

# SENATE BILL REPORT

## E2SHB 1110

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As of March 16, 2023

**Title:** An act relating to creating more homes for Washington by increasing middle housing in areas traditionally dedicated to single-family detached housing.

**Brief Description:** Increasing middle housing in areas traditionally dedicated to single-family detached housing.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Bateman, Barkis, Reed, Taylor, Riccelli, Berry, Fitzgibbon, Peterson, Duerr, Lekanoff, Alvarado, Street, Ryu, Ramel, Cortes, Doglio, Macri, Mena, Gregerson, Thai, Bergquist, Farivar, Wylie, Stonier, Pollet, Santos, Fosse and Ormsby).

**Brief History:** Passed House: 3/6/23, 75-21.

**Committee Activity:** Housing: 3/17/23.

### Brief Summary of Bill

- Requires certain cities planning under the Growth management Act to authorize minimum development densities on lots zoned predominately for residential use and include specific provisions related to middle housing in their development regulations.
- Requires the Department of Commerce to develop model middle housing ordinances, a process for cities to seek approval of alternative local actions, guidance to assist cities on items to include in a parking study, and provide technical assistance to cities to implement the requirements.

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### SENATE COMMITTEE ON HOUSING

**Staff:** Melissa Van Gorkom (786-7491)

**Background:** Growth Management Act. The Growth Management Act (GMA) is the

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comprehensive land use planning framework for counties and cities in Washington. The GMA establishes land use designation and environmental protection requirements for all Washington counties and cities. The GMA also establishes a significantly wider array of planning duties for 28 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA. These jurisdictions are sometimes said to be fully planning under the GMA.

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

Comprehensive Plans. The GMA directs fully planning jurisdictions to adopt internally consistent comprehensive land use plans. When developing their comprehensive plans, counties and cities must consider various goals set forth in statute, and include mandatory elements such as housing and a capital facilities plan. Comprehensive plans are implemented through locally adopted development regulations, and both must be reviewed and revised every ten years. The review and revision deadlines are staggered as follows:

- on or before December 31, 2024 for King, Kitsap, Pierce, and Snohomish counties, and the cities within those counties, with the following review, and if needed, revision on or before June 30, 2034;
- on or before June 30, 2025 for Clallam, Clark, Island, Jefferson, Lewis, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;
- on or before June 30, 2026 for Benton, Chelan, Cowlitz, Douglas, Franklin, Kittitas, Skamania, Spokane, Walla Walla, and Yakima counties and the cities within those counties; and
- on or before June 30, 2027 for Adams, Asotin, Columbia, Ferry, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, and Whitman counties and the cities within those counties.

The Department of Commerce (Commerce) must establish a program of technical and financial assistance to encourage and facilitate cities and counties to adopt and implement comprehensive plans.

Housing Element. Comprehensive plans must include a housing element that ensures the vitality and character of established residential neighborhoods. The housing element must include the following:

- 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 Commerce;
- a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing;

- identification of sufficient capacity of land for various housing;
- adequate provisions for existing and projected needs of all economic segments of the community;
- identification of local policies and regulations that result in racially disparate impacts, displacement, and exclusion of housing;
- identification and implementation of policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion of housing caused by local policies, plans, and actions;
- identification of neighborhoods that may be at higher risk of displacement from market forces; and
- establishment of antidisplacement policies.

Planning Actions to Increase Residential Building Capacity. Fully planning cities are encouraged to take an array of specified planning actions to increase residential building capacity which include, for example:

- authorizing a duplex, triplex, quadplex, sixplex, stacked flat, townhouse, or courtyard apartment on parcels;
- authorizing cluster zoning or lot size averaging in all zoning districts that permit single-family residences;
- adopting increases in categorical exemptions to the State Environmental Policy Act (SEPA) for residential or mixed-use development;
- adopting a form-based code in one or more zoning districts that permit residential uses;
- authorizing a duplex on each corner lot within all zoning districts that permit single-family residences;
- authorizing accessory-dwelling units in one or more zoning districts in which they are currently prohibited;
- adopting ordinances authorizing administrative review of preliminary plats; and
- allowing off-street parking to compensate for lack of on-street parking when private roads are used, or a parking demand study shows that less parking is required.

In general, ordinances and other nonproject actions taken to implement these specified planning actions are not subject to administrative or judicial appeal under SEPA, and any action taken by a city prior to April 1, 2023, to amend its comprehensive plan or adopt or amend ordinances or development regulations, solely to increase residential building capacity are not subject to legal challenge under the GMA.

