

## Fritzel, Anne (COM)

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**From:** Clinton Brink <CBrink@Brinkatlaw.com>  
**Sent:** Friday, November 19, 2021 7:17 PM  
**To:** Fritzel, Anne (COM)  
**Subject:** FW: Condo-Converting ADUs

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### External Email

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Hi Anne,

Thanks for taking my call today. Below is a slightly edited version of the email that I initially sent to Planning at the City of Tacoma:

I am a real estate attorney and small property investor in Tacoma. I am also on the Tacoma Permitting Task Force, which is a combined committee of private professionals and public officials that meet monthly to discuss code updates and process improvements at the City of Tacoma.

It recently occurred to me that it may be possible to separately sell an accessory dwelling units and a primary dwelling by converting the property to a condominium. Separate sale seems desirable from a public policy standpoint since condo-converting accessory dwelling units would help decrease the cost of home ownership by: (1) increasing the stock of small, inexpensive units *for sale*, not just for rent; and (2) making ADUs more viable, flexible, and valuable so owners have a greater incentive to construct more of them.

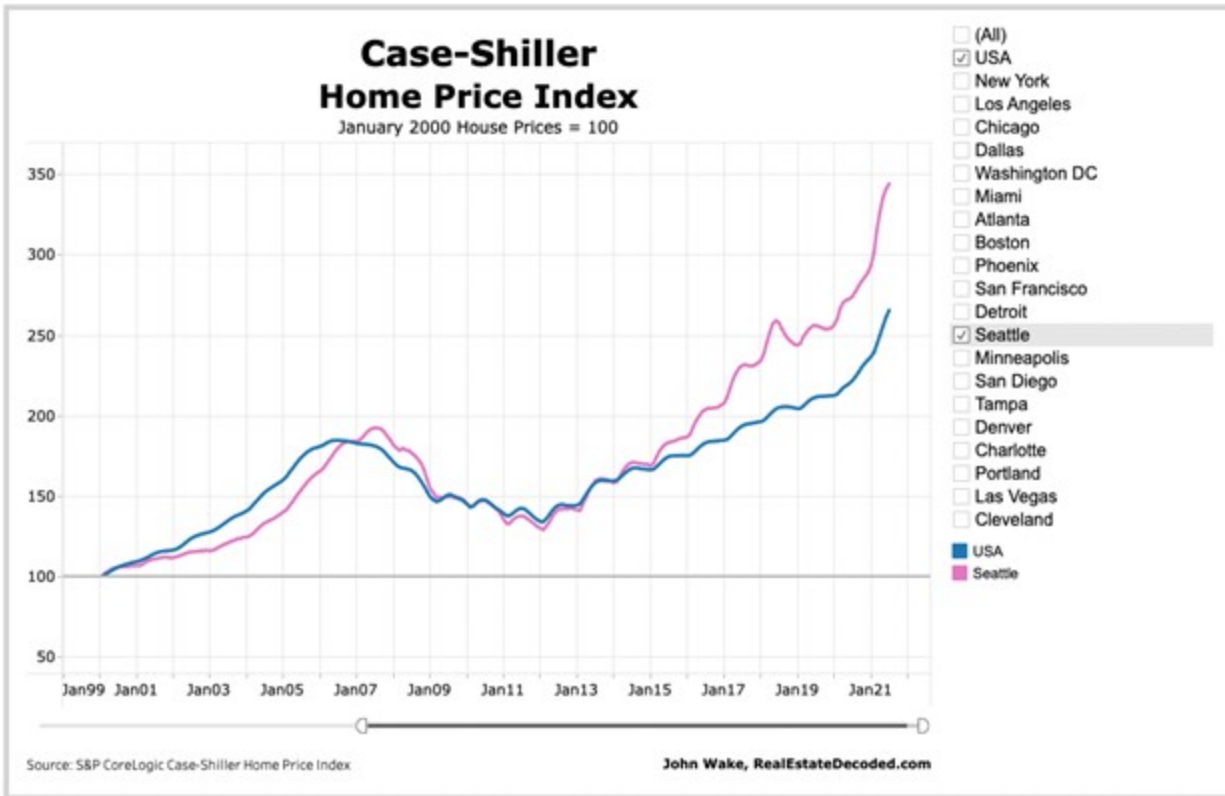
I looked into it, and after researching the condominium code, it appears to me that that converting ADUs to condominiums is already allowed under state law. Furthermore, it appears that state law actually prohibits local municipalities from passing laws that would forbid condo conversion of an ADU.

