BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

TODD MCGUIRE, an individual; MARY MCCURDY, an individual; JOHN CAPPS, an individual; JOHN WATTS, an individual; and AFFORDABLE HOMETOWN PORT TOWNSEND, a non-profit organization.

Petitioners,

v.

CITY OF PORT TOWNSEND,

Respondent.

No. 26-2-0017

PETITIONERS' PREHEARING BRIEF

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Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Housing Element, fail to identify and implement policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion in housing caused by local policies, plans, and actions, in violation of RCW 36.70A.070(2)(f), RCW 36.70A.020(4), (5), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #6?

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Does the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Transportation Element, fail to identify transportation facility and service needs in accordance with RCW 36.70A.070(6)(a)(i) through (iii), RCW 36.70A.070(12), and RCW 36.70A.120, including specific actions and requirements for bringing into compliance transportation facilities or services that are below the City's established level of service standards?

Does the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Transportation Element, fail to include a financing plan based on the needs identified in the comprehensive plan, fail to discuss how land use assumptions will be reassessed to ensure that level of service standards will be met, and fail to include demand management strategies, in violation of RCW 36.70A.070(6)(a)(iv)–(vii), RCW 36.70A.120, and RCW 36.70A.020(1), (12)?

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Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Capital Facilities and Transportation Elements, authorize development without ensuring that public facilities, services, and utilities will be adequate to support development at the time development is available for occupancy and use without decreasing levels of service below the minimum standards, in violation of and RCW 36.70A.020(1), (4), (10), (12), RCW 36.70A.070(4)(a), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #9? 30

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1 **INTRODUCTION**

2 On December 15, 2025, the City of Port Townsend (the "City") adopted Ordinance No.
3 3361 significantly amending its Comprehensive Plan and development regulations as part of the
4 City's 10-year periodic review cycle under the Growth Management Act ("GMA"), chapter
5 36.70A RCW. A major focus of that project was to meet the City's GMA affordable housing
6 requirements, including the mandate to provide adequate housing for moderate, low, and very low-
7 income households. The adopted development regulations also represent a significant, area-wide
8 upzoning—*e.g.,* increasing maximum densities, adopting minimum densities, and increasing
9 height limits across a broad swath of the City. Many of these changes occurred in the City's "land
10 use code," predominantly in Title 17 of Port Townsend Municipal Code ("PTMC"), the City's
11 zoning code. *See* PTMC 20.04.090.A (defining "land use code").[1] Ordinance 3361—together with
12 the City's updated Comprehensive Plan and adopted Land Use Code amendments—may be found
13 at Exhibit 56 of the Amended Index of Record dated April 20, 2016.

14 Port Townsend is a small city of approximately 10,600 residents. Ex. 56 at 8 (as of July 1,
15 2024). Originally platted for far greater urban density, the City developed in a dispersed and low-
16 density pattern that left Port Townsend with an unusually high amount of infrastructure per
17 household and a limited tax base to maintain it. *Id.* at 58. The new Comprehensive Plan update
18 acknowledges that much of the City's water, sewer, street, and utility infrastructure was
19 constructed decades ago and now requires substantial reinvestment regardless of future growth.
20 *Id*. at 190; *see also id*. at 476 ("The legacy of Port Townsend's early platting and development
21 history continues to shape the city's infrastructure challenges today" and "[d]ecades of deferred
22 maintenance, paired with a modest tax base, have left the city struggling to keep up with repairs
23 and improvements."). Against this backdrop, the adopted Comprehensive Plan update and the scale
24 of the proposed changes—including major revisions to the Land Use Code, infrastructure and
25 transportation planning—represent a significant departure from previous planning approaches.

26 The City's periodic review process spanned approximately one and a half years, from
27 March of 2024 (when the City issued its "Public Participation Plan," Ex. 59) to December 15,
28 2025, when the City Council adopted the Comprehensive Plan update and code changes. During

29

30 [1] The full text of the Port Townsend Municipal Code—including changes made by Ordinance 3361—may be accessed on the City's website at https://www.codepublishing.com/WA/PortTownsend/#!/PortTownsendNT.html.

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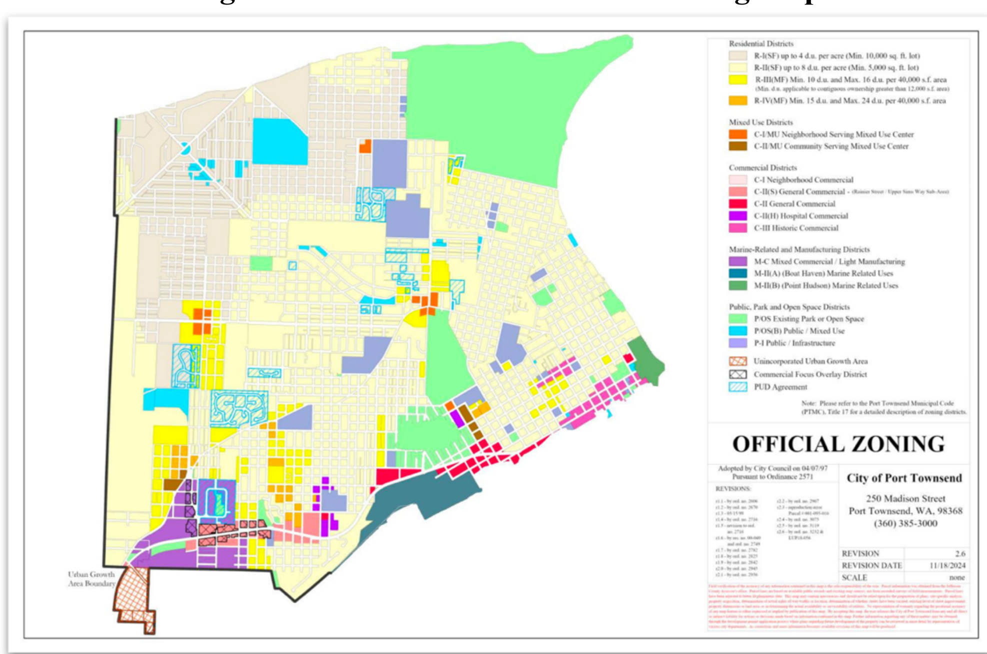
that time, as evidenced from the Amended Index of the Record, the City held numerous public outreach events and hearings before the Port Townsend Planning Commission, the body charged in the first instance with reviewing and evaluating potential Comprehensive Plan and Land Use Code changes, and with making a recommendation to the City Council based on the requirements of the GMA. *See generally* PTMC 20.04.010–20.04.090 (outlining the City's "Comprehensive Plan and Development Regulations Amendment Process").

During the Planning Commission's review process, a major point of public interest and concern was the raising of maximum densities and other limits for dwelling units in the City's R-II residential zone, by far the largest zoning district in the City. The size of the R-II zone can be seen in Figure 1 below—the City's official zoning map—where the R-II zone is shaded in light yellow. It covers the vast majority of the City.

Figure 1: Port Townsend Official Zoning Map



Source: Ex. 272 at 986

Prior to the changes in Ordinance 3361, the maximum density for dwelling units in the R-II zone (with minor exceptions) was eight units per 40,000 square feet—a denominator roughly the size of eight standard, 5,000 square-foot city lots, or a typical City block. As part of the update process, the City explored targeted zoning changes in smaller "nodes" across the City. *See, e.g.,* Ex. 56 at 33 (discussing original plan for "density alternatives for zoning nodes across the city"). But that gave way to the City's push for a larger, area-wide upzone.

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Ultimately, near the end of its deliberation process, the Planning Commission debated—and solicited public comments on—two principal area-wide alternatives. The first was to raise maximum density in the R-II zone to 32 units per 40,000 square feet—the equivalent of four units per 5,000 square-foot lot. The second was to raise maximum density to 48 units per 40,000 square feet—the equivalent of six units per 5,000 square-foot lot. *See* Ex. 139 at 34–42 (Sept. 11, 2025, Planning Commission materials). Various other changes were also debated and commented upon, including the imposition of minimum densities, raising height limits, and other similar changes to the City's residential zoning districts (the R-I, R-III, and R-IV zones as shown in Figure 1 above).

During the Planning Commission's deliberations, including a public hearing on October 23, 2025, members of the public raised several concerns with increasing density in the R-II zone, including that increased housing density and redevelopment would accelerate gentrification, increase housing costs, and displace lower-income residents. *See, e.g.,* Ex. 273 at 836–40 (comment from Planning Commissioner Viki Sonntag); Ex. 274 at 1198 (comment from Bly Windstorm); Ex. 272 at 1044 (comment from Habitat for Humanity). At the very end of that process, on October 23, 2025, the Planning Commission rejected increasing density in the R-II zone to 48 units per 40,000 square feet and recommended that the Council approve the smaller density increase of 32 units per 40,000 square feet, which was also recommended by City planning staff. *See* Ex. 272 at 18–35 (Planning Commission recommendation and staff report).

This lower-density recommendation reflects that the Planning Commission was materially informed of displacement and gentrification concerns. Its recommendation also reflected the Commission's conclusion that the 32-unit maximum density limit would satisfy all applicable requirements of the GMA. *Id.* at 25–34 (finding, *inter alia*, that the Commission's recommended changes would be consistent with the GMA and county-wide planning policies, would reflect current widely held community values, would maintain an appropriate balance of land uses within the City, and would both implement and strengthen the existing Comprehensive Plan goals and policies). The Planning Commission made its recommendation to the City Council on October 23, 2025. Ex. 272 at 14. Other changes recommended by the Planning Commission (and ultimately approved by the City Council) included minimum densities across all residential zones, eliminating any limit on the number of units in any one structure in the R-II zone, increasing height limits across the R-II, R-III, and R-IV zones, and increasing maximum lot coverage. Ex. 272 at 626-28

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1 (reporting the Commission's recommended changes).

2 As required by PTMC 20.04.080.B.2, the Commission's proposed changes then went to
3 the City Council and were considered at an additional public hearing before the Council that began
4 on Monday, November 17, 2025, and was continued to Monday, November 24, 2025. *See* Ex. 272
5 at 1061–68 (Council minutes for Nov. 17, 2025); Ex. 273 at 869–74 (Council minutes for Nov.
6 24, 2025). The public hearing before the Council was closed on November 24th. Ex. 273 at 874.

7 After the close of public comments at the November 24th hearing, however, planning staff
8 presented an entirely new proposal for density in the R-II zone that the Planning Commission never
9 considered—specifically, to allow six-unit multiplexes on 5,000 square-foot lots in that zone, and
10 12-unit multiplexes on 10,000 square-foot lots. *See* Ex. 273 at 873. The Council then voted to
11 proceed with that option, even though this "exception" to the Commission's recommended 32-unit
12 density limit was never previously considered or disclosed during the year-long public
13 participation program. *Id*. at 874.

14 At that time, this new proposal had not been considered by the Planning Commission or
15 released to the public in written form. It was only described orally after the close of public
16 comments on November 24, 2025, to the City Council. The language was later released in writing
17 as part of the "errata sheet" for the Council's December 8, 2025, meeting, augmenting the Planning
18 Commission's recommended cap of 32 dwelling units per 40,000 square feet in the R-II zone by
19 adding the phrase "***except 6 units per 5,000 square feet for infill projects with 10,000 square feet***
20 ***or less of lot area.****"* Ex. 274 at 1163 (emphasis added).

