to go through a conditional use review, but the volume of illegal short term rentals in the city was so large that it was impossible to enforce. Many years ago, we did have some areas of the city that required the house or ADU to be owner occupied. However, the policing of this was difficult, and because the same area did not limit the size of the ADU, the result was that more properties in the owner occupied-required area were actually full rental properties than in the areas where there were no ownership requirements but the ADUs' size was limited, too.

"One thing our code states is that even with the second unit, the lot should not include more people than the city normally allows in a household. Our definition of household is people related by blood, marriage, partnership, guardianship, adoption, etc., plus not more than 5 unrelated individuals. Since the ADUs are usually pretty small, they are usually only occupied by 1-2 people so they stay within that limitation." [31]

Portland then, in essence, is saying that they can not stop people from renting these units out in violation of its own code and using them, in a sense, as rental properties. This stands in contrast to Minneapolis, to Seattle and to other municipal jurisdictions attempting to limit the density. The city of Orlando, Florida, has a larger issue, because, according to the City's Planning Office, Orlando has a very high percentage of renters in the housing mix: a 50% renter's rate. Interestingly, Orlando has concerns about parking, too:

"Some lots are only 50 to 55 feet wide so they're not even eligible for an ADU. These are very desirable and popular places to live. We could create much smaller dwelling units but there is resistance to that, and a lot of the reason is parking. We either end up with a tandem parking (a problem that the neighbor may have to park behind the other neighbor) or people pulling up to their front yard and parking on the grass; parking on illegal streets or crowded

street parking. This makes all of this a big city type of situation; there's a chance that you can't street park on your street so you have to walk a couple of blocks to parking several streets down. Also, we're adding more traffic and people are scared of ADUs. Where will parking for cars go? What will it do to the neighborhood character? What is the school impact?" [32]

The city of Asheville, North Carolina, has the same renter issue that Orlando does: over 50% of the properties in Asheville are inhabited by renters. The city does not like short term rentals and bans them, but Asheville is a big object of state intervention (the state tried to seize the water system and the city does not get a portion of the hotel occupancy tax. In fact, it passed legislation that Asheville cannot regulate aesthetic design standards on single family homes, especially for garage design (color, porch requirements, garage location, etc.).[33]

Other cities around the country also display a variation on the issues of parking, the degree of administrative obstacles placed in the way of ADU development and aesthetic regulation. For example, the city of Austin, Texas, does not require owner occupancy of either the primary residence or the ADU. It also has the least onerous ADU development process, allowing units as of right and exempting ADUs from site plan review. [34]

Denver, Colorado does not impose any additional parking requirements on lots that add an ADU [35] but it requires owner occupancy of either the ADU or the primary dwelling, a requirement, as we have already found in Seattle and in Washington, D.C.[36] Interestingly, the city of New York does not permit any form of ADU.[37]

Only the state of Vermont prohibits municipalities from excluding ADUs located within or pertinent to an owner occupied single family dwelling.[38]

So where does this leave us? There is no question that more and more land owners will want to consider adding an ADU. The population is aging; the raw cost of land is escalating, and density and other practical considerations militate in favor of maximizing the use of a residential lot. Perhaps one of the primary drivers, though, may be a shift in cultural norms. The Wall Street Journal acidly titled its November 5, 2014 article on ADUs, "The Hottest Home Amenity: In-Law Apartments; Want to Boost Your Home Value? Invite Your Mother-in-Law Over. Why Space for Aging Parents is a Hot Real Estate Amenity Now."

The article contained anecdotal statements from real estate brokers and others facing the practical realities of pleasing new buyers in the market. Here's an example:

"When a 7-acre property in Silicon Valley went on the market for $14.85 Million, a busload of real estate agents arrived for a tour. The draw? In addition to the resort-style pool and a putting green, the agents, who specialize in finding upscale properties for Asian buyers, wanted to see the two guest houses—ideal spaces for aging parents and in-laws. 'I probably did $18 Million worth of business with Asians in the last 12 months,' said Arthur Sharif, an associate broker at Sotheby's International Realty in San Francisco who was listing the estate in Woodside, California. 'A huge, huge part of the conversation with these folks is the 'side house' and how it can accommodate elderly relatives,' he said. Put away the snarky in-law jokes. For both domestic and foreign buyers, the hottest amenity in real estate these days is an in-law unit, an apartment carved out of an existing home or a stand-alone dwelling built on the homeowner's property. While the adult children get the peace of mind of having mom and dad nearby, real estate agents say the in-law accommodations are adding value to their homes." [39]

Municipalities, states, and now banks, are all going to have to recognize the fact that ADUs are here to stay and expanding. The patchwork of regulation and disparate concerns of the different populations will eventually have to adjust to the market and to the realities of changing population demographics

and how people use land. Notwithstanding the impediments lenders put up to obtaining financing, ADUs are being built and, in point of fact, encouraged in many metropolitan jurisdictions. It is, to borrow a well-worn phrase, the wave of the future. It will therefore place the burden on city planning and zoning officials, municipal city councils and planning commissions, and building and safety officials to facilitate and anticipate those changes. To fail to do so will unquestionably lead to statewide legislation in those jurisdictions. Affordable housing is in short supply and the problem is growing worse in the United States. ADUs offer at least a part of the remedy.

ENDNOTES:

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[1]"The Boomerang Generation; Feeling OKAY about Living with Mom and Dad" by Kim Parker, Pew Research Center (2012) at pages 1 and 2.