However, some municipalities have already banned, or are considering banning, condo-conversion of ADUs.

It would be extremely helpful if Growth Management could review the law and, if appropriate, take action to stop municipalities from prohibiting condo conversion of ADUs. I explain in more detail below.

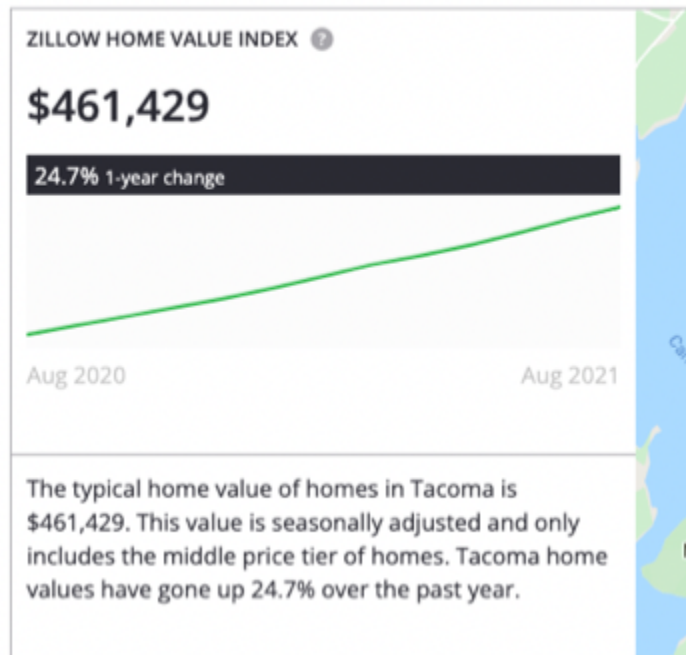
**We desperately need to bring down the price of housing so that home ownership is more affordable.**

I'm probably stating the obvious, but we have a serious housing affordability problem. The following graph shows that housing prices have increased almost exponentially over the last few years, especially in Seattle and Tacoma.



<https://realestatedecoded.com/case-shiller/> (adjusted for inflation)

## Tacoma Home Values



<https://www.zillow.com/tacoma-wa/home-values/>

See also <https://ofm.wa.gov/washington-data-research/statewide-data/washington-trends/economic-trends/median-home-price> (showing that USA housing prices increased by 80% from 2009-2020).

This dramatic increase in housing costs makes it much harder for young people and historically disadvantaged demographics to buy a home. Obviously homeownership is a critical aspect of wealth-building in America, so the

increasing unaffordability of housing just perpetuates historical inequities. I don't think it's an exaggeration to say that this is one of the most serious problems facing our society today.

**Allowing ADUs to be converted to condominiums will help increase the supply of affordable homes for sale.**

Some municipalities are considering code updates that will allow for construction of multifamily units in areas presently zoned for single-family. "At Home in Tacoma" is one example, and it's a great proposal. However, At Home in Tacoma may not dramatically increase the amount of units for sale because multifamily units tend to be owned by investors as rental properties. My understanding is that, from an economic standpoint, owning is generally more beneficial than renting, so it is usually more desirable to facilitate homeownership rather than rentership whenever possible.

Allowing condo-conversion of ADUs will help increase the supply of affordable homes *for sale*, not just for rent. ADUs are, by definition, smaller than the primary dwelling. They are often simpler than the primary dwelling as well. Therefore, a condo-converted ADU would tend to be more affordably priced than other homes in the area. Converted ADUs may also make it possible for disadvantaged groups to move into nicer neighborhoods, which offer better schools, more greenery, better public transport, and other benefits. Additionally, condo conversion of ADUs would tend to decrease the value of the primary dwelling too, making the primary dwelling more affordable at resale than the whole, unconverted property.

Every condo-converted ADU would need to be offered for sale to the existing tenant (if any) via a public offering statement under **RCW 64.90.655**. This would provide existing ADU tenants with a low-cost opportunity to become owners, which is exactly what we need to facilitate. In many cases, the resulting mortgage would likely be lower than the tenant's existing rent.

**Converting ADUs to condos is already allowed under state law.**

Per **RCW 64.90.010**(11) (and previously **RCW 64.34.020** (10)), the definition of "Condominium" is not limited to any development type. Any development type can be a condo so long as individual elements are designated appropriately for separate ownership:

(11) "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

In other words, a "condominium" does not have any specific physical form. It is not a townhouse or high-rise apartment. A condominium is any property that has a declaration, survey map, and plans recorded in compliance with state law, including a single-family residence and ADU.