21 Notably, this new density exception (allowing up to six units per 5,000 square feet) is the
22 equivalent of the same 48-unit-per-40,000-square-feet maximum density limit that the Planning
23 Commission rejected, and that the City's planning department characterized as being "a higher
24 density than most local developers, including affordable housing developers" can utilize. Ex. 272
25 at 1014. Nor was this new density exception "calculated under the [City's Land Capacity
26 Analysis]," even though the Land Capacity Analysis formed the analytical basis for numerous
27 other conclusions underlying the Comprehensive Plan and associated development regulations. *Id*.
28 at 1018. Although this new language was not previously presented to the Planning Commission—
29 or put in writing for the public hearing before the Council on November 24, 2025—it *was* put in
30 writing in a presentation by Planning Director Emma Bolin to a private developer forum on

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November 12, 2025, approximately three weeks after the Planning Commission's recommendation. *See* Ex. 21 at 18. At that time, planning staff characterized the exception as allowing six-plex development on vacant R-II lots of 10,000 square feet or more (with no mention of also allowing up to 12-unit multiplexes on lots of that size). *Id*. at 19.

Following staff's November 24, 2025, post-hearing presentation of this new density exception, the Council then deliberated and adopted that exception (along with other changes) at its regular business meetings on December 8 and 15, 2025. At those meetings, the Council received numerous comments that the public did not have sufficient time to digest and understand the proposed exception.[2] The Council voted to adopt the new density exception, along with the rest of Ordinance 3361, on December 15, 2025. Ex. 56 at 20. By our count, between November 17 and December 15, 2025, the Council received 282 public comments in opposition to the Plan and code changes, and only 37 in support.[3]

In its adoption of staff's new recommendation for a six-unit-per-5,000-square-foot density exception for infill development in the R-II zone, the Council characterized that change as simply the "functional equivalent" of a code change made two years prior, in 2023. *See* Ex. 56 at 5 (Ordinance 3361, second recital, paragraph 3). That prior change—adopted by Ordinance 3306 (Exhibit 7)—authorized the "conversion" of single-family residences in the R-II zone to four-unit houses, plus two ADUs per lot. *See* Ex. 7 at 9, 14. Because that change allowed six units per lot under limited circumstances, the Council reasoned the new language adopted by Ordinance 3361 was effectively no different.[4]

[2] *See e.g.,* Ex. 274 at 1198 (commenting that "[c]ouncil made changes to zoning densities in R-II over the recommendations of the Planning Commission and did not remand them back to the planning commission"); *id.* at 1200 (recommending that "the whole density issue in the comprehensive plan draft be returned to the planning commission for a public hearing and a new recommendation to the council"); Ex. 275 at 1097 (commenting that the changes are "complex and have been rapidly evolving and have not been properly vetted by the Planning Commission, the Council, or the public"); *id.* at 1099 ("too little time for thorough review by the Planning Commission, the public, and the Council itself"). Petitioners encourage the Board to listen to a sample of the Mayor's response to public comments on December 8, 2025. Ex. 239, https://cityofpt.granicus.com/player/clip/3701?view_id=4&redirect=true (timestamp 3:47:05-3:59:00).

[3] The magnitude of public opposition is even more remarkable considering that the Comprehensive Plan draft invited criticism of anyone who opposed the proposed density increases. The original draft contained disparaging language characterizing community opposition to the new plan as "NIMBYism," until December 15, 2025, when councilmember Ben Thomas moved for its removal. Ex. 273 at 103; Ex. 275 at 1116.

[4] *See* Ex. 56 at 5 (reasoning "[a]s directed by RCW 36.70A.600, Port Townsend allowed both two

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1 But such a myopic focus only on the number of dwelling units masks significant differences between the two. In Ordinance 3306, the City authorized the "conversion" of existing homes into fourplexes, not the tear-down of such structures and their complete replacement with new multiplex structures. *See* Ex. 7 at 14. The existing homes to be converted under Ordinance 3306 also were not constructed under the new, less-restrictive limits on lot coverage adopted by Ordinance 3361. *See* Ex. 56 at 871 (increasing lot coverage limit in the R-II zone from 35% to 60% "where an ADU or multiple units are included in the lot"). Four units in one structure also required a 20,000 square-foot lot (not a 5,000 square-foot lot). *See* Ex. 56 at 857 (redlined version of PTMC 17.16.010.B.2). Thus, not only would the new six-units-per-5,000-square-feet density exception for infill development in the R-II zone allow completely new six- and twelve-unit multiplexes, it would likely result in the construction of much larger—and denser—new multiplex structures than previously allowed under Ordinance 3306.

Nor was the public—or the Council, to our knowledge—ever presented with a map of where the new six-unit-per-5,000-square-feet density exception might apply. Yet, even without such a map, it can be inferred that this new exception could be used to allow new six- and 12-unit multiplex structures across much of the City of Port Townsend (regardless of infrastructure), effectively eclipsing the 32-unit, block-wide density limit recommended by the Planning Commission and adopted by the Council as the base density limit in the R-II zone.

"Infill development" is defined generally in the Port Townsend Municipal Code as "the development of a vacant or under-utilized parcel or parcels that are similar in size and configuration to those found in the adjacent developed area." PTMC 17.08.040. The code does not define the term "under-utilized." But materials developed during the City's periodic update process suggest that this broad term could be used to allow new six- and twelve-unit multiplex structures across a broad swath of the City of Port Townsend.

ADUs per parcel and the conversion of detached single family houses into fourplexes. The combination of a converted single family home into fourplex plus two ADUs allowed in the R-I and R-II zones, as adopted prior to the April 1, 2023, deadline under RCW 36.70A.600, combine to functionally allow sixplexes in these low and medium density zones in the City's existing development regulations."). *See also* Ex. 239, https://cityofpt.granicus.com/player/clip/3701?view_id=4&redirect=true (timestamp 1:41:25-1:42:26) (Dec. 8, 2025, Comment by Planning Director Emma Bolin) ("A lot of people do not know about a change from 2023, where we allowed sixplexes in the R-II zone on every R-II lot by right in Port Townsend. So our current package in front of you tonight . . . has no net change, no net increase in density allowed in the R-II").

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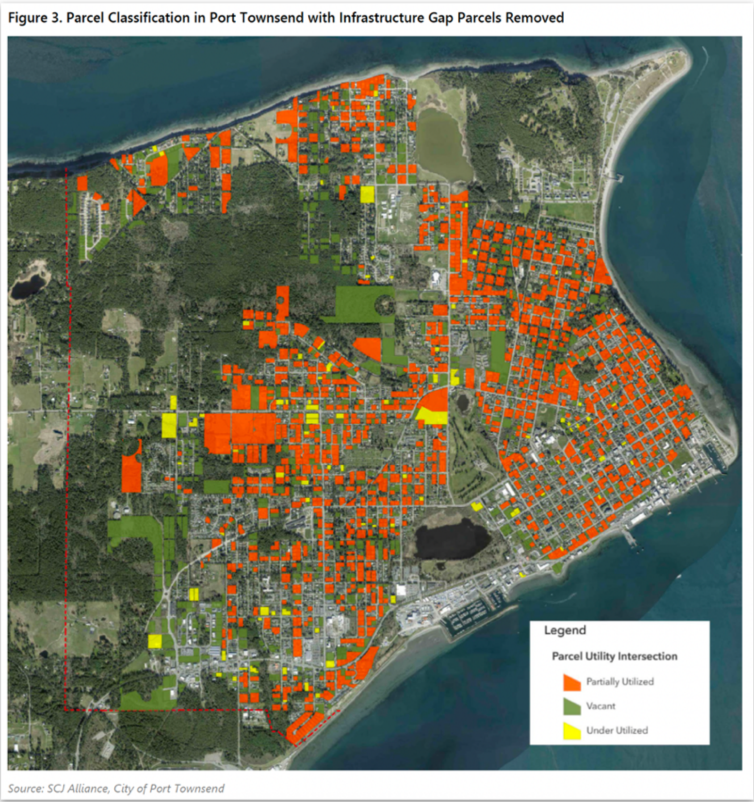
To illustrate this, the image in Figure 2 below is a map of the City of Port Townsend from the City's Land Capacity Analysis, showing the City's assessment of both "Under Utilized" parcels (in yellow) and "Partially Utilized" parcels (in orange). As can be seen, the combination of these two categories of partially and under-utilized parcels covers much of the City of Port Townsend, indicating that the new exception for six- and twelve-unit multiplexes could allow new, intensive redevelopment across much of the City, including throughout the R-II zoning district. This is especially true because (a) the term "under-utilized" is not defined, and (b) the term "partially utilized" is not used anywhere in the code, allowing the possibility that all of these lands could be subject to the new density exception proposed by staff and adopted by the Council after all public hearings on the proposed changes were over.

Figure 2: Under-Utilized Land in the City of Port Townsend



Source: Ex. 272 at 747 (LCA at 4) [5]

The methodology for creating the map in Figure 2 above similarly suggests that the new density exception for six- and twelve-unit multiplexes could apply across vast swaths of the City,

[5] Figure 2 is from Exhibit 272, materials from the September 11, 2025, City Council Meeting. An identical figure is included in the final version of Ordinance 3361 in black and white. *See* Ex. 56 at 734.

1 including all areas shaded in orange. Although the orange areas above are denoted as "partially
2 utilized—not "under-utilized," the phrase used in the definition of "infill development" at PTMC
3 17.08.040—the methodology for identifying under-utilized properties indicates that the orange
4 areas would, in fact, qualify as "under-utilized" for purposes of the newly proposed (and adopted)
5 density exception. In particular, the City's "Land Capacity Analysis Methodology" defined an
6 "under-utilized" property as one where "the number of existing units is significantly less than the
7 potential number of units it could support based on the zoning and size," including where "the
8 parcel is zoned for a higher density or more intensive use (e.g., multifamily or commercial) but is
9 currently used in a way that does not match its zoning potential (e.g., a single-family home on land
10 zoned for multifamily use or on commercial zoned land)." Ex. 86 at 17. That definition would
11 apply to any property in the R-II zone that currently does not include a six- or twelve-unit
12 multiplex, including any property where there is only a single-family structure, as the number of
13 dwelling units would be significantly below the number allowed under the new exception. The
14 upshot is that under that exception, all of the properties shaded in orange above could be "on the
15 market" for new six- and twelve-unit multiplex development.

16 Finally, the City's new exception for new six- and twelve-unit multiplex development was
17 adopted in addition to several other significant changes to the zoning code for properties in the R-
18 I, R-II, R-III and R-IV residential zones. For example:

19 • In the R-I zone, new density exemptions were adopted for duplex, triplex, and
20 fourplex conversion of existing homes; a minimum density of four units per 40,000 square feet
21 was adopted; minimum lot size was reduced for duplex development; and maximum lot coverage
22 was increased from 25% to 40% for multi-unit development. Also, the daylight plane requirement
23 was removed. *See* Ex. 56 at 869–71 (amendments to PTMC 17.19.030, Table 17.19.030).

24 • In the R-II zone, maximum density was increased from eight to 32 units per 40,000
25 square feet (with the exception for six- and twelve-unit multiplex development discussed above; a
26 minimum density of eight units per 40,000 square feet was adopted; a standard of "no limit" was
27 adopted for the allowable number of units in any one structure, with allowance for up to 18-unit
28 multiplexes as "permitted" uses (and 19 or more as a conditional use); minimum lot size was
29 significantly reduced for single-family detached, attached, and multifamily developments
30 (respectively from 5,000 square feet to 2,500, 1,150, and 2,500 square feet); minimum lot width

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1 was reduced from 50 to 14 feet; yardage requirements were reduced; maximum height limits were
2 increased from 30 to 35 feet for attached units and multifamily developments; and maximum lot
3 coverage was increased from 30% to 45% for multi-unit developments. Also, the daylight plane
4 requirement was removed. Ex. 56 at 863, 869–71 (amendments PTMC 17.16.020, Table 17.16.020
5 and PTMC 17.16.030, Table 17.16.030).