[2]Pew Research Center; "The Return of the Multi-Generational Family Household" (2010) cited in "Housing Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units," John Infranca, Stanford Law and Policy Review (2014), Volume 25, Issue 1, Pages 53 through 90 at 60-61.

[3]"The Boomerang Generation; Feeling OKAY about Living with Mom and Dad," at Page 12. See also "Fighting Poverty in a Bad Economy, Americans Move in with Relatives," Pew Research Center's Social and Demographic Trends Project, October 3, 2011.

[4]"Lennar design accommodates multigenerational families" by Martha Brannigan, Miami Herald—Latest News, January 25, 2013, at Pages 1 and 2.

[5]"Quicknotes; Accessory Dwelling Units," American Planning Association (2009) Page 1, accessible at www.mysolarroadmap.com/userfile/apa_adus.pdf.

[6]See, e.g., "What California Can Teach Other States About Climate Change," Vauhini Vara, The New Yorker, April 1, 2015).

[7]See Note 14, "A Room of One's Own? Accessory Dwelling Unit Reforms and Local Parochialism," Brinig and Garnett; Urban Lawyer, Summer 2013, Volume 45, Issue 3 at Page 9.

[8] www.followthemoney.org/entity-details?eid=7501

[9]See, e.g. www.followthemoney.org/entity-d

etails?eid=7501.

[10]Letter of April 15, 2016, to Senator Bob Wieckowski from League of California Cities, Page 1., as shown in Report of the Chief Legislative Analyst, July 20, 2016.

[11]Interview with author of March 6, 2017, with Kendra Harris, Legislative Analyst for League of California Cities.

[12]"Mercury News"; www.mercurynews.com/2016/09/27/california-eases-restrictions-on-granny-units

[13]Senate Rules Committee, Office of Senate Floor Analyses (Alison Dinmore, August 30, 2016).

[14]Newport Beach, California Municipal Code, Section 20.48.200 Senior Accessory Dwelling Units

[15]Santa Monica Municipal Code, Section 9.31.300-Second Dwelling Units, Subsections F through I.

[16]Santa Monica Municipal Code, Section 9.31.300 H.

[17]Accessory Dwelling Units: Model State Act and Local Ordinance; A Publication of the Public Policy Institute; Rodney L. Cobb and Scott Dvorak, American Planning Association, Page 25.

[18]Ibid at pages 23 and 24.

[19]Municipal Research and Services Center White Paper on Accessory Dwelling Units. www.mrsc.org/home/explore-topics/planning/general-planning-and-growth-management/accessory-dwelling/units-in-plain-english.aspx. Page 1.

[20]State of Washington RCW 43.63A.215 Subsections 1 and 3. See also "Housing Changing Households: Regulatory Challenges for Micro Units and Accessory Dwelling Units" by John Infranca, Stanford Law and Policy Review (2014) Volume 25, Issue 1, Pages 53 through 90 at 69.

[21]Letter of March 31, 2016 by Grace Kim, Chair of the City of Seattle Planning Commission to Honorable Councilmembers Rob Johnson and Mike O'Brien, Pages 2 through 4.

[22]Interview with Nicholas Welch conducted on February 22, 2017 by the author.

[23]Interview with Nicholas Welch conducted on February 22, 2017 by the author.

[24]"Accessory Dwelling Units, Government Sponsored Enterprises, The Americans with Disabilities Act, and Fair Housing." By Design Coalition Institute, Susan Thering, Director (March 18, 2017) at Page 3.

[25]Accessory Dwelling Units: Zoning Code Amendment at http://www.ci.minnepolis.mn.us/cped/project/adu.

[26]Interview of Shanna Sether, Senior City Planner at Community Planning and Economic Development Department with the author, March 17, 2017.

[27]Interview by the author of February 17th, 2017 of City of Los Angeles, CA Planner Matt Glesne and City of San Francisco, CA Planner Kimia Haddadan

[28]*Wilson v. The City of Laguna Beach*, 6 Cal.Ap.4th at 546-547.

[29]Letters from League of California Cities dated 4/15/15 and 5/10/16, as quoted in Report of the Chief Legislative Analyst, dated July 20, 2016.

[30]Interview by the author with Jane Blumenfeld, Urban Planner, March 17, 2017

[31]Interview by author with Phil Nameny, Portland, Oregon, February 22, 2017

[32]Author interview with planner at City of Orlando Planning Office, Orlando, Florida, February 23, 2017

[33]Interview by the author with Shannon Tuch, Zoning Administrator for the City of Asheville, North Carolina, on February 24, 2017.

[34]Austin, Texas City Code Section 25-5-2(B)(1) (2013), as cited in "Housing Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units" by John Infranca, 2014, Stanford Law and Policy Review, Volume 25, Issue 1, Pages 53 to 90 at 73

[35]See Colorado Zoning Code Section 3.4.3.3-3.4.4 [2010], as quoted in Infranca op.cit. p 75 Note 135

[36]D.C. Municipal Regulations, Title 11, Section 202.10F, as quoted in Infranca, op.cit. p 83 Note 204

[37] https://accessorydwellings.org/adu-regulations-by-city

[38]See Vermont Statute annotated Title 24, Section 4412; see also Brinig and Garnett, "A Room of One's Own? Accessory Dwelling Unit Reforms and Local Parochialism" at Page 1, Note 14 and Infranca, op.cit. at Page 69 and Note 83.

[39]"The Hottest Home Amenity: In-Law

Apartments" Wall Street Journal November 6, 2014 by Katie McLaughlin.