

HOUSING CHANGING HOUSEHOLDS: REGULATORY CHALLENGES FOR MICRO- UNITS AND ACCESSORY DWELLING UNITS

John Infranca*

INTRODUCTION	53
I. THE NEED FOR NEW FORMS OF HOUSING	56
A. <i>Growing Mismatch: Demographic Changes and Existing Housing</i>	56
B. <i>Criticisms and Claimed Benefits</i>	61
1. Micro-Units	61
2. Accessory Dwelling Units	64
II. THE STATE OF MICRO-UNIT AND ADU DEVELOPMENT	67
C. <i>Cities with Micro-Unit Developments</i>	67
D. <i>States and Cities that Encourage ADU Development</i>	69
III. REGULATORY CHALLENGES FOR MICRO-UNITS AND ADUS	70
A. <i>Austin</i>	70
B. <i>Denver</i>	73
C. <i>New York</i>	76
D. <i>Seattle</i>	78
E. <i>Washington, D.C.</i>	82
F. <i>General Financial Obstacles to Micro-Unit and ADU Development</i>	84
IV. THE WAY FORWARD OR A PASSING FAD?	86
CONCLUSION	89

INTRODUCTION

In recent decades, household sizes have shrunk and more people are living alone. At the same time, individuals are living longer and the number of multi-generational households, which were more prevalent in prior generations, is increasing. Available housing units frequently fail to match the needs of a city's evolving household forms. Regulations that fail to keep pace with these changes exacerbate this misalignment. In the words of one prominent

* Assistant Professor, Suffolk University School of Law and Research Affiliate, Furman Center for Real Estate & Urban Policy. Thanks to Vicki Been, Erin Braatz, Ben Gross, Josiah Madar, and the editors of the *Stanford Law & Policy Review*. Molly Wolfe, Daniel Barron, Stephen Ballentine, Rebecca Disbrow, Stephen Flug, Moneeza Maredia, Conor Muldoon, and Roman Pazuniak provided excellent research assistance at various stages of the broader Furman Center research project on which this paper is based.

affordable housing developer and advocate: “Of all the things that get in the way of better and more affordable housing options, the biggest obstacle may well be the tangle of building, zoning and occupancy regulations governing what can be built and how it can be used.”¹ This regulatory tangle does not prevent the construction, in cities throughout the country, of illegal housing units that do not conform to zoning or building codes and that may not provide safe living environments.²

In response to unmet demand and illegal units, some jurisdictions have altered regulations to permit the development of different types of housing, including both accessory dwelling units and micro-units. Accessory dwelling units (ADUs), which are often referred to as in-law units or secondary units, are self-contained units located on the property of a single-family home.³ While ADUs—which in the past were prevalent in many areas of the country—are particularly suited to lower-density areas, multifamily buildings with “micro-units”—multiple small individual units in a single structure—may be more appropriate in denser communities.⁴

Developers in a variety of jurisdictions have shown interest in both unit types. New York, Boston, Seattle, and San Francisco either allow or actively promote micro-units. A range of communities have changed regulations to permit construction of ADUs. Santa Cruz, California, for example, provides technical assistance to prospective ADU landlords, pre-approved designs, a low-interest loan program, and other resources. Supporters champion both

1. Roseanne Haggerty, *You Can't Build What People Want: Building Codes vs. Affordability*, ROOFLINES: THE SHELTERFORCE BLOG (Feb. 26, 2013), http://www.rooflines.org/3106/you_cant_build_what_people_want_building_codes_vs_affordability; see also RODNEY L. COBB & SCOTT DVORAK, AMERICAN PLANNING ASS'N, ACCESSORY DWELLING UNITS: MODEL STATE ACT AND LOCAL ORDINANCE 5 (2000) (“Zoning ordinances that prohibit ADUs or make it extremely difficult for homeowners to create them are the principal obstacle to the wider availability of this housing option.”).

2. A recent study in New York City estimated that 114,000 such units were added citywide between 1990 and 2000. PRATT CTR. FOR CMTY. DEVELOPMENT & CHAYA CMTY. DEV. CORP., NEW YORK'S HOUSING UNDERGROUND: A REFUGE AND RESOURCE 1 (2008) [hereinafter PRATT CENTER].

3. This article discusses three forms of ADUs: internal, attached, and detached. *Internal ADUs* are built within an existing structure, such as in an attic or basement. *Attached ADUs* are built as an addition to the primary structure. The line between internal and attached ADUs is often blurry and many jurisdictions do not distinguish between the two. *Detached ADUs* are physically separate from the primary dwelling but on the same lot, such as a backyard cottage or a unit above a garage.

4. There is no established threshold below which an apartment qualifies as a micro-unit. For the purposes of this Article, micro-units are units that contain their own bathroom and a kitchen or kitchenette, but are significantly smaller than the standard studio in a given city. See E. Assata Wright, *Tiny Apartments: Hudson County's First Micro-Unit Development Planned for Jersey City*, HUDSONREPORTER.COM (Sept. 29, 2013), http://hudsonreporter.com/view/full_story/23710067/article-Tiny-apartments--Hudson-County-s-first-micro-unit-development-planned-for-Jersey-City (“Although different developers have slightly different definitions for what constitutes a ‘micro’ apartment, in general it is an apartment that has less than 400 square feet of living space, yet still includes a bathroom and typical kitchen appliances within the unit.”).

ADUs and micro-units as a means of providing affordable housing, reducing sprawling development through urban infill, mitigating the energy usage and environmental impact of larger developments, and allowing seniors to age in place.⁵ City planners, business leaders, and local officials have embraced micro-units as a means through which expensive cities can attract and retain young professionals.⁶ However, given the nascent attempts to permit and encourage these housing types on a larger scale, there have not been comprehensive analyses of their actual effects.

There has been some prior study of regulations affecting ADUs, and advocacy organizations have drafted model ordinances to enable the construction of these units.⁷ These analyses have been tailored to a single jurisdiction or a small number of neighboring jurisdictions and have focused on ADUs and not micro-units—which raise distinct regulatory issues. This Article

5. See, e.g., KAREN CHAPPLE ET AL., CTR. FOR COMMUNITY INNOVATION AT THE INST. OF URBAN AND REGIONAL DEVELOPMENT, YES IN MY BACKYARD: MOBILIZING THE MARKET FOR SECONDARY UNITS 1 (2011) [hereinafter CENTER FOR COMMUNITY INNOVATION] (“Secondary units are particularly well-suited as an infill strategy for low-density residential areas because they offer hidden density—housing units not readily apparent from the street—and relatively less objectionable to the neighbors.”); DEL. STATE HOUSING AUTH., ACCESSORY DWELLING UNITS: A PRACTICAL OPTION TO PROMOTE AFFORDABILITY 4 (2010) (discussing benefits of ADUs including affordable housing provision, neighborhood stability, additional income for homeowners, and provision of care to older individuals); see also *infra* notes 45-56 and accompanying text.

6. See *infra* notes 37-38 and accompanying text.

7. The Municipal Research and Services Center (MRSC) of Washington’s 1995 report *Accessory Dwelling Units: Issues & Options* summarizes ADU ordinances in ten cities in Washington, guides local officials in assessing the potential for ADUs in their community, explores regulatory issues, and discusses potential benefits for renters, homeowners, and communities. MUN. RESEARCH & SERVS. CTR. OF WASH., REPORT NO. 33, ACCESSORY DWELLING UNITS: ISSUES & OPTIONS 2 (1995). In 2000, the Public Policy Institute of AARP enlisted the American Planning Association to develop a model state act and local ordinance on ADUs. COBB & DVORAK, *supra* note 1, at 5. The report provides communities with multiple options for tailoring an ordinance. *Id.* at 13; see also Wendy Koch, *A House Divided Helps Pay the Bills*, USA TODAY (Aug. 18, 2011), available at http://usatoday30.usatoday.com/MONEY/usaedition/2011-08-18-housesplitting10-CV-----With_CV_U.htm (noting that many local ADU laws “are modeled after one advocated by the AARP and passed by Santa Cruz, Calif., in 2003 that prompted other cities in California and the Pacific Northwest to follow”). The Department of Housing and Urban Development published a report in 2008, *Accessory Dwelling Units: Case Study*, detailing the experiences and policies of six localities. SAGE COMPUTING INC. FOR U.S. DEP’T OF HOUS. & URB. DEV., ACCESSORY DWELLING UNITS: CASE STUDY 2 (2008) [hereinafter HUD REPORT]. The Center for Community Innovation at the University of California at Berkeley released a report in 2012 that examines the market for ADUs and regulatory challenges in five cities in the East Bay. CHAPPLE ET AL., *supra* note 5. Professors Margaret Brinig and Nicole Garnett recently analyzed how municipalities throughout California responded to state legislation requiring a ministerial review process for ADU applications. Margaret F. Brinig & Nicole Stelle Garnett, *A Room of One’s Own? Accessory Dwelling Unit Reforms and Local Parochialism*, URB. LAW. 31 (forthcoming 2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2271781 (concluding that “a majority of California cities took a ‘thousand paper cuts’ response” to the mandate, imposing a range of requirements likely to stymie development).

provides the first comprehensive study of regulatory challenges to both ADUs and micro-units in a geographically diverse range of jurisdictions. Given the overlapping purposes ascribed to these unit types—reducing sprawl, providing more affordable housing, and responding to changing demographics—jurisdictions would benefit from considering both forms of housing as they evaluate potential regulatory changes.

This Article focuses on regulatory and other challenges to developing both of these unit types in five cities: New York, Washington, D.C., Austin, Denver, and Seattle.⁸ Part I discusses how changing household composition is resulting in a mismatch between housing needs and existing housing supply. It also reviews the claimed benefits and potential criticisms of micro-units and ADUs. Part II surveys existing developments of these housing types throughout the United States. Part III reviews the status of micro-unit and ADU development in the five study cities and highlights the key regulatory and other challenges to developing these units. Part IV highlights the key lessons from this regulatory analysis and evaluates whether the demand for these units is a passing fad or signals a more substantial shift in housing and planning patterns.

I. THE NEED FOR NEW FORMS OF HOUSING

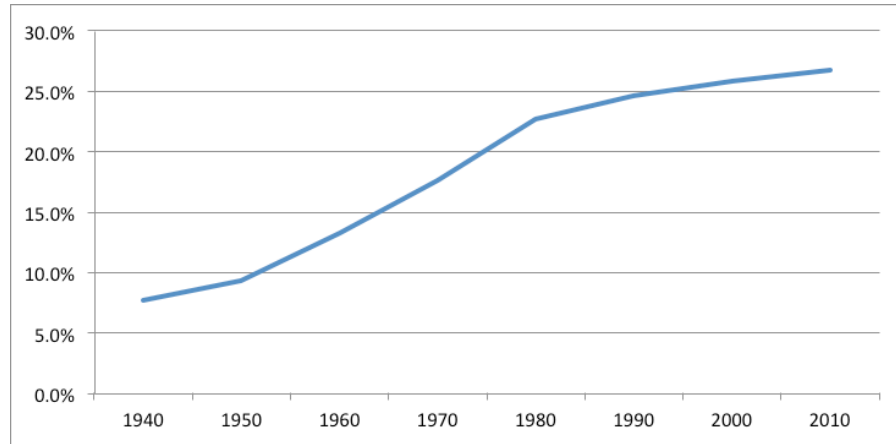
A. *Growing Mismatch: Demographic Changes and Existing Housing*

Changing household compositions render the existing housing stock inadequate for many households. Figure 1 depicts the dramatic increase in the share of households consisting of one person.⁹

8. The underlying research was conducted by the author and colleagues at the Furman Center for Real Estate and Urban Policy at New York University. The cities selected include some with considerable experience in the development of compact units as well as those just beginning to explore the issues. The cities have diverse urban forms, are in different regions of the country, and have populations that reflect characteristics associated with demand for micro-units and ADUs. A separate white paper provides a broader discussion of the research findings and methodology.

9. U.S. CENSUS BUREAU, 1-PERSON OCCUPANCY RATES, 1940-2000, http://www.census.gov/housing/census/data/livealone/livealone_rates.txt (last visited Apr. 13, 2014) [hereinafter CENSUS BUREAU 1940-2000]; U.S. CENSUS BUREAU, 2010 CENSUS, H13: HOUSEHOLD SIZE—UNIVERSE: OCCUPIED HOUSING UNITS (2010) [hereinafter CENSUS BUREAU 2010].

FIGURE 1: Share of U.S. Households Consisting of One Person
Living Alone 1940-2010



As shown in Figure 2, in each of the five cities studied at least one-third of households consist of just one person; in Washington, D.C. nearly half of households consist of one person living alone. The share of one-person households grew in all of these cities between 2000 and 2012.¹⁰ It is no coincidence that the number of one-person households has grown as an increasing share of adults are delaying marriage or choosing not to marry. One-in-three adults in the United States were single in 1950.¹¹ By the 2010 Census, the share of adults who were single (but not necessarily living alone) had risen to 48%.¹² In addition, the number of marriages declined from 8.2 marriages per 1,000 individuals in the total population in year 2000 to a rate of 6.8 marriages in year 2011.¹³

10. Compare CENSUS BUREAU 1940-2000, *supra* note 9, and CENSUS BUREAU 2010, *supra* note 9, with JONATHAN VESPA, ET AL., AMERICA'S FAMILIES AND LIVING ARRANGEMENTS: 2012, U.S. CENSUS BUREAU (August 2013), available at <http://www.census.gov/prod/2013pubs/p20-570.pdf>.

11. U.S. CENSUS BUREAU, 1950 CENSUS (1950).

12. U.S. CENSUS BUREAU, 2010 CENSUS (2010).

13. *National Marriage and Divorce Rate Trends*, CTR. FOR DISEASE CONTROL & PREVENTION, http://www.cdc.gov/nchs/nvss/marriage_divorce_tables.htm (last visited Apr. 13, 2014).