Affordable Housing Incentive Programs. Jurisdictions that fully plan under the GMA are authorized to enact or expand affordable housing incentive programs to provide for the development of low-income housing units if various requirements, such as committing low-income housing units developed to continuing affordability for at least 50 years, are met. These programs may be implemented through development regulations, conditions on rezoning or permit decisions, or both, on residential, commercial, industrial, and mixed-use development.

Common Interest Communities. A common interest community (CIC) is a form of real estate in which each unit owner or homeowner has an exclusive interest in a unit or lot and a shared or undivided interest in common area property. In Washington, several statutes govern residential CICs, such as condominiums and homeowners' associations (HOA). Generally these groups can regulate or limit the use of property by its members.

**Summary of Bill:** Density Requirements. A fully planning city meeting the population criteria, must provide by ordinance and incorporate into its development regulations, zoning regulations, and other official controls, authorization for the development of a minimum number of units on all lots zoned predominately for residential use by six months after the city's next required comprehensive plan update, or 12 months after OFM determines a city has reached the population threshold, whichever is later.

A fully planning city with a population of at least 25,000 but less than 75,000, that is not within a contiguous UGA with the largest city in a county with a population of more than 275,000, must include authorization for at least:

- two units per lot;
- four units per lot if at least one unit is affordable housing; and
- four units per lot within one-half mile walking distance of a major transit stop.

A fully planning city with a population of at least 75,000, or any city located within a contiguous UGA with the largest city in a county with a population of more than 275,000, must include authorization for at least:

- four units per lot;
- six units per lot if at least two of the units are affordable housing; and
- six units per lot within one-quarter mile walking distance of a major transit stop.

As an alternative, cities with a population of less than 75,000 within a contiguous UGA with the largest city in a county with a population of more than 275,000 may authorize at least:

- three units per lot;
- four units per lot if at least one unit is affordable housing; and
- six units per lot within one-half mile walking distance of a major transit stop.

To qualify for the additional units the applicant must commit to renting or selling the required number of units as affordable housing. The units must be maintained as affordable for a term of at least 50 years, and record a covenant or deed restriction that ensures the continuing affordability and address criteria and policies to maintain public benefit if the property is converted to a use other than which continues to provide for permanent affordable housing. The units dedicated as affordable must:

- be generally distributed throughout the development;
- be provided in a range of sizes comparable to other units in the development;
- to the extent practicable, provide the same proportion of bedrooms in affordable units

- as the number of bedrooms in units within the entire development; and
- have substantially the same functionality as the other units in the development.

A city with an affordable housing incentive program may vary from these affordable housing requirements and require any development to provide affordable housing, either on-site or through an in-lieu payment.

Density requirements do not apply:

- to lots designated with critical areas or their buffers; or
- to a watershed serving a reservoir for potable water if that watershed is, or was listed as of the effective date, as impaired or threatened under the federal Clean Water Act.

Alternative Density Requirement. Cities subject to the density requirements may choose to implement the density requirements for at least 75 percent of lots in the city that are primarily dedicated to single-family detached housing units. Unless identified as at higher risk of displacement, the 75 percent of lots allowing the minimum densities must include any areas:

- for which the exclusion would further racially disparate impacts or result in zoning with a discriminatory effect;
- historically covered by a covenant or deed restriction excluding racial minorities from owning property or living in the area; or
- within one-half mile walking distance of a major transit stop, community amenity, or a building, shopping center, or business area containing at least 100,000 square feet of retail space.

The 25 percent where density requirements are not implemented must include:

- any areas within the city for which Commerce has certified an extension due to the risk of displacement or lack of infrastructure capacity;
- any lots designated with critical areas or their buffers;
- any portion of the city within a one-mile radius of a commercial airport with at least 9 million annual enplanements that is exempt from parking requirements; and
- any areas subject to sea level rise, increased flooding, or geological hazards over the next 100 years.

A city that implements the density requirements for at least 75 percent of lots in the city that are primarily dedicated to single-family detached housing units may apply to Commerce for an extension: to timelines established; or for areas at risk of displacement as determined by the antidisplacement analysis. The city must create a plan for implementing antidisplacement policies by their next comprehensive plan implementation progress report. Any extensions of the timelines established may only be applied to specific areas where a city can demonstrate water, sewer, stormwater or fire protection services lack capacity to accommodate the density required, and the city has: included one or more improvements within its capital facilities plan to increase capacity; or identified which special district is responsible for providing the necessary infrastructure. The extension of timelines remains

in effect until the earliest of:

- the infrastructure is improved to accommodate the capacity;
- the city's deadline to complete its next periodic comprehensive plan update; or
- the city's deadline to complete its comprehensive plan implementation progress report to Commerce.

