



**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND**

**AB 6600
January 21, 2025
Regular Business**

AGENDA BILL INFORMATION

TITLE:	AB 6600: Middle Housing and Accessory Dwelling Units - HB 1110, HB 1337 and SB 5258 Compliance	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution
RECOMMENDED ACTION:	Receive briefing, provide policy direction.	

DEPARTMENT:	Community Planning and Development
STAFF:	Jeff Thomas, Community Planning and Development Director Alison Van Gorp, Community Planning and Development Deputy Director
COUNCIL LIAISON:	n/a
EXHIBITS:	n/a
CITY COUNCIL PRIORITY:	n/a

AMOUNT OF EXPENDITURE	\$ n/a
AMOUNT BUDGETED	\$ n/a
APPROPRIATION REQUIRED	\$ n/a

EXECUTIVE SUMMARY

The purpose of this agenda bill is to hold the second of two work sessions related to the requirements of HB 1110, HB 1337, and SB 5258 regarding middle housing and accessory dwelling units. The first work session was held on January 7 and was informational only. The second work session on January 21 will be to discuss options and receive policy direction from the City Council.

- In 2023, the Washington State legislature passed [HB 1110](#), [HB 1337](#) and [SB 5258](#) establishing new requirements for development on residential lots in Washington cities, including Mercer Island.
- Mercer Island must allow two Accessory Dwelling Units (ADUs) on each lot where single-family homes are allowed (R, MF, PBZ and TC zones). ADUs can be attached, detached, or a combination and they can be a conversion of an existing building.
- Mercer Island must also allow 2 to 4 units of middle housing on each lot located in the Residential zones (R-8.4, R-9.6, R-12 and R-15). Middle housing is moderate density housing that is compatible in scale, form and character with single-family houses. The City must allow at least six of the prescribed nine types of middle housing.
- In addition, Mercer Island must permit unit lot subdivision, allowing existing “parent lots” to be split into “unit lots” that provide for individual sale and ownership of middle housing and ADU units.
- Adoption of interim regulations to provide minimum compliance with HB 1110, HB 1337 and SB 5258 is planned in Q1 2025. Permanent development regulations will be developed in the future with

additional community engagement, analysis of policy options and refinement of the interim development regulations.

- At the January 21, 2025, City Council meeting, staff will brief the City Council on the policy choices of HB 1110, HB 1337, and SB 5258 and receive direction for the preparation interim regulations.

BACKGROUND

LEGISLATIVE REQUIREMENTS

In 2023, the Washington State Legislature adopted [House Bill 1110](#), commonly referred to as the “middle housing” bill. The main provisions of HB 1110 are codified as part of the Growth Management Act (GMA) in [RCW 36.70A.635](#) through [RCW 36.70A.638](#) and require many cities in the state to allow a range of moderate density housing types in areas that have predominantly allowed detached homes. The legislature also adopted [HB 1337](#) in 2023, codified as RCW [36.70A.680](#), [681](#) and [696](#), and requiring cities to permit two accessory dwelling units (ADUs) on all lots that permit single-family homes. Finally, SB 5258 was also adopted in 2023 and codified as [RCW 58.17.060](#)(3). Among other things, this bill requires jurisdictions to allow unit lot subdivision. Together these bills were intended to increase housing options that are more affordable across income levels.

Cities are required to adopt regulations in compliance with these new GMA requirements by six months after the due date for adoption of the periodic update of the comprehensive plan (June 30, 2025 for Mercer Island). If cities do not come into compliance by the due date, the state statute will “supersede, preempt and invalidate any conflicting local development regulations.” In the case of HB 1110, the state has adopted a model ordinance that will preempt any relevant local regulations if compliant regulations are not adopted by the deadline. More details on the requirements of each of these pieces of legislation is provided in [AB 6556](#).

