SENGATE BILL 5818

State of Washington  67th Legislature  2022 Regular Session

By Senators Salomon, Liias, Kuderer, Saldaña, and Short

Read first time 01/11/22. Referred to Committee on Housing & Local Government.

AN ACT Relating to promoting housing construction in cities through amendments to and limiting appeals under the state environmental policy act and growth management act; amending RCW 36.70A.600, 36.70A.070, 43.21C.495, 43.21C.501, and 4.84.370; creating a new section; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 36.70A.600 and 2020 c 173 s 1 are each amended to read as follows:

(1) A city planning pursuant to RCW 36.70A.040 is encouraged to take the following actions in order to increase its residential building capacity:

(a) Authorize development in one or more areas of not fewer than five hundred acres that include at least one train station served by commuter rail or light rail with an average of at least fifty residential units per acre that require no more than an average of one on-site parking space per two bedrooms in the portions of multifamily zones that are located within the areas;

(b) Authorize development in one or more areas of not fewer than two hundred acres in cities with a population greater than forty thousand or not fewer than one hundred acres in cities with a population less than forty thousand that include at least one bus stop.

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stop served by scheduled bus service of at least four times per hour
for twelve or more hours per day with an average of at least twenty-
five residential units per acre that require no more than an average
of one on-site parking space per two bedrooms in portions of the
multifamily zones that are located within the areas;

(c) Authorize at least one duplex, triplex, quadplex, sixplex,
stacked flat, townhouse, or courtyard apartment on each parcel in one
or more zoning districts that permit single-family residences unless
a city documents a specific infrastructure of physical constraint
that would make this requirement unfeasible for a particular parcel;

(d) Authorize a duplex, triplex, quadplex, sixplex, stacked flat,
townhouse, or courtyard apartment on one or more parcels for which
they are not currently authorized;

(e) Authorize cluster zoning or lot size averaging in all zoning
districts that permit single-family residences;

(f) Adopt a subarea plan pursuant to RCW 43.21C.420;

(g) Adopt a planned action pursuant to RCW 43.21C.440(1)(b)(ii),
extcept that an environmental impact statement pursuant to RCW
43.21C.030 is not required for such an action;

(h) Adopt increases in categorical exemptions pursuant to RCW
43.21C.229 for residential or mixed-use development;

(i) Adopt a form-based code in one or more zoning districts that
permit residential uses. "Form-based code" means a land development
regulation that uses physical form, rather than separation of use, as
the organizing principle for the code;

(j) Authorize a duplex on each corner lot within all zoning
districts that permit single-family residences;

(k) Allow for the division or redivision of land into the maximum
number of lots through the short subdivision process provided in
chapter 58.17 RCW;

(l) Authorize a minimum net density of six dwelling units per
acre in all residential zones, where the residential development
capacity will increase within the city. For purposes of this
subsection, the calculation of net density does not include the
square footage of areas that are otherwise prohibited from
development, such as critical areas, the area of buffers around
critical areas, and the area of roads and similar features;

(m) Create one or more zoning districts of medium density in
which individual lots may be no larger than three thousand five
hundred square feet and single-family residences may be no larger
than one thousand two hundred square feet;

(n) Authorize accessory dwelling units in one or more zoning
districts in which they are currently prohibited;

(o) Remove minimum residential parking requirements related to
accessory dwelling units;

(p) Remove owner occupancy requirements related to accessory
dwelling units;

(q) Adopt new square footage requirements related to accessory
dwelling units that are less restrictive than existing square footage
requirements related to accessory dwelling units;

(r) Adopt maximum allowable exemption levels in WAC 197-11-800(1)
as it existed on June 11, 2020, or such subsequent date as may be
provided by the department of ecology by rule, consistent with the
purposes of this section;

(s) Adopt standards for administrative approval of final plats
pursuant to RCW 58.17.100;

(t) Adopt ordinances authorizing administrative review of
preliminary plats pursuant to RCW 58.17.095;

(u) Adopt other permit process improvements where it is
demonstrated that the code, development regulation, or ordinance
changes will result in a more efficient permit process for customers;

(v) Update use matrices and allowable use tables that eliminate
conditional use permits and administrative conditional use permits
for all housing types, including single-family homes, townhomes,
multifamily housing, low-income housing, and senior housing, but
excluding essential public facilities;

(w) Allow off-street parking to compensate for lack of on-street
parking when private roads are utilized or a parking demand study
shows that less parking is required for the project;

(x) Develop a local program that offers homeowners a combination
of financing, design, permitting, or construction support to build
accessory dwelling units. A city may condition this program on a
requirement to provide the unit for affordable home ownership or rent
the accessory dwelling unit for a defined period of time to either
tenants in a housing subsidy program as defined in RCW 43.31.605(14)
or to tenants whose income is less than eighty percent of the city or
county median family income. If the city includes an affordability
requirement under the program, it must provide additional incentives,
such as:
(i) Density bonuses;
(ii) Height and bulk bonuses;
(iii) Fee waivers or exemptions;
(iv) Parking reductions; or
(v) Expedited permitting; and

