

HOUSE BILL REPORT

HB 1782

As Reported by House Committee On:
Local Government

Title: An act relating to creating additional middle housing near transit and in areas traditionally dedicated to single-family detached housing.

Brief Description: Creating additional middle housing near transit and in areas traditionally dedicated to single-family detached housing.

Sponsors: Representatives Bateman, Macri, Berry, Fitzgibbon, Ryu, Dolan, Wicks, Johnson, J., Barkis, Davis, Goodman, Gregerson, Morgan, Peterson, Ramel, Simmons, Slatter, Bergquist, Valdez, Thai, Duerr, Stonier, Riccelli, Ormsby, Taylor, Harris-Talley, Hackney, Kloba and Frame; by request of Office of the Governor.

Brief History:

Committee Activity:

Local Government: 1/18/22, 2/1/22 [DPS].

Brief Summary of Substitute Bill

- Requires cities planning under the Growth Management Act to authorize middle housing types or average minimum densities based on the population of the city.
- Requires the Department of Commerce to provide technical assistance to cities that authorize middle housing types or average minimum densities and to complete an evaluation on the costs to revise comprehensive plans.
- Requires the land use element of the comprehensive plan to include a built environment subelement.
- Adds additional requirements to the housing element of the comprehensive plan related to increased economic and racial integration, antidisplacement measures, and middle housing.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Adds additional requirements to the land use and capital facilities plan elements related to middle housing.
- Allows the Department of Commerce to grant cities an implementation timeline extension when certain infrastructure deficiencies are identified.
- Precludes new declarations and governing documents of a common interest community or homeowners' association within a city subject to the middle housing and density requirements from prohibiting such middle housing and density requirements.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Pollet, Chair; Duerr, Vice Chair; Berg and Senn.

Minority Report: Without recommendation. Signed by 3 members: Representatives Goehner, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Robertson.

Staff: Elizabeth Allison (786-7129).

Background:

Growth Management Act.

The Growth Management Act (GMA) is the State of Washington's comprehensive land use planning framework for counties and cities. The GMA establishes land use designation and environmental protection requirements for all counties and cities within the State of Washington, and a significantly wider array of planning duties for counties and the cities within that are obligated by population-based criteria or choice to satisfy all planning requirements of the GMA.

Jurisdictions that fully plan under the GMA must adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must include specific planning elements, each of which is a subset of a comprehensive plan, and must be implemented through locally adopted development regulations that conform to the plan.

The GMA also establishes 14 goals in a non-prioritized list to guide the development of comprehensive plans and development regulations of counties and cities that plan under the GMA. Examples include urban growth, housing, and economic development goals.

Mandatory Housing Element.

Legislation enacted in 2021 expanded the requirements of the comprehensive plan housing element. The housing element must ensure the vitality and character of established residential neighborhoods and:

- include an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth, as projected by the Department of Commerce (Department), including:
 - units for moderate-, low-, very low-, and extremely low-income households; and
 - emergency housing, emergency shelters, and permanent supportive housing.
- include a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing;
- identify sufficient capacity of land for various housing including government-assisted housing, housing for all levels of income, manufactured housing, and permanent supporting housing, and within an urban growth area, consideration of duplexes, triplexes, and townhomes;
- make adequate provisions for existing and projected needs of all economic segments of the community, including:
 - incorporating housing for households of all income levels;
 - documenting programs and actions needed to achieve housing availability;
 - consideration of housing locations in relation to employment locations; and
 - consideration of the role of accessory dwelling units (ADUs) in meeting housing needs;
- identify local policies and regulations that result in racially disparate impacts, displacement, and exclusion of housing;
- identify and implement policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion of housing;
- identify neighborhoods that may be at higher risk of displacement from market forces; and
- establish antidisplacement policies.

Mandatory Capital Facilities Plan Element.

The capital facilities plan element must include an inventory of existing capital facilities owned by public entities; a forecast of the future needs of such capital facilities; the proposed locations and capacities of expanded or new capital facilities; at least a six-year plan that will finance such capital facilities with sources of public money for such purposes clearly identified; and a requirement to assess the land use element if probable funding falls short of meeting existing needs. Park and recreation facilities must be included in the capital facilities plan element.

Mandatory Land Use Element.

The land use element requires the designation of the proposed general distribution, location, and uses of land. It must include population densities, building intensities, and estimates of future growth. The land use element is required to provide for the protection of the quality and quantity of groundwater used for public water supplies. When possible, the land use

element should consider planning approaches that promote physical activity. In counties and cities in which it is applicable, the land use element must also review drainage, stormwater, and flooding, and provide guidance on taking corrective actions to mitigate or cleanse these discharges that pollute the waters of the state.

