

HOUSE BILL REPORT

E2SHB 1110

As Passed House:

March 6, 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:

Committee Activity:

Housing: 1/17/23, 2/7/23 [DPS];

Appropriations: 2/21/23, 2/24/23 [DP2S(w/o sub HOUS)].

Floor Activity:

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

Brief Summary of Engrossed Second Substitute Bill

- Requires certain cities planning under the Growth Management Act to authorize minimum development densities in residential zones and include specific provisions related to middle housing in their development regulations.
- Requires the Department of Commerce to provide technical assistance to cities in implementing the requirements, to develop model middle housing ordinances, and to establish a process for cities to seek approval of alternative local actions.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON HOUSING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Peterson, Chair; Alvarado, Vice Chair; Leavitt, Vice Chair; Barkis, Bateman, Chopp, Low, Reed and Taylor.

Minority Report: Without recommendation. Signed by 3 members: Representatives Klicker, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Hutchins.

Staff: Serena Dolly (786-7150).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Housing. Signed by 25 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chopp, Couture, Davis, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Ryu, Sandlin, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 4 members: Representatives Chandler, Dye, Rude and Schmick.

Minority Report: Without recommendation. Signed by 1 member: Representative Connors.

Staff: Jackie Wheeler (786-7125).

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.

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 that is 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 that are generalized, coordinated land use policy statements of the governing body. 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. In developing their comprehensive plans, counties and cities must consider various goals set forth in statute.

The GMA also establishes 14 goals in a non-prioritized list to guide the development of comprehensive plans and development regulations of counties and cities that plan under the GMA. Examples include urban growth, housing, and economic development goals.

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, as projected by the Department of Commerce (Commerce), including:
 - units for moderate-, low-, very low-, and extremely low-income households; and
 - emergency housing, emergency shelters, and permanent supportive housing;
- 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 including government-assisted housing, housing for all levels of income, manufactured housing, and permanent supporting housing, and within a UGA, consideration of duplexes, triplexes, and townhomes;
- adequate provisions for existing and projected needs of all economic segments of the community, including:
 - incorporating housing for households of all income levels;
 - documenting programs and actions needed to achieve housing availability;
 - consideration of housing locations in relation to employment locations; and
 - consideration of the role of accessory dwelling units (ADUs) in meeting housing needs;
- 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;
- 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. Specified planning actions include, for example:

- authorizing middle housing types on parcels in one or more zoning districts that permit single-family residences unless unfeasible to do so;
- 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 ADUs 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 a lack of on-street parking when private roads are utilized 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.

Technical Assistance and Funding.

Commerce is required to assist cities and counties, both with funding and with technical assistance, in the adoption of comprehensive plans. Commerce's assistance program must include a priority list for funding and technical assistance based on a county's or city's growth rate, commercial and industrial development rate, and the existence and quality of a comprehensive plan, among other factors. Commerce is also required to administer a grant program to provide direct financial assistance to local governments for the preparation of comprehensive plans. Other technical assistance required to be provided by Commerce includes utilizing Commerce's staff and the staff of other agencies to assist in the development of comprehensive plans, including the provision of model land use ordinances, the adoption of procedural criteria, and regional education and training programs.

Homeowners' Associations and Common Interest Communities.

A homeowners' association (HOA) is a legal entity made up of members who are owners of residential real property located within the association's jurisdiction and who are required to pay dues for the upkeep of the association and common areas. An association can also adopt rules and regulate or limit the use of property by its members.

A common interest community (CIC) is similar to an HOA and is made up of member-

owners who are obligated to pay for the taxes, maintenance, or other costs of common areas. Like an HOA, a CIC can also regulate or limit the use of property by its members, including by adopting rules to establish and enforce construction and design criteria as well as aesthetic standards. A CIC may generally only be terminated by the agreement of at least 80 percent of the members.

A restrictive covenant or deed is a restriction or limitation of the use of the property that runs with the land.

Summary of Engrossed Second Substitute Bill:

Density Requirements.

Fully planning cities meeting population criteria must authorize the development of a minimum number of units on all lots zoned predominantly for residential use. 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 allow:

- at least two units per lot;
- at least four units per lot within .5 miles walking distance of a major transit stop; and
- at least four units per lot if at least one unit is affordable housing.

A fully planning city with a population of at least 75,000, and any city within a contiguous UGA with the largest city in a county with a population of more than 275,000, must allow:

- at least four units per lot;
- at least six units per lot within .25 miles walking distance of a major transit stop; and
- at least six units per lot if at least two units are affordable housing.

A major transit stop includes a stop on a high-capacity transportation system, commuter rail stops, stops on rail or fixed guideway systems, and stops on bus rapid transit routes.