APPROACH AND SCOPE OF WORK

Initial compliance with [HB 1110](#), [HB 1337](#) and the [SB 5258](#) unit lot subdivision requirements will be achieved via adoption of a single set of interim development regulations in Q1 2025. This approach will allow the City to adopt minimally compliant development regulations in a short timeframe to meet the compliance deadline. It will also allow adequate time for review of code amendments related to other legislative mandates that have deadlines in 2025 (including [HB 1293](#), [HB 1042](#), and [HB 1998](#)), as well as addressing interim development regulations adopted in 2024 that will expire in 2025.

This initial phase will focus on complying with the minimum requirements of the legislation, as described above. This approach will apply the existing dimensional standards in the residential zones to the newly permitted housing types (including floor area, lot coverage, building height, setbacks, etc.). It may also include additional action to address the policy options described below. It will not include development regulations tailored to specific housing types.

The City is planning a future second phase of work aimed at adopting permanent development regulations. This second phase will include additional community engagement, analysis of additional policy options and refinement of the interim development regulations. If development regulations or incentives related to specific housing types or any other policy options are desired, they can be developed during Phase 2.

ISSUE/DISCUSSION

FOLLOW UP ITEMS

At the January 7 meeting, City Council asked the staff to provide additional information on several issues. This information is provided below.

Can rental of middle housing and ADU developments be restricted by City regulation?

HB 1110 provides that development regulations for middle housing cannot be stricter than those for single family development; any rental restriction would have to apply to both housing types. RCW 36.70A.635(6)(b). HB 1110 does not otherwise include requirements related to the tenure of the units (i.e. owner occupied or rental). HB 1337 establishes that cities cannot require owner occupancy of an ADU and/or the primary unit on the same lot, meaning cities cannot prohibit rental of the ADUs or the primary residence. RCW 36.70A.681(1)(b). If the City Council desires, during the second phase of this work, additional legal analysis could be done for a limited rental restriction that would only apply to middle housing and single family development, but not to an ADU and a primary residence on the same lot.

How does Unit Lot ownership work?

Under state law (RCW 58.17.060(3)), unit lot subdivision is a type of short subdivision. Per MICC 19.16.010, short subdivisions are the division of up to four acres into up to four lots. In unit lot subdivision, a parent lot is divided into unit lots. Any portion of the parent lot not included in the unit lots must be owned in common by the owners of the unit lots, or by a homeowner's association. This commonly held land could include shared open space and driveways.

Unit lot subdivision is used to create separate unit lots that can be sold separately under fee simple ownership. "Fee simple" is a legal term that refers to full ownership of land and any buildings on that land.

Unit lot subdivisions can be approved prior to, during, or after development. For example, the backyard of an existing home can be divided into unit lots for sale to a developer that intends to add middle housing or ADUs to the property. Likewise, vacant land can be divided through unit lot subdivision for development and individual sale of middle housing units such as cottage housing or townhomes. Finally, unit lot subdivision could also be used to sell an existing detached ADU for ownership separate from the primary unit.

How many new housing units and ADUs were developed in 2024? How many of the ADUs were associated with an existing home vs. associated with a new single-family home?

The City tracks the annual permitting of new housing units in a [Housing Development Dashboard](#). In 2024, a net total of 160 housing units were permitted. This includes the multi-family units in the Xing Hua project (146 units), a net loss of one single family unit and the addition of 15 ADUs.

Staff also reviewed permit records to determine the breakdown of whether the ADUs are associated with an existing home or a new/rebuilt home. This data has been added to the [Housing Development Dashboard](#). Between 2017 and 2024, 74 ADUs were permitted. 35 were accessory to an existing home (47%) and 39 were part of a larger project to construct a new home (53%).

POLICY QUESTIONS

At the January 21, 2025 City Council meeting, staff will request City Council direction on the following policy questions. Additional analysis of each policy choice is provided in the next section, under Staff Analysis.

