

ESSB 5235 - H AMD 569

By Representative Shewmake

ADOPTED 04/07/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that local zoning
4 laws can contribute to limiting the housing available for
5 Washingtonians. The legislature finds that reducing these barriers
6 can increase affordable housing options. The legislature finds that
7 accessory dwelling units can be one way to add affordable long-term
8 housing and to provide a needed increase in housing density. However,
9 the legislature finds that research from several cities shows that
10 when accessory dwelling units are built and offered for short-term
11 rental for tourists and business visitors, they may not improve
12 housing affordability. Therefore, it is the intent of the legislature
13 to encourage reducing barriers to accessory dwelling units when local
14 governments have programs to incentivize or assure that they will be
15 utilized for long-term housing. The legislature finds that owner
16 occupancy requirements may provide an appropriate means for local
17 governments to ensure community impacts of accessory dwelling units
18 are mitigated and allow for relaxation of other requirements, when
19 they are an element of a program to reduce short-term rental of
20 accessory dwelling units. The legislature also intends to remove
21 barriers and restrictions on the number of unrelated occupants
22 permitted to live together, which will provide additional affordable
23 housing options.

24 **Sec. 2.** RCW 36.70A.696 and 2020 c 217 s 2 are each amended to
25 read as follows:

26 The definitions in this section apply throughout RCW 36.70A.697
27 and 36.70A.698 unless the context clearly requires otherwise.

28 (1) "Accessory dwelling unit" means a dwelling unit located on
29 the same lot as a single-family housing unit, duplex, triplex,
30 townhome, or other housing unit.

1 (2) "Attached accessory dwelling unit" means an accessory
2 dwelling unit located within or attached to a single-family housing
3 unit, duplex, triplex, townhome, or other housing unit.

4 (3) "City" means any city, code city, and town located in a
5 county planning under RCW 36.70A.040.

6 (4) "County" means any county planning under RCW 36.70A.040.

7 (5) "Detached accessory dwelling unit" means an accessory
8 dwelling unit that consists partly or entirely of a building that is
9 separate and detached from a single-family housing unit, duplex,
10 triplex, townhome, or other housing unit and is on the same property.

11 ~~((+5))~~ (6) "Dwelling unit" means a residential living unit that
12 provides complete independent living facilities for one or more
13 persons and that includes permanent provisions for living, sleeping,
14 eating, cooking, and sanitation.

15 ~~((+6))~~ (7) "Major transit stop" means:

16 (a) A stop on a high capacity transportation system funded or
17 expanded under the provisions of chapter 81.104 RCW;

18 (b) Commuter rail stops;

19 (c) Stops on rail or fixed guideway systems, including
20 transitways;

21 (d) Stops on bus rapid transit routes or routes that run on high
22 occupancy vehicle lanes; or

23 (e) Stops for a bus or other transit mode providing actual fixed
24 route service at intervals of at least fifteen minutes for at least
25 five hours during the peak hours of operation on weekdays.

26 (8) "Owner" means any person who has at least 50 percent
27 ownership in a property on which an accessory dwelling unit is
28 located.

29 (9) "Short-term rental" means a lodging use, that is not a hotel
30 or motel or bed and breakfast, in which a dwelling unit, or portion
31 thereof, is offered or provided to a guest by a short-term rental
32 operator for a fee for fewer than 30 consecutive nights.

33 **Sec. 3.** RCW 36.70A.697 and 2020 c 217 s 3 are each amended to
34 read as follows:

35 (1)(a) Cities must adopt or amend by ordinance, and incorporate
36 into their development regulations, zoning regulations, and other
37 official controls the requirements of RCW 36.70A.698(1) to take
38 effect by July 1, 2021.

1 ~~((2))~~ (b) Beginning July 1, 2021, the requirements of RCW
2 36.70A.698~~(1)~~:

3 ~~((a))~~ (i) Apply and take effect in any city that has not
4 adopted or amended ordinances, regulations, or other official
5 controls as required under this section; and

6 ~~((b))~~ (ii) Supersede, preempt, and invalidate any local
7 development regulations that conflict with RCW 36.70A.698~~(1)~~.