(y) Develop a local program that offers homeowners a combination of financing, design, permitting, or construction support to convert a single-family home into a duplex, triplex, or quadplex where those housing types are authorized. A local government may condition this program on a requirement to provide a certain number of units for affordable home ownership or to rent a certain number of the newly created units for a defined period of time to either tenants in a housing subsidy program as defined in RCW 43.31.605(14) or to tenants whose income is less than eighty percent of the city or county median family income. If the city includes an affordability requirement, it must provide additional incentives, such as:

(i) Density bonuses;
(ii) Height and bulk bonuses;
(iii) Fee waivers or exemptions;
(iv) Parking reductions; or
(v) Expedited permitting.

(2) A city planning pursuant to RCW 36.70A.040 may adopt a housing action plan as described in this subsection. The goal of any such housing plan must be to encourage construction of additional affordable and market rate housing in a greater variety of housing types and at prices that are accessible to a greater variety of incomes, including strategies aimed at the for-profit single-family home market. A housing action plan may utilize data compiled pursuant to RCW 36.70A.610. The housing action plan should:

(a) Quantify existing and projected housing needs for all income levels, including extremely low-income households, with documentation of housing and household characteristics, and cost-burdened households;

(b) Develop strategies to increase the supply of housing, and variety of housing types, needed to serve the housing needs identified in (a) of this subsection;

(c) Analyze population and employment trends, with documentation of projections;

(d) Consider strategies to minimize displacement of low-income residents resulting from redevelopment;
(e) Review and evaluate the current housing element adopted pursuant to RCW 36.70A.070, including an evaluation of success in attaining planned housing types and units, achievement of goals and policies, and implementation of the schedule of programs and actions;

(f) Provide for participation and input from community members, community groups, local builders, local realtors, nonprofit housing advocates, and local religious groups; and

(g) Include a schedule of programs and actions to implement the recommendations of the housing action plan.

(3) ((If adopted by April 1, 2023,)) The adoption of ordinances, amendments to development regulations, and other nonproject actions taken by a city to implement the actions specified in subsection (1) of this section, with the exception of the action specified in subsection (1)(f) of this section, or to implement strategies adopted within a housing action plan under subsection (2) of this section, are not subject to environmental or judicial review or administrative or judicial appeal under chapter 43.21C RCW.

(4) Any action taken by a city ((prior to April 1, 2023,)) to amend ((their) its comprehensive plan((r)),) or adopt or amend ordinances or development regulations, solely to enact provisions under subsection (1) of this section or to implement strategies adopted within a housing action plan under subsection (2) of this section, is not subject to review or legal challenge under this chapter.

(5) In taking action under subsection (1) of this section, cities are encouraged to utilize strategies that increase residential building capacity in areas with frequent transit service and with the transportation and utility infrastructure that supports the additional residential building capacity.

(6) A city that is planning to take at least two actions under subsection (1) of this section, and that action will occur between July 28, 2019, and April 1, 2021, is eligible to apply to the department for planning grant assistance of up to one hundred thousand dollars, subject to the availability of funds appropriated for that purpose. The department shall develop grant criteria to ensure that grant funds awarded are proportionate to the level of effort proposed by a city, and the potential increase in housing supply or regulatory streamlining that could be achieved. Funding may be provided in advance of, and to support, adoption of policies or ordinances consistent with this section. A city can request, and the

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department may award, more than one hundred thousand dollars for
applications that demonstrate extraordinary potential to increase
housing supply or regulatory streamlining.

(7) A city seeking to develop a housing action plan under
subsection (2) of this section is eligible to apply to the department
for up to one hundred thousand dollars.

(8) The department shall establish grant award amounts under
subsections (6) and (7) of this section based on the expected number
of cities that will seek grant assistance, to ensure that all cities
can receive some level of grant support. If funding capacity allows,
the department may consider accepting and funding applications from
cities with a population of less than twenty thousand if the actions
proposed in the application will create a significant amount of
housing capacity or regulatory streamlining and are consistent with
the actions in this section.

(9) In implementing chapter 348, Laws of 2019, cities are
encouraged to prioritize the creation of affordable, inclusive
neighborhoods and to consider the risk of residential displacement,
particularly in neighborhoods with communities at high risk of
displacement.