To qualify as affordable housing, the unit must be maintained as affordable for at least 50 years and record a covenant or deed restriction that ensures continued affordability. The affordable units also must be comparable in size and number of bedrooms as other units and be generally distributed throughout the development.

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

The 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 listed as impaired or threatened under the federal Clean Water Act.

A city may not approve a building permit if other federal, state, and local requirements for a building permit are not met, including compliance with the adequate water supply requirements in the State Building Code.

Middle Housing Requirements.

Cities subject to the density requirements are directed to include specific provisions related to middle housing in their development regulations. 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 administrative design review where an application is reviewed, approved, or denied by the planning director or the planning director's 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 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 that apply to detached single-family residences, unless otherwise required by state law;
- may impose a limit of two units on a residential lot of 2,000 square feet or less created through a lot split;
- must also allow zero lot line short subdivisions where the number of lots created is equal to the unit density required;
- may not require off-street parking as a condition of permitting development of middle housing within .5 miles 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 6,000 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 6,000 square feet.

A categorical exemption from the State Environmental Policy Act (SEPA) is established for development regulations that remove parking requirements for infill development. The limits on off-street parking requirements do not apply if a city submits to Commerce an empirical study prepared by a credentialed transportation or land use planning expert that clearly demonstrates, and Commerce certifies, that parking limits for middle housing will be significantly less safe for vehicle drivers or passengers, pedestrians, or bicyclists than if the jurisdiction's parking requirements were applied to the same location for the same number of detached houses. Commerce must develop guidance to assist cities on items to include in the study. The off-street parking requirements also do not apply to any portion of a city within a 1-mile radius of a commercial airport with at least 9,000,000 annual enplanements.

A city meeting the density and middle housing requirements is not required to update its capital facilities plan to accommodate the increased housing and population capacity until its comprehensive plan update required on or after June 30, 2034. In addition, any city adopting development regulations to fully implement the density requirements in the bill will be considered in compliance with the *mandatory* GMA element of making adequate provisions for existing and projected needs of all economic segments of the community, and with certain antidisplacement policies, until June 30, 2032. Population associated with permits for middle housing units are exempt from the threshold of an Office of Financial Management population projection to a county or a county population allocation to a city.

The density and middle housing requirements take effect the latter of six months after a city's next required comprehensive plan update or 12 months after the OFM determines a city has reached a population threshold under this section.

Commerce must provide technical assistance prioritized based on need to cities in implementing middle housing and minimum density requirements. Commerce must develop and publish model middle housing ordinances within six months after this bill takes effect. The model ordinances supersede, preempt, and invalidate local development regulations that fail to allow middle housing within the time frames provided.

Alternative Density Requirements.

Under four specific circumstances, cities may vary from the minimum density requirements.

Alternative Local Actions.

Commerce must establish a process for cities to seek approval of required local actions and may approve actions for cities that have, by January 1, 2023, adopted a comprehensive plan and development regulations that are substantially similar to the requirements in the bill. In making a determination, Commerce must find as substantially similar plans and regulations that: (1) 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 the minimum density requirements were adopted; (2) allow for middle housing throughout the city, rather than just in targeted locations; and (3) allow for additional density near major transit stops and community amenities and for projects that incorporate dedicated affordable housing.

Commerce also may determine that a comprehensive plan and development regulations that do not meet the stated criteria are otherwise substantially similar if the 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 implementation of the minimum density and middle housing requirements in the bill.

Any alternative local actions approved by Commerce are exempt from appeals under the GMA and the SEPA.

Affordable Housing Incentive Program.

If a city has enacted an affordable housing incentive program, the minimum density requirements and terms of that program govern to the extent they vary from the density in the act, and the city is not precluded from requiring any development to provide affordable housing, either on-site or through an in-lieu payment, nor limited in its ability to expand or modify a program or its requirements.

75 Percent Alternative.

Cities subject to the minimum density requirements may instead choose to implement the requirements for at least 75 percent of lots in the city that are primarily dedicated to single-family detached housing units. 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;
- any areas within .5-mile walking distance of a major transit stop or community amenity;
- any areas historically covered by a covenant or deed restriction excluding racial minorities from owning property or living in the area, as known to the city at the time of each comprehensive plan update; and
- any areas within .5-mile walking distance of a building, shopping center, or business area containing at least 100,000 square feet of retail space.

Unless identified as at higher risk of displacement, the 25 percent of lots that are not subject to the density requirements must include:

- any areas within the city that Commerce has certified an extension of the implementation timelines due to the risk of displacement or a lack of infrastructure capacity;
- any lots designated with critical areas or their buffers that are exempt from the density requirements;
- any portion of a city within a one-mile radius of a commercial airport with at least 9,000,000 annual enplanements that is exempt from the middle housing parking requirements; and
- any areas subject to sea level rise, increased flooding, or geological hazards over the next 100 years.

