



# Oregon

Kate Brown, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)

May 7, 2020

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director  
Gordon Howard, Community Services Division Manager  
Ethan Stuckmayer, Lead Housing Planner



SUBJECT: **Agenda Item 3, May 21-22, 2020, LCDC Meeting**

## HOUSE BILL 2001 AND HOUSE BILL 2003 - UPDATE ON IMPLEMENTATION OF HOUSING LEGISLATION

### I. AGENDA ITEM SUMMARY

**Purpose.** This agenda item consists of a summary and update of actions the Department of Land Conservation and Development (DLCD or department) has taken to implement House Bill 2001 (HB 2001) and House Bill 2003 (HB 2003) over the last few months.

**Outcome.** The purpose of this agenda item is to provide an update of actions taken on the implementation of House Bill 2001 and House Bill 2003. The commission is not being asked to take any rulemaking action on this agenda item.

### II. BACKGROUND

In 2019, the Oregon Legislature passed House Bill 2001 and House Bill 2003. These bills address the statewide housing supply shortage and affordability crisis. Governor Brown signed these two bills on August 6, 2019.

HB 2001 adds uses to single-family residential development for cities with population above 10,000 and all cities in the Portland Metropolitan Area with population greater than 1,000 and urban portions of Metro counties. Cities between 10,000 and 25,000 population must allow a duplex on all lots or parcels where single-family detached residences are currently allowed by city zoning. Cities greater than 25,000 population and the affected Portland Metropolitan Area jurisdictions must, in addition to the duplex requirement, allow triplexes, quadplexes, townhomes, and cottage clusters in areas zoned for single-family residential development. The bill has various other provisions that modify or are peripheral to these basic requirements.

HB 2003 has three key components, and various other provisions that are peripheral to refine these components. First, the bill directs Oregon Housing Community Services

and the department to develop a methodology and conduct a regional housing needs analysis (RHNA) for different regions of the state, and then report on the results and how to implement the analysis to the 2021 Legislature. DLCD is also asked to report on the several aspects of the methodology. Both reports are due by March 1, 2021. Second, the bill requires a city outside of the Portland Metropolitan Area with a population of 10,000 or greater to update its housing needs analysis once every eight years or once every six years for cities inside the Portland Metropolitan Area. Third, the bill requires these same cities to approve housing production strategies (HPS) after completion of the housing needs analysis, proposing and implementing measures to ensure that needed and affordable housing gets built in the city.

The two bills authorize and require the department and commission to take a series of measures and actions to implement the statutory provisions. Attachment A shows the schedule of the anticipated actions of department staff, the rulemaking advisory committee, the technical advisory committees, and the commission. This schedule also includes the projected dates for when commission will hold public hearings or meetings for adoption of the four housing rules. While the department has worked to plan a first and second hearing for each rule that coincides with regularly scheduled commission meetings, the timing is such that the second Infrastructure-Based Time Extension rule hearing and potential adoption should happen as soon as possible. Staff requests that the commission schedule a special meeting in the month of August to adopt the Infrastructure-Based Time Extension rules.

### **III. IMPLEMENTATION MEASURES**

#### **A. RULEMAKING ADVISORY COMMITTEE**

The Rulemaking Advisory Committee (RAC) appointed by the commission to advise on rulemaking to implement HB 2001 and HB 2003 met for its fifth meeting on Thursday, April 2, 2020. The primary objectives of this meeting were to gather final RAC member feedback on the Medium Cities Middle Housing Model Code and Administrative Rules (OARs) and solicit initial feedback on proposed code provisions in the Large Cities Middle Housing Model Code. These draft OARs are included in commission agenda item #4. The RAC also received updates on the Infrastructure-Based Time Extension Request and Housing Production Strategies progress.

A summary of key rule elements that RAC members discussed follows. Please note that the Medium Cities Model Code and Administrative Rules are the primary subject of Agenda Item #4 and are therefore not included as part of this summary.