Sec. 2. RCW 36.70A.070 and 2021 c 254 s 2 are each amended to
read as follows:

The comprehensive plan of a county or city that is required or
chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
and descriptive text covering objectives, principles, and standards
used to develop the comprehensive plan. The plan shall be an
internally consistent document and all elements shall be consistent
with the future land use map. A comprehensive plan shall be adopted
and amended with public participation as provided in RCW 36.70A.140.
Each comprehensive plan shall include a plan, scheme, or design for
each of the following:

(1) A land use element designating the proposed general
distribution and general location and extent of the uses of land,
where appropriate, for agriculture, timber production, housing,
commerce, industry, recreation, open spaces, general aviation
airports, public utilities, public facilities, and other land uses.
The land use element shall include population densities, building
intensities, and estimates of future population growth. The land use
element shall provide for protection of the quality and quantity of
groundwater used for public water supplies. Wherever possible, the
land use element should consider utilizing urban planning approaches
that promote physical activity. Where applicable, the land use
element shall review drainage, flooding, and stormwater runoff in the
area and nearby jurisdictions and provide guidance for corrective
actions to mitigate or cleanse those discharges that pollute waters
of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of
established residential neighborhoods that:

(a) Includes an inventory and analysis of existing and projected
housing needs that identifies the number of housing units necessary
to manage projected growth, as provided by the department of
commerce, including:

(i) Units for moderate, low, very low, and extremely low-income
households; and

(ii) Emergency housing, emergency shelters, and permanent
supportive housing;

(b) Includes a statement of goals, policies, objectives, and
mandatory provisions for the preservation, improvement, and
development of housing, including single-family residences, and
within an urban growth area boundary, moderate density housing
options including but not limited to, duplexes, triplexes, and
townhomes;

(c) Identifies sufficient capacity of land for housing including,
but not limited to, government-assisted housing, housing for
moderate, low, very low, and extremely low-income households,
manufactured housing, multifamily housing, group homes, foster care
facilities, emergency housing, emergency shelters, permanent
supportive housing, and within an urban growth area boundary,
consideration of duplexes, triplexes, and townhomes;

(d) Makes adequate provisions for existing and projected needs of
all economic segments of the community, including:

(i) Incorporating consideration for low, very low, extremely low,
and moderate-income households;

(ii) Documenting programs and actions needed to achieve housing
availability including gaps in local funding, barriers such as
development regulations, and other limitations;

(iii) Consideration of housing locations in relation to
employment location; and
(iv) Consideration of the role of accessory dwelling units in meeting housing needs;

(e) Identifies local policies and regulations that result in racially disparate impacts, displacement, and exclusion in housing, including:

(i) Zoning that may have a discriminatory effect;
(ii) Disinvestment; and
(iii) Infrastructure availability;

(f) Identifies and implements policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion in housing caused by local policies, plans, and actions;

(g) Identifies areas that may be at higher risk of displacement from market forces that occur with changes to zoning development regulations and capital investments; and

(h) Establishes antidisplacement policies, with consideration given to the preservation of historical and cultural communities as well as investments in low, very low, extremely low, and moderate-income housing; equitable development initiatives; inclusionary zoning; community planning requirements; tenant protections; land disposition policies; and consideration of land that may be used for affordable housing.

In counties and cities subject to the review and evaluation requirements of RCW 36.70A.215, any revision to the housing element shall include consideration of prior review and evaluation reports and any reasonable measures identified. The housing element should link jurisdictional goals with overall county goals to ensure that the housing element goals are met.

The adoption of ordinances and amendments to development regulations taken by a city that is required or chooses to plan under RCW 36.70A.040 to implement the actions specified in this subsection (2) are not subject to environmental or judicial review or administrative or judicial appeal under chapter 43.21C RCW.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a
requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural economic advancement, densities, and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources; and
(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) A commercial, industrial, residential, shoreline, or mixed-use area are subject to the requirements of (d)(iv) of this subsection, but are not subject to the requirements of (c)(ii) and (iii) of this subsection.

(B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) must be principally designed to serve the existing and projected rural population.

(C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5);

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural
population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(23). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(23). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary, the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries, such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county
that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdictional boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the office of financial management's ten-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must
be a factor in meeting the concurrency requirements in (b) of this subsection;

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the ten-year investment program developed by the office of financial management as required by RCW 47.05.030;

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies;

(vii) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the
standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride-sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6), "concurrent with the development" means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years. If the collection of impact fees is delayed under RCW 82.02.050(3), the six-year period required by this subsection (6) (b) must begin after full payment of all impact fees is due to the county or city.

(c) The transportation element described in this subsection (6), the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems, and the ten-year investment program required by RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130.

Sec. 3. RCW 43.21C.495 and 2020 c 173 s 2 are each amended to read as follows:
Amendments to development regulations and other nonproject actions taken by a city to implement: RCW 36.70A.070(2); RCW 36.70A.600 (1) or (4), with the exception of the action specified in RCW 36.70A.600(1)(f); and strategies adopted within a housing action plan under RCW 36.70A.600(2), are not subject to environmental or judicial review or administrative or judicial appeals under this chapter.

