

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' REPLY BRIEF

*[W]hile 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.*

City of Burien v. Cent. Puget Sound Growth Mgmt. Hearings Bd.
113 Wn. App. 375, 388, 53 P.3d 1028 (2002)

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1
2 **Port Townsend Municipal Code**

3 PTMC 20.042
4 PTMC 20.04.080(a)(4)2
5 PTMC 17.16.0302, 4
6 PTMC 20.04.010.B2
7 PTMC 17.16.010.B.24
8 PTMC 12.06.070.H14

9
10 **TABLE OF EXHIBITS**

11 **Exhibit No.**

12 Ex. 56*2, 3, 4, 13, 14, 15
13 Ex. 129**5
14 Ex. 273*10, 13
15 Ex. 274*3
16 Ex. 275*3
17 Ex. 283*7, 8
18 Ex. 287**8, 11
19 Ex. 325**14
20 Ex. 332**6, 7, 8, 9
21 Ex. 333**6, 7, 8, 9

22 * *Exhibit included with Petitioner's Prehearing Brief*

23 ** *Exhibit included with City's Prehearing Brief*

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1 those procedures. The City has established those procedures at PTMC 20.04, which require, among
2 other things, that “[t]he planning commission shall hold a public hearing on **any** text amendment
3 to the land use code and make a recommendation to the city council, using the decision criteria at
4 PTMC 20.04.080(a)(4)” (emphasis added). The plain language of this section of the Port
5 Townsend Municipal Code clearly requires the Planning Commission to hold a public hearing on
6 “any” text amendment, without qualification.

7 In their Prehearing Brief, Petitioners argued that the City violated both of these
8 requirements in its passage of the new density exception for six- and twelve-unit multiplex projects
9 in the R-II zone, now codified at Table 17.16.030 of the PTMC.² This new code language—which
10 greatly expands the Planning Commission’s recommended density limit of 32 units per 40,000
11 square feet, in what is by far the City’s largest zoning district—was added to the proposed text of
12 Table 17.16.030 *after* all hearings had ended before the City’s Planning Commission, and indeed
13 was not added to the proposed text of the PTMC until after all hearings had ended before the
14 Council itself. The City admits this in its brief. *See* City Br. at 12 (explaining “the exception text
15 was included in the ‘Errata Sheet’ along with the December 8, 2025 Periodic Update material”).

16 The fact that the Planning Commission never formally reviewed this sweeping density
17 exception for six-and twelve-unit multiplex projects (nor their environmental and infrastructure
18 impacts) across the R-II zoning district violates the plain language of PTMC 20.04.080(a)(4),
19 which, as discussed above, requires the Commission itself to hold a hearing on “any text
20 amendment.” The City does not dispute our reading of the code. Instead, it argues that requiring
21 the Planning Commission to hold a hearing on every text amendment would result in an “endless
22 loop of the Council referring amendments back to the Planning Commission, and unelected
23 advisory board.” City Br. at 6. But the Planning Commission plays a critical role in the City’s
24 planning process; it was the City itself that adopted this requirement as part of the official text of
25 the Port Townsend Municipal Code; and it did so specifically to meet its obligations under RCW
26 36.70A.140. *See* PTMC 20.04.010.B (explaining that the requirements of PTMC Chapter 20.04
27 “establish[] the city’s public participation program as required by RCW 36.70A.140”). The City
28 must therefore comply with those requirements under the GMA, and the Planning Commission
29

30 ² As discussed in Petitioners’ Prehearing Brief, this exception is part of the maximum housing density
in the R-II zone, which is defined as “32 units, ***except 6 units per 5,000 square feet for infill projects with
10,000 square feet or less of lot area.***” *See* Ex. 56 at 869 (emphasis added).

1 was required to hold a public hearing on the City’s new six- and twelve-plex density exception
2 prior to its adoption by the Council.

3 As discussed above, this case is also about truth in labeling. The City is correct that it did,
4 in fact, provide opportunity for public comment on the new six- and twelve-unit density exception
5 at the Council’s regular business meetings on December 8 and 15, 2025. And it did, in fact, respond
6 to those comments. *See* City Br. at 13–14 (discussing public comment at Council meetings). The
7 problem is that the City also repeatedly misrepresented the scope of the proposed change embodied
8 in the new six- and twelve-unit multiplex exception that the Council proposed and adopted after
9 the Planning Commission completed its review.