#### *Large Cities Middle Housing Model Code*

DLCD staff and the Angelo Planning Group consultant team are collaboratively preparing the Model Code. Department staff presented Part 1 of four of the Large and

Metro Cities Middle Housing Model Code at the fifth RAC meeting on April 2<sup>1</sup>. The Technical Advisory Committee reviewed a preliminary draft of Parts 1 and 2 of the Model Code at their fifth meeting on April 21. Department staff will incorporate the comments, suggestions, and questions posed by the Technical Advisory Committee into a revised draft presented to the RAC at their sixth meeting on May 7.

In discussing the Large and Metro Cities Middle Housing Model Code, the advisory committee comments centered on distinguishing each development type, maintaining consistency with building code and form, and maximizing flexibility for local jurisdictions and middle housing development.

#### *Infrastructure-Based Time Extension Request*

At their fifth meeting, RAC members were provided an update on progress of the Infrastructure-Based Time Extension Request (IBTER) Rule associated with HB 2001. RAC members offered insight on clarifying the parameters around the justification of an IBTER, especially in instances where single-family detached dwellings continue to be permitted.

#### *Housing Production Strategies*

At the April 2 meeting, Department staff gave the RAC an update summarizing the discussion of the second Housing Production Technical Advisory Committee. RAC discussion centered on proposed “buckets” for specific tools and strategies for Housing Production Strategies. Members agreed that tools and strategies should be diverse, allowing for a wide degree of different approaches and keeping equity as a core consideration. The “buckets” or categories of actions include the reduction of financial or regulatory impediments to housing development, the creation of financial or regulatory incentives to develop housing, leveraging access to local, state, and federal resources to develop housing, and a miscellaneous category for other innovative measures that provide solutions to unique local housing problems.

Future meetings of this HPSTAC will center on the delineation of what a city is required to include in a local Housing Production Strategy Report and what items may be included to better understand the full extent of a city’s housing needs.

#### *Next Steps*

The full RAC will next meet on May 7. The primary objectives of the May 7 meeting are to 1) review draft IBTER rule concepts, 2) identify Housing Production Strategy Report requirements and guidance, and 3) review revised Large and Metro Cities Model Code and minimum compliance standards Parts 1 and 2.

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<sup>1</sup> Four parts of Large and Metro Cities Middle Housing Model Code include Part 1: Purpose, Applicability, and Definitions, Part 2: Triplex and Quadplexes, Part 3: Townhomes, and Part 4: Cottage Clusters.

## **B. TECHNICAL ADVISORY COMMITTEES**

To meet deadlines and to bring in technical experts on specific matters, the rulemaking effort relies on three Technical Advisory Committees in addition to the full Rulemaking Advisory Committee. The Technical Advisory Committees are an extension of the Rulemaking Advisory Committees, populated with individuals with additional professional and lived experience expertise and also are advisory to the department. The Technical Advisory Committees are charged with exploring specific technical aspects of Oregon’s housing legislation in order to develop a set of administrative rules to implement HB 2001 and HB 2003.

Updates on the work conducted by each of the three Technical Advisory Committees to date is below.

- Middle Housing Model Code Technical Advisory Committee (MCTAC). This committee is organized to help clarify requirements for “medium” (cities with 10,000-25,000 people) and “large” (cities with more than 25,000 people, and counties in the Portland metro area) local governments in the adoption of codes allowing the development of middle housing types as required by House Bill 2001. The work of the committee includes review and providing comment on draft Model Development Code language and formulating a set of minimum standards that can be used as a basis for determining compliance of development codes submitted to DLCD by cities subject to House Bill 2001. This committee is considering two distinct Model Codes for consideration by the RAC and LCDC, one for medium cities and one for large cities, as defined in statute.

Since February, the MCTAC has met several times to assist department staff and the project team refine concepts, model code standards, and administrative rules for Medium Cities. A summary of this work is included as Agenda Item #4 in the draft rules and model code regarding duplexes.

With that milestone complete, the Technical Advisory Committee has since shifted its focus to the Large and Metro Cities Model Code. At their fifth meeting, department staff presented drafts for Parts 1 and 2 (of four) of the Model Code including purpose, definitions, applicability, and siting and design standards for triplexes and quadplexes. Part 3 and 4 will encompass siting and design standards for cottage clusters and townhomes – two housing types with specific definitions provided in House Bill 2001. These drafts are currently under development.

