

HOUSE BILL REPORT

E2SHB 1110

As Passed Legislature

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.

Senate Amended.

Passed Senate: 4/11/23, 35-14.

House Concurred.

Passed House: 4/18/23, 79-18.

Passed Legislature.

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

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.

housing ordinances, and to establish a process for cities to seek approval of alternative local actions.

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. 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 the plans and the local regulations must be reviewed and revised every 10 years.

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, 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;
- 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:

- 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 accessory dwelling units (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.

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. Generally these groups can regulate or limit the use of property by its 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.

A fully planning city meeting the population criteria, based on 2020 OFM population data, 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. A city not meeting the population threshold must comply with the density and middle housing requirements by 12 months after its next comprehensive plan implementation progress report after a determination by OFM that the city has reached the population threshold.

Unless zoning permitting higher densities or intensities applies, a fully planning city with a population of at least 25,000 but less than 75,000 must include authorization for at least:

- two units per lot;
- four units per lot within 0.25 miles walking distance of a major transit stop; and
- four units per lot if at least one unit is affordable housing.

Unless zoning permitting higher densities or intensities applies, a fully planning city with a population of at least 75,00 must include authorization for at least:

- four units per lot;
- six units per lot within 0.25 miles walking distance of a major transit stop; and
- six units per lot if at least two units are affordable housing.

Unless zoning permitting higher densities or intensities applies, a fully planning city with a population less than 25,000, within a contiguous UGA with the largest city in a county with a population of more than 275,000, must include authorization for the development of at least two units per lot.

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

The density requirements do not apply to:

- lots designated with critical areas or their buffers
- watershed serving a reservoir for potable water if that watershed is listed as impaired or threatened under the federal Clean Water Act; or
- lots that have been designated urban separators by countywide planning policies.

Alternative Density Requirement.

A city 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 density requirements must include any areas:

- for which the exclusion would further racially disparate impacts or result in zoning with a discriminatory effect;
- within 0.5 miles walking distance of a major transit stop; or
- 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.

The 25 percent of lots for which the minimum density requirements are not authorized must

include:

- any areas 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 a city within a 1 mile radius of a commercial airport with at least 9 million annual enplanements that is exempt from the parking requirements; and
- any areas subject to sea level rise, increased flooding, susceptible to wildfires, or geological hazards over the next 100 years.

A city implementing the alternative density requirement may apply to Commerce for an extension from the implementation timelines for areas at risk of displacement as determined by the city's antidisplacement analysis. A city granted an extension must create a plan for implementing antidisplacement policies by their next comprehensive plan implementation progress report. Commerce may certify one further extension based on evidence of significant ongoing displacement risk in the impacted area.

A city implementing the alternative density requirements also may apply for an extension to specific areas where a city can demonstrate that water, sewer, stormwater, transportation infrastructure, including facilities and transit services, or fire protection services lack capacity to accommodate an increased density. To qualify for an extension, the city must have included one or more improvements, as needed, within its capital facilities plan to adequately increase capacity or identified which special district is responsible for providing the necessary infrastructure. If an extension is requested due to lack of water supply from the city or the purveyors who serve water within the city, Commerce's evaluation must be based on the applicable water system plans in effect and approved by the Department of Health.

Any granted extension 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.

A city may reapply for an additional timeline extension with its next periodic comprehensive plan update or five-year comprehensive plan 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 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 types of middle housing and may allow ADUs 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. A city is not required to allow ADUs or middle housing types beyond the density requirements.

A city subject to the density requirements is directed to include specific provisions related to middle housing in their development regulations. Any city subject to the middle housing requirements:

- may only apply administrative design review for middle housing;
- 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;
- is not required to achieve the per-unit density on lots after subdivision below 1,000 square feet unless the city chooses to enact smaller allowable lot sizes;
- 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 0.5 miles 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 6,000 square feet before any zero lot line subdivisions or lot splits; 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 before any zero lot line subdivisions or lot splits.

A SEPA categorical exemption 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 million annual enplanements.

A city may not approve a building permit if other federal, state, and local requirements for a building permit are not met, including adequate water supply requirements. If an area zoned for residential use is currently served only by private wells, group B water systems, or group A water systems with less than 50 connections, or if a city or water providers within the city do not have an adequate water supply or available connections to serve the zoning increase, the city may limit the areas subject to the density requirements to match

current water availability.

Development may be limited to two units per lot in an area served only by on-site sewage systems until either the landowner or local government provides sewer service or demonstrates a sewer system will serve the development at the time of construction.

A city meeting the density and middle housing requirements is not required to update its capital facilities plan element to accommodate the increased housing until its first comprehensive plan update required on or after June 30, 2034, unless Commerce grants a timeline extension.

Department of Commerce.

Commerce must provide technical assistance to cities in implementing density and middle housing 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 until the city takes action to adopt the density and middle housing requirements.

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 the following by January 1, 2023:

- a comprehensive plan, and have adopted, or within one year of the effective date adopts, permanent development regulations that are substantially similar to the density and missing middle requirements; or
- a comprehensive plan or development regulations that have significantly reduced or eliminated residentially zoned areas that are predominantly single family.

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 the 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 in projects that incorporate dedicated affordable housing.

If a city can clearly demonstrate that the regulations adopted will allow for 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 may establish by rule any standards or procedures necessary to implement the

density and middle housing requirements and issue guidance for local jurisdictions to ensure that the levels of middle housing zoning can be integrated with the methods used by cities to calculate zoning densities and intensities in local zoning and development regulations.

Common Interest Communities.

Governing documents and declarations of CICs within cities subject to the density and middle housing requirements that are created after this bill takes effect may not prohibit the construction, development, or use of the additional housing units.

Appropriation: None.

Fiscal Note: Available.

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.