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**BEFORE THE
GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL REGION
STATE OF WASHINGTON**

FUTUREWISE, KIAN BRADLEY, and
TREVOR REED,

Petitioners,

v.

MERCER ISLAND,

Respondent.

Case No. 25-3-0003

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

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I. INTRODUCTION

This reply brief responds to Mercer Island’s brief.

II. ARGUMENT

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Issue 1: Did the City fail to identify sufficient capacity of land for emergency shelters, transitional housing, emergency housing, and permanent supportive housing?

Futurewise appreciates that the City did complete additional analysis for Emergency Housing land capacity and included a corresponding “finding” by the City Council in the adopted Comprehensive Plan.¹ However, the GMA requires jurisdictions to identify sufficient land capacity for four distinct housing categories: emergency housing, emergency shelters, transitional housing, and permanent supportive housing—each with unique operational and regulatory requirements. Mercer Island's own finding acknowledges they analyzed only "emergency housing development capacity"—a single category that cannot substitute for the comprehensive analysis required by state law.

The Ordinance and associated documents contain no evidence that Mercer Island conducted any specific capacity analysis for three of the four STEP housing categories. While RCW 36.70A.070(2)(c) requires cities to identify sufficient capacity for "emergency shelters" separately from "emergency housing," the City's analysis conflates these terms or treats them as synonymous. The Land Capacity Analysis Supplement acknowledges that "emergency housing is fundamentally different from other housing types because it is not always made up of dwelling units" and "can include shelter space", but provides no separate analysis for emergency shelter capacity specifically.² For transitional housing, the analysis lacks specific capacity calculations despite noting conditional use permit requirements that create regulatory barriers.³ The PSH analysis acknowledges 178 required units but fails to assess actual development capacity given market conditions and financing constraints. The City refers to "social service transitional housing" as a defined land use category that "is allowed by conditional use permit in a majority of zones within one mile of transit". However, the City explicitly distinguishes this from other housing types, noting that "social service transitional housing" is "a defined term in the MICC and does not include PSH".⁴ Mercer Island's

¹ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 *Land Capacity Analysis Supplement* pp. 340 – 41; Ex. 100 at 30 and Ex. 130 at 28.

² Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16, p. 104.

³ Response at 12.

⁴ City of Mercer Island Response Brief, p.15.

1 commitment to "consider an ordinance" and conduct "detailed analysis of spacing
2 requirements" in the future contradicts the GMA's mandate that comprehensive plans
3 demonstrate—not promise to analyze—adequate capacity.⁵ By acknowledging that spacing
4 requirements need future analysis, the City confirms their current assessment is incomplete⁶

5 Mercer Island's claim that Futurewise "conflates" capacity analysis with barrier removal
6 misses the fundamental point: the GMA requires both adequate capacity demonstration and
7 barrier identification as complementary requirements. Jurisdictions cannot claim adequate
8 capacity while ignoring regulatory constraints that prevent realizing that capacity.

9 The additional Emergency Housing Land Capacity Analysis in Agenda Bill 6519 represents
10 only a partial response to HB 1220's comprehensive STEP housing requirements, addressing
11 emergency housing in isolation without providing required separate capacity demonstrations for
12 all four distinct housing types.⁷

13 Mercer Island's claim that Commerce Book 2 'aggregates LCA for affordability levels'
14 contradicts Exhibits 12 and 13 of the Commerce Guidance.⁸ Commerce Exhibit 13 maintains
15 distinct categories—'Low income (0-80% AMI) and PSH' separate from 'Moderate income
16 (>80-120% AMI)'—while Table 8 aggregates these into '0-120% AMI and PSH,' eliminating
17 the 80% AMI boundary Commerce explicitly preserves.⁹ This represents a departure from the
18 Commerce framework, not faithful adherence to it.

19 The aggregated approach prevents verification of capacity adequacy for specific income
20 segments. Table 8's aggregation of "0-120% AMI and PSH" makes it impossible to determine
21 how much capacity serves the 0-30% AMI housing needs versus the 80-120% AMI population.
22 With total multifamily capacity of 1,073 units aggregating extremely low-income households
23 with moderate-income households earning four times as much prevents demonstrating adequate
24 capacity for the lowest-income residents.¹⁰

25 Mercer Island acknowledges having 'only a few zones that accommodate development at
26 densities that support affordable housing' but uses this scarcity to justify aggregated analysis—

⁵ Futurewise et al. Petition for Review Exhibit Ord. No. 24C-16, p. 28.