FIGURE 2: One-Person Households as Share of All Households¹⁴

	Austin	Denver	New York	Seattle	Washington, D.C.
One-person household as share of all households	34.5%	40.8%	32.6%	40.9%	45.2%

Since 1965 there has been a consistent net migration of single, college-educated individuals between the ages of twenty-five to thirty-nine into major metropolitan areas of over one million individuals.¹⁵ These areas were often marked by out-migration among the total population. Although many of these newcomers live alone, they are often very socially active and spend considerable time in public spaces.¹⁶ Younger adults delaying marriage are not the only group contributing to the growing share of adults who are living alone. The share of Americans over the age of sixty-five grew from 7% in 1940 to 13% in 2010.¹⁷ Over 40 million Americans are now sixty-five or older. This is more than quadruple the number in 1940.¹⁸ Twenty-eight percent of individuals sixty-five or older lived alone as of 2010.¹⁹ Coinciding with the rising number of single households, since 1980 the average family and household size has declined nationally. Family size fell from 3.29 individuals in 1980 to 3.14 in 2010, and household size declined from 2.76 to 2.58 over the same period.²⁰

All of these changes increase demand for smaller housing units. However, in many locales there is a substantial gap between the number of single-person households and the stock of studio and one-bedroom units.²¹ The number of

14. U.S. CENSUS BUREAU, SELECTED HOUSING CHARACTERISTICS, 2011 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES (2011) [hereinafter AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES].

15. Justyna Goworowska & Todd K. Gardner, *Historical Migration of the Young, Single, and College Educated: 1965 to 2000*, at 9 (U.S. Census Bureau, Population Div., Working Paper No. 94, 2012).

16. ERIC KLINENBERG, GOING SOLO: THE EXTRAORDINARY RISE AND SURPRISING APPEAL OF LIVING ALONE 18 (2012) (citing Duane Alwin et al., *Living Arrangements and Social Integration*, 47 J. MARRIAGE & FAMILY 319 (1988)).

17. U.S. CENSUS BUREAU, 1940 CENSUS (1940) [hereinafter 1940 CENSUS]; U.S. CENSUS BUREAU, 2010 CENSUS (2010) [hereinafter 2010 CENSUS].

18. See 1940 CENSUS, *supra* note 17; 2010 CENSUS, *supra* note 17.

19. 2010 CENSUS, *supra* note 17; U.S. CENSUS BUREAU, SELECTED HOUSING CHARACTERISTICS, 2006-2010 5-YEAR AMERICAN COMMUNITY SURVEY (2011), available at http://www2.census.gov/acs2010_5yr/summaryfile/ACS_2006-2010_SF_Tech_Doc.pdf.

20. U.S. CENSUS BUREAU, 1980 CENSUS (1980); 2010 CENSUS, *supra* note 17; see also KLINENBERG, *supra* note 16, at 46 (discussing trends toward delaying marriage and greater prevalence of divorce during period of 1960 through 1980s).

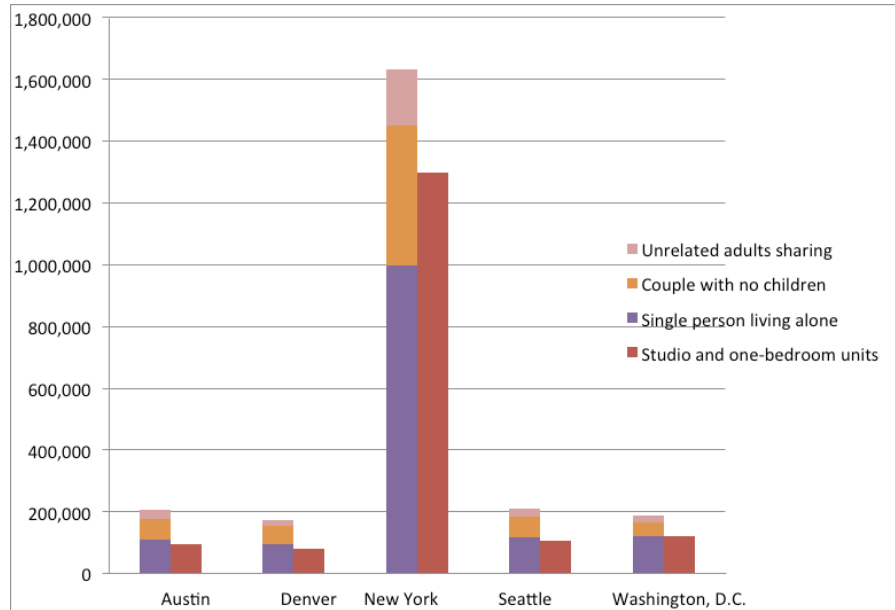
21. See COBB & DVORAK, *supra* note 1, at 8 ("American families are growing in number but shrinking in size. People are living longer, more people are staying single longer,

single persons living alone—the vast majority of whom would likely find a studio or one-bedroom apartment to be the most affordable housing option—exceeds or nearly matches the number of studio and one-bedroom units in each of the five cities. If you add to this group the number of households consisting of couples with no children, some share of which would likely prefer a studio or one-bedroom to a larger and likely more expensive two-bedroom unit, the total number of these households far exceeds the stock of smaller units. In addition, the substantial number of unrelated adults sharing a unit in each of these cities may indicate hidden demand for studio and one-bedroom units. A market survey by a California-based multi-family developer found that 62% of respondents would prefer living alone, even at a higher cost, to living in a larger apartment with a roommate.²² Figure 3 depicts the cumulative number of these three household types and compares this to the number of studio and one-bedroom units in each city.

and married couples are having fewer children. The housing stock has not kept up with this change in family demographics.”).

22. Jessica Fiur, *AMF Development Targets Millennials with California Micro Units*, MULTI-HOUSING NEWS ONLINE (Mar. 21, 2013), <http://www.multihousingnews.com/news/amf-development-targets-millennials-with-california-micro-units/1004076024.html>.

FIGURE 3: Studio and One-Bedroom Units and Select Household Types, by City²³



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.”²⁴ After reaching a low point in 1980 of 12.1% of the population, the number of people in multigenerational households²⁵ increased to 15.1% in 2000, and 16.1% in 2008.²⁶ This reversed a decline—between 1940 and 1980—by more than half of the share of Americans living in these households.²⁷ 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-

23. The housing unit counts come from the 2011 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES, *supra* note 14. The numbers for each household type in Figure 3 rely upon a methodology developed by the Citizen’s Housing and Planning Council of New York City for analyzing data from the American Community Survey’s Public Use Microdata Sample to better understand household composition within a municipality and the potential effect of existing household composition on housing demand. Citizens Housing Planning Council, ACS Puma Household Type Recode Methodology (unpublished document) (on file with author).

24. PEW RESEARCH CTR., THE RETURN OF THE MULTI-GENERATIONAL FAMILY HOUSEHOLD I (2010).

25. A “multi-generational family household” includes a household containing at least two adult generations (ages 25 and older) or a household containing grandparents and grandchildren, without parents. *Id.* at 2.

26. *Id.* at 22.

27. *Id.* at 1.

generational household, as well as an increase in the median age of first marriage, which is associated with more adult children living in their parent's homes.²⁸ The total number of multi-generational households increased to forty-nine million as of 2008, up from thirty-two million in 1950.²⁹ Some cities are expressly identifying the prevalence of these households as a reason for permitting ADUs.³⁰ In addition, developers, including Lennar Corporation, PulteGroup, Ryland, and KB Homes, are providing more flexible layouts that include accommodations for ADUs.³¹ At the same time, the growing percentage of young adults moving back home and living in a multi-generational household³²—due to factors including high housing costs—may reveal potential demand for more affordable micro-units.

B. Criticisms and Claimed Benefits

Although there is little empirical evidence on the effects of micro-units and ADUs, critics and advocates make strong arguments regarding both housing types. This Subpart reviews the key contentions in this debate.

1. Micro-Units

Critics contend that, contrary to the claims of advocates, micro-units do not provide affordable housing and may exacerbate high rents in a community. Micro-units in many cities rent at comparatively high rates per square foot, but at total monthly rents lower than larger apartments. For example, one micro-unit project in San Francisco would rent for \$5.91 to \$6.82 per square foot, compared to \$4.21 per square foot for the average sized studio in the city.³³ This has raised concerns that the development of expensive smaller units may

28. *Id.* at 5.

29. *Id.* at 4.

30. See, e.g., Linda Farneth, *Amendment will Allow Accessory Dwelling Units*, THE JOURNAL (Dec. 11, 2012, 11:31 AM), <http://www.journalpress.com/index.php/colonial-beach/beach-news/649-amendment-will-allow-accessory-dwelling-units> (discussing proposed ordinance in Colonial Beach, Virginia that would allow attached ADUs in part as response to “growing trend of multi-generational living within the same property”).

31. Martha Brannigan, *Lennar Design Accommodates Multigenerational Families*, MIAMI HERALD (Jan. 25, 2013), http://www.miamiherald.com/2013/01/25/3199631_p2/lennar-design-accommodates-multigenerational.html (detailing Lennar's layout to accommodate multi-generational households); Penelope Green, *Under One Roof, Building for Extended Families*, N.Y. TIMES Nov. 29, 2012, at A1 (noting that 30% of Pulte customers request features that enable multigenerational living).

32. The percentage of adults age 25-34 living in a multi-generational household rose from 11% in 1980 to 21.6% in 2010. See KIM PARKER, PEW RESEARCH CTR., THE BOOMERANG GENERATION: FEELING OK ABOUT LIVING WITH MOM AND DAD 2 (2012).

33. Carolyn Said, *Micro-Apartments Next for S.F.*, S.F. CHRON. (July 13, 2012), <http://www.sfgate.com/realestate/article/Micro-apartments-next-for-S-F-3706648.php>.

lead to increased rents in larger units.³⁴ However, if micro-units increase housing supply in a city they should reduce, or at the very least not increase, rents. Higher average rents for micro-units may simply reflect demand for new construction, particular locations within a city, or the attractiveness of a new housing option. In addition, micro-units may reduce the demand among singles for shared two-to-four bedroom housing units, which could render those units more affordable to families.³⁵

Beyond affordability, there are a number of claimed neighborhood—and city-level—effects of micro-units. These units may reduce energy consumption if residents choose them instead of living in larger studio or one-bedroom apartments and if they enable individuals to live in more walkable or transit-rich areas where vehicle ownership is unnecessary. They are championed as a means of attracting and retaining young professionals in expensive urban areas.³⁶ They are also touted as beneficial to cities seeking to attract larger employers concerned about residential opportunities for employees.³⁷

Nonetheless, neighborhood opposition to micro-units has grown in some jurisdictions as the number of developments has increased. Critics fear micro-units changing the character of neighborhoods by flooding them with

34. See Neal J. Riley, *S.F. Supervisors Back Micro-Apartments*, S.F. CHRON. (Nov. 20, 2012), <http://www.sfgate.com/default/article/S-F-supervisors-back-micro-apartments-4055493.php> (quoting city supervisor who observed “If 220 square feet is going to rent for \$1,500, what does that do for the rest of the places in San Francisco?”).

35. See OFFICE OF THE MANHATTAN BOROUGH PRESIDENT, *START-UP CITY: GROWING NEW YORK CITY’S ENTREPRENEURIAL ECOSYSTEM FOR ALL* 25 (2012), available at <http://www.mbpo.org/uploads/StartupCity.pdf> (“[I]n many New York City neighborhoods young individuals have long chosen to occupy large apartments, as the cost can be lower per-person when shared with multiple roommates. While these units in effect become micro-housing, the shared occupancy has the negative effect of removing larger units from the market. Large units are necessary for New York City to retain families who need multiple bedrooms and their continued loss has the potential to hurt New York City’s competitiveness on a regional level. Targeting construction of the micro-units to appropriate areas would not only increase the stock of affordable housing, but should increase the supply of available larger units.”); *c.f.* CITY OF BOSTON, *HOUSING BOSTON 2020: A BLUEPRINT FOR BUILDING 30,000 UNITS OF HOUSING BY THE YEAR 2020*, at 34 (2013), available at http://www.cityofboston.gov/images_documents/HousingBoston2020ForRelease_9_5_13_tc_m3-40309.pdf (discussing need for additional dormitory housing to reduce pressure on private market housing that can also serve families).

36. See Casey Ross, *Growth of Micro-Units Will Be Slow in Boston: Planners Worried About Standards*, BOSTON GLOBE (Mar. 27, 2013), <http://www.bostonglobe.com/business/2013/03/26/micro-units-will-slow-coming-boston/rR5RM6OBjIDad203rgsdK/story.html> (“Cities from San Francisco to Seattle to New York are exploring construction of apartments as small as 220 square feet to provide more housing for young professionals who are flocking to cities for jobs and the conveniences of urban living.”).

37. *Id.* (quoting pharmaceuticals executive who asserted during a forum on micro-units in Boston that such units are needed to aid in attracting and retaining skilled young scientists); see also CITY OF BOSTON, *supra* note 35, at 14 (discussing need for “housing that is right-sized and right-priced” to retain recent graduates and “skilled workforce . . . need[ed] to grow Boston’s economy”).

