

SENATE BILL REPORT

SB 5190

As Reported by Senate Committee On:
Local Government, Land Use & Tribal Affairs, January 12, 2023
Housing, February 8, 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: Senators Trudeau, Lovelett, Braun, Frame, Hasegawa, Hunt, Kuderer, Liias, Nguyen, Nobles, Pedersen, Shewmake and Wilson, C..

Brief History:

Committee Activity: Local Government, Land Use & Tribal Affairs: 1/12/23 [w/oRec-HSG].

Housing: 1/25/23, 2/08/23 [DPS-WM, DNP, w/oRec].

Brief Summary of First Substitute 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 required local actions, guidance to assist cities on items to include in a parking study, and provide technical assistance to cities to implement the requirements.

SENATE COMMITTEE ON HOUSING

Majority Report: That Substitute Senate Bill No. 5190 be substituted therefor, and the

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substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kuderer, Chair; Frame, Vice Chair; Cleveland, Saldaña, Shewmake and Trudeau.

Minority Report: Do not pass.

Signed by Senators Fortunato, Ranking Member; Gildon.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun, Rivers and Wilson, J..

Staff: Melissa Van Gorkom (786-7491)

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

Comprehensive Plans. The GMA directs fully planning jurisdictions to adopt internally consistent comprehensive land use plans. Comprehensive plans are implemented through locally adopted development regulations, and both the plans and the local regulations are subject to review and revision requirements prescribed in the GMA. When developing their comprehensive plans, counties and cities must consider various goals set forth in statute.

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.

Mandatory 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;
- 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, if adopted by April 1, 2023, are not subject to administrative or judicial appeal under SEPA or legal challenge under the GMA.

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 (First Substitute): Density Requirements. A fully planning city with a population of at least 25,000, must provide by ordinance and incorporate into its development regulations, zoning regulations, and other official controls, authorization for the development of additional units per lot on all lots zoned predominately for residential use, unless the lot is designated with critical areas or their buffers.

A city with a population of at least 25,000 but less than 75,000 must include authorization for at least:

- two units per lot on all lots zoned for predominately residential use;
- four units per lot in all lots zoned for predominately residential use, if at least one unit is affordable housing; and

- four units per lot in all lots zoned for predominately residential use within one-half mile of a major transit stop or community amenity.

A city with a population of at least 75,000, or any city located within a contiguous urban growth area with a city population above 200,000, must include authorization for at least:

- four units per lot on all lots zoned for predominately residential use;
- six units per lot on all lots zoned predominately for residential use, if at least two of the units are affordable housing; and
- six units per lot on all lots zoned predominately for residential use within one-half mile of a major transit stop or community amenity.

To qualify for the additional units the applicant must commit to renting 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 low-income housing. The square footage of the units dedicated as affordable must be equal to the average square footage of the market rate units on the same lot.

Middle Housing Requirements. Any combination of middle housing types must be allowed to achieve the unit density required. 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, courtyard apartments, and cottage housing.

Any city subject to the middle housing requirements:

- 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 listed on a local historic register through 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, environmental review processes, and critical areas 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; and
- 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.

Cities may be exempt from the parking provisions if the city or county makes a determination, supported by empirical evidence and best practices in a study that is prepared by a credentialed transportation or land use planning expert, that the lack of minimum parking requirements in a defined area would make on-street parking infeasible or unsafe for the authorized units.

The density and middle housing requirements take effect the latter of six months after the city's next required comprehensive plan update, or 12 months after the Office of Financial Management determines a city has reached the population threshold.

Cities may apply 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, or stormwater services lack capacity to accommodate the density required, and the city has:

- included an improvement 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 completes its next periodic comprehensive plan update; or
- the city submits its comprehensive plan implementation progress report to Commerce.

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.

A city that adopts the density and missing middle requirements is deemed to be in compliance with the mandatory GMA element of making adequate provisions for existing and projected needs of all economic segments of the community 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 required local actions, and may approve actions for cities that have adopted development regulations that are substantially similar to the density and missing middle requirements. The department must view favorably plans and regulations that authorize an overall increase in density

throughout the city in units allowed per single-family lot that is at least 75 percent of the overall single-family density throughout the city in units allowed per lot required under the Act. Any 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 prioritized based on cities demonstrating the greatest need.

