



# Oregon

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TO: Land Conservation and Development Commission

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SUBJECT: **Agenda Item 6, July 23-24, 2020, LCDC Meeting**

## **MIDDLE HOUSING MEDIUM CITIES MODEL CODE AND MINIMUM STANDARDS**

### **I. AGENDA ITEM SUMMARY**

**Purpose.** This agenda item presents background for the second public hearing by the Land Conservation and Development Commission (LCDC or commission) on proposed Oregon Administrative Rules (OARs) for middle housing as required by HB 2001 (Attachment A), applying to cities with a population between 10,000 and 25,000 (medium cities). To assist the commission in the review, and the eventual adoption of the OARs for medium cities, the Department of Land Conservation and Development (DLCD or department) has attached the proposed Oregon Administrative Rules (Attachment B), and the Medium Cities Middle Housing Model Code (Attachment C). The required Fiscal and Housing Impact Statements for a new Administrative Rule are included as Attachment D. The Rulemaking Advisory Committee (RAC) appointed for this rulemaking has reviewed the Fiscal and Housing Impact Statements.

As a result of public comments on draft proposed OAR language and based on commission guidance, the department made refinements to the rules that were proposed to the commission at its May 2020 meeting. This staff report and the subsequent staff presentation will detail the specific changes to the medium cities rules and model code for commission consideration.

**Outcome.** Staff recommends the commission take action on this agenda item. At this meeting, upon closing the public hearing and completing their review of the updated proposed rules, the commission can make a motion for adoption of the model code and associated OARs using the recommended language in Section III.G of this report. There is a time-sensitive nature to this recommendation, because cities outside of the Portland Metropolitan UGB with a population between 10,000 and 25,000 must have zoning codes in compliance with these rules by July 1, 2021, and final commission action at this meeting will allow these cities almost one year to develop, review, and adopt

necessary code amendments. Additionally, HB 2001 requires the commission to adopt rules prior to January 1, 2021, and the commission has additional rules for larger and Portland Metro jurisdictions yet to consider by then later this Fall.

## II. **BACKGROUND**

In 2019, the Oregon Legislature passed, and Governor Brown signed into law, House Bill 2001. This bill was passed with the intent to increase housing choice and supply.

HB 2001 requires middle housing to be allowed in all areas zoned for single-family residential development for cities with population above 10,000 and, within the Portland Metro Urban Growth Boundary (UGB), all cities with population greater than 1,000 and urbanized portions of counties. Non-Metro cities (“medium 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 Metro Area jurisdictions (“large and metro communities”) must, in addition to the duplex requirement noted above, 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. This staff report concerns the adoption elements for the medium city code. *The department is continuing to develop the large city administrative rules and model code, and will present these items to the commission for a first hearing in September with adoption ideally in November.*

## III. **IMPLEMENTATION MEASURES**

In September 2019, with a charge developed by LCDC, department staff initiated a joint HB 2001/HB 2003 rulemaking process. With commission guidance, the department convened a rulemaking advisory committee (RAC) and a series of technical advisory committees (TACs) to assist in the development of the rules. The advisory committees consist of a wide variety of housing, planning, and advocacy stakeholders and are co-chaired by two commission liaisons – Commissioner Anyeley Hallova and former Commission Chair Jerry Lidz.

At the time of this staff report, the RAC has met seven times to discuss all aspects of the rulemaking process, including proposed OAR 660-046, the Medium Cities Model Code, and related Fiscal and Housing Impact Statements. The technical advisory committee tasked with reviewing the middle housing model code and rules has met a total of seven times. At each of these meetings, the technical advisory committee provided feedback and comments on draft versions of proposed OAR 660-046. For commission consideration, summaries of these meetings are included as Attachments E and F to this report.

## **A. STAKEHOLDER AND COMMUNITY ENGAGEMENT**

To inform the rule and committee guidance, staff conducted extensive community outreach via webinar and in meetings throughout various locations in Oregon. This outreach effort included a series of six community conversations on housing held in McMinnville, Medford, Beaverton, Milwaukie, Hermiston, and Redmond. Summaries of these events are also included as attachments to this report. Summaries of these events are included as Attachment G.