“itinerant” and “sketchy” people³⁸ or overwhelming on-street parking.³⁹ Opponents note that small and crowded boarding houses and tenements, particularly in San Francisco and New York, motivated the introduction of housing codes aimed at protecting residents’ health and quality of life by mandating minimum room sizes or a maximum number of occupants.⁴⁰ However, as Professor Frank Alexander has noted, these measures were introduced without a sound scientific basis and reflected racial and cultural biases.⁴¹

While some express fear that micro-units could lead to a return to the problematic housing conditions of the past and “create a slippery slope of allowing other exemptions on considerations like natural light and ceiling height,”⁴² there is, thus far, no evidence that the development of micro-

38. Claire Thompson, *Peace in a Pod: How Tiny Apartments Could Reshape the Big City*, GRIST (Dec. 13, 2012), <http://grist.org/cities/apodment-livin>. In Santa Monica, California, planning officials have voiced fears that a concentration of small units may lead to a transitory population, a lack of diverse tenants, and a less vibrant neighborhood. See Ashley Archibald, *Developer Files Plans for 150 More Units Downtown*, SANTA MONICA DAILY PRESS (Feb. 15, 2013), http://www.smdp.com/developer-files-plans-for-150-more-units-downtown/118301?doing_wp_cron=1362518307.0631809234619140625000. Criticisms have also been lodged regarding micro-unit developments in San Francisco and New York. See Riley, *supra* note 34; Kim Velsey, *Kips Bay Residents Terrified that Micro-Units Will Flood Neighborhood with Yuppie Vagrants*, N.Y. OBSERVER (May 3, 2012), <http://observer.com/2012/05/kips-bay-residents-terrified-that-micro-units-will-flood-neighborhood-with-middle-class-loiterers/> (“No matter what anyone says, we’re worried that these are going to be SROs that are run as hotels,” Toni Carlina, the community board’s district manager, told the *Wall Street Journal*.”).

39. Dominic Holden, *Thinking Small: A Loophole for Really Affordable Housing*, THE STRANGER (June 4, 2009), <http://www.thestranger.com/seattle/thinking-small/Content?oid=1635067>.

40. See Frank S. Alexander, *The Housing of America’s Families: Control, Exclusion, and Privilege*, 54 EMORY L.J. 1231, 1251-52 (2005). In New York City, single-room occupancy buildings—historically boarding houses for single young people, women coming to the city to work, and male immigrant workers—eventually fell into disrepair and, in addition to motivating housing standard regulations, new construction of SROs was outlawed in 1954. Marti Weithman & Gerald Lebovits, *Single Room Occupancy Law in New York City*, 36 N.Y. REAL PROP. L.J. 21, 23 (2008).

41. Alexander, *supra* note 40, at 1251-52.

42. Said, *supra* note 33 (“‘It’s disingenuous to say it creates affordable housing, it’s just that you get significantly less space,’ said Sara Shortt, executive director of the Housing Rights Committee of San Francisco.”); see also Matt Chaban, *Micro-Apartments Take One (Small) Step Forward*, CRAIN’S N.Y. BUS. (Apr. 9, 2013), http://www.crainsnewyork.com/article/20130409/REAL_ESTATE/130409868 (citing critics of New York’s adAPT NYC project who “fear that, once developers win the right to build smaller units, that will become the norm, further starving space-constrained New Yorkers of living space”); Lee Romney, *San Francisco Considers Allowing Nation’s Tiniest Micro-Apartments*, L.A. TIMES (Sept. 24, 2013), <http://articles.latimes.com/2012/sep/24/local/la-me-micro-apartments-20120924> (“[S]ome critics [of San Francisco micro-units] worry that the swank model units getting kudos from officials might not be the norm. What’s to stop other developers, tenants’ rights advocates ask, from building grimmer versions, with low ceilings and poor light?”); Casey Ross, *Housing-Starved Cities Seek Relief in Micro-Apartment*, BOSTON GLOBE (Mar. 26, 2013), <http://www.bostonglobe.com/business/2013/03/25/micro-apartments-tight-squeeze->

units leads in this direction. There is instead strong evidence of an existing market in illegal and often unsafe housing. Applying reasonable regulations to the development of micro-units, as well as ADUs, can provide a safe and affordable alternative that reduces demand for illegal units. A legitimate concern does exist that the growing demand for micro-units will lead to developers purchasing existing single room occupancies (SROs), evicting current low-income tenants, and refurbishing the buildings to rent as more expensive micro-units.⁴³ Although the regulations allowing such conversions might differ from regulations permitting construction of new micro-unit projects, this possibility creates a need for cities with an existing stock of low-income SRO housing to consider the impact of micro-unit development on residents of these units.

2. Accessory Dwelling Units

Proponents portray ADUs as a more affordable housing option⁴⁴ that provides those with modest incomes the opportunity to gain access to “more desirable single-family neighborhoods.”⁴⁵ Such neighborhoods may have few rental opportunities and housing prices that are too high for ownership to be a realistic option. Affordability is linked to another claimed benefit, the role of ADUs in providing an economical option for older family members to age in

but-livable/vDRdMnChgdhCdFOrmupnyN/story.html (“But there is unease among public officials about allowing real estate developers to flood the market with such units, out of fear they will become the modern equivalent of 19th century tenements.”).

43. See Marissa Conrad, *New Small-Space Apartments in Uptown*, TIME OUT CHICAGO (Sept. 6, 2012), <http://www.timeoutchicago.com/shopping-style/home-design/15641656/new-small-space-apartments-in-uptown> (discussing conversion of foreclosed SROs into luxury rentals, but noting developer’s efforts to relocate existing residents).

44. See, e.g., COBB & DVORAK, *supra* note 1, at 6 (declaring ADUs “cost-effective means of increasing the supply of affordable rental housing in a community”); *Accessory Dwelling Unit Development Program*, CITY OF SANTA CRUZ (Nov 6, 2013), <http://www.cityofsantacruz.com/index.aspx?page=1150> (“With over 18,000 single family lots in the City of Santa Cruz, construction of ADUs provide an excellent opportunity to increase the amount of affordable rental housing in the community while providing homeowners with a chance to supplement mortgage payments, thus making their own housing more affordable.”). There are limited studies of the effects ADUs have on the affordability of housing. A widely-referenced study of Babylon, Long Island, which did not control for unit characteristics, concluded that secondary units rent on average for 35% less than non-secondary unit apartments. CHAPPLE ET AL., *supra* note 5, at 2 (citing T.K. Rudel, *Housing Change, Accessory Apartments, and Low Income Housing in Suburbs*, 36 PROF. GEOGRAPHER 174, 174-181 (1984)). The Center for Community Innovation’s analysis of Craigslist advertisements in the Bay Area found that secondary units rent at an average rate affordable to households earning 62% of Area Median Income (AMI), while non-secondary units at a rate affordable to households at 68% of AMI. CHAPPLE ET AL., *supra* note 5, at 10.

45. MUNICIPAL RESEARCH & SERVICES CTR. OF WASHINGTON, *ACCESSORY DWELLING UNITS: ISSUES & OPTIONS* 14 (1995), available at <http://www.mrsc.org/publications/adu30.pdf> [hereinafter MRSC].

place or live closer to caregivers.⁴⁶ ADUs can provide seniors with a new income source or housing for a caregiver.⁴⁷ An AARP survey of individuals fifty-five and older found that 89% of respondents desired to stay in their current residence “for as long as possible.”⁴⁸ More than 80% of respondents would prefer to stay in their current home if they needed assistance as they aged.⁴⁹ A separate survey of persons fifty and older revealed that 36% of respondents would consider adding an ADU to their home if they needed such assistance.⁵⁰ Relatedly, ADUs can enable a younger homeowner to provide affordable and independent housing to an elderly parent or a grown child.⁵¹

ADU supporters also claim that these units “encourage better housing maintenance and neighborhood stability” by providing homeowners with income to help maintain the property or pay the mortgage and taxes.⁵² Proponents champion the potential of ADUs to reduce sprawl by allowing infill or additional incremental density in a city’s core,⁵³ without significantly altering existing neighborhood character.⁵⁴ In some areas ADUs, by increasing

46. See CITY OF SEATTLE, SEATTLE PLANNING COMM. & DEPT. OF PLANNING & DEV., A GUIDE TO BUILDING A BACKYARD COTTAGE 2 (2010), available at <http://www.seattle.gov/planningcommission/docs/backyardcottagesguide-final.pdf> (“Although much of the attention given to Backyard Cottages revolves around their potential for increasing the supply of affordable housing opportunities, Backyard Cottages may also help to address other social issues, particularly those relating to housing options for the growing elderly population.”); Darin Moriki, *Thornton Approves “Mother-in-law” Units*, OURTHORNTONNEWS.COM (Mar. 27, 2013), http://www.ourcoloradonews.com/thornton/news/thornton-approves-mother-in-law-units/article_b577875c-e75b-58bc-a332-6426d041633a.html (noting that city council member’s interest in ADUs was motivated by desire “to address the lack of affordable housing options for the city’s aging residents”).

47. DEL. STATE HOUSING AUTH., *supra* note 5, at 1 (noting “movement for aging in place” as one indicator of “the need for accessory dwelling units”).

48. ADA-HELEN BAYER & LEON HARPER, AARP, FIXING TO STAY: A NATIONAL SURVEY ON HOUSING AND HOME MODIFICATION ISSUES 25 (2000), available at <http://www.aarp.org/home-garden/housing/info-2000/aresearch-import-783.html>.

49. *Id.* at 27-28 (reporting percentage for entire survey sample, which included individuals 45 and older).

50. COBB & DVORAK, *supra* note 1, at 9.

51. AMERICAN PLANNING ASS’N, PAS QUICKNOTES NO. 19, ACCESSORY DWELLING UNITS 1 (2009), <http://www.planning.org/pas/quicknotes/pdf/QN19.pdf>. The California legislature’s 2003 law requiring local communities to allow ADUs through a ministerial process included a declaration that “Second units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods. Homeowners who create second units benefit from added income, and an increased sense of security.” CAL. GOV’T CODE § 65852.150 (West 2013).

52. MRSC, *supra* note 45, at 12; see also HUD REPORT, *supra* note 7, at 2; MRSC, *supra* note 45, at 9-14.

53. See Judy Keen, *Seattle’s Backyard Cottages Make a Dent in Housing Need*, USA TODAY (May 26, 2010), http://usatoday30.usatoday.com/news/2010-05-25-cottages_N.htm.

54. HUD REPORT, *supra* note 7, at 2.

density, may enable expansion of public transportation or car share options.⁵⁵ ADUs also face criticism. As a report by the American Planning Association concluded:

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 wastewater.⁵⁶

In Raleigh, North Carolina a recent unsuccessful effort to lift the ban on detached ADUs to increase downtown density and provide more affordable housing encountered arguments that backyard units would lead to middle-class flight from downtown neighborhoods and increased blight.⁵⁷ Others feared over-population by college students—in both the main house and the ADU.⁵⁸ There have been similarly heated discussions around allowing more ADUs in other cities.⁵⁹

More research is necessary to evaluate the effect of ADUs on their neighborhoods. Existing research is sparse, but suggests that ADUs have less of an effect on neighborhoods than critics expect. A survey in the Bay Area found

55. See CHAPPLE ET AL., *supra* note 5, at 9 (finding that accessory dwelling units “bring in a new market of tenants disproportionately likely to rely on alternative transportation,” including car sharing).

56. AMERICAN PLANNING ASS’N, *supra* note 51, at 1.

57. Will Huntsberry, *In Raleigh, a Push to Lift the Ban on Granny Flats*, INDY WEEK (Nov. 28, 2012), <http://www.indyweek.com/indyweek/in-raleigh-a-push-to-lift-the-ban-on-granny-flats/Content?oid=3201317>. A city councilor who supports ADUs describes the opposition in these terms: “People envision these monstrous chicken coops in their backyards that hold recently released prisoners. I don’t see that as what typically happens on the ground.” *Id.*

58. Bob Geary, *Meeting Tonight: The New Raleigh Zoning Code and the Problem of Accessory Dwelling Units*, INDY WEEK (Aug. 27, 2012), <http://www.indyweek.com/citizen/archives/2012/08/27/meeting-tonight-the-new-raleigh-zoning-code-and-the-problem-of-accessory-dwelling-units>. (“[N]ow picture this. Your neighbor builds an ADU, a honkin’ two-story pad behind his house; but wait, it gets better (worse): your neighbor doesn’t actually live in the house. No, he rents it out to four college students, and in the new ‘accessory dwelling unit,’ four *more* college students are suddenly resident, and they’re living just a few feet from *your* house. Where you *DO* live.”). The proposal did not require that an owner live in either the main house or the ADU as such a requirement is barred by a decision prohibiting owner-occupancy regulations throughout North Carolina. See *City of Wilmington v. Hill*, 657 S.E.2d 670, 673 (N.C. Ct. App. 2008).

59. See e.g., Jim Haug, *Accessory Dwellings Debate Takes Center Stage*, DURANGO HERALD (Jan. 8, 2013), <http://durangoherald.com/article/20130108/NEWS01/130109607/-1/s>; Keen, *supra* note 53 (discussing neighbors’ concerns that ADUs will intrude upon their privacy); Molly McPherson, *York Looks to Tighten Accessory Dwelling Unit Ordinance*, SEACOAST ONLINE (Jan. 5, 2013, 2:00 AM), <http://www.seacoastonline.com/articles/20130105-NEWS-301050317> (discussing effort to tighten rules regarding ADUs to, among other elements, require that primary structure “be in existence for two years before an accessory dwelling unit could be built” and reduce maximum permitted size of unit); Keila Szpaller, *Missoula Council to Revisit Backyard Homes Throughout City*, MISSOULIAN (May 18, 2013) http://www.ravallirepublic.com/news/state-and-regional/article_f544fe2d-4dcc-5009-b0f2-da6e277ae82a.html.

that 62% of respondents who did not themselves have a secondary unit reported at least one unit on their block.⁶⁰ Two-thirds of this group reported no negative impact from the ADU(s). Seattle received mainly positive responses to a neighborhood survey on ADUs, which led it to expand the program.⁶¹ Similar studies of existing ADU programs can help cities to craft a campaign aimed at disproving the fears neighbors may have of the effects of ADUs.

Concerns that may remain, such as worries over parking, are not insurmountable obstacles. They instead call for careful consideration of how jurisdictions might revise regulations to allow ADUs while addressing the legitimate worries of neighbors. For example, neighborhood worries over parking, which are discussed in more detail in Parts III and IV, might be addressed by adjusting parking requirements for an ADU based on the lot's proximity to public transportation or by allowing tandem parking to make it easier for a homeowner to situate spaces on a lot.

