Washington State Department of Commerce

We strengthen communities

User Guide for Middle Housing Model Ordinances

UPDATE | OCTOBER 24, 2024

GROWTH MANAGEMENT SERVICES

Acknowledgements

Washington State Department of Commerce
Mike Fong, Director
Mark Barkley, Local Government Division, Assistant Director
Dave Andersen, Growth Management Services, AICP, Managing Director

Editors
David Osaki, AICP, Middle Housing Lead
Anne Aurelia Fritzel, AICP, GMS Housing Programs Manager
Lilith Vespier, Infill Housing Manager
Mary Reinbold, AICP, Senior Planner, Growth Management Services

Content Development
Bob Bengford, AICP, Partner, MAKERS Architecture and Urban Design
Scott Bonjukian, AICP, Project Manager, MAKERS Architecture and Urban Design
Ian Crozier, AICP, Associate Planner, MAKERS Architecture and Urban Design
Markus Johnson, Planner, MAKERS Architecture and Urban Design
Clay White, AICP, Planning Director, Kimley-Horn
Ben Felstein, Planner, Kimley-Horn
Tyler Bump, Partner, ECONorthwest
Mackenzie Visser, Associate, ECONorthwest
Michelle Anderson, Project Manager, ECONorthwest
Sara Springer, Member, Ogden Murphy Wallace PLLC
Drew T. Pollom, Ogden Murphy Wallace PLLC
Shane Hope, Principal, Plan Hope

Technical Committee
Preston Frederickson, City of Walla Walla
Mark Hofman, City of Newcastle
Erin Fitzgibbons, City of Newcastle
Joyce Phillips, City of Olympia
Elise Keim, City of Shoreline
Salina Lyons, City of Covington
Dafne Hernandez, City of Covington
Rob White, City of Ruston
Spencer Gardner, City of Spokane
David Boyd, City of Bothell
Rebecca Samy, City of Bothell
Nick Bond, City of Port Orchard
Adam Weinstein, City of Kirkland
Becky Ableman McCrary, City of Everett
Brennon Staley, City of Seattle
Carl Schroeder, Association of Washington Cities

Washington State Department of Commerce
PO Box 42525
Olympia, WA 98504-2525
www.commerce.wa.gov

For people with disabilities, this report is available on request in other formats. To submit a request, please call 360-725-4000 (TTY 360-586-0772). First published January 26, 2024; updated October 2024.

Table of Contents

1.0 – Introduction

User Guide Purpose

This User Guide is intended to support planners, advisory bodies, elected officials, and interested parties in implementing code amendments related to RCW 36.70A.635 and related RCW sections, and to help the readers understand the organization and basis for recommended standards in the Middle Housing Model Ordinances. The User Guide uses diagrams, references to public informational documents, and real-world examples to offer recommendations and best practices for the development of middle housing.

A middle housing model ordinance User Guide was originally published in January 2024, along with two model ordinances. This updated User Guide and updated model ordinances reflect the revisions to RCW 36.70A.635 implemented by House Bill (HB) 2321, passed in 2024, which is addressed in more detail below. This User Guide and model ordinances also responds to issues raised since the time the User Guide and model ordinances were published in January 2024.

Background

The Washington Legislature passed Engrossed 2nd Substitute House Bill 1110 ("E2SHB 1110", commonly referred to as "HB 1110") in 2023. The main provisions of HB 1110 are codified in RCW 36.70A.635 through RCW 36.70A.638. HB 1110 requires 77 jurisdictions across the State of Washington to adopt development regulations allowing for middle housing on all lots zoned predominantly for residential use, including minimum unit per lot standards, maximum parking requirements, and requiring administrative design review in cases where design review is used.

The state statute notes key legislative findings:

> *"…Washington is facing an unprecedented housing crisis for its current population and a lack of housing choices, and is not likely to meet the affordability goals for future populations. In order to meet the goal of 1,000,000 new homes by 2044, and enhanced quality of life and environmental protection, innovative housing policies will need to be adopted.*
>
> *Increasing housing options that are more affordable to various income levels is critical to achieving the state's housing goals, including those codified by the legislature under chapter 254, Laws of 2021.*
>
> *There is continued need for the development of housing at all income levels, including middle housing that will provide a wider variety of housing options and configurations to allow Washingtonians to live near where they work.*
>
> *Homes developed at higher densities are more affordable by design for Washington residents both in their construction and reduced household energy and transportation costs.*
>
> *While creating more housing options, it is essential for cities to identify areas at higher risk of displacement and establish antidisplacement policies as required in Engrossed Second Substitute House Bill No. 1220 (chapter 254, Laws of 2021).*[1]

[1] Department of Commerce guidance for implementing House Bill 1220: https://www.commerce.wa.gov/serving-communities/growth-management/growth-management-topics/planning-for-housing/updating-gma-housing-elements/

The state has made historic investments in subsidized affordable housing through the housing trust fund, yet even with these historic investments, the magnitude of the housing shortage requires both public and private investment.

In addition to addressing the housing shortage, allowing more housing options in areas already served by urban infrastructure will reduce the pressure to develop natural and working lands, support key strategies for climate change, food security, and Puget Sound recovery, and save taxpayers and ratepayers money."

RCW 36.70A.636(2)(a) directs the Washington State Department of Commerce ("Department of Commerce") to *"…[p]ublish model middle housing ordinances no later than six months following July 23, 2023."* The Model Ordinances and User Guide have been written to carry out this directive. Importantly, the Model Ordinances are not a duplication of the law and are written with the understanding that a "model" is a good example or recommendation.

The Model Ordinances and User Guide offer guidance to create increased housing capacity, promote housing production, increase densities, ensure functional and livable developments, protect the environment, and encourage the development of housing affordable at different income levels. The Model Ordinances are designed to assist cities with implementing new middle housing requirements and advancing supportive zoning for middle housing. This includes addressing topics such as reasonable dimensional standards and other provisions which will facilitate middle housing development. Local jurisdictions may make adjustments to these standards and provisions based on their local policy priorities.

The User Guide offers guidance on options for cities to address middle housing requirements, code changes to implement these new requirements, and a suite of recommendations so that development regulation amendments work well when implemented.

The Department of Commerce hired a consultant team for the overall body of work. The Model Ordinances and User Guide were shaped by engagement with stakeholders along with the project team's expertise in middle housing policy, land use planning, development regulations, and economic analysis.

House Bill 2321

The Washington Legislature passed Engrossed Substitute House Bill 2321 ("ESHB 2321, commonly referred to as "HB 2321") in 2024. HB 2321 modified some of the requirements originally established by HB 1110. HB 2321 does not modify the deadline by which subject cities must adopt middle housing regulations, which is six months after their next comprehensive plan periodic update deadline required under RCW 36.70A.130.

In summary, HB 2321 makes changes reflected in this User Guide and, where applicable, to the model ordinances, including:

- Modifying the definition of "courtyard apartments" to remove the 4-unit maximum on this middle housing type.
- Specifying that "major transit stops" include bus rapid transit stops which are under construction.
- Modifying the requirement that standards for middle housing cannot be more restrictive than those required for detached single-family residences. Previously, the provision included a statement about protection of critical areas and public health and safety.
- Removing the requirement for Tier 3 cities to permit "six of the nine types" of middle housing. Previously, interpretation issues existed since Tier 3 cities are only required to permit two units per lot and only four of the nine types of middle housing can reasonably be built in a two unit-per-lot configuration.

- Clarifying the off-street parking requirements for lots exactly 6,000 square feet in size. Previously, off-street parking requirements lots exactly 6,000 square feet in size were not addressed by the statute.
- Revising the critical areas exemption to apply to "portions" of a lot, parcel, or tract designated with a critical area or their buffers, except for critical aquifer recharge areas where detached single-family residences are allowed. Previously the critical area exemption applied to entire lots/parcels/tracts.
- Adding "parcels" and "tracts" when referencing "lots" in the context of critical areas.
- Adding areas designated as sole-source aquifers by the Environmental Protection Agency on islands in the Puget Sound to the list of lots and areas not subject to the requirements of RCW 36.70A.635.
- Adding that the middle housing requirements do not apply to lots created through the splitting of a single residential lot.
- Specifying the relationship between the HB 2321 critical areas amendment, growth targets, countywide planning policies, and multicounty planning policies.

Benefits of Middle Housing

Middle housing has many benefits, including:

- Contributing to undoing historic economic and racial exclusion by opening up traditionally single-family neighborhoods to more diverse housing options and household types.
- Providing housing that is typically more affordable both in their construction costs and reduced household energy and transportation costs than traditional detached single-family homes.
- Supporting efforts to address climate change, by expanding housing types that generally have less environmental impact per unit and lower carbon footprints than a detached single-family home.
- Providing housing that complements transit and walkability.
- Focusing new housing in urban areas and limiting the conversion of farms, forests, and rural lands.
- Contributing to meeting new Housing Element requirements by providing more housing for people at different income levels.

For these and other reasons, middle housing is an effective way to help accommodate housing needs for the state's growing population.

General Considerations

Effective implementation of the middle housing law (RCW 36.70A.635) requires thoughtful amendments to development regulations. How those amendments are drafted will vary given that cities have various code frameworks for how their zoning and other development regulations are organized and administered. For example, to regulate uses some cities rely on a comprehensive use table, while others list allowed uses by zone. To regulate bulk some cities use floor area ratio (FAR), others do not.

While some subject cities may have already seen middle housing development, infill development of middle housing on lots in existing neighborhoods may be new to other cities. Subject cities cannot require lot sizes for middle housing which are more restrictive (larger) than for detached single-family residences. Development standards that work well for middle housing on larger lots may preclude infill development on smaller lots. The User Guide recommends approaches to evaluate code amendments in a manner that reduces barriers to the development of middle housing types, especially on small infill lots.

In amending development regulations for middle housing, cities should review their development regulations for potential barriers to middle housing. Facilitating middle housing development is an important step in demonstrating how Housing Element requirements are being met (RCW 36.70A.070(2)(d)). While RCW 36.70A.635(6)(b) below establishes a guardrail for middle housing requirements, applying the statutory

requirement literally such that existing detached single-family regulations apply to middle housing may not result in codes that will allow middle housing development,

> "(b) *Except as provided in (a) of this subsection, any city subject to the requirements of this section…shall not require through development regulations any standards for middle housing that are more restrictive than those required for detached single-family residences, but may apply any 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." (RCW 36.70A.635(6)(b))*

The Model Ordinances and this User Guide do not address every possible development situation that could apply to middle housing. Below are some questions that may assist cities in determining whether their code actively accommodates middle housing (some are expanded upon later in the User Guide):

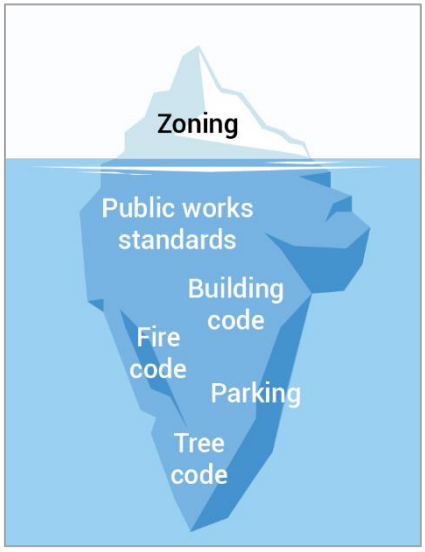
- Do established building setbacks, especially rear setbacks, need to be modified to accommodate development on small lots?
- Do current road standards account for the need for narrow driveways to access development on the rear of a lot if the primary home is retained, or if new middle housing development occurs on a vacant lot? Will there typically be enough room between the retained home or new middle housing development and the side property line?
- Are there subdivision standards which require large landscape buffers? These may be appropriate for traditional low-density single-family subdivisions but could be challenging to implement for infill subdivisions with middle housing.

Allowing middle housing types widely across cities is a step towards realizing the benefits associated with these housing types. However, how middle housing development standards are adopted, along with other considerations such as fee structures and infrastructure can impact the outcomes of allowances. This User Guide seeks to provide information and guidance for jurisdictions to assist in developing and adopting middle housing regulations that can efficiently bring middle housing to the market in a manner compatible with surrounding development.

1.1 – Applicability

Of the 281 cities and towns in Washington, 77 are subject to the requirements of RCW 36.70A.635. Only cities which are within "fully planning" counties under the Growth Management Act (GMA) are subject to RCW 36.70A.635, and only then if the city also meets additional qualifying criteria. The statute uses 2020 Washington State Office of Financial Management (OFM) data to identify cities initially subject to the statute.[2]

The statute describes three categories of cities, primarily based on population but one category also accounts for whether a city is or is not within a contiguous urban growth area with the largest city in a county, if the county is more than 275,000 in population. For the purposes of the Model Ordinances and this User Guide, the Department of Commerce references these categories as "tiers." The tiers are:



Zoning is just one of many types of regulations that control development. Source: MAKERS

[2] Office of Financial Management population data for 2020: https://ofm.wa.gov/washington-data-research/population-demographics/population-estimates/historical-estimates-april-1-population-and-housing-state-counties-and-cities

- Tier 1: Cities with a population of at least 75,000
- Tier 2: Cities with a population of at least 25,000 but less than 75,000
- Tier 3: Cities with a population less than 25,000, located in a county with a population of more than 275,000, and in a contiguous urban growth area with the largest city in the county

HB 2321, passed in 2024, added the following exemption to the areas subject to RCW 36.70A.635: "Areas designated as sole-source aquifers by the United States environmental protection agency on islands in the Puget Sound."[3] This applies to Bainbridge Island and cities on Whidbey Island, since those islands are identified as sole-source aquifers. Per Office of Financial Management population estimates, the City of Bainbridge Island crossed the 25,000 population threshold in 2022, and Oak Harbor's 2024 population is 24,900.

The list of cities subject to RCW 36.70A.635 follows, with each city's 2020 population. Each city's 2024 population is also provided for context.

[3] Map of Sole Source Aquifer Locations, United States Environmental Protection Agency: https://www.epa.gov/dwssa/map-sole-source-aquifer-locations

Tier 1 Cities

These are cities with a population of at least 75,000 in 2020.

City	City 2020 Population (U.S. Census)	City 2024 Population Estimate (OFM)
Seattle	737,015	797,700
Spokane	228,989	233,000
Tacoma	219,346	225,100
Vancouver	190,915	202,600
Bellevue	151,854	155,000
Kent	136,588	140,400
Everett	110,629	114,800
Renton	106,785	108,800
Spokane Valley	102,976	108,800
Federal Way	101,030	102,500
Yakima	96,968	99,370
Kirkland	92,175	96,710
Bellingham	91,482	97,270
Auburn	87,256	88,950
Kennewick	83,921	87,120
Pasco	77,108	82,220

Tier 2 Cities

These are cities with a population of at least 25,000 but less than 75,000 in 2020.

City	City 2020 Population (U.S. Census)	City 2024 Population Estimate (OFM)
Redmond	73,256	80,040
Marysville	70,714	74,390
Sammamish	67,455	68,410
Lakewood	63,612	64,620
Richland	60,560	64,190
Shoreline	58,608	61,910
Olympia	55,382	57,450
Lacey	53,526	60,210
Burien	52,066	53,000
Bothell	48,161	50,670
Bremerton	43,505	45,390
Puyallup	42,973	43,410
Edmonds	42,853	43,420
Issaquah	40,051	41,500
Lynnwood	38,568	41,500
Lake Stevens	35,630	41,540
Wenatchee	35,575	36,040
Mount Vernon	35,219	35,800
University Place	34,866	35,970
Walla Walla	34,060	34,580
Des Moines	32,888	33,400
SeaTac	31,454	32,710
Maple Valley	28,013	29,320
Camas	26,065	27,660
Mercer Island	25,748	25,830
Tumwater	25,573	27,470
Moses Lake	25,146	27.070

Tier 3 Cities

These are cities with a population less than 25,000 in 2020, located in a county with a population of at least 275,000, and in a contiguous urban growth area with the largest city in the county. Those counties and their largest cities are the following:

County	Largest City in the County (as of 2020)	County 2020 Population (U.S. Census)	County 2024 Population Estimate (OFM)
King	Seattle	2,269,675	2,378,100
Pierce	Tacoma	920,393	952,600
Snohomish	Everett	827,957	867,100
Spokane	Spokane	539,339	559,400
Clark	Vancouver	503,311	536,300
Thurston	Olympia	294,793	307,000
Kitsap	Bremerton	275,611	286,100

The list of Tier 3 cities follows.

City	County	City 2020 Population (U.S. Census)	City 2024 Population Estimate (OFM)
Kenmore	King	23,914	24,350
Tukwila	King	21,798	22,930
Mukilteo	Snohomish	21,538	21,590
Mountlake Terrace	Snohomish	21,286	24,260
Mill Creek	Snohomish	20,926	21,630
Covington	King	20,777	22,000
Arlington	Snohomish	19,868	22,980
Washougal	Clark	17,039	18,150
Port Orchard	Kitsap	15,587	18,300
Lake Forest Park	King	13,630	13,680
Woodinville	King	13,069	13,900
Newcastle	King	13,017	13,750
Edgewood	Pierce	12,327	14,080
Liberty Lake	Spokane	12,003	13,870
Fife	Pierce	10,999	11,320
Airway Heights	Spokane	10,757	12,070
Sumner	Pierce	10,621	11,040
Dupont	Pierce	10,151	10,180

City	County	City 2020 Population (U.S. Census)	City 2024 Population Estimate (OFM)
Milton	King/Pierce	8,697	8,755
Pacific	King/Pierce	7,235	7,270
Fircrest	Pierce	7,156	7,230
Normandy Park	King	6,771	6,855
Steilacoom	Pierce	6,727	6,845
Brier	Snohomish	6,560	6,600
Black Diamond	King	4,697	7,195
Algona	King	3,290	3,335
Clyde Hill	King	3,126	3,100
Medina	King	2,915	2,920
Millwood	Spokane	1,881	1,925
Woodway	Snohomish	1,318	1,345
Yarrow Point	King	1,134	1,135
Ruston	Pierce	1,055	1,065
Hunts Point	King	457	460
Beaux Arts Village	King	317	315

1.2 – Statutory Compliance Deadlines

Middle Housing Law

RCW 36.70A.635(11)(a) and (b) state that a city must comply with the requirements of RCW 36.70A.635 the latter of:

- Six months after the city's next periodic comprehensive plan update required under RCW 36.70A.130 if the city meets the population threshold based on the 2020 Office of Financial Management population data; or
- 12 months after the city's next implementation progress report required under RCW 36.70A.130 after a determination by the Office of Financial Management that the city has reached a population threshold established under RCW 36.70A.635(1).

Refer to RCW 36.70A.130 or the Department of Commerce periodic update webpage for information on periodic update schedule requirements.

When a city moves into a new population tier it must comply with the applicable requirements of RCW 36.70A.635 no later than one year after the next implementation progress report required under RCW 36.70A.130. Implementation progress reports are due five years after the review and revision required by of their comprehensive plan required under RCW 36.70A.130.

For example, the city of Redmond, which is currently Tier 2, crossed the 75,000 population threshold in 2022 per Office of Financial Management population estimates. Redmond is in King County, where cities'

comprehensive plan periodic updates are due December 31, 2024. Under RCW 36.70A.130, Redmond's implementation progress report will be due five years later on December 31, 2029, and by 12 months after that on December 31, 2030, the city will need to comply with Tier 1 requirements.

Other Bills

This User Guide references some of the other housing bills or sections of state law with specified compliance deadlines. These are summarized below.

- **Accessory dwelling units:** Fully-planning cities and counties must effectuate the requirements of RCW 36.70A.680 and .681 beginning six months after the next periodic comprehensive plan update deadline required under RCW 36.70A.130.[4]
- **Design review:** Fully-planning cities and counties must effectuate the requirements of RCW 36.70A.630 beginning six months after the next periodic comprehensive plan update deadline required under RCW 36.70A.130.[5]
- **Impact fees:** Fully-planning cities and counties must effectuate the requirements of RCW 82.02.060(1) six months after the next periodic comprehensive plan update deadline required under RCW 36.70A.130.[6]
- **Unit lot subdivisions:** All cities, counties and towns must effectuate the requirements of RCW 58.17.060(3) and include in their short plat regulations procedures for unit lot subdivisions by the next periodic update required deadline under RCW 36.70A.130.[7]
- **Residential parking:** Fully-planning cities and counties must effectuate the requirements of RCW 36.70A.622 by the next periodic update deadline required under RCW 36.70A.130.[8]

[4] RCW 36.70A.680(1)(a). Commerce has provided separate guidance for accessory dwelling units.
[5] RCW 36.70A.630(5)
[6] RCW 82.02.060(10). Commerce will provide separate guidance for impact fees.
[7] RCW 58.17.060(3). Commerce will provide separate guidance for unit lot subdivisions.
[8] RCW 36.70A.622. Commerce will provide separate guidance for residential parking.

1.3 – How to Use the Model Ordinances

Model Ordinance Text

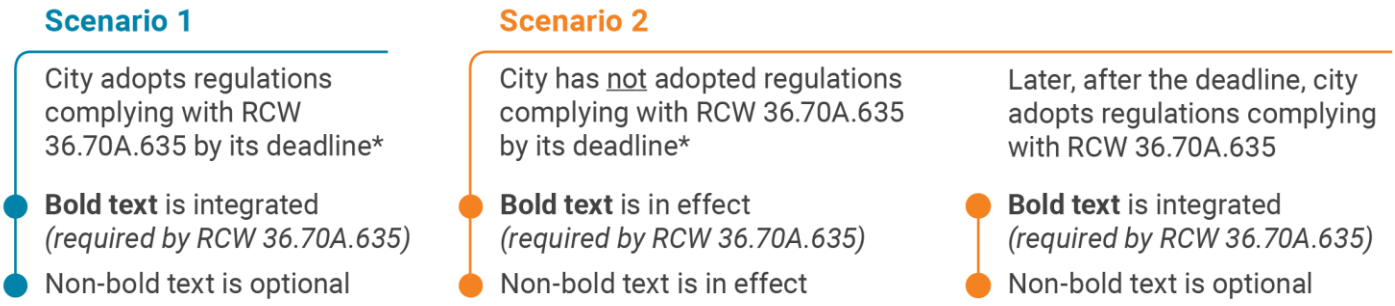
The Department of Commerce's authority to publish this Model Ordinance is provided in RCW 36.70A.636(2)(a) and (b), which state:

> *"(2) (a) The department shall publish model middle housing ordinances no later than six months following July 23, 2023.*
>
> *(b) In any city subject to RCW 36.70A.635 that has not passed ordinances, regulations, or other official controls within the time frames provided under RCW 36.70A.635(11), the model ordinance supersedes, preempts, and invalidates local development regulations until the city takes all actions necessary to implement RCW 36.70A.635."*

The Model Ordinances have two text styles meant to address implementation of the RCW:

- **Bold text in the Model Ordinances** represents provisions from RCW 36.70A.635 that cities subject to the law must implement.
- The non-bold text are standards that are optional for a city to use. Cities may choose to revise these optional standards, as well as adopt all, some, or none of the optional provisions. However, the non-bold text will apply to a city that does not pass ordinances, regulations, or other local controls to implement RCW 36.70A.635 within the time frame required by RCW 36.70A.635(11), until such time the city takes all actions necessary to implement RCW 36.70A.635. Certain optional standards are included in the Model Ordinance for this specific reason, to allow a city to have basic standards for certain middle housing types (such as cottage housing) should the Model Ordinance temporarily be in effect.

The diagram below summarizes the scenarios in which this Model Ordinance applies.



** Deadline is six months after a city's next periodic comprehensive plan update required by RCW 36.70A.130*

Example Section

In some cases, required provisions of the law have been rewritten for ease of use and to translate the law into local code format with the same effect. For example, for Tier 2 cities, RCW 36.70A.635(1)(a)(i) states:

> *(1) Except as provided in subsection (4) of this section, any city that is required or chooses to plan under RCW 36.70A.040 must provide by ordinance and incorporate into its development regulations, zoning regulations, and other official controls, authorization for the following:*
>
> *(a) For cities with a population of at least 25,000 but less than 75,000 based on office of financial management population estimates:*
>
> *(i) The development of at least two units per lot on all lots zoned predominantly for residential use, unless zoning permitting higher densities or intensities applies;*

This requirement for Tier 2 cities is written in the Model Ordinance as:

> ***A. The permitted unit density on all lots zoned predominantly for residential use is:***
>
> ***1. Two units per lot, unless zoning permitting higher densities or intensities applies.***

The Two Model Ordinances

The two Model Ordinances are similar. One is for Tier 1 and 2 cities, and the other is for Tier 3 cities. The key differences are listed in the table below.

Standard	Tier 1 and 2 Cities Model Ordinance[1]	Tier 3 Cities Model Ordinance[2]
Middle Housing Types	All nine middle housing building types are permitted on all lots zoned predominantly for residential use*	Duplexes, stacked flats, courtyard apartments, and cottage housing are permitted on all lots zoned predominantly for residential use**
Base Unit Per Lot Density	Tier 1 4 units per lot*** Tier 2 2 units per lot***	2 units per lot***
Additional Unit Per Lot Density	Tier 1 6 units per lot when near major transit or when at least 2 affordable housing units are provided*** Tier 2 4 units per lot when near major transit or when at least 1 affordable housing unit is provided***	No additional units per lot required
Floor Area Ratio	Progressive standards based on unit per lot count	No FAR standard
Maximum Lot Coverage	Lot coverage maximum is higher than the Tier 3 Model Ordinance and is based on unit per lot count	Lot coverage maximum is lower than the Tier 1 and 2 Model Ordinance

Standard	Tier 1 and 2 Cities Model Ordinance[1]	Tier 3 Cities Model Ordinance[2]
Minimum Setbacks	The minimum rear setback is less than in the Tier 3 Model Ordinance	The minimum rear setback is higher than in the Tier 1 and 2 Model Ordinance
Design Standards	Design standards are included. Less standards are included in Tier 1 and Tier 2 cities than for Tier 3 cities (e.g., there are no standards in Tier 1 and Tier 2 for covered entries and window/door transparency).	Design standards are included. More standards are included in Tier 3 cities than for Tier 1 and 2 cities.

* RCW 36.70A.635(5) requires a Tier 1 and Tier 2 city to allow "at least" six of the nine middle housing types. The model ordinance for Tier 1 and Tier 2 cities allows all nine to avoid pre-judging which middle housing types the jurisdiction intends to allow in the event the model ordinance goes into effect for jurisdictions that do not meet the statutory deadline to adopt middle housing regulations.

** RCW 36.70A.635 requires a Tier 3 city to allow all middle housing types that accommodate two units per lot, meaning duplexes, stacked flats, courtyard apartments, and cottage housing.

*** RCW 36.70A.635(1) uses the phrase "at least" when describing these unit per lot standards. Cities can allow higher unit per lot densities.

[1] Tier 1: Cities with a population of at least 75,000. Tier 2: Cities with a population of at least 25,000 but less than 75,000.

[2] Tier 3: Cities with a population less than 25,000, located in a county with a population of more than 275,000, and in a contiguous urban growth area with the largest city in the county.

2.0 – Model Ordinances and Annotations

Introduction

User Guide Chapter 2.0 copies most of the Model Ordinances' text (for all city tiers) and adds supplemental annotations. The annotations provide context, options, and recommendations for particular topics. Note: Model Ordinances sections as well as excerpts from existing RCWs are *italicized* throughout this document. Annotations are organized under the following headings:

- **Local Policy Choice** – Describes code options cities could consider to achieve desired local outcomes, including developing more housing.
- **Discussion** – Describes reasoning for model code content, issues cities should consider when drafting the middle housing development regulations, and recommendations for cities that want to consider code amendments that go beyond the minimum requirements of RCW 36.70A.635.
- **References** – Provides citations and links to research, articles, local codes, and real-world examples.
- **Footnotes** – Footnotes on the Model Ordinance provisions provide additional resources and clarifications.

Model Ordinance Text

The Model Ordinance text is copied below for reference.

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY/TOWN OF _____, WASHINGTON, IMPLEMENTING THE REQUIREMENTS OF ENGROSSED SUBSTITUTE HOUSE BILL (E2SHB) 1110 AND ENGROSSED SUBSTITUTE HOUSE BILL (ESHB) *HB 2321, ADDING NEW SECTIONS_____, AMENDING SECTIONS_____, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.*

WHEREAS, in 2023 the Washington State legislature passed Engrossed Substitute House Bill (E2SHB) 1110 (chapter 332, Laws of 2023) related to middle housing; and

WHEREAS, in passing E2SHB 1110 (chapter 332, Laws of 2023) the State legislature found that Washington is facing an unprecedented housing crisis for its current population and a lack of housing choices, and is not likely to meet affordability goals for future populations; and

WHEREAS, the State legislature further found that in order to meet the goal of 1,000,000 new homes statewide by 2044, and enhanced quality of life and environmental protection, innovative housing policies will need to be adopted and that increasing housing options that are more affordable to various income levels is critical to achieving the state's housing goals, including those established by the legislature in Engrossed Second Substitute House Bill No. 1220 (chapter 254, Laws of 2021); and

WHEREAS, the State legislature further found:

There is continued need for the development of housing at all income levels, including middle housing that will provide a wider variety of housing options and configurations to allow Washingtonians to live near where they work;

Homes developed at higher densities are more affordable by design for Washington residents both in their construction and reduced household energy and transportation costs;

While creating more housing options, it is essential for cities to identify areas at higher risk of displacement and establish anti-displacement policies as required in Engrossed Second Substitute House Bill No. 1220 (chapter 254, Laws of 2021);

The state has made historic investments in subsidized affordable housing through the housing trust fund, yet even with these historic investments, the magnitude of the housing shortage requires both public and private investment;

and

In addition to addressing the housing shortage, allowing more housing options in areas already served by urban infrastructure will reduce the pressure to develop natural and working lands, support key strategies for climate change, food security, and Puget Sound recovery, and save taxpayers and ratepayers money.

