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4 **BEFORE THE**
5 **GROWTH MANAGEMENT HEARINGS BOARD**
6 **CENTRAL REGION**
7 **STATE OF WASHINGTON**

7 FUTUREWISE, KIAN BRADLEY, and
8 TREVOR REED,

9 Petitioners,

10 v.

11 MERCER ISLAND,

12 Respondent.

Case No. 25-3-0003

**FUTUREWISE’S KIAN BRADLEY’S, and
TREVOR REED’S PETITIONERS’
PREHEARING BRIEF**

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I. INTRODUCTION

Washington and Mercer Island face a housing affordability crisis. This crisis demands bold action from every jurisdiction—yet Mercer Island, one of the region's wealthiest communities, has chosen a path of minimal compliance and exclusionary policy that undermines the Growth Management Act's core principles. Mercer Island comprehensive plan and development regulations fail to take the actions required by the Growth Management Act to meet this crisis. The Board should find that Mercer Island's comprehensive plan and development regulations violate the Growth Management Act and require the City to implement the specific, concrete measures the Legislature has mandated to address our region's housing crisis.

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II. STANDARD OF REVIEW

The Washington Supreme Court identified the standards applicable to this appeal:

The Board is charged with adjudicating GMA compliance, and, when necessary, with invalidating noncompliant comprehensive plans and development regulations. The Board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]. To find an action “clearly erroneous,” the Board must be left with the firm and definite conviction that a mistake has been committed.¹

Ordinance Nos. 24C-16 and 24C-18 are presumed valid.² The burden is on the Futurewise, Kian Bradley, and Trevor Reed (hereinafter Futurewise) to demonstrate that Ordinance Nos. 24C-16 and 24C-18 violate the GMA.³ “[T]he Board acts properly when it foregoes deference to a [city’s] plan that is not ‘consistent with the requirements and goals’ of the GMA.”⁴

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¹ *King Cnty. v. Central Puget Sound Growth Mgmt. Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 552, 14 P.3d 133, 138 (2000).

² *Kittitas Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 156, 256 P.3d 1193, 1199 (2011).

³ *Id.*; RCW 36.70A.320.

⁴ *Thurston Cty. v. Cooper Point Association*, 108 Wn. App. 429, 444, 31 P.3d 28, 36 (2001) *affirmed Thurston Cty. v. Cooper Point Ass’n*, 148 Wn.2d 1, 5 P.3d 1156, 1158 (2002).

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III. ARGUMENT

Issue 1: Did the adoption of Ordinance No. 24C-16, and Exhibits A and B, and Ordinance No. 24C-18, and Exhibits A through F, fail to identify sufficient capacity of land for emergency shelters, transitional housing, emergency housing, and permanent supportive housing violating RCW 36.70A.020(4), RCW 36.70A.030(14), RCW 36.70A.030(15), RCW 36.70A.030(31), RCW 36.70A.070, RCW 36.70A.070(2)(c) and (2)(d), RCW 36.70A.100, RCW 36.70A.120, RCW 36.70A.130(1) and (5)(a), RCW 36.70A.210, RCW 36.70A.290(2), or King County Countywide Planning Policies H-1 or H-3(a)?

Mercer Island's Comprehensive Plan violates the Growth Management Act (“GMA”) by failing to identify sufficient capacity of land for emergency shelters, transitional housing, emergency housing, and permanent supportive housing (“STEP” housing). RCW 36.70A.020(4) establishes housing as a planning goal under the GMA, requiring jurisdictions to plan for an accommodate housing affordable to economic segments of the population, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock. RCW 36.70A.070 and .070(2)(c) requires that the housing element shall to “[i]dentifies sufficient capacity of land for housing including, but not limited to, government-assisted housing, housing for moderate, low, very low, and extremely low-income households, manufactured housing, multifamily housing, group homes, foster care facilities, emergency housing, emergency shelters, permanent supportive housing”.RCW 36.70A.070(2)(d) further requires the housing element to “[m]ake[] adequate provisions for existing and projected needs of all economic segments of the community”.

The Legislature explicitly noted that "Washington is facing an unprecedented housing crisis" and that "increasing housing options that are more affordable to various income levels is

1 critical to achieving the state's housing goals."⁵ The Legislature has recognized "the continued
2 need for the development of housing at all income levels," which must include emergency
3 housing, emergency shelters, and permanent supportive housing for those most vulnerable in
4 our communities.⁶ Mercer Island's failure to plan for STEP housing directly contravenes this
5 legislative finding and intent.

6 RCW 43.330.120(2) and RCW 36.70A.190 require the Washington State Department of
7 Commerce ("Commerce") to provide both technical assistance to cities and counties that
8 planning under the GMA, including workshops, model ordinances, and informational materials.
9 Commerce may adopt criteria through rulemaking to guide counties and cities in creating
10 GMA-compliant comprehensive plans and development regulations, and RCW 36.70A.320(3)
11 directs the Board to consider this criteria when determining whether a county has fulfilled its
12 GMA obligations.⁷ While cities and counties in Washington are not strictly required to follow
13 the Department of Commerce's published guidance on the GMA, there is an expectation to
14 consider and utilize the Department's guidelines and assistance in implementing the GMA.⁸

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17 The Department of Commerce's *Guidance for Updating Your Housing Element: Updating*
18 *your housing element to address new requirements* revised its guidance in July 2024 to specify
19 that "[f]ully planning jurisdictions must do a quantitative [Land Capacity Analysis] for
20 emergency housing needs to show sufficient capacity for their allotted share of countywide
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23 ⁵ 2023 Wash. Sess. Laws ch. 332, § 1 (referencing housing goals codified by the legislature under chapter 254,
24 Laws of 2021, E2SHB 1220 added the requirement to plan for and accommodate housing **affordable to all**
25 economic segments)(emphasis added)

26 ⁶ *Id.*

⁷ See *Olympic Stewardship Found. v. W. Wash. Growth Mgmt. Hearings Bd.*, 166 Wn. App. 172, 193 n.18, 274 P.3d 1040, 1050 (2012).

⁸ See *Concerned Friends of Ferry Cty. v. Ferry Cty.*, 191 Wn. App. 803, 807, 365 P.3d 207, 210 (2015)(noting specific requirement for designating agricultural land of long-term commercial significance under the GMA requiring counties to consider the guidelines promulgated by the Washington Department of Commerce).

1 emergency housing needs (RCW 36.70A.070(2)(c)).”⁹ Commerce also published a *User Guide*
2 *and Best Practices Report for Emergency shelter, Transitional housing, Emergency housing*
3 *and Permanent supportive housing (STEP)*. Per the user guide, “all fully planning jurisdictions
4 must do a land capacity analysis to show land capacity for permanent supportive housing and
5 emergency housing/shelters, not just those jurisdictions that have occupancy, spacing and
6 intensity of use requirements.”¹⁰ The statutory definitions of emergency housing, emergency
7 shelter, and permanent supportive housing provide clear parameters for what must be addressed
8 in comprehensive plans.¹¹

9
10 In addition to GMA requirements, Mercer Island must comply with the King County
11 Countywide Planning Policies (CPPs), which provide further specificity on how jurisdictions
12 must plan for housing needs. CPP H-1 requires jurisdictions to "Plan for and accommodate the
13 jurisdiction's allocated share of countywide future housing needs for moderate-, low-, very low-
14 , and extremely low-income households as well as emergency housing, emergency shelters, and
15 permanent supportive housing."¹² The policy explicitly states that "[s]ufficient planning and
16 accommodations are those that comply with the Growth Management Act requirements for
17 housing elements" and "that outline regulatory and nonregulatory measures to implement the
18 comprehensive plan." Furthermore, CPP H-3 requires jurisdictions to "[c]onduct an inventory
19 and analysis in each jurisdiction of existing and projected housing needs of all segments of the
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23 ⁹ Exhibit #321, Washington States Department of Commerce, Local Government Division Growth Management
24 Services, *Guidance for Updating Your Housing Element: Updating your housing element to address new*
25 *requirements* p. 46 (Aug. 2023). Unless otherwise noted, the exhibits are included in the Table of Exhibits included
26 in a separate PDF.

¹⁰ Exhibit #284, Washington State Department of Commerce, *STEP Model Ordinance, User Guide and Best Practices Report* p. 31 (July 2024).

¹¹ RCW 36.70A.030(14), (15), (31).

¹² RCW 36.70A.100 and RCW 36.70A.210; Exhibit #276, 2021 King County Countywide Planning Policies p. 38 (Ratified Nov. 30, 2023).