⁶ *Id.*

⁷ Exhibit 100 p. 30

⁸ Futurewise Prehearing Brief Exhibit 321 p. 35.

⁹ Futurewise et al. Petition for Review Exhibit Ord. No. 24C-16, *Land Capacity Analysis Supplement*, p. 340-345

¹⁰ Futurewise et al. Petition for Review Exhibit Ord. No. 24C-16, *Land Capacity Analysis Supplement*, p. 344

1 precisely when understanding which specific income segments can be served becomes most
2 critical.¹¹ When aggregating all income levels below 120% AMI, Mercer Island's identified
3 capacity (1,428 units) falls short of the identified need for households below 80% AMI (1,444
4 units).¹² The affordability analysis shows that without subsidies, no housing type in Mercer
5 Island is naturally affordable to households earning less than 69% AMI or \$101,120.¹³ This
6 means that even if the total capacity numbers were sufficient, there is no evidence that any of
7 this capacity would be affordable to households in the extremely low-income category (below
8 30% AMI) or even the very low-income category (30-50% AMI).

9 Mercer Island's aggregated approach eliminates the analytical precision necessary to ensure
10 adequate capacity for STEP housing and extremely low-income households.

11 **Issue 2: Did the City fail to document programs and actions needed to achieve housing
12 availability including gaps in local funding, barriers such as development
13 regulations, and other limitations and fail to adopt and implement policies to
14 improve effectiveness and address gaps in partnerships, policies, and dedicated
15 resources to meet the City's housing needs? Yes.**

16 A. In Table 2 of its Housing Element, the City failed to adequately document
17 programs and actions to achieve housing availability.

18 Mercer Island has failed to fulfill RCW 36.70A.070(2)(d), which requires cities to 'make
19 adequate provisions for the existing and projected needs of all economic segments' and
20 'document programs and actions needed to achieve housing availability.' The City's limited
21 policies, geographic concentration of affordable housing provisions, and lack of concrete
22 implementation timelines demonstrate this failure. While the City attempts to correlate its
23 actions with Book 2/Exhibit 26 strategies, this comparison actually highlights the deficiencies
24 in the City's approach rather than validating it.¹⁴ The City's own brief acknowledges the
25 tentative nature of its commitments, stating that "Table 2 lists eight other actions to be taken" -
26 not actions already implemented or with concrete implementation plans.¹⁵

The City's commitment to 'increase land capacity to address capacity shortfall' lacks

¹¹ City of Mercer Island Response Brief, p.15.

¹² Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16, *Land Capacity Analysis Supplement* p. 344;
Exhibit #276, 2021 King County Countywide Planning Policies p. 40.

¹³ Exhibit #130 Ord No. 24c-16, Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16, *Land Capacity
Analysis Supplement*, p. 340

¹⁴ *Id.*,

¹⁵ *Id.*

1 specificity. While referencing height bonuses from Ordinance 24C-18, this limited Town Center
2 measure fails to specify which zones will be upzoned, what density increases will be
3 implemented, implementation timelines, or geographic scope.¹⁶ In contrast, Book 2/Exhibit 26
4 simply states "Upzone to address limited land availability," demonstrating the type of direct
5 action required.¹⁷

6 While Book 2/Exhibit 26 provides specific revenue tools including 'Local option taxes, fees
7 and levies,' the City offers only generic evaluation promises without analysis, commitment, or
8 timelines.¹⁸ Given that 76% of owner-occupied housing units on Mercer Island are valued over
9 \$1 million and 94% are over \$500,000, a property tax levy under RCW 84.52.105 allowing up
10 to fifty cents per thousand dollars of assessed value could generate substantial revenue.¹⁹ Yet
11 the City provides no analysis of potential revenue generation, no commitment to pursue specific
12 funding mechanisms, and no timeline for evaluation completion.