WHEREAS, E2SHB 1110 (chapter 332, Laws of 2023) is primarily codified in the Revised Code of Washington (RCW) section 36.70A.635; and

WHEREAS, in 2024 the Washington State legislature passed Engrossed Substitute House Bill (ESHB) 2321 (chapter 152, Laws of 2024), which modified certain middle housing requirements in RCW 36.70A.635, as well as amended definitions in RCW 36.70A.030; and

WHEREAS, on _____, the city/town council passed Ordinance No. _____ incorporating middle housing policies into the Housing Element of the Comprehensive Plan as required by House Bill 1220 (chapter 254, Laws of 2021); and

WHEREAS, on _____, the city/town transmitted a copy of the proposed ordinance to the Washington State Department of Commerce in accordance with RCW 36.70A.106 at least 60 days in advance of adoption for the required 60-day State review period; and

WHEREAS, on _____, the city/town issued a State Environmental Policy Act (SEPA) Determination of Non-Significance (DNS) on the proposed ordinance, which is a non-project proposal: and

WHEREAS, during the course of developing the proposed ordinance, various means of public outreach were used including, but not limited to, public meetings, a middle housing webpage, presentations at various community groups, notification of public hearings; and

WHEREAS, the city/town planning commission held work sessions on _____ to study and review matters related to implementing RCW 36.70A.635; and

WHEREAS, on _____, the city/town Planning Commission held a duly noticed public hearing on the proposed ordinance, accepted testimony and made a recommendation to the _____city/town council; and

WHEREAS, on _____, the city/town council held a duly noticed public hearing to consider the planning commission recommendation and accept public testimony; and

WHEREAS, adoption of the ordinance will bring the city/town into compliance with RCW 36.70A.635) and will serve the general welfare of the public;

NOW THEREFORE BE IT ORDAINED BY THE CITY/TOWN COUNCIL AS FOLLOWS

Discussion

These are example recitals. Recitals serve to support findings of fact, purpose and background information related to passage of an ordinance. Cities may tailor their recitals as much as necessary to reflect local ordinance structure, conditions and process.

Section 1 Model Ordinance Text

The Model Ordinance text is copied below for reference. Footnotes may have been added to the model ordinance text in this User Guide to provide supporting information. Refer to User Guide Chapter 1.3 – *How to Use the Model Ordinances* for information on the difference between bold text and non-bold text.

The purpose of this middle housing ordinance ("ordinance") is to:

A. Implement Engrossed Second Substitute House Bill 1110 and Engrossed Substitute House Bill 2321, codified in RCW 36.70A.030, 36.70A.280, 36.70A.635, 36.70A.636, 36.70A.637, 36.70A.638, 43.21C.495, and 43.21C.450, 64.32, 64.34, and 64.38, and 64.90, by providing land use, development, design, and other standards for middle housing developed on all lots zoned predominantly for residential use.

B. If necessary, supersede, preempt, and invalidate the city's development regulations that conflict with this ordinance until such time the city takes all actions necessary to implement RCW 36.70A.635, if the city has not taken action necessary to implement RCW 36.70A.635 by the time frame required by RCW 36.70A.635(11). The model ordinance shall remain in effect until the city has taken all necessary actions to implement RCW 36.70A.635.[9]

Discussion

These are example purpose statements. A city adopting development regulations for middle housing by the statutory deadline for complying with RCW 36.70A.635 (as amended by HB 2321), does not need to include the purpose statement in Model Ordinance Section 1, Subsection (B), since the city will already be complying with the statute.

[9] RCW 36.70A.636(2)

Section 2 Model Ordinance Text

The Model Ordinance text is copied below for reference. Footnotes may have been added to the model ordinance text in this User Guide to provide supporting information. Refer to User Guide Chapter 1.3 for information on the difference between bold text and non-bold text.

A. Nothing in this ordinance prohibits the city from permitting detached single-family residences.[10]

B. Nothing in this ordinance prohibits the city from requiring any development, including middle housing development, to provide affordable housing, either on-site or through an in-lieu payment, nor limit the city's ability to expand or modify the requirements of an existing affordable housing program enacted under RCW 36.70A.540.[11]

C. Nothing in this ordinance requires the issuance of a building permit if other federal, state, and local requirements for a building permit are not met.[12]

D. Nothing in this ordinance affects or modifies the responsibilities of the city to plan for or provide "urban governmental services" as defined in RCW 36.70A.030.[13]

E. The city shall not approve a building permit for middle housing without compliance with the adequate water supply requirements of RCW 19.27.097.[14]

F. The city shall not require through development regulations any standards for middle housing that are more restrictive than those required for detached single-family residences, but may apply any 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.[15, 16]

G. The same development permit and environmental review processes shall apply to middle housing that apply to detached single-family residences, unless otherwise required by state law including, but not limited to, shoreline regulations under chapter 90.58 RCW, building codes under chapter 19.27 RCW, energy codes under chapter 19.27A RCW, or electrical codes under chapter 19.28 RCW.[17]

---

[10] RCW 36.70A.635(9)
[11] RCW 36.70A.635(2)(c), RCW 36.70A.635(3)
[12] RCW 36.70A.635(10)
[13] RCW 36.70A.638(9) and (11)
[14] RCW 36.70A.638(10)
[15] RCW 36.70A.635(6)(b)
[16] Definition of "development regulations" under RCW 36.70A.030(13): "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.
[17] RCW 36.70A.635(6)(c)

H. Conflicts. In the event of a conflict between this ordinance and other development regulations applicable to middle housing, the standards of this ordinance control except that, this subsection shall not apply to shoreline regulations under Chapter 90.58.RCW.

Discussion

Items in bold above are general provisions included in RCW 36.70A.635 and .638. General provisions apply to the ordinance as a whole and provide clarifying information on how it is implemented.

Model Ordinance Section 2, Subsection (H) regarding conflicts, is included because the Model Ordinance cannot account for every existing development regulation a city may apply to middle housing.

Section 3 Model Ordinance Text

The Model Ordinance text is copied below for reference. Footnotes may have been added to the model ordinance text in this User Guide to provide supporting information. Refer to User Guide Chapter 1.3 for information on the difference between bold text and non-bold text.

The following definitions shall apply for the purposes of this ordinance, notwithstanding other definitions in the city's development regulations:[18]

Administrative design review" means a development permit process whereby an application is reviewed, approved, or denied by the planning director or the planning director's designee based solely on objective design and development standards without a public predecision hearing, unless such review is otherwise required by state or federal law, or the structure is a designated landmark or historic district established under a local preservation ordinance. A city may utilize public meetings, hearings, or voluntary review boards to consider, recommend, or approve requests for variances from locally established design review standards.

"All lots zoned predominantly for residential use" means all zoning districts in which residential dwellings are the predominant use. This excludes lands zoned primarily for commercial, industrial, and/or public uses, even if those zones allow for the development of detached single-family residences. This also excludes lands zoned primarily for mixed uses, even if those zones allow for the development of detached single-family residences, if the zones permit by-right multifamily use and a variety of commercial uses, including but not limited to retail, services, eating and drinking establishments, entertainment, recreation, and office uses.

"Cottage housing" means residential units on a lot with a common open space that either: (a) Is owned in common; or (b) has units owned as condominium units with property owned in common and a minimum of 20 percent of the lot size as open space.[19]

"Courtyard apartments" means attached dwelling units arranged on two or three sides of a yard or court."[20]

"Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

"Development standards" means controls placed by the city on building or site design and development including parking requirements, floor area allowances, density allowances, minimum lot coverage, and other dimensional standards.

"Duplex" means a residential building with two attached dwelling units.

---

[18] RCW 36.70A.030
[19] See design standards for cottage housing in Section 8 of the Model Ordinances.
[20] See design standards for courtyard apartments in Section 8 of the Model Ordinances.

"Fiveplex" means a residential building with five attached dwelling units.

"Fourplex" means a residential building with four attached dwelling units.

"Major transit stop" means:

(a) A stop on a high capacity transportation system funded or expanded under the provisions of chapter 81.104 RCW, except for any stop that solely serves express bus service or serves express bus service and other bus services not otherwise meeting the definition of major transit stop;

(b) Commuter rail stops;

(c) Stops on rail or fixed guideway systems; or

(d) Stops on bus rapid transit routes, including those stops that are under construction.[21]

"Middle housing" means 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.

"Single-family zones" means those zones where single-family detached residences are the predominant land use.

"Sixplex" means a residential building with six attached dwelling units.

"Stacked flat" means dwelling units in a residential building of no more than three stories on a residential zoned lot in which each floor may be separately rented or owned.

"Tier 1 city" means a city with a population of at least 75,000 based on 2020 Office of Financial Management population estimates.

"Tier 2 city" means a city with a population of at least 25,000 but less than 75,000 based on 2020 Office of Financial Management population estimates.

"Tier 3 city" means a city with a population of less than 25,000, that is within a contiguous urban growth area with the largest city in a county with a population of more than 275,000, based on 2020 Office of Financial Management population estimates.

"Triplex" means a residential building with three attached dwelling units.

"Townhouses" means buildings that contain three or more attached single-family dwelling units that extend from foundation to roof and that have a yard or public way on not less than two sides.[22]

"Unit density" means the number of dwelling units allowed on a lot, regardless of lot size.[23]

---

[21] See User Guide Chapter 3.2 – Major Transit Stops for more information on major transit stops.

[22] A "yard" refers to any type of open space on the lot adjacent to a building and does not refer to regulated setbacks. A "public way" refers to any public or private street, alleys, pathways, or similar feature which the public has a right of use.

[23] The User Guide may also refer to unit density as "unit per lot" or "unit per lot density."

Local Policy Choice

Middle Housing Definition

The RCW definition of middle housing is "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." RCW 36.70A.030 includes definitions for courtyard apartments , cottage housing, townhouses, and stacked flats, but duplexes, triplexes, fourplexes, fiveplexes, and sixplexes are undefined.

This definition of middle housing applies to all cities subject to RCW 36.70A.635, including all Tier 1, Tier 2, and Tier 3 cities. Cities may choose to include developments with more than six units per lot in the definition of middle housing. In doing so, cities should specify the maximum number of units a building may contain on a lot to be considered middle housing. Cities may also develop reasonable definitions for undefined middle housing types to help ensure that , when in conjunction with development and any optional design standards, they are compatible in scale, form, and character with single-family houses.

The middle housing definition is, in conjunction with the maximum unit density a jurisdiction adopts, important because RCW 36.70A.635 sets limits on permitting, design review, and parking standards for all middle housing types citywide in all cities subject to the middle housing law.

Discussion

All Lots Zoned Predominantly for Residential Use

RCW 36.70A.635(1) applies middle housing unit per lot standards to "all lots zoned predominantly for residential use". The Model Ordinance provides a definition of this phrase to help cities determine where the Model Ordinance unit density requirements should apply.[24]

RCW 36.70A.635(1) does not specify whether it is intended to apply unit per lot requirements to lots created in the future. However, the plain language of the word "all" implies the whole amount of lots are subject to RCW 36.70A.635(1), which includes all lots that currently exist, and all lots created in the future. See User Guide Chapter 2.5 for information on high density multifamily zones which may be excluded from this definition in certain circumstances, guidance on nonconforming lots, and "lot splitting".

Unit Density

Unit density as defined in the model ordinances refers to the number of units on a lot. RCW 36.70A.635 (5) states that cities "may" allow accessory dwelling units to achieve the unit density requirements of RCW 367.70A.635(1). Cities choosing to count accessory dwelling units as part of "unit density" and adopting the term "unit density" in local code should consider a definition that references accessory dwelling units (in doing so, it should be clear that an accessory dwelling unit is not a middle housing building type as defined in RCW 36.70A.030(26)). See more information in User Guide Chapter 4.1.

Middle Housing Building Types

There are nine middle housing types specified in the definition of middle housing in RCW 36.70A.030(26). Only four of these nine middle housing building types are defined in statute. Cities should define those middle

[24] The phrase "lots in the city that are primarily dedicated to single-family detached housing units" is also used in RCW 36.70A.635(4)(a) when discussing the alternative to density requirements. The phrase is not defined in the GMA or in the Model Ordinance. Additional guidance on this phrase, however, may be found in Chapter 6.1 as it relates to the alternative density option.

housing types they allow. Those middle housing types which are not defined are duplex, triplex, fourplex, fiveplex and sixplex. The following examples illustrate the need for cities to carefully consider how their "plex" definitions are written:

- A two-story stacked flat building (with one unit per floor) or a two-unit courtyard apartment could each also be considered a duplex.
- A three-story stacked flat building (with one unit per floor) could also be considered a triplex.
- A five-unit courtyard apartment building could be considered a fiveplex building.
- A townhouse-style building with six units on a single lot (as opposed to each townhome being on its own lot) could also be considered a sixplex.

While some overlap in definitions is reasonable as long as the requirement of state law is met, distinctions are helpful for applicants and city staff. Cities need to consider how different middle housing types are treated to comply with RCW 36.70A.635(5), which requires, in part, that "A city subject to the requirements of subsection (1)(a) or (b) of this section must allow at least six of the nine types of middle housing to achieve the unit density required." Tier 1 and Tier 2 cities' codes should specifically identify which of the six types of middle housing (or more than six if a city chooses to allow more than six) is permitted. Clear definitions of those middle housing types that are permitted by the city is also necessary for applicable design standards. For example, a five-unit courtyard apartment building requires a court or yard, but a fiveplex building does not. For middle housing building types in Tier 3 cities, see User Guide Chapter 2.6.

However, while different middle housing types may allow the same number of units, the four middle housing types that are defined in statute (RCW 36.70A.030) have distinguishing building form characteristics. Cities should consider these definitions, as defined in statute. For example:

- Cottage housing requires common open space, and open space that is a minimum of 20 percent of the lot size (RCW 36.70A.030(9)). Although the "Cottage housing" definition could be read such that the 20 percent open space requirement only applies to condominium units with property owned in common, Commerce recommends the same 20 percent apply to all cottage housing development. From a land use standpoint, the form of ownership should not determine the open space percentage for the residents.
- Courtyard apartments have a yard or court surrounded on two or three sides by dwelling units. Some cities define or promote courtyard apartments already; such buildings designed with fully-enclosed courtyards could be classified as another middle housing type such as a sixplex .
- Townhouses are a minimum of three units and are "…attached single-family dwelling units…" (RCW 36.70A.030(41)). Some cities allow townhouse buildings to be a minimum of two units.
- Stacked flats have each floor separately owned or rented (RCW 36.70A.030(40)). Because the definition limits stacked flat buildings to "three floors" such buildings can only have two or three units.

Major Transit Stop

See discussion of major transit stops, including future major transit stops not yet in operation, in Chapter 3.2. Also note that the definition of a "Major transit stop" for accessory dwelling units, under RCW 36.70A.696(8), is different than the general definition of "Major transit stop" applicable to middle housing in RCW 36.70A.030(26).

Multifamily

The provisions of RCW 36.70A.635 control for middle housing regardless of the local definition of "multifamily". Cities should update their permitted uses and/or multifamily definition to ensure middle housing with the appropriate number of units per lot is allowed.

For example, consider a Tier 1 city that currently defines “multifamily” as three or more units and which requires multifamily uses to include a minimum landscaped area but does not have the same requirement for detached single-family. Since middle housing cannot be treated more restrictively than detached single-family residences in the same zone, one solution is to amend the definition of “multifamily” to seven or more units, so that applicable multifamily standards don’t apply to middle housing. Note, this and other pre-emptions apply for all developments that meet the definition of middle housing types, including for example, a sixplex developed in a multifamily zone in a Tier 3 city. Cities may apply multifamily standards to middle housing in zones that do not permit single-family residences.

References

- “A Planners Dictionary”, American Planning Association
- Growth Management Act definitions – RCW 36.70A.030

Section 4 Model Ordinance Text

The Model Ordinance text is copied below for reference. Footnotes may have been added to the model ordinance text in this User Guide to provide supporting information. Refer to User Guide Chapter 1.3 for information on the difference between bold text and non-bold text.

A. The provisions of this ordinance shall apply to all lots zoned predominantly for residential use, unless otherwise noted.[25]

B. The provisions of this ordinance do not apply to:[26]

1. ***Portions of a lot, parcel, or tract designated with critical areas designated under RCW 36.70A.170 or their buffers as required by RCW 36.70A.170, 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.[27]***

2. ***A watershed serving a reservoir for potable water if that watershed is or was listed, as of July 23, 2023, as impaired or threatened under section 303(d) of the federal clean water act (33 U.S.C. Sec. 1313(d)).[28]***

3. ***Lots that have been designated urban separators by countywide planning policies as of July 23, 2023.***

4. ***A lot that was created through the splitting of a single residential lot.***

---

[25] Because the Model Ordinances apply automatically to cities which do not meet the compliance deadline for RCW 36.70A.635, the Model Ordinances do not include a placeholder for a city to list applicable city zoning districts subject to RCW 36.70A.635(1). Each city will need to work within the framework and structure of its own zoning code to identify which zoning districts are characterized by "lots zoned predominantly for residential use". Cities have the option to list the specific zone names in ordinances adopting local regulations which implement RCW 36.70A.635. See more information under Local Policy Choice.

[26] RCW 36.70A.635(8)

[27] RCW 36.70A.170

[28] More information on impaired and threatened watersheds can be found through the Department of Ecology: https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-improvement/Assessment-of-state-waters-303d

Local Policy Choice

Applicable Zones

The list of zoning districts applicable to RCW 36.70A.635 will be based on the local jurisdiction's evaluation of which zoning districts fall under the term "all lots zoned predominantly for residential use." However, the unit density and allowed use standards in Model Ordinance Section 5 and 6 do not apply to zoning districts "permitting higher densities or intensities" when compared to the unit densities prescribed in RCW 36.70A.635. The phrase "unless zoning permitting higher densities or intensities applies" may be interpreted to refer to either higher per acre density or higher unit density (i.e. maximum allowed units per lot).

Cities should not assume existing multifamily zones are exempt from middle housing requirements. Source: MAKERS

Cities should not assume existing multifamily zones are exempt from the unit density and allowed use standards in Model Ordinance identified in Sections 5 and 6 of the model ordinances. Middle housing can reach surprisingly high densities, at times, even higher than what is allowed under common multifamily zones. For example, two units on a 5,000 square foot lot achieve approximately 18 units per acre, and four units on the same lot achieve almost 35 units per acre.

Multifamily zones that allow greater than the minimum unit density required under the Model Ordinance's Section 5 by right on all lots over 1,000 square feet qualify as "permitting higher densities or intensities". Mixed-use zones which permit by-right multifamily and a variety of commercial uses are not included within the recommended definition of "all lots zoned predominantly for residential use".[29] Cities should consider updating other residential zones to maintain a spectrum of densities, or even moving away from "units per acre" density standards entirely. Cities are also encouraged to apply minimum densities in such multifamily zones, to ensure that future development can accommodate their growth targets and housing needs, including for various economic segments.

See considerations for mobile/manufactured home park zones in the Discussion section below.

Critical Areas and Critical Aquifer Recharge Areas

Generally

Cities are to apply critical area regulations to middle housing on all lots zoned predominantly for residential use in the same manner such regulations are applied to detached single-family residences. The portions of a lot, parcel, or tract with no critical areas or critical area buffers is subject to RCW 36.70A.635. There are special considerations for critical aquifer recharge areas, discussed below.

Critical areas are defined by the GMA as the following areas and ecosystems:

- Wetlands

[29] Mixed-use multifamily zones are not subject to RCW 36.70A.635 per the definition of "all lots zoned predominantly for residential use." Cities are encouraged to provide multifamily zones which are mixed-use with a variety of allowed non-residential commercial uses, including but not limited to retail, services, eating and drinking establishments, entertainment, recreation, and office uses. This can help provide jobs, shopping, and services in close proximity to more homes and people and help cities achieve any policy objectives related to climate change, environment, equity, affordable housing, transportation, and economic development.

- Areas with a critical recharging effect on aquifers used for potable water
- Fish and wildlife habitat conservation areas (this does not include such artificial features as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches)
- Frequently flooded areas
- Geologically hazardous areas

The provisions of RCW 36.70A.635 are exempted on portions of a lot, parcel, or tract with a designated critical area or a critical area buffer. This is an amendment made by HB 2321, compared to HB 1110 which exempted the entirety of a lot if any of the lot contained critical areas or their buffers. The amendment made by HB 2321 expands allowances for middle housing development on lots with critical areas within cities.

Regardless of a jurisdiction's approach to middle housing and critical areas, jurisdictions should plan for natural hazards and open space preservation. See Chapter 4.4 – Land Use Elements and Land Capacity for more information.

Critical Aquifer Recharge Areas
A lot zoned predominantly for residential use and within a critical aquifer recharge area (CARA) is subject to RCW 36.70A.635 if the following two conditions are met:

- A single family detached house would be allowed on the lot
- Any requirements to maintain aquifer recharge are met

CARAs are areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge. The quality and quantity of groundwater in an aquifer is inextricably linked to its recharge area. Maps of CARAs are developed by local jurisdictions.

See the Department of Ecology CARA Guidance document for more information.[30] The Commerce Critical Areas Handbook also discusses the designation, classification and protection of CARA's.[31] Protection of CARA's may require additional precautions for land uses located in CARAs, particularly those land use types that may have activities that could contribute to contamination of an aquifer. Examples might include car-related uses with special concerns for petrochemical leaks, illegal dumping, tire piles, auto graveyards, car washes, chemical storage, and warehousing. Protection of CARA's may also take the form of existing groundwater protection programs for sole source aquifer recharge areas, groundwater management areas, and source water/wellhead protection areas.

Frequently Flooded Areas
"Frequently flooded area" (FFA) is a critical area designation that can be applied by local jurisdictions to areas with a known flood risk.

The Washington State Department of Commerce Critical Areas handbook states that frequently flooded areas should include, at a minimum, the 100- year floodplain designations of the Federal Emergency Management Agency (FEMA) and the National Flood Insurance Program (NFIP), known as the "special flood hazard area." Many communities have incorporated the NFIP standards into their frequently flooded area codes and deem this sufficient. This can meet the minimum requirements if there are no special circumstances. However,

---

[30] "Critical Aquifer Recharge Areas Guidance." Washington State Department of Ecology. https://apps.ecology.wa.gov/publications/documents/0510028.pdf
[31] "Critical Areas Handbook." Washington State Department of Commerce. https://deptofcommerce.app.box.com/s/rlysjrfvrxpxwnm9jvbcd3lc7ji19ntp

FEMA maps do not address all of the flood risk in communities and frequently flooded area designation should be based on best available science. Local governments are encouraged to consider additional flood risks in their communities. For more information, see the Critical Areas Handbook.[32]

Reasonable Use

In addition to specific types of critical areas, local government critical areas ordinances have reasonable use provisions. Reasonable use permitting is a process that seeks to ensure that property owners can maintain a minimum "reasonable use" of their property, despite restrictions that are imposed by critical areas restrictions or other environmental laws. This process seeks to avoid a "taking" of property in contravention of rights established in the Fifth Amendment and Fourteenth Amendment of the U.S. Constitution and interpreted through decades of judicial rulings.

For residential zones, a minimal reasonable use may be a modest detached single-family residence, the size of which must meet applicable local reasonable use standards and criteria. It is unlikely that middle housing would be considered a reasonable use compared to a single-family residence in general, especially if the middle housing proposal would have more impact on the critical area. For more information, see the Commerce Critical Areas Handbook.

Impaired or Threatened Watersheds

Per the RCW, the relevant watersheds are those serving a reservoir for potable (domestic) water. The geographic eligibility for this exemption may be very limited. There is no statewide database on potable water reservoirs, so cities need to consult local information to determine if this exemption applies in their jurisdiction.

Watersheds are not categorized as impaired or threatened under section 303(d) of the Federal Clean Water Act, but individual water body segments may be listed as impaired. Impaired water body segments are identified as category 4 or 5 on the Water Quality Atlas maintained by the Department of Ecology (the department does not use the term “threatened”). Therefore, cities can reasonably interpret the RCW to be referring to watersheds which contain an impaired water body segment.

Cities should not adopt this provision if a watershed meeting the criteria identified in RCW 36.70A.635(8)(c) does not exist within the city limits. Note that new development allowed by middle housing regulations has the potential to reduce impacts on watersheds by incorporating current stormwater best management practices on-site and contributing to utility improvements.

For related information, cities can also review the Washington State Water Quality Assessment database and filter for Category 4 and 5 water body segments. The most directly applicable use designation is “water supply – domestic water.” There are a limited number of impaired water body segments used for domestic water and their watersheds are not applicable to the exemption if the watershed does not serve a potable water reservoir. Other water use designations may be of interest to cities for planning purposes depending on the local context.

Urban Separators

Some counties designate lands as “urban separators” under their countywide planning policies (CPP’s). These also serve as “open space corridors”, described by RCW 36.70A.160. These are corridors of land on the periphery of incorporated areas that provide visual breaks in the landscape and link open spaces between

municipalities and rural areas, and typically have very low permitted residential densities. The King County CPP's use this concept.

Cities should not adopt this provision if an urban separator(s) meeting the criteria identified in RCW 36.70A.635(8)(c) does not exist within the city limits.

Lots Created Through The Splitting of a Single Residential Lot

In 2024, RCW 36.70.635 was amended to stipulate that middle housing provisions do not apply to "a lot that was created through the splitting of a single residential lot". However, in Washington state law at this time "lot split" is undefined and there is currently no authorization or requirement for allowing lot splits, as was proposed in State lot split legislation in both 2023 and 2024 that did not pass. In the future, if laws defining and authorizing lot splits are passed, the Department of Commerce may update this guidance with information on how cities should update middle housing rules to exempt lots created through lot splitting.

It would not be appropriate to determine that a lot split is any lot that has been or will be divided. This could have the effect of eliminating most lots from being subject to the requirements of RCW 36.70A.635 and would not be a reasonable outcome contemplated by the "lot split" provision.

Discussion

Alternative Compliance

Cities may implement an alternative density requirement option in RCW 36.70A.635(4) that applies the standards of RCW 36.70A.635(1) to a different set of lots than "all lots zoned predominantly for residential use". The alternative to density requirements in RCW 36.70A.635(4)(a) applies to "lots in the city that are primarily dedicated to single-family detached housing units", and contains specific requirements that must be met.

Another available alternative action is based on addressing requirements and findings showing that the city's adopted comprehensive plan and development regulations are "substantially similar" to the requirements of RCW 36.70A.635 (see RCW 36.70A.636(3)). This approach requires Department of Commerce approval.

For more information about these alternatives, see User Guide Chapter 6.0.

Mobile/Manufactured Home Park Zones

In many cities mobile home parks/manufactured home communities (MHCs) provide relatively affordable housing for households that are otherwise at risk of being displaced. As a result, many cities have created special zones to discourage displacement of MHC residents and put in place standards for health and safety. In such zones MHCs are often the only allowed primary use. Minimum lot sizes also may be quite large and other development standards not commonly applied to other residential zones may be in place. For instance, Auburn's R-MHC (Manufactured/Mobile Home Community) zone has a minimum lot size of five acres. MHC zones that allow a large number of units on a single lot are considered to permit "higher densities or intensities" and would exceed the unit per lot density required under RCW 36.70A.635(1). Such MHC lots would be exempt from Section 5 and 6 of the model ordinances.

References

- Washington State Department of Commerce - Critical Areas Handbook
- Washington State Department of Ecology – Critical Aquifer Recharge Areas Guidance
- Washington State Department of Ecology – Water Quality Assessment and 303(d) List (landing page)

- Washington State Department of Ecology – Washington State Water Quality Assessment[33] (searchable database)
- Washington State Department of Ecology – Water Quality Atlas[34] (interactive GIS map)
- Washington State Department of Ecology – Water Quality Program Policy 1-11 (more information on water quality categories)
- United States Geological Survey – Watershed Boundary Dataset and Access National Hydrography Products
- King County – Urban Separators under King County Countywide Planning Policies (GIS data)
- City of Kent – Manufactured Home Park Preservation Study
- MRSC – Preserving Affordability Through Manufactured Home Park Zones

[33] Note that assessments are done every few years; as of this writing, anything listed with a date of 2018 and before is considered applicable. Any water body segments listed as only 2022 (the next assessment to be approved) will be listed after the July 23, 2023, date.

[34] Filtering by "305(b) report – includes 303(d) list" will show all categories and the resulting map can be filtered to display only categories 4 and 5. Click "add/remove map data" to add 8-, 10-, or 12-digit hydrologic unit codes (HUC); the larger the HUC, the smaller the watershed scale. 16-digit HUC codes are not available on this map.

2.5 – Unit Density and Affordable Housing

The Model Ordinances define "unit density" as the number of dwelling units allowed on a lot, regardless of lot size. RCW 36.70A.635 requires that applicable cities regulate density in applicable residential zones in a way that has not commonly been done in the past. Section 5 of the Model Ordinances identifies specific unit per lot density requirements for each city tier and includes affordable housing provisions that apply to Tier 1 and 2 cities.

RCW 36.70A.635(5) states that jurisdictions have the policy choice of counting accessory dwelling units towards the middle housing unit density. For the purposes of the model ordinance, accessory dwelling units do not count towards middle housing unit densities. This means the provisions of RCW 36.70A.681(1)(c), which requires that at least allow two accessory dwelling units on all lots located in all zoning districts within an urban growth area that allow for single family homes, would apply in cases where middle housing was developed on a lot. For example, under the model ordinance, a fourplex on a lot with a unit density of four units per lot would be required to allow two accessory dwelling units on that same lot.

Cities have the policy choice of whether or not to count accessory dwelling units towards middle housing unit density. Because it is a policy choice, the language in the model ordinance that states that accessory dwelling units do not count toward middle housing unit density is in non-bold text. Cities are also not required to allow accessory dwelling units in excess of the middle housing unit density requirement when middle housing is developed on the lot. For additional discussion, see Section 4.1.

For additional discussion on affordable housing, see Section 5.0.

Section 5 Model Ordinance Text

The Model Ordinance text is copied below for reference. Footnotes may have been added to the model ordinance text in this User Guide to provide supporting information. Refer to User Guide Chapter 1.3 – *How to Use the Model Ordinances* for information on the difference between bold text and non-bold text.

Tier 3 Cities

A. The permitted unit density on all lots zoned predominantly for residential use is <u>two</u> units per lot, unless zoning permitting higher densities or intensities applies.[35,36]

B. The standard of subsection (A) does not apply to lots after subdivision below 1,000 square feet unless the city has a smaller allowable lot size in the zone.[37]

C. Accessory dwelling units do not count as units for the purposes of this section.

---

[35] RCW 36.70A.635(1)(c) uses the phrase "at least" when describing these densities, so cities should treat these as floors for maximum unit density. Cities can allow higher densities.

[36] Because middle housing can reach considerable densities (two units on a 5,000 square feet lot is approximately 18 units per acre) cities should not assume existing multifamily zones necessarily permit "higher densities or intensities." See further information in User Guide Chapter 2.4.