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.

EFFECT OF CHANGES MADE BY HOUSING COMMITTEE (First Substitute):

- Modifies density requirements and population thresholds for cities.
- Removes Washington State ferry terminals and a stop for a bus with minimum service requirements from the definition of "major transit stop."
- Defines community amenity as a public or private school having a curriculum below the college or university level and a designated entrance or pedestrian access point to a park operated by the state or a local government for the use of the general public.
- Requires the applicant commit to renting or selling the required number of units as affordable for all additional units subject to the density requirements, and that the square footage of units dedicated as affordable equal the average square footage of the market rate units on the same lot.
- Requires any combination of middle housing types to be allowed to achieve the required unit density.
- Adds a requirement for cities subject to requirements to only apply administrative design review whereby an application is reviewed, approved, or denied by the planning director or the planning directors designee 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 listed on the local historic register through a local preservation ordinance.
- Modifies the maximum parking that may be required to one or two off-street parking spaces per unit, instead of per lot, and provides an exemption from the parking provisions if the city or county makes a determination, supported by empirical evidence and best practices in a study that is prepared by a credentialed transportation or land use planning expert, that the lack of minimum parking requirements in a defined area would make on-street parking infeasible or unsafe for the authorized units.
- Requires Commerce to develop guidance to assist cities on items to include in the parking study.
- Exempts lots designated with critical areas or their buffers from the density requirements.

- Changes the deadline by which cities currently meeting the population thresholds must comply with the density requirements to six months after a city's next required comprehensive plan update, instead of 24 months after the effective date of the bill.
- Exempts population associated with permits for middle housing units from the threshold of an Office of Financial Management population projection to a county or a county population allocation to a city.
- Requires Commerce publish model middle housing ordinances no later than six months, instead of 18 months, after the effective date of the bill.
- Specifies criteria by which Commerce may approve alternative local actions to determine compliance, including viewing favorable plans and regulations that authorize an overall increase in density throughout the city in units allowed per single family lot that is at least 75 percent of the overall single-family density throughout the city that is required under the Act.
- Removes requirement for cities subject to the density requirements to adopt local antidisplacement measures within nine months.
- Allows cities to apply to Commerce for an extension in implementing the Act's requirements in areas at risk of displacement and removes provisions related to the antidisplacement measures in the mandatory housing element.
- Modifies requirements for cities to receive an extension for water, sewer, or stormwater deficiencies, including requiring a city to include any needed improvements in its capital facilities plan to increase capacity or identify which special district is responsible for providing needed infrastructure.
- Requires cities to allow development in areas with water, sewer, or stormwater deficiencies if the developer commits to providing the infrastructure.

Appropriation: None.

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.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Stakeholders agree that to address the housing crisis we need to have housing supply. There are cities that are moving in this direction but we are not moving fast enough. Home is where we find safety, shelter, and refuge, it is a basic need. We are not building at a pace to keep up with the demand. We need to do something drastic or we will not meet the goal to build one million houses by 2040. Many people fear change and think that this will create high rise buildings in their neighborhood but it does not, it will build very modest density that blends into communities. Commerce is working on a tool kit to help cities and provide standards to share. What we have been doing hasn't been working, this is one piece of a larger policy platform. Under the bill, single family housing can remain. It doesn't require multiunit

housing but allows for the option.

Employers are struggling to attract and retain workers due to the lack of affordable housing near the workplace. We are in a wave of faculty retirement, and places where housing is more affordable is attracting more of these workers instead. By 2040, King County Affordable Housing Committee estimates a need to add 244,000 affordable housing units. Job growth and housing growth must work symbiotically. The ability to afford a home needs to be widespread and missing middle housing is an opportunity to move renters to owners. Older adults rely on unpaid family care givers and missing middle housing will help family members support a loved one as they age in place so they have the care they need while not spending down the assets they need for medical care. These housing types already exist but many cities have changed zoning since the 1950s to exclude this type of housing that can only be established with objective design and development standards. This bill is a good bill about community, equity and inclusion.