6 • In the R-III zone, maximum density was increased from 16 to 48 dwelling units,
7 with additional allowances for lodging and sleeping units; minimum density was increased from
8 10 to 12 units per 40,000 square feet; minimum lot sizes were reduced; minimum lot widths were
9 reduced from 30 to 25 feet for single-family detached uses, and no limit was imposed for attached
10 units; yardage requirements were reduced; maximum height limits were increased from 35 to 55
11 feet for multifamily developments; and maximum lot coverage was increased from 45% to 65%.
12 *Id*. at 869–71 (amendments to PTMC 17.19.030, Table 17.19.030).

13 • In the R-IV zone, maximum density was increased from 48 to 60 units, with
14 additional allowances for lodging and sleeping units; minimum density was increased from 15 to
15 16 units per 40,000 square feet; yard requirements were reduced; max height limits were increased
16 from 35 to 55 feet for multifamily developments; and maximum lot coverage was increased from
17 60% to 75%. Ex. 56 at 869–71 (amendments to PTMC 17.16.030, Table 17.16.030).

18 In all, the City's adoption of dramatically decreased development restrictions opens the
19 door to widespread and extensive potential new development. According to the Comprehensive
20 Plan, the zoning changes were made in the name and pursuit of affordable housing. *See id*. at 137
21 ("Establishing minimum residential densities encourages affordable housing by preventing land
22 from being used inefficiently" and "[e]ncouraging mixed-use development helps create affordable
23 housing[.]"). But there has been no information, analysis, or reassurance that these changes will
24 actually benefit the people most in need of affordable housing, or that they will provide benefits
25 to the degree that the most vulnerable populations will actually need.[6] In fact, the City has itself
26

---

27 [4] The City has acknowledged likely consequences of increased density and development. *See* Ex. 56 at 100 ("[U]pward pressure on costs exacerbates the financial burden on low-income residents, making them
28 more likely to be cost-burdened and at higher risk of displacement."); *id*. at 130 (acknowledging that "[b]y preserving existing housing, communities can prevent the displacement of current tenants . . . maintain
29 economic diversity in neighborhoods" and "leverage[e] existing infrastructure" and reduce "regulatory battles
30 associated with new construction"); *id*. at 723 (listing in the Jefferson County Countywide Planning Policy that "[d]isplacement of lower-income households, historically marginalized or vulnerable populations may result from conversion of housing, public investments, private redevelopment, and market pressures").

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1 identified that this kind of upzoning can increase the risk of economic and physical displacement.
2 *See id*. at 106 (describing how market forces, increased housing costs, and new development can
3 lead to direct and indirect displacement). At the same time the City purported to advance its
4 affordable housing objectives through the Comprehensive Plan, it adopted development
5 regulations that, on their face, appear to move in the opposite direction by upzoning and
6 dramatically expanding development across residential neighborhoods.

7 The ramifications of the City's zoning changes permeate through other elements and issues
8 in the Comprehensive Plan. Under the GMA, the City is required to ensure that development
9 occurs only when adequate public facilities and services exist or will exist concurrently with the
10 impacts of development, *see* RCW 36.70A.070(6)(a), (b), and to ensure that new development can
11 accommodate the City's adopted levels of service. *See* RCW 36.70A.070(6)(b). Yet there has been
12 no meaningful analysis of how allowing significantly greater density and development will affect
13 transportation concurrency, utility demand, and pressure on public infrastructure and services. The
14 City has also failed to explain how it will finance the improvements necessary to support new
15 development under the updated regulations, in violation of the GMA's requirement to coordinate
16 planning between land use decisions and capital facilities planning. *See* RCW 36.70A.070(3).

17 Petitioner Affordable Hometown Port Townsend ("AHPT") is a Washington non-profit
18 organization that works to support the growth of affordable, workforce and middle-income housing
19 while minimizing negative impacts on existing Port Townsend neighborhoods. Members of
20 AHPT—including Petitioners herein—are residents of the City of Port Townsend and will be
21 impacted by the revised development regulations and updated Comprehensive Plan. They will be
22 adversely affected by the increased density and intensity of use allowed by the new changes, as
23 well as the City's failure to meet its obligations related to addressing affordable housing, anti-
24 displacement policies, racially disparate impacts, and insufficient infrastructure, public facilities
25 and services. Petitioners timely participated in the City's public process for the 2025
26 Comprehensive Plan update and changes to the zoning code by submitting written comments
27 concerning matters at issue in this petition. *See, e.g.,* Ex. 273 at 803-5, 806-8; Ex. 274 at 925, 1195;
28 Ex. 275 at 836, 1076, 1080, 1101 (McGuire comments); Ex. 272 at 1066; Ex. 273 at 809-13, 789-
29 92, 798-802; Ex. 274 at 920, 928, 1197; Ex. 275 at 831, 893, 1104 (McCurdy comments).
30

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STANDARD OF REVIEW

The Washington Supreme Court has held that the Growth Management Hearings Board ("the Board") "is charged with adjudicating GMA compliance, and when necessary, with invalidating noncompliant comprehensive plans and development regulations. RCW 36.70A.280, .302." *King Cnty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn. 2d 543, 552 (2000).

> 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]." RCW 36.70A.320(3). To find an action "clearly erroneous," the Board must be "left with the firm and definite conviction that a mistake has been committed." *Dep't of Ecology v. Pub. Util. Dist. 1,* 121 Wash.2d 179, 201 (1993).

Id.

The City's actions are "presumed compliant unless and until a petitioner brings forth evidence that persuades a board that the action is clearly erroneous" *Kittitas Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn. 2d 144, 156 (2011) (citing RCW 36.70A.320(3)). "[T]he Board acts properly when it foregoes deference to a county's plan that is not 'consistent with the requirements and goals' of the GMA." *The Cooper Point Ass'n v. Thurston Cnty*., 108 Wn. App. 429, 444 (2001), *aff'd sub nom*. *Thurston Cnty. v. Cooper Point Ass'n*, 148 Wn. 2d 1 (2002)

ARGUMENT

Issue 13 [7]

Did the City of Port Townsend fail to provide early, continuous, and meaningful public participation in its adoption of Ordinance No. 3361, City of Port Townsend Comprehensive Plan and development regulations, in violation of RCW 36.70A.140 and RCW 36.70A.020(11)?

In adopting Ordinance 3361 on December 15, 2026, the City of Port Townsend did not comply with the "early and continuous public participation" requirements at RCW 36.70A.140. We present this issue first because we believe it is dispositive either of the case as a whole or, at the very least, of the City's last-minute density exception for six- and twelve-unit multiplex developments discussed above.

[7] The sections of the Argument in this pre-hearing brief are organized by the issues stated in the Board's Prehearing Order dated March 13, 2026. Each section begins with the issue number (in bold), followed by a recitation of the issue as stated in that order (in italics).

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Under RCW 36.70A.140, each city and county planning under the GMA—including the City of Port Townsend—"shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans."[8] RCW 36.70A.140 further provides that such established procedures "shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments."

The "early and continuous public participation" requirements of RCW 36.670A.140 are reinforced by the GMA planning goals, which direct cities to:

> Encourage the involvement of citizens in the planning process, including the participation of vulnerable populations and overburdened communities, and ensure coordination between communities and jurisdictions to reconcile conflicts.

RCW 36.70A.020(11).

In response to these GMA goals and requirements, the City adopted the procedures at PTMC Chapter 20.04, last amended in 2018 and titled "Port Townsend Comprehensive Plan and Development Regulations Amendment Process." According to the City itself, those procedures were adopted specifically to meet the "early and continuous public participation" requirements at RCW 36.70A.140. *See* PTMC 20.04.010.B ("This chapter also establishes the City's public participation program as required by RCW 36.70A.140."). *See also* Ex. 56 at 1 (Ordinance 3361 preamble, providing that the procedures at PTMC Chapter 20.04 are intended to "comply with the public participation and effective notice requirements of the RCWs").

The procedures at PTMC Chapter 20.04 govern the City's annual amendment and periodic review processes under the GMA, including changes both to the Comprehensive Plan and to the City's implementing development regulations—from exceptions to the annual amendment process, to the schedule for periodic updates, annual and periodic docketing, and formal application

[8] Port Townsend's Public Participation Plan adopted in March 2024 promised draft language to the Planning Commission in February/March of 2025. Ex. 59 at 8. Instead, the draft language was introduced at the Planning Commission in late October 2025. Ex. 151. This significantly compressed the timeline for the public to review and react to zoning changes and created a rushed process to meet the December 31, 2025, deadline. *See also*, Ex. 239, cityofpt.granicus.com/player/clip/3701?view_id=4&redirect=true (timestamp 3:58:00-3:59:00) (Dec. 8, 2025, Comment by Mayor Faber ("We didn't see the final…").

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requirements. Those procedures also generally require the Planning Commission to review and hold hearings on proposed changes before those changes are adopted by the City Council. *See, e.g.,* PTMC 20.04.080.A (providing "[a]ll proposed amendments on the final docket shall first be considered by the planning commission, which shall make a recommendation to the city council after holding at least one open record hearing"). These rules also establish procedures for what must be done when the Council chooses (or desires) to deviate from the Planning Commission's recommendation, or to consider an amendment that was not previously heard and evaluated by the Planning Commission.

Broadly speaking, PTMC 20.04.080.B.4 provides that "if the city council chooses to consider a change to an amendment to a Comprehensive Plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the city's procedures, an opportunity for review and comment on the proposed change shall be provided before the council votes on the proposed change." This code language generally mirrors that at RCW 36.70A.035(2)(a), titled "Public participation—Notice provisions." This language applies, by its terms, to Council-initiated changes to the Commission's recommendation both as it applies to the Comprehensive Plan and to the City's development regulations. However, PTMC 20.04.080.B.4 does not itself specify the form or venue for providing an additional "opportunity for review and comment" when the Council wishes to deviate from the Planning Commissions' recommendation. Nor does the Port Townsend Municipal Code specify the form or venue for providing such an opportunity when the Council wishes to deviate from the Planning Commission's recommendation on Comprehensive Plan amendments.

But with respect to changes or amendments specifically to City's "Land Use Code"—defined as PTMC Titles 17 18, and 19 (*see* PTMC 20.04.090.A)—the code provides express and unambiguous direction. Specifically, PTMC 20.04.090.C provides flatly that "[t]he planning commission ***shall hold a public hearing on <u>any</u> text amendment to the land use code*** and make a recommendation to city council, using the decision criteria set forth at PTMC 20.04.080(a)(4)" (emphasis added). This requirement unequivocally requires the Planning Commission to hold a public hearing on "any" proposed amendment to the Land Use Code.