[37] RCW 36.70A.635(6)(g)

Tier 1 Cities

A. The permitted unit density on all lots zoned predominantly for residential use is:[38,39]

1. ***Four units per lot, unless zoning permitting higher densities or intensities applies.***

2. ***Six units per lot on all lots within one-quarter mile walking distance of a major transit stop, unless zoning permitting higher densities or intensities applies.***

3. ***Six units per lot if at least two units on the lot are affordable housing meeting the requirements of subsections (D) through (I) below, unless zoning permitting higher densities or intensities applies.[40]***

B. The standards of subsections (A) do not apply to lots after subdivision below 1,000 square feet unless the city has enacted an allowable lot size below 1,000 square feet in the zone.[41]

C. Accessory dwelling units do not count as units for the purposes of this section.

Tier 2 Cities

A. The permitted unit density on all lots zoned predominantly for residential use is:[42,43]

1. ***Two units per lot, unless zoning permitting higher densities or intensities applies.***

2. ***Four units per lot on all lots within one-quarter mile walking distance of a major transit stop, unless zoning permitting higher densities or intensities applies.***

3. ***Four units per lot if at least one unit on the lot is affordable housing meeting the requirements of subsections (D) through (I) below, unless zoning permitting higher densities or intensities applies.[44]***

B. The standards of subsections (A) do not apply to lots after subdivision below 1,000 square feet unless the city has enacted an allowable lot size below 1,000 square feet in the zone. [45]

C. Accessory dwelling units do not count as units for the purposes of this section.

---

[38] RCW 36.70A.635(1)(b). RCW 36.70A.635(1) uses the phrase "at least" when describing these densities, so cities should treat these as floors for maximum unit density. Cities can allow higher densities.
[39] Because middle housing can reach high densities (four units on a 5,000 square feet lot is approximately 35 units per acre) cities should not assume existing multifamily zones necessarily permit "higher densities or intensities." See further information in User Guide Chapter 2.4.
[40] The affordable housing increase is not required to be available within one-quarter mile walking distance of a major transit stop unless a city chooses to do so. See the "combined housing unit increase" described under Local Policy Choice.
[41] RCW 36.70A.635 (6)(g)
[42] RCW 36.70A.635(1)(a). RCW 36.70A.635(1) uses the phrase "at least" when describing these densities, so cities should treat these as floors for maximum unit density. Cities can allow higher densities.
[43] Because middle housing can reach high densities (four units on a 5,000 square feet lot is approximately 35 units per acre) cities should not assume existing multifamily zones necessarily permit "higher densities or intensities." See further information in User Guide Chapter 2.4 – Applicability.
[44] The affordable housing increase is not required to be available within one-quarter mile walking distance of a major transit stop unless a city chooses to do so. See the "combined housing unit increase" described under Local Policy Choice.
[45] RCW 36.70A.635(6)(g)

Tier 1 and 2 Cities[46]

D. To qualify for additional units under the affordable housing provisions of Section 5(A), an applicant shall commit to renting or selling the required number of units as affordable housing and meeting the standards of subsections (E) through (I) below.[47]

E. Dwelling units that qualify as affordable housing shall have costs, including utilities other than telephone, that do not exceed 30 percent of the monthly income of a household whose income does not exceed the following percentages of median household income adjusted for household size, for the county where the household is located, as reported by the United States Department of Housing and Urban Development:[48,49,50]

1. Rental housing: 60 percent.

2. Owner-occupied housing: 80 percent.[51]

F. The units shall be maintained as affordable for a term of at least 50 years, and the property shall satisfy that commitment and all required affordability and income eligibility conditions.

G. The applicant shall record a covenant or deed restriction that ensures the continuing rental or ownership of units subject to these affordability requirements consistent with the conditions in chapter 84.14 RCW for a period of no less than 50 years.[52]

H. The covenant or deed restriction shall address criteria and policies to maintain public benefit if the property is converted to a use other than that which continues to provide for permanently affordable housing.

I. The units dedicated as affordable housing shall:

1. Be provided in a range of sizes comparable to other units in the development.

2. The number of bedrooms in affordable units shall be in the same proportion as the number of bedrooms in units within the entire development.

3. Generally, be distributed throughout the development and have substantially the same functionality as the other units in the development.

---

[46] The affordable housing provisions are not required to be adopted by Tier 3 cities.
[47] RCW 36.70A.635(2)
[48] Maximum monthly housing costs, with a housing cost burden of 30 percent, should be defined to be consistent with household gross income and adjusted income calculations for eligibility of affordable housing programs by HUD.
[49] "Income Limits." United States Census. https://www.huduser.gov/portal/datasets/il.html
[50] RCW 36.70A.030
[51] See User Guide Chapter 5.0 – Affordable Housing for information on administering affordable homeownership programs.
[52] Refer to for the Department of Commerce website for guidance on covenant and deed restrictions related to chapter 84.14 RCW (see "21-23 Work Products and Updates"). https://www.commerce.wa.gov/serving-communities/growth-management/growth-management-topics/planning-for-housing/multi-family-housing-property-tax-exemption-program/

Local Policy Choice

One-Half Mile Walking Distance to Major Transit Stops

In Model Ordinance Section 6, subsection (B), Tier 1 and 2 cities are encouraged to replace "one-quarter mile" with "one-half mile" where the higher density requirement in proximity to transit applies. This recommendation aligns with the required one-half mile walking distance standard for the elimination of off-street parking requirements in Model Ordinance Section 7 and increases housing capacity. See Chapter 3.2 for guidance on how walking distance is measured.

Cities should also consider going further by permitting higher density multifamily housing and a variety of non-residential uses near major transit stops.

Combined Housing Unit Increase

Unless zoning permits higher lot densities or intensities, Tier 1 cities must allow at least six units and Tier 2 cities must allow at least four units on lots zoned predominantly for residential use within one-quarter mile walking distance of major transit stops. Tier 1 cities must separately allow at least six units, and Tier 2 cities at least four units per lot, when affordable housing units meeting the provisions of RCW 36.70A.635(2) are provided in any location outside of a one-quarter mile walking distance of major transit stops.

Tier 1 and 2 cities may also consider combining the allowed unit density increases to increase housing capacity and affordable housing near major transit stops. This has the benefit of improving access to transit to lower-income households. The effect of using this option is:

- In a Tier 1 city, a lot located within one-quarter mile (or half-mile, as encouraged above) walking distance of a major transit stop and which has at least two affordable units would be permitted a minimum of eight units on the lot.
- In a Tier 2 city, a lot located within one-quarter mile (or half-mile, as encouraged above) walking distance of a major transit stop and which has at least one affordable unit would be permitted a minimum of six units on the lot.

Cities are encouraged to consider going beyond the requirements of RCW 36.70A.635 near major transit stops and permitting transit-oriented densities, multifamily housing, and a variety of non-residential uses.

Alternative Affordability Requirements or Incentives

RCW 36.70A.635(2)(c) and (3) allow cities to adopt alternate affordability program terms for middle housing development. However, adoption of alternate program terms does not mean that the affordability bonus of RCW 36.70A.635(1) may be altered or replaced. See the discussion of affordable housing in Chapter 5.0.

Affordable Housing Bonus Where Zoning Permits Higher Densities or Intensities

The affordable housing requirement for Tier 1 and 2 cities includes the statement, "...unless zoning permitting higher densities or intensities applies..." [53] This means that if a Tier 1 city's zoning permits a greater number of units (e.g. a higher density) than the minimum four units per lot required by RCW 36.70A.635(1)(b)(i), or a Tier

[53] Because middle housing can reach high densities (four units on a 5,000 square feet lot is approximately 35 units per acre) cities should not assume existing multifamily zones necessarily permit "higher densities or intensities." See more information in User Guide Chapter 2.4.

2 city's zoning permits a greater number of units than the minimum two units per lot required by RCW 36.70A.635(1)(a)(i), then a city may choose not to apply the affordable housing requirement.

In other words, a Tier 1 or Tier 2 city subject to RCW 36.70A.635 does not have to require affordable housing units on lots predominantly zoned for residential use in a zone when:

- A Tier 1 city permits a base unit density of at least five units per lot in the zone.
- A Tier 2 city permits a base unit density of at least three units per lot in the zone.

However, to plan for and accommodate housing for all income levels, cities choosing this option should consider other ways to increase the supply of affordable housing. Cities with higher density/intensity limits for a zone may still require affordable units in middle housing developments under RCW 36.70A.540. Providing an affordable housing incentive to achieve higher densities could also assist cities in meeting new Growth Management Act (GMA) Housing Element requirements. This includes identification of the number of housing units necessary to plan for projected growth by income level (RCW 36.70A.070(2)). See the discussion of affordable housing in Chapter 5.0 – Affordable Housing, of this User Guide.

Cottage Housing Size Limitations and Density Bonus

Some cities currently apply a density bonus or other code flexibility to help ensure cottage housing is financially viable. Cities should review their existing cottage housing regulations, and if applicable apply a cottage housing density bonus. A two-for-one bonus is common in Washington cities, with some cities going lower or higher. See also the design standards for cottage housing in Section 8 of the Model Ordinance.

Discussion

Code Format

As different cities' development regulations take on different formats to identify allowed uses and number of units (i.e., itemized list, tables), the specific code amendment format will vary. Existing maximum density limits which conflict with the provisions of RCW 36.70A.635 are superseded by the requirements of RCW 36.70A.635.

Nonconforming Lots

The term "all lots zoned predominantly for residential use" means all lots without condition (see also User Guide Chapter 2.3). This includes nonconforming lots. Also, many cities allow the development of detached single-family residences on nonconforming lots, and per RCW 36.70A.635(6)(b) cities shall not require through development regulations any standards for middle housing that are more restrictive than those required for detached single-family residences. As a consequence, applicable cities must allow middle housing on such lots, even if it's physically challenging to build middle housing on such lots.

Accessible Housing

Since 1991 the Fair Housing Act (FHA) has required that certain dwellings be readily accessible and usable by people with disabilities. In buildings with four or more units and without elevators the ground floor dwelling units must be accessible. Townhouse units are generally exempted unless they are part of larger building with

an elevator.[54] Stairs are an impediment to people with some physical disabilities and can prevent full use of a home or create a personal injury hazard.[55]

Cities should consider the opportunity to increase the supply of accessible housing by allowing buildings with at least four units and single-level ground-floor units in more locations. For example, when choosing the six of nine types required for Tier 1 and Tier 2 cities (see User Guide Chapter 2.6 – Middle Housing Types), fourplexes and courtyard apartments may provide more opportunities for accessible housing than stacked flats and townhouses. However, the provision of accessible housing should not be viewed competitively. A general benefit of permitting a variety of middle housing and meeting the requirements of RCW 36.70A.635 is providing more choice of housing for people at all stages of life and at different points on the spectrum of physical mobility.

Providing additional zoned capacity for multi-story, elevator-served multifamily housing is another way for cities to encourage accessible housing options.

Middle Housing with More Than Six Units

The statute language focuses on two to six dwelling unit middle housing types that are defined as being compatible with the form, scale, and character of single-family dwellings. The original concept of "missing middle housing", developed by Jeff Parolek of Opticos Design, included buildings with up to 12 units.[56] Cities have the option of including housing types like courtyard apartments, townhouses, and multiplexes with more than six units under the umbrella of middle housing, along with reduced parking requirements and streamlined design review.

Single-family home and duplex. Source: MAKERS

Research from the University of California Berkeley's Terner Center for Housing Innovation suggests middle housing projects with eight to twelve dwelling units is the ideal project size to best achieve economies of scale in housing production. As cities prepare to amend development regulations to comply with RCW 36.70A.635, they may consider allowing denser middle housing developments, especially in areas near transit, commercial services and job centers, and other amenities. Cities interested in denser middle housing projects should also review RCW 19.27.115 regarding single-stair multifamily structures.

References

- Department of Commerce - Middle housing building types
- Department of Commerce – Racially Disparate Impacts Guidance (pages 37 & 50 – 53)
- United States Census – Income Limits
- University of California Berkely Terner Center - Housing Innovation Brief, 2022 (page 9)
- *Local, regional, and national trends showing the decline in two-to-nine-unit projects over the last 20 years* (Urban Institute, 2023, pg. 51; Eye on Housing, 2017 & 2021).

---

[54] "Multistory Townhouses and Accessibility: When does the FHA apply?" MAP Strategies. https://map-strategies.com/ideas/multistory-townhouses-and-accessibility-when-does-the-fha-apply

[55] "Our Bans on Stacked Homes Are Bans on Age-Ready Homes." Sightline. https://www.sightline.org/2019/05/15/our-bans-on-stacked-homes-are-bans-on-age-ready-homes/

[56] What is Missing Middle Housing? Opticos Design https://missingmiddlehousing.com/about

Section 6 Model Ordinance Text

The Model Ordinance text is copied below for reference. Footnotes may have been added to the model ordinance text in this User Guide to provide supporting information. Refer to User Guide Chapter 1.3 – *How to Use the Model Ordinances* for information on the difference between bold text and non-bold text.

Tier 1 and 2 Cities

Subject to the requirements of RCW 36.70A.635(5), on all lots zoned predominantly for residential use the following uses are permitted by-right, unless zoning permitting higher densities or intensities than those listed in Section 5 of this ordinance applies:[57]

A. Duplexes.

B. Triplexes.

C. Fourplexes.

D. Fiveplexes.

E. Sixplexes.

F. Townhouses.

G. Stacked flats.

H. Courtyard apartments.

I. Cottage housing.

Tier 3 Cities

Subject to the requirements of RCW 36.70A.635(5), on all lots zoned predominantly for residential use the following uses are permitted by-right, unless zoning permitting higher densities or intensities than those listed in Section 5 of this ordinance applies.

A. Duplexes

B. Stacked flats.

C. Cottage housing.

D. Courtyard apartments.

[57] RCW 36.70A.635(5)

Local Policy Choice

For Tier 1 and Tier 2 jurisdictions that do not meet the statutory deadline for compliance with RCW 36.70A.635, all nine types of middle housing are permitted by-right in the Model Ordinance on all lots zoned predominantly for residential use until such time the city takes all actions necessary to implement RCW 36.70A.635. The purpose of this in the Model Ordinance is not to pre-judge which six middle housing types should be allowed if the Model Ordinance goes into effect for a jurisdiction that has not met its statutory deadline for adopting middle housing regulations.

For cities adopting middle housing regulations, whether prior to or after the statutory deadline, consider the following:

Tier 1 Cities

In each applicable zone (where lots are zoned predominantly for residential use), amend allowed use standards to permit at least six of the nine middle housing types within the definition of "Middle Housing" per RCW 36.70A.635(5). The minimum of six types applies within each zone; this requirement cannot be met by adding up the middle housing types permitted across multiple zones. While six is the minimum, jurisdictions may include more to provide more flexibility for the development of middle housing types.

Tier 2 Cities

In each applicable zone (where lots are zoned predominantly for residential use), amend allowed use standards to permit at least six of the nine middle housing types within the definition of "Middle Housing" per RCW 36.70A.635(5). The minimum of six types applies within each zone; this requirement cannot be met by adding up the middle housing types permitted across multiple zones. While six is the minimum, jurisdictions may include more to provide more flexibility for the development of middle housing types.

Where only two units per lot are allowed, Tier 2 cities may apply a supplemental standard, footnote, or other notation stating that middle housing building types which contain more than two dwelling units (e.g., triplexes, townhouses, or fourplexes) are allowed only where transit or affordable housing bonuses apply.

Tier 3 Cities

Tier 3 cities must allow two units per lot (RCW 36.70A.635(1)(c)). In each zone where lots are zoned predominantly for residential use, Tier 3 cities should amend allowed use standards to permit at least duplexes, cottage housing, courtyard apartments, and stacked flats. Tier 3 cities are encouraged to provide a variety of housing choices and may consider other middle housing types that can be in a two-unit configuration. Tier 3 cities are also encouraged to allow more than two units per lot and allow additional middle housing types, such as triplexes and fourplexes.

Housing Uses Allowed By-Right

In addition to complying with the middle housing law, RCW 36.70A.600(1) encourages all cities subject to GMA to update use matrices and allowable use tables that eliminate conditional use permits and administrative conditional use permits for all housing types, including multifamily housing, low-income housing, and senior housing.

Zoning Permitting Higher Densities or Intensities

Similar to the option cities have to allow higher unit density requirements, as noted under Section 5 of the Model Ordinance, the requirement for Tier 1 and Tier 2 cities to allow at least six types of middle housing also does not apply to where zoning permits higher densities or intensities.

RCW 36.70A.635(5) states in part, "…[a] city must allow at least six of the nine types of middle housing to achieve the unit density required in subsection (1) of this section", and in RCW 36.70A.635(1), the unit density standards do not apply where "zoning permitting higher densities or intensities applies." Therefore, the six-of-nine types requirement does not apply in zones where densities or intensities exceed the minimum unit per lot density in RCW 36.70A.635. An example would be a zone in a Tier 2 city that allows more than four units on all lots.

Discussion

Code Format

As different cities' development regulations take on different formats to identify allowed uses (i.e., itemized list, use tables), the specific code amendment format will vary.

Middle Housing on lots with Existing Houses

In cases where a detached single-family residence exists on a lot, a city's development regulations must allow middle housing types on the lot to achieve the minimum unit per lot densities in RCW 36.70A.635. Detached single-family residences are not middle housing. The unit per lot density requirements in RCW 36.70A.635(1) are to be achieved by middle housing types (and, if a city chooses, accessory dwelling units). The limitations a city may impose on middle housing are the number of middle housing units on a lot (and, if applicable, accessory dwelling units), but not whether or not middle housing may be allowed on the lot (subject to applicable development standards e.g. setbacks, height etc.).

Number of Middle Housing Types

To address housing need by promoting a variety of residential densities and housing types, jurisdictions are encouraged to permit more than six middle housing types. Note that accessory dwelling units are not one of the nine types of middle housing building types per the definition of middle housing (defined in RCW 36.70A.030(26)), but may be counted towards achieving the unit density in RCW 36.70A.635(1).

Examples of the nine middle housing types. Source: MAKERS

Multiple Middle Housing Structures on a Lot

Cities must allow multiple middle housing structures up to the unit density specified under RCW 36.70A.635(1). Cities must choose which of the nine middle housing types to allow, with any combination of these types to meet the required unit density. Because detached single-family residences are not a type of middle housing, cities are not required to allow multiple detached single-family homes per lot; see discussion on this below.

For example, a Tier 1 city that allows duplexes as one of its six minimum permitted middle housing types, must allow two duplexes on all lots where four units per lot are allowed. Likewise, a Tier 1 city that allows triplexes as one of its six minimum permitted middle housing types must allow two triplexes on all lots where six units per lot are allowed.

Multiple Detached Single-Family Residences on a Lot

Cities have the option to allow multiple detached single-family residences on a lot. Since detached single-family residences are neither defined as a middle housing building type nor authorized to count towards unit per lot density, this option is separate from the statute and cannot be used to substitute the middle housing requirements of RCW 36.70A.635.

Location Restrictions

Cities should review their codes for supplemental use standards related to spacing, distribution, buffering, and similar location restrictions for middle housing. Under RCW 36.70A.635(6)(b), such standards are not permitted if they create a greater restriction on the permitted location of middle housing compared to detached single-family residences in the same zone. For example, a requirement for duplexes to not be on adjacent lots or a requirement for duplexes to be separated by 500 feet is not allowed.

References

- Middle housing images (Commerce; Sightline Institute)
- Department of Commerce - Middle housing informational posters
- Department of Commerce - Middle housing building types and block models

2.7 – Dimensional Standards

The model ordinances include both **minimum middle housing requirements** and recommended standards to make middle housing compatible with the scale, form and character of detached single-family dwellings.

Notable provisions integrated into the model codes:

- RCW 36.70A.635(6)(b) requires that dimensional and other standards for middle housing be no more restrictive than those standards applying to detached single-family residences.
- The model ordinances invalidate existing dimensional standards that are seen as incompatible with middle housing. Examples include specific thresholds for units per structure, maximum building height, minimum setbacks, maximum lot coverage, and maximum floor area ratio.

Lastly, the model ordinance dimensional standards for Tier 1 and 2 Cities intentionally differs from Tier 3 standards. These differences reflect the potential for a greater number of units per lot for Tier 1 and 2 Cities versus Tier 3 Cities, and the differing levels of staffing and code complexity that might differ between Tier 1 and 2 Cities versus Tier 3 Cities.

Section 7 Model Ordinance Text

The Model Ordinance text is copied below for reference. Footnotes may have been added to the model ordinance text in this User Guide to provide supporting information. Refer to User Guide Chapter 1.3 for information on the difference between bold text and non-bold text.

Tier 1, 2, and 3 Cities

A. Applicability.

1. ***The city shall not require through development regulations any standards for middle housing that are more restrictive than those required for detached single-family residences, but may apply any objective development regulations that are required for detached single-family residences. This includes, but is not limited to, the following types of dimensional standards: building height, setbacks, lot coverage, floor area ratio, lot area and lot dimension, impervious surface, open space, and landscaped area standards.***[58]

2. *Dimensional standards invalidated by this section are replaced by the dimensional standards provided in this section.*

B. Density. Lot area requirements and unit density shall comply with Section 5 of this ordinance. *Other restrictions, such as minimum lot area per unit, or maximum number of housing units per acre, are invalid in relationship to the minimum number of units per lot that the City must allow under RCW 36.70A.635.*[59,60]

C. Units per structure. Minimum and maximum numbers of dwelling units per structure for middle housing are invalid, except as provided by the definitions of middle housing types in Section 2 of this ordinance.

---

[58] RCW 36.70A.635(6)(b) refers to setbacks and lot coverage as examples of development regulation dimensional standards. For clarity on this provision, additional examples of dimensional standards are added in the Model Ordinance.
[59] For more discussion on density measurements, see User Guide Chapter 4.3.
[60] Cities may set higher units per lot or minimum units per acre standards than prescribed in RCW 36.70A.635 (1) where multifamily is the predominant residential use intended for a zone. See more information in User Guide Chapter 2.4.

D. *Maximum building height: 35 feet. A maximum building height limit for middle housing of less than 35 feet is invalid.*[61]

1. *Building height shall be measured in accordance with the city's development regulations.*

2. *Rooftop appurtenances shall be regulated and measured in accordance with the city's development regulations.*

Tier 1 and 2 Cities

E. *Minimum setbacks.*

1. *The minimum required setbacks are as follows. Minimum setbacks from property lines for middle housing buildings greater than the following are invalid:*

   a. *Street or front: 15 feet, except 10 feet for lots with a unit density of three or more.*

   b. *Street or front, garage door (where accessed from a street): 20 feet.*

   c. *Side street: Five feet.*[62]

   d. *Side interior: Five feet, and zero feet for attached units internal to the development.*

   e. *Rear, without an alley: 15 feet, except 10 feet for lots with a unit density of three or more.*

   f. *Rear alley: Zero feet, and three feet for a garage door where it is accessed from the alley.*

2. *Setback projections.*

   a. *Covered porches and entries may project up to five feet into required front and rear setbacks.*[63]

   b. *Balconies and bay windows may project up to three feet into required front and rear setbacks.*

   c. *Required parking spaces may occupy required setbacks.*

   d. *Other setback projections shall be regulated and measured in accordance with the city's development regulations.*

F. *Maximum lot coverage.*

1. *The maximum lot coverage for middle housing are as follows. Maximum lot coverage less than the following is invalid:*

   a. *For lots with a unit density of six: 55 percent.*

   b. *For lots with a unit density of four or five: 50 percent.*

---

[61] See the Local Policy Choice section for an option cities may consider to incentivize pitched roofs.
[62] The side street setback applies to corner lots. The "side street" is the street other than the street from which the lot fronts upon.
[63] See also Model Ordinance Section 8, subsection (G)(2). Required parking may be in a setback except where it conflicts with the design standards for vehicle access, carports, garages, and driveways.

c. For lots with a unit density of three or less: 45 percent.

2. Unless the city has a different pre-existing approach to measuring lot coverage, lot coverage is measured as follows: the total area of a lot covered by buildings or structures divided by the total amount of site area minus any required or planned dedication of public rights-of-way and/or designation of private rights-of-way, and does not include building overhangs such as roof eaves, bay windows, or balconies and does not include paved surfaces.

G. Maximum floor area ratio (FAR).

1. Maximum FAR for middle housing is as follows. Maximum floor area ratio less than the following is invalid:

Unit density on the lot	Maximum floor area ratio (FAR)
1	*0.6*[64]
2	*0.8*
3	*1.0*
4	*1.2*
5	*1.4*
6	*1.6*

2. Unless the city has a different pre-existing approach to measuring FAR, FAR is measured as follows: the total interior floor area of buildings or structures on a site, excluding features listed in subsection (G)(3) below, divided by the total amount of site area minus any required or planned dedication of public rights-of-way and/or designation of private rights-of-way. For example, a maximum floor area ratio of 1.0 (1 to 1) means one square feet of floor area is allowed for every one square foot of site area.

3. Unless FAR is measured differently by the city's development regulations, the following are not included in the calculation of interior floor area:

a. Unoccupied accessory structures, up to a maximum equal to 250 square feet per middle housing unit.

b. Basements, as defined by the city's development regulations.

c. Unenclosed spaces such as carports, porches, balconies, and rooftop decks.

Tier 3 Cities

E. Minimum setbacks.

[64] 0.6 FAR applies to a detached single-family residence. See further information in the Local Policy Choice section below.

1. *The minimum required setbacks are as follows. Minimum building setbacks from property lines for middle housing buildings greater than the following are invalid:*

    a. *Street or front: 15 feet, except 10 feet for lots with a unit density of three or more.*

    b. *Street or front, garage door (where accessed from a street): 20 feet.*

    c. *Side street: Five feet.*[65]

    d. *Side interior: Five feet, and zero feet for attached units internal to the development.*

    e. *Rear, without an alley: 20 feet.*

    f. *Rear alley: Zero feet, and three feet for a garage door where it is accessed from the alley.*

2. *Setback projections.*

    a. *Covered porches and entries may project up to five feet into required front and rear setbacks.*

    b. *Balconies and bay windows may project up to three feet into required front and rear setbacks.*

    c. *Required parking spaces may occupy required setbacks.*[66]

    d. *Other setback projections shall be regulated and measured in accordance with the city's development regulations.*

F. *Maximum lot coverage.*

1. *The maximum lot coverage for middle housing is 40 percent. A maximum lot coverage limit for middle housing of less than 40 percent is invalid.*

2. *Unless the city has a different pre-existing approach to measuring lot coverage, lot coverage is measured as follows: the total area of a lot covered by buildings or structures divided by the total amount of site area minus any required or planned dedication of public rights-of-way and/or designation of private rights-of-way. Lot coverage does not include building overhangs such as roof eaves, bay windows, or balconies and it does not include paved surfaces.*

Local Policy Choice

Maximum Building Height

The model code uses a 35 feet maximum building height to accommodate three stories. This is consistent with the definition used for stacked flats (RCW 36.70A.030(40)), which defines a stacked flat as being no more than three stories. If pitched roof forms are desired, some adjustments may be needed depending on how

---

[65] The side street setback applies to corner lots. The "side street" is the street other than the street from which the lot fronts upon.
[66] See also Model Ordinance Section 8, subsection (G)(2). Required parking may be in a setback except where it conflicts with the design standards for vehicle access, carports, garages, and driveways.

height is measured. For those cities where the height is measured to the top of the roofline rather than the mid-point, consider this language:

#. The maximum height limit for middle housing is 40 feet where all roof forms above 35 feet have a minimum 3:12 roof pitch.

Setbacks

Cities may choose to adopt setbacks with consistent standards regardless of the middle housing type or unit density, or to offer flexibility to help incentivize middle housing development. In the Tier 1 and 2 Cities Model Ordinance, reduced setbacks for three or more units are intended to incentivize middle housing. Cities that want to simplify the code could adjust the front and rear setback standards under subsection (E) to be a consistent number regardless of unit density on the lot. Lower setbacks (e.g., 10 feet for Tier 1 and 2 cities) are recommended to provide flexibility for middle housing development.

Cities might also consider a different set of setback standards that apply to new dwelling units placed within or towards the rear of the lot, provided they preserve some usable open space on the lot. This could be similar to many cities' approaches for detached accessory dwelling units (ADUs), where rear setbacks for primary structures might be 20 feet, but a detached ADU could be within five or 10 feet of a rear property line provided it meets other dimensional and design standards. Other types of incentives may be considered. For example, in some residential zones the city of Bothell allows a reduced front setback only if the rear setback is increased by the same amount to help preserve trees, provide space for rain gardens, etc.

Note that even with zero-foot setbacks there may be other limitations to how close structures can be property lines. Cities may prohibit foundation footings and roof eaves from extending beyond a property line onto right-of-way or adjacent property, though some cities permit this with easements. Building codes and fire codes may also restrict how close separate structures can be to each other, depending on the fire-resistant qualities of each structure's design.

Lot Coverage and Floor Area Ratio

The Model Ordinance for Tier 1 and 2 Cities employs both lot coverage and floor area ratio (FAR) to balance the advantages of each standard. The Model Ordinance for Tier 3 Cities, which accommodates fewer units per lot, only employs lot coverage.

Cities opting to craft their own middle housing dimensional standards will need to review their current zoning tools and thresholds. Lot coverage is commonly used to manage building footprint and promote and open space. FAR is an increasingly common tool used to control building size.

The table below identifies the basic advantages and disadvantages to using lot coverage and FAR.

