



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

**AB 6556
January 7, 2025
Regular Business**

AGENDA BILL INFORMATION

TITLE:	AB 6556: Middle Housing and Accessory Dwelling Units - HB 1110, HB 1337 and SB 5258 Compliance	<input checked="" type="checkbox"/> Discussion Only <input type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution
RECOMMENDED ACTION:	Receive briefing.	

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 first 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 will be informational only to bring the entire City Council up to speed on the legislation and the second work session 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 7, 2025, City Council meeting, staff will brief the City Council on the requirements of HB 1110, HB 1337, and SB 5258.

BACKGROUND

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 are provided below.

HB 1337

HB 1337, codified at RCW [36.70A.680](#), [681](#), and [696](#), requires jurisdictions to allow two ADUs per lot on all lots that permit single-family residential development. The Washington State Department of Commerce (Commerce) has published [ADU Guidance](#) outlining the requirements and local policy options available to local jurisdictions; the requirements of the legislation are outlined below and more detailed information and examples can be found in the Commerce ADU guidance.

On Mercer Island, HB 1337 will apply to lots in the R, MF, PBZ, and TC zones, as these zones all allow single-family homes. This will expand the allowance for ADUs from just the residential zones to also include the MF, PBZ, and TC zones. [RCW 36.70A.696](#) defines an ADU as “a dwelling unit located on the same lot as a single-family housing unit, duplex, triplex, townhome or other housing unit.”

In addition, the following requirements apply:

1. ADUs may be attached, detached, or a combination and may be a conversion of existing structures (such as garages).
2. Must allow ADUs on lots that meet the minimum size requirements for the principal unit.
3. Must allow at least 1,000 square feet of floor area for each ADU. Development regulations for ADUs can be no more restrictive than those for principal units. Must allow ADUs of at least 24 feet in height. Detached ADUs may be sited on the rear lot line if it abuts an alley.
4. Cities should apply the same health, safety, and environmental regulations to an ADU that would be applicable to the principal unit (e.g. building and fires codes, critical areas code, shoreline master program, etc.).
5. Owner occupancy of the ADU or primary unit may not be required, except when an ADU is used as a short-term rental.

6. Sale of ADUs as independent units may not be prohibited.
7. Impact fees may be imposed on ADUs at a rate that does not exceed 50% of the rate that would apply to the principal unit.
8. May not require public street improvements for ADUs.
9. May not require off-street parking within ½ mile of a major transit stop. For lots that are less than 6,000 feet, parking requirements are limited to one space per unit and for lots that are greater than 6,000 feet, parking requirements are limited to two spaces per unit.