Mapped urban and low density development from 2001 to 2013 shows we have lost a lot of farmland. If we do not change, we will lose more farms that bring resilience to the food system. The current status quo zoning covers the majority of our residential land and only allows one type of home, a single detached house on a big lot. We need to bring more housing to already developed areas and middle housing is a way to do that. Protection of industrial lands is essential to the movement of goods in the region. Increasing middle housing will reduce the pressure to develop natural lands. Studies show that missing middle housing is associated to lower climate impact. The closer people live to where they work, the less they need to drive, which reduces emissions. This addresses housing shortage while placing the least burden on transportation systems.

CON: This bill is a one size fits all approach that does not take into consideration local needs. Smaller counties are expected to grow at the same rate as King county. This bill does not align with cities responsibility to provide water to its residences. There is concern about limits on parking because many of our residents are professional drivers who depend on their cars for their livelihood. There needs to be a local needs analysis for parking as an option in the bill.

OTHER: Willing to work on a statewide approach but this needs to be a combined effort. The primary concern is the one size fits all approach and inconsistency with other regulations that cities are subject to. The bill requires cities plan for and address utility issues but we don't own utilities for the city and so the city does not have the ability to do that. Inadequate infrastructure makes our ability to increase density limited and impractical. There should be tiering or flexibility added to this bill. Cities should have ability to identify locations that are most appropriate for this type of development without displacing other renting options. The language speaking to communities who have done something substantially similar needs to be refined.

Adding three units to a lot is expensive and won't keep preservation of the existing units.

Adding units would strain the existing infrastructure and those costs should not be passed on to other owners so the bill should ensure that only the lot being developed bears the cost of the development. This bill may interrupt and complicate ongoing city efforts to allow and encourage middle housing. Transportation should be added to the bill as a public utility. The existing bill does not address the impact within community associations. Please consider maximizing transit oriented development, data informed parking policy approach and funding for municipal infrastructure.

Persons Testifying: PRO: Senator Yasmin Trudeau, Prime Sponsor; Dani Madrone, American Farmland Trust; Jacob Vigdor, University of Washington faculty; Troy Schmeil, Sapphire Homes Inc./Callidus Development, Inc.; Zachary Stoneman, Lake Washington High School; Michael White, King County; HUGO Garcia, City of Burien Councilmember; Brent Ludeman, Building Industry Association of Washington; Fred Felleman, Port of Seattle Commissioner; Ryan Donohue, Habitat for Humanity Seattle-King & Kittitas Counties; Joe Tovar, Washington Department of Commerce; MARK SMITH, Housing Consortium of Everett & Snohomish County; Paul Charbonneau; Leah Missik, Climate Solutions; Bill Clarke, WA REALTORS; Council President Breean Beggs; Kerri Woehler, Washington State Department of Transportation; Mike Ennis, Association of Washington Business; Dan Bertolet, Sightline Institute; Cristina Mateo, WA Build Back Black Alliance - (WBBA); Bryce Yadon, Futurewise; Wes Stewart, Sierra Club; Alexandra Freeman-Smith, SEIU Healthcare 1199NW; Rachel Smith, Seattle Metro Chamber of Commerce; Dylan Sluder, Master Builders Association of King and Snohomish Counties; Cathy MacCaul, AARP Washington State.

CON: Katrina Knutson, City of Gig Harbor; Mayor, Rob Putaansuu, City of Port Orchard; Kyle Moore, City of SeaTac; City Councilmember Jack Walsh, City of Federal Way.

OTHER: Arne Woodard, Councilmember, City of Spokane Valley; Tiffany Speir, City of Lakewood; Jacob Gonzalez, City of Pasco; Dean Martin, Washington State Chapter of Community Association Institute; Carl Schroeder, Association of Washington Cities; Kristen Holdsworth, Kent Long Range Planning Manager; Lacey Jane Wolfe, City of Bellevue; Briahna Murray, City of Tacoma.

Persons Signed In To Testify But Not Testifying: No one.