



The following comments were submitted to the Department of Commerce by Allison Butcher on Dec. 6, 2023 via their [online form](#).

On behalf of the Master Builders Association of King and Snohomish Counties (MBAKS), we appreciate the opportunity to comment on the Department of Commerce's Draft Middle Housing Model Ordinances and Draft Model Ordinance User Guide.

MBAKS takes pride in building communities. Our 2,500 members are professional homebuilders, architects, remodelers, tradespeople, planners and engineers, suppliers, manufacturers, and sales and marketing professionals in your community. We are committed to ensuring that all people can attain housing and that everyone deserves a place to call home.

MBAKS strongly supports the passage of House Bill 1110 during the 2023 legislative session and see it as a necessary step to addressing our housing shortage head on. This new law represents a major reform to zoning in our state that will provide more diverse housing options for more people in more places. If properly implemented, this new law has the potential to add much-needed housing supply and help the state reach its goal of adding 1 million new homes by 2044.

Our association is committed to partnering with the Department of Commerce, local jurisdictions, and other stakeholders to help ensure its successful implementation. We appreciate the work that has gone into developing the Draft Model Codes and User Guide and submit the following comments for consideration as you work to finalize these documents.

When it comes to implementing middle housing, MBAKS' overarching objective is to keep it simple. The easier and more cost-effective it is to build middle housing, the more likely it is to be built, and the more attainable it will be for those looking for a place to call home. The fewer barriers cities put in place for middle housing, the more successful they will be at meeting their housing targets and our region's housing needs.

With the goal of facilitating more housing choices in mind, we applaud the ways in which the Draft User Guide suggests approaches cities could take to go beyond the minimum requirements in HB 1110. Some highlights of ways the User Guide offers for removing barriers to more housing choices include:

- Allowing exemptions under the State Environmental Policy Act (SEPA) to increase building capacity (p. 57);
- Increasing the number of lots that can be approved through a short subdivision (p. 57);
- Allowing larger middle housing types, between seven and 20 units, such as courtyard apartments, in areas "near transit, commercial services and job centers, and other amenities" (p. 27);
- Leveraging the newly passed condo bills, SB 5058 and SB 5258, by considering opportunities to allow up to 12 units per lot and provide other incentives for condominium and townhouse development (p. 64);
- Allowing middle housing on lots with regulated critical areas in the same way as single family homes (p. 19; see further discussion of this topic below);



- Expanding the higher density allowance in Tier 1 and 2 cities from at least a quarter-mile from a major transit stop to a half mile, making local codes consistent with other provisions eliminating off-street parking within a half-mile of a major transit stop (p. 25);
- Permitting higher densities near major transit stops (p. 25);
- Removing car parking mandates altogether or allowing on-street parking to count toward off-street parking requirements (p. 30; see further discussion on this topic below).

MBACKS strongly supports including the above recommendations in the final User Guide. These are positive steps cities can take to support more middle housing.

Affordable Housing

MBACKS understands that in areas outside one-quarter mile of a major transit stop, HB 1110 and the Draft Model Ordinance for larger cities allows six units per lot when two of the units are affordable in Tier 1 cities, and four units per lot when one unit is affordable in Tier 2 cities, and that these requirements must be met on-site. While MBACKS supports the policy objective of adding more affordable housing for the full range of income needs, we are concerned that the affordable housing provisions in HB 1110 and the Draft Model Ordinance are not economically feasible for small scale projects. Adding affordable housing on 4- or 6-unit projects is cost prohibitive in many cases and this could hamper the goals of these provisions from being met. This is especially true in the very high cost markets that our members operate in throughout King and Snohomish counties.

MBACKS maintains the affordability provisions would be more feasible and likely to be used if cities were to increase thresholds to projects with 10 or more units and offer a fee in-lieu option on these denser projects as an alternative path to compliance. We are concerned that a fee in-lieu program for small scale projects could increase housing costs and reduce permit applications. For example, our research found the mandatory housing affordability (MHA) program in Seattle had the unintended effect of reducing townhome permit applications since MHA was implemented.

We believe a combination of regulatory and financial incentives, including higher unit thresholds and a fee in-lieu option as an alternative for meeting the on-site affordability requirements established by RCW 36.70A.635, would be a more effective approach to increasing the supply of affordable housing.

To the extent that cities may still allow a fee in-lieu option for new development as an alternative to meeting on-site affordability requirements of RCW 36.70A.635(3), the User Guide should recommend clear standards be adopted for estimating this fee up front to more accurately assess project feasibility. Furthermore, to be successful, any fee must be practical and feasible.

Parking Standards

As noted above, MBACKS supports removing car parking mandates altogether or allowing on-street parking to count toward off-street parking requirements. Requiring two parking spaces on lots will only reduce the number of homes that can be built, increasing the cost of the remaining units.

Where parking standards are reduced or eliminated, areas typically devoted to parking stalls can be utilized for housing, providing more housing choices and benefiting the environment.