1 population and summarize the findings in the housing element."¹³ The CPP H-1 and Table H-1
2 require Mercer Island to plan for and accommodate 237 emergency housing and emergency
3 shelter units or beds and 178 units of permanent supportive housing affordable to households
4 earning 30 percent or less of the area median income (AMI).¹⁴ These CPPs reinforce and
5 elaborate on the GMA requirements, making clear that jurisdictions must specifically plan for
6 and accommodate housing needs at each income level separately, including emergency housing,
7 emergency shelters, and permanent supportive housing.
8

9 In violation of RCW 36.70A.020(4), RCW 36.70A.070(2)(c) and the CPPs, Mercer Island's
10 Comprehensive Plan fails to identify sufficient capacity for STEP housing. While the Housing
11 Element claims that "capacity for permanent supportive housing and emergency housing was
12 evaluated in the Land Capacity Analysis Supplement" and that the analysis "found that the
13 Comprehensive Plan allows adequate capacity," a closer examination of the Land Capacity
14 Analysis Supplement reveals critical deficiencies.¹⁵
15

16 The Land Capacity Analysis Supplement explicitly did not conduct an analysis of capacity
17 for emergency housing, citing outdated Commerce guidance.¹⁶ In addition, a significant flaw in
18 Mercer Island's approach is the aggregation of housing need across all income levels below
19 120% AMI.¹⁷ The Land Capacity Analysis Supplement states that "all housing need for
20 households earning below 120 percent of the AMI can only be accommodated in the
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23 ¹³ *Id.* p. 41.

24 ¹⁴ *Id.* p. 38, p. 40.

25 ¹⁵ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B Element 3 - Housing p. 104 (Nov. 19,
2024).

26 ¹⁶ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B Land Capacity Analysis Supplement p.
370 (Dec. 15, 2023) "further analysis of capacity for emergency housing is not required per the Commerce HB
1220 Guidance Book 2."

¹⁷ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B Land Capacity Analysis Supplement p.
344 (Dec. 15, 2023).

1 multifamily and mixed-use zone categories, the capacity for those zone categories and the
2 housing need in those income ranges were aggregated together."¹⁸ This aggregation
3 methodology fundamentally undermines the purpose of the GMA's requirement to identify
4 sufficient capacity for housing affordable to all economic segments. By combining all needs
5 below 120% AMI into a single bucket, Mercer Island obscures the extent to which there
6 actually sufficient capacity to accommodate housing at the lowest income levels, including
7 STEP housing.

8
9 Even when aggregating all income levels below 120% AMI, Mercer Island's identified
10 capacity (1,428 units) falls short of the identified need for households below 80% AMI (1,444
11 units).¹⁹ The affordability analysis shows that without subsidies, no housing type in Mercer
12 Island is naturally affordable to households earning less than 69% AMI or \$101,120. This
13 means that even if the total capacity numbers were sufficient, there is no evidence that any of
14 this capacity would be affordable to households in the extremely low-income category (below
15 30% AMI) or even the very low-income category (30-50% AMI). The Land Capacity Analysis
16 acknowledges that "[w]ithout affordable housing subsidies and incentives, households making
17 less than 70 percent of the AMI will be at risk of either being cost-burdened or priced out of
18 Mercer Island altogether."²⁰ Yet, as outlined below in Issue 2, the City further fails to identify
19 specific strategies, funding sources, or regulatory mechanisms that would ensure housing
20 affordable to these income levels may actually be developed.

21
22 By aggregating capacity across all income bands below 120% AMI and failing to conduct
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25 ¹⁸ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B Land Capacity Analysis Supplement p.
344 (Dec. 15, 2023).

26 ¹⁹ *Id.*; Exhibit #276, 2021 King County Countywide Planning Policies p. 40 (Ratified Nov. 30, 2023).

²⁰ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Land Capacity Analysis Supplement* p.
346 (Dec. 15, 2023).

1 an analysis of the capacity for STEP housing, Mercer Island fails to demonstrate how much of
2 the identified capacity would be available specifically for STEP housing and extremely low-
3 income households. Given the higher costs and specific requirements for developing such
4 housing, a more detailed analysis is necessary to ensure adequate capacity and to comply with
5 the GMA.

6 Proposed Policy 1.3.4 "Emergency Housing" in Mercer Island's Housing Element provides:
7 "Allow use consistent with state law and ensure that occupancy, spacing, and intensity
8 regulations allow sufficient capacity to accommodate the City's level of need."²¹ However, the
9 land capacity analysis does not account for any existing or anticipated occupancy, spacing, and
10 intensity regulations that might affect the development of STEP housing.

12 Without analyzing these specific regulatory factors, Mercer Island cannot accurately
13 determine whether the identified capacity is actually sufficient for STEP housing. This omission
14 is particularly problematic given that STEP housing often faces different regulatory
15 requirements than typical multifamily housing, potentially further reducing the actual
16 developable capacity for these housing types.²² For example, the Land Capacity Analysis
17 acknowledges that under interim regulations "transitional housing is a land use that is allowed
18 by conditional use permit in a majority of zones within one mile of transit".²³ RCW
19 36.130.020(1) prohibits local governments from imposing requirements on affordable housing
20 that differ from requirements for housing developments generally. Since permanent supportive
21 housing is defined as subsidized housing under RCW 36.70A.030(31), it cannot be subject to
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25 ²¹ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Element 3 - Housing* p. 111 (Nov. 19, 2024).

26 ²² *Id.* (Policy 1.3.4 specifically mentions occupancy, spacing, and intensity regulations for emergency housing.)

²³ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Land Capacity Analysis Supplement* p. 346 (Dec. 15, 2023).

1 special locational restrictions.

2 Mercer Island's Comprehensive Plan violates the GMA by failing to identify sufficient
3 capacity for emergency housing, emergency shelters, and permanent supportive housing, in
4 violation of the statutory definitions RCW 36.70A.030(14), (15), and (31) and RCW
5 36.70A.070(2).. Mercer Island has not adopted development regulations that implement
6 comprehensive planning for STEP housing in violation of RCW 36.70A.120 as there is a
7 misalignment between the comprehensive plan's housing goals and the city's regulatory
8 framework.
9

10 The plan's methodology of aggregating housing needs across all income levels below 120%
11 AMI obscures the fact that there is inadequate capacity specifically for households at the lowest
12 income levels. The data clearly shows that without significant subsidies and regulatory changes,
13 no housing in Mercer Island is affordable to extremely low-income households, yet the plan
14 fails to adequately address this gap. To comply with the GMA, Mercer Island must conduct a
15 specific analysis of capacity for STEP housing that accounts for regulatory barriers and
16 affordability challenges, identify concrete programs and funding sources to address these
17 barriers, and ensure that sufficient capacity is identified for each economic segment of the
18 population, particularly those most in need. Mercer Island has not complied with RCW
19 36.70A.070 or CPPs H-1 and H-3(a).
20

21 **Issue 2: Did the adoption of Ordinance No. 24C-16, and Exhibits A and B, and**
22 **Ordinance No. 24C-18, and Exhibits A through F, fail to document programs**
23 **and actions needed to achieve housing availability including gaps in local**
24 **funding, barriers such as development regulations, and other limitations and fail**
25 **to adopt and implement policies to improve effectiveness and address gaps in**
26 **partnerships, policies, and dedicated resources to meet the jurisdiction's housing**
needs violating RCW 36.70A.020(4), RCW 36.70A.070, RCW 36.70A.070(2)(d),
RCW 36.70A.100, RCW 36.70A.120, RCW 36.70A.130(1) and (5)(a), RCW
36.70A.210, RCW 36.70A.290(2), or King County Countywide Planning Policy
H-12?

1 Mercer Island's adoption of Ordinance No. 24C-16 and Ordinance No. 24C-18 violates
2 multiple GMA requirements because the City fails to adequately document programs and
3 actions needed to achieve housing availability, does not identify specific funding gaps, and
4 neglects to remove barriers to affordable housing throughout the jurisdiction. The limited scope
5 of policies addressing housing needs for extremely low-income households, geographic
6 concentration of affordable housing provisions, and lack of concrete timelines for
7 implementation demonstrate that Mercer Island has not fulfilled its statutory obligations under
8 RCW 36.70A.070(2)(d) and related provisions.
9

10 RCW 36.70A.070 and RCW 36.70A.070(2)(d) specifically mandate that housing elements
11 shall:

- 12 • Make adequate provisions for existing and projected housing needs of all economic segments
- 13 • Document programs and actions needed to achieve housing availability
- 14 • Identify gaps in local funding
- 15 • Identify barriers such as development regulations and other limitations
- 16 • Implement remedies to these barriers through development regulations

17 RCW 36.70A.100 and RCW 36.70A.210 require consistency with countywide planning
18 policies. RCW 36.70A.130(1) and (5)(a) establish December 31, 2024, as the deadline for
19 updating development regulations to remove barriers to housing availability.

20 The Washington State Department of Commerce *Guidance for Updating Your Housing*
21 *Element: Updating your housing element to address new requirements* explicitly instructs
22 jurisdictions to include comprehensive lists of barriers to affordable housing, including barriers
23 to emergency housing and permanent supportive housing and corresponding remedial actions.²⁴

24 King County Countywide Planning Policy H-12 directs jurisdictions to: "Adopt and
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26 ²⁴ See Exhibit #321, Washington States Department of Commerce, Local Government Division Growth Management Services, *Guidance for Updating Your Housing Element: Updating your housing element to address new requirements* p. 50 and Appendix B (Aug. 2023).