The committee has had significant discussion about the configuration of middle housing allowed in the Model Code. TAC members expressed a desire for the Model Code to encompass a wide variety of development scenarios, including discussion as to whether the Model Code should allow the development of “detached” triplexes and quadplexes in addition to “attached” configurations of these housing types.

TAC members also discussed dimensional standards proposed in the Model Code. There is tension about the appropriate minimum lot standards in the Model Code and Minimum Standards for compliance. Some members believe that jurisdictions should retain the ability to require larger lot sizes for these middle housing types, while others note that minimum lot sizes represent a technical regulation that has been used by jurisdictions to exclude higher density and middle housing types.

In regard to regulating form, TAC members discussed the advantages and disadvantages of various approaches. Most agreed that regulating Floor Area Ratio, in combination with appropriate height and setback regulations, is likely the best way for the Model Code to allow middle housing development in a wide variety of development scenarios.

Committee members did not reach consensus as to the appropriate provision of off-street parking in the Model Code. Some members feel that the Model Code options do not provide sufficient parking to respond to jurisdiction needs. Others believe that by requiring parking, the Model Code will further preclude rather than facilitate the development of various middle housing types. Central to the question of off-street parking is the degree to which market and financing factors affect the provision of off-street parking in the absence of minimum parking standards. Department staff will be asking the commission to give guidance on this point after a presentation in Agenda Item #4.

It will be important for the Model Code and administrative rules to balance factors such that jurisdictions can respond to local conditions while ensuring that standards do not create barriers to the development of smaller and more affordable unit types.

The Middle Housing Model Code Technical Advisory Committee will hold its sixth meeting on June 1, 2020. The primary objectives for this meeting are to 1) Discuss the draft of Part 3 of the Large and Metro Cities Model Code, 2) Refine provisions in Part 1 and 2 of the Large and Metro Cities Model Code, and 3) Discuss parameters for Middle Housing Administrative Rules (OAR Chapter 660, Division 046) for Large and Metro Cities.

Medium Cities are required to comply with the provisions of HB 2001 by June 30, 2021. Large and Metro Cities and Counties are required to comply with the provisions of HB 2001 by June 30, 2022.

- IBTER Technical Advisory Committee (IBTERTAC). The role of the IBTERTAC is to provide guidance to department staff as it formulates applicable criteria and the process to be followed by local jurisdictions requesting an extension for middle housing development code adoption due to an infrastructure deficiency. The deficiency must relate to transportation, water supply, wastewater, or storm drainage. This committee is asked to advise department staff on aspects of the

draft rule including but is not limited to, 1) how a city might formally request an extension, 2) what qualifies as deficient infrastructure, and 3) in which areas a city may delay adoption of middle housing development code.

The IBTERTAC met for the fourth time on April 14, 2020. At this meeting, the TAC discussed the key parameters on what types of stormwater system infrastructure deficiencies are eligible for an extension request. Members raised a variety of scenarios that warrant consideration, including regulatory compliance in light of changing statewide legal frameworks, varying terrain conditions of different geographies, legal liability, compliance with federal laws such as the Endangered Species Act, and how provisions in the model code and minimum standards affect stormwater impacts (e.g. impervious surfaces, lot coverage, etc.). Members also discussed the balance needed between facilitating middle housing development and ensuring regulations that protect the health and safety of a community are not compromised.

Staff also presented a methodology developed by Oregon Housing and Community Services for determining Census tracts at risk of gentrification and displacement. Committee members noted that the methodology will be helpful in identifying parcels with potential equity considerations, but providing clear direction for jurisdictions to consider equity in an IBTER will be important. As the TAC discussed a range of equity considerations, staff determined that this was a topic to bring to the RAC for consideration. While IBTER has a strong technical focus, it is important to ensure that the extension does not provide the opportunity for cities to either enforce exclusionary policies or fail to invest in historically underinvested communities.

The IBTERTAC will hold its fifth meeting on May 6, 2020. The primary objectives of the May 7 meeting are to 1) Review Draft IBTER Rule Concepts, 2) Refine the tools and analysis used for the IBTER equity evaluation process, and 3) Discuss further the extension application requirements.

Medium Cities are required to submit an IBTER application to the department by December 31, 2020. Large and Metro Cities and Counties are required to submit an IBTER application to the department by June 30, 2021.