Tool	Advantages	Disadvantages
Lot coverage	• Relatively easy to understand and calculate • Can help ensure that there's some amount of open space on the lot	• Less effective than FAR in managing the building massing on a lot because buildings can go up to the maximum height limit for the full allowed lot coverage

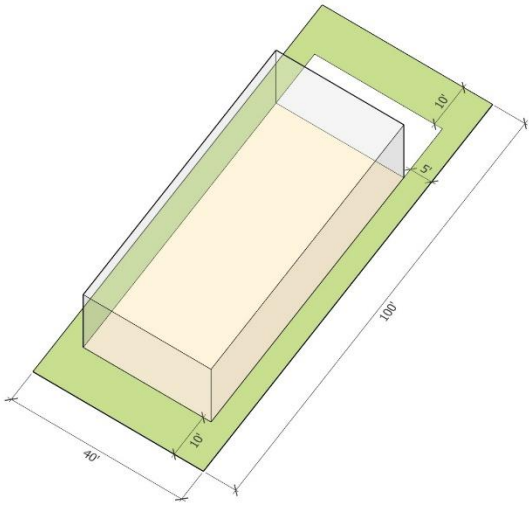
Tool	Advantages	Disadvantages
Floor area ratio	• More effective than lot coverage in managing building massing on a lot because it sets maximum floor area limits proportional to the lot size	• Fewer cities currently regulate FAR, thus it's an additional layer of review and can be perceived as more complicated to calculate

Lot Coverage

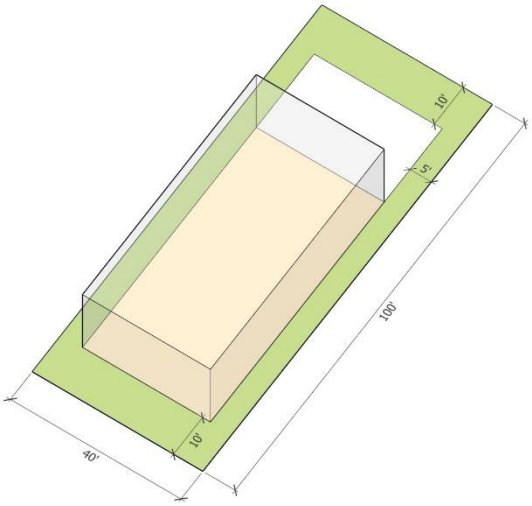
Lot coverage limits the area of building footprint compared to site area, usually expressed as a maximum percentage. For example, a lot coverage of 40 percent means 40 percent of a lot's total area is covered by a building. To be meaningful the maximum permitted lot coverage needs to allow a smaller building footprint than relying on setbacks alone. The Model Ordinances establish lot coverage thresholds that are approximately 5-20 percent lower than would be allowed by setbacks alone. This balances an assurance for more open space on a lot while still allowing a large enough building footprint area to accommodate middle housing.

The graphics below illustrate what 45 and 50 percent lot coverage look like on 40-foot by 100-foot lots. Hypothetical minimum setbacks (in green) are 10 feet, 5 feet, and 10 feet for the front, side, and rear, respectively. The unshaded areas of the lot (in white) show additional areas unrestricted by setbacks, but that exceed lot coverage limits.

50% Lot Coverage

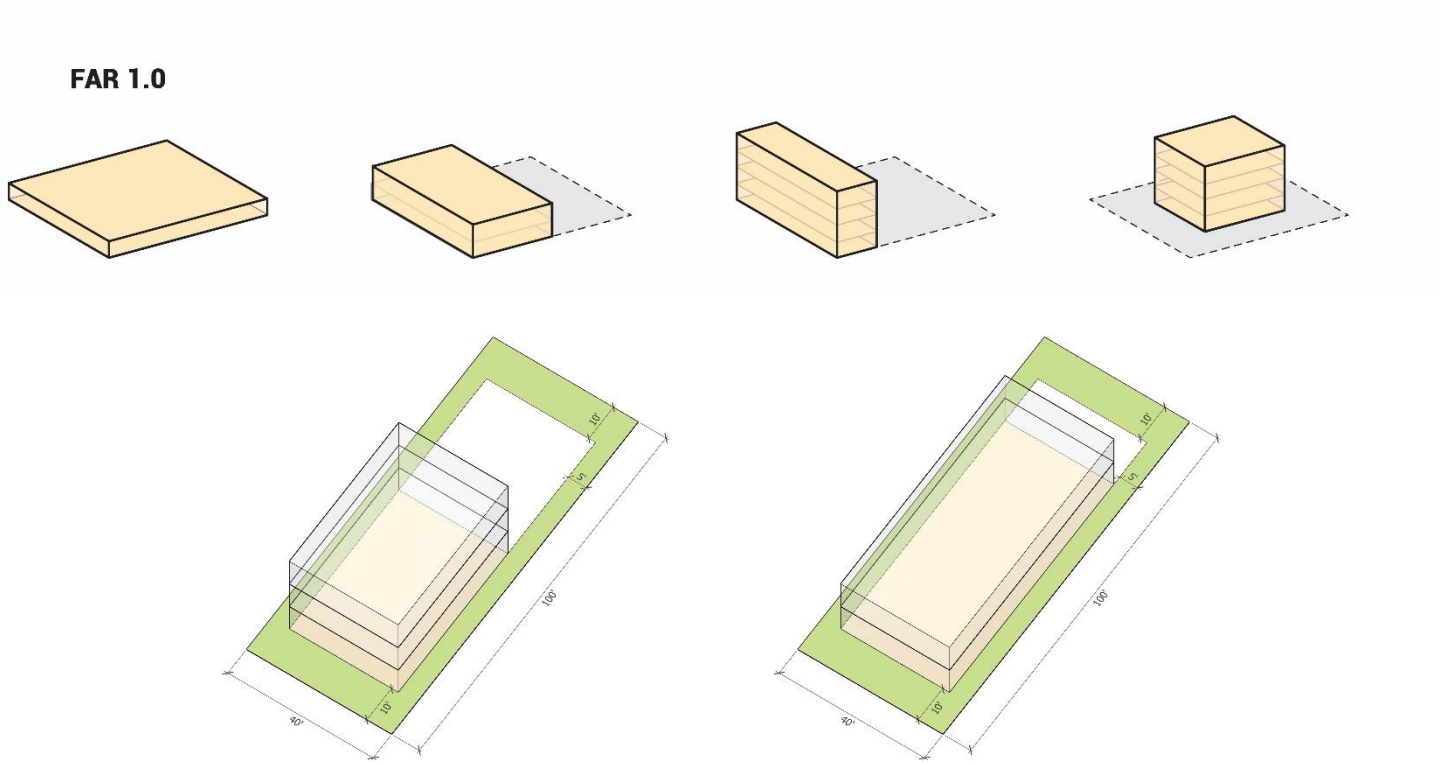


45% Lot Coverage



Floor Area Ratio

Floor area ratio (FAR) compares the total floor area of the building to the site area (floor area ÷ lot size = FAR), with the result represented as a decimal number (0.5 or 1.0, for instance). For example, a 4,000 square feet lot has its area multiplied by 1.0 FAR to arrive at a maximum floor area of 4,000 square feet allowed to be developed. The graphic below illustrates this example in two-story and three-story configurations



The top diagrams illustrate what an FAR of 1.0 looks like in a variety of configurations. The bottom two diagrams show what 1.0 FAR may look like specifically on a 4,000 square foot lot in two- and three-story configurations.

FAR is a popular tool for cities to manage building massing where middle housing is allowed because it limits building size without directly limiting unit count. However, many cities also do not use FAR.

The FAR standards for Tier 1 and 2 Cities in Model Ordinance Section 7, subsection (G), are written to consider a typical lot size of 5,000 square feet and accommodating "family-sized" units with two to four bedrooms, which are the most common housing unit sizes in Washington.[67,68] An analysis used an average middle housing unit size of 1,400 square feet.[69] This size is roughly in the middle of Washington state's average

[67] The FAR limits were tested on other lot sizes ranging from 4,000 square feet to 7,500 square feet. On smaller lots these limits could still allow two-bedroom units. On larger lots FAR standards become less of a limitation on average unit size because average unit size becomes larger than is what is likely to be built for middle housing under normal market conditions.
[68] United States Census, Table DP04 ACS 2022 1-Year Estimates
[69] Other average unit sizes were tested, ranging from 1,000 to 1,600 square feet. It was reasonable to test sizes larger than 1,000 square feet, which is the maximum gross floor area for accessory dwelling units that must be allowed under RCW 36.70A.681, and less than 1,600 square feet.

single-family homes (2,185 square feet[70]) and multifamily apartments (824 square feet[71]). Resulting FAR numbers were rounded up or down resulting in potentially different unit size averages.

Units Per Lot	Model Ordinance FAR	Allowed Foor Area (5,000 SF Lot)	Average Unit Size
4	1.2	6,000 SF	1,500 SF
6	1.6	8,000 SF	1,333 SF

Flexibility provided by the FAR standards in the Model Ordinance allow for middle housing to respond to and make adequate provisions for the needs of not only families and larger households, but also smaller households if a builder chooses to build smaller units. One-person households make up approximately 28 percent of Washington households.[72] In high-priced urban markets one-person households tend to be renters and high-income.[73]

Note that the floor area ratio standard also applies to detached single-family residences. RCW 36.70A.635(6)(b) requires, in part, that cities "…shall not require through development regulations any standards for middle housing that are more restrictive than those required for detached single-family residences, but may apply any objective development regulations that are required for detached single-family residences…" In other words, if a type of dimensional standard is not applied to detached single-family residences, it cannot be applied to middle housing. However, equal or less restrictive standards can be applied to middle housing as compared to single-family.

Approach Options
Cities have choices in how they employ lot coverage and FAR, including the following explored as part of developing the Model Ordinance.

- **Consistent standards.** In this approach, a single standard is applied uniformly to all lots in a zone.
- **Progressive standards.** In this approach, cities apply standards that incentivize middle housing by allowing more flexibility in exchange for a higher number of units on a lot. The Model Ordinance for Tier 1 and 2 cities applies a progressive approach for both lot coverage and FAR, with higher coverage and more floor area allowed for additional units. This approach was selected after testing development scenarios on lot sizes from 3,000 to 5,000 square feet, assuming that standards that work for these small lots are workable for the full range of lot sizes.
- **Lot-sized based standards.** In this approach, cities apply standards that change based on the lot size, using the assumption that lot size can help or hurt the ability to comply with the standards. For example, Oregon Middle Housing Code for Large cities uses five different FAR tiers.

---

[70] "The 2022 American Home Size Index." American Home Shield. https://www.ahs.com/home-matters/real-estate/the-2022-american-home-size-index/
[71] "Apartment Market Report Q3 2023." Washington Center of Real Estate Research, Runstad Department of Real Estate. https://app.leg.wa.gov/committeeschedules/Home/Document/262886
[72] United States Census, Table B11001 ACS 2022 1-Year Estimates
[73] "Seattle's high housing costs haven't stopped people from living alone." The Seattle Times. 2024. https://www.seattletimes.com/seattle-news/data/seattles-high-housing-costs-havent-stopped-people-from-living-alone/

Preserving Existing Homes

In some cases, it may be desirable for a middle housing development to incorporate or preserve an existing residential structure on the lot. It is especially advantageous on lots with larger backyards where density allowances can be met while retaining the existing home. Preserving the existing home can allow a developer to recuperate a portion of the investment costs more rapidly or allow a homeowner to retain their home while allowing development on the rest of the lot.

Example of a townhouse building built in the rear of an existing single-family lot, accompanied by a unit lot subdivision and a pedestrian access easement to the street.

Providing incentives and methods to preserve existing homes also provides cities an avenue to demonstrate implementation of new GMA Housing Element requirements focused on displacement. This includes new requirements to identify areas at higher risk of displacement and local policies and regulations that result in displacement. Options to incentivize preserving existing homes should be customized given every city is different. An example of a provision to incentivize the preservation of an existing home while adding middle housing elsewhere on the lot is exempting some or all of the existing from lot coverage, floor area ratio, and/or impervious area standards.

Discussion

Economic Considerations

Cities should develop middle housing dimensional standards that makes the desired housing types and housing outcomes the easier choice. For example, if attainable homeownership is a priority for a city, the city should develop progressive dimensional standards that incentivize the production of that housing type over larger, less dense, and more expensive housing types. Dimensional standards should consider the cumulative effect on achieving the desired development types and should leave room for a reasonable unit size to be feasible and create efficient floorplates for the desired development types.

Smaller Lot Sizes

Consideration for smaller lot sizes are listed below.

- The dimensional standards in Model Ordinance Section 7 were tested with 4,000-7,500 square foot lots, a typical range in cities subject to RCW 36.70A.635.
- The provisions of RCW 36.70A.635 apply to all lots in residential zones, except that lots after subdivision below 1,000 square are not required to achieve the unit densities in Model Ordinance Section 6. Some cities authorize lots close to this size, such as 2,500 square feet for detached single-family homes and 1,000 square feet or less specifically for townhouse development (where each townhouse unit sits on its own lot and is attached to other townhouse units).
- Cities that have different minimum lot sizes for different housing types must have a minimum lot size for single-family residences no smaller than what would be required of middle housing meeting. Cities may allow different middle housing types on smaller lots, such as a duplex in a Tier 1 city on a 3,000 square feet lot, when 5,000 square feet lots are required for fourplexes and single-family residences.

- Reducing minimum lot sizes is one of the most effective ways to support homeownership and increase housing capacity.[74] Cities interested in permitting very small lots should adjust dimensional standards to ensure such lots are buildable. This may include reducing or removing side setback and lot coverage requirements.
- Because the unit density requirements apply per lot, allowing smaller lots increases the total number of units allowed significantly. For example, if a city decides to reduce the minimum lot size from 5,000 square feet to 2,500 square feet for a particular zone, such a change would double the allowed density.
- Cities should consider the long-term implications of allowing smaller lots, particularly in areas where there are greenfield development opportunities for large new subdivisions given the middle housing requirements. Naturally, the smaller the new lot is, the harder it will be to be to build middle housing and meet all dimensional and design standards applicable to the zone.

References

- Portland Middle Housing Case Study (Cascadia Partners, 2023, pg. 11).
- Portland's development standards for R2.5 & R5 zones that produced the most middle housing.
- Oregon Middle Housing Model Code Large Cities
- Spokane's Building Opportunity for Housing Code Amendments (2023, pgs. 104 – 108)
- Edmonton, Canada Zoning Bylaw Changes (2023, pgs. 15 – 30)

[74] "Lot-Size Reform Unlocks Affordable Homeownership in Houston." Pew Charitable Trusts. https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2023/09/lot-size-reform-unlocks-affordable-homeownership-in-houston

2.8 – Design Standards

RCW 36.70A.030 defines "middle housing" as "…buildings that are compatible in scale, form, and character with single-family houses…". While design standards are not required, RCW 36.70A.635(6)(a) provides an opportunity to use administrative design review and apply objective design standards for middle housing to address compatibility with single-family houses, even if there are no design standards for single-family houses in place.

Model Ordinance design standards include:

- Cottage housing and courtyard housing design standards to reflect objectives associated with the RCW-defined housing types
- Basic pedestrian access provisions and design standards for vehicle access, carports, garages, and driveways that balance practical needs to accommodate middle housing while prohibiting design forms that have the potential to significantly impact the character of residential neighborhoods.
- Additional design standards related to entries, windows, and doors in the Model Ordinance for Tier 3 Cities.

Certain design standards above have been included for the purpose of ensuring that a city that needs to rely on the Model Ordinance in the event it does not meet its RCW 36.70A.635 compliance deadline to adopt middle housing regulations has some basic design standards for middle housing types it may not currently permit in their city.

Section 8 Model Ordinance Text

The Model Ordinance text is copied below for reference. Footnotes may have been added to the model ordinance text in this User Guide to provide supporting information. Refer to User Guide Chapter 1.3 for information on the difference between bold text and non-bold text.

Tier 1, 2, and 3 Cities

A. Applicability.

1. These standards apply to all middle housing types developed with up to six units on a lot. Specific cottage housing and courtyard apartment standards apply only to those types.

2. For the purposes of this section, a "street" refers to any public or private street and does not include alleys.

3. *These design standards do not apply to the conversion of a structure to a middle housing type with up to four attached units, if the floor area of the structure does not increase more than 50 percent.*

B. Purpose. The purpose of these standards is to:

1. *Promote compatibility of middle housing with other residential uses, including single-family houses.*

2. *De-emphasize garages and driveways as major visual elements along the street.*

3. *Provide clear and accessible pedestrian routes between buildings and streets.*

4. *Implement the definitions of cottage housing and courtyard apartments provided by state law.*

C. Design review. The process used for reviewing compliance with middle housing design standards shall be administrative design review.

D. Cottage housing.

1. Open space. Open space shall be provided equal to a minimum 20 percent of the lot size. This may include common open space, private open space, setbacks, critical areas, and other open space.

2. Common open space.

a. At least one outdoor common open space is required.

b. Common open space shall be provided equal to a minimum of 300 square feet per cottage. Each common open space shall have a minimum dimension of 15 feet on any side.

c. Orientation. Common open space shall be bordered by cottages on at least two sides. At least half of cottage units in the development shall abut a common open space and have the primary entrance facing the common open space.

d. Parking areas and vehicular areas shall not qualify as common open space.

e. Critical areas and their buffers, including steep slopes, shall not quality as common open space.

3. Entries. All cottages shall feature a roofed porch at least 60 square feet in size with a minimum dimension of five feet on any side facing the street and/or common open space.

4. Community building.

a. A cottage housing development shall contain no more than one community building.

b. A community building shall have no more than 2,400 square feet of net floor area, excluding attached garages.

c. A community building shall have no minimum off-street parking requirement.

E. Courtyard apartments.

1. Yard or court.

a. At least one yard or court is required.

b. The yard or court shall be bordered by attached dwelling units on two or three sides.

c. The yard or court shall be a minimum dimension of 15 feet on any side.

d. Parking areas and vehicular areas do not qualify as a yard or court.

2. Entries. Ground-related courtyard apartments shall feature a covered pedestrian entry, such as a covered porch or recessed entry, with minimum weather protection of three feet by three feet, facing the street or yard or court.

F. *Pedestrian access. A paved pedestrian connection at least three feet wide is required between each middle housing building and the sidewalk (or the street if there is no sidewalk). Driveways may be used to meet this requirement.*

G. *Vehicle access, carports, garages, and driveways.*

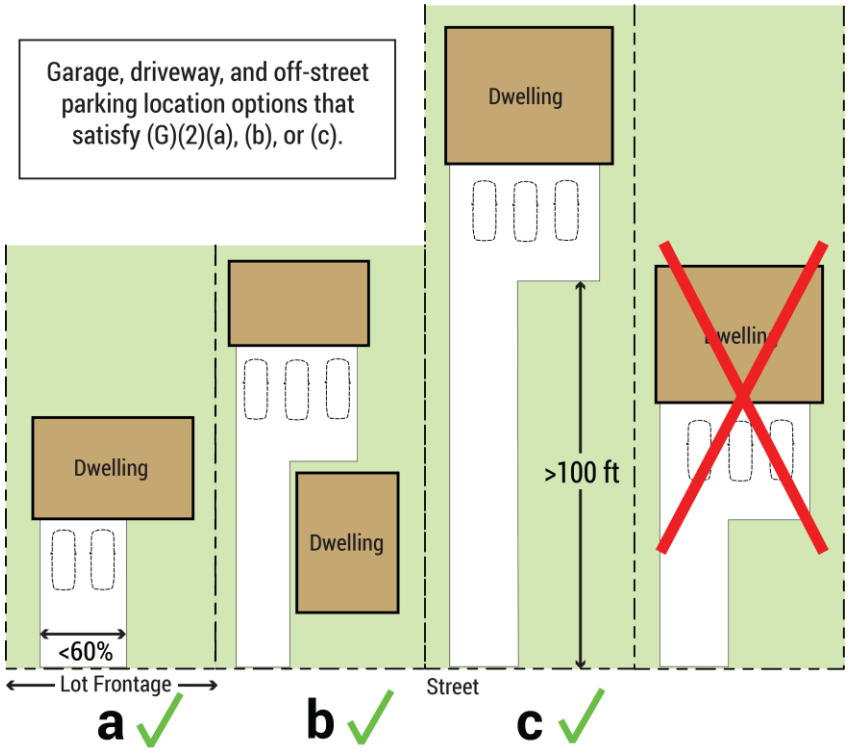
1. *For lots abutting an improved alley that meets the city's standard for width, vehicular access shall be taken from the alley. Lots without access to an improved alley and taking vehicular access from a street shall meet the other standards of subsection (G)(2) through (5) below.*

2. *Garages, carports, driveways, and off-street parking areas shall not be located between a building and a street, except when any of the following conditions are met:*[75]

   a. *The combined width of all garages, driveways, and off-street parking areas does not exceed a total of 60 percent of the length of the street frontage property line. This standard applies to buildings and not individual units; or*

   b. *The garage, driveway, or off-street parking area is separated from the street property line by a dwelling; or*

   c. *The garage, driveway, or off-street parking is located more than 100 feet from a street.*

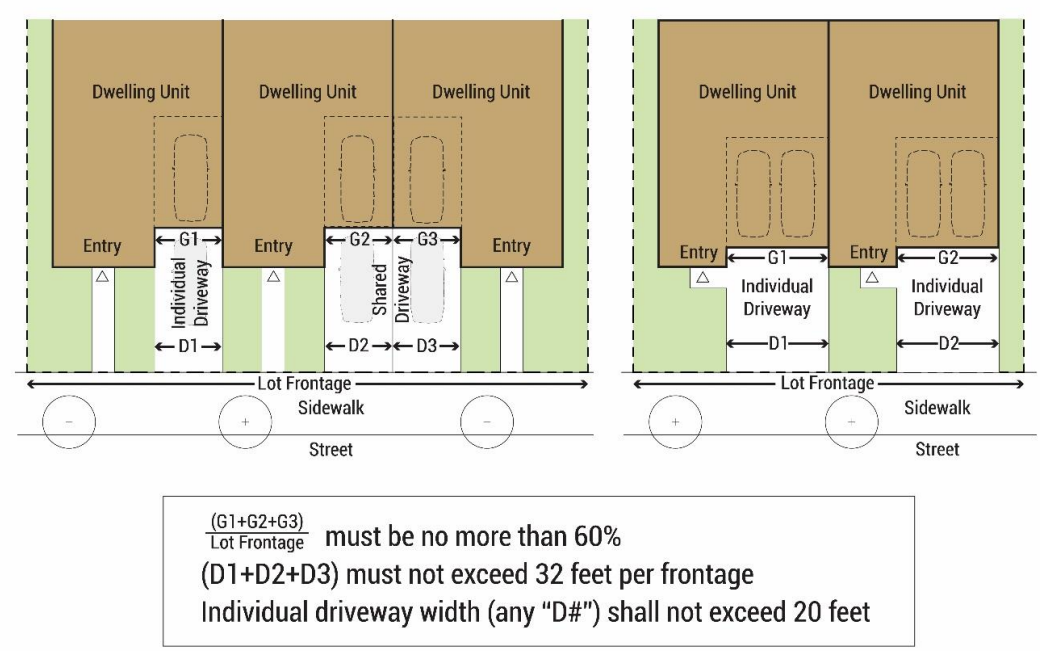


3. *All detached garages and carports shall not protrude beyond the front building façade.*

[75] See also Model Ordinance Section 7, subsection (E)(2)(c). Parking may be in a setback except where it conflicts with this standard.

4. *The total width of all driveway approaches shall not exceed 32 feet per frontage, as measured at the property line. Individual driveway approaches shall not exceed 20 feet in width.*

5. *Local jurisdiction requirements for driveway separation and access from collector streets and arterial streets shall apply.*

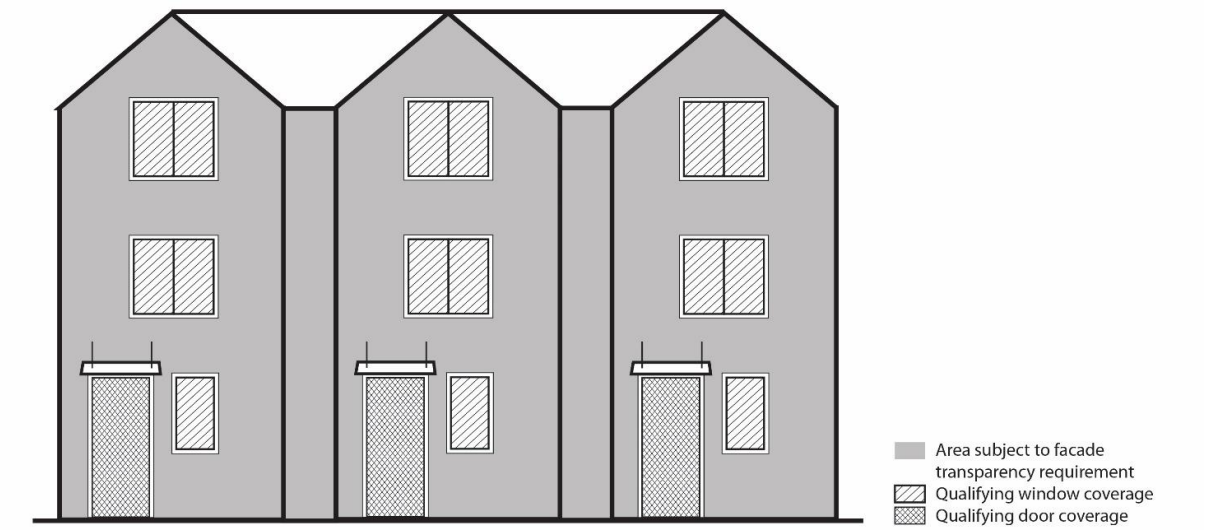


H. <u>Landscaping.</u> *Development regulations for landscaping and tree standards for middle housing shall be equally or less restrictive than those required for detached single-family residences.*

Tier 3 Cities

I. Entries. Each building shall incorporate a primary building entry or one or more private unit entries, such as a covered porch or recessed entry. Each entry shall feature minimum weather protection of three feet by three feet.

J. Windows and doors. A minimum of 15 percent of the area of the street-facing façade elevation shall include windows or doors (excluding garage doors). Facades separated from the street by a dwelling or located more than 100 feet from a street are exempt from this standard.



Local Policy Choice

Single-Family Design Standards

Cities may consider applying the same types of design standards in the Model Ordinances to detached single-family residences. Some tailoring may be required for applicability and context.

Cottage Housing

Size Limit

Cities may choose to establish a maximum size limit for cottages through an administrative design review process if they allow additional cottages above the unit density required under RCW 36.70A.635(1). RCW 36.70A.681(1)(f) states that city and counties may not establish maximum gross floor area limits for accessory dwelling units less than 1,000 square feet. A cottage housing floor area limit above 1,000 square feet would be reasonable.

Common Open Space

Common open space traditionally serves as the social and recreational center of cottage developments. "Common open space' is referenced in the definition of "cottage housing" and will need to take up much of the minimum 20 percent open space requirement, which also can include private open space, setbacks, natural features, critical areas, and other open space. Key aspects of common open space include:

- Requiring that cottages are oriented around the common open space.
- Minimum size standards to provide a minimum usable common open space area scaled to the size of the development. The minimum 15 feet dimension is important to ensure the common open space is usable for residents.

The minimum amount of open space per cottage can be variable; 300 square feet is more appropriate for small infill lots, but larger minimums, such as 400 square feet, is a common standard required by cities that regulate cottages.

Private Open Space

In addition to common open space, some cities require private open space for individual cottages. This may be required at the front or rear of a cottage and typically is encouraged to be located between a cottage and common open space and is not allowed to be at the side of a cottage. A minimum requirement of 200 square feet per cottage is typical, along with minimum dimensional and useability standards that are similar or relaxed compared to those for the common open space.

Porch Requirement

The entry standard, which requires a roofed porch on each cottage, helps cottages be compatible with the form and character of typical low-density neighborhoods.

Community Buildings

The integration of community buildings is popular in many cottage developments and thus important to allow in larger cottage housing developments. Because cottages are size-limited compared to typical detached single-family residences, a community building can further promote livability and social activity in the development with a range of shared uses, ranging from tool and furniture storage to community kitchens, libraries, and recreation rooms.

Danielson Grove Cottages in Kirkland. Note the mix of private (landscaped areas in front of the cottages) and common (lawn area plus the patio) open spaces and community building example (right image). Source: MAKERS.

Attached Cottages

Cities should consider allowing attached cottages, which comply with the other features of cottage housing but may include clusters of duplex or triplex-style buildings. This arrangement creates more room for common open space and helps improve energy efficiency, while supporting the community-oriented goals of some cottage housing developments.

Courtyard Apartments

Courtyard apartments is one of the middle housing types defined by RCW 36.70A.030.[76] Particular design features are included in the definition. The definition states that courtyard apartments have dwelling units arranged on two or three sides of a yard or court.

Because courtyard apartments are defined by a yard or court, common open space standards are provided in the model ordinances. There is also an entry standard which allows unit entries to face either the street or the common space.

Pedestrian Access

A pedestrian access standard ensures clear and accessible pedestrian routes are provided between buildings and streets. A paved pedestrian connection, as opposed to unpaved, is important to ensure that pedestrian access is permanently available to provide safe and reliable pedestrian access for people using mobility devices and for deliveries and emergencies (i.e., carts and gurneys). If a middle housing building is located at the back of a lot or has alley access, the pedestrian access standard also ensures that residents and visitors have easy access to the street and access to vehicles parked on-street.

The standard is also written with flexibility in mind. Driveways, which are often walked upon and already connect a building and a street, may be used to meet the standard instead of a separate paved connection. The standard does not preclude the use of ramps or stairs.

Note that the standard provides an objective measurement of three feet minimum width for the paved connection. Cities may require increased width to meet Americans with Disabilities Act (ADA) standards, and larger middle housing developments with more foot traffic on a shared pedestrian connection may warrant a wider pathway.

[76] RCW 36.70A.030(10)

Vehicle Access, Carports, Garages, and Driveways

This set of standards related to vehicle access, garages and carports is adapted from the Oregon middle housing model ordinances. This standard seeks to balance the practical need for vehicular access while prohibiting designs that are dominated by multiple garages and driveways along a street, which can have significant impacts on the walkability and visual character of residential neighborhoods.

The model ordinances include a standard that prevents designs like these with excessive driveway widths and garage-dominated designs. Source: MAKERS.

The standard anticipates two scenarios: lots with alley access or no alley access.

Alley Access

Alley access is preferred because it allows vehicle parking, services, and utilities to be collected in the rear of a development and create a more continuous and walkable streetscape in front of the lot. The alley access requirement applies to "an improved alley that meets the city's standard for width." This standard does not distinguish between whether the alley is or is not paved since some cities do not require paving or may have pre-existing alleys that are not paved. Alleys that are platted but unbuilt, steep, or have other accessibility issues likely would not be considered "improved" by most cities.

No Alley Access

Because many cities and neighborhoods do not have alleys, the standard also provides requirements for lots that need to take vehicular access from a street. The first preference is that garages and off-street parking areas be screened from the street by a building with dwelling units; for example, a townhouse development may have garages on the bottom of each unit that are accessed from the rear of the building by a shared drive that connects to the street in front. However, not every middle housing configuration and lot can physically or economically accommodate this. When parking cannot be screened and must be visible from the street, the model ordinance recommends that the width of off-street parking areas be limited in relation to the length of the lot's street frontage. If a garage or off-street parking area is located more than 100 feet from a street it would be exempt from this standard.

Covered Entries

The Model Ordinance for Tier 3 Cities provides for covered entries. Covered entries lend a sense of human scale to homes. The three-foot dimension allows a resident to open a locked door out of the rain.