It is a standard rule of statutory construction that "shall" means shall—it expresses a mandatory duty. *See, e.g., State v. Bartholomew*, 104 Wn.2d 844, 848 (1985) (explaining "[t]he general rule is that the word 'shall' is presumptively imperative and operates to create a duty rather

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1 than conferring discretion" and that "[i]t is only where a contrary legislative intent is shown that
2 'shall' will be interpreted as being directory instead of mandatory"). In turn, the plain-language
3 meaning of the word "any" is that it is a universal quantifier—referring to "every" or "all" of
4 something.[9] The result is that, under the plain language of the Port Townsend Municipal Code, the
5 Planning Commission is required to hold a public hearing on all text amendments to the Land Use
6 Code, where the proverbial "rubber hits the road" with respect to restrictions on potentially
7 detrimental land uses and development projects.

8 Here, that did not occur. After the Planning Commission completed its review of Ordinance
9 3361 and recommended a flat density cap of 32 dwelling units per 40,000 square feet in the R-II
10 zone, the City introduced materially different language specifically for new six- and twelve-unit
11 multiplexes. Ex. 274 at 1163 (Errata Sheet for Dec. 8, 2025, Council Meeting). That amendment,
12 first introduced after all Planning Commission hearings had come to an end, was ultimately adopted
13 by the City Council with no Planning Commission review. The City's failure to provide a public
14 hearing before the Planning Commission on that amendment represents a violation of the plain
15 language of the code, specifically the procedures adopted by the City pursuant to the GMA's
16 requirement for early and continuous public participation at RCW 36.70A.140.

17 Nor can the City satisfy the "spirit" of these requirements within the meaning of RCW
18 36.70A.140 by conducting a lengthy public process regarding one proposal and then introducing
19 materially different development regulations at the tail end of that process without following the
20 procedural steps required for land use code amendments. The GMA requires "early and continuous"
21 participation, not a last-chance opportunity for public comment after the substance of the regulations
22 have been dramatically altered.

23 This procedural deficiency is further compounded by City Council's failure to comply with
24 PTMC 20.04.090.D. That subsection requires City Council review following the Planning
25 Commission process, including a public hearing before the final adoption of land use code text
26 revisions. Here, however, the Council adopted the amendments during a "regular session business
27 meeting," rather than through the public hearing process as contemplated under Chapter 20.04. Ex.
28 275 at 1110 (Dec. 15, 2025, City Council Meeting Minutes). The City issued a press release on
29 December 1, 2025, giving notice of a December 8, 2025, meeting and opportunity for comment—
30

[9] *See, e.g.,* Merriam-Webster online at https://www.merriam-webster.com/dictionary/any.

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which was posted two days later in the local paper. Ex. 274 at 113. Both the December 8 and December 15, 2025, City Council meetings were "special business meetings," not properly noticed public hearings under PTMC 20.04.090.D. *See* PTMC 20.04.090.B (requiring at least 10 days' notice prior to the date of the hearing on text amendments generated by city council). Nor was there anything in the press release "that would alert the general public that the adopted amendments at issue"—specifically, the new exception for six- and twelve-unit multiplexes—"were on the table for consideration." *Neighbors For Responsible Dev. v. City of Yakima,* GMHB No. 02-1-0009, 2002 WL 32065606, *11 (Dec. 5, 2022).[10]

Nor did the City's response to public comments on the last-minute six- and twelve-unit multiplex exception give an accurate description of the proposed change. In response to numerous comments calling for transparency and further public involvement and disclosure, the City's comment response matrix for the County's final meeting repeatedly mischaracterized the new, last-minute density exception as being equivalent to the City's older allowance for "converting [an existing] home into a 4plex and adding 2 ADU's." Ex. 275 at 835–47. That response repeatedly (and falsely) equivocated between converting an *existing* structure with the construction of entirely new multiplex structures on much smaller parcels of land than previously allowed outright under former PTMC 17.16.010.B.2 *See* Ex. 56 at 857 (requiring 20,000 square feet of land for a new four-plex). Nor did the City ever disclose exactly where the new exception might apply. *Compare Neighbors For Responsible Dev.*, 2002 WL 32065606, * 7 (explaining that while "'the requirement to consider public comment does not require elected officials to agree with or obey such comment, local government does have a duty to be clear and consistent in informing the public about the authority, scope and purpose of proposed planning enactments'") (quoting *City of Burien v. Cent. Growth Mgmt. Hearings Bd.*, 113 Wn. App. 375 (2002)).

Notice and meaningful public participation is the "very core" of the GMA, a statute that establishes a "'bottom up' planning process designed to ensure that 'citizens, communities, local governments, and the private sector coordinate with one another in comprehensive land use planning.'" *Neighbors For Responsible Dev.*, 2002 WL 32065606, * 7 (quoting *City of Des Moines*

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[10] The City's press release appears to be omitted from the record but may be found on the City's website at https://cityofpt.us/sites/default/files/fileattachments/administration/page/24449/25.12.01_city_of_pt_press_release_second_reading_for_periodic_review.pdf. We would ask the Board to consider this document "for good cause shown" pursuant to WAC 242-03-565(1).

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v. Puget Sound Council, 97 Wn. App. 920, 932 (1999)). For the reasons above, the City's adoption process violated both the procedural framework established in Chapter 20.04 of the Port Townsend Municipal Code and the GMA's requirement for early and continuous public participation under RCW 36.70A.140. Further, because the City did not comply with the "spirit" of the Planning Commission meeting requirement—wholly circumventing the Commission in the Council's last-minute adoption of the six- and twelve-plex density exception—the City's adoption of Ordinance 3361 should be invalidated.

We now turn to specific, substantive deficiencies with the City's adoption of its new Comprehensive Plan update, including its failure to ensure that the massive, area-wide upzone embodied in the Land Use Code changes will actually meet the needs of those most in need of affordable housing.

Issue 1

Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Housing Element, fail to demonstrate sufficient capacity of land for housing including housing for moderate, low, and extremely low-income households, while also balancing the need to preserve existing housing stock, in violation of RCW 36.70A.070(2)(c), RCW 36.70A.115, RCW 36.70A.020(1), (4), (5), (10), (12), RCW 36.70A.120, RCW 36.70A.130(1) and (5)(b), RCW 36.70A.210, RCW 36.70A.100, and Jefferson County Countywide Planning Policies (CPPs) #6 and #9?

The City of Port Townsend used an approach that does not comply with the GMA. Cities planning under the GMA must ensure that their "comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth." RCW 36.70A.115. In doing so, they must be guided by the GMA's goals, including encouraging urban growth in areas where adequate facilities and services exist, accommodating affordable housing for all economic segments of the population, encouraging economic development, protecting and enhancing the environment, and ensuring the adequacy of public facilities and services necessary to support development. *See* RCW 36.70A.020(1), (4), (5), (10), (12).

The statute is equally clear about how these obligations must be carried out. RCW 36.70A.070 requires that a city's housing element include an "inventory and analysis of existing and projected housing needs" which must specifically evaluate units needed for several income bands—specifically "moderate, low, very low, and extremely low-income households." RCW

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36.70A.070(2)(a). To satisfy this requirement, the GMA requires the City to "identif[y] sufficient capacity of land for housing including, but not limited to, . . . housing for moderate, low, very low, and extremely low-income households," among other categories. RCW 36.70A.070(2)(c).

Here, the City of Port Townsend conducted a series of studies—many of which were deficient, as discussed below—to inform its housing element, including a Racially Disparate Impacts Analysis (June 5, 2025), a Housing Needs Analysis ("HNA") (June 6, 2025), and a Land Capacity Analysis ("LCA")(Feb. 28, 2025). Ex. 56 at 731-812. Relying on these materials, the City ultimately concluded that "there is ample land zoned to meet the City's housing targets." *Id*. at 87.

To reach this conclusion, the LCA (1) estimated developable lands available by zone, (2) categorized each zone by the housing types permitted within them, and then (3) summarized unit capacity based on the housing types available to each income band and compared that capacity to the City's projected housing needs. *Id*. at 731. But in the third step, the City collapsed the income bands into just three broad categories: low-income (households earning under 80% AMI), moderate-income (households earning 80-120%) and high-income (households earning more than 120%). *Id*. It then concluded—based on those aggregated categories—that the City "has sufficient land capacity to meet its housing targets at *all* income bands under current zoning." *Id*. 742 (emphasis added). This can be seen in Figure 3 below (Figure 13 of the LCA).

Figure 3: LCA Housing Needs

Figure 13. Port Townsend Housing Needs and Land Capacity by Income Band, 2020-2045

Income Band	Housing Needs	Aggregated Housing Needs	Pending Units	Remaining Needs	Total Capacity	Surplus/ Deficit
0-30 PSH	124					
0-30 Non PSH	807	1,403	277	1,126	1,824	**698**
30-50	286					
50-80	186					
80-100	75	169	90	79	2,651	**2,572**
100-120	94					
120+	76	76	451	-375	2,735	**3,110**
Total	**1,648**	**1,648**	**818**	**830**	**7,210**	**6,380**

Source: City of Port Townsend, Washington Department of Commerce, Jefferson County, Leland Consulting Group

Source: Ex. 56 at 740 (LCA at 10)

That approach does not comply with the GMA. In *Futurewise, et. al. v. City of Mercer Island*, GMHB No. 25-3-0003, 2025 WL 2393395 (Aug. 1, 2025), the Board held that when a City or County does its land capacity analysis, it must address housing capacity for each required income band individually—*i.e.,* moderate, low, very low, and extremely low-income—not in the aggregate. *See*

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1 *Futurewise*, 2025 WL 2393395, *15. The Board explained that aggregating income levels obscures
2 actual need and prevents an accurate inventory of housing capacity—particularly for very low- and
3 extremely low-income households, whose needs differ materially from those at higher income levels.
4 *Id*. at *12, 15 (finding that aggregating the income levels ultimately prevented the City from
5 compiling an accurate inventory of its existing and projected permanent housing needs, and therefore
6 did not comply with the GMA). As the Board emphasized, "[a]ggregation conceals the reality" that
7 most of the land capacity identified as serving both moderate- and low-income households is, in fact,
8 only available to moderate-income households. *Id.* at *12 ("The majority of inventory identified as
9 available for the aggregated moderate plus low-income segments is, in reality, available only for the
10 moderate-income segments.").

11 Here, the City's analysis suffers from the same defect. By grouping all households earning
12 below 80% AMI into a single category, the LCA masks whether sufficient capacity exists for very
13 low- and extremely low-income households in particular, which are also those most in need of
14 affordable housing. The City's own data confirms this problem. In its 2025 HNA, the City concluded
15 the greatest demand for affordable housing is among extremely low-income households earning at or
16 below 30% of AMI. *See* Ex. 56 at 75-76. Yet the LCA contains no analysis of housing availability
17 for that income band, instead reporting capacity only for aggregated categories of 0–80%, 80–120%,
18 and 120%+ of AMI. Ex. 56 at 739. The HNA's underlying charts show that the most acute housing
19 need is concentrated in the 0–30% and 30–50% AMI bands, while the 50–80% of AMI band reflects
20 comparatively less need—and even surplus capacity, as seen in Figures 4 and 5 on the following page.
21 Yet these two groups—with very different needs—were aggregated in the City's analysis.