II. THE STATE OF MICRO-UNIT AND ADU DEVELOPMENT

Rather than provide a comprehensive overview of micro-unit and ADU development in the United States, this Part highlights a few representative efforts.⁶² Part III will look more closely at the status of both micro-units and ADUs in the five study cities.

A. *Cities with Micro-Unit Developments*

In addition to the five study cities, efforts to develop micro-units in San Francisco and Boston have received significant attention. In November 2012 the San Francisco Board of Supervisors reduced the minimum size for a

60. CHAPPEL, ET AL., *supra* note 5, at 7.

61. Seattle initially allowed backyard cottages only in southeast Seattle, south of Interstate 90 and east of Interstate 5, pursuant to City Ordinance 122190, passed in August 2006. CITY OF SEATTLE, DEP'T OF PLANNING & DEV., BACKYARD COTTAGES ANNUAL REPORT 5 (2011) [hereinafter BACKYARD COTTAGES]. The Department of Planning and Development (DPD) conducted an analysis of the backyard cottages in southeast Seattle, which included a neighborhood survey in November 2008, which yielded mainly positive reactions to the cottages. CITY OF SEATTLE, DEP'T OF PLANNING & DEV., BACKYARD COTTAGES: SOUTHEAST SEATTLE NEIGHBORHOOD SURVEY RESULTS 1 (2008), *available at* <http://www.mayorsinnovation.org/pdf/9backyardcottages.pdf>. This analysis led DPD to propose allowing cottages throughout the city's single-family zones. BACKYARD COTTAGES, *supra*, at 5.

62. Although rooming and boarding houses, as well as single-room occupancy hotels, were a significant part of the urban fabric early in the twentieth century, the modern micro-unit is a quite recent development. As such, there has been almost no scholarly or practical literature on the development of these units. One exception is a student note focused on micro-units in California. *See* Dawn Withers, Note, *Looking for a Home: How Micro-Housing Can Help California*, 6 GOLDEN GATE U. ENV'T'L L.J. 125 (2012) (discussing application of California's building code and zoning laws to dwellings smaller than 300 square feet).

residential unit to 220 square feet.⁶³ The legislation caps the initial number of micro-units at 375.⁶⁴ Boston is allowing micro-units within a specified area, the South Boston Innovation District, with a minimum size of 350 square feet.⁶⁵ These units, which are smaller than current regulations permit, are intended to enable young professionals to remain in the city.⁶⁶ Boston has also reduced minimum unit sizes for transit oriented developments within one mile of public transportation, allowing studios as small as 450 square feet in such locations.⁶⁷ Other cities where developers have built or are exploring micro-units include Berkeley,⁶⁸ Glendale,⁶⁹ and Santa Monica⁷⁰ in California; Portland, Oregon;⁷¹ Jersey City, New Jersey;⁷² Chicago, Illinois;⁷³ Vancouver, British Columbia;⁷⁴ and Toronto, Ontario.⁷⁵

Smaller cities are also welcoming micro-units. In Worcester, Massachusetts fifty-five “micro-lofts” were built in a complex on the city’s Main Street.⁷⁶ The fully-furnished units are just over 300 square feet (the existing minimum) and will rent for approximately \$975 a month.⁷⁷ In

63. Riley, *supra* note 34.

64. *Id.*

65. Ross, *supra* note 42.

66. Casey Ross, *Menino Pushes Micro-Units to Lure Young to Waterfront*, BOSTON GLOBE (Dec. 13, 2011), <http://www.bostonglobe.com/business/2011/12/13/menino-pushes-micro-units-lure-young-waterfront/Qye00OdXNMV3DI5NESi50K/story.html>.

67. See CITY OF BOSTON, *supra* note 35, at 46.

68. Emile Raguso, *Berkeley Neighbors Fight Micro-Unit Proposal on Shattuck*, BERKLEYSIDE (Aug. 20, 2013), <http://www.berkeleyside.com/2013/08/20/berkeley-neighbors-fight-micro-unit-proposal-on-shattuck> (discussing proposed building of seventy units between 307 and 344 square feet).

69. Fiur, *supra* note 22 (describing development of 400 square foot micro-units).

70. See Archibald, *supra* note 38 (describing contentious discussions regarding development of 375 and 420 square foot units in downtown Santa Monica).

71. Cassandra Profita, *Downsizing to a Micro-Loft: From 1,200 to 300 Square Feet*, OREGON PUBLIC BROADCASTING (May 8, 2013), <http://www.opb.org/news/blog/ecotrope/downsizing-to-a-micro-loft-from-1200-to-300-square-feet> (detailing development of 288 square foot micro-units).

72. Wright, *supra* note 4 (discussing planned development with eighty-seven micro-units of between 325 and 350 square feet).

73. See Conrad, *supra* note 43 (describing conversion of foreclosed SRO buildings into luxury 350 square foot rental units).

74. See Adele Weder, *Living in 226 Square Feet on Vancouver’s East Side*, GLOBE & MAIL (Feb. 9, 2012 12:43 PM), <http://www.theglobeandmail.com/life/home-and-garden/architecture/living-in-226-square-feet-on-vancouvers-east-side/article545555/> (discussing thirty unit “micro-lofts” development).

75. Marlene Leung, *Will ‘Micro-Condos’ Take Off in Canada?*, CTVNEWS.CA (Oct. 6, 2013), <http://www.ctvnews.ca/business/will-micro-condos-take-off-in-canada-1.1485624> (discussing 300 square foot condominiums).

76. Michelle Williams, *Worcester Joins Micro-Loft Housing Trend, Allowing Residents to Live Large in Small Spaces*, THE REPUBLICAN (Aug. 23, 2013), http://www.masslive.com/news/worcester/index.ssf/2013/08/worcester_to_offer_micro_lofts.html.

77. *Id.*

Providence, Rhode Island, the nation's first enclosed shopping mall, a National Historic Landmark built in 1828, is being converted into micro-apartments with small retail spaces on the ground floor.⁷⁸ Thirty-eight of the building's forty-eight apartments will be between 225 and 450 square feet.⁷⁹ Units, renting for \$550 a month, will be furnished and include full baths, but not stoves.

B. *States and Cities that Encourage ADU Development*

A few states have passed legislation requiring or encouraging municipalities to accommodate ADUs. Washington's Housing Policy Act of 1993 requires counties and cities with populations over 20,000 to encourage ADU development in single-family zones.⁸⁰ California's second-unit law was amended in 2003 to require local governments to consider applications for ADUs through a ministerial process.⁸¹ This process cannot involve discretionary review or a public hearing, and parking requirements may not exceed one space per unit or bedroom.⁸² Vermont prohibits municipalities from excluding ADUs "located within or appurtenant to an owner-occupied single family dwelling."⁸³

Santa Cruz, California has made a substantial and well-documented effort to encourage ADUs. There, ADUs can be developed on lots of at least 5,000 square feet in designated residential zones as long as the property owner inhabits either the main house or the ADU.⁸⁴ The city waives development fees if the ADU is made available to a low-income household.⁸⁵ As of 2008, the city approved an average of forty to fifty ADU permits each year.⁸⁶ An ADU Development Program provides technical assistance to homeowners, a wage subsidy program for builders who use graduates of a training program, and a loan program.⁸⁷ The city embraced ADUs as a means to increase the supply of

78. Lamar Anderson, *The New Mini-Mall: Tiny Apartments to Open in Nation's Oldest Shopping Center*, ARCHITIZER (Feb. 20, 2013), http://www.architizer.com/en_us/blog/dyn/76759/micro-apartments-arcade-mall-providence.

79. *Id.*

80. WASH. REV. CODE ANN. § 43.63A.215 (West 2013).

81. CAL. GOV'T CODE § 65852.2 (West 2013). *See generally* Brinig & Garnett, *supra* note 7.

82. CAL. GOV'T CODE § 65852.2 (West 2013); Memorandum from Cathy E. Creswell, Deputy Dir., Div. of Hous. Policy Dev., Cal. Dep't of Hous. & Cmty. Dev. to Planning Directors and Interested Parties 4-5 (Aug. 6, 2003), *available at* www.hcd.ca.gov/hpd/sb2_memo050708.pdf ("In order for an application to be considered ministerially, the process must apply predictable, objective, fixed, quantifiable and clear standards. These standards must be administratively applied to the application and not subject to discretionary decision-making by a legislative body . . .").

83. VT. STAT. ANN. tit. 24, § 4412 (West 2013); *see also* Brinig & Garnett, *supra* note 7, at 14-15 and accompanying text (discussing efforts in other states).

84. HUD REPORT, *supra* note 7, at B-1.

85. *Id.* at 4.

86. *Id.*

87. *Accessory Dwelling Unit Development Program*, *supra* note 44.

affordable housing, supplement homeowner's mortgage payments, discourage the development of illegal units, and promote sustainable infill development.⁸⁸

ADU development efforts are not confined to urban areas. On Cape Cod, the Town of Wellfleet introduced an accessory dwelling bylaw to encourage incremental infill.⁸⁹ The law allows construction of an ADU on an existing single-family property, so long as adequate septic capacity exists. Homeowners must commit to renting the unit at an affordable rate and are given tax relief to encourage participation.⁹⁰

III. REGULATORY CHALLENGES FOR MICRO-UNITS AND ADUS

This part expands upon prior research by analyzing regulations affecting micro-units and ADUs in a geographically diverse set of cities: Austin, Texas; Denver, Colorado; New York, New York; Seattle, Washington; and Washington, D.C. These cities range in density from New York, with over 27,000 people and 8,000 housing units per square mile, to Austin, with approximately 2,600 people and 1,200 housing units per square mile.⁹¹ Each is marked by relatively high rent burdens, as of the 2011 American Community Survey between 48% and 55% of renters in these cities spent more than 30% of their income on rent.⁹² The Subparts that follow discuss current micro-unit and ADU development in each city and then detail how the city regulates these housing types. A concluding Subpart highlights more general financial challenges for these unit types.

A. Austin

Although no market-rate micro-units have been built in Austin,⁹³ a new downtown development by Foundation Communities, a non-profit affordable and supportive housing developer, will introduce micro-units aimed at lower-wage workers. The project includes 135 efficiency apartments renting for

88. *Id.*

89. See HUD REPORT, *supra* note 7, at 5-6.

90. See *Site / Bylaw, ADD-ON '13*, <http://addon13.blogspot.com/p/downloadable-material-summary-of.html> (last visited Apr. 13, 2014). The Town also co-sponsored a design competition. *Id.*

91. U.S. CENSUS, POPULATION, HOUSING UNITS, AREA, AND DENSITY: 2010—UNITED STATES—PLACES BY STATE (2010).

92. Furman Center calculation based on U.S. CENSUS, SELECTED HOUSING CHARACTERISTICS, 2011 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES, TABLE DP04 (2011).

93. As this Article was going to print, the City of Austin was considering an ordinance that would change certain regulations, including parking requirements, for developments of smaller units in proximity to transit. Christina Rudofsky, *As Austin Develops, Will Apartments Grow Smaller?* AUSTIN POST, <http://www.austinpost.org/article/austin-develops-will-apartments-grow-smaller-0> last visited May 10, 2014).

between \$400 and \$650 monthly, utilities included,⁹⁴ to single adults earning less than \$27,000 a year, roughly half of the area's median income.⁹⁵ In recent years, homeowners throughout Austin have built ADUs on single-family lots. Austin's Alley Flat Initiative recently proposed a creative model that involves placing pre-fabricated ADUs on the rear portions of single-family lots in East Austin.⁹⁶ The land beneath the ADU would be ground leased from the property owner, generating income for struggling homeowners facing rising property taxes while increasing the housing supply in established neighborhoods.

The minimum unit size in Austin is determined by the International Building Code, which mandates 220 square feet for an efficiency unit with two occupants and an additional 100 square feet for each additional occupant.⁹⁷ Austin and New York City are the only cities among the five studied that also limit the number of units permitted on a site.⁹⁸ Austin limits this number based upon the site area. Austin's densest residential district, Multifamily Residence High Density (MF-5), requires a minimum site area of 800 square feet for an efficiency unit and 1,000 square feet for a one-bedroom unit.⁹⁹ These regulations may render it practically impossible to build units at the minimum size because a developer cannot develop enough such units for the project to be profitable. Although a developer might, in light of these regulations, choose to incorporate more common space into a building, it is more likely that the developer would simply build larger units that allow it to capture higher rents. Austin requires one parking space per residential unit, but this requirement can be reduced in denser districts to a requirement of spaces for 60% of units.¹⁰⁰ Parking requirements can significantly increase per-unit construction costs and threaten the viability of a micro-unit project.¹⁰¹ As will be noted in subsequent Subparts, other cities have eliminated parking requirements in certain locations.

94. *New Development—Capital Studios*, FOUNDATION COMMUNITIES (June 10, 2013), <http://www.foundcom.org/news-and-events/capitalstudios>.

95. The project will be marketed to downtown workers who are priced out of existing housing. As of 2012, the average downtown rent in Austin was approximately \$2,031 a month. Sarah Coppola, *First Low-Income Housing Project in Decades Planned for Downtown*, AUSTIN AMERICAN-STATESMAN (Feb. 1, 2012), <http://www.statesman.com/news/news/local/first-low-income-housing-project-in-decades-plan-1/nRj98>.

96. The Alley Flat Initiative advocates the creation of sustainable and affordable housing, in the form of small, detached residential units that can be accessed via the city's extensive network of alleyways. *Vision*, ALLEY FLAT INITIATIVE (Apr. 16, 2013), <http://www.thealleyflatinitiative.org/vision>.

97. *See* INT'L BLDG. CODE § 1208.4 (2009).

