

ESHB 1042 - S AMD 297
By Senator Kuderer

ADOPTED 04/05/2023

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 35A.21
4 RCW to read as follows:

5 (1)(a) Code cities must adopt or amend by ordinance, and
6 incorporate into their development regulations, zoning regulations,
7 and other official controls the requirements of subsection (2) of
8 this section for buildings that are zoned for commercial or mixed use
9 no later than six months after its next periodic comprehensive plan
10 update required under RCW 36.70A.130.

11 (b) The requirements of subsection (2) of this section apply and
12 take effect in any code city that has not adopted or amended
13 ordinances, regulations, or other official controls as required under
14 this section by the timeline in (a) of this subsection and supersede,
15 preempt, and invalidate any conflicting local development
16 regulations.

17 (2) Through ordinances, development regulations, zoning
18 regulations, or other official controls as required under subsection
19 (1) of this section, code cities may not:

20 (a) Impose a restriction on housing unit density that prevents
21 the addition of housing units at a density up to 50 percent more than
22 what is allowed in the underlying zone if constructed entirely within
23 an existing building envelope in a building located within a zone
24 that permits multifamily housing, provided that generally applicable
25 health and safety standards, including but not limited to building
26 code standards and fire and life safety standards, can be met within
27 the building;

28 (b) Impose parking requirements on the addition of dwelling units
29 or living units added within an existing building, however, cities
30 may require the retention of existing parking that is required to
31 satisfy existing residential parking requirements under local laws
32 and for nonresidential uses that remain after the new units are
33 added;

1 (c) With the exception of emergency housing and transitional
2 housing uses, impose permitting requirements on the use of an
3 existing building for residential purposes beyond those requirements
4 generally applicable to all residential development within the
5 building's zone;

6 (d) Impose design standard requirements, including setbacks, lot
7 coverage, and floor area ratio requirements, on the use of an
8 existing building for residential purposes beyond those requirements
9 generally applicable to all residential development within the
10 building's zone;

11 (e) Impose exterior design or architectural requirements on the
12 residential use of an existing building beyond those necessary for
13 health and safety of the use of the interior of the building or to
14 preserve character-defining streetscapes, unless the building is a
15 designated landmark or is within a historic district established
16 through a local preservation ordinance;

17 (f) Prohibit the addition of housing units in any specific part
18 of a building except ground floor commercial or retail that is along
19 a major pedestrian corridor as defined by the code city, unless the
20 addition of the units would violate applicable building codes or
21 health and safety standards;

22 (g) Require unchanged portions of an existing building used for
23 residential purposes to meet the current energy code solely because
24 of the addition of new dwelling units within the building, however,
25 if any portion of an existing building is converted to new dwelling
26 units, each of those new units must meet the requirements of the
27 current energy code;

28 (h) Deny a building permit application for the addition of
29 housing units within an existing building due to nonconformity
30 regarding parking, height, setbacks, elevator size for gurney
31 transport, or modulation, unless the code city official with
32 decision-making authority makes written findings that the
33 nonconformity is causing a significant detriment to the surrounding
34 area; or

35 (i) Require a transportation concurrency study under RCW
36 36.70A.070 or an environmental study under chapter 43.21C RCW based
37 on the addition of residential units within an existing building.

38 (3) Nothing in this section requires a code city to approve a
39 building permit application for the addition of housing units
40 constructed entirely within an existing building envelope in a

1 building located within a zone that permits multifamily housing in
2 cases in which the building cannot satisfy life safety standards.

3 (4) For the purpose of this section, "existing building" means a
4 building that received a certificate of occupancy at least three
5 years prior to the permit application to add housing units.

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.21
7 RCW to read as follows:

8 (1)(a) Cities must adopt or amend by ordinance, and incorporate
9 into their development regulations, zoning regulations, and other
10 official controls the requirements of subsection (2) of this section
11 for buildings that are zoned for commercial or mixed use no later
12 than six months after its next periodic comprehensive plan update
13 required under RCW 36.70A.130.

14 (b) The requirements of subsection (2) of this section apply and
15 take effect in any city that has not adopted or amended ordinances,
16 regulations, or other official controls as required under this
17 section by the timeline in (a) of this subsection and supersede,
18 preempt, and invalidate any conflicting local development
19 regulations.

20 (2) Through ordinances, development regulations, zoning
21 regulations, or other official controls as required under subsection
22 (1) of this section, cities may not:

23 (a) Impose a restriction on housing unit density that prevents
24 the addition of housing units at a density up to 50 percent more than
25 what is allowed in the underlying zone if constructed entirely within
26 an existing building envelope in a building located within a zone
27 that permits multifamily housing, provided that generally applicable
28 health and safety standards, including but not limited to building
29 code standards and fire and life safety standards, can be met within
30 the building;

31 (b) Impose parking requirements on the addition of dwelling units
32 or living units added within an existing building, however, cities
33 may require the retention of existing parking that is required to
34 satisfy existing residential parking requirements under local laws
35 and for nonresidential uses that remain after the new units are
36 added;

37 (c) With the exception of emergency housing and transitional
38 housing uses, impose permitting requirements on the use of an
39 existing building for residential purposes beyond those requirements

1 generally applicable to all residential development within the
2 building's zone;

3 (d) Impose design standard requirements, including setbacks, lot
4 coverage, and floor area ratio requirements, on the use of an
5 existing building for residential purposes beyond those requirements
6 generally applicable to all residential development within the
7 building's zone;

8 (e) Impose exterior design or architectural requirements on the
9 residential use of an existing building beyond those necessary for
10 health and safety of the use of the interior of the building or to
11 preserve character-defining streetscapes, unless the building is a
12 designated landmark or is within a historic district established
13 through a local preservation ordinance;