Department staff have also sought guidance from other communities who historically may not have been able to or been asked to participate in the rulemaking process. These outreach efforts include focus groups with community organizations across the state, ensuring and supporting space for community members on the advisory committee roster.

Department staff also established a separate email address – [housing.dlcd@state.or.us](mailto:housing.dlcd@state.or.us) – to collect additional written comments. Any comments the department received through this email address were provided to the rulemaking advisory committee and technical advisory committee for their consideration. The comments are also available to LCDC in Attachment H.

Additionally, department staff coordinated a Speaker's Bureau to present information and receive feedback for the process. Speaker's Bureau events included various planning or housing committee or organization meetings such as the Metro Technical Advisory Committee, city planning commission or city council meetings, League of Oregon Cities, or Oregon American Planning Association events.

## **B. FRAMEWORK FOR MIDDLE HOUSING RULEMAKING**

Section (3)(2) of HB 2001 directs the Land Conservation and Development Commission to develop a model middle housing ordinance no later than December 31, 2020. In order to respond to differing requirements for different sized cities as part of HB 2001, the department has organized the development of a model code into two separate efforts. One is a model code is for "medium cities" (duplexes on every lot and parcel zoned for residential use and that allows for the development of single family detached dwellings). A separate model code is for larger cities outside the Metro boundary with a population over 25,000 people, cities within the Metro boundary with a population over 1,000 people, and urbanized portions of counties within the Portland Metro UGB.

The development of the Medium Cities Model Code serves two purposes: 1) the code will provide guidance to cities in implementing code provisions that comply with the purpose of HB 2001, and 2) the code will apply directly to a city that does not adopt a code that is consistent with HB 2001 provisions and the provisions of any administrative rule adopted by the commission.

To be in compliance with the provisions of HB 2001, a medium city must adopt updated local land use regulations by June 30, 2021. Prior to this adoption, the city must also submit code amendments through the 35-day post-acknowledgement plan amendment process for DLCDC staff review and comment, pursuant to OAR 660-018. During the post-acknowledgement plan amendment process, department staff will review the proposed land use regulations and provide comments regarding compliance with land use statutes and the statewide land use planning goals, including administrative rules and the provisions of Oregon Revised Statute Chapter 197 (Section 2 of HB 2001 is codified as ORS 197.758)

As outlined in HB 2001, a medium city can end up with the Medium Cities Model Code as-is, either intentionally or through inaction, or may adopt its own code provisions that are in compliance with the intent of HB 2001 and do not, individually or cumulatively, cause unreasonable cost and delay to the development of middle housing. The Medium Cities Model Code is drafted such that all standards contained within it do not cause unreasonable cost or delay. However, in order for department staff to review for compliance the proposed code amendments that may differ from the standards of the Medium Cities Model Code, the department must establish a set of baseline criteria or “minimum compliance standards” which comply with the statutory language.

To implement the bill, the department has developed two products: 1) a model code that can provide guidance to cities and may be applied directly to cities who do not take action to comply with HB 2001; and 2) Oregon Administrative Rule Chapter 660 Division 46, which outlines the middle housing rules applicable to medium cities and establishes middle housing minimum compliance standards to measure compliance with HB 2001.

Throughout the development of both of these products, the advisory committees, department staff, the project consultant, and the advisory committees held several core concepts at the forefront:

- The model code must define how duplexes should be allowed on all lots and parcels that are zoned for residential use and also allow for the development of single-family dwellings.
- The standards within the model code must not individually or cumulatively cause unreasonable cost and delay to the development of duplexes in medium cities.
- The standards should be specific, clear, and objective.

Both of these products are described in more detail below and are provided for commission review. Both products are subject to comment during the public hearing scheduled during this agenda item.

### **1. Medium Cities Middle Housing Oregon Administrative Rules**

Oregon Administrative Rules Chapter 660, Division 46 - Middle Housing in Medium Cities (OAR 660-046) is a new set of rules to implement House Bill 2001. DLCD staff and a consultant team from Angelo Planning Group (APG), EcoNorthwest, and SERA Architects (project team) collaboratively developed the draft rules. The Rulemaking and Model Code Technical Advisory Committee (MCTAC) reviewed and provided comments on the preliminary versions of the minimum compliance standards in Division 46.

