

TIER 3 CITIES MIDDLE HOUSING MODEL ORDINANCE

PUBLIC DRAFT

November 6, 2023

Model ordinance text in **bold** are provisions directly from HB 1110. These provisions are mandatory for cities applicable to HB 1110, except where the context indicates otherwise. Some provisions are rewritten for ease of use and to translate state law into local code format.

See the Middle Housing Model Ordinance User Guide for further context, alternatives, and discussion on each topic in this Model Ordinance.

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY/TOWN OF _____, WASHINGTON, IMPLEMENTING THE REQUIREMENTS OF ENGROSSED SUBSTITUTE HOUSE BILL (E2SHB) 1110, ADDING NEW SECTIONS _____, AMENDING SECTIONS _____, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in 2023 the Washington State legislature passed Engrossed Substitute House Bill (E2SHB) 1110 related to middle housing; and

WHEREAS, in passing E2SHB 1110 the State legislature found that Washington is facing an unprecedented housing crisis for its current population and a lack of housing choices, and is not likely to meet affordability goals for future populations; and

WHEREAS, the State legislature further found that in order to meet the goal of 1,000,000 new homes statewide by 2044, and enhanced quality of life and environmental protection, innovative housing policies will need to be adopted and that increasing housing options that are more affordable to various income levels is critical to achieving the state's housing goals, including those established by the legislature in Engrossed Second Substitute House Bill No. 1220 (chapter 254, Laws of 2021); and

WHEREAS, the State legislature further found:

There is continued need for the development of housing at all income levels, including middle housing that will provide a wider variety of housing options and configurations to allow Washingtonians to live near where they work;

Homes developed at higher densities are more affordable by design for Washington residents both in their construction and reduced household energy and transportation costs;

While creating more housing options, it is essential for cities to identify areas at higher risk of displacement and establish anti-displacement policies as required in Engrossed Second Substitute House Bill No. 1220 (chapter 254, Laws of 2021);

The state has made historic investments in subsidized affordable housing through the housing trust fund, yet even with these historic investments, the magnitude of the housing shortage requires both public and private investment;

and

In addition to addressing the housing shortage, allowing more housing options in areas already served by urban infrastructure will reduce the pressure to develop natural and working lands, support key strategies for climate change, food security, and Puget Sound recovery, and save taxpayers and ratepayers money.

WHEREAS, on _____, the city/town council passed Ordinance No. _____ incorporating middle housing policies into the Housing Element of the Comprehensive Plan as required by House Bill 1220 (2021); and

WHEREAS, on _____, the city/town transmitted a copy of the proposed ordinance to the Washington State Department of Commerce in accordance with RCW 36.70A.106 at least 60 days in advance of adoption for the required 60-day State review period; and

WHEREAS, on _____, the city/town issued a State Environmental Policy Act (SEPA) Determination of Non-Significance (DNS) on the proposed ordinance, which is a non-project proposal: and

WHEREAS, during the course of developing the proposed ordinance, various means of public outreach were used including, but not limited to, public meetings, a middle housing webpage, tabling events at community events, presentations at various community groups, notification of public hearings; and

WHEREAS, the city/town planning commission held work sessions on _____ to study and review matters related to implementing HB 1110; and

WHEREAS, on _____, the city/town Planning Commission held a duly noticed public hearing on the proposed ordinance, accepted testimony and made a recommendation to the _____city/town council; and

WHEREAS, on _____, the city/town council held a duly noticed public hearing to consider the planning commission recommendation and accept public testimony; and

WHEREAS, adoption of the ordinance will bring the city/town into compliance with HB 1110 and will serve the general welfare of the public;

NOW THEREFORE BE IT ORDAINED BY THE CITY/TOWN COUNCIL AS FOLLOWS

Section 1 – Purpose

The purpose of this middle housing ordinance (“ordinance”) is to:

- A. Implement Engrossed Second Substitute House Bill 1110, codified in RCW 36.70A.030, 36.70A.280, 36.70A.635, 36.70A.636, 36.70A.637, 36.70A.638, 43.21C.495, and 43.21C.450, 64.32, 64.34, and 64.38, and 64.90, by providing land use, development, design, subdivision, and other standards for middle housing developed on all lots zoned predominantly for residential use in applicable cities.
- B. **Supersede, preempt, and invalidate local development regulations should the city fail to have passed ordinances, regulations or other local controls to implement House Bill 1110 within the time frame required by RCW 36.70A.635(11), until such time the city takes all actions necessary to implement RCW 36.70A.635.**

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Section 2 – Definitions

The following definitions shall apply for the purposes of this ordinance, notwithstanding other definitions in the development regulations:

“Administrative design review” means a development permit process whereby an application is reviewed, approved, or denied by the planning director or the planning director’s designee based solely on objective design and development standards without a public meeting or hearing, unless such review is otherwise required by state or federal law, or the structure is a designated landmark or historic district established under a local preservation ordinance.

