



# Oregon

Tina Kotek, Governor

## HPAC Work Group Recommendation Template

### Work Group

- Availability of land
- Land development permit applications
- Codes and design
- Workforce shortages
- Financing

### Recommendation

Local jurisdictions must allow an applicant, by right, Adjustment of up to 20% from specified land use standards (please refer to Exhibit A).

- “Adjustment” means a deviation from an existing land use regulation.
- “Adjustment” does not include:
  - (a) A request to allow a use of property not otherwise permissible under applicable zoning requirements;

- Streamlining of permit application process.
- Eliminate complexity in land use permitting process.
- Need to review the impacts of various land use regulations on housing production, including bike and vehicle parking, tree and open space requirements, affordability requirements, transportation management, design standards, and others.
- Needs to be easier to get variances/adjustments to some land use criteria that affect density such as tree removal, tree plans, street connectivity, and block length requirements.

*Identify topics assigned to the work group that informed the development of this recommendation.*

### Adoption Date

Thursday August 17, 2023

### Method of Adoption

Unanimous consent by email.

## Co-chairs Guidance: Standards for Analysis

1. Clearly describe the housing production issue that the recommended action(s) will address.

The complexity of the land use permitting process and the tendency for non-material and/or minor issues to delay permitting for material amounts of time, and add to the cost and complexity of the permitting process, is an existing impediment to supply.

*Describe the barrier(s) or solution(s) the recommendation seeks to address, and how the existence of the barriers hinders production or how the solution supports production.*

2. Provide a quantitative, if possible, and qualitative overview of the housing production issue.

Considering our State's housing crisis, whether a housing unit has a precise amount associated open space is not a good reason to hold up a plan review. Nor is whether a project has the precise number of bicycle or automobile parking stalls. Nor whether a minimum lot is say 5,000sf in a particular zone, vs. 4,000sf.

This recommendation introduces "by-right" flexibility to our land use approval process – allowing our larger goal of increasing supply to be prioritized.

*Summarize the quantitative and qualitative information available, and reviewed by the work group, that informed the analysis of the barrier or solution and led to the recommendation included in this form.*

3. To assess the issue and potential action(s), include subject matter experts representing all sides of the issue in work group meetings, including major government, industry, and stakeholder associations.

Surveyors and permit review/processing specialists have been censused. Testimony was received that many times, an application will be turned back to the applicant due to a small technical issue and, even if the applicant can comply with the requested plan revision, this back and forth between the permitting authority and the applicant creates uncertainty, and costs time and money.

Additionally, HB 3414 (a similar effort to introduce flexibility to the land use system) was developed with extensive stakeholder input. Its standards are considered in this recommendation.

Kimberly Tallant (City of Portland Land Use Services Division Manager) and Nick Hodges (Principal Hacker Architects) provided specific input re. potential unintended consequences or tradeoffs, implementation considerations, other concerns from a local government or building codes perspective, and suggestions for wordsmithing and honing the recommendation. Please refer to Exhibit B.

4. Provide a quantitative, if possible, and qualitative overview of the outcome of the recommended action(s).

Given that many plan reviews are currently delayed due to the time it takes for staff to measure each and every metric / requirement, this recommendation is expected to decrease the permitting timelines. Also expected to encourage more builders to enter the land use process as the tendency of a denial due to a relatively small technical detail is eliminated.

Additionally, this recommendation is expected to unlock the development potential of many existing parcels of land that are currently “undevelopable” due to a minor issue leading to the lot not meeting a particular requirement.

Recommendation is expected to relieve jurisdictional staff providing them w. protection that they will not be accountable for quantifiable minor deviations from technical requirements.

*Outline the impact of the recommendation on housing production.*

5. Provide an estimate of the time frame (*immediate, short, medium, long-term*), feasibility (*low, medium, high*), and cost (*low, medium, high*) for implementation of the recommended action(s).

Time Frame: Short  
Feasibility: High  
Cost: Low

*Outline the work group’s estimate of the time for implementation of the recommendation and its impact on housing production once implemented. Describe the work group’s assessment of the feasibility of the recommendation being implemented and feasibility of success. Provide any estimates on the cost for implementation.*

6. Provide a general overview of implementation, the who and how for the recommended action(s).

This recommendation and new policy to be initiated by DLCD and subsequently required for local jurisdictions to adopt the new standard.

Intent to stay in alignment w. Adjustments portion of HB 3414, and incorporate the input of key stakeholders who have considered that work. The implementation standards noted in the Attached EXHIBIT A shall apply.

7. Outline the data and information needed for reporting to track the impact and implementation of the recommended action(s).

Local jurisdictions would track and provide annual reporting back to DLCD. Pursuant to City of Portland recommendation a 5 year trial period. HB 3414 had 10 years.

Jurisdiction should report on the number of variances granted per project.

*Identify the data the Governor's Office would need to track to determine if the recommendation is increasing housing production.*

8. Identify any major unknowns, tradeoffs, or potential unintended consequences.

- Fire, life, safety oriented requirements need to be carefully considered
- Reduction to the quality of the development
- Adverse impacts to surrounding parcels/uses
- Potetial for applicant to essentially pursue a re-zone via variances so limited number
- Houses becoming bigger and therefore more expensive
- Could put pressure on infrastructure

*Based on the work group's analysis and information provided by participating SMEs, outline what is unknown, the tradeoffs exist by implementing the recommendations, and any known potential unintended consequences.*

*Please include any relevant reports, data analyses, presentations, or other documents that would be informative and useful for the full HPAC as the recommendation is discussed and considered.*

**EXHIBIT A**  
Implementation Standards

Adjustments are available only if all of the following conditions are met:

- Applications are for a building permit or a quasi-judicial, limited or ministerial land use decision;
- Development is on lands zoned for residential or mixed-use residential uses;
- Development is within an urban growth boundary, not including lands that have not been annexed by a city; and
- Development is of net new housing units, including single-family or multifamily, mixed-use residential, manufactured dwelling parks, accessory dwelling units or middle housing as defined in ORS 197.758.