1. **Middle Housing Types:** Which six of the nine middle housing types should the City permit?
2. **Alternate Density Options:** Should the City take the standard approach (Option 1) or the alternate density option (Option 2), which would exempt some lots with significant critical areas from middle housing density requirements?
3. **Unit Density and ADUs:** Should the City adopt a maximum unit density standard? Should ADUs be counted toward middle housing unit density?
4. **ADU Floor Area Maximum:** Raise from 900 sq ft to 1,000 sq ft (or higher), or eliminate?
5. **ADU Floor Area Bonus:** Maintain bonus, amend size of bonus, or eliminate?
6. **Impact Fees:** Should the City impose impact fees on middle housing? On ADUs?

STAFF ANALYSIS

1. Middle Housing Types

Mercer Island must permit at least six of the nine middle housing types identified in [HB 1110](#). Of the nine housing types, staff recommend excluding five- and six-plexes since Tier 2 cities are not required to permit unit density above four units per lot.

The City also has the option to exclude a third middle housing type as well. Staff do not have a strong opinion on which additional housing type should be excluded. However, given the timing constraints around development of interim development regulations, it makes sense to hold off on permitting cottage housing at this time. This will allow additional time to consider and develop tailored development regulations for this housing type that would encourage small cottages clustered around a central open space. Without these tailored cottage housing development regulations, allowing cottage housing with the existing single-family dimensional standards could result in development of a lot with two detached dwellings that are essentially two small- to medium-sized single-family homes. If the Council would like to consider permitting cottage housing with tailored development regulations, this could be included as part of the process to create permanent regulations in Phase 2.

Staff recommendation

Staff recommend permitting the following six middle housing types in the interim development regulations: duplex, triplex, fourplex, townhomes, courtyard apartments, stacked flats.

2. Alternative Density Options

HB 1110 provides three options for compliance with the prescribed unit density requirements:

1. standard unit density requirements in RCW 36.70A.635(1),
2. alternative density requirements in RCW 36.70A.635(4), or
3. alternative local action as described in 36.70A.636(3).

Option 1

Option 1 entails permitting middle housing unit densities in all R-zoned lots in Mercer Island, including 2 middle housing units per R-zoned lot or 4 units per lot when within ¼-mile walking distance from the light rail station or if one of the units is affordable. This option is the most straightforward path to meet the unit density requirement.

Option 2

Option 2 provides that the City may implement the unit density requirements for “at least 75%” of the applicable lots in the city, and up to 25% may be exempted from the unit density requirements, subject to the criteria summarized below in Table 1.

Table 1: Alternative Density Requirements – Criteria for inclusion or exclusion from the unit density requirements as outlined in RCW 36.70A.635(4) and the Middle Housing User Guide	
Lots that must be included in the “at least 75%”	Lots that must be included in the “25% or less”
Any areas for which the exclusion would further racially disparate impacts or result in zoning with a discriminatory effect	Lots, parcels, and tracts designated with critical areas or their buffers that are exempt from the density requirements as provided in RCW 36.70A.635(8); provided that, only those lots where the critical areas or their buffers would preclude middle housing development should be excluded. A lot, parcel or tract that has a critical area or buffer on it, that could be developed for middle housing, should be considered as a lot eligible for middle housing development.
Any areas within ½-mile walking distance of a major transit stop	Any portion of a city within a one-mile radius of a commercial airport with at least 9,000,000 annual enplanements
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	Areas subject to sea level rise, increased flooding, susceptible to wildfires, or geological hazards over the next 100 years
	Areas within the city for which the department has certified an extension of the implementation timelines under RCW 36.70A.637 due to the risk of displacement. This certification is not required if the number of lots excluded from the unit per lot requirements of RCW 36.70A.635 is less than 25 percent of the total number of lots being considered in this alternative.
	Areas within the city for which the department has certified an extension of the implementation timelines under RCW 36.70A.638 due to a lack of infrastructure capacity. This certification is not required if the number of lots excluded from the unit per lot requirements of RCW 36.70A.635 is less than 25 percent of the total lots being considered in this alternative.