98. In addition, although Washington, D.C. does not generally limit the number of units per lot, there is an exception for existing structures in R-4 districts that are converted to apartment houses. Such conversions must have a minimum of 900 square feet of lot area for each unit. D.C. MUN. REGS. tit. 11, § 401 (2010).

99. AUSTIN, TEX., CITY CODE § 25-2-563 (2013).

100. *See Id.* § 25-6-472(A) (2013).

101. Mark Hinshaw & Brianna Holan, *Rooming House Redux: There's a Market for Small, Simple Housing for Young Adults*, 77 PLANNING 16, 18 (2011) (describing parking requirements as "chief culprit" in zoning ordinances that stifled development of inexpensive

Two types of ADUs exist in Austin. The city allows “accessory apartments,” but these units must be contained within a principal structure and occupied by at least one person who is over sixty years old or disabled.¹⁰² Austin also permits “secondary apartment special uses,” which are not subject to this occupancy restriction, but must be “contained in a structure other than the principle structure.”¹⁰³ The analysis that follows focuses on this “secondary apartment special use.”

The primary restrictions on ADU development in most cities are regulations that govern the maximum permitted size of an ADU, whether a lot is eligible to add an ADU, and whether the property owner must live on the premises. As with micro-units, parking requirements can also impede development. ADUs in Austin may not exceed 850 square feet, with no more than 550 square feet on a second floor.¹⁰⁴ Austin has the most restrictive minimum lot size of the cities studied, with a baseline of allowing ADUs only on lots larger than 7,000 square feet.¹⁰⁵ However, individual neighborhood planning associations may adopt an infill option¹⁰⁶ that reduces this minimum lot size to 5,750 square feet.¹⁰⁷ As of October 2012, out of fifty approved neighborhood plans, the secondary apartment infill option had been adopted neighborhood-wide in twelve plans and in parts of the neighborhood planning area in seven plans.¹⁰⁸ Even if a lot satisfies these minimums, it still may not be able to add an ADU if doing so would result in the structures on the lot exceeding the maximum permitted lot coverage.¹⁰⁹

housing); *see also* Matthew Yglesias, *Out, Damned Spot*, SLATE (July 9, 2013), http://www.slate.com/articles/business/moneybox/2013/07/free_parking_isn_t_free_parking_mandates_hurt_america_s_cities.html (describing parking requirements as a “scourge” that “tax the poor to subsidize the rich while damaging the environment and the broader economy”).

102. AUSTIN, TEX., CITY CODE § 25-2-901 (2013).

103. *Id.* § 25-2-774(C)(1).

104. *Id.* § 25-2-774(C)(7).

105. *Id.* § 25-2-774(B).

106. CTR. FOR SUSTAINABLE DEVELOPMENT, AT THE ALLEY FLAT INITIATIVE, TOPICS IN SUSTAINABLE DEVELOPMENT 2008 REPORT 22 (Steven A. Moore & Sergio Palleroni eds., 2008), *available at* <http://soa.utexas.edu/files/csd/AFI.pdf>; *see also* CITY OF AUSTIN, SPECIAL INFILL OPTIONS AND DESIGN TOOLS AVAILABLE THROUGH THE NEIGHBORHOOD PLAN COMBINING DISTRICT (NPCD) (2012), *available at* ftp://ftp.ci.austin.tx.us/npzd/Austingo/infill_tools.pdf (discussing infill special uses and approval process). For a map of the neighborhoods that have adopted the Secondary Apartment Infill Tool, as of January 18, 2013, *see* PLANNING & DEVELOPMENT REVIEW DEP’T, SMALL LOT AMNESTY INFILL TOOL CHOSEN IN ADOPTED NEIGHBORHOOD PLANS (Jan. 18, 2013), *available at* ftp://ftp.ci.austin.tx.us/npzd/Austingo/neighborhood_orsubdistrict_wide_infill.pdf.

107. AUSTIN, TEX., CITY CODE §§ 25-2-1531 – 25-2-1533 (2013). *See generally* CITY OF AUSTIN, SPECIAL INFILL OPTIONS AND DESIGN TOOLS, *supra* note 106, at 8-9 (discussing secondary apartment special use).

108. CITY OF AUSTIN, SPECIAL INFILL OPTIONS AND DESIGN TOOLS, *supra* note 106, at 18-20.

109. Denver’s lot coverage regulations differ by district. DENVER, COLO. ZONING CODE §§ 4.3.4.5(A), 5.3.4.5(A), 6.3.4.5(A) (2010) (providing regulations for Urban Edge

In Austin structures may not cover more than 40% of a lot and the combination of structures and any other impervious surfaces may not exceed 45%.¹¹⁰ Any parking space, regardless of its surface, is considered impervious. Austin requires two spaces for a detached ADU,¹¹¹ in addition to the two spaces required for a primary dwelling. According to local experts, the impervious surface cap and parking requirements combine to severely restrict potential ADU development. In addition, Austin requires fifteen feet between the primary dwelling and a detached ADU.¹¹² Therefore, even if the impervious surface cap is not an issue, a homeowner may find it impossible to comply with the spacing requirement to situate an ADU on a lot. Permitting less separation between dwellings would allow more homeowners to add an ADU. Seattle requires only five feet¹¹³ and Denver does not mandate a minimum separation.¹¹⁴

Austin 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.¹¹⁵ Onerous building review and permitting procedures can discourage homeowners seeking to develop an ADU. High permit costs may prevent a homeowner from adding a unit or legalizing an existing one.

B. Denver

Although there are no micro-unit developments in Denver, the Denver Architectural League held a micro-unit design competition in early 2013 for an eight-unit complex.¹¹⁶ The new form-based zoning code Denver adopted in

Neighborhood Context, Urban Neighborhood Context, and General Urban Neighborhood Context respectively). In Seattle, the maximum combined lot coverage of principal and accessory structures is 1,000 square feet plus 15% of the lot area if a lot is less than 5,000 square feet, or 35% of the lot for lots larger than 5,000 square feet. SEATTLE, WASH. MUN. CODE § 23.44.010(D). Lot coverage maximums do not exist in Washington, D.C.

110. AUSTIN, TEX., CITY CODE § 25-2-774(D)-(E) (2013). Austin's Green Alley Initiative allows neighborhoods to adopt an ordinance that would permit up to 50% impermeable cover if an ADU is affordable. *The Green Alley Initiative*, CITY OF AUSTIN, TEX., OFFICE OF SUSTAINABILITY (June 12, 2013), <http://austintexas.gov/department/green-alley-initiative>.

111. AUSTIN, TEX., CITY CODE § 25-6-472(A), App. A. An internal "accessory apartment," which must be occupied by a disabled individual or an individual over sixty years old, must have 1 space if it is an efficiency unit and 1.5 spaces if it is a single-bedroom unit. *Id.*

112. AUSTIN, TEX., CITY CODE § 25-2-774(C)(2) (2013).

113. SEATTLE, WASH., MUN. CODE § 23.44.041(B)(2), Table B (I) (2012).

114. DENVER, COLO., ZONING CODE §§ 4.3.4.5(A), 5.3.4.5(A), 6.3.4.5(A) (2010). However, Denver encourages a separation of fifteen feet, in exchange for which the city reduces the amount of an ADU's area that is counted towards lot coverage limits. *Id.*

115. AUSTIN, TEX., CITY CODE § 25-5-2 (B)(1) (2013).

116. *Micro-Housing Ideas Competition*, AM. INST. OF ARCHITECTS COLO., (May 9, 2013), <http://www.aiacolorado.org/EventDetail.aspx?EventId=767>; see also *Announcing: The Micro House Ideas Competition*, DENVER ARCHITECTURAL LEAGUE,

June 2010¹¹⁷ allows detached ADUs.¹¹⁸ A few Denver architects and developers specialize in ADU design and development.¹¹⁹ Thirty-eight building permits for new detached ADUs were issued between 2010 and 2013.¹²⁰ In addition, homeowners were given the option to add a detached ADU at the time of constructing a new home in the Stapleton neighborhood of Denver, a redevelopment of the former city airport. The developer estimates that 100-200 ADUs were built within a neighborhood of approximately 5,000 homes.¹²¹ However, demand for the units disappeared when the city's water department began collecting additional development fees for ADUs.¹²²

Denver also follows the International Building Code's definition of minimum unit size, allowing efficiency units as small as 220 square feet.¹²³ Although it requires parking spaces in most areas, Denver designates certain districts without any minimum required parking.¹²⁴ A recent study found that the city's efforts to encourage transit-oriented development have successfully resulted in increased density near transit stations and are "having a recognizable impact on Denver's land use and urban form."¹²⁵ These transit-rich areas may be inviting locations for future micro-unit development in

<https://sites.google.com/site/microhousingcompetition> (last visited May 2, 2013) (providing competition details).

117. See *Denver Zoning Code*, CITY OF DENVER, CMty. PLANNING & DEV., <http://www.denvergov.org/cpd/CommunityPlanningandDevelopment/Zoning/DenverZoningCode/tabid/432507/Default.aspx> (last visited Apr. 13, 2014).

118. See *Project Guide for Detached Dwelling Units*, CITY OF DENVER, DEV. SERVS., <http://www.denvergov.org/developmentservices/DevelopmentServices/HomeProjects/BuildingExpandingaHome/AccessoryDwellingUnits/tabid/441525/Default.aspx> (last visited Apr. 13, 2014) (providing guidance for those interested in developing such units).

119. See *About Us*, SIDEKICK HOMES BY KEPHART LIVING, <http://www.kephartliving.com/About.aspx> (last visited Apr. 13, 2014) ("We are a design and consulting firm dedicated to the support and resurgence of the Accessory Dwelling Unit (ADU) as a key component of sustainable communities. We design green, affordable and beautiful backyard cottages that blend harmoniously with existing architectural elements and neighborhood character.").

120. Author's calculation based upon annual reports obtained from Denver Community Planning and Development Department. Denver Cmty. Planning & Dev. Dep't, Total Year Valuation Report, 2010-13 (on file with author). The number of permits issued increased steadily each year, from 2 in 2010, to 6 in 2011, to 9 in 2012, and rising to 21 in 2013. *Id.*

121. E-mail from Heidi Majerik, Dir. of Dev., Forest City Stapleton, to author (May. 5, 2014) (on file with author). The ADUs cost approximately \$60,000 as an added option at construction.

122. *Id.*

123. See INT'L BLDG. CODE § 1208 (2009).

124. DENVER, COLO., ZONING CODE § 8.3.1.5(B)(1) (2010) ("There shall be no minimum off-street parking requirement for any use in the D-C or D-TD or D-CV Zone Districts."); *id.* § 8.9.1.1.

125. Keith A. Ratner & Andrew R. Goetz, *The Reshaping of Land Use and Urban Form in Denver Through Transit-Oriented Development*, 30 CITIES 31, 45 (2013) ("Early evidence indicates that the scope of transit-oriented development in Denver is considerable, resulting in nearly 18,000 residential dwelling units, 5.3 million square feet of retail space, 5.4 million square feet of office space, and 6.2 million square feet of medical space within one-half mile of existing or planned transit stations from 1997 to 2010.").

Denver, given that over 40% of Denver households are comprised of only one individual.¹²⁶

Denver allows internal or attached ADUs, as well as detached ADUs.¹²⁷ However, the city's form-based code imposes different restrictions on detached ADUs depending on the zoning district in which they are located.¹²⁸ Although in some parts of Denver ADUs can be developed on lots as small as 3,000 square feet, in other districts lots must be at least 12,000 square feet.¹²⁹ Denver limits the maximum ADU size based on the lot's area: on lots smaller than 6,000 square feet, ADUs may not exceed 650 square feet; on lots between 6,000 and 7,000 square feet, 864 square feet; and on lots greater than 7,000 square feet, 1,000 square feet.¹³⁰

Denver's lot coverage regulations differ by context and zoning district.¹³¹ Although the city does not require a minimum separation between the ADU and primary residence, it encourages a separation of fifteen feet, in exchange for which the city reduces the amount of an ADU's area that is counted towards lot coverage limits.¹³² The city exempts the lesser of 50% of the area occupied by the ADU or 500 square feet from the total maximum building coverage on a lot, as long as the ADU is fifteen feet from the primary dwelling and at least 80% of the ground floor of the ADU is used for parking.¹³³ ADUs also must be located on the rear 35% of the lot.¹³⁴ Denver does not impose any additional parking requirements on lots that add an ADU. Although it requires zoning permit review for homeowners seeking to add an ADU, the process does not include notice to neighbors or a public hearing.¹³⁵

126. See U.S. CENSUS BUREAU, *supra* note 14.

127. DENVER, COLO., ZONING CODE § 11.12.7 (2010) (defining attached ADU as “[a]n accessory dwelling unit that is connected to or an integrated part of the same structure housing the primary single unit dwelling (for example, an attached accessory dwelling unit may be located in the basement level of a structure also housing a single-unit dwelling use).”).

128. See DENVER, COLO., ZONING CODE § 11.8.2.1(B)(3) (2010) (“ADUs established in a detached accessory structure shall comply with the Detached ADU Building form standards in the applicable Zone District.”); *id.* § 12.10.4 (2010) (regulating detached ADUs on carriage lots).

129. See *Summary of Zone Districts*, CITY OF DENVER, <http://www.denvergov.org/Portals/646/documents/Zoning/DZC/Summary%20of%20Zone%20Districts.pdf> (last visited Apr. 13, 2014).

130. DENVER, COLO., ZONING CODE § 11.8.2.2(4) (2010).

131. The Denver Zoning Code divides the city into six neighborhood contexts and a number of special contexts. These contexts are further divided into zone districts. See *Summary of Zone Districts*, *supra* note 129.

132. See DENVER, COLO., ZONING CODE § 4.3.4.5(A), 5.3.4.5(A), 6.3.4.5(A) (2010) (listing provisions for Urban Edge Neighborhood Context, Urban Neighborhood Context, and General Urban Neighborhood Context, respectively).