- HPS Technical Advisory Committee (HPSTAC). The HPSTAC is convened to provide guidance on required components of housing production strategies that will be adopted by local governments. Committee members are asked to identify the process, criteria, and other necessary elements required for department review of housing production strategies. The committee will also develop the process and criteria to be followed for LCDC to review, in consultation with the Oregon Housing and Community Services Department (OHCS), and identify cities with a population greater than 10,000 that have not sufficiently achieved needed housing within their jurisdiction or have not sufficiently implemented a housing production strategy adopted under Section 4 of House Bill 2003.

The HPSTAC held its third meeting on April 8, 2020. Department staff presented progress on enforcement, engagement, and reporting requirements and updates to the Housing Production Strategy Report structure concepts. In this meeting, TAC member Dr. Marisa Zapata from Portland State University and founder of the Homelessness Research and Action Center delivered a presentation about the challenges associated with identifying and addressing housing need for people facing homelessness. Her PowerPoint is included as Attachment B.

Following Dr. Zapata's presentation, TAC members discussed permanently supportive housing and a continuum of resources alongside housing. Essential services in the development of housing include innovative measures such as case management, income, healthcare, and social support services within proximity of affordable housing to provide the needed resources to stabilize and even elevate housing outcomes for vulnerable communities. In addition, several data sets including the Point-in-Time and McKinney-Vento data were suggested as a way for cities to supplement the housing needs identified in their Housing Needs Analysis to include community members experiencing houselessness. Cities could then incorporate these data sets into the specific Housing Production Strategies to meet the needs of these vulnerable residents.

Cities with a population over 10,000 are required to adopt a Housing Production Strategy within one year of the adoption of their Housing Needs Analysis.

- Regional Housing Needs Analysis (RHNA). Pursuant to HB 2003, Oregon Housing and Community Services (OHCS) has been charged with developing a RHNA in conjunction with ECONorthwest. This process seeks to create a prototype that can be used to calculate housing needs by region in order to allocate number of units and housing types to cities. OHCS has held stakeholder involvement sessions to gather feedback on work completed as part of Phase One, and are developing a Regional Housing Needs Analysis modeled after methods used in California. They have assembled a stakeholder advisory group to help advise on this work. DLCD staff participate as ex officio members. The stakeholder sessions will help shape development of Phase Two, called the Oregon Method. OHCS will be presenting their findings with a short discussion at the May 18, 2020 HPSTAC meeting, and are eager to work with stakeholders going forward. Their draft of the methodology is due September 1, 2020. From this draft, they will conduct additional outreach, in concert with DLCD research on implementability of the bill in fall, 2020 and into early 2021. OHCS and DLCD respectively have reports on the model and potential benefits due to the legislature March 1, 2021.

### **C. SPEAKER'S BUREAU AND COMMUNITY-SPECIFIC OUTREACH**

In addition to the DLCD staff-led community conversations held in the early part of 2020, department staff are involved in significant outreach to local governments and

other potentially affected and interested parties to discuss the new housing legislation and implementation plans. Recent engagements and Speaker's Bureaus include:

- Clackamas and Multnomah County Planners
- Coastal Planners Network
- American Association of Retired Persons
- Urban Lands Institute Northwest
- League of Oregon Cities
- Habitat for Humanity

Additionally, housing and regional representative staff are holding meetings in each region of the state to discuss the proposed Medium Cities Model Code and Administrative Rules with affected cities. These are planned for the week of May 11. DLCD staff will report on these meetings at the May LCDC meeting.

Due to the recent public health emergency, the department has had to postpone many planned engagements with stakeholder groups to a later "virtual" meeting. A planned meeting with the Lane Independent Living Alliance in Lane County was cancelled due to the emergency. Planned engagements and virtual speakers' bureau events include:

- Native American Youth and Family Center
- Portland African American Leadership Forum
- Community Alliance of Tenants
- Homeless Research Action Collaborative
- Coalition of Communities of Color
- Habitat for Humanity
- Southern Oregon Realtor Association
- RELU Summer Conference Education Committee
- Town Hall with Representative Prusak
- Confederated Tribes of Grand Ronde
- Washington County Planners

#### **D. PLANNING ASSISTANCE**

The Oregon Legislature allocated \$4.5 million to assist cities to implement provisions of HB 2001 and HB 2003 within the 2019-2021 biennium. DLCD made the total amount of that resource available to local governments.