1 implement policies that improve the effectiveness of existing housing policies and strategies"
2 and "Address gaps in partnerships, policies, and dedicated resources to meet the jurisdiction's
3 housing needs".²⁵ The CPP H-12 guidance explicitly suggests specific approaches.

4 The GMA's directive to "make adequate provisions" for housing and to document barriers
5 and remedies necessitates more than vague promises. Mere aspirational statements in
6 comprehensive plans are insufficient to satisfy GMA requirements where concrete steps,
7 specific policies, programs, and implementation measure are necessary.²⁶

8
9 Mercer Island's comprehensive plan and development regulations fail to meet statutory
10 requirements to document programs and actions needed to achieve housing availability in
11 several critical ways. Mercer Island's Housing Element relies primarily on vague commitments
12 rather than the concrete actions required by RCW 36.70A.070(2)(d). For several housing types
13 including middle housing, permanent supportive housing, and accessory dwelling units, the
14 only listed action in Table 2 is to "[c]omply with statewide legislation."²⁷ This generic
15 statement provides no specific implementation strategy, timeline, or measurable outcomes,
16 contrary to RCW 36.70A.070(2)(d)'s requirement to document needed programs and actions.

17
18 While Table 2 mentions evaluating "potential local revenue sources" and continuing
19 contributions to the ARCH Housing Trust Fund, it does not:

- 20
- 21 • Identify the magnitude of existing funding gaps
 - 22 • Quantify funding needs by income level or housing type
 - 23 • Establish target funding levels necessary to meet projected housing needs
 - 24 • Analyze the adequacy of existing funding mechanisms;

25 ²⁵ Exhibit #276, 2021 King County Countywide Planning Policies p. 45 (Ratified Nov. 30, 2023).

26 ²⁶ See *Kittitas Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 164, 256 P.3d 1193, 1203 (2011).

27 ²⁷ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B Element 3 - Housing p. 106 (Nov. 19, 2024).

1 The city's vague commitment to "evaluate potential local revenue sources" without specific
2 funding targets or implementation timelines falls short of the GMA's requirements in RCW
3 36.70A.070(2)(d). CPP H-12 explicitly directs jurisdictions to address gaps in three key areas -
4 partnerships, policies, and dedicated resources.²⁸ The suggested strategies under H-12 focus on
5 concrete actions like reducing permitting timelines, modifying incentive programs, establishing
6 funding mechanisms, and increasing regulatory flexibility.²⁹ This requires a comprehensive
7 approach that goes beyond regulatory reform to include collaboration with housing partners and
8 allocation of financial resources. This absence of financial analysis prevents meaningful
9 assessment of the City's capacity to address housing needs and fails to provide decision-makers
10 with the information necessary to develop adequate funding strategies.

12 Housing for extremely low-income households (earning 30% AMI or below) requires
13 significant subsidy.³⁰ Washington state law provides numerous tools jurisdictions can use to
14 create dedicated resources for affordable housing.³¹ Mercer Island has failed to implement or
15 even seriously evaluate these tools. The CPP H-12 guidance specifically mentions "retooling a
16 Multifamily Tax Exemption program to improve its effectiveness," yet though Mercer Island's
17 plan mentions that "[s]ubsidies and incentives are needed to provide housing that is affordable
18 to households earning less than 70 percent of the AMI", the plan contains no analysis of
19 potential MFTE improvements or expansion beyond simply suggesting that "[s]ubsidies and
20 incentives can include strategies such as height bonuses, density bonuses, or multifamily tax
21
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23

24 ²⁸ Exhibit #276, 2021 King County Countywide Planning Policies p. 45 (Ratified Nov. 30, 2023).

25 ²⁹ Exhibit #276, *Id.*

26 ³⁰ Exhibit #321, Washington States Department of Commerce, Local Government Division Growth Management Services, *Guidance for Updating Your Housing Element: Updating your housing element to address new requirements* pp. 15 – 16, p. 35 (Aug. 2023).

³¹ Exhibit #321, *Id.* pp. 125 – 26.

1 exemptions (MFTE) in exchange for construction of income-restricted units”³²

2 Mercer Island's affordable housing initiatives are concentrated in a small portion of the city,
3 contrary to the GMA's intent to expand housing opportunities throughout jurisdictions. The
4 City's affordable housing incentives in MICC 19.11.040 apply only to the Town Center zones,
5 leaving most of the city without policies to promote affordable housing.³³ Multi-Family and
6 Town Center comprehensive plan designations that allow housing types affordable to low-
7 income households are clustered in the north end of the city near I-90.³⁴ The remainder of the
8 city is primarily designated for Single-Family Residential use, with minimal provisions for
9 affordable housing integration.³⁵

11 Mercer Island's housing provisions show a significant deficiency in prioritizing housing for
12 extremely low-income households (earning 30% or less of area median income or AMI).
13 Mercer Island is a high housing cost area.³⁶ In high-cost jurisdictions like Mercer Island, only
14 multi-family housing types—specifically walk-up apartments, low-rise condominiums (2-3
15 floors), and mid-rise apartments—provide affordability to households earning 80% or less of
16 area median income.³⁷ Even accessory dwelling units exceed affordability thresholds for these
17 income groups.³⁸ Mercer Island restricts these essential housing types exclusively to Multi-
18 Family and Town Center zones, which occupy only a small portion of the city, concentrated
19

21 ³² Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 *Land Capacity Analysis Supplement* p. 346 (Dec. 15, 2023).

22 ³³ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-18 Exhibit D pp. 1 – 2, p. 8 – 10 (Dec. 3, 2024).

23 ³⁴ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan Element 2 - Land Use* pp. 100 – 102 (Nov. 19, 2024) & *City of Mercer Island Housing Needs Assessment* p. 233 (Nov. 2022).

24 ³⁵ *Id.*

25 ³⁶ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 *Land Capacity Analysis Supplement* pp. 340 – 41 (Dec. 15, 2023).

26 ³⁷ Exhibit #321, Washington States Department of Commerce, Local Government Division Growth Management Services, *Guide Commerce for Updating Your Housing Element: Updating your housing element to address new requirements* p. 35 (Aug. 2023).

³⁸ Exhibit #321, *Id.*

1 near I-90 on the north end.³⁹

2 Mercer Island's Comprehensive Plan explicitly acknowledges the severity of the affordability
3 crisis, stating that residents earning below 69 percent of AMI face significant housing instability
4 and risk becoming cost-burdened or being completely displaced from the community.⁴⁰ Despite
5 recognizing that this vulnerable population requires higher-density, lower-cost housing options,
6 the City has restricted such housing types to limited areas, effectively creating affordability
7 deserts throughout most residential neighborhoods.
8

9 The City has not adopted inclusionary requirements, affordable housing incentives, or
10 moderate-density housing provisions for the majority of its residential areas, creating an
11 unbalanced distribution of affordable housing opportunities. The affordable housing bonuses in
12 MICC 19.11.040 do not provide enhanced incentives for housing affordable to households
13 earning 30% AMI or below.⁴¹ Comprehensive Plan Policy 2.3 to "[d]ecrease barriers and
14 promote access to affordable homeownership" lacks specific implementation mechanisms,
15 funding sources, or regulatory changes.⁴² This vague policy statement exemplifies the City's
16 overall approach to housing affordability—aspirational language without concrete
17 implementation measures.
18

19 RCW 36.70A.130(1)(a) and (5)(a) established December 31, 2024, as the deadline for
20 Mercer Island to update its development regulations to remove barriers to housing availability.
21 While the housing element mentions reviewing zoning regulations and streamlining design
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23 ³⁹ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan*
24 *Element 2 - Land Use* pp. 100 – 102 (Nov. 19, 2024) & *City of Mercer Island Housing Needs Assessment* p. 233
(Nov. 2022).

25 ⁴⁰ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 *Land Capacity Analysis Supplement* p. 348 (Dec.
15, 2023).

26 ⁴¹ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-18 Exhibit D p. *10 (Dec. 3, 2024).

⁴² Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B Element 3 - Housing p. 113 (Nov. 19,
2024).

1 review, the City has failed to actually implement these strategies by the statutory deadline of
2 December 31, 2024. The comprehensive plan suggests "considering" streamlining design
3 review without establishing implementation deadlines or specific process improvements.
4 Mercer Island's Land Capacity Analysis Supplement identifies numerous barriers to affordable
5 housing development, yet the comprehensive plan and development regulations fail to
6 implement corresponding solutions. The Analysis states that "multifamily development
7 regulations should be analyzed in the near future for potential amendments" but no specific
8 amendments have been adopted.⁴³ The Analysis identifies that "maximum lot coverage and
9 parking standards might still need amendments to support affordable housing" but these
10 standards remain unchanged.⁴⁴ The Analysis notes that requiring two parking spaces per unit
11 adds to construction costs for affordable housing, yet this requirement persists in MICC
12 19.03.020(B)(1).⁴⁵

14 This disconnect between analysis and implementation illustrates a compliance failure. The
15 GMA requires not just identification of barriers but adoption of remedies through development
16 regulations. Mercer Island's failure to translate its analysis into regulatory reform by the
17 statutory deadline constitutes a violation of RCW 36.70A.070(2)(d) and RCW
18 36.70A.130(5)(a).
19

20 Mercer Island's adoption of Ordinance No. 24C-16 and Ordinance No. 24C-18 fails to meet
21 the requirements of RCW 36.70A.070(2)(d) and related provisions. The City must revise its
22 comprehensive plan and development regulations to document specific programs and actions
23

25 ⁴³ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 16 Land Capacity Analysis Supplement p. 363
26 (Dec. 15, 2023).
⁴⁴ *Id.*
⁴⁵ *Id.*



1 needed to achieve housing availability, identify funding gaps, remove barriers to affordable
2 housing throughout the jurisdiction, and implement these measures with concrete timelines and
3 measurable outcomes.