A city may reapply for an additional extension with its next periodic comprehensive plan update or five-year implementation progress report. The extension application must include a list of infrastructure improvements necessary to meet the required capacity. Commerce must provide the Legislature with a list of those projects identified in a city's capital facilities plan that were the basis for the extension. A city granted an extension of timeliness for a specific area must allow development if the developer commits to providing the necessary water, sewer, or stormwater infrastructure.

Middle Housing Requirements. A city must allow at least six of the nine of middle housing types to achieve the unit density requirements. Middle housing is defined as buildings that are compatible in scale, form, and character with single-family homes and contain two or more attached, stacked, or clustered homes including duplexes, triplexes, fourplexes, fiveplexes, sixplexes, townhouses, stacked flats, courtyard apartments, and cottage housing.

Any city subject to the middle housing requirements:

- must allow zero lot line short subdivision where the number of lots created is equal to the unit density required;
- may only adopt objective development and design standards on the development of middle housing;
- may only apply a development permit process whereby an application is reviewed, approved, or denied based solely on objective design and development standards without a public meeting or hearing, unless such review is otherwise required by state or federal law, or the structure is a designated landmark or historic district established under a local preservation ordinance;
- may not require standards for middle housing that are more restrictive than those required for detached single-family residences;
- must apply to middle housing the same development permit and environmental review processes regulations that apply to detached single-family residences, unless otherwise required by state law;
- may not require off-street parking as a condition of permitting development of middle housing within one-half mile walking distance of a major transit stop;
- may not require more than one off-street parking space per unit as a condition of permitting development of middle housing on lots smaller than 6000 square feet
- may not require more than two off-street parking spaces per unit as a condition of permitting development of middle housing on lots greater than 6000 square feet; and
- may impose a limit of two units on a residential lot of 2000 square feet or less created through a lot split.

A categorical exemption from SEPA is established for development regulations that remove parking requirements for infill development. The parking provisions do not apply:

- if the local government submits to Commerce an empirical study prepared by a credentialed transportation or land use planning expert that clearly demonstrates, and Commerce finds and certifies, the application of parking provisions in a defined area would be significantly less safe for vehicle drivers or passengers, pedestrians, or bicyclists than if the jurisdiction's parking requirements were applied in the same location for the same number of detached houses; or
- to portions of cities within a one-mile radius of a commercial airport with at least 9 million annual enplanements.

No city shall approve a building permit for housing without adequate water supply. Population associated with permits for middle housing units are exempt from the threshold of an OFM population projection to a county or a county population allocation to a city.

A city that adopts the density and missing middle requirements is:

- not required to update the capital facility plan element required under the GMA to accommodate the increased housing and population capacity until the periodic comprehensive plan update required on or after June 30, 2034, unless Commerce grants a timeline extension or the city is under 75,000 within a continuous UGA with the largest city in a county with a population of more than 275,000 choosing to implement the alternative to the density requirement; and
- deemed to be in compliance with the requirement under the housing element to make adequate provisions for existing and projected needs of all economic segments of the community, and identify and implement policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion in housing caused by local policies, plans, and actions until June 30, 2032.

Department of Commerce. Commerce must develop and publish model middle housing ordinances within six months after the act takes effect. The model ordinances supersede, preempt, and invalidate local development regulations that fail to allow middle housing within the time frames provided until the city takes action to adopt density and middle housing regulations.

Commerce must establish a process for cities to seek approval of alternative local actions to meet density requirements, and may approve actions for cities that have adopted a comprehensive plan by January 1, 2023, and permanent development regulations within one year of the effective date that are substantially similar to the density and missing middle requirements. Commerce must find as substantially similar plans and regulations that:

- result in an overall increase in housing units allowed in single-family zones that is at least 75 percent of the increase in housing units allowed in single-family zones if density requirements were adopted;
- allow for middle housing throughout the city, rather than just in targeted locations; and

- allow for additional density near major transit stops and community amenities, and for projects that incorporate dedicated affordable housing.

If a city can clearly demonstrate that the regulations adopted will result in a greater increase in middle housing production within single family zones than would be allowed through the density requirements, Commerce may determine that a comprehensive plan and development regulations that do not meet these criteria are substantially similar. Any alternative local actions approved by Commerce are exempt from appeals under the GMA and SEPA.

Commerce must develop guidance to assist cities on items to include in a parking study and provide technical assistance to implement the requirements prioritized based on cities demonstrating the greatest need.

Commerce may establish by rule and any standards or procedures necessary to implement the act.

Common Interest Communities. Governing documents and declarations of CICs, including those such as condominiums and HOAs, within cities subject to the middle housing and density requirements created after the act takes effect may not prohibit construction, development, or use of the additional housing units.

**Appropriation:** The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.