

SENATE BILL REPORT

ESHB 2321

As of February 14, 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: Passed House: 2/8/24, 94-3.

Committee Activity: Housing: 2/14/24.

Brief Summary of Bill

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

SENATE COMMITTEE ON HOUSING

Staff: Melissa Van Gorkom (786-7491)

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.

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.

The GMA directs fully planning jurisdictions to adopt internally consistent comprehensive land use plans. Comprehensive plans must contain certain required elements including a housing element that ensures the vitality and character of established residential neighborhoods. Comprehensive plans are implemented through locally adopted development regulations, and both must be reviewed and revised every ten years.

Density Requirements. 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, unless zoning permitting higher densities or intensities applies, as follows:

- cities with a population of at least 75,000 must include authorization for at least: four units per lot; six units per lot if at least two of the units are affordable housing; and six units per lot within one-quarter mile walking distance of a major transit stop;
- cities 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 if at least one unit is affordable housing; and four units per lot within one-quarter mile walking distance of a major transit stop; and
- 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 include authorization for the development of at least two units per lot.

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 of July 23, 2023, as impaired or threatened under the federal Clean Water Act; or
- lots that have been designated urban separators by countywide planning policies as of July 23, 2023.

Middle Housing Requirements. A city must allow at least six of the nine of middle housing types and may allow accessory dwelling units to achieve the unit density requirements. Middle housing is defined as buildings that are compatible in scale, form, and character with single-family homes 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.

Any city subject to the middle housing requirements may not require:

- standards for middle housing that are more restrictive than those required for detached single-family residences, but may apply objective development regulations that are required for detached single-family residences, including but not limited to

- 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;
- off-street parking as a condition of permitting development of middle housing within one-half mile walking distance of a major transit stop;
 - more than one off-street parking space per unit as a condition of permitting development of middle housing on lots smaller than 6000 square feet before any zero lot line subdivisions or lot splits; and
 - more than two off-street parking spaces per unit as a condition of permitting development of middle housing on lots greater than 6000 square feet before any zero lot line subdivisions or lot splits.

The parking provisions do not apply:

- if the local government submits to the Department of Commerce (Commerce) an empirical study prepared by credentialed transportation or land use planning expert that clearly demonstrates, and Commerce finds and certifies, the application of parking provisions in a defined area would be significantly less safe for vehicle drivers or passengers, pedestrians, or bicyclists than if the jurisdiction's parking requirements were applied in the same location for the same number of detached houses; or
- to portions of cities within a one-mile radius of a commercial airport with at least 9 million annual enplanements.

Summary of Bill: Density Requirements. The minimum density requirements for residential lots within one-quarter miles walking distance of a major transit stop includes any bus rapid transit route stops under construction.

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.

Middle Housing Requirements. 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.

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.

A city may not require more than one off-street parking space per unit for middle housing constructed on lots no greater than 6000 square feet before any zero lot line subdivisions or lot splits.

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

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: HB 1110 was passed last year requiring cities 25,000 and greater to allow for middle housing and this is a follow-up to that legislation to make some technical tweaks. The critical areas were exempted in last year's bill, but some cities didn't feel it was clear and so some cities have excluded entire lots, so clarification was necessary to ensure that that building could occur in certain portions of those areas. The intent for critical areas is for it to only be on the portion of the critical areas and their buffers, applying the same standards as is currently done for single family homes.

Update of critical areas is helpful, still concerned about the carveout of aquifer which covers a lot of areas and treating those lots differently is inequitable. Should remove references to shoreline regulations. The health and safety components made it difficult to protect tree canopies and so this removes the language. Heard concerns from some cities that lots could be split to infinity and you would have microscopic houses and so there was an exemption added that this doesn't apply to any lot that has a single lot line split. We started the work to implement HB 1110 and this contains some fixes to help improve our ability to implement the bill and improve the clarity of the bill.

This is part of the effort to put housing stock in play as quickly as possible with parking requirements that are workable. Appreciate the change to the definition in courtyard apartments. There is confusion regarding the lot split references since there is not definition in state law for that. Suggest removing all references to zero lot line since that is a description physical condition where a building is allowed to sit and so it doesn't really apply and provides confusion. Townhouse definition currently sets a minimum of three units, suggest eliminating it or reducing it to two units to offer more flexibility. There is also a reference to single family which is confusing, if it is intended to require them to be on their own lot, suggest stating that rather than referencing single family.

OTHER: Hope that housing and the protection of the environment can coexist. Sec. 2 (8)(a) applies to portions of the lot, partial or tract designated with critical areas, the original bill exempted critical area lots, this bill should be amended to either exempt critical area lots and buffers or maintain current law.

Need to clarify the size of lots in this bill and ensure that lots in critical areas are entirely protected. Need to include trees in all of our communities. Sec. 2 (8)(d) states that no part of the bill would apply to not lots created by the splitting of a single residential lot which are most of our lots in Seattle. Unclear if we can save our critical areas without this clarification because of questions around very small lots with large critical areas. Seattle is fifth in the nation for an urban heat island and trees are the only scalable way to protect our communities from the impact of urban heat.

For the critical areas we agree the intent is to only cover the portions of the lot with critical areas but are concerned that some of the work has already been done. It is the sanctity of planning, concerned that the impacts of what we are asked to authorize because we are in the middle of that and so bringing back these areas for cities that have already excluded them for their planning purposes will either require them to do new work, add cost, or delay implementation. We think the language in the bill would accomplish the goal of not messing up the current comprehensive planning process but it does erode the value of a comprehensive and consistent planning framework that considers all of the development being authorized so we would prefer to bring those lots in somewhere down the road so that they could be integrated. No mention of the ability to walk to transit, if you are allowing increased building near transit there needs to be availability of sidewalks and walkways.

Persons Testifying: PRO: Representative Jessica Bateman, Prime Sponsor; Alex Hur, Master Builders Association of King and Snohomish Counties; Scott Bonjukian; Dave Andersen, Washington Department of Commerce; Bill Stauffacher, Building Industry Association of Washington; Bryce Yadon, Futurewise.

OTHER: Sandy Shettler; Kathleen Russell; Carl Schroeder, Association of Washington Cities; Steve Zemke, Friends of Seattle's Urban Forest and TreePAC.

Persons Signed In To Testify But Not Testifying: No one.