A local government may not approve more than 10 distinct adjustments. Each development standard described below is considered a distinct adjustment. Adjustments meeting the criteria under this section shall be granted by a local government and may be resolved through an existing or new administrative process of the local government that allows for flexibility in addressing development or design standards for residential development.

A local government shall grant an adjustment to the following development standards:

1. Side and rear setbacks and step backs, provided that the setbacks still comply with utility siting requirements;
2. The amount of landscaped area, common area or open space area, for a reduction of up to 20 percent, provided that stormwater management requirements and tree codes are met and that there is no impact to tree canopy requirements or ground or surface water resources;
3. Parking minimums;
4. Minimum or maximum lot sizes, for up to a 20 percent adjustment;
5. Minimum or maximum lot widths and depths, for up to a 20 percent adjustment;
6. Minimum bicycle parking for up to a 20 percent adjustment;
7. Minimum or maximum building lot coverage requirements:
  - a. For up to a 20 percent adjustment, for accessory dwelling units with a single-family detached house; or,
  - b. For up to a 20 percent adjustment, for multifamily, mixed-use residential and middle housing;
8. FAR and unit density maximums;
9. Building height maximums, in addition to existing applicable height bonuses, except for single-family detached houses or where denial of the variance is necessary to address a fire, life or safety issue, for an increase of the greater of:
  - a. One story; or
  - b. A 20 percent increase to base zone height with rounding consistent with methodology outlined in city code, if any; and
10. Prohibitions, on the ground floor of a mixed-use building, against:
  - a. Residential uses except for one face of the building that faces the street and is within 20 feet of the street; and
  - b. Nonresidential active uses that support the residential uses of the building, including lobbies, day care, passenger loading, community rooms, exercise facilities, offices, activity spaces or live-work spaces, except for active uses in specifically and clearly defined mixed use areas or commercial corridors designated by local governments.
11. A local government shall grant an adjustment to design standards that regulate:
  - a. Façade materials, articulation, color or pattern;
  - b. Roof forms and materials;
  - c. Entry and garage door materials and patterns;
  - d. Garage door orientation, except when the building is adjacent to or across from a school or public park;
  - e. Window material and design;
  - f. Window size or total window area, for up to a 20 percent adjustment;
  - g. Building orientation requirements, not including transit street orientation requirements;

- h. Building height transition requirements, for up to a 20 percent adjustment from the base zone, except where necessary to address a fire, life or safety issue; or
- i. Balconies, porches, recesses and offsets.

**EXHIBIT B**  
SME Feedback

1) Potential unintended consequences or tradeoffs:

- This could result in variance requests and automatic approvals that don't result in more housing being built on a site and could result in the housing being more expensive (larger square footage). There should be parameters on when this could be requested. One suggestion is to add "when at least X housing units are being added to a site".
- HB 33414 had a limit of up to 10 variances that could be requested. We had recommended fewer, because at a certain point, it basically ends up being a re-zone of the property. There should be a limit and Portland had recommended 5 previously.
- There should be some limitations on where this can be used, similar to the bill. I would recommend that it not be allowed in natural resource areas, historic, landslide, and floodplain areas.
- We would want to ensure that this does not preclude or make it more difficult to request variances that exceed this new threshold when there is a valid if subjective argument in support.
- We would want to ensure that the 20% threshold is the right threshold. For example, if you have a 45' height limit you get an additional 9' by right. Typical floor to floor in multifamily housing is closer to 10'-6. If we wanted to add an addtl floor, we would still be requesting a variance. For me, when thinking about multifamily, I'm always thinking in terms of # of stories.

2) Implementation considerations:

- I don't know what is meant by "reasonable degree". That would be important to define or clarify what is intended. Or just remove that.
- Since this just lists "land use regulations" and some examples, it needs to be more specific and finite. Or is your thinking that DLCDC or the state would work on that specificity?
- Similar to HB 3414, the applicant should meet some criteria for the request- it either allows more units to be built at the site, allows units to be sold or rented at lower prices, or they are providing affordable housing meeting existing programs.
- You need to clarify what you mean by "frontage requirements". Generally, I read this to be infrastructure frontage requirements (curb, sidewalk, paving) and those are not typically land use regulations. Perhaps you mean setbacks?
- Is there a process for evaluating this change and making improvements later?

3) Other concerns from a local government perspective:

- If an applicant requested a 20% increase to height, FAR, building coverage, setback reductions – at a certain point it's not all going to fit. This will put pressure on infrastructure bureaus as there may not be enough room for separation of on-site utility lines and facilities.
- There should be a timeframe for this automatic variance. The bill had 10 years, however, Portland was recommending 5 years.

4) Any suggestions for wordsmithing and honing this recommendation:

- I would recommend you change “land use regulations” to land use standards. The reason is that if you leave it general with regulation, the argument could be that you could request to change a procedure, process, or timelines.