
HOUSE BILL 3214

State of Washington 60th Legislature 2008 Regular Session

By Representatives Springer, Eddy, Takko, Morrell, and Ericks

Read first time 01/24/08. Referred to Committee on Local Government.

1 AN ACT Relating to clarifying the authority of local governments to
2 use incentives for commercial and industrial development to promote
3 production and preservation of affordable housing; amending RCW
4 82.02.020; adding a new section to chapter 36.70A RCW; creating new
5 sections; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the affordable
8 housing shortage constitutes a danger to the health, safety, and
9 welfare of all residents of the state, and is a barrier to sound growth
10 and sustainable economic development for the cities and counties. As
11 new commercial and industrial development generates new jobs, it also
12 creates demand for low and moderate-income housing not met by market
13 rate housing development in many parts of Washington state.

14 Therefore, the legislature finds that if local jurisdictions
15 provide zoning incentives to commercial and industrial development to
16 provide low and moderate-income housing, more jobs can be created in
17 areas that will have units affordable to low and moderate-income
18 households and more employees can live closer to their jobs. The
19 growth management act encourages innovative land use management

1 techniques such as density bonuses. Enacting more specific
2 authorization for zoning incentives for commercial and industrial
3 development to provide affordable housing will encourage greater use of
4 such incentives to achieve the purposes of the growth management act.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 36.70A RCW
6 to read as follows:

7 (1) A city or county planning under RCW 36.70A.040 may use
8 incentive zoning for commercial or industrial development to increase
9 the availability of affordable housing, or to preserve affordable
10 housing, or both, within the jurisdiction.

11 (2) For the purposes of this section, "incentive zoning" means any
12 development regulations, conditional rezones, or development approvals
13 that allow greater building height, more development capacity,
14 different uses, or more relaxed development standards, than otherwise
15 would apply to a commercial or industrial development, or that grant
16 other incentives to such a development, on the condition that
17 affordable housing be provided or preserved, either on or off of the
18 development site, or on condition that the developer provide money or
19 property to be used for affordable housing.

20 (3) Incentive zoning used under the authority of this section must
21 comply with the following:

22 (a) Housing units developed, preserved, or acquired pursuant to
23 incentive zoning must be affordable to, and occupied by, households
24 with income levels determined by the city or county, subject to the
25 limits in this subsection (3)(a), as follows:

26 (i) Rental housing units must be affordable to, and occupied by,
27 households with incomes not exceeding: (A) Eighty percent of the
28 median income, if located outside high-cost areas; or (B) the median
29 income, if located in high-cost areas.

30 (ii) Housing units for owner-occupancy must be affordable to, and
31 occupied by, households with incomes not exceeding: (A) One hundred
32 fifteen percent of the median income, if located outside high-cost
33 areas; or (B) one hundred fifty percent of the median income, if
34 located in high-cost areas.

35 (iii) "High-cost area" means a county where the third quarter
36 median house price for the previous year as reported by the Washington

1 center for real estate research at Washington State University is equal
2 to or greater than one hundred thirty percent of the statewide median
3 house price published during the same time period.

4 (b) Housing units created, acquired, or preserved pursuant to
5 incentive zoning must be committed to remain as affordable housing for
6 at least fifty years. A city or county may establish or agree to terms
7 on which a commitment may be reduced or terminated based on provision
8 of substitute affordable housing or a payment to be used for affordable
9 housing.

10 (4) A city or county may enact or expand incentive zoning for
11 commercial or industrial development whether or not the program may
12 impose a tax, fee, or charge on the development or construction of
13 property. A local jurisdiction may collect reasonable fees from an
14 applicant for an incentive zoning program to cover the cost to the
15 city, town, county, or other municipal corporation of administering the
16 incentive zoning program.

17 (5) If an applicant for a permit or development approval chooses
18 not to seek any benefits of an incentive program enacted pursuant to
19 this section, a city, county, or town may not condition, deny, or delay
20 the issuance of a permit or development approval for failure to
21 participate in such program, provided the permit application or
22 development project is consistent with zoning and development standards
23 on the subject property.