HB 1110

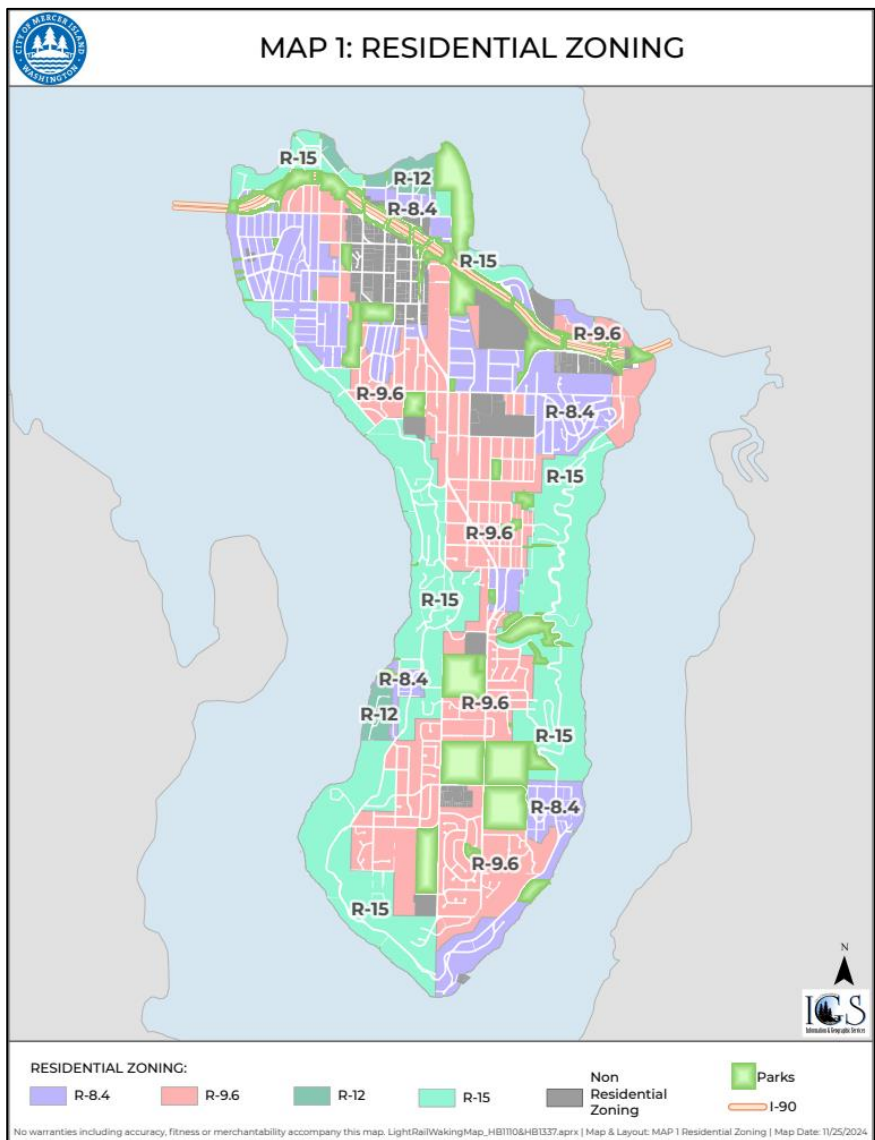
The main provisions of HB 1110, codified in [RCW 36.70A.635](#) through [RCW 36.70A.638](#), requires jurisdictions to allow middle housing on residential lots. Commerce has published, and subsequently updated several times, a [Middle Housing User Guide](#) and [Model Ordinance](#) to assist cities in complying with the new GMA provisions enacted by HB 1110. HB 1110 identifies three tiers of middle housing regulations, based on the population of the city. Mercer Island is categorized as a Tier 2 city, with populations of at least 25,000 but less than 75,000. The requirements summarized below are those that apply to Tier 2 cities.

Applicability In Mercer Island

The requirements of HB 1110 will apply in Mercer Island’s residential zones, including R-8.4, R-9.6, R-12, and R-15 (see Map 1: Residential Zoning). These requirements will not apply to the Multi-family, Planned Business, or Town Center zones because they already allow higher densities of residential development. The Commercial Office and Business zones do not allow residential development and the middle housing requirements are also not applicable there.

There are approximately 7,500 residentially zoned lots located throughout Mercer Island that will be subject to the middle housing unit density requirements in HB 1110. Nearly 100 of these lots are within ¼-mile walking distance from the light rail station where four units per lot will be permitted

outright (see Map 2: Walking Distance from Light Rail, page 5). However, some of these lots will have practical limitations to middle housing development due to restrictions related to critical areas (more information on



this is provided below), or a covenant or deed restriction preventing further lot division or development. Staff have not analyzed the extent of such covenants or deed restrictions.