22 **Figure 4: LCA Existing Housing Units**

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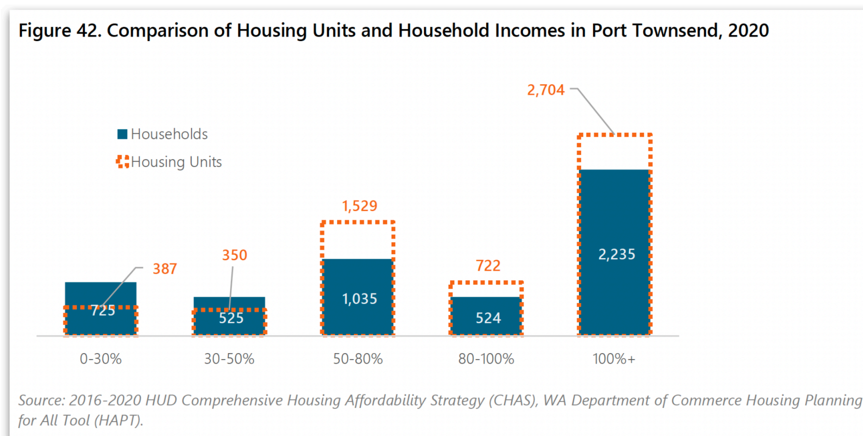

Source: Ex. 56 at 776 (HNA at 34)

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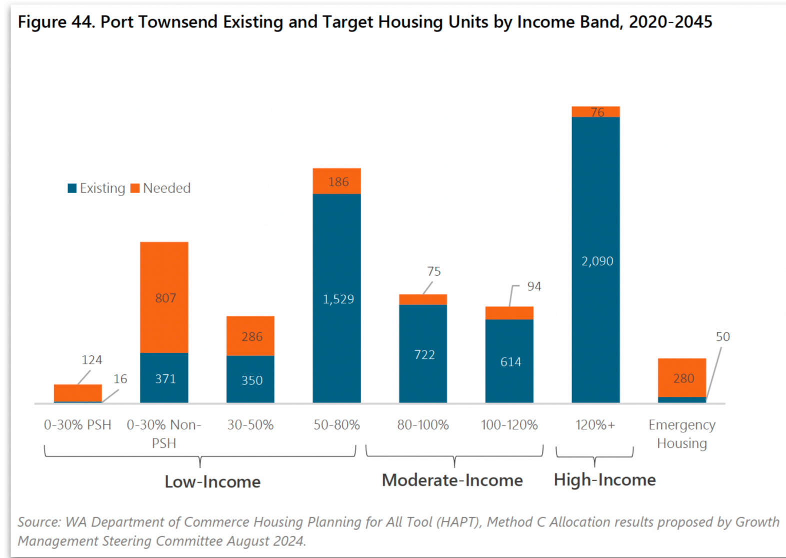
Figure 5: LCA Existing and Target Housing Units



Source: Ex. 56 at 778 (HNA at 36) [11]

As the Comprehensive Plan itself acknowledges, "[h]ousing needs by income vary significantly." Ex. 56 at 75. Units that may be feasible for households earning 50-80% of AMI are not realistically available to households earning 0-30% of AMI. Treating these distinct groups as one for purposes of land capacity analysis ignores markedly different housing and economic realities, not to mention the higher costs and specific requirements for developing low-income housing. Indeed, local organizations have warned that adopting minimum density requirements and increased vertical development may constrain the City's ability to produce housing affordable to the lowest-income households. *See* Ex. 272 at 1043-49 (comment from Habitat for Humanity).

State guidance underscores the deficiencies in the City's Housing Element. The Washington State Department of Commerce ("Commerce")—the state agency charged with providing guidance to local governments on GMA compliance—has made clear that a jurisdiction's land capacity analysis must evaluate whether anticipated market-rate development will actually serve specific income levels. *See* Ex. 283 at 33 (Commerce Book 2: Guidance for Updating Your Housing Element). Commerce explains that a municipality must determine "which income levels are likely to be served by new market-rate housing production in each zone," a task that "requires an analysis of local housing market conditions and housing affordability levels, as well as outreach to local affordable

[11] Figures 4 and 5 above are color excerpts from the Housing Needs Assessment attached to the final version of Ordinance 3361, which is in black and white. The color versions can be found in Exhibit 272.

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housing developers." *See id*. Commerce even provides an "example" format for summarizing those findings. *See id.* at 35.

The City did not perform that analysis. Instead, its LCA simply reproduces Commerce's example chart without undertaking the underlying evaluation of local market conditions or engaging with affordable housing developers. *See* Ex. 56 at 737; Ex. 283 at 35 (Commerce Guidance Book 2) (recommending local governments provide analysis of local housing market conditions and housing affordability levels, as well as outreach to local affordable housing developers). This omission further undermines compliance with RCW 36.70A.070(2)(d), which requires the City to make "adequate provisions for existing and projected needs of all economic segments of the community," including "low, very low and moderate-income households."

By aggregating income bands, the City implicitly assumes that the subsidies and incentives necessary to produce housing for lower-income households will be available at the scale required. *See* Attachment A at 2 (Dec. 3, 2025, Letter from Department of Commerce to Port Townsend recommending the City "identif[y] the number of units that are likely to require and/or incentives to be affordable at the designated income levels and the amount of subsidy required").[12] The City itself recognizes the subsidy gap in funding and notes that the City "needs an additional [] 1,403 housing units to serve 0-80% AMI." Ex. 274 at 240 ("[T]here is a shortfall between the funding available and the funding needed to meet projected housing need by income band"). But as the Board has explained, a jurisdiction cannot count such units toward its capacity unless it can demonstrate that those subsidies or incentives are, in fact, available for each income band—which is impossible to ascertain given the City's aggregation method. *See Futurewise,* 2025 WL 2393395, *24 ("If the City cannot show that subsidies or incentives are available for each of those units, then the City cannot claim those units in its capacity analysis.").

Because the City has failed to demonstrate sufficient land capacity for each required income band as mandated by RCW 36.70A.070(2)(c), it has also failed to ensure that its planning actions and

[12] This letter from the Department of Commerce to City Council was omitted from the administrative record produced by the City. *See* Ex. 280 at 3 (referring to receiving draft comments from Commerce). Before the record was closed, Petitioners confirmed with Port Townsend Counsel of Record that all of Commerce's correspondence was included in the record despite the absence of this "draft." Petitioners were given assurances that everything had been provided. Subsequently, the "draft" was obtained by Petitioners directly from Commerce. Petitioners respectfully request that the Board allow for supplementation of the record to consider this letter for "good cause shown." WAC 242-03-565(1).

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capital budget decisions are consistent with the Comprehensive Plan, in violation of RCW 36.70A.120. And because the Comprehensive Plan update and implementing development regulations do not bring the City into compliance with the GMA's housing requirements, the City has further violated RCW 36.70A.130 by failing to timely review and revise its plan and regulations to achieve compliance by the statutory deadline—December 31, 2025. RCW 36.70A.130(1), (5)(b).

The City's reliance on aggregated income categories "conceals the reality" of its housing market and development capacity. *Futurewise*, 2025 WL 2393395, *12. By failing to conduct the disaggregated, evidence-based analysis required by both statute and agency guidance, the City has not demonstrated that it can accommodate the housing needs of all economic segments of its community, as the GMA requires.

Issue 2

Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Housing Element, fail to make adequate provisions for existing and projected needs of all economic segments of the community, fail to incorporate consideration for low, very low, extremely low, and moderate-income households, and fail to document programs and actions needed to achieve housing availability and affordable housing needs, including gaps in local funding in violation of RCW 36.70A.070(2)(d), RCW 36.70A.020(4), (5), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPPs #6 and #9?

The City failed to meet requirements for specified economic segments of the community. The GMA not only requires planning jurisdictions to identify sufficient land capacity to meet the housing needs of all income bands, but also directs cities to make "adequate provisions for existing and projected needs of all economic segments of the community," including by:

(i) Incorporating consideration for low, very low, extremely low, and moderate-income households.

(ii) Documenting programs and actions needed to achieve housing availability including gaps in local funding, barriers such as development regulations, and other limitations.

(iii) Consideration of housing locations in relation to employment location; and

(iv) Consideration of the role of accessory dwelling units in meeting housing needs.

RCW 30.70A.070(2)(d). This provision requires more than just demonstrating sufficient capacity or surplus housing, it compels the City to make assurances that housing will be available across all income bands.

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The Board has made clear that policy changes are not enough absent a showing that they will actually meet a City's identified needs. *Futurewise*, 2025 WL 2393395, *25 ("[W]hile deepening affordability requirements [] will likely result in some amelioration of the affordable housing shortage, the record does not show that it makes adequate provision for housing all economic segments."). The City's approach falls short of this standard. By aggregating lower-income bands in its Land Capacity Analysis, the City obscures the distinct needs of very low- and extremely low-income households—the groups least likely to be served by new market-rate development. *See* Ex. 272 at 1044 (comment from Habitat for Humanity) (noting that vertical construction is more capital-intensive and less feasible for affordable housing organizations like Habitat). Although the City has adopted development regulations that purport to encourage affordable housing, it has not evaluated whether the types of development those regulations will produce will realistically serve the income levels with the greatest need.

Nor has the City documented the specific programs, funding mechanisms, or regulatory changes necessary to close that gap, as RCW 36.70A.070(2)(d) requires. There is no meaningful analysis of whether subsidies will be available at the scale required, whether new development impedes production of affordable units, or whether the anticipated housing supply and subsidy and incentive programs will actually serve the full spectrum of income bands. *See* Att. A at 2 (acknowledging that identifying the number and amount of subsidy requirements is a critical component of making adequate provisions); *see also* Ex. 272 at 1046 (comment from Habitat for Humanity) (noting that "rental housing subsidies serve persons who are below 50% of AMI" and "[t]he more nuanced definitions . . . help to clarify the likely solutions needed"). The Commerce guidance documents include an "Adequate Provisions Checklist" that Cities can use to document barriers and programs and actions to achieve housing availability. Ex. 283 at 120. Rather than meaningfully use the Commerce template to evaluate barriers and identify actions needed to address those barriers, the City instead merely repeats the broad directives found in the RCWs. *See, e.g.* Ex. 55 (Adequate Provisions Checklist) (listing "ensure that there is sufficient land zoned for moderate density housing" as an action needed to address the lack of large parcels for infill development). Moreover, in response to Commerce's letter alerting the City that it was not in compliance with the *Futurewise* case (*see* Att. A at 2) the City added a cursory mention of its subsidy gap to the Comprehensive Plan. Ex. 274 at 240. But without a more specific showing of subsidies available for

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1 each income group, the City has not complied with Commerce guidance or made adequate provisions
2 for all economic segments.

3 Finally, under RCW 36.70A.210, counties planning under the GMA are required to adopt
4 countywide planning policies ("CPPs") in cooperation with the cities located within that jurisdiction.
5 RCW 36.70A.210(2); RCW 36.70A.100. CPPs are required, among other things, to include "policies
6 that consider the need for affordable housing, such as housing for all economic segments of the
7 population and parameters for its distribution." RCW 36.70A.210(3)(e). Jefferson County CPP 6.7
8 provides that "[e]ach UGA shall accommodate its fair share housing affordable to low-and moderate-
9 income households according to housing units by income allocation and by promoting a balanced mix
10 of diverse housing types." Ex. 56 at 723. For the same reasons discussed above, the City is also in
11 violation of RCW 36.70A.210 and its own CPPs.

12 **Issues 3, 4, 5 & 6**

13 *Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan*
14 *Housing Element, fail to identify local policies and regulations that result in racially*
15 *disparate impacts, displacement, and exclusion in housing in violation of RCW*
16 *36.70A.070(2)(e), RCW 36.70A.020(4), RCW 36.70A.120, RCW 36.70A.210, RCW*
36.70A.100, and Jefferson County CPP #6?