13 The fifth action to "Use incentives to reduce the per-unit cost for affordable housing" lacks
14 any detail about what incentives will be used, how they will be structured, or their expected
15 impact. Book 2/Exhibit 26 provides specific examples including "Fee waivers for affordable
16 housing", "Density bonuses for affordable housing," and "Multifamily housing tax
17 exemption".²⁰ The City's generic reference to "incentives" without specification fails to
18 document actual programs or actions.

19 The sixth action to "Coordinate efforts with providers, developers, and government
20 agencies" provides no identification of which specific providers, developers, or agencies the
21 City will coordinate with beyond the existing ARCH partnership.²¹ The City's attempt to
22 correlate its Table 2 actions with Book 2/Exhibit 26 strategies demonstrates the inadequacy of
23 its documentation, where Book 2 provides specific detailed implementation mechanisms, and
24 concrete tools, Table 2 offers only vague aspirational statements.

25 Mercer Island's assertion that the funding issue is "too large for one city" fundamentally
26 attempts to deflect responsibility while failing to demonstrate compliance with specific

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Futurewise et al. Petition for Review Exhibit Ord. No. 24C-16, p. 268.

²⁰ City of Mercer Island Response Brief, p. 18

²¹ Id.

1 statutory mandates for local funding analysis and implementation²². While Commerce guidance
2 acknowledges that "cities are not the main funding source for affordable housing" and that
3 "most affordable housing funding comes from state and federal resources," it immediately
4 emphasizes that "local funding can also play an important role."²³ Commerce guidance requires
5 'all jurisdictions, at minimum, complete a checklist to document which available local funding
6 tools or incentives are already being used.'²⁴ Mercer Island's superficial mention of 'evaluate
7 potential local revenue sources' falls far short of this requirement, particularly given the City's
8 substantial local resources. As one of the region's wealthiest communities, Mercer Island is
9 uniquely positioned to implement meaningful local funding mechanisms. Mercer Island's
10 median household income exceeds King County's by \$60,000, with 20 percentage points more
11 households earning over \$200,000 and 14 percentage points fewer earning under \$100,000. Ex
12 130 at 415. The City's argument that the funding challenge is "too large for one city" rings
13 hollow when the City has not demonstrated any serious effort to utilize its considerable local
14 resources or implement available funding tools. RCW 36.70A.070(2) provides no exception for
15 jurisdictions to decline implementation based on funding challenges.

16 **B. Ordinance No. 24C-18 does not completely address the land capacity deficit**
17 **or barriers to housing availability.**

18 While Futurewise acknowledges that Mercer Island's adoption of Ordinance No. 24C-18
19 represents progress, Ordinance No. 24C-18 fails to meet the city's GMA obligations to provide
20 adequate housing capacity for extremely low and very low-income households (0-80% AMI).
21 The Land Capacity Analysis Supplement identified three distinct options to address housing
22 capacity shortfalls.²⁵ Mercer Island chose the most conservative approach, implementing
23 minimal height increases in the Town Center rather than pursuing Option B, which would have
24 added 895 units of capacity, and Option C, which would have added 174 units.²⁶ This approach
25 inadequately addresses the need for 517 units serving 0-80% AMI households (178 PSH and
26 339 non-PSH extremely low-income units.²⁷

²² City of Mercer Island Response Brief p. 18

²³ Exhibit 282 at 57

²⁴ Id at 58

²⁵ Futurewise et al. Petition for Review Exhibit Ord. No. 24C-16, *Land Capacity Analysis Supplement*, p. 350.

²⁶ Futurewise et al. Petition for Review Exhibit Ord. No. 24C-16, *Land Capacity Analysis Supplement*, p. 361.

²⁷ Futurewise et al. Petition for Review Exhibit Ord. No. 24C-16, *Land Capacity Analysis Supplement*, p. 369.

1 The ordinance creates virtually no capacity for 0-50% AMI households. Under the height
2 bonus system, buildings exceeding two stories must provide 15% affordable units at 50%
3 AMI.²⁸ While the height increase adds capacity for 153 additional dwelling units, only
4 approximately 23 of these additional units (15% of 153) would be affordable at 50% AMI.²⁹
5 The remaining units will likely require incomes of 70% AMI or higher. Since AMI thresholds
6 function as floors in developer agreements, units designated as 'affordable to 50% AMI' will
7 likely serve households at that ceiling rather than extremely low-income residents earning 0-
8 30% AMI.