Middle Housing

Middle Housing is moderate density housing intended to be “compatible in scale, form, and character with single-family houses” ([RCW 36.70A.030](#)). Specifically, Tier 2 cities, including Mercer Island, must allow a range of middle housing types on all residential lots, including at least six of a prescribed list of nine housing types:

- **Duplex/Triplex/Fourplex/Fiveplex/Sixplex:** A residential building with 2 to 6 attached dwelling units.
- **Townhouses:** Buildings that contain three or more attached single-family dwelling units that extend from foundation to roof and that have a yard or public way on not less than two sides.
- **Stacked Flats:** Dwelling units in a residential building of no more than three stories on a residential-zoned lot in which each floor may be separately rented or owned.
- **Courtyard Apartments:** Attached dwelling units arranged on two or three sides of a yard or court (typically open space).
- **Cottage Housing:** Residential units on a lot with a common open space that is often owned by all units.

Development standards for the selected middle housing types may not be more restrictive than those required for single-family homes. Permit and environmental review processes for middle housing must be the same as those for single-family homes. Design review for middle housing is limited to administrative design review.

Unit Density

In addition to permitting middle housing types, [HB 1110](#) requires cities to establish a new system for regulating housing density that has not been commonly used in the past. This system regulates density based on the number of housing units allowed per lot, regardless of lot size. This is referred to as “unit density”. Any of the permitted middle housing types can be combined on a lot to meet the unit density. Tier 2 cities must allow the following lot densities on all residential lots:

- Allow at least 2 middle housing units per lot.
- Allow at least 4 middle housing units per lot if:
 - a) The lot is located within a quarter mile walking distance of the light rail station (see Map 2: Distance from Light Rail, on the following page), or
 - b) At least one unit is affordable (more information is provided below on this affordability incentive).

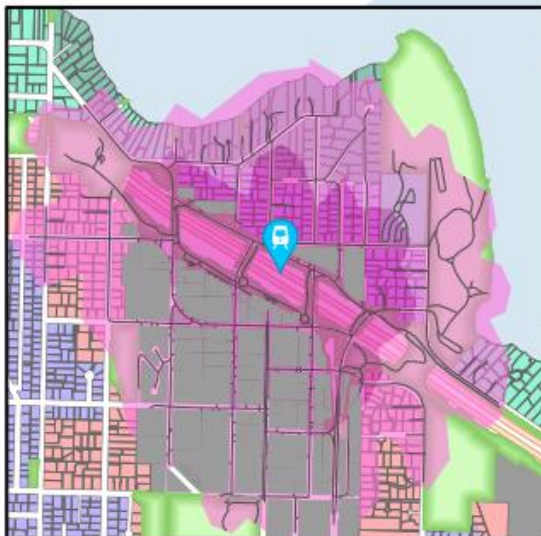
Recent updates to the [Middle Housing User Guide](#) have clarified how these lot density requirements apply in conjunction with single family and ADU housing units. Single-family housing and ADUs are not included in the definition of middle housing and are considered separate housing types. Thus, only middle housing types are counted towards the 2 or 4 units that must be allowed per lot. More specifically, since both single-family homes and middle housing must be permitted on residential lots and single-family homes do not count toward the middle housing unit density, these lots must allow BOTH a single-family home AND 2 to 4 units of middle housing.



