Chapter 365-196 WAC

GROWTH MANAGEMENT ACT—PROCEDURAL CRITERIA

FOR ADOPTING COMPREHENSIVE PLANS AND DEVELOPMENT REGULATIONS

Last Update: 3/29/23

Draft Copy for Informal Public Review: March 2024

PART EIGHT: DEVELOPMENT REGULATIONS

WAC 365-196-800 Relationship between development regulations and comprehensive plans – No changes proposed

WAC 365-196-805 Timing of initial adoption – No changes proposed

WAC 365-196-810 Review for consistency when adopting development regulations- No changes proposed

WAC 365-196-815 Conservation of natural resource lands – No changes proposed

WAC 365-196-820 Subdivisions.

(1) Regulations for subdivision approvals and dedications, must require that the county or city make written findings that "appropriate provisions" have been made for the public health, safety, and general welfare, including open spaces, drainage ways, streets or roads, alleys,

other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and all other relevant factors, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school; and that the public use and interest will be served by the platting of such subdivision and dedication.

(2) All cities, towns, and counties must:

(a) Include in their short plat regulations procedures for unit lot subdivisions allowing division of a parent lot into separately owned unit lots.

(b) Portions of the parent lot not subdivided for individual unit lots must 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.

(**3**~~2~~) Regulations for short plat and short subdivision approvals may require written findings for "appropriate provisions" that are different requirements than those governing the approval of preliminary and final plats of subdivisions. However, counties and cities must include in their short plat regulations and procedures provisions for considering sidewalks and other planning features that assure safe walking conditions for students who walk to and from school.

(**4**~~3~~) Regulations for subdivision approvals may require that the county or city make additional findings related to the public health, safety and general welfare to the specific listing above, such as

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protection of critical areas, conservation of natural resource lands, and affordable housing for all economic segments of the population.

(5~~4~~) In drafting development regulations, "appropriate provisions" should be defined in a manner consistent with the requirements of other applicable laws and with any level of service standards or planning objectives established by the ~~city or~~ county **or city** for the facilities involved. The definition of "appropriate provisions" could also cover the timing within which the facilities involved should be available for use, requiring, for example, that such timing be consistent with the definition of "concurrency" in this chapter. See WAC 365-196-210.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-820, filed 1/19/10, effective 2/19/10.]

WAC 365-196-825 Potable water – No changes proposed

WAC 365-196-830 Protection of critical areas – No changes proposed

WAC 365-196-832 Protection of critical areas and voluntary stewardship program - No changes proposed

WAC 365-196-835 Relocation assistance for low-income tenants - No changes proposed

WAC 365-196-840 Concurrency - No changes proposed

WAC 365-196-845 Local project review and development agreements.

(1) The local Project Review Act (chapter 36.70B RCW) requires counties and cities planning under the act to adopt procedures for fair

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and timely review of project permits under RCW 36.70B.020(4), such as ~~building permits,~~ subdivisions, binding site plans, planned unit developments, conditional uses, and other permits or other land use actions. The project permitting procedures ensure that when counties and cities implement goal 7 of the act, under RCW 36.70A.020(7), applications for both state and local government permits should be processed in a timely and fair manner.

(2) Consolidated permit review process.

(a) Counties and cities must adopt a permit review process that provides for consolidated review of all permits necessary for a proposed project action. The permit review process must provide for the following:

(i) A consolidated project coordinator for a consolidated project permit application;

(ii) A consolidated determination of completeness;

(iii) A consolidated notice of application;

(iv) A consolidated set of hearings; and

(v) A consolidated notice of final decision that includes all project permits being reviewed through the consolidated permit review process.

(b) Counties and cities administer many different types of permits, which can generally be grouped into categories. The following are examples of project permit categories:

(i) Permits that do not require environmental review or public notice, and may be administratively approved;

(ii) Permits that require environmental review, but do not require a public hearing; and

(iii) Permits that require environmental review and/or a public hearing, and may provide for a closed record appeal.

(c) Local project review procedures should address, at a minimum, the following for each category of permit:

(i) What is required for a complete application;

(ii) How the county or city will provide notice of application;

(iii) Who makes the final decision;

(iv) How long local project review is likely to take;

(v) What fees and charges will apply, and when an applicant must pay fees and charges;

(vi) How to appeal the decision;

(vii) Whether a preapplication conference is required;

(viii) A determination of consistency; ~~and~~

(ix) Whether a permit is exempt from review under development regulations because it is the residential repurpose of an existing building; and

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(~~x~~**x**) Requirements for provision of notice of decision.

(d) A project permit applicant may apply for individual permits separately.

(3) Project permits that may be excluded from consolidated permit review procedures. A local government may, by ordinance or resolution, exclude some permit types from these procedures. Excluded permit types may include:

(a) Actions relating to the use of public areas or facilities such as landmark designations or street vacations;

(b) Actions categorically exempt from environmental review, or for which environmental review has already been completed such as lot line or boundary adjustments, and building and other construction permits, or similar administrative approvals; or

(c) Other project permits that the local government has determined present special circumstances**, such as affordable housing development or the repurposing of an existing building to a residential use**.

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(4) A local government must exclude project permits for interior alterations from site plan review, provided that the interior alterations do not result in the following:

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(a) Additional sleeping quarters or bedrooms;

(b) Nonconformity with federal emergency management agency substantial improvement thresholds; or

(c) An increase in the total square footage or valuation of the structure thereby requiring upgraded fire access or fire suppression systems.

(5) Interior alterations must still comply with applicable building, mechanical, plumbing or electrical codes.

(6) For purposes of this section, "interior alterations" include construction activities that do not modify the existing site layout or its current use and involve no exterior work adding to the building footprint.

(~~4~~**7**) RCW 36.70A.470 prohibits using project review conducted under chapter 36.70B RCW from being used as a comprehensive planning process. Except when considering an application for a major industrial development under RCW 36.70A.365, counties and cities may not consolidate project permit review with review of proposals, to amend the comprehensive plan, even if the comprehensive plan amendment is site-specific. Counties and cities may not combine a project permit application with an area-wide rezone or a text amendment to the development regulations, even if proposed along with a project permit application.

(~~5~~**8**) Consolidated project coordinator.

(a) Counties and cities should appoint a single project coordinator for each consolidated project permit application.

(b) Counties and cities should require the applicant for a project permit to designate a single person or entity to receive determinations and notices about a project permit application as authorized by RCW 36.70A.100.

(~~6~~**9**) Determination of complete application.

(a) A project permit application is complete for the purposes of this section when it meets the county's or city's

procedural submission requirements, **as outlined on the project permit application**. ~~and is sufficient for continued processing, even if additional information is required, or the project is subsequently modified.~~

(b) **Additional information or studies may be required or project modifications may be undertaken subsequent to the local government's procedural review of the application.**

(c) The determination of completeness shall not preclude the local government from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur.

(d) If the procedural submission requirements, as outlined on the project permit application have been provided, the need for additional information or studies may not preclude a completeness determination. ~~The development regulations must specify, for each type of permit application, what information a permit application must contain to be considered complete. This may vary based on the type of permit.~~

(~~c~~**10**) For more complex projects, counties and cities are encouraged to use preapplication meetings to clarify the project action and local government permitting requirements and review procedures. Counties and cities may require a preapplication conference.

(~~d~~**11**) Within ~~twenty-eight~~ **28** days of receiving a project permit application, counties and cities must provide to the applicant a written determination of completeness or request for more information stating either:

(~~i~~**a**) The application is complete; or

(~~ii~~**b**) The application is incomplete and **that the procedural submission requirements of the local government have not been met and outline** what is necessary to make the application **procedurally** complete.

(c) The number of days shall be calculated by counting every calendar day.

(d) The local government shall, to the extent known, identify other agencies of the local, state or federal government that may have jurisdiction over some aspect of the application.

~~(c) A determination of completeness or request for more information is required within fourteen days of the applicant providing additional requested information~~.

(~~f~~**12**) The application is deemed **procedurally** complete **on the 29th day after receiving a project permit application** if the county and city does not provide the applicant with a **written** determination that the application is procedurally incomplete. ~~provided the applicant a written determination~~ **The local government may still seek additional information or studies when a written determination is not provided if new information is required or substantial changes in the proposed action occur.** ~~of~~

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~~completeness or request for more information within the twenty-eight days of receiving the application~~.

(~~g~~**13**) The determination of completeness may include **or be combined with** a preliminary determination of consistency**,** ~~and~~ a preliminary determination of development regulations that will be used for project mitigation**, the notice of application pursuant to RCW 36.70B.110, or other information the local government chooses to include**. **A determination of completeness or request for more information necessary for a complete application is required within 14 days of the applicant providing additional requested information.**

(14) A notice of application shall be provided within 14 days after the determination of completeness. If the project permit requires an open record pre-decision hearing, the county or city must provide the notice of application at least 15 days before the open record hearing.

~~(h) Counties and cities may require project applicants to provide additional information or studies, either at the time of the notice of completeness or if the county or city requires new information during the course of continued review, at the request of reviewing agencies, or if the proposed action substantially changes.~~

~~(7) Identification of permits from other agencies. To the extent known, the county or city must identify other agencies of local, state, or federal governments that may have jurisdiction over some aspect of the application. However, the applicant is solely responsible for knowing of, and obtaining any permits necessary for, a project action.~~

(~~8~~**15**) Notice of ~~project permit~~ application. **The** ~~N~~**n**otice of ~~a project permit~~ application **shall** ~~must~~ be provided to the public and the departments and agencies with jurisdiction over the project permit application. It may be combined with the notice of complete application.

(a) What the notice of application must include:

(i) The date of application, the date of the notice of completion, and the date of the notice of application;

(ii) A description of the proposed project action and a list of the project permits included in the application and a list of any required studies;

(iii) The identification of other permits not included in the application that the proposed project may require, to the extent known by the county or city;

(iv) The identification of existing environmental documents that evaluate the proposed project;

(v) The location where the application and any studies can be reviewed;

(vi) A preliminary determination, if one has been made at the time of notice, of which development regulations will be used for project mitigation and of project consistency as provided in RCW 36.70B.040 and chapter 365-197 WAC;

(vii) Any other information determined appropriate by the local government;

(viii) A statement of the public comment period. The statement must explain the following:

(A) **A statement of the right of any person to comment on the application**;

(B) How to comment on the application;

(~~B~~**C**) How to receive notice of and participate in any hearings on the application;

(~~C~~**D**) How to **request and** obtain a copy of the decision once made; and

(~~D~~**E**) Any rights to appeal the decision.