10 This can be seen in the comment response matrix included in the agenda materials for
11 Council’s regular business meetings in December of 2025, which may be found in the
12 administrative record at Exhibit 274, pages 904 to 936 (December 8 meeting), and Exhibit 275,
13 pages 815 to 847 (December 15 meeting). In that document, a total of 31 times the City responded
14 to concerns about the new density exception by asserting that the code already allowed up to six
15 units on every 5,000 square-foot lot in the R-II zone, in the form of converting an existing single-
16 family residence into four units and then adding two ADUs.³ It was on this basis that the City’s
17 planning staff presented the six- and twelve-unit multiplex density exception as representing “no
18 net change, no net increase in density [as] allowed in the R-II [zone].”⁴ The text of Ordinance 3361
19 was specifically amended to include this rationale for the new multiplex density exception.⁵

20 But as discussed in Petitioners’ Prehearing Brief, the new density exception for six- and
21 twelve-unit multiplex projects is not about simple “conversions” of existing single-family
22 residences. It is about allowing completely new six- and twelve-unit multiplex projects in
23 completely new structures, under completely new (and far more generous) bulk and dimensional
24 allowances, that may now be built after tearing down existing housing stock. That represents
25 something that is completely new, as the prior code (a) did not allow new six- or twelve-unit
26

27 ³ *See* Ex. 274 at 904–936 (repeatedly stating “[t]he current development code allows 6 units per R-II
28 5,000 sq ft lot in the form of converting home into a 4plex and adding 2 ADU’s”); Ex. 275 at 815–847 (same).

29 ⁴ Pet.’s Prehearing Br. at 6 n.4 (quoting Planning Director Emma Bolin).

30 ⁵ *See* Ex. 56 at 5 (Ordinance 3361, §1, ¶3) (finding that “[t]he combination of a converted single family
home into fourplex and 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”).

1 multiplexes in the R-II zone, and (b) even for new four-plex developments, the old code required
2 a 20,000 square-foot lot (not a 5,000 or 10,000 square foot lot). *See* Former PTMC 17.16.010.B.2
3 (Ex. 56 at 857). In this way, the City’s repeated justification of the new six- and twelve-unit
4 multiplex exception as “no net change,” and as the “functional equivalent” of what was allowed
5 before, materially misrepresents the scope of what the Council adopted. Through these false
6 equivocations, the City did not satisfy its duty to be “clear and consistent in informing the public
7 about the authority, scope and purpose of proposed planning enactments,” as the GMA requires.

8 Finally, it is surprising to learn only now that the City believes the new multiplex exception
9 would allow the construction of new six- or twelve-unit structures on literally any lots within the
10 R-II zoning district that are 10,000 square feet or less in size. The City makes this admission at
11 page 16 of its prehearing brief, where it provides a simple two-part decision tree for determining
12 where and when the exception would apply, consisting solely of the questions “Is the property
13 zoned R-II?” and “If yes, is the lot 10,000 SF or less?” City Br. at 16. The City says that if the
14 answer is “yes” to those questions, then “the property likely qualifies for the R-II sixplex
15 exception.” *Id.*

16 We say this is surprising because, reading the text of the new six- and twelve-unit multiplex
17 exception, one would think the word “infill” plays some role in limiting the scope of the
18 exemption—*i.e.*, that in addition to only applying to lots that are less than 10,000 square feet in
19 size, the exception is also limited to so-called “infill projects,” as that limitation is stated expressly
20 in the adopted code.⁶ In our Prehearing Brief, we attempted to offer a possible interpretation of
21 what this “infill” limitation might mean (though the City has never *actually* said what it means).
22 *See* Pet.’s Prehearing Br. at 7–8. In response, the City now says it means nothing—that the six-
23 and twelve-unit multiplex exception would likely apply to any lot within the R-II zoning district
24 that is 10,000 square feet or less in size. In other words, the City now says that the only limitation
25 on tearing down existing housing stock to build new six- and twelve-unit multiplexes is the size
26 of the lot, not whether the project would also qualify under some limited definition of “infill.”

27 This, in turn, means the new density exception effectively swallows the rule. On its face,
28 the adopted baseline density limit in the City’s R-II zoning district is 32 units per 40,000 square
29

30 ⁶ *See* PTMC Table 17.16.030 (Ex. 56 at 869: expressing limit at “32 units [per 40,000 square feet],
except 6 units per 5,000 square feet **for infill projects** with 10,000 square feet or less of lot area”) (emphasis
added).

