

SENATE BILL REPORT

SB 5190

As of January 24, 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: Senators Trudeau, Lovelett, Braun, Frame, Hasegawa, Hunt, Kuderer, Lias, Nguyen, Nobles, Pedersen, Shewmake and Wilson, C..

Brief History:

Committee Activity: Local Government, Land Use & Tribal Affairs: 1/12/23 [w/oRec-HSG].

Housing: 1/25/23.

Brief Summary of Bill

- Requires certain cities planning under the Growth Management Act to authorize development of four or six units per lot for certain residential zones and include specific provisions related to middle housing in their development regulations.
- Requires the Department of Commerce to develop model middle housing ordinances and provide technical assistance to cities to implement the 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

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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.

Comprehensive Plans. The GMA 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.

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;
- 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 caused by local policies, plans, and actions;
- 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 which include, for example:

- authorizing a duplex, triplex, quadplex, sixplex, stacked flat, townhouse, or courtyard apartment on parcels;
- 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 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 lack of on-street parking when private roads are used, 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 (HOA). Generally these groups can regulate or limit the use of property by its members.

Summary of Bill: Density Requirements. A fully planning city with a population of at least 6000, or a city located within a contiguous urban growth area with a city population above 200,000, must provide by ordinance and incorporate into its development regulations, zoning regulations, and other official controls, authorization for the development of:

- at least four units per lot on all lots zoned for residential use;
- six units per lot in all residential zones, if at least two of the units are affordable, if the applicant commits to renting two of the six units to low-income households for a term of at least 50 years, and record a covenant or deed restriction that ensures continued affordability; and
- six units per lot in all residential zones within one-half mile of a major transit stop.

Cities subject to the density requirements that have not adopted local antidisplacement measures as a portion of the city's comprehensive plan must, within nine months of the act's effective date:

- identify local policies and regulations that result in racially disparate impacts, displacement, and exclusion in housing;
- identify and implement policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion in housing caused by local policies, plans, and actions;
- identify areas that may be at higher risk of displacement from market forces that occur with changes to zoning development regulations and capital investments; and
- establish antidisplacement policies.

Middle Housing Requirements. Cities subject to the density requirements are directed to

include specific provisions related to middle housing in their development regulations. 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, courtyard apartments, and cottage housing.

Any city subject to the middle housing requirements:

- must adopt objective development and design standards on the development of middle housing that do not allow personal or subjective judgment by a permit administrator and do not discourage the development of middle housing through unreasonable costs, fees, delays, or other requirements or actions which individually, or cumulatively, make impracticable the permitting, siting, or construction of all allowed middle housing types or the ownership of a middle housing unit;
- 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, environmental review processes, and critical areas regulations that apply to detached single-family residences;
- may not require off-street parking as a condition of permitting development of middle housing within one-half mile of a major transit stop;
- may not require more than one off-street parking space per lot as a condition of permitting development of middle housing on lots smaller than 6000 square feet; and
- may not require more than two off-street parking spaces per lot as a condition of permitting development of middle housing on lots greater than 6000 square feet.

The density and middle housing requirements take effect the latter of 24 months after the effective date of the act for cities with a population of at least 10,000, or 12 months after the Office of Financial Management determines a city has reached the population threshold.

Cities may apply for extensions of the timelines established. Extensions may only be applied to specific areas where a city has identified water, sewer, or stormwater services are deficient or will become deficient within five years and for which the city has established a plan of action to remedy such services on a specific timeline.

A city that adopts the density and missing middle regulations is deemed to be in compliance with the mandatory GMA element of making adequate provisions for existing and projected needs of all economic segments of the community until June 30, 2032.

Department of Commerce. Commerce must develop and publish model middle housing ordinances within 18 months after the act takes effect. The model ordinances supersede, preempt, and invalidate local development regulations that fail to allow middle housing within the time frames provided until the city takes action to adopt density and middle housing regulations.

Commerce must establish a process for cities to seek approval of required local actions, and provide technical assistance prioritized based on cities demonstrating the greatest need. Any local actions approved by Commerce are exempt from appeals under the GMA and SEPA.

Common Interest Communities. Governing documents and declarations of CICs, including those such as condominiums and HOAs, within cities subject to the middle housing and density requirements created after the act takes effect may not prohibit construction, development, or use of the additional housing units.

Appropriation: None.

Fiscal Note: Requested on January 16, 2023.

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

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