Transportation Element.

The transportation element of a comprehensive plan must implement, and be consistent with, the land use element and must include subelements concerning:

- land use assumptions used in estimating travel;
- estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions;
- facilities and service needs;
- finances;
- intergovernmental coordination efforts;
- demand-management strategies; and
- pedestrian and bicycle components.

The transportation element may also include multimodal transportation improvements or strategies that are made concurrent with development.

Urban Growth Areas.

Under the GMA, participating counties are required to designate urban growth areas (UGAs) within their boundaries sufficient to accommodate a 20-year population projection range provided by the Office of Financial Management. Each city located within a planning county must be included within a UGA. Urban growth must be encouraged within UGAs, and only growth that is not urban in nature can occur outside of an UGA. Each UGA must permit urban densities and include greenbelt and open space areas.

Technical Assistance and Funding.

The Department is required to assist cities and counties, both with funding and with technical assistance, in the adoption of comprehensive plans. The Department's assistance program must include a priority list for funding and technical assistance based on a county's or city's growth rate, commercial and industrial development rate, and the existence and quality of a comprehensive plan, among other factors. The Department is also required to administer a grant program to provide direct financial assistance to local governments for the preparation of comprehensive plans. Other technical assistance required to be provided by the Department includes utilizing the Department's staff and the staff of other agencies to assist in the development of comprehensive plans, including the provision of model land use ordinances, the adoption of procedural criteria, and regional education and training programs.

Average Minimum Density Requirements.

Floor area ratio is the measurement of a building's floor area in relation to the size of the lot or parcel on which the building is located. Minimum density specifies a minimum size, or

floor area ratio, for new development.

Homeowners' Associations and Common Interest Communities.

A homeowners' association (HOA) is a legal entity made up of members who are owners of residential real property located within the association's jurisdiction and who are required to pay dues for the upkeep of the association and common areas. An association can also adopt rules and regulate or limit the use of property by its members.

A common interest community (CIC) is similar to an HOA and is made up of member-owners who are obligated to pay for the taxes, maintenance, or other costs of common areas. Like an HOA, a CIC can also regulate or limit the use of property by its members, including by adopting rules to establish and enforce construction and design criteria as well as aesthetic standards. A CIC may generally only be terminated by the agreement of at least 80 percent of the members.

A restrictive covenant, or a restrictive deed, is a restriction or limitation of the use of the property that runs with the land.

Summary of Substitute Bill:

Mandatory Land Use Element.

The land use element must include a subelement on the built environment to protect and improve the physical and mental health of residents within portions of UGAs with higher densities. The subelement should include provisions improving determinants of health. The Department must, in consultation with the departments of Ecology and Health, adopt guidance to promote these goals.

Mandatory Housing Element.

Cities and counties must take further measures to increase economic and racial integration among all segments of the population when planning under the housing element through programs encouraging, authorizing, directly investing in, or incentivizing new affordable housing options including duplexes, triplexes, townhomes, ADUs, multifamily housing, subdivision, or condominium common ownership. The housing element must consider the location of housing in relation to the location of shopping for household essentials and make adequate provisions for middle housing. Cities and counties must make a finding that comprehensive plans and development regulations affirmatively prevent displacement of lower- and moderate-income community members and families. Such communities are determined through community input and public meetings.

Cities that plan under the GMA with a population of 20,000 or more must adopt a subelement of the housing element to ensure that the city will take appropriate actions to meet the projected needs of all economic segments of the region and to prevent displacement.

The housing element must also allow subdivision of lots to increase the affordable housing supply. Options for subdivision are included.

Capital Facilities Plan Element.

A city that has identified a specific infrastructure deficiency and sought an extension to implementation of middle housing requirements must submit actions necessary to remedy that deficiency as part of the capital facilities plan element.

Transportation Element.

Intergovernmental coordination efforts under the transportation element must include a description of how the city or county will ensure that the transit frequency relied upon in the plan, development regulations, and permitting decisions is going to be continued undiminished. For any area where such transit frequency is not reasonably assured, the level of required density or mix of housing required is not required to be increased beyond what would be required if the transit was not present.

Middle Housing Requirements.

Any city with a population of 20,000 or more that plans under the GMA must authorize the development of all middle housing types on all lots over 4,500 square feet zoned for detached single-family residential use and within 0.5 miles of a major transit stop, based on walking distance. These cities must also allow for the development of duplexes and attached and detached ADUs on all other lots over 4,500 square feet zoned for single-family residential use, and for the development of triplexes on corner lots exceeding 5,000 square feet.

