

March 16, 2023

Senator Lynda Wilson
Washington State Legislature
Olympia, WA 98504

Re: Concerns Regarding House Bill 1110 – Middle Housing

Dear Senator Wilson,

In advance of the March 17 public hearing, I am writing to share concerns on the Bill and highlight key issues, which if left unattended, will undermine the effectiveness of the Bill. As drafted the Bill introduces social and economic injustices, favoring affluent, “privileged” communities. With your assistance we can add guardrails to address these inequities.

1. Override Pre-Existing Declarations and Covenants: To maximize social, economic and environmental justice, this Bill must override pre-existing Covenants, Conditions, and Restrictions (CC&Rs). Providing an exemption would unfairly shift density and infrastructure burden to adjacent and typically less affluent neighborhoods. Further as drafted the Bill will likely spur additional wealthy neighborhoods to draft similar CC&Rs further increasing the burden to other less prosperous neighborhoods.

As drafted the Bill will allow HOAs to in effect “redline” neighborhoods, preventing middle housing and expanded demographics from their communities. Historically many of the oldest HOAs in Washington State had CC&Rs which once excluded people of color or those of non-Aryan ancestry.^{1,2} While in 1926 the Supreme Court ruled such restrictions were legal, today they have ruled discriminatory in violation of the Fair Housing Act, (Act).³ Times have changed. Case law supports the preemption of such restrictions under the Act and other legal Federal and State laws.

Historically State and Federal agencies have been tone deaf in making similar decisions which disproportionately impacted lower income neighborhoods. For example, over a million people were displaced nationwide to support roadway construction creating what is now recognized as “racist highways.” These highways cut through neighborhoods, disrupted the neighborhood walkability, worsened air quality, most often in lower income communities who were unable to fight the development. In effect this Bill is doing the same by providing HOAs an exemption. It is disproportionately forcing the development density and traffic to lower income neighborhoods, impacting pedestrian safety, increasing noise and and adversely impacting air quality. If left unaddressed, the Bill introduces social and economic injustices which will likely be challenged.⁴

2. Prevention of Short-Term Rentals: The Bill is silent on the prevention of new units from being turned into short-term rentals. Allowing new middle housing units to be used for short-term rentals would be counter to the objectives of the Bill and reduce housing stock. As experienced in many NW cities including Vancouver, Portland, Leavenworth and Chelan, efforts to increase housing were dramatically impacted by new housing stock being used for short-term rentals.^{5,6,7} The Bill should include prohibitions of short-term rentals as a condition of development, not unlike the conditions included in the Bill regarding developers requirements to support “affordable housing”.
3. Foreign Investment / Unoccupied Housing: There continues to be a risk of foreign investors purchasing middle housing for investment and visa related purposes. As experienced in many cities in the Northwest and Vancouver BC, properties are not occupied year-round. In the past this foreign cash buyers have fueled bidding wars, at times pricing residents out of the market. To address this risk, it is recommended the Bill specify minimum occupancy requirements for all purchasers independent of the legal residency or nationality.

Thank you for taking the time to consider my recommendations. Working together we can refine this Bill to expand middle while helping to protect our neighborhoods promoting equity and social justice.

Respectfully,

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¹ Aryans Only Neighborhoods In Washington State https://depts.washington.edu/civilr/covenants_Aryans.htm

² Racial Restrictive Covenants <https://depts.washington.edu/civilr/covenants.htm>

³ Discrimination Under the Fair Housing act

https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview

⁴ As proposed, this preemption would not impact other remaining conditions such as height and view limitations, parking regulations, design restrictions and setbacks as specified by an existing HOA’s CC&Rs.

⁵ Leavenworth - <https://www.seattletimes.com/business/leavenworth-taking-steps-to-increase-low-income-housing/>

⁶ Chelan County - <https://www.seattletimes.com/business/real-estate/chelan-county-sidesteps-new-airbnb-regulations-plans-task-force-instead/> & ⁷ <https://www.seattletimes.com/business/real-estate/vacation-hotspot-chelan-county-limits-short-term-rentals/>

⁷ Vancouver BC <https://vancouver.sun.com/news/local-news/vancouver-mayor-plans-to-license-and-tax-airbnb-rentals/>