Pursuing Option 2 could potentially allow the City to exclude some lots that are highly constrained with critical areas from the middle housing unit density requirement. However, determining which lots can be excluded from the unit density requirements is complex, with both technical challenges and equity concerns. The [Middle Housing User Guide](#) indicates that only lots “where the critical areas or their buffers would preclude middle housing development should be excluded.” Determining whether a critical area precludes middle housing development relates to both the type of critical area and the extent of the critical area on the lot.

Certain types of critical areas, such as watercourses and wetlands, are regulated very strictly. Development within these critical areas is generally prohibited and development within the associated critical area buffers is highly constrained. Alternatively, other types of critical areas, like steep slopes or seismic hazard areas, can more readily be developed with appropriate engineering approaches to ensure stability of the site and structural integrity of the building. Thus, a lot with a large wetland or watercourse running through the middle would likely preclude development of middle housing, but a lot with a steep slope or seismic hazard area could potentially be developed with middle housing with the appropriate geotechnical and/or structural engineering.

Under the City’s current critical area regulations, the location and extent of critical areas is analyzed through a critical areas study as a part of the permitting process. The permit applicant is required to prepare a critical areas report when critical areas may exist on the property. The report is prepared by a qualified professional who performs on-site analysis to determine the exact location and extent of critical areas and buffers. The report also includes recommendations for mitigating impacts to the critical area (in the case of wetlands, watercourses and critical habitat areas) and to ensure safety of any proposed development (in the case of the geologic hazard areas). The City can engage a third-party peer reviewer as necessary to verify the findings of the applicant’s qualified professional. Based on these inputs, the City makes a determination on the applicant’s development permits.

If the City pursues Option 2, it would be necessary to determine which specific lots are to be excluded from the unit density requirements. The City’s GIS mapping of critical areas is only meant to provide a general indication of where critical areas *may* exist. It does not currently have the level of accuracy needed to identify exactly where critical areas are located, much less which specific lots are partially or wholly constrained by critical areas. Attempting to use the existing GIS data in this way could result in improperly excluding some lots and unnecessarily including others. These data limitations make the determination of which lots to exclude difficult and could lead to inequitable outcomes. Pursuing this option would require additional analysis and refinement of the City’s critical areas GIS map data to ensure an accurate and equitable approach. While we do not currently have a cost estimate for this work, it is expected to be quite costly.

Additionally, using Option 2 to exclude lots that are wholly constrained with critical areas from the area where middle housing density is permitted is unlikely to change the outcome for these lots. If the City instead used Option 1 and middle housing unit density is permitted on these lots, any properties seeking to develop middle housing would need to provide critical areas reports to identify the extent of the critical area and appropriate measures to protect the critical area and ensure the safety of the dwelling(s). Ultimately, this would have the same effect as excluding the lot from the middle housing density requirement when the lot is significantly constrained with wetlands or watercourses and their buffers. While this approach provides less clarity upfront on where middle housing can be developed, it would also put the burden of determining where critical areas preclude middle housing development onto the potential developer of such housing rather than on this City.

Option 2b

The [Middle Housing User Guide](#) also provides that more than 25% of applicable lots can be exempted from the unit density requirements by going through a certification process with Commerce. This involves applying for a timeline extension, documenting the percentage of lots proposed for exclusion from middle housing unit density requirements, and providing “an analysis of how applicable areas were determined for a delay in middle housing implementation”. This option appears to be primarily structured for areas with [high displacement risk](#) or a [lack of infrastructure capacity](#). However, it may be possible to attain Commerce certification for exclusion of lots that are wholly constrained by critical areas; this would require further investigation and discussion with Commerce staff. It would also require additional analysis and refinement of the City’s critical areas GIS map data to ensure an accurate and equitable approach.

Option 3

Option 3 provides pathways for cities that have previously adopted Comprehensive Plan policies (prior to January 1, 2023) and/or permanent regulations (prior to July 23, 2024) that are “substantially similar” to the requirements of RCW.70A.635. It also provides an option that is not date-bound but requires the City to “clearly demonstrate that adopted regulations 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.”