Alternatively, such cities may alter local zoning to allow an average minimum density equivalent to 33 dwelling units per acre within 0.5 miles of a major transit stop, based on walking distance. A city choosing to adopt minimum density requirements must also adopt findings of fact demonstrating that the actions taken to implement the average minimum density will not result in racially disparate impacts, displacement, or further exclusion in housing and must transmit such findings to the Department.

When providing for middle housing types or minimum net density, cities must ensure that the multifamily housing includes sufficient units to meet the projections of housing needs within the planning horizon. Certain exceptions and limitations are described.

Cities with a population between 10,000 and 20,000 must authorize the development of duplexes on all lots exceeding 4,500 square feet zoned for detached single-family residential use that do not have an ADU on the lot.

Certain parking regulations are prohibited, with exceptions.

Cities may adopt development and design standards related to siting and design of middle

housing but may not discourage the development of middle housing through fees, delays, or other requirements that make placing middle housing impracticable. Cities may not implement or require processes stricter than those applied to detached single-family residences. Cities are not prohibited from permitting detached single-family residences.

Technical Assistance.

By December 1, 2022, and updated every five years thereafter, the Department must evaluate the costs for counties and cities to review and revise their comprehensive plans to assure compliance with the GMA. Once completed, the Department must provide a report of the evaluation to the Legislature. At minimum, the report must include the costs for each general jurisdiction size and type and the costs to complete various types of planning requirements, including:

- meeting the requirements of a new goal in the GMA goals;
- meeting the requirements of a new comprehensive plan element;
- updating a critical areas ordinance;
- updating a shoreline master program;
- making a minor update to a comprehensive plan element;
- making a complex update to a comprehensive plan element;
- updating a development regulation; and
- implementing a new development regulation.

The Department must consult with the Washington State Association of Counties and the Association of Washington Cities as part of the evaluation process. The Department must also distribute funding in the form of grants. The Department may contract with a public or nonprofit agency with appropriate expertise in providing technical assistance and training to assist local governments related to comprehensive planning and other obligations under the GMA. The Department must make planners and department regulations specialists available to cities and counties to assist in the development of comprehensive plans and related development regulations.

Extensions.

Cities may apply for extensions of implementation timelines. Extensions may only be applied to specific areas where a city has identified water, sewer, stormwater, or transportation services that are deficient or will become deficient within five years and for which the city has established a plan of action to remedy such services on a specific timeline. The Department may establish rules for implementing this process.

Homeowners' Associations and Common Interest Communities.

Governing documents of HOAs and the governing documents and declarations of CICs within cities subject to the middle housing and density requirements that are created after the act takes effect may not prohibit the construction or development of the types of housing or density requirements that must be permitted within such cities.

Substitute Bill Compared to Original Bill:

The substitute bill adds additional requirements to the technical assistance that the Department must provide to cities and requires the Department to prepare an evaluation on the costs to cities to change comprehensive plans to implement the act's requirements. The Department may contract with a public or nonprofit agency to provide technical assistance and establish funding levels for grants. The Department must make planners and department regulations specialists available to assist in the development of comprehensive plans and development regulations.

The following updates are made to the comprehensive plan:

- the land use element must include a built environment subelement;
- the housing element has additional requirements related to increased economic and racial integration and antidisplacement measures; middle housing; and subdivision;
- the capital facilities element requires cities that have identified infrastructure deficiencies to include actions necessary to remedy the deficiencies; and
- the transportation element must include a description of how the city or county will ensure that the transit frequency relied upon in the plan, development regulations, and permitting decisions is going to be continued undiminished.

The population thresholds for middle housing and minimum density requirements are changed to apply to certain requirements to cities with a population over 20,000 and certain requirements to cities with a population between 10,000 and 20,000.

The provision allowing model ordinances developed by the Department to supersede and preempt local regulations in certain circumstances is removed.

Governing documents of HOAs and the governing documents and declarations of CICs within cities subject to the middle housing and density requirements that are created after the act takes effect may not prohibit the construction or development of the types of housing or density requirements that must be permitted within such cities.

Appropriation: None.