14 (f) Prohibit the addition of housing units in any specific part
15 of a building except ground floor commercial or retail that is along
16 a major pedestrian corridor as defined by each city, unless the
17 addition of the units would violate applicable building codes or
18 health and safety standards;

19 (g) Require unchanged portions of an existing building used for
20 residential purposes to meet the current energy code solely because
21 of the addition of new dwelling units within the building, however,
22 if any portion of an existing building is converted to new dwelling
23 units, each of those new units must meet the requirements of the
24 current energy code;

25 (h) Deny a building permit application for the addition of
26 housing units within an existing building due to nonconformity
27 regarding parking, height, setbacks, elevator size for gurney
28 transport, or modulation, unless the city official with decision-
29 making authority makes written findings that the nonconformity is
30 causing a significant detriment to the surrounding area; or

31 (i) Require a transportation concurrency study under RCW
32 36.70A.070 or an environmental study under chapter 43.21C RCW based
33 on the addition of residential units within an existing building.

34 (3) Nothing in this section requires a city to approve a building
35 permit application for the addition of housing units constructed
36 entirely within an existing building envelope in a building located
37 within a zone that permits multifamily housing in cases in which the
38 building cannot satisfy life safety standards.

1 (4) For the purpose of this section, "existing building" means a
2 building that received a certificate of occupancy at least three
3 years prior to the permit application to add housing units.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.27A
5 RCW to read as follows:

6 By January 1, 2024, the state building code council shall adopt
7 by rule an amendment to the current energy code that waives the
8 requirement for unchanged portions of an existing building used for
9 residential purposes to meet the current energy code solely because
10 of the addition of new dwelling units within the building. New
11 dwelling units created within the existing building must meet the
12 requirements of the current energy code.

13 **Sec. 4.** RCW 43.21C.450 and 2012 1st sp.s. c 1 s 307 are each
14 amended to read as follows:

15 The following nonproject actions are categorically exempt from
16 the requirements of this chapter:

17 (1) Amendments to development regulations that are required to
18 ensure consistency with an adopted comprehensive plan pursuant to RCW
19 36.70A.040, where the comprehensive plan was previously subjected to
20 environmental review pursuant to this chapter and the impacts
21 associated with the proposed regulation were specifically addressed
22 in the prior environmental review;

23 (2) Amendments to development regulations that are required to
24 ensure consistency with a shoreline master program approved pursuant
25 to RCW 90.58.090, where the shoreline master program was previously
26 subjected to environmental review pursuant to this chapter and the
27 impacts associated with the proposed regulation were specifically
28 addressed in the prior environmental review;

29 (3) Amendments to development regulations that, upon
30 implementation of a project action, will provide increased
31 environmental protection, limited to the following:

32 (a) Increased protections for critical areas, such as enhanced
33 buffers or setbacks;

34 (b) Increased vegetation retention or decreased impervious
35 surface areas in shoreline jurisdiction; and

36 (c) Increased vegetation retention or decreased impervious
37 surface areas in critical areas;

1 (4) Amendments to technical codes adopted by a county, city, or
2 town to ensure consistency with minimum standards contained in state
3 law, including the following:
4 (a) Building codes required by chapter 19.27 RCW;
5 (b) Energy codes required by chapter 19.27A RCW; and
6 (c) Electrical codes required by chapter 19.28 RCW.
7 (5) Adoption or amendment of ordinances, development regulations,
8 zoning regulations, and other official controls necessary to comply
9 with sections 1 and 2 of this act."

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10 On page 1, line 2 of the title, after "buildings;" strike the
11 remainder of the title and insert "amending RCW 43.21C.450; adding a
12 new section to chapter 35A.21 RCW; adding a new section to chapter
13 35.21 RCW; and adding a new section to chapter 19.27A RCW."

EFFECT: (1) Provides that the provisions of the bill apply to existing buildings that are zoned for commercial or mixed use.

(2) Requires cities adopt or amend their regulations and other official controls no later than six months after its next periodic comprehensive plan update, rather than by July 1, 2024.

(3) Provides that cities may not impose a restriction on housing unit density that prevents the addition of housing units at a density up to 50 percent more than what is allowed in the underlying zone if constructed entirely within the existing building envelope.

(4) Allows cities to require the retention of existing parking that is required to satisfy existing residential parking requirements under local laws and for nonresidential uses that remain after the new units are added.

(5) Provides that cities may impose permitting requirements on the use of existing emergency housing and transitional housing uses.

(6) Provides that cities can impose exterior design or architectural requirements necessary to preserve character-defining streetscapes or if the building is a designated landmark or is within a historic district established through a local preservation ordinance.

(7) Allows cities to prohibit the addition of housing units on ground floor of a commercial or retail building that is along a major pedestrian corridor as defined by each code city.

(8) Clarifies that cities may not require unchanged portions of an existing building meet the current energy code because of the addition of a new dwelling unit, but if any portion of an existing building is converted to new dwelling units, each of those new dwelling units must meet the requirements of the current energy code.

(9) Clarifies that cities cannot deny a building permit for the addition of housing units within an existing building due to

nonconformity of parking, height, setbacks, elevator size for gurney transport, or modulation, rather than for nonconformity of the existing structure.

(10) Authorizes the city official with decision-making authority, rather than the legislative authority of the city, to make written findings that nonconformity is causing a significant detriment to the surrounding area.

(11) Defines an existing building as a building that received a certificate of occupancy at least three years prior to the permit application to add housing units.

(12) Exempts adoption or amendment of ordinances, development regulations, zoning regulations, and other official controls necessary to comply with the bill from the state environmental policy act.

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