

Housing WAC Listening Sessions Q & A Summary

The Department of Commerce held informal listening sessions on March 19 and April 1, 2024 to receive public input on preliminary draft changes to Washington Administrative Code (WAC) Chapters 365-196 and 365-199. The following questions and answers are from those sessions. You can also watch video of the listening sessions, read background information and submit comments (until May 3, 2024 for this round) [here on our web page](#).

Process-related

1. How does Commerce decide what to include in WACs?

We ask ourselves what is required to implement the statute and whether rule changes and definitions need to be incorporated in the WAC or belong in other kinds of guidance. If there are multiple possibilities to address an issue, we will likely discuss it in guidance, fact sheets or a comment letter; if it's a straight-forward single answer then we will include it in WAC as needed for clarification on RCW. We incorporate changes with an eye to user-ease, consistency and not having to flip back and forth between the Revised Code of Washington (RCW) and the WAC.

2. This seems really late to implement for 2024 cities. Will 2024 cities get any flexibility in adoption deadlines to accommodate this change?

Commerce does not have the authority to adjust any timelines. Absent the WAC, we recommend using the underlying statute as a guide. You may also contact your regional planner to provide individualized advice in the interim.

3. How does Commerce create rules and make determinations that are least burdensome for residents and local governments complying with the Administrative Procedures Act?

This is a careful consideration throughout our rule-making practice. Our rules are not regulatory in nature and provide a presumptive path to statutory implementation, but not a mandatory one. If a particular local government wishes to pursue a preferable or less burdensome approach, they may do so.

4. Does Commerce hold local communities accountable for implementing what has been discussed here today?

Local governments are required to provide 60-day notice to Commerce that they plan to adopt new or amended plans or regulations. Commerce does not approve comprehensive plans or regulations, but we have the opportunity to identify areas of risk or concern, or kudos for a job well-done. Other stakeholders may also comment, and the statute offers an appeal mechanism to the Growth Management Hearings Boards (GMHB) after a plan or regulation is adopted. Commerce may also appeal an adopted item to the GMHB but, must obtain permission from the Governor to do so.

Some portions of the rule govern areas of the RCW where Commerce must approve local government actions. Any formal approval action taken by the department must be guided by any applicable WAC.

- 5. Will rules include criteria for Commerce approval and certification of exceptions, extensions and other considerations? Cities with periodic updates due in 2024 are trying to balance priorities without knowing criteria for approval and certification.**

Commerce is in the process of developing criteria for various approvals and certifications in the housing bills. We will include proposed criteria with the filing of the formal proposed rule-making (CR 102) later this year. In the meantime, in May 2024 Commerce intends to release interim application materials for processes requiring Commerce certification and approval. All requirements are in the RCW and the application process will be as straightforward as possible.

Definitions-related

- 6. Are “Patterns of Development” defined and did you compare across other statutes and WACs to review related definitions? We would love to have a good definition to point to.**

We did not define “patterns of development.” Detailed recommendations for determining “patterns of development” are included in draft WAC 365-196-310(4)(c)(vii). These recommendations should provide adequate guidance to determine the impacts of “patterns of development” when reviewing urban growth areas. In addition to considerations for urban growth areas, the term “patterns of development” is used when considering the rural element (WAC 365-196-425 (1)). If a definition for patterns of development is included for urban growth areas, it might also require addressing the guidance in the rural element to avoid confusion. We must keep in mind how a proposed definition might impact related definitions. If you think it is important to define within the WACs, please provide additional information through our [comment form found here](#).

- 7. Is “unit lot subdivision” defined?**

We do not define “unit lot subdivision” but [RCW 58.17.060](#) describes it. If you think it is important to define within the WACs, please provide additional information through our [comment form found here](#).

Parking-related

- 8. Regarding Empirical Parking Studies for addressing parking standards for middle housing, ADUs and co-living, what would constitute a safety concern? We would like guidance to define that if possible.**

Commerce is currently under contract with a consultant and working with stakeholders to develop a guidance document on what will be required when a jurisdiction submits an empirical parking study certification request to Commerce. Key terms will be discussed in the guidance document. We will open a public comment period on the guidance document, separate from the WAC update process.

- 9. SB 5290 (2023-2024) requires a significant change to permit processing in the state. Local governments are in need of guidance for these requirements, is there such guidance in this draft?**

Commerce has convened an advisory team to help with overall implementation of SB 5290. During the next year, Commerce will release a legislative report as required. Following the release of the legislative report, the advisory committee and WAC amendments as needed. Commerce has a webpage where we to share this work which you can visit [at this link](#).

- 10. Best practices for implementing parking requirements with unit lot subdivisions would be helpful to provide.**

Commerce does not generally consider the WAC to be the right place for best practices. A best practice necessarily entails one possible method among many to achieve a goal. We plan to develop additional guidance on unit lot subdivisions this fall, as well as guidance on the new statutory requirements governing parking. Best practices will be included in this guidance.

11. Will the guidance for parking take into consideration electric vehicle needs? For example not requiring/providing a garage or off street space would limit the ability to recharge an electric vehicle in most residential neighborhoods?

[RCW 36.70A.695](#), adopted in 2009, requires certain jurisdictions to allow electric vehicle charging infrastructure and authorizes cities to adopt incentive programs to encourage the retrofitting of existing structures with the electrical outlets capable of charging electric vehicles. However, requiring electrical vehicle parking was not considered as it is not within the scope of this work and is not a statutory requirement. Commerce cannot by rule create a new requirement where one does not exist in statute.