“All lots zoned predominantly for residential use” means all lots within a zoning district in which residential dwellings are the predominant use and which implements a residential Comprehensive Plan map designation. This excludes lands zoned primarily for commercial, industrial, and/or public uses, even if those zones allow for the development of detached single family residences. This also excludes lands zoned primarily for mixed uses, even if those zones allow for the development of detached single family residences, if the zones are intended for and permit by-right multifamily use and a variety of commercial uses, including but not limited to retail, services, eating and drinking establishments, entertainment, recreation, and office uses.

“Cottage housing” means residential units on a lot with a common open space that either: (a) Is owned in common; or (b) has units owned as condominium units with property owned in common and a minimum of 20 percent of the lot size as open space.

“Courtyard apartments” means up to four attached dwelling units arranged on two or three sides of a yard or court.”

“Duplex” means a development with two attached dwelling units.

“Fiveplex” means a development with five attached dwelling units.

“Fourplex” means a development with four attached dwelling units.

“Lot, parent” means a lot which is subdivided into unit lots through the unit lot subdivision process.

“Lot, unit” means a subdivided lot within a development as created from a parent lot and approved through the unit lot subdivision process.

“Major transit stop” means a stop on a high capacity transportation system funded or expanded under the provisions of chapter 81.104 RCW, commuter rail stops, stops on rail or fixed guideway systems, and stops on bus rapid transit routes.

“Middle housing” means buildings that are compatible in scale, form, and character with single-family houses and contain two or more attached, stacked, or clustered homes including duplexes, triplexes, fourplexes, fiveplexes, sixplexes, townhouses, stacked flats, courtyard apartments, and cottage housing.

“Public works department” means the public works or engineering department or other department, division, or agency of the city which reviews and approves infrastructure improvements associated with development.

“Single-family zones” means those zones where single-family detached residences are the predominant land use.

“Sixplex” means a development with six attached dwelling units.

“Stacked flat” means 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.

“Triplex” means a development with three attached dwelling units.

“Townhouses” means 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.

“Unit density” means the number of principal dwelling units on a lot, regardless of lot size.

“Unit lot subdivision” means the creation of two or more unit lots within a development which are created from a parent lot and approved through the unit lot subdivision process.

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Section 3 – General Provisions

- A. **Nothing in this ordinance prohibits the city from permitting detached single-family residences.**
- B. **Nothing in this ordinance prohibits the city from requiring any development, including middle housing development, to provide affordable housing, either on-site or through an in-lieu payment, nor limit the city's ability to expand or modify the requirements of an existing affordable housing program enacted under RCW 36.70A.540.**
- C. **Nothing in this ordinance requires the issuance of a building permit if other federal, state, and local requirements for a building permit are not met.**
- D. **Nothing in this ordinance affects or modifies the responsibilities of the city to plan for or provide urban governmental services as defined in RCW 36.70A.030.**
- E. **The city shall not approve a building permit for middle housing without compliance with the adequate water supply requirements of RCW 19.27.097.**
- F. **The same development permit and environmental review processes shall apply to middle housing 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.**
- G. **Conflicts.** In the event of a conflict between this ordinance and other development regulations applicable to middle housing, the standards of this ordinance control.

Section 4 – Applicability

- A. The provisions of this ordinance shall apply to all lots zoned predominantly for residential use.
- B. The provisions of this ordinance shall not apply to:
 - 1. Lots designated with critical areas designated under RCW 36.70A.170 or their buffers as required by RCW 36.70A.170.
 - 2. 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)).
 - 3. Lots that have been designated urban separators by countywide planning policies as of July 23, 2023.