4 **Issue 3. Did the adoption of Ordinance No. 24C-16, and Exhibits A and B, and**
5 **Ordinance No. 24C-18, and Exhibits A through F, fail to develop, adopt, and**
6 **include in the comprehensive plan a subarea plan for the Mercer Island light rail**
7 **station area violating Multicounty Planning Policies (MPPs) DP-Action-8, MPP-**
8 **RGS-8, MPP-DP-22, MPP-T-19, and associated narrative in VISION 2050 and**
9 **pages 15, 27 -28, and 68–72; King County Countywide Planning Policies H-3(i),**
10 **H-16, and H-17; RCW 36.70A.020(3); RCW 36.70A.020(4); RCW 36.70A.070;**
11 **RCW 36.70A.070(1); RCW 36.70A.070(6)(a); RCW 36.70A.100; RCW**
12 **36.70A.108; RCW 36.70A.120; RCW 36.70A.130(1) and (5)(a), RCW 36.70A.210,**
13 **or RCW 36.70A.290(2)?**

14 City comprehensive plans and development regulations must comply with the King County
15 Countywide Planning Policies (CPPs) and the Puget Sound Regional Council Multicounty
16 Planning Policies (MPPs).⁴⁶ RCW 36.70A.100 provides that “[t]he comprehensive plan of each
17 county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and
18 consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other
19 counties or cities with which the county or city has, in part, common borders or related regional
20 issues.” RCW 36.70A.210(1) and (7) require comprehensive plans to comply with CPPs and
21 MPPs. “The CPPs are thus the major tool provided in the GMA to ensure that the
22 comprehensive plans of each city within a county agree with each other.”⁴⁷ “The Board was
23 therefore correct to conclude that CPPs are binding”⁴⁸

24 ⁴⁶ *Stickney v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 11 Wn. App. 2d 228, 244–48, 453 P.3d 25, 33–35,
25 453 P.3d 25, 34 (2019); *King Cnty. v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 176,
26 979 P.2d 374, 380 (1999), as amended on denial of reconsideration (Sept. 22, 1999); *West Seattle Defense Fund, v.*
City of Seattle, CPSGMHB Case No. 94-3-0016, Final Decision and Order (April 4, 1995), at 55 “the City is
reminded of the requirement that its comprehensive plan be consistent with those of cities and counties which share
common borders or related regional issues (RCW 36.70A.100), with the [King County Countywide Planning
Policies] KCCPPs (RCW 36.70A.210(1)), and the multicounty planning policies (RCW 36.70A.210(7)).”

⁴⁷ *King Cnty.*, 138 Wn.2d at 175, 979 P.2d at 380.

⁴⁸ *King Cnty.*, 138 Wn.2d at 176, 979 P.2d at 380.

1 RCW 36.70A.130(1)(e) provides that “[a]ny amendment of or revision to a comprehensive
2 land use plan shall conform to this chapter. Any amendment of or revision to development
3 regulations shall be consistent with and implement the comprehensive plan.” Development
4 regulations including Ordinance No. 24C-18 must comply with the GMA.⁴⁹ RCW
5 36.70A.130(5) provides that “following the review of comprehensive plans and development
6 regulations required by subsection (4) of this section, counties and cities shall take action to
7 review and, if needed, revise their comprehensive plans and development regulations to ensure
8 the plan and regulations comply with the requirements of this chapter as follows: ... (a) ... on
9 or before December 31, 2024, ... for King, Kitsap, Pierce, and Snohomish counties and the
10 cities within those counties[.]”

11
12 King County Countywide Planning Policy (CPP) H-3(i) requires an inventory and analysis
13 that “shall include...housing development capacity within a half-mile walkshed of high-
14 capacity or frequent transit service.⁵⁰ The City's comprehensive plan and supporting documents
15 completely omit this required inventory and analysis, despite the recent light rail station
16 development.⁵¹ CPP H-16 mandates that jurisdictions “[e]xpand the supply and range of
17 housing types, including affordable units, at densities sufficient to maximize the benefits of
18 transit investments throughout the county.”⁵² To support high capacity transit, areas within a
19 half mile of the transit station need to be planned and zoned for transit-oriented densities of at
20 least 50 housing units per residential acre.⁵³ Yet currently, only Mercer Island's Town Center
21
22

23
24 ⁴⁹ *Kittitas Cnty.*, 172 Wn.2d at 164, 256 P.3d at 1203 citing RCW 36.70A.130(1). *Accord* RCW 36.70A.290(2).
25 ⁵⁰ Exhibit #276, 2021 King County Countywide Planning Policies pp. 41 – 42 (Ratified Nov. 30, 2023).
26 ⁵¹ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Element 2 - Land Use* p. 88 & *Land Capacity Analysis Supplement* p. 338, p. 341, pp. 343 – 44, p. 353, p. 371 (Dec. 15, 2023).
⁵² Exhibit #276, 2021 King County Countywide Planning Policies p. 46 (Ratified Nov. 30, 2023).
⁵³ Exhibit #312, Futurewise | GGLO | Transportation Choices Coalition, *Transit-oriented communities: A Blueprint for Washington State* p. 29 (Oct. 2009).



1 zones approach these density levels within a half mile of the Mercer Island’s new light rail
2 station.⁵⁴ The zones north of the station are not even close to this density.⁵⁵

3 Further, the City’s approach conflicts with CPP H-17 requires jurisdictions to “[s]upport the
4 development and preservation of income-restricted affordable housing that is within walking
5 distance to planned or existing high-capacity and frequent transit.”⁵⁶ Mercer Island's Policy 4.3
6 merely states that the City will “[a]llow the development of affordable housing within the Town
7 Center.”⁵⁷ The Washington Supreme Court in *Quadrant Corp. v. State Growth Mgmt. Hearings*
8 *Bd.* established that when legal terms are undefined, courts "apply its common meaning, which
9 may be determined by referring to a dictionary."⁵⁸ Webster's Third New International
10 Dictionary defines "support" as "to uphold by aid, countenance, or adherence" - a definition that
11 requires active assistance, not mere permission.⁵⁹ Simply "allowing" affordable housing falls
12 far short of the active "support" mandated by CPP H-17.⁶⁰ Allowing affordable housing is not
13 supporting affordable housing and is inconsistent CPP H-17.

14
15
16 “The Regional Growth Strategy is intended to coordinate growth among the region’s cities
17 and towns as they periodically update local housing and employment growth targets and amend
18

19 _____
20 ⁵⁴ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan*
21 *Element 2 - Land Use* pp. 100 – 102 (Nov. 19, 2024) & *City of Mercer Island Housing Needs Assessment* p. 233
22 (Nov. 2022); Exhibit #310 p. 0041.

23 ⁵⁵ *Id.*

24 ⁵⁶ Exhibit #276, 2021 King County Countywide Planning Policies p. 46 (Ratified Nov. 30, 2023).

25 ⁵⁷ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan*
26 *Element 2 - Land Use* p. 91 (Nov. 19, 2024).

27 ⁵⁸ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY p. 58 (2002). When the legislature has not defined a term
28 in a statute, the courts “apply its common meaning, which may be determined by referring to a dictionary.”

29 *Quadrant Corp. v. State Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 239, 110 P.3d 1132, 1140 (2005). In
30 *Quadrant Corp.* the state supreme court consulted Webster’s Third New International Dictionary. *Id.*

31 ⁵⁹ *Id.* p. 2297.

32 ⁶⁰ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY p. 58 (2002). When the legislature has not defined a term
33 in a statute, the courts “apply its common meaning, which may be determined by referring to a dictionary.”