MAP 2: WALKING DISTANCE FROM LIGHT RAIL STATION

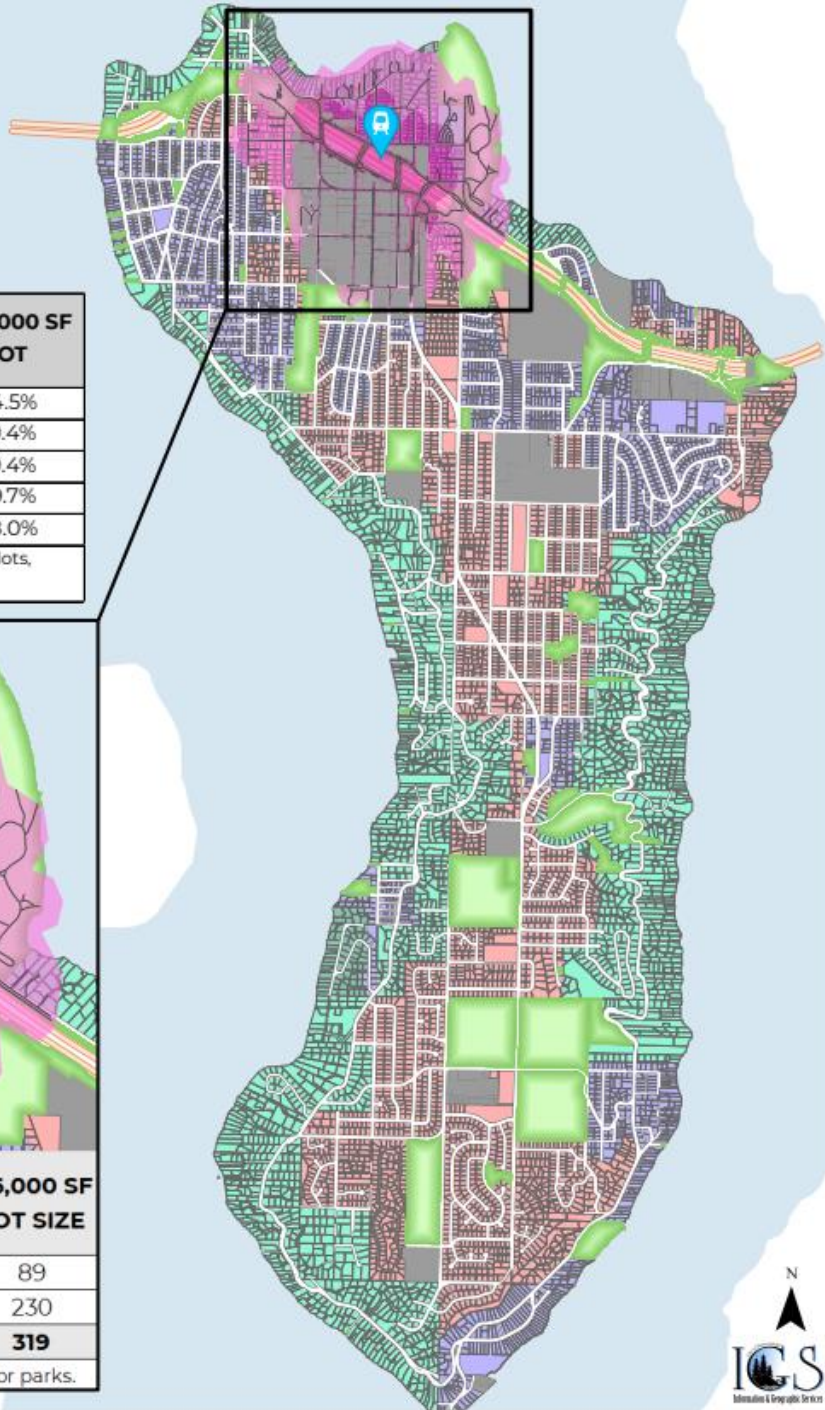
ZONING	# OF PARCELS	>6,000 SF LOT	% >6,000 SF LOT
R-8.4	2242	2118	94.5%
R-9.6	2972	2953	99.4%
R-12	165	164	99.4%
R-15	2071	2065	99.7%
TOTAL	7450	7300	98.0%

Does not include non-residential or non-buildable lots, tracts or parks.



WALKING DISTANCE	NUMBER OF LOTS	< 6,000 SF LOT SIZE	> 6,000 SF LOT SIZE
1/4 Mile	94	5	89
1/2 Mile	234	4	230
TOTAL	328	9	319

Does not include non-residential lots, tracts or parks.



