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Design review

Can a city still have a design review board?
Yes, but for a middle housing development permit, it may only be used to consider, recommend, or approve an applicant's request for a variance from the city's established design review standards, which must be objective and administered by the planning director or designee. *See also* **HB 1337** for design review for ADUs and **HB 1293** for all new development.

Can a city hold a public hearing on design review?
For middle housing development permits, a city must apply objective design standards without a public predecision hearing unless one is required by law, or the structure or district is designated as historic under a preservation ordinance. *See also* **HB 1293** for new development that is not middle housing.

Impacted cities

What does "contiguous urban growth area" mean?
To determine if your city falls under Section 3(1)(c), follow these steps:

1. Is the population of your county more than 275,000? If yes, continue.
2. Locate the largest city in your county on this map: Washington State City Urban Growth Areas
3. Using the map, determine if your city's UGA connects like puzzle pieces to that city's UGA, in an unbroken link of UGAs. If yes, then your city must comply with the requirements of **HB 1110**.

Which population do we use to determine where our city fits under the law – our current population or our population in 2020?
Cities are required to comply with requirements of **HB 1110** no later than six months after their next periodic comprehensive plan update if the city meets a population threshold outlined in Section 3 based on their 2020 OFM population. If the city does not meet the population threshold at that time, the requirements will apply 12 months after the next implementation progress report *after* the city's current population reaches the threshold.

Middle housing types

If our city is required to allow two units per lot under Section 3 and we already allow ADUs on all those lots, do we meet the density requirement?
Yes. Section 3(5) allows a city to fulfill the density requirements by allowing ADUs. Cities are not required to allow additional middle housing types beyond the density requirements.

But doesn't the law require us to allow at least six types of middle housing?
Cities are only required to allow as many middle housing types that also meet the minimum density requirement per lot. For example, a city is not required to allow a triplex for a lot that must allow two units. However, that city would need to allow a four-unit middle housing development on that lot if at least one unit met the affordable housing requirements.

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Impacted lots

Do the density requirements only apply to lots that allow single-family housing units?

It depends on which approach the city takes to meet the requirements:

- Section 3 (1) requirements apply to: "all lots zoned predominantly for residential use, unless zoning permitting higher densities or intensities applies;… ."
- Section 3 (4) provides an alternative where the city would apply the density requirements to at least 75% of the lots in the city that are primarily dedicated to single-family housing. In that case, you would focus on the single-family lots only.
- Section 4 provides additional local action alternatives for cities, which also focus on single-family lots and zones. More detail on this section is provided below in the section on **Alternative compliance**.

What size lots do the density requirements apply to?

The density requirements apply to: "all lots zoned predominantly for residential use, unless zoning permitting higher densities or intensities applies;… ." **HB 1110** is silent on lot size except for the provision in Section 3(6)(g) regarding lot size after subdivision. Because Section 3(8) lists exemptions for lots but does not include lot size, courts will likely interpret that as legislative intent to apply the requirements to all lots without regard to size because the Legislature could have included an exemption here for lots smaller than X sq ft but didn't.

However, Section 3(6)(b) allows a city to apply objective development regulations that are required for single-family to middle housing development. Further, Section 3(10) does not require a city to issue a building permit if other local requirements are not met if those requirements are not prohibited by **HB 1110**. If a city's ordinances require a lot to be of a certain size to build a detached single-family residence—or requires certain lot coverage or set-back requirements—then a city could apply those standards to middle housing.

Does HB 1110 require our city to allow subdivision of lots?

Section 3(5) requires a city to allow zero lot line short subdivision where the number of lots created is equal to the unit density required in Section3(1). Section 3(6)(g) does not require a city to allow or prohibit subdivision. Its sole purpose is to exempt a city from complying with the density requirement on any lot that becomes less than 1,000 sq ft due to a subdivision.

How does HB 1110 impact lots controlled by homeowner association covenants?

The density requirements apply to: "all lots zoned predominantly for residential use, unless zoning permitting higher densities or intensities applies;... ." The session law also requires cities to allow at least six types of middle housing to achieve that density for those zoned lots. For cities implementing the density alternative for at least 75% of lots dedicated to single-family detached housing, **HB 1110** prohibits excluding lots historically covered by a racially restrictive deed or covenant, as known to the city at each comprehensive plan update. In addition, a city cannot exclude lots that would further racially disparate impacts or result in zoning with a discriminatory effect. The exception to both is if the lots in question are identified as having a higher risk of displacement.

Sections 10 through 13 place new requirements on common interest communities and homeowner's associations by amending the laws that govern those types of ownership.

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Alternative compliance

What are the alternative compliance options if our city does not want to adopt the density requirements listed by population?
If your city does not want to adopt the density requirements in Section 3(1), you can choose to take the alternative option listed in Section 3(4): apply the density requirements to at least 75% of the lots in the city that are primarily dedicated to single-family housing.

Your city may have additional options under Section 4:

For cities that by January 1, 2023, adopted either a comprehensive plan OR development regulations that either significantly reduced or eliminated areas that are zoned for predominantly single-family residences OR that are substantially similar to the density requirements of the act, you will have until July 21, 2024, to adopt permanent development regulations that are substantially similar to the density requirements.

What does "substantially similar" mean?
Except for the following statutory criteria that Commerce must determine as "substantially similar," the department will have discretion to determine whether a plan and development regulations are substantially similar:

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 this act were adopted;
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.

Section 4(3)(d) provides Commerce with permissive authority to accept as "substantially similar" a plan and development regulations that do not meet the above 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 the requirements in Section 3.

Agency role

What is Commerce's role?
The Department of Commerce is directed to do the following:

1. Create model middle housing ordinances by January 2, 2024. These ordinances will preempt city ordinances that do not comply with the requirements by the deadlines established in **HB 1110**.
2. Provide technical assistance to cities required to comply with the session law.
3. Establish a process for cities who voluntarily seek approval of alternative local actions to meet the requirements of **HB 1110**. The law directs Commerce to provide this process but does not require cities to use it. See **Appeal protections** for more information.
4. Certifying extensions for implementation due to displacement risk or specific infrastructure deficiencies. See **Compliance timeline extension** for more information.

HB 1110 also grants the department permissive authority to issue guidance for cities to integrate the density requirements under the session law with how cities traditionally calculate density in zoning and development regulations.

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Compliance timeline extension

Under what circumstances can we apply for an extension to implement the density requirements?

The only cities that can apply for an implementation extension are those that are choosing to implement the alternative density requirements in Section 3(4): apply the density requirements to at least 75% of the lots in the city that are primarily dedicated to single-family housing. There are two reasons a city may apply for an implementation extension:

1. Antidisplacement risk. Section 5 provides the criteria. The extension can be renewed once and will only apply to the lots in the impacted area.
2. Infrastructure deficiency. Section 7 provides the criteria and it can only be applied to the area with a deficiency. A city granted an extension may reapply to renew the extension if the deficiency is not addressed.

Appeal protections

Does HB 1110 provide an appeal safe harbor for GMA or SEPA?

There are two areas of the bill that detail a safe harbor:

1. **For cities implementing any local action alternative** in Section 4 which received approval from Commerce, provision (3)(e) provides a SEPA and GMA safe harbor. However, the *department's final decision* to approve or reject actions by cities may be appealed to the Growth Management Hearings Board by filing a petition as provided in RCW 36.70A.290.
2. **For cities implementing the local action alternative** listed in section 4(3)(b), Section 8(2) provides a SEPA safe harbor.

Misc.

Did the Legislature pass a budget that specifically appropriated funding for HB 1110?

Yes.