34 *Quadrant Corp. v. State Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 239, 110 P.3d 1132, 1140 (2005). In
35 *Quadrant Corp.* the state supreme court consulted Webster’s Third New International Dictionary. *Id.*

1 their local comprehensive plans.”⁶¹ VISION 2050, as part of the Regional Growth Strategy,
2 identifies Mercer Island as a “High Capacity Transit Communit[y].”⁶² “High Capacity Transit
3 Communities include cities connected to existing or planned light rail ... rapid transit
4 facilities.”⁶³ Mercer Island’s new light rail station is located north of the Town Center, on the I-
5 90 corridor between 77th Avenue SE and 80th Avenue SE.⁶⁴

6 DP-Action-8, a multicounty planning policy, requires that “[e]ach city ... with a designated
7 ... light rail transit station area will develop a subarea plan for the designated ... station area
8”⁶⁵ “Station areas are within walking distance (about a half mile) of existing and planned
9 light rail and streetcar stations ...”⁶⁶ “High-Capacity Transit Station Areas” are defined to
10 include “[a]reas within ½ a mile of existing or planned light rail ... stations ...”⁶⁷ MPP-RGS-8
11 provides:
12

13 Attract 65% of the region’s residential growth and 75% of the region’s
14 employment growth to the regional growth centers and high-capacity transit
15 station areas to realize the multiple public benefits of compact growth around
16 high-capacity transit investments. As jurisdictions plan for growth targets, focus
development near high-capacity transit to achieve the regional goal.⁶⁸

17 MPP-DP-22 also provides: “Plan for densities that maximize benefits of transit investments
18 in high-capacity transit station areas that are expected to attract significant new population or
19 employment growth.”⁶⁹ MPP-T-19 provides: “Design transportation programs and projects to
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21 ⁶¹ Exhibit #322, Puget Sound Regional Council, *VISION 2050: A Plan for the Central Puget Sound Region* p. 27
(Oct. 2020).

22 ⁶² Exhibit #322, Puget Sound Regional Council, *VISION 2050: A Plan for the Central Puget Sound Region* p. 27,
p. 33 (Oct. 2020).

23 ⁶³ Exhibit #322, p. 33.

24 ⁶⁴ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan
Element 4 - Transportation* p. Page 118 (Nov. 19, 2024).

25 ⁶⁵ Exhibit #322, Puget Sound Regional Council, *VISION 2050: A Plan for the Central Puget Sound Region* p. 80
(Oct. 2020).

26 ⁶⁶ Exhibit #322, *Id.* p. 69.

⁶⁷ Exhibit #322, *Id.* p. 128.

⁶⁸ Exhibit #322, *Id.* p. 43.

⁶⁹ Exhibit #322, *Id.* p. 77.

1 support local and regional growth centers and high-capacity transit station areas.”⁷⁰

2 However, there is no subarea plan for the Mercer Island light rail station complying with the
3 Regional Growth Strategy and the above cited CPPs or MPPs in the comprehensive plan
4 adopted by Ordinance No. 24C-16 or in the development regulations adopted by Ordinance No.
5 24C-18.⁷¹ The subarea is also not shown on the comprehensive plan’s Figure 1 Land Use
6 Map.⁷² The Town Center (TC) comprehensive plan designation does not qualify as a subarea
7 plan because it does not include the light rail station or the area north of the station and within a
8 half mile of the station.⁷³ The Google Earth Map shows a half mile radius measured from the
9 west entrance to the Mercer Island Light Rail Station.⁷⁴ This area is well north of the Town
10 Center (TC) comprehensive plan designation.⁷⁵

11 MPP-T-19 requires “[d]esign transportation programs and projects to support local and
12 regional growth centers and high-capacity transit station areas.”⁷⁶ Currently, the western transit
13 center entrance is served by a sidewalk or path on one side of the street.⁷⁷ But there are no
14 improvements connecting the western transit center entrance to areas within a half mile of the
15 station.⁷⁸ This is just one example of why a subarea plan is needed to comply with the MPPs.

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⁷⁰ Exhibit #322, *Id.* p. 106.

20 ⁷¹ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Ordinance No. 24C-16 pp. 1 – 3, Exhibit A pp. 5
21 – 28, and Exhibit B *Mercer Island Comprehensive Plan* pp. 70 – 457 (Nov. 19, 2024); Futurewise *et al.* Petition for
22 Review Exhibit Ord. No. 24C-18 pp. 1 – *14 (Dec. 3, 2024).

23 ⁷² Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan*
24 *Element 2 - Land Use* p. 102 (Nov. 19, 2024).

25 ⁷³ *Id.*; Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan*
26 *Element 4 - Transportation* p. 118 (Nov. 19, 2024); Exhibit #310 p. 0041.

⁷⁴ GMHB Exhibit #310 p. 0041.

⁷⁵ *Id.*; Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan*
Element 4 - Transportation p. Page 118 (Nov. 19, 2024); GMHB Exhibit #310 p. 0041.

⁷⁶ Exhibit #322, Puget Sound Regional Council, *VISION 2050: A Plan for the Central Puget Sound Region* p. 106
(Oct. 2020).

⁷⁷ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan*
Element 4 - Transportation p. 134 (Nov. 19, 2024).

⁷⁸ *Id.* pp. 141 – 43.

1 MPP-RGS-8 provides in part that as “[a]s jurisdictions plan for growth targets, focus
2 development near high-capacity transit to achieve the regional goal.”⁷⁹ But much of the area
3 north of I-90 within a half mile of the East Link Light Rail Station is currently designated
4 Single-Family Residential (R) in the comprehensive plan.⁸⁰ In the Single-Family Residential
5 (R) comprehensive plan designation the allowed uses will be predominantly single-family
6 residential.⁸¹ The zones that implement the Single-Family Residential (R) comprehensive plan
7 designation have maximum densities of three to five dwelling units per acre.⁸² The Single-
8 Family Residential (R) comprehensive plan designation is inconsistent with MPP-RGS-8’s
9 requirement to “focus development near high-capacity transit to achieve the regional goal.”⁸³
10 The Regional Growth Strategy also calls for focusing growth near transit.⁸⁴ MPP-DP-22 also
11 provides: “Plan for densities that maximize benefits of transit investments in high-capacity
12 transit station areas that are expected to attract significant new population or employment
13 growth.”⁸⁵ Single-Family Residential (R) comprehensive plan designation have maximum
14 densities of three to five dwelling units per acre are inconsistent with MPP-DP-22.⁸⁶ To support
15 transit and focus development near high capacity transit this area and other areas within a half
16 mile of the transit station need to be planned and zoned for transit-oriented densities of at least
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20 ⁷⁹ Exhibit #322, Puget Sound Regional Council, *VISION 2050: A Plan for the Central Puget Sound Region* p. 43
(Oct. 2020).
21 ⁸⁰ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan*
Element 2 - Land Use p. 102 (Nov. 19, 2024); Exhibit #310 p. 0041.
22 ⁸¹ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan*
Element 2 - Land Use p. 100 (Nov. 19, 2024).
23 ⁸² *Id.*; Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *City of Mercer Island Housing*
Needs Assessment p. 233 (Nov. 2022).
24 ⁸³ Exhibit #322, *Id.* p. 43.
25 ⁸⁴ Exhibit #322, Puget Sound Regional Council, *VISION 2050: A Plan for the Central Puget Sound Region* pp. 23
– 33, p. 43, p. 106 (Oct. 2020).
26 ⁸⁵ Exhibit #322, *Id.* p. 77.
⁸⁶ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan*
Element 2 - Land Use p. 100 (Nov. 19, 2024); Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16
Exhibit B *City of Mercer Island Housing Needs Assessment* p. 233 (Nov. 2022)



1 50 housing units per residential acre.⁸⁷ Again, a subarea plan is needed to address the Regional
2 Growth Strategy and the MPPs. Failing to include the subarea plan in the comprehensive plan
3 and implementing regulations violates the GMA.

4 In conclusion, the comprehensive plan and development regulations do not include a
5 subarea plan for the Mercer Island light rail station area. The failure to adopt the subarea plan
6 violates the GMA.

7
8 **Issue 4. Did the adoption of Ordinance No. 24C-16, and Exhibits A and B, and**
9 **Ordinance No. 24C-18, and Exhibits A through F, fail to complete the King**
10 **County Growth Management Planning Council’s housing-focused review of the**
11 **draft periodic comprehensive plan update violating King County Countywide**
12 **Planning Policy H-26, RCW 36.70A.020(4), RCW 36.70A.070, RCW**
13 **36.70A.070(2), RCW 36.70A.100, RCW 36.70A.120, RCW 36.70A.130(1) and**
14 **(5)(a), RCW 36.70A.210, or RCW 36.70A.290(2)?**

15 The Growth Management Act imposes specific requirements on local jurisdictions to
16 ensure coordination and consistency in regional planning. Several key statutory provisions
17 establish these requirements. RCW 36.70A.100 mandates that "comprehensive plans shall be
18 coordinated and consistent with the comprehensive plans adopted by other counties or cities
19 with which the county or city has, in part, common borders or related regional issues." RCW
20 36.70A.210 requires counties, in cooperation with cities, to establish countywide planning
21 policies that serve as "a written policy statement or statements used solely for establishing a
22 countywide framework from which county and city comprehensive plans are developed and
23 adopted." RCW 36.70A.120 requires counties and cities must perform activities in conformity
24 with comprehensive plans and capital budget decisions must conform with the comprehensive
25 plan. Development regulations must implement and be consistent with the comprehensive plan.

26 ⁸⁷ Exhibit #312, Futurewise | GGLO | Transportation Choices Coalition, *Transit-oriented communities: A Blueprint for Washington State* p. 29 (Oct. 2009)

1 RCW 36.70A.130(1) and (5)(a) establish that jurisdictions must complete their
2 comprehensive plan updates by specific deadlines, with cities like Mercer Island required to
3 review and revise by December 31, 2024. Importantly, these deadlines apply to both the content
4 of the plans and the procedural requirements associated with their adoption.