Zoning Dimensional Standards

MBACKS strongly recommends using lot coverage to manage the scale of projects and not floor area ratio (FAR). We believe it would be much simpler to review and manage setbacks, height restrictions, and lot coverage than using FAR, which creates an arbitrary restriction on development. We recommend



Commerce consider using a higher lot coverage without floor area ratio, or allowing taller building heights, in the Guidance to support the creation of more middle housing.

Design Standards

MBAKS maintains the User Guide should be very clear in stating that Commerce is not advocating cities adopt a design review process, administrative or otherwise. The design review process often adds unnecessary delays and costs to the homebuilding process, creating a significant hurdle in the effort to add more housing choices. Design review can create a great deal of uncertainty over the development timeline on any given project. This lack of predictability and potential for delays makes projects having to undergo design review riskier to investors and more expensive to finance.

If a city does find it necessary to utilize a design review process, then administrative design review is preferable to full design review, assuming a timely and predictable process can be maintained, and design standards are clear, objective and easy to follow.

In summary, MBAKS prefers no design review for middle housing, but if a city does have a process in place, we recommend streamlining it, using clear and objective standards, in the shortest timeframe possible.

Subdivision

MBAKS supports adopting the most streamlined approval process for unit lot subdivisions as possible, including concurrent review and submittal with building permit. (One example for reference is the City of Seattle ULS process). Doing so will save time and ensure much-needed housing becomes available sooner.

Critical Areas

MBAKS notes that HB 1110 exempts lots designated with critical areas or their buffers from middle housing requirements. In this way, the new law is more restrictive than regulations that apply to single family housing and other development. MBAKS views this as a major flaw of the new middle housing law.

If critical areas regulations can be met, then middle housing should be allowed to proceed just like single family homes. We understand this provision may require a legislative fix to fully address. For purposes of the Draft Model Ordinances, MBAKS strongly supports the User Guide recommending cities to allow middle housing on lots with regulated critical areas in the same way as single family homes.

Major Transit Stops

MBAKS requests that the User Guide be amended to include a map or list of all major transit stops, as defined by HB 1110, for all Tier 1 and Tier 2 cities in the state of Washington. We further request that this list or map be updated as new major transit stops come online. While the User Guide includes definitions of the various types of major transit stops and guidance for measuring transit stop radius, we believe sharing a list of all major transit stops in Tier 1 and Tier 2 cities would greatly strengthen the User Guide, adding much clarity on where unit density increases related to transit proximity apply.

Trees

MBAKS notes that in most cases, HB 1110 and related Draft Model Ordinances prohibit local jurisdictions from adopting development, permit, and environmental review processes and requirements that are more restrictive for middle housing than for detached single family residences. Additionally, regarding trees, page 43 of the Draft User Guide states: *“Rather than offer specific prescriptive recommendations for tree preservation and retention for one use...like middle housing, cities should consider reviewing, updating existing tree regulations as a broader package across all uses and type of permit applications...”*



We concur with the above approach. However, **Section 9.1.2** of the Draft Model Ordinance includes a specific planting requirement related to common open space for cottage housing. We ask that you consider amending this to include a fee-in-lieu option with reasonable fees as an alternative path to compliance with the planting requirement.

This is consistent with MBAKS' position in favor of balanced tree codes that support both housing and trees. We recommend allowing alternative paths to compliance, such as off-site replanting or a fee in-lieu option, as best practices cities should consider when adopting a broader package of tree code changes. Also, any such fees should be practical and reasonable. Maintaining the ability for off-site replanting or a fee-in-lieu paid into a tree account are key elements to a well-balanced tree code.

With balanced tree codes, we can support a thriving tree canopy and create more diverse housing choices envisioned by HB 1110 at the same time.

Infrastructure Standards

Cities should allow the use of private driveways and provide maximum flexibility with driveway widths, so long as fire code standards are met. The ability to utilize private drive aisles is an important element when determining feasibility, especially for middle housing types, and should be carefully considered.

MBAKS also maintains cities should not place limits on the number of homes that can be served by private driveways. Limiting private driveways to two units is overly restrictive and will be a barrier to middle housing.

Building Code

MBAKS notes that structures with three or more units fall under the International Building Code (IBC) and are subject to a more costly process than one- or two-unit housing types. As the Draft User Guide states on page 58, this could "negatively impact the construction and affordability of most middle housing types with three or more units in one structure." Therefore, MBAKS supports the recommendation that cities consider updating their locally-adopted version of the IBC and International Residential Code (IRC) to allow housing types with up to six units to be built under the IRC.

Thank you again for the opportunity to comment on the Draft Middle Housing Model Ordinances and User Guide. We stand ready to work with local jurisdictions as they update codes and work to implement these necessary changes to provide more diverse housing choices in our state and region. MBAKS looks forward to continued collaboration on housing opportunities in King and Snohomish counties.