Windows and Doors

The Model Ordinance for Tier 3 Cities provides a design standard that at least 15 percent of the area of the street-facing façade elevation include windows or doors. This type of standard is a common requirement that orients dwelling units towards the street and provides "eyes on the street" for safety. Note that it does not specify that doors need to be transparent to qualify. Whereas the 15 percent standard is relatively common for those communities that regulate façade transparency, allowing doors to qualify offers flexibility. Cities can

consider adding additional language which clarifies garage doors do not qualify towards the 15 percent minimum, considering one of the purposes of the design standards is to de-emphasize garages and driveways.

Unit Articulation Standards

Façade articulation standards for townhouses and multifamily development help reduce the perceived scale of multi-unit buildings and add architectural variety and visual interest. Thus, cities might consider applying similar standards for middle housing. Articulation standards are particularly helpful for compatibility for larger middle housing buildings where multiple entries are visible from the street. By providing clear and objective options, an articulation standard can meet the requirement to not affect the generally allowed density, height, bulk, or scale of middle housing.

Below is an articulation standard developed for middle housing purposes. It is titled "Unit Articulation" since it applies only to multi-unit buildings facing the street and featuring separate ground level entrances.

X. Unit articulation.

1. Applicability.

a. Each attached unit featuring a separate ground level entrance in a multi-unit building facing the street shall include at least one of the articulation options listed in subsection (X)(2) below.

b. Facades separated from the street by a dwelling or located more than 100 feet from a street are exempt from this standard.

2. Articulation options:

1. Roofline change or a roof dormer with a minimum of four feet in width.

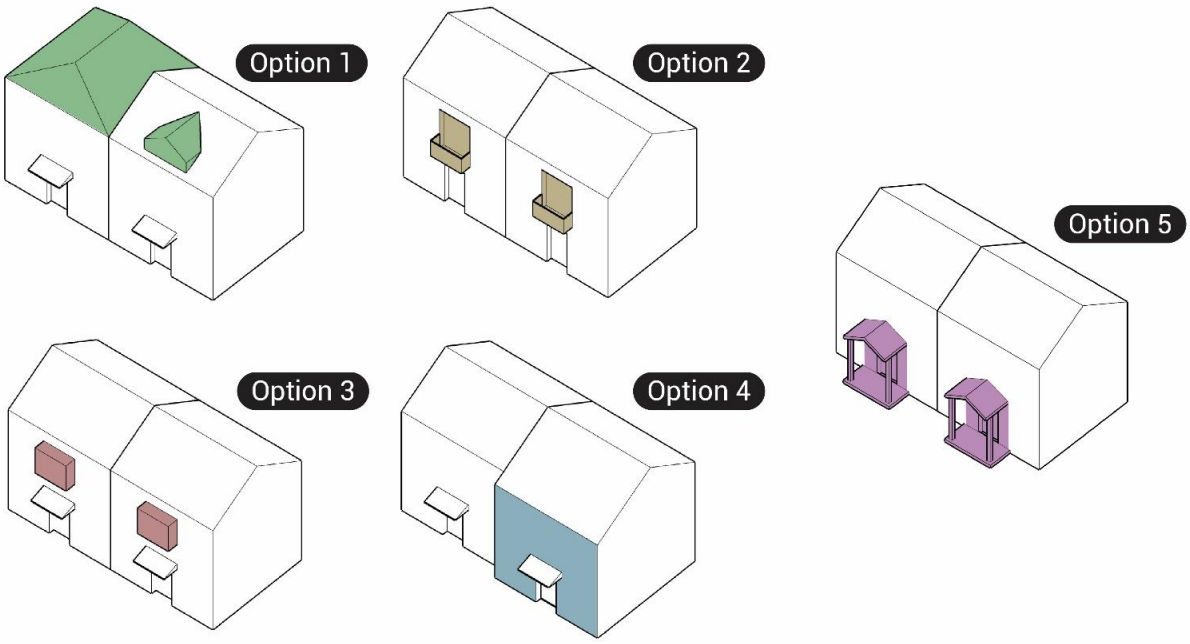
2. A balcony a minimum of two feet in depth and four feet in width and accessible from an interior room.[77]

3. A bay window that extends from the façade a minimum of two feet.[78]

4. An offset of the façade of a minimum of two feet in depth from the neighboring unit.

5. A roofed porch at least 50 square feet in size.

[77] "Balcony" refers to a platform that projects from the wall of a building and is surrounded by a railing or balustrade.
[78] A "bay window" is a window placed on an extension from an exterior wall.



Minimum Usable Open Space

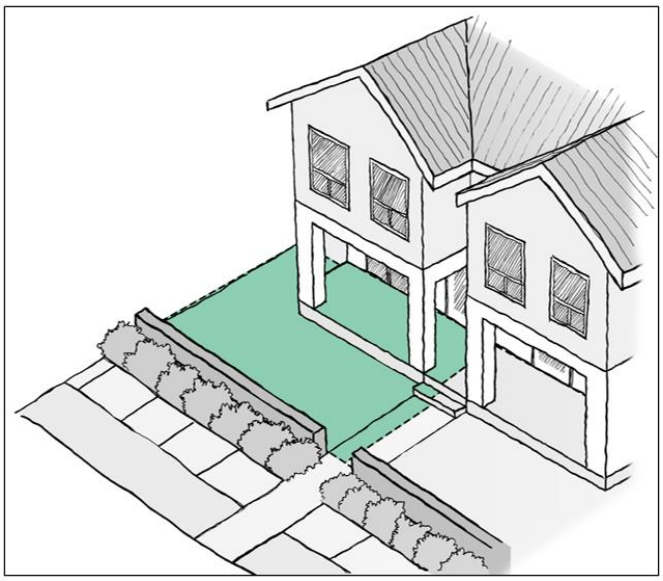
Many cities that allow for small lot detached single-family development or middle housing development require some form of minimum usable open space. Such standards can support usable open space beyond basic setback requirements and minimum lot coverage to ensure that each unit has on-site open space that meets a minimum dimension.

For cities allowing up to two units on a lot, consider a standard that requires open space equivalent to at least 10 percent of the lot area with a minimum dimension of 15 feet on all sides of the open space. Each unit must have direct access to the open space.

Where the lot density exceeds three units, consider a minimum 10 feet or 12 feet dimension to accommodate more flexibility, while ensuring a minimum usable dimension.

For stacked flats and buildings with four to six units more flexibility is warranted, as direct access to a ground level open space may not be possible. Thus, provisions for common open space that is physically accessible to each unit will be important. Private balconies and shared roof decks can also be open space resources that enhance the livability of middle housing.

Given space limitations on small lots and lots with two or more units, it is important to provide the opportunity to locate usable open space in the front yard. Front yards in many single-family neighborhoods are seldom used. However, front yards defined by a low fence, particularly when combined with a front porch, can make for effective usable yard space.



Front yards and porches can be a particularly good source of usable open space for middle housing. Source: MAKERS

Design Standards Departures

Cities also have an option to offer departure requests to middle housing design standards. Departures should only be made available if processed administratively and where a clear and objective design standard is provided as the starting point that provides a straightforward path to compliance. Applicants seeking departures volunteer to depart from an objective standard. In order for the planning director or their designee to evaluate a departure request, clear purpose statements must be provided for each design standard and additional criteria could be added for specific departure opportunities.

Example text for departure criteria is below.

a. *Departures are available for all design standards herein. Departures provide applicants with the option of proposing alternative designs when the applicant can demonstrate a design is equal to or better for meeting the "purpose" of a particular standard.*

b. *Departures shall be administrative and reviewed, approved, or denied by the planning director or the planning director's designee.*

c. *The planning director must document the reasons for all departure decisions within the project application records.*

As a land use decision, design departures are subject to both administrative appeal and possibly judicial appeal under RCW 36.70C. The administrative appeal period is subject to the city's local regulations.

Discussion

Design Review State Law

House Bill 1293 (chapter 333, Laws of 2023) changed how counties and cities can integrate design provisions into the development review process and added a definition of "design review" to RCW 36.70A.630 that specifies:

1. Only clear and objective development regulations be used to regulate the exterior design of new development.

2. Such “clear and objective” development regulations must include one or more ascertainable guideline, standard, or criterion by which an applicant can determine whether a given building design is permissible under that development regulation.

3. The design standards may not result in a reduction in density, height, bulk, or scale below the generally applicable development regulations for a development proposal in the applicable zone.

4. Design review must be conducted concurrently with consolidated project review and may not include more than one public meeting.

The provisions of 1, 2, and 3 above do not apply to designated landmarks and historic districts established under a local preservation ordinance.

The design standards in Section 8 of the Model Ordinances and User Guide are compliant with these criteria.

Administrative Design Review

A key difference between the design review provisions of RCW 36.70A.630 and related design review provisions of RCW 36.70A.635 is that when applying design review for middle housing, only “administrative design review” may be used. Administrative design is defined by the GMA as:

> *“…a development permit process whereby an application is reviewed, approved, or denied by the planning director or the planning director's designee based solely on objective design and development standards without a public predecision hearing, unless such review is otherwise required by state or federal law, or the structure is a designated landmark or historic district established under a local preservation ordinance. A city may utilize public meetings, hearings, or voluntary review boards to consider, recommend, or approve requests for variances from locally established design review standards.” (RCW 36.70A.030(3))*

The design standards provided in the Model Ordinance and User Guide are objective and measurable and are written to be efficient for staff to implement if the Model Ordinance, especially if the city does not adopt middle housing regulations by the city’s statutory deadline. Administrative design review is to be reviewed, approved, or denied by a planning director or their designee, with the exceptions noted in the definition. Informational resources about design review implementation are listed at the end of this chapter.

Exceptions to administrative design review may be made in cases where review is required by state or federal law, or if the structure is a designated landmark or within a historic district established by a local preservation ordinance. Public meetings, hearings, or voluntary design review boards may also be used to consider, recommend, or approve requests for variances from locally established design review standards.

As a land use decision, administrative design review is subject to both administrative appeal and possibly judicial appeal under RCW 36.70C. The administrative appeal period is subject to the city’s local regulations.

Trees

RCW 36.70A.635(6)(b) provides that "tree canopy and retention requirements" shall not be more restrictive for middle housing than for detached single-family residences. Other tree related development standards may include, but are not limited to, significant tree preservation, planting of new trees, and tree maintenance.[79]

Example of a new middle housing development that is protecting existing trees. Source: MAKERS

Trees provide considerable benefits to a community, including stormwater management, noise buffering, soil erosion reduction, supporting climate change strategies, providing habitat, and fostering aesthetics. Additionally, as noted by the environmental organizations focus group, trees are an equity issue with lower-income neighborhoods tending to have less tree canopy than higher-income neighborhoods. Many communities have adopted urban forestry regulations to address the planting, maintenance, care, and protection of tree populations.

Rather than have the model ordinances offer specific prescriptive recommendations for tree preservation and retention for one use (or subgroup of uses) like middle housing, cities should consider developing a comprehensive tree regulation strategy that thoroughly reviews, considers and updates existing tree regulations as a broader package across all uses and type of permit applications. Tree regulations should seek to balance and consider housing and environmental goals like climate change and air quality, local benefits of mature trees, voluntary and other tree planting programs, and available administrative and enforcement resources. Passed in 2024, RCW 36.70A.622 prevents cities with a population of more than 6,000 from requiring off-street parking of residential development when compliance with both tree retention and minimum parking requirements would make a proposed residential development infeasible.

Some cities have tree standards that promote maintaining or growing the overall tree canopy, rather than focusing on individual trees. For example, Port Orchard's McCormick Village Overlay District requires a plan that achieves a minimum 25 percent tree canopy coverage in 20 years upon maturity of the trees. Significant tree retention is only required if the significant tree is located with any perimeter landscaping requirement, critical area protection areas, and required buffers.[80]

[79] See also RCW 36.70A.622 and User Guide Chapter 2.9 regarding residential parking requirements in relation to tree retention standards.
[80] POMC 20.38.280

References

Design review

- Design Review, American Planning Association (collection of knowledge resources)
- Design Review: Guiding Better Development, American Planning Association (publication)
- Design Review in the Pacific Northwest, American Planning Association (conference session)
- Design Review, Municipal Research Service Center
- Short Course on Local Planning, Department of Commerce (see the special topic videos on infill development for small cities)

Examples of small city design standards

- Port Angeles Residential Infill Design Standards (Chapter 17.21 PAMC)
- Anacortes Housing Type Design Standards (AMC 19.43.010)

Trees

- Urban Forestry, Municipal Research Service Center
- Redmond Tree Protection Ordinance (RMC 21.72)
- Olympia Tree, Soil, and Native Vegetation Protection and Replacement Standards (OMC 16.60)
- Seattle's 2023 Tree Protection Ordinance – Ordinance 126821

Section 9 Model Ordinance Text

The Model Ordinance text is copied below for reference. Footnotes may have been added to the model ordinance text in this User Guide to provide supporting information. Refer to User Guide Chapter 1.3 for information on the difference between bold text and non-bold text.

A. These standards apply to all housing meeting the definition of middle housing in Section 3, except as noted in subsection (C) of this section.

B. Off-street parking for middle housing shall be subject to the following:

1. No off-street parking shall be required within one-half mile walking distance of a major transit stop.[81]

2. A maximum of one off-street parking space per unit shall be required on lots no greater than 6,000 square feet, before any zero lot line subdivisions or lot splits.[82]

3. A maximum of two off-street parking spaces per unit shall be required on lots greater than 6,000 square feet before any zero lot line subdivisions or lot splits.[83]

C. The provisions of subsection (A) do not apply to:

1. Portions of the city for which the Department of Commerce has certified a parking study in accordance with RCW 36.70A.635(7)(a), in which case off-street parking requirements shall be as provided in the certification from the Department of Commerce.[84]

2. Portions of the city within a one-mile radius of a commercial airport in Washington with at least 9,000,000 annual enplanements in accordance with RCW 36.70A.635(7)(b).[85]

---

[81] RCW 36.70A.635(6)(d). This standard applies only to middle housing, not all development. However, elimination or adjustment of other parking standards near major transit stops is encouraged. See the local policy choice and discussion sections.
[82] RCW 36.70A.635(6)(e)
[83] RCW 36.70A.635(6)(f)
[84] RCW.70A.635(7)(b).
[85] This only applies to Seattle-Tacoma International Airport. Enplanement data is provided by the Federal Aviation Administration: https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger

Local Policy Choice

Number of Parking Spaces Required per Unit

The Model Ordinance uses the off-street parking requirements of RCW 36.70A.635(6)(d) through (f).

However, in establishing off street parking requirements for middle housing, cities should consider how off-street parking may occupy land area that could affect middle housing site design, especially on smaller lots, as well as affect project affordability through the costs associated with developing parking. Off-street parking requirements can also affect unit count of a middle housing project and be a deciding factor in whether a middle housing project is or is not built.

For these reasons, it is recommended that cities consider at most a minimum parking requirement of one space for middle housing unit, regardless of lot size. This is the same as the one-space maximum a city can require on lots no greater than 6,000 square feet, but is less than the two-space maximum a city can require on lots greater than 6,000 square feet in size. One parking space per middle housing unit, regardless of lot size, can improve the physical and economic feasibility of developing middle housing.

Affordable Housing

Affordable housing is difficult to finance without subsidy, and off-street parking represents a substantial cost of developing housing. Households who might occupy affordable middle housing units may own fewer vehicles than moderate- and higher-income households.[86] Cities should consider eliminating off-street parking requirements for affordable housing units.

Major Transit Stops

See User Guide Chapter 3.2 for guidance on how walking distance to major transit stops may be measured.

Other State Law Parking Requirements

RCW 36.70A.681(2) has parking requirements for accessory dwelling units which are similar to what RCW 36.70A.635 provides for middle housing. For the purposes of parking requirements for accessory dwelling units, under RCW 36.70A.696(8) there is a slightly different definition of "Major transit stop" than for middle housing.

RCW 36.70A.620 has provisions on the amount of parking that can be required near certain types of transit for various types of affordable housing, housing for seniors and people with disabilities, and market rate multifamily units. The standards in RCW 36.70A.620 do not conflict with the standards of RCW 36.70A.635 or the Model Ordinances, but they should be reviewed so that in instances where there may be overlap, required off-street parking is consistent with both RCW sections.

RCW 36.70A.622 has provisions on the design of residential parking spaces in cities and counties, including parking spaces for middle housing. Commerce is drafting a technical assistance document for this law. The law requires that:

- Garages and carports cannot be required as a way to meet minimum parking requirements
- Parking spaces that count towards minimum parking requirements may be enclosed or unenclosed

[86] "Socioeconomics of urban travel in the U.S.: Evidence from the 2017 NHTS." Transportation Research Part D: Transport and Environment, Volume 116, 2023. https://www.sciencedirect.com/science/article/pii/S1361920923000196?via%3Dihub

- Tandem parking spaces must count towards meeting minimum parking requirements at a rate of one space for every 20 linear feet
- Up to six parking spaces must be allowed on pre-existing legally nonconforming gravel parking areas
- Parking spaces consisting of grass block pavers may count toward minimum parking requirements
- Parking spaces may not be required to exceed eight feet by 20 feet, except for parking for people with disabilities. Existing parking spaces do not need to be resized during resurfacing if doing so would require significant cost or reconfiguration of the parking area.
- Cities with a population greater than 6,000 may not require off-street parking if compliance with tree retention would otherwise make a residential development infeasible

Exemptions

The off-street parking standards of RCW 36.70A.635(6) do not apply in two situations:

- If a city submits to Commerce an empirical study prepared by a credentialed transportation or land use planning professional that clearly demonstrates, and Commerce finds and certifies, that middle housing parking required by RCW 36.70A.635 would be significantly less safe for pedestrians, bicyclists, or people in vehicles than if the jurisdiction's parking requirements were applied to the same location for the same number of detached houses.[87] Commerce has prepared guidance to assist jurisdictions on items to include in this study.
- In portions of cities within a one-mile radius of a commercial airport in Washington with at least 9,000,000 annual enplanements, in accordance with RCW 36.70A.635(7)(b).[88] This only applies to Seattle-Tacoma International Airport, according to enplanement data provided by the Federal Aviation Administration.[89]

Cities not planning to employ the "empirical study" exemption, and cities located further than one mile from applicable airports, have the option to not adopt Model Ordinance Section 9, subsection (B).

On-Street Parking Credit

To add flexibility and reduce construction costs, cities may consider allowing on-street parking to be credited toward any minimum off-street parking requirements. This approach is provided in the Oregon middle housing model codes. The credit could be written with the following types of standards intended to promote on-street parking in appropriate locations.

X. If on-street parking spaces meet all of the following conditions they shall be counted toward the minimum off-street parking requirement for middle housing.

1. On-street parking is allowed and abuts the subject site.

2. The space must be a minimum of 20 feet long.[90]

On-street parking in a residential neighborhood. Source: MAKERS.

[87] RCW.70A.635(7)(a)
[88] RCW.70A.635(7)(b)
[89] "Passenger Boarding (Enplanement) and All-Cargo Data for U.S. Airports." Federal Aviation Administration. https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger
[90] Item (2) could be revised to the standard length of a parallel parking space in the city if it is different than 20 feet.

3. The space must not obstruct a required sight distance area.

4. The on-street parking shall not be deeded, or for exclusive use, to any property.

Conversions

To encourage preservation and rehabilitation of existing structures, cities may consider exempting off-street parking requirements for middle housing conversion projects up to a certain size. This would allow greater flexibility for conversions or additions where the existing building placement makes it difficult or not possible to add new parking. The following provision would address common conversion proposals:

X. No additional off-street parking shall be required for conversion of a detached single-family residence to a middle housing type with up to four units (whether additional units are attached or detached with the original structure).

Discussion

Eliminating Off-Street Parking Requirements

Beyond one-half mile distance of a major transit stop, jurisdictions may consider eliminating minimum off-street parking requirements entirely for middle housing (and other residential land uses) to reduce the costs and physical complexity of providing housing and reduce the costs of owning and renting housing.

Off-street parking takes up land area and can create both physical and economic feasibility barriers to middle housing development. Reducing parking requirements can prove extremely helpful in supporting diverse housing types at lower price points. This is particularly an opportunity where local transit service is strong, bike and pedestrian infrastructure is well-connected, and residential areas are within close proximity to jobs centers and shopping areas. Builders can continue to build parking at their discretion to meet market demand even without regulatory requirements for parking.

The cost of providing surface parking can increase the per-unit construction cost of middle housing between approximately $5,000 and $50,000 depending on the type of parking, number of stalls required, drive aisle area, and turnaround space. Enclosed parking spaces can add even more costs to the construction cost of a housing unit depending on the level of conditioning and finishing requirements.

In addition, off-street parking can create significant physical barriers to middle housing development on infill sites, especially when space limitations require that parking be located in what would otherwise be buildable area for the structure. These physical limitations translate to economic impacts to development feasibility and financial yield that can cause middle housing to be built at lower densities or not be feasible at all.

In summary:

- Parking is expensive. Parking space construction ranges from $5,000 - $6,000 a stall for surface parking, $20,000 - $25,000 a stall for above ground structured parking, and $30,000 - $50,000 a stall for underground parking (Cascadia Partners, 2023; VTPI, 2022; & City of Lacey, 2021).
- High parking mandates negatively impact the financial feasibility of middle housing development.
- High parking mandates are spatially difficult to fit on a lot and compete against livable and open space.
- Parking is a popular amenity and developers will often choose to include off-street parking in middle housing projects where feasible.

SEPA Exemption

HB 1110 amended RCW 43.21C.495, a section of the State Environmental Policy Act (SEPA). It added subsection (6) that states:

> *The following nonproject actions are categorically exempt from the requirements of this chapter:*
>
> …
>
> *(6) Amendments to development regulations to remove requirements for parking from development proposed to fill in an urban growth area designated according to RCW 36.70A.110.*

This means implementation of subsection (A)(1) in Model Ordinance Section 9, which removes minimum parking requirements within one-half mile of major transit stops, does not require SEPA review. It also means

that other actions which go beyond subsection (A)(1), such as removing minimum parking requirements for any use and in any location within an urban growth area, do not require SEPA review.

Parking with Zero Lot Line Subdivision and Lot Splits

RCW 36.70A.635(6)(e) and (f) establish parking requirements based on lot size "…before any zero lot line subdivisions or lot splits."

The term "zero lot line" is used several times in RCW 36.70A.635. State law does not define "zero lot line" nor "zero lot line subdivision." Cities should interpret "zero lot line" to mean the physical state of a building located, or permitted to be located, on one or more property lines on a lot. This state can be achieved where a zoning setback requirement is zero feet, within an attached townhouse development, in a unit lot subdivision, or through other code mechanisms.

In Washington state law a "lot split" is undefined and there is currently no authorization or requirement for allowing lot splits. In the future, if laws defining and authorizing lot splits are passed the Department of Commerce may update this guidance with information on how cities should update middle housing rules to exempt lots created through lot splitting.

References

- Cost per space for parking (Cascadia Partners, 2023; VTPI, 2022; & City of Lacey, 2021).
- Middle Housing Implementation Pro-Forma Calibration and Assumptions (Cascadia Partners)
- Middle Housing Implementation Pro-Forma Sensitivity Testing (Cascadia Partners, 2023)
- Portland Middle Housing Case Study (Cascadia Partners, 2023, pg. 27)
- City of Olympia Washington reduces parking minimums for all residential units Ordinance 7366 (2023)
- *A Business Case for Dropping Parking Minimums*, 2022, Planning Magazine
- Parking Reform Network

Section 10 Model Ordinance Text

The Model Ordinance text is copied below for reference. Footnotes may have been added to the model ordinance text in this User Guide to provide supporting information. Refer to User Guide Chapter 1.3 for information on the difference between bold text and non-bold text.

A. Transportation. Regulations for driveways, frontage improvements, alley improvements, and other transportation public works and engineering standards shall not be more restrictive for middle housing than for detached single-family residences, except as addressed by this ordinance.

B. Lot Access/Road Standards.

1. *Private driveway access shall be permitted for middle housing development with any number of units when a fire apparatus access road is within 150 feet of all structures on the lot and all portions of the exterior walls of the first story of the buildings, as measured by an approved route around the exterior of the buildings.*

2. *When a fire apparatus road is not within 150 feet of all structures on the lot, subsection (B)(1) does not apply and one of the following conditions must be met:*

   a. *The building is equipped throughout with an approved automatic sprinkler system meeting International Fire Code requirements.*[91]

   b. *No more than two units are accessed via the same private driveway.*

   c. *Fire apparatus access roads cannot be installed because of location on property, topography, waterways, nonnegotiable grades or other similar conditions, and an approved alternative means of fire protection is provided.*

3. *Private driveways shall not be required to be wider than 12 feet and shall not be required to have unobstructed vertical clearance more than 13 feet six inches except when it is determined to be in violation of the International Fire Code or other fire, life, and safety standards, such as site distance requirements.*

4. *Private driveway access, separate from access to an existing home, shall be permitted unless it is determined to be in violation of the International Fire Code or other fire, life, safety standards, such as site distance requirements.*

5. *This subsection is not intended to limit the applicability of the adopted International Fire Code, except as otherwise presented in this subsection.*

[91] This standard references the 2021 International Fire Code.

Discussion

Public works and infrastructure standards that create conditions on development are a "development regulation" subject to RCW 36.70A.635(6)(b). This is supported by the definition of "development regulations" under RCW 36.70A.030.

To comply with RCW 36.70A.635(6)(b), public works and infrastructure development standards cannot be more restrictive for middle housing than for detached single-family residences.

However, some differences are appropriate to account for functional and utilitarian differences between middle housing and detached single-family residences and to promote public health, safety, and welfare. Differences in standards are most appropriate when they are based on the number of dwelling units (not based on the specific type of residential building). Differences are also appropriate where a new development or subdivision consists of multiple middle housing buildings, achieving a similar density and scale typical of multifamily development, resulting in both greater impacts on infrastructure and larger economies of scale can absorb higher costs.

Examples and further considerations are below.

Street Frontage and Alley Improvements

The standard of RCW 36.70A.635(6)(b) means, for example, that permitting for a fourplex cannot be conditioned upon an unpaved alley being paved or curb, gutter, and sidewalk being provided on a street frontage if a detached single-family residence on the same lot would not have the same condition.

However, street frontage and alley improvements could be required based upon technical metrics such as the number of PM peak hour vehicle trips estimated to be generated by a development. For example, one city in Washington requires that where a sidewalk is missing in front of a lot proposed for development the sidewalk must be provided if the development will generate 10 or more PM peak hour vehicle trips.

Cities should also consider addressing deficiencies in their pedestrian and bicycle networks in areas where an increase in density is expected as a result of complying with RCW 36.70A.635. City-led projects, such as creating an entire block of new sidewalk, can often result in better mobility outcomes than waiting for piecemeal improvements contributed by individual private developments.

Lot Access/Road Standards

Cities may need to adjust their standards for shared access provisions, particularly for those lots that don't have direct access to a public right-of-way. The Model Ordinance sets a base minimum width for such a shared access lane of 12 feet and seeks to ensure that such shared access lanes meet International Fire Code requirements. Cities should review current private road or driveway access standards to see if they would accommodate development of one or more housing units in the rear of a lot when the existing home is retained. Are the required widths narrow enough to accommodate access between the side property line and existing house? Do current standards allow the number of units required to be allowed under RCW 36.70A.635(1)? Are there other road standards that might need to be adjusted to work when applied to small lot development?

Water and Sewer

Water and sewer utility purveyors (cities, special districts, and private purveyors) should have flexible requirements for the design of water and sewer connections to middle housing lots and buildings. There are advantages and disadvantages to centralized and shared lateral connections and metering, and there may be

different ownership arrangements, cost implications, and other reasons that require a variety of approaches. For example, a sixplex developer should be able to choose between having a master meter maintained by a homeowner's association and having separate meters for each unit.

When development occurs on a larger lot and the lots resulting from that development can be redeveloped under RCW 36.70A.635, consider requiring installation of water and sewer lines that are sized to accommodate future redevelopment on each lot. This may not be necessary if the lots created are small enough where redevelopment would not be possible.

Stormwater

Stormwater runoff is produced when precipitation falls on impervious surfaces and flows into storm drains and streams. Impervious surfaces include building roofs and pavement. Some configurations of middle housing are relatively compact and do not necessarily increase impervious surface area beyond that of a typical detached single-family residence, and so the impact of redeveloping individual lots may be minimal. Allowing tall structures and requiring little or no surface parking/driveways can potentially reduce impervious surface in general. Because many Washington cities were developed before modern stormwater controls, new development tends to improve stormwater treatment because it includes modern infrastructure.

Cities should also allow on-site and off-site mitigation options when impervious surface resulting from middle housing development could approach or exceed the limitations for a stormwater system. For example, allowing pervious paving and grasscrete for driveways; reducing the amount of required off-street parking; allowing for vegetated roofs, rain gardens, and bioswales which capture or slow stormwater; allowing off-site strategies such as converting unused on-street parking to landscaped areas; allow the building of rain gardens or bioswales such as parks or street planter strips; or allowing modification or expansion of existing stormwater facilities to accommodate additional development.

Note that most development of 5,000 square feet or more of impervious surface on a lot triggers more requirements for on-site stormwater treatment.

Solid Waste

Because trash is a public health and safety concern, it is reasonable to have solid waste standards that scale with the size of development. Large numbers of bins can also be a transportation concern, especially for people walking. Larger middle housing developments may be required to provide a centralized trash dumpster area meeting environmental protection standards instead of each unit being permitted to have individual trash bins.

Solid waste bins in an alley for a six-unit townhouse development. Source: MAKERS.

References

- King County Capacity Charge. Example of a utility fee which is graduated based on the size and type of residential dwelling.
- Department of Ecology municipal stormwater permits. Information on what types of stormwater requirements are in place for jurisdictions across the state.

3.0 – Additional Considerations

3.1 – Existing Zones and Overlay Zones

To implement RCW 36.70A.635, cities have the option: to: (1) amend their existing zones; (2) create a "middle housing overlay zone"; or (3) create a new zone or zones. There are advantages and disadvantages to each approach.

Amending Existing Zoning

Cities may choose to change allowed uses, unit density (units per lot), per-acre density, and other standards in existing residential zones to comply with RCW 36.70A.635. In a typical zoning district predominantly for residential use and where only detached single-family residences are currently allowed, the zoning district's allowed uses must be amended to allow middle housing in general or specific middle housing types.