While the condo conversion of ADU may seem novel, I'm apparently not the first attorney to think of it. An attorney out of Bainbridge island, Daniel Suchman (now retired), appears to have written [an article](#) around 2005-2007 discussing the legalities of condo-converting ADUs on Bainbridge Island under **RCW 64.34.005** (now superseded by RCW 64.90).

There's also [this article](#) from 2019 explaining how ADU condo conversion is on the rise in Seattle and linking to five examples. I can provide at least [one more example](#) of an condo-converted ADU beyond those listed in the foregoing article.

Notwithstanding these examples, it's clear that ADU condo conversion is not a common practice yet. I think perhaps this is because of the amount of professional work involved, as state condo laws require a significant amount of expensive legal and civil engineering work. However, the increasing value of homes is starting to make ADU condo conversion economically feasible in more expensive areas.

**It is illegal under state law to pass a municipal ordinances restricting condo-conversion of ADUs.**

Per RCW [64.90.025](#) (and also its predecessor, RCW [64.34.050](#)) local municipalities cannot prohibit condo conversion, regardless of the type of property in question:

*A zoning, subdivision, or other land use statute, ordinance, or regulation may not prohibit the condominium or cooperative form of ownership or impose any requirement upon a condominium or cooperative or miscellaneous community that it would not impose upon a physically identical development under a different form of ownership.*

In other words, a developer can perform a condo conversion on any lawfully-constructed development (including a single-family residence with an ADU) so long as the builder complies with the state laws governing condo creation. Local municipalities are not allowed to impose any unique requirements on a development merely because the owner intends to do a condo conversion.

The City of Shoreline explains this as follows in Administrative Order (i.e., code interpretation) [#000005062700](#):

Condos are typically not “subdivisions of land.” The land is usually held in common by the association. We should advise the developer to follow whatever Washington State requires for condo registration but *we should think of condos as a type of ownership and not as a type of building or land use.*

...

*2. Condos are a form of ownership, not a physical form and our Development Code does not regulate ownership.*

In other words, Shoreline acknowledges that condo conversion is a state-level process and beyond its regulatory powers.

However, other municipalities have been less progressive. For example, Tacoma’s code contains a de facto ban against separate sale under TMC 13.06.080.A.4.a (pg 13-277), which states that ADUs must be under common ownership with the primary dwelling:

One ADU shall be allowed per residential lot as a subordinate use in conjunction with any new or existing single-family detached dwelling in the City of Tacoma. *Both dwellings shall be in single ownership.*

Worse yet, Bainbridge island appears to be considering an explicit ban on condo-conversion of accessory dwelling units per proposed [Ordinance No. 2019-09](#). From what I can tell, this ordinance has been in and out of committee for approximately two years and may come up for vote in 2022.

**Growth Management should take action to facilitate condo-conversion of accessory dwelling units.**

The benefits of removing barriers to ADU condo conversion are obvious. Every condo-converted ADU would increase the stock of starter homes and help relieve the housing crisis.

However, some municipalities expressly prohibit ADU condo conversion, which appears to be in violation of state law.

Local ordinances are preempted by state law, but they can still have a chilling effect. Without clear guidance on this issue from the state level, these local ordinances confuse owners about their rights, expose owners to potential local code enforcement liability, and may complicate title issues for subsequent owners.

Therefore Growth Management should clarify that state law prohibits municipalities from prohibiting ADU condo conversion, and if necessary, take action to address the local ordinances that already prohibit ADU conversion.

Best,

**Clinton Brink**  
Attorney

T 253.620.6577  
F 253.620.6565



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**From:** Barnett, Elliott <EBarnett@cityoftacoma.org>  
**Date:** Friday, November 19, 2021 at 12:30 AM  
**To:** Clinton Brink <CBrink@Brinkatlaw.com>  
**Subject:** RE: Condo-Converting ADUs

Hi Clinton,  
This is great info, thank you!

Anne Fritzel is a great contact at the Dept of Commerce – Growth Management Services. Her email is - [anne.fritzel@commerce.wa.gov](mailto:anne.fritzel@commerce.wa.gov). She may be aware of that legal argument, but if not would be great to let her know.

Please keep in touch regarding Home In Tacoma!  
All the best,  
Elliott Barnett, Senior Planner