17 *Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan*
18 *Housing Element, fail to identify and implement policies and regulations to address and*
19 *begin to undo racially disparate impacts, displacement, and exclusion in housing caused by*
20 *local policies, plans, and actions, in violation of RCW 36.70A.070(2)(f), RCW 36.70A.020(4),*
(5), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #6?

21 *Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan*
22 *Housing Element, fail to identify areas that may be at higher risk of displacement from market*
23 *forces associated with changes to zoning development regulations, in violation of RCW*
24 *36.70A.070(2)(g), RCW 36.70A.020(4), (5), RCW 36.70A.120, RCW 36.70A.210, RCW*
36.70A.100, and Jefferson County CPP #6?

25 *Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan*
26 *Housing Element, fail to establish anti-displacement policies with consideration given to the*
27 *preservation of historical and cultural communities as well as to the investments in low, very*
28 *low, extremely low, and moderate-income housing, equitable development initiatives,*
29 *inclusionary zoning, community planning requirements, land disposition policies, and*
consideration of land that may be used for affordable housing, in violation of RCW
36.70A.070(2)(h), RCW 36.70A.020(4), (5), RCW 36.70A.120, RCW 36.70A.210, RCW
36.70A.100, and Jefferson County CPP #6?

30 The City has not adequately complied with the anti-displacement requirements of the GMA.
RCW 36.70A.070(2)(e) requires the City to identify local policies and regulations that result in

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racially disparate impacts, displacement, and exclusion in housing, including discriminatory zoning, disinvestment, and infrastructure availability. RCW 36.70A.070(2)(f) further requires the City to implement policies and regulations that address and begin to undo those impacts. The City attempted to comply with these provisions by removing portions of its development code aimed at preserving neighborhood "character," which the City itself identified as potentially having racially disparate impacts. *See* Ex. 56 at 856 (Chapter 17.16 PTMC); *see also id.* at 781 (Racially Disparate Impact Analysis) (noting that "historic policies relating to housing and segregation[] . . . hold cities back from rectifying systemic harms[,]" such as those that reference "neighborhood character," or permit only the most expensive homes to be built). At the same time, the City adopted new development regulations encouraging denser, more expensive development while failing to assess whether that development would actually serve those most burdened by housing costs. Without such analysis, the City cannot demonstrate that its policies will reduce disparities rather than exacerbate them.

Public commenters identified areas in the City's Housing Element that raise these concerns. For example, Habitat for Humanity warned that the Housing Element's treatment of "multifamily housing" as synonymous with "apartments" could undermine opportunities for homeownership and wealth-building. *See* Ex. 275 at 825-26 (comment from Habitat for Humanity). In response, the City stated that its emphasis on apartments was based on Commerce guidance that encourages higher-density development because per-unit construction costs are generally lower. *Id.* But that response and rationale is in tension with the City's own Racially Disparate Impact Analysis, which acknowledges that Commerce's generalized data are based on cities with higher populations and "may be less applicable to Port Townsend." Ex. 56 at 781. The City's analysis specifically notes that "Port Townsend's high rates of cost burden among renter households demonstrates a need for targeted programs to keep lower-income renters housed." *Id*. Instead of developing targeted local strategies, the City relied on generalized, state-level policy guidance to justify new regulations that may lead to development that increases racially disproportionate displacement pressures.

In addition, RCW 36.70A.070 requires the City to identify areas with a "higher risk of displacement from market forces that occur with changes to zoning development regulations," and also to "establish anti-displacement policies with consideration given to the . . . investments in low, very low, extremely low, and moderate-income housing." RCW 36.70A.070(2)(g), (h). These requirements must be read in conjunction with the GMA's broader mandates to coordinate planning,

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ensure consistency between comprehensive plans and development regulations, and advance planning goals relating to housing. RCW 36.70A.020(4), (5); RCW 36.70A.100; RCW 36.70A.120; RCW 36.70A.210. Jefferson County CPP #6 likewise requires planning policies that consider displacement risk of lower-income households, historically marginalized, and vulnerable populations. *See* Ex. 56 at 722.

Commerce guidance confirms that displacement risk analysis must evaluate how local land use decisions and development regulations create incentives or disincentives for redevelopment and market activity. *See* Ex. 284 at 27–28 (explaining that "[l]ocal land use decisions impact displacement risk by creating incentives or disincentives for market actors"). Commerce encourages jurisdictions to analyze the root causes of displacement, evaluate who benefits and who is burdened by planning decisions and infrastructure investments, and use that information to adopt policies that prevent or reduce displacement. *Id.* In doing so, Commerce indicates several necessary "inputs" for a displacement risk analysis, including: (1) engagement with residents, community organizations, developers, and others with knowledge of displacement; (2) data showing neighborhood change and redevelopment pressure; and (3) staff analysis of how zoning and development regulations may affect redevelopment feasibility. Commerce specifically identifies underutilized parcels and low improvement-to-land value ratios as indicators of redevelopment pressure because such conditions signal areas that are "more feasible to redevelop, potentially displacing current residents." *Id.* at 30.

The City's June 5, 2025, Racially Disparate Impacts Analysis nominally conducted a displacement risk analysis and evaluated existing Housing Element policies, *see* Ex. 56 at 780, but does not satisfy the substantive requirements of RCW 36.70A.070(2)(g) and (h). The City's new regulations encourage denser, more expensive development without assessing whether the development will serve households most in need of affordable housing or reduce displacement pressures. *See* Ex. 272 at 1046 (comment from Habitat for Humanity); Ex. 273 at 836 (comment from Planning Commissioner Viki Sonntag).

First, the City failed to meaningfully identify areas at heightened risk of displacement caused by its newly adopted development regulations. Commerce guidance emphasizes that community engagement is "essential"[13] to confirm data analysis and identify the root causes of displacement, but

[13] Commerce notes that "[w]hile a data-driven displacement risk analysis demonstrates where there is an increased risk of displacement, additional information is needed to help confirm that the data analysis

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it is unclear the extent to which the City genuinely engaged with neighborhood representatives, community-based organizations, tenants, developers, or others *with direct knowledge* of displacement pressures.[14] Without doing so, the City cannot claim that its analyses reflect actual local conditions or adequately capture displacement risk.

The City also failed to analyze how the new zoning and development regulations would alter development incentives and market pressures. Commerce guidance emphasizes that jurisdictions should evaluate how zoning changes may increase displacement risk through redevelopment. Ex. 284 at 31. Yet the City never analyzed whether its new development regulations—including reduced minimum lot sizes and increased density allowances—would encourage redevelopment of existing housing occupied by low- and moderate-income households. Nor did the City evaluate whether areas with underutilized development capacity would become targets for market-rate redevelopment.

Second, the City failed to adopt meaningful anti-displacement policies with consideration of those risks. Commerce guidance states that anti-displacement policies must "provide clear direction for implementation," including direction regarding updated development regulations, permitting processes, fee structures, and programming decisions. Ex. 284 at 41 (Commerce Book 3, Guidance to Address Racially Disparate Impacts). Here, the City never assessed whether development under the new regulations would actually serve households most in need of affordable housing, or whether the regulations should incentivize replacement of existing housing stock with more expensive market-rate development.

Multiple commenters raised precisely these concerns during the review process, warning that denser development under the new development regulations could lead to greater displacement by encouraging existing homes to be torn down and replaced by more intensive, and expensive, development. Ex. 273 at 849 (comment from John Capps and Karelle Anthony) (noting concern that "[i]n Port Townsend, the wrong developers will be attracted to build luxury condos/apartments, debase charming income-diverse neighborhoods, and walk away with high-margin profits, without

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adequately reflects local experience. Community engagement with neighborhood representatives, community-based organizations, developers, local businesses and others is essential to confirm the data analysis and identify the root causes of the displacement risk." Ex. 284 at 30.

[14] The City's Racially Disparate Impact Analysis was completed by an outside consulting group—SCJ Alliance—who claim the community engagement step was part of a "broader outreach for the Comprehensive Plan" and cite to a "Stakeholder Engagement Summary." Ex. 56 at 780. This "Stakeholder Engagement Summary," to our knowledge, is not included in the record.

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addressing a single affordable housing unit" and requesting that the City "[m]odify proposed R-II zoning changes to limit risk of damaging prized assets at the hands of out-of-the-area developers, yet expand affordable housing development opportunities"). The local Habitat for Humanity ("Habitat") chapter commented that, while they support higher maximum densities, the organization "has significant concerns about proposals to increase minimum density requirements" which "could unintentionally hinder affordable housing development by introducing delays and limiting flexibility." Ex. 275 at 821. Habitat explained that increasing minimum density requirements would require them to build and sell homes as condominiums, and they "do not currently build that style housing due to construction costs as well as higher costs to homeowners in the long term." *Id*. at 822 (also noting other potential issues with condominium development such as common interest property requirements, vertical construction that is more capital-intensive, and raised construction insurance costs for developers). Habitat proposed alternative regulations to the City, such as Floor Area Ratio with valuation-based permit fees and proportional impact fees targeting inefficient land use. *Id*. The City did not, however, evaluate those potential alternatives and failed to thoroughly consider how its land use decisions may impact displacement risk by creating incentives or disincentives for developers.

Nor did the Comprehensive Plan or Racially Disparate Impact Analysis demonstrate how future affordable housing investments would offset the potential impacts identified above. As noted by on public commenter, "[w]ithout subsidies or some other market strategy to reduce costs, affordable housing will need to be targeted by appropriate methods"—such as Habitat for Humanity, public land and utilities allocations—which are "not typically feasible within commercial market cost and profit standards." Ex. 273 at 807 (comment from Todd McGuire). Absent such analysis, the City cannot demonstrate compliance with RCW 36.70A.070(2)(e)–(h). With new development regulations encouraging denser, more expensive development and no assessment of whether such development will actually serve those who are in most need of affordable housing, the outcomes are likely to have racially disparate impacts and "could unintentionally hinder affordable housing development." Ex. 275 at 822 (comment from Habitat for Humanity).

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Issues 8, 10, 11, & 12

Does the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Transportation Element, fail to ensure that level of service standard amendments were made concurrent with strategies to accommodate the impacts of development, in violation of RCW 36.70A.070(6)(b) and RCW 36.70A.120?

Does the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Transportation Element, fail to identify transportation facility and service needs in accordance with RCW 36.70A.070(6)(a)(i) through (iii), RCW 36.70A.070(12), and RCW 36.70A.120, including specific actions and requirements for bringing into compliance transportation facilities or services that are below the City's established level of service standards?

Does the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Transportation Element, fail to include a financing plan based on the needs identified in the comprehensive plan, fail to discuss how land use assumptions will be reassessed to ensure that level of service standards will be met, and fail to include demand management strategies, in violation of RCW 36.70A.070(6)(a)(iv)–(vii), RCW 36.70A.120, and RCW 36.70A.020(1), (12)?

Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan violate the Growth Management Act's concurrency requirements under RCW 36.70A.070(6)(b), RCW 36.70A.108, RCW 36.70A.630(4), RCW 36.70A.120?

The City's transportation concurrency framework fails to comply with the GMA because it does not establish meaningful level-of-service ("LOS") standards and instead relies on discretionary, ad hoc determinations of adequacy untethered to adopted infrastructure planning or financially feasible improvements. Under RCW 36.70A.070(6)(b), jurisdictions must "adopt and enforce ordinances" prohibiting development approval when development would cause transportation facilities to fall below adopted LOS standards unless improvements or strategies are made concurrent with development. The statute defines "concurrent with the development" to mean that either the improvements are already in place or there is a financial commitment to complete them within six years. RCW 36.70A.070(6)(b). The transportation element must therefore contain enforceable standards that meaningfully regulate development impacts and ensure infrastructure keeps pace with growth.