The existing dimensional standards and other standards in the zone may be retained to apply to both detached single-family residences and middle housing. However, pre-existing dimensional standards may be poorly suited to desired middle housing outcomes. For example, large building setbacks and low building height requirements could make middle housing development challenging, especially on smaller lots. At the same time, adjusting standards for both single-family and middle housing types could allow significantly larger single-family homes (sometimes known as "McMansions") to be built. This can be mitigated by allowing more generous standards for middle housing buildings. When updating dimensional standards, cities should look to the applicable Model Ordinance for their tier for guidance.

In existing multifamily zones, cities will need to adjust density or minimum lot area per unit standards that would preclude the required unit density for their tier on a typical lot, or to establish an exception to allow middle housing to exceed the base maximum density.

Tier	Base Unit Density	Typical Lot Sizes	Density
Tier 2 / Tier 3	2	5,000 SF	17.4 dwelling units per acre
Tier 2 / Tier 3	2	7,500 SF	11.6 dwelling units per acre
Tier 1	4	5,000 SF	34.8 dwelling units per acre
Tier 1	4	7,500 SF	23.2 dwelling units per acre

Overlay Zones

A second option is the use of overlay zones. Creating a difference in dimensional standards between detached single-family residences and middle housing is one reason cities may be interested in creating an overlay zone with standards specific to middle housing. This has the advantage of organizing middle housing standards in a separate code section, at the cost of increased complexity, with overlay provisions that would need to be repeatedly cross-referenced throughout the code. Cities must also consider that every zone subject to RCW 36.70A.635 would need to be shown on the zoning map with an overlay symbol.

New Zones

A third option is to create an entirely new zone or zones that complies with RCW 36.70A.635 to replace existing low-density zones. This provides the opportunity to start with a clean slate and create standards well-calibrated to deliver desired outcomes. Several Washington cities are already undertaking this effort in conjunction with their comprehensive plan updates.

Zone Names

Some cities are also updating zone and land use designation names that eliminate the term "single family" in favor of more generalized terms that emphasize development intensity. Examples include Residential 1, Residential 2, etc., where the lowest number equates to the lowest density; or R-L, R-M, R-H, to emphasize low, medium, and high density; or various versions of "Neighborhood Residential" zones.

3.2 – Major Transit Stops

Types of Major Transit

The definition of "Major transit stop" in RCW 36.70A.030(25) includes stops for at least the following types of transit systems:

- Light rail.
- Commuter rail.
- Amtrak.
- Streetcar.
- Monorail.
- Bus rapid transit (including those stops that are under construction), except for any stop that solely serves express bus service or serves express bus service and other bus services not otherwise meeting the definition of major transit stop.
- Trolley buses.
- Other transit funded or expanded under the provisions of chapter 81.104 RCW.

Note that for accessory dwelling units, under RCW 36.70A.696(8) there is a different definition of "Major transit stop" than for middle housing.

Chapter 81.104 RCW

This chapter of the RCW is for high capacity transportation systems, which are defined in the chapter as "a system of public transportation services within an urbanized region operating principally on exclusive rights-of-way, and the supporting services and facilities necessary to implement such a system, including interim express services and high occupancy vehicle lanes, which taken as a whole, provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation systems operating principally in general purpose roadways."

Chapter 81.104 RCW currently only applies to Sound Transit, which operates high-capacity transportation systems in King, Pierce, and Snohomish counties including light rail, commuter rail, and intercity express buses. All of the transit stops for Sound Transit services, including intercity express buses, are a major transit stop.

Sound Transit is actively modifying its express bus system as light rail and bus rapid transit are built out. Changes to the express bus system undergo public outreach and require the approval of the Sound Transit

Board of Directors. Occasionally, like other transit agencies, Sound Transit also administratively modifies express bus routes and stops via the regular service change process. Cities in King, Pierce, and Snohomish counties should stay updated on Sound Transit's express bus service changes to ensure continued compliance with RCW 36.70A.635.[92]

Fixed Guideway Systems

"Fixed guideway system" is not defined in the Growth Management Act (GMA) but is defined in the Washington Administrative Code (WAC). Under WAC 173-424-110 fixed guideway means "…a public transportation facility using and occupying a separate right of way for the exclusive use of public transportation using rail, **a fixed catenary system, trolley bus**, streetcar, or an aerial tramway."

The trolley bus network operated by King County Metro is an example of a non-rail fixed guideway system.

Bus Rapid Transit (BRT)

Bus rapid transit is not defined in the GMA, the Revised Code of Washington (RCW), or the WAC.

The Puget Sound Regional Council Regional Transportation Plan, which applies to the central Puget Sound region (King, Pierce, Snohomish, and Kitsap counties) describes bus rapid transit as the following: "Bus rapid transit (BRT) routes in the region are distinguished from other forms of bus transit by a combination of features that include branded buses and stations, off-board fare payment, wider stop spacing than other local bus service, and other treatments such as transit signal priority and business access and transit (BAT) lanes."

For further reference, the Federal Transit Administration defines BRT as: "Fixed-route bus systems that operate at least 50 percent of the service on fixed guideway. These systems also have defined passenger stations, traffic signal priority or preemption, short headway bidirectional services for a substantial part of weekdays and weekend days; low-floor vehicles or level-platform boarding, and separate branding of the service. Agencies typically use off-board fare collection as well. This is often a lower-cost alternative to light rail."[93] This is consistent with a similar definition and BRT standards maintained by the Institute for Transportation & Development Policy. [94]

The following services operated by transit agencies in Washington are examples of BRT:

- King County RapidRide routes.
- Sound Transit Stride routes.
- Community Transit Swift routes.
- Spokane Transit Authority City Line.
- C-TRAN BRT routes.

[92] See the Sound Transit "service changes" webpage for the latest information, including an email contact and subscription for service changes. https://www.soundtransit.org/ride-with-us/changes-affect-my-ride/service-changes
[93] "National Transit Database (NTD) Glossary." Federal Transit Administration. https://www.transit.dot.gov/ntd/national-transit-database-ntd-glossary. See also: https://www.transit.dot.gov/research-innovation/bus-rapid-transit
[94] "What is BRT?" Institute for Transportation & Development Policy. https://www.itdp.org/library/standards-and-guides/the-bus-rapid-transit-standard/what-is-brt/

Transit-Oriented Development

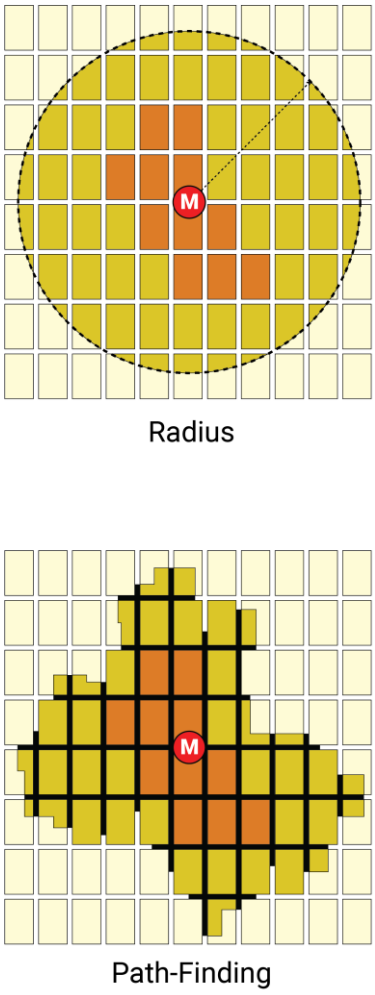
Cities should consider going beyond the middle housing density requirements of RCW 36.70A.635(1) near major transit stops and permitting transit-oriented densities, multifamily housing, and a variety of non-residential uses. The Department of Commerce provides many transit-oriented development (TOD) resources, including grant funding for TOD planning and examples of TOD planning documents.[95] See also the TOD page from the Municipal Research and Services Center.[96]

Measuring Walking Distance

Cities with major transit stops (RCW 36.70.030(25)) must consider both unit density increases, and specific middle housing parking requirements based on distance to the major transit stop. Tier 1 cities must allow at least six units per lot on all lots zoned predominantly for residential use within one-quarter mile walking distance of a major transit stop while Tier 2 cities must allow at least four units per lot within one-quarter mile walking distance of a major transit stop. For all cities subject to RCW 36.70A.635(1), no parking is required for middle housing within one-half mile walking distance of a major transit stop.[97]

Cities can measure distances from major transit stops in at least two different ways. Each method comes with advantages and disadvantages. The chosen methodology should be identified in the code, perhaps within a definition of "walking distance", to ensure the methodology is consistently applied and measured over time. Inclusion of the walking distance area on the zoning map, would offer greater certainty to property owners and others as to which parcels are and are not included in the walking distance requirements of a major transit stop. A potential downside to this approach is the need to go through a procedural process to amend the zoning map should the walking distance need to be amended over time due to physical improvements that change the walking distance or routes.

For both methods it is important to consider whether to place a center point of the major transit stop or use the perimeter of the major transit stop. In general, separate radii should be drawn for each boarding and alighting point if they are separated by more than 100 feet, such as a north-bound and a south-bound bus stops that are located at opposite ends of a block. For large major transit stops, such as a rail station, the most straightforward approach is to locate center points in the middle of the station platforms. However, the optimal approach should always be determined using the best judgement of the jurisdiction.



Conceptual illustration of different methods for measuring walking distance. Source: MAKERS

[95] https://www.ezview.wa.gov/site/alias__2000/37739/library.aspx
[96] "Transit-Oriented Development." Municipal Research Service Center. https://mrsc.org/explore-topics/planning/development-types-and-land-uses/transit-oriented-development
[97] Walking at three miles per hour, a typical speed for an able-bodied person, means a one-quarter distance is a five-minute walk and a half-mile distance is a ten-minute walk.

Radius with Adjustments

In this approach, a circle is centered on the major transit stop and the radius of the circle is the required distance (one-quarter mile or one-half mile). All lots zoned predominantly for residential use which are fully within the circle should be applicable, although some adjustments may be warranted as noted below. Lots which are partially within the circle should also be applicable in order to increase housing capacity near major transit stops, though a city can also set other criteria such as at least 50 percent of a lot or a minimum amount of lot area is in the circle for the lot to be included.

This method has the advantage of being easier to execute than path finding discussed below. A consideration is where precisely the circle is centered for large major transit stops, such as a rail station; the approximate center of the stop or platforms is most straightforward and avoids potential complexities with using pedestrian entrances and property boundaries - however, this should be determined on a case-by-case basis using the best judgement of the city.

This method has the disadvantage of not accounting for conditions that can constrain walkability and reduce the actual area that is in reasonable walking distance of the major transit stop, such as terrain, water bodies, missing pedestrian routes, or infrastructure barriers. Without accounting for these considerations that constrain walking, this method could overstate the walking distance geography. This disadvantage should be overcome by first drawing the circle and then customizing and adjusting it to remove areas which are not reasonably in walking distance due to local conditions. Areas which are removed should have documentation explaining why they are exempt.

Path-Finding

In this approach, actual walking paths extending from a major transit stop for the required walking distance (one-quarter mile or one-half mile) are mapped using a geospatial analysis of the local street network and other pedestrian routes such as off-street trails. All lots zoned predominantly for residential use which touch the walking paths are applicable.

This method has the advantage of more accurately capturing lots within actual walking distance of major transit stops.

This method has the disadvantage of requiring access to geospatial analysis software and the skills, funding, and time to employ it. This method also requires that the analysis be repeated from time-to-time to account for changes to pedestrian infrastructure. In some cases, these disadvantages could be overcome by hiring an outside consultant who specializes in geospatial analysis. Network analysis results created for this purpose should be displayed on zoning maps and made available for download on public geographic information system (GIS) databases, if possible.

Future Major Transit Stops

The definition of “Major transit stop” (RCW 36.70A.030(25)) and references to “Major transit stop” in RCW 36.70A.635 do not specify if or when to apply applicable requirements to most types of future major transit stops which are in planning or construction, with the exception that stops on bus rapid transit routes that are under construction are explicitly included

A jurisdiction may plan for transit-oriented development around future major transit stops. The extent and level of that planning may vary depending on the type of major transit stop. The opening of a light rail station may be preceded by years of station area planning to identify land use and zoning designations. Bus rapid transit facilities may involve a less elaborate and less detailed station area planning process.

Experience has shown that property acquisition and transit-oriented development may occur far in advance of the opening of a major transit stop, particularly for high-capacity transit such as light rail. Cities should consider adopting higher densities (at or above those required by RCW 36.70A.635) near and around major transit stops to allow for a higher level of housing production, even in advance of the major transit stop opening.

For all major transit stops, implementation of parking requirement and unit per lot densities in RCW 36.70A.635 should be implemented as soon as the walking distance measurements can be accurately determined. Final design of the major transit stop should provide sufficient information to determine the one-quarter mile and one-half mile walking distances for lots subject to unit density and parking provisions in the Model Ordinance (see 2.5 – Unit Density and Affordable Housing and 2.6 – Middle Housing Types). At the very latest, implementation of unit density and off-street parking requirements should occur no later than the opening of the major transit stop for use by the public.

In planning for middle housing around major transit stops, jurisdictions should consider that zoning around the major transit may be a mixed use or commercial zone, where the middle housing requirements would not apply. Further, residential zoning around major transit stops may be at a higher density than required under RCW 36.70A.635(1).

3.3 – Declarations and Governing Documents

While cities may review declarations and governing documents as part of a subdivision process or other development application, cities do not have the authority or obligation to enforce or invalidate them. Cities should, however, be aware of the following new provisions in state law and could help educate property owners and associations about these:

- Homeowners' association governing documents created after July 23, 2023, pursuant to Chapter 64.38 RCW may not actively or effectively prohibit the construction, development, or use of additional housing units as required in RCW 36.70A.635.[98]
- Condominium declarations created after July 23, 2023, pursuant to Chapter 64.34 RCW may not actively or effectively prohibit the construction, development, or use of additional housing units as required in RCW 36.70A.635.[99]
- Common interest community declarations and governing documents created after July 23, 2023, pursuant to Chapter 64.90 RCW may not actively or effectively prohibit the construction, development, or use of additional housing units as required in RCW 36.70A.635.[100]
- Association of apartment owners declarations created after July 23, 2023, pursuant to Chapter 64.32 RCW may not actively or effectively prohibit the construction, development, or use of additional housing units as required in RCW 36.70A.635.[101]

Existing declarations and governing documents cannot be amended in order to prohibit middle housing, but different design standards could be applied to middle housing. As cities do not have the authority to invalidate such declarations and governing documents, a challenge to a covenant would come from a third-party lawsuit.

---

[98] RCW 64.38.150
[99] RCW 64.34.110
[100] RCW 64.90.340
[101] RCW 34.32.330

3.4 – State Environmental Policy Act (SEPA)

Under RCW 36.70A.600(1), cities are also encouraged to amend local environmental regulations and take the following actions to increase residential building capacity:

- Adopt a subarea plan pursuant to RCW 43.21C.420
- Adopt a planned action pursuant to RCW 43.21C.440(1)(b)(ii)
- Adopt increases in categorical exemptions pursuant to RCW 43.21C.229 for residential or mixed-use development.
- Adopt maximum allowable exemption levels in WAC 197-11-800(1)

The adoption of ordinances, development regulations and amendments to such regulations, and other non-project actions taken by a city to implement any actions specified in RCW 36.70A.600(1), with the exception of adopting subarea plans, are not subject to administrative or judicial appeal under SEPA (RCW 43.21C).

3.5 – Building Code

Cities should be aware that structures with three or more units fall under the International Building Code (IBC) and are subject to a more extensive and costly standards than one- or two-unit structures which fall under the International Residential Code (IRC). The IRC applies to buildings with one or two dwelling units and townhouses not more than three stories above grade and with a separate means of egress. The difference in middle housing types covered by the two building codes will affect the construction and affordability of middle housing types with three or more units in one structure.

Cities that want to increase flexibility should examine updating their locally adopted version of the IRC and IBC to allow structures with up to six units to be built under the International Residential Code. Cities should also be familiar with RCW 19.27.800, which directs the State Building Code Council to recommend amendments to apply to the IRC to multiplex housing (buildings with up to six dwelling units in a single structure) by November 2026.

References

- A Trailblazing Reform Supports Small-Scale Development in Memphis." Strong Towns. January 2022.
- Memphis, TN Amends Local Building Code to Allow up to Six Units Under Residential Building Code (IRC) to Enable Missing Middle Housing." Opticos Design. January 2022.
- State of North Carolina changes IRC to allow up to four units.
- *The political movement to limit multifamily by limiting the IRC code* (Strong Towns, 2023; Baar, 2007)

3.6 – Subdivisions

General subdivision considerations are noted below. See also the discussion of unit lot subdivisions in User Guide Chapter 4.2.

Subdivision Alterations

Generally, when any person is interested in the alteration of an existing subdivision a subdivision alteration may be required pursuant to RCW 58.17.215. However, a city may provide an exception to the subdivision alteration process for middle housing unit lot subdivisions under RCW 36.70A.635(5) if the unit lots created: 1) do not amend existing conditions of approval of previously platted property; 2) would not result in the violation of a condition on the face of the plat; and 3) would not result in the violation of a covenant of the plat. Otherwise, a new subdivision would be required.

When a subdivision alteration is required, the statute provides options which could make the process easier to work through. A subdivision alteration application only requires the signature of a majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered. If the alteration only impacts a portion of the lots within a subdivision versus a proposal to remove an easement impacting all properties, for example, then only the majority of property owners within the area altered should need to sign the subdivision alteration application.

The statute also allows making a hearing on the subdivision alteration optional. While notice of the alteration is required to be sent to all property owners in a subdivision, a hearing is only required if requested within 14 days of receipt of the notice.

Alleys

Under the provisions of RCW 36.70A.635(6)(b), alleys cannot be required for middle housing subdivisions if they are not also required for single-family subdivisions.

Alleys are useful for the configuration of middle housing because they allow vehicle parking, services, and utilities to be collected in the rear of a development and create a more walkable streetscape in front of the lot. Alleys are particularly helpful for increasing the design flexibility of narrow lots. Cities can consider requiring new subdivisions, including unit lot subdivisions, to include alley-access lots, but this should be balanced with physical and economic considerations. Alleys require more land or shallower lots than a subdivision without alleys. Alleys may also add infrastructure costs for development. On a neighborhood or citywide scale, alleys may have limited benefits if new alleys are not part of a continuous alley network outside of the subdivision.

One option is to only require alleys in new subdivisions over a certain size for economy of scale (e.g., 10 acres) and/or if alleys are part of the existing street network in the vicinity.

3.7 – Appraisals

Washington State appraisers are licensed by the Washington State Department of Licensing. There are different levels of certified or licensed appraisers. RCW 18.140.010, subsections 22-24, dictate an appraiser licensee's scope of practice, as follows.

> (22) "**State-certified general real estate appraiser**" means a person certified by the director to develop and communicate real estate appraisals **of all types of property**.

(23) "**State-certified residential real estate appraiser**" means a person certified by the director to develop and communicate real estate appraisals of all types of residential property of one to four units without regard to transaction value or complexity and nonresidential property having a transaction value as specified in rules adopted by the director.

(24) "**State-licensed real estate appraiser**" means a person licensed by the director to develop and communicate real estate appraisals of noncomplex one to four residential units and complex one to four residential units and nonresidential property having transaction values as specified in rules adopted by the director.

Since RCW 36.70A. 635(1) requires Tier 1 cities to allow at least six units per lot in proximity to transit and when affordable housing is provided, questions have arisen over the ability of State-certified residential real estate appraisers to conduct appraisals for any residential use in a zoning district that permits over four residential units per lot, if that same zone also allows residential uses with four or fewer units.

Commerce and the Washington State Department of Licensing have produced a Frequently Asked Questions (FAQ's) document in response to questions raised by the appraisal industry. This FAQ document may be found on both the Commerce middle housing web page and on the Washington State Department of Licensing website.[102]

3.8 – Property Tax

In Washington state, all real property is subject to tax unless specifically exempted by law. Real property includes land, improvements to land, structures, and certain equipment affixed to structures. Characteristics of real property that influence the value include but are not limited to zoning, location, view, geographic features, easements, covenants, and the condition of surrounding properties.

State law requires that assessors appraise property at 100 percent of its true and fair market value in money, according to the highest and best use of the property (RCW 84.40.030). Fair market value, or true value, is the amount of money that a willing and unobligated buyer is willing to pay a willing and unobligated seller (WAC 390-05-235). All counties revalue properties each year and are required to do physical inspections at least once every six years. If an appraised property value changes, the owner will receive a change of value notice that lists the old and new appraised value of land and improvements. Valuation notices are not tax bills, and an increase in value does not necessarily mean that next year's property taxes will increase at a proportionate rate.

For more information on how residential property is assessed and valued see A Homeowner's Guide to Property Taxes from the Washington State Department of Revenue.

[102] Washington State Department of Licensing. www.dol.wa.gov/professional-licenses

4.0 – Integration with Other State Law Requirements

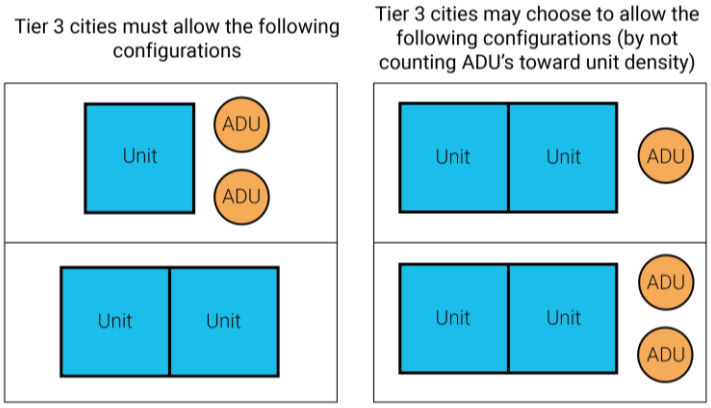
4.1 – Accessory Dwelling Units

House Bill 1337 (chapter 334, laws of 2023) codified in RCW 36.70A.681(1)(c) requires cities and counties to allow at least two accessory dwelling units (ADUs) on all lots that are located in all zoning districts within an urban growth area that allow for single-family homes.

For middle housing, RCW 36.70A.635(5) states, in part:

"... A city subject to the requirements of subsection (1)(a) or (b) of this section must allow at least six of the nine types of middle housing to achieve the unit density requirements in subsection 1.... A city may allow accessory dwelling units to achieve the unit density required in subsection (1) of this section. Cities are not required to allow accessory dwelling units or middle housing types beyond the density requirements in subsection (1) of this section...."

RCW 36.70A.635 (5) states that the middle housing unit density requirements are to be achieved with middle housing types and, if a city chooses, accessory dwelling units. The word "may" indicates that counting ADUs toward middle housing unit density is a policy choice. Section 5 of the Model Ordinances specify that ADUs will not count towards unit density under RCW 36.70A.635(5). However, as a policy choice, jurisdictions may adopt middle housing regulations that provide that accessory dwelling units do count toward unit density, along with middle housing types.



The example configurations also apply to Tier 2 cities where the base unit density is two units on lots zoned predominantly for residential use. Note that ADUs must be allowed to be attached or detached. Source: MAKERS

RCW 36.70A.635(5) also states that jurisdictions, if they choose, are not required to allow accessory dwelling units beyond the unit density requirements of RCW 36.70A.635. This provision could, when middle housing is developed, result in a scenario where less than two accessory dwelling units may be developed on a lot. For instance, a jurisdiction that chooses not to allow accessory dwelling units beyond the unit density required by RCW 36.70.635(1) could preclude ADUs on a lot with a two unit per lot requirement that has been developed with a duplex.

However, RCW 36.70A.635(5) is only specific to the role of ADU's in the context of middle housing development. Nothing in RCW 36.70A.635(5) states that the legislative requirements for accessory dwelling units in RCW 36,70A.681(1)(c) is superseded or not applicable when middle housing is not built on the lot. Therefore, a jurisdiction's development regulations must allow at least two accessory dwelling units in cases where a single family dwelling occupies a lot. This allows for the implementation of RCW 36.70A.681(1)(c).

4.2 – Unit Lot Subdivisions

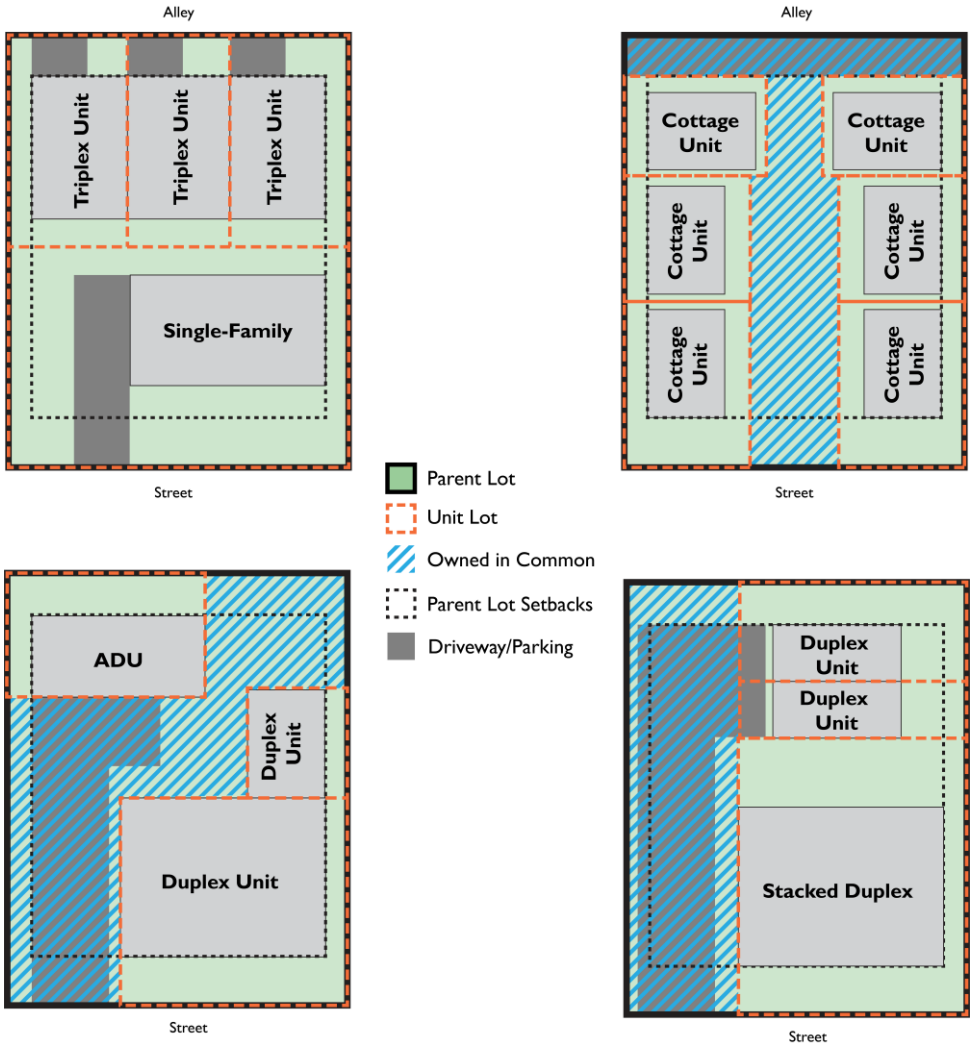
Unit lot subdivisions create new lots similar to a subdivision. The main difference and advantage of a unit lot subdivision is flexibility of zoning dimensional standards, such as minimum lot size, setbacks, and lot

coverage. Additionally, unit lot subdivision allows fee simple ownership of land for all middle housing types. Unit lot subdivisions can be an attractive tool for increasing homeownership opportunities.

Under Senate Bill 5258 (chapter 337, laws of 2023) local jurisdictions must allow for unit lot short subdivisions, as codified in RCW 58.17.060(3):

> *All cities, towns, and counties shall include in their short plat regulations procedures for unit lot subdivisions allowing division of a parent lot into separately owned unit lots. Portions of the parent lot not subdivided for individual unit lots shall be owned in common by the owners of the individual unit lots, or by a homeowners' association comprised of the owners of the individual unit lots.*

Jurisdictions must implement this requirement by their next periodic comprehensive plan update.



Examples of unit lot subdivision configurations. Source: MAKERS

This chapter provides model unit lot subdivision standards with provisions commonly used by Washington cities. See a list of code examples from cities that have adopted unit lot subdivision rules in the References below.

The unit lot subdivision standards below should be supplemented with approval findings, which may or may not be similar to required findings for short subdivision. Jurisdictions may also need to amend their local

project review requirements to specify submittal materials for unit lot subdivision permit applications, should they differ from short subdivision or subdivision requirements.

Example Unit Lot Subdivision Standards

X. Unit lot subdivisions. A lot may be divided into separately owned unit lots and common areas, provided the following standards are met.[103]

1. *Process. Unit lot subdivisions shall follow the application, review, and approval procedures for a short subdivision or subdivision, depending on the number of lots.*

2. *Applicability. A lot to be developed with middle housing or multiple detached single-family residences, in which no dwelling units are stacked on another dwelling unit or other use, may be subdivided into individual unit lots as provided herein.*

3. *Development as a whole on the parent lot, rather than individual unit lots, shall comply with applicable design and development standards.*

4. *Subsequent platting actions and additions or modifications to structure(s) may not create or increase any nonconformity of the parent lot.*

5. *Access easements, joint use and maintenance agreements, and covenants, conditions and restrictions (CC&Rs) identifying the rights and responsibilities of property owners and/or the homeowners' association shall be executed for use and maintenance of common garage, parking, and vehicle access areas; bike parking; solid waste collection areas; underground utilities; common open space; shared interior walls; exterior building facades and roofs; and other similar features shall be recorded with the county auditor.*

6. *Portions of the parent lot not subdivided for individual unit lots shall be owned in common by the owners of the individual unit lots, or by a homeowners' association comprised of the owners of the individual unit lots.*[104]

7. *Notes shall be placed on the face of the plat or short plat as recorded with the county auditor to state the following:*

    a. *The title of the plat shall include the phrase "Unit Lot Subdivision."*

    b. *Approval of the development on each unit lot was granted by the review of the development, as a whole, on the parent lot.*

8. *Effect of Preliminary Approval. Preliminary approval constitutes authorization for the applicant to develop the required facilities and improvements, upon review and approval of construction drawings by the public works department. All development shall be subject to any conditions imposed by the city on the preliminary approval.*

---

[103] RCW 58.17.060(3)
[104] The owner of a detached single-family residence may propose developing middle housing on their lot while retaining ownership of the existing residence using unit lot subdivision.