These pathways allow jurisdictions with existing policies and regulations that allow middle housing to achieve compliance without further legislative action by the jurisdiction, with Commerce approval. Mercer Island did not adopt “substantially similar” policies or regulations on these timelines, and staff does not recommend adopting regulations that go above and beyond the requirements of HB 1110 as a part of the interim development regulations.

Staff Recommendation

Staff recommend pursuing Option 1, the standard unit density requirements.

3. Unit Density and ADUs

Under HB 1337, two ADUs must be allowed on all lots that permit single-family homes. In addition, under HB 1110, in residentially zoned areas, two-to-four units of middle housing must also be permitted. Jurisdictions have several policy choices related to how ADUs and middle housing intermingle on lots that permit both housing types. The first consideration relates to the total number of units allowed on the lot. [RCW 36.70A.635\(5\)](#) states that “cities are not required to allow accessory dwelling units or middle housing types beyond the density requirements in subsection (1) of this section...” Thus, Mercer Island has the option to set a maximum unit density of two or four middle housing units per lot. Staff recommend including this maximum unit density standard in the Phase 1 interim regulations.

The second consideration is whether ADUs should be counted towards the unit density. If ADUs are counted as unit density, then ADUs are essentially treated as an additional middle housing type. Any combination of ADUs and middle housing types can be included in the two or four units of unit density allowed on a lot. An ADU can be accessory to a single-family home, or to a middle housing unit. Alternatively, if ADUs are not counted toward unit density, it adds to the complexity of the regulations. ADUs remain a separate housing type from middle housing and are regulated on a separate track. A lot can be developed with either (a) a single-family home and up to 2 ADUs, or (b) two-to-four middle housing units (and potentially a single-family home). Either of these options are feasible and the policy choice should be considered along with the Floor Area Bonus options, discussed below.

Staff Recommendation

Staff recommend setting the allowed unit density to a maximum of two units per lot in the R-zones, with a maximum of four units per lot within a ¼-mile walking distance of major transit stops or when one unit is affordable. Additionally, it is recommended that ADUs be considered a unit for the purposes of calculating unit density.

4. ADU Floor Area Maximum

[HB 1337](#) requires cities to permit ADUs of at least 1,000 square feet in gross floor area (GFA). Mercer Island currently permits ADUs of up to 900 square feet. The City will need to increase the allowed GFA to at least 1,000 square feet or eliminate the GFA maximum altogether. The staff recommendation for Phase 1 is to amend the maximum GFA allowance to 1,000 square feet as this is the simplest option for compliance.

As mentioned above, for Phase 1, staff recommend maintaining the existing dimensional standards in the R-zones for middle housing, including the existing floor area maximums. Amendments to the dimensional standards can be explored in Phase 2, if desired.

Staff Recommendation

Staff recommend setting the maximum GFA for ADUs at 1,000 square feet in the interim development regulations.

5. ADU Floor Area Bonus

Mercer Island’s existing development regulations include an incentive for ADU development in the form of an allowance for up to an additional 5% in GFA for projects that include an ADU ([MICC 19.02.020](#) (D)(3)(b)). With the new HB 1337 requirements for expanding the size and number of ADUs permitted on each lot, the City should consider whether to maintain this bonus. Options include maintaining the bonus as is, amending the size of the bonus, eliminating the bonus, and/or expanding the bonus to include some or all types of middle housing.

Incentives such as this floor area bonus could be used to encourage certain types of development over others. For example, a floor area bonus has been used to encourage cottage housing development in some nearby jurisdictions. Bonus floor area could also be used to encourage other desirable design features such as more off-street parking.

Mercer Island’s existing development regulations, including standards for GFA, lot coverage, setbacks, and tree retention are likely to significantly constrain middle housing development on many sites. While providing bonus GFA could be a powerful incentive on some sites, in other locations other factors may constrain the site such that the bonus is moot. Should the City want to consider amending or enacting any new development incentives, staff recommend further study of these options during the Phase 2 work.

Staff Recommendation

Staff recommend maintaining the existing floor area bonus of 5% in GFA for projects that include an ADU in the interim development regulations.