(ix) If the project requires a hearing or hearings, and they have been scheduled by the date of notice of application, the notice must specify the date, time, place, and type of any hearings required for the project.

~~(b) When the notice of application must be provided. Notice of application must be provided within fourteen days of determining an application is complete. If the project permit requires an open record predecision hearing, the county or city must provide the notice of application at least fifteen days before the open record hearing.~~

(~~c~~**16**) How to provide notice of application. A county or city may provide notice **using reasonable methods** ~~in different ways~~ for different types of project **actions or categories of project** permits ~~depending on the size and scope of the project and the types of permit approval included in the project permit~~. Project review procedures should specify**,** as minimum

requirements, how to provide notice for each type of permit. **Counties and cities** ~~Cities and counties~~ may use a variety of methods for providing notice. However, if the local government does not specify how it will provide public notice, it shall use the methods specified in RCW 36.70B.110 (4)(a) and (b). Examples of reasonable methods of providing notice are:

(**a**~~i~~) Posting the property for site-specific proposals;

(~~ii~~**b**) Publishing notice in written media such as in the newspaper of general circulation in the general area where the proposal is located, in appropriate regional or neighborhood newspapers, trade journals, agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; or in a local land use newsletter published by the local government;

(**c**~~iii~~) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(**d**~~iv~~) Notifying the news media;

(v) Mailing to neighboring property owners; or

(**e**~~vi~~) Providing notice by posting the application and other documentation using electronic media such as an email and a website.

(~~9~~**17**) The **notice of** application comment period. The comment period must be at least fourteen days and no more than thirty days from the date of notice of application. A county or city may accept public comments any time before the record closes for an open record predecision hearing. If

no open record predecision hearing is provided, a county or city may accept public comments any time before the decision on the project permit.

(~~10~~**18**) Project review timelines. Counties and cities must establish and implement a permit process time frame for review of each type of project permit application, and for consolidated permit applications, and must provide timely and predictable procedures for review. The time periods for county or city review of each type of complete application should not exceed one hundred twenty days unless written findings specify the additional time needed for processing. Project permit review time periods established elsewhere, such as in RCW 58.17.140 should be followed for those actions. Counties and cities are encouraged to consider expedited review for project permit applications for projects that are consistent with adopted development regulations and within the capacity of system wide infrastructure improvements.

(~~11~~**19**) Hearings. Where multiple permits are required for a single project, counties and cities must allow for consolidated permit review as provided in RCW 36.70B.120(1). Counties and cities must determine which project permits require hearings. If hearings are required for certain permit categories, the review process must provide for no more than one consolidated open record hearing and one closed record appeal. An open record appeal hearing is only allowed for permits in which no open record hearing is provided prior to the decision. Counties and cities may combine an open record hearing on one or more permits with an open record appeal hearing on other permits. Hearings may be combined with hearings required

for state, federal or other permits hearings provided that the hearing is held within the geographic boundary of the local government and the state or federal agency is not expressly prohibited by statute from doing so.

(~~12~~**20**) Project permit decisions. A county or city may provide for the same or a different decision maker, hearing body or officer for different categories of project permits. The consolidated permit review process must specify which decision maker must make the decision or recommendation, conduct any required hearings or decide an appeal to ensure that consolidated permit review occurs as provided in this section.

(~~13~~**21**) Notice of decision.

(a) The notice of decision must include the following:

(i) A statement of any SEPA threshold determination;

(ii) An explanation of how to file an administrative appeal (if provided) of the decision; and

(iii) A statement that the affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

(b) Notice of decision should also include:

(i) Any findings on which the final decision was based;

(ii) Any conditions of permit approval conditions or required mitigation; and

(iii) The permit expiration date, where applicable.

(c) Notice of decision may be in the form of a copy of the report or decision on the project permit application, provided it meets the minimum requirements for a notice of decision.

(d) How to provide notice of decision. A local government may provide notice in different ways for different types of project permits depending on the size and scope of the project and the types of permit approval included in the project permit. Project review procedures should specify as minimum requirements, how to provide notice for each type of permit. Examples of reasonable methods of providing notice of decision are:

(i) Posting the property for site-specific proposals;

(ii) Publishing notice in written media such as in the newspaper of general circulation in the general area where the proposal is located, in appropriate regional or neighborhood newspapers, trade journals, agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; or in a local land use newsletter published by the county or city;

(iii) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(iv) Notifying the news media;

(v) Mailing to neighboring property owners; or

(vi) Providing notice and posting the application and other documentation using electronic media such as email and a website.

(e) **Counties and cities** ~~Cities and counties~~ must provide a notice of decision to the following:

(i) The project applicant;

(ii) Any person who requested notice of decision;

(iii) Any person who submitted substantive comments on the application; and

(iv) The county assessor's office of the county or counties in which the property is situated.

(~~14~~**22**) Appeals. A county or city is not required to provide for administrative appeals for project permit decisions. However, where appeals are provided, procedures should allow for no more than one consolidated open record hearing, if not already held, and one closed-record appeal. Provisions should ensure that appeals are to be filed within fourteen days after the notice of final decision and may be extended to twenty-one days to allow for appeals filed under chapter 43.21C RCW.

(~~15~~**23**) Monitoring permit decisions. Each county and city shall adopt procedures to monitor and enforce permit decisions and conditions such as periodic review of permit provisions, inspections, and bonding provisions.

(~~16~~**24**) Code interpretation. Project permitting procedures must include adopted procedures for administrative interpretation of

development regulations. For example, procedures should specify who provides an interpretation related to a specific project, and where a record of such code interpretations are kept so that subsequent interpretations are consistent. Code interpretation procedures help ensure a consistent and predictable interpretation of development regulations.

(~~17~~**25**) Development agreements. Counties and cities are authorized by RCW 36.70B.170(1) to enter into voluntary contractual agreements to govern the development of land and the issuance of project permits. These are referred to as development agreements.

(a) Purpose. The purpose of development agreements is to allow a county or city and a property owner/developer to enter into an agreement regarding the applicable regulations, standards, and mitigation that apply to a specific development project after the development agreement is executed.

(i) If the development regulations allow some discretion in how those regulations apply or what mitigation is necessary, the development agreement specifies how the county or city will use that discretion. Development agreements allow counties and cities to combine an agreement on the exercise of its police power with the exercise of its power to enter contracts.

(ii) Development agreements must be consistent with applicable development regulations adopted by a county or city. Development agreements do not provide means of waiving or

amending development regulations that would otherwise apply to a project.

(iii) Counties and cities may not use development agreements to impose impact fees, inspection fees, or dedications, or require any other financial contribution or mitigation measures except as otherwise expressly authorized, and consistent with the applicable development regulations.

(b) Parties to the development agreement. The development agreement must include as a party to the agreement, the person who owns or controls the land subject to the agreement. Development agreements may also include others, including other agencies with permitting authority or service providers. **Counties and cities** ~~Cities and counties~~ may enter into development agreements outside of their boundaries if the agreement is part of a proposed annexation or service agreement.

(c) Content of a development agreement. The development agreement must set forth the development standards and other provisions that apply to, govern, and vest the development, use, and mitigation of the development of the real property for the duration of the agreement. These may include, but are not limited to:

(i) Project elements such as permitted uses, residential densities, and intensity of commercial or industrial land uses and building sizes;

(ii) The amount and payment of fees imposed or agreed to in accordance with any applicable laws or rules in effect at the time, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(iii) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(iv) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(v) Affordable housing;

(vi) Parks and open space preservation;

(vii) Phasing;

(viii) Review procedures and standards of implementing decisions;

(ix) A build-out or vesting period for applicable standards; and

(x) Any other appropriate development requirement or procedure.

(d) The effect of development agreements. Development agreements may exercise a county's or city's authority to issue permits or its contracting authority. Once executed, development agreements are binding between the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the

area covering the property covered by the development agreement. The agreement grants vesting rights to the proposed development consistent with the development regulations in existence at the time of execution of the agreement. A permit approval issued by the county or city after the execution of the development agreement must be consistent with the development agreement. A development agreement may obligate a party to fund or provide services, infrastructure or other facilities. A development agreement may not obligate a county or city to adopt subsequent amendments to the comprehensive plan, development regulations or otherwise delegate legislative powers. Any such amendments must still be adopted by the legislative body following all applicable procedural requirements.

(e) A development agreement must reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

(f) Procedures.

(i) These procedural requirements are in addition to and supplemental to the procedural requirements necessary for any actions, such as rezones, street vacations or annexations, called for in a development agreement. Development agreements may not be used to bypass any procedural requirements that would otherwise apply. Counties and cities may combine hearings, analyses, or reports provided the process meets all applicable procedural requirements;

(ii) Only the county or city legislative authority may approve a development agreement;

(iii) A county or city must hold a public hearing prior to executing a development agreement. The public hearing may be conducted by the county or city legislative body, planning commission or hearing examiner, or other body designated by the legislative body to conduct the public hearing; and

(iv) A development agreement must be recorded in the county where the property is located.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-845, filed 1/19/10, effective 2/19/10.

WAC 365-196-845 - Local project review and development agreements.

(1) Counties and cities planning under the act are required to adopt procedures for fair and timely review of project permits under RCW 36.70B.020(4), such as subdivisions, binding site plans, planned unit developments, conditional uses, site-specific rezones which do not require a comprehensive plan amendment and other permits or other land use actions. The project permitting procedures implement goal 7 of the act. Under RCW 36.70A.020(7), applications for both state and local government permits should be processed in a timely and fair manner.

(2) Consolidated permit review process.

(a) Counties and cities must adopt a permit review process that provides for consolidated review of all permits necessary for a

proposed project action. The permit review process must provide for the following:

(i) A consolidated project coordinator for a consolidated project permit application;

(ii) A consolidated determination of completeness;

(iii) A consolidated notice of application;

(iv) A consolidated set of hearings; and

(v) A consolidated notice of final decision that includes all project permits being reviewed through the consolidated permit review process.

(b) The many different types of permits administered by counties and cities can generally be grouped into project permit categories; for example:

(i) Permits that do not require environmental review or public notice, and may be administratively approved;

(ii) Permits that require environmental review, but do not require a public hearing; and

(iii) Permits that require environmental review and/or a public hearing, and may provide for a closed record appeal.

(c) Local project review procedures should address, at a minimum, the following for each category of permit:

(i) Requirements for a complete application;

(ii) How the county or city will provide notice of application;

(iii) Who makes the final decision;

(iv) How long local project review is likely to take;

(v) What fees and charges will apply, and when an applicant must pay fees and charges;

(vi) How to appeal the decision;

(vii) Whether a preapplication conference is required;

(viii) A determination of consistency; and

(ix) Requirements for provision of notice of decision.