133. *Id.*

134. *Id.*

135. See, e.g., DENVER, COLO., ZONING CODE §§ 3.4.3.3-3.4.4 (2010) (indicating uses subject to Zoning Permit Review); *id.* § 12.4.1 (outlining Zoning Permit Review process).

The city requires owner occupancy of either the ADU or the primary dwelling.¹³⁶ Supporters of owner-occupancy, which is also required in Seattle¹³⁷ and Washington, D.C.,¹³⁸ assert that the requirement promotes community stability and property maintenance. It may also substitute for more detailed ADU regulations. Owner-occupancy provides an on-site manager that, it is thought, serves as a check on ADU design, construction, and operation rather than imposing potentially onerous regulations.¹³⁹ In addition, Denver requires that ADUs in single-unit zoned districts have a minimum of 200 square feet of floor area per occupant of the ADU.¹⁴⁰ On one hand, this requirement may prove unproblematic for ADU development, as ADUs are generally built in lower-density neighborhoods where the market typically demands larger units. However, this requirement may render smaller ADUs unavailable for families with children.

C. *New York*

In 2012, New York City's "adAPT NYC" program requested proposals to design, construct, and operate a micro-unit building on city-owned land.¹⁴¹ The city's ownership of the site enabled it to override certain regulations—including minimum unit size and maximum density—to allow the development, which was intended to test the market and reveal regulatory

136. DENVER, COLO. ZONING CODE § 11.8.2.2(3) (2010) ("The owner of the zone lot on which an Accessory Dwelling Unit use is maintained shall occupy either the primary dwelling unit or the ADU as the owner's legal and permanent residence.").

137. SEATTLE, WASH., MUN. CODE § 23.44.041(C)(1) (2012) ("An owner with at least a 50 percent interest in the property must occupy either the principal dwelling unit or the accessory dwelling unit for six or more months of each calendar year as the owner's permanent residence. The Director may waive this requirement for up to three years if a letter is submitted that provides evidence to the Director showing good cause why the requirement for owner occupancy should be waived. Good cause may include job dislocation, sabbatical leave, education, or illness."). Seattle also states that the owner if "unable or unwilling" to fulfill these requirements must "remove those features of the accessory dwelling unit that make it a dwelling unit." *Id.* §23.44.041(C)(2).

138. D.C. MUN. REGS. tit. 11, § 202.10(f) (2010) ("Either the principal dwelling or accessory apartment unit must be owner-occupied.").

139. The APA's 2000 report on ADUs discussed a program in Daly City, California that included an owner-occupancy requirement. It noted that local officials believed this requirement played a critical role in preventing nuisances as owners living on the premises would not tolerate a nuisance that a tenant might otherwise create. COBB & DVORAK, *supra* note 1, at 10.

140. Denver requires, in all single-unit zoned districts, that "[i]n order to avoid overcrowding of the Accessory Dwelling Unit, the Accessory Dwelling Unit use shall contain a minimum of 200 square feet of gross floor area per occupant." DENVER, COLO., ZONING CODE § 11.8.2.2(5) (2010).

141. Press Release, N.Y.C. Dep't of Hous. Preservation & Dev., Mayor Bloomberg Announces New Competition to Develop Innovate Apartment Model for Small Households (July 9, 2012), *available at* http://www.nyc.gov/portal/site/nycgov/menuitem.b270a4a1d51bb3017bce0ed101c789a0/index.jsp?doc_name=/html/om/html/recent_events.html (follow "2012 Events" hyperlink, then "July 2012" hyperlink).

changes that might be necessary to allow similar developments on privately-owned land.¹⁴² The city received thirty-three applications from developers, the largest response to a request for proposals ever received by the Department of Housing Preservation & Development.¹⁴³ Interest in the program led city officials to begin looking for other city-owned sites appropriate for potential micro-unit developments and to announce plans for future RFPs.¹⁴⁴

The winning proposal will have fifty-five pre-built modular units between 250 and 370 square feet each.¹⁴⁵ Despite being the densest city studied, New York City is an outlier among the five cities and requires units to be at least 400 square feet.¹⁴⁶ The winning design includes substantial common space.¹⁴⁷ The building will exceed the maximum of thirty-eight units currently allowed on the lot as well as existing restrictions on lot coverage and required setbacks, but otherwise complies with existing regulations.¹⁴⁸ In New York the number of dwelling units allowed on a lot is limited to the maximum residential floor area permitted on the lot divided by a factor that differs based on the zoning district.¹⁴⁹ In the densest districts, R6 through R10, this factor ranges from 680 to 790, creating an additional barrier to the construction of buildings comprised solely of smaller units. New York City does, however, reduce potential development costs by waiving parking requirements in its Manhattan Core districts¹⁵⁰—which include the location of the adAPT NYC development—and in most areas of Long Island City, Queens.¹⁵¹

New York City currently does not permit any form of ADU. There is some interest in ADUs in the city, spurred by studies indicating a significant number of illegal units in basements or subdivided units. A recent study estimated that 114,000 new illegal units were added citywide between 1990 and 2000

142. *Id.*

143. Press Release, N.Y.C. Dep't of Hous. Preservation & Dev., Mayor Bloomberg Announces Winner of adAPT NYC Competition to Develop Innovative Micro-Unit Apartment Housing Model (Jan. 22, 2013) [hereinafter Mayor Bloomberg Announces], available at <http://www.nyc.gov/html/hpd/html/pr2013/pr-01-22-13.shtml>.

144. Stephen Jacob Smith, *More Micro-Apartments! City Seeking Developers for New Sites*, N.Y. OBSERVER (Apr. 4, 2013), <http://observer.com/2013/04/new-micro-apartment-rfps-announced-at-chpc-luncheon>.

145. Mayor Bloomberg Announces, *supra* note 143.

146. N.Y.C., N.Y., ZONING RESOLUTION § 28 (2011).

147. In New York City, indoor or outdoor recreation space equal to 2.8% of the total floor area is required in the densest districts. N.Y.C., N.Y., ZONING RESOLUTION § 28-31 (2011). This requirement applies to R8, R9 and R10 districts. In R6 and R7 districts the recreation area must equal 3.3% of total floor area. *Id.*

148. *See id.*

149. N.Y.C., N.Y., ZONING RESOLUTION § 23.22 (2011).

150. The Manhattan Core contains most residential development south of 110th Street on the West Side of Manhattan and south of 96th Street on the East Side of Manhattan. *See* FURMAN CTR. FOR REAL ESTATE & URBAN POLICY, SEARCHING FOR THE RIGHT SPOT: MINIMUM PARKING REQUIREMENTS AND HOUSING AFFORDABILITY IN NEW YORK CITY 4 (2012) (citing N.Y.C., N.Y., ZONING RESOLUTION § 13.12 (2011)).

151. *Id.*

alone.¹⁵² New York City's Mayor and City Council President announced an initiative in 2011 to address the safety concerns posed by some illegal units.¹⁵³ Manhattan Borough President Scott Stringer endorsed the efforts of low-income housing groups to institute a process for legalizing existing accessory dwelling units that do not comply with building, housing, and zoning codes.¹⁵⁴ Among other recommendations, the Borough President's Office suggested that ADUs be added as a new category within zoning, building, and housing codes and that a process be put in place to allow a waiver for certain non-compliant aspects of such housing, if the Department of Buildings inspects and finds the unit to be safe and habitable.¹⁵⁵ Thus far, however, the City Council has not considered the proposal.

D. *Seattle*

Among these five cities, Seattle has seen the most significant development of both micro-units and ADUs. Micro-unit developments have sparked controversy in the city.¹⁵⁶ Until 2013 creative developers exploited what critics term a "loophole" in city regulations. Housing in Seattle with nine or more individuals in a unit is classified as "congregate housing" and subject to a public review process.¹⁵⁷ To stay under this number, developers built buildings with "suites" containing eight separately-leased apartments for single individuals. The apartments had a private bathroom and kitchenette, but shared

152. PRATT CENTER, *supra* note 2, at 1. *See generally* CHHAYA CMTY. DEV. CORP. & CITIZENS HOUS. & PLANNING COUNCIL, *ILLEGAL DWELLING UNITS: A POTENTIAL SOURCE OF AFFORDABLE HOUSING IN NEW YORK* (2008), available at http://www.chhayacdc.org/pdf/Chhaya_reportHPD.pdf (analyzing prevalence of illegal units in Jackson Heights and in Briarwood/Jamaica sections of Queens and assessing potential for legalizing existing units). For an earlier news story on illegal subdivisions in Queens, see Frank Bruni & Deborah Sontag, *Behind a Suburban Façade in Queens, A Teeming, Angry Urban Arithmetic*, N.Y. TIMES (Oct. 8, 1996), <http://www.nytimes.com/1996/10/08/nyregion/behind-a-suburban-facade-in-queens-a-teeming-angry-urban-arithmetic.html?pagewanted=all&src=pm>.

153. Press Release, City of N.Y., Mayor Bloomberg and Speaker Quinn Announce New Approach to Target Most Dangerous Illegally Converted Apartments (June 7, 2011), available at http://www.nyc.gov/portal/site/nycgov/menuitem.b270a4a1d51bb3017bce0ed101c789a0/index.jsp?doc_name=/html/om/html/recent_events.html (follow "2011 Events" hyperlink, then follow "June 2011" hyperlink).

154. Nick Moroni, *Illegal Solution for More Housing?*, CRAIN'S N.Y. BUS. (Feb. 17, 2013), http://www.crainsnewyork.com/article/20130217/REAL_ESTATE/302179985; *see also* SCOTT M. STRINGER & ANDREW L. KOLLACH, OFFICE OF THE MANHATTAN BOROUGH PRESIDENT, *START-UP CITY: GROWING NEW YORK CITY'S ENTREPRENEURIAL ECOSYSTEM FOR ALL 26* (2012), available at <http://www.mbp.org/uploads/StartupCity.pdf> (noting reports on prevalence of illegal subdivided units and arguing in favor of a new process for legalizing these apartments, along the lines of efforts in Santa Cruz, California).

155. STRINGER & KOLLACH, *supra* note 154, at 26-27.

156. *See* Maria Dolan, *Are Apodments Ruining Seattle Neighborhoods?*, SEATTLE MAG. (Nov. 2012), <http://www.seattlemag.com/article/are-apodments-ruining-seattle-neighborhoods> (discussing controversy surrounding developments of Seattle "Apodments").

157. *See* Holden, *supra* note 39 (discussing code regulations governing congregate housing).

a full kitchen.¹⁵⁸ Because each “suite” was considered one “unit,” developers were able to avoid design and environmental reviews by building seven or fewer “suites.” In Seattle’s Lowrise Districts, where a number of these buildings have been developed, mandatory review is triggered if more than eight dwelling units are developed.¹⁵⁹ At the same time, developers counted the units differently, using each separate sleeping area as a unit, when applying for tax exemptions.¹⁶⁰ The Office of Housing announced in March 2013 that it would no longer allow developers to use different unit counts to serve different purposes, a change that should close this “loophole.”¹⁶¹

One form of micro-units, the aPodments developed by Calhoun Properties and Kauri Investments,¹⁶² can be rented on leases as short as three months, for around \$595 a month, including utilities, internet, and furnishings.¹⁶³ The units have been close to fully leased on the day a new development opens.¹⁶⁴ Nearly fifty buildings of micro-units have been built over the past few years, some containing as many as sixty-four units.¹⁶⁵ Some champion the micro-units as a form of “smart growth,” but others argue that they constitute an “upzon[ing] without any process” and fail to adequately spread increased density citywide.¹⁶⁶

Seattle’s comprehensive plan expressly endorses the development of attached and detached ADUs “as alternative means of accommodating residential growth and providing affordable housing options.”¹⁶⁷ The city has allowed internal ADUs since 1994 and detached units since 2009.¹⁶⁸ It receives

158. Hinshaw & Holan, *supra* note 101, at 18-19. Regulations in Seattle use kitchens, and not sleeping rooms, for the unit count. Lynn Thompson, *Critics of Micro-Apartments Calling for a Moratorium*, SEATTLE TIMES (Apr. 23, 2013), http://seattletimes.com/html/localnews/2020845443_apodmentscitycouncilxml.html.

159. See CITY OF SEATTLE DEP’T OF PLANNING & DEV., DPD TIP NO. 238, DESIGN REVIEW: GENERAL INFORMATION, APPLICATION INSTRUCTIONS, AND SUBMITTAL REQUIREMENTS 2 (2011), available at <http://www.seattle.gov/DPD/Publications/CAM/cam238.pdf>; CITY OF SEATTLE DEP’T OF PLANNING & DEV., DPD TIP NO. 208, WHEN ENVIRONMENTAL REVIEW IS REQUIRED IN SEATTLE 1 (2012), available at <http://www.seattle.gov/DPD/Publications/CAM/cam208.pdf>.

160. Thompson, *supra* note 158.

161. *Id.*

162. See *Apodment*, CALHOUN PROPERTIES, <http://apodment.com> (last visited Apr. 13, 2014).

163. Thompson, *supra* note 38.

164. Hinshaw & Holan, *supra* note 101, at 19 (noting waiting lists for Kauri Investment’s next three projects).

165. Thompson, *supra* note 158.

166. Dolan, *supra* note 156.

167. CITY OF SEATTLE, DEP’T OF PLANNING & DEV., DIRECTOR’S REPORT AND RECOMMENDATION: MICRO-HOUSING AND CONGREGATE RESIDENCES 1 (Oct. 1, 2013), available at http://seattle.gov/dpd/cs/groups/pan/@pan/documents/web_informational/s047682.pdf.