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Section 5 – Middle Housing Types Allowed

On all lots zoned predominantly for residential use the following uses are permitted by-right:

- A. Duplexes.
- B. Triplexes.
- C. Fourplexes.
- D. Fiveplexes.
- E. Sixplexes.
- F. Townhouses.
- G. Stacked flats.
- H. Courtyard apartments.
- I. Cottage housing.

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Section 6 – Unit Density

- A. The permitted unit density on all lots zoned predominantly for residential use is two units per lot, unless zoning permitting higher densities or intensities applies.
- B. The standard of subsection (A) does not apply to lots after subdivision below 1,000 square feet unless the city has a smaller allowable lot size in the zone.

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Section 7 – Parking Standards

Off-street parking for middle housing shall be subject to the following:

- A. **Transit proximity.** The city shall not require off-street parking as a condition of permitting development of middle housing within one-half mile walking distance of a major transit stop.
- B. **Base parking standards.**
 - 1. The city shall not require more than one off-street parking space per unit as a condition of permitting development of middle housing on lots smaller than 6,000 square feet.
 - 2. The city shall not require more than two off-street parking spaces per unit as a condition of permitting development of middle housing on lots greater than 6,000 square feet.
 - 3. In a unit lot subdivision with middle housing units, the standards of subsections (B)(1) and (2) above apply to the parent lot, and not to individual unit lots.
- C. **Exemptions.** The off-street parking requirements of (A) and (B) shall not apply in the following locations:
 - 1. Portions of the city within a one-mile radius of a commercial airport in Washington with at least 9,000,000 annual enplanements in accordance with RCW 36.70A.635(7)(b).
 - 2. Portions of the city certified for a safety exemption from the Department of Commerce in accordance with RCW 36.70A.635(7)(a).

Section 8 – Zoning Dimensional Standards

A. Applicability.

1. Middle housing shall meet clear and objective zoning standards that apply to detached single family residences in the same zone. This includes, but is not limited to, lot size and dimensions, impervious surfaces, and tree canopy and retention requirements.
2. Any zoning standards that apply only to middle housing development are invalid.
3. Zoning dimensional standards invalidated by this section are replaced by the zoning dimensional standards provided in this section.

B. Density. Minimum and maximum densities measured as units per acre, lot area per unit, or similar methods are invalid for middle housing.

C. Units per structure. Minimum and maximum numbers of units per structure for middle housing are invalid, except as provided by the definitions of middle housing types in Section 2.

D. Maximum building height. A maximum height limit for middle housing of less than 35 feet is invalid.

1. Building height shall be measured in accordance with the development regulations.
2. Rooftop appurtenances shall be regulated and measured in accordance with the development regulations.

E. Setbacks.

1. Minimum principal building setbacks from property lines for middle housing greater than the following are invalid:

- a. Street or front: 20 feet.
- b. Garage door (where facing the front of the lot): 20 feet.
- c. Side street: Five feet.
- d. Side interior: Five feet, and zero feet for attached units.
- e. Rear, without an alley: 20 feet.
- f. Rear alley: Five feet.

2. Setback projections.

- a. Covered porches and entries may project up to five feet into required front and rear setbacks.
- b. Balconies and bay windows may project up to three feet into required front and rear setbacks.
- c. Other setback projections shall be regulated and measured in accordance with the development regulations.

3. Nothing in this subsection affects setbacks for accessory dwelling units and other accessory structures.
 4. Flag lots, through lots, unusually-shaped lots, and setback measurements are regulated in accordance with the development regulations.
- F. Maximum lot coverage. Maximum lot coverage for middle housing less than the following is invalid: 40 percent.

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Section 9 – Design Standards