Fiscal Note: Requested on January 12, 2022.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) Washington is experiencing a statewide housing crisis and a statewide response is needed. The state is over 250,000 units short of keeping up with housing for the population because it is only producing around 40,000 new uses per year. Rent is

skyrocketing, people are spending half of their income on housing, and communities of color are disproportionately affected. Homeownership is unattainable for many first-time homebuyers and homelessness continues to grow. This is not only a problem for big cities. People are moving further away from where they work, which is increasing greenhouse gas emissions as well as costs. The closer people live to work and essential services, the less they need to drive. Determining what is allowed to be built and where is necessary for solving the housing problem. Jurisdictions can still allow single-family housing. Some policy decisions are better left to local governments, but the housing crisis and climate change are issues for statewide policy makers. There is need for statewide land use laws that meet the reality of growth and treat it as an intergenerational issue. Climate and housing needs do not have time to wait for cities with part-time policy makers to have individual control. Middle housing types tend to be more energy efficient. The bill will remove antiquated barriers. Current law has led to a status quo of zones exclusive to wealthy people. Exclusionary zoning originally was meant to keep black and brown folks out of neighborhoods. The status quo has not led to the housing options that are needed. There is currently sprawl and segregation of neighborhoods. Current laws are embedded in racial injustice and exclusionary classism.

An analysis commissioned by the Legislature demonstrated that the lowest cost way to construct low-cost housing is through middle housing. It is less expensive than high rises and detached single-family homes. Cost is largely driven by the size of the urban footprint. Once services are provided for a detached single-family home, the incremental cost to provide services to a fourplex is not much higher. Making the best use of existing infrastructure is the most cost-effective way. The implementation of the bill is currently funded in the Governor's proposed budget.

(Opposed) Some cities have recently created housing action plans after engaging with stakeholders and community members and have a plan for moving forward to provide rental and ownership opportunities. The question is whether such cities will be grandfathered in under the new requirements or whether they will have to do another overhaul. The bill has the potential to create dramatic long-term impacts on adequate police services and planning for schools. Jurisdictions should be able to retain local control over these issues. This bill is a punishment to cities that have already implemented housing action plans. Some housing action plans are not even six months old. This bill would make the time and planning put into the housing action plan a waste of time and money. Mandating housing types from the state level lacks transparency and input from the communities. A statewide approach would undercut local control of well-planned missing middle development. Housing action plans will already add more missing middle housing without state intervention. It would be better to provide incentives rather than require the housing types. Broad preemption is not supportive, necessary, or effective.

(Other) Allowing more middle housing and net density near transit is good, but unfortunately the bill's requirements challenges infrastructure. Regional growth plans are a barrier. Instead, jurisdictions should maintain control at the local level and further

resources should be provided.

Persons Testifying: (In support) Representative Jessica Bateman, prime sponsor; Mason Thompson; Lisa Parshley, Olympia City Council; Leah Missik, Climate Solutions; Jesse Piedfort, Sierra Club; Bryce Yadon, Futurewise; Clifford Cawthon, Sightline Institute; Dave Andersen, Washington Department of Commerce; Rami Al-Kabra; Liz Vogeli; and John Flanagan, Office of the Governor.

(Opposed) Arne Woodard, Spokane Valley City Council; Nancy Backus, City of Auburn; Jim Ferrell, City of Federal Way; Elliott Barnett, City of Tacoma; and Carl Schroeder, Association of Washington Cities.

(Other) Ruth Perez, Renton City Council; and Joseph Cimaomo, City of Covington.

Persons Signed In To Testify But Not Testifying: Jennifer Gregerson; Patience Malaba, Housing Development Consortium of Seattle-King County; Ryan Donohue, Habitat for Humanity Seattle-King and Kittitas Counties; Scott Bonjukian; Dani Madrone, American Farmland Trust; Joe Kunzler; Cary Westerbeck; Alex Hur, Master Builders Association of King and Snohomish Counties; Joe Tovar, American Planning Association Washington Chapter; Celeste Gilman, Washington State Department of Transportation; Laura Loe, Share The Cities Action Fund; Hugo Garcia; Karen Levenson, Individual Resident; Mike Ennis, Association of Washington Business; Hal Ferris, Ferris Advisors; Carolynn Ferris; Bill Clarke, Washington Realtors; Greg Smith; Viki Sonntag, Housing Solutions Network; Steve Segall, Thurston-Lewis-Mason Central Labor Council; Kyanne Andersen; Cathy MacCaul, AARP Washington State; Dorene Cornwell; Jan Himself, Building Industry Association of Washington; Paula Sardinias, Washington Build Back Black Alliance; Alex Davidson; Galen Ward; Tanner Lemke; Carol Helland, Redmond Planning and Community Development; Raelene Schifano, Homeowners Association Fightclub; Pamela Johnston; Eric Faison, City of University Place; Brandon Buchanan, City of Woodinville; Richard Ellison; Michael Oxman; Briahna Murray, City of Kent; Shelly Helder, Cities of Issaquah and Mountlake Terrace; and Amy Ockerlander, City of Duvall.