168. Seattle initially allowed backyard cottages only in southeast Seattle, south of Interstate 90 and east of Interstate 5, pursuant to City Ordinance 122190, passed in August 2006. BACKYARD COTTAGES, *supra* note 61, at 5.

approximately fifty ADU applications each year.¹⁶⁹ A 2011 report found that these units were “pretty evenly spread through-out the city,” had minimal aesthetic effects on their surroundings, and generated few complaints.¹⁷⁰ The units developed in 2010 averaged 540 square feet, and ranged in size from 224 to 800 square feet.¹⁷¹

Seattle’s regulations governing minimum unit size are more complicated than those in the other four cities. Seattle’s building code specifies a minimum unit size of 220 square feet,¹⁷² but a 2004 “Director’s Rule” from the Department of Planning and Development allows “small efficiency dwelling units” smaller than 220 square feet “if other amenities are also provided.”¹⁷³ Under the Rule an efficiency unit “shall have a living room of at least 150 new square feet of floor area,” which shall not include the floor area “occupied by bathrooms, cabinets, appliances, structural features, and any closets.”¹⁷⁴

Although the city requires parking in most areas, Seattle has designated districts without any minimum required parking.¹⁷⁵ These districts are the site of current micro-unit development. Seattle also waives parking requirements in certain districts if a development is within 1,320 feet of a street with frequent transit service.¹⁷⁶ This waiver process can provide for more flexibility and potentially more predictability than requiring a rezoning to reduce or eliminate parking requirements.

Seattle permits internal or attached ADUs with some limitations¹⁷⁷ and allows detached ADUs.¹⁷⁸ Seattle has the least restrictive requirements with regards to which lots are allowed to add an ADU: it imposes no minimum for attached and internal ADUs and allows detached ADUs on lots of 4,000 square feet or larger.¹⁷⁹ Permissible ADU size differs across the city. In Seattle’s single-family districts, ADUs cannot exceed 1,000 square feet, if attached, or

169. *Id.* (noting that there were “57 cottages permitted during the review period”).

170. *Id.* at 6.

171. *Id.* at 7 (providing summary information for fifty-five cottages permitted between December 4, 2009 and January 3, 2011).

172. SEATTLE, WASH., BLDG. CODE §§ 1208.3, 1208.4 (2009).

173. CITY OF SEATTLE DEP’T OF PLANNING AND DEV., DIRECTOR’S RULE 6-2004 (Nov. 22, 2004), available at <http://www.seattle.gov/dpd/codes/dr/DR2004-6.pdf>.

174. *Id.* The code identifies the required components of a dwelling unit’s bathroom and kitchen, but not their minimum size. SEATTLE, WASH., MUN. CODE § 22.206.050 (2012). However, these regulations do not dictate the size of the separately leased units within Seattle’s aPodments as the “dwelling unit,” for purposes of code compliance is the suite containing eight separately leased individual units. Hence, for these units, the minimum size would be seventy square feet. *Id.* § 22.206.020(C) (“Every room used for sleeping purposes, including an SRO unit, shall have not less than seventy (70) square feet of floor area.”).

175. SEATTLE, WASH., MUN. CODE § 23.54.015 (tbl.B) (2012). In general Seattle requires one off-street space per unit in multi-family residential districts. *Id.*

176. *Id.*

177. *Id.* § 23.44.041 (limiting attached ADUs to 1,000 square feet).

178. *Id.* § 23.44.041(B)(1) (outlining development standards for detached ADUs).

179. *Id.* § 23.44.041 tbl.B(a)-(c).

800 square feet, if detached.¹⁸⁰ However, in Seattle’s multi-family, low-rise districts, ADUs are capped at 650 square feet as well as a maximum 40% of total residential gross floor area on the lot.¹⁸¹

In Seattle, the maximum lot coverage, for both principal and accessory structures, is 1,000 square feet plus 15% of the lot area if a lot is less than 5,000 square feet, or 35% of the lot area for lots larger than 5,000 square feet.¹⁸² In addition, a detached ADU—along with any other accessory structures added to a lot (such as a garage)—may not cover more than 40% of the lot’s rear yard.¹⁸³ The city requires owner occupancy of either the ADU or the primary dwelling.¹⁸⁴

Seattle incorporates a number of flexibility measures into its ADU regulations, which reflect the city’s desire to encourage development of alternative housing types. To this end, the city also provides a special application process for homeowners seeking to add an ADU.¹⁸⁵ Homeowners must have one parking space per ADU in single-family housing districts, but that space may be placed in tandem with, rather than alongside, another required space.¹⁸⁶ Seattle eliminates this requirement for ADUs in certain districts¹⁸⁷ or if the applicant can prove that parking is infeasible or that a recent parking study demonstrates on-street parking capacity.¹⁸⁸ Seattle generally requires that ADUs meet the rear yard setback requirement but reduces the setback or allows setback waivers where a lot abuts an alley.¹⁸⁹

180. *Id.* § 23.44.041 tbl.A(a) & tbl. B(f).

181. *Id.* § 23.45.545(I)(3).

182. *Id.* § 23.44.010(D).

183. *Id.* § 23.44.041 Table. B(e).

184. *Id.* § 23.44.041(C)(1) (“An owner with at least a 50 percent interest in the property must occupy either the principal dwelling unit or the accessory dwelling unit for six or more months of each calendar year as the owner’s permanent residence. The Director may waive this requirement for up to three years if a letter is submitted that provides evidence to the Director showing good cause why the requirement for owner occupancy should be waived. Good cause may include job dislocation, sabbatical leave, education, or illness.”). Seattle also states that the owner if “unable or unwilling” to fulfill these requirements must “remove those features of the accessory dwelling unit that make it a dwelling unit.” *Id.* § 23.44.041(C)(2).

185. See CITY OF SEATTLE DEP’T OF PLANNING AND DEVELOPMENT, DPD TIP No. 116B, ESTABLISHING A BACKYARD COTTAGE (DETACHED ACCESSORY UNIT) (May 12, 2011), available at <http://www.seattle.gov/DPD/Publications/CAM/cam116b.pdf>.

186. SEATTLE, WASH., MUN. CODE §§ 23.44.041(A)(5), 23.45.545 (I)(7) (2012); see also BACKYARD COTTAGE, *supra* note 61, at 10 (discussing parking requirement). Tandem parking, which allows for vehicles to be parked in a line, rather than side by side, is often easier to provide.

187. SEATTLE, WASH., MUN. CODE §§ 23.44.041(A)(5), 23.45.545(I)(7) (2012).

188. *Id.* § 23.44.041(A)(5)(a)-(b).

189. *Id.* § 23.44.041 tbl.B(i).

E. *Washington, D.C.*

Washington, D.C. is in the midst of a multi-year zoning code revision¹⁹⁰ that includes provisions for ADUs¹⁹¹ that are intended to respond to changes in household size, allow individuals to age in place, provide additional income to homeowners, and give small households more housing options.¹⁹² The revised code would allow one internal ADU (on lots in the city's R-1, R-2, and R-3 zones)¹⁹³ or one detached ADU (in an existing accessory building in R-1 and R-2 only)¹⁹⁴ as of right. It requires owner occupancy of either the ADU or the principal dwelling¹⁹⁵ and a special exception for ADUs proposed in a backyard or an expanded accessory building.¹⁹⁶ These provisions have proven to be among the most controversial elements of the proposed code revisions.¹⁹⁷

Simultaneously, the zoning changes would permit increased development of residential units on the city's alley lots.¹⁹⁸ These alley lots are separate tax lots—typically smaller than a normal tax lot—on which the alley dwelling is the principal dwelling and no accessory dwelling is permitted. A separate set of provisions in Washington, D.C. permits construction of a one-family dwelling on an alley lot, so long as the lot is on an alley that is thirty feet or more in

190. See ZONING DC, <http://zoningdc.org> (last visited Apr. 13, 2014) (discussing details of zoning update). The text of the most recent draft of the new code (December 2012) is available at *Draft Proposed Text & Background Documents*, DC ZONING UPDATE, <http://www.dczoningupdate.org/documentcenter.asp?area=dcz> (last visited Apr. 13, 2014).

191. See Mike DeBonis, *D.C. Zoning Revamp Stokes Residents' Fears about Changing City*, WASH. POST (Dec. 1, 2012), http://articles.washingtonpost.com/2012-12-01/local/35585194_1_neighborhoods-penny-arcade-city-officials-and-advocates (describing opposition to rezoning and planning director's response that changes are "modest"); see also *Myth v. Fact: Accessory Dwelling Units*, ZONING DC (Nov. 27, 2012), <http://zoningdc.org/2012/11/27/myth-vs-fact-accessory-dwelling-units> (discussing how the changes to the zoning code will affect ADUs). These changes are in Chapter 6 of Subtitle D of the draft revised zoning code. Zoning Resolution Revised Draft Text December 2012, Subtitle D, Chapter 6 (Nov. 30, 2012), available at <https://www.communicationsmgr.com/projects/1355/docs/Subtitle%20D%20Revised%20Draft%2011-30-2012.pdf> [hereinafter ZRR Draft Text].

192. *Myth v. Fact: Accessory Dwelling Units*, *supra* note 191.

193. ZRR Draft Text, *supra* note 191, § 602.1.

194. ZRR Draft Text, *supra* note 191, §§ 602.1, 603.1.

195. *Id.* § 601.4 (discussing owner-occupancy requirement); *id.* § 602 (discussing internal ADUs); *id.* § 603 (discussing detached ADUs).

196. *Myth v. Fact: Accessory Dwelling Units*, *supra* note 191. New ADU buildings would be limited to a footprint of 450 square feet and a total living area of 900 square feet. *Id.*

197. Abigail Zenner, *Mendelson Grills Accessory Dwelling Opponents*, GREATER GREATER WASHINGTON (Mar. 18, 2013, 12:21 PM), <http://greatergreaterwashington.org/post/18091/mendelson-grills-accessory-dwelling-opponents> (discussing DC Council's hearing on zoning update and noting resident complaints regarding threat of ADUs to neighborhood character).

198. ZRR Draft Text, *supra* note 191, § 701.

width.¹⁹⁹ As for micro-units, a planned waterfront development will include 150 micro-units of between 330 and 380 square feet and there are plans for micro-units in other pending projects.²⁰⁰

Washington, D.C.'s minimum unit size is set at 220 square feet for an efficiency unit.²⁰¹ Existing parking requirements range from one spot per unit to one spot for every four units in denser districts.²⁰² The city recently announced that its revised zoning code will not, as was proposed, eliminate parking minimums in transit-rich outlying areas, but that it is still considering eliminating minimums in the urban core.²⁰³ The experience of other cities indicates that elimination of such minimums could result in substantial micro-unit development in those areas.

Washington, D.C. permits internal or attached ADUs with limitations.²⁰⁴ Internal ADUs are allowed, but only through the grant of a special permit, on single-family detached lots that are—depending on the residential district—at least 4,000, 5,000, or 7,500 square feet.²⁰⁵ A special exception, which requires notice to neighbors and a public hearing, may be granted when it “will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.”²⁰⁶ The city limits the size of internal ADUs to no more than 25% of the gross floor area of a house.²⁰⁷ A new parking space is not required when a homeowner converts a portion of their home into an internal ADU.²⁰⁸ However, the homeowner must occupy either the ADU or the primary dwelling.²⁰⁹ The city

199. D.C. MUN. REGS. tit. 11, § 2507 (2000) (outlining addition regulations governing development of such units).

200. Charlotte Gill, *Micro Apartments Coming to D.C.*, ABC7 NEWS (July 5, 2013), <http://wjla.com/18BE840>.

201. See INT'L BLDG. CODE § 1208 (2006).

202. D.C. MUN. REGS. tit. 11, § 2101 (2013).

203. Mike DeBonis, *D.C. Planners Drop Proposal to End Minimum Parking Rule for Developers*, WASH. POST (July 14, 2013), http://articles.washingtonpost.com/2013-07-14/local/40575288_1_parking-debate-curb-side-parking-parking-space.

204. D.C. MUN. REGS. tit. 11, § 202.10 (2010) (allowing accessory units to be added “within an existing one-family detached dwelling” as a special exception).

205. *Id.* ADUs are permitted as a special exception under section 3104. Homeowners in the city's R-1 district only are also allowed to place an ADU as of right above their garage, but only for occupancy by a “domestic employee.” *Id.* tit. 11, § 2500.5 (1938).

206. D.C. MUN. REGS., tit. 11, § 3104.1 (2013). The procedural rules governing special exception applications are outlined at D.C. MUN. REGS. tit. 11, § 3113 (2013); see *id.* § 3117.2 (2000) (“A public hearing, even if expedited under § 3116.1, shall be held on each appeal or application.”). A fee of \$325 must be paid for the special exception application and a building permit is required. D.C. MUN. REGS., tit. 11, § 3180.1(b)(12) (2010).

207. *Id.* § 202.10 (2010).

208. See *id.* More generally, Washington, D.C. requires between one parking space per unit and one space for every two units. *Id.* § 2101 (2013).

209. *Id.* § 202.10(f) (2010) (“Either the principal dwelling or accessory apartment unit must be owner-occupied.”).

also permits detached ADUs, but only if they qualify as a permitted nonconforming use²¹⁰ or are occupied by domestic employees.²¹¹ Pending revisions to the Washington, D.C. zoning code may loosen these regulations and allow more ADU development.

Many cities have a substantial number of properties with ADUs that are not properly permitted.²¹² Some owners convert their basement or garage attic into a rentable unit without knowing that such conversions require the city's review and approval; others simply ignore the law. Washington, D.C. has developed a process for homeowners to legalize an existing unpermitted internal ADU and, like a number of other cities,²¹³ has declared amnesty periods to allow owners to bring illegal units into compliance without penalty. However, even with the waiver of penalties or permitting fees, homeowners may find the costs involved in bringing a unit up to code outweigh any benefits, such as an increase in home value.