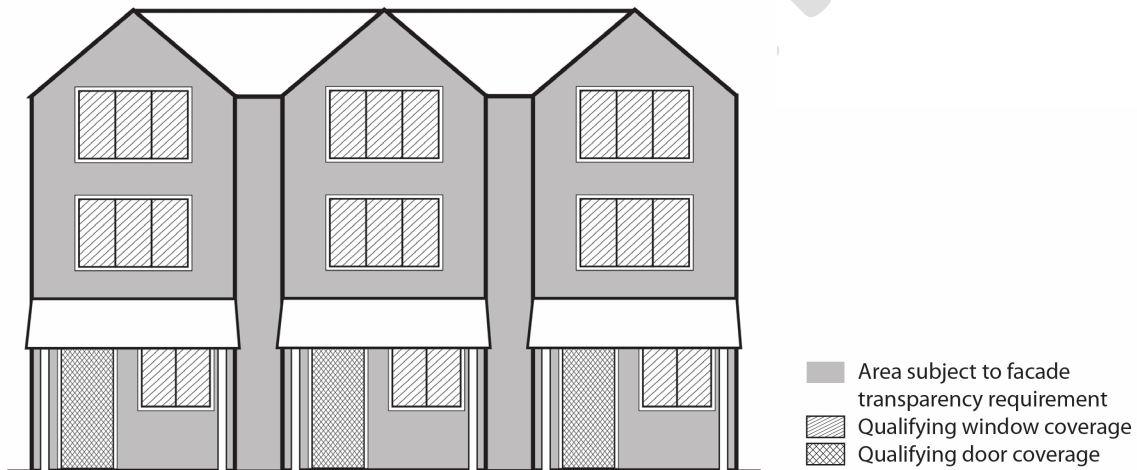
A. Generally.

1. These standards apply to all middle housing types.
2. Design review for middle housing shall be administrative.
3. These design standards do not apply to the conversion of a structure to a middle housing type with up to four attached units if the floor area of the structure does not increase more than 50 percent.

B. Entries.

1. Each building shall incorporate a primary building entry or one or more private unit entries, such as a covered porch or recessed entry. Each entry shall feature minimum weather protection of three feet by three feet.
2. Cottage housing and courtyard apartments are exempt from this entry standard. See Section 9, subsection (H) for cottage housing entry standards and Section 9, subsection (I) for courtyard apartments entry standards.

- C. Windows and doors. A minimum of 15 percent of the area of the street-facing façade elevation shall include windows and doors. Facades separated from the street by a dwelling are exempt from this standard.

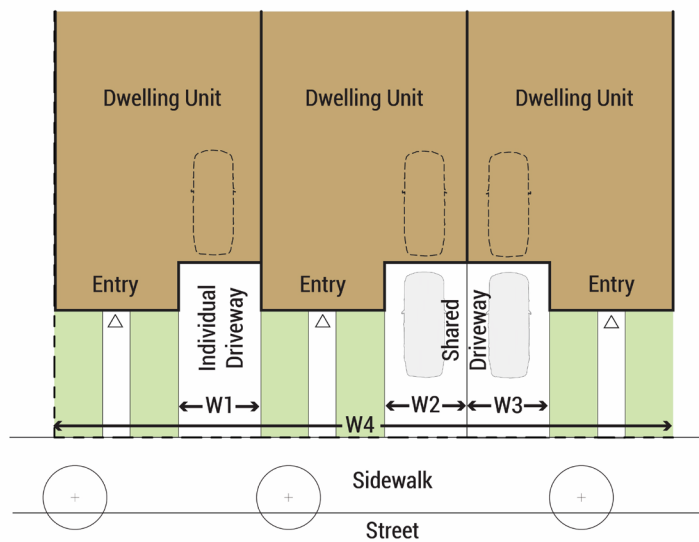


- D. Pedestrian access. A paved pedestrian connection is required between each middle housing building and the sidewalk (or the street if there is no sidewalk). Driveways may be used to meet this requirement.

E. Access, carports, garages and driveways.

1. For lots abutting an improved alley that meets the city's standards for width and surfacing, vehicular access shall be taken from the alley. Lots without access to an improved alley and taking vehicular access from a street shall meet the other standards of subsection (E)(2) through (5) below.