WALKING DISTANCE FROM LIGHT RAIL STATION:

1/4-Mile 1/2-Mile



Light Rail Station

Reachable Streets/Paths I-90

RESIDENTIAL ZONING:

R-8.4 R-12 R-9.6 R-15

Non Residential Zoning

Parks

No warranties including accuracy, fitness or merchantability accompany this map.
LightRailWakingMap_HB1110&HB1337.aprx | Map & Layout: MAP 2: Walking Distance From Light Rail Station | Map Date: 11/25/2024

Additionally, the legislation also provides the option for cities to allow ADUs to count towards the middle housing unit density requirements. So while ADUs are a different housing type from middle housing, they can be counted towards the unit density requirements in HB 1110. This option is discussed further in the Issue/Discussion section.

Regardless of which policy choice the City takes related to ADUs and unit density, a property owner will have the option of several different development scenarios on a residential lot – e.g. a single family home plus two ADUs, a single family home plus two middle housing units, or, potentially, a combination. Additional middle housing units would also be permitted on lots within ¼-mile of the light rail station or those that provide one unit of affordable housing. These projects could include a total of five units, including a single-family home and four units of middle housing.

Affordability Incentive

HB 1110 requires jurisdictions to provide additional unit density for projects that incorporate affordable housing. For Mercer Island, this means any residential lot may have four middle housing units if one unit is affordable. Affordable housing is defined as housing that is affordable to households earning at or below 60% of the Area Median Income (AMI) for rental housing and 80% AMI for owner-occupied housing. Affordable units must be maintained as affordable for at least 50 years, by a covenant or deed restriction held and maintained by the City. This required incentive does not prevent jurisdictions from also requiring middle housing development to provide affordable housing, either on-site or through fee-in-lieu payment.

Parking Restrictions

[HB 1110](#) limits the amount of off-street parking that jurisdictions can require in middle housing developments, as follows (these provisions are identical to those in [HB 1337](#)):

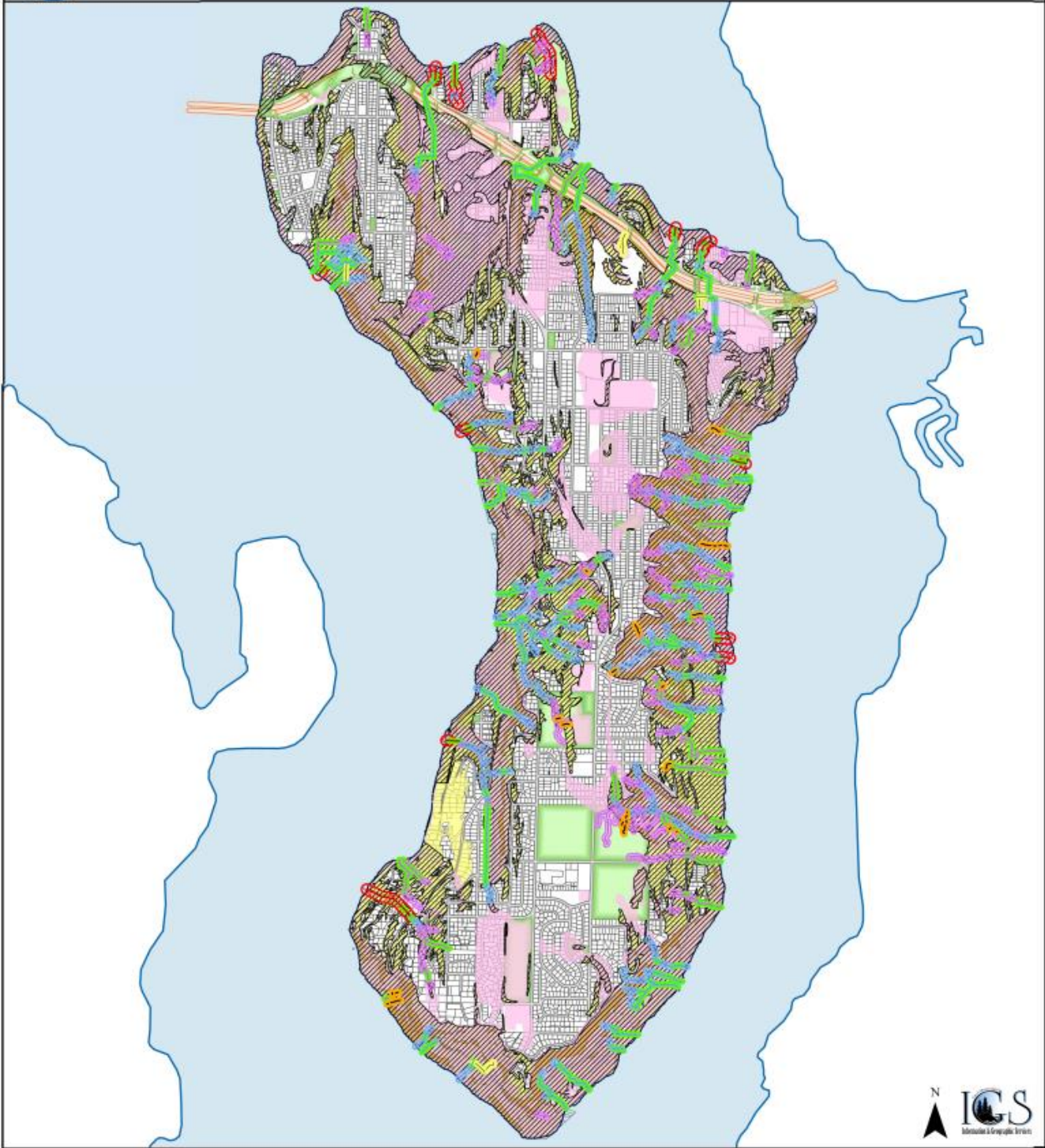
- No off-street parking requirements are allowed within ½-mile walking distance of the light rail station (see Map 2: Walking Distance from Light Rail Station).
- May only require 1 off-street parking space per unit for lots smaller than 6,000 square feet.
- May only require 2 off-street parking spaces per unit for lots larger than 6,000 square feet.