(d) A project permit applicant may apply for individual permits separately.

(3) Counties and cities may, by ordinance or resolution, exclude some permit types from these procedures. Excluded permit types may include:

(a) Actions relating to the use of public areas or facilities such as landmark designations or street vacations;

(b) Actions categorically exempt from environmental review, or for which environmental review has already been completed such as lot line or boundary adjustments, and building and other construction permits, or similar administrative approvals; or

(c) Other project permits that the local government has determined present special circumstances.

(4) Project permits may, by ordinance or resolution, exclude some permit types from time periods for approval.

(5) Interior alteration are defined as construction activities that do not modify the existing site layout or its current use and involve no exterior work adding to the building footprint.

(a) Counties and cities must exclude project permits for interior alterations from site plan review if the criteria in RCW 36.70B.140(3)are met.

(b) Interior alterations must still comply with applicable building, mechanical, plumbing or electrical codes.

(6) RCW 36.70A.470 prohibits using project review conducted under chapter 36.70B RCW from being used as a comprehensive planning process. Except when considering an application for a major industrial development under RCW 36.70A.365, counties and cities may not consolidate project permit review with review of proposals to amend the comprehensive plan, even if the comprehensive plan amendment is site-specific. Counties and cities may not combine a project permit application with an area-wide rezone or a text amendment to the development regulations, even if proposed along with a project permit application.

(7) Consolidated project coordinator.

(a) Counties and cities should appoint a single project coordinator for each consolidated project permit application.

(b) Counties and cities should require the applicant for a project permit to designate a single person or entity to receive determinations and notices about a project permit application as authorized by RCW 36.70A.100.

(8) Determination of complete application.

(a) A project permit application is complete for the purposes of this section when it meets the county's or city's procedural submission requirements and is sufficient for continued processing, even if additional information is required, or the project is subsequently modified.

(b) The development regulations must specify, for each type of permit application, what information a permit application must contain to be considered complete. This may vary based on the type of permit.

(c) For more complex projects, counties and cities are encouraged to use preapplication meetings to clarify the project action and local government permitting requirements and review procedures. Counties and cities may require a preapplication conference.

(d) Within 28 days of receiving a project permit application, counties and cities must provide to the applicant a written determination of completeness or request for more information stating either:

(i) The application is complete; or

(ii) The application is incomplete and that the procedural submission requirements of the local government have not been met and outline what is necessary to make the application procedurally complete.

(iii) The number of days shall be calculated by counting every calendar day.

(e) A project permit application is complete when it meets the procedural submission requirements of the local government as outlined in the project permit application. Additional information or studies may be required or project modifications may be undertaken subsequent to the procedural review of the application by the local government.

(f) The determination of completeness shall not preclude the local government from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur. However, if the procedural submission requirements, as outlined on the project permit application have been provided, the need for additional information or studies may not preclude a completeness determination.

(g) The application is deemed procedurally complete on the 29th day after receiving a project permit application if the county and city does not provide the applicant with a written determination that the application is procedurally incomplete. The local government may still seek additional information or studies when a written determination is not provided.

(h) The determination of completeness may include or be combined with a preliminary determination of consistency, a preliminary

determination of development regulations that will be used for project mitigation, the notice of application pursuant to RCW 36.70B.110 or other information the local government chooses to include.

(i) A determination of completeness or request for more information necessary for a complete application is required within 14 days of the applicant providing additional requested information.

(j) A notice of application shall be provided within 14 days after the determination of completeness. If the project permit requires an open record predecision hearing, the county or city must provide the notice of application at least 15 days before the open record hearing.

(9) Notice of application. The notice of application shall be provided to the public and the departments and agencies with jurisdiction over the project permit application.

(a) The notice of application must include:

(i) The date of application, the date of the notice of completion, and the date of the notice of application;

(ii) A description of the proposed project action and a list of the project permits included in the application and a list of any required studies;

(iii) The identification of other permits not included in the application that the proposed project may require, to the extent known by the county or city;

(iv) The identification of existing environmental documents that evaluate the proposed project;

(v) The location where the application and any studies can be reviewed;

(vi) A preliminary determination, if one has been made at the time of notice, of which development regulations will be used for project mitigation and of project consistency as provided in RCW 36.70B.040 and chapter 365-197 WAC;

(vii) Any other information determined appropriate by the local government;

(viii) A statement of the public comment period, which shall not be less than 14 days or more than 30 days, following the date of the notice of application. The statement must explain the following:

(A) A statement of the right of any person to comment on the application.

(B) How to comment on the application;

(C) How to receive notice of and participate in any hearings on the application;

(D) How to request and obtain a copy of the decision once made; and

(E) Any rights to appeal the decision.

(ix) If the project requires a hearing or hearings, and they have been scheduled by the date of notice of application, the notice

must specify the date, time, place, and type of any hearings required for the project.

(10) How to provide notice of application.

(a) A county or city may provide notice in using reasonable methods for different types of project actions or categories of project permits.

(b) Project review procedures should specify as minimum requirements, how to provide notice for each type of permit. Counties and cities may use a variety of methods for providing notice. However, if the local government does not specify how it will provide public notice, it shall use the methods specified in RCW 36.70B.110 (4)(a) and (b). Examples of reasonable methods of providing notice are:

(i) Posting the property for site-specific proposals;

(ii) Publishing notice in written media such as in the newspaper of general circulation in the general area where the proposal is located, in appropriate regional or neighborhood newspapers, trade journals, agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; or in a local land use newsletter published by the local government;

(iii) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(iv) Notifying the news media;

(v) Mailing to neighboring property owners;

(vi) Providing notice by posting the application and other documentation using electronic media such as an email and a website.

(vii) Placing notices in appropriate regional or neighborhood newspapers or trade journals.

(viii) Publishing notices in agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas.

(11) The notice of application comment period.

(a) Must be at least 14 days and no more than 30 days from the date of notice of application.

(b) A county or city may accept public comments:

(i) Any time before the record closes for an open record predecision hearing.

(c) Any time before the decision on the project permit if no open record predecision hearing is provided.

(12) Project review timelines

(a) Counties and cities must establish and implement a permit process time frame for review of each type of project permit application, and for consolidated permit applications, and must provide timely and predictable procedures for review. The time

periods for county or city review of each type of complete application should not exceed those specified in this section.

(b) County and city development regulations must for each type of project permit application, specify contents for a complete application necessary to for determining compliance with time periods and procedures.

(c) Counties and cities may exclude certain project permit types and timelines for processing permit applications as provided for in RCW 36.70B.140.

(d) Time periods for local government action to issue a final decision for each type of complete project permit application complete or project type should not exceed the following timelines:

(i) For project permits which do not require a notice of application (under RCW 36.70B.110): 65 days from determination of completeness

(ii) For project permits which require public notice (under RCW 36.70B.110): 100 days of the determination of completeness

(iii) For project permits which require public notice (under RCW 36.70B.110) and a public hearing: 170 days of the determination of completeness.

(e) Counties and cities may add permit types not identified, change permit names or type in each category, address how consolidated review times may be different than permits submitted individually and provide for how projects of a certain size or type

may be differentiated, including differentiating between residential and non-residential permits. For projects subject to consolidated review. The final decision shall be subject to the longest applicable permit time period identified in (12)(b)(i)(ii) and (iii), or to a longer time period if the time periods have been amended by the local government.

(f) If a local government does not adopt an ordinance or resolution modifying the timelines for final decisions, then the time periods in (12)(b)(i)(ii) and (iii) of this section apply.

(g) The number of days an application is in review with the county or city shall be calculated from the day completeness is determined to the date a final decision is issued on the project permit application. The number of days shall be calculated by counting every calendar day and excluding the following time periods:

(i) Any period between the day that the county or city has notified the applicant, in writing, that additional information is required to further process the application and the day when responsive information is resubmitted by the applicant;

(ii) Any period after an applicant informs the local government, in writing, that they would like to temporarily suspend review of the project permit application until the time that the applicant notifies the local government, in writing, that they would like to resume the application. A local

government may set conditions for the temporary suspension of a permit application; and

(iii) Any period after an administrative appeal is filed until the administrative appeal is resolved and any additional time period provided by the administrative appeal has expired.

(h) The time periods for a local government to process a permit shall start over if an applicant proposes a change in use that adds or removes commercial or residential elements from the original application that would make the application fail to meet the determination of procedural completeness for the new use.

(i) If, at any time, an applicant informs the local government, in writing, that the applicant would like to temporarily suspend the review of the project for more than 60 days, or if an applicant is not responsive for more than 60 consecutive days after the county or city has notified the applicant, in writing, that additional information is required to further process the application, an additional 30 days may be added to the time periods for local government action to issue a final decision for each type of project permit subject to this section.

(j) Any written notice from the local government to the applicant that additional information is required to further process the application must include a notice that nonresponsiveness for 60 consecutive days may result in 30 days being added to the time for review.

(k) For the purposes of this subsection, "nonresponsiveness" means that an applicant is not making demonstrable progress on providing additional requested information to the local government, or that there is no ongoing communication from the applicant to the local government on the applicant's ability or willingness to provide the additional information.

(l) Annual amendments to the comprehensive plan are not subject to the requirements of this section.

(m) A county's or city's adoption of a resolution or ordinance to implement this subsection shall not be subject to appeal under chapter 36.70A RCW unless the resolution or ordinance modifies the time periods by providing for a review period of more than 170 days for any project permit.

(n) When permit time periods provided for in this subsection, as may be amended by a local government, and as may be extended are not met, a portion of the permit fee must be refunded to the applicant as provided in this subsection.

(i) A local government may provide for the collection of only 80 percent of a permit fee initially, and for the collection of the remaining balance if the permitting time periods are met.

(ii) The portion of the fee refunded for missing time periods shall be:

(A) 10 percent if the final decision of the project permit application was made after the applicable deadline but the period from the passage of the deadline to the time of issuance of the final decision did not exceed 20 percent of the original time period; or

(B) 20 percent if the period from the passage of the deadline to the time of the issuance of the final decision exceeded 20 percent of the original time period.

(iii) Except as provided in RCW 36.70B.160, the provisions in subsection 12(j) are not applicable to counties and cities which have implemented at least three of the options in RCW 36.70B.160(1) (a) through (j) at the time an application is deemed procedurally complete.