8 (2)(a) Cities and counties must adopt or amend by ordinance, and
9 incorporate into their development regulations, zoning regulations,
10 and other official controls the requirements of RCW 36.70A.698(2)
11 within two years of the next applicable deadline for its
12 comprehensive plan to be reviewed under RCW 36.70A.130 after July 1,
13 2021.

14 (b) Beginning two years after the next applicable deadline for
15 the review of a county's or city's comprehensive plan under RCW
16 36.70A.130 after July 1, 2021, the requirements of RCW 36.70A.698(2)
17 apply and take effect in any city or county that has not adopted or
18 amended ordinances, regulations, or other official controls as
19 required under this section, and preempt any conflicting development
20 regulations.

21 **Sec. 4.** RCW 36.70A.698 and 2020 c 217 s 4 are each amended to
22 read as follows:

23 (1) (a) Except as provided in ~~((subsection[s] (2) and (3) of this~~
24 section)) (b) and (c) of this subsection, through ordinances,
25 development regulations, zoning regulations, and other official
26 controls as required under RCW 36.70A.697~~(1)~~(a), cities may not
27 require the provision of off-street parking for accessory dwelling
28 units within one-quarter mile of a major transit stop.

29 ~~((2))~~ (b) A city may require the provision of off-street
30 parking for an accessory dwelling unit located within one-quarter
31 mile of a major transit stop if the city has determined that the
32 accessory dwelling unit is in an area with a lack of access to street
33 parking capacity, physical space impediments, or other reasons
34 supported by evidence that would make on-street parking infeasible
35 for the accessory dwelling unit.

36 ~~((3))~~ (c) A city that has adopted or substantively amended
37 accessory dwelling unit regulations within the four years previous to
38 June 11, 2020, is not subject to the requirements of this ~~((section))~~
39 subsection (1).

1 (2) Through ordinances, development regulations, and other
2 official controls adopted or amended as required under RCW
3 36.70A.697(2):

4 (a) Cities and counties may not impose or enforce an owner
5 occupancy requirement on any housing or dwelling unit on a lot
6 containing an accessory dwelling unit, unless an accessory dwelling
7 unit on the lot is being offered or used for short-term rental,
8 except that:

9 (i) Cities and counties may impose and enforce an owner occupancy
10 requirement for the first year after initial occupation of the unit
11 or primary residence following permitting; and

12 (ii) Cities and counties may impose an owner occupancy
13 requirement for an additional period if such a requirement is
14 supported by findings of the need for such an increased requirement
15 adopted by the city or county after at least two public hearings are
16 held on the proposal, and any ordinance, development regulations, and
17 other official controls finally adopted directly address feedback
18 from the community. Such an additional period of owner occupancy
19 restrictions must be geographically limited, and may not apply to all
20 of the residential zones within the city or county.

21 (b) Cities and counties may adopt ordinances, development
22 regulations, and other official controls, including the imposition of
23 fees, impact fees, or taxes, or the waiver of taxes, fees, or
24 specific regulations, to encourage use of accessory dwelling units
25 for long-term housing. Cities and counties may only offer such
26 reduced impact fees, deferral of taxes, or other incentives for the
27 development or construction of accessory dwelling units if such units
28 are subject to effective binding commitments or covenants that the
29 units will not be regularly offered for short-term rental and the
30 city or county has a program to audit compliance with such
31 commitments or covenants.

