Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Housing Committee

HB 2160

Brief Description: Promoting community and transit-oriented housing development.

Sponsors: Representatives Reed, Fey, Mena, Alvarado, Berry, Bateman, Ormsby, Ramel, Macri, Street, Peterson, Gregerson, Ryu, Cortes, Riccelli, Doglio and Pollet; by request of Office of the Governor.

Brief Summary of Bill

- Prohibits cities planning under the Growth Management Act (GMA) from enacting or enforcing any development regulation within a station area that prohibits the siting of multifamily residential housing where any other residential use is permissible, with some exceptions.
- Prohibits cities planning under the GMA from enacting or enforcing any new development regulation within a station area that imposes a maximum floor area ratio of less than the transit-oriented density for any new residential or mixed-use development or imposes a maximum residential density.
- Limits the ability of cities planning under the GMA from requiring off-street parking as a condition of permitting residential or mixed-use development within a station area.
- Creates a categorical exemption from the State Environmental Policy Act for residential or mixed-use development within any station area up to the applicable transit-oriented development density.

Hearing Date: 1/9/24

Staff: Serena Dolly (786-7150).

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.

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 must designate urban growth areas (UGAs), within which urban growth must be encouraged and outside of which growth may occur only if it is not urban in nature. Each city in a county must be included in a UGA. Planning jurisdictions must include within their UGAs sufficient areas and densities to accommodate projected urban growth for the succeeding 20-year period.

The GMA also 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. Fully planning counties and cities must review and, if necessary, revise their comprehensive plans every ten years to ensure they comply with the GMA. Fully planning counties meeting certain criteria, and cities within those counties with a population of at least 6,000, must complete an implementation progress report detailing the progress they have achieved in implementing their comprehensive plan five years after the review and revision of their comprehensive plan.

Each comprehensive plan must include a plan, scheme, or design for certain mandatory elements, including a housing element. The housing element must ensure the vitality and character of established residential neighborhoods.

Limitations on Minimum Residential Parking Requirements.
The GMA contains limitations on the ability of fully planning counties and cities to establish minimum residential parking requirements for certain types of housing, including:

- For market rate multifamily housing units located within 0.25 miles of a transit stop that receives frequent transit service, no more than one parking space per bedroom or 0.75 of a parking space per unit may be required.
- For housing units designed for seniors and people with disabilities located within 0.25 miles of a major transit stop, no minimum residential parking limitations may be imposed.
- For accessory dwelling units (ADUs) located within 0.5 one-half miles of a major transit stop, no minimum residential parking requirements may be imposed. For all other ADUs, no more than one or two off-street parking spaces may be required, depending on the size of the lot.
- For middle housing located within 0.5 miles of a major transit stop, no minimum residential parking requirements may be imposed. For all other middle housing, no more

than one or two off-street parking spaces may be required, depending on the size of the lot.

In some cases, counties and cities may vary from these requirements if the jurisdiction has determined that a particular housing unit or lot is an area with a lack of access to street parking capacity, physical space impediments, or other reasons supported by evidence that would make on-street parking infeasible. In other cases, a city or county may vary from the requirements only after an empirical study prepared by a credentialed transportation or land use planning expert determines parking limits would create a significant safety issue.

State Environmental Policy Act.
The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. Government decisions identified as having significant adverse environmental impacts must then undertake an environmental impact statement (EIS). Under SEPA, certain nonproject actions are categorically exempt from threshold determinations and EISs in rule. Examples of categorical exemptions include various kinds of minor new construction and minor land use decisions.

Categorical Exemptions for Infill Development
Counties and cities fully planning under the GMA may establish categorical exemptions from SEPA to accommodate infill development. Under the infill development categorical exemption, counties and cities may exempt government action related to development that is new residential development, mixed-use development, or commercial development up to 65,000 square feet, proposed to fill in a UGA when:

- current density and intensity of the use in the area is roughly equal to or lower than called for in the goals and policies of the comprehensive plan;
- the action would not clearly exceed the density or intensity of use called for in the goals and policies of the comprehensive plan;
- the local government considers the specific probable adverse environmental impact of the proposed action and determines that those specific impacts are adequately addressed by other regulations, comprehensive plans, ordinances, or other local, state, and federal laws and rules; and
- the comprehensive plan was previously subjected to environmental analysis through an EIS.