9 Mercer Island's concentration of affordable housing incentives exclusively in Town Center
10 misapplies Commerce guidance, transforming expansion tools into exclusion mechanisms. The
11 Commerce guidance about feasibility of ““subsidized affordable housing projects” in 'low-rise
12 or mid-rise zones' was an analytical tool to identify opportunities, not justification for restricting
13 them to a single zone.³⁰

14 Mercer Island's argument that they placed incentives where they are "most likely to be used"
15 reveals unclear logic.³¹ In high-cost jurisdictions like Mercer Island, only multi-family housing
16 types affordability to households earning 80% or less of area median income.³² By restricting
17 incentives to the Town Center, the city creates a self-fulfilling prophecy, then uses the resulting
18 concentration as justification for not expanding opportunities elsewhere.

19 The city's own Land Capacity Analysis contradicts this geographic restriction. Option B
20 would have added 895 units in the Commercial Office Zone with analysis recommending
21 "affordable housing incentive similar to the height bonus in Town Center".³³ Similarly,
22 increasing MF-3 density would add 174 units in zones already allowing multifamily
23 development at comparable densities.³⁴ Despite acknowledging that "higher-density housing is
24 more likely to be affordable" and "permanent supportive housing is only likely in high-density
25 zones that include an incentive," the city chose the most geographically restrictive option when
26

28 Exhibit #135 Ordinance No. 24C-18 p. 1.

29 Futurewise et al. Petition for Review Exhibit Ord. No. 24C-16, *Land Capacity Analysis Supplement*, p. 352

30 Exhibit #321 Futurewise Prehearing Exhibits, *Guide for Updating Your Housing Element: Updating your housing element to address new requirements*, p.30.

31 City of Mercer Island Response Brief p. 19.

32 Exhibit #321 Futurewise Prehearing Exhibits, *Guide for Updating Your Housing Element: Updating your housing element to address new requirements* p. 35.

33 Futurewise et al. Petition for Review Exhibit Ord. No. 24C-16, *Land Capacity Analysis Supplement*, p. 361

34 Id.

1 multiple high-density zones were available .³⁵

2 C. Actions required to comply with the GMA must be completed by the periodic
3 update deadline, not deferred through implementation reports.

4 Mercer Island's argument fundamentally mischaracterizes both the statutory deadlines under
5 RCW 36.70A.130 and the Commerce guidance, creating a false dichotomy that undermines the
6 Growth Management Act's requirements for immediate compliance. RCW 36.70A.130(1)-(5)
7 establish mandatory deadlines that cannot be circumvented. The statute is clear: cities must
8 "revise their comprehensive plans and development regulations to ensure the plan and
9 regulations comply with the requirements of this chapter" by the specified deadlines. For
10 Mercer Island, this deadline was December 31, 2024. The City's comprehensive plan and
11 development regulations must be fully compliant with the GMA by this date, not merely
12 adopted in a non-compliant state with promises of future compliance. RCW 36.70A.130(9) is an
13 accountability mechanism, not an extension of compliance deadlines. The subsection (9)
14 implementation progress reports serve as ongoing monitoring tools to ensure continued
15 compliance and progress, not as a substitute for the fundamental compliance requirements
16 established in subsections (1)-(5). To interpret subsection (9) as extending the basic compliance
17 deadline would render the explicit deadlines in subsections (1)-(5) meaningless.

18 **Issue 3. Did the adoption of Ordinance No. 24C-16, and Exhibits A and B, and**
19 **Ordinance No. 24C-18, and Exhibits A through F, fail to develop, adopt, and**
20 **include in the comprehensive plan a subarea plan for the Mercer Island light rail**
21 **station area violating Multicounty Planning Policies (MPPs) and the?**

22 DP-Action-8, a multicounty planning policy, requires that “[e]ach city ... with a designated
23 ... light rail transit station area will develop a subarea plan for the designated ... station area
24 ...”³⁶ The Futurewise *et al.* prehearing brief documented that this subarea plan was never
25 adopted.