1 feet, with an exception for multiplex “infill projects” on lots up to 10,000 square feet in size. But
2 if the only limit for this exception is lot size, then there is effectively no limit at all. Every lot
3 within the R-II zoning district either (a) is currently 10,000 square feet or less in size, or (b) could
4 be subdivided into two or more parcels below that limit. This, in turn, means that literally every
5 lot in the R-II zone either is currently eligible for the multiplex density exemption or could be
6 modified to be exempt through the subdivision process. The result is that the only true density limit
7 is the “exception” itself, which equates to the same 48-unit-per-block density limit that the
8 Planning Commission rejected after attempting to respond to public concerns while also
9 complying with the GMA. Put another way, what the Council did was to adopt the same, higher
10 density limit that the Commission rejected, framed misleadingly as a limited exception to the
11 lower, 32-unit limit that the Commission recommended. That is not “truth in labeling.”⁷

12 Ultimately, the multiplex density exception is no exception at all. What the Council
13 adopted is simply the same 48-unit-per-block density limit that the Planning Commission rejected.
14 That exception should have been sent back to the Planning Commission for another hearing prior
15 to the Council’s decision. Nor did the Council truthfully and accurately disclose the full scope of
16 the exception, repeatedly (and falsely) equating it to the existing code’s allowance for conversion
17 of an existing single-family residence plus two ADUs. For these reasons, the Board should grant
18 our petition on Issue 13 and find that the City did not satisfy its public participation obligations
19 under the GMA.

20 **Issues 1—Failure to demonstrate sufficient capacity of land for all income brackets**

21 In their Prehearing Brief, Petitioners argued that the City failed to comply with RCW
22 36.70A.070(2)(c), which requires every GMA-planning jurisdiction to “[i]dentify sufficient
23

24 ⁷ Nor is this new, unlimited interpretation of “infill”—presented for the first time in the City’s
25 brief—consistent with how that concept was presented to the public during the City’s planning process.
26 The City argues that the idea of allowing sixplexes in the R-II zone was discussed prior to the Council’s
27 post-hearing introduction of the multiplex density exception discussed above. *See* City Br. at 9–10. That is
28 true, insofar sixplexes were discussed (and rejected) by the Planning Commission in relation to the higher,
29 48-unit-per-block density alternative that even the Council purported to reject. But even then, the concept
30 of “infill” was presented as allowing larger sixplex developments on parcels that are truly vacant or
underutilized—not on any parcel whatsoever. *See* Ex. 129 at 12 (depicting “infill opportunity lots” where
no current residential uses exist). The idea that literally any development—on any parcel in the R-II zone
below the 10,000 square-foot size threshold—would qualify as “infill” is entirely new. To our knowledge,
the City never disclosed this sweeping scope of the multiplex exception prior to filing its prehearing brief.
As above, this is not “truth in labeling.”

1 capacity of land for housing including, but not limited to, . . . housing for moderate, low, very low,
2 and extremely low-income households.” *See* Pet.’s Prehearing Br. at 16–21. Our argument was
3 that in performing its Land Capacity Analysis (“LCA”), the City aggregated the income bands
4 listed in this rule; and in doing so, failed to determine if there would be sufficient capacity for each
5 discrete income band under its proposed (and now adopted) changes to the Zoning Code, including
6 the massive upzone for six- and twelve-unit multiplexes discussed above. *Id.*

7 In response to this argument, the City argues it performed an “in-house ‘Disaggregation
8 Analysis,’” where it addressed the needs of each of the specific income bands referenced above
9 (namely, for moderate, low, very low, and extremely low-income households). City Br. at 19. But
10 oddly, the City does not even cite RCW 36.70C.070(2)(c), instead focusing exclusively on a
11 different rule at RCW 36.70C.070(2)(a). In doing so, the City misses the point of our argument.

12 The GMA contains two separate, but interrelated rules related to providing sufficient
13 housing capacity for the various income bands referenced above. The first of those rules—sub-
14 section (2)(a) of RCW 36.70A.070—requires the City to provide an “inventory and analysis of
15 existing and projected housing needs that identifies the number of housing units necessary to
16 manage projected growth, as provided by the department of commerce, including: (i) Units for
17 moderate, low, very low, and extremely low-income households.” This section of the GMA
18 essentially requires the City to (1) identify the number of units that currently exist for moderate,
19 low, very low, and extremely low-income households, and then (2) to identify the number of units
20 that need to be provided in the future for those same income bands. In short, this requirement—
21 the “(2)(a)” requirement—is about identifying the number of units needed to accommodate
22 households in each income band.

23 It is on this point that the City argues that it performed an “in-house” disaggregation
24 analysis (*see* City Br. at 19), citing Exhibits 333 and 332, neither of which (to our knowledge)
25 were ever shared with the City Council, the Planning Commission, or the public—hence the name
26 “in-house.” Both of those documents contain a table, identical in both instances and excerpted at
27 page 19 of the City’s brief, in which City planning staff calculated (1) the number of units needed
28 for each income band, (2) the number of pending units for each band, (3) the City’s “remaining
29 need” for units in each band, (4) the total number of units likely to be provided under the City’s
30 then-current zoning code for each band, and (5) whether the then-current zoning code was likely

to provide a surplus or deficit of units for each income band. The result of the City’s analysis was that the current zoning code was likely to provide a surplus of housing for every income band, except non-PSH housing for households making between 0 and 30%, for which the City calculated an anticipated deficit of 314 units over the 20-year planning horizon.⁸ In other words, for purposes of RCW 36.70A.070(2), City staff calculated that the current zoning code would provide a surplus of housing for *all* income bands, except for non-PSH housing for the lowest group that is most in need of affordable housing. A copy of the referenced table in Exhibits 333 and 332 where the City made these calculations is excerpted below.