Any city choosing this alternative may apply to Commerce for an extension for areas at risk of displacement as determined by the antidisplacement analysis that a jurisdiction is required to complete under the mandatory housing element of the comprehensive plan. The city must create a plan for implementing antidisplacement policies by their next five-year implementation progress report.

Any city choosing this alternative may also apply to Commerce for an extension for specific areas where a city can demonstrate that water, sewer, stormwater, or fire protection services lack capacity to accommodate the increased density, and the city has:

- included one or more improvements within its capital facilities plan to adequately increase capacity; or
- identified which special district is responsible for providing the necessary infrastructure, if the infrastructure is provided by a special purpose district.

A granted extension remains in effect until one of the following occurs:

- the infrastructure is improved to accommodate the capacity;
- the city completes its next periodic comprehensive plan update; or
- the city submits its next five-year implementation progress report for their comprehensive plan.

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 with an extension for a specific area must allow the required density of development if the developer commits to providing the necessary infrastructure.

Alternative for Certain Cities within Contiguous Urban Growth Areas.

As an alternative to implementing the same minimum density requirements as cities with a population of at least 75,000, 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 instead authorize development of the following number of units on all lots zoned predominately for residential use:

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

A city choosing this alternative is excluded from provisions specifying that: (1) the capital facilities plan element required under the GMA is not required to be updated to accommodate the increased housing and population capacity until a city's next required comprehensive plan update on or after June 30, 2034; and (2) any city adopting development regulations to fully implement the density requirements are to be considered in compliance with certain antidisplacement policies under the GMA until June 30, 2032.

Homeowners' Associations and Common Interest Communities.

Governing documents of HOAs and the governing documents and declarations of CICs within cities subject to the middle housing and density requirements that are created after this bill takes effect may not prohibit the construction or development of the types of housing or density requirements that must be permitted within such cities.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 8, 2023.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Housing):

(In support) The housing shortage is creating a housing crisis. The state needs 1 million new homes in the next 20 years, half of which need to be affordable at 30 to 50 percent of area median income. Working families are being priced out of the housing market, and the housing shortage is disproportionately impacting people of color. Homeownership for first time homebuyers is only affordable in three counties. Students also need walkable housing and communities. This bill will help us bring homeless people inside. There is no single solution to the housing shortage, but it has to get easier to build new housing. Builders are ready to build. Eliminating volunteer design review boards will help reduce the time it takes to get a permit. This policy is the fastest and most scalable way to increase housing production. Many people are better served by housing that is not single-family, but one study found that middle housing is prohibited on 75 percent of city land. Some cities have already implemented middle housing provisions, but every jurisdiction needs to do its part to tackle the housing shortage. It is less costly for cities to accommodate growth in a smaller, dense area. Even with growth management, cities are continuing to grow onto some of the state's best farmland. Middle housing reduces vehicle miles travelled and emissions.

(Opposed) None.

(Other) Cities are ready to support a bill with minimum density requirements and believe density requirements should be centered on certain amenities, such as transit, parks, and schools. The uniform application of requirements does not recognize the uniqueness of each city. The parking requirements will create many issues. Even in Seattle, 81 percent of households have cars. Some cities are trying to eliminate the number of cars on the road but are not well-served by transit agencies. More people would just create more traffic. The bill needs some technical changes. Using the same environmental permitting process as single-family housing will put cities out of compliance with shoreline permitting and environmental regulations. Applying middle housing provisions to common interest communities is unconstitutional, and they do not have the infrastructure to accommodate middle housing.

Staff Summary of Public Testimony (Appropriations):

(In support) Washington has been underproducing housing for generations and the key reason is because land use regulations severely limit the number and types of homes that can be built. If we want to build more homes, we need to open up more land for more types of housing. It is a statewide problem that requires a statewide solution. Access to quality

housing in close proximity to where people want to live and work, that is near parks and schools, allows people to drive less is essential to everyone's quality of life. It is key to fighting climate change, supporting the vulnerable, and building stronger local economies. The statewide mandate for more housing options could not be clearer. On the surface this bill is about housing, but in substance it is about empowering people to take root in our communities and could enrich democracy in Washington. Those with disabilities who are limited in their ability to find work in their local area would benefit from housing that is close to light rail or bus rapid transit, which this bill could allow. This bill balances the need of for-profit developers while also creating an affordability bonus. It will help ensure everyone has a safe and affordable place to call home by not only building more houses in more places, but also creating more homeowners.

A number of cities are seeing the need for a wider range of affordable housing and are working to address those needs but would like to see all cities fully participate in addressing this issue. The work required under this bill has been funded in the Governor's budget and Commerce looks forward to working with cities and counties on increasing housing choices. Instead of asking where we will find the money for the infrastructure, we must ask where we are going to find the infrastructure for a million housing units that are needed with or without this bill. A start would be to legalize the types of housing that require less infrastructure per unit.