26 Mercer Island does not contest that the subarea is required and the it was not adopted.³⁷
Instead the response brief argues the subarea plan does not have to be adopted by December 31,
2024.³⁸ This argument ignores the requirement in RCW 36.70A.130(5) that Mercer Island

³⁵ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16, *Land Capacity Analysis Supplement*, p. 370

³⁶ Exhibit #322 to Prehearing Brief, Puget Sound Regional Council, *VISION 2050: A Plan for the Central Puget Sound Region* p. 80 (Oct. 2020).

³⁷ City of Mercer Island Response Brief p. 29.

³⁸ City of Mercer Island Response Brief p. 29.

1 “shall take action to review and, if needed, revise their comprehensive plans and development
2 regulations to ensure the plan and regulations comply with the requirements of this chapter ...
3 on or before December 31, 2024” “The word ‘shall’ in a statute thus imposes a mandatory
4 requirement unless a contrary legislative intent is apparent.”³⁹ No contrary legislative intent is
5 apparent in RCW 36.70A.130. The deadline for the subarea plan was 2024.

6 The PSRC comments consist of a column labeled “Plan Review Consistency Tool” and
7 column labeled “PSRC Comment on Draft Plan.” The “Plan Review Consistency Tool” states:
8 “Support the adoption of subarea plans for light rail station areas (DP-Action-8)[.]”⁴⁰ At the
9 right, the PSRC gave comments on how the comprehensive plan could adopt a subarea plan.
10 The PSRC cover letter provides that it is “review[ing] plan elements for the 2024
11 comprehensive plan....”⁴¹ In context, it cannot be said that “PSRC did not mention a subarea
12 plan ...”⁴²

13 “An issue is moot if the court can no longer provide effective relief.”⁴³ The Transit-Oriented
14 Housing Development (TOD) bill sets minimum floor areas ratios that city development
15 regulations must allow within a half mile of light rail transit stations.⁴⁴ The TOD bill also
16 preempts “development regulations” that do not permit the floor area ratios or allowed
17 densities.⁴⁵ The deadline for Mercer Island to comply with the TOD bill is December 31,
18 2029.⁴⁶ The TOD bill does not require subarea plans for station areas or prohibit or preempt
19 subarea plans for station areas.⁴⁷ The bill established a grant program to fund station planning,
20 station area infrastructure, and the staffing necessary to implement transit-oriented development
21 requirements.⁴⁸ The TOD bill does not prohibit the Board from finding that Mercer Island failed
22 to adopt the subarea plan required by VISION 2050 and to order the city to comply with this
23 important requirement.

24 ³⁹ *Erection Co. v. Dep’t of Lab. & Indus. of State of Wash.*, 121 Wn.2d 513, 518, 852 P.2d 288, 291 (1993).

25 ⁴⁰ Mercer Island Exhibit 100 p. 68.

26 ⁴¹ Mercer Island Exhibit 100 p. 67.

⁴² Mercer Island Response Brief p. 30.

⁴³ *Clark Cnty. v. Growth Mgmt. Hearings Bd.*, 10 Wn. App. 2d 84, 104, 448 P.3d 81, 91 (2019) *review denied by*
Clark County Citizens United, Inc. v. Growth Mgmt. Hearings Bd., 194 Wn.2d 1021, 455 P.3d 130 (2020).

⁴⁴ Laws of 2025, Ch. 267 § 2(51), § 3(2)(a), § 3(4) (Effective Date: July 27, 2025) adopting (3SHB 1491). The
TOD bill also contains other provisions not relevant here.

⁴⁵ Laws of 2025, Ch. 267 § 3(2)(c).

⁴⁶ Laws of 2025, Ch. 267 § 3(15)(a); RCW 36.70A.130(5)(a), (9)(a).

⁴⁷ Laws of 2025, Ch. 267.

⁴⁸ Laws of 2025, Ch. 267 § 4.