The City's Comprehensive Plan proposes adoption of LOS "F" for urban arterial roads (excluding SR20 and Mill Road) replacing the prior LOS "D" standard that is still identified in the City's Capital Facilities Plan, which is itself incorporated by reference into the Comprehensive Plan. Ex. 56 at 523. But LOS "F" effectively eliminates any enforceable concurrency threshold because it represents failure conditions and therefore provides no meaningful floor below which service may decline. Instead, the City's code provides that concurrency approval shall be granted if "an ***adequate***

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1 ***level of service*** will exist after the development's transportation facility impacts are added to"
2 existing usage, cumulative impacts, and demand for new development. PTMC 12.06.070.H
3 (emphasis added). Because the City has adopted LOS F, the "adequacy" determination becomes
4 entirely ad hoc and subjective, in violation of the GMA.
5 The GMA establishes a comprehensive and prospective planning regime requiring
6 jurisdictions to identify *future* infrastructure needs, adopt enforceable LOS standards, and develop
7 funding plans to meet and maintain those standards through improvement projects. *See* RCW
8 36.70A.020; RCW 36.70A.070(3), (6)(b); RCW 36.70A.120. The GMA's planning goals include
9 ensuring adequate public facilities and coordination of development with infrastructure planning. *See*
10 RCW 36.70A.020(1), (12). If a jurisdiction cannot fund transportation improvements necessary to
11 maintain adopted standards, the GMA requires reassessment of the comprehensive plan itself—not
12 discretionary exemptions from concurrency requirements on a case-by-case basis. *See* RCW
13 36.70A.070(3). By adopting LOS F and relying on ad hoc adequacy findings instead of a cogent and
14 enforceable standard, the City effectively abandons the statutory requirement under RCW
15 36.70A.070(6)(b).
16 The City also has not met the GMA's requirement that transportation improvements or
17 strategies—or financial commitments for such—be in place at the time of development. *See* RCW
18 36.70A.070(6)(b). The Comprehensive Plan states that the Capital Facilities Plan identifies the
19 funding sources and investments necessary to provide concurrency. Ex. 56 at 197. Yet the Capital
20 Facilities Plan reveals that while approximately $5.1 million in transportation funding is identified
21 for 2025–2030, more than $114 million in transportation improvements remain unfunded during the
22 same period. Ex. 15 at 14. Without committed funding for the next six years, the City cannot meet
23 the GMA's concurrency requirements under RCW 36.70A.070(6)(b), especially in the context of the
24 massive upzone embodied in Ordinance 3361. The City cannot identify transportation and service
25 needs, or ensure that LOS standards will be met, without defining what "adequate" means, as required
26 by RCW 36.70A.070(6)(a)(i–iv). Nor is there any evidence that the City took into consideration the
27 effects of the last-minute density exception for six- and twelve-unit multiplexes when it selected the
28 new concurrency standard.
29 These LOS standards for vehicles cannot be viewed in a vacuum. The City is not planning
30 merely to allow indefinite traffic jams—the natural (or at least, allowable) result of lowering the LOS

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standard from D to F. Instead, it is planning to mitigate or offset the adverse impacts of lowering the vehicular LOS standard by planning for increased facilities for non-motorized "active" transportation. *See, e.g.,* Ex. 56 at 156 (explaining "[t]his project justifies the proposed reduction of level of service standard to F for traffic in favor of focusing investments on active transportation").

The problem with that approach, however, is while the new Comprehensive Plan update itself acknowledges that the City needs to establish an active transportation LOS standard (*see, e.g.,* Ex. 56 at 158, recognizing the City's "need to develop and Active Transportation Level of Service"), and at times states that such a standard has, in fact, been adopted (*see id*. at 171, stating "a LOS standard for active modes . . . is included"), the City has yet to develop or adopt such a standard, even though the Municipal Code itself states (falsely) that such a standard can be found in the Comprehensive Plan. *See* PTMC 12.06.060.C ("The level of service standards for active transportation shall be as designated in the Comprehensive Plan"). Indeed, the creation of such a standard is identified in the City's Active Transportation Plan as a *future* action, the eventual timing of which is unknown. *See* Ex. 56 at 540 (Active Transportation Plan, recommending that the City "[s]tudy and consider setting a level of service standard for pedestrian and bicycle facilities that supports the vision of linking the community via a comprehensive system of convenient pathways and bikeways"), *id*. at 542 (recommending that the City "[a]dopt and implement a Level of Service standard for active transportation based on Level of Traffic Stress (LTS)"). Nor has the City identified how it will fund necessary improvements. *See id*. at 171 (explaining "[t]he current fee in lieu system for sidewalk may be transitioned to an active transportation impact fee to create equitable and proportional to help build out the connected network. This will require a fee analysis study and update of the City's concurrency ordinance"), *id*. at 523 (same); *id*. at 585 (explaining that the City "has limited funds generated by the sidewalk fee in lieu program"). The City of Port Townsend cannot rationally mitigate the impacts of lowering the LOS standard for vehicles based upon a future, unknown, yet-to-be-developed LOS standard for active transportation, the funding mechanisms for which are uncertain.

Issues 7 & 9

Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Capital Plan Facilities Element, fail to demonstrate financial feasibility and funding sources for infrastructure needed to serve forecasted growth, in violation of RCW 36.70A.070(3), RCW 36.70A.020(1), (12), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #9?

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1 2 3 4 5

Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Capital Facilities and Transportation Elements, authorize development without ensuring that public facilities, services, and utilities will be adequate to support development at the time development is available for occupancy and use without decreasing levels of service below the minimum standards, in violation of and RCW 36.70A.020(1), (4), (10), (12), RCW 36.70A.070(4)(a), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #9?

6 7

The City failed to provide an adequate Capital Facilities Plan under the GMA. The GMA requires a City's comprehensive plan to include a capital facilities plan element consisting of:

8 9 10 11 12 13 14 15 16 17 18 19

> (a) An inventory of existing capital facilities owned by public entities, including green infrastructure, showing the locations and capacities of the capital facilities.
>
> (b) a forecast of the future needs for such capital facilities.
>
> (c) the proposed locations and capacities of expanded or new capital facilities.
>
> (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and
>
> (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

RCW 36.70A.070(3).

20 21 22 23 24 25 26 27 28

The City's Comprehensive Plan simultaneously adopted sweeping density changes intended to increase development capacity, repeatedly acknowledged existing infrastructure deficiencies and unfunded capital needs, and relied upon and incorporated by reference a Capital Facilities Plan ("CFP") that was adopted before the City proposed the density increases that have now been adopted.[15] *See* Ex. 56 at 58 (highlighting that "[i]nfill and density are needed to address housing and infrastructure costs," but that "small and yet costly infrastructure extensions have the large impact on the complexity of development even for a single existing lot").

29 30

[15] Much of what the City relied on involved out-of-date assumptions. The EIS was from 1996. Ex. 53. The basis for traffic projections through 2045 was derived from a 2009 Functional Transportation study. Ex. 56 at 155. The water system plan was from July 2019 and only projected need through 2036, not 2045. Ex. 18 at 53.

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1 The Comprehensive Plan states that the Capital Facilities Element is intended to
2 "accommodate orderly growth" and identify "the type, timing, and scale of public investment
3 necessary to provide public services for anticipated demand through to the year 2045." Ex. 56 at 189.
4 The Capital Facilities Element expressly identifies deficiencies in existing facilities and limitations
5 in future funding, simultaneously acknowledging that "[i]nfrastructure is a significant initial cost
6 when developing housing" and is a "hurdle for affordable housing." Ex. 15 at 189–90 ("Many of
7 [Port Townsend's] facilities . . . require significant reinvestment."). Rather than addressing specific
8 strategies for each public facility in the Comprehensive Plan, the City incorporates numerous
9 "functional plans" that govern transportation, sewer, stormwater, water, and parks infrastructure
10 independently. *Id.* at 192 (noting that these functional plans "may be consulted for more detailed
11 information regarding existing and planned facilities, service standards, and facility development").
12 The City further explains in the Comprehensive Plan that the "Capital Improvements Plan" is "the
13 main tool to enact the Capital Facilities Element and meet GMA requirements." *Id*. at 192
14 (referencing a Capital Improvements Plan, which appears to be the 2025-2030 Capital Facilities Plan
15 adopted on December 16, 2024).
16 The City's reliance on the 2025-2030 CFP is inadequate in multiple respects. First, the CFP
17 was prepared and adopted *before* any of the new regulations under Ordinance 3361 were incorporated
18 or formally considered by the City during the Comprehensive Plan review process. Ex. 15 at 1
19 (adopted via Ordinance 3344 on December 16, 2024). As discussed above, Ordinance 3361 adopted
20 substantial changes to the City's development regulations specifically intended to increase housing
21 capacity. As a result, the CFP necessarily relied on outdated assumptions regarding future land use,
22 population, transportation demand, stormwater runoff, water demand, wastewater capacity, on-street
23 parking, and other infrastructure impacts. The Comprehensive Plan, and incorporated CFP, could not
24 have meaningfully forecasted future infrastructure needs, evaluated concurrency, or established a
25 financially feasible plan for the growth that the City authorized afterward, especially when the City's
26 new analysis is that "[i]n order to meet future housing need allocations, it is expected that the city
27 will need to grow at a faster rate in the future than it has in the past." Ex. 56 at 744. That is precisely
28 the type of disconnected planning the GMA is designed to eliminate.
29 The Comprehensive Plan states that the CFP "draws from several specialized City plans" and
30 provides only a "concise overview," deflecting detailed analyses and inventories to those individual

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plans. Ex. 56 at 192. But if those underlying plans predate the City's new development regulations—as most of them do—then the incorporated analysis necessarily fails to undertake the required capital facilities planning under RCW 36.70A.070. For example, the CFP incorporates by reference the City's 2019 Stormwater Management Plan, which calculates future land use and land cover to predict future potential runoff impacts. *See* Ex. 13 at 37 (2019 Stormwater Management Plan). "Underdeveloped and remaining developable lands are assumed to be developed to their full, allowable potential." *Id*. But in 2019, the "full, allowable potential" was quite different from the new density increases under Ordinance 3361 and cannot offer a realistic data point for runoff modeling and meaningful stormwater management.

Second, the CFP repeatedly acknowledges that existing infrastructure funding is already inadequate. The CFP states that Port Townsend faces "limits to funding based on the relatively small scale of [its] tax base" and must make "difficult decisions about infrastructure investment priorities." Ex. 15 at 4. The CFP identifies approximately $70 million in funded infrastructure needs alongside approximately $133 million in unfunded needs. *Id.* at 4; Ex. 15 at 14. For funded projects, the City has identified generalized funding sources, but there does not appear to be a tabulation of the accuracy, reliability, and specific source of funding for each purpose. *See* Ex. 15 at 14. RCW 36.70A.070(3) requires more than a hypothetical or aspirational plan for future infrastructure; it requires a financially feasible capital facilities element and six-year plan that is coordinated with the City's land use element and anticipated development changes, including those changes needed to meet the City's housing allocations.