Categorical Exemptions for Housing Development
Under the housing development categorical exemption, all project actions that propose to develop one or more residential housing units within the incorporated areas of a UGA or middle housing within the unincorporated areas of a UGA, and that meet certain criteria are categorically exempt from SEPA. Before adopting the categorical exemption, jurisdictions must satisfy the following criteria:

- the proposed development must be consistent with all development regulations implementing a comprehensive plan under the GMA, except any development regulation that is inconsistent with the GMA; and

- the city or county has prepared an environmental analysis that considers the proposed use or density and intensity of use in the area proposed for exemption and analyzes multimodal transportation impacts.

Until September 30, 2025, all project actions that propose to develop one or more residential housing or middle housing units within a city west of the crest of the Cascade Mountains with a population of 700,000 or more are categorically exempt from the SEPA.

Summary of Bill:

Development Regulations Within a Station Area.
Fully planning cities may not enact or enforce any development regulation within a station area that prohibits the siting of multifamily residential housing on lots where any other residential use is permissible. Fully planning cities also may not enact any new development regulation within a station area that:

- imposes a maximum floor area ratio (FAR) less than the transit-oriented density for any new residential or mixed-use development; or
- imposes a maximum residential density.

A station area is comprised of all lots within a UGA that are fully or partially within:

- 0.5 miles walking distance of an entrance to a train station with a stop on a light rail system, a commuter rail stop, or a stop on rail or fixed guideway system; and
- 0.25 miles walking distance of a stop on a bus rapid transit route that features fixed transit assets that indicate permanent, high-capacity service including, but not limited to, elevated platforms or enhanced stations, off-board fare collection, dedicated lanes, busways, or traffic signal priority.

A city may adopt an exception to the station area boundaries after consultation with and approval by the Department of Commerce (Commerce).

A FAR is a measure of transit-oriented development intensity equal to building square footage, excluding areas used for parking, interior openings in floor plates, and mechanical floors or areas, divided by the developable property square footage. Developable property excludes lots or portions of lots with critical areas, critical area buffers, and public facilities. Commerce must develop guidance to convert different types of planning measurements to the transit-oriented development density requirements and applicable FARs.

The transit-oriented density for lots within 0.5 miles walking distance of a stop on a light rail system, a commuter rail stop, or a stop on rail or fixed guideway systems is at least 3.5 FAR and for lots within 0.25 miles walking distance of a stop on a bus rapid transit route is at least 2.5 FAR.

Within any station area, an additional 1.5 FAR must be allowed for affordable rental or owner-occupied housing and for permanent supportive housing. Multifamily housing units with at least

three bedrooms may not be counted toward FAR limits.

At least 10 percent of all new residential units within a station area must be maintained as affordable housing for at least 50 years, unless:

- the building is constructed on a lot in which a density that meets or exceeds the transit-oriented development density was authorized prior to January 1, 2024;
- the building is subject to affordability requirements with a lower income threshold or a greater amount of required affordable housing that were enacted prior to January 1, 2024; or
- a city has enacted or expands a mandatory affordable housing incentive program that requires a minimum amount of affordable housing that must be provided by residential development, either on-site or through an in-lieu payment.

Cities may designate parts of a station area to enact or enforce FARs that are more or less than the transit-oriented density if the average maximum FAR for all residential and mixed-use areas in the station area is no less than the required transit-oriented density.

Cities may exclude from the transit-oriented development density requirements any lot or portion of a lot that:

- is designated as a shoreline environment or a critical area;
- is nonconforming with development regulations for lot dimensions, unless an applicant demonstrates that the nonconforming lot may be developed in compliance with development regulations;
- contains a designated landmark or is located within a historic district previously established under a local preservation ordinance;
- has been designated as containing urban separators by countywide planning policies; or
- is an industrial or agricultural designated lot that either is limited to one dwelling unit per lot or only allows housing for individuals and their families responsible for caretaking, farm work, security, or maintenance.

The requirements for transit-oriented development regulations do not require:

- alteration, displacement, or limitation of industrial or agricultural areas with a UGA; or
- a city to issue a building permit if other federal, state, or local requirements for a building permit are not met.

The deadline for fully planning cities to comply with the transit-oriented development requirements is based on the date of the city's next comprehensive plan update. Any city that is next required to review its comprehensive plan by December 31, 2024, must comply no later than its first implementation progress report due after December 31, 2024. Any city that is next required to review its comprehensive plan after December 31, 2024, must comply no later than six months after its first comprehensive plan update due after December 31, 2024. Thereafter, all fully planning cities must comply at each comprehensive plan update or implementation progress report following the completion or funding of any transit stop that would create a new station area.