1 **Issue 4. Did the adoption of Ordinance No. 24C-16, and Exhibits A and B, and**
2 **Ordinance No. 24C-18, and Exhibits A through F, fail to complete the King**
3 **County Growth Management Planning Council’s housing-focused review of the**
4 **draft periodic comprehensive plan update violating King County Countywide**
5 **Planning Policy H-26, RCW 36.70A.020(4), RCW 36.70A.070, RCW**
6 **36.70A.070(2), RCW 36.70A.100, RCW 36.70A.120, RCW 36.70A.130(1) and**
7 **(5)(a), RCW 36.70A.210, or RCW 36.70A.290(2)?**

8 CPP H-26 states in part states that "The Growth Management Planning Council or its
9 designee [AHC] will conduct a housing-focused review of all King County jurisdictions' draft
10 periodic comprehensive plan updates" updates for alignment with the Housing Chapter goals
11 and policies prior to plan adoption and provide comments."⁴⁹ Comprehensive plans and
12 development regulations must comply with CPPs.⁵⁰

13 The City admits it submitted a "draft Housing Element" on March 15, 2024, not the
14 complete materials required for meaningful review. When AHC requested additional required
15 materials to conduct the mandated review, this was not a "refusal" but a reasonable request for
16 complete information. Because Mercer Island failed to provide complete materials, the required
17 review under CPP H-26 never took place.⁵¹ The City frames AHC's request for complete
18 materials as a "refusal," when in fact AHC was attempting to fulfill its CPP H-26 mandate. An
19 agency cannot conduct a meaningful housing-focused review without complete housing-related
20 materials. Whether AHC is advisory does not eliminate the mandatory nature of the review
21 process itself. CPP H-26 uses mandatory language - "will conduct" - establishing a clear
22 procedural requirement that jurisdictions must facilitate, not obstruct. Mercer Island's claim
23 about statutory deadlines ignores that the City submitted materials in March 2024, providing
24 ample time for proper review if complete materials had been provided. The City created its own
25 timeline problem by submitting incomplete information. The City cannot escape responsibility
26 by claiming AHC "refused" review when the City itself failed to provide the materials
27 necessary for that review. This is analogous to claiming a building permit was "refused" when
28 the applicant submitted incomplete plans - the responsibility lies with the applicant to provide
29 complete information, not with the reviewing agency to proceed with inadequate materials.

⁴⁹ Exhibit #276, 2021 King County Countywide Planning Policies p. 48 (Ratified Nov. 30, 2023)

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

⁵¹ Exhibit #

1 Contrary to Mercer Island's assertion, this violation is substantive because CPP H-26 serves
2 the substantive purpose of ensuring regional coordination and consistency in housing planning.
3 The review process is specifically designed to identify potential conflicts with CPPs before
4 adoption, making it an integral component of the regional planning framework. Mercer Island's
5 failure to facilitate this review therefore undermines the very foundation of the regional
6 planning framework established by the GMA, resulting in a substantive rather than merely CPP
7 H-26 procedural violation. Therefore, the Board should find that Mercer Island violated RCW
8 36.70A.020(4), RCW 36.70A.070, RCW 36.70A.070(2), RCW 36.70A.100, RCW 36.70A.120
9 failing to provide complete materials necessary for the required housing-focused review and
10 require the City to complete the review process with all required documentation.

11 **Issue 5. Did the adoption of the Land Use Element, the Future Land Use Map, the**
12 **Housing Element, and the development regulations in Ordinance No. 24C-16,**
13 **and Exhibits A and B, and Ordinance No. 24C-18, and Exhibits A through F, fail**
14 **to comply with King County Countywide Planning Policies H-2, H-7 , H-8, H-9,**
15 **H-10, H-13, H-18, H-19, H-21, H-22, and H-23 thereby violating RCW**
16 **36.70A.020(4), RCW 36.70A.100, RCW 36.70A.120, RCW 36.70A.130(1) and**
17 **(5)(a), RCW 36.70A.210, or RCW 36.70A.290(2)?**

18 CPPs are requirement of the GMA.⁵² RCW 36.70A.130(5) requires that Mercer Island
19 “shall take action to review and, if needed, revise their comprehensive plans and development
20 regulations to ensure the plan and regulations comply with the requirements of this chapter ...
21 on or before December 31, 2024”

22 The City argues that RCW 36.70A.130(5)(9)(c) extends the deadline in RCW
23 36.70A.130(1)(a) and (5). The Washington State Supreme Court has held in interpreting the
24 GMA that “[w]e are required to read legislation as a whole, and to determine intent from more
25 than a single sentence. Effect should be given to all of the language used, and the provisions
26 must be considered in relation to each other, and harmonized to ensure proper construction.”⁵³
RCW 36.70A.130(1)(a) requires counties and cities to, “if needed, revise its comprehensive
land use plan and development regulations to ensure the plan and regulations comply with the
requirements of this chapter according to the deadlines in subsections (4) and (5) of this
section.” RCW 36.70A.130(5) requires that Mercer Island “shall take action to review and, if

⁵² RCW 36.70A.210(7).