A capital facilities element cannot rely on an outdated plan while the land use element continues to expand the City's development potential without any coordinated analysis. The GMA requires concurrency and internally coordinated planning. *See* RCW 36.70A.070(3)(e); *see also* Ex. 56 at 197 ("To serve new growth and development, the GMA requires that certain facilities and services be provided concurrent with new development . . . Facilities that are subject to concurrency in the City are transportation, water, wastewater, and stormwater."). The City must therefore evaluate whether transportation (including "active transportation"), sewer, stormwater, water, parks and other capital facilities are adequate, and will continue to be adequate, concurrent with the increased demand and density anticipated by the Comprehensive Plan. *See* Ex. 15 at 6 ("The Capital Facilities Plan is not merely a wish list, and should account for meeting critical maintenance and planning for the

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1 density allowed for in the Comprehensive Plan.") Here, the City has instead relied on a CFP that was
2 developed before the development code changes were adopted—precluding the City's evaluation of
3 how the increase in allowable units and density will materially affect population, traffic, parking,
4 utilities, and stormwater—while simultaneously acknowledging that major infrastructure needs
5 remain unfunded and under-resourced. *See* Ex. 275 at 115 (Dec. 2, 2025, Council Review of Land
6 Use) ("Due to the current cost burden, the City lacks the resources necessary to make strategic
7 investments in infrastructure to support growth in a form consistent with the community's
8 desires.").[16]

9 In turn, the City's actions also violate the GMA's core planning goals and coordination
10 requirements. RCW 36.70A.020(1) and (12) require urban growth to occur where adequate public
11 facilities and services exist or can be provided to serve development at the time the development is
12 available without reducing service levels below adopted standards. Here, the City dramatically
13 increased allowable density while acknowledging that transportation, water, wastewater, stormwater,
14 and parks remain under-resourced and inadequate to support that level of growth.

15 Finally, RCW 36.70A.070(3)(e) specifically requires reassessment of the land use element if
16 funding falls short of meeting existing needs. The City's CFP expressly acknowledges extensive
17 unfunded infrastructure obligations. Ex. 15 at 4; Ex. 275 at 115. Yet rather than coordinating the
18 assessment of land use capacity, new development, and available infrastructure, the City authorized
19 upzoning allowing six-unit multiplexes on 5,000 square-foot lots in that zone and twelve-unit
20 multiplexes on 10,000 square-foot lots, set minimum densities across all residential zones, eliminated
21 any limit on the number of units in any single structure in the R-II zone, increased height limits across
22 R-II, R-III, and R-IV zones, removed all off-street parking requirements, and increased maximum
23 lot coverage. *See* Ex. 272 at 626-28.

24 In adopting Ordinance 3361, the City failed to ensure that its development regulations,
25 infrastructure planning, and capital financing were coordinated and financially feasible before
26 dramatically increasing allowable density and development throughout the City, in violation of RCW
27 36.70A.070(3), RCW 36.70A.020, RCW 36.70A.100, RCW 36.70A.120, RCW 36.70A.210, and
28
29

30 [16] For the same reasons, the City also violated RCW 36.70A.100, which requires internally coordinated comprehensive plans, and RCW 36.70A.120, requiring development regulations to be consistent with the comprehensive plan.

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Jefferson County CPP #9. The net result is that not only did the City violate its own public participation requirements and not only is there no evidence that the sweeping changes embodied in Ordinance 3361 are likely to benefit those most in need of affordable housing, but there is also no evidence that public infrastructure and utilities will even be adequate to support anticipated growth.

REQUEST FOR RELIEF

Under RCW 36.70A.302, the Board may determine that part or all of a comprehensive plan or development regulations are invalid if the Board finds "that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of [the GMA]." RCW 36.70A.302(1)(b); *see also Friends of the San Juans v. San Juan Cnty.,* GMHB No. 10-2-0012, 2010 WL 5857727 *20 (Oct. 12, 2010) (concluding that a finding of invalidity is a remedy and the burden of demonstrating the challenged action substantially interferes with the fulfillment of the GMA's goals is on the Petitioner). Based on the foregoing facts, Petitioners respectfully request that the Board find that Ordinance 3361 fails to comply with the goals and requirements of the Growth Management Act and that the adoption of that ordinance is clearly erroneous.

The City's adoption of Ordinance 3361 substantially interferes with the planning goals of the GMA by opening the door to widespread development without ensuring compliance with concurrency requirements, failing to provide adequate assurances that the resulting development will serve those most in need of affordable housing, and even adopting sweeping changes aimed at fostering commercial development that may displace those who are most in need. In doing so, Ordinance 3361 materially frustrates the GMA's core purpose of coordinated, planned growth that aligns development with adequate public facilities and housing needs. *See* RCW 36.70A.020. The Board should therefore invalidate Ordinance 3361 and remand the matter back to the City of Port Townsend for action that is compliant with the Growth Management Act.

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1 Dated this 29th day of May, 2026.
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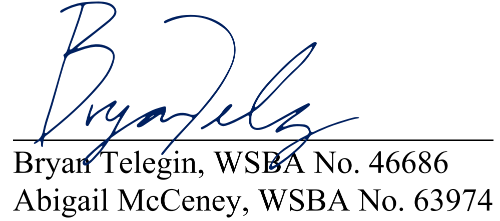
3 Respectfully submitted,
4 TELEGIN LAW PLLC
5
6 By: 
7 Bryan Telegin, WSBA No. 46686
8 Abigail McCeney, WSBA No. 63974
9 *Attorneys for Petitioners Todd McGuire,*
10 *Mary McCurdy, John Capps, and Affordable Hometown Port Townsend*
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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2026, I caused to be served a true and correct copy of the foregoing PETITIONERS' PREHEARING BRIEF via email on each of the persons listed below:

Counsel for City of Port Townsend

Austin M. Watkins (attorney)	awatkins@cityofpt.us
Lonnie Mickle (legal assistant)	lmickle@cityofpt.us

Dated: May 29, 2026

TELEGIN LAW PLLC

By: ______________________
Bryan Telegin

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ATTACHMENT A

Department of Commerce Comments

STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • 360-725-4000
www.commerce.wa.gov

DRAFT

December 3, 2025

City Council
City of Port Townsend
c/o Adrian Smith, Long Range Planner

Sent via electronic mail: asmith@cityofpt.us

Re: 60-Day Notice of Intent to Adopt Amendment – Combined Comprehensive Plan and Development Regulation Amendment

Dear City Council,

Thank you for the opportunity to comment on the City of Port Townsend's (City's) draft comprehensive plan and development regulations. We appreciate the ongoing coordination with our agency as you work to achieve the community's vision consistent with the goals and requirements of the Growth Management Act (GMA). Growth Management Services received the proposed amendment on October 2, 2025, and processed it with material identification number 2025-S-9960.

Your submission represents a great deal of work towards the 2025 periodic update of your comprehensive plan, due December 31, 2027.

We have reviewed your submittal using Commerce's Periodic Update Checklist-Updated July 2024, the Expanded Housing Checklist, and the Supportive Housing Types Review Checklist. We encourage you and your community to consider the following as you finalize your drafts:

Comprehensive Plan:

1. Land Use Element

   During our review, we did not find a future land use map showing city limits and UGA boundaries, as required by RCW 36.70A.070. We recommend adding an updated future land use map or maps to the land use element or in an appendix prior to final adoption.

2. Housing Element

   a. Based on our review of the materials provided, we recommend including a summary of your LCA within the housing element and the supporting analysis in an appendix. Please see Chapter 3 in Guidance for Updating Your Housing Element for additional information on meeting this requirement.
   b. Thank you for including information on barriers to affordable housing and proposed actions to address those barriers (pages 18-28) and in Appendix B. In consideration of recent Growth Management Hearings Board case findings[1], we recommend identifying the number of units that are likely to require subsidies and/or incentives to be affordable at the designated income levels and the amount of subsidy required. Guidance on completing this requirement can be found in Chapter 4 of Guidance for Updating Your Housing Element (pages 60-62). Also see Appendix B: Adequate provisions checklists. For further advice pertaining to adequate provisions, local governments should consult with their legal counsel.

3. Transportation Element

Development Regulations:

4. Accessory Dwelling Units (ADUs):
   a. As presented, the City's ADU regulations do not appear to allow for the siting of detached ADUs at a lot line when abutting a public alley. We recommend specifying this provision in the City's code to align with RCW 36.70A.681(1)(i).
   b. During our review, we did not find language in Port Townsend Municipal Code (PTMC) 17.16.020 allowing conversion of existing structures to ADUs even if they violate current code requirements for setbacks of lot coverage. We recommend adding this specific provision to the City's development regulations to align with RCW 36.70A.681(1)(j).
   c. After December 31, 2025, preemptive laws will supersede, preempt, and invalidate any conflicting local development regulations for ADUs. Please see: Preemptive state laws for infill housing fact sheet

5. In our review, we did not find regulations for temporary shelters and encampments on property owned or controlled by a religious organization are consistent with statutory standards. We recommend updating your code as needed to align with the requirements in RCW 35.21.915.

[1] *Futurewise et al. v. City of Mercer Island, Final Decision and Order, Case No. 25-3-0003*

DRAFT

6. Based on our review, we did not find regulations allowing a bonus density for affordable housing development on religious property, as required by RCW 36.70A.545. We recommend updating your code as needed to align with these statutory requirements, including adding "religious organization" as a defined term to the city's code.

7. As presented in PTMC 17.31.030, permanent supportive housing (PSH) and transitional housing do not appear to be allowed uses in the Rainier Street/Upper Sims Way Subarea which allows for residential uses. We recommend amending the code to allow for PSH and transitional housing in this subarea to align with the requirements in RCW 35A.21.430.

8. Co-living:
    a. Table 17.16.020 appears to prohibit lodging houses (i.e. co-living) in the R-II zone which allows multifamily dwellings and multiplexes at a density of 5-12 units. We believe this is inconsistent with RCW 36.70A.535(1), which requires co-living to be allowed on any lots zoned to allow at least six multifamily units. We recommend modifying city code to allow lodging houses (i.e. co-living) on all lots which allow for at least 6 multifamily residential units per lot.
    b. Table 17.16.030 requires a minimum density of 16-32 co-living units depending on the zoning district, which we believe is inconsistent with RCW 36.70A.535(2)(b). We recommend removing minimum density requirements for lodging houses (i.e. co-living).
    c. Based on our review, there are several other provisions for co-living not specified in the city's proposed development regulations. We recommend utilizing the Co-living Checklist (January 2025) as a tool to develop the city's co-living regulations and better align with the requirements in RCW 36.70A.535. After December 31, 2025, preemptive laws will supersede, preempt, and invalidate any conflicting local development regulations for co-living. Please see: Preemptive state laws for infill housing fact sheet

As a friendly reminder, copies of adopted amendments shall be submitted to Commerce within ten days after final adoption (RCW 36.70A.106(2)).

Again, we appreciate the opportunity to work with the City and provide comments on the proposed amendments. We are available for technical assistance and, if requested, can attend upcoming meetings with your Planning Commission and/or Council. If you wish to discuss any of the comments presented in this letter, you may reach me at Carol.Holman@commerce.wa.gov or 360-725-2706.

Sincerely,

DRAFT

Carol Holman, MUP
Western Regional Manager
Growth Management Services

cc:
David Andersen, AICP, Managing Director, Growth Management Services
Valerie Smith, AICP, Deputy Managing Director, Growth Management Services
Ben Serr, AICP, Eastern Regional Manager, Growth Management Services
Anne Fritzel, AICP, Housing Section Manager, Growth Management Services
Laura Hodgson, Housing Planning and Data Manager, Growth Management Services
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