Substantially Similar Local Actions.
Commerce may approve station area plans and implementing regulations adopted prior to January 1, 2024, as substantially similar to the transit-oriented development requirements. In determining whether a city's adopted plan and development regulations are substantially similar, Commerce may consider whether: (a) the regulations will provide a development capacity and allow the opportunity for creation of affordable housing that is at least equivalent to the amount of development capacity and affordable housing that would be allowed in that station area if the transit-oriented development requirements were adopted; (b) the jurisdiction offers a way to achieve buildings that exceed 85 feet in height; and (c) no lot within the station area is zoned exclusively for detached single-family residences.

Antidisplacement.
By August 1, 2024, the Governor must convene a work group to develop a list of antidisplacement guiding principles and strategies. The work group must submit a report of its findings and recommendations to Commerce by September 30, 2024, and by October 15, 2024, Commerce must make antidisplacement guiding principles and a list of potential strategies available to cities.

A city may seek an extension from the transit-oriented development density requirements by applying to Commerce for an extension in any areas that are at risk of displacement. The city and Commerce must agree on a plan for the city to mitigate the impacts of displacement and an implementation plan that includes specific antidisplacement policies. The city also may implement alternative FAR requirements in areas deemed at greater risk of displacement, including reducing FARs.

Limitations on Minimum Residential Parking Requirements.
Fully planning cities may not require off-street parking for residential or mixed-use development within a station area, except for off-street parking that is permanently marked for the exclusive use of individuals with disabilities. The prohibition against off-street parking requirements does not apply:

- if the city provides Commerce with an empirical study prepared by a credentialed transportation or land use planning expert that clearly demonstrates, and Commerce finds and certifies, that the limits on off-street parking in a defined area 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 without increased transit-oriented development and density requirements; or
- to any portion of a city within a 1-mile radius of a commercial airport with at least 9 million annual enplanements.

If a residential or mixed-use development provides parking for residential uses for transit-oriented development, fully planning cities may require:

- a share of any provided residential parking to be distributed between units designated as affordable housing and units offered at market rate; and

- the cost of unbundled parking charges to be included into the monthly cost for rental units designated as affordable housing.

State Environmental Policy Act.
All project actions that propose to develop residential or mixed-use development within any station area up to the transit-oriented development density required are categorically exempt from SEPA.

Planning Grants and Technical Assistance.
A fully planning city may apply to Commerce for planning grants and consult with Commerce to obtain technical assistance and compliance review with development regulation adoption. In addition, if funds are appropriated to the Growth Management Planning and Environmental Review Fund, Commerce may award grants to cities to facilitate transit-oriented development, which may only fund efforts that address environmental impacts and consequences, alternatives, and mitigation measures in sufficient detail to allow the analysis to be adopted in whole or in part by applicants for development permits.

The Washington State Department of Transportation (WSDOT) must create a new division within its agency or expand an existing division and designate a liaison as a point of contact and resource for WSDOT, local governments, and project proponents regarding land use decisions and processing development permit applications. The liaison's priority must be to facilitate and expedite any WSDOT decisions required for project approval.

Review and Evaluation.
By June 30, 2035, the Joint Legislative Audit and Review Committee (JLARC) must review city experiences with:
- the effects of the 10 percent affordable housing requirement for transit-oriented development;
- in-lieu payment options for affordable housing requirements, including how such payments were structured and the amount of housing created using in-lieu payments; and
- requirements for transit-oriented development density around fixed route transit stops providing frequent bus service.

In evaluating the impacts, JLARC must conduct case studies that consider:
- the effects on housing supply, including the supply of affordable housing;
- the implementation of transit-oriented development density regulations; and
- how statewide transit-oriented development density regulations are interacting with residential housing construction and development in specific cities.

In conducting its evaluation, JLARC must consult with a variety of entities, including housing developers, local governments, state agencies, and affordable housing advocates.

Common Interest Communities.
New governing documents and declarations of common interest communities, such as

condominiums and homeowner associations, may not prohibit the construction or development of multifamily housing or transit-oriented development density that must be permitted by cities or require off-street parking inconsistent or in conflict with transit-oriented development requirements.

Appropriation: None.

Fiscal Note: Requested on January 6, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.