24 **Sec. 3.** RCW 82.02.020 and 2006 c 149 s 3 are each amended to read
25 as follows:

26 Except only as expressly provided in chapters 67.28 and 82.14 RCW,
27 the state preempts the field of imposing taxes upon retail sales of
28 tangible personal property, the use of tangible personal property,
29 parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances,
30 and cigarettes, and no county, town, or other municipal subdivision
31 shall have the right to impose taxes of that nature. Except as
32 provided in RCW 82.02.050 through 82.02.090, no county, city, town, or
33 other municipal corporation shall impose any tax, fee, or charge,
34 either direct or indirect, on the construction or reconstruction of
35 residential buildings, commercial buildings, industrial buildings, or
36 on any other building or building space or appurtenance thereto, or on
37 the development, subdivision, classification, or reclassification of

1 land. However, this section does not preclude dedications of land or
2 easements within the proposed development or plat which the county,
3 city, town, or other municipal corporation can demonstrate are
4 reasonably necessary as a direct result of the proposed development or
5 plat to which the dedication of land or easement is to apply.

6 This section does not prohibit voluntary agreements with counties,
7 cities, towns, or other municipal corporations that allow a payment in
8 lieu of a dedication of land or to mitigate a direct impact that has
9 been identified as a consequence of a proposed development,
10 subdivision, or plat. A local government shall not use such voluntary
11 agreements for local off-site transportation improvements within the
12 geographic boundaries of the area or areas covered by an adopted
13 transportation program authorized by chapter 39.92 RCW. Any such
14 voluntary agreement is subject to the following provisions:

15 (1) The payment shall be held in a reserve account and may only be
16 expended to fund a capital improvement agreed upon by the parties to
17 mitigate the identified, direct impact;

18 (2) The payment shall be expended in all cases within five years of
19 collection; and

20 (3) Any payment not so expended shall be refunded with interest to
21 be calculated from the original date the deposit was received by the
22 county and at the same rate applied to tax refunds pursuant to RCW
23 84.69.100; however, if the payment is not expended within five years
24 due to delay attributable to the developer, the payment shall be
25 refunded without interest.

26 No county, city, town, or other municipal corporation shall require
27 any payment as part of such a voluntary agreement which the county,
28 city, town, or other municipal corporation cannot establish is
29 reasonably necessary as a direct result of the proposed development or
30 plat.

31 Nothing in this section prohibits cities, towns, counties, or other
32 municipal corporations from collecting reasonable fees from an
33 applicant for a permit or other governmental approval to cover the cost
34 to the city, town, county, or other municipal corporation of processing
35 applications, inspecting and reviewing plans, or preparing detailed
36 statements required by chapter 43.21C RCW.

37 This section does not limit the existing authority of any county,

1 city, town, or other municipal corporation to impose special
2 assessments on property specifically benefitted thereby in the manner
3 prescribed by law.

4 Nothing in this section prohibits counties, cities, or towns from
5 imposing or permits counties, cities, or towns to impose water, sewer,
6 natural gas, drainage utility, and drainage system charges: PROVIDED,
7 That no such charge shall exceed the proportionate share of such
8 utility or system's capital costs which the county, city, or town can
9 demonstrate are attributable to the property being charged: PROVIDED
10 FURTHER, That these provisions shall not be interpreted to expand or
11 contract any existing authority of counties, cities, or towns to impose
12 such charges.

13 Nothing in this section prohibits a transportation benefit district
14 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
15 the legislative authority of a county, city, or town from approving the
16 imposition of such fees within a transportation benefit district.

17 Nothing in this section prohibits counties, cities, or towns from
18 imposing transportation impact fees authorized pursuant to chapter
19 39.92 RCW.

20 Nothing in this section prohibits counties, cities, or towns from
21 requiring property owners to provide relocation assistance to tenants
22 under RCW 59.18.440 and 59.18.450.

23 Nothing in this section limits the authority of counties, cities,
24 or towns to implement incentive zoning consistent with section 2 of
25 this act, nor to enforce agreements made pursuant to such incentive
26 zoning.

27 Nothing in this section limits the authority of counties, cities,
28 or towns to implement programs consistent with RCW 36.70A.540, nor to
29 enforce agreements made pursuant to such programs.

30 This section does not apply to special purpose districts formed and
31 acting pursuant to Titles 54, 57, or 87 RCW, nor is the authority
32 conferred by these titles affected.

33 NEW SECTION. **Sec. 4.** The powers granted in this act are
34 supplemental and additional to the powers otherwise held by local
35 governments, and nothing in this act shall be construed as a limit on
36 such powers. The authority granted in this act extends to any

1 incentive zoning adopted by a local government through an ordinance or
2 resolution prior to the effective date of this act.

3 NEW SECTION. **Sec. 5.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 6.** This act takes effect July 31, 2008.

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