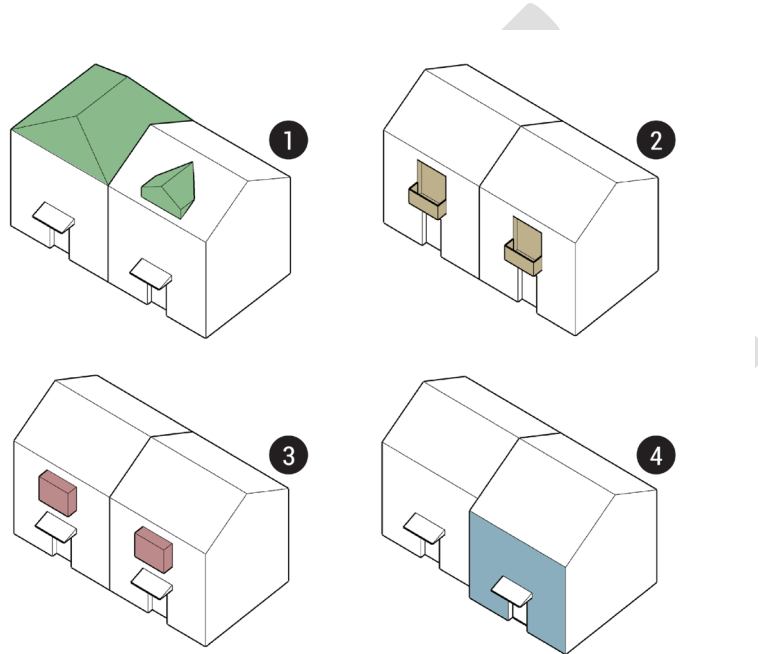
2. Garages and off-street parking areas shall not be located between a building and a public street, except when either of the following conditions are met:
 - a. The garage or off-street parking area is separated from the street property line by a dwelling.
 - b. The combined width of all garages and outdoor on-site parking and maneuvering areas does not exceed a total of 60 percent of the length of the street frontage property line. This standard applies to buildings and not individual units.
3. All detached garages and carports shall not protrude beyond the front building façade.
4. The total width of all driveway approaches shall not exceed 32 feet per frontage, as measured at the property line. Individual driveway approaches shall not exceed 20 feet in width.
5. Local jurisdiction requirements for driveway separation and access from collector streets and arterial streets shall apply.



$\frac{(W1+W2+W3)}{W4}$ must be no more than 60%
 (W1+W2+W3) must not exceed 32 feet per frontage
 W1 shall not exceed 20 feet

F. Unit articulation. Each attached unit featuring a separate ground level entrance in a multi-unit building facing the street shall include at least one of the following. Facades separated from the street by a dwelling are exempt from this standard.

1. Roofline change or a roof dormer with a minimum of four feet in width.
2. A balcony a minimum of two feet in depth and four feet in width and accessible from an interior room.
3. A bay window that extends from the facade a minimum of two feet.
4. An offset of the facade of a minimum of two feet in depth from the neighboring unit.



G. Cottage housing.

1. Cottage size. Cottages shall each have no more than 1,600 square feet of net floor area, excluding attached garages.
2. Common open space.
 - a. At least one outdoor common open space is required.
 - b. Common open space shall be a minimum 20 percent of the lot size with a minimum dimension of 15 feet on any side.
 - c. Common open space shall be bordered by cottages on at least two sides.
 - d. Parking areas and vehicular areas do not qualify as a common open space.
3. Entries. All cottages shall feature a roofed porch at least 70 square feet in size with a minimum dimension of seven feet on any side facing the street and/or common open space.
4. Community building.

- a. A cottage housing development may contain one community building.
- b. A community building shall have no more than 2,400 square feet of net floor area, excluding attached garages.
- c. A community building shall have no minimum vehicle parking requirements.

H. Courtyard apartments.

1. Common open space.
 - a. At least one outdoor common open space is required.
 - b. Common open space shall be a minimum dimension of 15 feet on any side.
 - c. Common open space shall be bordered by dwelling units on two or three sides.
 - d. Parking areas and vehicular areas do not qualify as a common open space.
3. Entries. Ground-related courtyard apartments shall feature a covered pedestrian entry, such as a covered porch or recessed entry, with minimum weather protection of three feet by three feet, facing the street or common open space.

I. Trees.

1. The city shall not require through development regulations any tree standards for middle housing that are more restrictive than tree standards required for detached single-family residences, except as provided in this Model Ordinance.
2. Common open space for cottage housing and courtyard apartments shall include at least one new tree per 1,000 square feet of common open space. Required trees shall meet the following standards at the time of planting:
 - a. Deciduous trees shall be fully branched, have a minimum caliper of one and one-half inches (as measured six inches above the root ball), and a minimum height of six feet at the time of planting.
 - b. Evergreen trees shall be fully branched and a minimum of six feet in height, measured from the treetop to the ground, at the time of planting.
 - c. All required trees shall be in-ground, except when in raised planters. Trees shall be installed to current nursery industry standards. Where support is necessary, stakes, guy wires or other measures shall be removed as soon as the tree can support itself. Trees shall be protected by fencing until they are mature enough to withstand typical wildlife activity.