There were several parking changes adopted this session that we address in the rules. Commerce will conduct a separate rule-making process on climate topics and there may be considerations of electric vehicle infrastructure in that rule-making. Also, our energy division continually reminds us about the need for facilities for electric vehicles and we will continue to work closely with them on this. Best practices regarding EV charging regulations can be included in our parking guidance.

Disparate Impacts-related

12. Where did the requirement for planning for all economic segments come from?

[RCW 36.70A.020\(4\)](#) – GMA housing goal, and [RCW 36.70A.070\(2\)](#), the housing element requirements.

13. Regarding the transportation element, is it a "shall" or a "should" for identifying and addressing racially disparate impacts?

RCW [36.70A.070\(2\)\(e\)](#) requires that the housing element: identify local policies and regulations that result in racially disparate impacts, displacement, and exclusion in housing, including (ii) Disinvestment; and (iii) Infrastructure availability.

Subsection (f) requires that the element: Identify and implement policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion in housing caused by local policies, plans, and actions. Many of the racially disparate impacts, especially those resulting from disinvestment and infrastructure availability, result from practices governed by the transportation or capital facilities element.

Therefore, jurisdictions shall address and begin to undo these impacts by adopting policies and identify actions to address disparate impacts in the housing element. Any infrastructure disinvestment should be addressed in the transportation, capital facilities, or, if appropriate, utilities elements in terms identifying and prioritizing investments and how to support infill development.

Commerce has produced guidance on this important work which is [available here](#). Communities can also find health outcomes by zip code on the [Department of Health webpage here](#).

14. Follow up, if the WAC cannot create new requirements, and is just to implement the RCW, if that bill didn't touch the transportation element at all, isn't it a bit of a reach to add it to that element?

HB 1220 requires that jurisdictions must look at racially disparate impacts to infrastructure. In addition, the varying GMA elements must work together and be consistent with one another. To note a need to

integrate with the other elements, Commerce is not creating a new requirement but is identifying a necessary implication of a statutory requirement. Identifying how different statutory requirements interrelate and are read together is a critical function of the WAC.

Density, infrastructure and Fees-related

15. Has Commerce considered density minimums/maximums for areas outside urban growth areas?

In the past, such as the WAC revision of 2010, we asked jurisdictions whether they want this and we received a resounding “no.” Our Rural Element Guidebook is currently under update, in the meantime [RCW 36.70A.070\(5\)](#) is your best reference.

16. What does Commerce have in mind for cities to do related to adequate infrastructure for Middle Housing? I see you mentioned in WAC 365-196-415 Capital Facilities Element, where lack of infrastructure limits infill development, cities required to allow middle housing must plan for adequate infrastructure. What exactly did Commerce have in mind for cities to do since it's generally the utility agencies that are responsible for energy production?

Functional plans for facilities such as sewer, water, or stormwater must be summarized in the local capital facilities or utilities plan element. Commerce will evaluate whether and how we respond to this question in the WAC.

17. How will Commerce provide guidance on adequate infrastructure for growth?

We recommend the following WACs related to infrastructure, which have limited updates in this set of changes. Commerce is also developing review criteria for any jurisdiction that chooses the alternative density approach to meeting middle housing requirements. This will be addressed in the first draft in July.

- WAC 365-196-320 providing urban services
- WAC 365-196-415 capital facilities element
- WAC 365-196-420 utilities element
- WAC 365-196-825 potable water

Commerce is also leading a task force to make recommendations on integrating water, sewer, school, and port districts into the growth management act planning process. The task force shall build upon the findings, concepts and recommendations in recent reports, including the "collaborative roadmap phase III" report prepared for the department in 2023 and the "roadmap to Washington's future" issued by the William D. Ruckelshaus Center in 2019.

18. How are you looking at handling proportional impact fee vs. new ADU half impact fee? If you adopt a proportional impact fee based on say, bedrooms or square footage, now you've got the ADU that can only be half a unit, how are you defining a unit if you're already in proportion? They seem to be in conflict a little.

We will consider this in our rule. Please provide a written comment. If you think there is a best way implement this requirement, please include that in your comment. A full treatment of the issue may be too much detail to include in the WAC considering the variables. We are currently collecting good examples on this, and would love to hear what you are considering.

19. Regarding the bonus density for religious institutions, the RCW provides that cities may establish a program after an institution expresses interest, and do not have to adopt a bonus before it is

requested. I didn't see any reference to that in the WAC. Was there any consideration of including mention of that?

[RCW 36.70A.545](#) requires that jurisdictions fully planning under the Growth Management Act must allow an increased density bonus consistent with local needs for any affordable housing development of any single-family or multifamily residence located on real property owned or controlled by a religious organization.

Generally, we looked to update the WAC with a focus on usability for the local government and provided options for when additional density bonus for affordable housing on property owned or controlled by religious institutions was requested of a local government. If you have alternative language you'd like to suggest, we are open to changes in the section.

Miscellaneous

20. How do these regulations hold up to covenants? Do the WACs include anything about future covenants not being restrictive?

HB 1337 (laws of 2023) added [RCW 64.32.320](#) and [330](#), and [RCW 64.34.110](#) and [.120](#) require that after July 23, 2023, declarations (aka homeowner association covenants) may not restrict the development of new accessory dwelling units in areas subject to state requirements on such housing types. It also protects a local government if such development is permitted inconsistent with covenants. However, the law does not supersede any existing covenants that restrict ADUs.

21. How are state protected and culturally modified trees on private property dealt with in land use?

Commerce does not have jurisdiction over such issues; we recommend contacting the Department of Archeology and Historic Preservation (DAHP). Culturally modified trees relate to cultural practices of area tribes. We recommend consulting with neighboring tribes to learn if this was a traditional cultural practice and to collaboratively develop policies governing culturally modified trees.