Division 46 establishes the minimum standards that a city must meet to be deemed compliant with the provisions of HB 2001. The standards outlined in Division 46 constitute the range of reasonable siting and design standards that local governments may adopt to regulate the development of middle housing. These standards are intended to be more flexible than the standards included in the Medium Cities Model Code.

In addition to reasonable siting and design standards, Division 46 outlines important process and enforcement rules such as division applicability, definitions, implementation, and noncompliance.

## **2. Medium Cities Model Code**

The Medium Cities Model Code was developed in conjunction with the minimum compliance standards of Division 46. The content of the Medium Cities Model Code is similar to Division 46. However, whereas Division 46 provides flexibility to local governments in how they regulate middle housing within the parameters of the minimum compliance standards, the model code is a set of specific standards a medium city can apply without further interpretation or amendments. Since cities that have not adopted their own codes in compliance with HB 2001 standards must apply the model code directly, staff recommends the model code not be written with optional code provisions for implementation.

The model code is formatted and written so that it would operate as a stand-alone chapter of a local development code including purpose, definitions, applicability, and development standards, design standards, and duplex conversion sections.

Staff and commission have received significant comment regarding parking in the model code, discussed below in Section E.

### **C. CHANGES TO OAR CHAPTER 660, DIVISION 046**

At the meeting on May 21, 2020, the commission was presented a draft version of the proposed Division 46 rules for medium cities. The commission made comments on the draft rules and kept the public hearing open until July 23, 2020 to gather additional comments and feedback from the public. Since the May commission meeting, staff have refined and updated the Division 46 rules for medium cities considering additional consultation with the advisory committees and additional comments received.

Department staff proposes one specific change to the proposed rules since the commission last reviewed them in May related to Statewide Planning Goal 5 and historic resources.

On May 20, Restore Oregon submitted a letter to the Land Conservation and Development Commission outlining issues regarding OAR 660-046-0010(3)(a)(B), which define parameters specific to middle housing affecting various Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) constraints, specifically historic resources. DLCD staff provided a response to Restore Oregon on June 11 (Attachment I), including several revisions to the proposed rule language to address issues raised in the letter. Department staff discussed revisions and application of proposed rules with the author of the letter submitted on behalf of Restore Oregon, Ms. Carrie Richter. Staff believe the revised language more appropriately aligns with the existing Goal 5 Historic Resource regulatory framework and provide local jurisdictions sufficient latitude to protect historic resources.

The letter from Restore Oregon raised issues specific to siting and design, rule language clarity, and consistency with the existing Goal 5 Historic Resource framework (OAR 660-023-0200). To address these issues, department staff incorporated the following changes into OAR 660-046-0010(3)(a)(B):

- Removal of references to “siting and design” in recognition that Section 2(5) allows jurisdictions to regulate siting and design of middle housing *and* regulate middle housing to comply with protective measures adopted pursuant to statewide land use planning goals.
- Revision of rule language to better reference and align with the existing Goal 5 Historic Resource framework as provided in OAR 660-023-0200.

The revisions of rule language help better meet the intent of the rule: to build on the existing regulatory and rule framework, reinforce a local jurisdiction’s obligation to protect Goal 5 Historic Resources, and set parameters around regulations minimally related to historic integrity that have a clear effect of excluding middle housing in single-family neighborhoods.

#### **D. CHANGES TO THE MEDIUM CITIES MODEL CODE**

The definition of “Duplex” has changed in the draft model code since the May LCDC meeting. DLCD initiated this change as a result of testimony heard from the MCTAC, RAC, and members of the public and to better align the definition with the definitions of other middle housing types in Division 46.

## Background of defining “Duplex” in the Model Code

The project team considered several iterations of the duplex definitions in the model code. This work was centered on two main topics: 1) whether duplex units could be configured in an attached or detached manner and 2) whether to include language describing the interrelation of duplexes and internal accessory dwelling units (ADUs).

