

ESHB 1042 - S AMD 261
By Senator Kuderer

PULLED 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 no later than six months after its next periodic
9 comprehensive plan update required under RCW 36.70A.130.

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

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

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

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

32 (c) With the exception of emergency housing and transitional
33 housing uses, impose permitting requirements on the use of an

1 existing building for residential purposes beyond those requirements
2 generally applicable to all residential development within the
3 building's zone;

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

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

14 (f) Prohibit the addition of housing units in any specific part
15 of a building, unless the addition of the units would violate
16 applicable building codes or health and safety standards;

17 (g) Require unchanged portions of an existing building used for
18 residential purposes to meet the current energy code solely because
19 of the addition of new dwelling units within the building, however,
20 if more than six new dwelling units are created within the existing
21 building, each of those new units must meet the requirements of the
22 current energy code;

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

29 (i) Require a transportation concurrency study under RCW
30 36.70A.070 or an environmental study under chapter 43.21C RCW based
31 on the addition of residential units within an existing building.

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

37 (4) By the next comprehensive plan update required under RCW
38 36.70A.130, each code city within a county subject to the
39 requirements of RCW 36.70A.215 that has a population of at least
40 20,000 must review the impact of subsection (2)(g) of this section

1 and report the impact and any recommended changes to the department
2 of commerce. The department of commerce must consolidate the
3 information received by cities into one report to the legislature by
4 July 1, 2028.

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

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

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

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

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

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

32 (b) Impose parking requirements on the addition of dwelling units
33 or living units added within an existing building, however, cities
34 may require the retention of existing parking that is required under
35 local laws for nonresidential uses that remain after the new units
36 are 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, unless
11 the building is a designated landmark or is within a historic
12 district established through a local preservation ordinance;

13 (f) Prohibit the addition of housing units in any specific part
14 of a building, unless the addition of the units would violate
15 applicable building codes or health and safety standards;

16 (g) Require unchanged portions of an existing building used for
17 residential purposes to meet the current energy code solely because
18 of the addition of new dwelling units within the building, however,
19 if more than six new dwelling units are created within the existing
20 building, each of those new units must meet the requirements of the
21 current energy code;

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

28 (i) Require a transportation concurrency study under RCW
29 36.70A.070 or an environmental study under chapter 43.21C RCW based
30 on the addition of residential units within an existing building.

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

36 (4) By the next comprehensive plan update required under RCW
37 36.70A.130, each city within a county subject to the requirements of
38 RCW 36.70A.215 that has a population of at least 20,000 must review
39 the impact of subsection (2)(g) of this section and report the impact
40 and any recommended changes to the department of commerce. The

1 department of commerce must consolidate the information received by
2 cities into one report to the legislature by July 1, 2028.

3 (5) 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. 3.** A new section is added to chapter 19.27A
7 RCW to read as follows:

8 By January 1, 2024, the state building code council shall adopt
9 by rule an amendment to the current energy code that waives the
10 requirement for unchanged portions of an existing building used for
11 residential purposes to meet the current energy code solely because
12 of the addition of new dwelling units within the building. If more
13 than six new dwelling units are created within the existing building,
14 each of those new units must meet the requirements of the current
15 energy code.

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

18 The following nonproject actions are categorically exempt from
19 the requirements of this chapter:

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

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

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

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

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

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

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12 On page 1, line 2 of the title, after "buildings;" strike the
13 remainder of the title and insert "amending RCW 43.21C.450; adding a
14 new section to chapter 35A.21 RCW; adding a new section to chapter
15 35.21 RCW; and adding a new section to chapter 19.27A RCW."

EFFECT: (1) 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.

(2) 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.

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

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

(5) Provides that cities cannot impose exterior design or architectural requirements unless the building is a designated landmark or is within a historic district established through a local preservation ordinance.

(6) 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 more than six new dwelling units are created within the existing building, each of those new dwelling units must meet the requirements of the current energy code.

(7) Clarifies that cities cannot deny a building permit for the addition of housing units to 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.

(8) 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.

(9) Requires each city within a county subject to the requirements of RCW 36.70A.215 that has a population of at least 20,000 report the impact and any recommended changes to the provisions relating to the need to meet the current energy code requirements to the Department of Commerce by the city's next comprehensive plan update and Commerce to issue one consolidated report to the Legislature by July 1, 2028.

(10) 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.

(11) 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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