32 (c) Cities and counties that impose owner occupancy requirements
33 on lots containing accessory dwelling units must provide for a
34 hardship exemption from any owner occupancy requirements applicable
35 to a housing or dwelling unit on the same lot as an accessory
36 dwelling unit. Such an exemption must allow an owner to offer for
37 rental for periods of 30 days or longer a dwelling unit or housing
38 unit as if a dwelling or housing unit on the property was owner
39 occupied, when the owner no longer occupies the primary residence due
40 to age, illness, financial hardship due to the death of a spouse,

1 domestic partner, or co-owner of the property, disability status, the
2 deployment, activation, mobilization, or temporary duty, as those
3 terms are defined in RCW 26.09.004, of a service member of the armed
4 forces, or other such reason that would make the owner occupancy
5 requirement an undue hardship on the owner. A city or county shall
6 develop and implement a process for the review of hardship
7 applications. Any city or county that imposes an owner occupancy
8 requirement on lots containing accessory dwelling units and has not
9 provided a hardship exemption from the requirement through
10 ordinances, development regulations, or other official controls as
11 required by this subsection may not impose or enforce an owner
12 occupancy requirement on any lot containing an accessory dwelling
13 unit until such time as the city or county has adopted the required
14 hardship exemption, except that an owner-occupancy requirement
15 pursuant to (a) of this subsection (2) may be imposed and enforced if
16 the owner of the lot offers an accessory dwelling unit for short-term
17 rental within the county or if the owner of the lot owns more than
18 three accessory dwelling units within the county.

19 NEW SECTION. Sec. 5. A new section is added to chapter 35.21
20 RCW to read as follows:

21 Except for occupant limits on group living arrangements regulated
22 under state law or on short-term rentals as defined in RCW 64.37.010
23 and any lawful limits on occupant load per square foot or generally
24 applicable health and safety provisions as established by applicable
25 building code or city ordinance, a city or town may not regulate or
26 limit the number of unrelated persons that may occupy a household or
27 dwelling unit.

28 NEW SECTION. Sec. 6. A new section is added to chapter 35A.21
29 RCW to read as follows:

30 Except for occupant limits on group living arrangements regulated
31 under state law or on short-term rentals as defined in RCW 64.37.010
32 and any lawful limits on occupant load per square foot or generally
33 applicable health and safety provisions as established by applicable
34 building code or city ordinance, a code city may not regulate or
35 limit the number of unrelated persons that may occupy a household or
36 dwelling unit.

1 NEW SECTION. **Sec. 7.** A new section is added to chapter 36.01
2 RCW to read as follows:

3 Except for occupant limits on group living arrangements regulated
4 under state law or on short-term rentals as defined in RCW 64.37.010
5 and any lawful limits on occupant load per square foot or generally
6 applicable health and safety provisions as established by applicable
7 building code or county ordinance, a county may not regulate or limit
8 the number of unrelated persons that may occupy a household or
9 dwelling unit."

10 Correct the title.

EFFECT: (1) Removes definition of nonprofit entity, and adds definitions of owner and of short-term rental.

 (2) Prohibits cities and counties from imposing owner-occupancy requirements on a lot containing an accessory dwelling unit unless the accessory dwelling unit on the lot is being used as a short-term rental, if it is within the first year of occupancy of the ADU or primary residence after permitting, or, for a restriction lasting longer than one year, if the city or county makes findings after at least two public hearings that such a restriction is necessary and the restriction is limited in geographic scope; and removes exceptions that would have allowed owner-occupancy requirements to be imposed if the owner of the lot owned more than five accessory dwelling units in the same city or county.

 (3) Prohibits cities and counties from offering incentives for the construction or development of accessory dwelling units unless the units are subject to effective binding commitments or covenants providing that the units will not be regularly offered for short-term rental, and the city or county has a program to audit compliance with such commitments or covenants.

 (4) Adds requirement that counties and cities planning under the Growth Management Act adopt a hardship exemption from owner-occupancy requirements associated with accessory dwelling units; provides circumstances that would qualify for an exemption; provides that a city or county that has failed to adopt a hardship exemption by the deadline may not impose owner-occupancy requirements outside of limited circumstances; and adds related definitions.

 (5) Establishes new deadlines for cities and counties to conform to the restrictions on owner-occupancy regulations.

 (6) Allows generally applicable health and safety provisions in applicable building codes or county ordinances to regulate or limit the number of unrelated persons that may occupy a housing or dwelling unit.

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