Section 10 – Subdivision

- A. Generally. Regulations for subdivisions, short subdivisions, binding site plans, and planned unit developments shall not be more restrictive for middle housing than for detached single-family residences.
- B. Unit lot subdivisions. A lot may be divided into separately owned unit lots, provided the following standards are met.
1. Approval Process. Unit lot subdivisions follow the application, review, and approval procedures for a short subdivision or subdivision, depending on the number of lots.
 2. Applicability. Sites to be developed with middle housing, detached accessory dwelling units, and multiple detached single-family residences on a lot in which no dwelling units are stacked on another dwelling unit may be subdivided into individual unit lots as provided herein.
 3. Development as a whole on the parent lot, rather than individual unit lots, shall comply with applicable unit density and zoning dimensional standards.
 4. Subsequent platting actions, additions, or modifications to the structure(s) may not create or increase any nonconformity of the parent lot.
 5. Access easements, joint use and maintenance agreements, and covenants, conditions and restrictions (CC&Rs) identifying the rights and responsibilities of property owners and/or the homeowners' association shall be executed for use and maintenance of common garage, parking and vehicle access areas; underground utilities; common open space; shared interior walls; exterior building facades and roofs; and other similar features shall be recorded with the county auditor.
 6. Within the parent lot, required parking for a dwelling unit may be provided on a different unit lot than the lot with the dwelling unit, as long as the right to use the parking is formalized by an easement recorded with the county auditor.
 7. Portions of the parent lot not subdivided for individual unit lots shall 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.
 8. Notes shall be placed on the face of the plat or short plat as recorded with the county auditor to state the following:
 - a. The title of the plat shall include the phrase "Unit Lot Subdivision."
 - b. Approval of the development on each unit lot was granted by the review of the development, as a whole, on the parent lot.
 9. Effect of Preliminary Approval. Preliminary approval constitutes authorization for the applicant to develop the required facilities and improvements, upon review and approval of construction drawings by the public works department. All development shall be subject to any conditions imposed by the city on the preliminary approval.
 10. Revision and Expiration. Unit lot subdivisions follow the revision and expiration procedures for a short subdivision.

Section 11 – Infrastructure Standards

- A. Transportation. Regulations for driveways, frontage improvements, alley improvements, and other transportation public works and engineering standards shall not be more restrictive for middle housing than for detached single-family residences, except as addressed by this ordinance.
- B. Lot Access/Road Standards.
1. Private driveway access shall be permitted for middle housing development with any number of units when any of the following conditions are met:
 - a. A fire apparatus access road is within 150 feet of all structures on the lot and all portions of the exterior walls of the first story of the buildings, as measured by an approved route around the exterior of the buildings; or
 - b. The building is equipped throughout with an approved automatic sprinkler system meeting International Fire Code requirements; or
 - c. No more than two homes are accessed via the same private driveway; or
 - d. Fire apparatus access roads cannot be installed because of location on property, topography, waterways, nonnegotiable grades or other similar conditions, and an approved alternative means of fire protection is provided.
 2. Private driveways shall not be required to be greater than 12 feet in width and have greater unobstructed vertical clearance than 13 feet six inches except when it is determined to be in violation of the International Fire Code or other fire, life, and safety standards, such as site distance requirements.
 3. Private driveway access, separate from access to an existing home, shall be permitted unless it is determined to be in violation of the Fire Code or other fire, life, safety standards, such as site distance requirements.
 4. This subsection is not intended to limit the applicability of the adopted fire code except as otherwise presented in this subsection.

Section 13 – Severability

If any section, subsection, clause, sentence, or phrase of this ordinance should be held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 14 – Authority to Make Necessary Corrections

The City/Town Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener’s clerical errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

Section 15 – Effective Date

The ordinance shall take effect and be in full force five days after publication of the attached summary which is hereby approved.

APPROVED

MAYOR

ATTEST/AUTHENTICATED: _____
CITY/TOWN CLERK

APPROVED AS TO FORM: _____
OFFICE OF THE CITY/TOWN ATTORNEY:

PASSED BY THE CITY/TOWN COUNCIL:
PUBLISHED:
EFFECTIVE DATE: