

Table 1. Comparison of Proposed New Development Code Section and RCW 35A.21.440.

RCW Section #	RCW 35A.21.440	Draft Code Section	Proposed New Development Code	Staff Commentary
1(a)	Code cities must adopt or amend by ordinance, and incorporate into their development regulations, zoning regulations, and other official controls the requirements of subsection (2) of this section for buildings that are zoned for commercial or mixed use no later than six months after its next periodic comprehensive plan update required under RCW 36.70A.130.	A	<i>Applicability.</i> This section applies to any development of new dwelling units in an existing building in a zone where commercial and mixed land uses are allowed. For the purposes of this section, “existing building” means a building that received a certificate of occupancy at least three (3) years prior to the submittal of a permit application to add housing units.	The definition of “existing building” comes from RCW 35A.21.440(4) below. The definition is added here so it only applies to this use whereas a definition added to Chapter 19.16 MICC would apply in every situation. This definition is particular to this circumstance so applying it throughout the code could have unintended consequences.
		B	<i>Permitted Use.</i> Development of new dwelling units in an existing building is a residential land use permitted in the TC, PBZ, C-O, B, and MF-2 zones. [RCW 35A.21.440(1)(a)]	Commercial uses are allowed in the following zones: C-O, B, PBZ, and MF-2 (Chapter 19.04 MICC) Mixed-uses are allowed in the TC zone. (Chapter 19.11 MICC)
1(b)	The requirements of subsection (2) of this section apply and take effect in any code city that has not adopted or amended ordinances, regulations, or other official controls as required under this section by the timeline in (a) of this subsection and supersede, preempt, and invalidate any conflicting local development regulations.			No development code amendments needed to address RCW 35A.21.440(1)(b)
2	Through ordinances, development regulations, zoning regulations, or other official controls as required under subsection (1) of this section, code cities may not:			The next 8 subsections will address RCW 35A.21.440(2)
2(a)	[Code cities may not] Impose a restriction on housing unit density that prevents the addition of housing units at a density up to 50 percent more than what is allowed in the underlying zone if constructed entirely within an existing building envelope in a building located within a zone that permits multifamily housing, provided that generally applicable health and safety standards, including but not limited to building code standards and fire and life safety standards, can be met within the building;	C	<i>Maximum density.</i> A maximum residential density established for the underlying zone may be exceeded by up to fifty (50) percent than what is permitted within the underlying zone provided that the development is constructed entirely within the existing building envelope in a building within a zone which permits multifamily housing, provided that generally applicable health and safety standards, including but not limited to building code standards, and fire and life safety standards, can be met within the building.	This provision would only affect zones with an established maximum density <i>and</i> allows multifamily housing. The only zone that would be subject to this section is the MF-2 zone. The maximum density in MF-2 zone has a maximum density of 38 dwelling units per acre. If a development were allowed an additional 50 percent, the maximum density would then be 57 dwelling units per acre. Note, this would only apply if the development is entirely within the existing building envelope. The City’s other zone subject to the proposed section B above that also allows multifamily residential uses is the TC zone. TC does not have an established maximum density.
2(b)	[Code cities may not] Impose parking requirements on the addition of dwelling units or living units added within an existing building, however, cities may require the retention of existing parking that is required to satisfy existing residential parking requirements under local laws and for nonresidential uses that remain after the new units are added;	D	<i>Parking.</i> New parking spaces are not required for dwelling units added to an existing building. The code official may condition approval to require the retention of existing parking spaces provided the total number of spaces to be retained is less than or equal to the number of spaces that would be required for multifamily uses in the subject zone.	
2(c)	With the exception of emergency housing and transitional housing uses, [code cities may not] impose permitting requirements on the use of an existing building for residential purposes beyond those requirements generally applicable to all residential development within the building's zone;	E	<i>Permit Required.</i> Development of new dwelling units in an existing building is permitted outright in any zone allowing commercial or mixed land uses unless the subject zone requires a land use permit for residential uses, in which case the permit requirement in the subject zone controls.	Permitting a use outright means that a land use permit is not required. Uses permitted outright are still required to get other necessary permits such as building permits. A development would still be subject to the design standards in that zone.

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2(d)	[Code cities may not] Impose design standard requirements, including setbacks, lot coverage, and floor area ratio requirements, on the use of an existing building for residential purposes beyond those requirements generally applicable to all residential development within the building's zone;	F	<i>Development Standards.</i> Development of new dwelling units in an existing building is subject to the development standards, including building height, setbacks, lot coverage, and floor area ratio requirements, applicable to residential development within the subject zone.	Proposed subsection F helps to address both RCW 35A.21.440(2)(d) and (e)
2(e)	[Code cities may not] Impose exterior design or architectural requirements on the residential use of an existing building beyond those necessary for health and safety of the use of the interior of the building or to preserve character-defining streetscapes, unless the building is a designated landmark or is within a historic district established through a local preservation ordinance;	G	<i>Design Standards.</i> New dwelling units in existing buildings are exempt from the design standards in Chapters 19.11 and 19.12 MICC, with the following exceptions: <ol style="list-style-type: none"> The street standards established in MICC 19.11.120, and Required ground floor street frontage uses established in MICC 19.11.020. 	Proposed subsections G(1) and G(2) are drafted to address both RCW 35A.21.440(2)(e) and (f).
2(f)	[Code cities may not] Prohibit the addition of housing units in any specific part of a building except ground floor commercial or retail that is along a major pedestrian corridor as defined by the code city, unless the addition of the units would violate applicable building codes or health and safety standards			
2(g)	[Code cities may not] Require unchanged portions of an existing building used for residential purposes to meet the current energy code solely because of the addition of new dwelling units within the building, however, if any portion of an existing building is converted to new dwelling units, each of those new units must meet the requirements of the current energy code;			A section addressing nonconformity to the energy code is not necessary. The City has adopted the WA State Energy Code by reference in Chapter 17.09 MICC. Section C505.1 of the WA State Energy Code states: “[...] Buildings or spaces undergoing a change in space conditioning, change in occupancy or use shall conform to the provisions of this code without requiring the unaltered portion of the existing building to comply with this code. [...]”
2(h)	[Code cities may not] Deny a building permit application for the addition of housing units within an existing building due to nonconformity regarding parking, height, setbacks, elevator size for gurney transport, or modulation, unless the code city official with decision-making authority makes written findings that the nonconformity is causing a significant detriment to the surrounding area; or			No development code amendments are necessary to address RCW 35A.21.440(2)(h).
2(i)	[Code cities may not] Require a transportation concurrency study under RCW 36.70A.070 or an environmental study under chapter 43.21C RCW based on the addition of residential units within an existing building.	H	<i>Transportation Concurrency and Environmental Review.</i> Development of new dwelling units in existing buildings is not subject to the transportation concurrency requirements in Chapter 19.20 MICC and environmental review required in Chapter 19.21 MICC.	
3	Nothing in this section requires a code city to approve a building permit application for the addition of housing units constructed entirely within an existing building envelope in a building located within a zone that permits multifamily housing in cases in which the building cannot satisfy life safety standards.			No development code amendments are necessary to address RCW 35A.21.440(3).
4	For the purpose of this section, "existing building" means a building that received a certificate of occupancy at least three years prior to the permit application to add housing units.			This definition incorporated into proposed Section A above