(13) Hearings. Where multiple permits are required for a single project, counties and cities must allow for consolidated permit review as provided in RCW 36.70B.120(1). Counties and cities must determine which project permits require hearings. If hearings are required for certain permit categories, the review process must provide for no more than one consolidated open record hearing and one closed record appeal. An open record appeal hearing is only allowed for permits in which no open record hearing is provided prior to the decision. Counties and cities may combine an open record hearing on one or more permits with an open record appeal hearing on other permits. Hearings may be combined with hearings required for state, federal or other permits hearings provided that the hearing is

held within the geographic boundary of the local government and the state or federal agency is not expressly prohibited by statute from doing so.

(14) Project permit decisions. A county or city may provide for the same or a different decision maker, hearing body or officer for different categories of project permits. The consolidated permit review process must specify which decision maker must make the decision or recommendation, conduct any required hearings or decide an appeal to ensure that consolidated permit review occurs as provided in this section.

(15) Notice of decision.

(a) The notice of decision must include the following:

(i) A statement of any SEPA threshold determination;

(ii) An explanation of how to file an administrative appeal (if provided) of the decision; and

(iii) A statement that the affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

(b) The notice of decision should also include:

(i) Any findings on which the final decision was based;

(ii) Any conditions of permit approval conditions or required mitigation; and

(iii) The permit expiration date, where applicable.

(c) Notice of decision may be in the form of a copy of the report or decision on the project permit application, provided it meets the minimum requirements for a notice of decision.

(d) How to provide notice of decision. A local government may provide notice in different ways for different types of project permits depending on the size and scope of the project and the types of permit approval included in the project permit. Project review procedures should specify as minimum requirements, how to provide notice for each type of permit. Examples of reasonable methods of providing notice of decision are:

(i) Posting the property for site-specific proposals;

(ii) Publishing notice in written media such as in the newspaper of general circulation in the general area where the proposal is located, in appropriate regional or neighborhood newspapers, trade journals, agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; or in a local land use newsletter published by the county or city;

(iii) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(iv) Notifying the news media;

(v) Mailing to neighboring property owners; or

(vi) Providing notice and posting the application and other documentation using electronic media such as email and a website.

(vii) Placing notices in appropriate regional or neighborhood newspapers or trade journals.

(viii) Publishing notices in agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas.

(e) Counties and cities must provide a notice of decision to the following:

(i) The project applicant;

(ii) Any person who requested notice of decision;

(iii) Any person who submitted substantive comments on the application; and

(iv) The county assessor's office of the county or counties in which the property is situated.

(16) Appeals. A county or city is not required to provide for administrative appeals for project permit decisions. However, where appeals are provided, procedures should allow for no more than one consolidated open record hearing, if not already held, and one closed-record appeal. Provisions should ensure that appeals are to be filed within 14 days after the notice of final decision and may be extended to 21 days to allow for appeals filed under chapter 43.21C RCW.

(17) Monitoring permit decisions. Each county and city shall adopt procedures to monitor and enforce permit decisions and conditions such as periodic review of permit provisions, inspections, and bonding provisions.

(18) A county or city is not prohibited from extending a deadline for issuing a decision for a specific project permit application for any reasonable period of time mutually agreed upon by the applicant and the county of city.

(19) Each county and city is encouraged to adopt further project review and code provisions to provide prompt, coordinated review and ensure accountability to applicants and the public by:

(a) Expediting review for project permit applications for projects that are consistent with adopted development regulations;

(b) Imposing reasonable fees, consistent with RCW 82.02.020, on applicants for permits or other governmental approvals to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW. The fees imposed may not include a fee for the cost of processing administrative appeals. Nothing in this subsection limits the ability of a county or city to impose a fee for the processing of administrative appeals as otherwise authorized by law;

(c) Entering into an interlocal agreement with another county or city to share permitting staff and resources;

(d) Maintaining and budgeting for on-call permitting assistance for when permit volumes or staffing levels change rapidly;

(e) Having new positions budgeted that are contingent on increased permit revenue;

(f) Adopting development regulations which only require public hearings for permit applications that are required to have a public hearing by statute;

(g) Adopting development regulations which make preapplication meetings optional rather than a requirement of permit application submittal;

(h) Adopting development regulations which make housing types an outright permitted use in all zones where the housing type is permitted;

(i) Adopting a program to allow for outside professionals with appropriate professional licenses to certify components of applications consistent with their license; or

(j) Meeting with the applicant to attempt to resolve outstanding issues during the review process. The meeting must be scheduled within 14 days of a second request for corrections during permit review. If the meeting cannot resolve the issues and a local government proceeds with a third request for additional information or corrections, the local government must approve or deny the application upon receiving the additional information or corrections.

(20) Adoption of additional measures.

(a) After January 1, 2026, a county or city must adopt additional measures under subsection (20) of this section at the time of its next comprehensive plan update under RCW 36.70A.130 if it meets the following conditions:

(i) The county or city has adopted at least three project review and code provisions under subsection (20) of this section more than five years prior; and

(ii) The county or city is not meeting the permitting deadlines established in RCW 36.70B.080 at least half of the time over the period since its most recent comprehensive plan update under RCW 36.70A.130.

(b) A county or city that is required to adopt new measures under (21)(a) of this subsection but fails to do so becomes subject to the provisions of RCW 36.70B.080(1)(l), notwithstanding RCW 36.70B.080(1)(l)(ii).

(22) Code interpretation. Project permitting procedures must include adopted procedures for administrative interpretation of development regulations.

(23) Development agreements. Counties and cities are authorized by RCW 36.70B.170(1) to enter into voluntary contractual agreements to govern the development of land and the issuance of project permits. These are referred to as development agreements.

(a) Purpose. The purpose of development agreements is to allow a county or city and a property owner/developer to enter into an agreement regarding the applicable regulations, standards, and mitigation that apply to a specific development project after the development agreement is executed.

(i) If the development regulations allow some discretion in how those regulations apply or what mitigation is necessary, the development agreement specifies how the county or city will use that discretion. Development agreements allow counties and cities to combine an agreement on the exercise of its police power with the exercise of its power to enter contracts.

(ii) Development agreements must be consistent with applicable development regulations adopted by a county or city. Development agreements do not provide means of waiving or amending development regulations that would otherwise apply to a project.

(iii) Counties and cities may not use development agreements to impose impact fees, inspection fees, or dedications, or require any other financial contribution or mitigation measures except as otherwise expressly authorized, and consistent with the applicable development regulations.

(b) Parties to the development agreement. The development agreement must include as a party to the agreement, the person who owns or controls the land subject to the agreement. Development agreements may also include others, including other agencies with permitting authority or service providers. Counties and cities may enter into development agreements outside of their boundaries if the agreement is part of a proposed annexation or service agreement.

(c) Content of a development agreement. The development agreement must set forth the development standards and other provisions that apply to, govern, and vest the development, use, and mitigation of the development of the real property for the duration of the agreement. These may include, but are not limited to:

(i) Project elements such as permitted uses, residential densities, and intensity of commercial or industrial land uses and building sizes;

(ii) The amount and payment of fees imposed or agreed to in accordance with any applicable laws or rules in effect at the time, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(iii) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(iv) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(v) Affordable housing;

(vi) Parks and open space preservation;

(vii) Phasing;

(viii) Review procedures and standards of implementing decisions;

(ix) A build-out or vesting period for applicable standards; and

(x) Any other appropriate development requirement or procedure.

(d) The effect of development agreements. Development agreements may exercise a county's or city's authority to issue permits or its contracting authority. Once executed, development agreements are binding between the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement. The agreement grants vesting rights to the proposed development consistent with the development regulations in existence at the time of execution of the agreement. A permit approval issued by the county or city after the execution of the development agreement must be consistent with the development agreement. A development agreement may obligate a party to fund or provide services, infrastructure or other facilities. A development agreement may not obligate a county or city to adopt subsequent amendments to the comprehensive plan, development regulations or otherwise delegate legislative powers. Any such amendments must still be adopted by the legislative body following all applicable procedural requirements.

(e) A development agreement must reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

(f) Procedures.

(i) These procedural requirements are in addition to and supplemental to the procedural requirements necessary for any actions, such as rezones, street vacations or annexations, called for in a development agreement. Development agreements may not be used to bypass any procedural requirements that would otherwise apply. Counties and cities may combine hearings, analyses, or reports provided the process meets all applicable procedural requirements;

(ii) Only the county or city legislative authority may approve a development agreement;

(iii) A county or city must hold a public hearing prior to executing a development agreement. The public hearing may be conducted by the county or city legislative body, planning commission or hearing examiner, or other body designated by the legislative body to conduct the public hearing; and

(iv) A development agreement must be recorded in the county where the property is located.

(24) Nothing in RCW 36.70B.080 prohibits a county or city from extending a deadline for issuing a decision for a specific project permit application for any reasonable period of time mutually agreed upon by the applicant and the local government.

WAC 365-196-846 Reporting Requirements

(a) Counties subject to the requirements of RCW 36.70A.215 and the cities within those counties that have populations of at least 20,000 must, for each type of permit application:

(i) Identify the total number of project permit applications for which decisions are issued according to the provisions of Chapter 36.70B RCW.

(ii) For identified project permit applications, establish and implement a deadline for issuing a notice of final decision as required by RCW 36.70B.080(1)and minimum requirements for applications to be deemed complete under RCW 36.70B.070 as required by RCW 36.70B.080(1).

(b) Counties and cities subject to the requirements RCW 36.70B.080(2) must also prepare an annual performance report that includes information outlining time periods for certain permit types associated with housing. The report must provide:

(i) Permit time periods for certain permit processes in the county or city in relation to those established under RCW 36.70B.080, including whether the county or city has established shorter time periods than those identified in RCW 36.70B.080;

(ii) The total number of decisions issued during the year for the following permit types:

(A) Preliminary subdivisions,

(B) Final subdivisions,

Commented [JD(8)]: From SB 5290; this creates its own section for reporting – basically from RCW 36.70B.080(2) – the effective January 1, 2025 version.