⁵³ *King Cnty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 560, 14 P.3d 133, 142 (2000)

1 needed, revise their comprehensive plans and development regulations to ensure the plan and
2 regulations comply with the requirements of this chapter ... on or before December 31, 2024
3”

4 RCW 36.70A.130(9)(c) provides:

5 (c) If a city or county required to provide an implementation progress report under
6 this subsection (9) has not implemented any specifically identified regulations,
7 zoning and land use changes, or taken other legislative or administrative action
8 necessary to implement any changes in the most recent periodic update in their
9 comprehensive plan by the due date for the implementation progress report, the
10 city or county must identify the need for such action in the implementation
11 progress report. Cities and counties must adopt a work plan to implement any
12 necessary regulations, zoning and land use changes, or take other legislative or
13 administrative action identified in the implementation progress report and
14 complete all work necessary for implementation within two years of submission
15 of the implementation progress report.

16 RCW 36.70A.130(9)(c) must be read together with RCW 36.70A.130(1)(a) and (5). The
17 key is that RCW 36.70A.130(1)(a) and (5) and their deadlines apply to “the requirements of this
18 chapter” RCW 36.70A.130(9)(c) does not include this language. Not every element in a
19 comprehensive plan and not all development regulations are required by the GMA. There are
20 optional comprehensive plan elements and development regulations.⁵⁴ These optional elements
21 and development regulations can be adopted and implemented under RCW 36.70A.130(9)(c).
22 This interpretation relies on the plain language of the GMA, reads the statute as a whole, and
23 harmonizes the GMA to ensure property construction. The City’s preferred interpretation
24 requires appending exceptions to RCW 36.70A.130(1)(a) and (5) that do not exist. The City’s
25 offered interpretation requires ignoring the deadlines in RCW 36.70A.130(5) for policies and
26 regulations that are not housing capacity related. This language is nowhere in the GMA.

Futurewise’s Prehearing Brief showed that the comprehensive plan and development
regulations violated CPP H-18. The Response Brief points to Policy 8.3 which promotes a range
of housing opportunities and policies 1.7 and 1.8 which strive to fairly disperse affordable
housing opportunities and discourage neighborhood segregation. But affordable housing are
only permitted in Multi-Family and Town Center zones, all located in the north end near I-90.⁵⁵

⁵⁴ RCW 36.70A.080.

⁵⁵ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 Exhibit B *Mercer Island Comprehensive Plan Element 2 - Land Use* pp. 100 – 102 & *City of Mercer Island Housing Needs Assessment* p. 233.

1 Mercer Island is a high cost jurisdiction and duplexes, triplexes, and townhomes are not
2 affordable to families earning less than 120 percent AMI.⁵⁶ These housing types will not allow
3 all residents live in their neighborhood of choice as CPP H-18 requires.

4 For the other CPPs, Futurewise relies on our prehearing brief and oral argument.

5 DATED this 9th day of June 2025, and respectfully submitted.

6 Signed: Brooke M. Frickleton

7 _____
8 Brooke Frickleton, WSBA No. 55580

9 Signed: Tim Trohimovich

10 _____
11 Tim Trohimovich, WSBA No. 22367

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26 ⁵⁶ Futurewise *et al.* Petition for Review Exhibit Ord. No. 24C-16 *Land Capacity Analysis Supplement* pp. 340 – 41;
Exhibit #321 Futurewise Prehearing Brief, *Guidance for Updating Your Housing Element: Updating your housing
element to address new requirements* p. 35.



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’ Reply Brief to be served on the persons listed below in the manner indicated:

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By Federal Express or Overnight Mail prepaid
X Through the Case Management System (CMS)

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Tim Trohimovich, WSBA No. 22367
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