##### House Bill 2001

DLCD will use the allocation of \$3.5M in assistance funds to local governments in implementing two aspects of HB 2001 to help ensure more housing choice in cities over 10,000 population, Metro cities over 1,000 population, and urbanized portions of Metro counties.

Cities will be able to apply for this funding to assist in the formulation and adoption of middle housing development codes. Based on feedback from previous grant cycles,

cities will have the option to either 1) apply for direct grant funding to hire staff, a consultant, or use other resources; or 2) enter a memorandum of understanding with the department and be assigned a consultant from a list of such consultants that will be under contract with the department. As of May 1, 28 cities had applied for assistance.

The \$3.5M allocated via HB 2001 also is available to local jurisdictions who seek to submit an infrastructure-based time extension request application. The funding available for this is limited to only the study and application process of the request and not to be used to actually remedy infrastructure deficiencies. As of May 1, five (5) cities applied for assistance.

Department staff have also provided information in a no-cost webinar to cities, via emails and one-on-one communications. Seventy (70) individuals participated in the webinar from communities across Oregon. Based on these applications, and feedback gained in the webinar via a poll, the department is preparing to distribute the funds to applicant communities.

### House Bill 2003

DLCD was appropriated \$1M to distribute to local governments for the purposes of completing housing needs analyses (HNAs) and housing production strategies (HPSs). As written in the bill, DLCD may only grant money to cities with a population greater than 10,000 – the cities that must complete housing needs analyses and housing production strategies under the provisions of HB 2003. DLCD had requested that the Legislature, at its February session, allow granting of these funds for housing needs analyses in smaller cities as well as for the development of housing implementation plans. While this proposal was not passed, and HB 2003 funding is limited to cities with a population greater than 10,000, it seems DLCD has sufficient applications to spend the entirety of these funds. .

### Planning Assistance Update

DLCD staff prepared two Requests for Proposals and posted them on the state's contracting service ORPIN in early April to solicit consultant proposals for work related to House Bill 2001 and House Bill 2003. The department received a sufficient number of proposals to begin review and proceed with notice to award.

Final funding decisions are anticipated by the end of May, and at that time will begin negotiations between cities and consultants. The Department anticipates finalizing negotiated agreements by the end of June and finalized contracts by mid-July, such that Model Code work can begin immediately upon rule adoption. For work that is not contingent on rule adoption, Department staff is working to finalize these agreements as soon as possible to provide local jurisdictions more time to complete work before the end of the fiscal year.

IV. **CONSIDERATIONS AND CONSTRAINTS**

Staff seeks commission guidance particularly on the Medium Cities Duplex rules in Agenda Item #4. This is the first of four rules to implement HB 2001 (three rules) and HB 2003 (one rule) this calendar year.

Constraints include schedule and potentially non-personnel expenditures due to the state's changing economic situation as a result of the COVID-19 pandemic. Staff is working as quickly as possible to develop these rules so that local governments can begin their work.

**Recommended Action**

While commission guidance is welcome on the points described in this memo, this is not a rulemaking agenda item. It is largely provided as an informational update. We will be continuing to brief commission at each meeting. Future rules for adoption will be up in the following sequence. This meeting schedule is further depicted in Attachment A.

May LCDC:	First hearing Medium Cities rules (HB 2001)
July LCDC:	Second hearing Medium Cities rules (HB 2001); first hearing IBTER rules (HB 2001)
Special August LCDC:	Second hearing on IBTER rules (HB 2001)
September LCDC:	First hearing Large and Metro City rules (HB 2001); First hearing Housing Production Strategies (HB 2003)
November LCDC:	Second hearing Large and Metro Cities rules (HB 2001); First hearing Housing Production Strategies (HB 2003)

V. **ATTACHMENTS**

**A. UPDATED 2020 MEETING SCHEDULE**

**B. HOUSING PREVENTS AND ENDS HOMELESSNESS BY DR. MARISA ZAPATA**