(C) Binding site plans,

(D) Permit processes associated with the approval of multifamily housing, and

(E) Construction plan review for each of the permit types in WAC 365-196-XXX (2)(ii)(a) though (d)when submitted separately;

(iii) The total number of decisions for each permit type which included consolidated project permit review;

(iv) The average number of days from a submittal to a decision being issued for the project permit types listed in RCW 36.70B.080(2)(b)(ii). This shall be calculated from the day completeness is determined under RCW 36.70B.070 to the date a decision is issued on the application. The number of days shall be calculated by counting every calendar day;

(v) The total number of days each project permit application of a type listed RCW 36.70B.080(2)(b)(ii) was in review with the county or city. This shall be calculated from the day completeness is determined under RCW 36.70B.070 to the date a final decision is issued on the application. The number of days shall be calculated by counting every calendar day. The days the application is in review with the county or city does not include the time periods in RCW 36.70B.080 (1)(g)(i)through(iii)

(vi) The total number of days that were excluded from the time period calculation under RCW 36.70B.080(1)(g)(i-through (iii) for each project permit application of a type listed in listed RCW 36.70B.080(2)(b)(ii).

(3) Counties and cities subject to the requirements of this subsection must:

(a) Post the annual performance report through the county's or city's website; and

(b) Submit the annual performance report to the department of commerce by March 1st each year.

(c) Submit the initial annual report required under this subsection to the department of commerce by March 1, 2025, and must include information from permitting in 2024.

WAC 365-196-845 Additional project review encouraged

(1) Counties and cities are encouraged to adopt further project review provisions to provide prompt, coordinated, and objective review and ensure accountability to applicants and the public, including expedited review for project permit applications for projects that are consistent with adopted development regulations or that include dwelling units that are affordable to low-income or moderate-income households and within the capacity of systemwide infrastructure improvements.

(2) Nothing in chapter 36.70B RCW is intended or shall be construed to prevent counties and cities from requiring a preapplication conference

Commented [JD(9]: Amendments made to RCW 36.70B.160 by HB 1293 Section 2.

RCW 36.70B.160 is called Additional Project Review Encouraged – Construction and Additional Project Review Encouraged - Additional Measures for Certain Jurisdictions - Construction(WAC title reflects RCW title)

or a public meeting by rule, ordinance, or resolution, where otherwise required by applicable state law.

(3) Each county and city shall adopt procedures to monitor and enforce permit decisions and conditions.

(a) Permit decision monitoring procedures referenced in RCW 36.70B.160 should include, but not be limited to:

(i) Use of a permit software system, if possible, to provide reminders to notify staff and the applicant of:

(A) Status of permit timeline

(B) Pending permit expiration dates

(C) Permit conditions that require compliance or implementation by certain timeframe

(D) Timeframes for financial guarantees and release of financial guarantees.

(b) The enforcement procedures reference in RCW 36.70B.160 for each permit should include, but not be limited to:

(i) Timelines for compliance upon issuance of a formal compliance order.

(ii) Penalties for lack of compliance.

(iii) Timelines for filing an appeal, including the applicable appeal body.

(iv) Identification of which county or city official has authority to issue enforcement notices for specific permit types.

(4) Nothing chapter 36.70B RCW modifies any independent statutory authority for a government agency to appeal a project permit issued by a local government.

(5) For the purposes of this section:

(a) A dwelling unit is affordable if it requires payment of monthly housing costs, including utilities other than telephone, of no more than 30 percent of the family's income.

(b) The definitions of "Dwelling unit", "Low-income household" and "Moderate-income household" as used in this section shall be as provided for in RCW 36.70B.160.

WAC 365-196-845 Additional project review encouraged- Additional measures for certain jurisdictions

Commented [JD(10]: Amendments to the same 36.70B.160 by SB 5290, SECTION 8 (WAC title reflects RCW title)

(1) Counties and cities are encouraged to adopt further project review and code provisions to provide prompt, coordinated review and ensure accountability to applicants and the public by:

(a) Expediting review for project permit applications for projects that are consistent with adopted development regulations;

(b) Imposing reasonable fees, consistent with RCW 82.02.020, on applicants for permits or other governmental approvals to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW.

(i) The fees imposed may not include a fee for the cost of processing administrative appeals.

(ii) Nothing in this subsection limits the ability of a county or city to impose a fee for the processing of administrative appeals as otherwise authorized by law;

(c) Entering into an interlocal agreement with another county or city to share permitting staff and resources;

(d) Maintaining and budgeting for on-call permitting assistance for when permit volumes or staffing levels change rapidly;

(e) Having new positions budgeted that are contingent on increased permit revenue;

(f) Adopting development regulations which only require public hearings for permit applications that are required to have a public hearing by statute;

(g) Adopting development regulations which make preapplication meetings optional rather than a requirement of permit application submittal;

(h) Adopting development regulations which make housing types an outright permitted use in all zones where the housing type is permitted;

(i) Adopting a program to allow for outside professionals with appropriate professional licenses to certify components of applications consistent with their license; or

(j) Meeting with the applicant to attempt to resolve outstanding issues during the review process.

(i) The meeting must be scheduled within 14 days of a second request for corrections during permit review.

(ii) If the meeting cannot resolve the issues and a county or city proceeds with a third request for additional information or corrections, the county or city must approve or deny the application upon receiving the additional information or corrections.

(2)(a) After January 1, 2026, a county or city must adopt additional measures under subsection (1) of this section at the time of its next comprehensive plan update under RCW 36.70A.130 if it meets the following conditions:

(i) The county or city has adopted at least three project review and code provisions under subsection (1) of this section more than five years prior; and

(ii) The county or city is not meeting the permitting deadlines established in RCW 36.70B.080 at least half of the time over the period since its most recent comprehensive plan update under RCW 36.70A.130.

(b) A county or city that is required to adopt new measures under (a) of this subsection but fails to do so becomes subject to the provisions of RCW 36.70B.080(1)(l), notwithstanding RCW 36.70B.080(1)(l)(ii).

(3) Nothing in chapter 36.70B RCW is intended or shall be construed to prevent a county or city from requiring a preapplication conference or a public meeting by rule, ordinance, or resolution.

(4) Each county or city shall adopt procedures to monitor and enforce permit decisions and conditions.

(a) Permit decision monitoring procedures should include, but not be limited to:

(i) Use of a permit software system, if possible, to provide reminders to notify staff and the applicant of:

(A) Status of permit timeline

(B) Pending permit expiration dates

(C) Permit conditions that require compliance or implementation by certain timeframe

(D) Timeframes for financial guarantees and release of financial guarantees.

(b) The enforcement procedures for each permit should include, but not be limited to:

(i) Timelines for compliance upon issuance of a formal compliance order.

(ii) Penalties for lack of compliance.

(iii) Timelines for filing an appeal, including the applicable appeal body.

(iv) Identification of which county or city official has authority to issue enforcement notices for specific permit types.

(5) Nothing in chapter 36.70B RCW modifies any independent statutory authority for a government agency to appeal a project permit issued by a local government.

WAC 365-196-847 Streamline Design review

Commented [JD(11]: HB 1923, Section 1

(1) Design review is a formal local government process by which projects are reviewed for compliance with design standards for the type of use.Design review standards shall be adopted by ordinance.

(2) Design review process:

(a) Design review must be conducted concurrently, or otherwise logically integrated, with the consolidated review and decision process for project permits set forth in RCW 36.70B.120(3).

(b) Design review may include no more than one public meeting. Continuation of a public meeting for the purposes of design review should be discouraged.

(3) Clear and objective development regulations

(a) Counties and cities may apply in any design review process.

(b) Only clear and objective development regulations governing the exterior design of new development. For the design review process, a clear and objective development regulation:

(i) 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; and

(ii) 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.

(c) Exterior Design:

(i) Exterior design of new development may include the exterior of the building(s) including, but not limited to, façade, roof and any other building features visible from the outside of the building.

(ii) Exterior design may also include site features not part of the building such as, but not limited to, lighting, landscaping, art, pedestrian paths, open space, and parking location.

(4) New Development:

(a) New development should include development of vacant property. This includes the demolition of existing buildings on a property which are subsequently developed with a new building.

(b) Cities and towns may adopt thresholds for what constitutes new development in situations where there are additions to, or new buildings developed on, property with pre-existing development.

(c) Interior remodels or alteration that do not expand the exterior building footprint and which do not modify the exterior of the building or exterior site design features, other than routine and minor repair and maintenance, should not constitute new development for design review purposes; nor should the cost of interior improvements be counted towards the determination of what constitutes new development.

(d) Nothing in this section is intended to exempt exterior repair and maintenance or interior remodels and alterations from applicable building, plumbing, mechanical, or electrical codes and related permits.

5. The provisions of WAC 365-196-XXX (1) do not apply to development regulations that apply only to designated landmarks or historic districts established under a local preservation ordinance.

6. A county or city must comply with the requirements of this section beginning six months after its next periodic comprehensive plan update required under RCW 36.70A.130.

WAC 365-196-850 Impact fees.

(1) Counties and cities planning under the act are authorized to impose impact fees on development activities as part of public facilities financing. However, the financing for system improvements to serve new development must provide a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

(2) A schedule of impact fees shall be adopted for each type of development activity that is subject to impact fees, specifying the amount of the impact fee to be imposed for each type of system improvement. The schedule shall:

(a) Be based upon a formula or other method of calculating such impact fees, such as unit size, or location relative to transit, schools or fire.

(b) Reflect the proportionate impact of new housing units, including multifamily and condominium units, based on the square footage, number of bedrooms, or trips generated, in the housing unit in order to produce a proportionally lower impact fee for smaller housing units. In determining proportionate share, the formula or other method of calculating impact fees shall incorporate, among other items, the following:

Commented [JD(12]: SB 5818

(i) The cost of public facilities necessitated by new development;

(ii) An adjustment to the cost of the public facilities for past or future payments made or reasonably anticipated to be made by new development to pay for particular system improvements in the form of user fees, debt service payments, taxes, or other payments earmarked for or pro-ratable to the particular system improvement;

(iii) The availability of other means of funding public facility improvements;

(iv) The cost of existing public facilities improvements; and

(v) The methods by which public facilities improvements were financed.

(~~2~~**3**) The decision to use impact fees should be specifically implemented through development regulations. The regulations should call for a specific finding on all three of the following limitations whenever an impact fee is imposed. The impact fees:

(a) Must only be imposed for system improvements that are reasonably related to the new development. "System improvements" (in contrast to "project improvements") are public facilities included in the capital facilities plan that are designed to provide service to service areas within the community at large;

(b) Must not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

(c) Must be used for system improvements that will reasonably benefit the new development.

(~~3~~**4**) Impact fees may be collected and spent only for the following capital facilities owned or operated by government entities:

(a) Public streets and roads;

(b) Publicly owned parks;

(c) Open space and recreation facilities;

(d) School facilities; and

(e) Fire protection facilities.