6. Impact Fees

Mercer Island currently imposes impact fees for parks and transportation on residential and commercial development. The residential impact fees are scaled to the size of the unit and the trips generated, based on the unit type (single family or multifamily). Mercer Island does not currently impose impact fees on ADUs. The ADU, by definition is an accessory use to the primary dwelling, and impact fees are only imposed on the primary unit. This serves as another incentive for ADU development, in addition to the floor area bonus described above.

Under the provisions of [HB 1110](#), impact fees may be applied to middle housing. Under [HB 1337](#), impact fees may also be applied to ADUs, however, the amount of the impact fee is limited to 50% of the rate that would be applied to the principal unit. The City's existing impact fee rates can be applied to middle housing and ADUs, based on the number of units on the lot. If the City Council would like to begin imposing impact fees on middle housing and/or ADUs, this can be accomplished with an amendment to the City's fee schedule to indicate how the existing impact fee rates will be applied to these housing types. The single-family rate would be applied to projects that include 1-2 units, and the multi-family rate would be applied to projects with three or more units of middle housing. For ADUs, the multifamily rate would apply, not to exceed 50% of the single-family rate.

Staff Recommendation

Staff recommend instituting impact fees on middle housing and ADUs by applying the existing rates, as described above.

NEXT STEPS

At the January 21, 2025 City Council meeting, staff will provide an overview of the policy choices available to the City related to middle housing and ADUs. City Council direction is needed on the policy questions outlined above. Once this direction is provided, staff will prepare a draft ordinance with interim development regulations.

A public hearing and first reading of an ordinance to adopt interim development regulations to comply with HB 1110, HB 1337 and SB 5258 is scheduled for February 4, 2025. Second reading and adoption of the ordinance is tentatively scheduled for March 4, 2025.

Upon adoption of interim development regulations, the drafting and adoption of permanent development regulations will be placed on the Community Planning and Development (CPD) Department work plan for completion at a future time, currently anticipated to be in 2026 or later. Several CPD work plan commitments are scheduled for 2025 including meeting legislatively mandated code amendment deadlines, renewing existing interim regulations, addressing previously docketed items, as well as the development and execution of an affordable housing fee in-lieu-of program in the Town Center.

A comprehensive review and discussion of the long-term CPD work plan will occur with the City Council at the conclusion of the 2025 state legislative session (Q2/Q3 2025). This will allow the City Council to review new state legislation requiring action by the City, and to adjust the timeline and prioritize other work items accordingly.

RECOMMENDED ACTIONS

The following motions are recommended for City Council to consider and approve which will enable staff to present an ordinance with a complete set of middle housing interim regulations on February 4, 2025:

1. Direct staff to prepare an ordinance containing interim development regulations for public hearing and consideration on February 4, 2025 incorporating the following six middle housing types [duplex, triplex, fourplex, townhouses, courtyard apartments, staked flats].
2. Direct staff to prepare an ordinance containing interim development regulations for public hearing and consideration on February 4, 2025 incorporating the [standard density approach (Option 1)].
3. Direct staff to prepare an ordinance containing interim development regulations for public hearing and consideration on February 4, 2025 setting an allowed unit density with a maximum of [two units per lot in the R-8.4, R-9.6, R-12 and R-15 zones, with a maximum of four units per lot permitted within ¼-mile walking distance of a major transit stop or when one unit is affordable]. Additionally, the interim development regulations should specify that ADUs will be [considered a unit] for the purposes of calculating unit density.
4. Direct staff to prepare an ordinance containing interim development regulations for public hearing and consideration on February 4, 2025 including a maximum floor area for ADUs of [1,000 square feet].
5. Direct staff to prepare an ordinance containing interim development regulations for public hearing and consideration on February 4, 2025 maintaining the existing ADU floor area bonus of [5% GFA].
6. Direct staff to prepare a resolution for consideration on March 4, 2025 to amend the City's fee schedule to apply existing impact fee rates to [middle housing and ADUs].