Figure 1: Surpluses and Deficits for Income Brackets Under Then-Current Zoning Code

Income Band	Housing Needs	Aggregated Housing Needs	Pending Units	Remaining Needs	Total Capacity	Surplus/Deficit
0-30 PSH	124		45	79	99	20
0-30 Non PSH	807		64	743	429	-314
30-50	286		62	224	648	424
50-80	186	1403	70	116	648	532
80-100	75		60	15	1326	1310.5
100-120	94	169	66	28	1326	1297.5
120+	76	76	451	-375	2735	3110
			818		7210	

Source: Ex. 333. *See also* Ex. 332 (same)

The problem with the City’s argument, however, is that we have never argued that it failed to disaggregate its analysis for purposes of identifying the number of units needed to serve these various income categories. Indeed, our Prehearing Brief even depicted the charts from the City’s Land Capacity Analysis providing much of the same information about how many units are needed for each income band. *See* Pet.’s Prehearing Br. at 18–19. Nobody disputes that the City knows how many units are needed in the future for moderate, low, very low, and extremely low-income households, just as RCW 36.70A.070(2)(a) requires.⁹

Instead, what we dispute is that the City never complied with RCW 36.70A.070(2)(c), which

⁸ In general, non-PSH housing in the 0 to 30% AMI range “simply refers to extremely low-income housing needs without supportive services”—*i.e.*, general housing affordable to the lowest income band. *See* Washington Dep’t of Commerce, *Establishing Housing Targets for Your Community* at 24 (July 2023), available at <https://deptofcommerce.app.box.com/s/chqj8wkl5ennranyb3ewzgd4w0e5ve3a>.

⁹ We do, however, question how the City calculated the “Total Capacity” column of the figure above, which reports the total numbers of units likely to be provided for each income band. Exhibits 333 and 332 do not explain those numbers or clarify if the City evaluated local market conditions as Commerce’s Book 2 requires. *See* Ex. 283 at 33–34. *See also* WAC 365-196-410(2)(d)(v)(A) (“calculations for determining residential capacity in each zone” must include “the data and assumptions used for acreages, densities, and market factors influencing development”).

1 requires the City to “[i]dentify *sufficient capacity of land* for housing including, but not limited to . .
2 . housing for moderate, low, very low, and extremely low-income households” (emphasis added).
3 Unlike the (2)(a) requirement above, this “(2)(c)” requirement is not, in fact, about identifying how
4 many units are needed for all income bands under the *existing* zoning code. Rather, it is about
5 determining whether those needs will *actually be met* under the *new* zoning code. This is made clear
6 at WAC 365-196-410, which provides, *inter alia*, that the City must identify “[t]he **zoning changes**
7 **needed** to provide a sufficient capacity of housing at all economic segments and an estimate of
8 housing capacity by income segment **under the updated zoning**,” and to “demonstrate that the **zoning**
9 **changes** create housing capacity for each economic segment equal to or greater than allocated housing
10 needs.” WAC 365-196-410(2)(d)(v)(C) (emphasis added). Importantly, in performing this (2)(c)
11 analysis, the City’s calculations must be “consistent with the [Department of Commerce’s] technical
12 guidance for performing a land capacity analysis,” *id.* at (D), which in turn require it to evaluate
13 whether anticipated market-rate development will actually serve each specific income band under the
14 proposed zoning changes.¹⁰ In short, unlike the “needs” assessment under RCW 36.70A.070(2)(a)
15 and the existing zoning code, the assessment required by RCW 36.70A.070(2)(c) specifically requires
16 the City to determine whether the *new* zoning code will actually meet those needs on an income-band-
17 by-income-band basis, and specifically whether it will do so under local market conditions.¹¹

18 This, the City did not do. In Exhibit 332, the city evaluated the total number of housing
19 units that can be accommodated under the 32-unit-per-block density limit in the R-II zone
20 recommended by the Planning Commission, finding that number to be 23,280 units over 727.5
21 acres of land, as shown in Figure 2 below. And in Exhibit 333, the city evaluated the total number
22 of housing units that could be accommodated under the 48-unit-per-block density limit in the R-II
23 zone rejected by the Planning Commission, finding that number to be 34,920 housing units across
24 the R-II zone, as shown in Figure 3 below. In neither of these cases, however, did the City
25 determine if the proposed zoning changes would actually provide sufficient capacity for housing
26

27 ¹⁰ See Ex. 283 at 33–34 (Commerce Book 2, requiring jurisdictions to determine, *inter alia*, “[w]hich
28 income levels are likely to be served by new market-rate housing production in each zone category,” and “[i]n
29 which zone categories is it feasible for affordable housing developers to produce new income-qualified
30 affordable housing projects, assuming typical sources of funding and financing are available”).