(~~4~~**5**) Capital facilities for which impact fees will be imposed must have been addressed in a capital facilities plan element which identifies:

(a) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

(b) Additional demands placed on existing public facilities by new development; and

(c) Additional public facility improvements required to serve new development.

(~~5~~**6**) The local ordinance by which impact fees are imposed must conform to the provisions of RCW 82.02.060. The department recommends that ~~jurisdictions~~ **counties and cities** include ~~the~~ authorized exemptions for low-income housing **and early learning facilities**.

Commented [JD(13]: 82.02.060(3) re early learning facilities

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 17-20-100, § 365-196-850, filed 10/4/17, effective 11/4/17; WSR 10-03-085, § 365-196-850, filed 1/19/10, effective 2/19/10.]

WAC 365-196-855 Protection of private property – No changes proposed

WAC 365-196-860 Treatment of residential structures occupied by persons with handicaps.

(1) Counties and cities planning under the act may not enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals.

(2) The term "handicap" is defined by the federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3602). It pertains to a person who:

(a) Has a physical or mental impairment that substantially limits one or more of their major life activities;

(b) Has a record of having such impairment; or

(c) Is regarded as having such impairment. It does not include current, illegal use of or addiction to a controlled substance (as defined in 21 U.S.C. Sec. 802). **Fair housing laws prohibit enforcing a neutral rule or policy that has a disproportionately adverse effect on a protected class, unless there is a valid business reason for the**

Commented [JD(14]: Federal Register :: Reinstatement of HUD's Discriminatory Effects Standard

rule or policy, and the housing provider can show that there is no less discriminatory means of achieving the same result.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-860, filed 1/19/10, effective 2/19/10.]

WAC 365-196-865 Family day-care providers.

(1) Counties and cities may not prohibit the use of a residential dwelling as a family day-care provider's home facility that is located in an area zoned for residential or commercial land uses. However, counties and cities may regulate such use as a conditional use. Counties and cities may prohibit such use if it would create an incompatible use adjacent to resource lands of long-term commercial significance. Counties and cities may prohibit such use in the primary crash zone of an airport or aviation facility.

(2) See WAC 365-196-210 for the definition of "family day-care providers" used in this section.

(3) A county or city may require the family day-care provider to comply with building and land use regulations. They can require the provider to be certified by the department of early learning and to comply with the sign code; as well as any building, fire, safety, health code, and business licensing requirements. They can also limit the hours of operation to keep the day-care from disrupting other neighborhood uses, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

(4) The county or city might also require the family day-care provider to show that they notified adjoining property owners of their intent to locate and maintain a family day-care near them.

(5) If disputes arise between neighbors and the family day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute. A forum, in this case, refers to a meeting of the affected parties to discuss and resolve the dispute.

[Statutory Authority: RCW 36.70A.050 and 36.70A.190. WSR 10-03-085, § 365-196-865, filed 1/19/10, effective 2/19/10.]

WAC 365-196-870 Affordable housing incentives.

(1) Background.

(a) The act calls on counties and cities to **plan for and accommodate** ~~encourage the availability of affordable~~ housing **affordable to all economic segments of the population**. Addressing the need for affordable housing will require a broad variety of tools to address local needs. This section describes certain affordable housing incentive programs (incentive programs) that counties and cities may to implement.

Commented [JD(15]: HB 1220

~~(b) The powers granted in RCW 36.70A.540 are supplemental and additional to the powers otherwise held by local governments, and nothing in RCW 36.70A.540 shall be construed as a limit on such powers.~~

(~~c~~**b**) Counties and cities may use incentive programs to implement other policies in their comprehensive plan in addition to affordable

housing; for instance, encouraging higher densities that reduce the need for land and increase the efficiency of providing public services.

(~~d~~**c**) Incentive programs may apply to residential, commercial, industrial and/or mixed-use developments.

(~~e~~**d**) Incentive programs may be implemented **through fee waivers and exemptions,** development regulations, conditions on rezoning or permit decisions, ~~or~~ any combination of these or other tools.

(~~f~~**e**) Incentive programs may apply to part or all of a ~~city or~~ county **or city**. A county or city may apply different standards to different areas within their jurisdiction, or to different development types.

(~~g~~**f**) Incentive programs may be modified to meet local needs.

(~~h~~**g**) Incentive programs may include provisions not expressly provided in RCW 36.70A.540 or 82.02.020 **or Chapter 84.14**.

(h) Incentive program may include preferential treatment for affordable housing development.

Commented [JD(16]: RCW 36.130.020

(2) Counties and cities may establish an incentive program that is either required or optional.

(a) Counties and cities may establish an optional incentive program. If a developer chooses not to participate in an optional incentive program, a county or city may not condition, deny or delay the issuance of a permit or development approval that is consistent

with zoning and development standards on the subject property absent the optional incentive provisions of this program.

(b) Counties and cities may establish a **mandatory** incentive program that requires a minimum amount of affordable housing that must be provided by all residential developments built under the revised regulations. The minimum amount of affordable housing may be a percentage of the units or floor area in a development or of the development capacity of the site under the revised regulations. These programs may be established as follows:

(i) The county or city identifies certain land use designations within a geographic area where increased residential development will help achieve local growth management and housing policies.

(ii) The ~~city or~~ county **or city** adopts revised regulations to increase development capacity through zoning changes, bonus densities, height and bulk increases, parking reductions, or other regulatory changes or other incentives.

(iii) The county or city determines that the increased residential development capacity resulting from the revised regulations can be achieved in the designated area, taking into consideration other applicable development regulations.

(3) Steps in establishing an incentive program.

(a) When developing incentive programs, counties and cities should start with the **local housing need gaps at each income level, as** identified in the housing element and develop incentive programs as a strategy to **make adequate provisions for existing and projected housing needs of all economic segments of the county or city as required by RCW 36.70A.070(2)(d)** ~~implement the housing element and close some of the identified gaps~~. **Incentive programs could include:**

(i) Reduce or waive development requirements such as parking, infrastructure connection fees and/or impact fees for housing affordable to low, very low, or extremely low-income households.

(ii) Expedite permitting and density bonuses for projects that set aside a percentage of units or all units as affordable to moderate, low, very-low, or extremely low-income households.

(iii) Adopt incentive programs that specifically encourage permanent supportive housing, transitional housing, indoor emergency shelter and indoor emergency housing.

(b) Counties and cities should identify incentives that can be provided to residential, commercial, ~~industrial~~ or mixed-use developments providing affordable housing **including tiny house communities as defined in RCW 35.21.686**. Incentives could include density bonuses within the urban growth area, height and bulk bonuses, fee waivers or exemptions, parking reductions, expedited permitting, or other benefits to a development. Counties and cities **should** ~~may~~ provide a variety of

Commented [JD(17]: HB 2001

incentives **to accommodate housing needs of all economic segments** and may tailor the type of incentive to the circumstances of a particular development project.

(c) Counties and cities may choose to offer incentives through development regulations, **fees, processes,** or through conditions on rezones or permit decisions.

(4) Criteria for **developing a program under RCW 36.70A.540.** ~~determining income eligibility of prospective tenants or buyers~~. When developing an affordable housing incentive program, counties and cities must establish standards for low-income renter or owner occupancy housing consistent with RCW 36.70A.540 (2)(b). The housing must be affordable to and occupied by low-income households.

(a) Low-income renter households are defined as households with incomes of fifty percent or less of the county median family income, adjusted for family size.

(b) Low-income owner households are defined as households with incomes of eighty percent or less of the county median family income, adjusted for family size.

(c) Adjustments to income levels: Counties and cities may, after holding a public hearing, establish lower or higher income levels based on findings that such higher income and corresponding affordability limits are needed to address local housing market. The higher income level may not exceed eighty percent of county median

family income for rental housing or one hundred percent of median county family income for owner-occupied housing.

(d) Affordable units developed under RCW 36.70A.540 should be committed to affordability for fifty years; however, a local government may accept payments in lieu of continuing affordability.

(e) The powers granted in RCW 36.70A.540 are supplemental and additional to the powers otherwise held by local governments, and nothing in RCW 36.70A.540 shall be construed as a limit on such powers.

(5) Maximum rent or sales prices: Counties and cities must establish the maximum rent level or sales prices for each low-income housing unit developed under the terms of their affordable housing programs. Counties and cities may adjust these levels based on the average size of the household expected to occupy the unit. These levels may be adjusted over time with changes in median income and factors affecting the affordability of sales prices to low-income households.

(a) For renter-occupied housing units, the total housing costs, including basic utilities as determined by the jurisdiction, may not exceed thirty percent of the income limit for the low-income housing unit.

(b) For owner-occupied housing units, affordable home prices should be based on conventional or FHA lending standards applicable to low-income first-time homebuyers.

(6) Types of units provided when a developer is using incentives to develop both market rate housing and affordable housing.

(a) Market-rate housing projects participating in the affordable housing incentive program should provide low-income units in a range of sizes comparable to those units that are available for other residents. To the extent practicable, the number of bedrooms in low-income units should be in the same proportion as the number of bedrooms in units within the entire development.

(b) The provision of units within the developments for which a bonus or incentive is provided is encouraged. However, programs may allow units to be provided in a building located in the general area of the development for which a bonus or incentive is provided.

(c) The low-income units should have substantially the same functionality as the other units in the development.

(7) Enforcement of conditions: Conditions may be enforced using covenants, options or other agreements executed and recorded by owners and developers of the affordable housing units. Affordable units developed under an incentive program should be committed to affordability for fifty years; however, a local government may accept payments in lieu of continuing affordability.

(8) Payment in lieu of providing units allowed. Counties and cities may also allow a payment of money or property in lieu of low-income housing units if the jurisdiction determines that the payment achieves a result equal to or better than providing the affordable housing on-site.

The payment must not exceed the approximate costs of developing the same number and quality of housing units that would otherwise be developed. The funds or property must be used to support the development of low-income housing, including support provided through loans or grants to public or private owners or developers of housing.

~~(9) Jurisdictions with affordable housing incentive programs should consider customized zoning and development regulations for development on real property owned or controlled by a religious organization.~~

WAC 365-196-872 Housing on property owned or controlled by a religious organization.

Commented [JD(18]: HB 1377 and HB 1754 and RCW 35A.21.360

(1) Religious organizations may host unsheltered people on property owned or controlled by the religious organization whether within buildings located on the property or outside of buildings on the property consistent with RCW 35A.21.360, RCW 36.01.290 and RCW 35.21.915.

(a) Counties and cities may not impose conditions other than those necessary to protect public health and safety and do not substantially burden the decision of the religious organization to provide housing for unsheltered people.