F. General Financial Obstacles to Micro-Unit and ADU Development

Micro-unit and ADU developers can face difficulties obtaining financing for a project or constructing units in a cost-effective manner. Lenders may undervalue micro-unit buildings or assess their risk higher until market demand for smaller units is clearly established. Some lenders—concerned about future market demand for the units and the effect on occupancy—may require that a development provide parking, even if regulations do not, believing that potential renters will demand this amenity. This can drive up construction costs and render it difficult for developers to price units attractively to non-car owners.

A lack of financing can also thwart homeowners seeking to build an ADU. Lenders typically will not consider expected rental income when financing an ADU's construction.²¹⁴ The resistance among banks may be a result of

210. *Id.* § 202.10 (2010).

211. *Id.* § 2500.5 (1938).

212. See, e.g., Martin John Brown, *People in Portland Want and Build ADUs—With or Without Permits*, ARCHITECTURAL THERAPY (Oct. 13, 2009), <http://architecturaltherapy.files.wordpress.com/2009/10/portland-adus-permitted-and-not-2009-10-13.pdf> (discussing study of MLS listings that estimated only 38% of ADUs in Portland are permitted); see generally *supra* notes 152-153 and accompanying text.

213. See, e.g., *Second Unit Amnesty Program*, CNTY. OF MARIN, http://www.co.marin.ca.us/comdev/comdev/CURRENT/second_unit_amnesty.cfm (last visited Apr. 13, 2014); HUD REPORT, *supra* note 7, at 5 (discussing amnesty program in Barnstable, Massachusetts, which made provision of affordable housing a requirement for illegal unit's legalization).

214. See Martin John Brown & Taylor Witkins, *Understanding and Appraising Properties with Accessory Dwelling Units*, APPRAISAL J. 297, 302 (Fall 2012) (“[L]oan originators and appraisers . . . struggle with topics such as HUD’s distinction between a ‘secondary unit’ and an ADU, and whether the income from rent can be included in qualifying the borrower for lending.”); CHAPPLE ET AL., *supra* note 5, at 5 (“Typically, homeowners building a secondary unit obtain a refinance-cashout or a home equity loan. In

appraisers' tendency to under-appraise these units due to (1) unfamiliarity with ADU models, (2) lack of market data demonstrating increased property value due to an ADU, (3) fear of litigation resulting from an over-appraisal, and (4) unwillingness to consider income-based valuations.²¹⁵ Owner-occupancy requirements also can make it difficult for homeowners to obtain financing for the construction of ADUs. Lenders may fear that, if they foreclose on the property, they will be unable to rent both the primary residence and the ADU.²¹⁶ At least one large city with substantial ADU development, Portland, Oregon, does not require owner-occupancy of any unit on a property with an ADU.²¹⁷ Jurisdictions should study whether owner-occupancy requirements serve their intended goals and whether other regulations might serve the same purposes, but more easily allow ADU development. The cost of required permits can also discourage homeowners seeking to develop ADUs. Portland, Oregon previously charged between \$10,000 and \$20,000 for an ADU Permit. For a two-year period starting in 2011, however, the city waived this fee as an incentive to promote their development. The waiver led to an increase in development and the city extended the waiver period until July 2016.²¹⁸

Height and setback regulations also pose potential difficulties for developers seeking to build cost-effective micro-units by impeding prefabricated and modular construction.²¹⁹ Similarly, regulations requiring that an ADU's design match that of the primary residence can reduce possibilities for prefabrication. Municipalities interested in encouraging the development of both unit types will need to further analyze these potential effects and weigh the benefits of less-expensive development against the ends served by these regulations.

both cases, the homebuyer must qualify on the strength of her current income, and cannot factor in rental income from the new secondary unit.”).

215. See generally Brown & Witkins, *supra* note 214 (discussing how the rarity of ADUs contributes to “spectacular variations in appraised values on the same property”).

216. See Alan Durning, *ADUs and Don'ts*, SIGHTLINE DAILY (Mar. 15, 2013, 9:30 AM), <http://daily.sightline.org/2013/03/15/adus-and-donts>.

217. CITY OF PORTLAND, BUREAU OF DEV. SERVS., NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD, CASE FILE NO. LU 08-156155 AD 5 (2008), *available at* <http://www.portlandonline.com/bds/index.cfm?a=214639&c=49783>; see also Brown & Witkins, *supra* note 214 (“Portland . . . has a relatively high number of permitted ADUs, and allows both primary and accessory units to be rented.”).

218. Portland, Or., Resolution 36,766, ADU System Development Charge Waiver (Mar. 3, 2010) *available at* https://docs.google.com/file/d/1Oi1wCZVP0mRC5n_yMJdZpQz8WpaolO_Vkm98xttnaHQOVTl4gB-3zySy1Is6/edit?hl=en_US; CITY OF PORTLAND, BUREAU OF DEV. SERVS., PROGRAM GUIDE-ACCESSORY DWELLING UNITS 4 (Feb. 20, 2013), *available at* <http://www.portlandoregon.gov/bds/article/68689>.

219. A number of existing and planned micro-unit developments are modular designs. See, e.g., Raguso, *supra* note 68.

IV. THE WAY FORWARD OR A PASSING FAD?

As Edward Glaeser and Joseph Gyourko have argued, there is evidence that zoning imposes minimum lot sizes larger than what individuals would freely choose.²²⁰ It seems equally true that zoning, building codes, and other regulations prohibit sizes and types of housing units that many individuals would freely, and happily, call home. Lee Fennel notes that “[h]ow much space a given household finds necessary for its well-being depends on the cultural context and on which activities are contained within the household, as opposed to being socialized within a larger community or procured privately outside the home.”²²¹ The shrinking of space within private homes may be offset by external amenities. Easy access to desired amenities helps explain the growing appeal of these smaller housing units even as national trends towards larger houses continue. Whereas those dwelling in dense, walkable locales may seek amenities outside the dwelling, residents in other locations may desire similar amenities—space to work, socialize, or consume entertainment—within their residence. Focusing on the provision of amenities, whether within or in close proximity to a residence, can lead to a reappraisal of the functions served by private living space and to different conclusions regarding these functions based on where the home is situated.

Relatedly, demand for micro-units and ADUs may reflect changing norms regarding the relation between the home and rights of privacy and association.²²² Rather than providing a private sphere within which residents associate with others, these new housing types allow residents to live in closer proximity with others. This enables individuals to associate with family, in the case of ADUs, or like-minded individuals, in the case of micro-units. Regulations that prohibit these choices and prevent individuals from living in a desired neighborhood can lower the potential benefits of agglomeration, to the detriment of individuals, neighborhoods, and the city.²²³ The trend of micro-unit and ADU development calls for reconsideration of not only regulations affecting individual units, but also of how land use regulations affect residential choice across neighborhoods. As Daniel Rodriguez and David Schleicher argue, individuals “want to live near specific other people” to obtain the benefits of access to certain businesses and “information spillovers.”²²⁴ Absent

220. Edward Glaeser & Joseph Gyourko, *Zoning's Steep Price*, REGULATION 24, 28, Fall 2002 (testing this assumption and concluding that evidence suggests land use controls, rather than construction costs and density, are responsible for high prices).

221. Lee Anne Fennell, *Property in Housing*, ACADEMIA SINICA L.J. 31, 56 (2013).

222. See Nicole Stelle Garnett, *Unbundling Homeownership: Regional Reforms from the Inside Out*, 119 YALE L.J. 1904, 1923 (2010) (reviewing LEE ANNE FENNELL, *THE UNBOUNDED HOME* (2009)) (discussing how the right to exclude provides associations room to exist).

223. Daniel B. Rodriguez & David Schleicher, *The Location Market*, 19 GEO. MASON L. REV. 637, 646 (2012).

224. *Id.* at 651-52.

options in a desired area within one city, young residents might simply move to another city.²²⁵

Micro-unit developers understand their projects in these terms. They note that the younger residents who constitute a growing share of the population in most cities pass little time at home, instead spending time in coffee shops, bars, parks, or at the office, working long hours.²²⁶ As one developer declared, “[w]e think of the common space in our buildings and the streetscape outside as the living room for our residents.”²²⁷ These lifestyle changes, coupled with the demographic changes discussed in Part I indicate that demand for these units is not a passing fad, is not likely to abate in the near future, and will instead likely spread to a broader range of cities. Increasing demand and the success of existing development will likely result in the market alleviating some of the financing challenges discussed in Part III.F. The regulatory challenges that remain will call for more careful deliberation.

Among the five jurisdictions studied, only New York does not currently allow units as small as 220 square feet. However, many other cities throughout the United States do impose higher minimum unit sizes.²²⁸ In addition, restrictions on the permitted number of dwelling units on a lot, such as those found in New York, Austin, and, to a limited extent, Washington, D.C., can pose additional challenges. Cities should consider replacing these regulations with more specific requirements for provision of common spaces in micro-unit developments. This would enable the city to encourage development of smaller units while still regulating density.

Critics of micro-units, and, to a lesser extent, ADUs, assert that these small units will bring transient residents who fail to invest in a neighborhood. In response to such concerns jurisdictions could require projects to include other unit types in addition to micro-units or encourage the development of micro-unit buildings with the flexibility to allow for a reconfiguration of units that would accommodate changing household sizes and enable residents to remain

225. *Id.* at 653.

226. Hinshaw & Holan, *supra* note 101, at 18 (quoting Seattle developer Jim Potter describing lifestyle of tenants in small rental units he develops and manages).

227. Casey Ross, *Developer Begins Building Micro Housing in Seaport*, BOSTON GLOBE (July 26, 2012), <http://www.boston.com/realestate/news/2012/07/27/developer-begins-build-micro-housing-seaport/WAQkqZkbnlNNBSmG1MdHmO/story.html>; *see also* Amanda Wilson, *Micro-Units at the Wharf Could Be D.C.'s First*, DCMUD (Oct. 15, 2012, 10:04 am), <http://dcmud.blogspot.com/2012/10/micro-units-at-wharf-could-be-dcs-first.html> (discussing micro-unit development in Washington, D.C. as relying on a concept that sees “micro-units as launch pads for engagement with walkable, 24-hour urban offerings and symbols of freedom from suburban commutes”); Darcy Wintonyk & Lynda Steele, *A 226 Sq. Ft. Solution to Living Large in Vancouver*, CTV BRITISH COLUMBIA (Aug. 17, 2012), <http://bc.ctvnews.ca/a-226-sq-ft-solution-to-living-large-in-vancouver-1.917039> (quoting Vancouver developer who declared that, for young micro-loft tenants, “[t]he city is your living room. The city is your dining room. You don’t need to use your own resources to recreate all that when you can just step out your door and enjoy a park, a beach, a restaurant, a café.”).

228. *See, e.g., supra* notes 64-79 and accompanying text.

in a neighborhood.²²⁹ Individuals who deliberately choose to live in high amenity neighborhoods, and in small units that encourage them to make frequent use of local amenities, also often forego private car ownership.²³⁰ Accordingly, cities should rethink parking: either eliminating requirements in certain districts, or providing waivers for developments in close proximity to public transportation, in neighborhoods with high Walk Scores, or in communities that provide access to car sharing or other alternatives.²³¹

Parking requirements also frequently pose challenges for homeowners seeking to develop ADUs.²³² As noted in Part III, onerous parking requirements in Austin can render it impossible for certain property owners to situate an ADU on a lot or to avoid violating maximum lot coverage or impermeable surface regulations. Similarly, although Denver allows for ADUs on lots as small as 3,000 square feet in certain areas, the requirement that ADUs be situated on the rear 35% of a lot can render ADU construction impossible on many smaller lots. Jurisdictions seeking to encourage ADU development must carefully consider the interaction of these regulations and should consider flexibility measures, such as those found in Seattle, where parking space requirements can be satisfied with tandem parking, proof that parking is infeasible, or adequate on-street parking.²³³

Finally, jurisdictions should avoid considering micro-units in isolation from other forms of housing, including ADUs. Both unit types have the potential to further urban infill goals, provide individuals with access to particular neighborhoods or proximity to other individuals, reduce energy consumption, and deliver new sources of affordable housing. They also serve distinct segments of the same changing spectrum of household compositions.

229. AMF Development, LLC, which is developing micro-units in Southern California through its “Young Urban Communities” projects, is designing the micro-units to allow for reconfiguration into one and two-bedroom units. Press Release, AMF Development, LLC, AMF Development Unveils Micro One-Bedroom Units for Southern California (Mar. 20, 2013) (on file with author).

230. See Devajyoti Deka, *The Living, Moving and Travel Behaviour of the Growing American Solo: Implications for Cities*, URB. STUDIES 5, July 2013 (reviewing studies that find individuals in single-person households are less likely to own a vehicle and drive fewer miles than other households).

231. Micro-unit developers argue their tenants rarely own cars. See Dolan, *supra* note 156. One micro-unit resident said that the dedicated spots at her development are never filled and observed that for many young urban residents, “the cost of owning and operating a car is more prohibitive than the lack of parking.” Thompson, *supra* note 38.

232. See CHAPPLE ET AL., *supra* note 5, at 8 (“[P]arking requirements in the East Bay cities we studied are one of the most common regulatory barriers to approval of accessory dwelling units on single family lots.”).

233. See *supra* notes 186-188 and accompanying text.

CONCLUSION

The Bipartisan Housing Commission's recent report identified restrictions on ADU development among the regulatory barriers that "increase the cost of housing and inhibit the development of new affordable rental housing."²³⁴ A similar assertion might be made with regards to micro-units. Zoning regulations, building and housing codes, and other municipal ordinances serve important interests. However, as building technologies and the urban environment change, jurisdictions must carefully evaluate these regulations and consider the potential they have, by prohibiting ADUs and micro-units, to drive up housing costs, reduce housing options for new households, encourage sprawl, and exclude new residents.

234. BIPARTISAN POLICY CTR., ECON. POLICY PROGRAM, HOUS. COMM'N, HOUSING AMERICA'S FUTURE: NEW DIRECTIONS FOR NATIONAL POLICY 84 (2013).