¹¹ On this point, see also WAC 365-196-325(1)(a) and Exhibit 287 at 21 (explaining that if a city’s
LCA finds current regulations will not provide sufficient capacity for all income categories, “[t]hen the
jurisdiction must return to Steps 1–5 to recalculate capacity and compare to needs” under proposed changes).

for all income bands—specifically, whether they would actually close the 314-unit gap that the City identified for non-PSH households in the 0–30% AMI level who are most in need of affordable housing. The City merely aggregated the total number of units allowable in each zone under each alternative, regardless of which income levels will likely benefit from new housing units. It is this failure that Petitioners challenge, and they do so specifically under RCW 36.70A.070(2)(c), a provision of the GMA that the City does not even cite in its brief.

Figure 2: Total Units in R-II under 32-Unit Density Limit

Zone	Acreage	Assumed Density per Acre per LCA	Residential/ Commercial Split per LCA	Assumed Density per Acre with 32 Units/R-II Block	Total Unit Capacity under LCA	Total Unit Capacity Under 2025 Periodic Update	
C-I/MU	14.1	36	0.75		381	36	381
C-II/MU	20	39.4	0.75		591	39.4	591
C-II	4.6	30	0.5		69	30	69
C-III	3.8	80	0.15		46	80	46
M-C	25.7	30	0.5		386	30	386
R-I	123.5	4	1		494	4	494
R-II	727.5	32	1	23280		8	23280
R-III	53.8	48	1		2582	12	2582
R-IV	10.7	60	1		642	32	642
					28470		28470

Source: Ex. 332

Figure 3: Total Units in R-II under 48-Unit Density Limit

Zone	Acreage	Assumed Density per Acre per LCA	Residential/ Commercial Split per LCA	Assumed Density per Acre with 48 Units/R-II Block	Total Unit Capacity under LCA	Total Unit Capacity Under 2025 Periodic Update	
C-I/MU	14.1	36	0.75		381	36	381
C-II/MU	20	39.4	0.75		591	39.4	591
C-II	4.6	30	0.5		69	30	69
C-III	3.8	80	0.15		46	80	46
M-C	25.7	30	0.5		386	30	386
R-I	123.5	4	1		494	4	494
R-II	727.5	48	1	34920		8	34920
R-III	53.8	48	1		2582	12	2582
R-IV	10.7	60	1		642	32	642
					40110		40110

Source: Ex. 333

1 Ultimately, the City was required to examine whether the adopted changes to the zoning
2 code—including the sweeping exception for six- and twelve-unit multiplexes across the entirety
3 of the R-II zone—will actually provide sufficient capacity for housing at 0–30% non-PSH level,
4 for those most in need of affordable housing in the City of Port Townsend. The City has not done
5 that work. It has not complied with the GMA. There is no guarantee that the massive upzone
6 adopted by the Council on December 15, 2025, will actually result in needed affordable housing
7 as opposed to more market-rate, higher-end units that are simply not affordable for any of the
8 relevant income bands discussed above. As Petitioner John Capps commented, “we, as a
9 community, should not risk our entire residential lot inventory on the premise that all-in high-
10 density zoning changes will somehow net us more affordable housing. It could actually have the
11 opposite effect.” Ex. 273 at 849 (emphasis in original).¹²

12 Ultimately, RCW 36.70A.070(2)(c) requires more than an inventory of future needs and
13 existing capacity. It also requires the City to evaluate whether proposed changes to the zoning code
14 will actually meet those needs, whether they will provide the needed capacity, and whether they
15 are likely to do so under local market conditions. Without that analysis, the City has not
16 demonstrated that its massive upzone will actually lead to more affordable housing in comparison
17 to the more moderate density increase recommended by the Planning Commission after extensive
18 analysis and public input. By not doing that work, the Council’s adoption of Ordinance 3361 was
19 clearly erroneous and does not comply with the GMA.