5 CPP H-26 specifically states in part that “[t]he Growth Management Planning Council
6 or its designee will conduct a housing-focused review of all King County jurisdiction’s draft
7 periodic comprehensive plan updates for alignment with the Housing Chapter goals and policies
8 prior to plan adoption and provide comments.”⁸⁸ The courts have upheld the importance of
9 interjurisdictional consistency and coordination in comprehensive planning. In *Stickney v.*
10 *Central Puget Sound Growth Management Hearings Board*, the court emphasized that
11 comprehensive plans and development regulations must comply with Multicounty Planning
12 Policies (MPPs) and Countywide Planning Policies (CPPs).⁸⁹ Countywide planning policies
13 serve as a framework to ensure consistency between city and county comprehensive plans.⁹⁰
14 These policies are not merely advisory but establish binding requirements that local
15 jurisdictions must follow in their planning processes. The requirement for a housing-focused
16 review by the Growth Management Planning Council is a critical procedural mechanism
17 designed to ensure that individual jurisdictions' housing plans align with countywide housing
18 goals and policies.

19 Mercer Island's failure to complete the required housing-focused review violates both
20 the letter and the spirit of the GMA's coordination requirements. While the city initially filed a
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25 ⁸⁸ Exhibit #276, 2021 King County Countywide Planning Policies p. 48 (Ratified Nov. 30, 2023)

26 ⁸⁹ 11 Wn. App. 2d 228, 244-48, 453 P.3d 25, 33-35 (2019).

⁹⁰ See *King Cty. v. Central Puget Sound Growth Management Hearings Board*, 91 Wn. App. 1, 13–14, 951 P.2d 1151, 1158 (1998), *aff'd in part, rev'd in part*, 138 Wn. 2d 161, 979 P.2d 374 (1999), as amended on denial of reconsideration (Sept. 22, 1999).

1 request for review by the Growth Management Planning Council, it subsequently failed to
2 provide the necessary information for the Growth Management Planning Council to conduct a
3 meaningful assessment of the draft comprehensive plan's housing provisions.⁹¹ Adopting
4 Ordinance No. 24C-16 and Ordinance No. 24C-18 without completing the required housing-
5 focused review, Mercer Island has bypassed a critical coordination checkpoint designed to
6 ensure alignment with regional housing goals. This creates a risk that the city's housing policies
7 may not adequately address its share of regional housing needs or may conflict with broader
8 regional housing strategies. The city's failure to participate fully in the review process indicates
9 a broader disregard for the interjurisdictional coordination requirements of RCW 36.70A.100.

11 As evident from Issues 1-3, there are significant concerns about the city's housing
12 element, including questions about sufficient capacity for emergency housing and emergency
13 shelters, concrete actions to address barriers to housing, and appropriate transit-supportive
14 densities near light rail stations. A housing-focused review by the Growth Management
15 Planning Council might have identified these issues and provided valuable guidance for
16 addressing them before plan adoption.

18 King County's Countywide Planning Policies specifically call for equitable distribution
19 of affordable housing, with Policy H-4 requiring each jurisdiction to address its share of the
20 countywide need for housing affordable to households with low, very low, and extremely low
21 incomes.⁹² The housing-focused review by the Growth Management Planning Council would
22 have assessed whether Mercer Island's comprehensive plan adequately addressed these regional
23 responsibilities. This violation is not merely technical but substantive in nature. Policy H-26
24

25
26 ⁹¹ Exhibit #272, E-mail Correspondence Re: Mercer Island request for Affordable Housing Committee (AHC) review; Exhibit #275, AHC letter of incompleteness to Mercer Island.

⁹² Exhibit #276, 2021 King County Countywide Planning Policies p. 42 (Ratified Nov. 30, 2023).

1 specifically requires the review to occur "prior to plan adoption," clearly establishing this as a
2 prerequisite procedural step.⁹³ By proceeding with adoption without completing this review,
3 Mercer Island has violated a directive in the countywide planning policies. Mercer Island's
4 Comprehensive Plan violates RCW 36.70A.100 because it was not coordinated with the
5 regional housing needs established in King County's planning framework. Mercer Island's
6 Comprehensive Plan does not adequately incorporate the countywide planning framework for
7 affordable housing. Mercer Island's failure to complete the required housing-focused review by
8 the Growth Management Planning Council violates the GMA and King County Countywide
9 Planning Policy H-26, undermining regional coordination on housing issues and potentially
10 compromising the comprehensive plan's consistency with countywide planning policies.
11

12 **Issue 5. Did the adoption of the Land Use Element, the Future Land Use Map, the**
13 **Housing Element, and the development regulations in Ordinance No. 24C-16,**
14 **and Exhibits A and B, and Ordinance No. 24C-18, and Exhibits A through F, fail**
15 **to comply with King County Countywide Planning Policies H-2 by not**
16 **prioritizing the need for housing affordable to households with incomes less than**
17 **or equal to 30 percent area median, H-7 by not supporting the development,**
18 **implementation, and monitoring of strategies that achieve the goals of the**
19 **countywide planning policies for housing, H-8 by not collaborating with**
20 **populations most disproportionately impacted by housing cost burdens to**
21 **develop, implement, and monitor strategies, H-9 by not adopting intentional,**
22 **targeted actions that repair harms to Black, Indigenous, and other People of**
23 **Color households from past and current racially exclusive and discriminatory**
24 **land use and housing practices, H-10 by not adopting policies, incentives,**
25 **strategies, actions, and regulations that increase the supply of long-term income-**
26 **restricted housing for extremely low-, very low-, and low-income households and**
households with special needs, H-13 by failing to implement strategies to
overcome cost barriers to housing affordability, H-18 by not adopting inclusive
planning tools and policies to increase the ability of all residents to live in the
neighborhood of their choice, H-19 by not lowering barriers to and promote
access to affordable homeownership for extremely low- through low-income
households, H-21 by not adopting policies and strategies that promote equitable
development and mitigate displacement risk, H-22 by not implementing,
promoting, and enforcing fair housing policies and practices, and H-23 by not
adopting and implementing policies that protect housing stability for renter

⁹³ Exhibit #276, *Id.* p. 48.

1 **households thereby violating RCW 36.70A.020(4), RCW 36.70A.100, RCW**
2 **36.70A.120, RCW 36.70A.130(1) and (5)(a), RCW 36.70A.210, or RCW**
3 **36.70A.290(2)?**

4 Cities comprehensive plans and development regulations must comply with the CPPs.⁹⁴

5 RCW 36.70A.100 provides that “[t]he comprehensive plan of each county or city that is
6 adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the
7 comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with
8 which the county or city has, in part, common borders or related regional issues.” RCW
9 36.70A.210(1) and (7) require comprehensive plans to comply with CPPs and MPPs.

10 Development regulations including Ordinance No. 24C-18 must comply with the GMA.⁹⁵ RCW
11 36.70A.130(5) provides that “following the review of comprehensive plans and development
12 regulations required by subsection (4) of this section, counties and cities shall take action to
13 review and, if needed, revise their comprehensive plans and development regulations to ensure
14 the plan and regulations comply with the requirements of this chapter as follows: ... (a) ... on
15 or before December 31, 2024, ... for King, Kitsap, Pierce, and Snohomish counties and the
16 cities within those counties[.]”

17
18 CPP H-2 provides: “H-2 Prioritize the need for housing affordable to households less than
19 or equal to 30 percent area median income (extremely low-income) by implementing tools such
20 as:

- 21 a. Increasing capital, operations, and maintenance funding;
- 22 b. Adopting complementary land use regulations;
- 23 c. Fostering welcoming communities, including people with behavioral health needs;
- 24 d. Adopting supportive policies; and

25 ⁹⁴ *Stickney v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 11 Wn. App. 2d 228, 244–48, 453 P.3d 25, 33–35,
26 453 P.3d 25, 34 (2019); *King Cnty. v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 176, 979
P.2d 374, 380 (1999), as amended on denial of reconsideration (Sept. 22, 1999); *West Seattle Defense Fund, v. City
of Seattle*, CPSGMHB Case No. 94-3-0016, Final Decision and Order (April 4, 1995), at 55 “the City is reminded
of the requirement that its comprehensive plan be consistent with those of cities and counties which share common
borders or related regional issues (RCW 36.70A.100), with the [King County Countywide Planning Policies]
KCCPPs (RCW 36.70A.210(1)), and the multicounty planning policies (RCW 36.70A.210(7)).”

⁹⁵ *Kittitas Cnty.*, 172 Wn.2d at 164, 256 P.3d at 1203 citing RCW 36.70A.130(1). *Accord* RCW 36.70A.290(2).