In the discussion about attached or detached duplex units, the project team originally proposed a model code standard that requires duplex units in an attached configuration within a single structure. This was based on an attempt to balance several factors such as the ease of implementation, the traditional understanding of a duplex, and the need to have a model code standard that would reduce conflict with other provisions already adopted in medium city development codes.

However, through testimony heard from the MCTAC, RAC, and members of the public, department staff was encouraged to reconsider the proposed definition. A majority of MCTAC members agreed that providing flexibility to accommodate a range of duplex development scenarios would be most beneficial. The originally proposed “attached duplex” configuration was overly limiting and did not achieve the intended outcome of increased development potential of duplexes. Additionally, as rulemaking continues for the model code and OARs for middle housing in large and metro cities and counties, it has become clear that “plex” development is most feasible when builders can adapt to and accommodate specific and unique site constraints through flexible design and unit configuration regulations

A summary of the proposed change to the definition of a duplex in the medium cities rules is provided below.

## Summary of Changes

DLCD is proposing to change the definition language of “duplex” to provide further flexibility to local governments and developers to encourage development of this middle housing type.

- Original Proposed Duplex definition:

*Duplex means a detached structure on a lot or parcel that is comprised of two dwelling units. In instances where a structure can meet the definition of a duplex and also meets the definition of a primary dwelling unit with an attached or internal accessory dwelling unit (ADU), the applicant shall specify at the time of application review whether the entire structure is considered a duplex or a primary dwelling unit with an attached or internal ADU.*

- Updated Proposed Duplex definition:

*Duplex means two dwelling units on a lot or parcel in any configuration. In instances where a structure can meet the definition of a duplex and also meets the definition of a primary dwelling unit with an attached or internal accessory dwelling unit (ADU), the applicant shall specify at the time of application review whether the entire structure is considered a duplex or a primary dwelling unit with an attached or internal ADU.*

The only change proposed is to the configuration of the units. Under this definition, the units of a duplex can be either attached or detached – providing the maximum amount of flexibility for a property owner. The updated definition is also now consistent with how triplex and quadplex will likely be defined in the Large and Metro Cities Model Code.

This update does not change the latter portion of the definition related to ADUs. Language referencing ADUs is still included to mitigate any potential process confusion at the local level. Also, this update also does not change the minimum compliance language in Division 46 related to duplexes. The minimum compliance in Division 46 for duplexes still allows a local government the ability to define a duplex as either attached or detached.

## **E. OFF-STREET PARKING**

At the meeting on May 21, 2020, staff presented members of the commission six major rulemaking highlights, one of which was off-street parking. Commissioners did not give staff any additional guidance with respect to the approach recommended by staff. Since, however, parking was the most discussed middle housing development element in the advisory committee process, staff wishes to provide a recap as follows.

Two key points related to middle housing parking requirements consistently came up in discussions at both MCTAC and RAC meetings. First, there is a perception that rural Oregonians and Oregonians in smaller cities have more reliance on the automobile to get around, especially in areas with little transit service. Some committee members argued that because of this increased reliance on automobiles, property owners should be required to include additional off-street parking spaces for duplexes. Second, department staff received questions about determining the true cost and development feasibility impacts of providing off-street parking, and if those impacts cause unreasonable cost and delay to the development of middle housing.

With these questions in mind, department staff conducted research into household vehicle ownership and parking requirements (Attachment J) in order to formulate a basis for determining the appropriate minimum parking standards in both the Medium Cities Model Code and Division 46.



The project team also conducted one-on-one calls with planning directors and staff in six medium-sized cities across Oregon. While some shared concerns, none offered specific data contradicting the analysis above or demonstrating widespread parking shortages. The project team heard about challenges experienced during annual events (e.g. the Pendleton Round-Up) and in areas where residential uses mix with commercial and institutional uses. However, department staff have found that these challenges often are best addressed through parking management rather than increased off-street parking requirements.