20 **Issue 2—Lack of adequate provisions for all economic segments of the community**

21 Nor has the City demonstrated that its analysis “makes adequate provisions for existing
22 and projected needs of all economic segments of the community” under RCW 36.70A.070(2)(d).
23 Under this provision of the GMA, the City is required to “[i]ncorporat[e] consideration for low,
24 very low, extremely low, and moderate-income households” and “[d]ocument programs and
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26 ¹² See also, e.g., Ex. 273 at 836–840 (comment by Planning Commissioner Viki Sonntag,
27 explaining: “The push for density is based on the idea that more market rate housing will address our housing
28 needs and that we get there by effectively deregulating zoning through maximizing density. However, the
29 evidence shows that more market-rate housing does little to address the existing inequity in access to housing
30 or the wider issues of displacement and homelessness,” and that “[m]ore seriously, without anti-displacement
policies, upzoning creates the potential for gentrification and displacement. Upzoning is positively and
significantly associated with the odds of a neighborhood becoming whiter. Since there is already significant
displacement of low-income households in PT owing to gentrification (indeed, JC is whiter than it was six
years ago), this risk needs to be taken seriously”).

1 actions needed to achieve housing availability including gaps in local funding, barriers such as
2 development regulations, and other limitations.” RCW 36.70A.070(2)(d). The City claims that it
3 complied with these requirements, listing the various zoning changes that it adopted in Ordinance
4 3361, describing “assertive actions” and programs it has implemented. *See* City Brief at 24-29.
5 But as above, it falls short of actually demonstrating that it has made adequate provisions for *all*
6 economic segments of the Port Townsend community.

7 For example, despite the City’s assertions, a bare recitation of the various zoning changes
8 enacted through Ordinance 3361 (*see* City Br. at 24–26) is meaningless without the analysis
9 required by RCW 36.70A.070(2)(c), discussed above. The City identified a specific unmet housing
10 need: non-PSH housing for households earning 0–30% AMI. Yet nowhere did the City evaluate
11 whether the adopted zoning changes would actually result in housing for that income band.

12 The City also points to its role as a market participant in the Evans Vista neighborhood,
13 where “at least 25% of units [are] restricted to households earning 80% of AMI or less.” City Br.
14 at 27. But a program directed broadly at 0–80% AMI provides no assurance that housing will be
15 available for the households earning 0–30% AMI. Likewise, the City cites the multifamily tax
16 exemption (“MFTE”) program, which it says provides housing to “low- and moderate-income
17 households.” *Id.* But nowhere does the City explain how that program specifically addresses the
18 needs of extremely low-income households. Here, as above, the City continues to aggregate
19 income bands and assumes that policies directed at a broad range of households necessarily benefit
20 those at the bottom. Indeed, nowhere in the City’s discussion of this issue does the City even argue
21 that it has made adequate provisions for households on the 0–30% AMI range. Every figure and
22 number in its brief is aggregated and does not specifically address the lowest-income households.
23 Nor does the City cite any aspect of Commerce’s updated guidance that would allow it to avoid
24 adequate provisions for those specific households—the very households the City previously
25 determined are most in need of affordable housing, as indicated in Exhibits 333 and 332 (discussed
26 above).¹³

28 ¹³ The City argues that it fully complied with Commerce’s updated guidance after this Board’s
29 decisions in *Mercer Island* and *Kitsap County*. *See* City Br. at 21 (quoting Ex. 287 at 43). But the large block-
30 quote from Commerce’s Book 2 says nothing about ignoring adequate provisions specifically for households
in the 0–30% AMI range or aggregating those households with other income bands. Indeed, Commerce’s
updated Book 2 says just the opposite—if there is “a lack of capacity *in one or more income categories*,
jurisdictions must identify and implement actions to address the projected deficit.” Ex. 287 at 41.

1 Finally, the City argues that Petitioners “take issue with the City’s policy decision to forego
2 an inclusionary zoning or fee in lieu program,” which we understand are two ways the City might
3 try to make adequate provisions for all income bands in the future. City Br. at 26. We did not raise
4 this issue, and it is not properly before the Board at this time. If on remand the City chooses to
5 consider these (or other) alternatives for coming into compliance with the GMA, it can do so at
6 that time. For now, the only question is whether Ordinance 3361 “makes adequate provisions for
7 existing and projected needs of *all* economic segments of the community,” as required by RCW
8 36.70A.070(2)(d). It does not do so. The City is not in compliance with the GMA.