Sec. 4. RCW 43.21C.501 and 2019 c 348 s 6 are each amended to read as follows:

(1) Project actions described in this section that pertain to residential, multifamily, or mixed-use development evaluated under this chapter by a city or town planning under RCW 36.70A.040 are exempt from appeals under this chapter on the basis of the evaluation of or impacts to the following elements of the environment, provided that the appropriate requirements for a particular element of the environment, as set forth in subsections (2) and (3) of this section, are met.

(2)(a) Transportation. A project action pertaining to residential, multifamily, or mixed-use development evaluated under this chapter by a city or town planning under RCW 36.70A.040 is exempt from appeals under this chapter on the basis of the evaluation of or impacts to transportation elements of the environment, so long as ((the project does not present significant adverse impacts to the state-owned transportation system as determined by the department of transportation and)) the project is:

((a)(i)) (i)(A) Consistent with a locally adopted transportation plan; or

((i)(i)) (B) Consistent with the transportation element of a comprehensive plan; and

((b)(i)) (ii)(A) A project for which traffic or parking impact fees are imposed pursuant to RCW 82.02.050 through 82.02.090; or

((ii)) (B) A project for which traffic or parking impacts are (expressly) mitigated by an ordinance, or ordinances, of general application adopted by the city or town.

((2)) (b) The exemption under this subsection (2) does not apply if the department of transportation has found that the project will present significant adverse impacts to the state-owned transportation system.
(3) Aesthetics. A project action pertaining to residential, multifamily, or mixed-use development evaluated under this chapter by a city or town planning under RCW 36.70A.040 is exempt from appeals under this chapter on the basis of the evaluation of or impacts to the aesthetics element of the environment, so long as the project is subject to design review pursuant to adopted design review requirements at the local government level. For purposes of this subsection, "design review" means a formally adopted local government process by which projects are reviewed for compliance with design standards for the type of use adopted through local ordinance.

(4) For purposes of this section, "impacts to transportation elements of the environment" include impacts to transportation systems; vehicular traffic; waterborne, rail, and air traffic; parking; movement or circulation of people or goods; and traffic hazards.

NEW SECTION. Sec. 5. (1) The legislature recognizes that certain rule-based categorical exemption thresholds to chapter 43.21C RCW, found in WAC 197-11-800, have not been updated in recent years, and should be modified in light of the increased environmental protections in place under chapters 36.70A and 90.58 RCW, the current affordable housing crisis, and other laws. It is the intent of the legislature to direct the department of ecology to conduct expedited rule making to modify the thresholds for the categorical exemptions described under subsection (2) of this section.

(2) By December 31, 2022, the department of ecology shall modify the rule-based categorical exemptions to chapter 43.21C RCW found in WAC 197-11-800 as follows:

(a) Include four attached single-family residential units to the current exemption under WAC 197-11-800(1)(b)(i);

(b) Create a new exemption level under WAC 197-11-800(1)(d) for single-family residential project types with a total square footage of fewer than 1,500 square feet in incorporated urban growth areas of at least 100 units;

(c) Apply the existing exemption level under WAC 197-11-800(1)(d) for single-family residential project types in incorporated urban growth areas to single-family residential types with a total square footage of 1,500 square feet or more in incorporated urban growth areas; and
(d) Increase the exemption level under WAC 197-11-800(1)(d) for multifamily residential project types in incorporated urban growth areas from 60 units to 200 units.

(3) This section expires January 1, 2024.

Sec. 6. RCW 4.84.370 and 1995 c 347 s 718 are each amended to read as follows:

(1) Notwithstanding any other provisions of this chapter, reasonable attorneys' fees and costs shall be awarded to the prevailing party or substantially prevailing party on appeal before the court of appeals or the supreme court of a decision by a county, city, or town to issue, condition, or deny a development permit involving a site-specific rezone, zoning, plat, conditional use, variance, shoreline permit, building permit, site plan, or similar land use approval or decision. The court shall award and determine the amount of reasonable attorneys' fees and costs under this section if:

(a) The prevailing party on appeal was the prevailing or substantially prevailing party before the county, city, or town, in a decision involving a substantial development permit under chapter 90.58 RCW or the prevailing party on appeal was the prevailing party or the substantially prevailing party before the shorelines hearings board; and

(b) The prevailing party on appeal was the prevailing party or substantially prevailing party in all prior judicial proceedings.

(2) In addition to the prevailing party under subsection (1) of this section, the county, city, or town whose decision is on appeal is considered a prevailing party if its decision is upheld at superior court and on appeal.

(3) Reasonable attorneys' fees shall be awarded to the prevailing party or substantially prevailing party at trial or on appeal before the court of appeals or the supreme court of a decision by a county, city, or town to issue, condition, or deny a development permit involving a project-specific affordable housing development.