Based upon this additional research and outreach, department staff feel it is clear that off-street parking requirements can play a major role in increasing the overall development cost of housing, and especially middle housing. Additional costs incurred during the development of housing are passed on to the eventual occupant of that housing, making it less affordable. Cities may regulate middle housing if the regulations do not cause unreasonable cost and delay to the development of middle housing. Allowing jurisdictions to impose more than a two-space minimum parking requirement for duplexes would be contrary to the intent of HB 2001.

Therefore, department staff recommends the following off-street parking requirement minimum compliance standard in Division 46:

*“A Medium City may not require more than a total of two off-street parking spaces for a Duplex.”*

Note that the minimum compliance standard is, in effect, a maximum off-street parking requirement. The minimum compliance language gives flexibility to medium cities to have a community conversation about the importance of parking. The standard in Division 46 gives cities options in how they regulate parking, within the bounds of unreasonable cost and delay. The standard is explicit that a city may not *require* more than two off-street parking for the entire duplex development, but does not regulate how many off-street parking spaces a city may *allow*.

To keep the cost of housing down, and let the market provide, the off-street parking requirement in the Medium Cities Model Code states that *“no off-street parking spaces are required.”* This standard not only represents the best practice in regulating parking for duplexes in medium cities, but also does not preclude a city from allowing any number of parking spaces in conjunction with duplex development.

Committee and community members remain concerned about where residents would park their vehicles if off-street parking requirements were reduced or eliminated. Research shows that, when left to market conditions, developers typically provide some degree of off-street parking – even without the presence of off-street parking requirements.

Therefore, department staff recommends keeping the off-street parking requirement in Division 46 as optional, with no minimum requirement expressed in the Model Code. Recognizing variance in local conditions, housing team and regional representatives are available to assist with implementation as cities work through these changes.

#### **F. FISCAL IMPACT STATEMENT / HOUSING IMPACT STATEMENT**

The changes to the proposed rules as outlined above do not alter or change the Fiscal and Housing Impact Statements that were provided to the commission as part of its most recent meeting in May.

The statements are provided for commission review in Attachment D of this Agenda Item.

#### **G. RECOMMENDED ACTION**

The department recommends that the commission:

- 1) Review the proposed changes to administrative rules (660-046) and the proposed changes to Medium Cities Middle Housing Model Code;
- 2) Consider the input of the rulemaking advisory committee and its technical advisory committee;
- 3) Consider public comment on the draft rules, draft model code, and associated fiscal and housing impact statements provided in conjunction with both the May, 2020 commission meeting and this meeting;
- 4) Provide the department direction regarding any questions or issues for which the commission needs further information in order to make a final decision; and
- 5) Adopt the proposed administrative rules and medium cities middle housing code, with appropriate amendments, as necessary.

#### **Sample Motions for Adoption:**

*“I move that the Land Conservation and Development Commission adopt Oregon Administrative Rule Chapter 660, Division 46, including the Medium Cities Middle Housing Model Code and minimum compliance standards, as drafted in Attachments B and C of Agenda Item #6.”*

*“I move that the Land Conservation and Development Commission adopt Oregon Administrative Rule Chapter 660, Division 46, including the Medium Cities Middle Housing Model Code and minimum compliance standards, as drafted in Attachments B and C of Agenda Item #6 with the following amendments....”*

**IV. ATTACHMENTS**

- A. ENROLLED HOUSE BILL 2001**
- B. PROPOSED MEDIUM CITIES MIDDLE HOUSING OREGON ADMINISTRATIVE RULES (660-046)**
- C. PROPOSED MEDIUM CITIES MIDDLE HOUSING MODEL CODE**
- D. FISCAL IMPACT STATEMENT / HOUSING IMPACT STATEMENT**
- E. RULEMAKING ADVISORY COMMITTEE SUMMARIES**
- F. MIDDLE HOUSING TECHNICAL ADVISORY COMMITTEE SUMMARIES**
- G. COMMUNITY CONVERSATIONS ON HOUSING SUMMARIES**
- H. WRITTEN COMMENTS RECEIVED ON HOUSE BILL 2001**
- I. MAY 20, 2020 RESTORE OREGON COMMENT LETTER AND CORRESPONDENCE**