1 e. Supporting collaborative actions by all jurisdictions.”⁹⁶
2 The comprehensive plan and development regulations do not increase capital, operations, or
3 maintenance funding for housing affordable to households earning 30 percent or less of the area
4 median income.⁹⁷ The affordable housing bonuses in Mercer Island City Code (MICC)
5 19.11.040 do not prioritize housing affordable to households earning 30 percent or less of the
6 area median income by giving larger bonuses or other incentives for housing at these
7 affordability levels.⁹⁸ The focus is housing affordable for housing earning 50 to 90 percent or
8 less of the area median income.⁹⁹ While providing housing at these levels is important, priority
9 is to be given to housing affordable to households earning 30 percent or less of the area median
10 income.¹⁰⁰ While the vision statement calls for a welcoming and inclusive place, there are not
11 tools implementing the vision statement as CPP H-2 requires.¹⁰¹ There are no supportive
12 policies for housing affordable to households earning 30 percent or less of the area median
13 income.¹⁰²

14
15 While Policy calls for prioritizing the use of local and regional resources for income-
16 restricted housing, particularly for extremely low-income households, households earning 30
17 percent or less of the area median income are maintaining membership in A Regional Coalition
18 for Housing (ARCH) and to continue to contribute to the ARCH Housing Trust Fund (HTF), no
19 priority is given to housing affordable to households earning 30 percent or less of the area
20

21
22 ⁹⁶ Exhibit #276, 2021 King County Countywide Planning Policies p. 41 (Ratified Nov. 30, 2023).

23 ⁹⁷ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 *Exhibit B Mercer Island Comprehensive Plan*
24 *Element 3 - Housing* p. 106, p. 116 (Nov. 19, 2024); Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-18
25 pp. 1 – *14 (Dec. 3, 2024).

26 ⁹⁸ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-18 Exhibit D p. *10 (Dec. 3, 2024).

⁹⁹ *Id.*

¹⁰⁰ Exhibit #276, 2021 King County Countywide Planning Policies p. 41 (Ratified Nov. 30, 2023).

¹⁰¹ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 *Exhibit B Mercer Island Comprehensive Plan II.*
Vision Statement p. 73 (Nov. 19, 2024).

¹⁰² Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 *Exhibit B Mercer Island Comprehensive Plan*
Element 3 – Housing pp. 103 – 116 (Nov. 19, 2024).

1 median income.¹⁰³ In total, the comprehensive plan does not comply with CPP H-2.

2 CPP H-7 calls for working “cooperatively with the Puget Sound Regional Council,
3 subregional collaborations and other entities that provide technical assistance to local
4 jurisdictions to support the development, implementation, and monitoring of strategies that
5 achieve the goals of this chapter [Housing].”¹⁰⁴ The Housing element does not call working
6 cooperatively on the development, implementation, and monitoring of housing strategies.¹⁰⁵

7
8 CPP H-8 directs the city to “[c]ollaborate with populations most disproportionately
9 impacted by housing cost burden in developing, implementing, and monitoring strategies that
10 achieve the goals of this chapter.”¹⁰⁶ The Housing element does not call for collaborating with
11 populations most disproportionately impacted by housing cost burdens.¹⁰⁷

12 CPP H-9 calls on the City to “[a]dopt intentional, targeted actions that repair harms to
13 Black, Indigenous, and other People of Color households from past and current racially
14 exclusive and discriminatory land use and housing practices (generally identified through
15 Policy H-5). Promote equitable outcomes in partnership with communities most impacted.”¹⁰⁸
16 An action is “the process of change or alteration . . .”¹⁰⁹ While Goal 3 and its associated policies
17 call for undoing identified racially disparate impacts, there are not intentional, targeted actions
18 to undo these harms, just a goal and general policies.¹¹⁰ For example, Policy 3.1.2 states
19
20
21

22 ¹⁰³ *Id.* p. 106.

23 ¹⁰⁴ Exhibit #276, 2021 King County Countywide Planning Policies p. 43 (Ratified Nov. 30, 2023).

24 ¹⁰⁵ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 *Exhibit B Mercer Island Comprehensive Plan*
25 *Element 3 – Housing* pp. 103 – 116 (Nov. 19, 2024).

26 ¹⁰⁶ Exhibit #276, 2021 King County Countywide Planning Policies p. 44 (Ratified Nov. 30, 2023).

¹⁰⁷ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 *Exhibit B Mercer Island Comprehensive Plan*
Element 3 – Housing pp. 103 – 116 (Nov. 19, 2024).

¹⁰⁸ Exhibit #276, 2021 King County Countywide Planning Policies p. 44 (Ratified Nov. 30, 2023).

¹⁰⁹ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY p. 21 (2002).

¹¹⁰ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 *Exhibit B Mercer Island Comprehensive Plan*
Element 3 – Housing p. 114 (Nov. 19, 2024).

1 “[e]xpand tenant protections[.]”¹¹¹ But tenant protections were not expanded.¹¹² Change did not
2 occur. These failures violate CPP H-9.

3 CPP H-10 calls on the City to “[a]dopt policies, incentives, strategies, actions, and
4 regulations that increase the supply of long-term income-restricted housing for extremely low-,
5 very low-, and low-income households and households with special needs.”¹¹³ Table 2 calls for
6 the city to [a]dopt additional incentives to spur development of new income-restricted
7 affordable housing units.”¹¹⁴ And policy 2.5.1 provides that “[a]ffordable housing incentives
8 that require units at varying income levels to be incorporated into new construction to address
9 the Mercer Island housing growth target and housing needs for households earning less than the
10 area median income (AMI). Affordable housing unit requirements should be set at levels to
11 yield more lower-income units as the benefit of the incentive increases.”¹¹⁵ But the affordable
12 housing bonuses in MICC 19.11.040 do not set at levels to yield more lower-income units as
13 the benefit of the incentive increases.¹¹⁶ MICC 19.11.040B. merely sets the percentage of units
14 that must be affordable at 15 percent. The affordable housing bonuses in MICC 19.11.040 do
15 not provide larger bonuses or other incentives for housing affordable to extremely low-income
16 households, households earning 30 percent or less of the area median income.¹¹⁷ RCW
17 36.70A.130(1)(e) provides that “Any amendment of or revision to development regulations
18
19
20
21

22 ¹¹¹ *Id.*

23 ¹¹² Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan*
24 *Element 3 - Housing* pp. 103 – 16 (Nov. 19, 2024); Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-18
25 pp. 1 – *14 (Dec. 3, 2024).

26 ¹¹³ Exhibit #276, 2021 King County Countywide Planning Policies p. 45 (Ratified Nov. 30, 2023).

¹¹⁴ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 *Exhibit B Mercer Island Comprehensive Plan*
Element 3 – Housing p. 106 (Nov. 19, 2024).

¹¹⁵ *Id.* p. 113.

¹¹⁶ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-18 Exhibit D p. *10 (Dec. 3, 2024).

¹¹⁷ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-18 Exhibit D p. *10 (Dec. 3, 2024); Exhibit #276,
2021 King County Countywide Planning Policies p. 83 (Ratified Nov. 30, 2023).

1 shall be consistent with and implement the comprehensive plan.” The affordable housing bonus
2 is not consistent with the CPPs or the comprehensive plan. median income.

3 CPP H-13 calls on the County to “[i]mplement strategies to overcome cost barriers to
4 housing affordability.”¹¹⁸ Table 2 calls for reviewing zoning regulations to reduce permit
5 timelines and adjust standards and to consider streamlining design review without any
6 deadlines,¹¹⁹ but nothing in the comprehensive plan and Ordinance No. 24C-18 will actually
7 implement these strategies.¹²⁰ The deadline for reviews and considering passed on December
8 31, 2024.¹²¹

10 CPP H-18 requires jurisdictions to adopt inclusive planning tools that help all residents live
11 in their neighborhood of choice by: a) providing affordable housing throughout the jurisdiction,
12 especially in high-opportunity areas; b) expanding moderate-density housing capacity across the
13 jurisdiction (particularly in single-family zones) and high-density housing where appropriate; c)
14 implementing inclusionary and incentive zoning where feasible, and d) ensuring diverse
15 housing types for various household sizes, compositions, and income levels.¹²²

17 As outlined above, the Mercer Island Comprehensive Plan Policy 4.3 limits affordable
18 housing to with the “Town Center”, with the affordable housing bonuses only in MICC
19 19.11.040 only available there.¹²³ Mercer Island is a high housing cost area.¹²⁴ In high cost

22 ¹¹⁸ Exhibit #276, 2021 King County Countywide Planning Policies p. 45 (Ratified Nov. 30, 2023).

23 ¹¹⁹ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 *Exhibit B Mercer Island Comprehensive Plan
Element 3 – Housing* p. 106 (Nov. 19, 2024).

24 ¹²⁰ *Id.* pp. 103 – 16; Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-18 pp. 1 – *14 (Dec. 3, 2024).

25 ¹²¹ RCW 36.70A.130(5).

26 ¹²² Exhibit #276, 2021 King County Countywide Planning Policies pp. 46 – 47 (Ratified Nov. 30, 2023).

¹²³ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 *Exhibit B Mercer Island Comprehensive Plan
Element 2 - Land Use* p. 91 (Nov. 19, 2024); Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-18
Exhibit D pp. 1 – 2, p. *8 – *10 (Dec. 3, 2024).