Critical Areas

Due to its topography, a large portion of Mercer Island's lots are constrained by critical areas and their buffers, which include watercourses, wetlands, and geological hazard areas (see Map 3: Critical Areas, on page 7). The City's existing critical areas ordinance will be applicable to middle housing development. While middle housing densities are not required on portions of lots with critical areas, HB 1110 also requires that standards for middle housing cannot be more restrictive than those for single-family. Thus, existing critical areas regulations will be applied on a site-by-site basis, just as they are for single-family. It is likely that some lots with identified geological hazards such as steep slopes and potential slide areas could still be developed with middle housing with the appropriate structural and geotechnical engineering. HB 1110 provides a policy option that could allow the City to exempt some lots with significant critical areas constraints from the middle housing density requirements; this option and the challenges inherent in identifying critical areas are further described below.



MAP 3: CRITICAL AREAS CITY OF MERCER ISLAND



Type "F" = 120-Ft Buffer	Type "Np" Unverified = 60-Ft Buffer	Potential Slide	Seismic
Type "Np" = 60-Ft Buffer	Type "Ns" Unverified = 60-Ft Buffer	Steep Slope	Erosion
Type "Ns" = 60-Ft Buffer	Piped Type F/Np/Ns = 45-Ft Setback		

No warranties including accuracy, fitness or merchantability accompany this map. LightRailWakingMap_HBI110&HBI337.aprx | Map & Layout: Walking Distance Hazard | Map Date: 8/15/2024

SB 5258

SB 5258, primarily concerns construction defect claims in condominiums. This legislation updates regulations concerning the process for a condominium association to bring a construction defect claim against a construction professional. This portion of the legislation does not directly impact the City’s regulatory requirements or process. However, the bill also includes two small sections unrelated to condominium construction liability that does impact the City. First, SB 5258 includes requirements pertaining to impact fees and requires that impact fee schedules establish fees with a “proportionally lower impact fee for smaller housing units”. Staff are currently analyzing [guidance](#) recently drafted by Commerce on this requirement and will be bringing forward a recommendation on this matter at a later time. Finally, SB 5258 also includes a requirement, codified at [RCW 58.17.060\(3\)](#), that local jurisdictions “include in their short plat regulations procedures for unit lot subdivisions allowing division of a parent lot into separately owned unit lots...”

