



Preemptive state laws for infill housing

Several preemption clauses related to housing development were enacted in the 2023-24 legislative sessions. These provisions supersede, preempt and invalidate local codes if a local government does not adopt regulations consistent with state law, by the date specified in statute. The following laws are preemptive six months after the periodic update due date:

- Permitting at least two accessory dwelling units per lot, for all urban growth areas ([RCW 36.70A.680](#) and [RCW 36.70A.681](#)).
- Permitting conversion of commercial buildings to multifamily ([RCW 35A.21.440](#) or [RCW 35.21.990](#)).
- Allowing a minimum middle housing ([RCW 36.70A.636](#) and [RCW 36.70A.635](#)).

The following law is preemptive December 31, 2025:

- Permitting Co-living for urban growth areas on lots that allow six or more multifamily residential units ([RCW 36.70A.535](#)).

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Preemptive laws
supersede, preempt, and
invalidate any conflicting
local development
regulations.

Amending local code is
helpful for clarity in
application submittal and
review.

What options exist for jurisdictions in approaching the statutory deadline for pre-emption?

1. **Local governments may adopt a consistent ordinance by the applicable deadline.** This means a local government will submit 60-day notice of intent to adopt with Commerce, and adopt consistent regulations by the deadline.
2. **The jurisdiction may allow pre-emption to occur,** in which case the requirements of state law apply and development regulations conflicting with state law are superseded, pre-empted and invalidated. Permit applications are to be processed and reviewed in accordance with the applicable state law development standards. Commerce recommends affected jurisdictions make changes to the municipal code to redirect applicants and plan reviewers to the applicable state standards.
3. **The jurisdiction may adopt interim controls prior to the pre-emption deadline** that comply with the standards of state law. Adoption of an interim ordinance must satisfy applicable public hearing requirements for the adoption of interim controls. Local governments are not required to submit interim ordinances for 60-day state agency review, however, the interim ordinance should be transmitted to Commerce upon adoption. The interim ordinance may expire upon adoption of permanent development regulations.

A moratorium cannot be used as a means of avoiding pre-emption.

Recommended noticing for local governments facing a preemptive statutes

If there is a likelihood of preemption, local jurisdictions should make reasonable efforts to notify stakeholders as far in advance as possible. The notice should include, but may not be limited to:

- Identification of which existing local regulations will be preempted and invalidated
- Identification of which specific provisions in state law will be in effect and supersede existing regulations
- Outlining how permits will be processed during the effective period of the preemption
- Stating changes in permit fees (if any) during preemption
- Noting the expected timeline, if the local government plans to adopt regulations that will remove preemption.

Commerce is here to support your jurisdiction

Commerce seeks to support jurisdictions through these preemptive laws with technical assistance, support through presentations to and meetings with local officials, example regulations, model codes, and early review and comment on draft regulations. If there are other ways Commerce can be of support, just ask. We would like to hear from you.

LOCAL GOVERNMENT DIVISION