¹²⁴ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 *Land Capacity Analysis Supplement* pp. 340 – 41
(Dec. 15, 2023).

1 jurisdictions only walk-up apartments, condominiums (2-3-floors) and mid-rise apartments and
2 condominiums are affordable to households earning 80 percent or less of the area median
3 income.¹²⁵ As a high-cost area, Mercer Island's affordable housing options for households
4 below 80% AMI are limited to walk-up apartments, condominiums and mid-rise apartments and
5 condominiums which are only permitted in Multi-Family and Town Center zones, all located in
6 the north end near I-90.¹²⁶ Accessory dwelling units are not affordable to families earning 80
7 percent or less of the area median income.¹²⁷

9 Mercer Island has not provided access to affordable housing to rent and own throughout the
10 jurisdiction or expanded moderate-density housing throughout the jurisdiction.¹²⁸ The
11 inclusionary zoning only applies to the Town Center designation and zones near I-90.¹²⁹ No
12 policies or regulations provide access to housing types that serve a range of housing types in
13 most of the city and accessory dwelling units are not affordable in Mercer Island.¹³⁰ Therefore,
14 the comprehensive plan and development regulations violate CPP H-18.

15 CPP H-19 provides: H-19 Lower barriers to and promote access to affordable homeownership
16 for extremely low-, very low-, and low-income, households. Emphasize:

18 _____
19 ¹²⁵ Exhibit #321, Washington States Department of Commerce, Local Government Division Growth Management
20 Services, *Guidance for Updating Your Housing Element: Updating your housing element to address new*
21 *requirements* p. 35 (Aug. 2023).

22 ¹²⁶ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan*
23 *Element 2 - Land Use* pp. 100 – 102 (Nov. 19, 2024) & *City of Mercer Island Housing Needs Assessment* p. 233
24 (Nov. 2022).

25 ¹²⁷ Exhibit #321, Washington States Department of Commerce, Local Government Division Growth Management
26 Services, *Guidance for Updating Your Housing Element: Updating your housing element to address new*
requirements p. 35 (Aug. 2023).

¹²⁸ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan*
Element 2 - Land Use pp. 100 – 102 (Nov. 19, 2024) & *City of Mercer Island Housing Needs Assessment* p. 233
(Nov. 2022).

¹²⁹ *Id.*; Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-18 Exhibit D pp. 1 – 2, p. *8 – *10 (Dec. 3,
2024).

¹³⁰ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan*
Element 2 - Land Use pp. 80 – 102, *Element 3 - Housing* pp. 103 – 16 (Nov. 19, 2024); Exhibit #321, Washington
States Department of Commerce, Local Government Division Growth Management Services, *Guidance for*
Updating Your Housing Element: Updating your housing element to address new requirements p. 35 (Aug. 2023).



- a. Supporting long-term affordable homeownership opportunities for households less than or equal to 80 percent area median income (which may require up-front initial public subsidy and policies that support diverse housing types); and
- b. Remedying historical inequities in and expanding access to homeownership opportunities for Black, Indigenous and People of Color communities.¹³¹

Comprehensive Plan Policy 2.3 provides “[d]ecrease barriers and promote access to affordable homeownership for extremely low-, very low-, and low-income, households.”¹³² Policy 2.3 fails to specify implementation details. While Table 2 mentions incentives, ARCH Housing Trust Fund contributions, and evaluating local revenue sources and fee-in-lieu programs, the city has missed its December 31, 2024 deadline for adopting these critical measures outside the Town Center zone.¹³³ This failure to implement meaningful affordable housing strategies throughout the jurisdiction directly violates CPP H-19, leaving affordable housing needs unaddressed across most of Mercer Island.

Further, Mercer Island Policy 3.2 provides: [a]cknowledge historic inequities in access to homeownership opportunities for communities of color.”¹³⁴ CPP H-19 calls for remedying historical inequities in and expanding access to homeownership opportunities, not just acknowledging them. Policy 3.2 violates CPP H-19.

CPP H-21 requires the City to “[a]dopt policies and strategies that promote equitable development and mitigate displacement risk, with consideration given to the preservation of historical and cultural communities as well as investments in low-, very low-, extremely low-, and moderate-income housing production and preservation; dedicated funds for land acquisition; manufactured housing community preservation, inclusionary zoning; community

¹³¹ Exhibit #276, 2021 King County Countywide Planning Policies p. 47 (Ratified Nov. 30, 2023).

¹³² Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan Element 3 - Housing* p. 113 (Nov. 19, 2024).

¹³³ RCW 36.70A.130(5).

¹³⁴ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B.3 *Mercer Island Comprehensive Plan Element 3 - Housing* p. 114 (Nov. 19, 2024).

1 planning requirements; tenant protections; public land disposition policies; and land that may be
2 used for affordable housing. Mitigate displacement that may result from planning efforts, large-
3 scale private investments, and market pressure. Implement anti-displacement measures prior to
4 or concurrent with development capacity increases and public capital investments.”¹³⁵ The
5 following areas were identified as having a higher displacement risk: “The south end of Town
6 Center; ... Multifamily zones adjacent to Town Center; and ... Multifamily zones east of Town
7 Center.”¹³⁶ Table 2 calls for the city to “[e]stablish anti-displacement measures to reduce and
8 mitigate risk of displacement in areas with increased displacement risk.”¹³⁷ Ordinance No. 24C-
9 16 and Ordinance No. 24C-18 did not adopt any anti-displacement measures.¹³⁸ The deadline
10 for complying with the CPPs costs was December 31, 2024.¹³⁹ Ordinance No. 24C-16 and
11 Ordinance No. 24C-18 failed to comply with CPP H-21.

12
13 CPP H-22 calls for the city to “[i]mplement, promote, and enforce fair housing policies and
14 practices so that every person in the county has equitable access and opportunity to thrive in
15 their communities of choice, regardless of their race, gender identity, sexual identity, ability,
16 use of a service animal, age, immigration status, national origin, familial status, religion, source
17 of income, military status, or membership in any other relevant category of protected
18 people.”¹⁴⁰ The comprehensive plan and Ord. No. 24C-18 do not adopt, implement, or enforce

22 _____
23 ¹³⁵ Exhibit #276, 2021 King County Countywide Planning Policies p. 47 (Ratified Nov. 30, 2023).

24 ¹³⁶ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B.13 *Racially Disparate Impacts*
25 *Evaluation* p. 433 (Dec. 15, 2023).

26 ¹³⁷ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan*
27 *Element 3 - Housing* p. 106 (Nov. 19, 2024).

28 ¹³⁸ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B.3 *Mercer Island Comprehensive Plan*
29 *Element 3 - Housing* pp. 103 – 16 (Nov. 19, 2024); Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-18
30 pp. 1 – *14 (Dec. 3, 2024).

31 ¹³⁹ RCW 36.70A.130(5).

32 ¹⁴⁰ Exhibit #276, 2021 King County Countywide Planning Policies p. 47 (Ratified Nov. 30, 2023).

1 fair housing requirements.¹⁴¹ This violates CPP H-22.

2 CPP H-23 calls for the city to “[a]dopt and implement policies that protect housing stability
3 for renter households; expand protections and supports for moderate-, low-, very low-, and
4 extremely low-income renters and renters with disabilities.”¹⁴² The comprehensive plan and
5 Ord. No. 24C-18 do not adopt and implement policies to protect housing stability for renters.¹⁴³
6 This violates CPP H-23. In sum, the comprehensive plan and development regulations fail to
7 comply with the CPPs identified above. This violates the GMA.
8

9 **IV. CONCLUSION**

10 This brief has shown that of Ordinance No. 24C-16 and Ordinance No. 24C-18 fail to meet
11 the new requirements for housing in the GMA, fail to comply with the MPPs, and fail to
12 comply with the CPPs. The petitioners respectfully requests that the Board remand the
13 ordinances back to the City to take action consistent with the GMA.
14

15 DATED this 17th day of April 2023, and respectfully submitted.

16 Signed:

17 _____
18 Brooke Frickleton, WSBA No. 55580

19 Signed: Tim Trohimovich

20 _____
21 Tim Trohimovich, WSBA No. 22367
22
23

24 ¹⁴¹ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B.3 *Mercer Island Comprehensive Plan*
25 *Element 3 - Housing* pp. 103 – 16 (Nov. 19, 2024); Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-18
26 pp. 1 – *14 (Dec. 3, 2024).

¹⁴² Exhibit #276, 2021 King County Countywide Planning Policies p. 47 (Ratified Nov. 30, 2023).

¹⁴³ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan*
Element 3 - Housing pp. 103 – 16 (Nov. 19, 2024); Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-18
pp. 1 – *14 (Dec. 3, 2024).

CERTIFICATE OF SERVICE

I, Tim Trohimovich, under penalty of perjury under the laws of the State of Washington, declare as follows:

I am an attorney for the Petitioners. On the date indicated below, I caused Futurewise’s Kian Bradley’s, and Trevor Reed’s Petitioners’ Brief and Exhibits to be served on the persons listed below in the manner indicated:

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