The [Middle Housing User Guide](#) addresses this requirement and how it aligns with the middle housing requirements in HB 1110 (see pages 87-91). Commerce also recently published additional draft guidance: [Unit Lot Subdivision Fact Sheet](#). Unit lot subdivision allows the land beneath detached single family housing, ADUs or middle housing where no units are stacked on another unit, to be divided for individual sale.

Unit lot subdivision is defined in state law as a type of short subdivision. The Mercer Island City Code defines a short subdivision as “a subdivision consisting of four or less lots on four or less acres.” Together these requirements will enable parent lots to be divided into up to four unit lots for individual sale and fee-simple ownership. Unit lot subdivision can be used with all forms of non-stacked housing, including single-family, middle housing, and ADUs. Unit lot subdivision is not appropriate for stacked flats, apartments, or configurations where one unit is stacked on top of another unit. This type of land division is commonly used for townhouse and cottage housing development, and it can also be used with side-by-side duplexes, triplexes and fourplexes as well as other detached or non-stacked orientations of middle housing units (see Figure 1 for examples). [RCW 36.70A.635](#) also requires cities to allow zero lot line subdivision. This means that attached housing forms, including townhomes and duplexes, can be built on separate unit lots with no setback between the housing units.

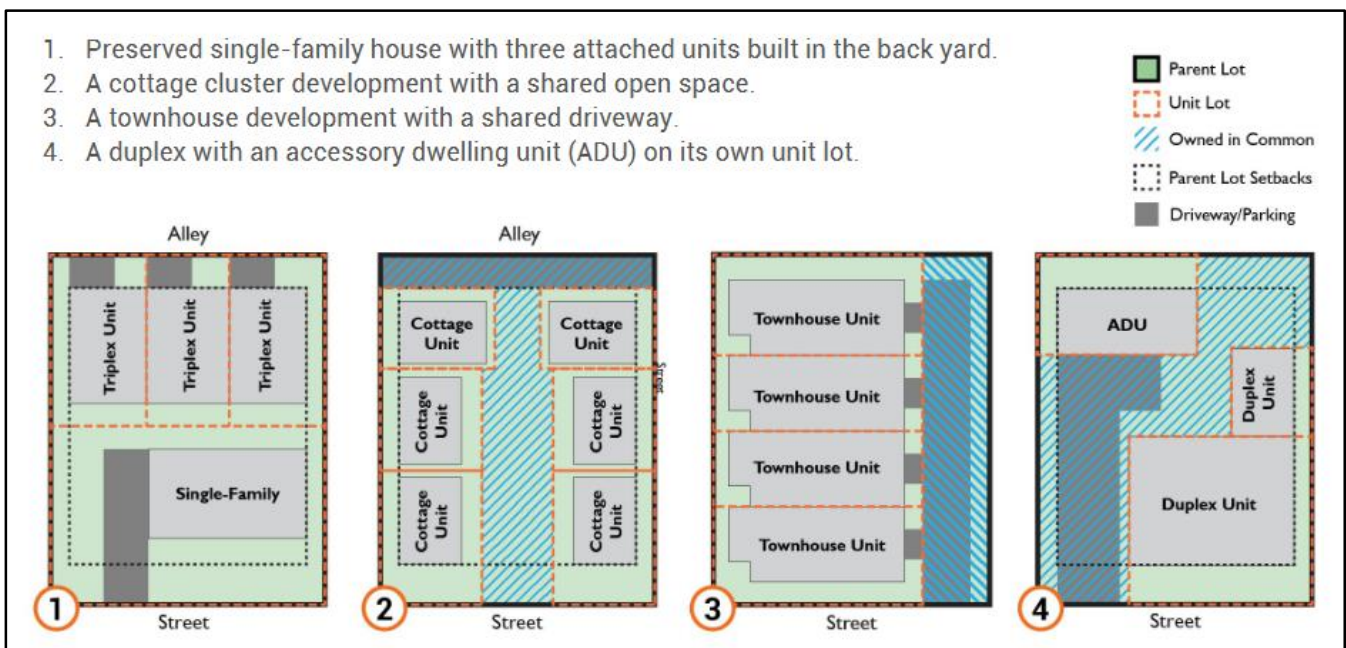


Figure 1: Unit Lot Subdivision Examples

ISSUE/DISCUSSION

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.

POLICY OPTIONS

Housing Types

Mercer Island must permit at least six of the nine middle housing types identified in [HB 1110](#). Of the nine housing types, the City may want to exclude 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. It may make sense to hold off on permitting cottage housing at this time, to 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. If this is desired, these more detailed development regulations could be included as part of the process to create permanent regulations in Phase 2.

Alternative Density Options

HB 1110 provides three options for compliance with the above 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, as described above under "Unit Density". 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 likely require additional analysis and refinement of the City's critical areas GIS map data to ensure an accurate and equitable approach.

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.

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 likely 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 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. This option provides a path for 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 is not eligible for this option.

Recommendation