9. *Revision and Expiration. Unit lot subdivisions follow the revision and expiration procedures for a short subdivision.*

10. *Definitions.*

    a. *"Lot, parent" means a lot which is subdivided into unit lots through the unit lot subdivision process.*

    b. *"Lot, unit" means a lot created from a parent lot and approved through the unit lot subdivision process.*

    c. *"Unit lot subdivision" means the division of a parent lot into two or more unit lots within a development and approved through the unit lot subdivision process.*

Local Policy Choice

Short Subdivisions

RCW 36.70A.635(5) states, in part: *…A city must also allow zero lot line short subdivision where the number of lots created is equal to the unit density required in subsection (1) of this section.* As Tier 1 cities must allow up to six units per lot, then they must allow at least six lots to be created in through a short subdivision process.

Under RCW 58.17.020(6), a "short subdivision" is the division or redivision of land into four or fewer lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership. However, RCW 58.17.020(6) states that the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine.[105] At a minimum, however, Tier 1 cities who limit short subdivisions to four lots need to raise the number to six lots.

All cities and towns interested in streamlining the subdivision process and promoting middle housing should set the maximum number of lots, tracts or parcels that can be created in a short subdivision to nine, as authorized by RCW 58.17.020(6) and encouraged by RCW 36.70A.600(1)(k). Short subdivisions require an administrative process and are typically reviewed and approved on a faster timeline than a subdivision.

Administrative Review of Preliminary and Final Plats

RCW 36.70A.600(1) encourages cities to:

- Adopt standards for administrative approval of final plats pursuant to RCW 58.17.100
- Adopt ordinances authorizing administrative review of preliminary plats pursuant to RCW 58.17.095

Discussion

Unit Lot Subdivision on Vacant Land

A unit lot subdivision may take place prior to development, during development, or afterwards. For example, a homeowner could use a unit-lot subdivision to sell a backyard to a developer who then builds a duplex on the unit lot.

---

[105] This authority was established in 2002 by SB 5832.

Unit Density and Dimensional Standards in Unit Lot Subdivisions

For the purpose of subdividing middle housing units into individual unit lots within a parent lot, the unit density standards apply only to the parent lot. Likewise, minimum lot size, setbacks, lot coverage, parking minimums and maximums, and FAR are applied to parent lots rather than individual lots.

Accessory Dwelling Units in Unit Lot Subdivisions

Two issues associated with ADU's and unit lot subdivisions warrant clarification:

- First, unit lot subdivisions may also be used to create individual unit lots for ADUs, both in attached or detached forms, except in the case where the ADU is stacked over or under the primary residence (stacked ADU forms may alternatively subdivide the ADU as a condominium). See the diagram on page 87 for an example site plan illustrating a detached ADU on its own unit lot.
- Secondly, RCW 36.70A.681(1)(c), requires cities and counties to allow at least two accessory dwelling units (ADUs) on all "lots" that are located in all zoning districts within an urban growth area that allow for single-family homes. The reference to "lots" here effectively means parent lots and not unit lots, as RCW 36.70A.681(1)(e) clarifies that the ADU provisions apply to lots that meet the minimum lot size required for the principal housing unit.

Zero Lot Line

The term "zero lot line" is used in several times in RCW 36.70A.635. State law does not define "zero lot line" nor "zero lot line subdivision."

Cities should interpret "zero lot line" to mean the physical state of a building located, or permitted to be located, on one or more property lot lines. This state can be achieved where a zoning setback requirement is zero feet, within attached townhouse developments on individual lots, or through other code mechanisms. This can also be achieved in a unit lot subdivision.

References

Examples of unit lot subdivision standards adopted by Washington cities:

- Algona – Unit Lot Subdivision Frequently Asked Questions and Tips (Short)
- Arlington Municipal Code 20.44.020
- Bellevue – Unit Lot Subdivision Project Page and Code Amendments
- Edmonds Municipal Code 20.75.045
- Everett Municipal Code 19.27
- Lynnwood Municipal Code 19.40
- Mountlake Terrace Municipal Code 17.09
- Shoreline Municipal Code 20.30.410(B)(4)
- Snohomish Municipal Code 14.215.125
- Spokane Municipal Code 17G.080.065
- Wenatchee Municipal Code 11.32.080

4.3 – Housing Elements

In 2021, the Washington Legislature changed the way communities are required to plan for housing. House Bill 1220 (chapter 254, laws of 2021) amended the Growth Management Act (GMA) housing goal to guide local governments to "plan for and accommodate" housing affordable to all income levels. This significantly strengthened the previous housing goal, which was to "encourage" affordable housing.

HB 1220, codified in RCW 36.70A.020(4). RCW 36.70A.030, RCW 36.70A.070(2), RCW 36.70A.390, RCW 35A.21.430, and RCW 35.22.683 includes direction to the Department of Commerce to provide existing and projected housing needs for communities in Washington, including units for moderate, low, very low and extremely low-income households, and for emergency housing, emergency shelters and permanent supportive housing.

Housing Units by income Band	Area Median Income (AMI)
Emergency housing/shelters	NA
Extremely Low	0-30% AMI, including some permanent supportive housing
Very Low	>30-50%
Low	>50-80%
Moderate	>80-120%
Other	Above 120%

Affordability levels defined in RCW 36.70A.030

Some, but not all, middle housing types allowed under RCW 36.70A.635 can help meet housing needs for moderate income households in the 80-120 percent Area Median Income (AMI) band required under RCW 36.70A.070(2). While there is a wide range of housing affordability outcomes that could be possible through middle housing development given the diverse market conditions across Washington, there are some middle housing types that have been found to be affordable for households in the 80-120 percent AMI band.[106] Those types are:

- Fourplexes
- Fiveplexes
- Sixplexes
- Townhouses
- Stacked flats
- Courtyard apartments
- Cottage housing

[106] This has been documented through technical support materials developed by the Department of Commerce as well as analysis conducted by some individual cities.

Additional review to verify this finding at the local level is recommended, and could be completed through a housing needs assessment created for a comprehensive plan or housing action plan.[107] Other items to address could include:

- Allowing for greater housing choices within areas that have historically excluded by race will also assist in meeting housing element goals to address past practices and policies that have contributed to racially disparate impacts and exclusion.[108]
- While these middle housing types could be built to meet the need for moderate-income housing, development standards that permit and encourage these housing types are required to actually see that housing development occur at income levels that cities and counties are planning for.
- Development standards including parking requirements, floor area allowances, density allowances, minimum lot coverages, setbacks, stormwater management, clearing and other dimensional standards need to be adopted. Additionally, fee structures and review procedures need to encourage these housing types over other less dense and more expensive housing types, such as detached single-family residences.

In Kitsap, King, Pierce and Snohomish Counties, cities can use a pro-forma tool developed by Cascadia Partners in coordination with the Department of Commerce to evaluate how middle housing outcomes could be accounted for using regulatory inputs customized by each city.[109] A jurisdiction can enter information about the density, height, setback, parking and other restrictions of a zone, in combination with land values, and determine what income level housing in that zone could serve. More details on this tool are available on Commerce's middle housing webpage under "Middle Housing Pro forma: Puget Sound Region."[110]

If a city were to conduct its own analysis regarding the combined effectiveness of affordability requirements, density bonuses, and other regulatory and financial incentives a city may determine that it could reasonably count a share of middle housing built in the low income (50-80 percent) AMI income bracket. If there is a precedent in a jurisdiction for affordable housing density bonuses to yield affordable housing, or a comparable jurisdiction with a similar housing market yields such housing, a jurisdiction may use this information to assume a small percentage of new units might develop in the less than 80 percent AMI income bracket.[111]

[107] See the Department of Commerce guidebook for developing a housing needs assessment.
[108] See the Department of Commerce guidance on addressing racially disparate impacts.
[109] Pro-forma tool for PSRC region: https://deptofcommerce.box.com/s/csphjl2vbr47yovggxtszdd5s7w03g9o
[110] https://www.commerce.wa.gov/serving-communities/growth-management/growth-management-topics/planning-for-middle-housing/
[111] https://deptofcommerce.app.box.com/s/1d9d5l7g509r389f0mjpowh8isjpirlh (page 35)

4.4 – Land Use Elements and Land Capacity

Overview

Development feasibility analysis of middle housing types in communities across Washington indicates that there is a wide range of potential development outcomes that could be reasonable to expect over a 20-year planning horizon. Development outcomes, and an understanding of potential development capacity, from middle housing allowances can vary greatly depending on macro-economic conditions as well as local market conditions such as achievable pricing and demand, as well as land availability for vacant, infill, and redevelopment sites.

These analyses conducted across cities in Washington have estimated that a range of three to 15 percent of parcels across a city could reasonably be expected to develop or redevelop as middle housing over a 20-year planning horizon.[112] Analysis conducted by the Puget Sound Regional Council on the development and redevelopment impacts of HB 1110, prior to the bill's passage in 2023, estimated that approximately 9 percent of parcels in Puget Sound Tier 1, Tier 2, and Tier 3 cities could be expected to develop or redevelop over a 20-30 year time period in their mid-high development scenario.[113]

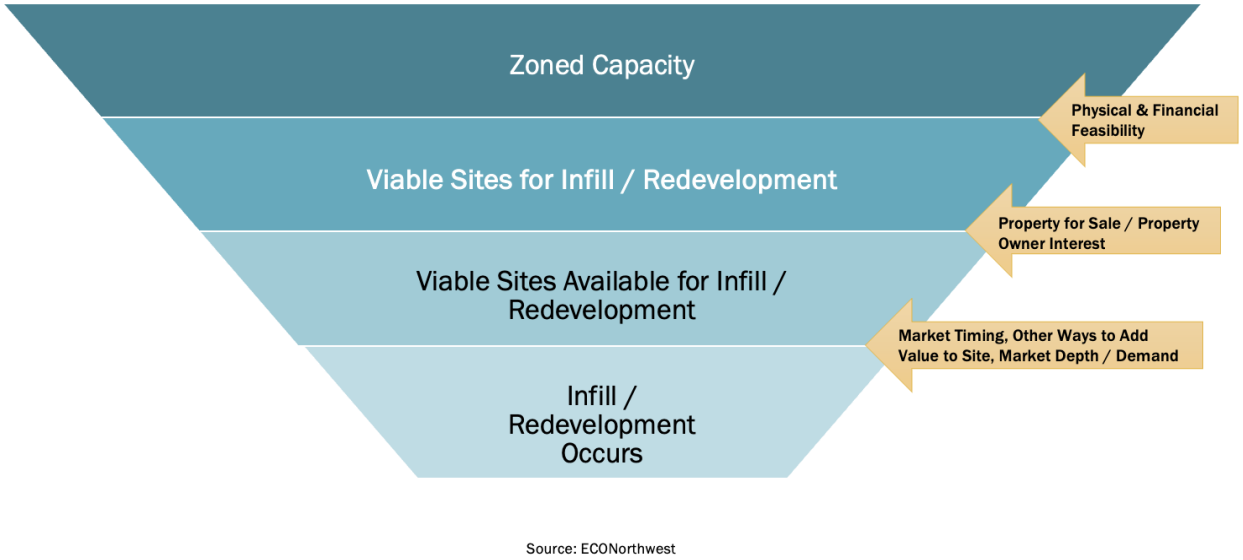
Additionally, analysis of middle housing development feasibility on greenfield sites in cities with high demand for housing indicates that nearly 50 percent of housing types built as part of larger planned development projects could likely be middle housing types with the remaining 50 percent built as traditional detached single-dwelling units.

In conversations with developers there are a variety of reasons why middle housing could make up a large share of overall housing types built on greenfield sites. Middle housing allows developers to capture a broader range of market segments, housing can be offered at lower price points that have more demand when feasible, and it allows developers to increase the overall sales volume and productivity of development on greenfield sites.[114]

Not all sites that are zoned for middle housing will develop or redevelop as middle housing. In addition to sites needing appropriate zoning for development, middle housing also needs to be physically and financially feasible, there needs to be builders who are familiar with building middle housing, sites need to be for sale or have property owner interest in selling, market timing must be appropriate, and there must be sufficient demand for middle housing types in these locations.

---

[112] "Housing Action Plan Implementation." City of Auburn, presentation to Planning Commission, January 4, 2023. https://weblink.auburnwa.gov/External/DocView.aspx?id=485625&dbid=0&repo=CityofAuburn
[113] "ESSBHB1110: Development & Redevelopment Impacts." Puget Sound Regional Council. https://www.psrc.org/media/7556
[114] "2040 Urban Growth Management Decision: Middle Housing Potential." Oregon Metro, MTAC Presentation, May 2023. https://www.oregonmetro.gov/sites/default/files/metro-events/MTAC-meeting-packet-May-17-2023-final.pdf



The land capacity analysis process. Source: ECONorthwest

Considerations for Land Capacity Analysis

The Department of Commerce has developed guidance for cities who are updating their Housing Elements as part of their Comprehensive Plan Updates and has identified high-level guidance for how cities can approach land capacity analysis specific to middle housing law requirements.[115]

When considering land capacity under RCW 36.70A.635, cities should consider:

1. Which lots would be potentially redevelopable (i.e., those without homeowner association restrictions, those that are vacant or have only one dwelling unit, those with a developable area over 2,000 square feet, etc.).
2. Of the lots in Step 1, determine which subset of lots may economically make sense to redevelop. A starting point for this analysis could be where to the land value is greater than the improvement value and the built square footage is less than 1,400 square feet.
3. Estimate the total development potential of lots selected through Step 2, i.e., the maximum number of dwelling units allowed to be developed on these lots net of existing units. Then determine what percentage of the development potential (or net maximum dwelling units) could reasonably be expected to redevelop over the 20-year planning period.

It is also helpful to remember that assumed densities, justifications for assumed densities, and potential development outcomes for middle housing will be different than those that have been observed for detached single dwelling development, multifamily development, and mixed-use development. Cities can reference the anticipated development outcomes identified at the beginning of this chapter (a three to 15 percent parcel redevelopment rate) as comparison points to understand how local market dynamics might impact development outcomes in their own jurisdictions. In identifying assumed development rates for land capacity analysis, cities should incorporate information about local market conditions and real estate market dynamics.

[115] "Guidance for Updating Your Housing Element." Department of Commerce. https://deptofcommerce.app.box.com/s/1d9d5l7g509r389f0mjpowh8isjpirlh

Lessons Learned from Other States

Oregon's Administrative Rules (OAR) for implementation of House Bill (HB) 2001 can provide some guidance on how other states have considered middle housing development and land capacity analyses. The OAR identifies a maximum of three percent increase in the number of dwelling units produced due to middle housing allowances within the specified residential zone(s), above the baseline estimate of land capacity prior to allowing middle housing types within a 20-year planning horizon.

However, Oregon jurisdictions can conduct their own analyses to make a case for a higher share of dwelling units that could reasonably be delivered. Oregon's approach takes a conservative path to account for development capacity while putting the burden of proof on cities to demonstrate why an increased middle housing development rate is warranted.

Some communities in Oregon did opt to conduct analyses to better understand how they can reasonably account for new middle housing allowances required under HB 2001. For example, Washington County found that, on average, three percent of parcels are feasible for development across all urban unincorporated areas but that the rates of development feasibility ranged from less than one percent in some neighborhoods to more than six percent in other neighborhoods. Analysis conducted in Milwaukie, Oregon estimated that eight percent of parcels are feasible for redevelopment while 14 percent of parcels may have feasible infill potential on vacant portions of sites when an existing house was retained.

Future Land Use Designations and Policies

Cities' comprehensive plan land use elements often have policies and land use designations based on unit-per-acre densities. Such unit-per-acre density numbers may be incompatible with the measure of "unit density" per lot introduced by RCW 36.70A.635, as "unit density" does not consider lot size and land area. Cities subject to RCW 36.70A.635 will need to consider how their land use element uses "density" to describe future residential land use designations.

For example, if a Tier 3 City currently describes a single-family land use designation as having a maximum density of five units per acre, such language is now contrary to the provisions of RCW 36.70A.635. Since Tier 3 and Tier 2 cities are subject to a base unit density of two units per lot, the overall density on an approximately 8,700 square foot lot could double and be up to ten units per acre.

Additionally, with the middle housing requirements of RCW 36.70A.635, some cities are rethinking the naming conventions for residential land use designations and zones. While cities are not required to remove "single family" from the names of future land use designations and zones, Commerce recommends that cities choose this route to avoid the strict single-family connotations. For example, the City of Walla Walla has renamed its previous "single family" zones as "Neighborhood Residential" zones" which allow both detached and middle housing types. Other cities are simply using the terms like "Residential Low" and "Residential High" which allow more flexibility to adjust the mix of housing types.

Growth Targets

RCW 36.70A.635(13) states:

> *"Until June 30, 2026, for cities subject to a growth target adopted under RCW 36.70A.210 that limit the maximum residential capacity of the jurisdiction, any additional residential capacity required by this section for lots, parcels, and tracts with critical areas or critical area buffers outside of critical areas or their buffers may not be considered an inconsistency with the countywide planning policies, multicounty planning policies, or growth targets adopted under RCW 36.70A.210."*

Some cities could have a maximum residential capacity dictated by countywide or multicounty planning policies. This provision clarifies that those cities are not in violation of such policies if their maximum residential capacity is exceeded due to the zoning changes that require allowing middle housing related to the critical areas applicability provision in RCW 36.70A.635(8)(a). See related information in User Guide Chapter 2.4.

4.5 – Condominium Buildings

Effective July 23, 2023, Senate Bill 5058 (chapter 263, laws of 2203) updated the definition of a "multiunit residential building" in Washington's condominium construction defect disputes law now exempts buildings with 12 or fewer units and with two stories or less. See RCW 64.55.010(6). This ends requirements for developers of such buildings to:

- Submit a building enclosure design document to the building authority before obtaining a building permit.
- Obtain a building enclosure inspection by a qualified building inspector during construction or rehabilitative construction.
- Obtain a building enclosure inspection by a qualified building inspector before conveyance of a condominium unit.

These requirements for condominium buildings can add time and expense to the development of condominium units, as compared to middle housing or multifamily buildings with rental units which do not have these requirements. This may have the effect of encouraging the development of 2-12 unit condominium buildings, including middle housing buildings, and therefore increasing homeownership opportunities.

Condominium law has also been recently amended to accelerate the timelines for the right-to-cure process when claims are made for construction defects and requires a written report from a qualified construction defect professional. The bill also exempts condominium and townhouse sales to first-time homebuyers from the real estate excise tax. See RCW 64.50.030(1) through (3) and RCW 82.45.240.

To leverage these bills, cities and counties could consider where there are opportunities to allow up to twelve units per lot and provide other incentives for condominium and townhouse development.

4.6 – "Family" Definition

Effective July 25, 2021, cities and towns may not limit household occupancy based on the number of unrelated persons. This may affect the definition of "family" and related terms like "single family" and "multifamily" in local development regulations.

RCW 35.21.682 was added by Senate Bill 5235 with this provision:

> *"Except for occupant limits on group living arrangements regulated under state law or on short-term rentals as defined in RCW 64.37.010 and any lawful limits on occupant load per square foot or generally applicable health and safety provisions as established by applicable building code or city ordinance, a code city may not regulate or limit the number of unrelated persons that may occupy a household or dwelling unit."*

Cities may limit allowed occupant load per square foot for health and safety reasons. Refer to the state building code and any local building code amendments.[116]

4.7 – Impact Fees

Senate Bill 5258 (chapter 337, laws of 2203) amended RCW 82.02 to require local jurisdictions that apply impact fees to adopt a fee schedule that reflects the proportionate impact of new smaller housing units based on the number of trips generated (for transportation impact fees only), the square footage of a dwelling unit, or the number of bedrooms in a dwelling unit. See RCW 82.02.060(1). Under RCW 82.02.060(10), jurisdictions must comply with these requirements within six months after the jurisdiction's next periodic comprehensive plan update required under RCW 36.70A.130.

Also note that RCW 36.70A.681(1)(a) requires impact fees for accessory dwelling units to not be greater than 50 percent of the fees that would be charged for the principal unit on the lot (typically a single-family home).

More information on impact fees is available from the Municipal Research and Services Center (MRSC).[117] Local jurisdictions in Washington may impose impact fees for one or more of the following:

- Public streets and roads.
- Publicly owned parks, open space, and recreation facilities.
- School facilities.
- Fire protection facilities.

Middle housing dwelling units are generally smaller than new detached single-family residences. Many cities vary impact fees by the size or type of the unit and exempt certain types of single-family residences from some or all impacts fees when they are trying to promote that housing type. In some cases, impact fee schedules make no distinctions for middle housing types and by default they may be classified as single-family, therefore incurring higher costs and a disincentive to their development. As noted above, fee structures which accommodate middle housing can help make middle housing more economically feasible to develop.

Cities and counties updating impact fees which may affect non-city service providers (e.g., school districts) should coordinate with those service providers on impact fee schedules and capital facilities plans.

[116] WAC 51-50-1004
[117] "Impact Fees." Municipal Research Service Center. https://mrsc.org/explore-topics/planning/land-use-administration/impact-fees

The table below shows a general example of park impact fees imposed on different housing unit types and options a city might take to implement for adjustment under RCW 82.02.060(1).

Unit Type	Current Per-Unit Parks Impact Fee	Option 1 $2.35/square foot	Option 2 $1,100 per bedroom
Single-family home, 2,500 square feet, four bedrooms	$4,000 ($1.60/SF)	$5,875	$4,400
Townhouse unit, 1,500 square feet, three bedrooms	$4,000 ($2.66/SF)	$3,525	$3,300
Fourplex unit, 1,100 square feet, two bedrooms	$2,500 ($2.27/SF)	$2,585	$2,200
Apartment unit, 900 square feet, two bedrooms	$2,500 ($2.77/SF)	$2,115	$2,200

Example of park impact fees adjusted per RCW 82.02.060(1)

4.8 – Shoreline Management Act and Middle Housing

Shoreline master program (SMP) provisions are not subject to the goals, policies, and procedures set forth in the Growth Management Act (GMA).[118] The policies, goals and provisions of the Shoreline Management Act (SMA) and its implementing rules are the sole basis for determining compliance of a SMP with the GMA, with the exception of the internal consistency requirements of RCW 36.70A.070 and 36.70A.040(4).

As such, SMPs and areas within shoreline jurisdiction governed by the SMA are not automatically subject to the middle housing minimum density requirements provided for in RCW 36.70A.635.

Shoreline Master Programs (SMP)

Development in shorelines and shorelands is governed under the city, town, or county's SMP. SMP's are locally adopted and approved by the Washington State Department of Ecology (Ecology) as the state shoreline management policy and regulatory mechanism for managing new uses and developments within shoreline jurisdiction. Zoning code provisions can be applied within shoreline jurisdiction, but they must be reviewed through the SMP's permitting structure, the SMP's policies, and the SMP's applicable bulk, dimensional, performance, use and other standards.

Chapter 90.58 RCW and RCW 36.70A.480 require that SMP provisions be coordinated and consistent with other local land use controls, including the comprehensive plan and zoning regulations. WAC 173-26-211(3) establishes the following criteria to help local governments evaluate the consistency between SMP environment designation provisions and corresponding comprehensive plan elements and development regulations:

[118] 36.70A.480(2)

- Provisions do not preclude one another,
- Adjacent uses are compatible with one another, and
- Infrastructure and services provided in the comprehensive plan are sufficient to support allowed shoreline uses.

Residential Uses in SMPs

While SMP residential development provisions apply to single-family, multifamily and the creation of new residential lots through land division, only single-family residential uses are listed as priority uses under the policy of the SMA[119]. SMPs may also include definitions and standards specific to different types of residential development (for example, single-family versus multifamily) based on use compatibility and ecological function protection requirements.

In cases where residential uses are allowed in shoreline jurisdiction, Chapter 90.58 RCW and Chapter 173-26 WAC requirements must be met. SMP policies and regulations must assure allowed residential uses and densities are consistent with the shoreline environment they are located within and that there will be no net loss of shoreline ecological functions. Such provisions may include specific regulations for setbacks and buffer areas, density, shoreline armoring, vegetation conservation requirements, and, where applicable, on-site sewage system standards for residential development and uses.

Middle Housing

Although residential uses are allowed in many Shoreline Environmental Designations (SEDs), middle housing requirements are not appropriate in all SEDs. Not all residential uses or densities will be appropriate in every SED.

Middle housing cannot be developed in shoreline areas unless permitted within the SMP. Middle housing provisions in zoning codes under RCW 36.70A.635 should be excluded from shoreline jurisdiction to avoid any internal consistency issues related to provisions that preclude one another.

As an example, if the required middle housing building types and zoning densities under RCW 36.70A.635 were applied to a “Conservancy” shoreline environment designation that only allows single family residential uses, and not middle housing residential uses, then that could create a situation where both the zoning code and SMP shoreline environment designation requirements cannot be met on a property. To avoid this potential internal conflict, middle housing zoning code provisions should clearly state that they do not apply within shoreline jurisdiction.

Middle housing densities are not necessary for residential reasonable use within shoreline jurisdictions and should not be included as project components in shoreline variance permit applications.

Under RCW 36.70A.635(6)(c), cities subject to the middle housing legislation may apply different permit and environmental review procedures to middle housing than apply to single family detached houses in areas subject to shoreline jurisdiction.

[119] RCW 90.58.020

Next steps/assistance

Local governments can plan for middle housing within shoreline jurisdictions during the next SMP periodic review update. In doing so, local governments should consider how shoreline review and permit procedures will apply to single-family, middle housing, and multifamily residences.

Ecology is also presently in the rulemaking process to amend Washington Administrative Code Chapters 173-18, -20, -22, -26, and -27 under the Shoreline Management Act to address several topics, including recently passed laws such as those related to increasing residential density and accessory dwelling units.

Local governments wanting to address middle housing under the authorities of their SMP should consult Washington State Department of Ecology guidance and work closely with their Ecology shoreline planner.

References

- Department of Ecology – Shoreline Master Programs
- Department of Ecology – Shoreline Planners Toolbox
- Department of Ecology – Shoreline Master Programs Handbook
- Department of Ecology – Shoreline planning and permitting staff
- Municipal Research Service Center – Shoreline Management Act

5.0 – Affordable Housing

The housing affordability requirements of RCW 36.70A.635 are included in Section 5 of the Model Ordinance. The requirements apply to Tier 1 and 2 cities, and they function as a unit per lot density increase as described in the table below.

City Tier	Base Unit Density	Increased Unit Density with Affordable Housing
Tier 1	4 units per lot	6 units per lot, at least 2 of which must be affordable housing
Tier 2	2 units per lot	4 units per lot, at least 1 of which must be affordable

Affordability requirements of RCW 36.70A.635

What qualifies as "affordable housing" is defined in the Growth Management Act (GMA) under RCW 36.70A.030(5). Affordable housing means units that have costs, including utilities other than telephone, that do not exceed 30 percent of the monthly income of a household whose income does not exceed the following percentages of median household income adjusted for household size, for the county where the household is located, as reported by the United States Department of Housing and Urban Development. The U.S. Department of Housing and Urban Development (HUD) publishes this information as the Median Family Income, also known as Area Median Income (AMI), for each county annually [120]. The required affordability thresholds for the middle housing law are:

- Rental housing: 60 percent AMI
- Owner-occupied housing: 80 percent AMI

For affordable owner-occupied housing, cities should clearly define affordable sales prices by bedroom size. Sales prices should use a budget-based approach that considers the same factors used by a mortgage lender to qualify a borrower. The budget-based approach includes other monthly housing costs like property taxes, insurance, and homeowner association or condominium owner association fees.

For affordable rental housing, if a city has an existing methodology for determining rental housing affordability it should apply that program. Alternatively, cities should refer to the U.S. Department of Housing and Urban Development methodology for determining rental limits.

5.1 – Development Feasibility Analysis

Development feasibility analysis conducted in support of this User Guide indicates that affordability requirements in RCW 36.70A.635 could lead to affordable housing development in some markets. The analysis included Tier 1 and Tier 2 cities across the state and used the pro forma assumptions listed in Appendix A - Middle Housing Pro Forma Assumptions. Depending on local market conditions, the affordable housing requirements may work well in some Washington cities and less well in others.

The analysis was conducted using a residual land value (RLV), or sometimes referred to as land budget approach, which models the budget a developer would have available to purchase land after accounting for all other predicted costs and revenues. If the land budget is equal to or greater than land costs in the area of a project, the proposed development is likely feasible. If the land budget is zero, the development would only be

[120] See Question 2 in the HUD income limits FAQ here: https://www.huduser.gov/portal/datasets/il.html#faq_2024

feasible if the land were provided for free or with an equivalent subsidy. If the land budget is negative, the developer would require an additional subsidy to make the proposed development financially feasible.

This feasibility analysis found that in most markets across Washington, affordable ownership is the most feasible and subsequently, the affordability provisions are most likely to occur for ownership. Layering other affordable housing programs such as a Multifamily Tax Exemption (MFTE) program could potentially increase development value, particularly for rental housing. However, MFTE programs need to be administered within defined residential target areas authorized under RCW 84.14.040 and cities should carefully consider program affordability, set asides, and program lengths to ensure compliance across multiple programs authorized under RCW 36.70A.540.

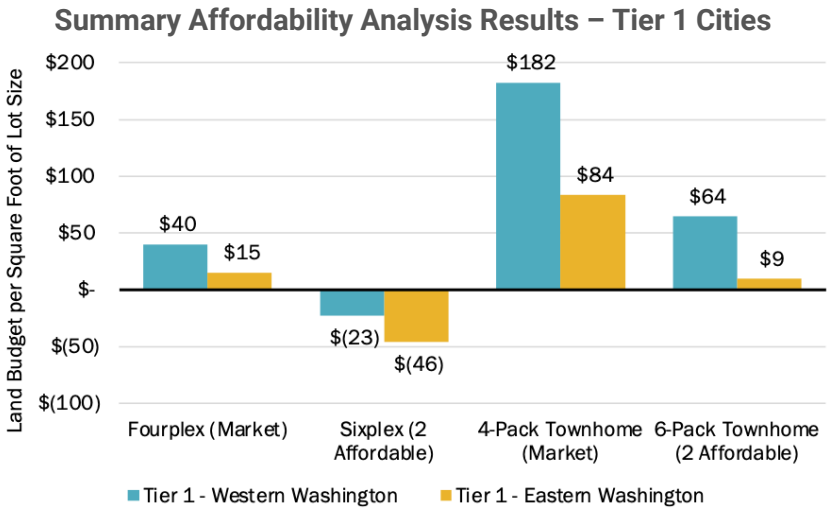
Tier 1 Cities

The Tier 1 analysis included these housing prototypes:

- Market rate fourplex (rental)
- Sixplex with two affordable units (rental)
- Market rate four-pack townhouse (ownership)
- Six-pack townhouse with two affordable units (ownership)

The analysis was run with the FAR limits included in the final Model Ordinance, which allows up to 1.6 FAR for six units. The key findings are:

- The market rate fourplex, market rate four-pack townhome, and six-pack townhome with affordable unit prototypes are likely feasible under current market conditions in Tier 1 cities.
- The market rate four-pack townhome is more feasible than the six-pack townhome with affordable units in both eastern and western Washington Tier 1 cities.
- Sixplex rental developments with two affordable units are likely not feasible in the Tier 1 cities evaluated. There is no feasibility incentive for a traditional market rate developer to pursue a six-unit building with affordable units over a four-unit all market rate. However, additional FAR would allow a non-profit developer to still compete for land and build larger family-sized units.