(b) Counties and cities have discretion to reduce or waive permit fees for a religious organization that hosts unsheltered people.

(c) Any religious organization hosting an outdoor encampment, vehicle resident safe parking area, temporary small houses, or indoor

overnight shelter, with a publicly-funded managing agency, must work with the county or city to use Washington's homeless client management information system, as provided for in RCW 43.185C.180.

(2) County and city incentive programs must include increased density bonuses, consistent with local needs, for new or rehabilitated affordable housing development on property owned or controlled by a religious organization, consistent with RCW 35A.63.300 and RCW 36.63.280. There are no requirements for how much additional density must be allowed, but counties and cities:

(a) Must limit the bonus density to sites within the urban growth area.

(b) Should adopt requirements for recording a notice to title that ensures the development is exclusively used for housing affordable to low income households, and will meet the established affordability criteria for a time period not less than 50 years.

(c) Should require the developer to work with transit service providers, if applicable, to provide appropriate transit services;

(d) Must require that the development not discriminate against any low-income household on the basis of race, creed, color, national origin, sex, veteran or military status, sexual orientation, or mental or physical disability; or otherwise act in violation of the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.

(e) Should be aware if adopting these density bonuses that the joint commission will review the success of these density bonuses to prepare a report to the legislature in 2030.

(f) Should also refer to RCW 36.01.290 and the Religious Land Use and Institutionalized Persons Act (RLUIPA) to understand the limits of their authority to regulate uses on property owned or controlled by a religious organization as well as the limits of what the religious organization may offer.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-870, filed 11/2/10, effective 12/3/10.]

WAC 365-196-875 Minimum residential parking requirements

(1) For counties and cities planning under RCW 36.70A.040, the minimum residential parking requirements of RCW 36.70.620 shall apply.

(a) For the purposes of this subsection, the following definitions should apply:

(i) "Seniors" means any individual 65 years or older.

(ii) "Transit stop" applies to stops where passengers embark or debark on public transit systems meeting the applicable transit service levels in RCW 36.70A.620, to include stops for conventional bus service, bus rapid transit, commuter rail, light rail, and rail or fixed guideway systems, including transitways.

Commented [JD(19]: HB 1923 and RCW 36.70A.620. Please note that this new section has pieces still pending, including some definitions, to be determined at the conclusion of ongoing work by a contracted consultant undertaking guidance relating to Parking Studies (eta May 2024). In addition, HB 2321 pending as of publication of this draft, might also impact this section.

(iii) A "credentialed transportation or land use planning expert" is

(iv) "Significantly less safe" is

(v) "Walking distance" may be measured as the distance traveled by road or sidewalk or by the direct distance between two points.

(b) Lack of access to street parking capacity, physical space impediments, or other reasons supported by evidence that would make on-street parking infeasible for the "unit" may be determined by the designated local government decision-maker.

(c) Distances to transit stops may be measured as the distance traveled by road or sidewalk, or by the direct distance between two points.

(d) When two parking requirement limits are provided, such as "one parking space per bedroom or 0.75 space per unit," the county or city may use either limit.

(e) For the purposes of RCW 36.70A.620(3), market rate multi-family units does not include market rate middle housing units.

(2) When permitting accessory dwelling units as defined by RCW 36.70A.696(1) and middle housing as defined by RCW 36.70A.030(26), counties and cities subject to the requirements of RCW 36.70A.635 and RCW 36.70A.681 may not:

(a) Require any off-street parking within one-half mile walking distance of a major transit stop.

Commented [JD(20]: To be defined by consultant parking study process to be completed in May 2024.

Commented [JD(21]: To be defined by consultant parking study process to be completed in May 2024.

Commented [JD(22]: We anticipate additional changes to this pending the completion of parking studies and guidance.

Commented [JD(23]: HB 1337 and HB 1110

(b) Require more than one off-street parking space per unit on lots smaller than 6,000 square feet before any zero lot line subdivisions or lot splits; and

(c) Require more than two off-street parking spaces per unit on lots greater than 6,000 square feet before any zero lot line subdivisions or lot splits.

(3) The provisions of WAC 365-196-875(2) do not apply:

(a) To those areas where the department has certified a local government empirical study meeting the requirements of RCW 36.70A.681(2)(b)(i) or RCW 36.70A.635(7)(a); or

(b) To portions of cities within a one-mile radius of a commercial airport in Washington with at least 9,000,000 annual enplanements.

(c) For the purposes of this subsection:

(4) In cases where the number of off-street parking spaces required by RCW 36.70A.620 conflict with RCW 36.70A.635 or RCW 36.70A.618, the least restrictive off-street parking requirement should apply.

(5) The off-street parking requirements of RCW 36.70A.635 and RCW 36.70A.681 should be considered maximums and may be reduced. In considering reducing maximum off-street parking requirements, counties and cities should give consideration to:

(a) Proximity to transit facilities;

(b) Availability of on-street parking in the area;

(c) Predominant lot sizes, and whether off-street parking may restrict development of middle housing types; and

(d) Demand for off-street parking for affordable housing units.

WAC 365-196-880 Accessory dwelling units

(1) For the purposes of this section, the definitions established in RCW 36.70A.696 apply.

Commented [JD(24]: HB 6617

(2)Requirements: Within urban growth areas, counties and cities:

(a) Must allow at least two accessory dwelling units on all lots that allow for single-family homes in the following configurations:

(i) One attached accessory dwelling unit and one detached accessory dwelling unit;

(ii) Two attached accessory dwelling units;

(iii) Two detached accessory dwelling units, which may be comprised of either one or two detached structures;

(iv) Must allow accessory dwelling units to be converted from existing structures, including but not limited to detached garages, even if they violate current code requirements for setbacks or lot coverage;

(b) Must allow accessory dwelling units on any lot that meets the minimum lot size required for the principal unit;

(c) May not establish a maximum gross floor area requirement for accessory dwelling units that is less than 1,000 square feet;

(d) May not assess impact fees on the construction of accessory dwelling units that are greater than 50 percent of the impact fees that would be imposed on the principal unit;

(e) May not require the owner of a lot on which there is an accessory dwelling unit to reside in or occupy the accessory dwelling unit or another housing unit on the same lot;

(f) May not establish roof height limits on an accessory dwelling unit of less than 24 feet, unless the height limitation that applies to the principal unit is less than 24 feet, in which case a county or city may not impose roof height limitation on accessory dwelling units that is less than the height limitation that applies to the principal unit;

(g) May not impose setback requirements, yard coverage limits, tree retention mandates, restrictions on entry door locations, aesthetic requirements, or requirements for design review for accessory dwelling units that are more restrictive than those for the principal unit;

(h) Must allow detached accessory dwelling units to be sited at a lot line if the lot line abuts a public alley, unless the county or city routinely plows snow on the public alley;

(i) May not prohibit the sale or other conveyance of a condominium unit independently of a principal unit solely on the grounds that the condominium unit was originally built as an accessory dwelling unit;

(j) May not require public street improvements as a condition of permitting accessory dwelling units.

(k) Must align parking with the requirements of WAC 365-196-875

(3) Restrictions on ADUs

(a) Counties and cities are not required or authorized to allow the construction of an accessory dwelling unit in a location where development is restricted under other laws, rules, such as home ownership association rules, or ordinances, and may apply generally applicable development regulations to the construction of an accessory unit, except when the application of such regulations would be contrary to this section.

(b) Counties and cities may apply public health, safety, building code, and environmental permitting requirements to an accessory dwelling unit that would be applicable to the principal unit

(c) Counties and cities may apply regulations to protect ground and surface waters from on-site wastewater; as such, the construction of accessory dwelling units may be prohibited on lots that are not connected to or served by public sewers;

(d) Counties and cities are not authorized to allow the construction of accessory dwelling units on lots designated with critical areas or their buffers as designated in RCW 36.70A.060, or in shoreline areas, though conversions of internal space may be allowed.

(e) Counties and cities may prohibit or restrict the construction of accessory dwelling units in residential zones with a density of one dwelling unit per acre or less that are within areas designated as wetlands, fish and wildlife habitats, flood plains, or geologically hazardous areas.

(f) Counties and cities may prohibit or restrict the construction of accessory dwelling units in a watershed serving a reservoir for potable water if that watershed is or was listed, as of July 1, 2023, as impaired or threatened under section 303(d) of the federal clean water act (33 U.S.C. Sec. 1313(d)).

(g) Counties and cities may prohibit or restrict the construction of accessory dwelling units in portions of cities within a one mile radius of a commercial airport in Washington with at least 9,000,000 annual enplanements.

(h) Counties and cities may prohibit or restrict the construction of accessory dwelling units may restrict the construction of accessory dwelling units in areas with other unsuitable physical characteristics of a property.

(i) Counties and cities may restrict the use of accessory dwelling units for short term rentals;

(4) The requirements of RCW 36.70A.681 shall: Supersede, preempt, and invalidate local development regulations in any county or city that has not passed ordinances, regulations, or other official controls within the time frames provided under RCW 36.70A.680.

(5) ADU regulations not subject to appeal. Any action taken by a county or city that is consistent with these requirements is not subject to legal challenge under chapter 36.70A RCW or chapter 43.21C RCW, unless the action has a probable significant adverse impact on fish habitat;

WAC 365-196-890 Minimum residential density.

Commented [JD(25]: HB 1110, Sec 3

(1) Except as provided in RCW 36.70A,635(4), any city that is required or chooses to plan under RCW 36.70A.040 must authorize by ordinance and incorporate into its development regulations, zoning regulations, and other official controls, the following:

(a) Cities with a population of at least 75,000, based on Office of Financial Management population estimates, must, on all lots zoned predominantly for residential use, permit the development of:

i. At least four units per lot, unless zoning permitting higher densities or intensities applies;

ii. At least six units per lot if located within a quarter-mile walking distance of a major transit stop, unless zoning permitting higher densities or intensities applies; and

iii. At least six units per lot, if at least two of the units are affordable housing, unless zoning permitting higher densities or intensities applies.

(b) Cities with a population less than 75,000 but at least 25,000 based on Office of Financial Management population estimates, must, on all lots zoned predominantly for residential use, permit the development of:

i. **At least two units per lot, unless zoning permitting higher densities or intensities applies.**

ii. **At least four units per lot if located within a quarter-mile walking distance of a major transit stop unless zoning permitting higher densities or intensities applies and**

iii. **At least four units per lot, if at least one of the units is affordable housing unless zoning permitting higher densities or intensities applies.**

(2) Cities with populations under 25,000 based on Office of Financial Management population estimates and within a contiguous urban growth area with the largest city in a county with a population of more than 275,000 must permit the development of least two units on all lots zoned predominantly for residential use, unless zoning permitting higher densities or intensities applies.