There has been a lot of work and ongoing conversation around middle housing over the last few years. Some of those in support of the bill are appreciative of the changes that were made in the prior committee and would prefer the version of the bill as it passed out of the policy committee.

(Opposed) This bill would upzone areas that are miles away from the nearest bus service or infrastructure system necessary to support it. This will cost millions of dollars and will drive up the price of housing in already expensive areas. Planning at the local level is critical because what works in one city may not work in another. The bill does not allow for this kind of differentiation or application of local knowledge. Many cities are willing to address the statewide housing shortage, but it needs to be in a way that makes sense to each city. Cities like Woodinville are accommodating growth by concentrating it around services and areas with existing or planned infrastructure in a way that makes sense to that city. Transportation options like light rail or bus rapid transit are often out of the city's control and are very limited.

The bill makes no provision for low-income housing and is limited regarding affordable housing. What may be considered affordable housing is not affordable for most, particularly the homeless population. The bill eliminates climate protections and will increase impervious surfaces, creating more heat islands. It would benefit a narrow business interest at the expense of our environment and community. Many cities are working on middle housing regulations that are appropriate for their neighborhoods and this would be negated if the bill were to pass. Just as the State of Washington does not want the

federal government overriding the state on protections for abortion rights, the state should not be overriding housing codes and regulations of local towns and cities. Cities under the direction of the Growth Management Act should be exempt from the provisions of this bill.

(Other) This bill has moved too far from what came out of the prior committee and several changes are needed, including a more nuanced approach to the parking limitations and infrastructure concerns. There are also concerns around the amendments to add density around all community amenities which should be revisited. There should be an amendment to allow cities currently in the comprehensive plan update process to be eligible for the substantially similar determination provision of the bill. Cities put years of work into their comprehensive plan updates, including hours engaging with the public. Implementing the goals of the bill through this process will be the most efficient way to accomplish the bill's desired outcomes.

Allowing middle housing on all residential lots is likely to have unintended consequences and unfunded impacts, particularly on lots that lack emergency access and existing or planned infrastructure. This bill will require upgrades to water, sewer, and stormwater infrastructure that could result in increases to utility fees. This could burden residents and inhibit development where cities have been planning investments. The bill will likely apply to 58 cities and could cost over \$7 million in direct expenses and a potential for \$6 million in additional costs. It fails to provide the resources and tools needed to plan for and address critical infrastructure needs and is not positioned to deliver the affordable housing that Washington is calling for. Many cities are already adopting provisions to allow more housing options and increase density around areas with significant transit-oriented development investments.

Persons Testifying (Housing): (In support) Representative Jessica Bateman, prime sponsor; Adán Mendoza-Sandoval, Associated Students of Central Washington University; Dani Madrone, American Farmland Trust; Alex Hur, Master Builders Association of King and Snohomish Counties; Jacob Vigdor; Brent Ludeman, Building Industry Association of Washington; Dave Andersen and Joe Tovar, Washington Department of Commerce; Michele Thomas, Washington Low Income Housing Alliance; Hugo Garcia; Mike Ennis, Association of Washington Business; Bryce Yadon, Futurewise; Leah Missik, Climate Solutions; Jesse Piedfort, Sierra Club; Girmay Zahilay; Zack Zappone, City of Spokane; Rachel Smith, Seattle Metropolitan Chamber of Commerce; Andrea Reay, Tacoma-Pierce County Unity Chamber; Bill Clarke, Washington Realtors; Sophia Bowton-Meade; and Kerri Woehler, Washington State Department of Transportation.

(Other) Carl Schroeder, Association of Washington Cities; Arne Woodard, City of Spokane Valley; Jason Sullivan, City of Bonney Lake; and Dean Martin, Washington State Chapter of Community Association Institute.

Persons Testifying (Appropriations): (In support) Joe Kunzler; Shaun Scott; Ryan Donohue, Habitat for Humanity Seattle-King and Kittitas Counties; Josie Cummings,

Building Industry Association of Washington; Lyset Cadena, City of Burien; Mike Ennis, Association of Washington Business; Matt Hutchins, American Institute of Architects Washington Council; and Dave Andersen, Washington State Department of Commerce.

(Opposed) Brandon Buchanon and Mike Millman, City of Woodinville; Judy Bendich; Jonelle Kemmerling; and Kathleen Russell.

(Other) Salim Nice, City of Mercer Island; Carl Schroeder, Association of Washington Cities; Arne Woodard, City of Spokane Valley; Lacey Jane Wolfe, City of Bellevue; and Dana Ralph, City of Kent.

Persons Signed In To Testify But Not Testifying (Housing): More than 20 persons signed in. Please see committee staff for information.

Persons Signed In To Testify But Not Testifying (Appropriations): None.