9 **Issues 3, 4, 5, & 6—Failure to address racially disparate impacts and displacement**

10 In our Prehearing Brief, we argued that the City did not comply with the anti-displacement
11 requirements of RCW 36.70A.070(2)(e), which requires the City to identify local policies and
12 regulations that result in racially disparate impacts, displacement, and exclusion in housing; RCW
13 36.70A.070(2)(f), which requires the City to “[i]dentif[y] and implement[] policies and regulations
14 to address and begin to undo racially disparate impacts, displacement, and exclusion in housing
15 caused by local policies, plans, and actions”; and RCW 36.70A.070(2)(g) and (h), which require
16 the City identify areas at risk of displacement due to market forces and to establish anti-
17 displacement policies for low, very low, extremely low, and moderate-income housing. *See* Pet.’s
18 Prehearing Brief at 23–27. On these points, Petitioners’ core argument has been that while the
19 upzone adopted by the City Council may generally lead to more housing units, those units (a) may
20 come at the expense of eliminating existing, lower-income housing units (*i.e.*, displacement),
21 while (b) offering no guarantee that the new units will actually be affordable. The City never
22 addresses this argument. Instead, it resorts to a series of mischaracterizations and mis-directions.

23 First, the City mischaracterizes our position as an objection to its removal of code language
24 requiring preservation of “neighborhood character.” City Br. at 30. That is entirely untrue. What
25 we *did* argue is that removing that language is not sufficient to address displacement risks when,
26 at the very same time, the City is adopting a massive upzone encouraging denser, more expensive
27 development for which there is no evidence that it will actually serve those most in need of
28 affordable housing. *See* Pet.’s Prehearing Br. at 24.

29 Second, the City mischaracterizes Petitioners as only interested in preserving the status
30 quo, which it describes as “exclusive single-family zoning and single-family housing that excludes

1 all economic segments of the community.” City Br. at 31. That, too, is entirely false. What we
2 want is an evidence-based comprehensive plan and development code that accommodates all
3 segments of the community—such as the Planning Commission recommended,¹⁴ which still would
4 have led to more intensive development throughout the City—not a massive “upzone for upzone
5 sake” as the Council adopted, especially when there is no evidence that it will actually serve those
6 most in need of affordable housing.

7 Third, the City misdirects when it suggests that preserving historic buildings is enough to
8 address displacement. City Br. at 33. It offers no evidence that historic preservation laws will be
9 sufficient to protect against displacement caused by the Council’s massive upzone.

10 Fourth, the City argues that it need only identify anti-displacement policies, not implement
11 them. City Br. at 32. But RCW 36.70A.070(2)(f) provides unequivocally that the City must
12 “[i]dentif[y] *and implement*” policies and regulations to address and begin to undo racially
13 disparate impacts, *displacement*, and exclusion in housing caused by local policies, plans and
14 actions” (emphasis added). Under the plain language of the GMA, the City must do more than
15 identify anti-displacement policies. It must also implement them.

16 Fifth, the City argues that Port Townsend generally is at low risk of displacement
17 according to the Department of Commerce. City Br. at 31–32. But as the City itself acknowledges,
18 “[a]lthough the displacement risk is currently low, displacement pressures typically impact cost
19 burdened renter households first—in Port Townsend, these households are more likely to be non-
20 white.” Ex. 56 at 793. Thus, existing rentals torn down to create now six- and twelve-unit
21 multiplexes under the Council’s adopted upzone may well have a disproportionate impact on those
22 most in need of affordable housing, including lower income residents who are not white.

23 Ultimately, the City cannot claim to have adopted adequate anti-displacement policies
24 without first answering the question of who is likely to benefit (and who is likely to be harmed)
25 by the massive upzone adopted by the City Council, including the sweeping density exception for
26 new six- and twelve-unit multiplexes. The City itself has heard from the development
27 community—including Habitat for Humanity and the Olympic Housing Trust—that new
28 construction costs are likely “too high to permit construction to serve more affordable housing
29

30 ¹⁴ See Ex. 273 at 838–840 (comments by Planning Commissioner Viki Sonntag, documenting research
for the Commission’s recommended 32-unit-density limit, including that upzoning on the scale adopted by the
City Council does not lower rents for low-income households and can lead to gentrification and displacement).

1 income brackets.” Ex. 325 at 16. Without answering that question, the City has not complied with
2 the GMA’s anti-displacement requirements.

3 **Issues 8, 10, 11, & 12—Transportation**

4 On the issue of transportation, the City cites *Wold v. City of Poulsbo*, GMHB No. 10-3-
5 0005c, 2010 WL 3950486 (Aug. 9 2010) for the proposition that a GMA-planning jurisdiction can
6 comply with the GMA’s transportation concurrency requirements by adopting LOS F as the
7 standard for measuring acceptable levels of vehicular traffic caused by new development. *See* City
8 Br. at 34–35. But in *Wold*, this Board approved the City of Poulsbo’s decision to adopt LOS F for
9 “certain intersections,” not for the entire city. *Wold*, 2010 WL 3950486, *49. In contrast, the City
10 of Port Townsend has now adopted LOS F for every city-owned arterial and intersection—
11 meaning there is literally *no* level of traffic congestion that the City would *ever* deem to be too
12 much, at *any* location, even if literally every lot in the City was developed to maximum capacity
13 (including six- or twelve-unit multiplex structures on nearly every lot in the R-II zoning district).
14 This complete abandonment of any limit on traffic amounts to no standard whatsoever, in violation
15 of RCW 36.70A.070(6)(b), which requires every jurisdiction to “adopt and enforce ordinances”
16 that set acceptable levels of traffic congestion.