(3) Cities are not required to achieve the per unit density on lots after subdivision below 1,000 square feet unless the city chooses to enact smaller allowable lot sizes.

(4)(a) To qualify for the additional affordable housing units allowed under subsection (1) of this section, the applicant must:

(i) Commit to renting or selling the required number of units as affordable housing and maintain the units as affordable for a term of at least 50 years, and

(ii) Have the property satisfy that commitment and all required affordability and income eligibility conditions adopted by the local government under Chapter 36.70A RCW.

(b) A city must require the applicant to record a covenant or deed restriction that:

i. Ensures the continuing rental 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; and

ii. Addresses criteria and policies to maintain public benefit if the property is converted to a use other than which continues to provide for permanently affordable housing.

(c) The units dedicated as affordable must:

(i) Be provided in a range of sizes comparable to other units in the development.

(ii) To the extent practicable, have the number of bedrooms in the same proportion as the number of bedrooms in units within the entire development.

(iii) Generally be distributed throughout the development and have substantially the same functionality as the other units in the development.

(d) For cities that have enacted a program under RCW 36.70A.540, the terms of that program govern to the extent they vary from the requirements of this subsection.

(4) A city that had enacted a program under RCW 36.70A.540 may require any development, including development described in subsection (1) of this section, to provide affordable housing, either on-site or through an in-lieu payment. The city may expand such a program or modify its requirements.

(5)(a) As an alternative to the density requirements in subsection (1) of this section, a city may implement the density requirements in subsection (1) of this section for at least 75 percent of lots in the city that are primarily dedicated to single-family detached housing units.

(b) The 25 percent of lots for which the requirements of subsection (1) of this section are not implemented must include but are not limited to:

(i) Any 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;

(ii) Any 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;

(iii) Any lots designated with critical areas or their buffers that are exempt from the density requirements as provided in subsection (9) of this section;

(iv) Any portion of a city within a one-mile radius of a commercial airport with at least 9,000,000 annual enplanements that is exempt from the parking requirements under RCW 36.70A.635(7)(b); and

(v) Any areas subject to sea level rise, increased flooding, susceptible to wildfires, or geological hazards over the next 100 years.

(c) Unless identified as at higher risk of displacement under RCW 36.70A.070(2)(g), the 25 percent of lots for which the requirements of subsection (1) of this section are not implemented may not include:

(i) Any areas for which the exclusion would further racially disparate impacts or result in zoning with a discriminatory effect;

(ii) Any areas within one-half mile walking distance of a major transit stop; or

(iii) 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.

(6) 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.

(a) A city may allow accessory dwelling units to achieve the unit density required in subsection (1) of this section.

(b) Cities are not required to allow accessory dwelling units or middle housing types beyond the density requirements in subsection (1) of this section.

(c) Cities must allow zero lot line short subdivisions where the number of lots created is equal to the unit density required in subsection (1) of this section.

(7) (a) Cities shall not require through development regulations any standards for middle housing that are more restrictive than those required for detached single-family residences.

(b) Cities may apply any objective development regulations that are required for detached single-family residences, including, but not limited to, setback, lot coverage, stormwater, clearing, and tree canopy and retention requirements to ensure compliance with existing ordinances intended to protect critical areas and public health and safety;

(c) Cities may apply design review for middle housing provided:

(i) Only administrative design review shall be required;

(ii) Only those objective design standards necessary to address middle housing compatibility with the scale, form and character with single family houses should be allowed.

(8) Cities shall apply to middle housing the same development permit and environmental review processes 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.

(9) The provisions of this section do not apply to:

(a) Lots designated with critical areas under RCW 36.70A.170 or their buffers as required by RCW 36.70A.170;

(b) 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)); or

(c) Lots designated urban separators by countywide planning policies as of July 23, 2023.

(10) RCW 36.70.635 does not:

(a) Prohibit a city from permitting detached single-family residences.

(b) Require a city to issue a building permit if other federal, state, and local requirements for a building permit are not met.

(11) A city must comply with the requirements of this section on the latter of:

(a) Six months after its 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

(b) 12 months after their 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 this section.

(12) A city complying with this section and not granted a timeline extension under RCW 36.70A.638 does not have to update its capital facilities plan element required by RCW 36.70A.070(3) to accommodate the increased housing required RCW 36.70A.635 or RCW 36.70A.636 until the first periodic comprehensive plan update required for the city under RCW 36.70A.130(5) that occurs on or after June 30, 2034.

(13) Recommendations for meeting requirements.

(a) Cities should define "all lots zoned predominantly for residential use" with consideration given to:

(i) Including zoning districts where residential dwellings are the primary use.

(ii) Non-residential zones, such as commercial, industrial and public zoning districts, should not be considered lots

"zoned predominantly for residential use" even though they may permit single family dwellings.

(iii) Mixed use zones that allow for a complementary mix of commercial development with residential development, and which allow residential development at higher densities than middle housing, should not be considered lots predominantly zoned for residential use.

(b) Cities may define duplex, triplex, fourplex, fiveplex and sixplex provided that the definitions are consistent with the definition of middle housing (RCW 36.70A.030(26)), including that middle housing buildings are compatible in scale, form, and character with single-family houses and contain two or more attached, stacked, or clustered homes.

(14) Development regulations for middle housing:

(a) Shall not require any standards that are more restrictive than those required for detached single-family residences, except as provided for in RCW 36.70A.635(6)(a) through administrative design review.

(b) 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 to ensure compliance with existing ordinances intended to protect critical areas and public health and safety;

(c) May adopt objective development regulations for middle housing that are less restrictive than existing standards required for detached single-family residences; and

(d) May use administrative design review to adopt design and development standards that reflect differences between detached single- unit houses and "middle housing" types; provided that,

(i) The design and development standard is objective; and,

(ii) The design and development standard makes middle housing compatible with the form, character and scale of existing single family houses.

(e)Cities establishing unit per lot requirements above the minimums identified in RCW 36.70.635 (1)(a)(i)-(iii), (1)(b) (i)-(iii) and (1)(c), should consider:

(i) The variety of lot sizes that may exist in the city;

(ii) Proximity to major transit facilities, if any;

(iii) The type of major transit facilities, if any;

(iv) Neighborhood facilities, such as shopping services, if any;

(v) Existing public facilities such as sidewalks;

(vi) How objective middle housing development and design standards can serve to make middle housing compatible with the form, scale and character of single family homes.

(f)Cities should consider applying the same critical area requirements for middle housing development that would apply to single family homes on the same lot.

(15) A city complying with the requirements of RCW 36.70A.635 and not granted a timeline extension under RCW 36.70A.638 should make updates its capital facilities element to accommodate the increased housing required by RCW 36.70A.635 and RCW 36.70A.636 prior to the first periodic update that occurs on or after June 30, 2034.

WAC 365-196-910 Extension for certain areas subject to alternative density requirements

(1) Cities choosing the alternative density requirements in RCW 36.70A.635(4) may apply to the department of an extension for areas at risk of displacement in accordance with WAC 365-199-070.

WAC 365-196-900 Department technical assistance—Approval of alternative action.

(1) The model middle housing ordinances published by the department in accordance with RCW 36.70A.636(2) shall:

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(a) Supersede, preempt, and invalidates local development regulations 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).

(b) Remain effect until the city takes all actions necessary to implement RCW 36.70A.635.

(2) Subject to a process provided for in WAC 365-199-060, cities implementing the requirements of RCW 36.70A.635 may seek approval of alternative local actions identified in RCW 36.70A.637(3)(b) and (c), subject to the approval process in WAC 365-199-060.

(a) The department may approve actions for cities that have, by January 1, 2023, adopted a comprehensive plan that is substantially similar to the requirements of RCW 36.70A.635 and have adopted, or within one year of July 23, 2023 adopts, permanent development regulations substantially similar to the requirements of RCW 36.70A.635. In determining whether a city's adopted comprehensive plan and permanent development regulations are substantially similar, the department must find as substantially similar plans and regulations that:

(i) 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 implemented.

(ii) Allow for middle housing throughout the city, rather than just in targeted locations; and

(iii) Allow for additional density near major transit stops, and for projects that incorporate dedicated affordable housing.

(b) The department may approve actions for cities that have, by January 1, 2023, adopted a comprehensive plan or development regulations that have significantly reduced or eliminated residentially zoned areas that are predominantly single family. The department must find that a city's actions are substantially similar to the requirements of RCW 36.70A.635 if they have adopted, or within one year of July 23, 2023, adopts, permanent development regulations that:

(i) 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 implemented;

(ii) Allow for middle housing throughout the city, rather than just in targeted locations; and

(iii) Allow for additional density near major transit stops, and for projects that incorporate dedicated affordable housing.

(3)(a) The department may determine that a comprehensive plan and development regulations that do not meet the criteria in RCW 36.70A.636(3)(b) or RCW 36.70A.636(3)(c) are otherwise substantially similar to the requirements of RCW 36.70A.635 if the city can clearly

demonstrate that the regulations adopted will allow for a greater increase in middle housing production within single family zones than would be allowed through implementation of RCW 36.70A.635.

(b) In making this determination, the city must provide supporting documentation and calculations that compare middle housing units allowed within single family zones under the alternative action to housing units allowed were the city to adopt applicable provisions of RCW 36.70A.635.

(c) In preparing the documentation and calculations, consideration should be given to housing element technical guidance documents prepared by the department for conducting housing element land capacity analysis.

(4) Any local actions approved by the department pursuant to RCW 36.70A.636 (b), and (c) to implement the requirements under RCW 36.70A.635 are exempt from appeals under this chapter and chapter 43.21C RCW.

(5) The department's final decision to approve or reject actions by cities implementing RCW 36.70A.635 may be appealed to the growth management hearings board by filing a petition as provided in RCW 36.70A.290.

(a) Areas at risk of displacement shall be determined by the antidisplacement analysis required to be completed under RCW 36.70A.070(2).

(b) The city must create a plan for implementing antidisplacement policies by their next implementation progress report required by RCW 36.70A.130(9). The department must certify such extension.

(2) The department may certify one further extension in accordance with WAC 365-199-070 based on evidence of significant ongoing displacement risk in the impacted area. (a)In considering significant ongoing displacement risk, cities should consider factors such as evictions, foreclosures, rent and home value market velocity, social vulnerability, demographic change, and other factors commonly used to measure displacement.