

HOUSE BILL REPORT

ESHB 2321

As Passed House:

February 8, 2024

Title: An act relating to modifying middle housing requirements and the definitions of transit stop.

Brief Description: Modifying middle housing requirements and the definitions of transit stop.

Sponsors: House Committee on Housing (originally sponsored by Representatives Bateman, Barkis, Duerr, Reed and Pollet).

Brief History:

Committee Activity:

Housing: 1/22/24, 1/25/24 [DPS].

Floor Activity:

Passed House: 2/8/24, 94-3.

Brief Summary of Engrossed Substitute Bill

- Modifies provisions for middle housing and minimum residential density requirements.

HOUSE COMMITTEE ON HOUSING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Peterson, Chair; Alvarado, Vice Chair; Leavitt, Vice Chair; Klicker, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Barkis, Bateman, Chopp, Hutchins, Low, Reed and Taylor.

Staff: Serena Dolly (786-7150).

Background:

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.

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 10 years to ensure they comply with the GMA.

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.

Middle Housing.

No later than six months after its next required comprehensive plan update, fully planning cities meeting population requirements must allow for the development of a minimum number of units on all residential lots as follows:

- Cities with a population of at least 75,000 must allow at least four units on all residential lots, at least six units on all residential lots within 0.25 miles walking distance of a major transit stop, and at least six units if two are affordable housing.
- Cities with a population of at least 25,000 but less than 75,000 must allow at least two units on all residential lots, at least four units on all residential lots within 0.25 miles walking distance of a major transit stop, and at least four units if one unit is affordable housing.
- Cities 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 allow two units on all residential lots.

A major transit stop is defined as 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.

The density requirements do not apply to:

- lots designated with critical areas or their buffers;
- a 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.

A city must allow at least six of the nine types of middle housing and may allow accessory dwelling units (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. The GMA defines courtyard apartments as up to four attached dwelling units on two or three sides of a court.

A city subject to the minimum density requirements must include specific provisions for middle housing in its development regulations and may not require any standards for middle housing that are more restrictive than those required for detached single-family residences. A city may apply any objective development regulations to middle housing that are required for detached single-family residences, including set-back, lot coverage, stormwater, clearing, and tree canopy and retention requirements to ensure compliance with existing ordinances intended to protect critical areas and public health and safety.

As an alternative, a city subject to the minimum density requirements may 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. In addition, a city may apply to the Department of Commerce (Commerce) for extensions from the implementation timelines for areas at risk of displacement or where a city can demonstrate that infrastructure or fire protection services lack capacity to accommodate an increased density.

Fully planning cities are limited in their ability to establish minimum off-street parking requirements for middle housing and may not require: (1) off-street parking within 0.5 miles walking distance of a major transit stop; (2) more than one off-street parking space per unit for lots smaller than 6,000 square feet; and (3) more than two off-street parking spaces per unit for lots greater than 6,000 square feet. The limits do not apply if a city submits an empirical study that clearly demonstrates, and Commerce certifies, that parking limitations for middle housing are significantly less safe than if the jurisdiction's parking requirements were applied to the same location for the same number of detached houses.

Summary of Engrossed Substitute Bill:

Middle Housing.

A city with at least 25,000 population that is subject to minimum residential density requirements must allow at least six of the nine types of middle housing. A city with less than 25,000 population may choose the number of types of middle housing to allow to meet

minimum residential density requirements. The four-unit limit in the definition of courtyard apartments is removed.

The minimum density requirements for residential lots within 0.25 miles walking distance of a major transit stop must be applied to any bus rapid transit stop under construction.

In applying objective development regulations to middle housing, fully planning cities may apply regulations related to set-back, lot coverage, stormwater, clearing, and tree canopy and retention requirements, and language related to compliance with existing ordinances intended to protect critical areas and public health and safety is removed.

The exemption from minimum density requirements for lots with critical areas or their buffers is limited to that portion of a lot, parcel, or tract with a critical area or buffer except for critical aquifer recharge areas where a single-family detached house is an allowed use provided that any requirements to maintain aquifer recharge are met. Until June 30, 2026, any additional residential capacity required by lots, parcels, or tracts with critical areas or critical area buffers may not be considered an inconsistency with countywide planning policies, multicounty planning policies, or growth targets.

Lots created through the splitting of a single residential lot are exempt from the middle housing and minimum density requirements.

A city may not require more than one off-street parking space per unit for middle housing constructed on lots that are exactly 6,000 square feet before any zero lot line subdivisions or lot splits.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill makes technical changes to middle housing requirements, which are primarily designed to address very specific and concrete issues that are within the spirit of last year's law. There were a few places where words were left out and a few items that needed to be clarified as cities are updating their comprehensive plans. The changes to parking requirements are very straightforward.

(Opposed) None.

(Other) Cities hope to continue conversations about this bill. Commerce is releasing its

model middle housing ordinance soon. Several items still need to be clarified and streamlined, especially the definitions of major transit stop and bus rapid transit. Cities are in the process of planning using the current definition of critical areas, not the definition related to portions of lots. Changing the definition would delay implementation of other pieces of middle housing as cities go back and fix this. Instead, changes to the definition of critical areas should apply at the five-year check-in. There are concerns with the language around health and safety issues, especially the interaction between lot splitting and tree protection. The tree protection and retention language needs to be modified. Parking requirements for people with disabilities is essential for caregivers and other services, and removing parking requirements does not serve them.

Persons Testifying: (In support) Representative Jessica Bateman, prime sponsor; Scott Bonjukian; Bryce Yadon, Futurewise; Bill Stauffacher, Building Industry Association of Washington; and Alex Hur, Master Builders Association of King and Snohomish Counties.

(Other) Briahna Murray, Cities of Tacoma, Bellevue, Redmond, and Kent; Carl Schroeder, Association of Washington Cities; Steve Zemke, Friends of Seattle's Urban Forest and TreePAC; Suzanne Grant; and Iskra Johnson.

Persons Signed In To Testify But Not Testifying: None.