Source: ECOnorthwest, 2023.

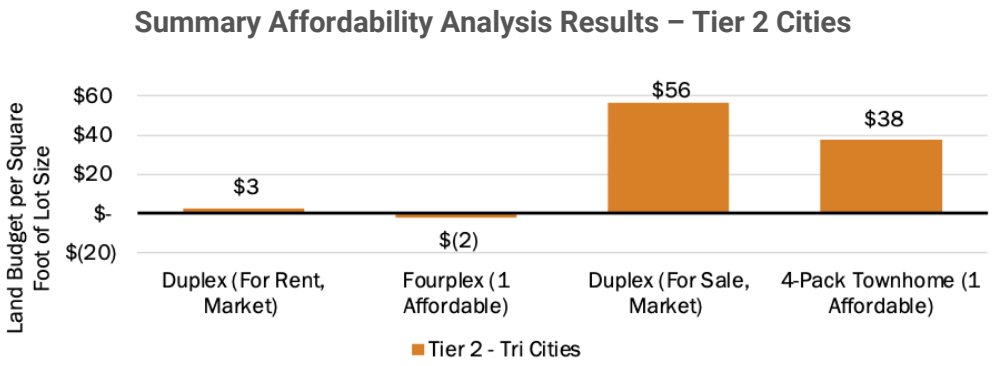
Tier 2 Cities

The Tier 2 analysis included these housing prototypes:

- Market rate duplex (rental)
- Fourplex with one affordable unit (rental)
- Market rate duplex (ownership)
- Four-pack townhouse with one affordable unit (ownership)

With the FAR limits of 1.2 for four units included in the Model Ordinance, the key findings are:

- Duplexes for rent are marginally feasible and fourplexes for rent (with one affordable unit) are just slightly not feasible given current market conditions in the Tier 2 city evaluated. However, there is a relatively small feasibility gap between the duplex for rent and fourplex for rent (with one affordable unit); this could indicate that if the rental markets strengthened in Tier 2 cities, a market rate builder could reasonably see similar levels of return for both prototypes.
- Both ownership duplexes and four-pack townhomes (with one affordable unit) are likely feasible in Tier 2 cities. However, because market rate duplexes are more feasible than the four-pack townhomes with one affordable unit, market rate developers do not necessarily have an incentive to build denser under current market conditions.



Source: ECOnorthwest, 2023.

Considerations for Affordable Housing Program Implementation

Administering Affordable Homeownership Programs

Administering an affordable homeownership program is generally more complex than managing an affordable rental program. Cities need to establish a mechanism for preserving affordability when homeowners decide to sell their properties. These resale restrictions can be administratively complex and require ongoing monitoring and enforcement. The potential for property appreciation in homeownership programs can also create complexities related to how appreciation is managed and shared between the homeowner and the program, as it can affect long-term affordability goals.

Homeownership also comes with ongoing expenses such as property taxes, homeowners' insurance, maintenance, and repairs. These costs can be unpredictable and add complexity for program administrators and homeowners, especially if homeowners are not adequately prepared for these financial responsibilities.

To administer and manage an affordable homeownership program, cities have a few options:

- Cities can comply with the requirements of RCW 36.70A.635 by developing and administering their own program for monitoring and administrating its affordable homeownership program. This approach is likely to have significant ongoing staff and administration costs for cities that do not have a current affordable housing program or do not have capacity to manage a new program.
- Cities can pay a third party to monitor and audit its affordable homeownership program. Enforcement of non-compliance is still required by city staff.
- Cities can engage with a regional partner to manage and monitor the program, such as South King Housing and Homelessness Partners (SKHHP) or A Regional Coalition for Housing (ARCH).
- Cities can engage with a local housing authority to manage and monitor the program. Examples at the city and county level include Spokane Housing Authority, Renton Housing Authority, Housing Kitsap, and Housing Authority of Snohomish County.[121]
- The city can engage with a community land trust (CLT) or other nonprofit to manage the program. In the CLT model, a nonprofit organization acquires and holds land specifically for the purpose of creating and maintaining affordable homes. Homebuyers can purchase the houses built on the CLT-owned land but do

[121] "PHA Contact Information." United States Department of Housing and Urban Development. A list of public housing authorities in Washington: https://www.hud.gov/sites/dfiles/PIH/documents/PHA_Contact_Report_WA.pdf

not own the land itself. Instead, they enter into long-term, renewable land leases, which keeps the cost of homeownership lower.

As a best practice, cities should conduct regular annual audits to ensure compliance with affordability requirements. In particular, cities will need to ensure that all income certifications were completed and valid at the point of sale. Cities have a few options for enforcing compliance with program affordability requirements:

- Ensure the city has a deed restriction on file with the title of any affordable for-sale parcel.
- The city could put a lien on the property title equivalent to the lost affordability value; fees collected from liens could either go into an affordable housing fund or create a revolving enforcement and auditing fund.
- The city could combine affordable units in a development under one affordability contract such that if one unit lost its affordable status all affordable units in the property would convert to market rate, which would incentivize all property owners in the development to enforce income certification and other requirements.

Administering Affordable Rental Programs

Many cities across Washington currently regulate compliance for affordable rental housing programs through various programs that are authorized under RCW 36.70A.540. These programs might include inclusionary zoning programs, MFTE programs, or other regulatory or process incentive programs to encourage affordable housing. For cities that do have existing affordable housing compliance processes and programs, administration of the affordability requirements of RCW 36.70A.635 for rental housing could be a relatively low burden.

However, if Tier 1 and Tier 2 cities do not have an existing affordable housing program, the same options for compliance and administration exist as for homeownership programs. These options include:

- Developing and administering a city-managed program for monitoring and administrating its affordable rental housing program. For cities that do not have an existing affordable housing rental program, this approach is likely to have significant ongoing staff and administration costs. For cities that have an existing affordable housing program under RCW 36.70A.540, this is the most straightforward option.
- The city can pay a third party to monitor and audit its affordable rental housing program. Enforcement of non-compliance is still required by city staff.
- Cities can engage with a regional partner to manage and monitor the program, such as SKHHP or ARCH.
- Cities can engage with a local housing authority to manage and monitor the program. Examples at the city and county level include Spokane Housing Authority, Renton Housing Authority, Housing Kitsap, and Housing Authority of Snohomish County.
- The city can engage with a nonprofit or third-party provider to administer and manage the program.

Tools to Encourage Affordable Housing Development

Cities should consider a variety of other ways to increase housing affordability that could be implemented in coordination with RCW 36.70A.635. Examples of strategies to promote affordable housing:

- Reduce or eliminate off-street parking requirements
- Increase State Environmental Policy Act (SEPA) threshold exemptions, adopt a SEPA infill exemption, and/or adopt a SEPA planned action
- Expedite the permit and subdivision process
- Adopt a multifamily tax exemption program
- Waive or reduce development review and utility connection fees
- Fund affordable housing with local taxes and/or levies
- Identify surplus land available for affordable housing development

References

- Middle Housing in Washington. Technical Committee #4 Meeting. October 24, 2023.
- City of Tacoma – Draft *Home in Tacoma Phase 2 Feasibility Analysis*. Planning Commission Presentation. October 18, 2023.
- Department of Commerce – Middle Housing and Attainability in the Puget Sound Region
- Department of Commerce – Planning for Housing in Washington
- Department of Commerce – Guidance for Updating Your Housing Element
- Department of Commerce – Guidance for Developing a Housing Action Plan
- Department of Commerce – Guidance for Developing a Housing Needs Assessment
- AARP – Discovering and Developing Middle Housing. October 2023.
- South King County Housing and Homelessness Partnership – King County Regional Housing Action Plan. 2020.

5.2 – Alternatives to Middle Housing Affordability Requirements

Local Affordable Housing Programs

Cities may adopt additional affordable housing incentives that are part of other affordable housing programs under RCW 36.70A.540. For cities that already have adopted affordable housing incentive program(s) under RCW 36.70A.540, the terms of that program govern to the extent they vary.

Under an RCW 36.70A.540 program, affordability requirements for rental units cannot exceed 80 percent area median income (AMI), and for ownership units cannot exceed 100 percent AMI.

Cities will need to meet the set-aside (share of units affordable), depth of affordability (AMI levels by tenure), and duration of affordability requirements identified in RCW 36.70A.635 but can layer additional process, regulatory, or financial incentives that might be available and applicable through an existing adopted RCW 36.70A.540 program.

The key affordability requirements of RCW 36.70A.635 that must be met include:

- Tier 1 cities allow 6 units per lot when at least 2 units are affordable
- Tier 2 cities allow 4 units per lot when at least 1 unit is affordable
- Affordable rental housing available at or below 60 percent AMI
- Affordable owner-occupied housing available at or below 80 percent AMI
- 50-year duration of affordability for both affordable rental housing and affordable owner-occupied housing

Note that the 50-year affordability requirement that exists in RCW 36.70A.635(2)(a) is also present in RCW 36.70A.540 with the option to accept payment in-lieu of continuing affordability. The affordable housing requirements of RCW 36.70A.635(3) do not preclude cities from requiring any development to provide affordable housing, either on-site or through an in-lieu payment, nor limit the city's ability to expand such a program or modify its requirements.

Cities may not allow a fee in-lieu option for middle housing development as an alternative to meeting the on-site affordability requirements established by RCW 36.70A.635.

Affordable Housing on Religious Organization Owned Property

Under RCW 36.70A.545, cities must allow an increased density bonus for any affordable housing development located on property owned or controlled by a religious organization. Affordable housing under RCW 36.70A.545 must be occupied exclusively by households earning 80 percent AMI or less and must keep affordability requirement for at least 50 years.

Enacting a density bonus under RCW 36.70A.545 would not exempt cities from affordability requirements of RCW 36.70A.635, but it would provide the opportunity for cities to adopt additional affordable housing incentives that allow more middle housing units on religious organizations' property. Middle housing development may be well suited to religious organizations with modest resources and/or those that are located in low-intensity residential neighborhoods.

This type of density bonus oriented toward middle housing could include:

- Increasing the maximum building height limit to 40 feet
- Increasing the maximum floor area ratio limit to 1.8 and having no lot coverage standard
- Reducing side setbacks to three feet and/or reducing front setbacks to between five and seven feet

- Allowing at least 10 units per lot or have no maximum density (allowing as many units that can fit within the building envelope)

6.0 – Alternative Compliance

RCW 36.70A.635 and RCW 36.70A.636 provide cities with three paths to compliance, summarized below. The following chapter includes a more detailed description of each option. Note that the Department of Commerce is currently (as of October 2024) engaged in a Washington Administrative Code (WAC) rulemaking process that addresses alternative compliance, so this chapter should be treated as interim guidance.

The three paths to compliance include:

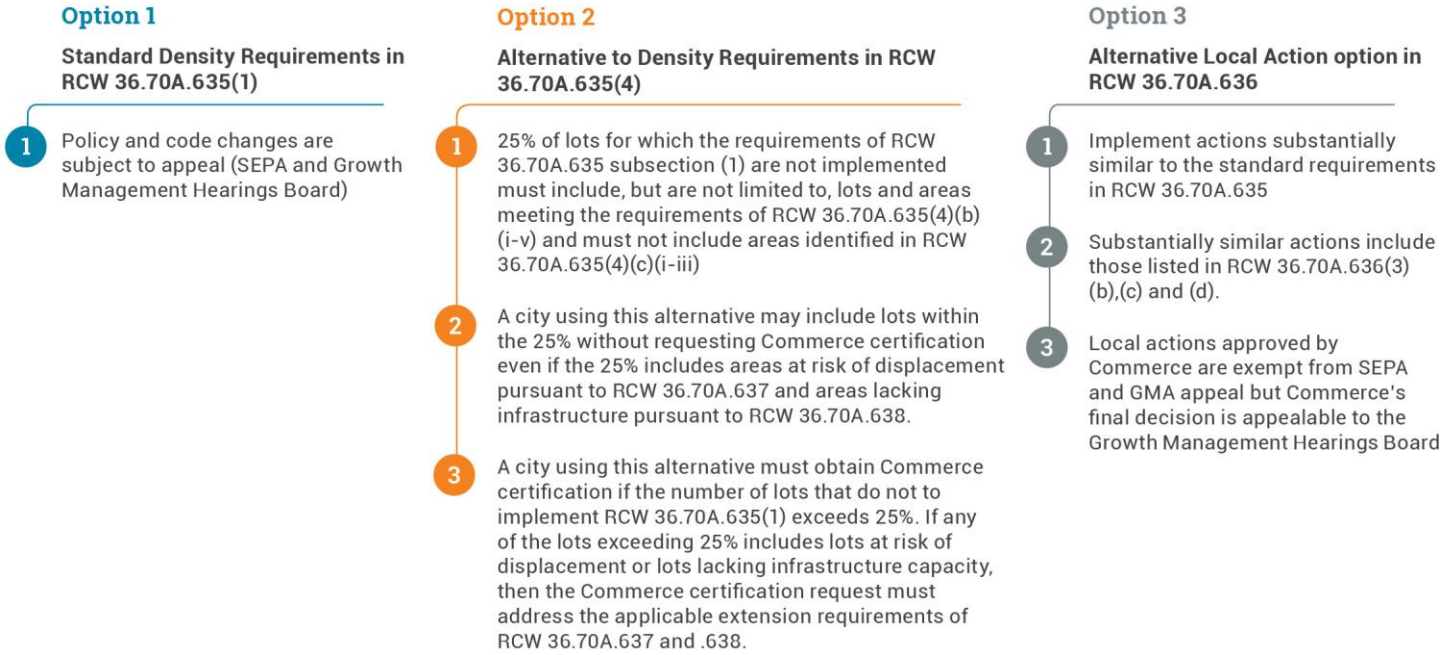
1. Standard Density Requirements in RCW 36.70A.635(1)

2. Alternative to Density Requirements – RCW 36.70A.635(4). This alternative permits a city to implement the unit per lot density requirements (required in RCW 36.70A.635(1)) for "at least" 75 percent of lots in the city that are primarily dedicated to single-family detached housing units.

   RCW 36.70A.635(4)(b) identifies areas and lots where the unit per lot density requirements will not apply using the alternative to density requirements approach. RCW 36.70A.635(4)(c) identifies areas which may not be included in lots not subject to the requirements of RCW 36,70A.635(1), unless the area has been identified as an area at higher risk of displacement under RCW 36.70A.070(2)(g).

   The opportunity also exists for a jurisdiction to exclude more than 25 percent of the lots primarily dedicated to single-family detached housing units from the requirements of RCW 36.70A.635(1); however, doing so will require Commerce certification.

3. Alternative local action option – RCW 36.70A.636(3). This alternative permits a city to seek approval from the Department of Commerce of alternative local actions "substantially similar" to the requirements in RCW 36.70A.635(1). This option requires submittal and approval by the Department of Commerce. When this process is utilized, actions taken by the city are not subject to administrative or judicial appeal under the State Environmental Policy Act (SEPA).



Cities must choose one of the three paths. Requirements are found in RCW 36.70A.635, 36.70A.636, 36.70A.637 and 36.70A.638

6.1 – Alternative to Density Requirements

RCW 36.70A.635(4)

The "alternative to density requirements" approach provides an option for jurisdictions to allow middle housing on certain lots primarily zoned for single-family detached housing units. The alternative allows at least 75 percent of the "lots in the city that are primarily dedicated to single-family detached housing units" to be subject to the unit per lot requirements of RCW 36.70A.635(1) without Commerce certification. A percentage less than 75 percent (i.e. excluding more than 25 percent of the lots subject to RCW 36.70A.635(1)) may be permitted subject to Commerce certification.

"Lots in the city that are primarily dedicated to single-family detached housing units" is not defined in the Growth Management Act (GMA). To identify these lots, Commerce recommends that those residential zoning districts where the permitted density is primarily focused on single-family detached housing be included. This would generally be zoning districts with permitted densities at ten dwelling units per acre or less. Even if middle housing is permitted in these zones, lower density zones are those primarily dedicated to single-family detached units. Once identified, these lots will be the basis for how the "at least" 75 percent of the lots is determined.

Eligible Lots

This alternative requires identification of which lots must be included in the "at least" 75 percent of the lots and the 25 percent or less of the lots that may be excluded from the unit per lot requirements of RCW 36.70A.635(1).

Except for areas identified at higher risk of displacement under RCW 36.70A.070(2)(g), lots that must be included in the "at least" 75 percent include:

- Any areas for which the exclusion would further racially disparate impacts or result in zoning with a discriminatory effect;
- Any areas within one-half mile walking distance of a major transit stop;
- Any areas 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.

Jurisdictions should therefore review displacement risk work completed as part of its housing element update to ensure this requirement under RCW 36.70A.635(4)(c) is met.

The 25 percent or less of the lots to be excluded from the unit per lot requirements of RCW 36.70A.635(1) must include but are not limited to:

- Lots, parcels, and tracts designated with critical areas or their buffers that are exempt from the density requirements as provided in RCW 36.70A.635(8); provided that, only those lots where the critical areas or their buffers would preclude middle housing development should be excluded. A lot, parcel or tract that has a critical area or buffer on it, that could be developed for middle housing, should be considered as a lot eligible for middle housing development.
- Any portion of a city within a one-mile radius of a commercial airport with at least 9,000,000 annual enplanements[122]

[122] This only applies to Seattle-Tacoma International Airport. Enplanement data is provided by the Federal Aviation Administration: https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger

- Areas subject to sea level rise, increased flooding, susceptible to wildfires, or geological hazards over the next 100 years[123]
- Areas within the city for which the department has certified an extension of the implementation timelines under RCW 36.70A.637 due to the risk of displacement. This certification is not required if the number of lots excluded from the unit per lot requirements of RCW 36.70A.635 is less than 25 percent of the total number of lots being considered in this alternative.
- Areas within the city for which the department has certified an extension of the implementation timelines under RCW 36.70A.638 due to a lack of infrastructure capacity. This certification is not required if the number of lots excluded from the unit per lot requirements of RCW 36.70A.635 is less than 25 percent of the total lots being considered in this alternative.

Further, the reference in RCW 36.70A.635(4)(b) to "must include but are not limited to" means that jurisdictions may include lots in the 25 percent that are not specifically listed in RCW 36.70A,635(4)(b)(i)-(v).

Vacant lots meeting the criteria above can be included in the 25 percent or less category.

Procedures

25 Percent or Less

If 25 percent or less of the lots in the city that are primarily dedicated to single-family detached housing units are excluded from the middle housing implementation requirements of RCW 36.70A.635, then there is no need for certification from Commerce, even if lots in the 25 percent include areas at high risk of displacement or lack infrastructure capacity. When submitting for 60-day review of the proposed action in accordance with RCW 36.70A.106, the city must include documentation showing that the percentage of lots subject to middle housing requirements, and those excluded for the reasons listed in RCW 36.70A.635(4)(b), meet the applicable 75 percent/25 percent provision.

More than 25 Percent

If more than 25 percent of the lots in the city that are primarily dedicated to single-family detached houses are proposed to be excluded from middle housing implementation under this alternative, then the city must seek a timeline extension certification from Commerce, whether or not any portion of entire area exceeding the 25 percent includes areas at high risk of displacement or areas lacking infrastructure capacity. Should any of the lots excluded from the requirements of RCW 36.70A.635(1) include areas at risk of displacement or areas lacking infrastructure capacity, then additional information to support their inclusion and a timeline extension consistent with RCW 36.70A.637 and/or .638, must be provided in a certification request to Commerce. (See discussion on Displacement Risk and Lack of Infrastructure Capacity further below.)

This certification must occur before submitting the notice of intent to adopt required under RCW 36.70A.106. A certification request must include documentation of percentages for areas subject to middle housing requirements, percentages of those areas excluded, an analysis of how applicable areas were determined for a delay in middle housing implementation, and other information Commerce has identified as needed to process a request for certification.

Displacement Risk

Cities choosing the alternative to density requirements of RCW 36.70A.635(4) that propose to exclude more than 25 percent of the lots primarily dedicated to single family-detached houses , and which includes areas at

[123] See resource links below.

risk of displacement under RCW 36.70A.637, must complete the anti-displacement analysis and seek Commerce timeline extension certification as required by RCW 36.70A.070(2).

In requesting an extension, the city must create and submit a plan identifying its anti-displacement policies. The plan must identify when the policies will be implemented, which must be before their next implementation progress report required by RCW 36.70A.130(9). The area (mapped) at risk of displacement for which the extension is being requested, as determined by the anti-displacement analysis, will need to be provided.

Lack of Infrastructure Capacity

Cities choosing the alternative to density requirements of RCW 36.70A.635(4) that propose to exclude more than 25 percent of the lots in the city that are primarily dedicated to single-family detached houses, and which includes areas lacking infrastructure capacity under RCW 36.70A.638, must address the requirements of RCW 36.70A.638.

Extensions of implementation deadlines for areas due to lack of infrastructure capacity requires that the city demonstrate a lack of capacity to accommodate the density required in RCW 36.70A.635(1) for one or more of the following: water, sewer, stormwater, transportation infrastructure, including facilities and transit services, or fire protection services.

In requesting an extension, the city will need to document the extent of the infrastructure capacity deficiency, include one or more improvements within its capital facilities plan to adequately increase capacity or identify the applicable special purpose district responsible for providing the infrastructure, if the infrastructure is provided by a special purpose district. Additional applicable water system plan information is required for timeline extension requests associated with lack of water supply to allow for Commerce evaluation of the request.

RCW 36.70A.638 includes specific provisions related to water and sewer. These provisions can be interpreted to be applicable not only to the time extension provisions of RCW 36.70A.638, but to middle housing in general.

Water

RCW 36.70A.638(9) states that a city may limit the area subject to the requirements of RCW 36.70A.635 to match current water availability in the following circumstances, if the area is zoned predominantly for residential use:

- The area is currently served only by private wells
- The area is served by a group A or group B water system with less than 50 connections[124, 125]
- A city or water provider(s) within the city do not have an adequate water supply or available connections to serve the zoning increase required under RCW 36.70A.635

This does not, however, affect or modify the responsibilities of cities to plan for or provide urban governmental services.

---

[124] Group A water systems information from the Washington Department of Health: https://doh.wa.gov/community-and-environment/drinking-water/water-system-assistance/tnc-water-systems

[125] Group B water systems information from the Washington Department of Health: https://doh.wa.gov/community-and-environment/drinking-water/water-system-assistance/group-b

Sewer

RCW 36.70A.638(11) states that areas zoned predominantly for residential use currently served only by on-site sewage systems may limit development to two units per lot on lots subject to RCW 36.70A.635, until either the landowner or local government provides sewer service or demonstrates a sewer system will serve the development at the time of construction. As with the case for water discussed in the preceding paragraph, this does not affect or modify the responsibilities of cities to plan for or provide urban governmental services.

It is recommended that the city's code allow the number of units provided for in RCW 36.70A.635(1) but that a supplemental standard, footnote, or other notation be provided stating that the absence of sewer service may limit redevelopment until such time sewer infrastructure improvements are made.

Resources

Displacement risk

- Washington Department of Commerce – Draft Displacement Risk Map
- Puget Sound Regional Council – Displacement Risk Mapping

Racially disparate impacts and racially restrictive covenants

- Washington Department of Commerce – Guidance to Address Racially Disparate Impacts
- King County – Unlawful, discriminatory restrictive covenants
- University of Washington – Racial Restrictive Covenants

Infrastructure planning

- Washington Department of Commerce – Capital Facilities Planning
- Capital facility and utility planning requirements: RCW 36.70A.070(3)-(4) and WAC 365-196-415 through WAC 365-196-420

Flood risk

- National Weather Service – Flooding in Washington
- Washington Emergency Management Division – Flood Hazard Profile
- Federal Emergency Management Agency – Flood Maps
- First Street Foundation – Flood Factor

Sea level rise risk

- Washington Department of Ecology – Sea Level Rise
- Washington Coastal Network – Sea Level Rise Resources
- National Ocean Service – 2022 Sea Level Rise Technical Report

Wildfire risk

- First Street Foundation – Fire Factor
- U.S. Forest Service Pacific Northwest Research Station – A "New Normal" for West-Side Fire
- U.S. Forest Service – Wildfire Risk to Communities
- Federal Emergency Management Agency - Wildfire

Geological hazard risk

- Washington Department of Natural Resources – Geologic Hazard Maps
- Pacific Northwest Seismic Network – Liquefaction Hazard Maps

6.2 – Alternative Local Action

RCW 36.70A.636

This option is appropriate for jurisdictions which have taken actions by certain dates that are substantially similar to the requirements of RCW 36.70A.635. Where applicable to a city, this could reduce further legislative action needed to comply with the law.

Two alternative local action options, summarized as follows, are identified in RCW 36.70A.636. Both actions require approval by Commerce to be in effect.

Alternative Local Action 1

A city has adopted comprehensive plan policies, by January 1, 2023, which are consistent with the provisions of RCW 36.70A.635 and took action to adopt permanent development regulations "substantially similar" to the requirements of RCW 36.70A.635 by July 23, 2024 (RCW 36.70A.636(3)(b)). Actions deemed substantially similar include those 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 specific provisions of RCW 36.70A.635 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 for projects that incorporate dedicated affordable housing.

Alternative Local Action 2

A city has adopted comprehensive plan policies or development regulations, by January 1, 2023, that have significantly reduced or eliminated residentially zoned areas that are predominantly single family (RCW 36.70A.636(3)(c)). A Commerce finding of "substantially similar" can be met if the city's permanent development regulations were adopted by July 23, 2024 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 specific provisions of RCW 36.70A.635 were adopted; and
- Allow for middle housing throughout the city, rather than just in targeted locations; and
- Allow for additional density near major transit stops, and for projects that incorporate dedicated affordable housing.

Commerce "Substantially Similar" Determination

As part of the review process of Alternative Local Action 1 and Alternative Local Action 2 listed above, the Department of Commerce may determine that the combined impact of the adopted comprehensive plan and development regulations are substantially similar to the requirements of RCW 36.70A.635 even if the city's request does not demonstrate the criteria listed in RCW 36.70A.636 (3)(b) and (c) are met.

This determination is only possible when the Department of Commerce determines that the city has clearly demonstrated that the adopted development regulations will allow for a greater increase in middle housing production in single-family zones than would be allowed through implementation of RCW 36.70A.635. This will require a capacity analysis prepared by the city comparing middle housing production between RCW 36.70A.635(1) and the city's plan/development regulations applicable to single-family zones.

SEPA Safe Harbor

If a city choses a local alternative action listed above and is required to make a SEPA threshold determination for that action, the action is exempt from administrative or judicial appeal.[126] An action by Commerce to approve or reject actions under the option are appealable to the Growth Management Hearings Board, however.

[126] RCW 36.70A.636(3)(e)

Appendix A - Middle Housing Pro Forma Assumptions

Prepared by ECONorthwest in January 2024.

Building Form

	Duplex	Duplex	Fourplex	Townhomes (4)	Sixplex	Townhomes (6)
Tenure	Rental	Ownership	Rental	Ownership	Rental	Ownership
Units	2	2	4	4	6	6
Floors	2	2	2	3	3	3
Gross Residential Area	4,200 SF	4,200 SF	4,795 SF	5,250 SF	5,985 SF	6,000 SF
Unit size	1,900 SF	1,900 SF	1,099 SF	1,313 SF	998 SF	1,000 SF
Bedrooms	3-bed	3-bed	2-bed	2-bed	2-bed	2-bed

Monthly Market Rate Rent Revenue Assumptions

	Duplex	Fourplex	Sixplex
Market Rate			
Tier 1 - Western Washington	$3,069	$1,775	$1,450
Tier 1 - Eastern Washington	$2,565	$1,594	$1,347
Tier 2 - Tri Cities	$2,660	$1,758	$1,437
Rents Affordable at 60% of MFI			
Tier 1 - Western Washington	$1,829	$1,430	$1,430
Tier 1 - Eastern Washington	$1,473	$1,153	$1,153
Tier 2 - Tri Cities	$1,640	$1,283	$1,283

Sales Price Assumptions

	Duplex	Townhomes (4)	Townhomes (6)
Market Rate			
Tier 1 - Western Washington	$779,000	$478,225	$354,825
Tier 1 - Eastern Washington	$560,000	$376,030	$310,000
Tier 2 – Tri-Cities	$640,000	$400,290	$330,000
Sales Prices Affordable at 80% of MFI			
Tier 1 - Western Washington	$398,717	$355,518	$355,518
Tier 1 - Eastern Washington	$287,973	$269,596	$269,596
Tier 2 - Tri-Cities	$339,834	$309,833	$309,833

Hard Costs per Square Foot

	Duplex	Duplex	Fourplex	Townhomes (4)	Sixplex	Townhomes (6)
Tier 1 - Western Washington	$185	$185	$196	$187	$194	$183
Tier 1 - Eastern Washington	$176	$176	$186	$177	$184	$174
Tier 2 - Tri-Cities	$181	$181	$192	$183	$190	$179

Other Cost Assumptions

Item	Value	Calculation Basis
Vacancy costs, market rate units	5%	Of rental revenues
Vacancy costs, affordable units	2%	Of rental revenues
Operating costs, rental units	20%	Of rental revenues
Commission cost from unit sales	3%	Of sales revenues
Surface parking stalls	$7,000	Per stall
Private garage parking	$22,000	Per stall
Soft Costs	25%	Of hard costs
Contingency	4.0%	Of Hard + Soft Costs
Developer Fee	5.0%	Of total development cost
Debt Service Coverage Ratio	135%	Of net rental revenues