17 The City appears to understand this, which is why the PTMC still requires a case-by-case
18 determination that “an adequate level of service” will exist after construction of new projects.
19 PTMC 12.06.070.H. But without a clear, objective standard, there is no guarantee that such a
20 standardless, ad hoc determination will maintain acceptable traffic levels. Nor has the City actually
21 set a level-of-service standard for active—*i.e.*, non-motorized—transportation to offset adverse
22 vehicular traffic impacts. Contrary to the City’s brief (*see* City Br. at 38), the City’s approach to
23 non-motorized transportation—based on “level of traffic stress”—has yet to be defined with an
24 enforceable LOS standard. *See* Ex. 56 at 542 (Active Transportation Plan, listing “[a]dopt Level
25 of Service standard for active transportation based on Level of Traffic Stress” as a future, yet-to-
26 be completed action).

27 **Issues 7 & 9—Capital facilities and infrastructure**

28 With respect to capital facilities and infrastructure, the City attempts to justify relying on
29 older plans that predate the City’s new upzone by arguing that they are based on past population
30 projections that have not, to date, panned out. *See, e.g.*, City Br. at 41 (arguing that “[t]he City’s

1 actual annual growth rates have consistently underperformed compared to official population
2 projections”). But at the same time, the City has admitted that “[i]n order to meet future housing
3 need allocations, it is expected that the city will need to grow at a *faster rate than it has in the*
4 *past.*” Ex. 56 at 744 (emphasis added). Encouraging more growth is obviously part of the
5 motivation of the City’s sweeping new upzone for six- and twelve-unit multiplexes. Petitioners are
6 not arguing that the City must, at this particular point in time, have a plan in place to upgrade all
7 public infrastructure sufficiently to handle “full buildout of zoning entitlements.” City Br. at 44.
8 But to have a defensible plan, the City must at least evaluate how growth rates might change by
9 opening the door to so much lucrative new development, and plan accordingly.

10 **Request for Invalidity**

11 Finally, Petitioners requested a determination of invalidity based on the City’s opening of
12 the door to widespread development without compliance with concurrency requirements, failing
13 to provide adequate assurances that the resulting development will serve those most in need of
14 affordable housing, and adopting sweeping changes aimed at fostering commercial development
15 that may well displace those who are most in need. Pet.’s Prehearing Br. at 35. The City contests
16 this, arguing that Petitioners failed to specifically ask for invalidity in their Petition for Review.

17 On this point, we note that the Board’s practice manual states that a petitioner seeking to
18 invalidate a jurisdiction’s action should “[r]equest imposition of invalidity in its Petition for
19 Review *or* in its opening brief for the Hearing on the Merits” (emphasis added).¹⁵ That is what we
20 did here and the City was on notice of our request well in time to meaningfully respond. *See*
21 *Friends of the San Juans v. San Juan Cnty.*, GMHB No. 10-2-0012, 2010 WL 5857727 *20, n.110
22 (Oct. 12, 2010) (considering request for invalidity where the respondent was “certainly on notice”
23 of the request). Because it failed to do so, the Board should grant our request and issue a
24 determination of invalidity pursuant to RCW 36.70A.070.302.

25 **CONCLUSION**

26 For all the reasons above, the Board should grant this appeal, find that the Port Townsend
27 City Council’s adoption of Ordinance 3361 was clearly erroneous under the GMA, issue a
28 determination of invalidity, and remand for correction of the errors discussed above.

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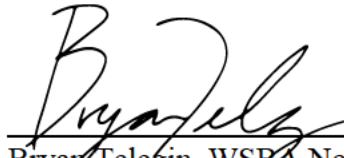
¹⁵ This language can be found on page 19 of the GMHB’s practice manual, available on the Board’s website at <https://elaho.wa.gov/sites/default/files/2023-06/GMHB%20Handbook.pdf>.

1 Dated this 22nd day of June, 2026.

2 Respectfully submitted,

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5
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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2026, I caused to be served a true and correct copy of the foregoing PETITIONERS' REPLY BRIEF via email on each of the persons listed below:

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Dated: June 22, 2026

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