Staff have evaluated these options and recommend pursuing Option 1, the standard unit density requirements. Staff analysis of Option 2 identified concerns related to technical challenges, costs, and equity concerns, as described above. The City does not meet the criteria for Option 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 units per lot (in addition to a single-family home, as described above in the Unit Density section). Staff recommend including a 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.

Maximum Floor Area

[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 floor area to at least 1,000 square feet or eliminate the GFA maximum altogether. The staff recommendation for Phase 1 is to amend the maximum gross floor area 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.

Floor Area Bonus

Mercer Island's existing development regulations currently 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 enacting any new development incentives, staff recommend further study of these options during the Phase 2 work.

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 multi-family). 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. If the City would like to do so, the staff recommendation is to apply the single-family rate to projects that include 1-2 units and the multi-family rate for projects that include three or more units of middle housing. The impact fee rates were structured using this unit breakdown when the rates were last studied in 2022.

[HB 1337](#) limits the amount of impact fees for ADUs to 50% of the rate that would be applied to the principal unit. If the City would like to begin imposing impact fees on ADUs, the staff recommendation is to apply the multi-family rate, not to exceed 50% of the single-family rate. The City should consider whether to apply the impact fees to ADUs and middle housing together, because this could impact whether certain housing types are incentivized, or if they should all be treated equally in the code.

NEXT STEPS

A second City Council work session on this topic is scheduled on January 21, 2025. At this meeting, staff will provide additional information on the policy choices available to the City related to middle housing and ADUs. City Council direction is needed on policy questions outlined below. Once this direction is provided, staff will prepare a draft ordinance with interim development regulations.

POLICY QUESTIONS FOR FURTHER CONSIDERATION

At the January 21, 2025 City Council meeting, staff will request Council direction on the following policy questions.

1. **Housing Types:** Which of the nine middle housing types should the City permit?
2. **Alternate Density and Critical Areas:** 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 Incentive:** Maintain incentive, amend size of incentive, or eliminate?
6. **Impact Fees:** Should the City impose impact fees on middle housing? On ADUs?

A public hearing and first reading of an ordinance to adopt interim development regulations to comply with HB 1110 and HB 1337 is tentatively scheduled for February 4, 2025. Second reading and adoption of the ordinance is tentatively scheduled for March 4, 2025. These dates will be adjusted if more time is needed to discuss, develop, and review the interim regulations.

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

Receive briefing; no action needed.